(16)

SAINT LUCIA

IN THE COURT OF APPEAL

CRIMINAL
~~CIVIL~~ APPEAL NO. 3 of 1983

BETWEEN:

NICHOLAS DOLOR - Appellant

and

THE QUEEN - Respondent

Before: The Honourable Mr. Justice Berridge - Chief Justice (Acting)
The Honourable Mr. Justice Robotham
The Honourable Mr. Justice Bishop (Acting)

Appearances: K. Foster and P. Foster with him for the Appellant
Director of Public Prosecutions for the Crown.

1984: May 21, 22
Oct.22.

JUDGMENT

BISHOP, J.A. (Acting) delivered the Judgment of the Court.

Guy Donacien died on the 4th July, 1982 and following investigation by the police, Nicholas Dolor was charged that on that date, at about 9.50 p.m. at Derniere Riviere in the Quarter of Dennery, he committed murder by intentionally causing the death of Guy Donacien by unlawful harm, contrary to section 178 of the Criminal Code of St. Lucia.

The jury returned a verdict of guilty after a trial that lasted over a week; and Nicholas Dolor was sentenced to death according to law.

He has appealed against conviction and sentence on the following grounds (as amended with leave of the Court):

/"1. that the.....

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

2. that the learned trial Judge failed to allow a trial within a trial on the appellant's objection that

(a) he did not make the statement allegedly taken before an Inspector of Police, more particularly as the mark allegedly taken by the police was not legally receivable and therefore inadmissible.

(b) he failed specifically and/or adequately and/or with sufficient clarity to direct the jury that the onus was on the prosecution to prove to their satisfaction and beyond reasonable doubt that the appellant had made the statement.

3. that the learned trial Judge failed properly and/or adequately to put the case for the defence to the Jury; and in particular in respect of a non-direction and/or misdirection and/or misconception of the fact that the accused had (by demonstrating) parried the deceased's attack with a rachet (with his cutlass and both hands outstretched) whereby the appellant suffered a grave and serious miscarriage of justice. It is respectfully submitted that the learned trial Judge erred by failure properly and/or correctly to direct the Jury on the law of self-defence and/or provocation and/or accident in relation to the facts of the

/instant case....

instant case leaving the Jury no alternative but to return a verdict of guilty of murder."

THE CASE FOR THE PROSECUTION.

On the night of 4th July, 1982, around 9.30 p.m. Guy Donacien was in the Quarter of Dennery at Dorniere Riviere, standing near the front of a van that was parked on the public road outside the rumshop of one Jones Valton, when he was fatally injured by Nicholas Dolor.

Antoine Louison and Ellis James saw what occurred between the two men.

Antoine Louison said that while he was in Ma Daddie's rumshop about 14 or 15 feet away and on the opposite side of the road from Valton's rumshop, he saw Nicholas Dolor enter Ma Daddie's shop and ask his father to give him a rum. Dolor's father answered and told the accused to go and give Guy his money; until he did so he would not get rum. When a nip of white rum, previously ordered by Dolor's father, was handed over, the accused took it and drank all of it; and according to Louison's evidence:

> "The accused said: 'Good! I am going to give Guy the money. I am going to kill his arse now!' The accused had a ..... cutlass. The accused went outside. I went outside also ..... and went and stood by the road on Valton's side ..... There was a van there ..... Guy was leaning on the front part. I saw Gregory (the accused) coming from the back of the van and he raised his cutlass. He made a blow and said: 'In your arse. ..... I saw the blow strike Guy.... on the side of his neck .... Guy fell backwards .... I saw a lot of people come around and I heard the accused say: 'Give me room, give me room let me finish him!' The accused raised the cutlass and he strike Guy with the flat side .... on his mouth. The accused said: 'You laughing for me?' I ran wasy .....".

Ellis James said that Guy Donacien was leaning, with head bent forward on the parked van and with his back to the road. While in that

/position.....

position he was struck by Nicholas Dolor who went up to him and aimed two blows with a cutlass one on the side of the neck and the other by his right "temple"; and,

> Guy fell to the ground. I saw the accused strike Guy with the flat side of the cutlass on his mouth. Guy did not get up from the ground - not at all. After the accused had struck Guy ..... on his mouth he scraped the cutlass on the high road ..... After he.... finished scraping his cutlass .... he went and washed his cutlass under a ..... pipe. .... On the night that that happened nothing at all was said between the two men."

I digress to point out that counsel for the appellant agreed that when he cross-examined these eye witnesses the events as related by the accused were not put to either of them and he gave as his reason for not doing so at the trial, that it had been put to each of them that he was not there at the material time. The cross-examination of Ellis James sought to show that he was not truthful. About five times it was put to him and although different reasons were advanced, about five times he denied that he was not at the scene.

So too Antoine Louison denied - on three different occasions - that he was not at the scene. He denied also that he was not telling the truth and he told counsel

> ".....the accused came from behind .... I did not see Guy and the accused having any trouble that day."

I return to the Crown's case. Following the incident near the van, the police were notified and Corporal Toby, with other policemen, went to the scene. When they got there, the accused spoke to the corporal saying:

> "Here am I, I am the one who kill the man."

When asked for the weapon which he used, Nicholas Dolor told the corporal that he had given it to Jones Valton. Valton handed

/over a.....

over a cutlass which Dolor admitted was the weapon he had used. Dolor was later escorted to the police station.

On the following morning - 5th July, 1982 - a post mortem examination was performed. Externally there were three injuries that could have been caused by a cutlass: (1) a cut 4 cms. long over the right side of the forehead penetrating to the surface of the skull (2) a 9 cm. long deep gaping wound over the left lateral and posterior aspect of the neck severing the muscles, lateral bony process of a vertebrum and the jugular vein and (3) a deep and gaping cut just below the left shoulder joint cutting into bone and severing attached muscles and small blood vessels. In the opinion of the pathologist, death was due to haemorrhage from the cut wounds. Under cross-examination he told counsel this about the injury to the neck:

> "I would say that the direction of the cut is such that it is more likely to have been made from the back or side than from the front."

Nicholas Dolor dictated a statement to Inspector Agdoma of the Police Force the same morning. The inspector recorded it thus:

> "He gave my father a blow and threw him down. I left him there and went to my home for my cutlass. I returned and hit him two or three times with the cutlass and he fell down. I left him on the ground. I heard people said that he died. I just stayed there and police came and arrest me."

It is the case for the prosecution that the statement was a free and voluntary statement to which Dolor made his mark because he could not sign his name. Its admissibility was challenged at the trial and I shall come to that.

Briefly then the case for the prosecution was based on accounts of eye witnesses and on a number of statements attributed to the accused (by an eye witness and by the police).

/The case....

THE CASE FOR THE ACCUSED.

Nicholas Dolor gave a detailed account of his activities on the 4th July, 1982 from about 8.00 a.m. when he went to a river to bathe. Then, around 10.00 a.m., not having eaten anything, he began drinking white rum. He remained at James Valton's rumshop until about 1.00 p.m. and then he went home. Within an hour he was at the dance hall that adjoined Valton's rumshop; and while there Guy Donacien accused him of taking produce from his (Donacien's) garden. An argument developed in which Donacien threatened to kill him before sundown that day, and so he moved away. Donacien followed him and there was an exchange of words and a fight in which Donacien pulled a rachet knife from his pocket. Again he (Dolor) moved away. He ran and then he saw Donacien bounce his (Dolor's) father.

At about 5.00 p.m. he went to the home of Ma Dinah for his pay of for a job of weeding he had done and he also took away his cutlass fom under some bananas.

About 5.30 p.m. he bought and drank "a half of rum" at a Mrs. Fletcher, and while on the way home he saw Guy Donacien in the vicinity of a van parked outside of Jones Valton's dance hall. In the words of Nicholas Dolor this is what occurred:

> "I was walking towards him ..... when I reached near him he charged on me with his rachet in his hand. When he pelt a blow with the rachet I barred him with the cutlass. He charged on me. We both fell to the ground and we rolled. We wrestled on the ground and we get up. I looked and I saw I had blood on me. And Jones took the cutlass ....."

The accused denied making the statements attributed to him by the prosecution witnesses, though it is correct to say that greatest attention was given to the statement which he allegedly dictated to the Inspector of Police, and I shall deal with that aspect of the case later.

/When he.....

When he was cross-examined Nicholas Dolor said:

> "I did not at all strike Guy Donacien with my cutlass. We wrestled on the ground..... I did not strike Guy at all that night."

When he was asked by the Jury whether he could explain how Guy Donacien got the cut on his neck, the accused said he did not know how Guy got that cut.

I wish now to deal with the manner in which the dictated statement was treated at the trial particularly because that aspect of the matter seemed to form the main, though not the only, cause for complaint on appeal.

Inspector Agdoma explained that at the La Caye Police Station he was told, in Dolor's presence, that Dolor had killed a man named Guy Donacien with a cutlass at Derniere Riviere, the previous day; and he was handed a cutlass by the police constable who made the report. Agdoma said that he cautioned Dolor and Dolor made a statement which he wrote. According to the Inspector: "No threats, promises, or inducements were made to the accused." It was at that point that objection was taken by counsel, "to the admissibility of the statement;" and the ground of the objection was, that "what purports to be the signature or mark taken was made by a person not duly authorised or empowered by the law to take the mark....."

It is relevant to point out here that counsel did not suggest -- even remotely - that the statement had been obtained by any unfair method such as fear of prejudice, hope of advantage, oppression or violence. Having stated the ground of his objection and there being no cross-examination of the Inspector, the Jury were asked to withdraw and they did so. Again counsel did not seek to cross-examine the witness. He simply made a legal submission to which the Director of Public Prosecutions replied. Then the trial Judge overruled the objection, stating that the submissions were misconceived and not

/applicable.....

applicable to the circumstances of the case. The Jury returned to Court and after they were checked counsel informed the Court that he had another "ground to argue." The Jury was asked to withdraw, and in their absence, counsel was invited to indicate clearly all the grounds in support of his objection to the admissibility of the statement. Counsel stated as follows: "that the accused did not make the statement, never made the statement and therefore it was not free and voluntary in that he had not signed it. The particulars of what he did not say were, "I left him there and went to my home for my cutlass. I returned and hit him two or three times with the cutlass and he fell down". He did not say that to the police. It is not free and voluntary." That was the extent of the grounds of objection to admitting the statement in evidence. The Director of Public Prosecutions did not wish to reply and the Court ruled (a) on all the evidence considered and submitted as to the circumstances surrounding the taking of the statement it was satisfied to the extent that it feels sure that the statement of the accused was freely and voluntarily given and had not been obtained by fear of prejudice or hope of advantage exercised or held out by a person in authority or by oppression, threats, duress or violence, in breach of Judge's Rules; (b) in so far as the submission is that the accused did not sign the statement or did not say certain words or things mentioned in the statement these are issues of fact and matters for the jury to decide. The submissions are overruled; the statement ruled admissible. The Jury returned to Court and the statement was admitted in evidence. Inspector Agdoma completed his testimony. In the only cross-examination on the statement, the inspector gave these answers:

> "The accused made a statement to me. He did not tell me that he had had some trouble with Donacien earlier that day. The accused did not tell me that earlier that afternoon Donacien had run behind him with a rachet."

When Nicholas Dolor gave evidence in his defence, he said:

/"I did not....

"I did not tell the police that I left him there and went home for my cutlass. I never told the police that I return and hit him two or three times and he fell down. I can't sign my name at all. The police never read any paper to me at the police station. When the police charged me I told him I had nothing to say."

This Court did not have the benefit of the questions posed by counsel when he cross-examined the inspector but I think it is a fair observation that there were different assertions made in the cross-examination from those stated in evidence in chief. The latter were not put in cross-examination and related to the second ground of objection to the admissibility, supporting the allegations of fact that the accused did not make the entire written statement attributed to him, did not sign his name to the statement that he did in fact, give. By implication and from the substance of the first ground of objection, the accused was conceding that his mark was made to part only of the statement admitted in evidence. He dictated only some of what was recorded.

Briefly then the case for the accused was that neither Antoine Louison nor Ellis James was an eye witness to the infliction of the fatal injuries to Guy Donacien; indeed they were not at the scene; further, that he did not make the oral statements attributed to him nor did he dictate the whole of the recorded statement. Only a part of it was made by him. He was unable to explain how Donacien got the injuries that proved fatal though he could say that earlier that day he had been threatened by Donacien they had a fight and later when Donacien attacked him with a rachet knife he used his cutlass to ward off the attack. They wrestled on the ground and he then got up leaving Guy Donacien on the ground, with blood on him.

THE APPEAL

Counsel submitted that the trial Judge erred when he admitted as evidence the written statement attributed to the appellant by the

/Inspector.....

Inspector of Police, and on which the appellant had made his mark because he could not append his signature. It was counsel's contention that the document was not "legally receivable". Counsel relied particularly upon section 2(2) of the signatures to Petitions Ordinance, Cap 117 of the St. Lucia Revised Ordinance 1957, which, he submitted, must be the proper law governing the circumstances of the instant case where the appellant could neither read nor write. Counsel contended that it was only when the law of St. Lucia remained silent on a point that there could be justification for invoking the law of England; and so the Judges Rules could not be regarded as applicable to taking a statement from this appellant, as was done by the police. Mr. Foster also cited the Police Ordinance 1965 sections 4,14 and 24; and he contended that when these sections were read and interpreted beside section 2(2) of Cap 117, the Inspector of Police was left without any power to take a mark.

Counsel submitted too that since this case involved the liberty of a subject then there ought to have been strict compliance with the statutory provisions referred to above.

Counsel emphasised in his argument that it was not shown on any part of the document admitted in evidence that the document was made at the request of Dolor.

It was the further contention of counsel for the appellant that the trial Judge ought to have held a voire dire - whether counsel raised the matter or not - in order to examine and determine the circumstances in which the mark was made, as only then could it be decided whether the document was admissible or not.

Counsel cited the case AJODHA vs STATE and other appeals (1981) 2 All. E.R. 193 and contended that while it was good authority for situations requiring a voire dire procedure the case did not extend to a consideration of persons who are illiterate.

/On ground....

On ground 2(b), already quoted, counsel for the appellant submitted that when dealing with the statement of the appellant, the trial Judge ought to have given not a general but a specific direction on the burden and standard of proof. He ought to have reminded the Jury that in considering the written statement the onus was on the prosecution to prove that it was free and voluntary and that the standard of proof was beyond any reasonable doubt.

The third ground of appeal (above) comprised the following main heads:

A. Self Defence.

Counsel submitted that the trial Judge had merely stated the law generally and had erred by failing to explain to the Jury the law of self-defence as it related to the facts of this case; further, that there were "multiple directions which were diagonally opposed one to the other". Consequently the Jury was confused and left with no alternative but to return a verdict of guilty of murder. In support of his submission counsel cited BALDEO DIHAL v R, 2 W.I.R. 282.

Counsel for the appellant also contended that the direction given the Jury was grossly inadequate and incomplete as there was no reference by the trial Judge to the proviso in section 55 of the Criminal Code. He referred to certain passages lifted from the summing up, and argued that these were grave and serious misdirections that had the effect of negativing the proviso in section 55.

The final submissions under this head were that (1) the trial Judge withdrew the case for the accused by making a finding of the fact that the appellant had not touched Guy Donacien and (11 by referring exclusively to the fact that the accused said he did not strike Dolor with the cutlass, without referring to his barring in the manner shown and to the consequences, in law, of doing so, the trial Judge did not assist the Jury as he ought to have done.

/B. Provocation....

B. Provocation.

Counsel for the appellant submitted that the trial Judge went wrong when he directed the Jury that there could not be any intent for the offence of manslaughter. He referred to two passages from the summing up, which in his view, when taken together amounted to a misdirection because the intent to cause death was present but there were extenuating circumstances, Counsel relied on LEE CHUN CHUEN v R. (1963) 1 All E.R. 73.

The final point under this head was a criticism of a part of the summing up, which, in counsel's view, would only confuse the Jury and he quoted the headnote in the case ANTOINE & BASS v R (1970) 13 W.I.R. 289.

C. Accident.

Counsel did not attach any great reliance on this head. He merely submitted that "there were no directions on the burden or standard of proof required when dealing with accident specifically", and he listed five cases to support his submission. It is not necessary to enumerate them here.

The Director of Public Prosecutions in relying to the submissions and arguments of counsel for the appellant, pointed out that the essence of the complaint about the written statement was not that Nicholas Dolor did not make it freely and voluntarily but that (a) the Inspector of Police was not a proper person to take the mark of the accused and (b) the accused did not make the entire statement attributed to him. Counsel submitted that the arguments advanced on behalf of the appellant revealed confusion of the powers when a statement is made to the police in a criminal case with those when an oath is required to be administered by a policeman who is a Justice of the Peace. She contended that the case before the Court was governed by the Judges Rules and that the Inspector of Police was not

/a police ...

a position to take the mark. He was the senior police officer present and the Judges Rules had been properly followed.

On ground 2(b) the Director of Public Prosecutions submitted that the directions given by the trial Judge about the statements were adequate and proper and the Jury could not have been left in doubt where the burden of proof lay or about what standard of proof was necessary. She referred to passages of the summing up and submitted that it was not necessary for the Judge to use any particular formula in his directions to the Jury. Counsel for the Crown cited HENRY WALTERS v THE QUEEN (1969) 2 A.C. 26.

As far as the third ground of appeal was concerned, the Director of Public Prosecutions dealt with accident, Self Defence and Provocation, in that order, indicating in the summing up what the trial Judge told the Jury on each aspect. She submitted that throughout the summing up the trial Judge did what was expected of him putting both sides of the case, and directing the Jury properly on what was the case for the accused as far as concerned accident, self defence and provocation.

THE STATEMENT RECORDED BY THE INSPECTOR

I have already dealt with the circumstances that surrounded its admission into evidence at the trial. It may be pointed out here that there was no evidence adduced to challenge or contradict that given by the Inspector to the effect that no threats, promises, or inducements were made to Nicholas Dolor. There were no other circumstances related in connection with the making of the statement despite the fact that the second ground of objection was, in part, that it was not a free and voluntary statement. The objection as argued before us was not that it was not free or voluntary but that in law, it ought not to have been admitted in evidence because

/Inspector.....

Inspector Agdoma was not given statutory authority to do what he did. So that the application of section 2(2) of Cap 117 was not on the issue of the voluntariness of the statement except that counsel contended that it was not shown on the document that it was written at Dolor's request.

Chapter 117, the Signatures to Petitions Ordinance, is an Ordinance to regulate the writing of petitions, letters and similar documents in the names of persons other than the writers; and subsection (1) of section 2 makes it an offence punishable on conviction, to append "to any petition or letter or similar document the name or mark of any other person without his knowledge and consent." The relevant part of subsection (2) reads: "Where the ..... mark of any person is appended to any petition or letter or similar document at his request, the scribe who ..... makes the mark on the document shall certify under his hand on the document that the document was read and explained to the person whose ..... mark is so appended and that the person appeared to understand its contents and approved of them and that the person's ..... mark was appended at his request ....." The subsection requires that the certificate indicate the full name, occupation and usual place of abode of the scribe, and makes if an offence - punishable on summary conviction - to fail to append the certificate or to append an untrue certificate. There is a third subsection which shows that where the scribe is a Justice of the Peace or Notary Royal, then his signature shall be deemed to be equivalent to the certificate required under subsection (2).

The Police Ordinance 1965 indicates, in section 4, the ranks comprising the Force in order of seniority. Gazetted officers are: Chief of Police, Deputy Superintendent and Assistant Superintendents; and, by virtue of section 14 of the Ordinance, every Gazette officer shall be ex officio a Justice of the Peace. An Inspector ranks after an Assistant Superintendent and is not a Gazetted Officer. So that

/an Inspector.....

an Inspector is not ex officio a Justice of the Peace. Section 24 concerned the power of a police officer in charge of a police station to cause measurements, photographs, finger-prints, palm and foot impressions of a person in custody for certain types of offences, to be taken. The section did not assist here -

It is clear that a statement dictated to and written by a police... after he has cautioned a person that he is not obliged to say anythi... unless he wishes to, and that what he says may be given in evidence, i... not a petition or letter or similar document and therefore does not fa... within the Signatures to Petitions Ordinance. The statement taken ... the police is given in the course of determining whether or by whom a criminal offence has been committed and it is subject to rules that differ from the provisions of the above Ordinance which applies to documents of a different nature and probably are limited to other occasions.

The statutoty provisions on which counsel for the appellant relie... do not, in my view, apply to the statement recorded by the Inspector, who did not pruport to act as a Justice of the Peace but as the senio... police officer present at the Police Station when the accused elected ... dictate a statement.

Judges' rules and Administrative Directions to the Police were printed at the Government Printing Office in St. Lucia about twenty years ago and they become effective on the 30th June, 1964. From that time until now they have been accepted and have been used as the guidelines or general principles whenever relevant, in criminal cases. That is to say, whenever investigations by police officers have to be conducted. The Rules are concerned primarily with admissibility in evidence against a person, of statements and answers to questions - whether oral or written - given by that person to police officers.

The statement attributed to Nicholas Dolor was given by him afte...

/caution.....

caution and upon his own election. It also showed on the face of it that it was true and correct and that he made his mark because he could not sign. The mark was not made by anyone else but Dolor, in the presence of a witness, Marlyn Tobie. The other circumstances in which it was taken have been stated earlier and there was no claim that the Judges' Rules were flouted or offended in any way whatever. Evidence was given to show that the statement was free and voluntary and in the absence of any positive assertion to the contrary there was no duty on the trial Judge to hold a voire dire. I do not agree with Counsel for the appellant that there is such a duty on a trial Judge whether the question of admissibility is raised by counsel or not. There must be some evidence to suggest to the trial Judge that the circumstances in which the statement or signature was given were such as to make it involuntary; in any event in the instant case every opportunity was given to counsel for the appellant to deal with the matter in the absence of the jury. As it turned out counsel never really made it an issue that the statement was not free and voluntary. He raised other issues - whether the accused said what was recorded or only part of it, whether the accused did not tell the Inspector details which were not recorded - which were properly left to the decision of the Jury as issues of fact; and before this Court, he submitted that there had been non-compliance with section 2(2) of Cap 117. A trial within a trial was not necessary in order to decide whether the statement was "legally receivable". The Inspector of Police had the power to do what he did when he recorded the statement from Nicholas Dolor, and in my view ground 2(a) of the appeal cannot succeed.

The remaining grounds of appeal all concerned directions by the trial Judge to the Jury; and before I deal with the specific aspects I wish to make some general observations. It is clear, I think, that since the Jury must depend, to a significant extent, on what is told them by the Judge, then the individual members must be placed and left

/in the.....

in the position where each of them understands the nature of the case advanced on each side; and in the final analysis, it is the effect and the impact of what is said inthe entire summing up, on any and every particular aspect, that must be looked at rather than at the style of the language or formula that is followed. To isolate certain statements from their surroundings and from the summing up taken as a whole, may give a different idea from the idea which is given when the summing up is considered as a whole. It must be remembered that, as was said by Lord Diplock, in WALTERS v THE QUEEN (1969) 2 A.C. 26:

> "By the time he sums up the Judge at the trial has had an opportunity of observing the jurors .....it is best left to his discretion to choose the most appropriate set of words in which to make THAT jury understand that they must not return a verdict against a defendant unless they are sure of his guilt .....".

In the instant case, as I have already pointed out, the voluntariness of the statement was not really challenged; but in my view, if it had been, then it would have been the duty of the trial Judge - and not of the Jury - to determine whether or not the statement was free and voluntary. In ADJODHA v THE STATE and OTHER APPEALS (1981) 2 All E.R. 193 Lord Bridge referred to the judgment of Hyatali C.J. in the Court of Appeal of Trinidad and Tobago, quoting thus: ".... the controversy which has developed in the courts of the West Indies and Guyana is not one over the principles governing the admissibility of confessions, since all the courts agree, and rightly so, that whenever an issue is raised whether or not an accused made a confession voluntarily it is the duty of the trial Judge to determine the issue on the voire dire." It must be clear then that it was not correct to say that the onus was on the trial Judge to remind the Jury that the prosecution had to prove to them that the statement dictated by Nicholas Dolor was free and voluntary.

In summing - up to the Jury the trial Judge explained the case for

/Nicholas Dolor as....

Nicholas Dolor as it applied to the dictated statement. The trial Judge considered the statement sentence by sentence comparing and contrasting the facts therein with the facts related by the witnesses for the prosecution and by Dolor himself. He reminded the Jury also that (a) it was the Crown's case that, Inspector Agdoma wrote only what was dictated to him by Dolor; and (b) it was Dolor's case that Inspector Agdoma inserted facts that were not dictated and did not state facts that were dictated to him, and then the Inspector did not read over the statement for him. The Judge told the Jury that it was for each of them - as a Judge of the facts - to decide whether or not Nicholas Dolor had (I) dictated each of the recorded sentences and (II) told the Inspector the other facts which he said the Inspector had omitted. There, each of them had to determine how much weight to attach to such of the sentences as they were satisfied were actually dictated by Nicholas Dolor.

In the light of the issues raised I am satisfied that the trial Judge dealt fully and adequately with the recorded statement. It may be true to say that, in the case of each of the sentences in the statement, when he considered it the trial Judge did not say each time that the prosecution had to prove it or that the specific sentence there being considered had to be proved to the extent that they felt sure of it; but it was clear from what the trial Judge told the Jury, (who had sat with him for about a week), that their minds were directed to their function of being the sole judges on the facts of the matter, to the law that the burden of proof rested exclusively upon the prosecution and there was no onus on the accused to prove anything at all, and also to the law that the prosecution had in proving the case, to satisfy them to the extent that they felt sure of the facts before acting upon them. I am unable to agree with the contention that the directions of the trial Judge on the burden and the standard of proof, so far as they concerned the statement dictated by Nicholas Dolor, were inadequate or unclear.

/Ground 2(b).....

Ground 2(b) cannot succeed.

I come to ground three.

The trial Judge, in the summing up, explained that it was the case for Nicholas Dolor that what occurred on the night of 4th July, 1982 as he and his witness described it for them, might very well have caused him "to defend himself in those circumstances when there might have been some degree of apprehension to his life", or might very well "have caused him to be provoked", and further, Dolor was urging for their consideration that it was an accident. The trial Judge dealt with each of these defences separately.

After explaining that unlawful harm is harm that is intentionally caused without any justification or excuse, the judge explained the law of self defence as it applies in St. Lucia, referring to and quoting from the sections of the Criminal Code that show in what situations the use of force can be justified (sections 46 to 49 inclusive). While it may be fair criticism to say, as counsel for the appellant said, that it was unnecessary to tell the Jury about the circumstances of self-defence as contemplated by sections 46, 47 and 48, and that the direction to the Jury should have been confined to the provisions of section 49 of the Criminal Code, with respect, I do not agree that the trial Judge confused the Jury. No confusion could have arisen in the minds of the Jury who were made fully aware of the uncomplicated issues in the case; because, as I see it, the Jury would have appreciated fully that the case for the Crown was that Guy Donacien died as a result of injuries received in a deliberately violent, unjustified and unprovoked attack with a cutlass by Nicholas Dolor, and that the case for Nicholas Dolor was - so far as concerned his self-defence - that he was attacked by Donacien who was armed with a knife and he barred the attack with his cutlass which he happened to be carrying at the time. Then they wrestled on the ground before Nicholas Dolor was able to get up. The case for

/Dolor was,.....

Dolor was, also, that prior to the actual attack on him with the knife, Guy Donacien had threatened to kill him before sun down and indeed they had fought earlier in the day. So that the Jury would have understood, and indeed were told, that they had to decide on the circumstances in which Donacien met his death. It is accepted that the Jury were directed on the law which permits the use of force in the case of extreme necessity even to killing.

Nor do I find that the trial Judge failed to explain the law of self-defence as it related to the facts of this case. After quoting section 49 of the Criminal Code the trial Judge told the Jury that they would have to apply that law to the circumstances of this case, especially bearing in mind that it was Dolor's allegation that Donacien was armed with a knife while the Crown's allegation was that Donacien was not armed at all. He told them that if they believed that Donacien was armed with a rachet knife then, were the circumstances in which he was supposed to have been using it or was about to use it such as would have indicated to Dolor that there was present harm that might have endangered his life?

The trial Judge directed the Jury that if they believed the evidence which the prosecution led and found as a fact that there was no rachet knife and that Donacien was not armed, then could Dolor have been defending himself with the cutlass or barring any attack on him?

He pointed out that they would have to ask themselves "whether the injuries could have been sustained by barring". He reminded them that there was evidence from the accused to the effect that he never struck Donacien at all and directed them that they would have to ask themselves whether the injuries could have been sustained without striking Donacien. The trial Judge also told the Jury this:

> "You will consider the evidence and decide whether this defence could arise. But I am leaving it /with you....

> with you so that you could think about it in so far as the suggestion that Guy Donacien had a rachet in his hand at that time and that he rushed the deceased and he barred and then they fell on the ground; and you consider it in the totality of the evidence, the suggestion of threat and so forth. So was there any justification for causing the death of Guy Donacien in those circumstances. You will decide whether that is so."

In the course of his summing up there were a number of other occasions when the Judge dealt with the facts of the case so far as they were relevant to self-defence. I shall refer to one other occasion. The Judge explained what was grievous harm and then directed the Jury thus:

> "So you have to ask yourself whether in those circumstances the defendant - if you accept the evidence - could have reasonably apprehended that at that particular moment of time, if you accept the evidence that the deceased had his rachet ..... might have caused him dangerous or grievous harm as I have indicated to you.....and you will decide whether falling on that day there was this justification. If you are left in doubt as to whether he acted in self-defence or not he also would be not guilty..... You will have to decide whether there was a rachet or not. If you are left in doubt..... you resolve that in favour of the defendant..... If there was no rachet was he defending himself? ..... The defendant is saying he had a rachet he was barring him and there was this struggle..... You will decide..... whether indeed there is this aspect of justification having due regard to the evidence as it has been submitted for your consideration."

I was unable to find in the summing up what counsel for the appellant described as "multiple directions which were diagonally opposed one to the other".

Counsel for the appellant also contended that the direction of the trial Judge was grossly inadequate because he failed to give any direction on the proviso contained in section 55 of the Criminal Code. Section 55 reads as follows:

> "Notwithstanding the existence of any matter of justification for force force cannot be justified

/as having....

as having been used in pursuance of that matter

(a) which is in excess of the limits prescribed in the section of this Title relating to that matter

(b) which in any case extends beyond the amount and kind of force reasonably necessary for the purpose for which force is permitted to be used;

Provided however, that force shall not be deemed to be in excess of the limits prescribed in this Title on the ground only that the degree of force used was in fact unnecessary if it is proved that the person using the force acted in the honest belief based upon reasonable grounds that the use of such force was necessary."

The facts and circumstances of the instant case and the directions given were such that there was no need for the trial Judge to have further directed the Jury on the proviso just quoted. Again, with respect, I must disagree with counsel.

As for the defence of provocation, the trial Judge told the Jury

"The accused in the evidence which he has submitted for your consideration, bearing in mind that no burden is placed on him to prove anything, is inviting you to find that there might very well, on the totality of the evidence, be a finding of provocation. You will again have to decide whether that is so or not."

Then he referred, in his direction, to the Criminal Code of St. Lucia and told them that they must consider the case as a whole and decide whether the case for the crown rebutted the proposition of provocation. The trial Judge explained the provisions of sections 171 and 172 of the Criminal Code. Section 171 described matters of extenuation which, if proved, would amount to manslaughter and not murder if the person accused intentionally caused the death of another by unlawful harm; and section 172 set out those matters that may amount to extreme provocation to one person to cause the death of another. As he quoted the sections to the Jury the trial Judge explained the meanings of phrases contained in the sections for example, when dealing with section 171 he said:

"Whoever intentionally causes the death of another by unlawful harm shall be deemed guilty of manslaughter - the intentional emphasis (being) on the the cause as distinct from the intent to commit the offence - who intentionally causes - that means of his own free will - causes the death of another by unlawful harm shall be deemed to be guilty

/only of.....

> only of manslaughternot of murder if either of the following matters of extenuation is proved; but again I point out to you that no burden is placed on the accused ....."

So that section 171 was quoted as it stood in the Code; and then the trial Judge explained to the Jury subsections (a) to (c) inclusive, which were the relevant matters of extenuation referred to; and as he explained each of the matters of extenuation he reminded the Jury of the facts of this case as advanced by the prosecution and by the accused. So too with section 172, subsections (a), (b) and (d) of the Criminal Code. The trial Judge dealt with those matters that might amount to extreme provocation and he related them to the facts and circumstances of the case before him. (Subsection (c) of section 172 referred to adultery committed in view of the accused and was clearly irrelevant here).

Then the trial Judge directed the Jury on non-extenuating provocation as laid down in section 175 (1) and (2) of the Criminal Code and he related that law to the facts of this case.

In my view the summing up on provocation was careful and correct and it did not reflect the misdirection alleged on behalf of the appellant nor indeed any other misdirection of which the appellant could now take advantage. The Jury could not have been confused by anything said in the directions on provocation during the course of the summing-up; and, as with the defence of self-defence, the burden and the standard of proof were properly explained to the Jury and provided no cause for complaint.

In so far as the defence of accident was concerned it seemed clear that in leaving that to the Jury the trial Judge was acting with care and caution. He told the Jury that the accused was also urging for their consideration, "that it was an accident in that he didn't

/strike....

strike him but they rolled on the ground and there the man might have sustained injuries." He directed them that they should decide whether or not that was so on the totality of the evidence including regard to the injuries. The trial Judge pointed out when he was dealing with the evidence of Nicholas Dolor that Nicholas Dolor had said that he and Guy Donacien were fighting earlier that day and he ran away; then later there was the incident in which Donacien charged on him with a rachet and he barred it with his cutlass before they fell to the ground rolled and wrestled. The trial Judge said then:

> "..... You have to ask yourself whether those injuries could have been caused by rolling on the ground or wrestling on the ground in these circumstances. The Crown is saying no..... it is a deliberate act of striking Guy Donacien when he was leaning on the van and not merely rolling on the ground as the defendant invites you to find. He is saying that in those circumstances it was an accident. He didn't have the intention and he didn't do the act and if youfind that that is so, well, not guilty of murder, not guilty of manslaughter. If you are left in doubt as whether it was an accident or not, not guilty of murder, not guilty of manslaughter."

The trial Judge referred to the nature of the injuries as described by the doctor and told the Jury yet again:

> "If they were rolling on the ground you have to ask yourselves whether you would think those injuries could have been sustained by Guy Donacien in the circumstances, the Crown is saying no, but the defendant invites you to find that was so and it was an accident..... and accident in which he didn't strike, he didn't have the intent, he didn't do the act ....."

I think it is clear from a consideration of the summing up that the trial Judge directed the Jury on several occasions that the burden of proof remained throughout on the prosecution and that the accused did not have to prove anything at all. He told them that (1) the Crown'case was that there was no room for manslaughter or for

/self-defence....

self-defence or for provocation or for accident; (II) the Crown had to prove its case to the extent that they felt sure that the accused committed murder; and (III) the prosecution could only succeed on the strength of its own case. In my view, the facts and circumstances required no more than was said by the trial Judge on the defence of accident, which did not, in my view really flow from any of the versions related at the trial.

For the reasons which I have set out, the Court is unanimously of the view that the appeal should be dismissed and the conviction and sentence affirmed.

E.H.A. BISHOP, (Acting)
Justice of Appeal

I Agree.

L.L. ROBOTHAM,
Justice of Appeal

I also agree.

N.A. BERRIDGE,
Chief Justice (Acting)