ST. VINCENT:

IN THE COURT OF APPEAL

CRIMINAL APPEAL NO. 14 OF 1978

BETWEEN:

SYDNEY JAMES - Appellant

V.

THE QUEEN

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

Appearances: C. Dougan for Appellant

O. Jack (D.P.P.) for Respondent

1979; January 31, Feb. 2

J U D G M E N T

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

The appellant, Sydney James, was on the 2nd November 1978, convicted of unlawfully killing Thomas Warner and sentenced to five years imprisonment.

He has appealed against his conviction and sentence on the following grounds:

1. The learned trial judge misdirected the Jury in his summing up in that:-
   (a) He failed to direct them upon the appellant's defence of self-defence.
   (b) He failed to direct them adequately or at all on the defence of misadventure.

/(c) He.....

(c) He failed to direct them adequately or at all on the defence of Accident.

(d) He failed to direct them adequately or at all on the legal concept of unlawfulness as it relates to the crime of manslaughter.

(e) He failed to put the defence adequately to the Jury.

(f) The sentence was too severe in the circumstances.

(g) The sentence of five (5) years imprisonment was excessive since the Appellant has never before been convicted of any offence.

(h) The learned trial judge failed to give sufficient consideration to:-

(i) The Appellant's gainful employment and youth.

(ii) The Appellant's family circumstances and committments.

Joyce Ferguson a witness for the Crown testified that on the 8th December 1977 at about 9.30 a.m. she was at Chapmans when an argument ensued between the appellant and Thomas Warner during the course of which Warner accused the appellant of having crazy blood in him whereupon the appellant went up to Warner and struck him two blows with a stick the first on his abdomen and the second at the side of his neck.

Warner, who was then standing near to a wall at the edge of the road, fell over, a distance of some 13 feet into the yard below striking his head against the rim of a tyre. She was substantiated in her evidence by that of Joy Warner, Celene Thomas and Yvonne Rodrigues. Warner was taken to the General Hospital, Kingstown where he died the same day.

A post mortem examination was performed the following day on his body by Dr. Shyamsunder Reddy who testified that he had a fracture of the cervical vertebrae. He gave as his opinion that

/the.....

the cause of death was due to compression of the spinal cord and dislocation with respiratory failure and stated that it was possible for the blow at the back of the neck to cause the fracture of the cervical vertebrae for the dislocation of the spine or both.

On cross-examination he further stated that the injuries which he saw on post mortem were consistent with a person falling over and hitting his head against a hard object.

Bearing this in mind the learned trial judge directed the jury

> "You may well feel that from the evidence the injury which caused the death of Warner resulted indirectly and not directly from any blow which the accused administered. If you so find, if you find that the injury which caused death may have resulted by the deceased falling over that wall you will then be entitled to find the accused guilty of manslaughter only if you can say that a reasonable person administering those blows to Warner in those circumstances, while Warner was standing where he was standing must have comtemplated the possibility of Warner falling over and injuring himself."

In arguing the appeal against conviction Counsel submitted that the trial judge misdirected the jury in his summing up in that he failed to direct them on the issue of self-defence. He referred the court to the passage in the summing up beginning at page 21 line 18 which reads as follows:-

> "At the said time he fire his hand at me the donkey make a shy. I raise the whip towards to Mr. Warner and he say like this "you all have fucking crazy blood and I'll knock you to fuck down." Then he making a scramble like he looking to pick up a stone. And he raise up but he did not get no stone in his hand. And he pelt his hand after me again and after he pelt his hand I raise the whip at him again and he make a move like he picking up a stone again, then I see he make a slip and he fall."

He further referred the Court to the passage in the summing-up beginning at page 48 line 12 which reads as follows:-

> "Members of the Jury, then you will be entitled to find the accused guilty provided always that he struck Warner unlawfully that he struck Warner wilfully, not in self defence, there is certainly no evidence of that here, so that Members of the Jury, that is the position."

/He.....

He submitted that in this passage the learned trial judge withdrew self-defence from the jury. We agree, but we do not agree with Counsel's submission that the issue of self-defence arose in this trial. The appellant has denied striking the deceased at any time. In the passage referred to by Counsel at page 21 what the appellant has alleged is that the deceased in the act of appearing to pick up a stone with which to strike him slipped and fell over the wall. This in our view raised the defence of accident or misadventure which Counsel conceded was the defence raised at the trial. In our opinion self-defence never arose and the trial judge was right in withdrawing it from the jury.

Turning to accident and misadventure Counsel submitted that the trial judge failed to direct the jury adequately on these issues more particularly as Accident was the main defence in the trial.

The Crown's case was that the appellant had struck the deceased two blows while he was standing very close to the wall thereby causing him to fall over the wall into the yard below. The appellant's evidence, however, was that the deceased had slipped and fallen over into the yard in an attempt to pick up a stone with which to strike him. He denied ever having struck the deceased. This in our view was the same thing as contending that the deceased had accidentally fallen into the yard which was in sharp contrast to what the Crown's witnesses were alleging.

The learned trial judge said to the jury in the course of his summing up

> "Well Members of the Jury I think you will find as a fact that the account of the incident as narrated by the accused differs substantially from the account as narrated by the majority of the Prosecution witnesses, but that does not mean that because the accused's version of it is in the minority that it is a lie because of that. You see in Criminal cases it is not the quantity of evidence that matters, it is the quality."

/and again.....

and again

> "Now, if you accept the accused's evidence, Members of the Jury, he never struck Warner, in fact Warner was the agressor, if you accept his evidence he hasn't struck Warner up to now, and he has not done anything wrong and therefore if you accept his evidence you find him not guilty. If you are in doubt as to whether his evidence is true or not, again you will find him not guilty. It is only if you reject his version altogether, if you reject his version of the incident altogether and you prefer the version of one of the Prosecution witnesses not Lena Pitt but one of the other Prosecution witnesses it is only if you do that that you can begin to think of finding the accused guilty."

In our view the issue of accident or misadventure was adequately put and the jury by their verdict must have rejected the appellant's defence. Accordingly the appeal against conviction is dismissed.

On the question of sentence Counsel drew the court's attention to the grounds of appeal as filed against sentence and asked the Court to consider placing the appellant on a bond as he was in custody for six months awaiting the preliminary inquiry.

In our view the incident was an unfortunate one and we are convinced of the genuineness of the expression of remorse made by the appellant. While we are unalbe to accede to the request of Counsel to place the appellant on a bond we feel that in all the circumstances the sentence passed was too severe. We will allow the appeal against sentence, quash the sentence passed and in its place order that the appellant serve a term of two years imprisonment with hard labour.

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

(N.A. Peterkin)
JUSTICE OF APPEAL

(Sir Maurice Davis)
CHIEF JUSTICE