

Cardinal Williams

Appellant

v.

The Queen

Respondent

FROM

**THE COURT OF APPEAL OF ST. VINCENT
AND THE GRENADINES**

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

Delivered the 10th July 2000

Present at the hearing:-

Lord Slynn of Hadley
Lord Nicholls of Birkenhead
Lord Cooke of Thorndon
Lord Clyde
Lord Millett

[Delivered by Lord Slynn of Hadley]

On 23rd June 1995 the appellant was convicted of the murder of his wife and sentenced to death. His appeal against conviction was dismissed by the Eastern Caribbean Court of Appeal (St. Vincent and the Grenadines) on 29th January 1996. On 30th October 1997 he was given special leave to appeal as a poor person to Her Majesty in Council. On 23rd November 1998 the Judicial Committee advised Her Majesty that the appeal be allowed and the matter be remitted to the Court of Appeal for further hearing in accordance with the opinion of the Board. The Judicial Committee in its judgment of 23rd November rejected several of the grounds of appeal. They were, however, asked that new evidence might be tendered:-

“in the form of a report by Dr. N.L.G. Eastman, a distinguished English forensic psychiatrist, who went to St. Vincent and interviewed the appellant in prison for

over 5 hours on 19th February 1998. Dr. Eastman was asked, unlike Dr. Debnath, to express an opinion on the appellant's mental condition at the time of the killing. It is unnecessary for their Lordships to say more than that the report, if accepted, would be material upon which a jury could have found that the appellant was suffering from diminished responsibility."

The Board considered that the new evidence could be received by the Court of Appeal under section 45 of the Eastern Caribbean Supreme Court (St. Vincent and the Grenadines) Act c.18 since it was likely to be credible. They said:-

"It may be that after cross-examination or the consideration of evidence in rebuttal, Dr. Eastman's evidence would be controverted and rejected. This is a matter going to weight; their Lordships consider that it passes the threshold test for admissibility under section 45(a)."

The Board also accepted that there was a reasonable explanation as to why the evidence had not been adduced at the trial so as to satisfy section 45(b) of the Act. They added:-

"Their Lordships would therefore on this ground remit the appeal to the Court of Appeal to decide how best to deal with Dr. Eastman's evidence. The Court may consider it expedient to order a new trial, so that the evidence can be given subject to cross-examination and any rebutting evidence before a jury. Or it may decide in the first instance to hear such cross-examination and rebutting evidence itself. Their Lordships consider that the procedure to be followed must be a matter for the Court of Appeal to decide."

On 16th December 1998 remission to the Court of Appeal on that basis was ordered "in particular to decide whether to order a new trial or itself to hear the evidence of Dr. Eastman and any rebutting evidence".

When the matter came before the Court of Appeal on 25th March 1999 all the judges accepted that they were bound by the ruling "in favour of the admission of Dr. Eastman's evidence" and would "have to decide whether to order a new trial or to deal with the evidence ourselves".

Singh J. with whom Redhead J. concurred, however made it plain that he disagreed with the ruling that there was a reasonable explanation as to why the evidence had not been adduced at the trial. Moreover he said that the opinion of Dr. Eastman was “more speculative than conclusive” and was based on what the appellant told him which he treated as true. He also disagreed that the threshold test in section 45(a) had been passed even though he was bound to accept that it was. He said:-

“... I can discern no useful purpose in ordering a retrial of this matter. In compliance with the second limb of the suggestion of the Privy Council, I would treat Dr. Eastman’s opinion as evidence before this Court. However, I do not find it necessary to order cross examination of his opinion, neither do I consider rebuttal evidence necessary. In my judgment, Dr. Eastman’s opinion was based on matters, the credibility of which was not established, and therefore was a mere academic opinion on those hypothetical facts.”

Having referred to the statement of the accused under caution Singh J. concluded that there was “Very compelling evidence indeed showing someone who at the time of the killing not only knew what he was doing but who also knew that what he was doing was wrong”.

Matthew J. read the opinion of the Judicial Committee as meaning “... hearing the testimony given under oath and being subject to cross examination”. He said, as was the opinion of both sides’ counsel before the Court of Appeal, that “... I would proceed in accordance with their judgment and hear the evidence of Dr. Eastman and any rebutting evidence. I do so order”.

On the hearing of the appeal pursuant to leave given by the Board Mr. Guthrie Q.C. for the appellant and Sir Godfray Le Quesne Q.C. for the Crown accepted that by its order the Board “intended that the appellant will be permitted to call Dr. Eastman and that it would be open to the Crown to cross-examine him and call evidence in rebuttal”. Both sides agree that unless their Lordships were able to substitute a verdict of manslaughter on the basis of diminished responsibility the matter should be remitted to the Court of Appeal to enable that court to hear Dr.

Eastman's evidence (including cross-examination) and any evidence in rebuttal.

There are now available to the Board not only Dr. Eastman's first report but two supplementary reports and a report obtained by the Crown from Dr. Mahy who visited the appellant in prison on 19th March 1999. Mr. Guthrie Q.C. says if taken together they provide such a wealth of material pointing to diminished responsibility that no cross-examination is necessary and that no court could fail to be satisfied by the appellant that he was at the time of the murder suffering from diminished responsibility. In view of this and the time which has passed it would be wrong, he submits, to refer the case back to the Court of Appeal, it being accepted that the case should not go for a retrial. Sir Godfray contends that there was no evidence before the Court of Appeal on which a finding of diminished responsibility could have been reached and that the only way to deal with the matter is for the doctor's evidence to be given and cross-examined.

If there was an identity of view between the two doctors that there was here such diminished responsibility as to require a verdict of manslaughter the course proposed by Mr. Guthrie might be possible and desirable. It is plain that there is much agreement between the two doctors but there are areas where they do not express the same view. Both agree that the appellant was at the relevant time suffering from a depressive illness. Dr. Eastman regards this as being relevant to and supportive of the defence of diminished responsibility. Dr. Mahy may or may not think that but he does not specifically say so. There is no clear identity of view as to possible brain damage and its effect on the appellant's responsibility for what he did. These and other areas could be explored and clarified by oral evidence-in-chief and by cross-examination. That was the intention of the original order as Matthew J. and counsel accepted. In their Lordships' view they still need to be so explored and it is not possible for them to deal with the matter on the basis of the written reports. The matter must go back to the Court of Appeal before a differently constituted court which their Lordships are told is available.

Although in consequence of what has happened it is now over five years since conviction and sentence (*Pratt v.*

Attorney General for Jamaica [1994] 2 A.C. 1) it is agreed that this matter should be dealt with as soon as possible.

Accordingly their Lordships will humbly advise Her Majesty that the appeal should be allowed and the case remitted to the Court of Appeal for them to deal with it in accordance with their Lordships' opinion.