ANTIGUA

IN THE COURT OF APPEAL

CRIMINAL APPEAL

NO. 2 of 1976

BETWEEN:

IVOR JOSIAH - APPELLANT

AND

THE QUEEN - RESPONDENT

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

Appearances: J.L. Simon for Appellant
C. Kennard, Director of Public Prosecution for Respondent
With him R. Davy

1976, July 20th and 26th

J U D G M E N T

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

The Appellant was on the 13th February, 1976, convicted on an indictment containing two counts for the murder of Charles Jones and Gwendolyn Joseph respectively, and sentenced to death by hanging. He has appealed against his conviction on both counts.

The grounds of appeal stated are as follows:

1. The learned trial Judge erred in that he failed to direct or he misdirected the Jury on the following matters:-

   (a) provocation, as an ingredient in determining the presence or absence of malice.

   (b) SELF DEFENCE: that this defence was available to the accused even if it was found that he first attacked the deceased or either of them if his subsequent action was made to avoid destruction.
   That the burden of negativing self defence was on the prosecution and if they were left in any doubt as to whether the

/accused,.....

accused was acting in necessary self defence, they should acquit.

(c) MANSLAUGHTER: that this verdict was still open to him on the first count if they rejected t e defence of self defence because a greater degree of force than was necessary in the circumstances was used.

2. The verdicts are unsafe, unsatisfactory and unreasonable and cannot be supported having regard to the weight of the evidence.

The facts and circumstances surrounding the deaths of Charles Jones and Gwendolyn Joseph are to be found in the statement of the Appellant admitted t o evidence in the trial as Exhibit A.G.2. The medical testimony was that they had both died of shock and haemorrhage from a ruptured liver as the result of a stab wound inflicted by a sharp cutting instrument.

From the outset it was made plain to the Jury that the Crown's case rested entirely on the statement of the Appellant. The defence challenged the admissibility of the statement on the ground that it was not a voluntary statement, but once it was admitted into evidence by the trial Judge, Counsel for the Appellant asked the Jury to accept that the statement was a correct explanation of what happened. This, he said, was the contention of the Defence. The statement is as follows:-

"He buy me rum and give Crabb to sell, me tell him, the profit he would take and me get back me standard money. Everytime he run out me buy more and give him. Me also give him cigarette and matches for sell. He never give me back any money. Me go by his place all the while, me does buy me ginger beer or malt, me ask him for me money and he always put me off. Last night Thursday 17th April, 1975 me go by Crabb place at Sutherlands, me meet Crabb, Gwendolyn and Hascoll he say me must wait until morning. I asked him if he have anything to drink, he said yes. He buy me drink of ginger beer, me drink it. He then tell me make are a we go make a raid on some fowl. I tell him no me nar tek up nobody fowl. He tell me to follow him. He, me and Hascoll went to a yard. He hold one fowl and Hascoll hold one. Me tell them to

/leave.....

leave people fuck hole something. They took the fowls back to the tavern. They strip the fowls and cook them. I told them I don't want any. Crabb say, you nar left yah tonight. I told him I am going away. He and Gwen start to beat me. Crabb call his picnie and tell him to bring a cutlass. The boy hand the cutlass and he started to beat me with it. I got a blow with it on my foot. He had a knife in one of his hand. Gwendolyn hold me in shirt stomach and Crabb start beating me again. He push the knife at me, me knock it out of his hand, me bend down to take up the knife and Crabb hit me hard against me head, me pick up the knife and me push it at him. He get it in his stomach. Gwendolyn was still holding me and me could not get away me push the knife at her and she get it in her stomach too. She get cut, she let me me go and me run out the place. I take the knife with me. Me run down the hill by Hospital, me see two car behind me, me hear somebody say me go shot he. Me get fraid and feel they would see me so me take off me clothes and hide them in the pasture. Me lie down in the grass for a while. Me run back to see Elrick John who was at the hospital gate. When me a run back up, the police come on and meet me in me empty underpants. Me had the knife in me hand, me give the knife to Sgt. Smith and tell them what happen. Me carry the police to the area where me take off me clothes."

Counsel for the Appellant submitted that there was other evidence in the case tending to show that the statement was a truthful account. He thn referred the court to the following three portions of the evidence.

(1) Inspector Goodwin stated that he went behind the counter of the premises and found boiled chicken in a pan on a coal pot.

(2) Sharon Jones, the deceased's daughter, identified the knife used by the Appellant as that of her father, and stated that he usually kept it in a box behind the counter.

(3) Barrymore Jones, son of the deceased, stated that at about 3.15 a.m. he heard his father call from the tavern, and that when he went he saw his father leaning on the pool board with a cutlass in his right hand.

Counsel next submitted that the entire transaction could not be separated, and that what had gone before would amount to provocation also in the case of Gwendolyn Joseph. Counsel finally submitted that the trial Judge never told the Jury that there was evidence available in the statement

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which could in law amount to self-defence OR to provocation and that if self-defence failed, as there was no other evidence in the case then the verdict of the Jury should have been manslaughter.

Counsel for the Respondent contended that the verdict of the Jury could be supported as it was for the Jury to say whether they accepted the statement in its entirety or only in part.

We do not agree with this contention. In the view of the court the whole of the account of the transaction must be taken together, and the Appellant's admission of a fact disadvantageous to himself should not be received without receiving at the same time his contemporaneous assertion of a fact favourable to him. If ever there was a case in which the Jury needed the assistance of the Judge in evaluating the statement of the Appellant, this was it. The learned trial Judge ought to have told the Jury that in a case of this nature in evaluating the statement of the Appellant they must look at the other evidence in the case, and if they find anything in that other evidence which creates an issue as to how the crime was committed or the circumstances leading to the commission of the crime, then it would be open to them to decide what they believed. But if, on the other hand, there was no such other evidence then it was their duty to act on the statement.

In this case, where there is no other evidence which puts the statement in issue, the Judge ought to have directed the Jury that the Prosecutions case must stand or fall by the statement. He should further have directed them that there were circumstances in this case which tended to support the truth of the statement. The statement raises two possible defences, namely, self defence and provocation. Both defences were open to the Appellant on each count as

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the evidence showed that the entire incident was one transaction. The Jury were entitled after evaluating the statement to find that the Appellant used more force than was necessary, and if they were properly directed on the question of provocation, then to return a verdict of manslaughter.

In our view the learned Judge erred in not directing them that there was evidence in law which amounted to provocation but it was for them to say whether it was sufficient. We are of the opinion that any reasonable Jury properly directed on the question of provocation would have returned a verdict of manslaughter.

The court therefore, without allowing or dismissing the appeal will substitute for the verdict of murder in each case a verdict of manslaughter. The Appellant will serve seven years hard labour on each count to run concurrently.

(N.A. Peterkin)
JUSTICE OF APPEAL

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

(Sir Maurice Davis)
CHIEF JUSTICE