

IN THE COURT APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 123/77

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JAMAICA

BEFORE:

THE HON. MR. JUSTICE ZACCA P. (Ag.) Presiding
THE HON. MR. JUSTICE ROBOTHAM J.A.
THE HON. MR. JUSTICE CARBERRY J.A.

REGINA

v

ERROL THOMAS

Mr. B. Macaulay Q.C. and Mrs. Macaulay for Applicant

Mr. Henderson Downer and Mr. H. Cooke for the Crown

April 10, 1978

ROBOTHAM J.A.

This is an application for leave to appeal to Her Majesty in Council from the decision of the Court of Appeal which was handed down on March 9, 1978, dismissing an appeal of Errol Thomas. He was convicted on May 6, 1977, in the Home Circuit Court for murder and sentenced to death and it was after a hearing lasting five days that the appeal was dismissed.

The grounds on which the application is sought are:-

- (1) "whether or not on a charge of murder where there was no evidence to support provocation on self-defence, it is right for a judge to direct the jury on such defences when they have not been put forward by the accused or his counsel.
- (2) whether or not, directions on such defences in a charge of murder would tend to lead the jury into confusion and hinder their full concentration on an accused's defence of accident or alibi.
- (3) if the answer to either question 1 or 2 is in the affirmative, whether the effect of such directions in the circumstances mentioned in question 1 would tend to divert the due and orderly administration of justice."

The case for the applicant as submitted by Mr. Macaulay is that whether the jury were in fact confused by such directions or not it not the question which has to be considered or decided. It is whether the directions given may have been confusing to the jury

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and it is not the duty of the Court of Appeal to say whether the jury were in fact confused. He makes a very broad submission to the effect that if the directions may have led to confusion or hindered their concentration on the main issue in the case the conviction should be quashed, and in answer to this court, he said that that would be the position regardless of how strong the evidence to support the conviction may have been. On the other hand, it is contended by Mr. Downer on behalf of the Director of Public Prosecutions that what is in issue is whether the jury were in fact confused or not. Each case must be considered on its own particular facts. In the instant case the jury came back for further directions, got them, and having returned to further consider their verdict, they returned a verdict of guilty of murder. There can be therefore no question of any confusion. In any event, he submits this is not a case in which it is desirable in the public interest that a further appeal should be brought. (Sec. 35 of the Judicature (Appellate Jurisdiction) Act.)

The court is cognisant of the fact that where there is any evidence either coming from the crown or from the defence which supports either provocation or self-defence, it is the duty of the trial judge to put it whether or not it has been relied on by the defence. The court is also cognisant of the fact that where there is no such evidence, there is no duty on the judge to give gratuitous directions. It has been said in D.P.P. v Leary Walker, (which has been referred to by Mr. Macaulay) reported at 21 West Indian Reports at page 410 that such directions tend to confuse the jury and hinder them in arriving at a true verdict. Leary Walker further said that this would indeed divert the due and orderly administration of justice.

It seems to us that what Leary Walker was there adverting to is the tendency to confuse and hinder the jury in arriving at a true verdict by virtue of gratuitous directions having been given; the failure to arrive at a true verdict is what would divert the due and orderly administration of justice. The court is fully aware of these principles and it is always on guard to see that in each case such gratuitous directions do not lead to a miscarriage of justice. This

can only be done by an analysis of the verdict in the light of the evidence and the directions which have been given. So often cases have come before this court where gratuitous directions have been given on provocation and the jury have returned a verdict of manslaughter where there was no evidence whatsoever to support provocation, either coming from the crown or defence. Clearly in a case such as that it could be shown that the jury were misled by those gratuitous directions, where the only proper verdicts from the evidence would have been guilty or not guilty of murder.

In this particular case, the Court of Appeal heard this appeal over the five days and at the end they were fully satisfied that by their verdict the jury were not confused and therefore there was no diversion of the due and orderly administration of justice. We do not consider it desirable in this particular case that in the public interest a further appeal should be brought to Her Majesty in Council.

The application is refused.

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