

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 33/90

BEFORE: THE HON. MR. JUSTICE WRIGHT, J.A.  
THE HON. MR. JUSTICE FORTE, J.A.  
THE HON. MESS JUSTICE MORGAN, J.A.

REGINA vs. RONALD RICKETTS

E. S. Bird for the appellant

Bryan Sykes for the Crown

December 5 and 17, 1990

WRIGHT, J.A.:

This is an appeal against conviction and sentence of death passed upon the appellant in the Home Circuit Court on March 3, 1989, after a trial lasting eight days before C. F. B. Orr, J., and a jury. We treated the hearing of the application for leave to appeal as the hearing of the appeal involving, as it does, questions of law.

This case is distinguished by certain remarkable features, among which the following are numbered: the appellant was indicted on November 4, 1986, for the murder of his wife between May 22 and 24, 1981; an identification parade was held in 1985, four years after the murder, at which a single witness, who had never seen the appellant before a night in May 1981, identified him on the basis of a view of him, which lasted for a few seconds, aided by the light of three cars passing one behind the other; the case came to trial almost eight years after the murder; the body was

identified by means of examination of the hair from the head and by comparing the teeth with the dental record supplied by the dentist. And if that was not enough to make the case outstanding, the appellant supplied a major feature by dismissing the two Queens Counsel and one Junior Counsel, who represented him, all at the same time at a critical stage of the trial, despite the entreaties of the trial judge. He asserted his competence to defend himself but soon realised that, despite the patience and indulgence of the judge, the weight of counsel's mantle was heavier than he thought as he exclaimed that he had some questions to ask but the law would not allow him. But what he lacked in knowledge of the law he certainly supplied with his tenacity and courage and undoubted experience of life. No attorney-at-law would have enjoyed the indulgence accorded him in the making of his no-case submission and even moreso in pursuing the plea for a visit to the locus in quo which did yield a bonus.

Now then, what was the evidence in this remarkable case? The date of the marriage of the appellant to Sweelen Marcia Chin is uncertain but it was sometime in 1980, but they never lived happily ever thereafter. The evidence of her mother, Freda Chin, and her sister, Cassetta Chin, told of a quarrel-plagued union in which the wife's address would be sometimes at the matrimonial home at 6 Trevennion Road while the appellant, not to be out-done, at least so it seems, would pack a suit case and move out to his mother's home taking his portable television set. But they would always be together again as the appellant would sue for her return. At the time of her death they were not living together.

Sweelen was a nurse attached to the National Chest Hospital, where she worked up to May 22, 1981. She was expected back at work the following day but did not show up. There is nothing in the evidence about her movements after she left work on May 22.

About 9:30 p.m. in a night in May 1981, Vincent Campbell, a sixty-five year old fisherman, was on his way to fish at Rocky off the Port Royal Road, when, on reaching in the vicinity of an old cemetery, he heard the pain-filled voice of a woman crying, "Lord, have mercy, help, help, Lord have mercy". Silence followed. He spent the next twenty minutes scouting around in the cemetery but saw no one and heard no one. So he resumed his journey until he reached a lane, which leads to a dump used by the Jamaica Defence Force. There he saw a car parked in the lane about two yards from the road with its back towards the road and a man standing behind the car facing the road and less than a yard from the road. This man said, "Man you have any matches?". He replied yes and handed him a box of matches and just then three cars passed. It was moonlight, he said, but it was the lights from the cars which gave him a view, lasting a few seconds, of the face of this man. He had never seen him before. Peculiarly enough, he could not say if the man took any matches out of the box before returning it to him. He had no conversation with the man but just continued on his way. While walking along he said the car passed him but he was unable to see how many persons were in the car because of the state of the lighting. He did not report the night's incident to the police until some four days later, when news broke of the finding of a decomposed body of a woman in the area. But it was not until March 15, 1985, that his observation was put to the test on an Identification Parade conducted by

Sergeant Donald Hines at which the appellant was represented by the late Mr. John Forrest, attorney-at-law and Mr. Hugh Thompson, who was one of the three attorneys dismissed at the trial. The appellant was at the time, as he himself put it, big and fat. It was his attorneys who chose the other eight men - all big and fat - for the parade. Because the appellant was clean-shaven and the others were bearded, the lower portion of each man's face was covered with a piece of paper held in place by pieces of tape, so testified Sergeant Hines. Questioned about the appearance of the men, Mr. Campbell said he saw nothing on the faces of any of them. Of course, he was then testifying four years after the parade.

"Q: Did you see anybody with any cloth over their face?

A: No sir. I didn't tek plenty notice because as I go in I just spot the man, sir, the same man, sir, I spot him."

A most remarkable performance.

Because this witness' testimony is pivotal, an assessment of his intelligence is of critical importance. He supplied the material for assessment, as appears at page 31 of the transcript, where further cross-examination relating to the identification parade was being conducted by Mr. Thompson:

"Q: Let me be more accurate, it was not a cloth it was a bit of paper, paper covering the face; you don't remember that either?

A: No, sir.

Q: All right.

HIS LORDSHIP: Paper now.

A: Maybe breeze could blow off that, sir, said cloth, and now you come and say paper, sir.

MR. THOMPSON: All right, Mr. Campbell, you didn't see any paper covering anybody?

"A: No, sir.

Q: That is the real answer. And you had no difficulty whatsoever pointing out the man whom you said you saw that night?

A: None at all, sir.

Q: Indeed, in fact you didn't even bother to walk up and down the line?

A: Never did.

Q: You walked straight in and point to the man?

A: I didn't have to, my eyes lock, sir.

Q: Thank you, Mr. Campbell.

A: My foot did not have to walk, sir."

Pressed further as to the number of men on the parade, whom he would describe as fat, he responded:

"A: I didn't see no fat man but that man, sir, that fat man, sir.

Q: So all other men were slim except the man who you point out who was fat?

A: Medium built man them mauger man still, sir.

Q: One fat man and the rest medium and mauger?

A: Yes, sir."

He disclosed that up to 1984, when his house was burnt down, he had not changed address. So why the delay in holding the parade? Needless to say, his evidence concerning the parade did not accord with the evidence of the officer in charge, who stated that, in addition to the two attorneys, there was a Justice of the Peace on the parade. Mr. Campbell had testified that, upon seeing the appellant in the line-up, he had shouted, "I see the same man again". Hines' evidence was that he merely called out the "number three", the number above the appellant's head. And, of course, Sergeant Hines' description of the men in the line-up conflicted violently with Mr. Campbell's.

Mr. Campbell had been cross-examined by Mr. Hugh Thompson, before his dismissal, but when the appellant took over his own defence he had this witness recalled for further cross-examination, which accounted for another twenty-nine pages of the transcript. He had the benefit of photographs which he had taken of the area. In this period he elicited from the witness that, contrary to his earlier testimony that he had spotted the appellant as he entered the parade, he now said he spent five minutes "looking and observing" before he made his identification. This makes it all the more remarkable that he did not see the paper on their faces. The appellant disputed the witness' claim to be a fisherman and had him admit that he did sell oysters from a basket but added that he also sold fish. It was the appellant's contention that before the identification parade he had bought oysters from the witness.

After much insistence, the appellant secured a visit to the locus in quo and when Mr. Campbell was asked to point out where the man was standing when he handed him the matches, the distance turned out to be not less than one yard, as he had earlier testified, but five yards along the lane which ran through bush. However, what was not made clear was the nature of the bush by the roadside up to the point where the man stood.

The appellant had reported his wife missing on May 24, 1981, to Sergeant Norman Ricketts at the Elletson Road Police Station and on May 27 he returned to inform the officer of the reported finding of the body off the Port Royal Road and was accompanied to the scene in an endeavour to ascertain the identity of the body but there is conflict as to what transpired there. They met Dr. Ramu returning from the post-mortem examination. The appellant claims that he went near

enough to see the body, which was some three chains from the road in the bush, and which he denied was his late wife's, but the police at the scene denied he could see the body from where he stood. However, the description he gave of what he said he saw very much accords with what Dr. Ramu described in his evidence. However, for the purposes of the disposition of this appeal, nothing turns on the outcome of the visit.

It is evident from Dr. Ramu's deposition that Sweelen Ricketts had met a very violent death. Her facial bones were splintered and her face was unrecognizable. When he saw the body, it was decomposed and maggot-infested with portions of the body evidencing post-mortem severance. The body appeared to have been dragged to the spot where he saw it.

The only other evidence which it is necessary to mention, since nothing else touches upon the all-important issue of identification of the accused, is his defence. In an unsworn statement occupying fifty-four pages of the transcript, he traced his life from 1968 and gave the history of his relationship with his wife up to the time of her disappearance. He elaborated on evidence extracted in cross-examination from Cassetta Chin of cruelty meted out to his wife by one Chester Thompson, an army sergeant. He also told of discoveries he made which were responsible for quarrels between him and his wife - discoveries relating to dealings by his wife of which he did not approve and asserted that he had nothing to do with her disappearance. As regards the witness, Vincent Campbell, he said he sells oysters and often passed by the appellant's business place on Princess Street. On the night of May 22, which seemed the likely time of the wife's death, he was with his children at a birthday party for Nicola, who testified she had cause to remember the occasion because it was the first time her father had done

something meaningful for her. She was then eleven years of age. Finally, with the aid of photographs tendered by this witness the appellant endeavoured to show that in May 1981 he was slim built.

Six grounds of appeal were filed. Grounds 1 and 3 challenged the identification of the body with the assistance of the depositions of Drs. Ramu and Lewis but foundered in the face of the authority of the Privy Council's decision in Scott and others v. R. (1989) 2 W.L.R. 924, approving the admissibility of such evidence. Ground 2 relating to a direction to the jury, emphasizing the importance of Vincent Campbell's evidence, was wholly misconceived and was abandoned. Ground 6 read as follows:

"The learned trial judge omitted to direct the jury on precisely how to deal with the evidence of Vincent Campbell that he saw only one fat man on the parade."

This ground was answered by reference to pages 489-90 of the transcript where the trial judge dealt in detail with the discrepancies between his evidence and that of Sergeant Hines and posed the two questions: How observant was Mr. Campbell? Can we accept him as a witness of truth? This ground, also, was for that reason, not pursued.

The grounds of substance were Grounds 4 and 5, challenging the cogency of the visual identification evidence on the night (of May 22?) and on the identification parade. Several weaknesses were identified in this evidence:

1. Vincent Campbell did not know the person he claimed he saw that night.
2. Such opportunity, as his testimony revealed, made whatever view he had, nothing but a fleeting glance. At one time he said it was "a few seconds" and later "less than a minute".

3. The lighting was not dependable. The moonlight was of no assistance and the light supplied by three cars passing quickly, one after the other, emphasized the fleeting nature of any view he had. Moreover, inasmuch as the lane ran into the bush it was necessary, but not done, to show how near to the main road the bush extended to give any validity to the witness' claim that the lights of the cars availed him.

Further, there was discrepancy as to exactly where the person stood when encountered by Mr. Campbell. In evidence he said close to the road "less than one yard" but at the locus he pointed out five yards.

4. No description of this person was disclosed and especially no peculiar features noted.
5. But most telling of all is the fact that the validity of whatever view he had was not put to the test until four years later, during which time the appellant conducted his business in an area frequented by the witness.
6. All this catalogue of weaknesses was crowned by his unforgiveable performance on the identification parade - he recognized the appellant but neither him nor the other eight men on the parade as they actually were.

In seeking to meet the challenge mounted, Mr. Sykes posed the question:

"Looking at the evidence of visual identification by Vincent Campbell in the light of decisions of the Privy Council (vide Junior Reid and others v. R., (1989) 3 W.L.R. 771, was this evidence sufficient in law to be left to the jury?"

We agree that this is the proper approach but his efforts to produce an affirmative answer were not supported by the record, so in one final effort he suggested that a re-trial be ordered, based on his interpretation of a statement made by the appellant which he thought to be equivocal but was not left to the jury as such. The short answer is that if the prosecution

has to rely on the possibility of the jury accepting what would, in our opinion, be a strained construction of a statement by the appellant then that surely is an admission of no-case to answer.

The evidence of visual identification, in this case, falls squarely within the contemplation of Lord Widgery's statement of the law in R. v. Turnbull and others (1977) 1 Q.B. 224 at pages 229 and 230, where he said:

"When in the judgment of the trial judge the quality of the identifying evidence is poor, as for example when it depends solely on a fleeting glance or on a longer observation made in difficult conditions the situation is very different. The judge should withdraw the case from the jury and direct an acquittal unless there is other evidence which goes to support the correctness of the identification."

Turnbull (supra) was approved in Junior Reid (supra). In this case the identifying evidence is unquestionably poor and there is not one scintilla of evidence supporting the correctness of the identification.

Usually the problem encountered regarding identification evidence is the manner in which the trial judge deals with the evidence, as several judgments of this Court as well as of the Privy Council attest: See R. v. Cameron S.C.C.A. 77/88 delivered 30/11/89 (unreported); R. v. Anthony Wilson S.C.C.A. 128/89 delivered 3/12/90 (unreported); Junior Reid and others v. R. (supra). The problem here is different in that it has to do with the quality of the evidence. But, in all fairness to the trial judge, it must be said that, once he decided to leave the evidence to the jury, he gave them directions which are so fair and balanced that no sustainable ground of appeal against the summing-up could be found. The fact remains, however, that poor and uncorroborated evidence does not improve even with the best summing-up. Accordingly, the

mischief created by leaving for the jury's determination, issues which should not have been left to them, cannot be cured by an impeccable summing-up.

What this case demonstrates is the need for trial judges to pay great heed to the several judgments which provide adequate guidance in dealing with identification evidence which has only recently emerged as a specialized area in the law of evidence.

For the reasons stated, we answer Mr. Sykes' question in the negative. There is great merit in the grounds impugning the quality of the identification. The appeal accordingly succeeds, the conviction is quashed, the sentence set aside and a judgment and verdict of acquittal entered.