

G R E N A D A:

IN THE COURT OF APPEAL

CRIMINAL APPEAL NO. 9 OF 1978

BETWEEN:

GEORGE JOSEPH - Appellant

V

THE QUEEN - Respondent

Before: The Honourable Sir Maurice Davis, Q.C. - Chief Justice
The Honourable Mr. Justice Peterkin
The Honourable Mr. Justice Berridge (Acting)

Appearances: C.C. St. Louis for Appellant

E. John, Attorney General for Respondent

1979, January 23 & 26

J U D G M E N T

BERRIDGE, J.A. (AG.) delivered the Judgment of the Court:

The appellant, George Joseph, who was the brother of the deceased, Germaine Joseph, was, on the 23rd October, 1978, convicted of her murder and sentenced to death by hanging. He now appeals against his conviction.

The facts are that on the 20th August, 1978, Germaine Joseph who was then living with her aunt, Louisa Andrew, left her home at about 6 a.m. in order to attend mass. She was followed about five to six minutes later by her aunt who, when she reached a short distance from her gap, was spoken to by a child as a result of which she ran up the road where she met Germaine lying face downwards in a drain with cuts about her body. She touched her and called to her but got no reply. She then got a car and took her to the General Hospital.

/Jonathan.....

Jonathan Ross was in bed at about 6 that morning and heard a shouting. He looked through his window and saw the appellant and his sister, Germaine, on the road about 20 ft. from his yard. The appellant had a cutlass in his hand and was chopping his sister on the head and upper part of her body. Germaine ran about a yard or two and the appellant ran after her and continued chopping her. She fell and he gave her three more chops while she was on the ground. He then went away.

Miriam Ross was walking along the Boca road around 6 a.m. and saw Germaine approaching. The witness turned back and stood up. When she turned again she saw the appellant with a cutlass upraised over Germaine's head. She bawled "Oh God, murder" then ran back in the direction whence she had come.

She ran to the home of one Ross and while there she heard Germaine bawling. She remained there for about 10 minutes and when she returned to the road she saw no one. On further search she saw Germaine lying face downwards on the side of a drain with blood flowing from the back of her head. She then ran and alerted the neighbours.

Three other prosecution witnesses viz., Lyris Renwick, Cynthia Joseph and Phyllis Ross all testified that the appellant had sometime later that morning stated to them that he had killed his sister, Germaine.

Dr. Ganapathy Laksmanan attended to Germaine Joseph at the Casualty Department of the General Hospital at about 6.15 a.m. that day. He testified that she had deep cut wounds over her right and left forearms and skull and was bleeding profusely. She died at about 9.30 to 10 a.m. on the same day and the doctor gave as the cause of death haemorrhagic shock, and stated that the deep cuts seen by him were caused by a sharp weapon like a cutlass. He further

/stated.....

stated that in his opinion violent force was necessary to have caused the injuries.

Counsel for the appellant abandoned grounds 1 - 4 of his grounds of appeal and dealt only with ground 5 viz., that the verdict was unreasonable or cannot be supported having regard to the evidence.

Counsel pointed out to the Court that no evidence was produced as to motive and suggested that a reasonable jury taking the facts as they are would conclude that the appellant was either a lunatic or a very bad man. He conceded however, that insanity was not raised as a defence because there was nothing before the Court to justify it. He then referred the Court to the case of R. v Charlson 39 Cr. App. R. 37 and submitted that the prosecution must prove that when the prisoner did the act which caused the injuries he was acting consciously and knew what he was doing and realized that he had no lawful justification for the act.

In the view of the Court the Charlson case cannot be applied to the facts and circumstances of the instant case. In the Charlson case there was evidence of a history of ill-health, particularly cerebral afflictions, in the prisoner's family and the prison doctor said that clinical examination and the history of the case showed that there was at least the possibility of the prisoner suffering from a cerebral tumor and that a person suffering from a cerebral tumor was liable to an outburst of impulsive and motiveless violence over which he had no control at all.

Counsel also referred the Court to the case of Frederick William Reynolds, 32 Cr. App. R. 39, in which observations were made by the Court on the duty of Counsel appearing for the appellant on an appeal against conviction of murder where the summing-up is not open to criticism. In this case the Lord Chief Justice commented as follows:-

/"There.....

"There is no obligation on counsel in such a case to endeavour to find some minute points which could have no bearing on the case. The Court has always read the transcript of the case, and when it is perfectly clear that there is no ground for appeal, there is no duty on counsel other than to tell the Court that he represents the appellant, and that if the Court has discovered anything in the case on which they wish to hear him, he is prepared to do his best to assist the Court."

In our view, in the instant case from first to last, there was not a shadow of a defence. It was a deliberate and wicked murder and this appeal is accordingly dismissed. Conviction and sentence affirmed.

(N. A. Berridge) (Ag.)
JUSTICE OF APPEAL

(N. A. Peterkin)
JUSTICE OF APPEAL

(Sir Maurice Davis)
CHIEF JUSTICE