No. 6187/B/84.

IN THE COURT OF APPEAL

CRIMINAL DIVISION

Royal Courts of Justice.

Monday, 22nd April, 1985.

Before:

LORD JUSTICE WATKINS

MR. JUSTICE BOREHAM

and

MR. JUSTICE HIRST

R E G I N A

v.

IQBAL BEGUM

(Transcript of the Shorthand Notes of Marten Walsh Cherer Limited, Pemberton House, East Harding Street, London EC4A 3AS. Telephone Number: 01-583 7635. Shorthand Writers to the Court).

LORD GIFFORD Q.C. appeared on behalf of the Appellant.

MR. M. BOWLEY Q.C. and MR. B. LEECH appeared on behalf of the Crown.

J U D G M E N T

(As approved by Judge)

LORD JUSTICE WATKINS: On 5th October 1981 in the Crown Court at Birmingham the appellant pleaded guilty to the murder of her husband. She was sentenced to life imprisonment. She appeals against that conviction by leave of the single judge who granted her an extension of time. It was of an unusually long period - approximately 3 years. We have before us too an application for leave to call witnesses. We have not found it necessary to accede to that application save to the extent of placing reliance upon the contents of an affidavit made by the appellant's present solicitor.

The appellant comes from Pakistan, as did her husband. They were married there some time in 1969. It was an arranged marriage. He was then a widower with a daughter. He was 50 years of age. The appellant was in her twenties. Following the marriage she came to live with him in the district of Birmingham. She came from a rural area in Pakistan. She was born in a village in the district of Mirpur. She had next to no education, and certainly none of a formal kind. Since coming to this country all those years ago she has acquired very little command of the English language. From the time she came here until she was convicted she saw very little of the world outside her home.

Following the marriage she gave birth by her husband to four children. There was from time to time, and especially in the latter part of the marriage, trouble at home. Some of the trouble between them arose out of the lack of accord between the appellant and the daughter of the deceased's first marriage. There seems to be very little doubt that violence occurred from time to time between these two unfortunate people. It erupted in a macabre form on 27th May 1981. By that time the husband was just over 60 years of age and the appellant just under 40.

On the day I have mentioned at about half past six in the evening a nephew of the deceased, one Din, came to the house to see his uncle. When he was admitted the appellant said to him: "My husband, somebody kill him". We are not told in what language those words were spoken. Din went into the living room and discovered the body of his uncle. It was an appalling sight. What had happened was that the appellant had not very long before picked up an iron bar which was in the home and had struck her husband upon the head with it a number of times. Din summoned the police and an ambulance.

The appellant was spoken to very shortly thereafter by police officers through an interpreter about whose competence to make himself intelligible to the appellant there seems to be no doubt. She told that man, who was talking to her in Punjabi, that she had hit her husband with an iron stick. She said: "I feel guilty myself, but I didn't know what I was doing. He wanted two of the children to be killed and I said 'Don't let the children get killed'". A number of questions were asked of her through this interpreter by the police officer interrogating her. Those were recorded in written form in a statement which she signed. At the conclusion of that very short statement she said in answer to the question, "Did you think you would really kill him with that stick?" - "Yes I did. But God did it." That is obviously not the most intelligible of statements.

She was hitherto a person of good character. She was kept in custody from that time onwards. A solicitor was assigned to her. He engaged the services of an accountant, who came originally from Pakistan himself, as an interpreter. From time to time that solicitor with the assistance of that interpreter endeavoured to take instructions from the appellant. He was remarkably unsuccessful. So much so, that when eventually he instructed counsel to appear for the appellant, he had to inform them in the brief along these lines: "Instructing

"solicitors attended the defendant at length with an interpreter at Risley on 4th September 1981. During the interview instructing solicitors endeavoured to obtain a statement and to take the defendant's instructions on her statement to the police. She refused to answer almost all their questions and after the interview had lasted a total of 2 hours 25 minutes with a break for lunch inbetween, they realised that absolutely nothing was to be gained by continuing and therefore have taken no instructions on the depositions of the prosecution witness During this interview, the defendant first admitted killing her husband and then a few moments later denied hitting him; said that she did not remember the incident but that Feroaz Hassan was present; asked the meaning of 'true' and 'false'; stated that her husband had killed two of her children; asked whether her eldest child was still alive and stated that she should be pardoned for what she had done." The solicitor then asked counsel in the brief if any further steps should be taken in their opinion. There seems to have been no communication from counsel to the solicitor to that effect. This brief was delivered a matter of days before the appellant appeared at the Crown Court at Birmingham before Leonard J.

The case had been listed for plea only. The contemplation must therefore have been to all those concerned with it that one of several things could have happened that day. She could have pleaded not guilty to murder and if the prosecution had been content to have considered the acceptance of a plea to manslaughter, have offered a plea to that. She could have contented herself with merely saying that she was not guilty to either murder or manslaughter, in which event the case would obviousl have had to be adjourned and arrangements made at some later date for her trial. When she appeared before the judge she did so after having s in the cells below her counsel and the interpreter. What passed between them we know something about from the affidavit of the appellant

present solicitor who has spoken to that interpreter. We know something about it also as a result of what counsel told the judge in open court that day.

The proceedings took this form. When she was put up to plead, lead counsel told the judge that he had not been able to obtain any answers from her in the consultation which had taken place a very short while before in the cells, despite the activities of the interpreter. The judge then very quickly opened the mind of counsel to the possibility that she might have to face a jury empanelled for the purpose of discover whether she was mute of malice or by visitation of God. Counsel and the judge discussed that possibility briefly. It was thought however that another effort should be made to see whether or not she could, or would, g instructions to counsel. There was an adjournment for a short time. Counsel saw her again with the interpreter. Once more she appeared in the dock. The indictment was now put to her. It contained but one charge - the allegation of murder. To the surprise of everyone there concerned with the case she pleaded guilty to that straight away. The judge, prudently, thought that there may have been some misunderstand He therefore advised counsel that he would adjourn again so that counsel could make himself sure that she had fully understood what it was she was doing by pleading guilty to the indictment. Counsel once more went downstairs. The interpreter was present, so was the solicitor. Upon his return to court counsel said: "My Lord, I am greatly obliged in this very unusual case for the opportunity of seeing her. The effect of seeing her has been this. The effect of the plea which she has entered has been explained to her. She has already had explained to her the difference between manslaughter and murder." Presumably that was at one of these several consultations that morning. The judge said: "It was that aspect of the matter which was concerning me if there had been no communication. (Counsel): She answered only the one question.

"She ignored everything else, but when asked, 'Do you understand the charge that has been put to you?' her answer to that was 'Yes'. That being so, my Lord, I do not think there is any further step which I can take in relation to the plea." The judge, understandably, having regard to the assistance which he had had from counsel and the several opportunities which counsel had had to ensure that this woman understood the charge and her response to it, said that he therefore had no alternative but to proceed and accordingly he sentenced her, as the law demands, to life imprisonment.

For a very long time no application for leave to appeal against that conviction was made. It seems to be obvious that there was simmering discontent in the Pakistani community in Birmingham about these proceedings. Eventually the appellant's present solicitor was instructed. She began to make enquiries about many matters and especiall about the competence of the interpreter. No interpreter, I should interpolate here, had been instructed by the court to appear upon the occasion to which I have referred, so reliance was placed upon the gentleman whose services had been enlisted by the appellant's solicitor. Something needs to be said about his command of language. He is fluent in the English tongue, but his native tongue is Gujarati. He has some knowledge of Urdu. The appellant's native tongue is Punjabi. She has some knowledge of Urdu. Customarily she mixes up in a jumbled sort of way those two languages, and moreover in a dialect which is the product of the rural area from which she emanates. It was clearly of the highest importance that an interpreter was found who had a sound knowledge of Punjabi and of Urdu. But the interpreter's other native language was Hindi. He knew no Punjabi. The appellant's present solicitor also has a command of Gujarati. She has been unable to communicate effectively at any time with the appellant. She has enlisted the services of a lady employed in her office who has a

command of Punjabi in order to take instructions from the appellant. In her affidavit she informs us of the conversation which she had with the interpreter. It is unnecessary in this judgment to go into the details of that conversation which took place on the telephone. Suffice it to say that it revealed precisely with what Indian languages the interpreter conversant. It led the solicitor, and eventually Lord Gifford whom she instructed, to the conclusion that this appeal should be launched on the basis that when she pleaded guilty to murder the appellant did so without having had explained to her in the language which she could understand the offences as we know them of murder and manslaughter, and the possibilities open to her having regard to all that had happened in her household of defending herself on the basis, for example, that she was not guilty of murder but possibly guilty of manslaughter for the reason that she was provoked by the behaviour of her late husband into doing what she did.

The main ground of appeal is that the purported plea, trial, conviction and sentence were null and void by reason of the various matters recounted in an advice, which Lord Gifford composed with very great care. I have already referred to much of the information contained in that. He therefore invites this court to say that the trial was a nullity. At the conclusion of argument late last week we indicated here that we had come to the conclusion that the trial was indeed a nullity and that we would give our reasons for that finding today.

In this country now there are people who have come to live from many parts of the globe from what was the old Empire and Commonwealt There are many languages spoken upon our streets. A number of them contain overtones of the dialects in which those languages are spoken, for example in the great Indian subcontinent. No one should minimise the difficulties which sometimes occur in obtaining the services

of an interpreter who is fluent not only in the language of the person who has to be interrogated but who also has knowledge of the dialect in which that language is spoken. That is merely an indication of the very great care which must be taken when a person is facing a criminal charge to ensure that he or she fully comprehends not only the nature of the charge, but also the nature of the proceedings which will ensue and of the possible defences which are available having regard to the facts of the case. Here, as is evident from what has been said already, there had been over a protracted period of time a failure to obtain even rudimentary instructions from this appellant about what had taken place in order to bring her to the desperate frame of mind in which she committed the frightful assault upon her husband. It is beyond the understanding of this court that it did not occur to someone from the time she was taken into custody until she stood arraigned that the reason for her silence, in the face of many questions over a number of interviews upon the day of the hearing and upon many days previously at various times, was simply because she was not being spoken to in a language which she understood. We have been driven to the conclusion that that must have been the situation. At all events, we are in so much doubt that she comprehended what was being said to her at crucial times that we cannot do other than come to the further conclusion that it would be impossible to feel sure that when she pleaded guilty to murder she understood all the implications of what she was doing.

It has been said on a number of occasions here that unless a person fully comprehends the charge which that person faces, the full implications of it and the ways in which a defence may be raised to it, and further is able to give full instructions

to solicitor and counsel so that the court can be sure that that person has pleaded with a free and understanding mind, a proper plea has not been tendered to the court. The effect of what has happened in such a situation as that is that no proper trial has taken place. The trial is a nullity. It must be appreciated that the court is very much in the hands of solicitors and counsel when a plea is being tendered to an indictment. The court is entitled to feel confident that before that plea has been tendered solicitors and counsel have satisfied themselves that the person arraigned fully understands what is going on, and that that person has before that time given full and intelligible instructions so that counsel has in the end been able to satisfy himself that the person is able to make a proper plea. If it be that the plea is guilty, that it is a plea which is tendered after proper reflection and is one which comes from a mind made completely aware of the implications of it.

The failure here both by solicitor and counsel was to realise that the fault of the apparent lack of communication lay in the inadequacy of interpretation. Yet not once does it appear to have occurred to either of them to question the interpreter so as to ascertain whether or not he was understanding what the appellant was saying to him and whether he, the interpreter, had the impression that she was not comprehending the language he was talking to her.

Sufficient has now been said, we think, in this case to cause anyone who is called upon to assist a person such as the appellant as a first precaution to ensure that the interpreter who is engaged to perform the task of interpretation is fully competent so to do, by which we mean is fluent in the language which that person is best able to understand.

For the reasons which we have given we have come to the conclusio

that the appellant made no proper plea. Her trial was therefore a nullity. The conviction will be quashed.

Lord Gifford has submitted to us that in that circumstance, havi regard to a number of considerations, such as the length of time that this appellant has now been in prison, the effect which prison life has had upon her and the prospects and painful expectation that a new trial would bring, we ought not to order one. We cannot accept that. This was a very serious matter. She battered her husband to death. Life is very sacred. When it is taken the public expects that the person who has been responsible for taking it is lawfully and properly dealt with. There must be a new trial of this appellant. If she has not been fully acquainted up to now with what is involved in a new trial then no doubt she very soon will be.

Lord Gifford, we ought to tell you this. Arrangements have been made to turn this courtroom into a Crown Court. If you invite me so to do, I shall invite Hirst J. to become a judge acting in the Crown Court for the purpose. If you think any useful purpose is to be served by my doing that, then I will do it, which means that here today a trial of this lady can take place. We know of course from what counsel for the Crown has told us that if a plea to manslaughter is tendered it is one which the Crown will feel disposed to accept. In those circumstances what is your wish?

LORD GIFFORD: My Lord, I would want to be as open with the court as possible in a matter which has had this history. Your Lordships have the evidence that was to be tendered at the Birmingham Crown Court for the prosecution. Your Lordships also have in effect, at any rate in outline, the mitigation that would be put forward on behalf of the appellant on a plea of guilty to manslaughter. From that you have something of the history which would be adduced.

If this were coming to trial afresh there would be further enquiries that would properly be made to call evidence in support of that mitigation, to enlist the help of experts as to the future of the family, what would happen to the children and such like. Weighing all that, the trial judge would then have to exercise his powers of sentencing

Of course if the trial takes place today that could not be done. However we are not coming to the trial afresh. The appellant has been in custod since the offence took place on 27th May 1981, that is just under 4 year which is the equivalent of almost a 6-year sentence, or more, assuming that a woman of this kind would receive parole.

On Thursday I sought to explain two things. First of all, the nature of the possible pleas. I am very satisfied that I have instructio on that about which I have advised her. Secondly, I have sought to explain the possibility that the matter could be ended today rather than wait over for a trial in Birmingham. In giving that advice, I say this frankly to the court, I have indicated to her that it is likely that the court may take a view of sentence which would enable her to be released today. I am very conscious that in putting it that way I am myself entering on difficult ground. However, I really must say this -- and I invite it in open court rather than-----

LORD JUSTICE WATKINS: Lord Gifford, you should at this stage have confidence in the court. If you tender the plea, the Crown will accept it. It would then be for Hirst J. to hear what you are saying.

LORD GIFFORD: I accept that, my Lord, and I will address my remarks to Hirst J.

LORD JUSTICE WATKINS: That would be appropriate.

The court will now adjourn so as to enable the trial to take plac

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