

SAINT LUCIA

IN THE COURT OF APPEAL

CRIMINAL APPEAL NO. 1 of 1977

BETWEEN: SYDNEY HALL

Vs.

THE QUEEN

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

Appearances: Kenneth Foster and Beryl Edwards with him
for Appellant.

L. Williams, Attorney-General for Respondent.

1977, May 16, 17, 18 ~~19~~. Nov-1

J U D G M E N T

DAVIS, C.J. delivered the Judgment of the Court:

The Appellant was convicted on the 10th February, 1977, for the murder of Jameson Albert and sentenced to death by hanging. He has appealed on four grounds which will be referred to at a later stage.

The deceased Jameson Albert was the husband of Veronica Albert but lived periodically overseas. During the husband's absence Veronica became intimate with the appellant and she bore him a child. Despite this, however, whenever the husband returned to St. Lucia Veronica resumed living with him. On the 2nd July, 1976, the appellant bought a house and erected it on lands at Monchy belonging to Veronica's father and lived there with her until about the 6th November, 1976

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when the deceased arrived in the state. On that date he met his wife near the Castries Market and asked for reconciliation. She agreed and the same day spoke to the appellant by the same market telling him of her intention to resume living with her husband. The appellant told her that he knew her husband had returned to St. Lucia and then instructed her to remove all her belongings from his house. Veronica removed the articles and the following Wednesday the appellant nailed up the doors and windows of the house. On Thursday he reopened the house and told Veronica to replace the articles in the house. She refused and never returned to the house. On Friday, 12th November, 1976, at about 3.30 p.m. the deceased was along with one Emmanuel Duncan and appellant came up to them and said to the deceased, "I am the master of this woman's, I am going to kill you before it is 6 o'clock". Duncan said to the appellant what kind of foolish talk was that and asked him whether he was going to kill him for his own wife. The appellant replied that he did not care and that whatever happened, happened. The appellant left. Before this incident on the same day one Iera Joseph heard the appellant spoke derogatively about the deceased's wife to the deceased and heard him tell the deceased, "you are not sure to pass this Friday night, you are bound to die and leave Veronica for me."

About 6 p.m. Bertillia Valtie, an old woman, who was at her daughter Florita's home where Veronica, the deceased and her children stayed for the time being, saw the appellant arrive and about 7 p.m. he went inside the house and searched.

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He then said "you all have hidden Veronique. If it is hide you all have hidden Veronique I will know what to do." Appellant then pulled a knife from his pocket and stabbed the deceased behind his neck. She stated that he stabbed five times and kept dragging the deceased until they reached a potato patch. She screamed and the appellant shouted at her, "madam". After the appellant finished he kicked the deceased and said, "salop, you will leave me alone." She ran away. In cross-examination this witness contradicted herself and stated, "I got frightened when he was killing him. I was inside when the incident started. When I came out I saw the movement of two men fighting. I ran away during the fight. Yes, I saw Sydney stab the deceased."

Veronica stated that she was in the kitchen when she heard the appellant asked her son for her and said, "to night I come for your mother, whatever will be, will be." She then ran away and did not return until the following morning.

The appellant who gave evidence on oath stated that he lived as man and wife with Veronica from sometime in 1975. He saw Veronica on Saturday the 6th November, 1976, and had some minor quarrel with her about a woman named Olive. As a result of that he did not sleep at Monchy on that night and neither did he go there on Sunday. On Monday he saw the deceased on Jeremie Street but had no quarrel with him. According to the appellant he returned to Monchy on Monday afternoon and Veronica remained there with him until Thursday.

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On Friday 12th November, 1976, appellant stated he went to Florita's house with milk, bread and a smoke herring but had no knife. He asked Bertillia Valtie for Veronica and was told she went over to one Rollima. He then went to a shop nearby for a quick drink. When he returned he saw Veronica standing about 2ft away from the kitchen steps and the deceased leaning on the kitchen. He did not expect to see the deceased there and was so surprised that he shivered and searching for words he could only say, "you saw the milk and bread I brought you?" She replied that she did not want any milk and he said he would take his child and his milk. While going to the kitchen he grabbed at him and there was a struggle. The deceased then grabbed him by the back and they fell. The deceased got up and kicked him while he was on the ground. He fired another kick at him and he held his foot and the deceased fell. They started fighting and they fell again with the deceased above him throttling him. He held the deceased testicles who then drew a knife. He held the handle of the knife and continued squeezing the testicles. Appellant stated that he got the knife and made a few quick lashes while he was on the ground to relieve the pressure. He denied that he ever made threats to the deceased earlier on that day.

The four grounds of appeal are as follows:

1. The learned Trial Judge, in error, failed properly and/or correctly to explain and/or direct the Jury on the Defences of self-defence, manslaughter, in relation to the instant facts of the case.

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2. The learned Trial Judge failed properly and/or adequately to put the case of the defence to the Jury, erroneously omitted entirely to refer to the cross-examination of the Prosecution witnesses, wrongfully adopted the Crown's version of the fight, and finally did misdirect the Jury to accept that the Deceased, in that position on top the Accused, could only have been stabbed by the Accused at the front and not at the back, contrary to, as testified by the Accused.
3. In the alternative, the learned Trial Judge erred by his failure to put and/or explain the defence of Accidental Death to the Jury, if in fact, the Jury believed the testimony of Sergeant Cherry.
4. That the verdict is against the weight of the evidence, is unreasonable and unsafe, and cannot be supported.

We will deal with grounds 2, 3 and 4 first. On ground 4 Counsel submitted that if the jury accepted the case for the prosecution then the verdict was unreasonable and unsafe, because of the discrepancies in that evidence. He specifically referred to the evidence of Bertillia Valtie. In our view the answer to this submission is that if the jury accepted the evidence for the prosecution there was compelling and forceful evidence for a verdict of murder.

On ground 3 Counsel submitted that there was evidence on which the defence of accident should have been left to the jury. The evidence referred to in this regard was the evidence of Sgt. John Cherry who stated that when he told the appellant of the death of Jameson Albert, the appellant replied that Veronica and her husband were fighting him. Veronica had a knife and he pushed Jameson onto the knife and ran away. The appellant denied this ever took place and gave a different

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story in the witness box. While we agree with counsel that it is the duty of the trial judge to leave to the jury all defences which can properly be raised on the evidence, we are of the view that, in this case, the defence of accident was not available to the appellant on the evidence before the court. We agree with the law stated in the cases cited by counsel in support of his intention but disagree with its application to this case.

On ground 2 counsel made no submissions in law and neither did he point out any errors in the summing up which could have affected the jury's verdict.

Ground 1 questions the correctness of the directions given by the trial judge on the defences of provocation and self-defence and in what circumstances a verdict of manslaughter may be given under section 171 of the Criminal Code, Chapter 250 of the Laws of St. Lucia. This section reads -

"171. Whoever intentionally causes the death of another person by unlawful harm shall be deemed to be guilty only of manslaughter, and not of murder or attempt to murder, if either of the following matters of extenuation is proved, namely,-

- (a) that he was deprived of the power of self-control by such extreme provocation given by the other person as is mentioned in the following section;
- (b) that he was justified in causing some harm to the other person, and that, in causing harm in excess of the harm which he was justified in causing, he acted from such terror of immediate death or grievous harm as in fact deprived him for the time being of the power of self-control."

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On the question of provocation counsel submitted that the trial judge inadequately dealt with the facts which could be considered provocative acts and failed in his duty to apply the law to the facts in issue. The trial judge directed the jury as follows:

"The defence of provocation, although it has not been mentioned as such, to my mind, still should be put to you. For here we have evidence of a struggle. Provocation is some act or series of acts done by the deceased to the accused which would cause in any reasonable person and actually cause in the accused, a sudden and temporary loss of self-control rendering the accused so subject to passion as to cause him to retaliate. You must find that the deceased did something to the accused which would have caused an ordinary man, and in fact cause the accused, to lose his self-control to such an extent that he wanted to retaliate. It follows therefore, that provocation is not an absolute defence. Provocation would reduce the crime from murder to manslaughter. Self-defence is an absolute defence; so that in this indictment there are three possible verdicts. First of all, not guilty; secondly, guilty of murder; and thirdly, guilty of manslaughter.

I will, during the course of my review of the facts try to place these various defences in the terms of the facts so that you will more easily be able to apply the law to the facts."

The definition of provocation given by the trial judge is the standard definition in English Law. It is preferable, however, for judges, when this issue is raised as defences in St. Lucia and Grenada, to follow the appropriate Code. The sections dealing with this issue in St. Lucia are sections 172-175 of the Criminal Code and the appropriate section or sections should be used to suit the facts of the case before the court. It is clear that the judge did not refer to any of these sections but despite this, in substance, he told the jury what provocation was. Counsel contended that although the judge told the jury that during the course of his review he would place this defence in terms of the facts

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so that they would more easily be able to apply the law to the facts he did not do so. The trial judge did not in his summing up specifically set out what facts were capable of amounting to provocation, if believed, but there was no doubt that he placed the defence of provocation to the jury and carefully related the story of the appellant to them. The facts were not difficult and we are of the view that there could have been no confusion in the minds of the jury regarding this defence. The trial judge left provocation to them and told them that if they were not sure whether the appellant was provoked or not and lost his self-control they were to convict of manslaughter.

In regard to the defence of self-defence Counsel submitted that the direction given by the trial judge was confusing, misleading and inadequate. He referred to the following passage in the summing up and stated that to tell the jury all fights were unlawful was erroneous. The passage reads -

"One ground for the justification of harm is self-defence. A person is entitled to defend himself and in so doing is entitled to kill another. All fights are unlawful. All fights are unlawful. But if a person is attacked he does not have to run. What is necessary is that a person who is attacked should demonstrate by his actions that he does not want to fight. He must demonstrate that he is prepared to temporize and disengage and perhaps to make some physical withdrawal. If, on the evidence, you should find that the accused either in fact was or honestly believed on reasonable grounds that he was in danger of serious injury or death at the hands of the deceased, he would be justified and he would be entitled to a verdict of not guilty."

Section 56(2) of the Criminal Code says "every fight

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is unlawful in which a person engages, or which he maintains, other wise than solely in pursuance of some of the matters of justification specified in this Title". The trial judge did not read this subsection of the Code to the jury but we feel that in substance he told them that all fights were unlawful unless they could be justified. He then went on to direct them that a person attacked did not have to run and may defend himself. He further stated to the jury that if the appellant honestly believed on reasonable grounds that he was in danger of serious injury or death at the hands of the deceased he was justified and entitled to a verdict of not guilty. We feel that this direction to the jury having regard to the sections of the Criminal Code relating to justification was not erroneous although the definitions given in the Code were not used literally.

The trial judge, however, at a later stage of his summing up told the jury -

"you see, if two men are struggling with their bare fists and one takes a knife, then you may find that the one using the knife is using excessive force to repel the danger with which he is threatened; and if he uses excessive force then self-defence is no longer available to him."

Counsel submitted that by this direction the judge withdrew the defence of self-defence from the jury; and that, in any event, he did not direct them in regard to paragraph (b) of section 171 of the Criminal Code. Counsel for the respondent directed the court's attention to page 25 of the record where the judge again referred to what the appellant stated was

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done to him and the judge's final direction to the jury that they were to convict only if they were sure that there was an unprovoked attack and that the appellant was not defending himself.

It is clear from the verdict that the jury rejected the defence of self-defence but we are not sure that their rejection of the defence of self-defence was due to the use of excessive force having regard to the direction given in the passage quoted above. In St. Lucia and Grenada there is a peculiar or unique provision in their Criminal Codes relating to excessive force. In St. Lucia this provision is paragraph (b) of section 171 already quoted above. We feel that having regard to this provision that when the judge directed the jury on justification and excessive force he should have adverted to this provision and direct^{ed} the jury accordingly. This provision appears to be an intermingling of the defence of justification and that of provocation but, under whatever category this defence falls, the jury, we feel should have been directed in accordance with the provisions of this paragraph. Although it is very likely that if they were so directed the same verdict may have been returned we are unable to say that a jury properly directed would have returned the same verdict. This provision reduces the crime of murder to manslaughter if the person was justified in causing some harm to the other person, and that, in causing harm in excess

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of the harm which he was justified in causing, he acted from such terror of immediate death or grievous harm as in fact deprived him for the time being of the power of self-control. Accordingly this court, under subsection (2) of section 36 of the West Indies Associated States Supreme Court (St. Lucia) Act 1969, without allowing or dismissing the appeal, will substitute for the verdict of murder, a verdict of guilty of manslaughter and sentence the appellant to a term of imprisonment for 30 years with hard labour.

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

(N.A. Peterkin)
JUSTICE OF APPEAL

(Sir Maurice Davis)
CHIEF JUSTICE