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IN THE COURT OF APPEAL

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ST. CHRISTOPHER NEVIS AND ANGUILLA:

CRIMINAL APPEAL NO.1 of 1976

BETWEEN:

WILLIAM BRADSHAW - Appellant

V.

THE QUEEN

Appearances: Mrs. M. Moore for appellant
Director of Public Prosecution (Odel Adams) for respondent
H. Brown and T. Seaton with him

April 26, 28, 1976

J U D G M E N T

PETERKIN, J.A. delivered the Judgment of the Court:

The appellant was convicted on 23rd January, 1976, of the murder of Edward Hughes, and sentenced to death by hanging. He now appeals against his conviction on the following grounds:-

1. The learned trial Judge failed to direct the jury sufficiently on the law relating to provocation.

2. The verdict of the jury is unreasonable having regard to the evidence.

3. The verdict of the jury cannot be supported having regard to the evidence.

4. The statements - "Ah me do it, I stab him",
"Coho you know what you do?",
"Yes, he fucking me up too long", and
"You ain't going to see me again,
I just kill Cabby"
were wrongly admitted in evidence and were prejudicial to the accused.

5. The learned trial Judge misdirected the jury on the law relating to self defence in that he postulated the test to be that of a reasonable man.

The facts and circumstances indicate that on 18th December,

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1975, at St. Paul's Village the appellant and Edward Hughes, the deceased, were playing dice when an argument arose over the stake money of 25 cents. The appellant moved away, taking up the dice and money, and at the same time handing back 10cents to the deceased. The deceased threw it down, claming that the 25 cents belonged to him. He then held the appellant by the shirt. The appellant took out a knife from his pocket, and, opening it, made a stab at the deceased which missed him. They were separated, and the appellant closed the knife and replaced it in his pocket. He then gave the dice to one of the bystanders. The deceased who continued to demand the money and dice took away a dried date-palm stick about 3ft long and 1¾ins in diameter from one Wilson, a lad of 15 years, approached the appellant, and made a blow at him with it. Of the three witnesses who claimed to have witnessed the incident, two stated that the blow did not carry to the appellant. The third witness was not sure whether or not it had struck the appellant. They all stated, however, that at that stage the appellant took out his knife and stabbed the deceased, who fell to the ground and later died of the injury received. The appellant then left for the Police Station where he stated to Corporal Vasquez that he had stabbed the deceased.

Corporal Vasquez said in evidence that when he saw the appellant that day his lower lip appeared to be red and swollen. When seen by Sergeant Hanley about three hours lather the appellant's lower lip was still swollen.

The appellant in his defence stated that he was struck on his mouth with the stick by the deceased. He further stated that the deceased had pursued him and struck him two further blows with the stick when he had fallen, and that it was at that stage that he had stabbed the deceased.

Grounds two and three were not argured in view of the

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submissions made under ground 1 which will be dealt with at a later stage.

Under ground four Counsel referred the court to Cross on evidence 4th Edition, pages 24 to 27. Counsel conceded that the evidence was not objected to at the trial stage, and that it was, strickly speaking, admissible, but submitted that the Judge ought to have exercised his discretion to exclude it because its prejudicial value exceeded its probative value. The statement complained of was a voluntary oral admission made by the appellant which was relevant. The court can see no good reason why it should have been excluded.

In regard to ground five, the gravamen of Counsel's complaint is that the learned trial Judge postulated the objective rather than the subjective test in directing the jury. Counsel was, however, not able to point out to the court any passage in the Judges summing up which supported her contention. We are of the view that the trial Judge's summing up in regard to self-defence was adequate.

Under ground 1 Counsel referred the court to the passages in the summing up which dealt with provocation, and submitted that in the first place the definition given was incorrect. She referred the court to Julien V. Reg, 1970, 16 W.I.R., page 400. We would only point out that the definition of which she complains of as being incorrect was the same as that given by Devlin J. in R. V. Duffy, 1949, 1 A.E.R. 932. This definition was later described as being a "Classic diredtion" by Lord Goddard, C.J. and accepted by the court of Criminal Appeal.

Counsel then referred the court to page 31 of the Record, lines 18 to 22, and to the case Reg. V. Plinton, 1965, 9 W.I.R. page 48. She next submitted that the burden of proof had been incorrectly stated in regard to provocation by the trialJudge. While the passage complained of is

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clearly open to criticism, the trial Judge had already made it plain to the jury at page 28 of the record that the onus was on the Crown to negative provocation, when he directed them as follows:-

> "Now, it is for the Prosecution to prove every ingredient of the charge. The intent to kill or cause serious bodily injury; the deliberate and voluntary act or acts alleged to have caused the death of the deceased; the absence of lawful justification or excuse; the absence of provocation."

Finally, Counsel referred the court to the evidence in the trial which she claimed could amount to provocation, and to the fact that the jury had asked for further directions on provocation, and submitted that the trial Judge had given no direction to the jury as to the capacity of the evidence to amount in law to provocation.

The learned trial Judge gave a proper definition of provocation and later went on to direct the jury as follows:-

> "If you find that the deceased struck the accused; assaulted him; caused him to lose his self-control; and that it was while the accused was smarting under this stress of provocation, that he stabbed the deceased, then you will find him not guilty of murder but guilty of manslaughter, provided that you think that a reasonable man in similar circumstances would have acted as the accused did. The test is the test of the reasonable man. If you have a doubt as to whether the accused acted under the stress of provocation or not, you will resolve that doubt in his favour and find not guilty of murder but guilty of manslaughter."

Counsel for the respondent submitted that this was an adequate direction on the facts of the case. It was clear, however, that the jury did not understand the direction, as, after retiring, they returned to the court and asked for further directions on the question of provocation. In the direction given the trial Judge failed to tell them that even if they rejected the appellant's account of the assault there was evidence in the prosecution's version of the incident capable in law of amounting to provocation but it was for them to say whether that provocation was sufficient to cause a reasonable man to lose his self control and do what the

/accused.....

accused did, and whether the accused did act under the stress of such provocation. Also, that if they were in doubt of that they should acquit of murder.

When the jury returned to the court with their request for further directions the trial Judge merely repeated the definition of provocation and further stated as follows:-

> "The thing to notice about this is that it is not sufficient for the evidence to show that the deceased did something to the accused and the accused lost his temper and did something. If you think that what the deceased did to the accused was sufficient to cause a reasonable man, a reasonable man, to lose his temper and to act in the way the accused did, then provocation would apply. Is that clear? But if you think that a reasonable man would not have reacted in the way that the accused did in those circumstances, or you are in doubt - you see. If you think a reasonable man would not have acted as the accused did in those circumstances, then provocation cannot succeed as a defence."

It is to be observed that nowhere in the summing up did the trial Judge direct the jury that there was evidence in the case which could in law amount to provocation. We are of the opinion that in dealing with provocation as justifying the view that the crime may be manslaughter and not murder, a distinction must be made between what the Judge lays down as a matter of law, and what the jury decides as a matter of fact. We feel that this was the assistance sought by the jury and this they did not get.

In the circumstances, we are unable to say that a jury properly directed would have arrived at the same verdict, and therefore, we would invoke Section 40 (2) of the West Indies Associated States Supreme Court, (St. Christopher, Nevis and Anguilla) Act, 1975 and, instead of allowing or dismissing the appeal, we will substitute a verdict of manslaughter for that of murder.

The court will impose a sentence of 10 years hard labour.

/H.A. PETERKIN.....

(N.A. PETERKIN)
JUSTICE OF APPEAL

(E.L. ST. BERNARD)
JUSTICE OF APPEAL

(MAURICE DAVIS)
CHIEF JUSTICE