Thurs. 28th March. 1963

COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 133/62

IN THE COURT OF APPEAL FOR JAMAICA

Before: The Hon. Mr. Justice Duffus -- President (Ag.)
The Hon. Mr. Justice Lewis
The Hon. Mr. Justice Waddington

REGINA vs. GEORGE JARRETT

Mr. Ian Ramsay for the Appellant
Mr. Martin L. Wright for the Crown

ORAL JUDGMENT OF THE COURT
DELIVERED BY
MR. JUSTICE DUFFUS

This is an appeal against conviction on the charge of manslaughter in the Circuit Court in the parish of St. Ann on the 27th June last year. The relevant facts are very short indeed. It appears that the appellant was sitting on top of a load of canes on the first of three trailers being drawn along by a tractor on a road in the parish of St. Ann; the deceased was sitting on top of a load of canes in the third trailer; a motor lorry was overtaking the tractor and trailers, and while alongside it appears that the deceased man was handing over some pieces of canes to persons in the back of the lorry. The appellant objected to the deceased handing over these pieces of cane, called to him and told him not to do so. Whether or not the deceased man heard the appellant when he called to him is not known, but it appears that the deceased continued to deliver the canes, or, to throw the canes into the passing lorry, whereupon the appellant took a piece of cane from off

the lot in the first trailer and threw it towards the deceased in the last trailer.

A witness named Everick Miller said he was seated on top of the load of canes in the No. 2, or, middle trailer and, according to this witness, the appellant broke the bit of cane, which he flung, presumably from a longer length of cane, and he saw this piece that was flung hit the deceased man in his belly (to use his own words), and that this was done after the deceased man had handed the canes to the men in the lorry. This witness Miller said that the appellant called to the deceased and told him he was not to give the men in the truck cane as they belonged to the P.N.P. -- People's National Party.

Another witness for the Crown was a man named Emerson Parkes; he was one of those persons in the lorry, and he was receiving canes that the deceased threw into the lorry. He stated in his evidence that when the deceased man took up the three pieces of cane and threw them in the lorry the appellant said, "You don't hear me say you must not give Mount Zion People any cane because they are P.N.P." and at that stage he saw the appellant take up a piece of cane from the trailer between 2 and 3 feet long, 1½ inches in dismeter, and throw it at the deceased man, hitting the deceased near to his navel, and he heard the deceased man cry out then, "Lord, my belly", at the same time placing his hand across his belly.

Apparently it was not realized at the time that the deceased had received a serious injury. The tractor and trailers proceeded to the premises where the canes were to be delivered, and persons on the trailers and tractor got off it; the deceased man however lay down on the spot and he die d.

The post mortem disclosed that the deceased had died from a ruptured spleen. The doctor, Dr. Noel Black, found

a swelling on the lower part of the abdominal wall, on the right side, which he described as a haematoma. The spleen was situate on the left side. And, as I say, he found that that was ruptured. In his own words, it was "practically torn across." It was his opinion that death was due to the ruptured spleen and that it could have been caused from a blow from a piece of sugar cane, and if it was of the size described by the witness Emerson Parkes, it was his view that a moderate degree of force must have been used when it was thrown.

The appellant was charged for manslaughter. The learned Trial Judge in the course of his summing-up to the jury defined manslaughter, and he proceeded to say .....

> "The particular type of manslaughter that applies in this case is what is known in law as involuntary manslaughter, namely, doing an unlawful and dangerous act which causes death. Unlawful is meant in the sense not only of being wrongful but with the intention of doing some harm to the deceased -- some wrong in the criminal sense."

He proceeded to say .....

> "In this case, of course, the Crown alleged that he .....",

that is the appellant,

> "..... was assaulting -- he had the intention of assaulting the deceased when he threw that cane and because of that assault, assault by throwing the cane and hitting him, the deceased died."

He also directed the jury in these words:

> "I quite agree with learned counsel for the accused that if the cane was merely thrown to attract the attention of the deceased, with no intention of hitting him or doing him any harm, death would have been caused by misadventure and there would have been no charge against him, the accused."

After dealing with the evidence, and at the conclusion of his summing-up, he said this:

> "Those are the facts, contained within a very narrow compass."

"What was the intention? The accused himself tells you he had no intention of hitting him; he merely threw the cane to attract his attention because he didn't seem to hear when he called to him. When he told him not to give the cane he didn't hear and was still in the act of handing the cane when the accused threw the cane. That is the point: What was his intention? If, as I told you, he only said that by way of a joke and he thought the deceased didn't hear him and threw this cane just to attract his attention, not with the intention to kill (hit), then, of course, he is not guilty."

sic.

"On the other hand, the onus is always on the Crown. You have to be satisfied beyond a reasonable doubt that he threw the cane with the intention of hitting the deceased -- annoyed, was peeved -- let us put it this way: peeved because despite his warning the deceased insisted on giving the cane to the men on the truck, he threw this cane and hit the deceased and as a result of that injury from the blow he died."

Now, as indicated from passages I have quoted from the summing-up, the appellant admitted throwing the cane towards the deceased, but he stated that it was his intention at the time of throwing the cane not to do harm to the deceased man but merely to attract his attention as he may not have heard when he called to him telling him not to hand out the cane to the men on the truck.

On appeal before us it is submitted that the learned Trial Judge did not adequately direct the jury. The first ground was, "that where the evidence is consistent with guilt but also possibly with innocence," that the Judge should have told them that they should adopt the innocent construction of such evidence; and that this omission amounted to misdirection.

Learned Counsel for the appellant argued his case before us with his usual clarity and forcefulness, and he relied on a decision in the Court of Appeal of Jamaica, the

Queen against Clarice Elliott, 6 J.L.R., at page 174, where a former Chief Justice of Jamaica, Sir Kenneth O'Connor, delivering the judgment of the Court, said:

> "A jury may convict a prisoner on purely circumstantial evidence, but they should be satisfied 'not only that those circumstances were consistent with his having committed the act, but they must also be satisfied that the facts were such as to be inconsistent with any other rational conclusion than that the prisoner was the guilty person.'"

It is not necessary for the purposes of this judgment to read the rest of the judgment in that case.

That was a case which depended entirely on circumstantial evidence and it appeared that adequate directions had not been given to the jury. The instant case, however, does not depend on circumstantial evidence; there was clear and direct evidence that the appellant had thrown the piece of cane at the deceased man. There was also evidence that when he threw the cane at the deceased man it was after the deceased man had delivered or thrown three canes into the passing lorry. And there was evidence as to the statement which the appellant made at the time he threw the cane. And the jury in our view were given adequate directions on the question as to what was the intention of the appellant at the time he threw the cane. It can't be said that in this case the judge should have gone further and have given the directions referred to in Clarice Elliott's case.

We are asked to say that the jury could only have arrived at the intention of the appellant by the consideration of circumstantial evidence. Well, even if one assumes that that submission is correct (that they could only infer the intention of the appellant from circumstances proved in the instant case) it is our view that the directions of the learned Trial Judge nonetheless fully covered the situation.

I pass now to the second ground of appeal, and that

was: the Learned Trial Judge failed to define the meaning of the word "dangerous" in the definition of involuntary manslaughter in the circumstances of this case, and that he failed to direct that to import guilt the act causing death must be both unlawful and dangerous in a case of Involuntary Manslaughter; and that the omission amounted to misdirection."

The summing-up of the Trial Judge on this point was read by me a while ago; his words were: "The particular type of manslaughter that applies in this case is what is known in law as Involuntary Manslaughter, namely, doing an unlawful and dangerous act which causes death." It is our view that there was really nothing further the judge could do to define "dangerous act" there. He perhaps could have given illustrations if he had so desired as to what he thought a dangerous act might be or as to what he thought might not be a dangerous act, but it is clear that he left the assessment of the facts entirely to the jury. It was a matter for them to decide whether the throwing of the piece of cane in these circumstances was in fact a dangerous act.

It is our view that the facts can be said to speak for themselves. A person who throws a piece of stick or a bit of cane at another person can be said to be doing a dangerous act, depending on the nature of the article (as Mr. Ramsay pointed out) and depending on how it was thrown. Well, the evidence as to this was before the jury. It seems that the blow must have been something more than a light or trivial blow to have caused this swelling that the doctor saw in the abdomen and to have almost completely torn the spleen. These were facts before the jury, and it was for them to decide whether the act was in fact a dangerous one. There was no necessity for the judge to have gone further. In fact, Counsel himself is not able to give us the form that he thinks the summing-up should have taken, except he thought it was inadequate. In our view it was

quite adequate.

Now, I would like to refer to the case of the Queen against Larkin, (1942) 29 C.A.R. at page 18, in the judgment of the Court of Criminal Appeal, delivered by Mr. Justice Humphreys; he said this: "Where the act which a person is engaged in performing is unlawful, then if it at the same time is a dangerous act, that is an act which is likely to injure another person, and quite inadvertently the doer of the act causes the death of that other person by that act, then he is guilty of manslaughter." That definition was followed in the Queen against Edward Hall, (1961) 45 C.A.R., page 366, and was approved of by the Court on that occasion, on the hearing in the Court of Criminal Appeal. Relating the facts in the instant case to this definition, it is our view that clearly if the appellant threw this piece of cane at the deceased man intending to hit him and that he did so in the words used in the summing-up by the Trial Judge -- because of annoyance or because he was peeved -- then, clearly, that was an unlawful act, that would have amounted to an assault on the person of the deceased man notwithstanding the fact that the appellant did not foresee the consequences would have been as serious as they turned out to be. And it is our view that the jury would have been justified in finding th-at that act was also a dangerous act, an act which was likely to injure -- even though by inadvertence it caused injuries more serious than the appellant foresaw.

In the circumstances it is our view that the summing-up was sufficient, was adequate. We find no fault with it.

The third ground Counsel did not proceed to argue as he tied it with the first and second grounds, and he said that he was not prepared to argue that the verdict was unreasonable in view of the directions given by the Trial Judge.

The appeal against conviction therefore fails.

Leave was given to learned Counsel to argue the question of sentence although the appellant did not appeal against sentence. This matter has given us some amount of concern, and we have discussed it among ourselves fairly thoroughly. It is possible that the individual members of this Court, had they been presiding over the trial, might have given a different sentence, possibly a more le-nient sentence; but we have to consider whether in the circumstances of this case some wrong principle has been followed by the Trial Judge. Can we say that the sentence of 2 years imprisonment given by him can be regarded as manifestly excessive? We have looked at the remarks passed by the Trial Judge when he was imposing sentence, and it is quite clear that he took into consideration the recommendation for leniency which was made by the jury. He says this: "On the other hand, they ..." that is the jury, ".... have made recommendation for mercy, which naturally I shall give great consideration." It is also clear that he considered the fact that the appellant had no criminal record, for he says this: "your record is a good one. You have no previous conviction and, as I say, the police have reported favourably." It is clear that he took a serious view of the appellant's acts, for he said this: "Because of your deliberate act in throwing this cane with the intention of hitting this man, an unlawful and dangerous act, as a result of this act this man died. You must go to prison for 2 years." Then he added that it was a very lenient sentence; he did not want it to be thought that he did not think that manslaughter was a serious offence, but he thought 2 years hard labour would suffice.

The appellant was a young man aged 23. And we are unable to say in the circumstances that the learned Judge erred. We do not consider that the sentence was manifestly excessive. The appeal therefore will be dismissed; the conviction and sentence confirmed.

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