JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL No.12/75

BEFORE: The Hon. Mr. Justice Hercules, J.A.(Presiding).
The Hon. Mr. Justice Swaby, J.A.
The Hon. Mr. Justice Robinson, J.A.

R. v. ROOSEVELT EDWARDS

Dennis Daly for the Applicant.

Velma Hylton Gayle for the Crown.

5th and 6th April and 14th May, 1976

HERCULES, J.A.:

The Applicant herein was convicted before White J. and a jury on 22nd January, 1975. The indictment charged murder of Percival Wiltshire on 16th March, 1974.

There were two main eye-witnesses to the incident, viz: Lindberg Watson and Nuckmoy Chin. Of considerable significance was their evidence that they both knew Applicant before the incident. Substantially their descriptions were the same. They were to the effect that on 15th March, 1974, about 10.30 a.m., while walking together along Spanish Town Road, Applicant rode up on a bicycle firing shots from a revolver. As a result Watson himself got shot and injured while Percival Wiltshire got killed.

The issues of accident, self-defence and provocation never arose. The Applicant, in an unsworn statement, set up an alibi which was rejected by the jury.

Mr. Dennis Daly was granted leave to argue three supplementary grounds. The first elaborately worded ground dealt with the question of identification. Mr. Daly submitted that the evidence of Watson and Chin was unsatisfactory and unsafe to support a conviction. He also adverted to the dock identification of Cpl. Rupert Neita, who also purported to be an eye-witness. If Neita's evidence happened to be the sole evidence in the case, having regard to the manner in which the trial judge dealt with it, there would have been some substance

in Mr. Daly's contention. But we consider that there was abundant credible evidence from Watson and Chin on which the jury could act. We found no merit in this or indeed in any of the other two grounds argued.

Mr. Daly had also been granted leave by another panel of the Court to call additional evidence. In consideration thereof we heard the evidence of William Barnett. Barnett saw Watson and Chin on the scene. He even testified that Watson was wounded by the first shot fired by the gunman. But so far as Barnett was concerned the gunman was not Applicant but one Brother B who died soon after the incident. Although Barnett passed the Denham Town Station regularly on his way to and from work, he never thought he should go and report what he had seen to the Police. He kept the secret until after the death of Brother B and even after Applicant had been convicted.

We approach the question of the fresh evidence in the manner enunciated by Widgery J., as he then was, in Reg. v. Flower (1966) 1 Q.B. 146 at pages 149/50:

> "When this court gives leave to call fresh evidence which appears at the time of the application for leave to be credible, it is still the duty of the court to consider and assess the reliability of that evidence when the witness appears and is cross-examined, and this is particularly true when evidence is called in rebuttal before this court. Having heard the fresh evidence and considered the reliability of the witness, this court may take one of three views in regard to it. First, if satisfied that the fresh evidence is true and that it is conclusive of the appeal, the court can, and no doubt ordinarily would, quash the conviction. Alternatively, if not satisfied that the evidence is conclusive, the court may order a new trial so that a jury can consider the fresh evidence alongside that given at the original trial. The second possibility is that the court is not satisfied that the fresh evidence is true but nevertheless thinks that it might be acceptable to, and believed by, a jury in which case as a general proposition the court would no doubt be inclined to order a new trial so that that evidence could be considered by the jury, assuming the weight of the fresh evidence would justify that course. Then there is a third possibility, namely,

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> that this court, having heard the evidence positively disbelieves it and is satisfied that the witness is not speaking the truth. In that event, and speaking generally again, no new trial is called for because the fresh evidence is treated as worthless, and the court will then proceed to deal with the appeal as though the fresh evidence had not been tendered."

The third possibility is what we find apposite in the instant case. We arrived at this conclusion after hearing William Barnett and paying the most careful attention to his demeanour.

In the result we refused the application.