JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 138/91

BEFORE: THE HON. MR. JUSTICE CAREY, J.A.
THE HON. MR. JUSTICE WRIGHT, J.A.
THE HON. MR. JUSTICE WOLFE, J.A.

REGINA vs. MICHAEL ROBINSON

Miss Carol Malcolm, Assistant Director of Public Prosecutions, and Miss Audrey Clarke for the Crown

Lord Gifford, Q.C. for the applicant

April 11 and May 16, 1994

WOLFE, J.A.:

The applicant was indicted for the offence of murder arising out of the death of Chi Pang Chan on the 27th day of June, 1990, in the parish of St. Andrew. He was tried before Clarke, J., sitting with a jury, in the Home Circuit Court between the 18th and 21st days of November, 1991. Having been convicted as charged, he was sentenced to suffer death in the manner authorised by law. He now seeks the leave of this court to appeal against the said conviction.

This application first came before this court on the 15th day of June, 1993, when Lord Gifford, Q.C. informed the court that he was unable to find any arguable ground to advance on behalf of the applicant whom he had advised but prayed the court for an adjournment to interview one Herma Ritchie to ascertain whether or not she could be of any assistance to the applicant's case. The court, mindful of the gravity of the offence for which the applicant had been convicted and in an effort to afford counsel the opportunity to assist the applicant

by way of his best endeavours, granted the adjournment.

On the 11th day of April, 1994, when the matter again came on for hearing Lord Gifford, Q.C. informed the court that notwithstanding his best efforts he was still firmly of the view that there was nothing he could urge on behalf of the applicant and that he had further informed the applicant accordingly and that he had accepted the advice of counsel. Counsel emphasised that in his view the learned trial judge had impeccably dealt with all the issues, which arose for consideration, in his summation to the jury.

This court wholeheartedly agrees with the observations of counsel for the applicant. We have with great care scrutinized the record and we too can find nothing therein which could be meritoriously urged on behalf of the applicant.

The incident which gave rise to the indictment occurred on the 27th day of June, 1990, at Sheila Place, Queensborough, in the parish of St. Andrew. The applicant had lived with his aunt, Miss Ruby Campbell, at 10 Diana Place up to June 1989. Ruby Campbell was by occupation an informal commercial importer, that is, she travelled overseas, purchased goods and sold them on the local market. The evidence adduced at the trial indicated that the deceased was accustomed to engage the services of Miss Campbell to purchase footwear overseas for him. He also sold her foreign currency from time to time. His visits to Miss Campbell usually took place on a Wednesday. The evidence also revealed that the applicant knew the deceased and on many occasions was present at the home when the deceased visited Miss Campbell.

The sole eye-witness, Miss Victoria Lee, a beautician, who resides at 10 Sheila Place, which is just a few chains away from Diana Place, described being at home about 3:15 p.m. on Wednesday June 27, 1990, when she heard a car on Sheila Place. On looking through her window she observed a man of Chinese origin struggling with a black man. She heard one of the men say,

"Give me this." The Chinese man had an envelope in his hand and the black man held on to the envelope at the same time he was using a knife to stab the Chinese man, who eventually fell to the ground. The other man ran and jumped down into a nearby gully. Miss Lee observed that the Chinese man was bleeding and to use her words "battling for life." The envelope which he had in his hand during the struggle was not seen.

Charmaine Jones, a sister of the applicant and with whom he lived at 2571 Hopewell Road, Waterford, St. Catherine, gave evidence to the effect that on June 28, the day following the fatal stabbing of the deceased, Detective Superintendent Hibbert and Detective Corporal McPherson visited her home at Waterford and removed from the applicant's room a black and white T-shirt and a pair of black and white sneakers marked "British Knight". From a barrel containing the applicant's dirty clothes, they also removed a pair of "acid washed" jeans. These articles were claimed by the applicant and when analysed by the Government Analyst showed human blood stains. Miss Jones said that these articles of clothing were being worn by the applicant on June 27.

Senior Superintendent Isadore Hibbert interviewed the applicant on June 28, 1990, during which interview the applicant was duly cautioned and offered to make a statement. The statement was duly recorded. This statement was tendered and admitted into evidence without objection by the defence. The contents of the statement so far as material are set out hereunder:

> "You are not obliged to say anything unless you wish to do so, and whatever you say will be taken down in writing and given in evidence.
>
> Michael Robinson
> 29.6.90
>
> Wit.: L.A. Lawrence, A.S.P.
> 29.6.90
>
> Wit.: I.D. Hibbert, S.S.P.
> 29.6.90

"I Michael Robinson wish to make a statement I want someone to write down what I have to say. I have been told that I need not say anything unless I wish to do so and whatever I say will be taken down in writing and given in evidence.

Michael Robinson
29.6.90

Wit.: L.A. Lawrence, A.S.P.
29.6.90

Wit.: I.D. Hibbert, S.S.P.
29.6.90

Saith,

Me know Mr. Chan. We call him Sheephead and Mr. Chin. Me know him from me was living with me auntie at Cowper Drive. Me live a Cowper Drive bout eight years. Him usually carry money come to me auntie a Cowper Drive. Sometimes him hand me the money and me give me auntie. Me and him talk up to the time me auntie left and go live up Queensborough wid me auntie Ruby Campbell. Me auntie sell fi herself but she buy foreign exchange from Sheephead. She know dem and dem love her for a fi him brother store she buy from a foreign. Wednesday a was going round a me auntie. As me bend the corner me see him. He was driving him Isuzu Aska. Him stopped through him know me. Me go in a de car. Him tell me dat him going round on de road. Him stop and blow at a house but no one was over there and me tell him say fi give me a money and him say him nuh have any money. Me see de money in a him pocket and mi hold on pon it and him tump me in a mi face. Him pull de door pon him side and get out and me pull my side and get out and de two a we start rastle. Him come round to me and tump me in a mi face and mi jook him wid mi knife and him tump mi again and mi jook him. Me take de money and jump down in a de gully and run. Mi see one man and him start throw stones after mi and den me hear three shots and still continue running. Me go straight a mi house at Waterford. Thursday mi go Arcade me see me cousin Lincoln and him ask me say what him hear say happen and me tell him say me did de a track although a nuh truth. Me just deny it. Him tell me say mi auntie gone over mi house. Me leave and go over there but me never see dem. Me leave and go back a de Arcade. Me see one woman up a de top a Princess Street and me ask her if she want dollars fi buy and she said how much me have and me tell her two hundred and she buy it. She give fifteen hundred fi de two hundred U.S. In a de evening me cousin McPherson come down a mi house and start search de place and ask me question and

"den carry mi go a Waterford Police Station and say him a go phone him boss. Den later mi see Mr. Hibbert come de. Das all.

Michael Robinson
29.6.90

Wit.: L.A. Lawrence, A.S.P.
29.6.90

Wit.: I.D. Hibbert, S.S.P.
29.6.90

The foregoing statement was read over to me. I was told I could add, alter or correct anything I wish. It is true. I made it of my own free will.

Michael Robinson
29.6.90

Wit.: L.A. Lawrence, A.S.P.
29.6.90

Wit.: I.D. Hibbert, S.S.P.
29.6.90

Taken down by me this 29/6/90 at Homicide Office, C.I.B. Headquarters, Kingston in presence of S.S.P. Hibbert and A.S.P. Lawrence. It was read over to the maker who was told he could add, alter or correct anything he wished. Statement commenced 3:40 p.m. and concluded at 4:40 p.m.

I.D. Hibbert, S.S.P. #2780
29.6.90."

Dr. Royston Clifford, consultant pathologist, testified that the deceased sustained ten stab wounds all over the body and died as a result of multiple stab wounds inflicted with a sharp instrument such as a knife, with various degrees of force involved.

The applicant, however, gave evidence on oath and denied that he had given the statement which was admitted into evidence. He further denied that the clothing was his and that he had killed the deceased.

In addition to the written confession referred to above, the prosecution also relied on the evidence of oral confessions made to Detective Senior Superintendent Isadore Hibbert, who having duly cautioned the applicant informed him that he had good reason to suspect that he had murdered Chin Pang Chan whereupon the applicant said, "I don't know why I do it." He further

admitted that he had used a rachet knife to stab the deceased and that he did not know what had happened to the knife.

The confessions of the applicant were also supported by the circumstantial evidence which has been outlined in the summary of the evidence set out herein. Taken together the prosecution case was overwhelming. We are of the view that the case for the defence lacked any substance whatever. Once the jury accepted that the cautioned statement was voluntarily made by the applicant and was not a forgery as the applicant contended in his sworn testimony and that the contents of that statement were true, the verdict was inevitable.

The learned trial judge, notwithstanding that there was no challenge to the admissibility of the statement, in his very careful and proper directions to the jury invited them to give due consideration to whether or not the statement was made voluntarily as also whether it was a forgery.

The verdict of the jury clearly demonstrated that they accepted that the statement was made by the applicant and that the contents were true. Such a finding is, in our view, unassailable.

For these reasons we refused the application for leave to appeal.

On the question of sentence, the killing was occasioned during the course of a robbery, as Lord Gifford, Q.C. has conceded, and in accordance with section 2(1)(d)(i) of the Offences against the Person Act, we have classified the offence as capital murder. Consequently, the sentence of death imposed by the court below is affirmed.