

J A M A I C A

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 29/85

BEFORE: The Hon. Mr. Justice Rowe, President
The Hon. Mr. Justice Carey, J.A.
The Hon. Mr. Justice White, J.A.

R. v. LLOYD COLEMAN

Delroy Chuck for the appellant

Miss Jennifer Straw for the Crown

30th March, 1987

ROWE, P.:

The applicant Lloyd Coleman was convicted before Gordon J. and a jury in the Clarendon Circuit Court of the murder of Monica Anderson on either the 23rd or the 24th July, 1983. This is a case in which the jury having considered their verdict for some nine minutes returned a verdict of guilty as charged.

The case was from the point of view of the crown a reasonably straight-forward one. Monica Anderson, hereafter referred to as the deceased, and the applicant lived together as man and wife at Simons district in Clarendon. It appears that ~~the~~ deceased had two children who lived with their maternal grandmother not far from where the deceased lived.

The evidence was that on Friday, 22nd July, 1983, George Newman, the only other person who lived on the same building as the applicant and the deceased, overheard the applicant cursing the deceased and threatening to kill her.

Mr. Newman intervened and enquired of the applicant the reason for the quarrel and the threats and the applicant told him that he had seen a letter which the deceased had received from a man in Kingston inviting her to come to Kingston and to meet with him. Mr. Newman pacified the quarrel and that was the end of it. The following day, however, when Mr. Newman returned from work he heard a similar quarrel between the applicant and the deceased on the same subject. Again he intervened; again he pacified the quarrel; and on the face of it, peace was restored.

The applicant, the deceased and many others from the village attended a wake on the night of Saturday, 23rd July, 1983. After the wake they all walked home. To some it appeared that the applicant and the deceased were on good terms during the wake and on the walk home. The applicant and the deceased parted from the balance of the people and went towards their home which was situated on a hill some distance away from where witnesses Brown and Dawkins lived. It was then 11.30 p.m.

Two gentlemen, Mr. Brown and Mr. Dawkins, gave evidence that on July 23, 1983, at about midnight, i.e. about half-an-hour after the applicant and the deceased had parted from them on the walk home from the wake they heard screams coming from the direction of where the applicant and the deceased lived. The screams were those of a female voice and the screams appeared to have been very loud at one time and then diminished into nothing. Both of these gentlemen seem to have been apprehensive about the tone of the screams, and Mr. Brown gave evidence that he spoke to Mr. Dawkins saying that the screams sounded to him as if "somebody was receiving a murderation".

Mr. George Newman, the witness who lived on the same building as the applicant and the deceased, said it was about midnight to one o'clock that he heard " a heavy sound down in a de house" loud enough to awaken him from sleep and after that he heard some grunting. He heard "as if something bounced down", in the house. He called out to the applicant but got no reply. Apart from the grunting he heard sounds as if "somebody take something outa house and carry it weh, heard like somebody a move".

Now on the following morning, i.e. the 24th, the applicant was seen coming from the bush at 6 a.m. and he told Mr. Newman that the deceased had gone to Kingston. Later that same morning he carried milk to a customer and when he got there he explained to his customer, Gwendolyn Gordon, that he had brought the milk because the deceased had gone away to "town", meaning to Kingston.

The applicant made a number of reports to persons in the area as to the whereabouts of the deceased. He always said that the deceased had taken a particular bus, the Fedders bus, and that she had gone away to Kingston, leaving early on the morning of the 24th. He said too that she had dressed herself in a new suit and had gone away. To the mother of the deceased the applicant explained that the deceased had gone to work in Kingston, that she had taken most of her clothes and that he had provided the money for the trip. The mother gave evidence to the effect that she replied to the appellant saying she was surprised at such behaviour, because the deceased whom she had seen twice on the previous day had not mentioned the propose trip to Kingston and had made no special arrangements with her for the care of her two children.

After this alleged trip to Kingston the mother waited in vain for correspondence from the deceased. All her enquiries as to her whereabouts proved futile. Two months after July 24, the applicant sent a box containing the deceased's clothing to her mother.

A year passed. Then on August 11, 1984, Keith Smith the brother of the deceased was tending goats. He came upon a partly buried "light blue skirt". With his machete, Keith Smith dug up the skirt. He recognized it to be the skirt his sister had worn on the Saturday night of her disappearance. He made other observations. He saw some bones by the skirt and further down the hillside, he saw a pile of bones. This find he estimated to be located about half-a-mile from the applicant's home and it was located in a wooded area, described by Keith as "wilderness". Next day the police visited the scene, and took possession of the bones which consisted of one human skull, one jawbone, a left and a right femur, a right tibia, two fibula, part of the right hip-bone, part of a left hip-bone, a left scapula, a left ankle bone and 17 ribs. Pathologist, Dr. Venugopaul, examined these bones and concluded, firstly that there was no duplication of bones, that is to say, they all belonged to the same person, secondly, that the person was a female aged between 20 and 25 years of an average height of 5'1" with a two inch differential either way. The pathologist found two stab wounds in the skull and from traces of blood on the bones, concluded that the wounds were inflicted before death. Death was due to shock and haemorrhage as a result of injuries to the head caused by a sharp cutting instrument inflicted with severe degree of force. From the condition of the bones, the doctor also concluded that they had been exposed to the elements for one to three years.

In a short unsworn statement the applicant said that he and the deceased were on quite friendly terms on July 23, 1983, that they attended the wake, called "singing", walked homewards as the witnesses Dawkins and Brown had testified, and that when they got to his home the deceased declared that she was going to "Town" the following morning. He remonstrated with her for the sudden decision as he had no money to give her. She refused to wait until Monday. She went to bed and awoke early in the morning. He refused her invitation to him to accompany her to the bus stop as he gave the explanation that he was tired. She then dressed and just before leaving the house she said:

"I am going to set guzman on you
or if not, find someone to hurt
meself to stop you from going to
America.."

Then she added:

"I am serious", and then she left the house.

Inferentially that was the last time that he, the applicant, was seeing the deceased and the further inference from his narrative is that he did not harm her in any way.

In a full and careful summing-up, the learned trial judge brought home to the minds of the jury the requirement that the prosecution must prove that Monica Anderson was killed and that the circumstances pointed exclusively to the applicant as the person who killed her intentionally without any lawful justification or excuse. Mr. Chuck did not seek to challenge any of these directions. He complained, however, that the learned trial judge wrongfully admitted the evidence of Marcus Brown at p. 67 of the Record where Marcus Brown is reported as answering the following questions:

"Q: The bawling that you heard, what it sounded like?

A: It sound like - a sey, 'A who a get murderation?'

HIS LORDSHIP: What it sounded like to you?

"A: Dead bawl, like somebody a get str
struggle.

HIS LORDSHIP: Man or woman it sounded like?

A: Woman voice.

HIS LORDSHIP: You said you spoke to one Dawkins?

A: Yes, and ask him who a get
murderation."

Mr. Chuck submitted that what Brown said to Dawkins was clearly hearsay and inadmissible. He submitted too that the rule in Subramaniam v. D.P.P. [1956] 1 W.L.R. 965 could not be prayed in aid as the speaker was not expressing his own state of mind.

The term "Murderation" can have no technical meaning and must have been understood by the jury, if they thought of it at all, as an expression referring to a serious beating and not necessarily a murderous one. We do not think that the question by Brown directed to Dawkins was anything more than a rhetorical one. It drew no response but it had the effect of causing the men to listen keenly and to recall the incident in later years. In any event, we do not think that this statement could have any effect whatsoever upon the verdict and in his candid way Mr. Chuck admitted that there was other credible evidence on which the jury could have acted to arrive at their verdict. Mr. Brown described the bawling as "dead bawl", something he was quite entitled to do, because as an ordinary responsible person it is permissible for him to interpret common sounds and to give his opinion on them to the jury. What is more, however, the learned trial judge completely ignored this statement of Mr. Brown when he came to charge the jury and so the jury could not have treated this chance remark as significant for any purpose. At its highest, the evidence challenged could be said to be inadmissible, but even then its probable

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effect upon the charge could at most be infinitesimal and could not in any way affect the verdict. The application for leave to appeal is refused on the ground that there was abundant evidence from which the jury could draw the inescapable inference that the applicant had a motive for killing the deceased and did in fact inflict injuries from which she died sometime during the night of July 23, 1983, and thereafter drew her body from the house and deposited it in the wilderness.