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IN THE COURT OF APPEAL OF SEYCHELLES

JONES PHILOE — APPELLANT

V.

THE REPUBLIC — RESPONDENT

Criminal Appeal No.14 of 1991

B. Renaud for the Appellant
T. Fernando for the Respondent

JUDGMENT

This is an appeal against a decision of the Supreme Court of Seychelles (Alleear J. sitting with a Jury). The Appellant was found to have on the 8th day of January 1991 at Rochon, Mahe, murdered his concubine one Marline Gabriel.

On the 10th September 1991 the Appellant caused to be filed five grounds of appeal which read as follows:-

1. The Learned Judge did not direct the Jury in sufficiently strong terms on the question of mens rea which was a material factor in the light of the evidence which existed as to the amount of alcohol consumed by the accused.
2. The Learned Judge did not lay sufficient stress on the vital ingredient of provocation which was a strong contributing factor in the crime.
3. It is believed and averred that has more stress been laid on factors (1) and (2) above stated, the Appellant would have been convicted of a lower crime of manslaughter.
4. The Learned Judge did not sufficiently or at all draw the minds of the Jury to the possibility of the deceased having accidentally set herself on fire.
5. The Learned Judge failed to recall the Jury and direct them on a majority verdict after a sufficient time of deliberation had elapsed.

At the hearing of the appeal Counsel for the Appellant informed this Court that he intended to concentrate on Ground 4 of the grounds of appeal. He went on to argue that, in the summing up the learned Judge did not sufficiently tell the Jury

that there was a possibility that the deceased had accidentally set herself on fire.

A close examination of the summing up shows that the learned Judge gave the Jury the usual and general directions as to the manner in which they were to consider the evidence. Thereafter he recapitulated for them the main features of the evidence of each witness.

In doing so he reached the evidence of the accused and told the Jury:

> "His version is that Marline was accidentally burnt. You must have seen the contradiction in his version. The learned counsel pointed them out to you when he was addressing you in Court. You must carefully think over them although I am not going into that again."

It is appropriate at this stage to point out that the case for the Prosecution was based on the evidence of Jessy Clothilde and of Bernard Sanders, who stated that in the Accused's presence the victim stated it was the accused who had thrown Kerosene at her and had burnt her. Further the Prosecution also adduced in evidence two dying declarations made by the victim to Doctor Hussein Ariff and to Sgt. France R. Andrew in each declaration she said it was the accused who had thrown Kerosene at her and had burnt her. these declarations were supported by ample circumstantial evidence On the other hand the evidence of the Accused stood alone and he contradicted himself in cross examination. It is also appropriate to mention that the above-mentioned quotation from the learned Judge's summing up came immediately after he had given to the Jury the Accused's version as he deponed in chief and without any reference to his contradictions during his cross-examination.

Later the learned Judge invited the Jury to decide whether Marline had committed suicide or whether she had poured Kerosene on herself and set fire to her body. He told the Jury: "If on the evidence you see that this is so, you must acquit him of the charge."

And the Learned Judge added: "Did Marline die accidentally? Was the death brought about by accident, that is with her clothes soaked in Kerosene? She walked in the fire and got burnt. If you find this was an accident you must acquit the accused."

After drawing the Jury's attention to their duty of assessing the weight of the evidence of each witness he told the Jury: "You will have to decide if the accused tells you it was an accident and that he said he did it and was playing."

After considering the arguments of learned Counsel on both sides we are unable to agree that the case of the accused was insufficiently put to the Jury. We are satisfied that the Jury must have understood that they had to decide whether the burns were accidental or not.

Some reference has seen made to the cardinal but elementary principle that the burdenof proof never shifts. In a case of this nature if an accused person raises a defence, then it becomes an issue and it will be for the Jury to decide whether they will accept the version of the Prosecution or that of the Defence. The onus remains on the Prosecution to prove its case throughout. If the Jury is of the view that the Defence version might possibly be true, it must give Accused the benefit of that doubt and acquit him.

We find that the direction of the Learned Judge to the Jury has been to that effect.

Ground No. 4 fails.

Learned Counsel made some reference to Grounds Nos. 1 and 5.

The purpose of Ground 1 is to submit that if the Learned Judge had used "sufficient strong terms on the question of mens rea, which was a material factor in the light of the evidence which existed as to the amount of alcohol consumed by the accused" then the inference would be that the Accused

was temporarily intoxicated when he committed the offence and therefore was not responsible for his act. A perusal of the record indicates that there was no dispute on the amount of drinks Accused had on that night and it was argued that those drinks would have prevented the Accused from forming the intent to kill (the necessary mens rea). No evidence direct or circumstantial was led which could have led to any such inference. Indeed Counsel for the Respondent submitted quite rightly in our view that Accused's conduct and demeanour after the incident shows that he was not suffering from any intoxication which would have deprived him of his mental and physical faculties, at the time of the commission of the offence.

In his summing up the learned Judge did comment on intoxication and Accused's consumption of drinks on that night. He directed the Jury specifically that if they were to find that Accused was temporarily insane, then he was not responsible for his act and should be acquitted. We therefore find no merit in Ground 1.

We now come to Ground 5. In view of the provisions of sections 262 and 263 of the Criminal Procedure Code Cap. 45 we find that there is no substance in that Ground.

No submissions were made in respect of Grounds 2 and 3.

For the above mentioned reasons we find no merit in the appeal which is dismissed.

A. Mustafa
..... A Mustafa
President

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

T.P. Georges
..... T.P.Georges
Justice of Appeal

October, 1991