JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL No. 59/83

BEFORE: The Hon. President
The Hon. Mr. Justice Carey, J.A.
The Hon. Mr. Justice White, J.A.

R. v. JOHN CAMPBELL

Anthony Pearson for Applicant

Howard Cooke for the Crown

June 13, 1985

ROWE, P.:

The applicant lived with Louise Smith (the deceased) as her husband in a one room apartment at 32 Penn Street, St. Andrew for 18 years and the union produced three children. Wayne and Ralston aged 12 and 14 years respectively, tearfully and unhappily, testified at the trial of their father, the applicant, who was convicted before Wolfe J. and a jury in the Home Circuit Court for the murder of their mother, the deceased.

On the night of Tuesday, December 2, 1980, the deceased was at home. She changed into her night clothes and went off to bed. Ralston too went to sleep in that same bed. Indeed, it was the practice in that household for the parents and their three teenaged children all to sleep in the one bed. Wayne

who is described as a brilliant boy and who presently attends a Grant-Aided Secondary School, was sitting up preparing his home work with the aid of electric lights - this account is taken from the evidence of Wayne, who continued, by saying, that the applicant came home at 9.30 p.m. and finding that no supper had been prepared for him began to quarrel with the deceased. This quarrel degenerated into abuse and laid bare the contempt which the deceased appeared to have for the applicant as she dismissed him in the words:

"Go way suck pussy boy."

I have deliberately repeated these abusive words as they form one of the foundations on which the learned trial judge left to the jury the issue of provocation. Wayne who was the sole witness on whom the Crown relied to prove how the deceased received her injuries, said, that as soon as the deceased told the applicant the "something very bad," the applicant used the sole of his foot to hit the deceased in her side so that she fell to the floor "knock out". Wayne was understood to mean that his mother lost consciousness, temporarily, as a result of this blow. While the deceased was lying prone on the wooden floor of the room, Wayne said that the applicant picked up a bottle containing kerosene oil from underneath a table and poured the contents thereof over the unconscious woman. Then the applicant struck a match which flickered and went out. He struck another and threw it upon the deceased. Instantly she was ablaze. Said Wayne, "when she set ablaze and she feel the burn, she come back to herself and jumping up on the floor and the floor catch fire."

After jumping around and bawling, the deceased ran outside, still ablaze, went under a pipe, and used the water to put out the blaze. She was taken to the Kingston Public Hospital where she died ten days later on December 12. Dr. Ramu who performed the post mortem examination found that between 80% and 85% of her body surface was burnt and that she died from bronchial pnuemonia as a result of those burns.

In cross-examination the applicant attacked the credibility of Wayne on the ground that his testimony at the trial was inconsistent with evidence which he had given at the preliminary examination in important respects. Firstly, it was recorded that Wayne had told the learned Resident Magistrate that there was an electrical black-out in the area on the night of December 2, and that he had been preparing his home work by means of candle lights. Secondly, that when the deceased received the blow from the applicant she fell on the bed and was in that position up to the time when she was set ablaze. Thirdly, that when the applicant drew the first match he threw it at the deceased but it missed the mark and fourthly, that the applicant was seen making fanning motions with his hands when the deceased was set ablaze as if to assist the deceased to put out the fire.

Wayne maintained that there was no black-out on that night and that he had not made such a statement to the Resident Magistrate as recorded in the deposition. He also denied making the other statements attributed to him. Indeed, he said that the floor beside where his mother lay also caught fire and that the bed, far from being burnt, was at that time, in the possession of his sister.

The applicant gave sworn evidence in his defence in which he put forward that the deceased met her death partly, through her own intemperate action and partly by accident. Wayne, he said, was asleep throughout the entire incident and consequently his entire account of what transpired was a figment of his imagination. As to the events of the night, the applicant said that he arrived home to find both his sons Ralston and Wayne asleep in bed and the deceased in the act of cleaning the dining table. There were no electric lights and the room was illuminated by the light of a candle which stood on the table. He said a quarrel did ensue between the deceased and himself which commenced with the deceased complaining that he had unnecessairly spent money which had been intended to be put away in the bank. Although no supper had been provided for him, this was not the source of the quarrel. The deceased, he said, persisted in the quarrel to the extent that Ralston awoke and gently reprimanded his mother, reminding her that the applicant desire an opportunity to complete some records which he required for the operations of a betting shop under his charge. The applicant said he was prepared to return to the street to secure food for himself and was in the act of changing his clothes so to do, when the deceased offered to boil some tea for him. He refused, preferring to dress and go on to the street. The deceased took the first aggressive step, he said, by holding on to him to prevent him from leaving the house. He shrugged her off. She resumed her hold and took up the bottle containing kerosene oil. There ensued a struggle between them in which she attempted to pour the kerosene oil up on him and in trying to prevent her from achieving her purpose some of the oil spilled on her night dress. How her dress

caught fire was accidental. Standing near the edge of the table, was a lighted candle, and as they struggled, the deceased came into contact with the lighted candle and there was the blaze. According to the applicant his hands, too, caught on fire, as also his underpants. He denied that he deliberately poured kerosene oil upon the deceased or that he deliberately struck a match and deliberately threw it upon the deceased.

Ralston who testified for the Crown said that he was awakened by his brother Wayne and that when he awoke he saw the deceased in the room ablaze and the applicant was also in the room. It was after he was awakened that the applicant and the deceased ran from the room. If the jury accepted that Ralston spoke truthfully when he said it was Wayne who awakened him, then they could not accept the applicant's evidence that Wayne was asleep up to the time that he ran from the room.

It was important that the jury should have been carefully directed as to how they should approach the evidence given by Wayne, having regard to his youth, and to the inconsistencies which appeared in what he was recorded as saying, at the preliminary examination and his evidence before the jury at trial. To the credit of the learned trial judge he gave meticulous directions on these issues. And at page 127 of the Record he directed them that:

> "If you find there was a black-out that night and there was a candle there - there was a candle burning in the house, then I am afraid I tell you this ..... You don't have to act on it. If you were to find that a candle was in the house burning, then I don't think you could accept any of Wayne's testimony because the structure of his whole evidence would have been destroyed and when you consider what the defence is, I don't think you could have acted upon it."

The learned trial judge directed the jury as to accident and as to provocation and invited them to return verdicts of not guilty or of manslaughter if the prosecution did not negative those issues. Mr. Pearson followed the guidance offered by Lord Chief Justice Goddard in R. v. Reynolds, [1947] 32 CR. App. R. 39 and did not file or argue any ground of appeal as in his view the summing-up of the learned trial judge was impeccable. We too, were quite unable to discover any arguable ground on our reading of the Record. Wayne had given a lucid account of what must be one of the most callous attacks of a man upon a woman with whom he had lived as man and wife, and provided that he was believed, the verdict of guilty of murder was inescapable.

His application for leave to appeal is therefore refused.