DAVIES v THE STATE

CA

COURT OF APPEAL FOR SIERRA LEONE, Criminal Appeal 10 of 1977, Hon Mr Justice During JA, Hon Mr Justice Short JA, Hon Mr Justice Kutubu JA, 11 July 1979

[1] Criminal Law and Procedure – Murder – Summing up – Whether judge misdirected jury – Whether reference to "confession statement" adequately distinguished from an admission – Whether all defences adequately dealt with – Necessary to put case to jury as ordinary men and women

The appellant was convicted by a jury of murder and sentenced to death. He appealed against conviction on a number of grounds relating to how the judge directed the jury in his summing up.

Held, per Short JA, dismissing the appeal:

1. With regard to ground 1, the language complained of in the trial judge's summing-up was not an error of law. The following direction when considered within the context of the summing-up as a whole was without flaw: "If after you have carefully considered the entire evidence in this case, you are satisfied so as to feel sure that the prosecution have failed to discharge their duty as cast upon them, then you have to return a verdict of Not Guilty of this offence of murder and the accused will be acquitted and discharged".
2. With regards to ground 2, the language might be infelicitous if taken out of context: "I should, I opine, direct you to the effect that the statement of the accused is tantamount to a confession statement." However, when read in its context, it was obvious that the trial judge was not equating the phrase "confession statement" with that of "confession of an offence charged" but rather with "admission of certain facts stated by the accused", for immediately after the words complained of, the judge went on to state what he meant and made the dichotomy between *confession* and *admission* manifestly clear.
3. The trial judge adequately dealt with all possible defences which might be open to the appellant and stated: "However it is settled law that where there is possible defence of self defence or of provocation I should direct you accordingly on the law relating to them." The trial judge then directed fully on these defences in the summing-up.
4. It was necessary that the judge put the case to the jury as ordinary men and women, not as though he were addressing twelve graduates from Fourah Bay College. The trial judge put the case to the jury in the only way it should have been put and more than adequately put the case for the appellant to the jury. *R v Spriggs* (1958) 1 QBD 276 applied.

Cases referred to
R v Spriggs (1958) 1 QBD 276

Appeal
This was an appeal by Curtis Davies who was convicted by a jury of murder and sentenced to death. The facts appear sufficiently in the following judgment.

Mr E A Thomas and Mr A Renner-Thomas for the appellant.
Miss M A C Jones, Senior State Counsel, for the respondent.

SHORT JA: The appellant was charged with murder at a Session of the High Court in Freetown presided over by Golley J sitting with a jury. He was convicted by the unanimous verdict of the

jury and was sentenced to death. It is against this conviction that he has appealed on the following grounds:

"1. That the Learned Trial Judge erred in law when at page 39 lines 22 – 27 he directed the jury as follows:

"If after you have carefully considered the entire evidence in this case, you are satisfied so as to feel sure that the prosecution have failed to discharging (sic) their duty as cast upon them, then you have to return a verdict of *Not Guilty* of this offence of murder and the accused will be *Acquitted and Discharged.*

2. That the Learned Trial Judge misdirected the jury when he said at page 53 line 31 and page 54 line 1 – 2 "I should, I opine, direct you to the effect that the statement of the accused is tantamount to a confession statement."

3. That the Learned Trial Judge misdirected the jury on evidence and the law applicable thereon when he said at page 54 line 2–10. "He admitted in a voluntary cautioned statement which is in evidence that he struck the deceased a blow with a windscreen winding instrument …. If he did not do this act nor in the heat of passion when he was master of his mind then you have to rule out provocation and consider murder simpliciter".

4. That the Learned Trial Judge erred in law when he directed the jury at page 47 line 13 – 17 as follows: "You will have to weigh in the scale the nature of the force used as against must bear reasonable relationship to the provocation if the offence of murder is to be reduced to manslaughter (six)."

5. The Learned Trial Judge erred in law, in that he failed to put the case for the Defence to the jury adequately and properly.

6. The verdict is unreasonable and cannot be supported having regard to the evidence."

The brief facts of the case for the prosecution are as follows. On the 2nd of December 1976, the deceased, Benoni Leigh, left his home at No 4A, Upper Allen Town Main Road, for Freetown. Incidentally, the appellant lived at No 4B, Upper Allen Town Main Road in the same compound. The deceased returned shortly afterwards and entered their common compound where he found one Mrs Bernice Pearce, a cousin of the appellant, and the appellant sitting.

The deceased also sat on a bench in the same compound and spoke of his visit to a cousin of his who had returned from overseas. According to Bernice Pearce, the appellant's cousin, who gave evidence for the prosecution, the appellant got up suddenly, approached the deceased, who was still sitting on a bench and said:

"You Benoni you (wicked mother and father) when I was little and was being looked after by your parents I have not forgotten the treatment I received. It is still in my mind. Your mother used to give me remnants and leftovers from meals, and she used to give me a lot of laundry to do and I took them to the Kissy Brook and laundered them. Your mother used to tell lies on me to your father who used to inflict a lot of punishment on me without asking."

The witness intervened and remonstrated with the appellant, who then returned to where he had been sitting. The deceased was still sitting on the bench. The witness further stated that not too long afterwards, the appellant got up from where he was sitting and "appeared to be looking around for something and soon as he went near to the deceased he picked up an iron which was by." The appellant was alleged by this witness to have then said:

"I am pleased you are back as I was waiting for you. Leh are go do tin way all man go see."

The deceased asked the appellant to return the piece of iron which the former stated was his tool. The deceased was a motor mechanic. The appellant refused. The deceased got up from where he was sitting and as he approached the appellant, the latter moved backwards. The appellant was about to hit the deceased with the iron when the witness intervened and demanded the iron from him. As the witness approached the appellant, he (the appellant) stated that he would first kill the witness before killing the deceased. The witness ran out to the street for help. She did not succeed in summoning help as it was a public holiday. On returning to compound, she said she saw the deceased, called him but he did not move. She stated that:

"While the deceased was laying face downwards the accused come with an axe handle and continued to hit the deceased on his waist and back. I asked him to desist from what he was doing – beating the deceased as if he was beating a boa constrictor."

He said:

'Yes I killed the bastard!"

The witness said that there was a lot of blood as the deceased was removed by the police. She also saw a "hole on the deceased's side."

The Pathologist's evidence was, inter alia, that:

"I formed the opinion that death resulted from a chest injury. It is possible that the wound could have been caused by an instrument with a sharp blade such as a knife."

The next witness, Amy Bangura, also testified to having heard the appellant say "I have killed the bastard" while he, the appellant, was standing in front of the deceased who was motionless. Under cross-examination, however, he did say he heard the accused say:

"Get up. You said you wanted to fight me. Get up now and let us fight."

Another witness, Christiana Kelley Nicol, stated that on the day in question, she went to the scene of the incident and met the appellant standing. She said she asked him what had happened and his reply was to the effect that:

"the man said he would deal with me, me first don deal with am. Look am na gron da."

She further said:

"I saw an axe handle which the accused said he took to knock him."

The next witness Walter Wray, retired Chief Superintendent of Police also went to the scene on the same day. He said he found the appellant lying in a pool of blood – dead. When questioned by him after showing him the body of the deceased Benoni Leigh, the witness said that the appellant replied:

"I killed the bastard."

The witness further stated that he saw a stab wound on the deceased's breast.

On the instruction of Police Superintendent Bambay Kamara, the witness organised a search of the compound and stated that one Frederick Conteh shouted "look something here". The witness said that he went to Conteh who showed a knife which contained blood strains. The knife together with the other exhibits was sent to Mr Dalton Franklin Faulkner, the Forensic Analyst, in the Sierra Leone Ministry of Health, for examination. He found that the blood strains on the knife were human blood and of the same blood group type as that on the shirt which the deceased wore at the time of his death, ie, "O" the (suspositive). According to

the witness, the appellant's blood was of a type different from that on the knife and also that on the deceased.

A witness Frederick Conteh confirmed the evidence of Walter Wray that the knife which was tendered in evidence was found under a mango tree and that it had blood stains on it. The defence elected to reply on Exhibits A, C & D and did not call any witnesses. The appellant stated that he relied on his statement to the Police.

Exhibit "A" is the Postmortem Report on the deceased. Exhibit "C" is the statement made by the appellant to the Police on the 5th of December 1976 after he had been cautioned. The substance of it is that on the 2nd of December 1976, after his visit to Freetown, the deceased asked the first prosecution witness, Bernice Pearce, for a pint of rum (Omole) which was given to him. The appellant, in jest, told the deceased that if it was the time when he (the appellant) had been drinking, he would have taken the pint of Omole from him and consumed the contents and the deceased threatened to stab him if he did. The deceased then became insulting and accused the appellant of having been to goal and that he had had sexual intercourse with his (appellant's) late mother. The appellant then slapped the deceased on the left jaw and Mrs Bernice Pearce, PW1 intervened and restrained him. The deceased removed his wrist watch which he handed over to Mrs Pearce, went into his house and returned with a parcel with which he threatened to "allay" the appellant and, in fact, threw some of the contents on him. He said his right eye became sore and he took the winding iron and hit the deceased resulting in the deceased falling to the ground. A struggle ensued during which he defended himself "the deceased trying to get rid of the iron rod from me." He then left the deceased lying on the ground and left to report himself at the Kissy Police Station.

He stated that CID officers later took him to a spot in the compound of No 4 Upper Allen Town where he was shown by the police a knife which was on the ground as the one which he allegedly used on the deceased during the fight. His denied using any knife. He admitted that the shirt which he wore during the course of the fight with the deceased was blood stained. In exhibit 'D" on which learned counsel for the appellant stated that the defence relied in the court below, the appellant stated inter alia:

> "on Thursday 2nd December 1976 after I had struck the deceased and he fell dead, the area was searched by the police who arrested me but no knife was seen".

It is significant that the appellant's narrative of the episode leading on to a quarrel and culmination in a struggle with the deceased in the presence of his cousin, PW1 Bernice Pearce, was never supported by this witness. It is also interesting that in Exhibit "D" the appellant admitted that he struck the deceased and he fell dead. His bone of contention throughout has been that he did not strike with a knife. In Exhibit "A", the post-mortem report, the pathologist gave the cause of death as "Chest Injury".

Learned counsel for the appellant argued the grounds of appeal at some considerable length. With regard to grounds 1, the language complained of in the learned trial judge's summing-up, that is to says:

> "if after you have carefully considered the entire evidence in this case, you are satisfied so as to feel sure that the prosecution have failed to discharge their duty as cast upon them, then you have to return a verdict of Not Guilty of this offence of murder and the accused will be acquitted and discharged", does not appear to expose the learned trial judge to any criticism of error in law. This direction when considered within the context of the summing-up as a whole is without flaw. Indeed, learned counsel himself conceded that part of the summing-up at page 39 line 29 which reads:

"if you cannot make up your minds as to whether or not the prosecution have proved their case beyond reasonable doubt then you have to return a verdict of *Not Guilty*" was a proper direction.

In arguing Ground 2, counsel was critical of the learned trial judge's direction, to wit:

"I should, I opine, direct you to the effect that the statement of the accused is tantamount to a confession statement."

Perhaps the language here might be infelicitous if taken out of context. Because, when read in its context, it is obvious that the learned trial judge was not equating the phrase "confession statement" with that of "confession of an offence charged" but rather with "admission of certain facts stated by the accused", for immediately after the words complained of at page 54 line 2, the learned trial judge went on to state what he meant. He stated that:

"He admitted in a voluntary cautioned statement which is in evidence that he struck the deceased a blow with the windscreen winding instrument which according to PW1 Bernice Pearce had left him carrying it with him; and the deceased fell down."

Again, in line 11 of the same page the learned trial judge made his meaning clearer when he stated thus:

"Remember Ladies and Gentlemen of the jury, that a self confessed statement "I have killed the bastard" – does not even need corroboration. Words to this effect were said to have been uttered by the accused by a good number of the witnesses. They were heard to fall from the lips of the accused himself."

The learned trial judge made the dichotomy, as he intended it; between *confession* and *admission* manifestly clear in line 5 et seq at page 49 of the records where he stated:

"As regards confession and admission statement I must warn you that you must treat such statement with great care".

With regard to Ground 3, learned counsel for the appellant adopted the same arguments in support of Ground 2. Here again, the learned trial judge was dealing with the charge of murder vis-à-vis the pieces of evidence which he quoted. The learned trial judge adequately dealt with all possible defences which might be open to the appellant at page 45 line 10 of the summing-up, he stated:

"However it is settled law that where there is possible defence of self defence or of provocation I should direct you accordingly on the law relating to them."

The learned trial judge thereafter directed fully on these defences at pages 45 to 49 lines 5 of the summing-up. Taking grounds 4, 5 and 6 together, I find no merit in them when one takes into consideration the whole of the evidence and Exhibits A, C & D on which the defence relied.

Learned counsel for the appellant throughout his arguments has the impression that the learned trial judge ought to have directed the jury as though he were addressing twelve graduates from Fourah Bay College. As the late Lord Goddard CJ stated in the case of *R v Spriggs* (1958) 1 QBD at page 276 "One has to remember, after all, that juries are not drawn from University professors or University dons. They are ordinary men and woman."

In my view the learned trial judge put the case to the jury in the only way it should have been put and more than adequately put the case for the appellant to the jury.

For the reason given, this appeal fails and is dismissed.

Reported by Anthony P Kinnear and Victoria Jamina

KING v THE STATE

CA

COURT OF APPEAL FOR SIERRA LEONE, Criminal Appeal 9 of 1977, Hon Mr Justice Ken E O During JA, Hon Mr Justice F A Short JA, Hon Mr Justice S M F Kutubu JA, 11 July 1979

[1] Civil Procedure – Transfer of preliminary investigation – Application should have been made under s 10(c) of Courts Act not s 10(b) – Courts Act 1965 s 10

By judge's summons on 26 May 1977, Senior State Counsel applied under s 10(b) of the Courts Act 1965 for the transfer of a preliminary investigation into charges against the appellant of falsification of accounts and larceny by servant. The appellant argued that the judge was wrong to have entertained the application and to have made the order under s 10(b) of the Courts Act 1965 when the matter was a preliminary investigation and not a summary trial.

Held, per Short JA, setting aside the order of the High Court:

The application for transfer should have been made under s 10(c) of the Courts Act 1965. Any other construction would be contrary to the reason and intent of s 10 of the Act.

Legislation referred to
Courts Act 1965 s 10
Falsification of Accounts Act 1975 s 1
Larceny Act 1916 s 17(1)(a)

Appeal
This was an appeal from an order made by Taju Deen J sitting in the High Court in Freetown on 13th July 1977. The facts appear sufficiently in the following judgment.

Mrs Ahmed for the appellant.
Miss M A C Jones for the respondent.

SHORT JA: This is an appeal from an order made by Taju Deen J sitting in the High Court in Freetown on 13th July 1977 as follows:

> "It is ordered that the charges of falsification of accounts, contrary to section 1 of the Falsification of Accounts Act 1975, and larceny by servant, contrary to section 17(1)(a) of the Larceny Act 1916, against Charles Edward King be enquired into at the Magistrate's Court in Moyamba."

Learned counsel for the appellant filed only one ground of appeal, that is:

> "The learned judge was wrong to have entertained the application and made the order under section 10(b) of the Courts Act 1965 when the matter before the Magistrate's Court is a preliminary investigation and not a summary trial."

By judge's summons dated 26th May 1977, the then Senior State Counsel, R Bankole Thompson Esq, applied under section 10(b) of the Courts Act No 31 of 1965 for the transfer of the preliminary investigation mentioned in the judge's order quoted supra. In paragraph 4 of his supporting affidavit dated 26th May 1977, the Senior State Counsel deposed, inter alia, that the subject-matter of his application was a "preliminary investigation."

The relevant sub-sections of section 10 of the Courts Act No 31 of 1965, read: