GRENADA

IN THE COURT OF APPEAL

CRIMINAL APPEAL NO.3 OF 1999

BETWEEN

MICHAEL YEARWOOD - APPELLANT

AND

THE QUEEN - RESPONDENT

BEFORE:	The Hon. Dennis Byron	Chief Justice
	The Hon. Justice Satrohan Singh	Justice of Appeal
	The Hon. Justice Albert Redhead	Justice of Appeal

Appearances: Mr. K. Radix and Mr. L. Noel for the appellant
Mr. C. Nelson, D.P.P for the Crown.

1999: July 6, 8

JUDGMENT

BYRON C. J.

The appellant appealed against his conviction for murder before the Hon. Lyle St.Paul J. and a jury on the 15th day of March 1999. At the hearing we dismissed the appeal and promised to give our reasons in writing. The issues in this case were not complex and so I have decided to explain in this brief manner the reasons for our decision.

The Background Facts

It was undisputed that the deceased Jefferson Gilbert died about 1.45 am on 29th August 1998 from a stab would inflicted by the appellant shortly before at a Dance Hall at the Grand Mal Community Centre.

The witnesses called by the prosecution described the incident graphically. Jason Gilbert the brother of the deceased said that there was a time when he tried to reenter the party and the appellant and another man was blocking the entrance. The appellant told him “if you fucking bad pass in this doorway”. Jason entered through another entrance.

Stephen Greenidge was leaving the hall when he saw and heard the appellant and another guy preventing people from entering freely. He got out by squeezing through. He then saw the deceased inside the hall quarrelling with the appellant for about “45 seconds” asking what is the difference between the two doors. He soon noticed that they were at the bottom of the steps quarrelling. He saw the appellant step towards the deceased and do something which looked like a punch to the chest. He said he was drinking a beer and was about an arms length away from the appellant who then turned to him and punched him on the left side of his back. He then heard the appellant say “if you looking for it tonight you going to get it." As he walked away Greenidge felt cramps and put his hand to the area where the appellant had punched him and felt and saw that he was bleeding from a stab wound.

Another witness, Devon Vincent described how he saw the appellant stab the deceased at the bottom of the stairs and made a lash at another fellow who made a dash towards him. He said that he heard the appellant say “Ah killing all ah you mother cunt tonight”.

Another witness was a police officer Bernard Thomas who was at the hall in plain clothes. While there the appellant asked him why he was pushing him, to which he replied that he was not pushing but the appellant was standing on his foot. The appellant took a knife from his pocket and said “this is my fucking space

you standing in" and continued using other obscene words and threats. Thomas went outside and while there, about 1.00 am he saw the appellant jam the deceased against a wall at the bottom of the stairs take the knife from his back pocket and stab the deceased and say "Anybody mother cunt come again dead". The deceased staggered towards him and fell on the ground. The appellant came and looked at the deceased on the ground and left. The deceased was taken to the hospital where he died shortly after. It should be pointed out that one of the prosecution witnesses, Gibson Parris, described a scuffle before the stabbing in which two guys and the appellant exchanged punches for about "20 seconds".

Against this the appellant said that the police officer was smoking marijuana and he told him to set an example, that it was the deceased who came to him and quarrelled with him and said if you bad why don't you come downstairs. The deceased approached him again and asked him if he is afraid to come downstairs. He said that he went downstairs and the deceased approached him and said:

> "He feel to kill me mother cunt here tonight. He had a bottle in his hand. He start to quarrel again. I see two guys coming across. One had a knife in his hand. When I see that a lot of things went through my mind because me sister was murdered forty feet from that area. The quarrel started back again. Then a scuffle started. I made a grab at the knife and I made a juke and ran. That is it."

The appellant called a witness Denis Martin. His evidence was that the appellant was surrounded by three fellows including the deceased and they had beer bottles in their hands and that a quarrel and fight broke out between them. He did not give evidence of the stabbing. Against that background the jury returned a verdict of guilty of murder.

The Summation

It was our view that the judge put the issues very fairly to the jury and invited them to consider whether on the evidence they could be sure that the appellant intended to kill the deceased because murder required the specific intent to kill. He also invited them to consider whether there was any doubt that the appellant had acted in self defence or the killing was accidental, in either case no crime would have been committed. He also invited them to consider whether the verdict of manslaughter was open on the ground that the appellant was provoked by words or conduct to inflict the fatal wound.

The Verdict

It was clear that the jury believed the version of the prosecution witnesses and in my view that version was supported and capable of justifying the verdict that they did in fact reach.

The Appeal

Counsel for the appellant sought to persuade us that irrelevant and therefore inadmissible evidence was admitted which prejudiced the appellant. Additionally he argued that the learned trial judge erred when he invited the jury to consider that evidence when they were dealing with the issue of the appellant’s intent. He was referring to the sequence of events which led up to the stabbing incident replete as the evidence was with obscenities. Unfortunately, the argument could not get off the ground. The evidence was too intimately linked sequentially for it to have been omitted without making the case unintelligible. In addition it provided evidence of surrounding circumstances which

was relevant to the intention of the appellant. Additionally it was relevant to rebut the defences of accident, self defence and provocation.

Counsel for the appellant urged that there were errors in the directions to the jury on the question of the specific intention for the crime of murder.

In dealing with this submission I can do little better than to refer to a part of the learned trial judge's summation on this topic which in my view does not leave room for criticism. I thought that he explained to the jury very clearly and emphatically not only that the intention to kill was an essential ingredient of the crime of murder but also described in clear and easily comprehensible language how to ascertain whether the intent existed.

> I tell you, an accused criminal intent or intention in relation to his voluntary act by consequence thereof is basically subjective to the accused. The accused's intent or intention is an inference drawn from his act and its relevant surrounding circumstances, viewed together. These surrounding circumstances may include, (1) The emotion or emotional motive. For example, hatred, jealousy or greed which prompted the accused to do the act. (2) The accused's reason or purposive reason or motive for committing the act or the ultimate purpose which the accused sort to achieve by committing the act. (3) The accused's desire for the consequence of the act. (4) The accused's subjective foresight or foreseeability of or subjective belief in the degree or probability of the consequence which degree may range from a mere possibility to a certainty or a mere certainty and: *(5)* The accused–s subjective honest or actual belief in the existence of certain circumstances which motivated the act.
>
> Again I tell you before you can convict the accused of murder, the Prosecution must satisfy you that at the time the wound was inflicted he intended to kill Jefferson Gilbert.
>
> The question you have to ask yourselves now, did the accused intend to kill Jefferson Gilbert? Now let us review the evidence for the Prosecution.–

He also submitted that there was an insufficiency of evidence on the issue of the specific intent to kill. Any review of the evidence rebutted that submission as there was abundant evidence from which a jury could find that the appellant intended to kill the deceased. Counsel for the appellant also submitted that the learned trial judge failed to put the defence adequately in that he did not relate the

appellant’s evidence to the issues and to direct the jury on the options open to them in dealing with that evidence.

This submission though eloquently put was rebutted by the summation itself which contained several examples of the judge doing exactly that. In fact at the very beginning of the summation the judge made that point very emphatically and it was repeated at several instances throughout the summation. Counsel for the appellant criticised the style of the style of the summation because the judge in his view made references to similar issues of law at various parts of the summation.

In my view the summing up was very concise and clear. This was a case where the judge decided to leave to the jury all the defences which could have been open to the appellant. It was therefore necessary for him to have dealt with each separately. To do otherwise would have been to run the risk of confusing the jury.

Counsel for the appellant also complained that the defence of provocation was inadequately left to the jury because the judge did not include those aspects of the prosecution’s case which could have been helpful to the appellant. What the learned trial judge did was to put the defendant’s case on provocation. He invited the jury to consider the defendant’s evidence and that of his witness on its own merit and only if they disbelieved him should they go on to consider the prosecutions evidence. This was putting the appellant’s case at its highest level. Unfortunately for the appellant, this was not a case where there was any material in the prosecution’s case which could have tipped the balance of credibility in the appellant’s favour on any of the essentials in his defence.

On the whole I thought that the directions the judge gave to the jury impeccably explained to the them their duty and the law. In my view the appellant

did not suffer any miscarriage of justice in this trial. There was ample evidence to support the finding of the jury and the legal issues were clearly and accurately explained.

It was for these reasons that the appeal was dismissed.

DENNIS RYRON
Chief Justice

SATROHAN SINGH
Justice of Appeal

ALBERT REDHEAD
Justice of Appeal