JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO: 129/93

COR: THE HON MR JUSTICE RATTRAY, P
THE HON MR JUSTICE WRIGHT J A
THE HON MR JUSTICE FORTE J A

R v DELROY DENNIS

Hugh Wildman for Crown

Applicant unrepresented

26th July & 24 October, 1994

FORTE J A

The applicant was convicted in the St. James Circuit Court on the 9th December 1993, for non-capital murder and sentenced to life imprisonment with an order that he should not be eligible for parole, until he has served fifteen (15) years imprisonment. On the 26th July 1993, when the application came before us, in the absence of an Attorney for the applicant, and Crown Counsel having indicated, correctly in our view, that there were no arguable points in the application, we refused the application for leave to appeal, and promised then to record our reasons briefly. This we now do.

The facts and the issues raised in the case were very simple.

Samah Samuels, died as a result of injuries received at the hand of the applicant on the 27th April, 1993. His death resulted from internal haemorrhage caused by a ten centimetre laceration which extended from just above the occiput to the frontal bone on the left side of the scalp, penetrating the brain. In proof of its case, the crown relied on the evidence of Cleveland Reid an eyewitness. He was at a shop in the village square of Mocho at about 7.00 p.m. The deceased was also there, standing at the door of the shop, and having "heated" words with the applicant who was then inside the shop. The deceased had asked the applicant for his axe. The applicant denied that he had an axe for the deceased, whereupon the

applicant asked the deceased for his (the applicant's) machete. The deceased having told him that he had no machete for him, the applicant asked him if he had chopped out his burial spot yet. In answer the deceased said "You cut out yours yet?" At this time the applicant left inviting the deceased to stay there as he would soon return. Twenty minutes later he returned, armed with a machete, went straight to where the deceased was standing in the street, and chopped him in his head. He was in the process of chopping the deceased again, when the witness prevented him from doing so. Someone else, thereafter, took the applicant away, and the deceased was taken to the hospital where he succumbed to his injury.

In his defence the applicant contended that the injury he inflicted on the deceased, was done in self-defence. In sworn testimony, he maintained that on that evening when he first approached the shop, coming from his "ground" he saw a crowd, including the deceased who was with two other men, one of whom was Mr. Reid who testified for the Crown. As he approached, the three men came close together apparently blocking his path. He agreed that there was a conversation with the deceased in respect of an axe, and a machete, which culminated in the deceased saying "it going to done right here tonight." The men then surrounded him, with the deceased standing in front of him. The two other men were armed with machetes. On a previous occasion he had had an altercation with all three men when they ran him down and he had to take refuge in the police station. Because of this, he honestly believed that an attack on him was imminent, and so he struck out at them with his machete and ran.

In keeping with the defence raised, the learned trial judge identified the issues to the jury as self-defence and provocation. Following the principles stated in Solomon Beckford v R [1987] 36 W I R 300 and several decisions of this Court, and in the context of the particular issue raised by the defence in this case, the

learned trial judge directed the jury on the question of self-defence inter alia thus:

> "A killing in lawful self-defence is no offence. Self-defence is lawful when it is necessary to use force to resist or defend yourself against an attack or threatened attack, and when the amount of force used is reasonable. Now, in this case, the defence is not saying that the accused was defending against an attack but a threatened attack and I want to give you some directions now on how you are to approach this issue of a threatened attack. As regards a threatened attack, and I wish you to listen to me carefully. You must ask yourselves, whether he, the accused honestly believed that he was under a threatened attack, you see, because in law, even if it turned out that he was mistaken and there was no attack really forthcoming it doesn't matter if he honestly believed that he was under an immediate threat of attack, he, if he so honestly believed, then in law, he would be entitled to defend himself, that is, to use reasonable force to defend himself."

Later in reviewing the evidence of the applicant, the learned trial judge put the evidence into the context of self-defence by directing the jury as follows:

> "And, he said, at this time he felt like dem a goh chop him up or something because Chiniman and the other persons had already run him down and he had to go and sleep in a police station. So, Mr. Foreman and members of the jury, this is what the accused man is saying. Right at this point, he said he honestly believed, that is what he is saying, that an attack is imminent upon him because he is surrounded; there is a man to the right of him and a man to the left of him, and Mr. Chin is in front of him. There is this background of seeming animosity that had been existing between himself and Chin."

On the issue of provocation he directed:

> "Provocation, Mr. Foreman and members of the jury, is some act or series of acts done and or words spoken which causes in the defendant a sudden and temporary loss of self control and which would cause a reasonable person to lose his self-control and to behave as the defendant did. Therefore, you have to consider two questions, the allegedly committed provocation that caused the defendant to lose his self control and would that conduct have caused a reasonable person to lose his self control and behave as the defendant did. Now, Mr. Foreman and members of the jury, I am leaving to you, the following aspect of the evidence, that is if you accept it, as being conduct capable of amounting to provoking conduct, because in the final analysis, it is you who must decide whether it is provoking conduct. If you accept what he says, the fact or evidence, let me not say fact, for it is for you to decide the fact, the evidence pertaining to his being surrounded by three men, two of which were armed, each with a machete, and the words spoken by Mr. Chin, 'It going to done right here tonight.' Now, I am leaving that aspect of the evidence, if you accept it as being capable of amounting to provoking conduct, would the allegedly provoking conduct cause the defendant to lose his self-control and cause him to behave as the defendant did, that is, to chop as he did.
> In considering that second question, you should take into account everything said and done according to the effect which in your opinion it would have on a reasonable man, and that reasonable man, and that reasonable man here, is a person, a farmer from Mocho in this parish. So, would a reasonable twenty-eight year old farmer, the same sort of being like the accused, that is the reasonable person we are talking about here."

Having examined carefully the above passages together with the other thorough directions given on the relevant issues, we came to the conclusion, that no fault could be found in the manner in which the jury were directed to approach these issues. In our view the summing up was fair and adequate, and related accurately the principles of law which were applicable. In those circumstances we concluded that there was no merit in the application, and accordingly refused leave.