

IN THE PRIVY COUNCIL

No.6 of 1972

ON APPEAL FROM THE SUPREME COURT OF HONG KONG

(APPELLATE JURISDICTION)

B E T W E E N :

GRAHAM EDWARDS alias DAVID
CHRISTOPHER MURRAY Appellant

- and -

THE QUEEN Respondent

CASE FOR THE RESPONDENT

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Record

1. This is an appeal from a judgment of the Supreme Court of Hong Kong in its appellate jurisdiction (Blair-Kerr, Huggins and Pickering J.J.) dated the 1st June 1971 dismissing the appeal of the Appellant against his conviction by the Supreme Court in its criminal jurisdiction (Rigby C.J. and a jury) on the 24th March 1971 for the offence of murder, in respect of which he was sentenced to death.

20 2. The indictment charged the Appellant with the murder of Ronald Alan Coombe on the 1st December, 1970. The trial occupied seven days between the 16th March, 1971 and 24th March, 1971.

3. Evidence was given for the Crown as follows :-

30 The deceased was the Deputy Director of the West Australian Institute of Technology, Perth and booked into Room 1223 of the Hong Kong Hotel on 27th November, 1970 for a stay of three or four days. On 1st December, 1970 at 0900 hours his body was found lying on the floor of Room 1223 dressed in bloodstained pyjamas. He had received 27 stab wounds including 9 stab wounds in front of

Record

the chest, three of which were fatal. The room was in disarray and there were numerous bloodstains. A trail of blood led through an open window along a ledge outside the 11th floor of the hotel up the outside of the building to the 17th floor, into a bathroom then up a flight of stairs to the roof top. The trail went across the roof top down some scaffolding outside the building to the 6th floor across onto an adjoining building and down to a wharf. The accused in evidence admitted that he inflicted these injuries to the deceased in the early hours of 1st December, 1970 and made his escape by the route described.

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4. It was the Prosecution Case that the accused, who was 19 years of age, came from Perth, West Australia, where he lives, to Hong Kong on 27th November, 1970 with the intention to kill the deceased. He was met by chance on arrival at the airport by a Mr. Cho Chi Kan, a tailor's tout. The following morning the accused invited Mr. Cho to his hotel room and discussed with him the obtaining of a pistol or knife in Hong Kong and the means whereby entry could be gained to Room 1223 of the Hong Kong Hotel through the window.

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5. Staff of the Hong Kong Hotel gave evidence that the accused was seen on the Hotel premises on the following occasions :

(a) On 27th November at 2100 hours the accused on the 12th floor of the Hotel asked about the occupant of Room 1223 and then left without going to Room 1223.

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(b) On 28th November at 1800 hours the accused knocked at Room 1223 and received no reply and left. He was wearing a dark wig.

(c) On 29th November at 1630 hours the accused was found alone inside Room 1223. He was escorted from the Room to the Hotel lobby and in an adjoining toilet he removed a wig. The deceased returned to the Hotel and had a brief conversation with the accused in the Hotel lobby. The deceased went towards the Hotel lifts and the accused left the Hotel.

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(d) On 29th November between 2300 and 2330 hours the accused was in the lobby of the Hong Kong Hotel. He was not wearing a wig.

10. (e) On 30th November at 2245 hours the accused was seen on the 12th floor of the Hotel carrying a brief case and walking towards Room 1223. Shortly afterwards he left without the brief case. He was wearing a dark wig.

20 6. The accused entered Hong Kong carrying a vaccination certificate and a passport in the name of David Christopher Murray. The accused was admitted to Queen Elizabeth Hospital at 0425 hours of 1st December under the name of Quantrill. Later that day he gave a long statement to police officers and said his name was Murray, the name he had previously used in Hong Kong. On the morning of 2nd December after he had been charged with murder he admitted his name was Edwards. The accused in evidence said that he had stolen and falsified the passport he held in the name of Murray.

30 7. After killing the deceased the accused made a large number of statements concerning the injuries he received in Room 1223 and how he came to stab the deceased. These can be summarised as follows :-

(a) At about 0400 hours on 1st December 1970 the accused told a nurse at the British Military Hospital that he was involved in a fight whilst playing cards.

40 (b) On admission to Queen Elizabeth Hospital at 0445 hours on 1st December the accused gave his name as Quantrill and said that he was injured when he fought with people in a bar.

(c) At 0515 hours on 1st December the accused was questioned by an Inspector of Police and said that his name was

Record

David Murray alias Robert Quantrill and that he had been involved in a fight in a bar.

- (d) At 1650 hours on 1st December the accused was interviewed by a Senior Superintendent and two Senior Inspectors of Police. A record of this interview is Ex.P. 26. The accused said that he was involved in a fight concerning some smuggled goods that he was to collect. After a break in this interview of one hour the accused said that his previous story was not true and that he did not mean to kill the deceased. He then gave a long statement under caution in which he said that he killed the deceased as a result of homosexual advances made by the deceased. 10
- (e) At 10.06 hours on 2nd December, 1970 when charged with murder of Ronald Alan Coombe the accused repeated his suggestion of homosexual advances by the deceased. 20
- (f) On 5th December, 1970 in the custodial ward of Queen Elizabeth Hospital the accused wrote a letter to his father, Ex.P.37. In that letter the accused wrote that after a medical examination he "told them (the Hong Kong Police) what had really happened and that I also lied about my name and everything because I was going to get into trouble, because of being in Hong Kong illegally". The accused also wrote that the Hong Kong Police and others had been very helpful. 30
- (g) On 9th December whilst in the custodial ward of the Queen Elizabeth Hospital the accused wrote a statement, Ex.P.30, said to be a "final and full confession". It is incomplete and deals with events in Perth. It establishes that the accused was on good social terms with the deceased's wife in June and July, 1970. The accused in evidence said that he was on intimate terms with the deceased's wife until his departure to Hong Kong, that she paid his fare to Hong Kong and that they planned to travel together to 40

the United Kingdom from Perth in February 1971.

- (h) Later on 9th December the accused wrote a note to Senior Inspector Gravener Ex.P. 29 in which he said that the police "are barking up the wrong tree" in their investigations.
10. (i) On 14th December whilst in the custodial ward of the Queen Elizabeth Hospital wrote a letter, Ex.P.31, to Superintendent Harris of the Royal Hong Kong Police Force. This letter advanced reasons as to why accused would not have deliberately murdered the deceased. These reasons show that the accused had detailed knowledge of the terms of a proposed divorce settlement between the deceased and his wife and a life insurance policy of A\$100,000 on the life of the deceased.
- 20 (j) On 16th December, 1970 the accused gave a short statement to a prison officer in which he said his injuries were caused by the deceased "who apparently objected to paying blackmail".
- (k) On the 24th December, 1970 the accused gave a short statement to a prison officer in which he said that he received his injuries in the course of a fight with an Australian in the Hong Kong Hotel.
- 30 (l) In January, 1971 whilst in prison on remand the accused wrote a statement which purported to be that of one "Ken Markham", an alleged accomplice in the theft of pornographic photographs by the accused from the home of the deceased in Perth. The statement purported to be written in London and was accompanied by letters addressed to the Commissioner of Police, Hong Kong and The Chief Justice, Hong Kong. The Prison
- 40 authorities in Hong Kong took these documents from another prisoner who was about to return to the United Kingdom.

8. The accused gave sworn testimony that he had known Mrs. Coombe since June, 1970 and was a boarder

Record

at her home. He had sexual intercourse with her and together they operated an agency for call girls. The deceased wanted to divorce his wife and the accused had detailed knowledge of negotiations concerning a proposed divorce settlement. The deceased's wife agreed to accept apart from substantial maintenance etc. a cash payment of A\$3,500. This was A\$1,500 less than previously contemplated, and in annoyance at this reduction the accused decided to blackmail the deceased with pornographic photographs that he stole from the deceased's bedroom. The deceased's wife paid his fare to Hong Kong of A\$600, and he came to Hong Kong on a stolen and forged passport. The accused said he telephoned the deceased on the evening of 28th November and offered to sell him 'a certain piece of property'. The accused also gave evidence that when the deceased returned to the Hong Kong Hotel in the afternoon of 28th November he went with the accused to Room 1223. The accused there showed the deceased the photographs and demanded A\$3,000 blackmail money. Subsequently both the accused and the deceased apologised to the hotel manager for any inconvenience caused by the presence of the accused. On 1st December at about 0030 hours the accused went to the deceased's room and demanded blackmail money for the photograph. An argument developed, the deceased attacked the accused with a knife. the accused lost control of himself and stabbed the deceased and escaped from the Room through the window. He received injuries to his left leg and hand.

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9. The father of the accused was the only other Defence witness. He said that in Perth he had telephoned a certain number at the request of the accused and had subsequently informed the West Australian Police that someone had asked him for A\$3000 for a photographic negative which he (the witness) wanted for the accused.

10. An appeal against the conviction of the Appellant was heard by the Supreme Court of Hong Kong in its Appellate Jurisdiction (Blair-Kerr, Huggins and Pickering, JJ.) on the 14th, 17th and 18th May, 1971. In a judgment delivered on 1st June, 1971 the appeal was dismissed.

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11. The Court after a detailed review of the evidence placed before the jury held that there was

evidence to support the conviction and that the jury was not unreasonable in rejecting the improbable story advanced by the accused.

10. 12. The second issue dealt with by the Appellate Court was the direction of the learned Chief Justice as to the onus of proof. The Court cited a number of passages from the Chief Justice's direction and held that the overall effect of the direction was to indicate to the jury that the onus of proof rested on the Prosecution. The Court also noted that the Chief Justice had given 'plain hints' to the jury that the correct verdict was one of manslaughter and the jury had decisively rejected that suggestion.

13. The learned Chief Justice directed the jury as follows -

20 'Now, Mr. Bernacchi raised what is certainly in the appropriate case an alternative defence to a charge of murder, or even to a charge of manslaughter - that is the defence of provocation. Mr. Bernacchi, as I understand him, suggested that the accused, when he was attacked with a knife - and particularly when he was first injured - when his hands were first injured with a knife - was so provoked that he lost all control of himself and that in those circumstances he ought not to be held responsible for what he did.

30 Members of the jury, in my view the defence of provocation cannot be of any avail to the accused in this case. Provocation, as I say, is undoubtedly a valid legal defence in certain circumstances, but you may well think that it ill befits the accused in this case, having gone there with the deliberate purpose of blackmailing this man - you may well think that it ill befits him to say out
40 of his own mouth that he was provoked by any attack. In my view the defence of provocation is not one which you need consider in this case.'

Counsel for the accused before the Appellate

Record

Court argued that the issue of provocation by the deceased should not have been withdrawn from the jury. The Full Court accepted this submission, but held that despite this misdirection it would apply the proviso to section 80(2) of the Criminal Procedure Ordinance and hold that no substantial miscarriage of justice had occurred. The terms of the direction to the jury about self-defence, coupled with the verdict, shewed that the jury had rejected the accused's story, that the deceased had attacked him. Even if properly directed about provocation, therefore, the jury would necessarily have rejected that defence. 10

14. The Respondent respectfully submits that the Full Court was right in holding that the verdict was supported by the evidence and was not unreasonable, and in holding that the jury was rightly directed about the onus of proof. The learned Chief Justice, in the Respondent's respectful submission, was justified in withdrawing the issue of provocation from the jury. 20
Alternatively, if the issue should have been left to the jury, the Respondent respectfully submits that no substantial miscarriage of justice within the meaning of s.80(2) of the Criminal Procedure Ordinance occurred, for the reasons given in the judgment of the Full Court.

15. The accused both before the Appellate Court and in his Petition for leave to appeal to Her Majesty in Council complained that the jury took into account irrelevant evidence in that after deliberating for over 3 hours they queried evidence given about some gloves found in Room 1223. The Respondent respectfully submits that there is no reason to conclude that undue emphasis was placed on this evidence. The resumption of the Court at 7.35 p.m. was at the instance of the learned Chief Justice, and this is shown by his opening words to the jury. The evidence as to gloves, it is reasonable to assume, was simply the piece of evidence under consideration when the Chief Justice interrupted the deliberations of the jury. 30 40

16. The accused in his Petition to Her Majesty in Council for special leave to appeal raised a new ground of appeal, that the learned Chief Justice's

direction on self-defence precluded the jury from returning a verdict of not guilty of murder because it suggested that more than reasonable force was used by the accused to repel an attack. The question whether more than reasonable force was used was in fact expressly left to the decision of the jury by the learned Chief Justice, and there was, in the Respondent's respectful submission, nothing improper in his comment on the evidence.

10 17. The appellant in his Petition has raised a second entirely new ground of appeal, namely, that the learned Chief Justice misdirected the jury as to the relevant time at which the state of mind of the accused was to be considered. The direction included these words :

20 'But before you return a verdict of guilty of murder in this case you would have to be satisfied that it has been proved beyond reasonable doubt that the accused came here with the express intention of murdering Dr. Coombe and that he achieved his purpose and that he is guilty of that murder.'

30 It was clearly the Prosecution case that not only did the accused arrive in Hong Kong with an intention to kill the deceased, but also he carried out that purpose. The defence raised gave an alternative explanation of events, but once the Prosecution satisfied the jury that the Prosecution case had been proved to the extent that the accused arrived in Hong Kong on 'a mission to kill' and disproved the Defence case of blackmail, there was an irresistible conclusion of fact to be drawn that the accused carried out his intention. His presence in Room 1223 and his stabbing of the deceased afforded no other possible explanation on the evidence.

40 18. The accused in his Petition has raised a third entirely new ground of appeal, namely, that inadmissible evidence was placed before the jury in re-examination of Senior Inspector Gravener concerning his enquiries in Perth. Counsel for the accused had been allowed to ask Inspector Gravener in cross-examination whether certain statements made by the accused in ex. 31, about the financial arrangements made in the divorce

Record

proceedings between the deceased and his wife, were true. In re-examination counsel for the Respondent was completing the picture by asking Inspector Gravener whether other statements made by the accused in ex. 31, about the financial consequences of the death of the deceased for his wife, were true. The Respondent respectfully submits that this evidence was not inadmissible. Alternatively, in view of the cross-examination of Inspector Gravener, his re-examination did not lead to any substantial miscarriage of justice.

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19. The Defence invited the jury to return a verdict of guilty of manslaughter. If this appeal should be upheld the relief to be granted to the accused should be the substitution of a conviction of manslaughter for the conviction of murder.

20. The Respondent respectfully submits that the judgment of the Supreme Court of Hong Kong in its appellate jurisdiction was right and ought to be affirmed, and this appeal ought to be dismissed, for the following (among other)

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R E A S O N S

1. BECAUSE there was sufficient evidence before the jury to prove the accused guilty of murder and the verdict was proper and reasonable having regard to all the evidence:
2. BECAUSE the Respondent did not rely on any inadmissible evidence:
3. BECAUSE the effect of the learned Chief Justice's direction to the jury was to direct them properly as to the onus and burden of proof:
4. BECAUSE the learned Chief Justice correctly directed the jury as to the law of self-defence:
5. BECAUSE the learned Chief Justice correctly withdrew from the consideration of the jury the issue of provocation:
6. BECAUSE the verdict of the jury shews

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Record

that they would have rejected the defence of provocation if it had been left to them:

7. BECAUSE in all other respects the learned Chief Justice's charge to the jury was correct:
8. BECAUSE if there was any irregularity at the trial no substantial miscarriage of justice has actually occurred:
9. BECAUSE of the other reasons given in the judgment of the Full Court.

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J. G. Le QUESNE

A.P. BUCKETT

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- and -

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Respondent

CASE FOR THE RESPONDENT

CHARLES RUSSELL & CO.,
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London, W.C.2.

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