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IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 57/72

BEFORE: The Hon. Mr. Justice Fox (Presiding)  
The Hon. Mr. Justice Smith  
The Hon. Mr. Justice Robinson

CASPER CARTY v. REGINA

26th March, 1973

Appearances: Miss V. Hylton for Crown  
Applicant unrepresented.

FOX, J. A.:

The applicant was charged on an indictment for murder. He was convicted in the Clarendon Circuit Court on 21st March, 1972, for manslaughter and sentenced to imprisonment with hard labour for 12 years. This was the second trial of the applicant on that indictment.

The offence is alleged to have taken place on 14th November, 1970. The Crown's case was that on that date the applicant had thrown a lighted bottle on the dwelling house of Nerissa Wright. As a consequence of that act the house was destroyed and a little girl, Delores Douglas, received injuries from burning which subsequently caused her death.

By their verdict the jury negatived the existence of an intention in the applicant to cause death or serious bodily harm at the time of his act. They must have found that the applicant was guilty of an act which was unlawful and dangerous and which had resulted in death.

We do not think that there is any merit in the application for leave to appeal against conviction but are of a contrary view in relation to the application for leave to appeal

against....

against sentence. The applicant was 53 years old at the time of the commission of the offence. He was twice married and is the father of seven children with ages ranging from 20 years to 9 months. Four of these children are dependent on him for support. He had one previous conviction for unlawful wounding in June, 1963. Of him, the police officer who gave evidence of character said that he was a very hardworking and respected person in his community.

We agree that in sentencing the applicant it was proper for the learned trial judge to have taken into account not only the nature and quality of the unlawful and dangerous act which resulted in death, but also evidence of the motive for the act, that the amorous advances of the applicant towards Nerissa Wright had been rejected by her. Nevertheless, we are of the clear view that the sentence which was passed was excessive in the sense that it exceeded the demands of what is required for the deterrence of others and to express an appropriate retributive effect.

The applicant was convicted on 21st March, 1972. His application comes before this court one year and five days after that date. When he was sentenced he had been in custody for one and a half years. In the light of all these circumstances we are of the view that the appropriate sentence which ought to be substituted for the sentence passed upon the applicant at his trial is imprisonment with hard labour for a period of 4 years.

The application for leave to appeal against conviction is therefore refused. The application for leave to appeal against sentence is granted. The sentence of 12 years' imprisonment with hard labour is set aside and as a substitution therefor the applicant is sentenced to imprisonment with hard labour for four years.