IN THE SEYCHELLES COURT OF APPEAL

Gerald Bibi — Appellant

v.

The Republic — Respondent

Criminal Appeal No.3 of 1990

Mr. B. Georges for the Appellant
Mr. T. Fernando for the Respondent

Judgment of the Court

The appellant was prosecuted before the Supreme Court for the offence of murder. He pleaded not guilty. The jury unanimously found him guilty of the offence and the learned presiding judge sentenced him to life imprisonment. He is now appealing against this conviction on the following grounds as set out in his memorandum of appeal:

1. The verdict is unsafe and unsatisfactory for the following reasons:
   (a) The defence was never shown the prior inconsistent statements of the three prosecution eyewitnesses, the existence of which statements was not disclosed to the Defence until the evidence was being led at the trial of the Appellant;
   (b) The Learned Trial judge failed to direct the jury to treat the evidence of the eye-witnesses with caution given that they had each given a previous inconsistent statement to the police.
2. The Learned Trial judge failed to direct the jury on:
   (a) the material inconsistencies in the prosecution case, namely:
      (i) The exact place where the murder allegedly took place;
      (ii) Who helped to pull the deceased out of the sea;

(iii) The manner in which the deceased allegedly defended himself from attack;

(iv) Whether the Appellant was at the island over lunch on the day of the incident and if so, whether the witness Aderly Charlette was also there;

(v) Whether the Appellant went off diving alone or with the witness Aderly Charlette after the alleged incident;

(vi) The position of the Appellant just before the alleged incident;

(vii) The position of the witness Barbara Boniface just before the alleged incident,

(b) the improbability of the Appellant committing murder in full view of a number of eye-witnesses and then proceeding to a diving afternoon;

(c) the improbability of the alleged eye-witnesses:

(i) not telling the police the alleged truth at the earliest opportunity;

(ii) not telling the police the alleged truth until they had been detained for a few days;

(iii) not telling the police the alleged truth even if they were being detained as suspects.

(d) the change of story on the part of the alleged eye-witnesses in order to be released from custody.

(e) the improbability of the Appellant himself fetching the police and accompanying them to the island after the incident.

Ground 1(a) was abandoned at the hearing of the appeal. Mr. Georges learned counsel for the appellant complained before us that the learned trial judge in his summing-up failed to state to the jury various points raised by him on behalf of the defence. He submitted that it was incumbent upon the learned judge to put the defence case fairly and adequately to the jury. The learned judge contented himself by reciting the evidence of the witnesses without analysing it as he should have done. He disposed of the

points raised by defence counsel in a few sentences. Learned Counsel referred us to various discrepancies in the evidence of the three eye-witnesses, Ferley Ronald Radegonde, Barbara Boniface and Jeannette Radegonde called by the prosecution to establish the charge against the appellant. He was of the view that the discrepancies pinpointed to the jury by him, were important and they should have been brought out to the jury by the learned Judge to enable them to assess the credibility of the witnesses. He also stated that the learned judge failed to direct the jury to treat the evidence of the three above mentioned witnesses with caution in view of the fact that they had given previous inconsistent statements to the police. He contended that those omissions by the learned judge constituted misdirection which would justify this Court to quash the conviction.

We have gone through the evidence of the three eye-witnesses and agree that there are discrepancies in their evidence though in our view not of a serious nature. We would point out however, that the learned Judge in his summing-up did mention briefly that there were discrepancies in their evidence though he did not specifically enumerate them. The learned judge did also refer to the inconsistent statements given to the police by the witnesses but he did it very succinctly and made no comment thereon to guide the jury in their deliberation.

This case is not a complex one, on the contrary it is very simple and straightforward. The jury had only to decide whether they believed witnesses Ferley Radegonde, Barbara Boniface and Jeannette Radegonde or not. Had the learned Judge not made any mention of the discrepancies and earlier inconsistent statements made by the three witnesses, such omissions could have been a misdirection. But they were mentioned, however, briefly, and learned counsel for the appellant in his long and able address forcefully hammered home to the jury the discrepancies and inconsistencies.

The jury as judges of fact can be safely deemed to be possessed of sufficient intelligence to appreciate the importance of the discrepancies and inconsistencies at their true value. We have no doubt that they must have given due consideration to them before arriving at their verdict.

We wish to observe that it would have been better if the points and issues raised by the defence were analysed by the learned judge and a more careful and helpful direction given on them. However in the circumstances of the case failure to do so did not constitute a misdirection justifying quashing of the conviction. Grounds 1(b) and 2(a) fail.

As regards grounds 2(b), (c), (d) and (e) we think they have little merit. The presiding judge has no duty to argue the case for the defence. That is the function of Counsel.

In the circumstances we cannot say that the summing-up was unfair or prejudicial to the appellant. The appeal fails and is accordingly dismissed.

A. Mustafa
..... A. Mustafa
President

H. Goburdhun
..... H. Goburdhun
Justice of Appeal

C. d'Arifat
..... C. d'Arifat
Justice of Appeal

14th October, 1991