

Bourgeois justice, working-class injustice



Black, working class and poor? Guilty!

Party comrades recently attended a trial at Woolwich Crown Court, cosily situated to act as an adjunct of Belmarsh high security prison in south London. There they witnessed a blatant exposure of the hypocrisy of British imperialism, which claims to be a steadfast champion of civil liberties, human rights and the rule of law. In the criminal courts, in particular, the jury trial is supposed to safeguard the golden principle that nobody can be convicted of a crime unless the evidence shows *beyond all reasonable doubt* that the accused is guilty as charged.

Jury manipulation

What our foray into Woolwich Crown Court showed, however, is that proceedings can be and are manipulated in such a way as to ensure juries convict if the evidence shows not 'guilt beyond all reasonable doubt' but only that there is a distant possibility that the accused *might* be guilty.

The case we observed involved a young, poor, working-class black man, who was accused of conspiring with two other men to produce marijuana. The other two men had pleaded guilty and were not on trial.

The only evidence put forward of the accused's guilt is that he had spoken at various times to the men in question on a mobile phone, that he had visited the property where the marijuana was grown and that in a house shared by various people where he stayed from time to time there was found a book on growing marijuana and the type of thermometer that is apparently used by people who grow marijuana.

The police, however, used a smoke-and-mirrors approach to presenting their evidence, which, by demonstrating their painstaking efforts to track down which mobile telephone belonged to whom, involving triangulation from various telephone masts showing where mobile phone numbers were located at the time of various conversations, managed to create the impression that since the accused was most probably in telephone contact with the marijuana growers, he must necessarily have been conspiring with them, or at least have conspired with them in their criminal enterprise at some point.

The jury duly found the accused guilty as charged. Despite the trickery on the part of the prosecution, it is diffi-

cult to avoid the conclusion that for 12 citizens to arrive at such an incredibly certain conclusion in the light of the very inconclusive state of the evidence – which very arguably established no case to answer – could not be unrelated to the fact that they were all but one of them were white. One also wonders whether it is a coincidence that in London, with its diverse and multi-ethnic population, an almost all-white jury was produced to try a black man.

The jury did at one point ask the judge whether merely visiting the house where the marijuana was being grown would lead necessarily to the conclusion that the accused was involved in a conspiracy to grow it. The judge had to admit that it did not. However, he then in effect made a speech for the prosecution, in which he 'reminded' the jurors that there was lots of other evidence that should be put together with the evidence of the accused's visit to the house and which might enable a conclusion of conspiracy to be reached. But a conclusion *beyond all reasonable doubt* ..?

The judge's amazing bias was brought even more forcefully to light after the jury returned a guilty verdict when, refusing to allow the accused bail for the two weeks he would have to wait before his sentence was handed down, he outrageously stated that this was because the accused was a danger to society!

Of this there was no evidence whatsoever. As far as this middle-class white judge is concerned, no doubt the resentment that all and any disadvantaged working-class person might quite rightly feel at the way society treats him necessarily turns him into a danger to society, especially if he is black! We can expect a vicious sentence, even though the accused had no previous convictions of any kind.

The same judge had also demonstrated the paranoia felt by the bourgeoisie and its servants when confronting the oppressed masses when he turned at the beginning of the trial on members of the public sitting quietly in the public gallery taking notes.

Besides accusing the whole public gallery of 'insolence', a charge which was entirely uncalled for, he demanded assurances that these notes were not being taken with a view to using them for coaching witnesses who were not allowed to be present at the proceedings. One wonders whether members of the public in question might have found themselves charged with attempting to pervert the

course of justice, were it not for the fact that there were no defence witnesses to be called other than the defendant's mother.

The whole thing makes a mockery of the concept of a public trial (as opposed to the trials held behind closed doors so favoured by enemies of bourgeois democracy) if any member of the public who dares sit in the public trial is to be considered a criminal.

Of course, to pass on information to witnesses about the course of the trial it would be quite unnecessary to take notes. The real reason why notes represent a threat is that they constitute evidence untainted by fading memory of what actually happened in court, leaving less wiggle-room for travesties of justice to be dressed up as the rule of law.

The law of joint enterprise and the role of the media

The terror felt by the bourgeoisie in the face of the alienation that the capitalist system produces among oppressed workers is also shown by developments in the law of 'joint enterprise', according to which people who might at one time have been guilty of being *accomplices* to the commission of a crime (generally attracting a lesser sentence) are made guilty with the accused of the *crime itself*.

In the case of murder, such a conviction carries a mandatory sentence of life imprisonment, even where the role of the accomplice was very minor – for example, pointing out to the murderer where his intended victim lives.

This area of law is fraught with difficulties of interpretation, which we will deal with below. However, if these draconian legal provisions are married up to bourgeois media hysteria against 'gangs' of working-class youth who supposedly make it unsafe for old ladies to venture out of their homes, the effect is explosively unfair.

The media spreads dread and fear of any group of working-class adolescents leaving school together at the same time – ie, when the school closes for the day – who will transmogrify in the yellow press into a 'gang'. Any misbehaviour on the part of bored teenagers, such as the loud use of bad language, insults directed at adolescents from a different class or school, squabbles over alleged infringements of adolescent 'rights' such as 'ownership' of boyfriends or girlfriends, are transformed by the media into criminally threatening behaviour.

Strident demands are then put forward that these 'gangs' should be ruthlessly suppressed by the full force of police brutality and the bourgeois state apparatus. If such a

'gang' resorts to fisticuffs to resolve its differences, the hysteria becomes deafening – and if some idiot pulls out a knife and stupidly kills somebody, then the heavens really fall.

The media take advantage of such an event to bring the petty bourgeoisie and the better-off sections of the working class on board to share the terror that the bourgeoisie has of the disenfranchised and disadvantaged young people of Britain. Not only is the *whole* 'gang' presented as responsible for what one idiot did, but every 'gang' (ie, every group of bored working-class adolescents) is tarred with the same brush.

All of them become 'feral gangs', weapons of mass destruction liable without the slightest provocation to take out their knives to cut up defenceless old ladies at any moment of the day or night.

'Practical' considerations prevail over 'strict logic'

If the law of 'joint enterprise' is – and it is – a complete mess of contradictory and irrational 'principles', this is not unrelated to the fact that Her Majesty's judiciary has shamelessly trailed in the wake of Her Majesty's yellow press, which in turn expresses the fear the ruling class has of the oppressed, as well as its contempt for them and indifference to the deprivation that the bourgeois system inflicts on them.

In the view of that well-known toady of British imperialism Lord Hutton, it matters not that legal decisions are illogical and self-contradictory so long as 'gang' members can be banged up. To quote from his speech in a case called 'R v Powell', reported in 1999:

"The rules of the common law are not based solely on logic but relate to practical concerns and, in relation to crimes committed in the course of joint enterprises, to the need to give effective protection to the public against criminals operating in gangs ... There are practical considerations of weight and importance related to considerations of public policy which ... prevail over considerations of strict logic."

Some case law

Well, let us look at some of the effects of these departures from 'strict logic' to see whether they make us proud enough of the British 'justice' system to feel it is superior at least to some feudal system such as that operative in Saudi Arabia.

To be found guilty of murder, a person must not only have physically caused another person's death but also have *intended* either to kill him or to cause him grievous – severe – bodily harm.

To be found guilty of *murder by association* in 'joint enterprise', however, not only does the defendant *not* have to have been the cause of the victim's death, but, in addition it is not even necessary to show that he intended him any harm!

This is the legal 'principle' laid down by the highest court in the land in such cases as 'R v Powell' mentioned above. The law lords were asked to rule whether to be equally guilty of a murder committed by the primary party it would be necessary for the secondary party to intend him to die or be seriously injured, or whether it would only be necessary to foresee that he might be.

In the case in question, a pub brawl took place in which the victim was killed with a knife at a time when the defendant, perhaps wanting no part of what his friends were doing in their alcohol-fuelled aggression, had walked out of the pub. However, because the defendant *knew* that one of his friends was armed with a knife and therefore would have been able to foresee that he might possibly use it, he was found to be as *guilty of murder as the murderer*, albeit there was no evidence that he endorsed either murder or grievous bodily harm.

Indeed, he may have been strongly opposed to both but been in no position to do anything about it. Yet he was still found guilty of murder and therefore subjected to a mandatory sentence of imprisonment for life.

To avoid conviction under the 'joint enterprise' charge, a defendant needs to show he would have been unable to foresee that a knife would be used – ie, that he did not even know about the knife. But even that principle was undermined in the 'Rahman' case of 2008, where the evidence accepted by the court was that the defendants, in the course of a confrontation between rival groups of youths, had armed themselves with various weapons intending to inflict serious injury.

One of the defendants took out a knife and killed the victim. It was possible in law for his companions to be found to be as guilty of murder as the one who pulled the knife simply because it was foreseeable to those participating in the attack that any one of them *might* have armed himself with a knife and *might* use it.

However, the judge who decided the case had neglected to ask the jury to assess whether *in fact* the defendant *could* have foreseen it. The foresight could not be inferred but had to be established by the jury as a question of fact. As a result, the companions of the murderer

were able to escape conviction on the basis of the judge's misdirection of the jury that had lost them the chance of getting off.

Had the required question actually been put to the jury in the charged atmosphere of an English criminal trial – which definitely tends to create the impression that the accused must be guilty otherwise he would not be on trial – it is unlikely the companions would have been so lucky.

Even more distressing is the use of this 'principle' of joint venture against children in their early teens. As we write, a boy of 14 who backed away from a scrap his friends were having and went off to his grandparents' house is serving life for a murder committed *after he left the scene* by a 13-year old with a knife his co-defendant *did not even know he had*.

The prosecution's case was that a group of schoolboys had wantonly attacked an innocent student with miscellaneous weapons intending to seriously injure him. At some stage, one of the alleged attackers decided he wanted no part of the fracas and went off to his grandfather's house. Some time after he left, one of the youths pulled out a knife and killed the victim.

We do not have a transcript of the judgment in the case, but one assumes that the jury, faced with what was presented to them as a 'gang' of black adolescents, was prepared to believe that all those who had been involved in the fracas – a schoolboy scrap that went tragically wrong – could foresee the possibility of one of them having a knife and using it – despite the fact that carrying and using knives is not a particularly normal act for any 13-year old, no matter what their class or skin colour. Such a finding of 'fact' shows clearly the influence of racist prejudices that are continually fostered by the corporate press.

The extraordinary part of the decision was that the boy who had left the scene was found by the jury *beyond all reasonable doubt* (!!) to be guilty of murder, since he had been present when the fight broke out and had therefore 'participated in the joint enterprise'. The irrationality of the jury's findings of 'fact' was further demonstrated when they accepted the prosecution's claim that the 'gang' had attacked the student with *various* weapons – a claim that was supported by witnesses.

This evidence, however, was contradicted by forensic evidence that proved the victim had not been injured in any way prior to the fatal blow, but the forensic evidence apparently caused no reasonable doubt as regards the veracity of the evidence of those who testified that they had witnessed the defendant assaulting the victim.

Of course, the defendant is poor, working class and black – which are his three real crimes. The important thing,

however, is that our wonderful English law is incapable of distinguishing a person who realises before anybody is killed that this is nothing he ever wanted to be involved in from a person who fails to step back from the precipice before it's too late and someone dies.

To add insult to injury, although lifers are eligible for parole after some years, they have to show that they repent what they have done ... But this young man did absolutely nothing. He is not even able to 'repent' and get his parole without confessing to something of which he was not guilty.

Although juries can be and are routinely manipulated, nevertheless we take the view that it is better that there should be a jury than that questions of fact be established by judges alone, as there is, on the whole, a better chance of receiving justice from one's peers than from a judge whose life experience and class background are a million miles away from that of those on whom he sits in judgment.

Dealing with alienated youth

No doubt the anti-social behaviour of groups of bored teenagers is annoying and maybe even occasionally intimidating. The answer, however, does not lie in trying to prevent teenagers from forming friendships by castigating groups of friends as criminal gangs.

It lies in providing young people with constructive and interesting ways of spending their time – by making sports facilities and youth clubs available to them, providing facilities that enable them to pursue interests in music, art, etc, which not only prevents them from being bored but assists them in becoming assets to society.

What happens under capitalism, however, is that the needs of working-class people are consistently ignored, and in a period of economic crisis such as the one we are currently undergoing, what few facilities might previously have been wrested from a reluctant bourgeoisie are heartlessly closed down.

The young in particular both tend to be headstrong and to have nothing much to lose, and do from time to time rise up in rebellion at the cultural desert to which they are confined, whereupon the bourgeoisie does everything in its power to crush them, and to terrorise into submission anybody else who might be thinking of following their example.

In our view, even the young people who have committed crimes and must be punished, like the 13-year old who did stab the student, need to be treated with compassion with a view to their rehabilitation rather than being discarded like a faulty part. However, this too would require resources that the bourgeoisie does not want to waste on the working class, even though it is the working class that has produced the wealth that the bourgeoisie is able to wield.

Here again, the bourgeois press is mobilised to justify the bourgeoisie's callousness towards young criminals and the public is pressganged into believing that anyone who commits crimes as a teenager can never be rehabilitated. Well, that is certainly true if no attempt is ever made to facilitate the process!

Under socialism the wealth produced by society will be distributed by the proletarian state for the benefit of the workers – and it will certainly be a priority to bring its disadvantaged members up to the level of the others and eliminate attitudes of alienation from society inherited from the class society that has been overthrown.

Our youth will be our most precious asset, representing as it does, the future of humanity, and every effort will be made to ensure that each and every young person is able to develop their talents and to give to society everything of which he or she is capable, and no person is, with all their skills and potential, discarded and left to rot as they are under capitalism.

**** For more information about the joint enterprise law and the campaign against unjust convictions, please see jointenterprise.co ****

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