

No ref. 1680

5th October, 1965.

J A M A I C A

IN THE COURT OF APPEAL

CIRCUIT COURT APPEAL No. 78/65

BEFORE: The Hon, Mr. Justice Duffus (President)
The Hon. Mr. Justice Henriques
The Hon. Mr. Justice Moody (Acting)

R. v. I S A A C C O R N I S H

Mr. F. Phipps appeared for the Crown
Mr. M. Tenn appeared for the appellant.

MOODY, J.A. (Ag.),

In this case the applicant was convicted on the 6th of April on an indictment charging him with murder. The facts are sufficiently well known that we need hardly go into them in detail. Briefly, the deceased man was attending a dance; he was seen to leave the dance to come outside and after throwing or exchange of throwing of bottles himself and the applicant came into a conflict. The deceased is alleged to have said that he got a cut and the applicant subsequently ran away. He was found by the doctor to have had a wound which penetrated in the left ventricle of the heart from which he died.

In this application for leave to appeal one ground was argued before us and that is, that the learned trial judge misdirected the jury, in that he failed to direct the jury adequately or properly on the issue before the jury - page 56, 57 of the record, namely, that even if the jury rejected the evidence of the defence, nevertheless, if that evidence left them with a reasonable doubt it was their duty to acquit him. Well, this matter was argued at considerable length before us and repeatedly the sections of the summing-up which were relevant were examined. Counsel for the applicant asks us to say that

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there are three positions: one, if the defence is accepted, the jury must acquit, secondly, if the defence is rejected, but it leaves the jury with a reasonable doubt the jury should acquit, and thirdly, on consideration of all the evidence a reasonable doubt arises they must acquit. In support of this argument he referred us to the case of Murtagh and Kennedy and referred specifically to item two as discussed in this particular case.

We are of the opinion that on this aspect of the case there was no defect in the summing-up of the learned trial judge. He put to them the three positions that arise, as mentioned by Counsel for the Crown in his reply, namely, that if the Crown establishes the case the jury will convict; if the jury are in doubt as to whether the defence is established they should acquit, and if the defence is in fact established they should acquit, and if there is a reasonable doubt after considering all the evidence of the case and all the issues raised they should acquit him, and that it is only if they are left in the position where there is deliberate, intentional, unprovoked act causing death that they should convict him.

In our view, the directions of the learned trial judge were ample, and we are unable to accept the submission that was contended for by the applicant's Counsel. In our view, the overall directions well include a situation that if the jury did not accept the defence as put forward by the applicant, nonetheless, if any issues raised by the accused leave them in doubt they should acquit, and that was not specifically stated in as many words, but certainly, was comprehended by the entire directions given by the learned trial judge.

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We are unable, therefore, to accept the contention of the applicant's Counsel and the application is accordingly refused.