Cross-examination Recalled

"Now let me bring you to this. The doctors called by the defence agreed entirely with the most important conclusions come to by Dr. Stallworthy, Dr. Hunter, and Dr. Saville," said Mr Brown. "Dr. Stallworthy, in his evidence, said that, from all the information he had gained he had no doubt that both accused knew the nature and quality of their act and they knew it was against the moral code of the community. He said there was nothing to lead him to believe that they were insane at the time they killed Mrs Parker. Now I turn you to Dr. Medlicott's evidence. I asked him: 'Did they know what they were doing?' His answer was: 'Yes.' I asked: 'And they knew the nature and quality of their act?' His answer was: 'They did.' I asked: 'Did they know the law of the country?' His reply was: 'Yes.' I then asked him: 'Did they know their act was wrong according to the law?' The doctor saw he was in a spot and he said: 'They knew, but they did not recognise the law.' I put the question to him again and he said: 'They knew it was wrong in the eyes of the community.' That is precisely what Dr. Stallworthy and Dr. Saville said," Mr Brown said.

"Dr. Bennett would not answer yes or no to questions. He always wanted to qualify it in case he might be shown to be wrong," said Mr Brown. "Dr. Bennett, in reply to his Honour, said in more roundabout words what Doctors Stallworthy and Saville said for the Crown. That was that the accused knew that what they did was against the moral standards of the community, though he added that it was not against their own moral standards. It is impossible for you, the jury, to have any doubts about it that the conclusions reached on the mental condition of the accused by both the witness for the Crown and the defence is the same.

"In the course of the trial you have learned a great deal about these young people in the dock. I won't give you the list of things showing they are depraved. You have already heard it," said Mr Brown. "Notwithstanding their depravity they are not insane. The evidence proves that these two young people have most unhealthy minds, but the unhealth is badness and is not insanity at all.

"I will conclude with the words I used at the opening of this trial," said Mr Brown. "This plainly was a coldly, callously planned and premeditated murder committed by two highly intelligent and perfectly sane but precocious and dirty-minded girls. Now I add: And who have been proved to have been sane at the time they killed Mrs Parker. They are not incurably insane. My submission is they are incurably bad."

HIS HONOUR SUMS UP

His Honour, beginning his summing up, said he was conscious of the fact "that the time you have to devote to listening to me and the time you may have to devote to your own deliberations may deprive you of certain pleasures you may have had today. I am sure you will agree, however, that nothing must interfere with the due fulfilment of your duties."

Their oath as jurymen required, first, that they should disregard anything they might have learned about the case from any source other than the evidence put before them in the Court. He was referring in particular to the fact that this case had been much reported in the papers both before this trial and during the trial, said his Honour.

It was the duty of the jurymen, as honest and responsible citizens, to use their knowledge of the world and affairs in arriving at their decision and they were entitled to bring to bear on it their common sense.

The members of the jury must cast aside any feelings of pity for the dead woman, for members of her family, or for the two accused. Their function was solely to decide whether the Crown had proved its case and whether the defence of insanity had been proved, said his Honour.

It had not been denied in this case—subject to the defence of insanity—that the two accused were guilty of the crime with which they were charged. Nor was it denied that they conspired to murder Mrs Parker. These admissions rendered it unnecessary for him to warn the jury to look for sufficient onus of proof, as was usually done by the Judge in a murder trial. There did not appear to be any doubt in this case that the Crown had established its case.

Burden of Proof

The burden of proof that rested upon the defence in regard to the ground of insanity was a different one, his Honour said. "It is for the defence to satisfy you that the allegation of insanity of the required kind and degree has been made out. If you cannot make up your minds on that question your duty would be to decide against the defence."

When two accused persons were tried jointly it was always necessary that the jury should consider the case of each accused separately, and to consider in regard to each only so much of the evidence as was properly relevant to that particular accused. "In this particular case there does not appear to be any need for severance of the evidence."

His Honour said counsel for the two accused had endeavoured to draw no distinctions as between evidence applicable to one accused or to the other. Dr. Haslam and Mr Gresson, asked by his Honour if he had correctly interpreted their submissions, agreed that this was so.

The crime of murder consisted in the killing of a person "by an unlawful act, meaning to cause the death of the person killed," his Honour continued. "There can be no doubt that if this person's death was caused as alleged by the Crown, it was caused by an illegal act." Where there were two or more persons jointly concerned in the commission of a crime the law did not make any distinction between them; it did not matter in this case who struck the first blow, or who struck any particular blow.

"Any person who, in pursuance of a common design to commit a crime, does any act in furtherance of the commission of the design, is guilty of the crime involved," said his Honour, quoting from the Crimes Act.

It was usual in murder cases for the Judge to explain the law as to manslaughter, but he saw no facts which would render it proper for the jury to treat this crime as manslaughter.

Alternatives for Jury

"The gravamen of this case is the defence of insanity. If you find that defence established to your sufficient satisfaction on the evidence and the probabilities of the case your duty will be to return the following verdict: 'Not guilty, on the ground of insanity.'

"If on the other hand you find the defence not established you must bring in either a verdict of 'guilty' or a simple verdict of 'not guilty.' As I have explained, counsel for the defence have already invited you not to bring in a verdict of not guilty. Your proper choice lies between 'guilty' and 'not guilty on the ground of insanity.'

"Under section 43 of our Crimes Act everyone must be presumed to be sane at the time of doing or omitting any act until the contrary is proved. That is the onus that rests on the defence. It is also laid down that 'no person shall be convicted of an offence by reason of an act done or omitted by him when labouring under natural imbecility or disease of the mind to such an extent as to render such person incapable of understanding the nature and quality of the act or omission and of knowing that such act or omission was wrong'."

There was no suggestion of natural imbecility in this case, said his Honour. "Disease of the mind" was what was normally termed insanity. It was a matter of fact—and hence one for the jury to decide—what was insanity or disease of the mind. The jury was entitled to have the views of medical men on this matter.

"In this case you have the evidence of the two doctors called for the defence, who have expressed the opinion that these two accused are insane. On the other hand you have the evidence of three doctors called for the prosecution in rebuttal, who have sworn that both of the accused are sane and neither suffers from any disease of the mind," said his Honour.

"The learned Crown Prosecutor, a few moments ago, quoting an old Latin tag, suggested to you that you might well claim that these two were not possessed of healthy minds. It may well be that they suffered from some degree of mental disorder, that to some extent and in some way their minds are unusual and abnormal. I don't think anyone can listen to this case without coming to some such conclusion.

"The question remains whether this abnormality of mind does or does not amount to 'disease of the mind,' these being the words of the statute. I suppose that must be a matter on which doctors will often differ, because it depends on the degree of mental aberration, and there must be borderline cases where one man would say this is insanity and another would say, 'This is not insanity.' It may well be that in this case you have just that sort of picture before you: the case where there is mental abnormality which some doctors are prepared to classify as insanity whereas other doctors are not prepared so to classify it. Such a view involves no reflection on any of the medical men concerned.

"I do not propose to go in detail over the evidence on this question of insanity. You have heard it at great length and I am sure that the relevant aspects of it will have impressed themselves already upon your mind. . . .

"If you are not satisfied that insanity is proved, that is the end of this defence," said his Honour. "You need not go any further. On the other hand, disease of the mind is not of itself a sufficient defence. The law does not relieve persons of criminal responsibility merely because they are insane. It requires them to be insane, but it requires more than that.

"The insanity which is to relieve a person from criminal responsibility must be, in the words of the act, such as renders the person in question 'incapable of understanding the nature and quality of the act or omission, of knowing that such act or omission was wrong.' Sane people are punished by the law because they know the nature and quality of their acts and know that their acts are wrong. If a person suffering from disease of the mind knows the nature and quality of the act and knows that it is wrong in the eyes of the law, he stands on the same footing as the ordinary sane person.

"No Mystery"

"There is no mystery about this—no conflict between the medical and legal views," said his Honour. "This is a law that has been in force for many years and one that you and I are bound to be guided by in this case.

"You will observe that in addition to insanity there are two elements to be considered. It will be sufficient if the defence satisfies you that the accused did not know the nature and quality of the act, and equally sufficient if they satisfy you that even if the nature and quality of the act were known the accused did not know that the act was wrong.

"There are therefore, two alternatives, either of which will suffice. The first is that the accused did not know the nature and quality of the act. Now that reference is to the physical quality of the act. Did they know that they were killing a woman? All the medical men who were examined on that point—that is to say Doctors Medlicott, Bennett, Stallworthy and Saville—have sworn to you that in their opinion these accused persons did know the nature and quality of their act. Dr. Hunter was not examined on this point.

"As I have understood the case, that has not been in dispute. There has been no attempt by cross examination or by argument or in any other way to suggest to you that they did not know the nature and quality of the act, and as far as I can see, on the evidence there is no ground upon which you could properly hold that either of the accused did not know the nature and quality of the act.

"If that be the view that commends itself to you, then you have only to consider the other alternative: were they by disease of the mind rendered incapable of knowing that the act or omission was wrong?" said his honour. "You will observe in the first place that our law does not exonerate on the ground of irresistible impluse or on the ground that a person knowing the wrongness of the act is by disease of the mind led nevertheless to commit the act.

"Grave crimes are almost invariably committed by persons knowing that they were doing wrong but nevertheless by some perversity of the mental processes are led to commit the act," said his Honour. "In such cases the only question is, did the accused know that the act was wrong? What I have just said would require qualification in other cases . . . but so far as this present case is concerned it conveys an accurate statement of the issue.

"On this matter, also, there are four doctors who have said first that both of the accused knew, in their opinion, that what they did was wrong in the eyes of the law and further that they knew that what they did was wrong according to the generally accepted moral standards of the community. . . . There is no doctor who has said or even suggested that either of the accused did not know that what she did was wrong. Is there anywhere else in the evidence any material on which you can properly conclude that either of the accused did not know that the act was wrong? If not, your duty is plain: the proper verdict is a simple verdict of guilty."

What he had just said, said his Honour, bore on a question of fact . . . "and on questions of fact it is your decision and your decision alone that is to prevail. . . .

Two Important Words

"In that connexion I ask you to consider the addresses of learned counsel," said his Honour. "Have they put before you any reasons for supposing that either of these girls did not know that the act in question was not wrong? There are two important words in this particular phrase 'incapable of knowing that act or omission was wrong.' One is the word 'knowing' and the other is the word 'wrong.' As to the word 'wrong,' I tell you, as a matter of law, that a person knows a thing can be wrong if he or she knows it to be contrary to the law of the land and contrary to the moral standard accepted by ordinary, reasonable members of the community. It is not sufficient to suggest that an accused person has erected some peculiar moral standard of his own. It is not permissible to say, 'I knew this was a breach of the law and a breach of the moral code, but I thought I was above or beyond the law and that although it was illegal or immoral I might commit it without infringing my own code of morality.' That is no defence in law.

"In considering, therefore, the word 'wrong' in that connexion, you will accept it as including whatever is wrong in law and wrong in accordance with the moral standards which are commonly accepted in the community.

"The other important word is the word 'knowing.' It has to be considered at the very moment of the commission of the crime. There are some forms of disease of the mind such as may make it very difficult to tell whether at the crucial time the person in question was able to perceive things so clearly as to know that there was a breach of the law and morality. . . .

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"The particular type of insanity suggested in the evidence in this case does not appear to me to be one which raises a difficulty of that kind. The four doctors examined on this question have all told us that the two accused knew the act was wrong, in the sense of being illegal and contrary to accepted moral standards.

"Is there anything in the evidence apart from these medical views which would lead you to a different conclusion? Have you any ground for supposing that these girls did not know the moral standards and that their act was contrary to these standards? Were their minds so confused that they did not know; or are the doctors—four of them—right in saying that they knew the act was wrong?"

In his review of the evidence, his Honour quoted from the cross-examination of Dr. Medlicott, who admitted the girls knew their act was wrong "in the sense in which I have defined it," his Honour said. "If you accept that passage as correct, then it is your duty to conclude that both accused are guilty of the offence, and the defence of insanity is not made out." There was a "somewhat similar passage" in the notes of Dr. Bennett's evidence which, if the jury accepted, "really left them no option but to hold both accused guilty of murder, as the required degree of insanity had not been proved."

The members of the jury might read the whole of the diaries produced during the trial, "but you will probably feel that you have, from witnesses and counsel, received a sufficient picture of the documents."

His Honour concluded his summing-up at 12.40 p.m. The jury returned at 2.55 p.m. with their verdict of guilty against each accused.

Age of Accused

His Honour said to counsel that they might recall that he drew their attention to the fact that the question of the ages of the accused might arise. It had now arisen. This concerned the sentence of a young person convicted of murder.

Mr Gresson said there had been clear evidence by Mrs Hilda Marion Hulme, mother of Juliet Hulme, that Juliet Hulme was well under the age of 18.

Dr. Haslam said that Mr Rieper had given evidence that Pauline Parker was under 18.

Mr Brown, speaking under stress, said he did not think the parents should be recalled to give evidence on the ages of the girls. The relevant matter formed part of the evidence.

His Honour said it was a question whether it was a matter for the jury or for the Court. It was a question of fact. He proposed to submit to the jury to decide on the evidence and then submit his own decision.

"Mr Foreman and gentlemen, in view of the verdict it is required to be ascertained if each prisoner is under the age of 18," said his Honour. "I now ask you to answer it in regard to each prisoner on the evidence. Parker's father has sworn to her age. Mrs Hulme has sworn to the age of her daughter and according to that she is well under the age of 18. I suggest, Mr Foreman, you may be able to answer that issue after a short conference with your fellow jurors in the box."

The foreman consulted the other jurors and then said they found both Parker and Hulme to be under 18.

"Not knowing whether that is a matter properly for the jury or for the Judge, I now add my own decision that both prisoners are under 18," said his Honour.

The Registrar (Mr G. E. Pollock) then addressed each prisoner in turn: "You have been indicted for the murder of Honora Mary Parker to which indictment you pleaded not guilty and placed yourself upon a jury of your country. That jury has found you guilty. Have you anything to say why sentence should not be passed upon you according to law?"

Dr. Haslam, on behalf of Parker, said he had no further submissions to make.

Mr Gresson, on behalf of Hulme, said there was nothing he could add to what was already in the evidence.

His Honour: Prisoners at the bar, the sentence to be passed on you is that fixed by law, namely Section 5 of the Capital Punishment Act, 1950. The sentence of the Court is a sentence to detention during Her Majesty's pleasure.

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