Judgment Book 1010

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO: 31/80

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

R. v. LOXLEY GRIFFITHS

Berthan Macaulay Esq., Q.C. & Mrs. Margarette Macaulay for Applicant

Patrick Brooks, Esq, for the Crown

May 28, October, 26 1981

ROWE J.A.

We set out hereunder our reasons for treating this application as the hearing of the appeal and dismissing the appeal.

The applicant was convicted in the Home Circuit Court before Ross J. and a jury on February 12, 1980 for the murder of his wife Joy which occurred at Harribin Lane off the Grants Pen Road on the night of August 19, 1978. Joy and Loxley Griffiths were married for a mere 14 months before her death. Some six weeks earlier she had returned to live in her mother's house and from all accounts this was due to a breakdown in the marriage. The case for the prosecution was that at about 7 p.m. on August 19, 1978, while Mrs. Griffiths was at Harribin Lane the applicant entered that yard. He was wearing a bush jacket in a most peculiar way, that is to say, with his left hand concealed under the jacket. He spoke to his wife, first while she was at the pipe side, and next when she was at a wash stand in the yard. Neither his presence nor his discourse were agreeable to her. She told him she wished no argument from him and requested that he should leave. On the evidence from the prosecution witnesses which was accepted by the jury, the applicant then drew a long machete from under the bush

jacket and dealt his wife two chops; one to the left side of her neck which caused a wound eight inches long, by two inches wide, by two inches deep extending from the angle of the jaw, downwards and backwards severing multiple channels of the blood and nerves and extending to the seventh cervical cord; and the other chop to the left occipital region of the skull fracturing the underlying skull bone. Death was due to shock resulting from massive blood loss from the neck wound.

The appellant gave sworn evidence that his wife met her death at the hands of her brother, Fred, who tried to chop the applicant with a machete, but the blows intended for him fortuitously landed on his sister Joy. The appellant did not dispute that his marriage to the deceased was undergoing strain, but he implored the jury to believe that his wife's mother and her relatives were not on friendly terms with him. He denied being in possession of a machete that night and joined issue with the prosecution as to his mode of dress, maintaining that the shirt he wore was neatly tucked into his trousers. It was his account that when he entered the premises he saw the deceased sitting in the lap of a man and when he mildly remonstrated with her for such unseemly and unwifely behaviour she responded with curses and abuse. He wished to be free of her and so he asked that she give to him money that he had given her to keep. She refused and this led to a quarrel. Matters were brought to a head when during the quarrel he punched his wife and that was the signal for her brother Fred to draw a cutlas and chop at him twice. He dodged the blows which both caught the deceased.

In a commendably concise summing-up the experienced trial judge, Ross J, directed the jury that they could return a verdict of guilty of murder if they found that by his voluntary and deliberate act, the appellant intentionally brought about the death of the deceased. Alternatively they could return a verdict of guilty of manslaughter if they found that although the appellant deliberately chopped his wife so that she died, he did not have the intention to kill or cause serious bodily harm. The facts did not permit the raising of the issues of self-defence or provocation and these were not mentioned by the trial judge. As to these

decisions the appellant makes no complaint.

Five grounds of Appeal were very briefly argued by counsel for the appellant. We find it necessary in these reasons to refer only to Grounds 2 and 3.

Ground 2 complained that the directions on the standard of proof were inadequate and misleading. The learned trial judge is reported to have directed the jury on the standard of proof in these terms:

> "So then, before you convict this accused, the Crown must so satisfy you by the evidence which makes you feel sure of guilt of the accused. Now, when I say you must feel sure, it doesn't mean you must be absolutely certain, because there are few matters in this life which are certain. Consequently, if you have a doubt, which is a flimsy doubt, a fanciful doubt, an insubstantial doubt, that sort of doubt should not deter you, but on the other hand, where you have a real doubt, or as it is sometimes called, a reasonable doubt, or a doubt of substance, then every such doubt should be resolved in favour of the accused."

The members of the court are familar with the manner in which the burden and standard of proof have been explained to juries in Jamaica by trial judges and in the face of the directions extracted above only a very brave counsel could seek to take exception to them. We do not understand the decision of the Privy Council in Henry Walters v. The Queen (1968) 13 W.I.R. at 354 to be saying that there is a hallowed phrasology from which a trial judge must not depart when directing a jury on the burden and standard of proof. Indeed Lord Diplock said at page 356:

> "By the time he sums up the judge at the trial has had an opportunity of observing the jurors. In their Lordships view it is best left to his discretion to choose the most appropriate set of words in which to make that jury understand that they must not return a verdict against a defendant unless they are sure of his guilt. Their Lordships would deprecate any attempt to lay down some precise formula or to draw fine distinctions between one set of words and another."

An aware and intelligent set of jurors may immediately understand and appreciate the judge's direction that the prosecution has a duty to lead evidence to prove the case against the accused person to the satisfaction of the jury to the extent that they can feel sure of his guilt. In the opinion of the trial judge some jurors might need more assistance before they can grasp the simple truth as to the nature of the standard of proof. In the instant case it was well within the province of the learned trial judge to indicate in some detail the concept of reasonable doubt and having chosen clear and precise language to perform this function, we find that the challenge to his direction is insubstantial and without merit.

Of considerably more importance is Ground 3 which was:

> "The directions on intent were wrong, in that, the judge impliedly applied the definition of 'intent' in D.P.P. v. Smith as modified in Hyam v. D.P.P."

In D.P.P. v. Smith (1960) 3 All E.R. 161 the unanimous opinion of the House of Lords was that the proof of intention in the crime of murder should be established by the standard of the ordinary man capable of reasoning who is responsible and accountable for his actions, and consequently it was not necessary to prove what was the actual state of mind of the accused. Following upon much criticism from academic writers, a rejection of the principle of the objective test by the High Court of Australia in Parker v. The Queen (1962-63) 111 C.L.R. 610 at 632, and various explanations of the meaning and extent of the judgment, the House of Lords in Hyam v. D.P.P. (1974) 55 Cr. App. R. 91, reconsidered the principle of the so-called objective test as the proof of intention as adumbrated in D.P.P. v. Smith supra. Lord Hailsham L.C. said at page 105:-

> "Before an act can be murder it must be 'aimed at someone' as explained in D.P.P. v. Smith and must in addition be an act committed with one of the

following intentions, the test of which is always subjective to the actual defendant."

(emphasis mine)

(i) the intention to cause death

(ii) the intention to cause grevous bodily harm in the sense of that term explained in D.P.P. v. Smith ..... i.e. really serious injury."

There is in consequence no irrebuttable presumption of law that if a man by an act aimed at another causes his death, he is guilty of murder, if a reasonable person would have known that death or really serious injury would result from his action. In all cases it is the intention of the accused person which the jury must ascertain. They may be able to arrive at his intention because by his words or his writings he expressly stated his intentions. More often, however, the jury will have no such express material before them and must proceed by the route of inference. Lord Hailsham in D.P.P. v. Hyam supra specifically approved the dictum of Byrne J. who delivered the judgment in Smith's case at the Court of Criminal Appeal stage reported as R. v. Smith (1960) 44 Cr. App. R. 261 at 265:

In Smith's case the appellant and the deceased policeman were known to each other. A car containing stolen goods and driven by the appellant was stopped by a constable on traffic duty and the deceased approached the car to make investigations. The appellant drove off the car in an erratic manner with the deceased clinging on to the car and he was knocked off and suffered fatal injuries. The prosecution's case against the appellant was conducted on the basis that he did not intend to kill the deceased constable, but that he intended to do to him grevous bodily harm. As stated by Byrne J. in his judgment, the issue for the jury on the charge of murder was whether the prosecution had established that Smith intended to casue the police officer grevous bodily harm. The prosecution sought to provide this proof by maintaining that Smith's intention ought to be inferred from his conduct, whilst the defence was that Smith had no such intention and

that in any event, the intention relied upon by the prosecution was not established as an inference from the facts. Byrne J. in delivering the judgment of the Court of Criminal Appeal observed:-

> "In these circumstances it fell to the learned judge to direct the jury on the meaning and application to the particular facts of the maxim on which the prosecution had relied and which is often stated in the following terms: 'a man must be taken (or presumed) to intend the natural consequences of his acts.' This is a presumption to which the learned judge at the outset referred in the following terms: 'The intention with which a man did something can usually be determined by a jury only by inference from the surrounding circumstances including the presumption of law that a man intends the natural and probable consequences of his acts."

Byrne J. went on to express his understanding of the presumption and this exposition of the law as set out below was what Lord Hailsham expressly approved:

> "Whatever may have been the position last century when prisoners could not go into the witness box and the distinction between presumptions of law and presumptions of fact, was not so well defined, it is now clear, as was naturally conceded by Mr. Griffith-Jones, that the presumption embodied in the above maxim is not an irrebuttable presumption of law. The law on the point as it stands today is that the presumption of intention means this:, that, as a man is usually able to foresee what are the natural consequences of his acts, so it is, as a rule, reasonable to infer that he did foresee them and intend them. But, while that is an inference which may be drawn, yet if on all the facts of the particular case it is not the correct inference, then it should not be drawn."

Since it is clear that in cases like the present one it is the particular and specific intention with which the accused did the act which the jury are called upon to find, when there is evidence that the accused expressed an intention contrary to that which is contended for by the Crown, or when he behaves in a manner which would belie the specific intent,

the jury must consider all the circumstances to determine whether the prosecution has proved the specific intention. Lang v. Lang (1954) 3 All E.R. 571 is a classic example of a man's intention coming into conflict with his desire. The husband behaved towards his wife in a grossly brutal manner and threatened to continue his coarse and degrading conduct, yet he did not wish his wife to leave the matrimonial home. This is how Lord Parker posed and answered the question in Lang v. Lang supra:-

> "What then is the legal result where an intention to bring about a particular result (be it proved directly or by inference from conduct) co-exists with a desire that the result should not ensue? That is the substantial point raised by this appeal. The issue may be put more concretely. What legal inference is to be drawn where the whole of a husband's conduct is such that a reasonable man would know what the particular husband must know - that in all human probability it will result in the departure of the wife from the matrimonial home. Apart from rebutting evidence, this, in their Lordship's opinion is sufficient proof of an intention to disrupt the home."

As we understand Mr. Macaulay's submission, he was inviting this Court to say that there was a conflict between the decision in Lang v. Lang a judgment of the Privy Council which is binding on us and that in D.P.P. v. Smith as explained in Hyam v. D.P.P. We do not share his view especially as we are of opinion that the decision in Hyam's case makes it abundantly clear that the test of intention is always a subjective one, that is to say, a jury must always be concerned with the intention of the physical person before the Court.

We turn now to consider the directions given by Ross J. in the instant case. At pages 105 - 107 he said:

"And, of course, you must also be satisfied that the accused intended to kill or to inflict some serious bodily injury to the deceased when he inflicted the blows.

Now, this matter of intention is one of the elements on which you must be satisfied, like all the other elements which I have mentioned but, of course, it is not positive or direct proof because the prosecution can't call a witness to say what this man intended by looking in this man's mind. You do not do that because you can't look in peoples mind and see what is in their minds, so the only practical way of proving a person's intention is by drawing an inference from that person's words or conduct.

Now, in the absence of evidence to the contrary you are entitled to regard the accused as a reasonable man, that is, an ordinary, responsible person capable of reasoning. And in order to discover his intention in the absence of an expressed intention - and there is no evidence here that he expressed an intention to kill or to cause serious injury to Joy Griffiths - so what you've got to do here is to look at the evidence which you accept as to what he did and at all the surrounding circumstances and ask yourself whether as an ordinary, responsible person he must have known that death or serious bodily injury would result from his actions. And if you find that he must have known that then you may infer that he intended the result and this would be satisfactory proof of the intention required to establish this charge.

So, here, if you accept the evidence of Miss Dacres and Mrs. Mercurious that this accused on that night took a machete and chopped Joy Griffiths in the vicinity of her neck, inflicting these two wounds which the doctor told you about and to which I will refer in a little while, resulting in her death, you ask yourselves now, any ordinary, responsible person who goes and inflicts machete wounds like that on another, can that person fail to appreciate that death or some serious injury must result from that sort of action? And if you find that he must have known that death or some serious bodily injury would result from these actions then, of course, he intended the result of those acts and you must decide whether he intended to kill or to cause some serious bodily injury to Joy Griffiths when he inflicted those wounds."

Ross J. was careful to stress that if as an ordinary responsible person, the applicant must have known that death or serious bodily harm would result from his actions, the jury could infer that he intended such harm. The learned trial judge was not concerned with the legal abstraction "the reasonable man" as an entity separate from the applicant and he did not direct the jury to find what that abstraction would have intended. Neither did he go on to tell the jury that if the reasonable man would have had the specific intent, then they must on that basis alone say that that was the intention of the applicant. His most telling direction was contained in the last sentence quoted above.

The explanation which the applicant offered as to how Joy Griffiths met her death placed responsibility therefor upon her brother. Nowhere did the applicant attempt to say what was in his mind or what were his desires, when as the jury found, he inflicted the injuries on his wife. We are of the view that directions given in the instant case are consistent with the decision in D.P.P. v. Smith supra as modified by the decision in Hyam v. D.P.P. supra and are in no way objectionable or in conflict with the decision in Lang v. Lang supra. We approve of these directions and find no merit in this Ground of Appeal.