
O N A P P E A L

FROM THE COURT OF APPEAL OF JAMAICA

B E T W E E N :

DONALD PARKES

Appellant

- and -

THE QUEEN

Respondent

CASE FOR THE APPELLANT

RECORD

- 10 1. This is an appeal from a Judgment of the Court of Appeal of Jamaica (Luckhoo AG.P, Swaby, J.A., Robinson Ag.J.A.) dated the 12th of July 1974, which dismissed the Appellant's application for leave to appeal against his conviction in the Home Circuit Court (The Hon. The Chief Justice and a Jury) of murder, upon which he was sentenced to death. pp.78-79
and
pp.72-78
pp.68-69
- 20 2. The Appellant was charged in an indictment containing one count, the particulars of which were that he "on the 14th day of September 1971 in the parish of Saint Andrew murdered Daphne Graham" p. 1
3. The trial took place in the Supreme Court for Jamaica sitting in the Circuit Court for the Parish of Kingston on the 21st day of January 1974. The prosecution called material evidence to the following effect :- pp.2-68
- 30 (a) Ralston Jarrett, lived at 10 Boynes Road in the Parish of St.Andrew, as did the deceased, her mother Minna Graham, and the Appellant. He said that at about seven o'clock on the morning of the 11th of September 1971 he was in the yard of p.3 11.28-
end pp.4-5
11.9

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p.6 1.15

p.6 1.19

p.6 11.23-end
and
pp.7-8 1.5

10 Boynes Road when, as a result of what he heard he saw the deceased standing on the verandah holding the left side of her chest and crying. He spoke to her, she made no answer, and he assisted her to a chair. He went down and "across the back" and saw Minna Graham who was "holding on to Parkes around the back". He gave evidence as follows:

- Q. Did he have anything in his hand? A: Yes, ma'am.
- Q. Tell the court, please.
- A. He did have a knife in his hand.
- Q. What kind of a knife would you call it?
- A. A ratchet knife.
- Q. Now did you know him before that day?
- A. Yes ma'am
- Q. About how long? A. A good while.
- Q. Now when you saw him being held by Minna and he had a knife in his hand did either he or Minna talk?
- A. Miss Graham was talking and said he stab up her daughter and she going to hold him until police come.
- Q. When Minna Graham - you call her Miss Graham?
- A. Yes.
- Q. When Minna Graham said that did the accused man say anything?
- A. No ma'am
- Q. Did you do anything?
- A. Well, after she was holding him and he was trying to get away and the knife cut her on her finger.
- Q. I see. Did you see how the knife got to cut her on her finger?
- A. I did not see how it get to cut her but she showed me the cut bleeding.
- Q. Did you see how she got the cut or she showed you?

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A. She showed me ma'am.

Q. Did you do anything after that?

A. I went down to Parkes and asked him what happened and - I asked him what happened for I never see him getting on like that from the time I know him.

Q. You asked him what happened, did he answer you?

A. No ma'am.

Q. What happened after you asked him what happened?

10 A. I took away the knife from him.

Q. And when you took the knife was it opened or closed?

A. It was open.

HIS LORDSHIP: When you had seen it first was it opened then?

A. Yes sir.

CROWN ATTORNEY: Did you notice anything about the blade when you took it?

A. No ma'am.

20 Q. After you took the knife what happened to Parkes and Miss Graham, Minna?

A. I said to her.

Q. What happened, don't tell me what you said, what happened to Miss Graham?

A. She holding on to him.

HIS LORDSHIP: Who held him? A: She sir.

CROWN ATTORNEY: Did she continue holding all the while or she let go holding him?

30 A. I leave her holding him and say I was going around to the front to get a cab to take Daphne to the doctor.

He also gave evidence that he took possession of the knife and handed it to a policeman.

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(b) Minna Graham gave evidence of the events of the morning of the 11th of September 1971 in the following terms :-

p.15 11.17-end
and
p.16 11.1-3

Q. Do you remember the 11th of September, 1971?

A. Yes Ma'am.

Q. Now that morning did you leave your home at Bowen's Road?

A. Yes ma'am.

Q. When you were leaving home was Daphne there?

A. Yes.

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Q. What part of the premises was Daphne?

A. She was standing at her room door.

HIS LORDSHIP: She occupied a room by herself?

A: Yes sir.

CROWN ATTORNEY: And her room was to what part of the house?

A. It is two houses ma'am, I live into one and I rent out one, so I give her a room on the tenant side.

Q. She did not live on the same house with you?

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A. No ma'am.

Q. The house that she lived in, her room was to what part of the house, to the front or back?

A: To the front ma'am.

Q. About what o'clock did you leave the premises that morning?

A. It was around 7.30 ma'am.

p.17 11.1-11

She tended to her wounded daughter and then:

p.17 11.16-end
and

Q. When you got to the back did you see anybody?

p.18 11.1-32

A. I saw Donald Parkes.

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Q. Do you see Donald Parkes here?

A. Yes ma'am.

Q. Do you see him here today?

(Witness looks around courtroom)

HIS LORDSHIP: You can't see so well? You can go
down and look if you wish.

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CROWN ATTORNEY: Come down and look.

(Witness leaves the box and comes into
the well of the court, walks towards
the dock and points to the accused)

A. Yes ma'am this is him.

HIS LORDSHIP: All right come back.

(Witness returns to witness box)

10 CROWN ATTORNEY: When you saw him, did he
have anything with him?

A. Yes ma'am.

Q. What?

A. He has a knife in his hand.

Q. What?

A. A ratchet knife.

Q. Was it open or closed? A: It was closed
ma'am.

Q. Did you speak to him? A: Yes ma'am.

20 Q. Do you remember what you said? A: Yes,
ma'am.

Q. What did you say?

A. I asked him 'what she do you, what Daphne
do you'?

HIS LORDSHIP: How you said it?

A. I asked "what she do you" two different
times; "what she do you why you stab her"?

HIS LORDSHIP: What you said at first?

A. I called out to Jarrett.

30 Q. What I am trying to get is exactly what you
said to the accused and the words used to
him. Start again, as soon as you saw him
what did you say?

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A. What she do you why you stab her?" two different times I asked the same question.

CROWN ATTORNEY: The first time you said "what she do you why you stab her?" did he answer you?

A. No answer.

Q. Thereafter you said so again, did he answer? A: No ma'am.

Q. How close to him were you while you were talking?

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A. Right in his presence, right before him.

Q. When he didn't answer you, did you do anything?

A. Yes ma'am.

Q. What?

A. I boxed him two times and hold him in his pants waist.

p.19 1.25

She gave evidence of an assault upon her by the Appellant with the knife and how Mr. Jarrett "took away the knife from him and said 'give me the knife' and he freely handed over the knife to him" She said:

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p.19 11.
26-27

Q. Now when the knife was opened and before you got the cut on your finger, did you see the blade of the knife?

A. It is a sharp pointed knife ma'am, very sharp.

Q. Did you see the blade?

A. It has a sharp point

Q. Did you notice anything on the blade?

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A. Blood stain was on the blade ma'am; blood stain.

She later in her evidence returned to events earlier that morning:

p.23 11.8-25

Q. Now tell me, just to go back a little, that morning when your daughter was injured, did

you see the accused in the yard before?

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A. Yes ma'am, he lived in there.

Q. With whom did he live? A. With his auntie ma'am.

HIS LORDSHIP: What is her name? A: Gwendolyn Lewis

CROWN ATTORNEY: And is that the lady who was friendly with Mr. Jarrett?

A. Yes ma'am.

10 HIS LORDSHIP: And you say that morning before you left you had seen the accused in the yard?

A. Yes sir, I saw him standing on the verandah but I did not know what he was waiting on.

Q. Which verandah?

A. On Daphne's verandah sir, with his two hands behind him, behind his back like this. (demonstrates).

20 (c) Detective Sergeant Milton Pusey gave evidence of going to 10 Bowens Road in St. Andrew on the 15th or 16th September and taking possession of the deceased's clothing from Minna Graham and the knife from Ralston Jarrett. He said he sealed the knife in an envelope, made a sealed parcel of the deceased's shirt, and took both to the Forensic Laboratory where he handed them to a Doctor March (who did not give evidence at the trial).

p.30 11.26-30
p.30 1.35 and
p.31 11.1-8
p.31 1.29
p.31 1.34

p.31 11.35-36
p.32 1.3
p.32 1.7

30 He also gave evidence of the arrest of the Appellant on the 29th of September 1971 when "he made no statement".

p.32 11.2-38
p.32 11.31-32

40 (d) Dr. Eric De Pass gave evidence of the post mortem examination of the deceased on the 22nd of September 1971. He gave evidence of two relevant wounds and, when shown the knife which had been taken from the Appellant said "it could have caused both". In his opinion "a mild to moderate degree of force" would have been necessary to cause the wounds, and death was "due to shock and haemorrhage, associated with cardiac tamponade". In cross-examination the

p.34 11.11-end
pp.35-37 1.34
p.34 11.33-end
and p.35 11.1-22

p.35 1.32
p.36 11.-46-47

p.37 11.13-14

RECORD

p.38 11.21-35
p.38 1.35

doctor dealt with a suggestion that the wounds were self-inflicted as "possible but unlikely".

p.41 11.26-end
and
p.42-43 1.35

4. The Appellant made an unsworn statement from the dock in which he made no mention of any contact with the deceased on the 11th of September, but in which he described his encounter with her mother as follows :-

p.42 11.17-end
and
p.43 11.1-21

Well, on the 11th of September, 1971, I woke up one morning and come out and wash my face. On Saturday morning the 11th of September, 1971, I woke up and come outside and wash my face and I was going into my pocket to take out my towel and dry my face when I saw Minna Graham.

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Q. Mrs. Graham?

A. Yes sir. She approach me and hold me in my paints waist and ask I, ask me, what her daughter do me why I stab her, and I did not answer her because I did not know what she was speaking about so I could not answer her. She start to tear off my shirt and when she start to tear off my shirt I ask her what I do her why she going on like that and she replied that she heard that me was the one who stab her daughter and she would hold on to me until the police come.

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Q. What?

A. She hold on to me and said she would not let me go until the police come sir, and then she started to search my pocket if I have any weapon or anything like that, and she find a small penknife in my pocket.

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HIS LORDSHIP: Did you say small penknife?

A. It was not a very small knife, it was a good-size knife, and she open it and say she going stab me because me is the one who stab her daughter and I box the knife out of her hand and say it is my knife and took it up with my hand, and she grab at the knife and cut herself between her finger, and then she let go and enter the front of the yard.

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Well that is all, she come and tell me I must leave the yard because I am one who going around stabbing up her daughter.

HIS LORDSHIP: What?

10 A. She said I must leave her yard immediately. Well I tell her say I would prefer to wait until my aunt come because my aunt was not at home that said moment and I was there and until her son come and start to threaten me that he hear me is the one who stab him sister and he was not there and I must leave the yard or else he would kill me. Then I leave the yard, sir, and come out of the yard and go out on the street to avoid trouble, and go out on the street.

5. The Learned Chief Justice began his summing-up by dealing with the burden and standard of proof, and went on to direct the jury as to the law in cases of murder, including the issues of provocation and self-defence. He then directed the jury on the issue of intention in the following terms:

p.44 11.1-40
p.44 11.41-end
and
p.45-46 1.48

20 Now, where you find an ordinary, responsible person, in order to discover his intention in the absence of any expressed intention, you look at what he did and ask yourselves whether as an ordinary responsible person he must have known that death or really serious bodily injury would result from his actions. If you find that he must have known, that in other words any reasonable, responsible person must have known that the act which is alleged was committed by the accused, if you find in the final analysis that he did commit it, if any ordinary responsible person must have known that death or serious bodily injury would result from his actions, then that would be satisfactory proof of the intention required to establish the charge of murder, that is to say, you may infer that that was his intention.

p.46 1.49 and
p.47 11.1-16

40 6. The Learned Trial Judge then turned to the facts and, after dealing with general matters, summarised the evidence of Doctor De Pass. He reminded the jury that there was no eye-witness to the alleged stabbing and went on to recite a passage in the closing speech for the prosecution:

p.47 11.29-end
and
pp.48-49 1.32
p.48 11.33-end
and
p.49 11.1-46
p.51 11.8-39

Of course, one of the disadvantages in cases being tried years after they were committed is that sometimes witnesses either die or they cannot be found and all

p.52 11.9-25

RECORD

that sort of thing. Miss Hylton told you in this case that there was a witness who gave evidence that cannot be called because the witness cannot be found, and so she has elected to put what evidence was available to her before you and ask you to say that that evidence is sufficient to prove the guilt of the accused. Well, of course, whether or not it is sufficient is a matter for you and you will not speculate on what any absent witness would have said. As I indicated earlier, where there are no eye-witnesses, a charge may be proved by inference from surrounding circumstances and this is what is called circumstantial evidence.

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p.53 11.39-end 7. The Learned Trial Judge in his summing-up
and dealt with the evidence of Minna Graham and in
p.54 11.1-22 particular with her evidence as to what she had
seen and heard on the morning of the 11th of
September 1971:

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p.54 11.23-end
and
p.55 1.1

Let us see what Mrs. Graham said. She said she left the premises that morning at about 7.30; she went through the gate. She said that when she was leaving the premises - and this is one important fact which has been put forward - when she was leaving the premises the accused was standing on the verandah of the deceased's room with his two hands behind him. So, if you believe her, he was there on the deceased's verandah when she was leaving. According to Mrs. Graham, the deceased herself was standing at her door, which as I have told you was in the building, in a separate building from the one Mrs. Graham lived in, and the room of the deceased was to the front of the house. You have Mrs. Graham saying she is leaving the premises and when she is leaving she sees the deceased standing at her door and the accused standing on the verandah. It is a matter for you to say whether you believe Mrs. Graham or not. She says that shortly after - before that, she said there was nothing wrong with the deceased when she was leaving. Shortly after she left she said it was not any time after, while she was on the road having just left the yard, somebody came and told her something and she turned back, went back into the yard, went into the room of the deceased and saw her in there holding her left breast.

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8. Later in his summing-up the Learned Trial Judge referred to the passage in Mrs. Graham's evidence in which she described her encounter with the Appellant:

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10 So we have what she said she saw when she left the premises. What she saw when she returned? The daughter, nothing was wrong with her before she left, she came back and found her in her room holding her left breast and she was bleeding. She went immediately afterwards to the back of the premises. She saw the accused with a knife and she was there - it is a matter for you to say whether she said, 'what she do you why you stab her?' - she has not said she called the name of her daughter, the deceased, she only said "what she do you why you stab her?"

p.55 11.32-end
and
p.56-58 1.31

20 There are a number of things which you have to understand from this aspect of the evidence. First, when she said, 'what she do you why you stab her?', was that sufficient to indicate to the accused what Mrs. Graham was speaking about? She has not called any name. Bear in mind that the accused said in his statement to you that Mrs. Graham asked him what - well he says that she asked him what her daughter do him why he
30 stab her; so he puts the daughter's name into it. She did not say she used the daughter's name. Well, if what she did say was what the accused said she said, that is, what her daughter do him why he stab her, then you will probably think there would have been no doubt in the accused's mind as to what she was saying to him, but bear in mind, as I said, it
40 is for you to say whether when she used those words it was sufficient to indicate to the accused what she was saying to him.

50 The second thing to bear in mind is this, that when she said, 'what she do you why you stab her?', that statement is not to be taken as proof, just the mere statement, is not be taken as proof that the accused did stab the deceased, because, for the simple reason members of the jury, it is common sense, Mrs. Graham did not see the stabbing. So when

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she said to the accused, that is if you believe she said it, 'what she do you why you stab her?', she was speaking from something that she must have heard from somebody, which is not evidence at all. So please bear that carefully in mind. The statement of itself is not proof of what is contained in it, that the accused stabbed the deceased, but where a person is accused of an offence, then the accusation is sometimes or almost always led in evidence for a jury to see what the reaction of the accused was to the accusation, in which event it is not the statement itself which is evidence, but it is the reaction to it that makes it evidence, in other words, if a woman says to a man in the presence for instance, of the police, 'you raped me', and he said, 'Yes I did it but I am sorry', or something to that effect, the words 'you raped me' is not evidence, but when he said 'I did it', that makes it evidence, by accepting it. So he admits it; that makes it evidence. So it is what is said in relation to the accusation that makes it evidence, and it is not only what is said that can make an accusation evidence, but conduct. A person can accept something by his conduct, or deny it by his conduct, so what you have to look at here in this case is what was the reaction of the accused to this accusation, that he had stabbed the deceased. If you believe that Mrs. Graham accused him.

Of course you should have no difficulty, it seems to me, it is a matter entirely for you, in deciding that she did accuse him as she said because the accused himself told you that she did. Now if you find that she did accuse him, what was his reaction to the accusation? Silence is the reaction. Now of what use is silence to an accusation. There are no police men present, these are two private citizens and if you believe the evidence the accused is accused of stabbing the deceased, and what does he do? He keeps silent. He has told you why he kept silent and it is a matter for you to take into account. He said he did not answer her because he did not know what she was speaking about. This is his explanation - 'I don't know what this woman is talking about' so he keeps silent. You will have to say whether keeping silent in those circumstances was a reasonable thing

to do, or what you would reasonably or really expect a person to do in the circumstances. If a person is accused of something serious, is it a normal thing to remain silent because you don't know what the person is speaking of, or would one say, 'what are you talking about', or ask some question to that effect? This is what he said and you will have to say what you think is the normal reaction to it. If he is accused, and understands he is being accused of doing a certain act, in this case stabbing the deceased in such a way that she died eventually, would you normally expect him to deny it if it were not true? This is the point. Would you normally expect a person who is accused of a serious offence to deny it if it is not true, and if that is what you normally expect, then the silence in those circumstances is a matter which you can take into account along with other evidence, not by itself alone, it would not be sufficient by itself, but along with other evidence - it is a matter which you can take into account in deciding whether the accused in fact committed the act. If he did not do it, would you expect him to say 'I did not stab your daughter, what are you talking about? When did you say I did it? or something to that effect. As I say, in deciding whether or not this aspect of the case is evidence on which you can rely, evidence which you can take into account, you bear in mind what the accused said why he remained silent.

Well now, it is not just that he remained silent, and this is depending on whether you believe Mrs. Graham, because the accused gives a different version of what took place. Mrs. Graham said that having accused him, or having used those words to him, she boxed him and held him in his waist, and the accused, she said, opened the knife and was going to cut her; she put up her hand to ward off the blow and she got the cut on her finger. Now this aspect of the incident, members of the jury, is only adduced as conduct on the part of the accused when she accused him of committing the act, in other words, we are not here trying a case of wounding Mrs. Graham, and you must use it in that sense at all, and you must not say

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'Oh, it must be him, that is why he cut the lady', or anything like that at all. The reaction to the accusation of having cut the deceased, this is part of it, this is why the prosecution had led it, and you will have to say whether this conduct assists you in deciding whether the reaction of the accused to the accusation was one which was indicative of guilt or innocence. Of course, if you cannot say whether it is indicative of either, you put it out of your mind, it would not help in those circumstances. If you feel sure it points irresistibly to guilt, you take that into account; if you think it points to innocence you don't take that into account and that would be a weak link in the chain which would cause it to break down, but bear in mind the accused said Mrs. Graham did not get cut in that way at all.

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p.59 1.26

9. The Learned Trial Judge reminded the jury of Mr. Jarrett's evidence that the Appellant had not replied to Mrs. Graham's allegation, and then dealt with the Appellant's reaction to the accusation made by Mr. Jarrett himself:

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p.60 11.2-10

According to Mr. Jarrett, he asked the accused what happened and the accused did not answer. There again, Mr. Jarrett was living with the aunt of the accused, with whom the accused lived, and he was asking the accused what happened and he did not answer. Would you normally expect him to answer? This is all part of his conduct on the accusation he made, which you take into account and say what you make of it.

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p.60 11.
40-48

10. After referring to the identification of the knife, the Learned Trial Judge reminded the jury that Sgt. Pusey had taken possession of the weapon recovered from the Appellant, and dealt with the evidence as follows :-

p.61 11.13-31

On the question of blood, members of the jury, of course it would have been better if scientific evidence was brought to establish that blood was on the knife, if the prosecution claims that blood was on it, because that type of evidence can be brought if available; so I don't know that you will attach so great a significance to this aspect of the evidence, not only because it is Mrs. Graham saying blood was on it, but Mr. Jarrett said he did not notice anything about the blade. Of course, the detective sergeant also said that

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the knife had what appeared to be blood stains. The evidence is there; it is a matter for you to say what weight evidence of that sort, what weight you will attach to it. She said blood stains were on it; the sergeant said what appeared to be blood stains was on the knife, anyway you treat it in the way I have told you.

- 10 11. After reviewing the evidence called by the prosecution, the Learned Judge summarized the statement made by the Appellant from the dock, and after directing the jury again as to the law relating to provocation and self-defence, invited the jury to retire to consider their verdict.
12. The jury returned a verdict of guilty of murder and the Appellant was sentenced to suffer death in the manner authorised by law.
- 20 13. The Appellant applied for leave to appeal against his conviction to the Court of Appeal of Jamaica (Luckhoo Ag.P., Swaby J.A., Robinson Ag.J.A.) The application was heard on the 29th May 1974 and was refused on the 12th of July 1974.
14. The Judgment of the Court was delivered by Luckhoo J. Ag.P. who began by emphasizing that "the case for the prosecution rested entirely on circumstantial evidence". After a review of the evidence, the Learned Judge reiterated that the case for the Crown depended upon "a possible motive and opportunity for committing the crime".
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- The Judgement of the Court continued in these terms :-
- There was the further circumstance that when twice accused by the deceased's mother of having stabbed her daughter and asked the reason for his so doing the applicant remained silent. In this regard the Learned Trial Judge directed the jury that if they were of the view that the mother's accusation was made in circumstances which called for some response on the part of the applicant his silence might be regarded by them as one of the circumstances in the chain of circumstantial evidence upon which the Crown relied in proof of the applicant's guilt though it could not be regarded by
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p.61 11.32-end and
pp.62-63 1.15
p.63 11.16-end and
p.64 11.1-10
p.65 11.27-end and
pp.66-67 1.45

p.67 11.46-47

p.68 1.16
p.69 11.5-8

p.69 11.10-end and
pp.70-72 1.22

p.70 11.23-end and
pp.71-78 1.9

p.73 11.9-10

p.73 11.9-end and
pp.74-75 1.9

p.75 11.10-12

p.75 11.18-30

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itself as an admission of guilt.

- p.75 11.30-40 15. The Learned Judge referred to the argument of Counsel for the Appellant that the Learned Trial Judge had erred in law in his direction as to the relevance of Mrs. Graham's evidence, and to Hall v. R. (1971) 55 C.A.R. 108. The Learned Trial Judge also referred to R v. Mitchell 1892 17 Cox. C.C. 508 which had been relied upon in argument by the Crown.
- p.75 11.42-end and
p.76 11.1-29
p.76 11.43-end and
p.77 11.1-9
- p.77 11.15-17 16. In the Court's view, there was "a valid point of distinction between Hall v R. and the instant case, "and" it was open to the jury to conclude that the applicant's silence in the face of the deceased's mother's accusation was conduct (albeit conduct of a negative kind) or demeanour which amounted to an acceptance of it". 10
- p.77 11.21-25
- p.77 11.37-45 17. The Court also rejected submissions made on behalf of the Appellant "that the learned trial judge misdirected the jury on the evidence given by the deceased's mother in respect of the point of time at which she observed the Applicant on the verandah outside the deceased's room door and that this misdirection was so prejudicial to the Applicant having regard to the nature of the evidence in the case that the conviction ought not to be allowed to stand". In the Court's view "while it is true that in directing the jury on the evidence given by the deceased's mother the learned Chief Justice did not repeat the ipsissima verba of the witness we think that his recital of the evidence of that witness was substantially accurate and could have caused no improper prejudice to the Applicant." 20
- p.77 11.45-end and
p.78 11.1-2
- p.78 11.3-9 18. The Court also rejected the submission made on behalf of the Appellant that the verdict was unreasonable and could not be supported having regard to the evidence. 30
- p.78 11.10-end and
p.79 11.1-end 19. The Appellant was granted special leave to appeal to the Privy Council in forma pauperis on the 29th October 1975. 40
20. The Appellant respectfully submits that this appeal should be allowed. It is respectfully submitted that the learned trial Judge misdirected the jury on the evidential value of and interpretation to be attached to the silence of a person when faced with an accusation of an unlawful act. It is respectfully submitted that the passage referred to in paragraph 8 above

allowed the Appellant's silence to be construed as evidence that he had committed the act of which he was accused and as such amounted to a misdirection.

10 It is respectfully submitted that the direction is not consistent with the principles as stated by Lord Atkinson in R. v Christie 1914 AC. 545. It is respectfully submitted that the law was correctly stated by the Judicial Committee of the Privy Council in Hall v R. 1971 55 CAR 109, in that "it is a clear and widely known principle of the common law in Jamaica, as in England, that a person is entitled to refrain from answering a question put to him for the purpose of discovering whether he has committed a criminal offence. A fortiori he is under no obligation to comment when he is informed that someone else has accused him of an offence".

20 It is respectfully submitted that in the present case there were not present those "very exceptional circumstances" in which "an inference may be drawn from a failure to give an explanation or a disclaimer".

30 It is respectfully submitted that the rule of law as stated in R v Christie and Hall v R is unaffected by the decision of R v. Mitchell 1892 17 Cox C.C. 503. It is further submitted that in the present case the position is not affected by the judgment of the Court of Appeal, Criminal Division (Lawton L.J., Talbot and Pain J.J.) in R. v Chandler (reported in The Times of January 23rd 1976) in which the Learned Lord Justice referred to a "a broad principle of common sense". It is respectfully submitted that no principle of common sense requires a man to answer an allegation the nature of which he is hitherto totally ignorant.

40 21. It is respectfully submitted that the Learned Trial Judge misdirected the jury as to the evidence which had been given by Mrs. Minna Graham in a material particular. It is submitted that the passage referred to in paragraph 7 above does not accurately summarise the evidence given by the witness and referred to in paragraph 3 above.

50 The Learned Trial Judge emphasised to the jury that the case for the Crown depended upon circumstantial evidence, and it is submitted that, by wrongly placing the Appellant in close proximity

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to the deceased at a time which can only have been moments before the offence was committed, the learned Judge considerably strengthened the chain of circumstantial evidence.

22. The Appellant respectfully submits that this appeal should be allowed, and the Appellant's conviction should be quashed for the following, among other

R E A S O N S

1. BECAUSE the jury were misdirected in law as to accused's right of silence. 10
2. BECAUSE the jury were misdirected as to the evidence of Mrs. Graham as to the proximity of the Appellant to the deceased.
3. BECAUSE the misdirection on the evidence of Mrs. Graham as to the proximity of the Appellant to the deceased rendered the misdirection in law more liable to have occasioned a miscarriage of justice.

ROBERT D. HARMAN, Q.C.

JOHN G. BOAL

No. 40 of 1975

IN THE PRIVY COUNCIL

O N A P P E A L
FROM THE COURT OF APPEAL OF JAMAICA

B E T W E E N :

DONALD PARKES Appellant

- and -

THE QUEEN Respondent

CASE FOR THE APPELLANT

SIMONS, MUIRHEAD & ALLAN,
40 Bedford Street,
Covent Garden,
London, WC2E 9EN

Solicitors for the Appellant