

Leroy Lamey

Appellant

v.

The Queen

Respondent

FROM

THE COURT OF APPEAL OF JAMAICA

JUDGMENT OF THE LORDS OF THE JUDICIAL
COMMITTEE OF THE PRIVY COUNCIL,
Delivered the 20th May 1996

Present at the hearing:-

Lord Keith of Kinkel
Lord Griffiths
Lord Jauncey of Tullichettle
Lord Nicholls of Birkenhead
Lord Steyn

[Delivered by Lord Jauncey of Tullichettle]

The issue in this appeal is whether the murder of which the appellant was convicted was a capital or non-capital offence. This in turn involves consideration of the proper construction of section 2(1)(f) of The Offences Against the Person Law 1864 as substituted by section 2 of The Offences against the Person (Amendment) Act 1992. Prior to the passing of that Act conviction of murder carried the death penalty by reason of section 2 of the 1864 Law. However, following upon the report of a Joint Select Committee in September 1992, the Jamaican Legislature passed the 1992 Act which *inter alia* repealed section 2 of the 1864 Law and substituted therefor a new section which defined as capital murder that which was committed in various circumstances specified in subsection (1).

These circumstances may be summarised as follows:-

- (a) the murder of various specified officials either acting in execution of their duties or for any reason directly attributable to their occupation;

- (b) the murder of a witness or party in a civil or criminal proceeding or of a serving or former juror in a criminal trial;
- (c) the murder of a justice of the peace acting in execution of his judicial functions;
- (d) murder committed in course or furtherance of (i) robbery, (ii) burglary, (iii) arson, or (iv) any sexual offence;
- (e) contract murder; and finally
- (f) which must be set out in full:-

"any murder committed by a person in the course or furtherance of an act of terrorism, that is to say, an act involving the use of violence by that person which, by reason of its nature and extent, is calculated to create a state of fear in the public or any section of the public."

The appellant was charged with capital murder contrary to section 2(1)(f) and duly convicted. The Court of Appeal dismissed his application for leave to appeal. The facts are simple. The deceased was sitting on a wall talking to his aunt in an area where there were a number of houses close by. The appellant and another man came up to the deceased, the appellant stated that he wished to speak to him, both men produced guns, marched the deceased up against the wall and shot him, the appellant three times and the other man once. The aunt was the only eye witness to the shooting. She was a stout-hearted lady of strong Christian belief who would not accept that she was frightened by or afraid of the murderous activities of the appellant and his colleague. However she gave evidence that there were other members of the family who saw the shooting but were afraid to join with her in pursuit of the murderers because of the guns of the latter. There was no other evidence as to the reaction of anyone who had witnessed the shooting.

The question for the Board was accordingly whether in the foregoing circumstances the murder was committed "in the course or furtherance of an act of terrorism" within the meaning of section 2(1)(f). No argument was addressed to the Court of Appeal on this matter so that unfortunately their Lordships do not have the benefit of the views of the members thereof.

The competing arguments were brief and to the point. Mr. Davies, for the appellant, argued that the effect of the critical words "in the course or furtherance of an act of terrorism" meant that the murder must be ancillary to some other act of terrorist violence and could not constitute it. Terrorism connoted some political or ideological aim. Furthermore the word "calculated" must be construed as "intended" rather than "likely", with the result that the act of violence must be intended to create a state of

fear. Mr. Guthrie Q.C., for the respondent, submitted that "in the course or furtherance of" did not require the murder to be an adjunct to an act of terrorism and that two acts did not require to be separated. Nor did terrorism require to be in pursuance of some ideological or political purpose. If the circumstances of the murder were such as to be likely to create a state of fear in any section of the public that was sufficient to satisfy the test in the paragraph.

The starting point in any consideration of section 2(1)(f) must be the fact that its object was to reduce the categories of murder which attracted the death penalty. It follows that a construction which produces little or no reductive effect is unlikely to be correct. Furthermore regard must be had to the general principle that a person should not be penalised and in particular should not be deprived of life or freedom unless under clear authority of law (Bennion's Statutory Interpretation, 2nd Edn. page 574). During the course of argument reference was made to statements by Ministers relative to section 2(1)(f) during the debates on the 1992 Act in both Houses of the Legislature. It appears that the mischief sought to be dealt with by the paragraph was the wanton killing of persons for the primary purpose of driving fear into the hearts of a particular community. Terrorist organisations such as those which operate in the United Kingdom and in Spain are not said to be a problem in Jamaica. These statements are relevant to the background argument against which the paragraph was enacted rather than to the construction thereof.

Their Lordships reject the appellant's contention that the murder must be ancillary to an independent act of terrorism. The Shorter Oxford English Dictionary defines terrorism as "a policy intended to strike with terror those against whom it is adopted". A single murder could very well have a dual purpose namely the elimination of the victim and the terrifying thereby of a section of the public, for example, a member of one gang might shoot a member of another gang in circumstances in which it was obvious that the shooting was intended as a threat or warning to other members of the latter gang. Their Lordships consider that such a dual purpose murder would be committed in the course or furtherance of an act of terrorism even if no further act of violence was involved. Their Lordships also reject the respondent's argument that any murder committed in a manner which creates a state of fear in any section of the public would satisfy the test. If this had been the intention of the legislature it could have been so stated and the reference to an act of terrorism would have been unnecessary.

An act of terrorism by its very nature involves an intention to strike others with terror. The reference in the paragraph to the nature and extent of the violence and to the public or any section thereof as the object of the terror demonstrates that something more than mere consequential frightening of the victim or occasional bystanders is required. In their Lordships' view the paragraph requires there to be a double intent on the part of the murderer namely an intent to murder and an intent to create a state of fear in the public or a section thereof. The intent to create a state of fear may be demonstrated by the mere circumstances in which the murder has been committed or it may manifest itself in some other conduct of which the murder forms part such as the blowing up of a building or a high-jacked aeroplane. In neither case is it necessary that the murder be witnessed by others. Suffice it that the circumstances in which it took place are intended to create fear in those who are the objects of the terror when they become aware of the facts. However the paragraph does not apply to a murder committed with the sole intent of killing the victim whereby fear happens to be created in those who see it take place or hear of it.

Since their Lordships are of the view that an act of terrorism pre-supposes an intention to create a state of fear in the public it is not necessary to determine whether the word "calculated" means "intended" or "likely". Mr. Guthrie referred to a number of cases in which the word "calculated" in different statutes had been construed to mean "likely". Their Lordships did not find these cases to be of assistance since regard must always be had to the context in which the word appears and in none of the cases did it appear in the context of terrorism.

In this case there was no evidence to suggest that the appellant and his colleague had any intention other than to kill the deceased. The fear in the other members of the family was created by the killing and nothing else. It follows that the appellant did not commit a capital murder for the purposes of section 2(1)(f) of the 1864 Law.

Both parties were agreed that in the event of the appeal being successful the case should be remitted back to the Court of Appeal to substitute a sentence of life imprisonment and to specify the period which the appellant must serve before being eligible for parole in terms of section 3A of the 1864 Law.

Their Lordships will therefore humbly advise Her Majesty that the appeal should be allowed and the case be remitted to the Court of Appeal for the above purpose.