

***32 William Herbert Wallace**

Court of Criminal Appeal

19 May 1931

(1932) 23 Cr. App. R. 32

Lord Chief Justice , Mr. Justice Branson and Mr. Justice Hawke

May 18 & 19, 1931

Murder—Suspicion—Evidence Consistent with Innocence and Guilt.

The Court will quash a conviction founded on mere suspicion.

Appeal against conviction.

Appellant was convicted of murder at Liverpool Assizes on April 25, 1931, and was sentenced to death by Wright, J.

Roland Oliver, K.C. (S. Scholefield Allen with him), for appellant, who was present:

It is submitted that in this case the prosecution never discharged the onus of proof; in other words, the evidence, viewed as a whole, was as consistent with the innocence of the accused as with his guilt. In a case where the prosecution relies on circumstantial evidence, the evidence must at least be sufficient to exclude the reasonable possibility of someone else having committed the crime. The case here should have been withdrawn from the jury. Appellant, *33 who was charged with having murdered his wife on January 20, is fifty-two years of age and had been married for eighteen years. The evidence was that he had lived on terms of closest affection with his wife and had no conceivable motive for killing her. The case for the prosecution was that the murder was a planned one, carried out with extreme ferocity and complete callousness. Appellant had been summoned on the evening of the crime on a business matter to a non-existent address by a false telephone message sent to a place where he was known to resort on the day before. The case for the prosecution was that appellant had sent that message himself, as part of a carefully planned scheme to establish an *alibi*, but the evidence was all the other way. The clothing of the murderer must have been heavily splashed with blood, yet no blood was found on the appellant's clothes and he could not have had time to destroy or cleanse them. The theory of the prosecution was that he was wearing only a macintosh at the time of the murder. A partly-burnt macintosh was found under the dead woman's body, and the prosecution contended that appellant alone had a motive for burning it. The defence, however, relied on the fact that her skirt also was burned by contact with a gas fire in the room, and suggested that she had been wearing the macintosh round her shoulders when attacked by an intruder. Appellant made a number of statements after his arrest, and the judge, in his summing-up, observed how consistent they were and how little criticism could be made about them. The case was pressed very hard against the appellant, and the jury were inflamed against him by the oppressive way in which the case was conducted, and help which might reasonably be expected to have been given to the defence by the police was not given. Unfair criticism was made at the trial of appellant's demeanour by

witnesses who had said nothing about this at the police court. There was no trustworthy evidence at what hour the deceased woman met *34 her death. Throughout the case one fails to find a single piece of evidence that was not consistent with innocence.

[Allusions having been made to the conduct of the Liverpool Police in dealing with the case, the Court declined to go into the matter.]

Hemmerde, K.C. , incidentally stated that at the request of the defence the jury was not taken from the City of Liverpool, but from the County of Lancaster.

Oliver, K.C. , in reply:

Appellant is accused—this is the whole *gravamen* of the case against him—of having “faked” a situation in which he could pretend that someone other than himself had got let into the house, not had broken into it, and there had murdered his wife.

The Court adjourned for nearly an hour.

T. R. F. B.

The Lord Chief Justice:

¹ This appellant, William Herbert Wallace, was charged, at the Assizes in Liverpool, with the murder of his wife on January 20. In the result he was convicted, and on April 25 last he was sentenced to death. He now appeals against that conviction. Three facts, at any rate, are obvious. The first is that at the conclusion of the case for the Crown no submission was made on behalf of the appellant that there was no case to go to the jury. Counsel has explained the circumstances in which, and the reasons for which, no such submission was made. The fact remains, however, that there was no such submission.

The second fact which seems to be obvious is that the evidence was summed up by the learned judge with complete fairness and accuracy, and it would not have been *35 at all surprising if the result had been an acquittal of the prisoner.

The third obvious fact, upon which it is unnecessary for me to dwell, is that the case is eminently one of difficulty and doubt.

Now the whole of the material evidence has been closely and critically examined before us during the past two days by learned and experienced counsel on both sides, and it does not appear to me to be necessary to discuss it again. Suffice it to say that we are not concerned here with suspicion, however grave, or with theories, however ingenious. Section 4 of the Criminal Appeal Act of 1907 provides that the Court of Criminal Appeal shall allow the appeal if they think that the verdict of the jury should be set aside on the ground that it cannot be supported having regard to the evidence.

I should like to add that there is not, so far as we can see, any ground for any imputation upon the fairness of the police, but the conclusion at which we have arrived is that the case against the appellant, which we have carefully and anxiously considered and discussed, was not proved with that certainty which is necessary in order to justify a verdict of guilty, and, therefore, that it is our duty to take the course indicated by the section of the statute to which I have referred. The result is that this

appeal will be allowed and this conviction quashed.

Conviction quashed .

Representation

Solicitors for appellant: Davis, Berthen & Munro, Liverpool. ***36**

1. This judgment is a copy of a *verbatim* transcript supplied by the courtesy of the Director of Public Prosecutions.

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