IN THE COURT OF)
CRIMINAL APPEAL) No. 38 of 1965

CORAM: BRERETON, J.
WALSH, J.
MANNING, J.

Friday 6th August, 1965.

REGINA v. McLEOD-LINDSAY.

JUDGMENT

WALSH, J.: By s.6 of the Criminal Appeal Act, 1912, it is provided that the Court, on an appeal against conviction, shall allow the appeal if it is of opinion that the verdict of the jury should be set aside on the ground that it is unreasonable or cannot be supported, having regard to the evidence. In a careful and elaborate argument counsel for the appellant discussed the details of the evidence given at the trial in an endeavour to persuade the Court that the conviction of the appellant on a charge of wounding with intent to murder should be quashed on the ground that the verdict could not be supported, having regard to the evidence.

As this ground was argued it was necessary for the Court to examine the evidence and form a judgment upon it. The principles governing the task and function of this Court in relation to this ground of appeal are indicated in the cases of Raspor v. The Queen, 99 C.L.R. 346, and Plomp v. The Queen, 110 C.L.R. 234. The Court must scrutinise the evidence. But this is not to be done in order that the Court may form its own opinion from the transcript as to the guilt or

innocence of the appellant and substitute its opinion for that of the jury, if the opinions do not coincide. It is to be done in order that the Court may decide, bearing in mind that the jury might accept some of the evidence as entirely truthful and reliable, and might reject the truthfulness or reliability of other evidence, whether the Court thinks that upon the evidence it was open to the jury to be satisfied beyond reasonable doubt that the appellant was guilty.

I am of opinion that in this case it was open to the jury to be so satisfied. I have given consideration to the arguments on behalf of the appellant and have examined the evidence. I have had the benefit of a summary of the evidence bearing upon different aspects of the case which the learned trial Judge has provided in his report to this Court. The details of the case are analysed in the reasons of Brereton, J. I agree with his conclusion that the Court cannot hold that it was unsafe to convict or that it was not open to the jury to be satisfied beyond reasonable doubt of the guilt of the appellant. I wish to add a few comments upon this ground of appeal.

Some of the detailed submissions put to the Court on behalf of the appellant seemed to me to be based upon the supposition that if the evidence at a trial covers several different subsidiary issues of fact, the Crown bears an onus to establish, beyond reasonable doubt, the conclusion which is favourable to its case in respect of each of these and that in order to test whether or not the Crown has done so one should examine each subsidiary issue separately. For example, as there was some direct evidence bearing upon the presence of the appellant at the Hotel at various times on the evening of the crime, the suggestion underlying the submissions for the appellant was the Crown

case must fail if that evidence did not establish clearly that the appellant was away from the Hotel during a sufficient period of time for the commission of the crime. This same notion underlies also ground 5 of the grounds of appeal in which it is said that His Honour was bound to direct the jury that the onus was on the prosecution to show, beyond reasonable doubt, that the appellant "had an opportunity" to commit the crime. But the onus which is on the Crown is to prove that the accused committed the crime. If other evidence in the case, particularly the evidence relating to the bloodstains and the clothing, and to the question of the jacket being in the car and not being worn by the appellant when he was at the house later, could be regarded as capable of establishing that it was he who attacked his wife, then it is not to the point to say that it was not proved independently that he had left the Hotel or that he had the opportunity to be at the house earlier when the attack was made. The case must be considered as a whole and not as if it could be divided into separate and unrelated compartments. As Dixon C.J. said, in Plomp v. The Queen, 110 C.L.R., 234 at 242:-

> "All the circumstances of the case must be weighed in judging whether there is evidence upon which a Jury may reasonably be satisfied beyond reasonable doubt of the commission of the crime charged".

It was argued, in effect, that the jury was bound, because of the evidence of the appellant's wife, to acquit him. The argument was that even if this evidence was not fully accepted it must at least require the conclusion that there was a reasonable doubt as to guilt. But an appellate court can rarely be justified in holding that a jury was bound to act upon direct exculpatory evidence, given by a witness

whose credit and reliability have been challenged, and whom the jury has had the opportunity to observe. The trial Judge has reported that he was left with serious doubts as to her mental capacity and her reliability.

Many of the detailed arguments addressed to the Court were of such a character that they could be relevant only if the Court was engaged in a complete re-trial of the facts. They were arguments which might very properly have been addressed, and no doubt were addressed, to the jury, concerning such matters as the weight which ought to be attached to some particular part of the evidence and the reasons why some particular inferences ought, or ought not, to be drawn from particular facts. These are not matters with which this Court is concerned. When the whole case is considered I think it can be seen that it was within the province of the jury to reach the conclusion that the appellant was guilty and with this conclusion, as it happens, the learned trial Judge agreed.

Upon the other grounds of appeal against conviction I agree with the reasons given by Brereton J. for rejecting them and I agree also that this Court should not interfere with the sentence imposed by the trial Judge. Therefore I am of opinion that the appeal should be dismissed.
