

Trevor Padayachy & Or.

Appellants

v.

The Republic

Respondent

Criminal Appeals 9 and 10 of 1988

Mrs. Twomey for the appellants

Mr. Lucas for the Republic

JUDGMENT OF THE COURT

The two appellants (Padayachy and Hoareau) were prosecuted before the Supreme Court for the offence of murder (contrary to section 293 of the Penal Code). They pleaded not guilty and were defended by counsel. The jury unanimously found them guilty of the offence and the learned presiding judge sentenced them to life imprisonment.

They are now appealing on the following two grounds:

- (1) The learned Chief Justice erred in his summing up when he directed the jury on the presumption of innocence.
- (2) The learned Chief Justice in his summing up misdirected the jury in that he failed to sum up the defence case.

Briefly the case for the prosecution was that on 5 September 1988 the two appellants conspired to murder Devan, the victim in this case and with that and in view they went out of their home accompanied by one Adrienne Jules. Padayachy enticed Devan to come and meet him at the Liquid Air Building area Victoria. Devan came at Liquid Air Building, in his car. He stopped the car and Padayachy got into the car and sat in the front seat. Hoareau, the second appellant sat behind Devan and Adrienne Jules occupied the seat in the rear behind Padayachy. Hoareau suddenly got hold of Devan and pinned him to his seat and put one of his hands on his mouth to prevent him from shouting and Padayachy took out a knife and stabbed Devan repeatedly in his chest and abdomen.. Adrienne Jules as soon as he saw Padayachy raising his knife to strike Devan opened the door of the car and bolted. The

victim sustained very serious injuries in his chest and abdomen. His heart was injured and he died as a result of the injuries inflicted on him. Both appellants took the body of Devan in the car to the reclamation ground and threw the body in the sea.

Padayachy and Hoareau blamed each other for the killing. Each of them also alleged that whatever he did was done under duress and out of fear.

Mrs. Twomey in support of the first ground of appeal cited the following passage from the summing up:

"You must start with the presumption which our law makes whenever any person is charged with a crime, a presumption that the accused is innocent and you should not believe in this case that either of the accused is not innocent, unless the prosecution has satisfied you that he is guilty."

She contended that this phrase could have misled the jury and confused them about the presumption of innocence of an accused.

The above phrase may not be very felicitously expressed but phrases and words should not be wrenched off from their context and interpreted in isolation. We are satisfied that the context in which the words complained of occur clearly explains their meaning. At the end of the very paragraph from which the above phrase has been lifted we read the following:

"I have said that the prosecution must satisfy you as to the guilt of each accused; that is what we call a burden on the prosecution. The accused does not have to prove that he is innocent. The prosecution must prove that he is guilty and I have said the prosecution must prove it beyond reasonable doubt."

We find Ground 1 of no merit.

Counsel for the appellant also complains that the summing up has not touched the defence case at all.

We do not agree. As pointed out by Mr. Derjacques counsel for the Republic the Judge repeatedly put the case for the defence to the jury and he rightly referred us to the following pages of the summing up: 229 2nd, para, 230 2nd para., 233 2nd. para. amongst others.

In the concluding part of his summing up the learned Chief Justice had this to say:

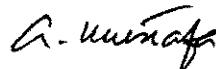
"I think let us take the first accused. Are you satisfied that he never stabbed Devan, it was accused No. 2 who stabbed Devan? Have the prosecution proved that it was accused No. 1 who stabbed Devan or have they proved to you that accused No. 1 did something to encourage No. 2 to stab Devan or to help accused No. 2 to carry out a plan which they had prepared together. If you find, yes, accused No. 1 either stabbed or helped No. 2 to carry out something which they had planned before, then you have to find him guilty of murder unless you find that when he acted he did so under threat. That he would be immediately killed or suffer grievous bodily harm unless he did the act which the other accused made him do. If you believe he acted under duress like that, you must acquit him, call him not guilty. If you are in a state of doubt, "I am not sure whether he stabbed or helped or he had any common intention with second accused to cause death or grievous harm to Devan," then you have to acquit him because you see the prosecution would not have discharged the burden which I said was upon them to prove beyond reasonable doubt the guilt of the accused."


"I now turn to second accused. If the prosecution have satisfied you either that he stabbed Devan or he put his hand around Devan to stop him from crying out and to hold him down and to allow the first accused to stab him or if the prosecution have satisfied you that in some way accused No. 2 helped accused No. 1 with a common intention to kill Devan then accused No. 2 would be guilty of murder. Unless you find he acted under compulsion or duress and he did what he did because he was afraid if he did not do it, he would immediately get himself to be killed by the other accused or he is going


If you are in doubt whether he did anything to help or he himself did the stabbing, if you are in doubt you have to acquit him because the prosecution have not proved their case beyond reasonable doubt. If you are in doubt whether or not he acted under duress or compulsion you have to acquit him. The prosecution have not proved beyond reasonable doubt his guilt."

It was said in Lurie, 25 Cr. App. R. 113 "We have said over and over again that what is required is that the case for the prosecution and the case for the accused should be fairly stated, and the proper direction in law should be given by the presiding judge and he is not bound to put every point." We entirely endorse above view. In the circumstances of this case we find that no criticism can be levelled at the summing-up of the learned Chief Justice. The summing-up read as a whole fairly stated both the case for the prosecution and the defence.

The appeals fail on both grounds and are accordingly dismissed.


A. Mustapha
President


H. Goburdhun
Justice of Appeal


T. Georges
Justice of Appeal

26th October, 1989