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IN THE COURT OF APPEAL

CAYMAN ISLAND CRIMINAL APPEAL NO. 5/74

BEFORE: The Hon. Mr. Justice Edun, J.A.
The Hon. Mr. Justice Graham-Perkins, J.A.
The Hon. Mr. Justice Robinson, J.A.

DAYALL WHITTAKER v. REGINA

Mr. H. Small for Appellant

Mr. D. Muirhead, Q.C., & Mr. S.R. Panton for Crown.

21st November, 1974

GRAHAM-PERKINS, J.A.:

The applicant was convicted by the majority verdict of a jury of the offence of manslaughter on an indictment which had charged him with the offence of murder before Grannum, J., in the Grand Court of Grand Cayman.

The evidence led by the prosecution consisted entirely of a written statement made by the accused two days after the deceased, Mrs. Parker, was assaulted. In that statement the applicant admitted delivering a blow to the deceased's head, as a result of which she subsequently died. During the trial this confession was challenged by the defence on several grounds, but principally on the grounds that it was a complete fabrication composed by a police officer, and that the accused was forced to sign it for fear of some physical harm that had been threatened to him. Before this statement was put in evidence, the learned trial judge held the usual trial within a trial and came to the conclusion that it was a voluntary statement. The position thereafter was that it was for the

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jury to decide what weight they should attach to it, bearing in mind the circumstances in which it was taken. To this end the detective officer who took the statement from the accused was cross-examined at length with a view to showing that the statement given by the accused was forced from him and that it was a statement to which no weight at all should be attached.

The appellant now challenges his conviction on two grounds, namely: (i) that the learned trial judge erred in law in that he failed throughout his summing-up to fairly put the defence of the appellant to the jury; and (ii) that he erred in law in directing the jury to consider the case for the appellant in terms of the grave consequences that would follow to the police witnesses if the allegations of the appellant were true.

In respect of the second of these grounds, this Court is of the view that there is no substance therein. With respect to the first ground we are of the view that there are instances in the summing-up in which the trial judge did use very strong language while dealing with certain aspects of the evidence. We do not, however, think that the summing-up taken as a whole did not put the defence fairly and squarely to the jury. Indeed there are several instances in the summing-up where the trial judge did exactly what he was required to do; that is, to assure the jury that it was for them and for them alone, to determine the one issue of fact, whether the accused had made the confession that he was alleged to have made. He warned them, more than once, that if they were in any doubt at all about that issue, they should resolve it in favour of the appellant. The issue having been so left to the jury they came to the conclusion that the appellant did make the statement attributed to him but that when he hit Mrs. Parker with this piece of wood he did not intend either to kill her or to inflict such serious

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injury that was likely to result in her death. On that basis the jury convicted of manslaughter. Thereafter the judge proceeded to inflict a sentence of imprisonment for life.

In our view the learned trial judge was clearly wrong. He erred in principle in that he should have awarded a determinate custodial sentence when once he decided to award a custodial sentence at all. There was no evidence before him as to any mental instability in the applicant; there was no evidence before him of circumstances requiring the accused to be removed from the society for the rest of his life. In these circumstances, this court proposes consistently with authority, (See R. v. Picker (1970) 2 All E.R. 226) to set aside the sentence imposed and substitute therefor a sentence of imprisonment for seven years at hard labour. The result is that the appeal as to conviction is dismissed; the appeal as to sentence is allowed. The sentence is set aside and a sentence of seven years at hard labour substituted.