SAINT LUCIA

IN THE COURT OF APPEAL

Criminal Appeal No.19 of 1994

BETWEE N:

JAMES BAPTISTE

Appellant

v

THE QUEEN

Respondent

Before: The Rt. Hon. Sir Vincent Floissac
The Hon. Mr. Justice C.M. Dennis Byron
The Hon. Mr. Justice Satrohan Singh

Appearances: Mr. Marcus Foster for the Appellant
Mr. Errol Walker, D.P.P. for the

1996: January 29;30;
February 12.

JUDGMENT

BYRON, J.A.

On 10th November 1994 the appellant was convicted of Murder after trial by jury presided over by d'Auvergne J. The deceased, David JnBaptiste, was his cousin and they had been on good terms. On the afternoon on the 15th day of May 1993 they had been gambling outside Darcy's rum shop at Barre Denis in the quarter of Castries. Towards the end of the afternoon the deceased was heard to ask the appellant to pay him the money he owed and the appellant to say that he had already paid, whereupon the deceased grabbed the appellant by his collar and both men held on to fight. The deceased broke a bottle and held the broken glass in his hand and the appellant had an ice pick in his hand and they were trying to stick each other and arguing.

There were several people around and they intervened and prevented the fighting. The appellant put the ice pick in his pocket and the deceased threw the piece of bottle by the gutter. The appellant a man of about 46

years of age was seen to go by Mr. Darcy's van in front of the shop and cry before leaving the scene. The deceased, a much younger man in his early twenties, left and returned in a clean shirt and was sitting on a stool outside the shop when the appellant returned.

The time that had elapsed was an issue in the case and there was some variance in the estimates given by the prosecution witnesses. Andrew JnBaptiste testified that the altercation occurred about 5.30 pm and that the deceased returned after about 20 minutes and the appellant about half an hour later. Curtis Hippolyte said the altercation occurred about 6.00 pm the deceased returned after about 45 minutes and the appellant about 10 minutes after. Charles Augustin said it occurred about 4.45 pm the deceased returned about 2 hours later and about 4 hours later he saw the appellant going up the road. Joseph Caul who was in Mr. Darcy's Dance Hall said he saw the deceased in his wounded state after about 5.00 pm. P.C. Chicot testified that at 6.00 pm the appellant was already at Central Police Station making a statement. It would seem that the jury could have reasonably considered that the elapsed time did not exceed 30 - 45 minutes.

When he returned the appellant was bare backed and holding his hand behind his back. He went to the deceased who was sitting and said to him something like "look me, do what you doing now". He then hit him with the cutlass across his belly then again on his arm. The witnesses saw blood come from the arm and as the deceased started to get up the appellant struck him again by his neck and blood spurted. The deceased walked away fell to the ground and died soon after.

It was argued on behalf of the appellant that he was trying to hit the deceased with the flat side of the cutlass, and not to cut him. The consultant pathologist Dr. Stephen King testified that there was a minor incision on the back of the left upper arm which could have been a glancing blow and a cut to the neck severing the jugular vein and cutting the trachea or airway just below the thyroid cartilage. This wound caused the death. In his opinion these wounds could have been caused by a cutlass used with moderate force as no bones were cut, only soft tissue. There was no injury to the belly.

The appellant went to the police station and made a statement to the effect that he had come to report himself because the deceased attacked him with a cutlass and when he tried to disarm him the cutlass accidentally cut

him.

The appellant made a brief statement from the dock. He said that he did not intend to kill the deceased and lashed him with the cutlass to scare him and that he lied in the statement he made to the police because he was ashamed that he had killed his best friend. He added that he and the deceased were playing cards and drinking rum since 2.00 pm and "it is the rum that caused that". He called one witness Cletus Andrew who said that he saw them playing cards and drinking together since 3.00 pm and when he saw them they were laughing.

The evidence therefore revealed that the possible defenses to the crime of murder of self-defence and accident which were raised in the appellant's voluntary statement to the police were subject to compelling rebuttals including the appellant's own admission that he had lied in raising them. Consequently self-defence was withdrawn from the jury and no criticisms have been levied on that ground.

The defenses specifically raised by the appellant in his statement in court were his lack of intention to kill and his intoxication. The evidence of the prosecution witnesses, however, made it necessary for the learned trial Judge to direct the jury on the issue of provocation although the appellant had not said in terms that he was provoked, in accordance with the settled practice, described by Lord Tucker in **Bullard v R** [1961] 3.AII E.R. 470:

> "It has been long settled law that if on the evidence, whether of the prosecution or of the defense, there is any evidence of provocation fit to be left to the jury, whether or not this issue has been specifically raised at the trial by counsel for the defence and whether or not the accused has said in terms that he was provoked, it is the duty of the judge, after a proper direction, to leave it open to the jury to return a verdict of manslaughter if they are not satisfied beyond reasonable doubt that the killing was unprovoked."

The grounds of appeal raised questions on the learned trial Judge's failure to give any direction on the effect of the appellant's admission that he had lied to the police, and on alleged errors of law in her directions on intoxication and provocation.

LIES

The proposition that it is very important for a jury to be carefully directed on the effect of a conclusion that an accused person is lying, was examined in

two recent decisions of this court in Solomon v R. St.Lucia Grim. App. No.5 of 1994 and Williams v R. St.Vincent and the Grenadines Crim. App. No.10 of 1995. Briefly stated the principle is that whenever the jury are invited to regard, or there is danger that they may regard, lies told by the accused person, or evasive or discreditable conduct by him as probative of his guilt of the offense for which he has been charged a trial Judge is required to warn the jury against the natural tendency to think that if he is lying he must be guilty. See **R v Richens** [1993] 4 All E.R. at 877.

In **R v Goodway** [1993] 4 All E.R. 894 at p.900 Lord Taylor C.J. explained that in order to assist the jury to consider the factors relevant to a proper assessment of the value of such lies as tending to show guilt:

> "the direction should be along the lines indicated in R v Lucas [1981] 2 All E.R. 1008. That is to the effect that the lie must be deliberate and must relate to a material issue. The jury must be satisfied that there is no innocent motive for the lie and should be reminded that people sometimes lie, for example, in an attempt to bolster up a just cause, or out of shame, or out of a wish to conceal disgraceful behaviour..."

In my view a warning was required in this case. The appellant admitted that he inflicted the fatal injury unlawfully but raised issues about his mental state. Did he intend to kill? Did he lose his self-control as a result of extreme provocation? If the jury resolved those questions in his favour he would have been entitled to a manslaughter verdict and not one of murder. In raising those issues he admitted that his initial explanation to the police, alleging that the deceased had attacked him with the cutlass was a lie.

In such a circumstance the learned trial Judge had to ensure that the jury did not fall prey to the natural tendency to think that because he had lied he must be guilty of murder. He was entitled to have the learned trial Judge explain to the jury that they should look at the evidence and determine whether there was any motive for the lie other than his guilt. He gave such a motive when he said he responded to a feeling of shame, for killing his best friend a member of his family. The learned trial Judge should have pointed out to the jury that in assessing this evidence they could have considered whether his immediate and voluntary attendance at the police station lent support to his explanation for telling the untruth at that time.

INTOXICATION

Counsel complained that the trial Judge wrongly withdrew the issue of

the appellant's drinking from the jury when she said:

> "there was a lot of talk about rum. Accused said that it was the rum that caused him to act as he did. However, intoxication is no defense to any criminal chargeMembers of the jury, none of the evidence given in court has indicated that James and David were drinking. The accused however has told you he was drinking with David. You must consider this piece of evidence along with all the other evidence."

The unqualified declaration that intoxication is no defense to any criminal charge is inaccurate as it collides with the specific statutory provisions in Section 22 of the Criminal Code which makes it a defence in the special circumstances prescribed.

Intoxication induced without the consent of the person accused by the malicious or negligent act of another person as a result of which at the time of the act he did not know what he was doing or that it was wrong is a complete defense to any criminal charge resulting in acquittal. Insanity caused by intoxication even if it is only temporary is just as much a defense as insanity caused by other causes. The evidence in the case did not include any information to show that the appellant's intoxication was induced without his consent or that he did not know what he was doing or that what he did was wrong. The learned trial Judge would therefore have been justified in ruling that there was no evidential basis for putting these defenses to the jury.

The provision relevant to the evidence in this case is Section 22[4] which reads:

> "Notwithstanding anything captained in sections 71 to 77 inclusive of this Code, intoxication shall be taken into account for the purpose of determining whether the person charged had formed any intention, specific or otherwise, in the absence of which he would not be guilty of the offense."

This sub-section means that although voluntary drunkenness does not provide a complete exemption from criminal liability, it can exculpate an offender in those cases where its presence prevents the accused person from forming any intention necessary for the commission for the offenses with which he has been charged. In relation to this case, if the jury were satisfied that the appellant was by reason of his drunken condition incapable of forming the intent to kill he could not be convicted of murder but would be liable to a manslaughter conviction.

It can be argued that this sub-section does not make intoxication a defence as such, as it only operates to require the jury to consider whether

the evidence of drinking could throw doubt upon whether the appellant had formed the specific intention to cause death. But this is exactly what he pleaded when he said that he did not intend to kill, it is "the rum that caused it". There can be no doubt that the direction of the learned trial Judge deprived the appellant of the opportunity of having the jury consider the evidence of his drinking as a relevant factor in determining whether he did form the specific intention of causing the death of the deceased.

This omission was compounded by the unfortunate comment in which it was suggested that the statement of the appellant was not evidence "in court" leading to the inference that it carried less weight than the prosecution evidence.

On the other hand it is fair to say that the evidence on this issue was weak in the sense that the nature and quantity of rum consumed was not identified nor was there any evidence of its affect on the appellant. Yet, it was nonetheless the duty of the learned trial Judge to leave it for the consideration of the jury, as there was some evidence from which inferences of fact could have been drawn.

EFFECT OF INTOXICATION ON PROVOCATION

The appellant submitted that his intoxication should have been put to the jury as a factor to be taken into account in his favor in considering provocation. The law is well settled that, for reasons of public policy, in considering whether a person having the power of self-control to be expected of an ordinary person would have reacted to the provocation as the accused did, the fact that the defendant was the worse for drink at the time should not be taken into account, even though the drink would, if taken by him, have the effect of reducing an ordinary person's power of self-control. On the other hand being taunted with one's drunkenness or tendency to drunkenness [of which there was no evidence in this case] may go to the gravity of the provocation. See **R v Morhall** [1995] 3 W.L.R. 330. This submission therefore fails.

THE DEFINITION OF MURDER

Counsel for the appellant argued that in putting provocation to the jury, the learned trial Judge made several legal errors .

At the outset of her treatment of this issue she said:

> "Members of the jury every ingredient of that offence of murder must be established to your satisfaction, so that you feel sure before you can convict the accused. The ingredients that have to be proved to your satisfaction are as follows before you can convict. There must be death of another person.
> The death must be by unlawful harm.
> The accused must have intended to kill the deceased.
> Remember the definition? "Whoever intentionally, (I just assisted you with the word "intention") caused the death of another person by unlawful harm is guilty of murder."

The definition thus put was an incomplete and consequently misleading quotation from Section 170 of the Criminal Code which defines murder as follows:

> "Whoever intentionally causes the death of another person by unlawful harm shall be deemed to be guilty of murder, unless his crime is reduced to manslaughter by reason of such extreme provocation, or other matter of partial excuse, as in the following section is mentioned."

In my opinion this constituted a grave misdirection. An important ingredient of the offence for murder was that the prosecution had to prove that the crime was not reduced to manslaughter by extreme provocation or other matter of partial excuse. The omission to include this when explaining the ingredients of the offence of murder to the jury was serious and could have led them to conclude that once they were satisfied of those specified ingredients the prosecution had established the crime of murder.

Although there was an occasion during her summation when the learned trial Judge read the definition accurately there was no indication that there was anything wrong with the section referred to here. It is necessary to emphasise the importance of care because if the jury are given two conflicting definitions without any explanation, they may be unable to determine which one is correct. It is difficult to assess the relative importance they may attach to different parts of a summation. Anything said about provocation in other parts of the summation may not have corrected the impression created by this misdirection.

ERROR RE SECTIONS 171(b) And 171(a)

In explaining the circumstances under which the crime of murder may be reduced to manslaughter she said:

> "Section 171 states, "Whoever intentionally causes the death of another person by unlawful harm, (what I told you just now), shall be deemed to be guilty of manslaughter and not of murder ar attempted murder if either of the following matters of extenuation is proved:
> (1) That he was deprived of self-control by such extreme provocation given by the other person.
> So this accused person must have been deprived of the power of self-control by such extreme provocation and that the provocation must be given by the other person. So it must be provocation given by David JnBaptiste to the accused.
> (2) Or, members of the jury, if he at the time, (that is James the accused) 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."

In order to deal with the complaints made about this direction it is desirable to refer to Section 171 of the Criminal Code which states as follows:

> "171. Whoever intentionally causes the death of another person by unlawful harm shall be deemed to be guilty of manslaughter only and not of murder or attempted 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 self-control,
> (c) that, in causing death, he acted in the belief, in good faith and on reasonable grounds, that he was under a legal duty to cause the death or do the act which he did;
> (d) in the case of a woman who causes the death of her child being a child under the age of twelve months, that although she was not insane, she was deprived of the power of self-control by a disorder of the mind produced by childbearing."

It will be observed that the direction of the learned trial Judge included an incomplete and thereby misleading quotation from Section 171(b), which could have conveyed the false impression that proof that the appellant acted from terror of immediate death [of which there was no evidence] was an ingredient in establishing the defense of provocation.

It is only Section 171(a) which refers to provocation. Section 171(b) does not describe provocation. It qualifies the rule against the use of excessive force in lawful self-defence. In such cases a person can have his crime reduced to manslaughter if he shows the extenuating circumstance that

the excess of force was caused by his terror of immediate death and he lost his self-control as a result. It was therefore irrelevant to the case as the learned trial Judge had specifically withdrawn self-defence from the jury on the basis that the appellant was not relying on it and there was no evidence on which to ground it.

In that context the jury must have been left with the impression that provocation meant either a deprivation of self-control or terror of immediate death. This must have confused them and improperly placed in their mind a concept about provocation which the conduct of the case as a whole indicated was totally against the appellant.

WHAT IS PROVOCATI0N

Counsel also drew attention to that section of the summation where the learned trial Judge told the jury:

> "In extreme provocation, the deceased must have attacked the accused with a deadly weapon, and you have to look at the facts to see if this as so, members of the jury. "A broken piece of bottle", could it have caused death, at that time. But as I told you, you consider this first confusion. Consider the time span between that confusion and when David came back. Did David have anything in his hand? Did David attack the accused? Remember the accused told you, and every witness also told you that David did not have anything in his hand. But did this accused come back to scare David? Bearing in mind to scare David he used a cutlass and he used it towards the neck, and that they were close to each other."

This direction was emphasized in several other passages of her summation. The direction that in extreme provocation the deceased must have attacked the accused with a deadly weapon was wrong. The expression deadly weapon or deadly force appears in Section 1 72(b) and in 175(2) of the Criminal Code, neither of which was relevant to this case. Both of these subsections deal with fighting as provocation. In 172(b) the use of fatal force during a fight can be extenuated if at the commencement the deceased gave the impression that he was going to attack with a deadly weapon or in a deadly manner. In 175(2) the extenuation is removed if it appears that the person using the force had purposed or prepared to do so before he had received any blow in the fight.

This was not a fight. The provocation relied on was an unlawful assault and battery and the accompanying circumstances of violence and insult.

Such conduct can amount to provocation as explained in Section 172(a) of the Criminal Code as follows:

> "172. 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 gestures or other circumstances of insult or aggravation as to be likely to deprive a person, being of ordinary character, and going in the circumstances in which the accused person was, of the power of self-control."

Nowhere in her summation did the learned trial Judge make any reference to this. Her omission to do so was a serious error. The evidence adduced by the prosecution witnesses included allegations that the deceased had committed an assault and battery upon the appellant by grabbing his collar, which was accompanied with violence, by breaking a bottle and trying to stick him with the broken glass and words and other circumstances of insult and aggravation which included the contested and public accusation of debt, and their relationship, the deceased being the much younger cousin of the appellant, bringing the case within Section 172(a).

THE ORDINARY MAN

The sub-section also requires that the acts of provocation be of such a kind, 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. A rationale for this provision is given Lord Diplock in R v Camplin [1978] A.C. 705:

> "The public policy that underlay the adoption of the "reasonable man" test in the common law doctrine of provocation was to reduce the incidence of fatal violence by preventing a person relying upon his own exceptional pugnacity or excitability as an excuse for loss of self-control."

It is incumbent on the learned trial Judge to direct the jury to apply the test of the ordinary man. Assistance on the method to be employed was authoritatively given in the case of **R v Camplin** [1978] A.C.705 where Lord Diplock said:

> "The judge should state what the question is using the very words of the section. He should then explain to them that the reasonable man referred to in the question is a person having the power of self-control to be expected of an ordinary person of the sex and age of the accused, but in other respects sharing the same characteristics as they think would affect the gravity of the provocation to him; [and that the question is not merely whether such person would in like circumstances be provoked to lose his self-control but also whether he would react to the provocation as the deceased did]."

There does not seem to be any difference in meaning between the ordinary man in Section 172(a) and the reasonable man as explained in **R v Morhall** 1995 3W.L.R. by Lord Doff at p.336:

> "In my opinion it would be entirely consistent with the law as stated in section 3 of the Act of 1957, as properly understood, to direct the jury simply with reference to a hypothetical person having the power of self-control to be expected of an ordinary person of the age and sex of the defendant, but in all other respects sharing such of the defendant's characteristics as they think would affect the gravity of the provocation to him: See **Reg v Camplin**."

MEANING OF PREVIOUS PURPOSE

Counsel submitted that the learned trial Judge misdirected the jury on the meaning of previous purpose.

The learned trial Judge said: "Section 175(a)states:

> The crime shall not be deemed to be reduced to manslaughter if there was no loss of self-control, that he was not in fact deprived of his self-control. You will bear in mind the time the incident happened and sub-section {b} reads:
> "If he acted wholly or partly from a previous purpose, to cause death or harm, or to engage in an unlawful fight",
> in other words was it a premeditated act? Now the Crown has placed for your consideration, that after the fracas, with the ice pick and the bottle, James went up the road in the direction towards his home and David went in the opposite direction towards his home. Then James came back holding something behind his back while David was already there (by the rumshop) sitting on a stool.
> The Crown has placed for your consideration, that James had the intention to do what he did. The defence on the other hand is telling you this is not so. Bearing in mind that evidence of the witness for the Defence, the son of the proprietor of the shop who said that he heard these men outside talking and laughing, therefore there was no premeditation and that therefore there was no intention to kill. But it is for you Members of the jury to say if that is so."

Subsection 175(1)(b) in fact reads as follows:

> "175(1) Notwithstanding proof on behalf of the accused person of such matter of extreme provocation as in the third preceding section is mentioned, his crime shall not be deemed to be thereby reduced to manslaughter if it appears, either from the evidence given on his behalf or from evidence given on the part of the prosecution,
>
> (b) that he acted wholly or partly from a previous purpose to cause death or harm or to engage in an unlawful fight, whether or not he would have acted on that purpose at the time or in the manner in which he did act but for the provocation;"

Once again an incomplete quotation has led to a complete misunderstanding. The learned trial Judge gives the wrong impression that premeditation means the same thing as intention to kill. But this is clearly not the meaning. This subsection means that if the person intended to cause the death or to harm the deceased before he was provoked he could not rely on provocation that occurred while he was operating under an intention to cause death.

The learned trial Judge, in failing to explain that previous purpose meant a purpose that existed before the provocation, seriously damaged the appellant's case. This sub-section was not relevant to this case and the learned trial Judge's directions had the effect of withdrawing provocation from the jury on the ground that the conduct relied on to support the defense was a previous purpose and therefore a non extenuating circumstance.

This constituted a serious misdirection.

COOLING TIME

Counsel complained that the learned trial Judge misdirected the jury on the nature of "cooling time" throughout her summation. These directions include the statement:

> "I have read out to you, members of the jury from the Criminal Code, that for there to be acceptable provocation by law there must be no cooling time, the accused was provoked by the deceased and the accused struck the fatal blow immediately or within short period of time".

The phrase "cooling time" has been used to describe the interval of time between the act of provocation and the fatal act referred to in section 175(c) which states:

> "175(1) Notwithstanding proof on behalf of the accused person of

such matter of extreme provocation as in the third preceding

> section is mentioned, his crime shall not be deemed to be thereby reduced to manslaughter if it appears, either from the evidence given on his behalf or from evidence given on the part of the prosecution;
> (C) that, after the provocation was given and before he did the act which caused the harm, such a time elapsed or such circumstances occurred that a person of ordinary character might have recovered his self-control."

It also refers to the common law requirement that the provocation must cause "sudden and temporary loss of self-control".

As explained in R v Duffy [1949] 1 All E.R. 932:

> "Provocation is some act or series of acts done or words spoken...which would cause in a reasonable person and actually causes in the accused, a sudden and temporary loss of self-control, rendering the accused so subject to passion as to make him for the moment not master of his mind."

The law distinguishes between a desire for revenge and provocation, providing no extenuation for the former. The conscious formulation of a desire for revenge where a person has had time to think and to reflect negatives a sudden, temporary loss of self control which is the essence of provocation. The longer the period that elapses between the provocation and the infliction of the fatal injury the more likely that it was not done as a result of sudden and temporary loss of self control.

In more recent times the interval of time between the provocation and the fatal injury has had to be considered in the light of domestic violence cases where provocative acts have been alleged to span a period of years. In these cases the same principles have been applied and explained to indicate that although the fatal injury need not follow immediately on the provocation it must be close enough in time for it to be found that the accused person acted from sudden and temporary loss of self control. In **R v Ahluwalia** [1992] 4 All E.R. 889 Lord Taylor C.J. said:

> "Nevertheless, it is open to the judge, when deciding whether there is any evidence of provocation to be left to the jury and open to the jury when considering such evidence, to take account of the interval between the provocative conduct and the reaction of the defendant to it. Time for reflection may show that after the provocative conduct made its impact on the mind of the defendant, he or she kept or regained self-control. The passage of time following the provocation may also show that the subsequent attack was planned or based on motives, such as revenge or punishment, in consistent with the loss of self-control and

> therefore with the defense of provocation. In some cases, such an interval may wholly undermine the defense of provocation; that, however, depends entirely on the fact of the individual case and is not a principle of law.....
> We accept that the subjective element in the defense of provocation would not as a matter of law be negatived simply because of the delayed reaction in such cases, provided that there was at the time of the killing a sudden and temporary loss of self-control' caused by the alleged provocation. However, the longer the delay and the stronger the evidence of deliberation on the part of the defendant, the more likely it will be that the prosecution will negative provocation."

The issue therefore poses two questions for the jury. The first a question of fact is whether the appellant was deprived of his self control at the time he inflicted the fatal injury, and the second a matter of opinion, also for the jury, is whether a person of ordinary character in the same circumstances and with similar characteristics as the appellant might have recovered his self-control by the time the fatal injury was inflicted?

It would seem to me that where the lapse of time was in vicinity of 3045 minutes the jury must be given a fair opportunity to decide those questions.

It certainly cannot be correct to give the jury the impression that a verdict of manslaughter on the ground of provocation is only open to the appellant if inflicted the injury immediately after he was provoked.

There was evidence which the jury could have considered on the factual question of whether the appellant was deprived of his self-control. The evidence included his crying in public after the separation, the way he was dressed when returned, and the words he uttered and his actions.

The evidence that he armed himself with a cutlass which could support a conclusion that he formed the intention to kill is inconclusive on the issue of whether he acted on a desire for revenge or under a loss of self-control, there being no evidence of deliberation on his part.

The question of opinion as to whether a person of ordinary character might have recovered his self-control had to be considered by reference to the public accusation of welshing on the gambling debts, the circumstances under which they were separated, the appellant's emotional reaction, the duration of the elapsed time, and the age and other characteristics of the appellant, including his relationship with the deceased.

The way in which the learned trial Judge addressed this issue could

have influenced the jury to conclude that the evidence that the appellant had inflicted the injury after going away and returning completely negatived provocation. I think that was a serious misdirection.

The effect of these misdirections cannot be minimized. The appellant was deprived of an opportunity to have the jury fairly consider the defenses, which could have resulted in a verdict of manslaughter. In the circumstances I would set aside the conviction for murder and substitute a conviction for manslaughter.

SENTENCE

Evidence was adduced of the appellant's good character. He had no previous convictions. The crime of manslaughter is however a serious first offense. It is possible to consider the suggestion of his counsel that he tried to hit the deceased with the side of the cutlass as a mitigating factor if one puts the most favourable construction on the evidence. It is nonetheless clear from the verdict that the jury rejected that interpretation of the evidence. After considering the gravity of the offense, the appellant's age and previous character, I would impose a sentence of 15 years.

C.M.DENNIS BYRON
Justice of Appeal

I Concur.

SIR VINCENT FLOISSAC
Chief Justice

I Concur.

SATROHAN SINGH
Justice of Appeal