IN THE COURT OF APPEAL

GRENADA

Criminal Appeal No. 8 of 1973

Between WILLIAM FRANK - Appellant

and

THE QUEEN - Respondent

Before: The Honourable the Acting Chief Justice
The Honourable Mr. Justice St.Bernard
The Honourable Mr. Justice Peterkin(Acting)

D. Lalsee & Jerome Forde for the appellant
D. Lambert (Director of Public Prosecutions) for the Crown

1974, January 22 and

The judgment of the Court was delivered by

CECIL LEWIS, C.J.(Ag.)

At the conclusion of the hearing of this appeal on January 22, the Court announced its decision that the appeal would be dismissed, and intimated that it would give its reasons at a later date. This it now proceeds to do.

The appellant was convicted on November 14, 1973, of the murder of Clifford Francis (hereinafter called the deceased) and sentenced to death. He has appealed against his conviction.

The evidence for the prosecution discloses that on December 2, 1972, the deceased' wife, Nelcia Francis and her daughter, Nella Alexander, were at the home of the deceased. There were some visitors to the said home on that day. These were Ossie McMillan, Eugene George, Errol Ogilvie and George Ogilvie. The wife of the deceased said that all the other persons were on the verandah except her daughter Nella, who was inside the house. The appellant and the deceased were playing cards in the verandah; they were playing for money. At some stage during the game, the appellant was heard to tell the deceased that he had $4.00 for him. The deceased either did not

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reply as one witness said or replied saying that he did not have any money for the appellant. The appellant again spoke to the deceased saying "You aint giving me my $4.00?" The deceased replied that he had no $4.00 for the appellant. The appellant was then heard to tell the deceased, "I bet I kill your fucking arse for my $4.00," and as he said so, he put his right hand to his right side, pulled out a knife and pushed it into the throat of the deceased. Blood was seen to spout from the throat of the deceased, who staggered back a few steps and fell down in the drawing room "apparently dead" to use his wife's words. The appellant thereupon walked away from the house with the knife.

This was the substance of the evidence given by the four eye witnesses, who gave evidence for the prosecution namely: Nelcia Francis, Nella Alexander, George Ogilvie and Ossie McMillan.

On the following day, Dr. George Murray performed a post mortem examination on the body of the deceased, and found that there was an incised wound on the left side of his neck, which cut through the left carotid artery and the jugular vein. There was also a lacerated wound under the chin. In the doctor's opinion, death was due to shock and loss of blood as a result of the severing of the left carotid artery and jugular vein, which, he said, could have been caused by a sharp instrument such as a knife.

A report was made to the Central Police Station at about 3 p.m. on the day of the incident and as a result of which, Corporal Wildman went with Police Constable Smith 477 and Police Constable Reuben 475, to the home of the deceased where they met several people in the house. Corporal Wildman said that he observed on the floor of the living room, what appeared to be a pool of blood, and also on the verandah. He also noticed what appeared to be blood spattered on a portion of the door and on

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the floor. This door leads from the living room to the verandah.

The policemen then went to the house of Cecilia Harris the girl friend of the appellant, which was about 100 yards away from the home of the deceased. They met the house closed, but they pushed open the door and found the appellant lying on a bed. Corporal Wildman held him by the hand and pulled him up and asked him if he was William Frank, and on his replying in the affirmative, he told him he had received a report that he had stabbed Clifford Francis with a knife at his home, and that he is now dead. He cautioned him and arrested him for the offence of murder, and the appellant said "I don't know how that happen between me and the man." Police Constable Smith, who was with them, raised a pillow on which the appellant was lying, and there he saw a knife on the mattress. He asked him whose knife it was, and the sapellant said, "It is mine." The appellant was then taken to the St.Paul's Police Station, where he was detained. The knife was later produded in Court and identified by the witnesses as being the same knife with which the appellant had stabbed the deceased.

The appellant made a statement on oath at the trial, in which he admitted that he and the deceased were playing cards; that he had made a bet with the deceased; that the deceased had $4.00 change for him, and he had asked him to give him the $4.00 change. He also admitted that he had a knife in his hand which he had borrowed from George Ogilvie to peel some oranges as he wanted to make orange juice. His description of the incident between himself and the deceased can best be described in his own words. In examination in chief he said:

> "Ossie McMillan came and met us there before George went for the cards. Clifford won a game. I asked him for $4.00 change which he had for me. He told me he has no $4.00 for me. I lost the game. I told him I would only bet $1.00 from the $5.00 so he would have $4.00 for me.

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> I was never in any vexed manner in which I took the cigarettes and matches I had on the table along with some fine change and put it in my pocket. Stretching the knife to George Ogilvie which I had borrowed from him as I had intended to go Clifford held my hand in which I think he was trying to get the knife from me. We both stumbled on the right half of the door which was closed and he fell on the floor on his right side in which blood came from his neck. I did not know how serious the cut was. I stood up in a very sad manner and could not have done anything at the moment. George ran to get a car in the road, then I picked up the knife from the floor and went home at my girl friend Cecilia Harris and there I fell fast asleep on the bed with the knife on the right side of the pillow. It was not wilfully done but accidentally. We also were very good friends. for many years. I hadn't no feelings against him and I was veey sorry concerning the matter."

And in cross-examination:

> "J.W.1 is the knife I had and which the Police found. When it fell on the floor George was on the verandah. I carried it away as I had borrowed it and George did not have time to get it away, as he went for a car. Clifford was standing in front the door as I handed the knife to George. He stood aside the the right half which was closed with one hand up. He was not directly facing me. When I was handing the knife to George he was on my right and deceased on my left. George was about 2 feet from me. I used my right hand to hand George the knife. Clifford held my right hand with his right hand. George was doing nothing. In holding my hand and trying to get away the knife we both stumbled and Clifford fell on the right half of the door. He went back on the half of the door and fell on his right side with his head inside the living room and his feet on the verandah. I was standing right by the side of Clifford between the verandah and the door. At that time the knife was on the floor of the living room and close to his "chest part." The knife got to the floor as it got away from my hands. I then noticed blood coming from the left side of Clifford's neck. I did not deliberately push the knife into the deceased throat. The knife is not my knife. Accused did attempt to take the knife from my hand. I did not stay to help the deceased as I was feeling so sad."

The appellant's defence was by no means clear cut, but it can be gathered from his use of the words "It was not wilfully done, but accidentally" that he was raising the defence of accident. This defence was adequately put to the jury, and his counsel has not challenged in the trial judge's summing up in this respect.

What was submitted in relation to the first ground of appeal was that the trial judge was in error in directing the

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jury on the questions of self-defence and provocation, when as was claimed by counsel for the appellant there was no evidence to support these two defences and they were not raised by the defence. When, however, it was pointed out to counsel that the fact that the defending counsel does not stress an alternative case does not relieve the trial judge from directing the jury to consider the alternative, if there is material to justify a direction that they should consider it; counsel then shifted his ground and said that the directions given by the trial judge on the issues of provocation and self-defence may have tended to confuse the jury in the circumstances of this case. This court is unable to agree with that submission.

The issue of provocation was put to the jury on the basis that the deceased was trying to get away the knife from the appellant and that he also refused to pay the appellant a debt which the appellant claimed that he owed him. The judge was of the opinion that this was sufficient material to justify him in leaving to the jury the question whether the appellant could have been provoked to such an extent as to cause him to lose his self-control, and resort to the violent act that resulted in the death of the deceased. We are not disposed to say that the trial judge was not justified in leaving the issue to provocation to the jury in the circumstances of this case.

On the question of self-defence the judge left this issue to the jury on the basis that if the jury found that when the deceased was attempting to grab the knife and the appellant believed on reasonable grounds that he was in imminent danger of death or dangerous harm, and in those circumstances he inflicted the mortal wound in order to protect himself then if the jury accepted that view or were in reasonable doubt about it, it was their duty to acquit the appellant. This defence, in the opinion of the court was one which the judge on a view of the evidence most favourable to the appellant was entitled to put to the jury

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and the court does not feel that in these circumstances the trial judge should be unduly criticised for doing so. He obviously left the issue of self-defence to the jury out of abundant caution and in the interest of the appellant. The first ground of appeal therefore fails.

The second ground of appeal was based on a typographical error appearing in the summing up. When this was pointed out to counsel for the appellant he quite properly did not proceed with this ground of appeal.

On the third ground of appeal the question was but faintly argued that the death of the deceased may have been hastened while he was being taken from his house to the taxi, but in the opinion of the court there is no merit in this ground of appeal, as the cause of death was not due to the fact that the injured man was taken from his house to a taxi but to the fact that the knife had severed the left carotid artery and jugular vein which resulted in shock and loss of blood from which the wounded man died. It was for these reasons that we dismissed the appeal.

P. Cecil Lewis
Acting Chief Justice

E.L. St.Bernard
Justice of Appeal

Neville Peterkin
Justice of Appeal(Ag.)