

GRENADA:

IN THE COURT OF APPEAL

CRIMINAL APPEAL NO. 2 of 1977

BETWEEN: MATTHIAS BELFON - APPELLANT

VS.

THE QUEEN - RESPONDENT

Before: The Hon. Sir Maurice Davis, Q.C. - Chief Justice  
The Honourable Mr. Justice St. Bernard  
The Honourable Mr. Justice Peterkin

Appearances: C. Bristol for Appellant  
E. De Freitas with him

Attorney-General (Ag.) for Respondent  
Mrs. E. De Freitas with him

---

1977, May 9 & 10, Oct.  
~~1977, Oct 7~~

---

J U D G M E N T

ST. BERNARD J.A. Delivered the Judgment of the Court:

The appellant was convicted of the murder of Thaddeus Paul on the 1st August, 1976, at Chantimelle, and sentenced to death by hanging. He has appealed against his conviction.

The appellant's defence at the trial was that he drew a revolver which he had been carrying and shot the deceased, thereby causing his death, but that he was justified in so doing as he was acting in lawful self-defence. There was evidence on his behalf that the deceased had gone to his home on 19th July, 1976, and had made threats to kill the appellant and his family. There was also evidence that the

/deceased.....

deceased had used the following words:-

"I am going to make all of you Belfons afraid to walk the road. I have a reputation for being a badman and I am going to live up to it. Belfon think I am Gordon he is taking chances with but I am going to show him. He has a licensed gun but he is afraid to use it. I have a gun too and I am not afraid to use it; is who pull first."

The appellant stated from the dock that after reporting the matter to the police he had met the deceased and others in the public road at Chantimelle some time that evening, and that the deceased said that he had been waiting for him all evening, had threatened to pour some lead into him, and then had cuffed him in the face. He then went on to state that after an exchange of words the deceased had said to him,

"I know you have an old piece of gun in your pocket all the time and you allow a little boy to beat you up almost to death the other day. It's me you think you could handle? Anyhow you going to eat some lead tonight."

Then he continued as follows:-

"He then cuffed me in my face again. He jumped backwards and I saw him push his hand in his pocket. I had my revolver in my pocket. I pulled it out and fired one shot in front of him on the ground. He did not run away. He advanced to me with his hand still in his pocket. I fired two shots on the hand that was in the pocket. He then ran away from me towards the shop."

Dr. Dennis Toppin who testified at the preliminary inquiry, and whose deposition was read at the trial, stated that when he examined Thaddeus Paul on the 19th July, 1976, there were in his abdomen two puncture wounds on the lower right aspect, and that his right forearm also had two puncture wounds - one in front and the other on the back.

/The.....

The case for the prosecution on the other hand rested on the evidence of two eye-witnesses to the incident, Stephen Paul and Terron Phillip. Stephen Paul maintained that after an exchange of words the Appellant had instantaneously drawn his revolver and deliberately shot the deceased. Terron Phillip stated in part,

"There was more talk and accused answered Thaddeus Paul but I cant remember what he told Thaddeus. All this time accused had his arms folded, and Thaddeus had his left hand in his short pants waist while his right hand was waving in the air towards accused. Then I saw a gun in accused's hand and I heard three shots fired and Thaddeus Paul turned and ran towards the back of Miss Doris's shop."

Counsel for the appellant argued grounds 3, 4, 5 and 10 together. They all dealt with self-defence. In referring to ground 10, he submitted that the learned trial judge erred in law in failing to direct the jury that if on the evidence they should find that the appellant honestly believed and had reasonable grounds for believing that his act of shooting was necessary to prevent the deceased from doing serious bodily injury to or causing the death of the appellant the act would be justified and therefore not punishable at all. He referred the Court to the case of Johnson v. Regina 10 W.I.R., 402.

With reference to ground 3 he submitted that the learned trial judge failed to direct the jury that if they were in doubt as to whether the appellant acted in self-defence that issue should be resolved in favour of the appellant.

We are in agreement with both of these submissions. With regard to the submission made under ground 10, the issue in the

/trial.....

trial was whether the shooting stemmed from a deliberate intention to kill as the prosecution alleged, or from an innocent intention to disarm the deceased as the appellant alleged. If the jury accepted the prosecution's case as having been proved beyond reasonable doubt then the appellant would be guilty of murder as charged. If on the other hand they did not, and proceeded substantially on the facts as alleged by the appellant, they would then have been obliged to consider whether in fact or in his honest belief based upon reasonable grounds the shooting was necessary to save himself from death or serious bodily injury. The error in failing to direct the jury in terms as submitted by counsel is in our opinion fatal, as the appellant was entitled to the jury's verdict upon it.

In regard to the submission made under ground 3, nothing was said as to what should be done if the jury were unable to reach a clear finding one way or the other. In our view there should have been a specific direction that the onus rested squarely on the prosecution to negative self-defence, and, that if such a situation arose as above, the prisoner would then be entitled to an acquittal. We think that in this respect the summing-up was again defective.

Accordingly, for the reasons stated we would allow this appeal, quash the conviction and sentence, and, as we consider that the interests of justice so require, order a new trial upon a fresh indictment in accordance with para (a) of sub-section (5) of Section 41 of the West Indies Associated States Supreme Court (Grenada) Act, 1971.

/N.A. Peterkin.....

---

(N.A. Peterkin)  
JUSTICE OF APPEAL

---

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

---

(Sir Maurice Davis)  
CHIEF JUSTICE