

Capital letter

Set 2

IN THE COURT OF APPEAL OF NEW ZEALAND

CA 316/85

THE QUEEN

v

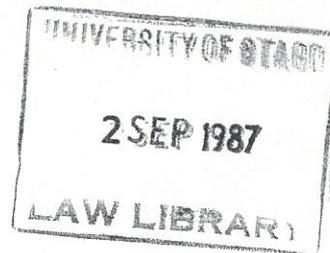
WILLIAM STEPHEN THORPE MIRAMS

Coram Cooke P
Somers J
Casey J

Hearing 14 November 1986

Counsel J. Haigh for Appellant
W.R. Flaus for Crown

Judgment 23 December 1986



JUDGMENT OF THE COURT DELIVERED BY COOKE P

This is an application for leave to appeal against a conviction for murder, based solely on the ground that Crown counsel used emotive and inflammatory language in order to persuade the jury to a point of view which was not justified by the evidence.

The appellant and his wife were separated. At his trial a friend of hers, Mrs Clayton, testified that at about 12.30 pm on 11 June 1985 she received a telephone call from Mrs Mirams to the effect that the appellant had asked Mrs Mirams to meet him at their former home and that as she was reluctant to go alone she would like Mrs Clayton to go with her. They went to the house. The appellant seemed surprised that his wife was accompanied and said that he wanted to speak to her in private. Mrs Clayton went into

CA 316/85 W. v Mirams 23/12/86

the kitchen. The other two were in the sitting room. For some minutes she heard conversation in normal tones, then there were footsteps as of someone walking out of the room, then a series of shots rang out in quick succession.

After a time she called out to Mirams, asking him what he had done. He made no reply. In the hall he was standing with a gun in his hand, pointing at the floor. He let her out of the house. He said it did not matter anyway as he would be dead in a few minutes too. He said that his wife was not going to get away with this - or words to that effect. Mrs Clayton was able to see the body of Mrs Mirams slumped on the sofa. The side of her head was covered in blood.

The unchallenged case for the Crown at the trial, fully supported by the evidence, was that the appellant shot his wife four times with a semi-automatic rifle that he obtained from a wardrobe. Three of the shots were into the back of the skull at a distance of no more than 1.5 metres. A fourth shot was fired but apparently went astray, injuring the left shoulder and fingers of the deceased. The defence at the trial was insanity, it being contended that the accused was labouring under a temporary psychosis. There was much psychiatric evidence on both sides. A ground of appeal that the verdict was against the weight of psychiatric evidence was rightly abandoned.

That left only the ground of the alleged emotive and inflammatory language used by counsel who appeared for the Crown at the trial.

We were supplied with extensive, agreed notes of his opening and closing speeches. The passages objected to must of course be taken in their context, but it will be sufficient if we set out the passages themselves. We mention that in addressing the jury Crown counsel also made various references to the need to weigh the evidence in a clinical way, and to apply their minds calmly and dispassionately to the evidence and the law as explained by the Judge. These references could not save the conviction if, taken as a whole, the way in which counsel addressed was objectionable and unfair to such an extent as to create a real risk that the verdict may have been affected. The specific passages complained of were as follows, but counsel for the appellant acknowledged difficulty in making much of most of them considered individually.

Opening

...I am going to ask you to say that the killing on a winter's afternoon in June of this year was nothing short of a cold-blooded murder...

...seems from the point of view of Mr Mirams, there was a studied refusal to accept the reality of the situation and he saw in his wife a source of bitterness, a need for vindictiveness, which he allowed to increase in intensity to the point where he looked to kill her. The Crown says that this is a classic case of fury dimming the lamp of the mind...

...the photographs show the close grouping - dead accuracy - keep that in mind - it is an important feature of the case as it suggests that the accused was plainly aware of what he was doing as seems that there was a deliberateness about his actions here...

...It is our case that Mrs Mirams waited patiently for her husband to return, totally unsuspecting and defenceless. And like a bit of prey, he stalked her and then shot her with the dead accuracy of a skilled hunter - Photo 33.

Closing

...And he put this murderous intent into effect by shooting his wife not once, not twice, but three times in the back of her skull and a further shot went astray and struck her in the shoulder. There was an impressive accuracy about his shooting, even allowing for the frightening closeness of his target as the plan shows...

...Interesting during the lead-up period and earlier, that the accused was enjoying other relationships:

- with Faire;
- Sweet;
- Bethel

Relationships of varying closeness and intensity.

Interesting also is the expression of resentment about his wife's position of employment. This was a source of irritation for him and he saw his wife as ambitious, not caring for the children. But just like his suspicions of her infidelity, this belief existed in his mind only.

Nothing has been put before you to show that these suspicions were indeed well-founded.

Possibly, Mrs Mirams observed long hours of work, but this cannot promote or support the implied stain on Mrs Miram's character which the defence would have you believe. The hours varied and the children were obviously able to see her at work. They were teenagers. The son was at King's College. When they did meet with their mother it was around 3.30 pm - 4.30 pm...

...We then have a series of remarks indicating with horrifying clarity just how the accused saw his wife and her situation.

- the lowly references to her as a bitch and his deep-set belief that she was trying to take him for everything she could. In fact, the solicitor's evidence tells a different story...

(After a reference to the fact that a first cousin once removed of the accused was a psychiatrist)

...An extraordinary approach, almost as if that fact could not be made known for fear that we would all come to realise, as was suggested to Dr Culpan, that the accused's family would be alert to illness;

- to the need for support
- to the need for medication when required (p.120)...

...We started with a case of murder and finished with a case of murder. A murder where the accused approached his wife with stealth and with the impressive accuracy of a marksman shot her three times in the back of the skull. Having done that, he then abandoned her and upon interception by the police could only express the hope that she was dead and not injured as he had shot her. In this case, I submit there is only one proper verdict against this accused - guilty of murder.

The principles applicable to a ground such as is relied on here have been stated by this Court in R v Thomas (No.2) 1974 1 NZLR 658 and R v Roulston 1976 2 NZLR 644, 654-6, and there is no need to repeat them. What we now particularly emphasise is the following point. In deciding whether the prosecuting counsel has overstepped the mark it is important to consider among other factors whether his language, even if featuring colourful figures of speech, represents essentially a view of the facts supported by the evidence. There is a difference between distorting or overstating the facts and describing the facts accurately, as justifiably seen by the Crown, in vivid words apt to bring the Crown's case home to the jury. We do not say that this difference will always be decisive, but it has to be kept very much in mind.

In this case the Crown's contention, thoroughly justified by the evidence, was that the accused cold-bloodedly and not in a phase of temporary insanity shot his unsuspecting wife at close quarters. Counsel's rhetoric - 'fury dimming the lamp of the mind': 'like a bit of prey, he stalked her and then shot her with the dead accuracy of a skilled hunter' - would not be to the taste of all. Many people would think at the present day that cooler language would be at least equally and probably more effective in persuading a jury. But the metaphors and similes were apt enough to encapsulate an accurate view of the evidence. Some of the arguments not using particularly high-wrought language seem weak, but weakness is not to be equated with impropriety.

We note too that there was a long, careful and dispassionate summing up by the Judge, which would have gone far to dissipate any atmosphere of excitement that might have lingered on even after the reply of defence counsel to the final speech for the prosecution.

This was a tragic case in which the jury were well entitled to find a most deliberate murder. We are entirely satisfied that the verdict should not be disturbed by reason of any words used by Crown counsel.

R B Cottle P.

Crown Solicitor, Auckland, for Crown