**BENJAMIN KNOWLES**

**V.**

**THE KING**

PRIVY COUNCIL

1930 March 10

**LEX (1930) –1 A.C 366**

**CITATIONS**

3PLR/1930/1  (PC)

[1930]1 A.C.366

**BEFORE THEIR LORDSHIPS:**

LORD SANKEY L.C.

VISCOUNT DUNEDIN, LORD DARLING, LORD ATKIN, and LORD THANKERTON.

**ORIGINATING COURT**

THE CHIEF COMMISSIONER'S COURT OF ASHANTI (EASTERN PROVINCE), GOLD COAST (GHANA)

**REPRESENTATION**

PRITT K.C. and HORACE DOUGLAS - for the appellant

WILLIAM JOWITT A.-G. and C. H. PEARSON - for the Crown

**ISSUES FROM THE CAUSE(S) OF ACTION**

CRIMINAL LAW AND PROCEDURE: Ashanti - Trial for Murder without a Jury – Wrong summing up by trial judge - When manslaughter instead of murder would be the proper charge – duty of appellate court thereto

CRIMINAL LAW AND PROCEDURE:- Criminal Law - Privy Council Practice – Jurisdiction whether extends to criminal appeals – When conviction for murder instead of manslaughter will be set aside - Ashanti Administration Ordinance (No. I. of 1902), s. 9.

CHILDREN AND WOMEN LAW: Women and substance/drug abuse – Death arising from a moment of mutual drunkenness - Wife-killing via a revolver shot by husband – dying declaration of wife designed to protect husband and testimony of husband asserting accident – Where upstaged by conflicting circumstantial evidence – duty of court thereto to consider both murder and manslaughter – Effect of considering murder alone

HEALTHCARE AND LAW:- Substance and drug abuse - Drunkenness – Married couple and habitual drunkenness - Side-effects - Gunshot wound inflicted by husband on wife in a state of mutual drunkenness – Doctor husband – Whether subsequent treatment of wound in a way deemed proper but scarcely sufficient exculpates husband from liability – Direction of entrance of bullet – implication for forensic analysis – post-mortem examination and implications for justice administration – Whether the presence of criminality can be discerned from a set of forensic conclusions

**HISTORY AND SUMMARY OF FACTS**

The appellant was convicted of the murder of his wife, and sentenced to death upon a trial in Ashanti without a jury. By s. 9 of the Ashanti Administration Ordinance, 1902, "so far as it is practicable and local circumstances permit" the procedure, civil and criminal, in the Ashanti Court was to be the same as in the Supreme Court of the Gold Coast Colony; in that Court it was imperative by Ordinance that a trial for murder should be with a jury. The trial judge had not stated that a trial with a jury was not practicable or not permitted by local circumstances. It appeared on the appeal that there never had been trial by jury in Ashanti.

The death of appellant's wife resulted from a wound inflicted by a shot from a revolver while she and the appellant were together alone in a room. By a dying declaration she had stated that the revolver had been fired accidentally by herself in a manner which she described. The appellant in his evidence also attributed the wound to an accident by her. There was much circumstantial evidence:-

Held, that it should be presumed that a trial with a jury was not practicable, or was not permitted by local circumstances, and accordingly that the appeal failed so far as it was based upon want of jurisdiction; but that the appeal should be allowed upon the ground that the appellant had not the substance of fair trial, and had suffered substantial and grave injustice, in that the trial judge, having come to the conclusion that the revolver had been fired by the appellant, had entirely failed to consider whether the evidence justified a conviction for murder as opposed to manslaughter, and the Board was clearly of opinion that it did not.

APPEAL (No. 54 of 1928) by special leave from a judgment of the Chief Commissioner's Court of Ashanti (Eastern Province), delivered on November 23, 1928, convicting the appellant of murder and sentencing him to death.

The appellant was tried in the Chief Commissioner's Court of Ashanti by the acting Circuit Judge sitting at Kumasi without a jury, upon a charge under s. 224 of the Criminal Code of the Gold Coast Colony (applied to Ashanti by an Ashanti Ordinance of 1925) of having murdered his wife. The trial occupied from November 13 to 21, 1928, and on November 23 the Circuit Judge delivered judgment convicting  
the appellant and sentencing him to death.

On January 29, 1929, the Governor of the Gold Coast Colony in the exercise of powers vested in him granted the appellant His Majesty's pardon on condition that he be imprisoned for life.

On May 7, 1929, the Judicial Committee granted the appellant special leave to appeal from the conviction and sentence.

The terms of ss. 8 to 10 of Ashanti Administration Ordinance I. of 1902, as amended, relating to the law and procedure in the Ashanti Court, and the material facts appearing upon the evidence, are stated in the judgment of  
the Judicial Committee.

The procedure in criminal cases in the Supreme Court of the Gold Coast Colony, which by s. 9 of the above mentioned Ashanti Ordinance is made applicable in Ashanti "so far as is practicable and local circumstances permit" is laid down in the Criminal Procedure Ordinance (Laws of that Colony, 1920, c. 13, c. 31 in 1928 ed.). Sects. 117 and 118 of that Ordinance provide:

"117. In cases tried with a jury the trial shall be with a jury of seven men who may be common or special jurors.

118. Trials in all cases punishable by death shall be heard before a jury of seven special jurors, unless the said number of special jurors are not comprised in the jurors' list for the place where the trial is had, or not obtained when summoned, when the trial may be had with any less number of special jurors, the remainder of the jury being made up of common jurors." (1)

(1) In the Laws of the Gold Coast Colony, 1928, the numbers of the sections in both Ordinances referred to above are varied. Sects. 178 to 198 deal with the qualification of jurors and the preparation of jury lists.

The powers of the acting Circuit Judge were derived from Ashanti Ordinance No. 9 of 1919, ss. 2 and 3.

1929. Nov. 18, 19.

Pritt K.C. and Horace Douglas - for the appellant.

Having regard to s. 9 of the Ashanti Administration Ordinance, 1902, and s. 118 of the Gold Coast Criminal Procedure Ordinance, 1920, the Court had no jurisdiction to try the appellant without a jury unless it was not practicable, or not permitted by local circumstances, to have a jury. There could be no difficulty in Kumasi in obtaining the small jury required by s. 118. The trial judge has nowhere stated that it was impracticable to do so, or that local circumstances did not permit it. The printed case for the Crown contends that s. 118 did not apply because it is in a part of the Ordinance headed "Trials upon information," and the law of Ashanti makes no provision for informations. But even if that heading can affect the imperative terms of s. 118, the commissioner of police signed the charge, and for that purpose he represented in Ashanti the Attorney-General. If that part of the Ordinance does not apply there was no power in Ashanti to try an indictable offence; nor was there power to take the dying deposition, as the section providing for that is in the same part. The Judicature Ordinance of Ashanti (No. IX. of 1919) contemplates that a trial for murder shall be with a jury, as it provides that a trial for murder shall not take place unless the Circuit Judge "presides over" the Court. Upon the facts (1)the judgment was unsatisfactory in many respects. More particularly in that the trial judge, having come to the conclusion that the facts stated in the dying declaration did not agree with the circumstantial evidence, treated a conviction for murder as the inevitable alternative. If the dying declaration is disregarded the rest of the evidence was wholly insufficient to justify a conviction. The trial judge

(1) The arguments upon the facts were heard after those upon the question of jurisdiction were concluded failed to consider whether the evidence justified a conviction for murder, although the Criminal Code lays down circumstances in which homicide may amount to manslaughter only; those circumstances include loss of self-control due to extreme provocation. The appellant suffered substantial and grave injustice within the meaning of In re Dillet (1);he had not "the substance of fair trial," and in Ibrahim v. The King (2) that was stated as a ground upon which a conviction could be set aside. [Reference was made also to\_ Vaithinatha Pillai v. The King-Emperor. (3)]

Sir William Jowitt A.-G. and C. H. Pearson - for the Crown.

Under the maxim "Omnia praesumuntur," etc., it is to be presumed that a competent Court has properly exercised its jurisdiction, and that rule applies in a criminal case: Reg. v. Brenan (4); Morris v. Ogden (5); Broom's Legal Maxims, 11th ed., p. 740. This case should be considered therefore as if the trial judge had stated in his judgment that it was not practicable to have a jury, or that local circumstances did not permit it. There is no provision in Ashanti for preparing jury lists or summoning jurymen; trial by jury has never been introduced into Ashanti. Trial by information, which is dealt with in that part of the Criminal Procedure Ordinance of the Gold Coast which contains s. 118, does not form part of the Ashanti system; there is no attorney-general and no provision for informations. With regard to the facts, while it is not desired that the Board should limit its jurisdiction, attention is drawn to In re Dillet (1) and \_ Arnold v. The King - Emperor (6)as to the practice of the Board in criminal cases. It is submitted that the evidence was sufficient to justify the conviction.

Pritt K.C. in reply. The maxim, and the cases referred to thereon, do not apply. First, because it is apparent that the trial judge dispensed with a jury not because it was impracticable to have one, but because in his view it was not necessary under the procedure in Ashanti. Secondly, because the Court as constituted was not a competent Court. By s. 8 of the Ordinance of 1902 the Court was to be guided by the law in force in the Gold Coast Colony, and by s. 14 of the Supreme Court Ordinance that included the common law of England. Further, even if it was not practicable to have a jury, the Court was not authorized to try the appellant without one. In order to comply with ss. 8 and 9 of the Ordinance of 1902, the proper course was to refer the case to the Supreme Court of the Gold Coast for trial; there was express power to do so by s. 17 of the Ordinance of 1902.

At the conclusion of the argument their Lordships stated that they would humbly advise His Majesty that the appeal should be allowed, and that their reasons would be stated later.

**MAIN JUDGMENT**

1930. March 10. The report of their Lordships was delivered by VISCOUNT DUNEDIN .

This appeal, for which special leave was granted by His Majesty in Council, is against a conviction of the appellant for the murder of his wife, Mrs. Knowles, by the acting Circuit Judge of Ashanti on November 23, 1928. The case was tried by the judge without a jury and the appellant was not allowed the assistance of either solicitor or counsel. The grounds of appeal are first, no jurisdiction, and second, that there was no evidence on which a conviction of murder could be maintained.

The Court of Ashanti by which the appellant was tried was established by the Ashanti Administration Ordinance No. 1 of 1902. The sections of the Ordinance, as amended by subsequent ordinances, which bear on the method of trial in criminal cases are the following:-

Sect. 8: "Where not otherwise provided by some other statute, ordinance, or other law for the time being in force in Ashanti, the Court shall in causes and matters brought or arising before it be guided by the law in force in the Gold Coast Colony as set forth in ss. 14-19 of the Supreme Court Ordinance of the said Colony." Sect. 9: "So far as it is practicable and local circumstances permit, the procedure in the Court, civil and criminal, shall be the same as the procedure in the Supreme Court of the Gold Coast Colony."

Sect. 10: "In no cause or matter, civil or criminal, shall the employment of a barrister or solicitor be allowed."

It is unnecessary to quote the various sections of the Acts which regulate procedure in the Gold Coast, as it is clear that if the trial had been in the Gold Coast it would have been imperative to have a jury for a capital case and the prisoner would, if he chose, have had the assistance of counsel and solicitor.

The appellant therefore contends that a jury for a capital case was a sine qua non, and that a conviction by a judge sitting alone cannot stand.

The Attorney-General stated, and it was not denied by the appellant, that as a matter of fact there never has been hitherto trial by jury in Ashanti.

Now the direction that in Ashanti the criminal procedure of the Gold Coast shall be the guide is not absolute, but is qualified by the provisions of s. 9. If jury trial is not practicable, or not permitted by local circumstances, then the direction does not apply. Practicability and the state of local circumstances are questions which can only be determined in Ashanti on the spot. It is impossible for their Lordships of this Board to form a conclusion on such matters, and it is not for them to turn themselves into a local tribunal. They are of opinion that this is a matter to which the maxim "Omnia praesumuntur rite et solemniter acta" clearly applies, and they are therefore unable to sanction this ground of appeal.  
  
Before dealing with the question of the evidence their Lordships think it necessary emphatically to repeat what has been said on many occasions, that they do not sit as a Court of Criminal Appeal. To allow criminal proceedings to be reviewed, to use the words of Lord Watson in Dillet's case (1), there must have been "substantial and grave injustice... done." In the present case if it had turned out that it was against the law for a judge to try a capital case without a jury, that would have been substantial injustice, for it would have been conviction without jurisdiction, and it was on that ground that leave of appeal was manifestly granted. But the case having been brought up it is incumbent on their Lordships to examine the judgment as given. Even in this somewhat exceptional case, however, their Lordships are still not sitting as an ordinary criminal court of appeal in which case they would be entitled to consider what would have been their own verdict. Though the criterion is hardly as strict as it would have been on an application for leave based on the simple ground that the evidence did not support the verdict, yet they must be satisfied that there is something which, to use the words of Lord Sumner in \_ Ibrahim v. The King \_(1)"deprives the accused of the substance of fair trial."

Now the facts of the case as proved are simple enough. The appellant and his wife were alone in their bedroom after luncheon. There had been guests at luncheon, who had gone away shortly after 2 P.M. without anything noticeable having happened. Their native servants heard loud voices suggestive of quarrelling. The appellant and his wife it was proved lived generally on good and, indeed, affectionate terms, but had occasional quarrels which were greatly induced by the fact that both the appellant and his wife were addicted to the taking of too much liquor, and the appellant drugs, and were often in a drunken or semi-drunken and dazed condition.

The evidence as to the time is confused and contradictory, but somewhere between 4 and 5 P.M. the native servants heard a shot and a cry. They were frightened, and one of them ran off to the district commissioner, who had been one of the guests at the luncheon and said what he had heard. The district commissioner took his car and went off to the house of the accused, whom he saw, and asked if there had been an accident. The accused said it was all right. The district commissioner then went away. The native servant went back again later and two hours later the district commissioner wrote a note saying the native servants were very excited, and asking if he could be of any service. To this letter he got no reply. About the same time the native servant was called into the room and told to clean up a pool of blood. The accused said to his wife he would like to send her to the hospital. He then said he would go himself, and went. When he was gone the cook, by desire of Mrs. Knowles, lifted a revolver which was by the bed and put it into a box, locked it, and gave her the key. While clearing up the blood he picked up something which he did not recognize, but which was a revolver bullet.

That evening the accused got a sleeping draught containing morphia from the dispensary of the hospital. Next evening he got a repetition of the medicine and a hypodermic syringe with two ampoules of morphia. About 3 o'clock that day Dr. Gush, who lived at Kumasi, heard that something had happened and in consequence drove down to Bekwai, where the accused lived. He found the accused in a somewhat dazed condition and bearing signs of the results of alcohol and the drugs above referred to. The accused volunteered the information that there had been "a domestic fracas," and showed him his left leg covered with bruises which he said had been inflicted by his wife with an Indian club. He also said that she had been nagging him and he had said if she didn't stop he would put a bullet in her. Dr. Gush asked to see Mrs. Knowles, and heard her say she would like to see him. He then went into the bedroom with the accused and examined the wounds, which he found had been treated with iodine by the accused - a proper, though in the circumstances scarcely a sufficient, treatment. The wound was such a wound as would be inflicted by a revolver bullet. It was in a peculiar direction. The bullet entered the left buttock and proceeded in an upward direction, and making its exit at the lower side of the abdomen on the right side, having, as was afterwards disclosed at a post-mortem, pierced the intestine, the bladder and the uterus. It was not bleeding directly when Dr. Gush saw it, but there was some blood  
coming from the vagina.

He asked Mrs. Knowles how the accident happened and she said she had been examining her husband's revolver which had been recently cleaned by the police, that she had put the revolver down on a chair, and shortly after sat upon it, that she tried to remove it from underneath her, but the openwork sleeve of her dress caught in the trigger and the revolver went off.

Dr. Gush said she must go to the hospital but had better have a bath first. He found the accused at the fire quite dazed. He went to fetch his car; on coming back he got the revolver from Mrs. Knowles, and found in it five cartridges and one empty shell. He noticed a hole in the mosquito net which covered the two beds.

Mrs. Knowles died the next day, but before she died she made a dying declaration. This was to the same effect as to what she had said to Dr. Gush with two small differences. She mentioned that the revolver had been cleaned, but did not say "by the police," and she said that before it happened the boy had come in with afternoon tea.

Other matters to be mentioned are that the mosquito net had several holes in it: that the accused said that on one occasion his wife had put a bullet past him while he was in bed; that another bullet was found by the police and certain marks on the furniture. Further, on October 22 the acting and assistant commissioner of police went to Bekwai and found the accused in bed lying in bloodstained sheets and having on blood-stained pyjamas. He was weak and ill, but they considered him rational. They told him that they were going to detain him on a charge of causing grievous bodily harm and that a dying declaration was to be taken from his wife. He then made several remarks, namely: "I think she will roll up" (i.e., die). "This is a bad business, I may go to prison." "If she rolls up I am afraid I am for it." He went with them to Kumasi, and in the assistant commissioner's bungalow, while the acting commissioner went for a warrant, he said, "I don't care what happens to me, I am worried about my wife," and then, "If my wife rolls up it means a murder case," and again, "If my wife rolls up I will be hung by the neck until I am dead."   
Their Lordships must now examine the judgment. In the judgment of the circuit judge is to be found what to a jury would have been the summing up, and then the verdict. Now the judge examines at great length the possibilities as to which bullet of the two bullets found, one of which had made dents in the furniture, was the bullet which caused the wound. Upon this question he comes to no certain conclusion, being oppressed by the difficulties as to either theory. In their Lordships' view this inquiry is quite by the mark. It is quite certain that the deceased was killed by a revolver bullet, and there being no certain evidence as to the position of the parties at the time, no conclusions can be drawn from the possible indicia as to the flight of the bullet. The judge next takes up the story of the deceased as given in the evidence of Dr. Gush, and as given in the wife's dying declaration, and along with it the story as given by the prisoner himself when he gave evidence at the time. That story, abbreviated, is as follows: That he had had a quarrel with his wife about nothing, which ended, that he then went to bed to sleep, that he saw his wife come in and start to undress and afterwards went to sleep, that there was a shot fired which woke him, and he heard his wife say she had been shot, that he jumped up and said, "Show me, show me" (this was a remark heard by one of the servants behind the door), that he plugged the wound and put her to bed, and she said, "People will think I have done this purposely," to which he replied she had only to lie quiet and he would take the blame. That he did not trouble about the district commissioner's note, as being a medical man himself he had done what was needful and that he did not want her disturbed. That afternoon he took drink and drugs, and to use his own words, "I had the fixed idea of protecting my wife, and didn't realize until later that my statements were dangerous. I had an idea fixed that I would take any punishment if I could save my wife."

As regards the revolver he said that he usually kept it under his pillow fitted in a holster; that on this occasion he took it out of the holster cocked it and laid it on the book-case.

The judge then examines these accounts and finds them unsatisfactory. He is particularly impressed by the statement of Mrs. Knowles as to the servant bringing tea, which was not true, and he saw no reason for the appellant taking out the revolver and cocking it, and points out the discrepancy as to its place, the appellant saying it was on the book-case, while Mrs. Knowles said it was on the chair. He lays stress on the various remarks made by the appellant after the event, which he considers were not made, except as to those on October 22 when in a dazed condition. He thinks it proved that there was a domestic fracas, and considers the remark that he would put a bullet through his wife if she did not stop, very significant. He therefore comes to the conclusion that the wife's story was not true, and then he says, "Taken as above the evidence against the prisoner is overwhelming."

Now the learned judge was entitled to draw his own conclusions as to whether Mrs. Knowles's account was true, and their Lordships, not being, as above stated, an ordinary court of criminal appeal, would not consider themselves entitled to set that aside upon the ground that they would come to a different conclusion on the facts as found. Having come to the conclusion that the story of an accident could not be substantiated, and the position and direction of the wound excluding all idea of deliberate self-infliction, he was driven to the conclusion that the shot was fired by the appellant. That there was criminality in what happened is a necessary result of that conclusion. In a fit of drunken recklessness to fire a shot to silence a nagging woman, which shot the woman, even though the shot was not intended to hit her, is a crime. But the fatal flaw in the judgment is that having set aside Mrs. Knowles's account of the occurrence as accident he at once assumed that the only alternative to accident is murder. There is not the slightest inquiry whether assuming that the shot was fired by the accused, the act amounted to manslaughter and not murder. There is no attempt to face the question whether the standard of proof required to prove murder as against manslaughter has in this case been reached. If the case had been before a jury and the judge had not explained to them the possibility of a verdict of manslaughter, but had said if not accident the only alternative is murder, that would have been an erroneous summing-up. That is what is to be found in the judgment. The question as between manslaughter and murder is entirely undealt with, and their Lordships are therefore, as the learned judge failed to consider the question, bound to consider whether the evidence here reached the standard of proof necessary to involve a conviction for murder. They are clearly of opinion that it did not. A conviction for manslaughter might have been a different matter, but that is not before their Lordships. They have therefore humbly advised His Majesty to quash the conviction.

Solicitors for appellant: Wynne-Baxter & Keeble.\_  
  
Solicitor for respondents: Burchells.