Henry Walters – – – – – – – – – *Appellant*

v.

The Queen – – – – – – – – – *Respondent*

FROM

THE COURT OF APPEAL OF JAMAICA

REASONS FOR REPORT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 3RD OCTOBER 1968

Present at the Hearing:

THE LORD CHANCELLOR
LORD UPJOHN
LORD DIPLOCK

[*Delivered by* LORD DIPLOCK]

At the conclusion of the hearing on 3rd October 1968 their Lordships stated that they would humbly advise Her Majesty to dismiss this petition for special leave to appeal *in forma pauperis* from an order of the Court of Appeal of Jamaica dismissing the petitioner's application for leave to appeal from his conviction before Small J. and a jury upon a charge of murder.

In the petition three grounds were advanced in criticism of the summing-up of the learned judge at the trial. It is unnecessary to say anything more about the first two grounds than that in their Lordships' view there was no substance in the complaints. But they think it desirable to explain their reasons for rejecting the complaint about the directions given to the jury upon the burden of proof which lies upon the prosecution in a criminal case, in view of the apparent conflict between some of the recent decisions of appellate courts in the West Indies on this topic.

At the trial of the petitioner the learned judge thought it desirable to explain to the jury what was meant by the time-honoured phrase "a reasonable doubt". In the course of doing so he said: "a reasonable doubt is that quality and kind of doubt which, when you are dealing with matters of importance in your own affairs, you allow to influence you one way or the other".

It has for many years been a common practice of judges in England and other common law jurisdictions when directing the jury on the onus of proof to expand the bare expression "reasonable doubt" by using this or a similar analogy. On behalf of the petitioner, however, it was contended that a direction in terms such as these is erroneous because it invites the jury to apply a "subjective" test instead of an "objective" one. A similar contention had been upheld in *Ramroop v. R* (1963) 6 W.I.R. 425 by the Court of Appeal of Trinidad and Tobago, where the actual words used at page 429 were: "It is better . . . merely to look at it as being satisfied, as you have to be in some important matter concerning yourselves". That Court considered that an explanation in these terms would "suggest no particular standard"—(of proof)—"because whereas one juryman might feel satisfied from certain facts to act in a particular way in some matter of importance to him another on the same facts might feel differently".

R. v. Ramroop was followed by the Court of Appeal of Jamaica in *R. v. Bromfield* (1965) 8 W.I.R. 273 where the phrase used was " such a standard of proof or state of mind as you would act upon in a matter of great consequence in your own affairs ", and subsequently in *R. v. Powe* (*ibid.* at page 395) and *R. v. Plinton* (1965) 9 W.I.R. 44 where almost identical phraseology had been used. In *Lesmond v. R.* (No. 1) (1967) 10 W.I.R. 252, however, The Court of Appeal of the West Indies Associated States approved as part of a " proper and adequate " direction the phrase " such a doubt as would weigh with you in your own important affairs of everyday life ". The Court distinguished these words from those condemned in *R. v. Bromfield* on the grounds that the latter did whereas the former did not equate " the standard of proof itself with the personal standards of conduct of individual jurors ".

In their Lordships' view the correctness or otherwise of a direction to a jury on the onus of proof cannot depend upon such fine semantic distinctions. No jury, whether in the West Indies or England, as it listens to an oral summing-up by the judge is capable of appreciating them. As Lord Goddard C.J. said in *R. v. Kritz* [1950] 1 K.B. 82 at page 89 " It is not the particular formula that matters: it is the effect of the summing-up. If the jury are made to understand that they have to be satisfied and must not return a verdict against a defendant unless they feel sure, and that the onus is all the time on the prosecution and not on the defence, then whether the judge uses one form of language or another is neither here nor there."

The expressions " objective test " and " subjective test " are currently in popular use among lawyers, sometimes in contexts in which they are helpful in indicating a meaningful contrast. But in the context of " doubt ", which cannot be other than personal to the doubter, it is meaningless to talk of doubt as " objective " and otiose to describe it as " subjective ". It is the duty of each individual juror to make up his own mind as to whether the evidence that the defendant committed the offence with which he is charged is so strong as to convince him personally of the defendant's guilt. Inevitably, because of differences of temperament or experience some jurors will take more convincing than others. That is why there is safety in numbers. And shared responsibility and the opportunity for discussion after retiring serves to counteract individual idiosyncrasies.

By the time he sums up the judge at the trial has had an opportunity of observing the jurors. In their Lordships' view it is best left to his discretion to choose the most appropriate set of words in which to make *that* jury understand that they must not return a verdict against a defendant unless they are sure of his guilt; and if the judge feels that any of them, through unfamiliarity with court procedure, are in danger of thinking that they are engaged in some task more esoteric than applying to the evidence adduced at the trial the common sense with which they approach matters of importance to them in their ordinary lives, then the use of such analogies as that used by Small J. in the present case, whether in the words in which he expressed it or in those used in any of the other cases to which reference has been made, may be helpful and is in their Lordships' view unexceptionable. Their Lordships would deprecate any attempt to lay down some precise formula or to draw fine distinctions between one set of words and another. It is the effect of the summing-up as a whole that matters.

39222—1 Dd. 178096 75 11/68

In the Privy Council

HENRY WALTERS

v.

THE QUEEN

DELIVERED BY

LORD DIPLOCK

Printed by HER MAJESTY'S STATIONERY OFFICE PRESS
1968