

PC
GNS. G. 1

46/1961

IN THE PRIVY COUNCIL

No. 20 of 1961

O N A P P E A L

FROM THE FEDERAL SUPREME COURT
OF THE WEST INDIES.

UNIVERSITY OF LONDON
W.C.1.
13 FEB 1961
INSTITUTE OF ADVANCED
LEGAL STUDIES

B E T W E E N :-

63597

CHARLOTTE DAPHNE KING

Petitioner

- and -

THE QUEEN

...

Respondent

CASE FOR THE APPELLANT

RECORD

10 (1) This is an appeal from the order of the Federal Supreme Court of the West Indies Criminal Appellate Division dated the 4th February 1961 dismissing the Appellant's appeal against her conviction in the Supreme Court sitting in the Island of Barbados on the 26th November 1960 on a charge of murder.

20 (2) The principal issue arising in this appeal is whether the Appellant's conviction should stand, where she was jointly tried for the same murder with one Yarde; where the main case of the prosecution against both accused was one of Common design; and where the conviction of the said Yarde was quashed by the Federal Supreme Court on the grounds that the evidence of common design was insufficient.

30 (3) The Appellant together with one Carl Yarde was jointly charged with having murdered, sometime between the 20th and 21st of December, 1959 one Ernest Peterkin, in the parish of St. Michael, in the Island of Barbados and was jointly tried therefor in the Supreme Court sitting in Barbados, presided over by Mr. Justice Stoby. Both the accused were on the 26th of

p.1 1.10

p.3

RECORD

p.66 1.27-29 November, 1960 convicted and sentenced to death.

p.3 1.13 (4) Both the accused applied to the learned Trial
p.4 1.9 Judge for a separate trial. The acting Solicitor
p.4 1.17 General appearing for the Crown opposed this
Application on the grounds that the case for the Crown
p.4 1.20 was one of a common enterprise by the two accused.
The Application was refused. In opening the case to
p.6 1.8 the jury the acting Solicitor General again stated
that the case for the Crown was that the two accused
jointly effected the murder. 10

p.21 1.8 (5) Evidence was given at the trial of a statement
p.29 1.19 made by the Appellant to the Police on the 21st
p.115 1.20 December 1959, that she was a married woman 37 years
p.117 1.41 of age, separated from her husband. In July, 1959 she
met Ernest Peterkin, a blind man of about 70 years of
age, and in October of that year she went to live with
him on terms of intimacy. Yarde had been the
Appellant's lover before she met Peterkin, who was
a man of some substance, and she continued to be
intimate with Yarde after she moved into Peterkin's 20
house. On the morning of the 20th December, 1959
p.116 Yarde was with the Appellant in a room of Peterkin's
11.24-35 house. Peterkin discovered his presence and went to
the room where they were, where he accused the
Appellant of having a man with her in his house.
She denied the accusation and tried to put him off by
saying that the person he heard in the room with her
was one of her children. She had two children who
lived at Peterkin's house. In the meanwhile Yarde
left the house through a window. In her statement 30
the Appellant admitted that Peterkin quarrelled with
her throughout that day about the man he said she
had brought into his house. Evidence was given
p.49 inter alia by one Charles Dash that the Appellant
1.1-16 had told him on the 18th December 1959 that she had
heard that Peterkin had made a will leaving a house
to her. Evidence was given by one Rupert Yarde
p.46 (not apparently related to the other accused) that
11.27-33 on the 20th December 1959 at about 11 a.m. the
Appellant had said to him, "Mr. Yarde you hear 40
Petes is sending one of your children to call you
to take him to a lawyer" and had told him not to
carry Peterkin anywhere that day. Rupert Yarde's
daughter Ermintrude gave evidence that she heard
p.38 1.41- Peterkin say that he wanted her father to take him
p.39 1.8 to a solicitor or a lawyer to change his Will.
According to Ermintrude, when Peterkin spoke those
words the Appellant who was only about a foot
p.41 away from her had said "if he live." At that time
11.12-22 Peterkin was 2 feet 6 inches to 3 feet away from 50
Ermintrude and her brother was standing about
18 inches from Peterkin. When she saw Police

Officers on the morning of the 21st December, she did not tell them about the "if he live" story. p.43 11.30-37

Sometime during the night of the 20th-21st December, 1959 Peterkin was killed by a blow delivered from behind with a blunt instrument such as a crow bar or ripping iron which broke his neck. A doctor gave evidence that at least three blows had been struck with this blunt instrument, on his neck and on both his shoulder blades. He also had abrasions of the chest and cuts about the throat. In the doctor's opinion the cause of death was shock and haemorrhage following dislocation of the cervical spine and contusion and laceration of the brain tissue. The throat wounds had nothing to do with cause of death. p.8 11.29-41
p.9 11.18-21
p.7 11.5-8
p.8 11.27-33
p.12 11.9-11

No direct evidence was led by the prosecution about the events immediately before and at the time of the killing, except the statement made by the Appellant already referred to and a statement by the accused Yarde. The Appellant had further said in her statement that about 8 p.m. on the 20th Yarde came back to the house where he heard Peterkin cursing her. She told Yarde that Peterkin had accused her of bringing a man into the house and had said that the man had jumped through a bedroom window. Yarde was then standing outside the house by the front window. He remained outside until about 11.00 p.m. when she opened the front door and he came inside. At that time Peterkin was still walking about the house feeling with his stick and cursing her and the children. He threatened to wet the children's bed, but did not then go into their bedroom. Peterkin continued to walk about the house quarrelling until about 12.30 a.m. on the 21st when he then went into his bedroom and closed the door leading from the said bedroom to the bath. Yarde and the Appellant then entered the bedroom from the other door which leads to the children's bedroom. Whilst she was in the bedroom Peterkin held her and attempted to choke her. Yarde, on seeing this, gave Peterkin a blow on the back of his neck with a ripping iron which was in a corner of the house. Peterkin fell to the ground near the bed bleeding from his mouth. Whilst Peterkin was on the ground groaning, Yarde took the kitchen knife and stabbed him several times about the neck until he stopped making any sound. Yarde then left the house with the same ripping iron and the kitchen knife. p.115 1.20
p.118 1.1
p.116 1.35-
p.117 1.12

Yarde had stated to the police that he had spoken to the Appellant in the afternoon of the p.118 1.36-
p.119 1.7

RECORD

20th at Peterkin's house. He left and returned about 11.30 p.m. On his return, he remained in the car in the garage until the Appellant called him. He went into the house and, according to his story, he saw Peterkin feeling about with a stick. The Appellant had a crowbar in her hand; she gave it to him and told him to hit Peterkin with it; he told her he could not do it and she took the crowbar and hit Peterkin on his neck and he fell to the floor. She then gave the crowbar to Yarde and told him to break the lower half of the back door which he did. He then went home.

10

p.14 1.32-
p.17 p.49

Evidence was further given that during the early hours of the 21st December the Appellant had roused several of her neighbours with a report that masked men had entered Peterkin's house and hit him on the neck with a piece of iron. She had originally repeated that story to the police but later gave the statement already referred to. According to the witness Charles Dash the Appellant told him on the 24th December that on the night of the murder at about 11 p.m. she had gone into Peterkin's bedroom "muching him up" and Peterkin had held on to her front and would not let go. Yarde had then struck Peterkin whereupon she had asked Yarde "What he licked him down for." The Appellant had said she did not know what to do, had fetched the kitchen knife and cut his throat.

20

p.18 1.12-41
p.53 11.35-40

30

p.56 11.2-20
p.58 11.12-30

Further evidence was given that on the 22nd December the Appellant had given a sign to Yarde, who was hiding in the cane close to Peterkin's house, by shaking her head, in order to warn him of the presence of police officers. When accused of doing so by the police she had replied according to one officer "I would rather the rope go round my neck" and according to another police officer she had added the words "right now". When the police had tried to question the accused Yarde he had run away.

40

p.57 1.18
p.58 1.29

p.65 1.4
p.66 1.4

Neither of the accused gave any evidence or made any statement at the trial.

p.68 11.21-37

(6) In his summing up to the jury the learned Trial Judge directed the jury that they should consider the case against both accused separately, that they could convict both or acquit both or convict one of them and that the Crown's case was one of joint agreement or pre-arranged plan. He said "So you see from what I have explained, that in order to establish a

50

p.69 11.32-43

10 joint agreement by King and Yarde to kill Peterkin, the Crown have to prove that pre-arranged plan - prove it by evidence. If the evidence does not justify you in finding that Peterkin's death was brought about as a result of a concerted plan by King and Yarde, then you cannot possibly convict both of these two accused. You will have to consider which one killed him, and if you cannot make up your minds beyond reasonable doubt as to which one killed, then you will have to acquit both."

Later, after dealing with certain questions of law, the learned judge said he would discuss the evidence concerning the Appellant; then the evidence concerning Yarde; and would then say a word or two about common design. p.72 11.49-52

Having analysed the evidence against the Appellant the learned judge then referred to the 4 points made against Yarde by the Crown

p.91 1.47-
p.92 1.30

- 20 (i) His statement showing that he was present:
- (ii) The Doctor's evidence that there must have been 3 blows struck, whereas in his statement Yarde referred to only one blow
- (iii) His admitted knowledge that Peterkin had discovered a man in the house on the morning of the 20th.
- (iv) His running away.

30 The learned judge questioned how far some of this evidence could prove his guilt. He also referred to evidence of a pre-arranged plan and stated that in his opinion the inference of a pre-arranged plan ought not to be drawn. p.92 1.32-
p.93 1.45
p.93 1.47-
p.94 1.27

40 The learned judge then went on to discuss the evidence of pre-arranged plan as it affected each of the two accused separately, ending by saying that the jury could only find both accused guilty if they found that they had acted in concert; otherwise the jury should consider if they could find either guilty and if so, which one. Thereafter he first invited the jury to consider their verdict against Yarde and if they acquitted Yarde then to consider the case against the Appellant. p.94 1.32-
p.96 1.44

At the end of his judgment the learned Judge quoted the words of Lord Goddard in R. v Abbott

p.96 1.45-97
1.8
p.98 1.19-
p.99 1.14

RECORD

1955 2 Q.B. at p.503 that if two people are jointly indicted for the same crime and the evidence does not point to one rather than the other, and there is no evidence that they were acting in concert, the jury ought to return a verdict of not guilty against both.

The learned judge did not at any point in his summing up direct the jury that to find the Appellant alone guilty the jury must be sure that Yarde did not kill Peterkin.

10

p.100 1.9

Both accused were found guilty.

p.102 1.30

(7) The Appellant and the accused Yarde appealed to the Federal Supreme Court of the West Indies. The Appellant's grounds of appeal were inter alia that the verdict could not be supported having regard to the evidence and that it was not open to the jury to reach a verdict of guilty against both the accused.

p.106 1.27

p.110 1.27

(8) The Federal Supreme Court by their judgment dated the 4th February, 1961 dismissed the Appellant's appeal, but allowed the appeal by Yarde, quashed his conviction and set aside his sentence.

20

p.111 1.14

p.109 1.25

p.109 1.30

(9) The reasons given by Rennie J. who delivered the judgment of the court were inter alia that the evidence against the two appellants was not the same. The bulk of the evidence in the Appellant's case was not admissible against Yarde and vice versa.

p.109 11.42-50

"In those circumstances, it would seem proper for the jury to have considered whether King was guilty and then to have looked for evidence of a common design to determine whether Yarde was also guilty. The fact that they found both guilty does not mean that King could only be convicted if there was a common design to commit murder. The case against her did not rest on the existence of a common design." The court also said that there was ample and sufficient evidence to support the verdict against the Appellant.

30

p.110 1.26

p.110 1.35

p.111 1.6

As regards the case against Yarde the court held that his case rested entirely on the ability of the prosecution to prove a common design to murder Peterkin, and that the case was put forward and presented to the jury on that footing. Yet the court found it impossible to say that the

40

inferences that could be drawn from the evidence against him pointed conclusively to his guilt.

(10) The Appellant submits that the verdict of the jury was open to at least 3 different interpretations:

- (i) That they found that the Appellant killed Peterkin and that Yarde was a party to a plot to kill.
- 10 (ii) That they found that Yarde killed Peterkin but that the Appellant was a party to a plot to kill.
- (iii) That they did not know who killed Peterkin but found that both accused were parties to a plot to kill.

20 There was no way of telling which interpretation was the right interpretation of the verdicts, except that, having regard to the order in which the learned Judge invited the jury to consider their verdict, namely firstly the question of common design, then if they did not find this proved, the case against Yarde, and only then the case against the Appellant, it is submitted that it is not unlikely that their finding was simply one of common design.

(11) The Appellant humbly submits that the Federal Supreme Court erred in the following respects:

- 30 (i) They interpreted the verdict of the jury in the first of the 3 different ways set out in paragraph 10 hereof and thereby substituted their own findings of fact for those of the jury.
- (ii) They held that the case against the Appellant did not rest on the existence of a common design. In fact the Crown case against both accused was one of common design and the learned trial judge also directed the jury that the question of common design should be considered against both the accused. In 40 the circumstances the verdict of guilty against the Appellant may have been solely due to a finding of common design.
- (iii) They held that the case against Yarde

was solely one of common design. In fact the learned judge directed the jury that there was some evidence apart from common design against Yarde and that they could find Yarde, and not the Appellant, guilty although he indicated that this evidence was in his view weak. In the circumstances the finding of the jury might have been that Yarde killed Peterkin.

10

- (iv) They failed to hold that apart from the issues as to common design there was no evidence against the Appellant and that the trial judge should have directed the jury accordingly. Both accused were present when Peterkin was killed. There was no evidence to show who killed him. The jury could only have been convinced that the Appellant killed Peterkin if they were also convinced that Yarde who admitted being present at the time of the killing, did not kill him.

20

(12) The Appellant respectfully submits that grave and substantial injustice has been done, that this Appeal should be allowed, that her conviction should be quashed and her sentence set aside and that a verdict of acquittal be entered, for the following among other

R E A S O N S

1. BECAUSE the Federal Supreme Court interpreted the verdict of the jury in a way which may have been inconsistent with the actual findings of the jury.
2. BECAUSE the Federal Supreme Court erred in holding that the case against the Appellant did not rest on the existence of a common design.
3. BECAUSE the Federal Supreme Court erred in holding that the case against Yarde was solely one of common design.
4. BECAUSE once the evidence of common design was regarded as insufficient there was no evidence to show which of the two accused killed Peterkin.

30

40

E.F.N. GRATIAEN

DICK TAVERNE

No. 20 of 1961

IN THE PRIVY COUNCIL

O N A P P E A L
FROM THE FEDERAL SUPREME COURT
OF THE WEST INDIES

B E T W E E N :-

CHARLOTTE DAPHNE KING
... .. Petitioner

- and -

THE QUEEN ... Respondent

CASE FOR THE APPELLANT

HERBERT OPPENHEIMER, NATHAN
& VANDYK,
20, Copthall Avenue,
London Wall,
London, E.C.2.
Solicitors for the Appellant.