

IN THE CAYMAN ISLANDS COURT OF APPEAL
 HOLDEN AT GEORGE TOWN, GRAND CAYMAN
 C.I.C.A. NO. 10/87 - *Criminal*

BEFORE: THE HON. PRESIDENT
 THE HON. MR. JUSTICE GEORGES, J.A.
 THE HON. MR. JUSTICE HENRY, J.A.

ALBERT JACKSON vs. REGINA

APPELLANT IN PERSON

MR. R. SHEEHAN FOR THE CROWN

2/88
APRIL 17, 1989 & 2ND SEPTEMBER 1989

ZACCA, P. :

On April 17, 1989, we dismissed this appeal and affirmed the conviction and sentence. We promised to put our reasons into writing. This we now do.

At the commencement of the hearing of the appeal Mr. Pierre Lamontagne, Q.C., who had been assigned to argue the appeal on behalf of the appellant, informed the Court that the appellant did not wish him to argue his appeal. The appellant expressed the desire to represent himself on his appeal and stated that he did not require the service of Counsel. He also rejected an offer by the Court to have the matter adjourned to allow him to be represented by Counsel.

The Court granted leave for Mr. Lamontagne to withdraw and the appeal proceeded with the appellant making submissions on his own behalf.

The appellant was charged with the murder of Loris Agatha Randal on 6th February, 1986. The jury returned a verdict of guilty of manslaughter on 28th April, 1987 by a majority of nine to three. The appellant was sentenced to 14 years imprisonment. From this conviction

and sentence, he has appealed.

The deceased was a domestic helper employed to Mr. J. Powell at West Bay. She occupied the maid's quarters which was a building away from the residence of Mr. Powell.

The appellant was a married man with children. He also had an intimate relationship with one Imogene Gibson. At the same time, he was involved in an intimate relationship with the deceased.

The deceased and the appellant became friends sometime in 1985. He visited her at her room on several occasions. Several witnesses stated that prior to the 6th February 1986, they were having quarrels and the relationship was strained.

On 6th February, 1986, the deceased was discovered in a swimming pool at the residence of Mr. Powell wearing a bathing suit with her right breast exposed. She was removed from the pool and her body examined by Dr. Noel March, a pathologist.

A post mortem examination revealed that death was due to drowning. The medical evidence, however, disclosed that she had been severely beaten in her abdomen and head prior to being placed in the swimming pool. It was the opinion of the Doctor that when placed in the pool, she was unconscious. She had apparently had recent sexual intercourse.

It was discovered that two light bulbs, which were on the building occupied by the deceased, were broken and the pieces of glass from the bulbs were seen on the ground. These pieces of glass were recovered from the ground and later sent to Mr. Ronald Rawalt in Washington D.C., a Special Agent of the F.B.I. for examination. Pieces of glass which were found on a pair of slippers worn by the appellant and pieces of glass found in a motor vehicle which the appellant had driven, were also sent to Mr. Rawalt.

The light bulbs were seen to be in good working order on the night of the 5th February, 1986. It was the evidence of Mr. Rawalt that the pieces of glass recovered from the ground were from a light bulb and that the pieces of glass recovered from the appellant's slippers and the car, were similar to the pieces found on the ground. It was his conclusion that all the glass came from the same light bulb. He, however, admitted under cross examination that he could not say with certainty that the glass from the slippers and the glass taken from the car came from the light bulb.

Fingerprints matching the appellant's were found on the screen of a door and louvre windows leading into the deceased's room. It is admitted that the appellant visited the deceased regularly prior to her death and so no weight could be attached to the finding of the fingerprints. The evidence, however, indicated that the screen was found in an upside down position, suggesting that the intruder had removed the screen but in replacing it had put it back upside down.

Evidence was given by Imogene Gibson to the effect that she was asked by the appellant to write a letter to the deceased. The letter was tendered in evidence to suggest that there were disagreements between the appellant and the deceased.

The letter read :

"Dear Loris,

I am sorry for the disturbance I caused between you and Albert. I know he loved you very much. I also know that he stopped loving me a long time ago but I figured that if I could tell you thing to cause problems that he would have come back to me. I told you a lot of lies about him I also told you that he slept with me everynight of last week well my dear that was not true but it served the purpose I intended for and that was to create problems with you and him I am sorry about the whole thing because it still didn't help me. I only made a fool of myself and made you look at me now as a trouble maker and a liar. Life between me and Albert has finished and I can't

" go on like this anymore. He love you and you only hold on to him and he will care for you. Forgive me for what I did. This will be the last you will ever hear from me again I now have to make a decision and there is only one thing to do so when you have read this letter don't ever try to contact me ever again. Don't let anyone read read this letter or tell anyone about this it and less is it is Albert alone.

Imogene Gibson
22/1/86 "

Imogene Gibson also stated that the appellant slept at her apartment on the night of the 5th February, 1986. She admitted, however, that whilst she was asleep, the appellant could have left the apartment without her knowledge.

Arney Lorraine Ebanks who lived in an apartment adjoining the apartment occupied by Imogene Gibson and the appellant on the night of 5th February, stated that at about 1.00 a.m. in the morning of the 6th February, he got awake to go to the bathroom. He heard the door of the adjoining apartment open and close. He saw a shadow cross his window but could not say whether it was a male or female.

Evidence was given by Evanisto Garvin a gardener employed to Mr. Jimmy Powell, that on a date sometime in January 1986 he saw the appellant and the deceased in the deceased's room. As he put it, he saw "the appellant riding her belly". She was lying on the bed and the appellant was on top of her. The deceased's two hands were tied with a belt in front of her.

It is fair to say that the reasonable inference from the evidence was that the deceased was not regarded as a good swimmer, if indeed she was able to swim at all.

On 17th May, 1986 an interview with the appellant was conducted by Chief Inspector Kenrick Hall and Brian Parry of the Cayman Island Police Force. Questions were asked by Parry and the answers recorded by Hall.

The appellant was cautioned by Parry and the recorded questions and answers were tendered in evidence by consent as Exhibit 16. This was indicated at page 153 of the Record.

The Crown relied heavily on these questions and answers and indeed the evidence as disclosed in the questions and answers went to the proof of the alleged offence of murder.

The relevant questions and answers are as follows :

10 Q. You kill Lauris Randall didn't you ?

A. No but I did go up there the night in question. I went up there at about 1 am. A.J.

11 Q. Who let you in ?

A. She let me in. A.J.

13 Q. What you did when you get in ?

A. We talk some, then we had sex. A.J.

14 Q. After you had sex what happen ?

A. She say she was going in the pool. I must come and go with her. I said I was coming and I drep a she put on her swim suit and she left. I fell off back AJ to sleep in the bed. AJ

15 Q. How long you slept about.

A. Could be about an hour and a half to two hours AJ

16 Q. What happen then ?

A. I wake up I did not feel her or see her in the bed along side of me. I then remember that she said she was going in the pool and I was going with her. I got up and went over to Jimmy's yard, when I got by the pool I saw the form of a person on the bottom of the pool. I got frighten ran back to the apartment put on my shirt and pants and left because I was wearing AJ my brief frighten AJ.

17 Q. How could you see all this in the middle of the night ?

A. Out by Jimmy house the lights was on and they burn all night. AJ

- 25 Q. In your statement of the 6th February 1986 you talk about a quarrel between you and Lauris at Lauris house when Skinny Donalds was there what happen then ?
- A. Yes I remember now I did slap her in the bath room that night that Skinny Donalds and them was there. AJ AJ
- 28 Q. Have you ever kick or punched her in the belly ?
- A. No Sir, I would say this much when we was in Jamaica in December 1985 she had her monthly period but none since she came back to Cayman. AJ
- 31 Q. Albert did you ever put handcuff on Lauris ?
- A. No Sir, I don't own a pair of handcuff I had one when I was a police but in September of last year it was handed over to Sgt. Ena Forbes along with the rest of my police kit.
- 34 Q. You said earlier in answer to a Question that you never tied Lauris up the Gardner Garvin at Jimmy Powell's Residence said that in January 1986 he heard screams from Lauris house about 2 or 3 pm one afternoon and he open the back door and look in and he saw you and she on the bed and you had her wrist tied up with a belt is that ture or not ?
- A. It isn't. AJ
- 63 Q. Where you say she let me in through the door facing Ranburn Christian home which door do you mean ?
- A. The back door. AJ
- 64 Q. That was about 1 am on Thursday 6th February 1986
- A. Yes.
- 67 Q. What did you do between then and going up to Willie Farrington Drive at 1 am on Thursday 6th Feb. 1986 ?
- A. I went to Imogene apartment and was watching T.V. A.J.
- 68 Q. How long did you stay there ?
- A. Might have been until about ten minutes to one or so. AJ
- 70 Q. The people in Imogene's house ?
- A. Yes she was sleeping. AJ

- 76 Q. Tell me in your own words what happen after Lauris let you in ?
- A. We sat on the bed and talk and talk for a couple of minutes then we lie down on the bed; we started to play with each other, I then took off my clothes and she took off hers. AJ
- 77 Q. What was she wearing when you went over there Albert ?
- A. As far as I can remember she had on I think was her night dress. AJ
- 79 Q. After Lauris took off her clothes what happen ?
- A. We lie back down on the bed and continue playing with each other and we end up having sex after which I put on my brief, lie down back in the bed and she went to the bath room the last I remember hearing was when she said she was going in the pool and that I must come and go with her. I told her she must go ahead I was coming and she went through the door and I fell off to sleep. AJ
- 80 Q. What you did when you woke up ?
- A. After I didn't feel her in the bed or see her in the bed, I remembered then that she said she was going in the pool and I went through the front door out by the pool when I got there I saw the form of a person at the bottom of the pool and I got scared rushed back to the apartment put on my pants and shirt also my slippers. AJ
- 81 Q. Are we talking about these "Shown exhibit MC 1 right slipper, MC 2 left slipper and M.B. 1 Green shirt ?
- A. Yes what they took from me. AJ
- 82 Q. What happen after you put your clothes on ?
- A. I ran away from the place because I was scared of being accused of something I didn't do. AJ
- 86 Q. You are being interviewed about a very serious subject and you are saying that when we first asked you about your movement you told us lies but what you are now telling us you say is the truth I have asked you twice in this interview when you went to Lauris at 1 am on 6/Feb. 1986 if as you say you are telling the truth and have nothing to hide why is this ?

A. The car that I was using was belong to Imogene Gibson but until this day she dont know that I moved her car out of the yard it is insured for both of us to drive and why I wouldn't say anything before about the car when I was asked was because I was afraid of her getting involved. AJ.

87 Q. So Imogene dont know that you went out that night ?

A. No. AJ

88 Q. Lauris Randall had horrific abdominal injuries inflicted on her just prior to death Albert I believe you caused those injuries ?

A. No Sir I did not. I was told about a week after by some guys from East End that Lauris came to East End on the Wednesday to try and get her baby from Linsel but they wouldn't give it to her and that him and her had a big argument over the matter. Also that she was taking him to court on this Friday which would have been the 7th Feb. 1986. AJ

91 Q. I believe having got in through the back door you had another row, beat her up causing these injuries and to cover up what you have done put her into a swim suit and throw her into the pool, that is what happen Albert ?

A. No Sir. AJ

95 Q. Its foolish to suggest that she said she wanted to go in the swimming pool at that hour of the morning because she couldnt swim and was afraid of the water this is according to several witnesses ?

A. No its not the first time she been in that pool also me and her and some friends including her Sister Maxine went in the sea at Plantana Cond, around could be 9 to 10 o'clock a night also about two Sundays before her death her myself and a friend of hers name Dorrett and Dorrett little boy went in the sea on Boggy Sand Road, while there on one occasion she left me where I was out in the sea and she went back shore, she hollar out and called to me and said I must come quick. I rush to her from where I was and when I got to her all she could say was help me I asked her want's wrong she said her leg was cramped and I had to pull her in close on the sand and started to squeeze up her leg because it was hard like. AJ

98 Q. The body also had tie marks on the wrist and we have the evidence of Garvin the Gardener who say that he saw you with Lauris in bed tied up by her hands in January 1986. Is this just another coincidence ?

A. That's not so. AJ

99 Q. Well it is so that Lauris had the injuries to her wrist because they were plainly there for all to see. You are either guilty of this murder or the unluckiest man on the island. Showed exhibit R.B.I and exhibit B.P. #2 ~~you-still-knew-nothing-about~~ B.P. #2 is a piece of cord from by Lauris bed in which you just had sex with her. R.B. #1 is another piece of cord from your dressing table at Windsor Park. Are you still trying to tell me that you didn't tie Lauris up ?

A. No Sir. I didn't tie her up at no time. AJ

102 Q. It is just to unbelievable to be true Albert, to many coicidences and too much evidence to say you kill her plus motive, plus opportunity is that wrong ?

A. I didn't kill Lauris. A.J.

104 Q. But the real reason is that you did caused these injuries to her and put her in the pool hoping that you never would be found out and now you have been, you are telling some poor lies to get out of it ?

A. I didn't put no one in no pool I didn't caused no injuries to Lauris neither did I kill her. A.J.

105 Q. If what you just said is true why did you smash up the eve lights at Lauris house ?

A. I did not smash up no eve lights. AJ

106 Q. I believe you smashed them up so no body would see you carrying her over to the pool after you beat her up ?

A. I didn't smash up no eve light neither did I carry no body and put in any pool. AJ

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The appellant in his defence whilst admitting that the deceased and himself did have quarrels, denied that he had killed her. He denied being at her premises in the early morning of the 6th February, 1986. He stated that the last time he went to the deceased's home was on the first Monday night in February. This would be some three days prior to the day the deceased was found dead. On the night of the 5th February, 1986 he was at Imogene Gibson's apartment. He slept on the floor in her room after watching television. He got awake at 6.00 a.m. next morning. He denied having left the apartment during the course of the night. He handed over a pair of slippers to the police. He also denied that he had beaten the deceased or placed her in the pool.

The appellant in his evidence was examined by his Counsel as to the questions and answers recorded in Exhibit 16.

The appellant stated that in answer to Question 10, he only said "No". He denied giving the answers recorded in questions 14, 15, 16, 17. He said that question 18 was never asked nor did he give the answer as recorded.

Under cross examination the appellant admitted that the answers as recorded to questions 68, 73, 74 and 75 were correct. He, however, stated that he disagreed with every part of the interview which indicated that he was at the deceased's home on the night she died. It was the appellant's case that the police did not accurately record what he had said and that certain of the relevant questions were not asked.

At the hearing of the appeal, the appellant stated that he was not challenging the judge's summing up but relied on submissions that there was no evidence to warrant a conviction for murder or manslaughter.

The appellant contended that the document containing the questions and answers was not a true document in that several of the questions were never asked nor did he give the answers to several of the questions.

He specifically challenged those questions and answers which placed him at the deceased's house in the early morning of the 6th February, 1986. He further submitted that he was not given the privilege of reading over the document, and that the document should not be given any weight.

The appellant further submitted that there was no certainty that the deceased drowned in Mr. Powell's pool. It was his belief that she had drowned elsewhere and then taken to Mr. Powell's pool.

We gave careful consideration to the submissions made by the appellant. We have also examined the summing up of the learned Trial Judge.

The matters raised by the appellant were matters for the consideration of the jury. It has not been suggested that the learned Trial Judge misdirected the jury or did not properly leave these matters for their consideration.

We find that there was sufficient evidence on which the jury having been properly directed, could have arrived at the verdict which they did.

The learned Trial Judge having left a verdict of manslaughter for their consideration, it was open to the jury to return such a verdict.

We could see no reason for setting aside the verdict of the jury. We were also of the view that the sentence imposed on the appellant was not manifestly excessive and was appropriate under the circumstances.