

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 53/77

PRESENT

BEFORE: The Hon. Mr. Justice Kerr, J.A. (Presiding)
The Hon. Mr. Justice Melville, J.A.
The Hon. Mr. Justice Rowe, J.A. (Ag.)

R. v. OSMOND LYNCH

Mrs. M. McIntosh for the Crown

Mr. A.G. Gilman and Mr. D. McKoy
for the applicant

January 16, 1978

ROWE, J.A. (Ag.)

Osmond Lynch was charged with murder. The allegation being that he on the 20th of June, 1976, in the parish of St. Ann, murdered Sydney Williams.

The matter as it was unfolded before the trial Court in the parish of Trelawny was that, a married woman who called herself Iris Newland had been friendly with the accused from January 1973 to June 1974 and when that relationship came to an end she became friendly and lived as man and wife with the deceased Sydney Williams.

It appears that Osmond Lynch continued in a platonic relationship with Miss Newland, and each week-end conveyed her to market and back. He would stop at Miss Newland's shop situate at Priory and have drinks with Miss Newland, the deceased and another man who was called Paisley.

The Crown's case rested almost entirely upon the evidence of Miss Newland and the burden of that evidence was a confession which Miss Newland alleged that the applicant made to her. The motive for the killing was jealousy as Miss Newland alleged that the applicant told her that he wished them to get married to each other and this could only be accomplished if the deceased was got out of the way.

One curious fact in the case, as the Judge quite rightly put it to the jury, is that on 20th June, 1976, some three weeks before

the killing, the deceased, the applicant, Miss Newland and Paisley visited Endeavour property some distance from Priory and made arrangements with a "Shepherd" about a pig. One does not quite understand why so many people should go so far away for a pig, but whatever that arrangement was, it seemed that on the night that Mr. Williams was killed he had gone to that very property and to the very place where the earlier arrangement in connection with the pig had been made.

Mr. Williams, the deceased, left home on the 20th June, 1976, intending to visit Kingston. He never arrived. He just disappeared. On the 21st June, his burnt-out motor car was discovered, but it was only some days later - the 23rd, that his own body partly decomposed was found. The medical evidence is that this body when discovered was severely burnt all over. The burns were of a third degree nature, meaning that the burns had penetrated through the skin to the deep tissues. When the doctor examined the head and neck, he found that there was a lacerated wound to the back of the head about two inches in length, and there was another lacerated wound at the back of the head about two inches in length, and he said there was a fracture at the vault of the scalp, and there was root fracture at the back of the neck. In his opinion both fractures could have been inflicted by a piece of steel and he spoke of a third fracture on the left thigh. The doctor said there was no laceration in the region of the thigh, but there was a laceration to the head. After the body was discovered the police began to make investigations and in the course of their investigations, it appeared that they interviewed Miss Newland on several occasions. The police did not then interview the applicant. The applicant it appeared had been hospitalised in the Port Maria Hospital for some days, but Miss Newland said that on the 9th July she saw the applicant Osmond Lynch, and he spoke to her in an ordinary sort of way. First, she accused him of having told her an untruth, because she thought he was then in hospital. Thereupon he invited her to come up to his house. While they were at the house of the applicant seated comfortably under a tree, he is alleged to have spoken to her in this way "Miss Iris, I am going to tell you something and you must not let me down." The witness assured the applicant

that she would not attempt to let him down, whereupon the applicant said to her: "A no do the act - A no and Paisley kill Sydney Williams."

Miss Newland wanted to know how it was that the applicant planned to get Mr. Williams killed, and the applicant is alleged to have said to her: "Paisley left from Priory with Mr. Williams on the Sunday night to Endeavour Property, but before he told me that, he said that he hear that I was detained and locked up for the death of Mr. Williams. Before he told me that, and he could not stand it so he drink some rum and cornmeal and the rum and cornmeal did not take any effect. He drank some brake fluid from the truck so that is why he was in hospital."

This witness, Miss Newland wanted to know in what way Mr. Williams was killed, and the applicant is alleged to have told her that Paisley went with the applicant to Endeavour property to a Cedar tree root and showed him, the applicant, that that was a good spot to kill Williams.

First, according to the applicant, Paisley came out of the car and Paisley said to Williams: "Come, let me show you something." Williams complied with the request, and when Williams had done so, he the applicant, "lick" Williams with a piece of steel in his head. Williams fell, but managed to get up and run, and the applicant chased Mr. Williams and "licked" him with a stone in his back, whereupon the deceased dropped and at that time the man Paisley "hit Williams in his neck to death." According to Miss Newland, the applicant further told her that he and Paisley "gassed" Mr. Williams and then they set him on fire.

Afterwards, the decision was taken to burn the car and that was done. Miss Newland said that after the applicant had made this gruesome confession to her, she sat quietly for a little time to collect her nerves and then she went and made a report to the police, whereupon the applicant was arrested.

At the trial, the applicant gave an unsworn statement in his own defence. He did not call any witnesses and in that unsworn statement he said, he was a truck owner and driver and he knew nothing at all about the death of Williams. He agreed that he took Iris Newland to market all the time, that he did so on Saturday mornings and would take her back to her home at Priory, where she and Williams have a shop and he, the applicant would generally stop there and have a drink with Paisley and

Mr. Williams before he would go home. About the 20th of June he said, "I know nothing at all about this incident." He came from the market with Miss Newland. Paisley called him and asked him if he could go to Endeavour with him on Sunday. The applicant said he was going to St. Mary to a funeral by a place called Spring Head. He borrowed Mr. Sharp's car to drive to the funeral, but when he went, the funeral was postponed and he left and went down to Priory in an effort to obtain a spring blade for his truck. He said that when he returned, he saw Paisley, and Paisley said he was now ready to go to Endeavour. He, the applicant, took Paisley to Endeavour and when he got there, Paisley told him to turn on the right hand side of the road, with entrance into Endeavour property and the man, Paisley told him to park there. He did so. He said that Paisley left him sitting in the car and Paisley said he would soon come back, and in the next fifteen minutes, he saw another car coming and afterwards, he said he heard a bawling and he got out of his car to investigate, and then he noticed that a car was being burnt up, and when he approached that and went towards the entrance he saw both Iris Newland and Paisley in his own car. Iris Newland was in the back seat and Paisley in the front, and Paisley told him to take them home quickly and used some hard Jamaican words to express how quickly he wanted to go home, and the applicant said he did take Paisley and Iris Newland to their home. He also said that Paisley threatened him that if he the applicant reported the matter, Paisley would cut off his nose, and the applicant said when he got home, his pressure, arthritis, and ulcerated stomach attacked him in such a way that he went to the hospital in Port Maria where he was treated, and it is because he went to the hospital why Iris Newland was making up the story that he said he had taken poison. The applicant was saying he had no part in the killing. He was denying having told Iris Newland anything at all about having taken any part in the killing and he was saying that on the fatal evening, although he was present in the area where the car was burnt, and where he heard the bawling, the killing was no part of his doing.

In a very careful and fair summing-up, the learned trial judge Carey J. told the jury that they should approach the evidence of Iris Newland with very much care. He did so several times; he made it absolutely clear to the jury that in the circumstances of the case, Iris Newland should

be regarded as somebody who had ^{an} interest to serve, because the Police had on several occasions interviewed her; that they should nevertheless consider the demeanour of Iris Newland - consider whether or not, they could accept her evidence as absolutely credit-worthy, and if they did so and at the same time rejected as being untrue the account given by the applicant of the part which he played in the whole scenario, then and only then should they convict the accused of murder. By their verdict the jury did ~~these things~~. One, they accepted the evidence of the prosecution that on the night of the 20th of June Iris Newland was at home in bed, and in this she was supported by the evidence of her household help, Joan Smith. The Jury must also have accepted that Iris Newland was not on the scene when Sydney Williams was murdered. The Jury must have accepted that Iris Newland spoke the truth when she said that the applicant made a confession to her; the Jury must have accepted that Iris Newland spoke the truth as to the terms of that confession, and in those circumstances it appears, as Mr. Gilman for the applicant has quite rightly conceded, that no argument could be advanced to impugn the conduct of the trial or the summing-up of the learned trial judge. The verdict cannot be said to be against the weight of the evidence.

There being no other ground on which this conviction could be attacked, the application for leave to appeal is refused. The application is treated as the hearing of the appeal and the appeal is dismissed. The conviction and sentence are affirmed.