

J A M A I C A.

IN THE COURT OF APPEAL

CIRCUIT COURT CRIMINAL APPEAL NO. 81/63.

R E G I N A V. HEYMAN HANLON.

BEFORE: The Hon. Mr. Justice Cundall, President  
" " Mr. Justice Duffus  
" " Mr. Justice Henriques

Mr. L. Williams for Appellant  
Mr. J.S. Kerr for the Crown.

The President.

This appellant who is about 17 years old, was charged with the murder of Mavis Grandison, a girl of approximately the same age. He was found guilty of manslaughter and sentenced to five years imprisonment.

The appeal is against conviction and sentence. The following is a summary of the facts.

The appellant had a dispute with the deceased and two other girls over his shirt which he had given to one of the latter to wash for him. They quarrelled and fought. Some hours later another incident occurred outside of a dance hall, known as the Bull Head in Trench Town. The accounts given by the witnesses varied considerably. One of the Crown's witnesses, Cachita Campbell who was involved in the incident said that the appellant cut her on her throat with a knife and that the deceased girl said to the appellant "You can't do the little girl like that and she don't do you anything," whereupon the appellant kicked her into a fence and then he sprang on the deceased with a knife in his hand, holding her around the neck. Cachita Campbell then saw the deceased move away from the appellant saying "Lord him cut me." At this stage Cachita Campbell says that she fainted and did not see how the deceased got cut.

The deposition of Gloria Grandison, a sister of the deceased and another of the girls involved in the incident, was read at the trial as she had left the island before the trial. She related the incidents leading up to the final incident. She was not present when Mavis Grandison was stabbed but she went to

the scene shortly after and there picked up a knife 15 feet from the deceased's body. She identified this knife as one which she had seen the appellant holding in his hand at one of the earlier incidents, when she heard the appellant say "Them must have to go to Bull Head tonight. I am going to kill them blood cloth. All the one May May (i.e. the deceased) if she ever come it will be the first one I kill." She heard the deceased say to the appellant, "I must have to come out and go to Bull Head." She saw the deceased go inside a house and come out with a cutlass which one Shirley Smith took away from her. The deceased then left the yard announcing in the hearing of the appellant that she was going to Bull Head. It was shortly after this that Gloria Grandison heard something and saw the deceased's dead body.

Louise Smith, another witness for the prosecution related the inception of the quarrel over the shirt, between the appellant and the deceased. She made out that the girls were really the aggressors and said that the deceased and Cachita Campbell cursed the appellant and attacked him. This incident ended and some time later there was another incident when she saw the deceased and other girls again attack the appellant and beat him. He escaped from them and ran pursued by Mavis who was hitting him with the flat of a cutlass. There was another fight with the girls and the appellant got away and ran again pursued by the deceased who was hitting him with the flat of the cutlass. She saw the deceased raise the cutlass and then put one of her hands "under her stomach" and go down on the ground. She went closer and saw her bleeding from her side. She did not see how the deceased had received the fatal wound nor had she seen the appellant with the knife at any time while the fighting was in progress. She had in fact borrowed the knife from the appellant earlier that night and given it back to him.

Roy Saunders, tendered by the Crown for cross-examination, did not see how the deceased had received the fatal wound but earlier he had seen about nine girls including the deceased

chasing the appellant. The deceased had a bottle and one Sybil had a stick. Later he saw the appellant return to the yard where the deceased lived whereupon the latter dropped her clothes and said "We have to fight." The appellant left the yard and was followed by the deceased who had a cutlass. It was shortly after this that he heard something and saw the deceased lying on the ground still holding the cutlass which was taken by the girl Sybil who ran away with it. This witness said that he had not seen the witness Louise Smith, who was his girlfriend, on the scene when the deceased was running after the appellant.

It will therefore be appreciated that the jury were faced with two different accounts from the crown's witnesses viz. Cachita Campbell's account of a deliberate attack by the appellant on herself and the deceased and Louise Smith's account which was the exact opposite being a series of attacks by Cachita Campbell, the deceased and other girls on the appellant.

Gloria Grandison's deposition tended to support Cachita Campbell's account whereas Roy Saunders supported Smith's account, though each denied being present at the actual killing. The medical and police evidence was neutral to these differing accounts. Dr. Pershadsingh who performed the post mortem examination formed the opinion that death was due to massive haemorrhage and acute shock resulting from a stab wound through the left lung into the heart inflicted by a knife, similar to the appellant's with considerable force, though it could have been caused by the deceased falling on the point of the knife.

The doctor examined the appellant on the morning after the killing and found four injuries which he described as trivial,- cuts abrasions and bruises - two of which could have been caused by blows from the flat side of a cutlass, one by the sharp cutting edge of a cutlass or knife and the fourth by a fingernail.

Detective Constable Earle Murdock deposed that at 6.30 a.m. on the day following the killing the appellant came to the Police Station where he was on duty and said "Officer I come give

up myself sir. Them say me kill the girl at Trench Town last night."

Detective Corporal Moncrieffe investigated the matter. He visited the scene of the crime, saw the body of Mavis Grandison, recovered the knife from Gloria Grandison and subsequently arrested the appellant who after caution, admitted that the knife was his.

When he saw the deceased he observed that she was not wearing a skirt.

The appellant gave evidence on oath. He related the incidents leading up to the final incident when Mavis Grandison met her death. Undoubtedly these incidents were highly provocative to him. He said he had given his shirt to Louise Smith to put down for him; when he returned for it he found that Mavis Grandison had given it to her sister to wear and when he protested Mavis cursed him and he left her yard. He returned later to again ask for his shirt and Cachita Campbell flung it at him whereupon they cursed each other and Cachita flung a knife at him which cut him on his face. He subsequently showed this injury to the doctor who stated that he got the impression that it was caused, not by a glancing blow, but by someone putting a finger inside the appellant's mouth and trying to tear it. He left the yard but was followed by a number of girls armed with a bottle, a stick and a cutlass, led by the deceased. The deceased then invited him to fight and while talking to him, "her spit came in his face." The deceased then hit him with a stick and he ran but the girls backed him up and he had to fight his way out. The fight was stopped by Roy Saunders and the girls left. He then returned to the yard where the girls lived and got some more shirts belonging to him from Louise Smith and left. While he was walking on Central Street the deceased came and stood before him with a cutlass. They quarrelled again and the deceased slapped him with <sup>the</sup> cutlass. He saw the other girls near by so he ran. He fell over a motor cycle by a dance hall. He saw Cachita Campbell close by so he held her and they now started to fight on the ground. The other girls came up and started to hit him. He then got up and ran into the dance hall. He had his knife in his hand. Men

in the dance hall pushed him out and the girls started to hit him with sticks and the deceased chopped at him with the cutlass, cutting his finger. He was then unable to run away due to a crowd and the girls who were beating him. He then held on to the deceased and they started to fight. He was still being hit and he became unconscious. He next found himself running up the road and crying. He said he did not know what had happened either to himself or to the deceased and that he had no intention of hurting or cutting her.

After addresses by counsel the judge summed up for one hour and forty-five minutes. The jury retired for thirty-seven minutes and then returned a unanimous verdict of not guilty of murder but guilty of manslaughter.

On appeal there were 9 grounds against conviction and during the hearing learned counsel for the appellant, with leave of the court, added a 10th ground, but abandoned two grounds. For the purposes of this judgment it will be convenient to group the grounds as follows:-

"1. (a) That the verdict of the jury was against the weight of the evidence and the conviction was patently unreasonable.

(b) That self defence was clearly established and not negatived by the prosecution.

2. That the learned judge had failed to direct the jury that if the attack upon the appellant on the highway was such as to cause him to fear for his life or serious bodily injury he need not retreat and would be justified in attacking the deceased in self defence.

3. That the learned judge should have directed the jury that on the evidence death by accident was a real possibility.

(a) That the learned trial judge should not have admitted in evidence the deposition of Gloria Grandison.

- (b) That having decided to admit it he should only have done so after all the other evidence for the prosecution had been adduced.
- (c) That in his summing up he should have reminded the jury that they had not seen or heard the witness and that they had not had the advantage of hearing her cross-examined."

In regard to ground 1.(a), this ground was improperly drawn but no objection was taken to it by learned counsel for the Crown. It was no doubt intended to read "that the verdict of the jury should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence," in the words of the Judicature (Appellate Jurisdiction) Law 1962, Sec. 13(1).

This court has on many occasions criticised the use of the words "against the weight of the evidence" in grounds of appeal in criminal cases. There can be no doubt that "this phrase is inaccurate and is one which cannot properly be substituted for the words of the statute" [per Lord Tucker when delivering the reasons of the Judicial Committee in ALADESURU V. R. [1956] A.C. 49 at p. 56]. The statute here being considered was a Nigerian Ordinance but worded in terms identical with those of the Jamaican Law.

Greater care should be taken <sup>when</sup> drawing grounds of appeal. In the instant case the Court has however given consideration to the ground as if it were properly drawn.

As mentioned earlier the witnesses for the Crown fell into two categories. On the one hand was the account given by Cachita Campbell supported in part by the deposition of Gloria Grandison. If the jury accepted as true the evidence of Cachita Campbell this was a case of deliberate murder. On the other hand the account given by Louise Smith paints an entirely different picture. After previous incidents she describes a final scene in which the accused is being chased by a number of girls including the deceased, with a cutlass, Cachita Campbell with a broken bottle, one named "Miss D", another named Sybil with a piece of stick, and others, denizens of Back o' Wall whom she did not know. They caught him

and were beating him but he got away and ran off. The girls continued to chase him, the deceased striking him with the flat of the cutlass. He ran up Central Road, fell and the girls again caught up with him. Louise Smith continues, "When they hang on him on Central Road was beating him and him fall down, I saw the girls then down on him beating him still and he was trying to help himself but he could not overcome the girls through it was plenty of them and I saw when the girls came up off him and him run up Central Road. I saw Mavis hold up her hand with the cutlass was running after him and knocking him with the cutlass."

Q. Did the cutlass catch him? A. No sir.

Q. Tell me this? Central Road and where now?

A. Central Road and Sixth Street Corner.

Q. And then what happened after that?

A. I saw when Mavis hold up her hand with the cutlass like this and afterwards I saw-----

His Lordship: Which hand?

A. Her left hand please. And I saw when she put her hand under her stomach and she went down on the ground.

Mr. Muirhead: And what happened?

A. I saw when she lay down flat on the ground and I saw people was running around her....

Q. What you saw?

A. When I went up there I saw her lay down with the cutlass into her hand and I saw she was bleeding.

A series of questions about the ~~knife~~ <sup>Knife</sup> followed and then

Mr. Muirhead asked:-

Q. Now when you saw her fall down bleeding where was he?

A. This time he run and gone, sir.

Q. Cross-examination this is what she said,

Q. Now at this time, the last time, now about how many people were over him beating him?

A. About nine of them.

Q. About nine women?

A. Yes, Mam, pure (sic) women.

Q. That time you saw them suddenly ease off him?

A. Yes please.

Q. And Mavis got up and held her stomach, or side or whatever it is?

A. When the crowd ease off him I saw Pampas (appellant) running.

Q. And what you saw Mavis do?

A. Mavis Grandison run after him like this with the cutlass in her hand and knock after him.

His Lordship? Who eased off him at that time?

A. The girls that were beating him please.

Q. Then what happened?

A. I see when the girls eased off the man and he ran and Mavis Grandison ran at him with the cutlass into her hand and I saw when she turn back holding up her tummy like this.

Miss Morrison: She didn't catch him

A. No please."

There can be no doubt that the jury must have been faced with an extremely difficult task having regard to the fact that the Crown had put forward, as indeed they had to, two totally irreconcilable stories and, no doubt, a verdict of guilty of manslaughter does not on the face of it seem unreasonable. On the other hand, when one comes to analyse the evidence, it would seem that the jury must have rejected the story told by Cachita Campbell. What has exercised our minds during the weeks that have elapsed since the appeal was heard is whether in the rejection of Cachita Campbell's evidence the Crown has, as it clearly is their duty to do, negatived self defence - see Chan Kau v. R. (1955) A.C. 206 and R.v. Lovell (1957) 1 Q.B. 547 - or whether the jury could reasonably have relied on part of Campbell's evidence so to negative self-defence although rejecting her account of the actual killing.

It is the view of the court that the jury must have

rejected the story of Cachita Campbell in its entirety - it is totally irreconcilable with the evidence of Louise Smith and this being so, if they did rely on it to negative self-defence, that would have been unreasonable.

We therefore turn to the rest of the Crown's evidence. Having examined it, we are of the opinion that the Crown has failed to negative self-defence.

The accused in his defence tells of being chased and beaten by a gang of young viragos led by the Deceased who was armed with a cutlass. He admits having a knife but denies having used it consciously. The nature of the injuries he received hardly bear out the violence of the attack he describes but the Crown's witness Louise Smith describes a similar attack and it may well be that these young termagants were more concerned with terrifying the Accused than inflicting serious bodily harm. The Accused like many another before him similarly placed elected to say that he became unconscious. As he put it, "When they lick me, I don't know what happen. I first find myself running up the road and crying. I just find myself run out of the crowd and crying." This is not a very convincing explanation but it does not, of itself, negative self defence even although he admits having a knife. The Accused himself is little more than a boy. It must, for him, have been a most frightening experience. As he, himself, puts it, he did not intend to hurt the Deceased or anybody. He said, "I was so afraid. Afraid of how she have the cutlass and chop me and I don't intend to cut her with my knife,"

We are of the opinion that the Crown has failed on this evidence to negative self defence and that the verdict of the jury is unreasonable.

In view of this decision we do not consider it desirable to discuss the other grounds of appeal.

The appeal against conviction is allowed, the conviction washed and a judgment and verdict of acquittal entered.

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President.