JAMAICA Judgment Book.

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 60/78.

BEFORE: THE HON. MR. JUSTICE HENRY, J.A.
THE HON. MR. JUSTICE MELVILLE, J.A.
THE HON. MR. JUSTICE ROWE, J.A. (Ag.)

REGINA

v

GLENROY MURRAY

Mr. A.C. Mundell for the Applicant.
Mr. A. Soares for the Crown.

December 10, 21, 1979.

MELVILLE, J.A.

On the 10th day of March, 1978, the applicant was convicted in the St. Elizabeth Circuit Court at Black River for the murder of Daniel Allen on a day unknown between the 28th and the 31st days of October, 1977 and sentenced to suffer death in the manner authorised by Law.

At the trial it was common ground that it was the applicant who had inflicted the three injuries which resulted in death, to the head of the deceased, so that the real issue for the jury's determination was in what circumstances were the injuries inflicted.

The case for the Crown rested mainly on the evidence of a Mr. DeLisser who stated that on the evening of the 28th October, 1977, the deceased, in the presence of the applicant, complained that the applicant had sent one Dockery "to loose" the deceased goat; whereupon the applicant pushed the deceased who started to run and was chased by the applicant. Each man then had a machete.

DeLisser tried to follow them but as he had been some distance from them during the conversation he lost sight of them, but shortly after he heard sounds like meat was being chopped. Sometime later DeLisser saw the applicant returning from the direction in which he had chased the deceased. Bloodstains were on his shirt and when DeLisser asked him what had happened, the applicant replied that the deceased had accused him of stealing his goat, he had hit the deceased with a stone and the deceased had gone to the station. It was not until some three days later that the body of the deceased was found in a clump of bushes where it had apparently been dragged and dumped.

The applicant's evidence was that he had caught the deceased stealing his grandfather's cow and when challenged the deceased had attacked him firstly with a machete and then with a stone. Indeed he went so far as to say that the deceased actually hit him with a stone, chopped at him with a machete and was going for another stone when he chopped the deceased, apparently in self defence.

Before us the ground of complaint was that the learned trial Judge erred in failing to leave the issue of provocation to the Jury. This, unfortunately seems to be quite true. Although manslaughter, on the ground of lack of the necessary intent, was left to the Jury - as it was raised as a subsidiary to self defence - it was never put to the Jury that even though the matters relied on as amounting to self defence failed; yet the Jury still had to consider them in so far as provocation was concerned. It was for the Jury to say whether

those acts would have amounted, in the circumstances, to provocation sufficient to reduce to crime from murder to manslaughter. As this aspect of the matter was never dealth with in the summing up, the applicant was denied the opportunity of having a verdict of manslaughter instead of murder.

What is more than a little disturbing in this matter is that at the end of the summing up, the learned trial Judge asked both Attorneys if there was anything else and both in turn replied "No". One can only conclude that these gentlemen must have been "sitting on their ears," so very obvious was this omission. We should hope that Attorneys, on both sides, would pay some earnest attention to the summing up and be of some assistance to the trial Judge in the future.

In the circumstances, this Court is constrained to grant the application for leave to appeal; the hearing is treated as the hearing of the appeal. The appeal is allowed; the conviction and sentence are set aside and a verdict of guilt of manslaughter substituted. A sentence of twelve years at hard labour from the date of conviction is imposed.