HALL *v.* REGINAM

COURT OF APPEAL (Jones, C.J., Dove-Edwin, J.A. and Marke, J.):
November 24th, 1964
(Cr. App. No. 38/64)

[1] **Criminal Law—manslaughter—negligence—degree of negligence—disregard of safety of others deserving punishment:** Criminal negligence which will base a conviction for manslaughter is a single indivisible conception, going beyond a mere matter of compensation between subjects and showing a disregard for the life and safety of others that amounts to a crime against the state deserving punishment (page 192, line 35—page 193, line 13).

[2] **Criminal Procedure — judge's summing-up — burden and standard of proof—direction to assessors or jury:** In a criminal case the jury should be directed that the onus is always on the presecution to prove the guilt of the accused and that before they convict they must feel sure of his guilt; provided that this is clear from the summing-up taken as a whole, it does not matter what particular form of words is used (page 192, lines 4–14).

[3] **Evidence—burden of proof—criminal cases—burden on prosecution:** See [2] above.

[4] **Evidence—burden of proof—standard of proof—overall effect of summing-up that assessors or jury to be sure of guilt:** See [2] above.

The appellant was charged in the Supreme Court with murder.

The appellant was a member of one of two rival societies; one of his customary duties was to fire a gun loaded with live ammunition at ceremonies in which his society participated. At one such ceremony, the appellant fired the gun in an apparently busy street and, as a result, wounded one and killed another member of the rival society dancing close by. In a cautioned statement the appellant claimed to have fired the gun without taking aim and at the trial stated that he pointed it into the air but that someone had jostled him from behind.

He was convicted of manslaughter on a majority verdict of the jury. On appeal the appellant contended that the trial judge had misdirected the jury on the burden and standard of proof required in a criminal case in that he had instructed them that the Crown had to prove the appellant's guilt to their "satisfaction," and that they should be "satisfied" on the whole of the evidence that the charge had been proved. He contended that the use of these expressions did not convey to the jury forcefully enough that if they had any reasonable doubt about the guilt of the accused they should acquit

him. Secondly, it was argued that the jury had been misdirected as to the degree of negligence required to establish manslaughter.

Cases referred to:

(1) *R.* v. *Bateman,* [1925] All E.R. Rep. 45; (1925), 19 Cr. App. R. 8.

(2) *R.* v. *Hepworth,* [1955] 2 All E.R. 918; (1955), 39 Cr. App. R. 152.

(3) *R.* v. *Kritz,* [1950] 1 K.B. 82; (1949), 33 Cr. App. R. 169, *dicta* of Lord Goddard, C.J. applied.

Smythe and *C. N. Rogers-Wright* for the appellant;
D. M. A. Macauley, Ag. Sol.-Gen., Mrs. Dixon-Fyle, Tejan-Cole and *St. Bernard* for the Crown.

JONES, C.J.:

The appellant in the court below was charged with the murder of a girl named Felicia Johnson. The jury found him guilty of manslaughter by a majority verdict of nine to three, which was accepted by the learned trial judge, and he was sentenced to seven years' imprisonment. It is against this verdict and sentence that he has appealed to this court.

The facts fall within a narrow compass. On June 27th, 1964 a wedding took place at Wellington village not far from Freetown. Two local societies, namely the Alikali Society and the Hunting Society, participated in the festivities on the evening of the wedding day. The appellant was a member of the Hunting Society and held the office of *Olukortun,* that is, he was the officer responsible for performing all hunting ceremonies in connection with the hunting devil. One of his duties, according to custom, was to fire a gun with a live cartridge, once before their "play" started and once also after the "play" ended. It would appear that the appellant fired the first shot without any incident.

The prosecution's case was that about 6.30 p.m. when the appellant came to fire the second shot, he pointed the gun towards members of the other society, the Alikali Society, about 8 to 10 feet from them (the doctor's estimate was 21 feet) and fired. As a result one Allie Conteh, a member of the Alikali Society, was wounded and had to be taken to hospital and Felicia Johnson was killed. The doctor could not say whether death was instantaneous but he said it took place within 15 minutes of the shooting and that the cause of death was due to shock arising from the gun shot wounds to her face, upper part of the chest and the upper and lower lips.

The appellant was arrested on the spot and he made a statement at the police station the next day after being cautioned. This was what he said about the second shooting:

> "I again went into my room and took up the gun, and put a cartridge in the other barrel. By then the empty shell was in the other side of the barrel and I stood in the middle of the street and fired without taking aim. Before firing I saw some Alikali people dancing but I did not know whether the shot came down low on them."

The following day, when he was charged, he confirmed this statement. At the trial his defence was that he pointed the gun in the air without taking aim at anything. He said that whilst the gun was so pointed, someone jostled him from behind and, as his finger was on the trigger at the time, the gun went off. He denied pointing the gun towards and shooting at the Alikali dancers.

There were several grounds of appeal filed and argued by the appellant's counsel, including one as to the excessiveness of the sentence. In our view only two of these grounds call for consideration. The first complains that the trial judge misdirected the jury on the burden of proof required in a criminal case by directing them as follows:

> "The golden rule or yardstick which you have been told from time to time to apply in criminal trials is that it is for the prosecution to prove their case to your satisfaction and not for the accused to prove his innocence. As I always say to juries, an accused person enters the dock presumably an innocent man; he need not say a word; he can challenge the prosecution by saying: 'I dare you to prove your case against me.' If, after considering the evidence as a whole, you cannot make up your minds, or you cannot say you are satisfied on the evidence that the charge put forward by the prosecution has been proved, you should then return the verdict that the accused is not guilty."

Mr. Smythe quarrelled with the judge's use of the words "satisfaction" and "satisfied" in their respective contexts and argued that some stronger words or expression should have been used so as to convey to the jury that, if they had any reasonable doubt (with an explanation of that expression), they should acquit. Mr. Smythe, however, with his usual candour conceded that this court has to look at the whole of the summing-up before deciding whether the trial judge conveyed to the jury the requirements laid down by the law. With

this we entirely agree and we are buttressed in this view by a portion of the judgment of Lord Goddard, C.J. to be found in the case of *R.* v. *Kritz* (3) ([1950] 1 K.B. at 89; 33 Cr. App. R. at 177). He said:

> "It would be a great misfortune, in criminal cases especially, if the accuracy or inaccuracy of a summing-up were to depend upon whether or not the judge or the chairman had used a particular formula of words. It is not the particular formula of words that matters: it is the effect of the summing-up. If the jury are charged whether in one set of words or in another and are made to understand that they have to be satisfied and must not return a verdict against a defendant unless they feel sure, and that the onus is all the time on the prosecution and not on the defence, then whether the learned judge uses one form of language or another is neither here nor there."

See also the case of *R.* v. *Hepworth* (2) ([1955] 2 All E.R. at 920; 39 Cr. App. R. at 155).

In the present case, we are satisfied that the language used by the learned trial judge in his direction to the jury on the matter in issue was ample and adequate and left nothing to be desired. This ground therefore fails.

The second of these grounds, and on which Mr. Smythe heavily stakes his appeal, complains of a misdirection to the jury regarding the quantum of proof required to establish the offence of manslaughter. In his summing-up the learned trial judge applied what he described as the "well worn rule" or test to be found in *R.* v. *Bateman* (1), without naming that case. He told the jury that the facts must establish negligence and that that negligence should go beyond a mere matter of compensation between subjects and show such disregard for the life and safety of others as to amount to a crime against the state deserving punishment. He went on as follows and took the trouble of repeating himself. He said:

> "You must be satisfied about that; that is, if you do not find the act was unlawful and voluntary, you must go on and ask yourselves the question if the act of the accused contained an element of criminal negligence. Before you can say criminal negligence has been established, you must be satisfied that the facts are such that, in your own view, the act of the accused was negligent and that his negligence went beyond a mere matter of compensation between subjects and that he showed such a disregard for the life and safety of others as to amount to a crime against the state, deserving punishment.

It seems to me quite a simple straightforward test to apply."

Now, in several other portions of his summing-up the learned trial judge used the expression "an element of criminal negligence" or "element of criminal negligence" or "any element of criminal negligence." It is the use of these expressions that Mr. Smythe finds fault with. He submitted that the learned trial judge appeared to have given the impression to the jury that criminal negligence was made up of several ingredients and that on proof of any one such ingredient, *e.g.*, that the appellant was merely negligent, they should bring in a verdict of guilty of manslaughter. We find nothing of the sort. Criminal negligence, as Mr. Smythe in his reply conceded, is one and indivisible and not made up of several elements in the quantitative sense. The use, therefore, of the expressions complained of in their several contexts was in place and we find that the jury were properly directed and were never left in doubt as to the quantum of proof required by the law. This ground must also fail.

As to the sentence, we do not think that the learned trial judge acted on wrong principles. We will therefore not interfere with it. We accordingly dismiss the appeal.

DOVE-EDWIN, J.A. and MARKE, J. concurred.

Appeal dismissed.

WILSON (R. A.) *v.* WILSON (E.) and GENET

SUPREME COURT (Beoku-Betts, J.): November 24th, 1964
(Divorce Case No. 28/62)

[1] **Evidence—burden of proof—standard of proof—divorce—adultery—proof against person charged beyond reasonable doubt:** A court is bound to decide a divorce suit based on adultery as strictly as a criminal case and the burden of proof in relation to the adultery is such that the benefit of the doubt must be given where a reasonable doubt exists (page 196, lines 37–38; page 197, lines 14–16).

[2] **Family Law—divorce—adultery—evidence—evidence of both opportunity and inclination required:** To prove adultery as a ground for divorce, there must be both evidence of opportunity and of inclination (page 197, lines 10–13).

[3] **Family Law—divorce—adultery—standard of proof—proof against person charged beyond reasonable doubt:** See [1] above.