

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

B E T W E E N :

STANLEY ABBOTT

Appellant

- and -

THE QUEEN

Respondent

CASE FOR THE RESPONDENT

RECORD

- 10 1. This Appeal is against conviction by special leave in forma pauperis dated 25th June, 1975. p.153
2. The Appellant was jointly charged with one Edward Chadee on 23rd June, 1973 with the murder of Gale Anne Benson, on the 2nd January, 1972. They were tried before a Judge (Garvin Scott J.) and a jury and were convicted and sentenced to death on 20th July, 1973. p.1
p.147
- 20 3. The Appellant applied to the Court of Appeal of Trinidad and Tobago for leave to appeal against conviction. By his Notice and Grounds of Appeal the Appellant claimed inter alia that the learned trial Judge had misdirected the jury in withdrawing duress as a defence to murder from the Jury. The Court of Appeal (Sir Isaac Hyatali C.J., Phillips and Corbin JJ.A.) dismissed the application for leave and affirmed the sentence of death. p.147
p.148
p.149-153
- 30 4. A post mortem was carried out on the body of deceased on the 27th February, 1972 by Professor Keith Simpson, who gave evidence at the trial. He found 4 categories or areas of wounds which included a group of ten slashes, cuts in the skin in the front and left side of the chest. None of these had penetrated the p.8
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chest. Secondly he found a through and through cut entering and passing through the left arm at the elbow. Further a superficial 1" stab wound at the top of the shoulder, and a very deep stab wound at the root of the neck, 3" long, with a vertical slit on the skin, which penetrated to the chest. A single finger nail was found lying in the back of the throat behind the tongue. There was dirt and brown earth in the windpipe, air passage and stomach. Death was a consequence of, first, the stab wound penetrating to the chest, and secondly had been accelerated or precipitated by the face being covered in earth as if in burial while life was still present. There was no evidence of constriction to the neck.

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5. The facts given in evidence by the Crown and the defence were not substantially in dispute. The body of the deceased was discovered by police on the 24th February, 1972 in a pit in the garden of premises at 26, Christina Gardens, Arima, belonging to one Michael Abdul Malik. On the 25th February, 1972 the Appellant went to the police and made a written statement admitting that he, in company with others had murdered the deceased. The statement was admitted in evidence without objection. It recited the Appellant meeting with Michael Malik (alias Michael X) in England shortly after 1956. That in February, 1971 the Appellant had returned to Trinidad at Malik's expense and worked for him in Trinidad. That on one occasion in May, 1971 the Appellant had come to England as a messenger for Malik, but that on receipt of a letter telling him to return, he came back to live at 43 Christina Gardens. Thereafter the Appellant lived either at 26 Christina Gardens (Malik's home) or at 43 Christina Gardens in company with one Steve Yeates, Marvin Deane (alias "Kidogo") Hakim Jamal, the deceased Gale Benson, and others who stayed at various times including Adolphus Parmassar, (alias "Sonny") and Edward Chadee (alias "Junior"). The Appellant's written account was that on New Year's Day, 1972, Michael Malik called a meeting of all the men but for Hakim Jamal, and told them that he wanted blood and that Halle (Benson) had to go. He instructed them to dig a hole in the back garden, and Steve Yeates to bring Gale Benson to the hole. Next morning Sonny, Kidogo, Edward Chadee and the Appellant dug the hole. Michael Malik drove up and said, "You know the time you have to do this in". Yeates then brought Gale Benson to the hole. Kidogo and Yeates stabbed her with a cutlass, the latter giving her a cut to the front of her throat.

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The statement continued: "when he was in the hole I was right there maybe I pushed her and she fell in the hole, then Kidogo jumped into the hole after her followed by Steve. I held her mouth because she was shouting. All of us covered the hole and left for Michael's home. A few minutes after we returned, Michael and Jamal returned home". The statement finished by relating how Gale Benson's clothes and belongings were disposed of by burial and burning.

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6. Adolphus Parmassar gave evidence for the Crown. He gave evidence of the meeting on New Year's day at which the Appellant, Yeates, Deane, Kidogo, Chadee and himself were present. In terms he substantiated the account set out by the Appellant in his statement. Parmassar was told to sleep that night at No.26. The Appellant was awakened by him next morning at No.43 Christina Gardens. His evidence was that when the deceased was brought to the hole the Appellant held her round the neck and jumped with her into the hole saying: "It is for you". That Kidogo then jumped in with the cutlass and that the Appellant held the deceased while she struggled and Kidogo attempted to stab her; that the Appellant then called out for help, at which Yeates jumped in, took the cutlass from Kidogo and cut the deceased's throat. That the Appellant, Chadee, Yeates and Kidogo then covered the hole while the deceased was still moving.

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7. The Appellant gave evidence on oath. He described Michael Malik as explosive. He added that the letter telling him to return to Trinidad (paragraph 5 above) contained one word: "Come", and that that word represented life and death to him, and further that he had not wanted to go to England but that Malik threatened his (the appellant's) mother's life. Thereafter he said he was treated unmercifully and was mortally afraid for his and his mother's life. He recounted how on Christmas Eve Malik came to his room in the morning with blood on his mouth and beard, saying that he had drunk the blood of a calf. He gave an account of the meeting called by Malik substantially according to his written statement but added that he was mortally afraid during and after the meeting as he walked home across the road. He added that he did not go to the police because he did not think they would believe him.

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He also added that on the next morning Malik

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spoke to him and told him that if he did anything to endanger the safety of the men around the hole, his family or himself, by not obeying, he would die that morning and that his mother would die as that was where he (Malik) was going with Jamal. He denied touching the deceased other than to put his hand on her lips. He gave evidence of a telephone call from his mother that day in which she stated that Malik had been at her house that day, (the Appellant's mother was not called as a witness), and that Malik had phoned his home from her house. He mentioned too that Chadee said that he took a call from Malik.

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8. Much of the Appellant's evidence dealt with Malik's way of life, his friends, his house, which was likened to a prison, the arms that he was alleged to have kept and threats of violence, which it is alleged he made against other people.

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9. Edward Chadee gave evidence in which he described the meeting on New Year's day. The Appellant to his recollection suggested that Gale Benson should be given a plane ticket rather than killed, to which Malik had replied that he wanted blood. He stated that Malik did speak to the Appellant at the hole and that after the conversation, the Appellant had said that Malik wanted Kidogo to kill the deceased, that the heart is under the left breast and that the hole was to be dug in 45 minutes. He also heard the Appellant telling Kidogo how to kill the deceased. He stated that when the deceased came to the hole the Appellant held her mouth with his right hand and her left hand behind her back, and jumped into the hole with her, that Kidogo (Deane) followed with the cutlass, there was a struggle, the Appellant called for help and that Yeates jumped in and took the cutlass. He stated that when they returned to Malik's house, Malik telephoned to see whether everything was alright.

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10. The learned trial Judge reviewed all the evidence most thoroughly in his summing up, and directed the jury that it was immaterial in law who actually inflicted the fatal blow, provided they were satisfied that the Appellant was present acting together with the common design and purpose to kill, and participating in the act. In dealing with the defence case that he was terrorised he said: "Even if you believe that he was in fear of his life, in fear of Malik, in

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fear that his mother would be killed, and in those circumstances acted on orders of Malik, acted under duress, in those circumstances, putting his case at the highest, even if you believe it, duress is no defence to the crime of murder; no defence whatever".

10 11. By their Judgment, the Court of Appeal recited the facts and re-affirmed the principle of common law asserted by Blaketone "that a man under duress ought to die himself rather than escape by the murder of an innocent".

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p.152 1.26

20 12. It is submitted that the case of the Director of Public Prosecutions for Northern Ireland v. Lynch 1975 A.C. 653, while establishing that duress is available as a defence to an aider and abettor to murder, expressly resisted any extension of the defence to a principal in the first degree. It is respectfully submitted that in view of the participation of the Appellant in the stabbing of the deceased, and in particular his actual part in burial while she was still alive, the Appellant was and ought to be treated as a principal in the first degree. It is contended that while there was some obita dicta authority for the application of the defence of duress to aiders and abettors, there is no authority in case law, obita, or legal learning for its extension to a principal in the first degree, but on the contrary express authority and learning to the contrary.

30 13. Further it is submitted that a proper view of the majority reasoning in the case of Lynch is that the defence of duress should only be available to an aider and abettor who has not actually participated in the act of killing and who was not actually present at the scene of the killing. It is respectfully submitted that public policy requires that the ambit of availability should be narrowed so as to exclude any person who participates at the scene of a killing, as well as the principal in the first degree.

40 14. It is further submitted that the principle established by the case of Lynch should be limited to cases where the facts comprising the allegation of duress involve not only a threat of serious injury or death to the accused but the effective continuation and constant immediacy of that threat right up to the time of the killing. In the case of Lynch the

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defendant had been driven to the scene of the killing by armed men. In the instant appeal not only was the Appellant free to return to his own house across the road after the meeting on New Year's Day, but even on the morning when the murder was committed there was no evidence that Malik was armed when he came to the hole; indeed the only people armed were the perpetrators of the murder.

15. Further it is respectfully submitted that in any event a withdrawal by a judge of a defence from the jury can only amount to a misdirection where evidence has been given upon which the jury could have found the defence proved. It is submitted that Lynch's case re-affirms the concept that duress should not be seen as an easy answer to an allegation of murder, and that a mere contention by the accused that he was mortally afraid will never be sufficient. In the premises of the instant appeal it is respectfully submitted that there was no issue of duress raised, alternatively if the issue was raised, a jury properly directed would not have acquitted.

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16. By reason of the foregoing the Respondent submits that the Appellant's conviction should be upheld and this appeal dismissed, for the following amongst other

R E A S O N S

- (1) BECAUSE the defence of duress is not available to a principal in the first degree to murder.
- (2) BECAUSE the defence of duress is not available to an aider and abettor to murder who participates in the actual killing.
- (3) BECAUSE public policy requires that the defence of duress should not be extended to participants in murder.
- (4) BECAUSE the case of Lynch is properly to be construed as limited to the facts of that case.
- (5) BECAUSE there was no issue of duress raised.
- (6) BECAUSE no jury properly directed could have acquitted on the ground of duress had it been left to them.

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GEORGE NEWMAN

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B E T W E E N :

STANLEY ABBOTT Appellant

- and -

THE QUEEN Respondent

CASE FOR THE RESPONDENT

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