Privy Council Appeal No. 12 of 1944

Daniel Youth - - - - - - - - - - *Appellant*

v.

The King - - - - - - - - - - - *Respondent*

FROM

THE SUPREME COURT OF JAMAICA

REASONS FOR REPORT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 13TH NOVEMBER, 1944

Present at the Hearing:

LORD RUSSELL OF KILLOWEN
LORD PORTER
LORD SIMONDS
LORD GODDARD
SIR MADHAVAN NAIR

[*Delivered by* LORD PORTER]

Their Lordships have already indicated that they would humbly advise His Majesty that this appeal should be dismissed and that they would give their reasons for tendering such advice in due course. Those reasons are set out below.

The appellant and his wife Amelia Youth were jointly charged on indictment in the Supreme Court of Turks and Caicos Islands before His Honour S. T. B. Sanguinetti and a jury of twelve with the murder of one Poland Smith in the parish of Saint George at the Bight of Blue Hills. Both pleaded not guilty but were convicted and sentenced to death: the wife's sentence however was afterwards commuted to penal servitude for life. The husband alone appealed first to the Supreme Court of Judicature of Jamaica and subsequently by special leave to His Majesty in Council.

The appellant lived in a small settlement on Caicos Island called Thomas Stubbs Settlement which appears to have consisted of only three houses: one inhabited by the appellant and his wife, the next by the deceased man, his wife and family, and the third by the dead man's mother-in-law.

There was ample evidence of bad blood between the appellant and the deceased and indeed that the appellant threatened to get him out of the Settlement and had been heard to say with reference to him " Something is going to happen serious ".

Some miles to the west of this settlement lies another and larger settlement known as Bight Settlement, a road or path joins the two settlements, and from this road a track leads to the seashore which is about half to two-thirds of a mile distant.

The dead man was accustomed to pay a visit each Sunday afternoon to friends at the Bight Settlement and on Sunday, July the 5th, 1942, as usual he left his house about 5 o'clock and visited one James Pratt, who lived two or three miles away. He arrived about 6 p.m., left about 10 p.m., but never reached his home.

On Tuesday the 7th July, 1942, his dead body was found floating in the sea some distance to the west of the Bight Settlement. Death apparently was not due to drowning but to a combination of injuries which had been inflicted upon him: they consisted of three scalp wounds towards the back of the head, a jagged wound below the left ear and a cut through the right side of the lower jaw penetrating through the inferior maxilla. Though the last mentioned wound would cause profuse bleeding, the blood would not, necessarily be on the assailant.

Later the same day at a spot lying just off the track mentioned above a sandy clearing was found blood-stained and trampled and marked by footprints. The clearing was about one mile from Thomas Stubbs Settlement and 21 chains from the shore.

The bloodstains continued for about 200 yards to the beach and on the beach were found two sets of footprints as if two persons walked face to face sideways to the sea. The two sets were about two feet apart heavily indented, as if a weight was being carried and between them at one spot was a collection of blood. One set was larger than the other. According to the evidence the appellant and his wife left home a long time after the dead man, walking in the direction which he had taken towards the Bight Settlement. At sunrise the following morning Amelia Youth was seen coming from the direction in which she and her husband had gone the previous evening and shortly afterwards the appellant came from the same direction towards his house. That same morning a farmer living at Bight Settlement saw two persons coming eastwards along the beach about 4 a.m. After they saw him the two turned back in the direction of Stubbs Settlement, but he was unable to identify who they were.

On the same day there was found on the floor of the Youths' house a machette without a handle which could have caused the wound on the right-hand side of the dead man's face, but no blood was in fact found on it.

The two accused were seen by the police about 3 p.m. on the 7th July and the appellant then had a bruise over his left cheek, scratches on his throat, and a dark stain on his shirt. The stain was not from blood and is immaterial. The explanation given by the appellant and his wife as to the other injuries was that they had had a quarrel the night before in the course of which he had struck his face against the room door and she had scratched him. After this interview the appellant, who was wearing an old blue shirt and pants, asked leave to go home to change his clothes and started on his way but was called back and thereupon ran away and hid himself. He was subsequently arrested the same day, but again escaped and was finally re-arrested on the 11th July. Meanwhile his wife was arrested and kept in custody.

Later on, viz., on the 22nd July, in consequence of certain information which had been received one of the local constables and a clerk went to the Youths' house and searched in a field about 40 feet beyond a wall which stood east of the house, and was itself 15 to 20 feet from the house. The appellant used this field for planting corn, potatoes, and such like purposes and in it the constable found a clump of dry bush which had apparently been gathered together and upon which a few small stones had been placed. Underneath he found two cave holes going down vertically into the rock and in them were two sticks or clubs. The larger one had upon it diffused stains of human blood. The smaller was also smeared with blood, but it was impossible to say whether this blood was or was not human blood as the quantity found was too small to enable a conclusion to be reached. Either of the two sticks might have caused the injury at the back of the head in as much as the wounds found on the deceased man, except that which cut through the jaw, must have been caused by a blunt instrument or by the head coming in contact with a hard surface, e.g., stone or wood.

The matters set out above constitute the evidence admissible against the appellant. The information however which led to the discovery of the sticks or clubs came from the female accused and is contained in the statement set out below:—

> " On Saturday 4th July 1942 I and my husband Daniel Youth who is commonly called General had a little fight, and he knocked his face just above his eyes on the side of the house all these scratches that he has on his face now were not there on Saturday.
>
> My husband did not sleep home on Sunday night 5th July 1942, he went out just about sunset, and he never came home until Monday morning. About 10 a.m. my husband on Monday morning left to go for conchs, and he returned home at or about 1 o'clock. My husband then said to me you see Poland home? I said to him I am not looking out for Poland. He replied to me you wont see that damn bitch back in Thomas Stubbs, he said I done murder his ass out last night and dragged him in the sea. I did not believe him at first so he went to eastward and he brought a lignumvitae stick a big stick full up with blood and he said this is the stick that I killed him with. I said to him General you should not have killed Poland out like that and he said to me

you aint glad, that damn bitch out of Thomas Stubbs so you can live in peace and he tell me if I talk it he was going to carry me cross to northward and kill me and put me in the hole he said just how he murdered Poland he would murder me the same way. The same day when we heard that Poland Smith was murdered he sent Rosina my sister in the field to get some corn and while she was gone he tell me dont mind what James Pratt and them tell me I must tell them nothing because if I do he will still kill me how he tell me before. He carried the stick in the cave hole to eastward of the house in the field.

Sunday night he had on one short old pair of oznaburg pants and one old blue shirt and waistcoat. He told me he lay way for Poland down in the road and the first stroke he gave him was on his head to knock all his senses away from him.

I am telling you how to get the stick its on the east side of my house in the banana bottom some potatoe slips and then there are some rocks and near that is the cave hole.

(Sgd.) AMELIA YOUTH."

The same advocate had been assigned to defend both prisoners. They were jointly charged and jointly tried. No application was made that their trials might be separated. When however the statement was tendered in evidence it was objected to by defending counsel, the grounds of objection being that persons whether under arrest or not should not have statements elicited from them. This objection was overruled by the presiding judge, but the jury were warned with the greatest care both then and subsequently and in the summing up that this statement was not evidence against the husband and must not be taken into consideration in determining his guilt or innocence.

Neither of the accused elected to give evidence and both were found guilty of murder. Daniel Youth alone appealed to the Supreme Court of Jamaica, his contention being that the statement was inadmissible against him and whatever warning may have been given it must have so influenced the minds of the jury as to have made his trial unfair.

His appeal was dismissed on the 30th May, 1943, on the ground that the statement *was* admissible for and against the wife and that the jury had been warned that they were on no account to take the statement as evidence against the husband.

Their Lordships find themselves in agreement with the Supreme Court. There was evidence against the appellant on which the jury were entitled to convict. Its strength is not a matter for their Lordships to determine: the jury are sole judges unless some step has been taken which is contrary to natural justice or some grave and substantial injustice has been done.

In the present case it is said that the admission of the statement must necessarily have so influenced the mind of the jury that the appellant has been deprived of the substance of a fair trial.

Their Lordships would point out the statement was evidence which might be regarded either as favourable or unfavourable to Amelia Youth and as such it was imperative for the prosecution to put it in evidence. It is true no doubt that in all joint trials the mind of the jury *may* be influenced by the reception of evidence which is only admissible against one of the accused, but the practice in this country has always been in a joint trial to admit such evidence, leaving it to the presiding judge to warn the jury that the evidence must not be used to strengthen the case against or lead to the conviction of a prisoner against whom it is not admissible.

In truth the real complaint in the present case is that the prisoners were tried jointly and not separately—the submission being that they should have been tried separately and the husband's case taken first.

The question of joint or several trials however has always been left to the discretion of the presiding judge. The discretion must of course be a judicial one, but here their Lordships would point out that no application was made to sever the trials nor in their view would it have been possible to override the judge's discretion had he been asked to try the prisoners separately and refused to do so. Much less would it have been possible to interfere where such request was not made.

So far their Lordships have been dealing with the matter as if no specific provisions were in force which had a bearing upon it.

The provisions, however, of the Evidence Ordinance No. 3 of 1901 of the Revised Laws of the Turks and Caicos Islands, 1909, are relevant to its consideration. Two of those provisions must be quoted, and are as follows:—

> " XCIX. In all criminal proceedings the accused, and the husband or wife of the accused, as the case may be, may be called as a witness, but subject to the following provisions:—
>
> " (i) The accused shall not be called as a witness without his consent;
>
> " (ii) the wife or husband of the accused shall not be called as a witness without the consent of the accused, except in any case in which the wife or husband might have been compelled to give evidence before the commencement of this ordinance.
>
> * * * * * *
>
> " CII. No person who is or has been married shall be compelled to disclose any communication made to him during marriage by any person to whom he is or has been married; nor shall he be permitted to disclose any such communication unless the person who made it or his representative in interest consents, except in suits between married persons or proceedings in which one married person is prosecuted for any crime committed against the other, and except in the cases mentioned in Sections XCIX and C."

The appellant relied upon these sections, and in particular on sect. CII, as precluding the giving in evidence of this statement of Amelia Youth in the present proceedings.

As to XCIX, it was said that the statement became evidence when it was put in, and could not be put in without the husband's consent; and as to CII, it was said that the statement contained a communication made by the husband and was therefore inadmissible since no consent had been given.

Their Lordships do not find themselves able to accept these arguments. Both sections appear in a group of provisions entitled " Production and Effect of Evidence ", and under the subheading " Witnesses ".

From these headings it would appear that the sections deal and deal only with witnesses called to give evidence in Court. But apart from this consideration sect. XCIX, where it says " the wife . . . of the accused . . . shall not be *called as a witness* without his consent ", points to the same result.

Moreover the section has, in their Lordships' view, no bearing on a case where husband and wife are being jointly tried. In such a case, on the one hand the wife cannot be called as a witness against the husband, by reason of the wording of the section, and on the other she cannot be prevented from giving evidence on her own behalf, nor can a statement she has made be shut out, since it is evidence against her.

So in the case of sect. CII. A statement made outside the witness box is obviously inadmissible against anyone except the person making it, but the section cannot be intended to prevent the police or indeed any third person outside a Court of law listening to the statement of a wife suspected of a crime or the wife from excusing herself or explaining the circumstances, even though the explanation or excuse may implicate her husband. The section is dealing with evidence given in the witness box, and means that marital disclosures cannot there be given in evidence against an accused. The statement under consideration was neither given in evidence nor disclosed as evidence against the husband. It was admissible for and against the wife, and was rightly used as evidence in her case. The appellant has no cause of complaint under the sections. The statement was not put in against him, but was properly used in the case of his co-accused, and the jury were carefully warned against paying any regard to it in his case.

In their Lordships' view, therefore, the sections do not avail the appellant.

They will humbly advise His Majesty that the appeal should be dismissed.

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In the Privy Council

DANIEL YOUTH

v.

THE KING

DELIVERED BY LORD PORTER

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