[2010] JMCA Crim 60

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 71/2008

BEFORE: THE HON. MR JUSTICE PANTON, P.
THE HON. MRS JUSTICE HARRIS, J.A.
THE HON. MISS JUSTICE PHILLIPS, J.A.

RAYMOND GOWIE v R

Robert Fletcher & Cecil J Mitchell for the appellant

Miss Natalie Brooks & Miss Keri-Ann Kemble for the Crown

5 July 2010

ORAL JUDGMENT

PANTON, P.

[1] This appellant Raymond Gowie was tried in the Home Circuit Court between 7 May and 19 May 2008. He was found guilty of the offence of murder, the particulars being that he, on 10 April 2004 in the parish of Saint Andrew murdered Romano Fook.

[2] On 21 May 2008, the learned trial judge, Mr Justice McIntosh, sentenced him to life imprisonment at hard labour with a specification that he should serve 30 years before becoming eligible for parole. A single judge of this court

granted the appellant leave to appeal on the basis that the defence of accident was raised but the learned trial judge had not given adequate directions in that regard.

[3] The original grounds of appeal filed by the appellant and supplemental grounds filed thereafter have been abandoned by learned counsel Mr Robert Fletcher who now appears for the appellant. However, we granted leave to the appellant to argue further supplemental grounds which were subsequently filed instead of those originally filed. The grounds are:

> "1. The learned trial judge in his summation failed to deal adequately with the defence of self defence which arose as a possibility on the facts. As a consequence the appellant was thereby greatly prejudiced and was thus deprived of a real chance of acquittal.
>
> 2. The learned trial judge so derided the appellant's account that the jury could have been left in no doubt that they were being directed to reject that defence and were being invited to view the appellant in an unfavourable light. In so doing he denied the appellant a fair trial.
>
> 3. The learned trial judge failed to leave to the jury the issue of provocation as a basis of ariving (sic) at a verdict of manslaughter in the case. This omission deprived the appellant of a complete and fair consideration of all the relevant issues at his trial.
>
> 4. The learned trial judge erred in not warning the jury not to draw an inference unfavourable to the appellant from evidence that the eyewitness was shot and injured because she was a witness in the case.
>
> 5. The sentence is manifestly excessive."

[4] Skeleton arguments were filed in respect of the first four major grounds of appeal.

[5] The Crown, represented before us by Miss Natalie Brooks and Miss Keri-Ann Kemble, filed skeleton arguments in respect of ground four and asked in those arguments that in the interests of justice the court should exercise its discretion and order a retrial.

[6] Mr Fletcher, in giving an overview of the appeal said that, all the appellant is asking for is an opportunity to have a fair trial which he did not receive in this trial. He said that the learned trial judge, as demonstrated in the transcript of the evidence of the proceedings, had been very aggressive in the management of the matter and in the course of that management, omissions of importance were made and that consequently the appellant's case was prejudiced. We hope that we do no violence to Mr Fletcher's submissions by doing that precis of it.

[7] We have carefully combed the transcript, particularly the summation by the learned trial judge. We are disappointed in the manner in which he dealt with the question of accident, bearing in mind that at the end of the summation he had been reminded by learned Senior Deputy Director of Public Prosecutions of the need to deal with that defence. We are further disappointed that, although he gave some directions on the question of self defence, he repeatedly told the jury that self defence did not arise, although there were times he said in the summation, it was a matter for the jury to decide. There was also evidence

that was placed before the jury which ought not to have been placed before them, in respect of the circumstances surrounding the death of a witness.

[8] In the circumstances, we have no choice, we feel, but to quash the conviction and to set aside the sentence. We however do not think it is out of place to remind trial judges of the need for great care to be taken in the management and trial of criminal cases. We are seeing many instances of convictions that have to be set aside for good reason because of failure to address clear cut issues that arise on the evidence. There are times when we see a cavalier approach to what appellants regard as a serious defence. We trust that our words will not fall on deaf ears or stony ground.

[9] The appeal is allowed, the conviction is quashed, the sentence is set aside and a new trial is ordered in the interests of justice. We urge that arrangements are made for this trial to take place as early as possible.