

J A M A I C A

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL No. 33/75

BEFORE:     The Hon. Mr. Justice Luckhoo, P. (Ag.).  
              The Hon. Mr. Justice Swaby, J.A.  
              The Hon. Mr. Justice Zacca, J.A. (Ag.).

REGINA    v.   HUBERT EDWARDS

Mr. N. Edwards, Q.C., and Mr. S. Morris and

Miss D. Lightbourne for the applicant

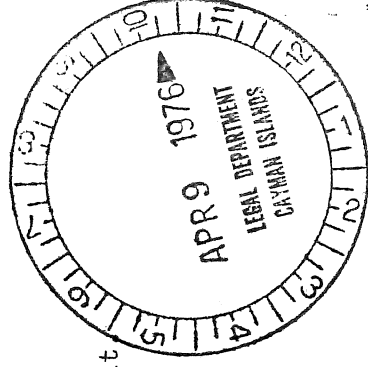
Mr. B. Macaulay, Q.C. for the Crown.

October 21, 22; and  
December 19, 1975

Zacca, J.A. (Ag.):

On March 5, 1975, the applicant Hubert Edwards was convicted by a Jury before White, J. in the St. Mary Circuit Court for the murder of Theodora Gibbs on May 12, 1974 and was sentenced to death. He has applied for leave to appeal against his conviction.

The applicant and the deceased lived together as man and wife at Bottom Bay, Annotto Bay in the parish of St. Mary. They lived in a small wooden structure containing two sections; one section used as a bedroom and another small section used as a kitchen. There was a partition between the bedroom and the kitchen, this partition being about 9 inches in height. There was a double bed in the room. The height of the bed from the floor was stated by one witness to be 18 inches, and by another witness 2 ft.



The deceased was alleged to have died from asphyxia as a result of a broken neck. The case for the Crown rested mainly on circumstantial evidence. The case for the Crown as unfolded by the witness for the Crown was that at about 8 p.m. on the 11th May, 1974 the applicant was seen by one Sydney Bailey to enter a dance hall in Annotto Bay. He remained there for about ten minutes and on coming out of the dance hall the applicant was heard to say to himself "I tell you not to go to the dance and you pass me order and go; when you come home you going to see out of me and you which one badder than the other ... " Mr. Bailey also stated that at about 11 p.m., he, Bailey, went into the dance hall where he saw and spoke to the deceased. At about 1 a.m. he left, leaving the deceased in the dance hall.

Andel Robinson who gave evidence on behalf of the Crown also stated that he saw the deceased and the applicant go into the dance hall on the night of the 11th May, 1974. At about 11 p.m. he saw the applicant chasing the deceased. The applicant had a big piece of stick in his hand and he was hitting the deceased in her back whilst the deceased was running. He heard the deceased saying "Murder, Hubert you a go kill me." It is to be observed that the witness Sydney Bailey did not speak of this incident although he is alleged to have been on the scene at 11 p.m.

The Crown also led evidence from the Doriel Parser who stated that she saw the "child" on the 11th May at about 11 p.m. running and jumping over a wall into a factory yard. She heard a bawling "Murder, murder, .... let him go, Murder. Murder, Him a go kill me. Mumma, mumma, murder." The witness was however unable to identify who "the child" was; nor did she see the applicant when this bawling was taking place. The reception of this evidence was one of the grounds of appeal argued by the attorney for the applicant.

Isolyn Gilpin in her evidence stated that at about 3 a.m. on the 12th May she was at her home on Main Street, Annotto Bay. She heard cries for "Murder" and "Help". She went out to the front verandah and she saw the applicant and the deceased on the

Main Street. The applicant was holding the deceased by her fingers and wringing her hand. She walked along a lane and the applicant was still holding and twisting the deceased's fingers. Isolya Gilpin further stated that she went up to the applicant and said to him "Buttie, what happen." The applicant replied "Why you interested". She followed them and the applicant continued to twist the deceased's fingers and she saw the deceased "squat" (presumably from the twisting of the fingers). The applicant then kicked the deceased in her belly and the deceased said "Lord, you going kill me like how you kill Miss ...". It would appear that the witness was stopped by the learned trial judge at that stage. The applicant was alleged to have again kicked the deceased in her belly. Gilpin again spoke to the applicant and he told her to follow them. She, however, did not follow them but went towards her home. At about 8 a.m. she heard something as a result of which she went to the applicant's yard. She saw the deceased's body lying on a bed. The applicant who was then sitting on the verandah was seen to be crying. The body of the deceased was placed in a car and taken away. Mrs. Gilpin further stated that later that morning she was on the Main Street when she saw the applicant and his father coming towards her. The applicant came up to her, slapped his hand on a stall and said to her "If anyone talk say is me kill Marion I run my knife in a team and kill them."

Clementina Edwards also gave evidence on behalf of the Crown. She stated that at about 4.30 a.m. on the 12th May she was awakened by a crying which was coming from the applicant's premises. She lived next door to the applicant with a zinc fence dividing their premises. She went outside, looked through the fence and she saw the applicant and his mother. She heard the mother say "What is this on the poor boy again." The applicant's father then came up and the applicant told him that Marion was dead. He was asked by his father if he had reported the matter to the police and on being told no, the applicant's father advised him to report it. Mrs. Edwards also stated that at about 9 a.m. that

same morning she again saw the applicant and he said to her "Miss Clemmie, Marion dead. She like sick last night and dead."

Egbert Roberts, a chauffeur, also gave evidence. He stated that at about 10 a.m. on Sunday 12th May he was asked by the applicant to take "a dead" to the hospital. He at first refused but later drove his car to the Roman Catholic Church in Annotto Bay. There, he said, the applicant, his father and another man brought a dead body wrapped in a brown checkered spread to his car. He noticed that the head of the body was "swinging". The body was placed in the trunk of the car and he was told to take the body to the hospital for an inquest. On the way to the hospital he stopped at the police station. The applicant and his father accompanied him in the car.

Roberts further stated that at the hospital the nursing sister unwrapped the spread and the sister asked the applicant about a bruise which was seen over the left forehead of the deceased. The applicant replied that the deceased had fallen off a breadfruit tree on the Thursday. The Sister then asked the applicant "How come she fall off a breadfruit tree from Thursday? This is a fresh batter." The applicant then replied "Is the bed she fall off." The Sister further questioned the applicant and asked him if he and the deceased ever had a row. The applicant replied "no, she only held on to him, pulled his shirt and he chucked her off and said, go weh." There was no evidence as to when this incident had occurred, if indeed, it did.

Under cross-examination Mr. Roberts stated that the journey to the hospital was a short and smooth one. There was not much vibration although the car had to be driven over a site where a bridge was being constructed.

Constable Angelita Davis stated that he was on station guard duty at Annotto Bay on the 12th.

The Constable and reported to him that his common-law wife was dead. The Constable asked the applicant if she had been sick and he replied that sometimes she complained that her stomach was hurting her.

The applicant also told the constable "that at about 9 p.m. on

Saturday, 11th May, 1974, they both retired to bed at Bottom Bay. The deceased was complaining that her stomach was hurting her. He, the applicant, fell asleep shortly after and he got awake at about 5 a.m. on the Sunday. He said to her 'how you feel now'. She replied 'me no feel too bad because your mother just looked after me'. Shortly after he noticed that she was dead." Constable Davis stated that he asked the applicant if he had touched her and he replied that he had not. Subsequently, at about 8 a.m. Constable Davis accompanied the applicant to his home where he saw the body of the deceased lying on a bed, covered with a white sheet. The deceased was clothed in a red dress and he observed that her face was bruised and swollen as if hit by an object. He pointed this out to the applicant and told him that her face had apparently been hit by something. The applicant made no reply. Constable Davis further stated that he held the deceased by her left hand, spun her over and noticed that her neck did not turn with the body. He told the applicant that he was of the opinion that the neck was broken. Again the applicant made no reply. This witness further stated that he took the applicant's statement in writing, read it back to him and he signed it as being true. This statement which was tendered in evidence is as follows:

Hubert Edwards states -

"The deceased Theodora Gibbs is my common-law wife. We have been living together as man and wife for the past one year and two months. She also complain of pain in her abdomen. She has last visited the Annotto Bay Hospital where she was treated by Dr. Martin on Monday 6th May, 1974, and on Friday 10th May, 1974. On Saturday 11th May, 1974, at about 9 p.m., we both retire to bed together. She was complaining that her abdomen was hurting her. I fell asleep and wake up about 5 a.m., Sunday 12/5/74 and asked her how she feel. She said she was not feeling bad because my mother just look after her, shortly after I notice that she was dead. As a result of this I went to the Annotto Bay Police Station and made a report

to the police. On Sunday 12th May 1974 at about 10 a.m., I gave this statement to the police at Annotto Bay Police Station. It was read over to me and I signed same as being true and correct."

It will be observed that this written statement differs somewhat from the unsworn statement which was made by the applicant at the trial. No objection was taken at the trial with respect to the statement being tendered in evidence.

Det. Sgt. Dwyer received a report on May 13, 1974. He thereafter went to the Hospital morgue where he saw the dead body of Theodora Gibbs and he observed that her neck appeared to be broken. On his return to the police station he spoke to the applicant having first cautioned him. He stated that he asked the applicant if he had been to a dance at Russell's Casino at Annotto Bay on Saturday, May 11, 1974 and the applicant replied in the negative. He further told the applicant that the deceased's neck was broken and asked him if he could explain how it was broken. The applicant replied "I don't know. We went to bed at nine o'clock at night and we sleep until five next morning. She woke up and complain of a pain in her belly; shortly after I looked around and saw her dead. She did not get off the bed throughout the night." The applicant was arrested and on being cautioned, said, "Them can hang me if them want."

The medical evidence as disclosed by Dr. Sydney Martin was to the effect that the Doctor performed a Post Mortem examination on the body of the deceased on May 13, 1974. External examination showed that the head was flexed to one side and this indicated that there was a fractured neck. He did not observe any bruising or laceration to the face. The Doctor explained that if the body had been used the bruising would eventually disappear. On dissection the Doctor discovered a fracture between the first and second cervical spine. He also discovered a ruptured pregnancy of the left tube. This pregnancy was six to eight weeks old. The Doctor concluded that death was due to asphyxia from the broken neck and secondly, bleeding and shock from a ruptured ectopic gestation.

The bleeding from a ruptured ectopic gestation sometimes lasted two or three days before causing death. It was the view of the Doctor that two kicks in the belly could have caused the ruptured ectopic gestation. A direct blow or a jerk could also have caused this injury. As to what could have caused the broken neck the Doctor stated that it is usually caused by strangulation, or choking or maybe from a direct blow but most usually from choking or tying a cord around the neck. He also stated that he agreed with the textbook view that a broken neck is usually caused by throttling or hanging but seldom from a direct blow. He however stated that if the victim had fallen, hitting the back of the neck across the arm or back of a chair, this could result in a broken neck.

It is to be observed that whilst the Doctor stated the cause of death, he did not express an opinion as to whether the broken neck was caused by throttling, choking, a fall or a direct blow.

In his defence the applicant made an unsworn statement from the dock in which he stated:

"I work at a Hardware store in Annotto Bay. I leave work at 7.30 p.m. on the Saturday evening. I went around to my home and I saw my Missis complaining about her tummy. She said she fell off a breadfruit tree in the yard. I bathe and change my my clothes. I go up the road to get a bowl of soup for her. I did not get any. I returned home some time after 9.00. I saw her. I asked her how she was feeling. She said she was going outside to use the chamber. She said she got a fall and my mother take her up and put her up back on the bed because she was sick. I was there with her and she say, well, she dont feel too bad now and we go to bed. I discover in the night I hear a stumble. She touch me. She was lying with her head on the partition, like this edge of bench here. I never discover that her neck was break. I lift her up and I put her on the bed and scream out to my mother and run to my father where him working, sir. I further report it at the station."

The applicant also stated that prior to this day, he had sent the deceased who was sick to Dr. Martin and he had given her tablets. He also stated that Miss Gilpin would wilfully lie and that she was a trouble maker and that everyone was telling lies on him. He denied that he had made the statement to Det. Dwyer which was attributed to him by Det. Dwyer.

The applicant was therefore, at the trial, denying any act of violence on his part against the deceased. The defence of accident i.e., the deceased falling and breaking her neck on the partition was the defence which was being sought to be established on the part of the defence.

The jury, however, after a consideration of the evidence returned a verdict of guilty of murder. By this verdict the jury found that the deceased's death resulted from a broken neck sustained at the hands of the applicant.

Several grounds of appeal were argued on behalf of the applicant. Firstly, it was submitted that the evidence of Dorrel Parser, to the effect that she had heard "the child bawling "murder! murder! fe let him go. Murder! murder! Him a go kill me, Mumma, Mumma, murder!" was improperly admitted as there was no evidence from the witness identifying who "the child" was, nor was there any evidence to show that the applicant was present or that it was said in his presence. This evidence was left for the consideration of the jury and it was submitted that the minds of the jurors would have been unfairly prejudiced against the applicant. This complain is not without substance. The evidence ought not in the circumstances to have been admitted. We are satisfied that having regard to the remainder of the evidence in the case the admission of this evidence did not itself tip the scale against the applicant.

Secondly, it was submitted on behalf of the applicant that the evidence given by the witness Isolyn Gilpin that she heard the deceased saying "Lord, you going kill me like how you kill Miss" was hearsay and inadmissible. It was further submitted that the learned trial judge should have discharged the jury upon that evidence being given. On behalf of the Crown it was submitted that the