


*Privy Council Appeal No. 8 of 1995*

**Everette Byers** *Appellant*

v.

**The Queen** *Respondent*

FROM

**THE COURT OF APPEAL OF THE  
EASTERN CARIBBEAN  
( ANTIGUA AND BARBUDA)**

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JUDGMENT OF THE LORDS OF THE JUDICIAL  
COMMITTEE OF THE PRIVY COUNCIL,

Delivered the 2nd October 1996

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*Present at the hearing:-*

Lord Jauncey of Tullichettle

Lord Lloyd of Berwick

Lord Nolan

Lord Nicholls of Birkenhead

Lord Hoffmann

*[Delivered by Lord Jauncey of Tullichettle]*

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1. On 2nd April 1990 after a trial lasting twenty days the appellant was convicted of the murder in Antigua of Mrs. Arah Hector and sentenced to death. His appeal against conviction was dismissed by the Court of Appeal of the Eastern Caribbean on 27th November 1992 and he now appeals to this Board. There were no eye witnesses to the murder but more than fifty witnesses gave evidence for the Crown. The appellant gave no evidence sworn or unsworn and none was led on his behalf.

2. It may be appropriate to give a brief summary of the relevant facts. Mrs. Hector was last seen alive in the early afternoon of Sunday, 28th May 1989 while travelling in a very distinctive yellow van towards a small farm owned by her husband some miles from their house in St. Johns. On 30th May her body was found in a shallow grave at a beach several miles from the farm. There was pathological evidence to the effect that death had resulted from a massive haemorrhage from wounds to the neck. Owing to the state of decomposition of the body the estimate of the time of death could be no more accurate than twelve hours either side of 8.00 a.m. on 28th May. The appellant, who lived in St. Johns, did part-time work for the Hectors at the farm. A number of witnesses spoke to having seen him and Mrs. Hector together in the van on the morning of 28th May. Other witnesses saw the van and Mrs. Hector in it in the vicinity of the farm and travelling towards it later in the day. One of these witnesses said that she also saw the appellant in the van. There was evidence that the appellant had left the house in which he lived at about 11.00 p.m. or 11.30 p.m. on 28th May and shortly before midnight the van was once again seen in the vicinity of the farm although the driver was not identified. Forensic evidence suggested that the attack on Mrs. Hector had taken place in the bedroom at the farm and there was evidence of extensive bloodstaining on the floor which had been wiped away with a towel. The appellant had previously been forbidden to enter the farmhouse but a number of prints from the shoes which he was wearing on 28th May were found on the bedroom floor in the area of the bloodstaining. There was a spot of human blood of unidentified group on the right shoe. Wrapped round the body, when found, was a bloodstained pair of trousers kept at the farm by the appellant and there were bloodstains in the back of the van. On two occasions on 29th May the appellant stated to the police that he had not seen Mrs. Hector on Sunday, 28th May. However, on 30th May he admitted that he had been picked up by Mrs. Hector in the van on the morning of 28th May and that, after borrowing some welding plant in St. Johns, he was driven home and she drove off, after which he never saw her again.

3. Mr. Davies, for the appellant, submitted that the trial judge had failed properly to put the defence to the jury during the course of the summing up. The case was, he suggested, complex depending entirely upon threads of circumstantial evidence and it was the duty of the judge to give every assistance to the jury in assessing and making sense of the evidence. This he had failed to do because he had treated the evidence as a whole from which inferences were to be drawn instead of going through each individual item relied upon by the prosecution and commenting on any weaknesses or discrepancies therein, as he should have done. He referred to a number of decisions in which the need to put the defence fairly to the jury had been emphasised. To give a few examples, in *R. v. Dinnick* [1909] 3 Cr.App.R. 77 at page 79 Lord Alverstone C.J. referred to the principle of criminal law that "when a defence, however weak it may be, is raised by a person charged, it should be fairly put before the jury". In *R. v. Tillman* [1962] Crim.L.R. 261 the Court of Criminal Appeal, in a case in which the appellant gave evidence, held that "however weak a

defence might be and even when it consisted almost entirely of denials, it was the duty of a judge in summing up to put before the jury the nature of the defence". As a final example reference may be made to the unreported case of *Ellis Taibo v. The Queen* (Judgment of the Privy Council delivered on 26th March 1996) a case in which the appellant made an unsworn statement from the dock. The prosecution case there was, as Lord Mustill described it, "not only weak but confusing, and confusing in a way which tended to obscure its weakness". The confusion related to the identification of certain shirts upon whose finding the prosecution relied to link the appellant to the crime. One of the grounds of appeal was that particular care should have been, but in the event was not, taken in the summing up to point out the various weaknesses in the evidence for the prosecution. At page 12 Lord Mustill said:-

"The purpose of their Lordships in emphasising the evidence on DG3 [one of the shirts] is not to dwell on a mistake which, without the chronological analysis provided to the Board, would be wholly understandable, but to illustrate the need for the trial judge to explain to the jury why the simple case presented to them by the prosecution might be open to doubt. After the most careful study their Lordships have concluded that such an explanation cannot be found in the summing up actually delivered. Little purpose would be served by going through it line by line. It must be emphasised at once that there is no question here of the direction being unbalanced, in the sense of favouring one side to the prejudice of the other. Although there were features of the summing-up, as there were of the trial, which are open to criticism, that kind of unfairness cannot be suggested here. Nor can it be said that the judge's account of the evidence was inaccurate. But in a marginal case such as this the evidence needed to be scrutinised, and not simply rehearsed, if a verdict founded on it was to be safe. This did not happen here, and their Lordships feel bound to conclude that the verdict cannot stand."

4. It was this case upon which Mr. Davies particularly relied to support his proposition that the judge should have commented on each individual item of prosecution evidence.

5. In a case where the prosecution evidence is not only weak but confusing it may be appropriate for a judge to scrutinise and comment on each item upon which the prosecution relies. That, however, is not this case. There was a substantial body of evidence from witnesses entirely independent of Mrs. Hector and the appellant from which it could be inferred that they were together in the yellow van and at the farm on 28th May. Perhaps not surprisingly, given the number of sightings which were made, there were discrepancies between the estimates of time given by different witnesses but none of them were such as to cast serious doubt on the overall prosecution case. There were the footprints of the appellant in the bedroom where the murder was said to have taken place, human blood on the shoe which he was wearing on 28th May and his bloodstained trousers wrapped round the neck of Mrs. Hector. There was also evidence that a number of miniature bottles of alcohol were found to be missing from the farmhouse after the murder and of the appellant being seen with some bottles of a similar type during the evening of 28th May. Mr. Knox, for the Crown, relied on the appellant's false denials to the police that he had been with Mrs. Hector on 28th May, denials made at a time when her body had not yet been found. These denials, it was submitted, strongly suggested that the appellant was aware of Mrs. Hector's fate and was seeking to distance himself from her movements on 28th May. All in all there can be no doubt that the prosecution case was both strong and straightforward and far removed from being marginal as it was in *Taibo*. Against it the appellant put forward no substantive defence merely seeking to cast doubt upon the accuracy of some of the witnesses and the inferences to be drawn from the evidence.

6. The judge's summing up extended to some 137 pages of the transcript and during the course of it he conducted a very thorough if somewhat repetitious rehearsal of the evidence. Apart from repeatedly warning the jury of the consequences of their having a reasonable doubt as to the appellant's guilt, he referred on several occasions to his defence that he had not committed the crime. He twice referred to the defence as involving a possible alibi though there was of course no evidence to that effect. The judge made specific reference to an explanation given by the appellant to the police for his possession of the miniature bottles and he also told the jury that there might be reasons for the appellant's lies to the police other than to conceal his guilt. He also suggested to them that they might not find sufficiently credible an important identification witness who by cross-examination was demonstrated to have made inconsistent statements on previous occasions. Given that the appellant gave no explanation in rebuttal of the strong evidence against him, it is difficult to see how the judge could have taken the defence case further. He certainly could not have constructed a positive defence for which there was no basis in fact.

7. Mr. Davies' real attack on the summing up was not so much that the judge had failed to put the entirely negative defence case properly but that he had failed to go through the extensive evidence with a toothcomb emphasising each and every discrepancy and weakness in the prosecution evidence. In their Lordships' opinion there was no such duty incumbent upon him

in this case. Where a case depends entirely on identification evidence it will be appropriate for a judge to draw to the attention of the jury discrepancies and weaknesses in the evidence. In the present case the Court of Appeal concluded, rightly in their Lordships' view, that although the identification evidence as to the occupants of the yellow van travelling towards and in the vicinity of the farm was not critical to the success of the prosecution the trial judge had dealt with it adequately and at some length. Where, as in *Taibo*, the prosecution case is not only weak but confusing, a trial judge will be well advised to perform a similar exercise. However, where there is not only identification evidence but both direct and circumstantial evidence pointing to the guilt of an accused, detailed scrutiny of each piece of prosecution evidence is not required. It must be a matter for the judge to determine in the exercise of his discretion what evidence requires detailed scrutiny and what merely merits a passing reference. It will normally be quite sufficient if the judge draws the attention of the jury to material discrepancies and weaknesses going to the root of the prosecution case. While a simple rehearsal of the evidence of each witness may not always be the best way in which to sum up a case to a jury, their Lordships do not consider that any different form of summing up or even one involving such a scrutiny as the appellant has desiderated would have made any difference to the result given the overall strength of the prosecution evidence and the lack of any explanation offered by the appellant.

8. The Court of Appeal dealt very carefully with each ground advanced before it by the appellant and their Lordships have no doubt that they reached the correct conclusion.

9. For these reasons their Lordships will humbly advise Her Majesty that the appeal should be dismissed.