JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 94/83

BEFORE: The Hon. Mr. Justice Carey, J.A.
The Hon. Mr. Justice White, J.A.
The Hon. Mr. Justice Downer, J.A. (Ag.)

REGINA

v.

LLOYD REECE

C. Dennis Morrison for applicant

Walter Scott for Crown

2nd October & 13th November 1986

CAREY, J.A.:

In September 1983 at the Clarendon Circuit Court, the applicant having been indicted for and convicted before Bingham, J., sitting with a jury, of the murders of Gladys Halder and Leo Bucknor, was duly sentenced to death. His application for leave to appeal was refused by this Court on 2nd October when we promised to put our reasons in writing and to hand them down at a later date. We now fulfil that promise.

The lamentable facts of the case for the prosecution must now be detailed.

Gladys Halder, a United States resident, was in the habit of returning to her native land to spend her annual holidays every other year or so and stayed at 5 Arnold Drive

in May Pen with her daughter and son-in-law, Mr. & Mrs. Mclaughlin. At the time of these events the house was occupied by her sixteen (16) year old son Maurice Halder, and his nephew Leo Bucknor, a lad aged a mere 10 years. The McLaughlins were away in the U.S.A. On the 10th January, 1983 Maurice Halder, while travelling from Mandeville to May Pen, met this applicant on the bus, quite by chance, and struck up a conversation with him on the subject of music in which both shared an interest. The result of that conversation was that Maurice Halder agreed to accompany the applicant into Kingston, while the applicant promised to return to May Pen with Maurice so as to seek Gladys Halder's permission for Maurice to return to Kingston, with a view to accompanying the applicant on his guitar at a recording studio. The applicant had informed Maurice Halder that he was song-writer. Maurice Halder, on his part, said he was a self-taught guitarist who could also play the double bass and drums.

On their return from Kingston, both the applicant and Maurice Halder went to 5 Arnold Drive, Maurice Halder's home, where the applicant was introduced to Gladys Halder. She invited him to spend the night. He asked her if he could address her as 'Mamma', because that was how he referred to persons whom he loved. She provided him with pyjamas and with a meal. He had a bath. After 9:00 O'Clock, visitors who had called, left. Among these was Donovan Sanchez who confirmed the presence of the applicant in the house that night. He recalled the applicant singing "Hell a pop down here, my friend". Those words were peculiarly prophetic. Leo Bucknor slept with Gladys Halder, while the applicant and Maurice Halder were to sleep in the same room.

Early in the morning, Maurice Halder said he awoke to find the applicant up. The applicant requested him to follow him to the store-room where he was told that he should accompany him to Town (i.e. Kingston). Whereupon, Maurice reminded the applicant that his mother had said that she herself would take him to Kingston and back. The applicant then went to the bathroom, Maurice following. The applicant continued to insist that Maurice should come to Kingston. The applicant next pulled a kitchen knife from his pyjamas and ordered Maurice into the bath-tub which was filled with water. Menaced by the knife, Maurice was compelled to get into the tub, where he was told to put his head under the water. The applicant himself then tried to force Maurice's head under water, but Maurice was able to slip from under his hand. He begged the applicant not to kill him as he would cooperate. He was constrained to make this plea, he said, because he felt that the applicant was intending to kill him. Thereafter, Maurice was ordered out the tub, a clothes-line was used to tie his hands and his feet and he was gagged; his neck was tied to a pipe. The applicant left him and went to the door of Mrs. Halder's room where he knocked. Maurice heard her call his pet name 'Teddy', and then exclaim 'Lord Jesus'. Thereafter, silence.

Three minutes later the applicant returned to the bathroom in which Maurice was trussed up. The applicant's clothes were blood-stained. He washed himself in the bath-tub. The applicant again left, returning with Leo whom he asked for the car keys. Leo replied that he did not know their whereabouts. He was then led out. Thereafter Maurice heard Leo making a sound as if he was gasping for breath.

Again the applicant returned to the bathroom, wearing Maurice's US Army cap and clothes and carrying Maurice's Walkman radio. He asked for and obtained Maurice's watch. He also took a bicycle from the home, returned and led out Maurice who noticed his own guitar and his mother's travelling bag and the bicycle leaning against the door. All these the applicant took with him, when he made his escape over the fence.

Maurice Halder, whose hands were still bound, then made his way to a neighbour named Boysie Cole and made a report to him. There his bonds were eventually untied by sons of Boysie Cole. Cole himself gave evidence confirmatory of the physical condition of Maurice Halder when Maurice arrived at his home in the early hours of 11th January, 1983. Boysie Cole having armed himself with his machete, then hurried across to the McLaughlin's house and there he found Gladys Halder lying dead on her bed. She was covered in blood and appeared to have an injury to her neck. He summoned another neighbour, Hyman Douglas who, in addition, noticed a blood-stained knife resting on her stomach. He described her injury as a stab wound through her neck. Both men went into another room where they found little Leo Bucknor under a pile of clothes. There was a shirt twisted around his neck, and Douglas thought he felt a heart beat. He took him off to the May Pen Hospital, but the enrolled nurse who attended him could find no pulse. She observed what appeared to be marks made by fingers about his neck, and she gave as her opinion that he had been strangled.

We would observe that although a post-mortem examination was carried out by the Government's Pathologist,

neither did he give evidence at the committal proceedings, nor was he available at the trial, having left the Island to accept some other assignment.

The police interrogated the applicant on 12th January, 1983 when, according to the police evidence, he offered to make a statement which, in the event, was admitted in evidence after a voir dire by the trial judge. It was suggested by defence counsel to the witnesses on the voir dire, that although it was the fact that the applicant had given a statement to the police, that being tendered was not the true statement. When the applicant himself gave evidence on the voir dire, he stated that he was presented some papers which he signed, but the signatures appearing on the document being shown him, were not his. He said that he told the police some of what was written in the statement admitted in evidence, but denied other portions. Curiously, he said in relation to some answers ascribed to him that he did not give them, but acknowledged the signatures there as his. He did not suggest that any physical violence or threats had been used against him but said he was told a 'bad' word.

In that statement taken under caution, the applicant admitted stabbing Mrs. Halder in her throat and strangling Leo Bucknor. He explained how he came ot kill Leo, that it was Maurice Halder who had encouraged him to do so because Leo would have given them both away. It was Maurice Halder, he added, who had suggested that he be tied by the applicant and a request from his mother for money made by the applicant.

When the applicant was first interviewed by the police, he was found to have in his possession a brown leather wallet

which he stated had been given him by Maurice Halder. He was asked what other items Halder had given him, and promptly took them to premises on Retirement Road where a bag with clothes, some of which belonged to Maurice Halder, was recovered. The applicant indicated that the bag and contents came from Halder's house. At another house, the police retrieved Maurice Halder's guitar. In relation to Halder's watch and Walkman radio, which he mentioned as coming from Halder's house, he said these were located elsewhere where it would be dangerous to go. The bicycle, on which it was alleged the applicant had ridden away, was handed over to the police on his instigation.

In his defence, the applicant, who gave evidence on oath, testified that it was Halder who had in fact killed his own mother and nephew. He confirmed that he had gone to the house and had stayed there the night on the invitation of Mrs. Halder. Maurice Halder gave him his guitar in exchange for a couple of songs which Maurice had taken from him earlier and also a bicycle. After this, he rode away leaving the bicycle with his aunt who lives in Palmer's Cross in Clarendon.

He had given a statement to the police but not that tendered in evidence. He denied taking any items from the Halder's household, except the guitar and the bicycle which were both given to him.

Learned counsel for the applicant did not seek to challenge the jury's verdict on any question of fact, but complained of the learned trial judge's failures or omissions as indicated in the following three grounds of appeal:

"(1) That the learned trial judge failed to leave the applicant's defence fairly to the jury and by his several adverse comments on the applicant's evidence he clearly invited the jury to disbelieve the applicant.

(2) That the learned trial judge failed to give the jury adequate assistance in his directions on circumstantial evidence by relating those directions to the various inferences that would arise on the evidence.

(3) That in inviting the jury to consider the weight and effect of the cautioned statement tendered by the Crown, the learned trial judge omitted to point out to the jury that on the basis of the cautioned statement there was some evidence from which it could be inferred that the witness Maurice Halder was an accomplice and the learned trial judge therefore erred in law in failing to give the jury a warning on the dangers of acting on the uncorroborated evidence of accomplices."

First, we consider the last of the grounds as presumably it was the strongest counsel felt able to put forward: it was argued first. The basis for this ground is derived from the following directions of the learned trial judge at page 288:

"Now, it might be passing through your minds and defence counsel didn't mention it in his address to you, that Maurice Halder, from the part he played in this incident, might not be entirely free of any blame for what took place. It might occur to you. I have no doubt it might occur to you. You heard the evidence of Maurice Halder, however. It is a matter for you to say how you view that evidence.

This young man, if you accept his evidence, was taken at knife-point and, according to him, an attempt was made to force him into a bathtub with water and an attempt was made to drown him. And, after he came out of... he said he asked the accused not to kill him; if he don't kill him he would cooperate.

Now, what was operating in that young man's mind at that time? You will have to ask yourselves these questions: Was it a

> "question of trying to save his own skin? Is that what must have occurred to him at that stage?"

We are not at all clear what the learned trial judge had in mind when he used the term "free from blame". But shortly after these words, he expressed himself thus:

> "So, even if you might form the view that well, Maurice Halder ... you haven't really heard all the truth from Maurice Halder; he was more involved in this than we have been led to believe, that is not the end of the case against the accused; that isn't the end of the case against the accused."

and again:

> "Because, if Maurice Halder's evidence, just by itself, raises a reasonable doubt in your mind; if you don't believe him then I would suggest that you put his evidence aside and go on to consider the other evidence in the case."

There appears in these passages, so the argument ran, an underlying unease on the part of the learned trial judge as to the credit worthiness of the main witness for the Crown, Maurice Halder, and he seemed to be suggesting that this witness, if not an accomplice, had at least an interest to serve. If this were the case, then it was argued, the learned trial judge was obliged to give the traditional warning as to the dangers of acting on uncorroborated evidence. We agree that those passages are plainly capable of conveying that impression and prompts us to say that it was a wholly unnecessary approach, and as we will explain in a moment, unsupportable in point of law.

There were two mutually inconsistent stories as to how the murders were perpetrated. There was the version given by Maurice Halder and that put forward by the applicant: each in stark contradistinction to the other.

But Halder's was supported by other circumstantial evidence in the case, which the learned trial judge properly placed before the jury, although he characterized the circumstantial evidence as a second and distinct limb of the Crown's case, which he invited the jury to divorce from any other facts capable of implicating the applicant; e.g., Halder's direct evidence and the applicant's confession. It is this fragmentation of the facts in the case which, we suggest, is unrealistic and quite unnecessary. It would, we think, have been more helpful to direct the jury that they should consider whether the circumstantial evidence and the applicant's confession, whether in combination or singularly, strengthened the direct evidence of Halder.

In reviewing evidence, it is, we think, quite wrong to isolate individual pieces of evidence and divorce them from the global context, for facts derive their particular significance from their entire setting. We do not think we can stress this too highly.

But of more importance, as it appears to us, the learned trial judge must have based his comments on his mistaken view of the effect of statements in a confession implicating persons other than the maker thereof. In that statement under caution by the applicant, it will be remembered, the applicant endeavoured to implicate the witness Halder by suggesting that Halder had encouraged him to kill Leo Bucknor. It is trite law that a confession is admissible only against the maker thereof. The mention of Halder's involvement therefore had no evidential value and accordingly, could not reflect on his credit.

The learned judge plainly fell into error in treating the statement as he did. But that error cannot enure to the

benefit of the applicant for those comments of the learned judge were unduly favourable to the applicant. They really did not amount to misdirections. There is then no basis for urging that he would be obliged in the circumstances to give the directions suggested in the ground. We can see no merit in it.

In Ground 1, learned counsel complained that the trial judge compared Halder's evidence and that of the applicant in a way which was to the prejudice of the applicant. As an example he called our attention to page 294:

> "Now the evidence in this case is that Teddy Halder, and it is unchallenged as well, was admitted in the hospital and he spent a few days there. Here is this witness telling you that Maurice Halder, otherwise called Teddy Halder, when he saw him that morning he was crying and panicky, and I think also, Mr. Boysie Cole's evidence is to the effect or was to the effect that when he saw Maurice Halder at his door-way, on the verandah having woken him up that morning. Mr. Cole has said his two hands were tied together at the wrist, that is Teddy Halder, with a piece of white cord. He was crying. So you would have to ask yourselves now, if this young man, who the accused asks you to believe, or leads you to believe, was the person who planned and executed this incident or who was responsible for what took place, could this be the sort of conduct that one would expect from him? Would he be staying around, on the scene, having done this? Because, if he was malingering or putting on an act, when he went to Mr. Cole, certainly, when he went to the hospital and he is examined by more competent people, who ought to know what the situation was, could he put on an act for them as well to manage to get into the hospital and spend two days in there? You know how hospital beds are in demand, you don't even have enough space in our public hospitals, this is common knowledge? Or was it this, a situation where because of what had taken place, his state of mind was what caused him to react in this way? It is entirely a matter for you."

The specific complaint in this instance was that the

learned trial judge commented on the evidence in the excerpt in such a way as to indicate that the applicant should not be believed.

The summing-up of the learned trial judge, we wish to observe, was logically structured. It was necessary to contrast the two versions of the killings. He was in the excerpt cited remarking on evidence which he had characterized as circumstantial, and leaving the jury to consider whether Halder's distressed condition after the incident, when he arrived crying and bound at the Cole's house, or at the time of his arrival at the May Pen Hospital, was genuine or feigned. They were invited to do so because the applicant had said in evidence that it was Halder who had planned and executed the murders. In our view, the comments of the learned trial judge were apt and eminently warranted in the circumstances, and we are quite unable to see how they could be considered unbalanced and therefore prejudicial to the applicant. At page 304 the following commentary appears:

> "Now, when Maurice Halder left that witness box, it wasn't suggested to him by the defence that he hadn't been left tied. His evidence as to that went unchallenged. It wasn't also suggested to him, contrary to what the accused would lead you to believe, that this Maurice Halder was setting him up. It wasn't suggested to Maurice Halder when he was in the witness box that during the course of that night he was seen coming out of the accused pants in the bathroom. That was never suggested to him. You will have to ask yourselves, 'well, if that is true, if what the accused is saying as to that was true, why no suggestion put?' Did he give his attorney instructions as to that? And, having regard to the very careful way in which the defence was conducted in this case, would that have escaped counsel? Or is it something that the accused is inventing, fabricating?"

The use of the phrase - "lead you to believe" - was, it was

urged, unfortunate.

For our part, we are not persuaded that in the context in which the phrase appears, the objection raised is sustainable. There is not the least suggestion that the situation highlighted in the passage cited was inaccurately stated or exaggerated; the challenge appears to us rather to be directed to the infelicitous use of language. Again, at page 307, where our attention was called to the following excerpt:

> "He sees this man the accused, for the first time that day and he is going to give him his guitar, his tool of trade or his potential tool of trade, he has taught himself to play the guitar and according to his opinion, he plays it well, and he is going to give him his guitar and exchange for two songs. And you know what is very significant in this case? You recall Teddy Halder giving evidence? When he left that witness box it wasn't suggested to him, as the accused would have you believe, when he gave evidence from the witness box, that Teddy Halder had said that on the way to the house, 'Do you remember me stopping by and leaving some songs with a boy, I left them with a boy to type, to take to school'. Now something as material and as important as that, if that was what Teddy Halder said, to the accused that morning before he left the house, wouldn't you expect it to be put to Teddy Halder? But it is not put to him, not put to him at all, but then you have now, the accused going into the witness box and mentioning this incident and then Teddy gives him his guitar in exchange for the two songs. Now you have to ask yourselves as people of experience of this world, was that young boy going to swop what would have been his prize guitar for two songs, two songs by the accused?"

At pages 308-309, the learned trial judge having contrasted the evidence of the two principal dramatis personae in the murder, said this:

> "Was that the conduct, the actions of a guilty person, as the accused would have you believe? Or, on the other hand, when one looks at the conduct of the accused, following the incident, looking

> "at and comparing and contrasting the conduct of both these persons, these two principal actors in this drama, so to speak, which one is more consistent with innocence than with guilt? Look at them separately. The conduct of the accused, is it consistent with innocence or with guilt? The conduct of Maurice Halder, is it more consistent with innocence than with guilt?"

As to this excerpt, no specific complaint was being made, but it was cited as confirming that the modus operandi of the learned trial judge was to suggest that the applicant's story was not capable of belief. Finally, another example was referred to at page 311:

> "If you believe Maurice Halder, the accused account can't be true and, on the other hand, if you believe the accused account, then it would have to mean that the whole case against him is a grand conspiracy."

We have been careful to set out the passages referred to, so as to demonstrate that we have given careful consideration to all the submissions of learned counsel who has, in his customary style, been clear, cogent and economic.

Having regard to the manner in which the case was fought in the Court below, it was incumbent on the learned trial judge to contrast the evidence of Maurice Halder and the Crown witnesses in support with that of the applicant. In the light of the overwhelming facts on the one side against the other, the mere recital of those facts served to demonstrate on which side the weight of evidence lay. Such terms as 'conspiracy' or 'grand conspiracy', 'leads you to believe', and the comment that no questions were asked in cross-examination, which was the fact, are not, in our view, criticisms which are sustainable in the circumstances of the case.

A summing-up must be seen as a whole, and what should be regarded as an injustice to an accused, would be a failure by the judge to put his defence to the jury fully and fairly. We would also regard as a serious dereliction of his duty to ensure a fair trial for a judge to disparage the defence of an accused person. When a trial judge makes comments which he is entitled to do, and these are warranted on the facts, and having regard to the way in which the case is fought before him, this Court will be loath to interfere. Hardly so, where the gravamen of the complaint amounts to no more than criticism of the judge's language. A summing-up is not to be equated to a speech, to law students or lawyers or an academic treatise: it is an endeavour, inter alia, to put the issues which fairly arise in a case as simply as the circumstances allow and to explain so much of the law as is relevant to allow a determination of those issues by a jury. We, for our part, do not sit to correct the style of English in which a judge may indulge.

The final ground of appeal as we apprehended it, was based on the fact that the learned trial judge had said that the Crown's case rested on three (3) limbs, namely, Halder's evidence, circumstantial evidence other than Halder's direct evidence, and the applicant's confession. It was submitted that the circumstantial evidence taken by itself would not have been sufficient to give rise to an irresistible inference of guilt and such as to rebut any conclusion inconsistent with it.

We can deal with this ground summarily. We have already stated our opinion that the learned trial judge's method of dealing with the evidence at one stage of his summation was somewhat unrealistic. However, even if it were accepted,

which we do not, that the circumstantial evidence, (apart from the evidence of Halder), was inconclusive by itself, the there was the confession of the applicant which by itself, was the clearest evidence of guilt, if accepted. But at the end of his summing-up, the learned trial judge did say this at page 329:

> "So you have 3 limbs, as I told you: evidence of Maurice Halder; the other chain of circumstances which goes to support Maurice Halder's evidence and the caution statement, finally, on which you can act to return a verdict of guilty in relation to all these counts, if you believe the evidence... and, if you can draw that conclusion that I have indicated to you, in relation to the evidence in the case."

With these parting words to the jury, which we have suggested was the correct approach, they could have been in little doubt that the circumstantial evidence which he had identified, was capable of assisting them in making up their minds as to the veracity of Halder and therefore, the guilt of the applicant.

It was for these reasons that we refused this application for leave to appeal.

Before leaving this matter, we must deplore the grossly protracted period of time which this application has taken to reach this Court and we trust that there are no further cases, whatever be the charge, still outstanding in the lists since 1983.