THE COURT OF APPEAL

Record Number: 206/16

Edwards J.
Kennedy J.
Donnelly J.

BETWEEN/

THE PEOPLE
(AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS)

RESPONDENT

-AND-

KRZYSTOF GRZEGORSKI

APPELLANT

JUDGMENT of the Court delivered on the 22nd day of October 2019, by Ms. Justice Donnelly

Introduction

1. The appellant appeals against his conviction for the murder of Bogdan Michalkiewicz. When arraigned, the appellant pleaded not guilty to murder but guilty of manslaughter. This plea was unacceptable to the Director of Public Prosecutions and the case proceeded to trial before a judge and jury in the Central Criminal Court. A co-accused pleaded not guilty to murder and was ultimately acquitted by direction of the trial judge on the basis that while there was evidence that he was in the apartment during the time of the killing, there was insufficient evidence linking him to the commission of the offence.

Grounds of Appeal

2. The appellant's notice of appeal contained two grounds. Both related to the issue of his own intoxication and the judge's charge to the jury: -

> "(1) The learned trial judge erred in failing to re-charge the jury in the manner requisitioned by counsel on the issue of intoxication and intent in respect of the offence of murder."
>
> (2) The learned trial judge erred in failing to re-charge the jury in the manner requisitioned by counsel on the issue; directing the jury that they ought to consider the position of the appellant herein if the version of events contained in his memoranda of interviews could reasonably be true in particular as regards his level of intoxication at the time of the killing of the deceased.

Judge's Charge on Intoxication

3. In his written submissions, the appellant contested that no charge had been given by the trial judge in relation to the question of "involuntary intoxication." From a perusal of the transcript, it was clear that "involuntary intoxication" had never been raised as an issue at the trial. Counsel for the appellant accepted that he could not advance this ground in the appeal. In the circumstances, we are quite satisfied that the first ground of appeal must be rejected.

Judge's charge on the issue of whether the defence put forward by the accused could reasonably be true

4. Counsel on behalf of the appellant submitted that the learned trial judge should have acceded to the application made on his behalf to re-charge the jury in relation to the appellant's interviews. In written submissions, it was stated: -

> "That the learned trial judge should specifically have stated that if the jury were satisfied that the version put forward by the accused in interview could reasonably be true (even if it were unlikely), i.e. that he did not recall the incident and that he was so affected by alcohol that he did not intend to kill the appellant that they should acquit the accused."

5. It was quite properly conceded at the hearing of the appeal that the appellant's statements at interview did not extend so far as to include that precise statement by the appellant. In fact, at various times both before and during his arrest, the appellant told people that he had certain recollections. These were, for example, recollections of stabbing the victim, of certain events before and after the homicide. Moreover, the appellant never stated in interview that he had no intention to kill him; at most he stated that he did not know what he was thinking.

6. At the conclusion of the judge's charge, counsel for the appellant submitted that the learned trial judge should re-charge the jury specifically on the issue of how they should approach the version of events put forward by the appellant in interview. This was put forward in terms that the appellant did not remember much of the incident in the context of the submission and that accordingly he could not have had the requisite intent for murder at the time that the deceased was killed. Counsel on behalf of the appellant (Mr. Bowman) made the requisition in the following manner: -

> "**MR. BOWMAN**: The Court did not explain to them that if the jury is satisfied that the version of events offered by the accused man could reasonably be true, it must be accepted and acted upon.
>
> **JUDGE**: I sometimes -- I don't generally --
>
> **MR OWENS**: What version of events?
>
> **JUDGE**: I don't generally say that actually in fact, but I'll see what Mr Owens says.
>
> **MR OWENS**: What version of events offered by the accused?
>
> **MR BOWMAN**: Yes, the version in terms of his incapacity to recollect by alcoholic consumption could --
>
> **JUDGE**: Yes. Well, I'm sorry I have no problem -- no, I'm not going into the substance of it at all, but I mean I just -- I don't usually use that, that doesn't mean I shouldn't use it.
>
> **MR BOWMAN**: May it please the Court.

MR OWENS: I would oppose that, Judge.

JUDGE: Yes. We'll just see, I'll wait until Mr Bowman finishes, yes, I've no strong objection, but I'd like to think --

MR BOWMAN: Mr Owens has now distracted me.

JUDGE: -- not that I have some fixation with it, but I just keep to my normal approach unless there's some good reason to the contrary."

7. Counsel for the appellant did not refer to the matter again but went on to raise another point about the charge to the jury in respect of intoxication. The judge recharged on that aspect. Following his recharge there was no further requisition.

8. In the course of this appeal, the appellant submitted that the learned trial judge should also have explained to the jury the obligation on the prosecution to disprove the version of events put forward by the applicant in the interview with the gardaí and it is submitted that in failing to re-direct the jury in both of these ways the learned trial judge erred in law and the resulting conviction of the applicant for murder is unsafe.

9. It is necessary to look at the evidence in the trial and the judge's charge in order to make a proper assessment of the merit of this ground of appeal.

The Evidence at Trial

10. Bogdan Michalkiewicz was born on the 21st January, 1972 and was forty-one years of age at the date of his death. He was a Polish national who came to Ireland in 2005, working as a landscaper. As a result of an occupational injury to his back he was unable to work and could not walk without the aid of a stick. He was dependent on disability benefit and he suffered from alcohol addiction.

11. The evidence established that he died in extremely violent circumstances at his home at 15 Westside Apartments, Letterkenny, in County Donegal on the afternoon of the 13th May, 2013. His throat was cut, with the external carotid artery and the internal jugular vein completely severed. He had multiple stab/incision wounds principally to his face and head which included highly unusual stab wounds to his right eye and tongue. His face was entirely disfigured and there were gaping holes around the cheek region and upper jaw exposing multiple fractures in this area. He sustained multiple blunt force trauma injuries consistent with punching, kicking or stamping or the use of a blunt object, including having an object dropped on his face. There were also blunt force trauma injuries to the chest and multiple stab wounds to the abdomen, the latter being inflicted post-mortem. Approximately seventy different injury sites were noted on his body and forty-six of these were located to the head and face. The pathologist described it as a prolonged, sustained and violent assault.

12. His body was discovered by his brother two days later. The entrance door to his home was damaged with evidence of forcible entry and the apartment was in complete disarray. Much of the furniture was broken or out of place and there was blood-spatter on the

walls. A number of knives were found in the apartment, including a blue-handled knife, which was consistent with the weapon that would have been used to cause the stabbing injuries.

13. Extensive CCTV footage was sourced and this placed the appellant and his co-accused in the apartment block during the afternoon of the 13th May, 2013 and forensic evidence put them in the apartment. They entered the apartment block at 11.25hrs and there was no further sighting of them until they were seen leaving at 16.36hrs. The victim is believed to have been murdered during that time. Fingerprints found at the scene on a bloody light switch, on an empty bottle of Finlandia vodka and on the apartment door were matched to the appellant.

14. There was a significant amount of evidence given as to the appellant's use of alcohol from an early age and at the time of the homicide. This information came from the appellant in interview but there was also significant independent evidence as to his intoxication during the relevant period.

15. On the 11th May, 2013 the appellant was seen in Tesco's supermarket breaking the seals on two bottles of vodka and drinking from them at 07.25hrs. On the 12th May at 21.55hrs he was observed stealing alcohol in Tesco when he took a bottle of vodka and drank from it.

16. In interview the appellant said that he was drinking wine with the co-accused before they entered the apartment. He said that in the apartment he thought they started drinking from the bottle that the gardaí showed him in interview.

17. There were five empty vodka bottles found in the examination of the deceased's apartment and three empty cider bottles. One vodka bottle had the appellant's fingerprints on it. There were also empty blister packs of Tramadol, which the deceased took for pain relief. The appellant did not say that he took any of the Tramadol.

18. The appellant and the co-accused met a Mr Laskowski in the Courtyard Shopping Centre in Letterkenny at 16.43hrs, minutes after leaving the apartment building. He described the appellant as being drunk. He conceded under cross-examination that he had said very drunk in his statement.

19. The appellant was arrested at 18.20hrs on the 13th May, 2013 for theft of a bottle of vodka a short time earlier. The appellant, in the company of the co-accused, opened a bottle of vodka in the shop and poured it into an empty wine bottle. He was described by the arresting garda as highly intoxicated.

20. While there was evidence that the appellant had been drinking heavily and that he had issues with alcohol, there was no evidence of a formal nature that he was an alcoholic.

21. The appellant was detained overnight at Letterkenny Garda Station on the 13th May, 2013 on the theft charges until he was brought to court the following morning and

released on bail. He left for England sometime after the victim's body was discovered, in breach of his bail conditions.

22. When he was in England his co-accused was arrested and charged and was remanded in custody. The appellant then sent a video by email to the girlfriend of this co-accused in which he admitted killing Bogdan Michalkiewicz approximately five or six months before. He stated that his co-accused was present in the room but was completely innocent and that he, the appellant had "inflicted all deadly wounds" on the victim's body.

23. On the 23rd October, 2013 the appellant called to an unmanned police station in March, Cambridgeshire and had a telephone conversation with Police Constable Matthew Davies. Constable Davies gave evidence at the trial that the appellant told him that he wanted to confess to killing someone, in Letterkenny County Donegal six or eight months before. He said, "that he could only remember the name Bogdan and, that he had stabbed him, he couldn't remember too much detail though, due to being drunk at the time of the incident". Police officers went to March police station and arrested him approximately twenty minutes later. He was returned to Ireland on a European arrest warrant.

24. Following his extradition, the appellant was arrested on foot of a warrant issued under s.42 of the Criminal Justice Act, 1999 on the 5th May, 2014 and conveyed to Ronanstown Garda Station where he was lawfully detained. During his detention the accused was interviewed on five separate occasions. He made no admissions in the first three interviews. He lied about why he had gone to the Police Station in March, saying he went because he knew that the gardaí were looking for him in respect of the theft offences. He was specifically asked if he told them anything else and he replied no.

25. The appellant's relevant answers regarding the homicide in interview were as follows: -

    (i) In the third interview he was questioned extensively about his movements on the 13th May, 2013 and denied any recollection of what he did. However, when CCTV footage was put to him he recalled some of his movements. He recalled meeting Mr Laskowski in the shopping centre on the afternoon of the 13th May, having initially denied any recollection of this.

    (ii) In that interview he initially claimed that he could not remember what happened between 11.25hrs and 16.36hrs on the 13th May, but when he was asked if the co-accused was with him he said that, "Now I remember. We were sleeping in a flat in a stairwell". [There was evidence that there was a couch outside the victim's flat].

    (iii) When it was put to him that the gardaí believed that he was in the victim's apartment that day he asked if they had CCTV.

    (iv) In the fourth interview, following the forensic evidence being put to him and the gardaí informing him that they knew what he had told the police in March, he confessed to the killing. He began by telling the gardaí that he had recorded the

confession video as he knew the co-accused had been arrested. In this interview he referred to forcing in the door although that detail was never put to him by the gardaí.

26. In the fourth interview, the appellant gave the gardaí the following account: -

"**Q**: Tell us what happened, what do you remember?

A: The only thing I remember, I came with my friend, Dariusz. The first time when I came we were knocking on the door, nobody answered. That happened two or three times.

Q: What apartment are you referring to?

A: To Bogdan for the phone because Dariusz left the phone there probably on Thursday. We decided to stay there. We were drinking wine which I stole. We woke up again and decided to knock on the door one more time, so I'm not sure if anyone opened the door. I was knocking on the door but nobody opened it. I don't remember if I went out from there or I decided to hit the door or force the door because I was not sure if the door was a little bit open or not, so I don't remember if I used my force to push with my shoulder or push a little bit with a little bit of force. Not sure if I hit the door with my shoulder or pushed it a little bit but 100% it was one them. I don't remember so well if it was Monday when I woke up or later.

Q: What do you mean by that?

A: I'm 100% sure it was Monday but not sure if it was the first thing after I woke up or a little bit later. The first thing I did when I woke up was to knock on the door. I don't remember after knocking if I left and came back later to this apartment.

Q: What happened next?

A: When I went to the flat Bogdan was sitting in an armchair. He turned his body and when he saw me and Dariusz he decided to take that phone from the table and give that phone to Dariusz and I don't remember what happened later on. But I remember for sure that we did not start the fight straightaway. I'm sure about it because I remember we were sitting around the table and we had a conversation how to get another bottle of vodka. I don't remember this conversation. I came to that conclusion after I heard about the phone calls today but I don't remember the calls. After a long time I think the bottle you showed me before, I think that I brought that bottle with me and that there was some alcohol in it. I think we started drinking then. Next that I remember of situation when we were standing all together and pushing each other, holding our t-shirts and jumpers. Dariusz was not involved in that situation, so I pushed Bogdan away from me. So I didn't -- it was not my intention to push Bogdan to

the table but, unfortunately, he fell on the table. Now I don't remember. The last thing I remember is that I grabbed the knife…I hold the knife and I remember that I stabbed him to the chest but I don't remember where I grabbed the knife from. The last thing I remember is that when I was coming out of the flat I grabbed a piece of cloth to clean the floor, something like an old t-shirt. I decided to wrap the knife in the cloth and when I was coming out of the apartment block I decided to bin that knife. That is everything I remember in relation to this situation. When I woke up the next day I woke up in the garda station in the cell. For the first 15 minutes I was wondering where the blood on my sleeve was coming from because I could not remember from where that blood was coming from. Later I took a shower and one of the gardaí binned the jumper with the blood. I know that he binned that jumper. Before I left Ireland I came to the garda station and I was asking about the jumper. They said they had bin it.

Q: What happened when you stabbed Bogdan?

A: I don't remember. I remember when I was stabbing him the last thing I remember from situation is when I binned the knife.

Q: How was Bogdan when you leave flat?

A: I was 100% sure that Bogdan was dead …… I don't remember,

Q: How did you know that?

A: Because I saw what happened to him, his injuries, also his neck, throat that it was slashed. I was sure that the person was dead.

Q: How was his neck slashed?

A: I know for sure I did but I don't remember

Q: Were all of Bogdan's injuries inflicted by you alone?

A: Yes, but I don't remember the scenario when they all happened, that I remember I was stabbing him. Today I get the information that he was stabbed 70 times -but I was thinking I stabbed him more than 10 times.

Q: Why?

A: I was thinking no more than 10 but today I got information. I don't remember that it happened so many times.

Q: Do you mean that you were told during interview that it happened so many times?

A: Yes”

27. In the fifth interview the appellant was asked to clarify certain details and he stated: -

> "I remember his throat being cut, only the fact that I was stabbing Bogdan with a knife".

He said he knew he was dead because he saw the injuries to his neck. When he was asked what he thought would happen when he stabbed Bogdan he replied: -

> "I don't remember what I was thinking at the time".

28. During the course of his interviews with the gardaí following his arrest, the appellant was in a position to recall: -

(i) Calling to the victim's apartment several times and knocking on the door when no-one answered.

(ii) Calling to the victim's flat because the co-accused had left his phone there the previous Thursday.

(iii) Sleeping in the stairwell of the flat.

(iv) Drinking wine which he stole.

(v) Forcing the door of the flat open.

(vi) The victim sitting in an armchair when they went into the flat.

(vii) The victim giving the co-accused the phone.

(viii) The fact that they did not start to fight right away.

(ix) Sitting around the table having a conversation about how to get another bottle of vodka.

(x) He thought that they were drinking together.

(xi) Pushing each other and specifically pushing the victim away from him whereupon the victim fell upon the table.

(xii) That his co-accused was present but not involved.

(xiii) Grabbing a knife.

(xiv) The knife was blue.

(xv) Stabbing the victim.

(xvi) That the victim's throat was cut.

(xvii) That he inflicted multiple wounds upon the victim.

(xviii) Knowing that the victim was dead.

(xix) In interview the appellant also said that he sent the video exonerating the co-accused because he knew that he had been arrested and that there was blood staining on his clothing. The gardaí confirmed at trial that this detail had not been provided to the appellant, nor had any details in relation to damage to the door or the amount of injuries sustained by the deceased.

The Judge's Charge

29. The relevant part of the trial judge's charge to the jury was as follows: -

"Now, if you – a situation will obviously arise where you may be called upon to give to the accused what is called the benefit of the doubt, sometimes called the benefit of the reasonable doubt, not as I say just the doubt so to speak, but the benefit of the reasonable doubt. Others would use the phrase quite rightly, the right to the reasonable doubt. You can see, ladies and gentlemen, when you've considered the totality of the evidence, you might be left in a situation where you entertained a doubt as to whether or not the accused was guilty of murder, that such a thing is possible, that's a matter of principle, I'm not -- I speak in principle, I don't know what your view of the evidence is, it's none of my business. But as a matter of principle, were you left in that situation at the end of the evidence and the doubt you entertained was a reasonable doubt, you would give the benefit of that doubt to the accused.

[…]

Now, during the course of the case, you will be considering individual topics and individual pieces of evidence. And it may well be that in considering any particular topic or particular piece of evidence, you would find that two views of a particular piece of evidence were possible. One view favourable to the accused and one view favourable to the prosecution. Now, obviously if the standard of proof is proof beyond reasonable doubt, and if the accused was to have the benefit or the right to the reasonable doubt, if the view favourable to the accused was a reasonable one, you would apply the principles of which I have referred and give the accused the benefit of that reasonable doubt. Of course, it might be the case that the view favourable to the accused might be rubbish, obviously then you might be in a situation where you had the capacity to have a manufactured or absurd or a fanciful doubt. If that were the case of course, you would take the view favourable to the prosecution. In that situation, the prosecution would have proved the view favourable to them beyond reasonable doubt. Now, it could well be that the view favourable to the defence would be the less probable view. You could take the view that the more probable -- that the view favourable to the prosecution is the -- is probably correct. But you can see, ladies and gentlemen, that that would not be enough, because there is a difference between a probability and a conclusion to the higher standard of proof beyond reasonable doubt.

[…]

Again, you can see that that is a world away from what you are dealing with here. And I have referred to a situation where two views might be possible on the evidence and I have explained to you that provided the view favourable to the defence is a reasonable one, then you adopt that view even if it is the less probable. Now, of course, what the prosecution has to do in that situation in other words, is to prove the version favourable to it to that standard of proof known as proof beyond reasonable doubt. And that's what that means. And the necessity in the case to give the benefit of the doubt to the accused would arise in a situation where the view favourable to the defence was reasonable.

[…]

In addition, the prosecution must prove what we call a *mens rea* or guilty mind. A person must be shown not only to have performed a given physical action, the obvious one. But also at the time of doing that, to have a particular state of mind and the state of mind which is required in a case of murder is an intention to kill or cause serious injury. So, if I am charged with murder the prosecution must prove not only that I have killed the deceased, but also when I killed him I intended to kill him, or cause him at least serious injury.

[…]

So that is -- now, in order to decide on somebody's state of mind, apart from the presumption to which I have referred, we engage with the evidence, I spoke generally and this is how you will approach the matter, and use your common sense are in terms of looking at the totality of the picture, factual and otherwise. And you will look at the actions of the accused, the words of the accused, the surrounding circumstances, there and attempt to reach a conclusion as to the accused state of mind at the relevant time. It is again something we are called upon to do in our -- throughout our lives one way or another. The -- you're trying this gentleman, Mr Grzegorski, for an alleged murder. You're not trying some notional or theoretical person, you're trying him in this case. And accordingly, you're looking at his state of mind, not the state of mind of some theoretical shall we say, average reasonable person. Although, in principle an accused state of mind could fall into that category. You're not looking -- that's not what you're looking for however, you've got to decide whether or not this man at this time had this intention at -- when the deceased was killed. It is in other words, a subjective test, it's subjective in the sense that it pertains to him […]" (Emphasis added)

30. The trial judge gave a brief synopsis of the evidence in the trial and made mention of the interviews. He did not read them out again to the jury but made reference to the fact that the jury had those interviews (meaning they had been provided with the written memoranda of those interviews).

31. It is also necessary to point out that the trial judge had charged the jury on the very issue in the case; the question of whether the appellant's "drunkenness" reduced the offence to

manslaughter. Having dealt with the ingredients of murder the trial judge charged the jury as follows: -

"Now, manslaughter can arise in a number of different ways in our system, and I have given you just now an example, I hope, of a straightforward kind. It can be the case that there are circumstances in which drunkenness can form a defence to a charge of murder. And in those circumstances, again for the purpose of this case, being practical about it, if that -- such a defence would mean that one was guilty of manslaughter rather than murder. So there are circumstances where drunkenness or alcohol if you like can reduce a charge of murder to a charge of manslaughter. And that is what is contended for here on behalf of the defence.

All right, what are the elements of the situation then? We know historically the law has always recognised and it is the law that if I form an intention to do something even in drink, a drunken intent in other words, I've still formed a relevant intent by definition, the -- anybody who drinks I suppose would be in a situation where they will have known if they have a great deal to drink, they will decide to do things and their inhibitions may be diminished and that may be the reason they do things. But they will nonetheless have formed the intention to do those things. So you can see, ladies and gentlemen, even when one has consumed alcohol, even when one is drunk, one can form an intention to do a particular action. And that is therefore admittedly a drunken intent. All right, there can come a situation however at a certain point so to speak where drink can provide a defence to murder such that the offence is in fact reduced to manslaughter. That is if it comes to a point where a person isn't able to form an intention to kill or cause serious injury. That the drink as it were, has affected the person to that extent in his mind or extended that far, so to speak. And again, your experience may or may not assist you in between the 12 of you, I think will obviously, some of you may drink some of you may not. But you will appreciate, ladies and gentlemen, that in drink a point might be reached as a matter of principle where you in fact would not be able to form an intention to kill or cause serious injury.

Now, there's no point in beating about the bush on this matter, a drunken intent is a sufficient intent in law. It seems to follow as a matter of inevitable human reason that to put it no further than this, one would want to be very drunk indeed not to be able to form the intention in question. And therefore -- that I believe is a practical observation which I must make. It is not that I'm seeking to influence you as to the view you take about drink in this case or the state of mind of this man. Now, it is -- it is the case that when you are considering this man's state of mind, you will take into account whether or not he had drink at the time, you will take into account his background, you will take into account, I don't mean this in a pejorative way, his baggage as a person, his history, his personality, his character as you know it from the evidence in this case in the particular circumstances disclosed by the evidence in this case, because as I said you're deciding what this man thought on this occasion, not some notional or theoretical person. I could have mentioned that a little earlier but I mention it now because it is -- it seems relevant to do so in the light of the nature of

this element of drink as a defence to murder, which has been as it were, in the defence contention, thrown up in the case."

32. The trial judge also recharged on the issue of intoxication as follows: -

> "And I'm going to reiterate it now, drink is no defence sorry, drink is no defence, if the only effect of the drink is though more readily a man give way to his passions. That is insufficient, the effect of drink has to go much further, it has to go so far as either to render him incapable of knowing what he is doing at all, or if he appreciated that, of knowing the consequences or probable consequences of his actions. So drink is no defence if the only effect of the drink is the -- more readily to allow a man to give way to his passions, that is not -- that is insufficient. The effect of drink has to go much further, it has to go so far as even to render him incapable of knowing what he is doing at all or if he appreciated that, of knowing the consequences or probable consequences of his actions. So that is not I believe incompatible with how I put it earlier, but it serves nonetheless to reiterate the point."

33. There were no further requisitions.

Determination

34. Counsel on behalf of the appellant urged upon the court that the trial judge should have specifically referred to his client's "defence" in instructing the jury that it must acquit if that "version of events" could reasonably be true. His concern was that the jury may have been left in the position that if they were satisfied with the content of the memos, and it might reasonably be true, they might nonetheless feel that they could not acquit.

35. The Court is of the view that this concern on the part of the appellant is entirely misplaced. There was no failure in the direction of the trial judge. He gave a full charge on the issue of the burden of proof and the standard of proof. He gave what may be described as a very expansive instruction on the drawing of inferences and the importance of drawing the inference most favourable to the appellant unless it had been excluded by the prosecution beyond reasonable doubt. That requirement, set out as a fundamental principle in the case of *People (DPP) v. Cronin* [2006] IESC 9 relied upon by the appellant in this appeal, was fully complied with by the trial judge in this case.

36. There was no error of significance in the present case. The trial judge had given a charge which included all necessary information. He had also made specific reference to the "words of the accused". The jury could have been left in no doubt about the onus being on the prosecution to prove all matters beyond reasonable doubt and that where there was a doubt on any issue that they had to give the benefit of that doubt to the appellant.

37. Moreover, in this particular case, there was no "version of events" put forward in evidence by the appellant that clearly and unequivocally stated that "he was so affected by alcohol that he did not intend to kill". At best from an evidential point of view he put forward that he did not recollect what he was thinking at the time he was stabbing the victim. It is a fallacy to suggest that simply because at interview an accused person did not say that he

intended to kill but instead states that he had no recollection of what he was thinking at the time he inflicted the fatal wounds, that this explanation is sufficient to amount to a defence if a jury believes that his explanation might reasonably be true. It is not the law that every explanation of events by an accused at interview amounts to a defence to a claim that must be accepted by a jury if the explanation could reasonably be true. It is the law however that the onus remains on the prosecution to establish the guilt of an accused person beyond reasonable doubt.

38. In the present case, what was truly argued at trial on behalf of the appellant was for the jury to draw an inference from all that the appellant had said, that he was so drunk that he did not have the capacity to form an intention to kill. The jury were adequately informed by the trial judge about the burden of proof and in particular the drawing of inferences. This was not a trial where a stark choice on the evidence was presented to the jury, i.e. there was no clear dividing line between the prosecution case and the evidence relied upon by the accused. If there was, one might have expected a clear direction to the jury along the lines argued on behalf of the appellant *i.e.* that if they were satisfied that the version could reasonably be true then they should return a verdict of not guilty of murder but guilty of manslaughter. In the present case however, any such direction would have been contrary to the evidence and unfair to the prosecution.

39. On the contrary, at the trial the jury were required to assess all the evidence before they could reach a conclusion beyond reasonable doubt that the appellant intended to kill or cause serious injury at the time he inflicted the catastrophic injuries on the victim. The jury were correctly charged in relation to the presumption under s. 4 of the Criminal Justice Act, 1964, that the appellant was presumed to intend the natural and probable consequences of his actions but that presumption may be rebutted. The undoubted issue in the case was whether the appellant, by virtue of the large amount of alcohol he had drunk, was capable of forming that intention. The jury were correctly charged in terms of the burden of proof and the standard of proof and the drawing of inferences. They were expressly told that where there were two views possible on the evidence, provided that the view favourable to the defence was a reasonable one they had to adopt that view even if it was the less probable. They were charged on the law as it related to intoxication and intention. Aspects of the evidence were highlighted to them, included some aspects of the interviews where his long history of alcohol abuse was discussed. They were referred to the interviews.

40. When the charge is considered as a whole, it can be seen that the law was correctly identified to the jury, the real issues in the case were identified and attention drawn to salient evidence. There can be no doubt that the jury were aware of the issues at stake in the trial and of the legal constraints on them in reaching their decision on these issues.

Conclusion

41. In conclusion therefore, we are satisfied that the judge's charge, when considered as a whole, adequately dealt with the fundamental principles of law and the real issues before the jury.

42. In all the circumstances, the appeal against conviction is dismissed.