

25, 1971

IN THE PRIVY COUNCIL **51 OF 1970**

ON APPEAL
FROM THE COURT OF APPEAL OF JAMAICA

BETWEEN:

RUPERT ANDERSON

Appellant

AND

THE QUEEN

Respondent

UNIVERSITY OF LONDON
INSTITUTE OF FINANCED
LEARNING
-7 APR 1972
25 RUSSELL SQUARE
LONDON, W.C.1.

CASE FOR THE RESPONDENT

RECORD

10 1. This is an appeal in forma pauperis by special leave from a Judgment of the Court of Appeal of Jamaica (Waddington, Eccleston and Luckhoo, J.J.A.) dated the 20th day of March, 1970, which had dismissed the Appellant's appeal against his conviction in the Port Antonio Circuit Court (Robotham J., and a Jury) on the 3rd day of July, 1969, on a charge of murder upon which the Appellant had been sentenced to death.

20 2. The Appellant was indicted on the charge that he, on either the 23rd or 24th days of December, 1968, in the Parish of Saint Mary, murdered one Huie Foster.

p.1

3. The trial took place in the Supreme Court for Jamaica sitting in the Port Antonio Circuit Court, Portland (Robotham J., and a Jury) between the 30th June and the 3rd July, 1969. The prosecution called material evidence to the following effect :-

30 (a) Linette Walker said that she was a barmaid at Trinity Port Maria in the Parish of St.

pp. 3-7

RECORD

p.5 11.
17-19

p.6 11.
23-26

pp. 8-16

Mary and that she knew the deceased Huie Foster who worked at a gas station near her bar; she had known the Appellant for about four or five months and he had visited her bar on occasions; on a Monday in October, 1968, the Appellant visited her bar; he looked worried and she asked him what was wrong; the Appellant said that his girl-friend came down from Highgate on the bus and instead of going straight to the Appellant, she went to see the deceased at the gas station and the deceased told her a lot of things about the Appellant; the Appellant did not tell the witness what the deceased had said to the girl-friend but made the remark that "a fucker like that want to kill because him mek him mouth bother him too much". In cross-examination the witness explained that the Appellant did not say that he was going to kill the deceased but that the deceased "want to get killed because he mek his mouth bother him too much." The witness denied that she had fabricated the conversation and volunteered that the Appellant was not an enemy of hers.

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(b) Carmen Walden said that she was not working at the time of the trial but had been working part-time at Port Maria hospital in December, 1968; she had known the deceased, Huie Foster, for many years; she was friendly with him and had been intimate with him on one occasion; she saw the Appellant once in October, 1968; the Appellant said that he worked at the hospital as head-porter; when she asked if she could get work there in the holidays, the Appellant said that he would take her to the matron; a week later, she saw the Appellant on the hospital road and he said that he could get her a job at the hospital; he said that he could get a pink card from a Mr. Wilson to get her into the job but that she would have to go to the Appellant's house to sit down and sign the form; she thought the Appellant wanted her to go to his house for sex; she said she got a job at the hospital in

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RECORD

the second week of December, 1968, without the Appellant's assistance; she said that between November and December 1968, when she and the deceased were walking in Port Maria together, the deceased and the Appellant spoke together for a short time but she did not hear what was said; she said that she spent the night of the 23rd December, 1968, at one Olive Reynolds' house.

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(c) Stanford Lynch, a farmer at Trinity, said that he had known the deceased and the Appellant for some years; the deceased and the Appellant were friendly at first; he did not take note of when they became not so friendly; on the 23rd December 1968, he went to the gas station where the deceased worked and saw the deceased and the Appellant there; between 8.00 and 8.30 p.m. the Appellant left in Mr. Toby (Leroy Graham's) car for Highgate; the Appellant was then wearing a Khaki shirt and trousers.

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pp. 19-24

(d) Joyce Scarlett, a domestic, said that she had known the Appellant for about three years; on the 23rd December, 1968, at 9.15 p.m. she was standing at the hospital gate at Port Maria talking to one Lloyd Skyers; she was at the bus-stop on the road leading to the hospital; a short while after the Victor bus going to Ocho Rios passed, she saw the Appellant going in the direction of Port Maria. Under cross-examination, she said that she liked the Appellant; he had never called her a thief; she talked to Lloyd Skyers for about an hour on that evening.

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pp. 29-34

(e) Lloyd Skyers, a chauffer employed at the Port Maria hospital, said that he had known the Appellant for two years; on the 23rd December, 1968, at 9.15 p.m. he saw the Appellant standing at the hospital gate; at about 9.30 p.m. the Appellant walked up the hospital road.

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pp. 35-39

RECORD

pp. 39-48

(f) Andrea Walker, a schoolgirl, said that on the 23rd December, 1968, she was at her cousin's bar at Trinity at some time between 11.30 p.m. and midnight; shortly before midnight, she left the bar to go to her mother's home which is some 1½ chains from the Port Maria hospital gate; she said that she reached her mother's gate and stayed there for a while; she saw the deceased sitting on a bicycle at the hospital gate when a gentleman came down towards him from the hospital direction and seemed to speak to the deceased; the deceased dropped his bicycle and went up the hospital road; the deceased ran and the gentleman walked quickly after him; she then lost sight of them; she heard a sound like a moaning as if from a human being; she then saw a lady coming from the hospital direction as if she were running; a gentleman walked towards her; the gentleman cut across the lady who ran back towards the hospital; the gentleman then turned back. She said that she did not know the gentleman or gentlemen she had seen; she said that the distance between her mother's house and the bar is 2½ chains. She said that she did not see Oscar Fairweather, a District Constable. In the course of cross-examination, she said that she came no closer to the deceased than 1½ chains, that he was not under the light and that he had taught her to ride a bicycle. She said that she stayed by her mother's gate for about ten minutes and went to bed leaving the bicycle lying by the gate.

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pp. 49-72

(g) Oscar Fairweather, a District Constable, said that he had known the deceased for over four years and the Appellant for over a year; on the 23rd December, 1968, he said that he was in Miss McKella's bar; he saw the deceased there at 11.30 p.m.; shortly before midnight, the deceased rode off on his bicycle; the witness left the bar 20 minutes after the deceased and walked towards Trinity; when the witness had gone a little way and was opposite the hospital gate, he heard a voice saying,

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10 "murder, murder,"; the witness stopped and went back to the bar and then returned; the witness saw a man with a penlight (with a red rim around the top of it) in his left hand and saw his right hand go up twice; the man said, "you fucker you, you fucker you"; the witness recognised the voice as that of the Appellant; he said that he and the Appellant had both lived on the same piece of land with a common landlord and had spoken whenever they met; the witness said that he could not see what was happening; he said that the Appellant was wearing a pair of water boots and a full suit of Khaki; the witness said that he then went home to bed; at 20 8.00 a.m. on the following morning, the witness went to the hospital gate and saw the deceased's body there by the side of the house at the spot where he had heard the voice of the Appellant. Under cross-examination, the witness said that he had been in the bar since about 9.00 p.m. drinking beer and soda, but not white rum; after he got home, he said that he had had one white rum; he said that the deceased left the bar 15 minutes before he did so; when he heard the voice saying "murder, 30 murder", he said, "Who is that, who is that", but there was no reply; he said that he went back to the bar for assistance; it took him 3 to 4 minutes to go back to the bar and return; he said that he stayed on the right hand side of the road when he returned; he agreed that there was a croton bush between the house and the road but said that it was not then thick; he said that he could hear the Appellant's voice across the road.

40 (h) Magnus Watson, a tailor and the Appellant's great-uncle, said that on the 23rd December 1968, the Appellant was living in an apartment in his house; the Appellant had rented the apartment some 3 weeks earlier; the Appellant came home after midnight on the night of the 23rd/24th December, 1968; the witness asked who it was and the Appellant said that it was he, Rupert,

pp. 73-79

RECORD

and that he had come from Port Maria and had gone to a dance near Highgate. The witness said that he generally woke in the morning at about 6.00 a.m. and that on the 24th December, 1968, he woke and got up at about that time; he saw the Appellant who said that he had heard that a man had been killed in Port Maria and that he knew the man; the Appellant left at 7.00 a.m. saying that he was going to Highgate; the Appellant returned at about 8.00 a.m.; the Appellant's Khaki shirt and trousers were wet and he borrowed the witness's tailor's iron to press them. On the 25th December, 1968, the police came and the Appellant left with them. Under cross-examination, the witness said that he had no clock at home but that he took the time from the radio; he said that the Appellant did not mention the man being killed after he had returned from Highgate. 10 20

pp. 81-88

(i) Josiah Ferguson, a grave digger, said that he lived alone at the hospital gate at Port Maria; he had known the deceased for two years; he left his house on the 23rd December, 1968, at 7.00 p.m. and returned on the following morning at 7.00 a.m.; he saw a bicycle leaning on the corner of his house, on the side near to the hospital; it was the deceased's bicycle; he then saw a body by the house near to the main road; it was the deceased's body; he then went to the police station. Under cross-examination, he said that the nearest light to his house was one chain away. 30

pp. 89-99

(j) Ivan Wilson, a driver, said that he had known the Appellant and the deceased for about 6 months; he said that on the 24th December, 1968, before 10.00 a.m. he saw the Appellant at Sandside, Trinity between the gas station and the hospital gate; he had a conversation with the Appellant; he said, "what a way them kill our good friend" (referring to the deceased) and the Appellant replied, "what is not yours mus' leave it alone. Like brute you live, like brute you shall also die, because it is a 40

RECORD

10 lesson to man to teach man not to fool
around the next man woman"; the witness
said to the Appellant that he did not
know that the deceased was fooling around
with another man's woman and the Appellant
replied that on the previous night he had
seen the deceased in Miss McKella's bar
drinking a beer and had seen him turn his
back to the counter looking out to the
road for another man's woman and at the
same time looking for his death although
he did not know it; the witness said that
he had stopped his van to speak to the
Appellant and left him there after the
conversation. Under cross-examination,
the witness said that he had come from
Richmond to Port Maria, a distance of 10½
miles, that he did see the Appellant and
did speak to him; he said that he was
20 good friends with the deceased.

(k) Aston Wood, a bus conductor on Victor
Transport buses which ran from Kingston to
Ocho Rios via Highgate and Port Maria,
said that he knew the Appellant, who had
travelled on his buses regularly and that
he had spoken to him on occasions; on the
23rd December, 1968, the Appellant got on
to the bus at Highgate at 9.20 p.m. and
got off the bus 2 chains below the Port
30 Maria hospital gate at about 9.45 p.m.;
the Appellant was wearing a Khaki shirt
and pants; he had a little parcel in his
hands, small and some 2½ feet long.
Under cross-examination, the witness said
that the bus was busy that evening,
passengers were carrying Christmas parcels
and some were standing; the Appellant was
the only person who got on at Highgate.

pp. 99-105

(l) Leroy Graham, a chauffeur, said that he
40 lived at Harmony Hall in the district of
Highgate and that he had known the
Appellant for about a year and the
deceased for over 2 years; on the 23rd
December, 1968, he saw the Appellant at
the gas station at about 8.15 p.m.; he
gave the Appellant a lift in his car; he
reached Harmony Hall at about 8.50 p.m.

pp.105-109

RECORD

having dropped the Appellant off some 7 chains away; the Appellant was wearing a Khaki suit. Under cross-examination, he said that it took about half-an-hour to drive from Trinity to his house; he said that his nickname was 'Toby'.

pp. 109-126

(m) Rudolph Dwyer, a detective constable stationed at Port Maria, said that on the 24th December, 1968, as a result of a report made to the police station, he went to the hospital porter's lodge by the main road leading to Port Maria; he saw the deceased's body there, behind the porter's lodge and near to the main road leading to Trinity; he searched the body and found in the right trouser pocket an automatic pistol (Exhibit 1) with 3 rounds of ammunition, 2 in the magazine and 1 in the breach; there was a banana trunk about 3 yards from the body, with 7 slits in it as if someone had thrust a machete through it several times; the slits were recently made because the stains were still fresh running through the slits. On the 25th December, 1968, at 5.00 a.m. the witness went to the home of Magnus Watson and there saw the Appellant and told him that he was making enquiries into the death of Huie Foster; the Appellant said, "Thank God, mi have Toby who can give evidence for mi that mi come up with him from Port Maria and mi never go back down deh. Mi never chop up Huie and kill him"; the Appellant showed the witness a pair of brown Khaki trousers, a brown Khaki shirt and a pair of tall water boots; in the right back pocket of the trousers (Exhibit 2), the witness found a brown handled pocket knife; in the right foot of the water boots (Exhibit 5) the witness found a piece of cardboard with brown marks thereon resembling blood stains; the Appellant said that he owned a machete (Exhibit 6) which was hanging up in his room with handle thereof being visible; on the blade of the machete were banana stains; the clothes, being the trousers (Exhibit 2) and the shirt (Exhibit 3) appeared recently to have been ironed. On the 27th December, 1968, the witness

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RECORD

10 went to the Appellant's room and found a
pen flashlight (Exhibit 7) there, with a
red rim round it; the flashlight was
working when the witness took possession
of it. Upon arresting the Appellant and
charging him with the murder of the
deceased and after caution, the Appellant
said to the witness, "Mi never go back to
Trinity". Under cross-examination, the
witness said that he started his
investigations on the 24th December, 1968,
and went to Fraser Wood by 9.30 a.m. via
Highgate; he did not speak to Magnus
Watson. On the 25th December, 1968, at
5.30 a.m. he saw the Appellant; he did
not tell Magnus Watson that he did not
need a warrant; the machete (Exhibit 6)
was not leaning up on the front verandah
of the house; he did have a conversation
with the Appellant; both the cardboard
and penknife were found by him.

pp.141-150

20 (n) Dr. Gervais Valentine Harry, a registered
medical practitioner, said that on the
24th December, 1968, he was going to work
at the Port Maria hospital, when he saw a
crowd of people at the hospital gate at
about 7.00 a.m.; he saw the body of the
deceased, whom he had known well, at the
back of a cottage at the hospital gate;
30 there was blood on the grass and earth
near the corner of the cottage; he
described some 16 incised wounds on the
deceased's body; 5 wounds were on the
front of the body involving the right
index finger, right wrist, lower forearm,
chest and nose; 8 wounds were on the back
of the neck all more or less parallel to
one another, one of which severed the
spinal cord while another created an
40 opening in the skull exposing the brain;
2 wounds were on the left side of the face,
one of which almost severed the left-ear
while the other ran horizontally across
the left temple; there was a wound 5
inches long down to and partially through
the left shoulder blade also running
horizontally; death was due to multiple
injuries; the wounds were consistent with
infliction by a sharp cutting instrument

pp.127-134

RECORD

such as a machete. Under cross-examination, the witness said that blood was spattered around the body; the spraying of blood would cease immediately the chop through the spinal cord had taken place.

pp.134-141

- (o) Harold Vincent Garriques, a medical technologist and chief technician at the Forensic Science Laboratory in Kingston, said that on the 28th December, 1968, he received certain sealed parcels from Detective Dwyer; as to the shirt (Exhibit 3), the water boots (Exhibit 5) and the Machete (Exhibit 6), he found no traces of blood; as to the trousers (Exhibit 2) he found blood present in very small brown and serosanguinous stains on the inner aspect of the right back pocket; this blood had been diluted by some form of washing; as to the piece of cardboard in the right boot, he found human blood present which must have been at least two weeks old; as to the knife (Exhibit 4) he found a trace of human blood on the cutting edge of the knife; none of the blood found was in sufficient quantities for grouping. Under cross-examination, the witness said that the slight trace of blood on the inside of the right back pocket of the trousers could have come from something being placed in the pocket; he said that a thorough washing with soap and detergent would be required to remove blood from the trousers; the blood on the cardboard was not more recent than two weeks: it was not a fresh stain and could have been older than two weeks.

pp. 151-156

- (p) Cleveland Wilson, a headman, said that he lived in Port Maria; on the 23rd December, 1968, he was in Miss McKella's bar, which is about a chain from the hospital gate; he saw the deceased in the bar at 10.30 p.m. the deceased came into the bar and talked to him and bought him a drink; he and the deceased were standing by the counter; the deceased did not remain at the counter all the time; he saw the deceased step outside and then return to the bar; the deceased

was directly facing the hospital gate when he went outside; the deceased went outside 3 times; the deceased left the bar at about 11.30 p.m. and went up to the hospital gate; the witness left the bar about an hour later and went towards Port Maria; the witness said he knew Oscar Fairweather who left before him and went towards the hospital gate; the witness said that he left about an hour after Oscar Fairweather. Under cross-examination, the witness said that he usually drank in Miss McKella's bar, a rum bar, that he had been there from 10.00 p.m., that he was there before Oscar Fairweather and that he left at about 12.30 a.m.; he said that he liked White rum as did Oscar Fairweather; he had known the deceased for about 3 years and that when the deceased went outside for the third time, the deceased said that somebody was coming to meet him at the hospital gate; the deceased did not look anxious.

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4. The Appellant made an unsworn statement from the dock. He said that he lived at Deen Pen, Fraser Wood and worked as a mason; on the 23rd December, 1968, he went down to Port Maria at about 5.00 p.m. to his cousin's house; he left his cousin's house at 7.30 p.m. his cousin's young daughter giving him a £1 to get some beef in Highgate for her on the following morning; he walked up to the gas station where he saw his friend, the deceased; he obtained a lift in Mr. Toby's car having arranged to meet the deceased on the following Wednesday; he said that the deceased was his friend; Mr. Toby dropped him off and he walked home; when he got home he changed his clothes, found that his wallet was missing and remembered that he had last had his wallet when at his cousin's home earlier; he changed into black trousers and a plaid shirt and caught the bus to Port Maria; while on the bus a young lady, Joyce, asked him to carry a parcel for her as she was standing on the bus with 3 parcels; he did so and returned the parcel to her when he got off the bus at the housing scheme; he went to his cousin's yard and found his wallet; he then went to the road leading

pp. 157-
162.

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RECORD

to Port Maria at about 10.30 p.m. and while walking towards Port Maria a man in a white car coming towards him stopped and asked the way to Kingston; the Appellant told the man the way and asked for a lift to Highgate; the man dropped the Appellant off in Highgate and the Appellant walked home; when he got home the Appellant heard his uncle call out to him asking him where he had been and he said Port Maria; his uncle asked the time and the Appellant said he did not know; the Appellant turned on his transistor radio and heard the time about 5 minutes later given as 11.30 p.m.; he called out the time to his uncle. On the following morning the Appellant woke up and went to Highgate to get the beef; he did not see his uncle but heard him at the fowl coop; the Appellant returned from Highgate and his uncle asked him to buy some fowl feeding and the Appellant said he was going to Highgate again to buy some things; he left for Highgate again at about 9.00 a.m., his uncle giving him 10/- to buy the fowlfeeding; he bought the fowl feeding in Highgate, returned home and gave the same to his uncle; while in Highgate to buy the fowl feeding, he saw a contractor who told him that a policeman was looking for him; the Appellant told the contractor to direct the policeman to where he lived but the contractor said he was not prepared to do so; later on the same day, while the Appellant was sitting on the edge of the verandah of his uncle's house, he saw Detective Dwyer and other policemen drive to within 2 chains of his gate, stop and then drive off. The Appellant described how on the 25th December, 1968, he woke up at 5.00 a.m. and saw Detective Dwyer and two other policemen on the verandah at his uncle's house; Dwyer said, "Jesus Christ, a you Oscar say, kill Huie?" and the Appellant replied, "no, which Huie?" and Dwyer told him; Dwyer then went to the Appellant's room and took a pair of Khaki trousers and a shirt, a cutlass and the water boots, Dwyer saw nothing in the boots but saw a polish mark on the boots which had got there while the Appellant was cleaning out his room on the previous day; Dwyer said "You fucker you, I catch you now, see the man blood on the water boots here." The Appellant explained how he had previously cut a bunch of

banana for two aunts from America who had come to his uncle's house. He said that he did not carry a penknife; he did not have the cardboard in the water boots which was three weeks old; he used it for mason work; he did not wear water boots to Port Maria at all but wore brown mush puppies.

10 5. The learned trial judge began his summing-up by giving an outline of the Crown's case and of the Defence. He directed the jury upon the nature of their duty and the respective functions of judge and jury in a criminal trial and that the burden of proof was on the prosecution. He then considered the relevancy of motive and the meaning and effect of circumstantial evidence and the necessary elements which the prosecution had to establish to justify a verdict of murder. Having described the location of the hospital gate and the porter's lodge, the learned trial judge then reviewed the prosecution's case in detail by reference to five phases: first, the association of the deceased with Carmen Walden and the Appellant's knowledge thereof; second, the Appellant's departure from Trinity station in Toby's car to Highgate and his return to Port Maria when he alighted from the bus by Miss McKella's bar; third, what took place at the hospital gate as related by Joyce Scarlett and Lloyd Skyers; fourth, what occurred after Fairweather, Andrea Walker and Cleveland Wilson left the respective bars; fifth, the discovery of the body by Dr. Harry and Josiah Ferguson; sixth and last, the evidence of Magnus Watson as to what the Appellant said to him on the morning of the discovery of the deceased's body.

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pp. 163-211

The learned trial judge in considering the evidence of Harold Garriques said :-

p.204 11.
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40 "He says that there was no blood on the shoes - well, that is merely his opinion, Members of the Jury, you are not bound to accept it because he happens to be an expert in this particular field. An expert is brought before you merely to guide

RECORD.

and assist you in evaluating evidence of a particular nature, he being trained in that particular field therefor. You will weigh well what an expert has said before you discard his evidence because neither you nor I is trained in that particular field in the same way that Mr. Garrigues would weigh well what I would have to say in the field of law because he is not trained in that particular field, but you are still judges of the facts, and you may accept or reject the evidence of the expert".

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p.205
11. 1-4

"He says he does not think the blood on the cardboard was more recent than two weeks but, of course, nobody is infallible; he says it could be more."

The learned trial judge dealt with the Appellant's unsworn statement from the dock in detail and concluded his summing-up by reminding the jury that the burden of proof rested on the prosecution throughout, of the nature of circumstantial evidence and of the standard of proof required of the prosecution.

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6. The jury returned a verdict of guilty of murder and the Appellant was sentenced to death.

7. The Appellant applied for leave to appeal against his conviction to the Court of Appeal of Jamaica (Waddington, Eccleston and Luckhoo, JJA.) sitting as a Court of Criminal Appeal. The application was treated as an appeal and the hearing of the application as the hearing of the appeal and the appeal was dismissed on the 20th March 1970.

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pp. 220-
231.

pp.226-227

The Judgment of the Court was delivered by Waddington J.A., who summarized the case for the prosecution saying that it depended almost entirely upon circumstantial evidence. After refusing leave to the Appellant to call fresh evidence under the provisions of Section 26 (b) of Law 15 of 1962, the Court said that the grounds of appeal could be summarized under four heads.

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10 The first head complained of the learned trial judge's failure to deal adequately with the evidence of Oscar Fairweather or to draw the jury's attention to contradictions and inconsistencies in his and other witnesses' evidence or to conflicts between the evidence of various witnesses and further, of the trial judge's failure to direct the jury generally on how to deal with contradictions, inconsistencies and discrepancies in the evidence of the witnesses. It was held that the so-called contradictions inconsistencies and conflicts in the evidence were more specious than real and/or did not relate to matters of such substance as would warrant any special treatment by the learned trial judge. There was no rule of law requiring any directions generally as to how the jury should treat contradictions, inconsistencies and

20 discrepancies although it was customary to give such directions. The absence of such directions could not have caused any miscarriage of justice having regard to the evidence in the case.

30 The second head complained of certain alleged misstatements by the trial judge of the facts as disclosed by the evidence and as to various comments made by the learned trial judge which were said to be unwarranted, unfair and unfounded. The Court considered that with the exception of two alleged misstatements and two comments there was no merit in this ground of appeal. The two alleged misstatements concerned the evidence of Oscar Fairweather and Harold Garriques; after considering the complaints in detail, the Court held that on both occasions the learned trial judge corrected any misstatements as to the witnesses' evidence-in-chief when

40 reviewing their evidence-in-cross-examination. As to the two comments (which are set out in paragraph 5 hereof) the Court said that counsel for the Appellant had submitted that by the first comment the trial judge was inviting the jury to reject the evidence of the expert and to speculate for themselves as to whether blood was in fact on the boots and that by the second comment the trial judge was saying that, despite the evidence, the blood on the cardboard

pp.228-
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p. 230

RECORD

could have been more recent than two weeks. The Court found that the evidence was entirely in favour of the defence and the learned trial judge should have told the jury that in so far as the cardboard and the boots were concerned there was no evidence implicating the Appellant. However the Court held that even if the jury had been told in so far as the cardboard and the boots were concerned there was no evidence implicating the Appellant, they would inevitably have come to the same verdict and accordingly, the Court was satisfied that no substantial miscarriage of justice had actually occurred. 10

The third head complained that the motive for the crime advanced by the Crown was not supported by the evidence and that the learned trial Judge ought so to have told the jury. The Court held that there was evidence which, if accepted by the jury, showed that the Appellant resented the attention which the deceased was showing, if not to Carmen Walden, then to some other woman who was present at the time the deceased was killed. 20

The fourth head complained that the verdict of the jury was unreasonable and/or unsafe. The Court held that the Crown had presented a very strong case of circumstantial evidence against the Appellant and that the verdict which the jury returned was inevitable.

8. The Appellant was given special leave to appeal in forma pauperis by the Judicial Committee on the 17th day of December, 1970. 30

9. The Respondent respectfully submits that this appeal should be dismissed. It is submitted that there was no material misdirection of the jury upon the law or upon the facts by the learned trial judge in his summing-up, with the exception of the two comments upon the evidence of Harold Garriques set out in paragraph 5 hereof and referred to in paragraph 7 hereof. The learned trial judge dealt fully with the relevant evidence given at the trial and sufficiently and correctly directed the jury in relation thereto. 40

10. It is submitted that the reasons given by the Court of Appeal for rejecting the Appellant's Appeal are correct and should be upheld.

10 It is further submitted that, in relation to the two comments upon the evidence of Harold Garrigues, such comments could have caused the Appellant no miscarriage of justice and that without such comments and with the jury being directed that there was no evidence implicating the Appellant in relation to the cardboard and the boots the verdict of the jury must have been the same as that given.

11. The Respondent respectfully submits that this appeal should be dismissed and the judgment and order of the Court of Appeal of Jamaica should be affirmed for the following, among other

R E A S O N S

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1. BECAUSE the jury were correctly directed both on the facts and the law of the case.
 2. BECAUSE of the other reasons in the judgment of the Court of Appeal.
 3. BECAUSE the Appellant has suffered no miscarriage of justice.

STUART N. McKINNON.

51 OF 1970

IN THE PRIVY COUNCIL

ON APPEAL
FROM THE COURT OF APPEAL OF JAMAICA

BETWEEN
RUPERT ANDERSON Appellant
AND
THE QUEEN Respondent

CASE FOR THE RESPONDENT

MESSRS. CHARLES RUSSELL & CO.
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Solicitors for the Respondent.