

SAINT VINCENT AND THE GRENADINES

IN THE COURT OF APPEAL

CRIMINAL APPEAL NO. 13 OF 2002

BETWEEN:

RUPERT YEARWOOD

Appellant

and

THE QUEEN

Respondent

Before:

The Hon. Mr. Albert Redhead

Justice of Appeal

The Hon. Mr. Adrian Saunders

Justice of Appeal

The Hon. Mr. Ephraim Georges

Justice of Appeal [Ag.]

Appearances:

Mr. O. Dennie and Ms. N. Sylvester for the Appellant

Mr. R. Gaspard, Director of Public Prosecutions, and Ms. S. Fraser

2003: July 1; 2
September 29.

JUDGMENT

- [1] **SAUNDERS, J.A.:** On the night of Friday 26th October, 2001, Rupert Yearwood, Kelvin Mapp and others were at a house at Calder. They played cards. They cooked. They amused themselves into the night, as they were eating, an argument developed between Mapp and Yearwood. Mapp began hurling abuses at Yearwood. After having his food, Mapp went to bed. But he rose early, at 4.00AM, and continued heaping curses on Yearwood. The caretaker of the house took exception to his conduct. Mapp was rebuked by the other men. But to no avail. He continued his invective against Yearwood. He accused Yearwood and the latter's family of being thieves. He threatened to go home for his cutlass. He left the group for about half an hour but he returned still carrying on with his abuse.

- [2] Yearwood for the most part ignored Mapp. Then about 6.00AM, according to the Prosecution witnesses, Yearwood abruptly got up and left. He said nothing. Between 10 to 35 minutes later (the accounts vary) Yearwood returned with a gun. He said, "Whey the fucking man dey, let him come out, leh me kill he mother cunt." Mapp ran inside the house and picked up two bottles. Yearwood shot him dead with a single bullet to the head.
- [3] Yearwood was convicted of murder and sentenced to death. He has appealed both his conviction and sentence. The principal grounds of appeal against conviction related to the trial Judge's directions on provocation and the failure to give a good character direction.

Provocation

- [4] Counsel for the appellant submits that the Judge neglected properly to direct the jury on aspects of provocation that relate to the burden of proof. Specifically, the Judge did not tell the jury that it was for the Crown to negative provocation beyond reasonable doubt. Counsel is right. The Judge erred in this regard. See: **McPherson v The Queen**¹.
- [5] It must be said however that there was here no evidence that Yearwood had suffered any sudden and temporary loss of self-control. The prosecution's case is that after enduring the insults, threats and abuse from the deceased, Yearwood left, said nothing, armed himself with a gun and returned to shoot the deceased. Those circumstances more suggested a case of revenge rather than one of provocation. Yearwood gave evidence on his own behalf. This was his account of the incident:

"...It was Kelvin [i.e. the deceased] who was cursing for food. Joel Fraser said to him, "You now wake up Kelvin is that your praise for the morning?" Kelvin told Fraser, "Don't tell me nothing. Let me come out of your fucking

¹ (1957) Cr. App. Rep. 213

house before I kill all ah you." I got up and put on my shoes in the house. Whilst putting on my shoes I saw Kelvin coming up from down where he lives. I observed him hiding a bag between some grass and some trees. I walked ahead, and he stood in the road and said. "You are a bad man and you running from me?" He had nothing with him then. He was standing behind me when he said this. I walked behind a house and went to where he hid the bag. I looked in the bag and observed a gun. I was so frightened I took up the bag with the intention of going to the nearest Police Station as I was of the view that he wanted to kill me. I took up the bag and came back to the house before going to the Mesopotamia Police Station. I saw him run up the house and pull two bottles from inside the house and said, "Oh fuck Tari find me gun". He was coming towards me with the two bottles. I tried to take the gun out of the bag and it went off accidentally. I was so frightened that I started to run....."

- [6] Assuming Yearwood's evidence to be substantially true, one must still ask does it disclose material suggesting provocation? A plea of provocation should only be left to the jury if there is evidence of provocation of the accused and secondly that such provocation caused him to lose his self-control. See: **Gilbert v The Queen**². In *Gilbert* Viscount Dilhorne stated the following:

In **Lee Chun-Chuen vs R** [1963] A.C. 220 Lord Devlin said at pp.231: "Provocation in law consists mainly of three elements, the act of provocation, the loss of self-control, both actual and reasonable, and the retaliation proportionate to the provocation. The defence cannot require the issue to be left to the jury unless there has been produced a credible narrative of events suggesting the presence of these three elements. They are not detached. Their relationship to each other – particularly in point of time, whether there was time for passion to cool – is of the first importance. The point that their Lordships wish to emphasise is that provocation in law means something more than a provocative incident."

In the light of section 3 of the Homicide Act 1957 these passages require to be qualified to the extent that since the passage of the Act of 1957, if there is evidence on which a jury can find the accused was provoked to lose his self-control, the issue of provocation must be left to the jury. This must be done even though in the Judge's opinion no reasonable jury could possibly conclude on the evidence that a reasonable person would have done so and that on the evidence a verdict of manslaughter would be perverse....

- [6] The jury here clearly rejected Yearwood's defence of accident. Viewing the evidence most favourably to the accused, while there may have been here

² (1977) 66 Cr. App. Rep. 237 @ 242

evidence of a provocative incident, there is no basis upon which it could be said that Yearwood had lost his self-control. Moreover his retaliation far outweighed whatever acts of provocation there may have been. See: *Alphonse vs The State*³. I would therefore hold that, notwithstanding the defect in the learned Judge's directions to the jury, there has been no miscarriage of justice and that had the jury been properly directed they would inevitably have convicted the appellant of the offence of murder.

Good Character Direction

- [7] Counsel for the appellant submits that the learned Judge erred in failing to give a good character direction and that this failure deprived Yearwood of due process and the protection of the law. The cases of **Aziz**⁴ and **Kizza Sealey**⁵ were cited.
- [8] These cases underline the principle that the good character of a defendant is relevant to his credibility and to the likelihood that he would commit the offence in question. Prima facie, where a defendant has a good character, appropriate directions should be given by the Judge as to the relevance of that good character. A direction on good character would be particularly relevant where the defence is one of accident.
- [9] Yearwood, in his evidence on oath, did not at all refer to his own good character. The only unequivocal evidence that Yearwood was of good character came from one of the Prosecution witnesses, a 37 year old man. That man said of Yearwood that he had known him from childhood and that he had never heard of him in trouble with the law. The witness said that he was surprised and amazed by this incident. A police officer who testified stated that during the time he had worked at the Stubbs Police Station, he had received one report of an incident involving Yearwood that he had investigated. He went on to say that Yearwood was a fairly

³ (1994) 48 W.I.R. 92

⁴ (1996) A.C. 41

⁵ Privy Council Appeal No. 98 of 2001

young chap at the time. The issue of the defendant's character was not further explored throughout the trial. Subsequently, it was revealed that in 1987 Yearwood was convicted of wounding.

[10] A Judge has a residual discretion to dispense with good character directions in certain circumstances. See: **Aziz** at pp. 53F. Based on the evidence that came out at the trial, the Judge here may have deliberately opted not to give any good character directions in light of the failure of the defence to raise the issue and the uncertainty as to the appellant's actual character. In my view the Judge was entitled so to do. I do not accept that this ground of appeal is a valid one.

Appeal Against Sentence

[11] Early on in the proceedings, the learned Director of Public Prosecutions conceded that this was not an appropriate case for the death penalty. I entirely agree with this concession. I would accordingly quash the sentence of death imposed upon the appellant. Instead I would order that the appellant serve a term of imprisonment of twenty (20) years.

Adrian Saunders
Justice of Appeal

I concur.

Albert Redhead
Justice of Appeal

I concur.

Ephraim Georges
Justice of Appeal [Ag.]