

IN THE COURT OF APPEAL

GRENADA:

CRIMINAL APPEAL NO. 1 of 1975

BETWEEN: RAYMOND CHARLES - Appellant

Vs.

THE QUEEN - Respondent

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

Appearances: C. Bristol and D.C. Williams with him
for appellant

E.A. Heyliger & L. St. Paul with him
for the Respondent

1976, January 26, February 6

J U D G M E N T

Davis, C.J. delivered the judgment of the Court:

The appellant was convicted on the 21st November, 1975, of the murder of O'Riley Edgar and sentenced to death by hanging. He has appealed against his conviction on four grounds.

On the 9th December 1974, O'Riley Edgar, a man about 70 years old with the right arm and right leg amputated, lived at La Poterie in the parish of Saint Andrew with his family. Around midnight, Lena Thomas, his wife, saw the appellant with a flashlight peeping through a window. He came inside the house, put out an oil lamp, and struck Lena Thomas a blow with something like a stick. The appellant asked for one Laura and was told she was not there. The deceased picked up a cutlass and was brandishing it when the appellant gave him two
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blows with a piece of stick or piece of iron. The appellant then left the house.

As a result of the blows the deceased received he sustained a ^uwound and a fracture of the radius at the junction of the middle and lower third of the left forearm bone. He was admitted to the General Hospital on the 10th December 1974, and treated by the surgeon specialist, Mr. Holgate. He was discharged from the hospital on the 18th December. He remained in bed from that time until he died on the 5th January, 1975. Dr. Lawrence Gibbs who performed the post-mortem stated that the cause of death was hypostatic pneumonia as a complication of immobility largely due to his recent physical injury to the arm.

The grounds of appeal are as follows:

- (1) the learned trial judge failed properly to direct and explain to the jury that according to the law of Grenada a requisite element of murder was that the accused must at the time of committing the offence have the intention to cause death by unlawful harm.
- (2) that the trial judge failed to direct the jury on the question of manslaughter.
- (3) the judge did not direct the jury adequately or at all on the issue of the cause of death, and
- (4) the trial judge in directing the jury on the question of alibi failed to state that even if they did not believe the alibi of the

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appellant they must not convict unless they felt sure that the prosecution have proved their case beyond reasonable doubt.

On ground 1 counsel submitted that the definition of murder in section 242 of the Criminal Code, Chapter 76 of the Laws of Grenada was that whoever intentionally caused the death of another person by any unlawful harm was guilty of murder, but the trial judge at page 13 of the record, directed the jury as follows:-

"By the law of this State, a person commits murder who unlawfully causes the death of another by unlawful harm. In this case, therefore, the prosecution must prove:

- (1) that the accused intentionally did an act,
- (2) that the act caused harm to O'Riley Edgar,
- (3) that the harm was unlawful, and (4) that it resulted in the death of O'Riley Edgar."

He pointed out that nowhere in the summing up did the judge direct the the jury that the necessary intention was an intention to cause death and that an intention to cause unlawful harm was insufficient. He directed the Court's attention to section 241 of the Criminal Code which provided that whoever caused the death of another person by unlawful harm was guilty of manslaughter. In support of his arguments he cited the case of James Jaganath v. The Queen, 11 W.I.R. 315.

Section 170 of the St. Lucia Criminal Code Cap. 250 is identical with section 242 of the Grenada Code which reads:

"Whoever intentionally causes the death of another person by an unlawful harm is

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guilty of murder....."

In the above case the specific intent required to establish the crime of murder was considered by the Court of Appeal and it was stated that by whatever evidence or legal rule it was sought to establish intent, it was an intent to cause death which was the essential ingredient required to support the crime of murder.

We are satisfied that in the present case the summing up in regard to the necessary intent to establish the crime of murder was defective in that the jury was not directed in any part thereof that the specific intention was an intention to cause death by unlawful harm but rather they were directed that a person committed murder who unlawfully caused the death of another by unlawful harm. This is the definition of manslaughter given in the provisions of section 241 of the Criminal Code. In other parts of the summing up the judge stated that the intentional act of the appellant must be shown to have caused harm to the deceased, and the harm so caused, must be shown to have been unlawful. This statement does not include the essential ingredient to be proved, that is, an intent to cause the death of another person and is therefore inadequate in directing the jury on a charge of murder. The provisions of section 12 of the Criminal Code set out the manner in which the specific intent necessary on a charge of murder may be proved.

In respect of the second ground of appeal counsel sub-

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mitted that the judge failed to give adequate directions to the jury on the question of manslaughter.

In this case no question of provocation or unnecessary use of force arose and therefore the issue of manslaughter only arose on the question of intent. The harm being unlawful the question to be left to the jury was whether or not they were satisfied beyond reasonable doubt of an intention to cause death and, if they were not so satisfied, then the crime would be manslaughter.

On ground three counsel submitted that the cause of death was made an issue at the trial and therefore the judge ought to have given a careful direction on the law of causation and left it to the jury to find whether the wound was the substantial cause of death. He cited the following passage from the summing up:

"The law is that O'Riley 's death, from hy postatic pneumonia is attributable to the blow which he received, which fractured his forearm and that caused him to be immobile, and whoever dealt that blow caused his death."

If this was the only passage in which the trial judge directed the jury on the issue of the cause of death, then we think there was a misdirection. When, however, the summing up on this issue is read as a whole it will be observed that the question, as to the cause of death, was left to the jury. Immediately preceding the passage quoted

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above the judge told the jury:

"Despite a thoroughly searching cross-examination, Dr. Gibbs maintained his view as to the cause of O'Riley Edgar's death. If you accept Dr. Gibbs opinion, the evidence of Mr. Holgate, then the position is that O'Riley Edgar, an elderly person, 65 - 70 years old, received a blow with a blunt instrument which fractured his forearm, and ultimately led to O'Riley Edgar's death. It has been contended that a broken radius is a predisposition to hypostatic pneumonia. It was suggested to Dr. Gibbs that such was the case. Dr. Gibbs agreed but Dr. Gibbs's evidence was that the broken radius led to immobility, and that immobility brought on the hypostatic pneumonia, from which O'Riley died; that immobility was the predisposition and not the broken radius; and I would here tell you that if you accept that opinion of Dr. Gibbs, even though as stated by counsel for the defence, it is opinion evidence, if you accept that opinion, it is unnecessary, as suggested by learned counsel for the defence, for the Prosecution to go through one by one, all the other predispositions in order to

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establish that it was not possible for O'Riley to have died as a result of one of them.

You would have had, by your acceptance of Dr. Gibbs' evidence, evidence as to the cause of death, as to how the hypostatic pneumonia set in, through immobility of O'Riley occasioned by the broken radius. By reason of the fact that he was already handicapped by having only that one forearm, it was by reason of that, that O'Riley Edgar was immobile. He had to remain too long in one position. He contracted hypostatic pneumonia and died."

In addition, although the doctor stated that hypostatic pneumonia might be caused by other means than immobility, there was no evidence whatever in the case showing any abnormal treatment to the deceased or that he was ill prior to his injury or that he contracted any of the diseases suggested subsequent to his injury. We think that no reasonable jury would have come to any other conclusion but that the hypostatic pneumonia was caused by immobility largely due to the recent injury to the deceased's forearm.

Counsel argued that the judge in directing the jury on the alibi of the appellant at page 28 of the record failed

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to give the jury a specific direction on the burden of proof in relation to an alibi defence. He cited the case of R v. Brathwaite (No.1) 15 W.I.R.263 in support.

In reply to this submission Counsel for the respondent directed the court's attention to paragraph 598 of Archbold's 38th Edition where it is stated that "Although there is no rule of law that in every case where the defendant relies on an alibi the judge must direct that it is for the prosecution to negative the alibi, such a direction is necessary if the jury seem in danger of supposing that, because an alibi has been put forward by the defence the burden must be on the defence to prove it."

He contended that taking the summing up as a whole the jury could not have been mistaken upon whom the burden of proving the guilt of the accused rested.

The judge at page 16 of the record told the jury:

"It is important also, and cannot be too strongly emphasised, that it is for the prosecution to prove the accused guilty and not for the accused to prove his innocence. This burden rests always on the Prosecution, and this is so, even if the defence advances a plea of alibi or of self-defence or of provocation. Even in these circumstances the Prosecution must satisfy you, beyond reasonable doubt,

/that.....

that such a plea of alibi, or of self defence or of provocation, cannot be entertained in the light of the circumstances revealed to you by all the evidence."

and again at page 28 the judge goes on:

"In replying to that charge and to the allegations of the Prosecution, the accused has advanced, inter alia, a plea of alibi. Let me repeat, that it is not for him to prove his alibi to be true. The burden of proof, as I have already told you, is on the prosecution. It is for the Prosecution to destroy that alibi, to satisfy you, beyond reasonable doubt, that the evidence - all of it - does not permit the alibi to be sustained or entertained."

and again at page 32:-

"I have already told you that the burden is on the Prosecution to satisfy you that the alibi advanced by the accused, cannot, in the light of the evidence be sustained. It is for you now, Mr. Foreman and members of the jury, to consider all the evidence, that of the Prosecution witnesses as well as the accused's statement from the dock and the evidence of

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his witnesses and decide whether the Prosecution has succeeded in satisfying you, beyond reasonable doubt, that the accused's alibi cannot hold water in the light of that evidence."

We are satisfied that although the trial judge did not use the classic direction given to juries on the question of alibi, he left them in no doubt as to where the burden rested and his directions in this regard were satisfactory and adequate.

We are of the opinion that in view, however, of the grave misdirection in regard to the intent necessary to be proved on a charge of murder that that conviction cannot stand. It is clear, however, that the jury rejected the defence of the appellant and were satisfied beyond reasonable doubt that the deceased came to his death by the unlawful harm inflicted upon him by the appellant and this would constitute the crime of manslaughter. The Court, acting under section 42 (2) of the West Indies Associated States Supreme Court (Grenada) Act, 1971, will, without allowing or dismissing the appeal, substitute for the verdict of guilty of murder, the judgment of guilty of manslaughter, and will set aside the sentence and impose in place thereof a sentence of 4 years imprisonment with hard labour.

(Maurice Davis)
CHIEF JUSTICE

(E.L. St. Bernard)
JUSTICE OF APPEAL

(N.A. Peterkin)
JUSTICE OF APPEAL