IN THE COURT OF APPEAL
VIRGIN ISLANDS

Criminal Appeal No. 1 of 1971

Between: GEORGE CAMPBELL CHALWELL Appellant

and

THE QUEEN Respondent

Before: The Honourable the Chief Justice
The Honourable Mr. Justice Cecil Lewis
The Honourable Mr. Justice St. Bernard

J.S. Archibald for appellant
N. Jacobs (Attorney General) for respondent

1972, April 25

JUDGMENT

The judgment of the Court was delivered by -

CECIL LEWIS, J.A.

The appellant was convicted on the 29th day of October, 1971 of the offence of murder and sentenced to death. He was charged on an indictment, the particulars of which alleged that on the 19th of June, 1971, at East End, Tortola in the Virgin Islands, he murdered Jean Thomas.

The appellant and Jean Thomas were on terms of close friendship. In fact, he was the father of her child, Tony, a little boy just about a year old when his mother met her death. The appellant lived in his mother's house with Tony at East End, Tortola. Jean Thomas was in the habit of visiting the appellant's mother's house and would go into the appellant's room whether he was there or not. On the day in question, 19th June, she went to the house at some time in the morning. She was first in the kitchen with the appellant's mother where the latter was feeding the baby, and after the baby had been fed, his grandmother took him into his father's room and left him there. At some stage during her visit, the woman, Jean Thomas must have gone into the appellant's room, for at some specified time between 11.00

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o'clock and noon the appellant's sister, Corrin Rabsatt, who was going along a passage in the house, suddenly saw the door of the appellant's room open and Jean Thomas emerged. She was then bleeding from her nose and mouth and the witness observed that she had a cut under her neck. She ran in the direction of the kitchen and was intercepted by the appellant's mother and his sister who took her outside into the yard where, with the assistance of Leslie Malone and others, she was placed in Malone's jeep and taken to Peebles Hospital. Doctor Smith saw her at about 1.40 p.m. and found that she was dead.

The case for the prosecution was that the wounds which the deceased suffered caused her death and were deliberately inflicted by the appellant. The appellant seems to have disappeared from the scene soon after the incident in his room and was not seen until around 2.10 p.m. when he appeared at the Police Station and made a statement to the Police Constable on duty there. He told the policeman, Constable Allen, that he wanted to see a doctor and a lawyer immediately, that he was at home that day wrestling with his girlfriend, trying to take a knife away from her, and in so doing she got stuck in her throat with the knife. When subsequently charged with murder, he elaborated this statement somewhat but the gist of his defence was that the woman Jean Thomas met her death accidentally while they were engaged in a tussle for the knife.

The Crown called a witness Lilian Thompson whose evidence showed that despite the fact that the appellant's mother had said that the appellant and Jean Thomas "always got on well" that this might not be strictly true. Her evidence was that on the night of the 18th of June she had a conversation with the appellant in which he asked her if she knew what Jean was doing to him and suggested that she was indulging in some sort of conduct of which he disapproved, but he did not say exactly what this conduct was. He also told her that earlier that

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night, he had struck Jean, and when Lilian Thompson saw Jean a little later that same night she found that she had a swelling on her mouth.

Then there was the evidence of a witness called McIntosh, a corporal of police, who said that on the 19th of June, sometime before the unfortunate incident which resulted in the woman, Jean's death, he was in the yard of one Anselmo Potter between 10.00 and 11.00 o'clock. The appellant, who lives about 100 yards from Anselmo Potter's premises was in Potter's house. He called the witness, McIntosh, and when he went to him he asked him these words: "If somebody kill somebody what will the police do?" And McIntosh replied, "we will arrest". The appellant then went on to tell him that Jean had pulled a knife at him last night, (i.e. on the night of the 18th June) and had threatened to kill him. He asked him why did he not make a report to the police and the appellant replied that he was able to take care of himself.

The doctor performed a post mortem examination on the body of the deceased woman and found that there were five wounds on her. Three of these wounds were of no significance. These consisted of the wounds referred to as wounds 2, 3 and 5. Wound 2 was a horizontal cut on the chin slightly above the point of the chin and approximately half an inch long, wound number 3 was a horizontal cut half an inch below the point of the chin and one inch in length. The fifth wound was a small cut half an inch in length across the ball of the right thumb. Two wounds, either of which could have caused death were wounds numbers 1 and 4. Wound number 1 was a penetrating wound on the left side about two inches below the angle of the jaw and the fourth wound was a horizontal cut about two and a half inches in length penetrating into the space between the hyoid bone and the thyroid cartilage and extending deeply into the tissue in front of the spine and completely dividing the larynx and the

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lower part of the pharynx. In the doctor's opinion, the cause of death was severe haemorrhage from numerous small blood vessels cut by the wounds in the neck and also asphyxia resulting from inhalation of blood.

The appellant on being charged and cautioned made a voluntary statement to the police after consulting his solicitor who was present when the statement was taken. This statement reads:

> "On Saturday 19th June, 1971, at about 1.50 p.m. I arrived at Road Town Station. I told Corporal Allen who I met at the Road Town Station that I want to make a complaint about an incident that happened and I want to see a lawyer and a doctor immediately. I want to see a doctor about a cut on my left forearm, a scabaway on my right finger knuckle and my right side of my face. I told Corporal Allen that me and my girlfriend had a falling out last night; she came to Greenland today. I think that it was after twelve (12.00 noon). She met me sleeping, she woke me up, and she started talking to me asking me if I think I bad. I did not study her. I went back to sleep. She hit me and I get up and sit down on the bed. I had a little knife on the window. She fly for it and she got it. She haul it and cut me here on my left hand. I fly and I held her hand. We start to harangle for the knife. While harangling the knife stick her by her neck. I don't know which side. I was frightened so I take out the knife and I start for the Police Station here in town. I loved her. I gave the police the knife here."

So quite clearly, what the appellant was saying is that the wounds which the woman Jean Thomas sustained were caused during the struggle between them when she was stooping over him on his bed, that she took the knife and attempted to stab him with it, and in the course of his efforts to prevent her stabbing him, she was wounded accidentally. The jury however rejected the defence of accident and the ground of appeal challenging their rejection was abandoned.

The same doctor who performed the post mortem on the

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body of Jean Thomas also examined the appellant, and he found that the wounds which he received were by no means of a serious nature. He found, first of all, a half inch scratch across the upper part of the left forearm which did not penetrate the full thickness of the skin. This wound, he said might have been caused by a sharp instrument such as the knife in question. Then there was a small abrasion on the appellant about quarter of an inch square on the back of the middle finger of the right hand close to the first joint. That abrasion, the doctor said, could not have been caused by the knife. Then there was a further abrasion on the right cheek about a quarter of an inch square. There was no other physical abnormality on the accused. So it is evident that in the course of the alleged struggle between the appellant and Jean Thomas, while she received wounds of a fatal nature, he received wounds which were of minor significance.

It was urged on behalf of the appellant that "at no stage during the summing up did the trial judge direct the jury to consider the issue of self-defence subjectively".

The attention of the Court was drawn to three passages in the judge's summing up to which reference to this issue was made. The first was at page 36 of the record where the judge said this:

> "Now what is the law in regard to self-defence. The law says this: A man who is attacked may defend himself. He may do, but he may only do what is reasonably necessary in all the circumstances. What is reasonably necessary will depend on the facts and circumstances - that is to say, on the evidence. It will be for you to say on the evidence whether what was done in the alleged self-defence was reasonably necessary. If in defending himself an accused person uses such force only, as is reasonably necessary in all the circumstances, he is not guilty of any crime." .... "You will note, Mr. foreman and members of the jury that in considering self-defence you must /find .....

find evidence of an attack or of an apprehended attack on the accused. Again, if the evidence is, and this will be for you to find, that the accused acted under a premeditated intention to kill the deceased or to do grievous bodily harm to the deceased, and that premeditation was present in the mind of the accused right up to the time when he inflicted the injury or injuries which caused the death of the deceased, then you will be entitled to find that the defence of self-defence failed."

The next reference occurred on page 58:

"Now in regard to self-defence, if you find that the deceased attacked the accused with the knife and that the accused inflicted the injuries on the deceased (even at a time when the accused held the deceased's hand with the knife) and that what the accused did was reasonably necessary so as to prevent injury or any further injury to the accused, then in those circumstances you must acquit. If you are in doubt as to that, you must also acquit."

He repeated this direction for the purpose of emphasis and added:

"And in considering self-defence, you will bear in mind this: That the accused is in his own room - in his mother's house - his own room. No question of retreat arises when a person - if you find this is what happened - comes to him with a knife ....."

And finally on page 59:

"If you find that the deceased - in considering self-defence - attacked the accused, that the deceased attacked him with the knife, and that the accused inflicted the injuries on the deceased (even at the time when the accused held the deceased's hand while the deceased had the knife) that what the accused did was reasonably necessary to prevent further injury or injuries to him, the accused, then in those circumstances you must acquit. If in doubt you must also acquit. You see, if you find that the deceased attacked the accused with the knife and the accused inflicted those injuries, and that when he inflicted them you find that it was reasonably necessary for him to have done so, then you must acquit him. If you are in doubt you must acquit him also. A man is attacked with a knife - you saw the knife - ask yourselves what is

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likely to happen if a person attacks you with that knife. Is it reasonable to think and consider that you would receive serious injury from such an attac and if in that attack you hold the hand - you hold your assailant's hand - with that knife and you find it is reasonably necessary to prevent serious injury to yourself to inflict an injury on your assailant even while holding the knife - while holding your assailant's hand that is to say - if that is reasonable, then self-defence."

So there, the matter was put quite clearly to the jury that if they were of opinion that when the wounds were inflicted on the deceased woman the appellant was in danger of serious injury or reasonably believed himself so to be, then he would be acting in necessary self-defence and would not be guilty of any offence. The jury by their verdict obviously did not consider this to be the case and rejected the plea of self defence. We are of the opinion that the directions to the jury on this issue were quite adequate.

Then the issue of provocation was said to have arisen because of the fact that the deceased hit the appellant. In his statement on page 28 of the record the appellant said that as he lay in bed, Jean Thomas hit him and he got up and sat down, and that he had a little knife on the window and "she fly for it and she got it. She haul it and cut me here on my left hand". The complaint on this issue was confined to the use of the word "retaliation" in a passage in the summing up where the trial judge said:

"Again, in order to constitute provocation the retaliation by the accused must be proportionate to the provocation he received. So that for example, if a person commits a minor assault on another person such as, let us say tickling his nose, you Members of the Jury as reasonable men and women of this world may well find an act of retaliation to be disproportionate, if it consisted in striking a fatal blow with a knife.

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> A man tickles you nose. He does an act towards you, but in retaliation you pick up a knife and stab him to death; in thos circumstances as reasonable men and women you may well say to yourselves, surely that is disproportionate. If it is disproportionate then it is not provocation in law."

It was said that "retaliation" was too strong a word to use in the circumstances of this case, but on its being pointed out to counsel for the appellant that the word used in Mancini v. D.P.P. 28 Cr. App. R 65 in a similar context, was "resentment" he did not pursue this ground of appeal any further.

In any event the Court is of the opinion that the use of the word "retaliation" would not in the circumstances have been prejudicial to the appellant.

It was also argued that the verdict was unreasonable, because even if the most favourable interpretation were put on the evidence for the Crown a reasonable jury would still be left in doubt as to whether or not the charge of murder had been established. The answer to this is that the jury did in fact have all the evidence before them, and it has not been suggested that there has been any misdirection on the facts or that the trial judge failed to bring to the notice of the jury any essential point in the case. It was really a matter for the jury to say whether or not they were satisfied beyond reasonable doubt that the Crown had established the guilt of the appellant. They were so satisfied and convicted the appellant. The appeal is accordingly dismissed.

P. Cecil Lewis
JUSTICE OF APPEAL