

IN THE PRIVY COUNCIL

No. 40 of 1975

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

RECORD OF PROCEEDINGS

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IN THE PRIVY COUNCIL

No. 40 of 1975

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

RECORD OF PROCEEDINGS

No. 1

Indictment

In the
Supreme Court
of Jamaica

No. 1

Indictment

10th May 1972

The Queen v. Donald Parkes

In the Supreme Court for Jamaica

In the Circuit Court for the parish of Kingston

IT IS HEREBY CHARGED on behalf of Our Sovereign
Lady the Queen;

Donald Parkes is charged with the following
offence:-

STATEMENT OF OFFENCE

Murder.

PARTICULARS OF OFFENCE

Donald Parkes, on the 14th day of September, 1971
in the parish of Saint Andrew murdered Daphne
Graham.

for Director of Public Prosecutions,
10th May, 1972.

In the
Supreme Court
of Jamaica

No. 2

Proceedings

No. 2
Proceedings
21st January
1974

HOME CIRCUIT COURT,
January 21, 1974

R. v. DONALD PARKES

(Time: 10.06 a.m.)

CROWN ATTORNEY (Miss Hylton): Before the Court m'lud, is Donald Parkes. Before he is pleaded I wish to make an application for the indictment to be amended as to date. I wish to apply m'lud that the indictment be amended to read: Donald Parkes on the 14th day of September, 1971, in the parish of St. Andrew, murdered Daphne Graham.

10

HIS LORDSHIP: What date is there now?

CROWN ATTORNEY: The 11th of September m'lord, that is the day of the incident.

HIS LORDSHIP: Yes. Mr. McCalla, do you appear?

DEFENCE ATTORNEY (Mr. G. McCalla): I appear for the accused m'lord. No objection.

HIS LORDSHIP: The indictment is amended accordingly.

20

REGISTRAR: Donald Parkes, you are charged with the offence of murder, the particulars are that you, Donald Parkes on the 14th day of September, 1971, in the parish of St. Andrew, murdered Daphne Graham; how say you, are you guilty or not guilty?

ACCUSED: Not guilty.

JURY AS EMPANELLED AND SWORN

No. 25	Mrs. Ivy Maud Beckford	- sworn	
" 29	Miss Marjorie Brimo	"	
" 13	Mr. Earl Comrie	"	(Foreman)
" 33	Mr. Rodney Beadle		
" 49	Mr. Lloyd Cox		
" 57	Mr. Edwin Lloyd Chin	(Challenged by Crown)	

30

No. 37 Mr. Herman Bloomfield - sworn
 " 1 Miss Erline Anderson "
 " 65 Mrs. Frances Collymore "
 " 17 Mr. Glenroy McDonnough "
 " 5 Mr. Terrence Brown "
 " 73 Mr. Leonard Davis "
 " 9 Mrs. Martha Barton.

In the
 Supreme Court
 of Jamaica

No. 2

Proceedings

21st January
 1974

(continued)

10

REGISTRAR: Mr. Foreman, members of the jury, the prisoner at the bar Donald Parkes is charged with the offence of murder, the particulars are that he Donald Parkes on the 14th day of September, 1971 in the parish of St. Andrew murdered Daphne Graham. To this indictment he has pleaded not guilty and it is your charge, having heard the evidence, to say whether he be guilty or not guilty.

(P R O C L A M A T I O N)

(Time: 10.25 a.m.) Crown Attorney opens case to the jury. (Time 10.35)

No. 3

20

Ralston Jarrett

Prosecution
 Evidence

RALSTON JARRETT is sworn.

No. 3

Examined by Attorney for the Crown (Miss Hylton):

Ralston
 Jarrett
 Examination

Q. I am going to ask you to speak as loudly as you can so that the last gentleman in this corner can hear you and everybody else in the courtroom, do you understand?

21st January
 1974

A. Yes, ma'am.

Q. Your name is Ralston Jarrett? A. Yes.

Q. You are a storeman? A. Yes.

30

Q. You used to live at 10 Boynes Road?

A. Yes ma'am.

HIS LORDSHIP: Where is Boynes Road?

A. In St. Andrew.

Q. Off the Waltham Park Road? A. Yes sir.

In the
Supreme Court
of Jamaica

Prosecution
Evidence

No. 3

Ralston
Jarrett
Examination

21st January
1974
(continued)

CROWN ATTORNEY: Now do you have any particular friend on those premises, did you have any particular friend on those premises? A. No ma'am.

Q. Do you know the accused man? A. Yes, ma'am.

Q. Do you know his aunt? A. Yes, ma'am.

Q. Was she living on those premises? A. Yes.

Q. What is her name? A. Gwendolyn Lewis.

Q. Were you friendly with her? A. Yes ma'am.

Q. Do you know Minna Graham? A. Yes.

Q. And did you know her daughter Daphne Graham? 10
A. Yes, it is her home I was living in.

Q. The home belongs to Minna Graham? A. Yes.

Q. Now do you remember the 11th of September 1971?
A. Yes ma'am.

Q. Were you at Boynes Road in the yard? A. Yes.

Q. Something happened sometime in the day?
A. Yes ma'am.

Q. About what o'clock?

HIS LORDSHIP: This is at No.10? A. Yes sir.

CROWN ATTORNEY: About what o'clock? 20
A. About 7 o'clock.

HIS LORDSHIP: In the morning? A. Yes.

CROWN ATTORNEY: Where in that yard were you before something happened?

A. I was at the back of the yard around at my room where I was living.

Q. Now Daphne Graham's room, where was that, what part of the yard? A. At the front of the yard.

Q. And was the accused man there that morning?
A. Yes ma'am. 30

Q. Now before something happened did you see the accused man? A. No ma'am.

Q. Now did you hear somebody talk, don't tell me what was said, you heard somebody talk?

A. Yes.

Q. And as a result of what you heard did you go anywhere?

A. I went round to the front of the yard ma'am.

Q. And did you see anything?

A. I saw Daphne standing on the verandah holding up her stomach and crying.

10 Q. (HIS LORDSHIP): Mr. Brown, I am sorry, but I noticed when Miss Hylton was telling you about the case you had your head down all the while and now while the witness is giving evidence you had your head down. May I say it is a very important matter in deciding the truth of a witness' evidence to look at him because looking at a witness can give you an idea sometimes whether he is speaking the truth or not - you are not even looking at me while I am talking to you now, sir. Mr. Brown is there anything wrong why you can't look at me when I am speaking to you. You don't just listen, you look sometimes you know. When you see a person you can better hear and judge what they are saying, will you please pay some attention. It is no point your sitting up there so, you must make some contribution to the deliberations of the jury, and unless you are looking and paying attention, you cannot make any contribution. It is the verdict of twelve jurors we need, not eleven, so please don't be a baggage up there.

20

30

CROWN ATTORNEY: You said you saw her holding up her stomach but you put your hand to a certain part of your body, hold for me again so the jury can see.

A. Right here (touching the left side of breast).

Q. Did you notice anything where she was holding?

A. Yes.

40 Q. What you noticed?

A. I saw her was bleeding from that spot.

Q. As a result of what you had heard and the condition of Daphne Graham as you saw it, did you do anything?

A. I went up to her and spoke and she did not answer me.

In the
Supreme Court
of Jamaica

Prosecution
Evidence

No. 3

Ralston
Jarrett
Examination

21st January
1974
(continued)

In the
Supreme Court
of Jamaica

Prosecution
Evidence

No. 3

Ralston
Jarrett
Examination

21st January
1974
(continued)

Q. And after you spoke to her what happened?

A. I draw a chair and I put her to sit down and draw away her dress and looked and I saw a cut.

Q. And where was the cut in relation to the part of the body she was holding?

A. Just over her left breast.

Q. What happened after that?

A. I put her to sit down and saw she could not balance up and I take her and put her cross way her bed to lay down. 10

HIS LORDSHIP: Her bed? A. Yes sir.

Q. What happened after that?

A. And when I come down off the verandah now and went across the back, I saw Miss Graham.

Q. Is that Minna Graham now? A. Yes.

HIS LORDSHIP: That is Daphne's mother? A. Yes sir.

CROWN ATTORNEY: When you saw Minna, was she alone?

A. I saw her holding on to Parkes around the back.

HIS LORDSHIP: This accused? A. Yes sir. 20

CROWN ATTORNEY: Could you see this accused properly?

A. Yes ma'am.

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. 30

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 was 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.
- 10 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? 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.
- 20 Q. You asked him what happened, did he answer you? A. No ma'am.
- Q. What happened after you asked him what happened?
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.
- 30 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.

In the
Supreme Court
of Jamaica

—
Prosecution
Evidence

No. 3

Ralston
Jarrett
Examination

21st January
1974
(continued)

In the
Supreme Court
of Jamaica

Prosecution
Evidence

No. 3

Ralston
Jarrett
Examination

21st January
1974
(continued)

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

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.

Q. Now after you had left Minna Graham around the back and go back to the front did Minna Graham come to the front? A. Yes.

Q. About how long after you had left her to the back did she come to the front? 10

A. Just around ten minutes after.

Q. Did she have anything with her when she came to the front?

A. She have a bag with some clothes in it to carry the lady to the doctor.

HIS LORDSHIP: Clothes for Daphne? A. Yes sir.

CROWN ATTORNEY: And did Daphne leave in a car? Did Daphne go to the hospital? A. Yes.

Q. How did she go to the hospital?

A. Miss Graham and a next lady take her to the hospital in the car. 20

Q. Did you go with them? A. No ma'am.

Q. Now the knife you took from the accused man, what did you do with it?

A. I give it to the policeman.

Q. And if you should see that knife again, would you recognise it?

A. Well, I would know it is a ratchet but I don't have no special mark on it.

(Knife shown to Defence Attorney, then to witness) 30

Q. Open that for me please officer and show it to the witness. Look at that for me, what can you say about that knife?

A. Well, please, I can't say nothing about it; I know I take away a knife but I don't know if it is this said one.

Q. What kind of a knife is that?

A. A ratchet knife.

Q. And can you say whether the knife you took from the accused man was one like that?

A. It was one like that.

Q. But you cannot say that is the knife?

A. No ma'am.

Q. I wish to mark this m'lord, as 'one for Identity'.

HIS LORDSHIP: Yes.

10 CROWN ATTORNEY: When you heard something and went to the front and saw Daphne bleeding, did you see anybody else in that yard with a knife?

A. No ma'am.

Q. Now what happened to the accused man after Daphne went off to the hospital?

A. Well, I did not see him again.

Q. Did you go back to the back of the premises?

A. Yes ma'am.

Q. And you did not see him? A. No ma'am.

20 Q. The shirt which he had on when you saw Mrs. Graham holding him, would you recognise it if you saw it again?

A. Well I don't remember the colour shirt but I know it tear through she was holding him.

Q. You know it tear? A. Yes ma'am.

Q. Take that, and look at it for me please; you see it tear? A. Yes.

Q. Show the court please? A. Here it is.

Q. The shirt you saw the accused wearing and was torn, can you say where the tear was?

A. Well really, I don't know where the tear was.

Q. Thank you.

CROSS-EXAMINED BY DEFENCE ATTORNEY (MR. McCALLA):

Q. Mr. Jarrett, how long did you live at that home? A. About 12 months.

In the
Supreme Court
of Jamaica

Prosecution
Evidence

No. 3

Ralston
Jarrett
Examination

21st January
1974

(continued)

Cross-
examination

In the
Supreme Court
of Jamaica

Prosecution
Evidence

No. 3

Ralston
Jarrett

Cross-
examination

21st January
1974

(continued)

Q. And during all that time you knew Daphne the deceased woman?

A. Yes sir. It is her home I live into, her mother home and she was living there too.

Q. You would see her very often.

A. Yes sir, every day.

Q. Can you remember at any time seeing her crying?

A. Not before she get the cut.

Q. Not before that day?

A. Not before that day I never saw her crying. 10

Q. Did you know she was ill - she was sick?

A. Yes sir.

Q. What was wrong with her?

A. Dem say her brain not working.

HIS LORDSHIP: What you know?

A. Well it is that I hear the mother say.

Q. What you see to know she was sick, we are not concerned with what you hear only what you know; did you say anything about her which made you know she was sick? 20

A. Well, really, I did not see her look that bright sir.

DEFENCE ATTORNEY: Never look bright? A. No sir.

Q. But you never did see her crying for no good reason? A. Not before that.

Q. Now the day of this incident you were in the back-yard? A. Yes sir..

Q. You heard something and you went up front?

A. Yes sir.

Q. You saw Daphne bleeding you said? A. Yes sir.30

Q. She was wearing a dress then? A. Yes sir.

Q. Did you see the wound? A. Yes sir.

Q. Through the dress?

A. I pull away the dress and look at it.

Q. You moved the dress away? A. Yes sir.

- Q. Now you merely saw the wound, right?
 A. Yes sir.
- Q. You don't know how she got the wound?
 A. No sir.
- Q. You didn't see anyone inflict any wound on her?
 A. No sir.
- Q. The knife in question - what day of the week was this?
 A. On a Saturday morning.
- Q. You said you took the knife away?
 A. Yes sir.
- 10 Q. What did you do with it?
 A. I gave it to the police.
- Q. Same time?
 A. The Sunday morning.
- Q. That Sunday morning?
 A. Yes sir.
- Q. The police came to the house that morning?
 A. Yes sir.
- Q. What time?
 A. Around 8 o'clock to nine.

HIS LORDSHIP: In the morning?
 A. Yes sir, about that.

20 DEFENCE ATTORNEY: The police was there?
 A. Yes sir.

- Q. You called the police?
 A. Parkes' auntie send and call the police.
- Q. And you gave them the knife that very morning?
 A. Yes sir.
- Q. Do you remember at Halfway Tree court you gave evidence?
 A. Yes sir.
- Q. What did you tell them about the knife?

HIS LORDSHIP: No, no.

30 DEFENCE ATTORNEY: You gave evidence at Halfway Tree court?
 A. Yes sir.

HIS LORDSHIP: You have to suggest to him, if you say he is saying something different.

In the
 Supreme Court
 of Jamaica

Prosecution
 Evidence

No. 3

Ralston
 Jarrett
 Cross-
 examination

21st January
 1974
 (continued)

In the
Supreme Court
of Jamaica

Prosecution
Evidence

No. 3

Ralston
Jarrett

Cross-
examination

21st January
1974

(continued)

DEFENCE ATTORNEY: You gave evidence at Halfway
Tree court that you delivered the knife to
the police the following day?

HIS LORDSHIP: Just a minute, that is not different
to what he is saying now.

DEFENCE ATTORNEY: He said he gave it to the police
that morning, the morning of the 11th.

HIS LORDSHIP: Wait a minute. What are you
suggesting to him that he said at Halfway
Tree at the preliminary inquiry?

10

DEFENCE ATTORNEY: That he took the knife to the
police station the following day.

HIS LORDSHIP: Put that to him, that is not what
you put to him a while ago.

DEFENCE ATTORNEY: Mr. Jarrett, I am suggesting to
you that you are not telling the truth about
the incident?

A. Please sir, I am telling the truth sir.

HIS LORDSHIP: That is all the answer you need to
give.

20

DEFENCE ATTORNEY: You gave evidence that the
knife was delivered to the police the
following day at the police station.

HIS LORDSHIP: Is that a statement or a question.

DEFENCE ATTORNEY: That is a statement m'lord.

HIS LORDSHIP: You can't make a statement Mr.
McCalla, please; you are giving evidence
down there. You must ask him questions.

DEFENCE ATTORNEY: Let's go over it. Mr. Jarrett,
do you remember giving evidence at the Halfway
Tree Court? A. Yes sir.

30

Q. You said then that you..

HIS LORDSHIP: Are you asking whether he said it
or telling him?

DEFENCE ATTORNEY: I am telling him.

HIS LORDSHIP: You can't tell him Mr. McCalla please; you can't disclose to the court what is in the statement. Only the witness can give evidence, you cannot from there. If you are suggesting to him he said it, you must ask him whether or not he did say so.

DEFENCE ATTORNEY: Your lordship pleases. I am suggesting he is not telling the truth about it.

10 HIS LORDSHIP: And he says, yes, he is telling the truth. Ask him about the Halfway Tree statement.

DEFENCE ATTORNEY: What you said about it?

HIS LORDSHIP: Please Mr. McCalla, what he said at Halfway Tree has a limited use in this court, as you know. You don't ask him what he said, suggest to him that he said something different, suggest to him what he said.

DEFENCE ATTORNEY: I am suggesting to him m'lord.

20 HIS LORDSHIP: You have not suggested it yet, you have been making statements.

DEFENCE ATTORNEY: I am suggesting to you Mr. Jarrett that you made a different statement about this matter?

HIS LORDSHIP: You have to tell him the occasion and suggest to him what was it different that he said.

DEFENCE ATTORNEY: At the Halfway Tree court and about the time the knife was delivered.

30 HIS LORDSHIP: Have you said something different at another place?

A. Please sir, I delivered the knife to the police at the yard and I went to the station and gave a statement sir, please.

HIS LORDSHIP: All right; all right.

DEFENCE ATTORNEY: So Mr. Jarrett, you know nothing about how the deceased person got injured, you did not see anything? A. I did not see.

In the
Supreme Court
of Jamaica

Prosecution
Evidence

No. 3

Ralston
Jarrett
Cross-
examination

21st January
1974

(continued)

In the
Supreme Court
of Jamaica

Prosecution
Evidence

No. 3

Ralston
Jarrett
Cross-
examination

21st January
1974
(continued)

- Q. You don't know anything?
A. I don't know how she got injured.
Q. Whatever you know is what you were told,
what you heard? A. Just that sir.

NO RE-EXAMINATION BY CROWN ATTORNEY

No. 4

Minna Graham
Examination

21st January
1974

No. 4

Minna Graham

(Time 11.05 a.m.) MINNA GRAHAM is sworn.

EXAMINED BY CROWN ATTORNEY:

- Q. You are Mrs. Graham? A. Yes ma'am. 10
Q. And what is your first name? A. Minna.
Q. And Mrs. Graham you are a shop-keeper?
A. Yes ma'am.
Q. And you used to live at Bowen's Road?
A. I am still living there.
Q. At No. 10? A. Yes.
HIS LORDSHIP: You own the premises? A. Yes sir.
CROWN ATTORNEY: And is Daphne Graham your
daughter? A. Yes ma'am.
Q. She was a dressmaker? A. Yes ma'am. 20
Q. How old was she? A. Thirty-two when she died.
Q. And let us get this over, was she generally
healthy, or was she accustomed to be ill?
A. Long ago in her early days.
HIS LORDSHIP: At what age? A. Around 15, sir.

Q. She was ill? A. Yes sir.

CROWN ATTORNEY: What kind of illness, can you tell the court? A. Mental ma'am.

Q. Mentally ill at that time? A. Yes, ma'am.

Q. Now about how long before she died had she been keeping well?

HIS LORDSHIP: Well, had she been keeping well?

CROWN ATTORNEY: Had she been keeping well before she died? A. Yes ma'am.

In the
Supreme Court
of Jamaica

Prosecution
Evidence

No. 4

Minna Graham
Examination

21st January
1974
(continued)

10

Q. For about how long?

A. From when she was around 15 years old ma'am, she took sick and get better about three years after that and from then she was perfectly all right.

Q. She was 32 years old when she died?

A. Yes ma'am.

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

A. Yes ma'am.

20

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.

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?

30

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?

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.

In the
Supreme Court
of Jamaica

Prosecution
Evidence

No. 4

Minna Graham
Examination

21st January
1974
(continued)

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

A. It was around 7.30 ma'am.

Q. Was anything the matter with Daphne when you were leaving? A. No ma'am.

Q. Shortly after you left did you hear something?

A. Yes ma'am.

Q. About how long after you left did you hear something?

A. It was not any time after. 10

Q. Where were you when you heard something?

A. I just leave the yard.

Q. In the premises or on the road?

A. On the road.

HIS LORDSHIP: You had just left the yard?

A. Yes sir.

CROWN ATTORNEY: And when you heard something, what did you do? A. The tenant ...

Q. Don't tell me what you were told. You said you heard something. Now having heard something did you do anything? A. Yes. 20

Q. What did you do? A. I turn back.

Q. Did you get back to the yard?

A. Yes ma'am, right in Daphne's room.

Q. Did you notice anything? A. Yes.

Q. Tell the court?

A. She get a stab in her left breast.

Q. What did you see why you say that?

A. Blood, and she hold her left breast like this; she was bleeding. 30

HIS LORDSHIP: You saw her in her room? A. Yes sir.

CROWN ATTORNEY: In what position was she, sitting, standing or what?

A. Standing ma'am, and she drop on the floor.

Q. When you saw her in her room was there anybody else in there?

A. Yes ma'am, a tenant beside her.

In the
Supreme Court
of Jamaica

HIS LORDSHIP: What is her name? A. Dorothy Lynch.

Prosecution
Evidence

CROWN ATTORNEY: Is Miss Lynch still a tenant of yours?

No. 4

A. They all remove after the incident.

Minna Graham
Examination

Q. After you saw your daughter in that condition did she speak with you? A. Yes.

21st January
1974

(continued)

10 Q. After your daughter talked to you, did you go anywhere in those premises? A. Yes ma'am.

Q. What part, in relation to the house in which Daphne lived, did you go?

A. I did not go in the house, I go up the yard, the back of the yard.

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

A. I saw Donald Parkes.

Q. Do you see Donald Parkes here?

A. Yes ma'am.

20 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.

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.

30 (Witness returns to witness box)

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.

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(continued)

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.

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, 10
"what she do you why you stab her"?

HIS LORDSHIP: What you said at first?

A. I called out to Jarrett.

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?

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 20
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?

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. 30

Q. Yes?

A. And I said to him, a not going..

HIS LORDSHIP: Just a minute.

CROWN ATTORNEY: Now when you did that did he do anything? A. Yes, ma'am, I said to him ..

Q. Listen to my question, when you boxed him and

- A. hold him in his pants waist did he do anything?
 A. Yes, he open the knife and was coming like that in my face.
- Q. He opened the knife and was doing what?
 A. Coming in my face.
- Q. What you mean?
 A. Was coming to cut me in my face with the knife.
- Q. When you saw him doing that did you do anything?
 A. I raise my left hand like this and it cut me on my finger here; I get five stitches in the finger and three injections.
- Q. Rest right there. Now after you got cut on your hand did you continue to hold him?
 A. Yes ma'am.
- Q. And what happened after that?
 A. I called to his uncle-in-law.
- Q. What name? A. Jarrett.
- Q. When you call Jarrett, did Jarrett come?
 A. He stand up, fold him hand like this and ...
- Q. Did he come?
 A. He did not help me with him.
- Q. After you call him did he come? A. Yes.
- Q. And what happened?
 A. I say, 'you see him cut me though'.
- Q. Did Mr. Jarrett do anything?
 A. He took away the knife from him and said 'give me the knife' and he freely handed over the knife to him.
- 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?
 A. Blood stain was on the blade ma'am; blood stain.

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(continued)

10

20

30

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(continued)

Q. What kind of knife would you say it was?
A. A ratchet knife.

Q. And if you saw that knife again would you
recognise it?
A. Yes ma'am.

Q. May "I for Identity" be shown to the witness?
Look at that for me.

A. That is the knife ma'am; that is the knife.

Q. I wish now to tender this as Exhibit 1, may
it please your lordship.

10

HIS LORDSHIP Yes.

CROWN ATTORNEY: Now after the knife was taken from
the accused man, what happened to you and him?

A. I took my daughter to the hospital ma'am.

Q. Did anything happen between yourself and
Parkes?

A. No, ma'am, I hold him in his waist and tell
him I not going to let him go until the police
come, but unfortunately ...

Q. When you left him was he fully clothed?

20

A. Yes. No, he did not have on the clothes for
I tear it off.

HIS LORDSHIP: You are a little too anxious to
say ... I know you have a long story to tell
but you must wait until you are asked you see,
you will be given every chance to tell that
part of your story which you can tell in here,
but wait until you are asked and answer when
you are asked.

CROWN ATTORNEY: When you were leaving him to take
your daughter to the hospital, did he have on
all the clothes he had on at first?

30

A. No, he only hae on his pants because I tore
off the shirt.

Q. Who tore off the shirt? A. Me, ma'am.

Q. And the shirt, would you recognise it if you
saw it again? A. Yes, ma'am.

- Q. Show her for me.
 A. Yes, ma'am, this is the shirt.
 Q. You said you tore it off? A. Yes.
 Q. Show us where? A. See it here.
 Q. I wish to tender the shirt, may it please your lordship, as Exhibit 2.

HIS LORDSHIP: Just a minute, hold it by the collar and show it. Hold it up for the jury to see.

Yes, Exhibit 2.

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(continued)

- 10 You tore it off and had it in your hand?
- A. After I tear off the shirt, him take it off and throw it at a coconut tree root.
- Q. Do you mean you actually took it off his body?
 A. No, I did not take it completely off his body, but he took it off and throw it at a coconut tree root.
- CROWN ATTORNEY: Do you know what happened to the shirt after he throw it at the coconut tree root?
- 20 A. I went to the hospital with my daughter.
- Q. What happened to the shirt?
 A. When I come back from the hospital I took up the shirt and hand it to the policeman.
- Q. Which hospital you took your daughter to?
 A. Kingston Public Hospital.
- Q. And was she admitted? A. Yes, ma'am.
- Q. Now what about the clothes she had on?
 A. She had on a pink dress.
- 30 Q. What happened to the clothes?
 A. They were at the hospital and I took them from the hospital to the police station ma'am.
- Q. And did they have any marks on them, the clothes? A. Yes.
- Q. What marks? A. Blood stains.

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(continued)

- Q. After your daughter was admitted, did you visit her in hospital? A. Yes ma'am.
- Q. Do you recall the last time you saw her alive in hospital? A. Yes.
- Q. Tell the court.
- A. It was the Tuesday. It happened the 11th of September.

HIS LORDSHIP: What day of the week was the 11th?

A. It was a Saturday when she get the stab.

CROWN ATTORNEY: And you saw her alive?

A. Up to Tuesday, 12 o'clock when I went to the hospital to visit her. 10

- Q. Check on your fingers for me and tell the court what day the Tuesday was?
- A. (checking on her fingers): Saturday was the 11th; Sunday the 12th; Monday the 13th and Tuesday was the 14th.

Q. You saw her alive on the 14th? A. Yes.

Q. Now on the following day, the 15th of September, did you go to the hospital? A. Yes. 20

Q. Did you see your daughter there? A. Yes.

Q. On the 15th when you went to the hospital - when you went to the Kingston Public Hospital on the 15th, did you see your daughter in the Kingston Public Hospital?

A. In the dead house ma'am.

Q. Were you told something before you saw her there? A. Yes.

HIS LORDSHIP: After you saw her at midday on the 14th, you did not see her again until you saw her dead body on the 15th? A. Yes sir.

CROWN ATTORNEY: After you saw the dead body on the 15th, do you remember going back to the morgue a week later on the 22nd of September?

A. Yes.

Q. Do you know anybody by the name of Adassa Surgeon? A. That is my sister ma'am.

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(continued)

Q. When you went back on the 22nd of September to the morgue was Adassa Surgeon with you?

A. Yes, ma'am.

Q. And did the two of you, yourself and Adassa Surgeon, identify the body to the doctor?

A. Yes, ma'am.

Q. And the doctor performed a postmortem on the body? A. Yes.

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?

10

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.

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

20

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).

CROWN ATTORNEY: Tell me, Mrs. Graham, have you had anything with the accused before the 11th of September? A. Nothing at all ma'am.

Q. Do you know - not what you are told, but do you know whether your daughter Daphne had any differences with the accused man?

30

HIS LORDSHIP: What you know, not what you hear, not what somebody else tells you.

(sic) Q. When you say any differences, what you mean, you mean any fuss?

CROWN ATTORNEY: Yes?

A. Yes, ma'am.

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(continued)

HIS LORDSHIP: You take your own ears and hear
the fuss? A. Yes sir.

CROWN ATTORNEY: About how long before the
Saturday morning? A. About a week before.

HIS LORDSHIP: Before Saturday the 11th?
A. Yes sir.

Q. They had a what?

A. I have a room there.

Q. No, no, you said they had a dispute.

A. Yes sir.

10

CROWN ATTORNEY: I don't wish to go into the
details m^lord, if my learned friend wishes...

The clothes Daphne had on, you handed those
over to the police? A. Yes.

Q. I do not wish to tender these m^lord.

(Time: 11.30 a.m.)

Cross-
examination

CROSS-EXAMINED BY DEFENCE ATTORNEY:

Q. On the morning of the incident, were you
at home?

A. Yes, sir, I was just getting ready to leave
for work.

20

Q. You go out? A. Yes sir.

Q. And you were outside on the road when some-
body told you something?

A. A tenant called me.

HIS LORDSHIP: Just say yes or no.

A. Yes sir.

DEFENCE ATTORNEY: Somebody told you something
when you were on the road, and as a result
you returned to the house? A. Yes sir..

Q. When you got back to the house, you saw your
daughter sitting on the verandah?

A. Standing.

Q. Where was the accused man then?

HIS LORDSHIP: Just a minute. Did you see the accused man at the time when you saw your daughter standing in the room, did you see him at that time?

A. Before she get the stab?

Q. You went back and saw your daughter - standing in the room? A. Yes.

10 Q. At that moment when you saw your daughter standing in the room did you know where the accused was? A. No sir, I did not see him.

Q. You did not know where he was until afterwards?

A. Yes sir.

DEFENCE ATTORNEY: So you heard something but you did not see anything. A. No sir.

Q. You heard that your daughter was wounded?

HIS LORDSHIP: No, no. Don't ask her what she heard, please.

20 DEFENCE ATTORNEY: You heard something but you did not see anything and you don't know then how your daughter got hurt, do you?

HIS LORDSHIP: That is provoking her to tell you what she heard, how it happened. She has not said she saw it. All that is going to happen is that she is going to tell us and that is not evidence.

DEFENCE ATTORNEY: You did not see, you don't know. Was the accused man a tenant at your house?

A. No, he was just a squatter with his auntie.

Q. He lived there? A. Yes sir.

30 Q. During the time he lived there were you unkind to him in any way? A. Yes sir.

HIS LORDSHIP: Did you hear the question?

A. Yes sir.

Q. What was it he asked you?

A. If me ever kind to him in any way?

Q. Unkind.

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Cross-
examination

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(continued)

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(continued)

DEFENCE ATTORNEY: Were you ever unkind to him?

A. No sir.

Q. Treated him well? A. Yes.

Q. Everybody got on well? A. Fairly well.

Q. Never had any quarrel with Daphne, the accused man, so you all treated him with kindness, never had ...

HIS LORDSHIP: Everybody treated him kindly?

A. Yes sir.

DEFENCE ATTORNEY: Had no quarrels at all with him, no fuss, no anything. The day of the incident ... 10

HIS LORDSHIP: Just a minute please, you are making some statements and she is keeping quiet.

DEFENCE ATTORNEY: I am not making any more statements with regard to that topic.

HIS LORDSHIP: You made a statement - everybody treated him well, no quarrel with anybody, everybody get on well together, and she is keeping quiet; she has not answered. 20

Do you agree that everybody get on well?
A. Nobody quarrel with anybody in the yard sir.

DEFENCE ATTORNEY: Yes, Miss Graham, you said your daughter was mentally ill? A. Yes sir.

Q. You tried to get treatment for her?

A. Yes sir, she get treatment.

Q. She went to Belleview Hospital? A. Yes.

Q. Several times?

A. One time sir, she spent two years at the Bellevue Hospital when she was fifteen; she get sick and she spend two years there and from then she is perfectly well. 30

Q. Now when she is at home, at times at home, would she act strangely? At any time?

A. No strangeness.

Q. She was a dressmaker? A. Yes sir.

Q. She used scissors?

A. She must use scissors to cut the work, must have to use scissors to cut the work sir.

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Q. Can you remember at any time that she tried to stab herself with her scissors?

A. Impossible sir, that is impossible, impossible.

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HIS LORDSHIP: Do you know of it ever happening?

A. No sir, it never happen.

Minna Graham
Cross-
examination

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(continued)

10

DEFENCE ATTORNEY: She never tried to cut herself with her scissors? A. No sir.

Q. You were not always at home with her?

A. I work in the days and come in in the evening, so she is with me all the time.

Q. So you are not quite sure what would have taken place while you were out, you had to go to work.

20

HIS LORDSHIP: Don't say she gave evidence according to what you said there. I wish you would ask the witness questions so that she knows you are asking her questions rather than making statements, because she does not know whether you are talking to yourself or you are asking her a question. A while ago you said, 'so you don't know, you are not quite sure what happened while you were at work', is that a question or a statement?

DEFENCE ATTORNEY: This is merely an inference, m'lord.

30

HIS LORDSHIP: Don't utter the inferences down there, and we don't know whether it is a question the witness answered.

DEFENCE ATTORNEY: It is all based on the question, if she is not at home m'lord, if you are not at home you cannot tell what takes place at home.

HIS LORDSHIP: So all intelligent people would know, what I am asking you to do is refrain from uttering matters which you are to talk to the jury eventually about, down there.

40

DEFENCE ATTORNEY: Was the police there the morning of the incident? A. No sir.

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Minna Graham
Cross-
examination

21st January
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(continued)

Q. The police was not there? A. No sir.

HIS LORDSHIP: Do you mean whether the police was there when it took place or when?

DEFENCE ATTORNEY: At any time that morning, was the police there?

A. No police was there at all.

HIS LORDSHIP: No police came there in the morning?

A. No sir.

DEFENCE ATTORNEY: Did the dress, Daphne's dress, you took it to the police station? A. Yes sir.

10

Q. When?

A. The Saturday, the 11th of September, the same day; I took it to Hunt's Bay police station for the doctor tell me ...

HIS LORDSHIP: No, no, don't tell us what the doctor tell you.

DEFENCE ATTORNEY: You took it to the station that day? A. Yes sir.

Q. Now you said you got the cut on your hand?

A. Yes sir.

20

Q. You went in the backyard to see the accused?

A. Yes sir.

Q. Did you struggle with him? A. No.

Q. How you got his shirt?

A. When him cut me I hold him into his waist and he was trying to get away from me and I hold on to him and said I am not going to let him go until the police come. Well it so happen ...

HIS LORDSHIP: Wait for the question lady, please.

DEFENCE ATTORNEY: You held him in his waist?

A. Yes sir.

Q. And you struggle with him? A. Yes.

Q. Tried to get his shirt off?

A. I tear him on his shirt.

Q. You held him in his waist, struggle with him, tried to get his shirt off; tried to get the knife..

A. I was not struggling with him to get the knife.

Q. I am suggesting to you that in the process of struggling...

HIS LORDSHIP: She just said she was not struggling.

DEFENCE ATTORNEY: Whatever you were doing, wrestling with him.

10 HIS LORDSHIP: Were you wrestling with him trying to get his shirt off madam?

A. I was not wrestling to get his shirt off; I held him in his waist till when the police come to hand him over to the police ..

DEFENCE ATTORNEY: And you got his shirt off.

HIS LORDSHIP: Did you get his shirt off?

A. It did not come off sir, it only tear, but him take off the shirt.

HIS LORDSHIP: Yes, you told us that already.

20 DEFENCE ATTORNEY: I am suggesting to you Miss Graham, that during the process of holding him in his waist, whatever you were doing whether struggling or not, you got cut on your hand?

HIS LORDSHIP: Was that how you got cut madam?

A. No sir, he deliberately cut me with the knife; he was going to stab me with the knife.

Q. Answer the question as shortly as you can.

30 DEFENCE ATTORNEY: I am suggesting that is the way it happened? A. No sir.

Q. Thank you.

(Time 11.40 a.m.)

NO RE-EXAMINATION BY CROWN ATTORNEY.

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No. 4

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Cross-
examination

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(continued)

In the
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No. 5

Milton Pusey

Prosecution
Evidence

Time 11.41 a.m.

No. 5

Detective Sergeant MILTON PUSEY is sworn.

Milton Pusey
Examination

Examined by Crown Attorney:

21st January
1974

- Q. Your name please? A. Milton Pusey.
- Q. And your rank?
A. Detective Sergeant of police stationed at Elletson Road in the parish of Kingston.
- Q. In 1971, September, where were you attached? 10
A. I was attached to the Hunt's Bay police station in St. Andrew.
- Q. Now do you remember getting a report from Mrs. Minna Graham? A. Yes ma'am.
- Q. What day?
A. It was on the 15th of September, 1971.
- Q. Now as a result of the report which you got, what did you do?
A. I went to the morgue at Madden's, Madden's morgue in Kingston and there I saw the dead body of her daughter Daphne Graham. 20
- Q. And thereafter did you commence investigations?
A. Yes ma'am.
- Q. Do you know where Mrs. Graham lived?
A. Yes ma'am.
- Q. Where? A. 10 Bowens Road in St. Andrew.
- Q. Can you recall if you went there?
A. Yes ma'am.
- Q. When?
A. Either the 15th or the 16th. 30
- Q. Now in the course of your investigations, sergeant, did you receive anything?
A. Yes ma'am.
- Q. What was it you received?
A. I received from her a shirt.

- Q From whom? A. From Mrs. Minna Graham.
- Q. And the shirt which you got, if you saw it again would you recognise it?
- A. Yes ma'am.
- Q. Did you receive anything else from Mrs. Graham?
- A. A pair of brassieres.
- Q. Anything else?
- A. A dress and a duster.
- 10 Q. Now apart from the shirt, the clothes which you got from Mrs. Graham did you notice anything about them? A. Yes.
- Q. What?
- A. They had what appeared to be blood stains.
- Q. Now apart from Mrs. Graham, did you receive anything from anybody else?
- A. Yes ma'am.

HIS LORDSHIP: Were you going to show him the shirt?

CROWN ATTORNEY: I wished to show him the two m'lord.

A. I received a ratchet knife from Ralston Jarrett.

- 20 Q. That knife, would you recognise it if you saw it again? A. Yes ma'am.

CROWN ATTORNEY: May Exhibits 1 and 2 be shown to the witness.

(Exhibits shown to the witness)

A. Yes, ma'am, this is the knife I received from Jarrett.

Q. Exhibit 1 m'lord.

A. And this is the shirt I received from Minna Graham.

- 30 Q. Exhibit 2 m'lord.
Now what did you do with that knife and that shirt? First of all what did you do with the knife?

A. I sealed it in an envelope.

Q. What did you do with the shirt?

A. I made a sealed parcel of it.

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No. 5

Milton Pusey
Examination

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(continued)

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No. 5

Milton Pusey
Examination

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(continued)

Q. What did you do with the sealed envelope and the sealed parcel?

A. I took them to the Forensic Laboratory.

Q. You took them sergeant? A. Yes ma'am.

Q. And what did you do when you got to the Forensic Laboratory?

A. I handed them over to Dr. March.

Q. When you got the shirt, did you notice anything about it?

A. I think a portion of it was torn. 10

Q. Hold it up and show it. A. Yes.

Q. You got it in that condition, torn a little?
A. Yes.

Q. Did you notice anything else about it?

A. I remember it was torn.

Q. When you got the knife, did you notice anything about it?

A. I saw what appeared to be blood stains on the blade.

Q. Now, in continuance of your investigations, did you see the accused? A. Yes. 20

Q. On what date, do you remember?

A. Yes, I saw him on the 29th of September, 1971.

Q. Did you have anything in your possession when you saw him?

A. Yes ma'am, I had a warrant for his arrest.

Q. What happened when you saw him?

A. I read the warrant to him, cautioned him and arrested him.

Q. You charged him for what? 30

A. The murder of Daphne Graham. He made no statement.

CROWN ATTORNEY: Now, where was it that you saw him?

A. I saw him by the seaside down by West Street.

Q. Now between the 15th of September and the 29th of September, did you see the accused?

A. No ma'am.

Q. Did you know him before? A. No ma'am.

(Time 11.50)

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CROSS-EXAMINED BY DEFENCE ATTORNEY

Prosecution
Evidence

No. 5

Milton Pusey
Cross-
examination
21st January
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(continued)

- Q. Detective Sergeant, you went to Bowens Road on the 15th of September, you said?
A. I am not certain of that date; I am not sure it is the 15th, but it is either the 15th or the 16th I went there.
- Q. It was after you received a report that you went there? A. Yes sir.
- 10 Q. Now the dress that you received, or the articles that you received, were they delivered to you at the station? A. Yes sir.
- Q. At the police station? A. Yes sir.
- HIS LORDSHIP: You put the dress and you said 'the articles', do you mean all the articles, that is to say the knife as well as the shirt?
- DEFENCE ATTORNEY: The dress and the shirt, not the knife. You received those at the police station? A. They were handed to me.
- 20 Q. At the police station?
A. I would not swear that it was at the station but they were handed to me.
- HIS LORDSHIP: Are you going to be any time with this witness? I see the doctor in court.
- DEFENCE ATTORNEY: Yes m'lord, I have a few more questions to ask.
- HIS LORDSHIP: If they are short - if not ...
- DEFENCE ATTORNEY: We will take the doctor m'lord.

In the
Supreme Court
of Jamaica

No. 6

Eric de Pass

Prosecution
Evidence

(Time 11.52 a.m.)

No. 6

Dr. ERIC DePASS is sworn

Dr. Eric
de Pass

EXAMINED BY CROWN ATTORNEY:

Examination
21st January
1974
(continued)

- Q. Your name please doctor? A. Eric DePass.
- Q. And you are a Registered Medical Practitioner?
A. Yes.
- Q. And Pathologist at the Government Laboratory?
A. Yes ma'am. 10
- Q. Doctor, do you remember the 29th of September,
1971? Sorry, the 22nd of September, 1971?
A. Yes.

HIS LORDSHIP: We are asking you about something
that happened in 1971, between then and now
you must have seen a lot of people..

A. Without looking at anything I would not try
to recall the details.

Q. You made notes about this case at the time
doctor? A. Yes sir. 20

Q. And you wish to refresh your memory?
A. Yes sir.

Q. Yes, certainly.

CROWN ATTORNEY: On the 22nd of September, 1971,
did you perform a post mortem examination on
the body of an adult female? A. Yes.

Q. Identified to you by one Adassa Surgeon?
A. Yes.

Q. As being the body of whom?
A. Daphne Graham. 30

Q. Will you tell the court your findings
externally?

A. Externally there were three wounds: a trans-
verse incised wound one and a quarter inches
long in the second left interspace, two inches

from the mid-line - roughly about here (doctor indicates), one and a quarter inches long, and this wound was gaping, wide open. Secondly, there was a sutured wound, for a cut-down incision, for intravenous injection on the anterior medial aspect; that is a surgical wound made by a doctor for putting fluid into a vein. Thirdly there was a gaping wound one inch long in the left posterior axillary line in the 6th left intercostal space. This is the posterior axillary line (doctor indicates), and it would be roughly somewhere here.

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(continued)

10

Q. Wound No.2 that you described is a surgical wound?

A. That was produced in the treatment.

Q. Now wound No. 1, and wound No. 3, having regard to what you saw, did you form any opinion as to what could have caused the wounds?

20

HIS LORDSHIP: Wound No. 3, was that surgical?

A. That was not produced. That was gaping also, it was wide open.

CROWN ATTORNEY: Wound No. 1 and wound No. 3, did you form any opinion as to what could have caused those wounds? A. I did.

Q. By what? A. Bu a sharp cutting instrument.

Q. Such as? A. Such as a knife.

30

Q. Now doctor, I am going to show you a knife. Can you express an opinion as to whether or not that knife could have caused wound No.1 and wound No.3? A. It could have caused both.

Q. With what degree of force would you say it is necessary to cause wound No. 1?

HIS LORDSHIP: Perhaps we had better go inside.

CROWN ATTORNEY: Any other external findings doctor?

A. No.

Q. Did you dissect the body? A. I did.

Q. What were your findings internally doctor?

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- A. Internally the findings in the chest were as follows: There were approximately 500 cubic centimetres of blood and clots in the left chest cavity, which contained the left lung. The left lung itself was largely collapsed. There were approximately 400 cubic centimetres of blood and clots in the pericardial sac, the sac which covers the heart. Now the wound at No.1, this one passed in through the second inter-space between the ribs downwards and medially, that is in that direction (indicates) downwards and towards the midline, entering the pericardial sac, the sac which covers the heart and puncturing the left main branch of the pulmonary arteries that takes blood to the lungs from the heart - it is divided into two, one goes to the left lung and the other to the right lung. There was some bleeding into the anterior mediastinum which is the thing which supports the chest organs, the little batch of fibrous tissues which supports the chest organs - there was some bleeding into that. Those were my main internal findings. 10 20

CROWN ATTORNEY: Having regard to what you saw externally ...

HIS LORDSHIP: Just a minute. The third wound about which you spoke, did you see anything of that internally?

- A. That did not penetrate the chest. 30

CROWN ATTORNEY: Having regard to what you saw externally, wound No. 1 and internally, are you able to express an opinion as to the depth of that wound?

- A. I did not measure this but I can give you a very rough estimate, depending on - you say that is the knife - it varies from person to person, the thickness of the chest wall to the back, I would say possibly it would have gone in about 4 to 4½ inches from the skin to the inside. 40

Q. And what degree of force, assuming that a knife such as that one, or that one had been used, would be necessary to cause wound No.1?

- A. Because there was no bony structure in the pathway, I would say a mild to moderate degree of force.

Q. Now a wound to that part of the body, doctor, whether mild or moderate, or much force, do you consider it serious? A. Oh, yes.

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Q. And the collapse of the left lung, could you tell us what caused that to collapse?

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A. It is the presence of the blood in the chest cavity which fills up the space and forces the air out of the lung.

No. 6

Dr. Eric
de Pass
Examination

10 Q. Can you express an opinion doctor, as to the cause of death, having regard to your examination?

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A. Well I formed an opinion as to cause of death. Death I thought was due to shock and hemorrhage associated with cardiac tamponade which is an embarrassment because of the blood in the heart sac, it did not allow the heart to work, it needs a certain amount of space to move in and with the presence of blood there it could not move as freely.

(continued)

20 Q. The presence of blood prevented the heart from moving freely? A. Yes.

Q. And also caused the left lung to collapse?

HIS LORDSHIP: No, no, there was blood both in the lung cavity and in the sac around the heart?

A. Yes.

CROWN ATTORNEY: Now doctor, that wound that you saw, having regard to the examination both externally and internally, can you give any opinion relative to the position of the assailant and the victim?

30

A. Assuming that the assailant is a right-handed person, this would put him directly in front of the individual; assuming he is left-handed, it could be to the side.

(Time: 12.00 noon)

CROSS-EXAMINATION BY DEFENCE ATTORNEY:

Cross-
examination

Q. The wounds were incised wounds?

A. Yes sir.

40 Q. What is the difference between an incised and a punctured wound?

A. A punctured wound is a pointed sort of a rounded thing, an incised wound has a sharp edge.

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Cross-
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(continued)

Q. So you would say that incised wounds, in common language, are slash wounds? A. Yes.

Q. There were no punctured wounds?

A. I did not see any.

Q. No stab wounds?

HIS LORDSHIP: Just one minute please. You saw no punctured wounds? A. No.

Q. The other thing is, no stab wounds? Are they synonymous? A. Not in my language.

Q. Tell us in your language whether you saw any stab wounds? 10

A. Yes, the wound, No.1, was a stab wound.

DEFENCE ATTORNEY: An incised wound?

A. Yes, it is an incised wound because the edges were clean cut, but it was a penetrating wound - two different things, an incised wound in the skin is a clean edged wound, but the penetration made it into a stab wound.

DEFENCE ATTORNEY: It is as a result of the depth?

A. Yes, that you regard it as a stab wound. 20

Q. Now doctor, judging from the standpoint of position, could those wounds be self-inflicted?

A. I don't think wound No.3 is likely to have been self-inflicted, but it is a possibility.

Q. What is the position of that?

A. (indicating) - No. 3 wound was back here; it is a bit hard to cut herself.

Q. It is in front?

A. No. 1 was in front, the other one was in the posterior line. 30

Q. You would not say that?

A. Somebody would cut themselves around there?

Q. That it could be reached?

A. I did not say that it could not be reached. It is a possibility but it is unlikely.

Q. Thank you doctor.

HIS LORDSHIP: Well you know Mr. McCalla, you asked

the doctor about whether the wound that he saw could have been self-inflicted; the doctor gave an answer about No.3 but he has not said anything about No.1, do you want to ask him about that?

DEFENCE ATTORNEY: What did your lordship say?

10 HIS LORDSHIP: Are you pursuing No.1. You asked him about the wounds and the doctor started out by saying No.3 is unlikely, do you want him to say anything about No.1?

DEFENCE ATTORNEY: I think he answered that by saying possibly.

HIS LORDSHIP: No, no, he was speaking about No.3. He has not told us a word about No.1 in relation to the question you asked him.

DEFENCE ATTORNEY: I think he did.

HIS LORDSHIP: Did you doctor? A. No.

DEFENCE ATTORNEY: Well, in relation to wound No.1, is there, could it be self-inflicted?

20 A. Possibly sir.

DEFENCE ATTORNEY: Thank you.

(Time 12.05 p.m.)

RE-EXAMINATION BY CROWN ATTORNEY:

Re-
examination

Q. Now doctor, I would like to deal, with with (sic) possibility but probabilities, having regard to what you saw?

A. I think it is unlikely to have been self-inflicted.

HIS LORDSHIP: No.1? A. Yes m'lord.

30 Q. Would you like to tell us why doctor?

A. I don't think somebody would do that to themself - it is my own personal opinion.

CROWN ATTORNEY: Having regard to the direction?

A. Yes, you would have to go up and come down.

HIS LORDSHIP: If it is a right-handed person, it is not consistent with being self-inflicted by a right-handed person?

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(continued)

A. It is more unlikely to be self-inflicted by a right-handed person because one has to go high up and come down (indicates).

HIS LORDSHIP: Miss Hylton (Crown Attorney), I don't know, and it seems to me - it is a matter for you, but Mr. McCalla ...

CROWN ATTORNEY: That is what I propose to come with now m'lord, the scissors. Now doctor, you have seen a scissors? A. Yes.

Q. Now having regard to the wound which you saw, doctor, wound No.1, can you express any opinion as to whether or not that wound could have been self-inflicted with a scissors, a dressmaker's scissors? A. No ma'am. 10

HIS LORDSHIP: Thank you doctor.

(Time 12.10 p.m.)

No. 7

Milton Pusey
(recalled)

Cross-
examination
(continued)

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No. 7

Milton Pusey

Sergeant MILTON PUSEY, still on oath

CROSS EXAMINATION BY DEFENCE ATTORNEY (continued) 20

Q. Yes, Sgt. Pusey, you said these things were taken to you at the station?

A. I am not sure whether they were taken, all of them.

HIS LORDSHIP: You are being asked about the shirt and dress.

A. I cannot recall if they were taken to me at the station but they were handed to me either at the station or at her home.

DEFENCE ATTORNEY: You are not sure? 30

A. I can't recall now.

Q. You made any private investigations that day at the home?

HIS LORDSHIP: What day, please?

DEFENCE ATTORNEY: The fifteenth?

A. I can't recall the day.

Q. Was it the 15th you said in evidence?
 A. Either the 15th or 16th I made certain observations.

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Q. All right, the 15th or the 16th, you made any investigation at the home?
 A. I made observations there.

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Q. Did you visit the room that the deceased person lived in?

Milton Pusey
 (recalled)

A. I saw the room, it was shown to me.

Cross-
 examination

10 Q. You did not go inside?
 A. I went in, yes.

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Q. So this clothing was given to you, you had no definite way of knowing whose clothing it was?
 A. I was told.

(continued)

Q. Thank you Sgt. Pusey.

(Time 12.11 p.m.)

CROWN ATTORNEY: M^lord, that is the case for the crown.

THE DEFENCE

20 DEFENCE ATTORNEY: M^lord, the accused elects to give his statement from the dock.

Defence
 Evidence

No. 8

No. 8

Donald Parkes

Unsworn
 statement of
 Donald Parkes

DONALD PARKES, unsworn from dock.

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HIS LORDSHIP: What is your name?

A. Donald Parkes sir.

Q. Now Mr. Parkes, what you are going to say is something which I am sure you will want the jury to hear, do you understand?

30 A. I understand sir.

Q. And you will want them, I am sure, to take it into account, what you say, when they are considering their verdict? A. Yes sir.

Q. For them to hear you will have to speak up

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Unsworn
statement of
Donald Parkes
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(continued)

loudly enough so that they can hear you; don't bother to say anything in a voice that they have to strain to hear; if they have to strain to hear they might not bother to listen? A. Yes sir.

Q. Do you understand? A. Yes sir.

Q. Where do you live? A. 10 Bowens Road.

Q. Before you were charged with this offence, what work did you do?

A. I was working with the Pre-Mix company at Molynes Road. 10

Q. Now will you speak up loudly and let us hear what it is you have to say, and slowly enough for me to be able to write it down, do you understand?

A. Yes sir, I understand.

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. 20

Q. Mrs. Graham?

A. Yes sir. She approach me and hold me in my pants 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. 30

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. 40

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 me go and enter the front of the yard.

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.

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10 HIS LORDSHIP: What?

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.

20

On the 27th of September, 1971 I was down by the seaside and on West Street, when I saw two police come to me and one stick me up with a gun and say 'don't move', and he say I must put my hand up in the air, and I put them like this (demonstrates), and they search me and carry me to the West Street station and handed me over to Sgt. Milton Pusey, and on the said day he handed me over to Sgt. Pusey and he say I was charged for murder, and from then on I was in custody sir, and from then on I was in custody up to this time sir.

30

HIS LORDSHIP: Anything else?

A. No sir, that is all.

HIS LORDSHIP: Sit, please.

(Time 12.20 p.m.)

DEFENCE ATTORNEY: No witnesses m'lord. That is the case for the defence.

40

CROWN ATTORNEY ADDRESSES THE JURY.

(Time: 12.30 p.m.) DEFENCE ATTORNEY ADDRESSES THE JURY.

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No. 9

Summing Up

No. 9

(Time: 12.35 p.m.)

Summing Up

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Mr. Foreman and members of the jury:

The accused is charged before you for the offence of murder. The particulars of that offence are that the accused on the 14th day of September, 1971, in the parish of St. Andrew murdered Daphne Graham.

Your function is to decide whether or not on the evidence that you have heard in court, the accused is guilty of this offence. You are the sole judges of the facts in the case. It is not my duty to decide the facts; my duty is to tell you the law which is applicable to the charge against the accused and to the circumstances of the case, but it is your sole duty to decide the facts. My duty as far as the facts are concerned is to try to help you in coming to your decision by reminding you of the evidence that has been given and by making such comments on that evidence as I think necessary or as I think might be of assistance to you. If I express any view of the facts with which you agree, then you may adopt my views as your own and take them into consideration during your deliberations, if you think they can help you. Please understand that if I express any view of the facts with which you do not agree, it is your duty to put aside the views that I express and form your own views on the facts. The burden of proving the guilt of the accused is on the prosecution. There is no duty on the accused to prove his innocence; he sits there and is presumed to be innocent until you by your verdict say he is guilty, and the prosecution must prove the guilt of the accused so that you feel sure of his guilt, that is the standard of proof required. You may not convict him of this offence unless you are satisfied by the evidence in the case so that you feel sure of his guilt.

Now murder, members of the jury, is the offence which is committed when one person by a deliberate or voluntary act intentionally kills another. That is a simple definition of murder. Various people use various definitions, for instance, Miss Hylton in opening the case to you

gave you her definition of murder, but a simple one is as I have said, where one person by a deliberate or voluntary act intentionally kills another, then the offence committed is murder. In order to amount to murder the killing must first of all, be the result of a deliberate or voluntary act on the part of the accused, that is to say, it must not have been caused by accident, an accidental killing is no offence at all. Secondly, in order to amount to murder, the killing must be intentional, that is to say, the act which results in death must have been done or committed with the intention either to kill or to inflict really serious bodily injury. Although to amount to murder it requires a deliberate and intentional killing. It is not every deliberate and intentional killing which is murder. A deliberate and intentional killing done as a result of legal provocation is not murder at all, but is manslaughter, which is a lesser offence than murder and where a deliberate and intentional killing is done in lawful self-defence, then there is no offence committed at all.

Now, to break it down further, members of the jury, the prosecution must prove a number of matters before they can ask you to convict the accused of this offence if the prosecution prove, first of all, the death of the person named in the charge, that is the death of Daphne Graham; they must prove, secondly, that it is the accused who killed her. Thirdly, it must be proved that he killed her by a voluntary or deliberate act, that is to say it was not an accidental killing. Fourthly, it must be proved that the accused intended either to kill the deceased or to inflict really serious bodily injury on her and this intention has to be proved like any other fact in the case.

Now, as you have heard me say time and again over the last two weeks, intention, what is on a person's mind at any particular time, is not capable of positive proof; the only practical way of proving a person's intention is by inferring it from the person's words, or from the person's deeds. In other words a man's intention, which is a state of mind, is inferred from his conduct.

Now, members of the jury, every person who is sane, acts according to what his mind tells him; in other words his mind makes a decision and he acts

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on the decision made by his mind, and it is what his mind decides that we are trying to find, but as I have said, in order to know what his mind decides, you look at what he actually did and from that you infer what he had decided in his mind before. I usually give the illustration of my getting up here and walking to the door. If I did that then you would probably think that it is reasonable to assume or to infer that I had decided before I did that, that I was going to do it; so that is the simple way in which a person's intention is proved, by inference from his conduct. A jury is also entitled to draw reasonable inferences from such facts as they find proved in order to help them in coming to a decision in the case. There are various matters which cannot be proved by direct evidence, and can only be proved by inference from other proved evidence, so once you find certain facts proved and if you accept them as true, then you can from those facts draw reasonable inferences in order to assist you. Of course, you must now (sic) draw an inference unless it is a reasonable one and of course, you will not draw an inference unless there are proved facts which you have already accepted from which you can draw the inference, and if there are more than one inference to be drawn, at the end of the day, if you find that from the inference that you can draw the inference to be drawn is equally capable of guilt as with innocence, then in those circumstances you have to say that guilt has not been established, where at the end of the day you have looked on all the facts, on all the circumstances and you have drawn such reasonable inferences as you can draw - if the inferences which you draw from the facts which you find proved are equally capable with guilt as with innocence, then you must decide in favour of innocence and acquit the accused. 10 20 30

Now, members of the jury in the absence of evidence to the contrary, as Miss Hylton told you are entitled to regard this accused as a reasonable man, that is to say as an ordinary responsible person capable of reasoning. There is no evidence in this case that he is not a sane person, so you are entitled to regard him as a reasonable man, as an ordinary, responsible person capable of reasoning. What I am telling you is a further way of putting what I have already told you, that you infer intention from conduct. 40

Now, where you find an ordinary, responsible

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10 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 satis-
factory proof of the intention required to
establish the charge of murder, that is to say, you
may infer that that was his intention.

20 Now, the two other matters which the prosecu-
tion must prove before they can ask you to convict
this accused, are first of all, that the killing
was unprovoked, that the accused, if you find that
he did inflict the injury on the deceased, that he
was not acting under legal provocation and lastly,
they must prove that he was not acting under lawful
self-defence, when he inflicted the injury. Those
are the ingredients of the charge which the prosecu-
tion must prove, and must prove them to the
extent where you feel sure before you can find the
accused guilty of this charge.

30 Now we turn to the evidence in the case
members of the jury. As Miss Hylton told you, the
evidence in the case is quite short. You bear in
mind that this incident took place from 1971 and it
is a great pity that this matter is only being
tried now, some two and a half years afterwards,
that is unfortunately what has had to be done,
where offences are committed so long ago and yet
they can't come for trial for one reason or
another earlier. Of course what happens in a case
like that is that people's recollection gets dim,
40 people speak from recollection and the longer away
from an incident you might think, the less able
would a person be able to remember vividly what
exactly took place, so in considering the
evidence in the case and the statement made by
the accused, you must take into account the length
of time since it has happened and make allowances
for any absence of recollection that there may be.
For instance, we got Sgt. Pusey being unable to
remember, for instance, whether he went to the home

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(continued)

or the scene where this incident took place, whether he went there on one day or another; whether the clothes were brought to him at the station or he took them at the premises, and so forth. The reason for that, naturally, is because of the length of time, but one of the other witnesses have said they have not remembered anything because of the lapse of time; nonetheless you bear that in mind when considering the details of the evidence.

10

What is the evidence you have heard members of the jury? It is not disputed or it is not denied that the incident took place at No.10 Boynes Road in St. Andrew; we are told it is off the Waltham Park Road - that is to say, however the deceased received the injuries which caused her death, it was received on those premises. You have heard that the premises are owned by Mrs. Graham, who is a shop-keeper and she lives on the premises, herself; the deceased Daphne Graham was her daughter and occupied a room in a house on those premises. According to what Mrs. Graham said she Mrs. Graham lived in one house - there are two houses on the premises, she lives in one and the other is tenanted and the daughter, the deceased, lived in a room in the building which was tenanted, and her room was to the front of that house.

20

The deceased, you heard from her mother, was 32 years of age when she died in 1971, and in view of certain questions that were asked of Mrs. Graham, I will remind you that Mrs. Graham said her daughter, the deceased, when she was a child in her teens, when she was 15, she became mentally ill and was admitted to the Bellevue Hospital for treatment for some two years, but since she was about 18 years of age she had been quite normal and had not been ill again. This is what Mrs. Graham told you.

30

Now, the accused is the nephew of a Miss Gwendolyn Lewis who was a tenant on the premises at No.10 Boynes Road at the time, and Mrs. Graham said that the accused lived on those premises at the time with his aunt.

40

The other witness, apart from Mrs. Graham, Mr. Ralston Jarrett, a storeman, he lived on the premises at the time as well and he was friendly with Miss Lewis.

So that is the situation, members of the jury, and those are the persons who appear before you to give evidence in the case. Now; the first thing as I have told you the prosecution must satisfy you about, is the death of the deceased and there is ample evidence of that if you accept it. You heard that the deceased was admitted to the Hospital, according to the evidence given by her mother, on the 11th of September, Saturday the 11th of September, 1971, Mrs. Graham said she went to see her in hospital and the last time she saw her alive was about mid-day on the 14th of September. The following day, the 15th, she went to the morgue and she saw her daughter's dead body there, and on the 22nd of September she said she was present when the post-mortem examination was performed on her daughter's body; she was there with her sister Adassa Surgeon and they both identified the deceased's body to Dr. DePass.

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(continued)

10

20

Dr. DePass told you of having performed the postmortem examination that day and the body he said was identified by Mrs. Surgeon. So there is ample evidence of her death. The question is, who killed her.

30

40

Before we look into the question of what evidence there is as to who killed her, and may I just say we are not really enquiring who killed her, we are enquiring whether the accused killed her, that is what the prosecution have set out to do in this case, and that is what you have to consider, but what killed her, let us look at what killed her. That evidence was given by Dr. DePass who is the Pathologist in charge of the Government Laboratory at North Street in Kingston. Dr. DePass told you he examined this dead body and he found on it three wounds. We can exclude wound No.2, members of the jury, which was a surgical incision of the left forearm, which was made in order to introduce an instrument in there to give the deceased blood, so we ignore that and we are left with two wounds, Dr. DePass said he found. The first one he said was a transverse incised wound one and a quarter inches long in the second left intercostal space, that is the space between the ribs, two inches from the mid-line, and it was a gaping wound. Dr. DePass demonstrated to you the site of that injury which was on the upper left breast. You will probably agree that is the site he indicated. The second

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wound about which we are concerned and which Dr. DePass spoke about was a gaping wound he said, one inch long in the left posterior auxillary line in the 6th left intercostal space - he demonstrated to you, he showed you the site of that injury, and remember he said it was somewhere on the left side, straight down in line with the arm, it was in that region there was that second injury. Those were the wounds which the doctor saw on external examination. He dissected the body and he told you that he found that there was approximately 500 c.c. (500 cubic centimetres) of blood and clots in the left chest cavity which caused the left lung to be largely collapsed; the presence of that amount of blood in the chest cavity pushed out the air and caused the left lung to be largely collapsed; in the sac around the heart was found approximately 400 c.c. of blood and clots. The first wound, he described the wound of the upper left breast which he described, he said that wound passed in through the second inter-space, that is the space between, I suppose the first two ribs it went downwards and medially, that is towards the midline, that is the direction of the injury downwards and towards the midline, entering the pericardial sac, that is the sac I told you about around the heart; that injury punctured the left main branch of the arteries which lead from the heart to the lungs. The left one, he said, was punctured and there was some bleeding into the fibers which support the organs of the chest, the technical expression is anterior mediastinum. The doctor said that in his opinion death was caused by shock and hemorrhage from these injuries, associated with a cardiac tamponade, that is a restricting of the heart by the presence of blood in the sac so that it could not function properly, it could not beat properly, it was constricted, that is perhaps the better word, by the presence of the blood in the heart and that was partially responsible for death; actually the doctor said the other wound, the one to the left side, did not penetrate the chest wall at all and obviously was not of any serious import. That is what the doctor said; those are the injuries he saw on the deceased and that is what he said caused her death.

Now the question that you will have to decide is how did she get those injuries, was it the accused, as the prosecution alleges, who inflicted those injuries on the deceased causing her death.

Now after lunch, after we resume at 2 o'clock we will go into that aspect of the evidence.

(LUNCHEON ADJOURNMENT) (Time: 1.03 p.m.)

THE RESUMPTION

(Time: 2.02 p.m.)

COURT RESUMES. Jury roll call answered. Prisoner in the dock.

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10 Mr. Foreman and members of the jury, at the adjournment I was just about to go on to that aspect of the evidence in the case which the prosecution asks you to say proves that this accused is the person responsible for inflicting the injuries on the deceased. Now I introduce my comments and my reminder to you of the evidence by this: in his address to you Mr. McCalla (Defence Attorney) said that there was no evidence produced at all to show any one who can actually say that they saw the accused stab the deceased or injured the deceased.

20 There is no such evidence, he says, and you will all we have heard, he says, is "I heard so and so" and "I heard so and so", that is all that we have heard. Of course it is true that there is no direct evidence that the accused injured the deceased and as regards the hearing so and so, witnesses did say that they heard something but you did not hear what they heard because what they heard is not evidence, but in the way that the courts are conducted that is the way that it is usually done, where the witness said I heard something and then I did so and so; but, members of

30 the jury, the fact that no witness has been produced who said "I saw the accused injure the deceased" is not a ground on which you can say that he cannot be convicted for this offence, because it is not always that a charge can be proved by the evidence of eye-witnesses. The fact that there are no eye-witnesses to the commission of the offence does not mean that the offence cannot be legally proved. You see, there

40 are certain types of offences which are by their very nature, by the very nature in which they are committed are done where there are no witnesses looking on and if the fact was that you had to produce somebody who saw the offence committed, then there would be several serious offences which could not be proved at all. For instance,

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if a man breaks into a house where one person alone lives and murders that person, you would not expect any eyewitnesses to be in the house and so an offence like that would be completely unestablished; but, that offence can be proved if there are sufficient surrounding circumstances from which a jury can infer that a particular person committed a murder, and that is what the prosecution seeks to do in this case. 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 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. Now circumstantial evidence is as valuable in proof of a charge as direct or eye-see evidence as it is called. It is just as valuable. Some people feel that circumstantial evidence is even better in certain circumstances than eye see or direct evidence. Now circumstantial evidence going to prove the guilt of an accused person, is this, that one witness must prove one thing, another prove another thing and these taken together prove the charge to the extent where you feel sure that it has been proved, but none of them taken separately proves the guilt of the accused; taken together they lead to the one inevitable conclusion of guilt, and if that is the result of circumstantial evidence, it is a much safer conclusion to come to than if one witness goes into the witness box and gives direct evidence and says "I saw the crime committed". The reason for that is that eye-witnesses may sometimes be mistaken about what they saw or may be influenced by grudge or by spite whereas circumstantial evidence is free from these blemishes, which is how it is usually put. Of course, not all circumstantial evidence is free from blemishes like that, because people might have motives in telling a lie and that must always be taken into account and

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guarded against; all the circumstances relied on must point in one direction and one direction only. If the circumstantial evidence falls short of that standard, if it does not satisfy that test, if it leaves gaps, then it is no use at all.

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Circumstances may point to one conclusion, but if one circumstance is not consistent with guilt it breaks the whole thing down. You may have all the circumstances consistent with guilt but equally consistent with something else too - for instance innocence; that is not good enough. What you want is an array of circumstances which point only to one conclusion and to all reasonable minds that one conclusion alone. In other words, members of the jury, you must be satisfied that there is no reasonable way or manner of accounting for the circumstances in this case than the conclusion that the accused is guilty of having inflicted injury on the deceased.

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So this is what the prosecution has done in this case; they have put before you circumstances given by Mrs. Graham, the mother of the deceased by Mr. Jarrett who lived in the yard, and in certain respects from the doctor, and they are asking you to put all those circumstances together and ask you to say that the only reasonable conclusion to draw from those circumstances, if you accept them, as established, and you feel sure that those facts are established, the only reasonable conclusion to draw is that this accused is the person who

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inflicted the injury on the deceased.

Now, if it falls short of that, if one fact points away from guilt to innocence then, of course, the whole thing breaks down. It is like a chain, and it is said that a chain is as strong as its weakest link, so if you have any weak links in the evidence, then circumstantial evidence is not made out, and you will have to give the accused the benefit of the doubt and acquit him.

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So let us look at the evidence itself, members of the jury, and see what those circumstances are. Now the first thing is, as I have told you that this accused lived in the yard at No.10 Boynes Road and the deceased lived there, so did Mrs. Graham and so did Mr. Ralston Jarrett, both Mrs. Graham and Mr. Jarrett said that on the morning in question, the accused was present on the premises - he, himself, told you that in the

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statement he made, that he was there on the premises.

Now there is some discrepancy as regards time, between what Mr. Jarrett told you and what Mrs. Graham said. Jarrett said it was about 7 o'clock that he heard something and went round to the front of the premises where he saw the deceased injured, whereas Mrs. Graham said that it was at about 7.30 when she had left the premises and was on the street that they heard something and went back and saw the deceased injured; so there is the discrepancy about the time. You always take into account matters of discrepancy in evidence, and you bear in mind, of course, that witnesses as regards time, unless they said they looked at a clock, guess time, estimate time, and give you a recollection of what they thought the time was. Perhaps in this case, having regard especially to the length of time that this thing happened, you might not think that the discrepancy of a half hour is of any significance at all - it is a matter entirely for you.

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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

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10 breast, She was standing and then she fell to the
floor. A tenant in the yard named Dorothy Lynch
was in the room with her; that was the only person
in there with the deceased. Dorothy Lynch, she
told you, has removed from the premises. She said
the deceased spoke to her, that is to Mrs. Graham,
and Mrs. Graham said after the deceased spoke to
her she went to the back of the yard, according to
her she went 'up the yard to the back' where she
saw the accused. Now this is important. She said
she saw the accused at the time with a ratchet knife
in his hand, and she has identified the knife which
you saw in court, Exhibit 1, as the knife, the
ratchet knife which she saw the accused with in his
hand. The knife she said, was closed at the time.
Then she said, she said to him, 'what she do you
why you stab her?'. The accused did not answer.
She repeated it, 'what she do you why you stab her?';
20 the accused still did not reply. She said she was
standing there, right in front of him, and she
boxed him twice and held him in his pants' waist.
He opened the knife which he had, and was coming
like that - and she showed you a motion - to cut
her with the knife, according to her, in her face;
she raised her left hand and got cut on the little
finger of her left hand. She continued to hold
the accused and she called to Mr. Jarrett, who was
there on the premises and after some time, accord-
ing to what she said, Mr. Jarrett came and took
30 away the knife from the accused. This is the
account so far of what Mrs. Graham said.

40 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?'.

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

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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 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 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. 10

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 she said to the accused, that is if you believe she said it, 'what she do you why you stat 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. 20 30 40

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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 policemen 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 normally 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 questions 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

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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 not use it in that sense at all, and you must not say, '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 has 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 irresistably 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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You remember he said that she searched him and took away a knife from him and she opened it and she was going to stab him back because he stabbed her daughter. He boxed the knife out of her hand and she took it up - sorry, he boxed the knife out of her hand and took it up with his hand and she grabbed at the knife and it cut her in that way. This is how he says she got cut. So you bear that in mind in deciding what you make of what Mrs. Graham said. He denied it happened in that way at all.

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Now another thing you bear in mind is this, that when, according to Mrs. Graham, she said the accused was cutting after her, she had slapped him, she held him in his trousers' waist and had slapped him, so the knife aspect of the evidence, was it because he had been slapped by Mrs. Graham

in circumstances where he does not think she should have slapped him at all, was this a reaction from the slapping rather than from the accusation?

So members of the jury, that more or less is the evidence given by Mrs. Graham.

10 Now Mr. Jarrett, he supports Mrs. Graham that the knife was taken away from the accused. What Mr. Jarrett said was that he was around at his room at the back of the same house in which the deceased lived and at about 7 o'clock he heard something and he went around to the front and he saw the deceased standing on the verandah holding up her stomach and crying - in demonstrating where the stomach was, he pointed to the left breast, and he saw her bleeding from the spot where he saw her holding. He spoke to her and she did not answer. He put her to sit in a chair and drew aside her dress and saw a cut at the left breast where she was holding. She could not sit up and he put her
20 across a bed to lie down. He went to the back and saw Mrs. Graham with the accused. The accused had a ratchet knife - he cannot say whether it is the one in court, but 'it is one like that', and Mrs. Graham said to the accused that he stabbed her daughter and she is going to hold him until the police come, and the accused said nothing.

I have dealt with that already. This is just another version of the accusation made to the accused and I have dealt with that already.

30 According to Mr. Jarrett and the accused, Mrs. Graham said that the accused was trying to get away from Mrs. Graham and the knife cut her on her finger, and he saw her finger bleeding. She showed him the cut, he said. Now he is really saying here that how Mrs. Graham got cut was when the accused was trying to get away the knife cut her, which would contradict what Mrs. Graham said, that it was a deliberate act on the part of the accused. As I said, we are not trying a cutting case here.
40 It is the picture which she presents of the accused cutting at her, deliberately, and this is contradicted by what Mr. Jarrett said that it is while the accused was trying to get away from her that the knife cut her, which puts a different picture on the matter, - it is a matter entirely for you - in which event the cut on her would not assist you at all on the question of whether the accused

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committed the act or not.

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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Mr. Jarrett said he took away the open knife from him and he later handed it over to the police - he said he handed it over on the following day to the police. The police came to the house at about 8 o'clock the morning and he handed over the knife to the police. Of course Sgt. Pusey said he got these articles in the course of his investigation and he received the knife from Ralston Jarrett. He said he did not go to the premises until about the 15th, whereas from what Mr. Jarrett said, it would have to be the 12th. So that is another discrepancy in the evidence which you must take into account, members of the jury. When you have these discrepancies they go to the question of credit. You will have to say whether in view of these discrepancies you are prepared to believe the evidence of one witness against the other. If the discrepancy is on a matter which is of no significance in the case, perhaps you will think it is not significant, whereas if it is on an important aspect of the case you will give it serious consideration in deciding what to believe. You bear in mind the haziness Sgt. Pusey had of the event. One cannot blame him; as a police sergeant he must have had dozens and dozens of cases since September, 1971, is it really surprising that he cannot remember what took place? In other words, is the fault on his side or Mr. Jarrett's side.

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That is the evidence Mr. Jarrett gave. What else is there in the case? There is this knife, members of the jury. As I told you Mrs. Graham identifies it as the knife which she saw in the hand of the accused. As far as the accused is concerned, he says that a small knife was taken from his pocket by Mrs. Graham. Sgt. Pusey identified the knife as the one he received from Mr. Jarrett. Mr. Jarrett was asked if he saw

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10 anything on the knife when he took it from the
accused and he said no, he did not notice anything
about the blade of the knife. That is what he
said, but Mrs. Graham said that blood stains were
on the blade of the knife, that is to say when she
saw the accused with it in his hand. Well this
is a matter which is open to you to take into
account. Do you believe Mrs. Graham that there
was blood stains on the knife? On the question of
whether there was blood stain on it or not, you
take into account what Mr. Jarrett said that he did
not notice anything about the blade. Would he
have noticed blood on it, if blood was on it? 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
20 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
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
30 stains was on the knife, anyway you treat it in
the way I have told you.

There is the shirt of the accused which was
produced. I don't know that it takes the matter
any further members of the jury, not on the
evidence that was presented to you. You saw his
shirt, it had a tear on it. Mrs. Graham
explained how it got that tear, apparently she
was quite enraged that morning - it takes a bold
40 woman to hold on to a man and box him; not only
did she do that, she said she tore his shirt off
him. Well it turned out, according to what she
said, she did not actually take the shirt off
his body but she apparently grabbed the shirt
and tore it and after she tore it the accused
took it off and threw it under a coconut tree and
when she returned from the hospital she took up
the shirt and handed it over to the police. Well,
we only have the shirt with the tear on it and I
50 don't think that can assist you at all on the
evidence you have before you.

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What else is there? Well Mr. McCalla, in his address to you, said, well, not only you don't have any evidence of anybody who saw the accused inflict the injury on the deceased, but you have no reason given why he should do it. In other words no motive. He said it is only a mad man who would, without any reason at all, stab a woman in those circumstances. Well, members of the jury, it is true that only mad people do things without any motive; every man usually has a reason for doing what he does, but what reason a person has for doing something is in his mind. Who knows what reason he has? Lots of times people do things which on the face of it there is no reason for doing it and they are perfectly sane. Because motive is something which a person has in his mind, the prosecution has not got to prove motive in any case. In other words, if they prove an act, they have not got to prove the reason why the act was done. Of course, if they can prove a reason, or suggest a reason why the act is done, well, it makes the case so much stronger. But, a lack of motive is also taken into account where the question of a person having committed an act is in issue. If he had no motive for it, well that is a relative matter for the jury's consideration on the question of whether he did the act or not, just the same way as if motive can be proved, it would be a matter to be taken into account. In other words, a lack of motive weakens the prosecution's case when they say a person did an act. Where the motive does not matter at all is there there*is positive evidence that the act was committed, but where the question whether it was committed or not is in dispute, or issue, motive plays a part in the way I have described it to you.

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*(sic)

Now is there any motive in this case? Well Mrs. Graham said that a week before the 11th, the day on which the deceased received these injuries, the accused and the deceased had a dispute. Now the question of what this dispute was about was not gone into; it is just said they had a dispute. Whether it was a dispute sufficiently serious to give him reason for wanting to injure her or not, we do not know; we just know there was a dispute. When she was cross-examined Mrs. Graham said she was never unkind to the accused, she treated him well and everybody in the yard treated him kindly; nobody quarrelled with anybody in the yard. In

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other words, it is one of those exceptional tenant yards where you have peace and quiet reigning at all times - this is what she said.

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10 Mr. McCalla said, well, there it is, nobody had any quarrel so the deceased and the accused did not have any quarrel or Mrs. Graham would have told you. Mrs. Graham said already they had a dispute. I don't know whether dispute and quarrel are the same thing. It is a matter for you. What Mrs. Graham said in cross-examination, does that not nullify the evidence that she gave that there was a dispute before?

There you are members of the jury; that is the evidence in the case. It is for you to say what you make of it.

20 Now the accused made a statement from the dock, which he was legally entitled to do, and you must take what he said into account in deciding whether or not the prosecution has established his guilt to the extent where you feel sure of his guilt. You take into account what he said. Of course, you bear in mind when you are considering what he said, that what he said is not on oath; it has not been tested by cross-examination like the witnesses for the prosecution were, and you attach to what he told you what weight you think fit in the circumstances, but take it into account in deciding his guilt and in deciding whether the burden of proof on the prosecution has been discharged. What he told you was, that morning, the morning of the 11th of September, he got awake and went out and was washing his face. He washed it and was drying his face with a towel when Mrs. Graham approached him and held him in his pants' waist - and as I reminded you already, she asked him what her daughter do him why he stabbed her. He did not answer as he did not know what she was speaking of. She started to tear off his shirt and then he asked her what he do her why she going on like that and she replied that she heard he was the one who stabbed her daughter. That is not evidence that he did it because she heard so - I have told you that already. He said she held him and said she would not let him go until the police came - and then I told you, according to what he said, she searched him and found a small penknife in his pocket, and then afterwards he said it was not so very small.

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(continued)

He has not said whether it is the one in court, and as I told you he explained how she got cut and she let him go and enter the front of the yard and she tell me I must leave her yard immediately. He went on to say he was there until Mrs. Graham's son came and he threatened him and he left the yard and on the 27th of September he was charged with this offence as Sgt. Pusey himself told you. That is what he said so you take that into account.

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When Mrs. Graham was giving evidence she was asked about her daughter, whether she was still ill mentally; you will remember Mr. McCalla asked her about her daughter and her illness. She said that from she has been perfectly well after she went to Bellevue at the age of 15 years, three years after that she had been perfectly well and she did not act strangely at home. Mrs. Graham told you that the deceased was a dressmaker and being a dressmaker she used scissors, so she said, and she was asked whether the deceased ever tried to cut herself with a scissors, and she said she does not know of that, of the deceased ever having tried to cut herself with a scissors, and one would naturally infer from that that it was being suggested that the deceased took her own life, the deceased stabbed herself, that is what one would normally infer from a question like that. But, of course, we have heard no evidence about that members of the jury, nobody has said that the deceased ever cut herself with a scissors and the fact that that question was asked made Miss Hylton ask Dr. DePass whether that fatal injury which he said the deceased had, could have been caused by being self-inflicted by the use of a dressmaker's scissors, and he said it could not have been self-inflicted with a dressmaker's scissors. The doctor described the injury to you. Remember he was asked by Mr. McCalla what a puncture wound was and he said it is a rounded wound. He was also asked what was an incised wound and the doctor said it required a sharp edge. In other words a slash, a clean edged wound is an incised wound. He saw no puncture wound on the deceased, the wound in her chest was a stab wound. He said he does not think the wound to the side is likely to have been self-inflicted, it is possible but unlikely because of the area in which it was, and it would be awkward for a person to inflict an injury on one's self.

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He said that the injury to the chest could possibly have been self-inflicted, that is the one to the chest.

In the
Supreme Court
of Jamaica

No. 9

Summing Up

21st January
1974

(continued)

10 In re-examination he said it is very unlikely to have been self-inflicted. When I asked him why, he said he does not think somebody would do that to themselves, that is how he feels, and he said it is more unlikely to be self-inflicted by a right-handed person because of the direction in which the injury went. You remember the direction is from left to right, towards the mid-line, that was the direction. But, of course, we have no evidence of whether the deceased was right handed or left handed, nor have we got any evidence as to whether the accused is right handed or left handed. The doctor was asked whether from the nature of the injury to the chest, where would the assailant, assuming an assailant inflicted the injury, where would the assailant be standing. The doctor said, 20 assuming the assailant is right-handed, he would be directly in front to have caused that injury and perhaps you can well see, having regard to the direction and if the person were left-handed it would be to the side. As I said, we have no evidence as to whether the accused is right or left handed. I don't know if that assists you.

30 There we have it members of the jury, you will have to say now whether that evidence is sufficient for you to infer whether it is a reasonable inference and the only reasonable inference to be drawn in the circumstances that the accused is the person who inflicted the injury on the deceased. As I said, all the evidence must point one way and if there is any part of it which points away from guilt you cannot say that you are satisfied to the extent where you feel sure that the accused was the person who inflicted the injury; you can only be satisfied that it was the accused who did it if the evidence which you accept leads 40 you irresistibly to that conclusion - the direct evidence and the inferences which you regard as reasonable inferences, and which you are prepared to draw in the circumstances. You will have to say what you accept, if you are not sure in all the circumstances that the accused was the person who inflicted the injury, you must naturally find him not guilty and it goes without saying that if you believe what he said, obviously he is not guilty, he was just washing his face when he is

In the
Supreme Court
of Jamaica

—
No. 9

Summing Up

21st January
1974

(continued)

being accused of something he knows nothing about. If that is the truth, if you believe that is what happened, you must acquit him. If you are not sure, having regard to what he said, whether he inflicted the injury, you must acquit him. If you don't believe him, look at the rest of the case, in all the circumstances do you feel sure it was the accused who inflicted the injuries; if you are not sure you must acquit him. If, however, you feel sure that he inflicted the injuries, particularly the fatal injury, on the deceased - the prosecution have to make you feel sure it was deliberately inflicted, this is what they have to prove - there is no direct evidence about that and it is a matter of inference again, is it a reasonable inference from the nature of the injury that it was deliberately inflicted? You heard what was the depth of the injury; it went into the chest wall between the ribs and all the way down into the heart. The doctor said, in regard to that injury members of the jury, it would have had to be in four or four and a half inches, and it would require mild to moderate force to inflict it. So you will have to say whether in all the circumstances the evidence proves to the extent where you feel sure, if you find that the accused did inflict the injury, that it was a deliberately inflicted injury, and this is a matter, as I say, of inference from all the surrounding circumstances.

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Now, if for any reason, you do not feel sure, if you cannot say that the irresistible conclusion is that it was deliberately inflicted, then there would be no satisfactory proof that it was, then you would have to acquit the accused as well. They have to prove it was deliberately done, and then if you feel sure, however that it was deliberately inflicted, then you will have to find that it was done with the required intention and I have told you about that already members of the jury, how you decide the question of intention. I will just tell you that the doctor said that a wound to that part of the body you would consider a serious injury and you would have to ask yourselves this, if a man takes a knife and deliberately plunges it into the chest of another person, what intention is disclosed by conduct of that nature, if it is not an intention to cause serious injury or to kill? So it is left for you to say whether, if you believe the accused deliberately plunged the knife into the chest of the deceased, whether

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10 you can reasonably infer and feel sure that he had
 the intention to do serious bodily injury. I don't
 see how you could find otherwise, but this is a
 matter entirely for you. I just tell you that is
 one of the ingredients about which the prosecution
 has to satisfy you, and the other matter which
 they have to prove is that it was not done in self-
 defence and it was not done under provocation,
 under legal provocation. They have to prove the
 negative, but members of the jury, if you feel
 sure that the accused deliberately inflicted this
 injury, the fatal injury, to the deceased,
 intending to cause her serious bodily injury or
 to kill her, then there is no evidence in the case
 from which you can say it was either done under
 provocation or in self-defence. You see, although
 the burden is on the prosecution to prove that
 these things did not exist, self defence and
 provocation, you cannot say that it happened, that
 20 it was done under provocation or in self-defence
 unless there is some evidence from which you can
 say it, and what you have is just the mere infliction
 of the injury on the deceased and there is no
 evidence as to self-defence and no evidence as to
 provocation, in which event you are entitled to
 say that it was done neither in self-defence nor
 under provocation.

30 You will have to say what you find, whether
 you find the accused guilty or not guilty. I have
 told you all the ingredients of the offence of
 murder, You will have to say what you find, at
 the end of the day, can you say that you are
 satisfied to the extent where you feel sure that
 it was the accused who inflicted the fatal injury
 to the deceased in circumstances amounting to
 murder, that is to say done intentionally,
 deliberately, without any lawful justification
 or excuse, or not done under provocation? If you
 have any doubt about it, members of the jury, if
 40 you are not sure, you must acquit him. If,
 however, you feel sure that the charge has been
 established, you feel sure and the evidence leads
 you irresistibly to the conclusion that the
 accused is guilty of the charge, then it is open
 to you to convict him of murder.

Will you now please consider your verdict, if
 you wish to retire to do so, please let me know.

(Time: 3.02 p.m.)

FOREMAN: We wish to retire.

In the
 Supreme Court
 of Jamaica

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 No. 9

Summing Up

21st January
 1974

(continued)

In the
Supreme Court
of Jamaica

No. 9

Summing Up

21st January
1974
(continued)

No.10

Verdict and
Sentence

21st January
1974

JURY RETIRE UNDER SWORN GUARD at 3.03 p.m.

JURY RETURN at 4.15 p.m.

JURY ROLL CALL ANSWERED. PRISONER IN THE DOCK.

No. 10

Verdict and Sentence

REGISTRAR: Mr. Foreman, please stand.

Mr. Foreman, members of the jury, have you arrived at your verdict?

A. We have.

Q. Is your verdict unanimous, that is to say are you all agreed? 10

A. Unanimous.

Q. Do you find the accused Donald Parkes, guilty or not guilty of this indictment which charges him with murder?

A. Guilty.

Q. Mr. Foreman, members of the jury, you say the accused is guilty of murder, that is your verdict and so say all of you?

A. Yes. 20

REGISTRAR: Mr. Parkes, please stand.

The jury having found you guilty, have you anything to say why the sentence of this court should not be passed upon you?

A. I don't hear what you say sir.

Q. The jury having found you guilty, have you anything to say why the sentence of this court should not be passed upon you?

A. Yes sir.

HIS LORDSHIP: Yes, what is it you want to say? 30

A. That I is not guilty sir, I am not guilty sir.

Q. Anything else?

A. I would like to see a Probation Officer.

HIS LORDSHIP: Well, not in this type of case.

(P R O C L A M A T I O N)

HIS LORDSHIP: Donald Parkes, the jury have found you guilty of murder; the sentence of the court is that you suffer death in the manner authorised by law.

(Time: 4.17 p.m.)

In the
Supreme Court
of Jamaica

No.10

Verdict and
Sentence

21st January
1974

(continued)

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No. 11

Notice and Grounds of Appeal

JAMAICA
CRIMINAL FORM 1

IN THE COURT OF APPEAL
NOTICE OF APPEAL OR APPLICATION FOR LEAVE TO APPEAL
AGAINST CONVICTION OR SENTENCE

Criminal Appeal No.29 of 1974

TO THE REGISTRAR OF THE COURT OF APPEAL

Name of Appellant: DONALD PARKES

20 Convicted at the Circuit Court held at KINGSTON

Offence of which convicted: MURDER

Sentence: DEATH

Date when convicted: 21.1.74

Date when sentence passed: 21.1.74

Name of Prison: GENERAL PENITENTIARY

I, the abovenamed Appellant hereby give you notice that I desire to appeal to the Court of Appeal against my CONVICTION & SENTENCE on the grounds hereinafter set forth on page 3 of this notice.

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Signed: DONALD PARKES
Appellant

28.1.74

In the Court
of Appeal of
Jamaica

No.11

Notice and
Grounds of
Appeal

28th January
1974

In the Court
of Appeal of
Jamaica

No.11

Notice and
Grounds of
Appeal
28th January
1974
(continued)

Signature and address of witness attesting mark

.....

Dated this 28th day of JANUARY 1974.

QUESTIONS	ANSWERS	
1. Did the Judge before whom you were tried grant you a Certificate that it was a fit case for Appeal?	NO	
2. Do you desire the Court of Appeal to assign you legal aid?	YES	
If your answer to this question is "Yes" then answer the following questions:-		10
(a) What was your occupation and what wages, salary or income were you receiving before your conviction?	LABOURER \$30.00 per week	
(b) Have you any means to enable you to obtain legal aid for yourself?	NO	
3. Is any Solicitor now acting for you? If so, give his name and address:	Mr. George McCalla of 60 Duke St. Kingston	20
4. Do you desire to be present when the Court considers your appeal?	YES	
5. Do you desire to apply for leave to call any witnesses on your appeal?	NO	
If your answer to this question is "Yes", you must also fill in Form 22 and send it with this notice		30

GROUND OF APPEAL OR APPLICATION

(GROUND 1) Insufficient evidence on which I should not be convicted.

Further Grounds of appeal will be filed by my attorney Mr. George McCalla of 60 Duke St. Kgn.

Appellant: Donald Parkes 28/1/74

Witness: C.O. Ewart S/Wdr 28/1/74

No. 12

Supplementary Ground of Appeal

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO.29/74

REGINA VS. DONALD PARKES

In the Court
of Appeal of
Jamaica

No.12

Supplementary
Grounds of
Appeal

24th May 1974

TAKE NOTICE that the Attorney-at-Law at the hearing of the above appeal will seek leave to urge and argue as his principal Ground of Appeal, the following:-

10 "2. The learned trial Chief Justice mis-
directed the jury on a matter especially vital
in a case where the prosecution had sought to
establish the guilt of the appellant by cir-
cumstantial evidence, to wit, the value, if
any, of the fact of silence on the part of a
person suspected or accused of incriminating
facts or an unlawful act. The passage com-
plained of appears at pages 48 to 49 of the
Record of Appeal herein - photocopies of the
20 said pages with the passages complained of
underlined are attached to this notice. The
particulars of this misdirection are
complained of as follows:-

(A) The Learned trial Chief Justice, having
rightly directed the jury (albeit
impliedly) that the reaction of a person
accused of an unlawful act is evidence
from which they can infer that he
30 accepted in whole or in part such an
accusation, erred, with respect, in
directing the Jury

(1) that silence was a reaction and

(2) that such silence tantamounts to
either

(i) an acceptance in whole or in
part of the accusation or

(ii) is by itself probative of his
guilt of an offence or at
least of the fact of his having
40 committed the criminal act.

In the Court
of Appeal of
Jamaica

No.12

Supplementary
Grounds of
Appeal

24th May 1974
(continued)

(B) Assuming that the learned trial Chief Justice's direction could be construed to mean that the mere fact that a person accused of an unlawful act is silent in the face of the accusation is not a basis upon which an inference against him can be drawn, he further erred, with respect, by impliedly qualifying this proposition as not extending to a case where the accusation is made by a private citizen and not a police officer.

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WHEREFORE THE APPLICANT PRAYS:-

- (1) that he be granted leave to appeal
- (2) that his application be treated as the Appeal
- (3) that his conviction be quashed and his sentence set aside
- (4) that this Honourable Court may grant such other relief as may be just.

DATED the 24th day of May, 1974.

(Signed) Keith St. Bernard

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KEITH ST. BERNARD

Attorney-at-Law for the Appellant.

No.13

Judgment

12th July 1974

No. 13

Judgment

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL No. 29 of 1974

BEFORE: The Hon. Mr. Justice Luckhoo, Ag.P.
(Presiding)

The Hon. Mr. Justice Swaby, J.A.

The Hon. Mr. Justice Robinson, Ag. J.A. 30

DONALD PARKES v. R.

B. Macaulay, Q.C. and K. St. Bernard for the
applicant.

Chester Orr, Q.C. and N. Sang for the Crown.

May 29; July 12, 1974In the Court
of Appeal of
JamaicaLUCKHOO, Ag.P.:

No.13

Judgment

12th July 1974
(continued)

On January 21, 1974, the applicant Donald Parkes was convicted in the Home Circuit before the Chief Justice and a jury on an indictment charging him with the murder on September 14, 1971, of Daphne Graham, and was sentenced to death. He now applies for leave to appeal against conviction.

10 The case for the prosecution rested entirely on circumstantial evidence. The deceased who was 32 years of age at the time of her death resided in one of the rooms on premises situate at 10, Boynes Road in the parish of St. Andrew. Her mother Minna Graham resided in another house on the same premises. Minna Graham testified that she saw the applicant on the morning of September 11, 1971 standing on the verandah onto which the deceased's room door opened. He had both hands behind his back. At about 7.30 a.m. when she left the

20 premises for work the deceased was standing at her room door. When she got to the road one of the tenants on the premises presumably, one Dorothy Lynch, called out to her. She thereupon went to the deceased's room. Dorothy Lynch was present. The deceased was standing and holding the left breast. She was bleeding. She then collapsed. Minna Graham said that she spoke with the deceased and then left for the back of the premises. On getting there she saw the applicant. He had a

30 ratchet knife in the hand. It was closed. She asked him "What she do you why you stab her?". He did not reply. She repeated the question. Again he did not reply. She then slapped him twice across the face, held him by the waist and tore his shirt telling him that she would not let him go until the police came. He thereupon opened the ratchet knife the blade of which appeared to be blood stained. He made as if to cut her face.

40 She raised her left hand to avoid the blow and received a cut on a finger which later took five stitches. She called out for one Jarrett, the applicant's uncle-in-law who came up. The applicant handed over the knife to Jarrett. The deceased was taken to the Kingston Public Hospital where she was admitted a patient and underwent surgery. She succumbed to her injuries on September 14, 1971.

In the Court
of Appeal of
Jamaica

—
No.13

Judgment

12th July 1974
(continued)

The medical testimony disclosed that the deceased received two stab wounds to the chest, one of which penetrated into the pericardial sac, The cause of death was shock and haemorrhage resulting from the penetrating stab wound which, in the doctor's opinion, could have been caused by the knife taken from the applicant. Jarrett testified that he was at the back of the yard when his attention was attracted by someone. As a result he went to the front of the premises and saw the deceased standing on her verandah crying and holding the left breast. She was bleeding. He spoke to the deceased but she did not reply. He then put her to sit down and on drawing away her dress saw a cut just over the left breast. He attempted to leave her in a sitting position but she over-balanced and he put her to lie upon her bed. He then went towards the back of the premises where he saw Minna Graham holding on to the applicant. Minna Graham was saying that the applicant had stabbed her daughter and that she would hold him until the police came. The applicant was trying to get away from Minna Graham's grasp and Minna Graham showed him (Jarrett) a cut she had got on her finger. The finger was bleeding. Jarrett said that he asked the applicant what had happened but the applicant did not reply. He took away the knife from the applicant but did not notice anything about the blade. He then left to get a car to take the deceased to hospital. He later handed the knife to the police.

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According to Minna Graham the applicant and the deceased had had a fuss about a week before the deceased received the fatal injuries. Dorothy Lynch did not testify at the trial apparently her whereabouts were then unknown.

The applicant in an unsworn statement from the dock denied inflicting any injury on the deceased. He said that on the morning of September 11, 1971, on awakening he came outside and washed his face and was about taking his towel to dry his face when he saw Minna Graham. She approached him and held him by the pants waist and asked him what her daughter did for him to stab her. He did not reply. Because he did not know what she was speaking about he was unable to answer her. She began to tear off his shirt. He asked what he had done her for her to be going on like that and she replied that she heard that he

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was the one who stabbed her daughter and she would hold him until the police came. She searched his pocket and found a penknife. She opened it and said she was going to stab him because he was the one who stabbed her daughter. He struck the knife from her hands and told her that it was his knife. He picked up the knife and she grabbed at it and got cut between the finger. Then she let him go and went to the front of the yard.

In the Court
of Appeal of
Jamaica

—
No.13

Judgment

12th July 1974
(continued)

10 On the case for the Crown there was evidence
of a possible motive and opportunity for committing
the crime as well as the circumstance of the appli-
cant being seen a short distance from the scene of
the crime soon after the fatal injury was inflicted
on the deceased holding a knife, which was at that
point of time closed but which on being opened
revealed the blade which appeared to be blood-
stained. There was the further circumstance that
when twice accused by the deceased's mother of
20 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
30 the applicant's guilt though it could not be
regarded by itself as an admission of guilt. One
of the grounds of appeal strenuously argued on
behalf of the applicant was that it was not compe-
tent for the jury to draw an inference adverse to
the applicant in this regard as he was not obliged
to say anything at all and that this was a right to
which he was entitled under the common law regard-
less of whether or not the accusation was made by
or in the presence of the police. Mr. Macaulay
submitted that the learned trial judge erred in
40 giving the direction he did give in this regard.
In support of his submission Mr. Macaulay referred
us to the case of Hill v. R. (1971) 55 Cr.App.R.108.
In that case the Judicial Committee of the Privy
Council held that there is no obligation upon a
person to comment when he is informed that someone
has accused him of an offence, there being a clear
and recognised principle of the common law that a
person is entitled to refrain from answering a
question put to him for the purpose of discovering
50 whether he had committed a criminal offence. In

In the Court
of Appeal of
Jamaica

No.13

Judgment

12th July 1974
(continued)

that case during the course of a police search packets of ganja were found in a shopping bag in a woman's room. The woman said that the shopping bag had been brought there by the accused. The accused was not on the premises when the search was in progress but he was brought there by another police officer. He was told by the officer who had conducted the search that the woman had said that the ganja belonged to him. He remained silent. At the trial the accused remained silent and called no witness. He was convicted of unlawfully having ganja in his possession. His appeal to the Court of Appeal of Jamaica against conviction was dismissed. The Court of Appeal held that the accused's silence when told of the accusation made against him by the woman amounted to an acknowledgment by him of the truth of the statement which the woman had made. The Privy Council held that silence alone on being informed by a police officer that someone else has made an accusation against him cannot give rise to the truth of the accusation and that was so whether or not he was cautioned. The Judicial Committee observed that it may be that in very exceptional circumstances an inference may be drawn from a failure to give an explanation or a disclaimer. Mr. Macaulay contended that any inference adverse to the accused person can only be made where there is positive conduct, action or demeanour and not where there is mere silence. Mr. Macaulay further contended that although that case and such other reported cases as he has been able to discover in relation to similar questions concern accusations made by, to or in the presence of police officers, that does not provide any distinguishing feature for a private citizen making the accusation may thereafter cause the accused person to be arrested and charged with the offence in respect of which he was accused. Mr. Chester Orr on the other hand submitted that in the circumstances of the instant case the accusation by the deceased's mother called for a disclaimer from the applicant. He referred to the case of Reg. v. Mitchell (1892). 17 Cox C.C. at p.508 where Cave, J. in his directions to the jury said:

"Now the whole admissibility of statements of this kind rests upon the consideration that if a charge is made against a person in that person's presence it is reasonable to expect that he or she will immediately deny it, and that the absence of such a

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denial is some evidence of an admission on the part of the person charged, and of the truth of the charge. Undoubtedly when persons are speaking on even terms and a charge is made, and the person charged says nothing, and expresses no indignation, and does nothing to repel the charge, that is some evidence to show that he admits the charge to be true."

In the Court
of Appeal of
Jamaica

—
No.13

Judgment

12th July 1974
(continued)

10 Stress was laid upon the fact that the Privy
Council's opinion in Hall v. R. related to the
accused's silence when informed that someone else
had accused him of an offence and that it was not
a case where there was an accusation made direct
to the accused person. We are of the view that
this is indeed a valid point of distinction between
Hall v. R. and the instant case, and that this case
falls within the ambit of the passage appearing in
20 Archbold's Criminal Pleading, Evidence and Practice
(37th Edition) paragraph 1126 cited with approval
by the Privy Council in Hall v. R. It was open to
the jury to conclude that the applicant's silence
in the face of the deceased's mother accusation
was conduct (albeit conduct of a negative kind)
or demeanour which amounted to an acceptance of it.
Indeed the learned trial judge in his directions
to the jury said that silence could not by itself
be regarded as an admission of guilt but could be
regarded as one of the circumstances in the chain
30 of circumstantial evidence upon which the Crown
relied in proof of the applicant's guilt, if the
applicant's explanation at the trial for his
silence were rejected. Such a direction we think
to be more favourable to the applicant than it
need have been. We think that the submissions
made on this ground fail.

40 It was further submitted 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. 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

In the Court
of Appeal of
Jamaica

No.13

Judgment

12th July 1974
(continued)

witness was substantially accurate and could have caused no improper prejudice to the applicant.

Finally, it was submitted by Mr. Macaulay that the verdict was unreasonable and could not be supported having regard to the evidence. We are of the view that the evidence adduced by the Crown was sufficient to discharge the onus of proof placed upon the Crown. In the result the application for leave to appeal is refused.

In the Privy
Council

No.14

Order granting
Special Leave
to Appeal in
forma pauperis
to Her Majesty
in Council

12th November
1975

No. 14

Order granting Special Leave to
Appeal in forma pauperis to Her
Majesty in Council

AT THE COURT AT BUCKINGHAM PALACE

The 12th day of November 1975

PRESENT

THE QUEEN'S MOST EXCELLENT MAJESTY
IN COUNCIL

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WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 29th day of October 1975 in the words following viz.:-

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"WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of Donald Parkes in the matter of an Appeal from the Court of Appeal of Jamaica between the Petitioner and Your Majesty Respondent setting forth that the Petitioner prays for special leave to appeal in forma pauperis from a Judgment of the Court of Appeal of Jamaica dated the 12th July 1974 which dismissed the Petitioner's application for leave to appeal against his conviction in the Home Circuit Court Kingston of murder: And humbly praying Your Majesty in Council to grant the Petitioner special leave to appeal in forma pauperis from the Judgment of the Court of Appeal of Jamaica dated the 12th July 1974 and for further and other relief:

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10 "THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and in opposition thereto Their Lordships do this day agree humbly to report to Your Majesty as their opinion that special leave ought to be granted to the Petitioner to enter and prosecute his Appeal in forma pauperis against the Judgment of the Court of Appeal of Jamaica dated the 12th July 1974:

"And Their Lordships do further report to Your Majesty that the authenticated copy of the Record produced by the Respondent upon the hearing of the Petition ought to be accepted (subject to any objection that may be taken thereto by the Petitioner) as the Record proper to be laid before Your Majesty on the hearing of the Appeal."

20 HER MAJESTY having taken the said Report into consideration was pleased by and with the advice of Her Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

30 Whereof the Governor-General or Officer administering the Government of Jamaica for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

In the Privy Council

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No.14

Order granting Special Leave to Appeal in forma pauperis to Her Majesty in Council

12th November
1975
(continued)

N. E. LEIGH

IN THE PRIVY COUNCIL

No. 40 of 1975

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

RECORD OF PROCEEDINGS

SIMONS MUIRHEAD & ALLAN
40 BEDFORD STREET
LONDON WC2E 9EN

Solicitors for the
Appellant

CHARLES RUSSELL & CO
HALE COURT
LINCOLN'S INN
LONDON WC2A 3UL.

Solicitors for the
Respondent