

CA. CRIMINAL LAW - Murder <sup>trial</sup> Evidence - Circumstantial evidence  
While the verdict unreasonable and cannot be supported having regard  
to the evidence - whether inescapable inference of guilt - whether  
defence of accident raised by applicant rebutted  
[applicant alleged deceased was accidentally killed and body  
subsequently burnt]  
APPLICATION FOR LEAVE TO APPEAL refused  
JAMAICA  
No case referred to

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 100/89

BEFORE: THE HON. MR. JUSTICE CAREY, PRESIDENT (AG.)  
THE HON. MR. JUSTICE FORTE, J.A.  
THE HON. MR. JUSTICE DOWNER, J.A.

REGINA

VS

JASPER JEMISON

Delroy Chuck & Helen Birch for applicant

Kent Pantry, Deputy Director of Public Prosecutions  
for the Crown

7th & 22nd October, 1991

DOWNER, J.A.:

On June 20, 1989 after a trial in the Circuit Court at Port Antonio before Reckord, J., and a jury, the jury after retiring for two minutes returned a verdict of guilty in respect of the charge of murder against the applicant Jasper Jemison. The Crown's evidence was circumstantial, so leave was granted to argue the supplemental ground of appeal which contended that the verdict was unreasonable and could not be supported having regard to the evidence.

In the light of that, it is necessary to rehearse the evidence led by the prosecution. This will determine whether the inescapable inference of guilt can be supported with particular emphasis on whether the defence of accident raised by the applicant both in his caution statement and in his account from the dock was rebutted. Also, this rehearsal will enable an assessment to be made of the applicant's conduct both before and after the death of Dorothy Williams, the deceased.

The particulars which were adduced to stigmatise the verdict as unreasonable, was firstly that the evidence of the prosecution failed to negative accident, secondly that the friendship between the applicant and the deceased was such that it would negative an inference of criminal behaviour on his part and thirdly that the conduct of the applicant after the death of Dorothy Williams was inconsistent with guilt. Fourthly, that the Crown failed to discharge the onus of proof which is essential in a criminal trial.

There were two areas where the account detailed by the applicant and the evidence marshalled by the Crown coincided. He admitted that he was present at the death of Dorothy Williams so there was opportunity for him to have committed the crime. On the other hand, the prosecution and the applicant differed on the issue of motive and inferences which could be drawn on the circumstances of death and the conduct of the applicant both before and after the death of Dorothy Williams.

Yvonne Wilson recounted that she and the deceased Dorothy Williams were friends and that Dorothy was also called Pearline. She estimated that Dorothy Williams was about nineteen years of age and that she was an intimate friend of the applicant. On the crucial day of Monday January 30, 1989 she saw the applicant and Williams walking towards the applicant's home and she has not seen her since. She asked the applicant for Williams on Wednesday the 1st of February and his reply was that she had gone to Kingston and had not then returned. This was untruthful as Williams was then dead and the applicant knew of her death. So the question as to why he lied, must have been in the forefront of the jury's mind.

Janet Pink was Dorothy Williams' land-lady and she saw her alive on Monday 30th January with the applicant. Dorothy Williams had left her infant with Mrs. Pink and had failed to collect the baby on Tuesday. When the applicant was asked about Dorothy Williams he repeated the same story he had given Yvonne Wilson.

Winston Lowe saw the deceased on Tuesday 31st January walking with a man with a machete in front of her. He described her as being dressed for the bush. On the same day Novelett Muirhead also saw the applicant with a bag, a red plastic jug and a machete.

It is now pertinent to give the applicant's account of his movements. Corporal Neville Thompson gave evidence of a report concerning Dorothy Williams who was missing and he took the applicant in custody on the 7th February, 1989. His initial response was to repeat the story that Williams had gone to Kingston. A fortnight later on 21st February he gave a caution statement. He admitted that she who was also called Pearline accompanied him to the bush and that while they were going down a steep hill, she held on to his shoulder, he slid and she fell on his machete and died. He then decided to conceal this fact and the body. This story he repeated from the dock.

To rebut the defence of accident, the Crown led evidence of the motive for murdering Dorothy Williams. That evidence came from Daniel Desgouttes who also had an intimate relationship with the deceased. He told the Court of an incident of 29th January when he accompanied her to her home, the applicant stood astride the entrance and proclaimed that he intended to sleep there that night if any other man did. He also ruled that she could not leave her home on that night.

In the light of this aggressive stance, Desgouttes took his leave, but returned the following Monday evening. Thereupon he saw the applicant retreating backwards down the steps from Williams' home. The inference was that she was at the apex of the eternal triangle.

Crucial to the Crown's case was the mode in which they sought to rebut the defence of accident which was adduced. The applicant admitted that he burnt Williams' body in order to conceal it. The bones were examined at the Forensic Laboratory. While they

were retrieving the bones, Special Detective Corporal Moodie picked up a national identity card of Williams and the applicant admitted that the card was a photograph of his girlfriend. As for the forensic evidence, Dr. Clifford observed a fracture to the skull which could have been caused by heat or by a severe degree of force by a blunt instrument. The fact that the applicant burnt the body, was a powerful circumstance from which the jury could have inferred that he was responsible for the death of Dorothy Williams.

Accordingly, there was a case to answer and sufficient evidence to rebut the defence of accident. There was no criticism by counsel of the learned trial judge's summing up.

It is against this background that we reject the contention that the jury's verdict was unreasonable. The application for leave to appeal is therefore refused.