

[COURT OF CRIMINAL APPEAL]

1954 Present : Gratiaen J. (President), Weerasooriya J.
and Sansoni J.

KANAPATHIPILLAI, Appellant, and THE QUEEN, Respondent

APPEAL No. 63 OF 1954, WITH APPLICATION No. 123

S. C. 3—M. C. Batticaloa, 15,926

Evidence—Dog trained in criminal investigation—Its behaviour and reactions at scene of crime—Relevancy as evidence—Evidence Ordinance, s. 11 (b).

Very convincing expert evidence should be placed before a Court which is invited to conclude that the mere behaviour of a Police dog by itself renders the existence of any relevant fact in a criminal trial so "highly probable or improbable" as to justify the application of Section 11 (b) of the Evidence Ordinance.

APPPEAL, with application for leave to appeal, against a conviction in a trial before the Supreme Court.

G. E. Chitty, with G. L. L. de Silva, J. C. Thurairatnam, A. S. Vani-gasooriyar and Daya Perera, for the accused appellant.

• *Ananda Pereira, Crown Counsel, for the Attorney-General.*

Cur. adv. vult.

January 31, 1955. GRATIAEN J.—

This was an appeal against a conviction for murder. At the conclusion of the argument we quashed the conviction and ordered a fresh trial. The reasons for our decision must now be stated.

The case against the appellant was based on circumstantial evidence, and there was a large body of relevant and admissible evidence which, if believed by the jury, would doubtless have been sufficient to support the conviction. The prosecution, however, was permitted to lead certain other items of evidence which should not have been admitted, and unfortunately the learned Commissioner of Assize specially directed the jury to take these matters into consideration as being of sufficient weight (if true) to strengthen the case against the appellant. I refer to the evidence of Mr. V. K. Kandiah, Sub-Inspector of Police, concerning the behaviour and reactions of a dog named "Tarzan" at the scene of the crime on the following day.

"Tarzan", described by Sub-Inspector Kandiah as a "Police dog", had been accompanied to the scene by a Sub-Inspector who was stated to be "a specially trained Police dog handler" (whatever that may mean). According to the evidence, certain experiments were then carried out

to which "Tarzan" reacted by "running about the locality" and "proceeding" in certain directions. The precise significance of these reactions was entirely a matter for speculation and conjecture because, in the very nature of things, "Tarzan" himself was not in a position to explain them to the jury. Nor did any witness professing to be an expert interpreter of the behaviour of dogs offer any theory (reliable or otherwise) for the consideration of the Court. All that we do know is that, after having sniffed a muzzle-loader (with which the murder is alleged to have been committed) "Tarzan" first ran up to a certain bush and later halted at the foot of a mango tree. At neither of these places was anything found which remotely incriminated the appellant.

Let us assume (although it was not proved at the trial) that "Tarzan" has been specially trained to assist Police officers in the detection of crime. We do not for a moment discount the usefulness of trained thoroughbred dogs in the field of criminal investigation. For instance, an important clue may be discovered by an animal which would point to the identity of the offender; but in such a case, it is the positive evidence brought to light rather than the manner of its discovery that constitutes relevant and admissible evidence of the offender's guilt. But we have not yet reached that state of knowledge which would enable us to place reliance on the apparent suspicions of an animal as to the identity of the perpetrator of a crime. At present, therefore, very convincing expert evidence should be placed before a court which is invited to conclude that the mere behaviour of a Police dog by itself renders the existence of any relevant fact in a criminal trial so "highly probable or improbable" as to justify the application of Section 11 (b) of the Evidence Ordinance.

In some countries, apparently, evidence of the tracking of a suspected offender by a well-trained and well-tested bloodhound of good breed has been cautiously admitted by judges as furnishing some evidence of a man's guilt. But, *Wigmore on Evidence* (Vol. 1 pages 635-6 Section 177) warns us that in actual usage, this kind of evidence is "apt to be highly misleading to the danger of innocent men, and, amidst the popular excitement attendant upon a murder and the chase of the suspect, all the facts upon which the trustworthiness of the inference rests are apt to be distorted in the testimony. Moreover, the very limited nature of the inference possible is apt to be overestimated". These observations are in complete accord with the rule of prudence (which is not strictly a proposition of law) that evidence ought not to be admitted if its reception would probably cause prejudice which is quite disproportionate to its true evidential value. In this country, it may perhaps be safer for the present to leave such evidence (even if it can be proved by expert testimony to possess some limited relevancy) completely out of consideration by jurors or even by a Judge sitting alone to exercise criminal jurisdiction.

The evidence of Sub-Inspector Kandiah regarding the behaviour and reactions of "Tarzan" should for several reasons have been ruled out at the trial, and we are far from satisfied that the jury's verdict was not unduly influenced by these extraneous considerations.

Fresh trial ordered.