46/1961

IN THE PRIVY COUNCIL No. 20 of 1961

ON APPEAL

FROM THE FEDERAL SUPREME COURT OF THE WEST INDIES

BETWEEN

CHARLOTTE DAPHNE KING Appellant

- and -

THE QUEEN Respondent

CASE FOR THE RESPONDENT

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1. This is an appeal, by special leave of the Judicial Committee granted on the 20th April, 1961, from a judgment of the Federal Supreme Court of the West Indies (Rennie, Archer and Wylie, JJ.) dated the 4th February, 1961, which dismissed an appeal from a judgment of the Supreme Court of Barbados (Stoby, J. and a jury) dated 26th November, 1960, whereby the Appellant was convicted of murder and sentenced to death. pp.112,113 pp.107,111 pp.67-99

2. The indictment charged the Appellant jointly with one Carl Yarde with the murder of Ernest Peterkin between the 20th and 21st December, 1959. Yarde was tried together with the Appellant and was also convicted of murder and sentenced, but on appeal to the Federal Supreme Court the conviction was quashed and the sentence set aside. p.1

3. The trial took place before Stoby, J. and a jury between the 15th and 26th November, 1960. The evidence called by the Crown included the following:

(a) Dr. Anthony Erskine Ward had performed the post mortem on 21st December, 1959. There were two incised wounds to the front of the neck which would not have caused death: they might have been inflicted before or after death. There were injuries to both left and right shoulders and to the back of the head, which could have been inflicted by blows from a blunt instrument, pp.6-13

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such as a ripping-iron; there must have been at least three blows, one of which dislocated the spine. The cause of death was shock and haemorrhage following the dislocation of the spine and laceration of the brain tissue. As there were no sign of injuries to the arms, the deceased might have been held while he was being struck. The body had been found lying in a bedroom in the deceased's house in a semi prone position: it was in a pool of blood which had gathered while the body was lying there, with the head near the middle of the bed.

pp.13, 14 (b) James Christopher Peterkin, the nephew of the deceased, had identified the body as that of his uncle: he had been totally blind, and walked with a stick.

pp.14, 15 (c) Olga Skeete, lived in the next house to the deceased's to the west. At 3 a.m. on 21st December, she was awakened by the Appellant who told her that two masked men had broken into the deceased's house while she was with him in the bedroom and murdered him by hitting him round his neck with a piece of iron.

pp.16, 17 (d) Theodore Lynch and Reuben Benn both said that at about 3 a.m. on the 21st December, the Appellant had roused them and told them that the deceased had been killed by two masked men.

pp.18-25 29-31 34-38 (e) Police Sergeant Ormond Marshall said that at 4.30 a.m. on the 21st December he went to the deceased's house where the Appellant had told him that two masked men had killed the deceased, after breaking in at the back door. He described the house which had two bedrooms: the body had been found in the smaller of these. At the side of the house there was a garage with a gap in the wall through which a man could pass. No possible weapon had been found. At 12.45 p.m. on the 21st December he had taken a statement in writing from the Appellant, Exhibit O.M.3; in this statement, the Appellant had said that she had been living with the deceased as his mistress for 3 months: she had known the other accused Carl Yarde for some time and had often been intimate with him: he would visit her at the deceased's house: about 8 a.m. on Sunday, 20th December, Yarde had visited her at the

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deceased's house, and soon after the deceased had accused her of bringing a man to the house: the deceased had quarrelled all day and told her to leave the house by the next day: at 8.00 p.m. that day Yarde had returned to the outside of the house, and she had told him of the quarrelling: he remained outside until 11 p.m. when she opened the door and he came in: the deceased continued to walk about the house quarrelling and cursing until 12.30 a.m. when he went into his bedroom and closed the door leading to the bathroom: Yarde and she then entered the bedroom by another door, and while she was in the bedroom the deceased had attempted to choke her: Yarde, on seeing this, gave the deceased a blow on the back of the head with a ripping iron which was in a corner of the house: the deceased fell to the ground bleeding and Yarde then stabbed him several times about the neck with the kitchen knife: Yarde then left taking the two weapons and she saw that the deceased was dead: she had then told the neighbours that someone had killed the deceased: she was aware the deceased had made a will, but not that she benefited under it.

(f) Ermintrude Yarde, aged 17, lived in the house to the east of the deceased's: On 20th December the Appellant had called her in and told her that that morning the deceased had heard her and Yarde together in the bedroom: this was confirmed by the deceased: in the hearing of the Appellant the deceased told the witness that he was going to alter his will, at which the Appellant remarked, "If he live", in a low voice. Later that day the Appellant had said that the deceased was angry and that she did not want anyone to call. That night the witness was woken up and heard the Appellant tell the story of the two masked men. pp. 38-44

(g) The will of the deceased, produced by Vere Carrington, Exhibit V.C.1, devised his house and land worth £3,000-£4,000 together to the Appellant, and the residue was bequeathed to his daughter. pp.114-115

(h) Rupert Yarde said that on the 20th December the Appellant had told him of her quarrel with pp.46-48

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the deceased and his threat to see his lawyer: she had asked him not to take the deceased anywhere that day.

pp.48-51, 53-54, 62-64 (i) Charles Dash was the owner of the deceased's house. On 18th December the Appellant had told him that she knew that the deceased had left the tenancy of the house to her in his will, and asked that she might pay a lower rent after his death. On 17th December the witness had left a ripping-iron, a long piece of iron with a head for drawing nails, a hammer and a chisel at the house. The ripping-iron had disappeared since then.

On the 24th December he had visited the Appellant about 2 p.m. to bring some pork, when she called him to the bedroom and said that he was not to tell anyone her words, she was going to tell him the truth: on the night of the 20th about 11 p.m. she had gone to the deceased's room and "muched" him up: the deceased held on to her and would not let go, and the boy "up and lick him down with it"; she asked him why he did it, and she did not known what to do so she went for the kitchen knife and cut the deceased's throat.

p. 53 ll.25-42

pp. 55-57 (j) Lionel Griffiths, corporal of police, had tried to arrest Carl Yarde at the deceased's house on the night of 21st December. Early the next morning a man approached and ran away: the Appellant denied warning Yarde about the presence of the police.

pp. 58-60 (k) Keith Whittaker, corporal of police, had been with the previous witness early on 22nd December when he saw the Appellant signal to Yarde not to approach the house, who thereupon ran away.

pp. 60, 61 (l) Assistant Police Superintendent Nathaniel Gaskin said that at 2 p.m. on 21st December he went to Yarde's house in order to interview him: Yarde had run away when he was told the purpose of the visit. On 30th December he had seen Yarde again on his arrest. Under caution he made a written statement (Exhibit N.G.1) in which he said that he had been at the deceased's house on the morning of 20th December and had left when the deceased heard him: he returned that evening and spoke to the Appellant at the window and went

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away until 11.30 p.m.: he then returned and got into the car in the garage until the Appellant called him into the house: the deceased was there and the Appellant handed him a crow-bar which she had in her hand: he said he could not do it, whereupon she took the crowbar and hit the deceased on the neck from behind: the deceased fell to the floor and the Appellant handed Yarde the crow-bar telling him to break open the back door: Yarde had then walked home, having told the Appellant that he was frightened.

4. A submission of no case to answer on behalf of the Appellant was rejected and the Appellant did not give evidence or call any witnesses. The accused Yarde did not give evidence or call any witnesses. p. 65

5. The learned Judge began his summing-up by defining murder to the jury, particularly in relation to a charge against two persons jointly: the case against each must be considered separately and similarly all the evidence might not be admissible against both: the law in relation to principals in the second degree was explained and examples given of the principle of common design: to find both guilty, the jury had to find that there was a joint pre-arranged agreement to kill the deceased, and it was necessary for the Crown to prove this by evidence: if the evidence did not justify a verdict against both, the jury would have to consider whether there was evidence to convict one of the accused beyond reasonable doubt, otherwise they should acquit both. The learned Judge went on to explain the standard of proof required, and that the decision upon questions of fact were for the jury: after discussing the weight to be attached to circumstantial evidence, he considered the evidence against the Appellant for the reason that the case against each accused must be considered separately as if she were standing trial separately: the medical evidence showed that murder had been committed: the evidence relating to the deceased proposing to change his will was considered, which would give the Appellant a motive for the crime: the threat uttered on the verandah was relevant if the jury accepted the evidence: the evidence relating to the Appellant's p. 67-99

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story about two masked men was detailed and the jury instructed as to what was necessary before evidence of a statement made by the accused was accepted: the learned Judge suggested that the statement spoken to by Dash was no more than surplusage to that already made to Sergeant Marshall: the jury ought not to attach importance to the remark made to the policeman when she warned Yarde away from the house. The defence of the Appellant was that the Crown had not proved its case.

The case against Yarde must be considered separately: the learned Judge went through his statement and the evidence of his running away on several occasions: this might have an innocent interpretation: there was really no evidence against him of a pre-arranged plan to murder: after considering the Appellant's statement of 21st December the learned Judge said that there were obvious weaknesses in the case against Yarde: there was little evidence except his admission that he was present: if the jury found there was no acting in concert, they must consider whether they could find either guilty: if they thought that in view of the evidence the Appellant was trying falsely to put the blame on Yarde in her statement, they might draw the inference that she was guilty of the murder. The onus was on the prosecution to prove both guilty separately and it was not for the jury to make a choice because one or other were probably guilty.

p.100 6. The jury found both the Appellant and Yarde guilty of murder and they were both sentenced to death.

pp.101-106 7. Both the Appellant and Yarde appealed against their convictions and the appeals were heard on 1st, 2nd and 4th February 1961 by the Federal Supreme Court, (Rennie, Archer and Wylie, JJ) when the Appellants' appeal was dismissed and Yarde's was allowed: his conviction was quashed and the sentence set aside.

pp. 107-111 8. The judgment of the Federal Supreme Court was given by Rennie, J. The learned Judge outlined the facts established by the prosecution: it had been argued for the Appellant that the jury's verdict must

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have been based on a finding of common design, and that that verdict could not stand if there was no sufficient evidence of common design: this would only be so if the evidence against both was the same, which was not so here: only the medical evidence was common to both cases. There was evidence of motive and a threat on the part of the Appellant and it was proper for the jury to have considered whether she was guilty and then to have considered whether there was evidence against Yarde of a common design: the case against the Appellant did not rest on the existence of a common design. The summing up had contained an adequate direction as to circumstantial evidence. The last submission was that there was no sufficient evidence to support the Appellant's conviction, but in the Court's view a very strong case had been made out against her: there was ample and sufficient evidence to support the verdict, and her appeal should be dismissed.

The case against Yarde, however, rested entirely upon proof of a common design to murder: the Judge had directed the jury that there was no sufficient proof of a pre-arranged plan against Yarde, but the jury had found him guilty: however it was impossible to say that the inferences to be drawn from the evidence called against him point inevitably to his guilt: the case against him was not proved with the necessary certainty, and his appeal would be allowed.

9. The Respondent respectfully submits that the conclusion of the Federal Supreme Court in respect of the Appellant was correct and should be upheld. There was sufficient evidence upon which the jury could properly have come to their verdict. It is submitted that the learned Judge's summing up was entirely adequate and proper and that he was justified in leaving the case against the Appellant to the jury for their verdict. The verdict was given in accordance with the summing up and should not be disturbed. There was sufficient evidence against the Appellant to justify the verdict of the jury either upon the basis that the Appellant was alone guilty of murder or that she was a party to a scheme as a result of which the deceased was murdered. The finding of the Federal Supreme Court that there was no sufficient evidence of common design admissible

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against Yarde ought not to affect the consideration of whether there was sufficient evidence of such common design to murder admissible against the Appellant.

10. The Respondent respectfully submits that the conviction of the Appellant should be upheld and that this appeal should be dismissed for the following (amongst other)

R E A S O N S

(1) BECAUSE there was sufficient evidence upon which the Appellant could properly be found guilty. 10

(2) BECAUSE of the other reasons given in the judgment of the Federal Supreme Court.

(3) BECAUSE the Appellant has suffered no injustice.

MERVYN HEALD

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CASE FOR THE RESPONDENT

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