JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 92/91

COR: THE HON. MR. JUSTICE CAREY J.A.
THE HON. MR. JUSTICE DOWNER J.A.
THE HON. MR. JUSTICE PATTERSON J.A. (AG.)

REGINA VS EVERTON MORRISON

Robin Smith for appellant

Terrence Williams for Crown

15th & 22nd February 1993

CAREY J.A.

On 15th February 1992, we treated this application for leave to appeal a conviction for murder as the hearing of the appeal which we allowed. The conviction was quashed, the sentence set aside and we intimated that we would shortly give our reasons therefor. We now do so.

The appellant was convicted in the Circuit Court Division of the Gun Court on 4th July 1991 before Reid J (Ag.) sitting with a jury and sentenced to death.

The short facts are that on 28th October 1988, Joseph Hunter was shot to death by one of two gunmen who stole his licensed firearm. The witness present at the shooting never saw the assailant. On 7th January 1989 the police had reason to visit the appellant's home where he lives with one Julie Plummer. She gave evidence as to the presence of two firearms on the premises, the whereabouts of which she had been apprised by the appellant. The fatal bullet, according to the Ballistics Expert, had been fired from one of these weapons. That weapon, she identified as one she had seen in the possession of the appellant for a considerable period of time prior to, and after the date of the murder. The other weapon was identified

as that stolen from the victim. Miss Plummer, in regard to that weapon stated however, that she had seen it in the appellant's possession prior to the murder.

The prosecution case depended, it is plain, on circumstantial evidence. The learned judge gave the following directions at p. 145:

> " You remember Mr. Scott telling you that the prosecution is relying upon circumstantial evidence. It is not direct evidence of someboay who saw anything happen and it really amounts to this, what is placed before you, not being direct evidence, is evidence of a series of incidents which are undesigned but taken together they point to a certain direction that something happened. In this case the prosecution says it is murder and murder by the accused."

In that extract we do not think that he made clear to the jury what circumstantial evidence really was and what their approach to such evidence should be. It must be borne in mind that in this jurisdiction, **Hodge's** case [1838] 2 Lewis i.e. 227 is still applicable. That is not the position in England: see **McGreevy v. D.P.P.** [1973] 1 All E.R. 503. The matter was considered by us in **R. v. Lloyd Barrett** (unreported) S.C.C.A. 151/82 delivered November 4 1983 where we stated at p. 6:

> " The weight of authority beginning with **R. v. Clarice Elliot** 6 J.L.R. 173; **R. v. Elijah Murray** 6 J.L.R. 256; **R. v. Burns and Holgate** 11 W.I.R. 110 and **R. v. Cecil Bailey** [1975] 13 J.L.R. 46 is that where the case for the prosecution depends on circumstantial evidence, the judge should make it clear to the jury that not only must the evidence point in one direction and one direction only, and that being guilt, it must be inconsistent with any other conclusion. The approach in this country is not the same as in England."

We desire to say that it should be clearly stated to the jury that, circumstantial evidence consists of the inferences

to be drawn from surrounding circumstances, there being an absence of direct evidence. The jury should be told (i) that if on an examination of all the surrounding circumstances, they find such a series of undesigned and unexpected coincidences, that as reasonable persons, their judgment is compelled to one conclusion; (ii) that all the circumstances relied on, must point in one direction and one direction only; (iii) that if that evidence falls short of that standard, if it leaves gaps, if it is consistent with something else, then the test is not satisfied. What they must find, is an array of circumstances which point only to one conclusion and to all reasonable minds, that conclusion only. The facts must be inconsistent with any other rational conclusion.

The basis for our interference with the conviction is not so much the unhelpful directions on circumstantial evidence but, that the learned trial judge in isolating the facts, applied facts which were incapable of linking the appellant with the crime. Although there was evidence that the victim's firearm was allegedly found on the premises of the appellant, Miss Plummer gave conflicting evidence as to when she actually saw it in the appellant's possession. Indeed, she said that she had seen it in his possession before the date of the murder. As we noted earlier, there was evidence that the fatal bullet was fired from a gun which she could positively identify as having been continuously in the appellant's possesison before the crime and thereafter and that could have linked him with the murder. That was, in our view, the only evidence which could properly have been left to the jury in that regard.

That is enough, in our judgment, to compel us to interfere with the conviction and order that a new trial should be held at the ensuing session of the Circuit Court Division of the Gun Court.