

1. Criminal (Mur) - Murder - trial - No complaint either with respect to evidence or direction to jury.
Application for leave to appeal refused.

No cases referred to

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO: 76/88

BEFORE: The Hon. Mr. Justice Carey - President (Ag.)
The Hon. Mr. Justice Forte, J.A.
The Hon. Mr. Justice Morgan, J.A.

R. v. EDWARD EBANKS

Delroy Chuck for Applicant

Kent Pantry & Bryan Skyes for Crown

September 26, & October 12, 1988

FORTE, J.A.

This is an application for leave to appeal against the conviction of the applicant for the offence of murder on the 23rd March, 1988 before Gordon J., sitting with a jury in the St. Elizabeth Circuit Court. On 26th September last we refused leave to appeal and promised to put our reasons in writing. We do so now.

The facts out of which this conviction arose were briefly as follows:

On the 23rd March, 1988 the deceased Gladys Simms was slain while she slept in her bed with her daughter Dorrit Brooks. The applicant was seen by Brooks to enter the room after breaking down the door. He was armed with a machete and a knife and immediately commenced an attack on Simms who fell from the bed without waking from her sleep. She was never to awake again: she lay dead on the floor.

He then turned his attack on Brooks, while her son, Kenneth Brown watched from the doorway of his adjoining room. The injuries he inflicted upon her were not fatal and she survived to seek assistance after the applicant had fled through the back-door of the house and to give evidence for the Crown.

The post mortem examination subsequently performed on the body of the deceased Gladys Simms revealed that death was due to:

1. Shock and haemorrhage, as a result of multiple injuries.
2. Laceration of the lung with haemorrhage into the plural cavity and
3. Intracranial haemorrhage i.e. bleeding inside the skull.

The main injuries described by the doctor and which substantially contributed to the cause of death were:

1. A three and a half inch laceration to the scalp above the left ear, and
2. A three inch laceration of the back of the left side of the chest below the scapula just two and a half inches deep, which went into the lung, causing a laceration of the back of the lower lobe of the left lung.

The defence was a denial of the commission of the offence, the applicant testifying that he went to look for a girl-friend on that night, that he did not see her, and on his way back home he heard a voice behind him saying "Deacon chop up Dor and Gladys and if I ketch him I kill him. If I ketch him I stab him." He went to his brother's home and told him that they said he chopped up people. The testimony that he heard a voice behind him was to some extent consistent with what the crown alleged that the applicant said to Inspector Hall after he was told of the report and cautioned. These words were:

3.

"I was on my way to the grocery shop when I heard a voice behind me saying, Devon killed Mary Simms and her daughter and I catch him I going to chop him up and kill him too."

However, in cross-examination, the Inspector denied that the name mentioned in that statement by the applicant was "Deacon". The significance of this, apparently is to be found in the fact that the applicant is called "Deacon".

The issue raised at the trial was one of identification. The witness Brooks and Kenneth Brown both testified to having known the applicant before, for 5 and 8 years respectively. Indeed the witness Brooks testified that the applicant lived on the same premises, having been brought there to live by her brother who had pity on him at a time when he had no where to live. The opportunity for recognizing the applicant was provided by the light from a lamp by which the young Kenneth had been studying in the adjoining room, and which shone into the room where the applicant made his violent attack upon his victims. Kenneth, in fact did call the applicant by name, during the attack pleading with him saying:

"Deacon lick them but don't kill them."

At the hearing of this application, Mr. Delroy Chuck conceded that having examined the transcript he could find no valid complaint either in respect of the evidence or the directions to the jury of the learned trial judge. With this view we entirely agree. The evidence was overwhelming against the applicant, and revealed a most vicious and cold blooded attack upon the deceased and her daughter while they slept in bed. The directions treated all the issues involved with admirable efficiency and cannot be faulted. In the event, we found no reason to interfere and consequently refused leave to appeal.