

32/86

## SUPREME COURT OF VICTORIA — FULL COURT

**R v ZECEVIC**

Kaye, O'Bryan and Tadgell JJ

24, 28, 29 April; 29 May 1986

[1986] VicRp 78; [1986] VR 797; (1986) 21 A Crim R 225

**CRIMINAL LAW – EVIDENCE – EVIDENCE OF ACCUSED'S GOOD CHARACTER – WHETHER ADMISSIBLE – EFFECT OF – WHETHER SUCH EVIDENCE GOES TO CULPABILITY AND CREDIBILITY OF ACCUSED.**

**Per Kaye and O'Bryan JJ:** Whilst the primary significance of evidence of good character bears upon the probability or improbability of the accused's guilt, it can also be used with respect to the credibility of the accused in giving his testimony or account of the facts.

*R v Murphy* (1985) 63 ALR 53; (1985) 4 NSWLR 42, applied;

*R v Bassett* [1952] VicLawRp 75; (1952) VLR 535; [1952] ALR 1035; and

*Attwood v R* [1960] HCA 15; (1960) 102 CLR 353; [1960] ALR 321; 33 ALJR 537, considered.

**Per Tadgell J:** Whilst evidence of good character may be taken into account in determining the accused's guilt or innocence, the worth of such evidence, insofar as it might bear on the accused's credit is likely to be very much less when he makes an unsworn statement from the dock.

[NOTE: The evidence of character must not be evidence of particular facts nor the individual opinion of a witness; it must be evidence of general reputation: per Cockburn CJ, *R v Rowton* (1865) 34 LJMC 57 at 60-1. See also *Cross on Evidence*, 2nd Aust ed. 1979, pp258, 381-2, 405, 545; *Archbold*, 42nd ed. 1985, pp427-8; *Bourke's Criminal Law* 3rd ed, by Nash, 1981, p1276. Ed.]

**KAYE and O'BRYAN JJ:** *[After setting out the facts and dealing with grounds of appeal not relevant to this Report, their Honours continued]* ... [19] Ground 3: The third ground of appeal arose out of the learned trial Judge's direction to the jury that evidence of the applicant's good character led from four witnesses rendered it less probable that the applicant would commit the crime charged, and that the jury were entitled to use the evidence in the manner in which Mr Morrish, during his final address, invited them to do. The learned Judge added:

"Good character evidence, of course, does not alter the facts. If you find the accused man guilty of murder after having considered all the evidence including the good character evidence, the fact that he is of good character does not alter that result. But he is entitled to have the good character evidence taken into account along with all the other evidence in your consideration of the question of his guilt."

His Honour's direction of the significance of evidence of good character was in terms which conformed with the characterisation of such evidence by the High Court in *Attwood v R* [1960] HCA 15; (1960) 102 CLR 353 at 359. His direction of its use by the jury conformed with the following statement by this Court in *R v Bassett* [1952] VicLawRp 75; [1952] VLR 535 at 541; [1952] ALR 1035:

"In principle it would seem that evidence of good character which is legally admissible in the accused's favour is, like all other evidence in his favour, to be considered by the jury for what they think it is worth in coming to their conclusion as to his guilt or innocence. Such evidence cannot of course change facts, but it may put a different complexion on the facts from that which they might bear without such evidence."

The complaint made under Ground 3 is that the learned trial Judge erred in failing to direct the jury adequately as to the use which could be made of the evidence. [20] It was contended that evidence of good character is relevant not only as to the improbability of an accused person being guilty of the crime charged, but also as to the credibility of his testimony or of his account of facts relevant to the commission of the crime. It was complained that by failing to direct the jury

that the evidence could be used to support his account of the events leading up to and including the shooting, the applicant's defence had been deprived of gaining support for acceptance of his account of those matters.

The High Court in *Attwood's Case* [1960] HCA 15; (1960) 102 CLR 353 at p359; [1960] ALR 321; 33 ALJR 537 expressed the traditional view of evidence of good character as follows:

"The expression 'good character' has of course a known significance in relation to evidence upon criminal trials; for it denotes a description of evidence in disproof of guilt which an accused person might adduce. He may adduce evidence of the favourable character he bears as a fact or matter making it unlikely that he committed the crime charged. The limitations upon the description of evidence admissible under this head are the subject of the much discussed decision in *R v Rowton* [1865] EngR 53; 169 ER 1497; [1865] Le & Ca 520. Probably the limitations are not observed in practice, but that is not the aspect of the case that concerns us here. What does concern us is that the reasons of the judges show clearly enough that evidence of good character is regarded as really bearing on the probability or improbability of guilt. As Cockburn CJ, said: 'The fact that a man has an unblemished reputation leads to the presumption that he is incapable of committing the crime for which he is being tried'."

The statement cited from the judgment of Cockburn CJ, in *Rowton's case* was made when, under the common law, an accused person was prevented from giving sworn evidence in his own defence, a disability which was subsequently [21] removed by the *Criminal Evidence Act* 1898, s1. The question before the High Court in *Attwood's case* was whether evidence elicited by the Crown which tended to show that an accused charged with murder was of bad character was wrongly admitted. What the Court said about evidence of good character was in the course of discussion concerning the nature and relevance of evidence of bad character. However, what appears in *Attwood's case* in this connection is not in conflict with what was said by this Court in *Bassett's case*, although in *Simic v R* [1980] HCA 25; (1980) 144 CLR 319 at 333; 30 ALR 519; (1980) 54 ALJR 406 the High Court observed that the passage in *Attwood's case* did not purport to be a full statement of the law on good character evidence.

In more recent times the Court of Criminal Appeal and the Court of Appeal in England have recognised that evidence of good character is relevant to credibility of an accused. The Court of Criminal Appeal in *R v Bellis* [1966] 1 All ER 552; (1966) 1 WLR 234 at 235 said that "possession of a good character is a matter which primarily goes to credibility". Again in *R v Bryant* (1979) 1 QB 108 at 119 the Court of Appeal said: "The possession of a good character is a matter which goes primarily to the issue of credibility". (See also to like effect in *R v Richardson* (1969) 1 QB 229 at 311). There are to be found similar statements in the judgments of King CJ and White J in *R v Trimboli* (1979) 21 SASR 577 at 578 and 586; (1979) 1 A Crim R 73.

However, in *Bellis's case* by the direction which was under review, the jury were instructed that mere possession of good character was "something which you must take into account in his (the defendant's) favour really on [22] the basis that a person of good character is less likely to commit this type of offence than a man of bad character". The Court refused to interfere with the conviction of the ground of failure to direct also that evidence of good character goes primarily to credibility. It said that the direction given was not less favourable to the defendant "because logically if he (the Deputy Chairman of the Court of Sessions) directed them that the defendant was more credible by reason of his good character, it would have followed from that that he was less likely to have committed the offence". Similarly, in *Bryant's case* the Court of Appeal, after stating that possession of good character was a matter going primarily to credibility, continued that juries should be instructed that evidence of good character is capable of bearing a more general significance. That significance was said to be best illustrated by the statement of Williams J in *R v Stannard* [1837] EngR 476; 173 ER 295; (1837) 7 C & P 673 at 675: "... evidence of character must be considered as evidence in the cause".

In the trial giving rise to the conviction which was the subject of appeal in *R v Thompson* [1966] QWN 73, the facts relied on by the Crown were disputed by the appellant. The trial Judge failed to direct the jury what was the significance of evidence of the accused's good character, although he made comments about the evidence which suggested that it was insignificant. Gibbs J (as His Honour then was), after referring to the High Court's statement in *Attwood's case* that evidence of good character in a criminal trial is regarded as bearing on the probability

or improbability of guilt, cited with apparent approval the [23] statement of Patteson J in *R v Stannard* [1837] EngR 476; 173 ER 295; (1837) 7 C & P 673 that "the object of allowing it (evidence of good character) before the jury is to induce them to believe, from the improbability that a person of good character should have conducted himself as alleged, that there is some mistake or misapprehension in the evidence on the part of the prosecution, and it is strictly evidence in the case". His Honour continued:

"To adopt the words used by *Cross on Evidence*, 2nd ed, at p333, the evidence of the appellant's good character in the present case was a yardstick by which the credibility of the testimony against him should have been measured. The importance of the evidence was enhanced by the fact that there were considerable discrepancies in the evidence of the prosecution and that the story of the appellant was in itself by no means farfetched."

The use of evidence of an accused's good character was considered in *R v Stalder* (1981) 2 NSWLR 9; 3 A Crim R 87 by the New South Wales Court of Criminal Appeal. There the appeal arose out of a suggestion of his good character implied in an accused's unsworn statement. In addition to the common law doctrine, s412 of the *Crimes Act* 1900 (NSW) provides that evidence of the character of an accused shall, in all cases, be received and dealt with as evidence on the question of guilt. After a comprehensive examination of the authorities relating to the doctrine, Street CJ (at p17) stated his conclusion as follows:

"It is clear from these authorities that evidence of good character is admissible as material establishing that it is unlikely that the accused committed the offence. I do not regard the extract I have quoted from *Attwood v R* [1960] HCA 15; (1960) 102 CLR 353, at pp359, 360; [1960] ALR 321; 33 ALJR 537, as carrying the legitimate use over beyond unlikelihood into improbability of guilt. Nor has the more [24] extreme statement of Cockburn CJ in *R v Rowton* [1865] EngR 53; 169 ER 1497 at p1502; [1865] Le & Ca 520, at p530; 169 ER 1497, quoted in *Attwood v R* [1960] HCA 15; (1960) 102 CLR 353, at p359; [1960] ALR 321; 33 ALJR 537, that unblemished reputation leads to a presumption that the accused is incapable of committing the crime, stood the test of time. It is unlikelihood of guilt that most accurately described the proposition in aid of which evidence of good character can be used.

There is a corollary which has likewise long been recognised as within the legitimate use which may be made of evidence of good character. Evidence of good character can be used as establishing the credibility of the accused in his denial of the charge and hence the unlikelihood of his guilt. There are suggestions to be found in the authorities that credibility is the topic to which evidence of good character is primarily operative. For example, in *R v Bellis* [1966] 1 WLR 234, at p235; [1966] 1 All ER 552(n), a classically correct direction had been given that evidence of good character was to be taken into account on the basis that 'a person of good character is less likely to commit this type of offence than a man of bad character'. The Court of Criminal Appeal in England, assenting to criticism of this direction, said (at p236; 552): '... this court does take the view that possession of a good character is a matter which primarily goes to credibility ...': see also *R v Bryant* [1978] 2 WLR 589 at p598; [1978] 2 All ER 689, at p696.

These, and other similar comments which diligent research may discover, do not correctly reflect the significance of evidence of good character either at common law or, more particularly, in this State in the light of the statutory prescription in s412. The issue to which the evidence goes is, by the section, 'the question of his guilt'. One matter to be evaluated in that regard is, no doubt, the credibility of the accused's account in denial of the charge but this is, I repeat, merely an incidental aspect of the topic which is best described as the unlikelihood of guilt."

It is observed that the Chief Justice concluded that the statutory requirement contained in s412 did not alter or qualify the significance at common law of evidence of an accused person's good character.

[25] One question with which the New South Wales Court of Criminal Appeal was concerned in *R v Murphy* (1985) 63 ALR 53; (1985) 4 NSWLR 42, 28th November 1985) was whether the trial Judge erred in directing the jury that use could not be made of evidence of good character in assessing the credibility of the appellant. Matters involving the appellant's credibility were of critical importance to his defence. Those matters concerned what exactly was said by the appellant on the occasion relied upon by the Crown as constituting the crime charged, and what was the intention of the appellant at the time the words attributed to him were spoken. The Court said that at common law evidence of good character is regarded as bearing to some extent on the credibility of the accused person. It then set out portion of the passage of the Chief Justice's

judgment in *Stalder* (at p17), which we have quoted. Among other authorities cited by the Court was *R v Garner* (unreported, 25th August 1983) in which Street CJ, with whom Cantor and Miles JJ agreed, said:

"At times in evaluating the question of the guilt of an accused, his credibility when denying the charge may come under consideration. In such cases the element of credibility arises merely as an incidental aspect of the topic described as the unlikelihood of guilt."

Notwithstanding the absence of any statutory requirement by Victorian legislation to the same effect as s412 of the New South Wales *Crimes Act*, we respectfully adopt as a correct statement of the common law concerning a permissible use of evidence of an accused person's good character the following statement of the New South Wales Court of Criminal Appeal in *Murphy's case*:

[26] "This line of authority shows that, while the primary significance of evidence of good character is upon the unlikelihood of guilt, there is a corollary to the effect that evidence of good character can be used with respect to credibility of the accused in his denial of the charge, and hence the unlikelihood of his guilt. The omission to give a specific direction on the credibility aspect may or may not be regarded as resulting in a miscarriage, according to the particular circumstances of the case in hand."

We return now to the direction which is challenged under this ground. The exception to His Honour's direction concerning good character evidence taken by counsel at the conclusion of the charge was confined to seeking a further direction that the evidence could be used in connection with the unsworn account given by the applicant. Before this Court Mr Morrish submitted that the learned trial Judge, by describing a use of the evidence limited to the improbability of the applicant's guilt, failed to bring to the jury's attention the full use which could be made of the evidence. The real value of the evidence was said to be its enhancement of the credibility of the applicant's account of the deceased's conduct and of his loss of self-control. However, counsel informed the Court that in his final address he did not suggest to the jury that they should use the evidence in that way. It follows that the learned trial Judge's summary of Mr Morrish's submissions to the jury concerning the use which they could make of the evidence accorded with Mr Morrish's address. In this connection it is also significant that, after the jury retired to deliberate on their verdict, counsel for the applicant sought from the trial judge, for the first time, a direction that the applicant's good character could also be used in connection [27] with the unsworn account given by the applicant, which was in addition to the way in which he had chosen to present the defence evidence and case.

The burden of the applicant's account was that he was not guilty of the murder of the deceased. His Honour directed the jury that evidence of the applicant's good character rendered it less probable that he had murdered the deceased. The issue to which the evidence of his good character was directed was his guilt; cf. *Stalder* at p17.

The issue arose out of two questions raised by the defence which were identified and discussed by the learned trial Judge. Those questions were whether the applicant had the required murderous intention and, if so, whether the shooting was provoked. It was implicit in or followed from the direction that the evidence of the applicant's good character rendered it less probable that he had the required murderous intention, and at least possible that he was acting under provocation when he shot the deceased. It is for the trial Judge to decide whether a specific direction as to the particular use of evidence of good character is necessary in a trial. His decision must be based upon, *inter alia*, the questions raised by the evidence, the manner in which both the prosecution and defence cases have been put to the jury, and the form in which he has framed his charge; see *R v Schmahl* [1965] VicRp 95; [1965] VR 745 at 750 per Sholl J; *R v Thompson* at p74 per Gibbs J; *R v Wasow* – [18 A Crim R 348 – NSW Court of Criminal Appeal, 27th June 1984, and referred to in *Murphy's case*.] In our opinion the learned trial Judge's decision not to re-direct the jury in the manner sought by [28] the applicant's counsel, when viewed in the light of the considerations to which we have referred, was a matter for his own judgment.

At its highest for the applicant, His Honour's refusal to re-direct constituted a non-direction. The result of his refusal was clearly distinguishable from the misdirection in *Murphy's case*, where the jury was expressly directed that evidence of good character could not be used to support the



credibility of the appellant's testimony concerning the substance of the disputed conversation and his intention at the relevant time.

In any event, it was not demonstrated, and we do not perceive, that by the omission of a specific direction as to credibility the applicant was denied the chance of a verdict of not guilty of murder, with a consequent miscarriage of justice. From the undisputed evidence of independent facts, the compelling inference to be drawn was that the applicant fired the first shot at the deceased from a distance of five to seven metres, and that he then, having advanced towards the deceased, fired three more times at the body and at point-blank range. A conclusion open on those facts was that the applicant shot the deceased with murderous intent and without provocation. It follows that Ground 3 was not made out ... *[Their Honours then considered other grounds of Appeal]*

**TADGELL J:** *[After dealing with grounds of Appeal not relevant to this Report, His Honour continued]:* ... **[10]** The third ground of application complained that the learned trial Judge failed to direct the jury adequately as to the use the jury could make of evidence of good character. There was considerable evidence of the applicant's good character. The direction that His Honour gave as to the use the jury might make of it was the conventional direction based on *Attwood v R* [1960] HCA 15; (1960) 102 CLR 353, 359; [1960] ALR 321; 33 ALJR 537, to the effect that it can be considered as bearing on the probability or improbability of guilt. This, apparently, was the way in which counsel for the applicant put it in his **[11]** address to the jury and His Honour, in his charge, endorsed him, saying of the evidence that you are entitled to use it in the way Mr Morrish invites you to, if you see fit". His Honour also added: "Good character evidence, of course, does not alter the facts".

By way of exception, counsel submitted that "the jury should have been directed that they could use the evidence of good character to support the account given by the accused; in other words, it is a matter that goes to his credit, as well as the way in which Your Honour put it. The authority for that proposition is the case of *R v Murphy* (1985) 63 ALR 53; (1985) 4 NSWLR 42". His Honour responded by saying, in effect, that the problem about character evidence in *R v Murphy* arose because the trial Judge had said that the jury could not use evidence of good character in relation to credit, whereas his own direction had been in accordance with what is usually done. In any event, His Honour declined to redirect.

The argument in support of ground 3 before this Court emphasised that the credibility of the applicant was important at the trial: his account of the events preceding the shooting of the deceased included an assertion that he had been stabbed and the Crown had invited the jury to doubt that he had. The applicant had also denied the truth of evidence of one of the Crown witnesses, Maryana Sibar, the deceased man's mistress, who had lived with the deceased in Unit 6, that before 16th July the applicant had threatened the deceased. The Crown had also suggested to the jury that they should at least be very suspicious of the evidence of the applicant's three brothers, to the effect that when they had first seen the body of the deceased after the shooting **[12]** there had been a knife in his hand. Counsel for the applicant submitted that, since the Judge had lent some weight to the Crown's criticism of the evidence of the three brothers, and that this could react very unfavourably to the applicant, he was entitled by way of counter-balance to the full benefit that any direction about his good character could afford. It was submitted that the instruction that the jury actually received about the use they might make of evidence of the applicant's good character would have been of little use to him. The real value of it was to support his unsworn statement, especially his account of the stabbing and his denial that he wanted to kill the deceased, and his assertion that "all I wanted to do was hurt his legs but not breaking his bones".

The usual jury direction nowadays given in this State about the use that may be made of evidence of an accused person's good character is founded on two propositions to be derived on the subject from *Attwood v R*, *supra*, at pp359-360, viz. that the accused "... may adduce evidence of the favourable character he bears as a fact or matter making it unlikely that he committed the crime charged ..."; and "... evidence of good character is regarded as really bearing on the probability or improbability of guilt". Some eight years before *Attwood v R* this Court, in *R v Bassett* [1952] VicLawRp 75; [1952] VLR 535, 541; [1952] ALR 1035, expressed a not inconsistent view, saying:

"In principle it would seem that evidence of good character which is legally admissible in the accused's favour is, like all other evidence in his favour, to be considered by the jury for what they think it

is worth in coming to their conclusion as to his guilt or innocence. Such evidence cannot [13] of course change facts, but it may put a different complexion on the facts from that which they might bear without such evidence."

The basis for the reception of evidence of good character of a defendant in a criminal trial has shifted during the development of the English criminal law. Some reference to the history is given by Viscount Simon LC in *Stirland v DPP* [1944] AC 315, 325-326; [1944] 2 All ER 13; (1944) 30 Cr App R 40. By the end of the 18th century it was constantly admitted and in *R v Stannard* [1837] EngR 476; 173 ER 295; (1837) 7 C & P 673, Patteson J observed:

"I cannot in principle make any distinction between evidence of facts and evidence of character: the latter is equally laid before the jury as the former, as being relevant to the question of guilty or not guilty: the object of allowing it before the jury is to induce them to believe, from the improbability that a person of good character should have conducted himself as alleged, that there is some mistake or misrepresentation in the evidence on the part of the prosecution, and it is strictly evidence in the case."

Williams J in the same case said:

"I have no doubt ... that evidence to character must be considered as evidence in the cause. It is evidence, as my brother Patteson has said, to be submitted to the jury, to induce them to say whether they think it likely that a person with such a character would have committed the offence."

This is still the law in England: *R v Bryant* [1979] QB 108, 119. So far as I can see, it is quite consistent with what was said on the subject in *Attwood v The Queen*. *Attwood's case*, however, dealt only in passing with the significance of evidence of good character, and then only to compare it with evidence of bad character, with which the case was principally concerned. Not surprisingly, therefore, the High Court said in *Simic v R* [1980] HCA 25; (1980) 144 CLR 319; 30 ALR 519; 54 ALJR 406, 411, that the observations in *Attwood* about [14] evidence of good character did not purport to contain a full statement of law on the subject. While a direction to a jury founded on *Attwood* could never be wrong on that account, it would be a mistake to suppose that a detailed direction dealing with the precise way that the proved fact of an accused's good character could react with other proved facts might not be called for. That is to say, a direction the effect of which was simply to rehearse what was said in *Attwood* might not always be sufficient to isolate for the jury the particular matters of fact to which evidence of good character might be relevant.

In *R v Stalder* [1981] 2 NSWLR 9; 3 A Crim R 87, 17 Street CJ, having referred to most of the authorities I have mentioned, and some others, gave his opinion that "it is unlikelihood of guilt that most accurately describes the proposition in aid of which evidence of good character can be used". His Honour went on to notice that "there are suggestions to be found in the authorities that credibility is the topic to which evidence of good character is primarily operative". In *R v Bellis* [1966] 1 All ER 552; [1966] 1 WLR 234, 236, the Court of Criminal Appeal in England took the view that "possession of a good character is a matter which primarily goes to credibility ...". The same view was taken by the Court of Appeal in *R v Bryant* [1979] QB 108, 119. The Court there said that the possession of a good character is a matter which does go primarily to the issue of credibility. This has been made clear in a number of recent cases. But juries should be directed that it is capable of bearing a more general significance which is best illustrated by what was said by Williams J in *R v Stannard* [15] ... in the passage I have already quoted. See also *R v Richardson* [1969] 1 QB 299, 311.

Street CJ, in *R v Stalder*, was prepared to acknowledge that evidence of good character can be used as establishing the credibility of the accused in his denial of the charge, and hence the unlikelihood of his guilt, but treated such use as merely a corollary to the proposition that the evidence may be used to demonstrate the unlikelihood of guilt. It is, he said, "merely an incidental aspect of the topic which is best described as the unlikelihood of guilt". This point was taken up again by the New South Wales Court of Criminal Appeal in *R v Murphy*, where it assumed considerable significance. The Court of five judges cited with evident approval the decision of that Court in *R v Farquhar* (unreported, 29th May 1985) in which it was said: "There can be no doubt that character evidence can be relevant to the question of credibility". The Court in *R v Murphy* also quoted the following passage from *R v Garner* (unreported, 25th August 1983) in which Street CJ said:

"At times, in evaluating the question of the guilt of an accused, his credibility when denying the charge may come under consideration. In such cases the element of credibility arises merely as an incidental aspect of the topic described as the unlikelihood of guilt."

The omission to give a specific direction on the impact which evidence of good character might have on the issue of credibility might or might not be regarded as resulting in a miscarriage, according to the particular circumstances of the case in hand. The Court in *R v Murphy* was concerned with a jury charge the effect of which required [16] the jury to put out of mind the evidence of the accused's good character as having a bearing on his credit. The Crown case involved proof that the accused had had conversations in the course of which he spoke words amounting to attempts to pervert the course of justice in relation to the judicial power of the Commonwealth. The accused had given sworn evidence contradicting critical parts of the evidence of the conversations relied on by the Crown. The credibility of the accused was of primary importance because of two essential questions requiring the jury's consideration: one was what was said by the accused and the other was with what intention it was said. In the light of the authorities to which the Court of Criminal Appeal referred, it was plain that the jury had been misdirected. It was not merely a matter of omitting to give a specific direction on the matter of the accused's credibility, but of giving a wrong direction.

The use to be made of evidence of an accused person's previous good character might very well be expected to differ according as to whether or not he gives evidence on oath: cf. *R v Trimboli* [1979] SASR 73, 81. It may generally be said, as it was in *R v Bassett*, *supra*, that such evidence can always be "considered by the jury for what they think it is worth in coming to their conclusion as to his guilt or innocence". The worth of the evidence insofar as it might bear on the accused person's credit is likely to be very much less, however, when he makes an unsworn statement from the dock than when he gives his account in a fashion giving rise to the sanction of perjury and allowing by cross-examination an investigation of its real value. It [17] is also to be recalled that the High Court pointed out in *Simic v R*, *supra*, at p411, "... it is obvious that whether evidence of good character will be of any avail to an accused person depends on the strength of the evidence supporting the charge".

These propositions are evident enough when one remembers that the essential purpose of evidence of good character is not to change facts (as the learned Judge remarked in his charge), but to suggest "a different complexion on the facts from what which they might bear without such evidence": *R v Bassett*, *supra*. I do not say that a specific direction to the jury on the bearing that evidence of the accused's previous good character might have on his credit could never be appropriate when he makes an unsworn statement. If the giving of the direction is properly done, however, it might in such a case react unfavourably to the accused rather than beneficially to him. I think that is very likely to have been the case here if the Judge had acceded to counsel's submission to redirect. What would the gist of the redirection have been? It could not sensibly have involved merely a suggestion to the jury that they use the evidence of good character in assessing the credibility of the accused's unsworn statement. Why should that particular statement be singled out as being inherently more reliable, on account of the accused's previous good character, than the other statements he had made to the police about the circumstances of the deceased man's death and which were at variance with the unsworn statement?

At least two statements made by the accused in his interview with the police on 17th July 1983 were [18] startlingly and vitally opposed to what he said in Court. These were, first, that the deceased had said "nothing at all" to the accused after stabbing him and, secondly, that when asked "Why did you go to your bedroom?", the accused replied, "Because I wanted to scare him you know, to get my shotgun and break his legs, that is all". A balanced redirection of the kind sought by counsel for the applicant as to the use the jury might make of evidence of character going to credit would, in my opinion, scarcely have omitted a reference to the other statements; otherwise the Judge would in effect have been inviting the jury to be unwarrantably selective in the application of evidence that was said to go to the applicant's credibility. The effect which these two statements, if accepted, could have had on the matter of the accused's particular intent and on the matter of provocation is obvious. In summary, I consider that the applicant really lost nothing from the Judge's refusal to redirect on the question. He was, with respect, wise to take the course he did. I am of opinion, accordingly, that this ground is not sustained... [*His Honour then considered other grounds of Appeal*].

Solicitors for the applicant: Galbally and O'Bryan. Solicitor for the respondent: JM Buckley, solicitor for the DPP.