

SAINT VINCENT AND THE GRENADINES

IN THE COURT OF APPEAL

CRIMINAL.APP.NO. 16 OF 1997

BETWEEN:

FELIX MATTHIAS

Appellant

and

THE QUEEN

Respondent

Before:

The Hon. Mr. Satrohan Singh

Justice of Appeal

The Hon. Mr. Albert Redhead

Justice of Appeal

The Hon. Mr. Albert Matthew

Justice of Appeal [Ag.]

Appearances:

Ms. Nicole Sylvester for the appellant

Mr. Brian Cottle for the respondent

December 9, 1997
December 12, 1997

Criminal Law - Murder conviction - Death sentence - Defence of accident - Discrepancies between different statements given by accused - Possible defence of self-defence - Meaning of 'malice aforethought' - Issue of provocation - Failure by judge to leave all possible defences to the jury for their deliberations - Failure to establish requisite mens rea for murder. Appeal allowed. Conviction set aside.

JUDGMENT

SATROHAN SINGH J.A.

Sometime around midnight on May, 7, 1996, Reginald Williams (the deceased) died from a stab wound from a screwdriver on his neck. On June 30, 1997, the appellant was convicted by a jury of the murder of Reginald Williams. He was sentenced to death by Cenac J. He appeals to this Court from his conviction. At his trial, the only evidence as to how the deceased may have received the fatal wound came from different statements given to the police by the appellant and from his evidence on oath. These statements and evidence to a certain extent, are in conflict with each other. However, there was no evidence from the prosecution witnesses or other circumstances to show that the incident may not have happened according to one or other of the versions given by the

appellant.

In his caution statement to the police, the appellant said that on that day, some three hours before the deceased met his death, he and the deceased were in one Ackie's shop drinking. There the deceased accused him of telling one Barrie that the deceased stole his weed. He denied squealing on the deceased. The deceased then went home. The appellant who lived in the same house also went home. At the house the deceased again accused him of squealing on him and the deceased started cursing. The deceased then took a screwdriver and said "he tired wid this kind ah thing and he said I must left him out. So he began to fire stabs with the screwdriver at me and I hold his hand and bend it back with the screwdriver and the screwdriver chuke him in his neck and after he fall down on the bed a get frighten and a run out the house it was an accident. The same screwdriver he always have it and when me and he gat noise he always pull it on me. He said in cross examination he was frightened and confused when he made this statement.

To Eucharist Woodley, his sister, the appellant said, "I went home and met Reginald in the shop drinking." They went home. "Reginald had a screwdriver in his hand pounding the screwdriver all over the house and say he cannot take this thing anymore and that he (the appellant) pushed him and he fell on the screwdriver and he dead." To police Inspector James, the appellant said "officer, I just got home and meet me cousin dead." Before the jury and on oath the appellant said:

"On 7th May, 1996 I went home. I met Reginald home. That was about 6:45 p.m. He was drinking a bottle of rum and he was smoking weed. I said, "Good evening" to him. He said to me, "Good evening", and I lie down on the bed with a book. I was reading and about three hours later about 10:30 p.m. Reginald came into the bedroom. He was quarreling and said since I came there, everything that happened there I take it out and he is tired and fed up. He is going to kill me and with that he reached, leaned over to the bed and draw a screwdriver from his boots. The boots were by the bed when I saw him draw the screwdriver get up off the bed and he keep stabbing at me with the screwdriver

and I was moving back and he keep on coming to me stabbing. I was completely blocked in. There is no way I could get out because he had the entrance of the door blocked off The onliest thing I could do was try to defend myself, try to get way the screwdriver from him. When doing that he was stabbing at me so vicious with the screwdriver, aggressive. My hand held on some place on his hand and his hand bend back and be accidentally get wound and I see him fall on the bed and when he fall I get so frightened which I was frightened from the beginning, but I was more frightened then. After I ran out the house. I didn't take away the screwdriver from the deceased. In cross examination he said "when Reginald attacked me I was trying to defend myself by getting away the screwdriver."

For the Crown to have established a case of murder against the appellant. they had to prove beyond a reasonable doubt that the appellant. with malice aforethought, by an unlawful act killed Reginald Williams. Malice aforethought in this context meant an intention on the part of the appellant to cause the death of or to do grievous bodily harm to Williams or knowledge that the act causing death will probably cause the death of or grievous bodily harm to Williams i.e. the appellant must have had foresight of the probable consequences of his act.

From what can be gleaned from these statements and evidence, there is disclosed (1) that the deceased may have stabbed himself in a struggle with the appellant after he had attacked the appellant with the screwdriver thereby making him the author of his own demise or (2) an attack by him of the appellant, which caused the appellant to push him away whereupon he fell on the screwdriver attracting the defences of accident, self defence or provocation (3) an attack on the appellant, by the deceased and the appellant in an attempt at defending himself inflicting the injury on the deceased when he turned the arm of the deceased holding the screwdriver back on the deceased, attracting the defence of self defence and (4) no evidence of malice aforethought.

Given these circumstances, it was incumbent on the trial judge to leave with the jury for their deliberations not only the issue of accident but also the issues of self defence and provocation. This the judge failed to do. The principal ground of appeal not surprisingly therefore was that this omission was fatal to

the conviction of murder. That it was a miscarriage of justice in that it deprived the appellant of a possible acquittal on the issue of self defence or of a reduced verdict of manslaughter on the issue of provocation.

There is merit in this argument. I agree with it. Despite the fact that the only defence ran by the appellant was that of accident, the law is settled that the judge, on the evidence was duty bound to leave the issues of self defence and provocation for the consideration of the jury. I therefore hold as a matter of law that there was a miscarriage of justice created by this omission of the judge's in his directions to the jury and that this omission deprived the appellant of a possible complete acquittal of the charge against him. On a totality of the evidence in this matter, the element of the requisite mens rea for murder was not established by the prosecution. And, on any of the versions given by the appellant, there is not disclosed any unlawful act of the appellant. The injury found by the doctor was not inconsistent with the version given by the appellant that disclosed the act of self defence. Even if it can be said that the jury may have disbelieved every version given by the appellant, the verdict would still be wrong because they would then have been left with no fact or circumstance capable of establishing the mens rea for murder or manslaughter. There was not a scintilla of evidence to suggest a reason why this appellant would want to murder his first cousin Mr. Williams. The verdict would then have had its foundation in speculation or surmise.

For these reasons, I would allow this appeal and set aside the conviction and sentence.

SATROHAN SINGH
Justice of Appeal

I Concur.

ALBERT REDHEAD AD
Justice of Appeal

I Concur.

ALBERT MATTHEW
Justice of Appeal