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26th November, 1963.

J A M A I C A

IN THE COURT OF APPEAL

CIRCUIT COURT APPEAL NO. 97/63

Before: The Honourable Mr. Justice Cundall -President  
The Honourable Mr. Justice Lewis  
The Honourable Mr. Justice Henriques

R E G I N A    vs,    C O R N E L I U S    S U T H E R L A N D

Mr. R. N. A. Henriques for the appellant.

Mr. L. Barnett for the Crown.

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MR. JUSTICE CUNDALL:

This is an application for leave to appeal against a conviction for murder. The applicant was charged with the murder of his wife, whom he had married a short six months before, by inflicting numerous wounds with a cutlass over her head and neck, one of the wounds penetrating into the skull and another severing the jugular vein.

At the trial, the defence was a two-fold one. First, that the appellant suffered a black out and did not know what had happened and secondly, that he was provoked by his wife's conduct. There is no doubt that since they married they had not lived happily together. It was a distressing case in that these two people had to live in a little room, eleven by eleven, with some five other people including a daughter of the marriage who herself had just had a child - perfectly appalling conditions. The wife too was given to going out visiting and the husband complained about it. In fact, it was such an incident on a Sunday afternoon which led to this distressing occurrence.

Apart from the defence of the black out, of which as learned counsel for the appellant has very properly told us, there is no evidence whatever in support, there was this suggestion of provocation, hardly the type of provocation which would reduce the crime of murder to one of manslaughter. As the Judge pointed out to the jury, it was the appellant's side of the story they were hearing, the wife was not there to give her version of it, but he had told the jury that shortly after their marriage she started to mash up his life. He said that she did not want him to be in the house at all; she did not

want him to have any rest; she wanted him to work all the time like an animal and when he went to rest against the bamboo post at the gate she would quarrel with him about it, He said that she did not remain at home all the time but she would go to neighbours' yard and visit all the time in the district and elsewhere every week, sometimes twice a week, and when he would go to the bush to work when he returned home he would not see her. She would tell him that he was not her husband and that he could not mind her. He complained that his wife did not look after his food, would not cook his food, would not give him any tea, his daughter had to cook and look after his meals and sometimes this would go on for weeks.

He further said that sometimes she would take his clothes to the river and bring them back dirty. They slept in the same bed in one little room and a little three-year old boy slept between them. At nights his wife would nag him saying he was lazy and would do no work. That is the sum and substance of these acts of provocation which he complains about.

In the course of an extremely fair summing up in which the learned Chief Justice lent over backwards in favour of the applicant, he left to them fairly and squarely - he need not have done - this issue of black out, although there was no evidence of it, he told them that if they were in any doubt about it, they should give the accused the benefit of that doubt. He also invited their attention to all these various acts of provocation, so-called provocation, and again left it to the jury having explained the law to them to decide whether they were satisfied with this or whether they were in any doubt as to whether it was true or not. If they were in any doubt about the black out or satisfied about the black out they should find him not guilty. If they were satisfied about the provocation likely to make any reasonable man lose control of himself and in fact made the applicant lose control of himself, they should find him guilty of manslaughter or if they were in any doubt as to whether the provocation was such or not they should find him guilty of manslaughter.

The summing up was extremely fair and as Counsel has frankly told us he can find no fault with it neither can we. The application is refused.