

JAMAICA

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IN THE COURT OF APPEAL

CRIMINAL APPEAL No. 149/1972

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BEFORE: The Hon. Mr. Justice Luckhoo, J.A., Presiding.
The Hon. Mr. Justice Fox, J.A.
The Hon. Mr. Justice Hercules, J.A.

IVAN FOWLES v. R.

K. St. Bernard for the applicant.

H. Downer for the Crown.

October 17, 26, 1973

LUCKHOO, J.A.:

When this application for leave to appeal against conviction in the St. James Circuit Court on September 26, 1972 for murder came before us Mr. K. St. Bernard, who appeared for the applicant by assignment, informed us that after a careful study of the record he could find no arguable ground of appeal. Having read the record ourselves we shared Mr. St. Bernard's view of the matter and refused the application for leave to appeal.

In this case the trial judge, Henry, J. delivered a full and fair summing-up in the course of which he dealt accurately with the law and the evidence relating to the case as a whole and particularly to the issues of provocation and self-defence raised by the applicant in his defence. Briefly, the case for the prosecution was to the effect that at about 6.30 a.m. on Sunday May 7, 1972, the applicant came to the deceased Uriah Davis' premises at Roehampton and attacked him with a machete inflicting severe bodily injuries resulting in the deceased's death soon thereafter. At the time of the attack the deceased was unarmed and was feeding his livestock. The prosecution tendered evidence of motive which may be summarised as follows. The deceased's sister in law Medina Williams had alleged that on the previous day she was raped by Hubert Fowles, the applicant's brother. Later that evening this allegation was brought to the attention of the applicant's mother by Alexander Morris, the common law husband of Medina Williams. The applicant's mother was distressed by the allegation made against her son Hubert and upon the applicant observing his mother's distress and ascertaining the cause of it

he became incensed and threatened to kill his brother Hubert as well as Medina Williams and her relatives. In pursuance of those threats he went in search of Medina Williams at about 2 a.m. on Sunday May 7, 1972.

The case for the defence was to the effect that the applicant went to the deceased to make a complaint that the deceased's goats had been tied to fruit trees on land in the ownership of the applicant's father and were feeding there. A complaint having been made by the applicant to the deceased to this effect a quarrel developed between them. The deceased ran into his house, returned with a machete and chopped five times at the applicant with the machete. With the aid of a stick the applicant disarmed the deceased and being vexed he made two "slaps" upon the deceased's body with the machete. He then left the district. On his return some nine days later he learnt that the police were looking for him. He went to the police station and was arrested and charged with the offence of murder.

The verdict returned by the jury was in our view one which they could reasonably and properly reach on the evidence and we can see no ground for interfering with it.