JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 88/85

BEFORE: The Hon. Mr. Justice Carey, J.A.
The Hon. Mr. Justice White, J.A.
The Hon. Mr. Justice Campbell, J.A.

Regina v Denzil Scott

Noel Edwards, Q.C., for applicant

Miss J. Strawe & Miss H. D. Hylton for Crown

2nd & 7th July, 1986

CAREY, J.A.:

The applicant was convicted in the Clarendon Circuit Court on 3rd October 1985 before Wolfe J and a jury for the murder of Leroy Ellis at a district called Bell Plain in Clarendon. The allegation against him was that on the evening of 31st May a number of young men, Granville and Carlton Fisher, Kenneth Johnson and Leroy Ellis went to a 'mango feast' (so described by the witness Kenneth Johnson). The party broke up round about 8:00 p.m. when Johnson and the two Fishers left. Thereafter, they repaired to the gate of one Sam where cigarettes were purchased. The applicant then went off by himself down a hill followed shortly after by the other youths. A man, who turned out to be Ellis, was seen approaching. The next event which occurred in this sad tale, is that the applicant utterred an expletive, and flung a stone which felled Ellis. He then remarked "ah so mi do it". Granville and Carlton Fisher, who both testified for the Crown, said that the applicant identified his victim as a

man who had stabbed him in his forehead some 3 weeks before. Both Fishers and the other witness, Johnson, confirmed that the applicant then threatened all 3 witnesses to his crime that he would kill them if they were so unwise as to report him.

The medical evidence showed that the slain man had sufferred a depressed skull fracture which left brain tissue protruding from the wound and resulted in his death.

The applicant in his defence stated on oath that Ellis had stabbed him in his forehead, in the mistaken belief that he was called by the odd pseudonym of 'Duppy Batty' and that he was taking away his woman. But Ellis having learnt of his mistake had visited him the very next day and given him $100 to pay his medical expenses and promised a further $150 in the future. The applicant explained that the Crown witness, Kenneth Johnson, is referred to as 'Duppy Batty' and that some time after he was stabbed he had seen Johnson and Ellis in a fuss during which blows were exchanged by them.

As to the incident in which Ellis died, his account was that after the feast, they walked along the road and spliffs were rolled. He apparently took no part in this exercise. They came to a mango tree and all four men started to throw stones in an endeavour to hit off the mangoes. He assured the jury that he was quite able to see to hit off the mangoes because the moon shone so brightly. After the stones were hurled in the tree and mangoes fell, he went to retrieve a mango. He heard a groaning and realized that a body was lying prostrate there. One of the witnesses, Granville, identified the body as that of a man who had stabbed him and assaulted Kenneth Johnson. He did not know what stone hit the man he saw lying there.

The learned trial judge in a careful summing up left manslaughter to the jury on the basis of provocation viz, the incident involving the stabbing of the applicant by Ellis 3 weeks before the incident and also on the footing that when the applicant flung the stone, he might not have had the intention to kill or cause serious bodily harm. The latter basis was, we think unduly kind to the applicant because on the Crown's case there was evidence that after hurling the stone at Ellis, he remarked - "ah so mi do it". The jury were entitled to find that the intention to kill was expressed. Howsoever that might be, it would not in any way prejudice the applicant, and indeed the learned trial judge gave, we think,a broad hint as to how he was thinking, because in his closing charge to the jury he expressed himself in this wise at p. 156:

> "So those are the verdicts open to you. 'Not guilty of anything, not guilty of murder but guilty of manslaughter'. You bear in mind when you come to consider the question of the intention, you bear in mind the instrument used. I don't know if when a man fling a stone if you really intend to kill or cause serious bodily injury".

In the light of the facts and the character of the summing-up, we entirely agreed with Mr. Noel Edwards, Q.C., who appeared before us on behalf of the applicant, and candidly admitted that he was unable to find any ground of merit to put before us for consideration.

We accordingly refused the application for leave to appeal.