(10)

SAINT LUCIA

IN THE COURT OF APPEAL

CRIMINAL APPEAL NO. 12 of 1982

BETWEEN:

STEPHEN SERAPHIN - Appellant

and

THE QUEEN - Respondent

Before: The Honourable Sir Neville Peterkin - Chief Justice
The Honourable Mr. Justice Berridge
The Honourable Mr. Justice Robotham

Appearances: K. Foster for the Appellant
S. d'Auvergne, Director of Public Prosecutions for the Crown

1983; Feb. 2, 3,
May 30.

JUDGMENT

PETERKIN, C.J. delivered the Judgment of the Court.

The Appellant was on the 29th October, 1982, convicted of the murder of Richardson Medard and sentenced to death by hanging. He has appealed against his conviction.

At the hearing of the appeal leave was sought, and granted, to amend the third ground of appeal. They now read:

"1. The verdict is against the weight of the evidence, is unreasonable and cannot be supported.

2. The Learned Trial failed, properly and/or adequately and/or sufficiently to direct the Jury on the law of intent in relation to the law on provocation and/or self-defence whereby the Jury had no alternative but to return the verdict of murder.

/The Learned.....

3. The Learned Trial erred by his failure to put the case of the Defence adequately and/or properly and/or sufficiently to the Jury in relation to the facts of the case, in that his directions on self-defence and/or provocation, as put, could only have confused the Jury by references to legal definitions which, on the facts, were not only irrelevant but prejudicial leaving the Jury no alternative but to return a verdict of murder."

At about 7 a.m. on 16th July, 1982, the deceased Richardson Medard, left his home. He went, as was his custom, to the home of his sister, Nacia Francis, who took care of him and prepared his meals. She testified that he left after taking his coffee, and that he had with him his haversack and outlass. He went apparently to the Venus Estate which he worked for a Mrs. Renee Adjodha. She testified that she had given him the Venus Estate to work on a share basis. On this Estate there was a small wooden house which she testified was commenced in 1976 by her late husband, and completed after he had died in 1979 by John Seraphin, brother of the appellant. It was a one room wooden house, and John Seraphin used to sleep in it. He died in March of 1981. Mrs. Adjodha testified that she had seen the appellant on her land once only and that he had told her that he was sleeping there. She said that she had asked him to leave as someone else was in charge of the estate.

At about 9 a.m. that morning, 16th July, 1982, both Rubina Renee and George Prescott were in their respective gardens at Millet when they heard the cries of someone calling for help and the noise of dogs barking. They both went in that direction, and, on reaching a river about a quarter mile from their gardens, they saw the appellant at the edge of the river. He was washing a cutlass and a stick in the river. The appellant told them both that he had killed Richardson. He then walked a short distance away and lifted the leg of a man who was lying

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on the ground. He then told them to go and tell this to other people as he himself was about to go to Anse-la-Raye to make a report. They both left him there, and Prescott went quickly to the Police Station where he made a report. In the meantime the appellant went to the Anse-la-Raye Health Centre to nurse Humilta Modeste. She testified that he had a bleeding wound on his left finger which, in her opinion, was serious enough for him to see a doctor. When questioned by her he stated that Richardson had given him the wound.

On arrival at Millet the Police found the dead body of Richardson Medard lying in the grass about 90 yards from the river bank. The post mortem examination performed by Dr. Voss revealed no less than 20 cuts, mostly severe, consistent with an attack by a cutlass. Death in his opinion was due to cerebral laceration and haemorrhage due to a cutlass wound on the head. The wounds, he stated, indicated the use of considerable force. The appellant was arrested by Constable Cherubin at about 9.30 a.m. at the Anse-la-Raye Health Centre and taken to the Police Station. At about 4.20 p.m. that same day he gave a written statement to Sgt. Justin Sealy who was then the Station Sergeant in charge of Anse-la-Raye.

At the trial of the appellant the statement was admitted to evidence as being voluntary without any objection on the part of the Defence. It was the only evidence in the trial coming from the Prosecution as to the manner and circumstances in which the deceased had met his death. The appellant elected to give sworn testimony in which he verified what he had said in the statement given to Sgt. Sealy on the same day of his arrest. With the exception of a few minor modifications it was more or less the same. The statement contains his version of what occurred that day. It remained uncontroverted. It reads:

/"I was at.....

"I was at Millet, Qrt. of Anse-la-Raye in a house which my deceased brother, John Seraphine had built, that is today the 16th July 1982 at about 8.30 a.m. Whilst I was inside the house I heard somebody pulling the front door. The door did not open, so I peeped through a hole in the door and I saw it was Richardson Medah. I did not open the door, but seeing it was Richardson Medah I asked him what he wants. He told me that he has come for me. I saw he had a cutlass in his hand. I did not open the door, but I told him that he has no land here so you come to steal. He told me again that he come to stop me. I was still peeping through the hole. I saw him took two stones from the ground. I had to go outside so I opened the door. As soon as I opened the door Richardson Medah threw a stone at me, but it did not hit me. I then got outside and we started throwing stones at each other. He also sent his dog to bite me. At one stage one of his stones hit me on my left foot. We then started again throuwing stones at each other but I was hiding between banana trees, so as to get close to him. By that time we got close to the river, we were about two hundred (200 yds) away from the house. At that stage we got close to each other and there was no more stones on the spot so each of us stood with our cutlasses in our hands striking at each other. Medah gave me a blow with his cutlass on my right finger and bend down to pick up a stone. As he was about to strike, I fired a blow with my cutlass and cut off his left risk. He had his cutlass in the other hand and he threw it at me and it cut me in the left hand. When I was wounded I gave him a cutlass lash on the side of his head and each time I see him coming towards me I hit him with my cutlass. I cannot remember what amount of lashes I gave him, but I gave him quite a few lashes. When I saw him fall to the ground I left him alone. I then left and went towards the river. On reaching the river I saw some people going to their garden I told them that I had trouble with Richardson Medah. I chop him and I do not know if he is dead. I then showed the people where he was lying. I then left and went to Anse-la-Raye Village. I met other people on the road and I told them what took place at Millet. I then went to the Anse-la-Raye Health Centre to dress my wound. I told the nurse what happened and whilst I was there a Policeman came and took me to the Police Station."

Manifestly in our view the appellant could not hope to successfully raise self-defence. Section 56 of the Criminal Code puts this to rest by stating that no force used in an unlawful fight can be justified under any provision of the Code. On a view of the evidence most favourable to him he had engaged in an unlawful fight. Indeed,

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this was the position contended for by his own counsel before the Jury when he asked them to find that it was a case of extenuating provocation. The learned trial Judge has, we think, dealt adequately with this aspect, and the Jury by their verdict have, quite rightly in our opinion, rejected self-defence. There remains, however, the issue of provocation which, if successfully raised, reduces the killing to manslaughter only.

We turn first to the statement of the appellant. It contained matters both disadvantageous as well as advantageous to him. The Judge left the whole to the Jury to say what facts asserted by the prisoner they accepted. While there was nothing wrong about this, we feel that it called for a special direction, and that it might have been better if he had told them that inview of the fact that there was no other evidence to the contrary against which to weigh what the accused had said in his statement to the Police, and in view of the fact that he had given sworn testimony in the trial to verify what he had said in the statement, that, while it was a matter entirely for them, it would be open to them to attach equal weight to his explanations as to his admissions.

As to provocation, section 171 of the Criminal Code states:

> "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."

/The Code.....

The Code then goes on in section 172 to set out certain matters which may amount to extreme provocation to one person to cause the death of another. It reads:

> "The following matters may amount to extreme provocation to one person to cause the death of another person, namely:-
>
> (a) an unlawful assault and battery committed upon the accused person by the other person, either in an unlawful fight or otherwise, which is of such a kind, either in respect of its violence or by reason of accompanying words, gestures, or other circumstances of insult or aggravation, as to be likely to deprive a person, being of ordinary character, and being in the circumstances in which the accused person was, of the power of self-control;
>
> (b) the assumption by the other person, at the commencement of an unlawful fight, of an attitude manifesting an intention of instantly attacking the accused person with deadly or dangerous means or in a deadly manner."

It should be borne in mind that it was being contended for in the trial on behalf of the appellant that he had engaged in an unlawful fight with the deceased in circumstances of extreme provocation, and so was guilty of manslaughter only. It became necessary therefore in our view for the trial Judge to have referred to section 175 (d) and to have given a clear direction to the Jury on the aspect of undue excess. The section which deals with non-extenuating provocation reads:

> "That this act was, in respect either of the instrument or means used or of the cruel or other manner in which it was used, greatly in excess of the measure in which a person of ordinary character would have been likely under the circumstances to be deprived of his self-control by the provocation."

He ought therefore in the opinion of the Court to have directed the Jury that they could only convict the accused of murder if they felt quite sure that his act was, in respect either of the instrument or means used or of the cruel or other manner in which it was used, greatly in excess of the measure in which a person of ordinary character would have been likely under the circumstances to be deprived of his self-control

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by the provocation. His failure to do so amounted in the view of the Court to a misdirection.

We are not able to say what view a reasonable Jury would have taken on the issue of provocation had they been so directed. And so, in accordance with section 36 of the West Indies Associated States Supreme Court (St. Lucia) Act - No. 17 of 1969 - the Court will, instead of allowing or dismissing the appeal, substitute for the verdict of Murder one of guilty of Manslaughter.

The appellant will be imprisoned and kept to hard labour for a term of 20 years.

N.A. PETERKIN,
Chief Justice.

N.A. BERRIDGE,
Justice of Appeal.

L.L. ROBOTHAM,
Justice of Appeal.