

10/10/07

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 30/2006

**BEFORE: THE HON. MR. JUSTICE SMITH, J.A.
THE HON. MR. JUSTICE MORRISON, J.A.
THE HON. MR. JUSTICE DUKHARAN, J.A. (Ag)**

EGBERT ECCLESTON v R

**Mr. Terrence Ballantyne instructed by Richard Bonner & Associates for the
appellant**

Miss Opal Smith, and Mrs. Andrea Martin-Swaby for the Crown

September 29 and October 3, 2007

ORAL JUDGMENT

SMITH, J.A.:

On the 8th July 2006, the appellant was convicted in the Clarendon Circuit Court of manslaughter. He was indicted for murder. The particulars are that he, Egbert Eccleston, on the 3rd day of August 2002, in the parish of Clarendon murdered Solomon Jackson.

Counsel for the prosecution correctly based his arguments on the following: (1) The evidence of Mr. Clive Vydal, a fisherman who had gone out with others on the 1st August 2002 to Portland Rock. (2) They were there until the 3rd of August. (3) Some persons who were with them had gone back to land taking some of their fish which they had caught,

while they remained. Mr. Vydal said that he was in a hut, took a spliff and fell asleep. He was awakened by the deceased shouting; "No shoot me Stitch". When he looked he saw the appellant firing a gun at the deceased. He saw the deceased jump up and hold on to the appellant. The deceased told Vydal to run. Mr. Vydal ran off and the appellant fired shots at him too. He chucked off from the rock into the water and went into his boat, reversed, maneuvered it and managed to get away. He went to land.

The importance of this witness for the prosecution is that according to him he saw the appellant shoot the deceased. Mr. Albert Jagoo, another witness who was also at Portland Rock stated that he saw the appellant with a gun. Detective Sgt. Calbert Davis said that when he spoke with the appellant, he confessed that he shot the deceased because he had stolen his fish pot.

The forensic expert, Miss Dunbar, also stated in her evidence that gunpowder deposits were found on the hand of the appellant. Mr. Ballyntyne, for the appellant, criticized the manner in which the swabbing was done and complained that certain details of the examination of the swabbing were omitted. The defence of the appellant is an alibi, he said that he was not there. The jury by their verdict clearly rejected the alibi. The appellant told Sgt. Davis that he shot the man because he stole his fish pot.

The verdict of manslaughter clearly indicates that they accepted the police as a witness of truth and on the basis of what he said the appellant told him, they returned a verdict of manslaughter. We agree with counsel for the appellant that the directions of the learned trial judge were not structured but we are satisfied that the issues were clearly and fairly put to the jury. The judge made them understand that they should not convict the appellant merely because they reject the alibi, but they should go back to the Crown's case and consider the evidence adduced by the Crown and that they should only convict the appellant if they were satisfied beyond reasonable doubt that the Crown witnesses were speaking the truth.

We are of the view that it cannot be argued that there is any miscarriage of justice. We think that the accused did have a fair trial. Accordingly, we are of the view that the appeal against conviction should be dismissed. Having accepted the evidence of the police that the appellant said that the deceased had stolen his fishpot the jury concluded that the appellant was provoked, and that as a consequence of the provocation he killed the deceased. The appellant had one previous conviction.

We are of the view that in the circumstances 25 years for manslaughter by reason of provocation is manifestly excessive. In our judgment 10 years would be appropriate. Accordingly, we allow the

appeal against sentence. The sentence of 25 years is set aside and we substitute therefor a sentence of 10 years imprisonment at hard labour. Sentence is to commence as of 28th October 2006.