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HARI PAL

v.

REGINAM

[COURT OF APPEAL, 1968 (Gould V.P., Hutchison J.A., Marsack J.A.), 11th, 18th October] B

Criminal Jurisdiction

Criminal law—evidence and proof—witnesses—previous inconsistent statements by—conflict in evidence between witnesses—admissibility and weight—direction to assessors. C
Criminal law—witnesses—conflict between—previous inconsistent statements—appropriate direction to assessors.

The appellant was convicted of manslaughter. At his trial there was inconsistency between the evidence of some prosecution witnesses and statements previously made by them, and conflict between the evidence of some such witnesses from one to the other. The trial judge, in summing up, directed the assessors (a) to view with suspicion the evidence D of any witnesses who had made previously inconsistent statements (b) to accept any part of their evidence as the truth only after the most careful consideration (c) that the previous inconsistent statements were evidence only of the fact that the witnesses concerned had earlier said something different from what they were saying in court and (d) that though the inconsistencies and false statements may have been due to E fear of self-incrimination, or in some matters to hazy recollection of events . . . . they must scrutinize the evidence most carefully, must determine whether parts of it could none the less be regarded as trustworthy or whether the whole of their evidence should be rejected.

Held: 1. It is not the law that the court must necessarily reject all the evidence given at the trial by a witness who has made a previous F inconsistent statement, or whose evidence is on some points in conflict with that of other prosecution witnesses.

2. The summing up was scrupulously fair to the appellant and the directions on the admissibility of and weight to be attached to evidence were not open to objection.

Cases referred to: *R. v. Golder* [1960] 3 All E.R. 457; [1960] 1 W.L.R. G 1169: *Gyan Singh v. Reginam* (1963) 9 F.L.R. 105.

Appeal against conviction of and sentence for manslaughter in the Supreme Court.

F. M. K. Sherani for the appellant.

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B .A. Palmer for the respondent.

Judgment of the Court (read by MARSACK J.A.): [18th October, 1968]—

This is an appeal against a conviction for manslaughter before the Supreme Court at Suva on the 18th April, 1968, and also against sentence of four years' imprisonment imposed for that offence.

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It is not disputed that the deceased, Frank Spowart, died from the effect of two deep stab wounds in the left side of his back, these wounds being inflicted in the course of a fight between the deceased and the appellant at Suva on 30th October, 1967. This fight was the climax of a long series of quarrels between the family of the deceased and that of appellant. The appellant was charged with murder. All five assessors B expressed the opinion that the appellant was guilty of manslaughter on the ground of the use of excessive force in self-defence. The learned trial Judge accepted this unanimous opinion, gave judgment convicting the appellant of manslaughter, and passed sentence of four years' imprisonment.

Five grounds of appeal against conviction were set out in the notice C of appeal. One referred to what appellant contended was a misdirection on the subject of the stains found on the knife produced at the trial. We can find no substance in this ground which, in our view, does not require further consideration.

The other four grounds can conveniently be considered together. They amounted to a submission that the learned trial Judge had misdirected D the assessors, and himself, on the credibility of some of the witnesses for the prosecution, in that he had not correctly dealt with certain conflicts of evidence on important points from one witness to another, and inconsistencies between the evidence of witnesses given at the trial and statements previously made. In counsel's submission some of the important evidence which was accepted as reliable by the learned trial Judge should E not have been so accepted; and thus, in counsel's submission, there was a sound basis for the general ground of appeal that the verdict was unreasonable and could not be supported having regard to the evidence.

Counsel's argument was directed very largely against the evidence given by the witness Phyllis Raymond. Her evidence was most important, as she was the only person outside members of deceased's family who was an actual eyewitness of the struggle in which the deceased met F his death.

In what the trial Judge referred to as one important matter, namely whether or not the appellant's wife had a knife in her hand, this witness gave evidence at the trial which was in direct conflict with her evidence at the preliminary inquiry; and counsel submitted that because of this conflict, and also of the fact that there were conspicuous inconsistencies G betwen her evidence and that of other witnesses for the prosecution, she should have been regarded as an unreliable witness and little, if any, weight should have been given to her evidence.

Counsel cited the judgment of Lord Parker C.J. in *R. v. Golder* [1960] 3 All E.R. 457 at p.459 —

H "In the judgment of this court, when a witness is shown to have made previous statements inconsistent with the evidence given by that witness at the trial, the jury should not merely be directed that the evidence given at the trial should be regarded as unreliable;

they should also be directed that the previous statements, whether sworn or unsworn, do not constitute evidence on which they can act."

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In our view the direction of the learned trial Judge, both to the assessors and to himself, on this point was full and accurate. In the course of his summing-up he directed the assessors to view with suspicion the evidence of any witnesses who had made previously inconsistent statements, and to accept any part of their evidence as the truth only after the most careful consideration and when they were completely satisfied that it was the truth. He also made it clear that the previous inconsistent statements were evidence only of the fact that the witnesses concerned had on some earlier occasion said something different from what they were now saying in the Court; and they were not evidence of the facts to which their contents related.

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It is not the law that the Court must necessarily reject all the evidence given at the trial by a witness who has made a previously inconsistent statement, or whose evidence is on some points in conflict with that of other witnesses called for the prosecution. The authorities on the first of these points were reviewed by this Court in *Gyan Singh v. Reginam* (1963) 9 F.L.R. 105, and in the course of the Court's judgment the principle to be followed was stated thus —

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"It is the duty of the trial Judge to warn the Assessors, and to keep in mind himself, that it is dangerous to accept sworn evidence which is in conflict with statements previously made by the same witness; or, at least, that such evidence should be submitted to the closest scrutiny before acceptance. It is, however, still the duty of the Assessors, and of the Judge himself, after full atttention has been paid to this warning, to determine whether or not the evidence given before them in Court at the trial is worthy of credence and, if so, what weight should be attached to it."

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Applying this principle we find ourselves unable to agree that the learned trial Judge, after directing himself correctly, was wrong in accepting the evidence of Phyllis Raymond as to the fatal assault by appellant on the deceased.

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With reference to the conflict of evidence among the witnesses for the prosecution, the learned trial Judge has, in our view correctly, drawn the attention of the assessors not only to the differences amongst the witnesses but also to what he refers to as the lies told to the police or at the preliminary inquiry. Most of these referred to the events preceding the actual outbreak of fighting. He also invited the assessors to give full consideration to what had been said at length on this point by counsel in their closing addresses. His direction to the assessors and to himself was to the effect that although these inconsistencies and false statements may have been due to fear of selfincrimination, or in some matters to hazy recollection of events which took place in a very short period of time some months before, they must scrutinize the evidence most carefully, must determine whether parts of their evidence could none the less be regarded as trustworthy, or whether the whole of their evidence should be rejected.

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In the result we can find nothing in the summing-up of the learned trial Judge, and the directions to the assessors, and to himself, on the admissibility of evidence and the weight to be attached to it which is open to objection. We find that the summing-up was scrupulously fair to the appellant. We are of opinion that there was ample evidence, accepted on good grounds by the Court, to justify the finding which was made, that the deceased came by his death as the result of wounds inflicted by the appellant; and that the degree of force employed by the appellant was, in all the circumstances, grossly excessive. We do not find it necessary to traverse the evidence in detail; this was done adequately by the learned trial Judge in his summing-up.

For these reasons the appeal against conviction will be dismissed.

With regard to the appeal against sentence, counsel urges that though the learned trial Judge stated that this was not a case for a severe deterrent sentence he none the less proceeded to impose one. We find ourselves unable to agree with that contention. We are satisfied that full consideration was given by the learned trial Judge to all the matters urged in appellant's favour, and we are unable to say that the sentence of four years' imprisonment was in any way excessive.

The appeal against sentence is also dismissed.

Appeals dismissed.