

CA Criminal Law - Murder - Conviction for manslaughter - trial
Submitting up - Self defence - Grounds of appeal - Sentence - Whether judge
mis-directed jury on issue of self defence - whether judge
misdirected jury on issue of proof - whether sentence of fifteen
years imprisonment excessive. Application for leave to
appeal refused. JAMAICA Application for leave to
appeal refused. No cases referred to

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 192/88

COMP

BEFORE: THE HON. MR. JUSTICE CAREY, J.A.
THE HON. MR. JUSTICE DOWNER, J.A.
THE HON. MISS JUSTICE MORGAN, J.A.

EVIDENCE
CRIMINAL PROCEDURE

R. v. JOSEPH WRIGHT

Dr. Randolph Williams for the applicant
Lloyd Hibbert, Deputy Director of Public
Prosecutions for the Crown

17th April & 27th June, 1989

DOWNER, J.A.:

This is an application for leave to appeal against a conviction and sentence for manslaughter before Reckord, J. (Ag.) and a jury after a trial during the period October 23-27, 1987, in the Home Circuit Court. The charge in the indictment was murder but the jury returned a verdict of manslaughter and a sentence of fifteen years hard labour was imposed. Leave to appeal was refused and we now put our reasons in writing.

There were two eye-witnesses for the Crown in this sordid domestic tragedy. The most comprehensive account was given by the brother of the deceased, Andrew Tomlinson, who was fifteen years old at the time of the incident. He

recounted that on 31st July, 1985 his elder brother, the deceased Donald, went for his morning's wash and that his uncle the accused attacked Donald with a long knife and chopped him in his head. When Donald faced the accused he received another chop in his face and then the knife was pushed in his side. Just about that time Donald's mother returned from shopping where she had gone to purchase cigarettes. She gave evidence that she saw when the long knife was withdrawn from Donald's body.

As to the surrounding circumstances, both mother and son gave evidence that there was quarrelling between the accused and the other members of the family. It seemed as if there were problems concerning space as the quarters they occupied was rather crowded as there were five children in the family. In those circumstances, the deceased sometimes slept outside. One feature to be noted is that Andrew Tomlinson admitted that the incident was witnessed by one "Picture-man" whose name was Alphanso Wilson. Donald was taken to the Kingston Public Hospital where he died from the injuries he received that morning.

There was common ground between the defence and the Crown that there was a series of quarrels between the accused and his sister, the mother of the deceased. As regards the incident, however, there is a marked divergence. The accused in his sworn testimony said he was attacked by his nephew Donald who wanted him to leave the home. His account of the genesis of the quarrel was that he had accused Andrew Tomlinson of stealing money from him and that his sister took the boy's side, and also that Donald was constantly harassing him.

As for the incident itself, the accused Wright said that it came about after he was accused of using his sister's

bath soap for washing his clothes and when he went for his morning's wash, his sister pointed her hand in his face. She also threatened him with three bottles and Donald came to menace him with a cutlass. He was assaulted, he recalled, by both mother and son and he received a wound from Donald. He said he had the knife in his waist and he used it to defend himself. In defending himself Donald was wounded.

Alphonso Wilson (who is called "Picture-man") gave evidence in support of the accused in so far as he testified that Doanld attacked the accused and further he stated that Andrew Tomlinson was not on the scene at all that day. He also spoke of the quarrel between mother and son on the one hand and the accused on the other.

It was against this background that the learned trial judge left the issue of self defence and provocation to the jury and although there was an effort to criticise the directions on self defence, we found there was no merit in the submission as the learned trial judge emphasised that it was the honest belief of the accused which must be taken into account in accord with Beckford v. R. (Unreported) Privy Council appeal dated 15th June, 1987.

There was also a complaint that notwithstanding the correct directions on the onus of proof at page 5 of the record the effect of the learned trial judge's directions at page 53 of the record was a misdirection. That direction it was submitted emphasised to the jury that if they rejected the defence of self defence, the only issue left for them to consider was provocation. That submission was unsound for a summing-up must be considered as a whole and the learned trial judge had also reiterated on page 32 of the record that the jury must be satisfied to the extend that they felt sure about the Crown's case before a verdict of guilty of any offence could

be returned. Indeed, the learned judge was saying that if they rejected self defence, then they were required to consider the issue of manslaughter on the basis of provocation. If they were in doubt as between murder or manslaughter, then they should find manslaughter. The language may have been inelegant but the meaning was clear for the jury returned a verdict of guilty of manslaughter.

So considered, we refused leave to appeal and also found no merit in the ground that the sentence of fifteen years imprisonment was manifestly excessive. It was ordered, however, that the sentence was to run from the 27th January, 1988.