IN THE COURT OF APPEAL

ST. VINCENT

CRIMINAL APPEAL NO.3 of 1975

BETWEEN: NIGEL ADAMS Appellant

AND

THE QUEEN Respondent

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

H.B. Samuel for appellant.
C. Dougan (Acting D.P.P.) for respondent.

1975, June 4 July 1

J U D G M E N T

ST. BERNARD J.A. delivered the judgment of the Court:

The appellant was convicted on 25th February 1975 of the murder of Kingsley James and sentenced to death by hanging.

The facts and circumstances as disclosed by the evidence are as follows: About 10 a.m. on 20th October 1974 the appellant was struck with a stone which caused an injury to his hand. In his statement to the police the appellant alleged that the stone was thrown by the deceased. The wound was dressed at the hospital and the appellant was allowed to leave. At about 1 p.m. on the same day, the deceased who was walking on the road at Chateaubelair was accosted by the appellant who accused him of having thrown the stone and stated that he was not satisfied. The deceased used indecent language to him. An argument ensued during which the deceased turned and ran, and the appellant who was armed with a knife pursued him and stabbed him in his back. The injury proved fatal and he died on 22nd October 1974. In his defence the appellant alleged that the deceased and himself had a fight, in the course of which the deceased drew a revolver at him. He stated that he then shifted away from the deceased and he cut him. Constable James, who investigated the matter, made a search but did not find any revolver.

The surgeon who attended the deceased described the injury as being a 1¼" wound about 2" to the right of the midline and 2" below the upper border of the shoulder muscle. He concluded that the weapon must have been thrust obliquely in order to have entered the chest.

There are three grounds of appeal, namely:-

1. The learned trial judge erred in law in that his summing up to the jury on the issue of provocation amounted to a mere definition and not a direction.
2. The learned trial judge erred in law (last paragraph of his summing up) by misdirecting the jury on the vital issue as to their duties in returning their verdict.
3. The learned trial judge departed from well settled principles as to the law in directing the jury on the standard of proof."

On ground 1, counsel referred to the definition of provocation given by the trial judge at page 37 of the record and stated that the words "reasonable person" were omitted therefrom, then submitted that because the important constituent "reasonable person" was omitted the result was to apply the subjective rather than the objective test to the prejudice of the appellant. Counsel cited the classic definition of provocation by Devlin J. in R. v Duffy (1949) 1 All E.R. 932.

We agree that the words "reasonable person" were omitted in the judge's summing up, but the effect of this was, in our opinion, to give a wider definition which was more favourable than prejudicial to the appellant.

In regard to ground 2, counsel referred to the last paragraph of the summing up which reads as follows:-

> "As you are aware, the laws of the State do not permit me to accept, on a charge of murder, a verdict which is not of you all and in those circumstances I should ask you to use your best endeavours to arrive at a unanimous verdict. Consider all the facts of the case and apply the law as I direct you and then endeavour to resolve the matter in accordance with common sense and the dictates of your conscience. Will you please consider your verdict and tell me "how you find". "

He submitted that the effect of the direction was to withdraw from the jury a verdict of manslaughter and to coerce them into returning a verdict of murder only. In support of his contention counsel cited section 13 of the Jury Ordinance 1938 No.9, and stated this was identical with section 8 of the Criminal Justice Act, 1967 (English). He directed the Court's attention to the Practice Direction contained in Archbold's Criminal

Pleading Evidence & Practice at paragraph 606 of the 38th Edition. He conceded however that in the instant trial the jury had returned after twenty-six minutes with a unanimous verdict of murder.

In our opinion the words complained of formed part of a final direction given to the jury which commenced at the top of page 66 of the record. The trial judge began this direction with these words:-

> "Now there are a number of verdicts which you may return in the matter,..... guilty of murder, guilty of manslaughter not guilty of any offence whatsoever ....."

While we agree that it would have been better for the judge to have used the practice direction cited yet we are of the opinion that in the context in which the direction complained of was used the jury could not have been coerced into returning a verdict of murder only. We agree that the words "the laws of the State do not permit me to accept on a charge of murder, a verdict which is not of you all" are not without objection but a jury properly directed would, having regard to the facts and circumstances of this case, have come to the same conclusion.

Ground 3 was argued on the question of the onus of proof also on the basis of the standard of proof required. Counsel referred to a number of instances in the trial judge's summing up. He submitted that they amounted to a misdirection and that it was for the Court to decide on the effect of what he claimed were misdirections. What he did for the purposes of his argument was to dissect a number of passages from their general context and to submit them in that form. He complained of the direction given on the onus of proof in provocation, and of the use of the words "reasonable doubt" on several occasions.

Turning to the direction on provocation the trial judge directed the jury thus:

> "The prosecution must disprove as an essential part of the case for the Crown it is not for the defence to establish or to prove to you that there was provocation it is on the prosecution to disprove that there was no provocation or that there was no sufficient provocation."

In our opinion, he may have lapsed into the use of a double negative but the passage leaves us in no doubt whatever that he was placing the onus correctly on the Crown to negative provocation as part of the Crown's own case.

The record shows a similar direction by the trial judge on the issue of self defence at page 40.

Turning to the general direction to the jury on the burden of proof and on the standard of proof required the learned trial judge said as follows:-

> "In every criminal case it is the duty of the prosecution to establish the guilt of the accused; it is not for the accused to prove to you that he is an innocent man. Every person who comes into this Court is deemed to be innocent until guilt is brought home to him by the prosecution. The prosecution must prove their case to you in such a way that they make you feel sure not only that the offence has been committed but that the accused is the person who committed the offence."

We think it necessary at this stage to refer to two passages from well known cases which we think should be allowed to speak for themselves. The first is by Lord Goddard in R. v Kritz (1949) 2 All E.R.406. It reads:

> "It is not the particular formula that matters: it is the effect of the summing up. If the jury are made to understand that they have to be satisfied and must not return a verdict against a defendant unless they feel sure, and that the onus is all the time on the prosecution and not on the defence, then whether the judge uses one form of language or another is neither here nor there."

The second passage is taken from the judgment of Lord Diplock in the Privy Council case of Henry Walters v The Queen (1968-69) W.I.R.13 at page 356.

> "By the time he sums up the judge at the trial has had an opportunity of observing the jurors. In their Lordships' view it is best left to his discretion to choose the most appropriate set of words in which to make that jury understand that they must not return a verdict against a defendant unless they are sure of his guilt; and if the judge feels that any of them, through unfamiliarity with court procedure, are in danger of thinking that they are engaged in some task more esoteric than applying to the evidence adduced at the trial the common sense with which they approach matters of

> importance to them in their ordinary lives, then the use of such analogies as that used by Small J., in the present case, whether in the words in which he expressed it or in those used in any of the other cases to which reference has been made, may be helpful and is in their Lordships' view unexceptionable. Their Lordships would deprecate any attempt to lay down some precise formula or to draw fine distinctions between one set of words and another. It is the effect of the summing up as a whole that matters."

It is made clear that the correctness or otherwise of a direction to a jury on the onus and standard of proof required cannot depend upon fine semantic distinctions, but rather it is the effect of the summing up as a whole that matters.

In the instant case, we are satisfied when one views the language used in the context of the summing up as a whole that the direction to the jury on the onus of proof and on the standard of proof required was both clear and adequate.

Accordingly, for the reasons stated the appeal is dismissed and the conviction and sentence affirmed.

E.L. ST. BERNARD
JUSTICE OF APPEAL

MAURICE DAVIS
CHIEF JUSTICE

N. PETERKIN
JUSTICE OF APPEAL