

CRIM. PRAC.

JAMAICA

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IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO: 30/94

COR: THE HON MR JUSTICE RATTRAY, PRESIDENT
THE HON MR JUSTICE DOWNER, J A
THE HON MR JUSTICE PATTERSON, J A

R V MARY LYNCH

Frank Phipps, Q.C. , Anthony Pearson & Miss Tracey Hamilton for Appellant

Bryan Skyes Dep. Director of Public Prosecutions for Crown

April 24, 25 & June 24, 1996

RATTRAY, P

On the 2nd of May 1994 the applicant Mary Lynch was convicted in the Home Circuit Court on a charge of having murdered her husband Leary Lynch and sentenced to life imprisonment without eligibility for parole before having served twenty years. The murder fell under the category of non-capital.

Mr. Lynch at the relevant time was the Divisional General Manager responsible for credit in the National Commercial Bank Branch at the Atrium. He lived with the applicant at premises 12 Sunset Close in Cherry Gardens. The relationship between the parties appeared, to use the words of the applicant to be "up and down". On Saturday the 23rd of May, 1992 the Labour Day weekend, Mr Hezekiah, the gardener otherwise called "Rat" was picked up by Mr. Lynch at about 7:30 in the morning along with another person called "Natty" and they went to Mr. Lynch's Farm at Linstead.

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There they worked all day and came back late in the evening. Mr. Lynch took both Natty and Mr Hezekiah to the bus stop and left them there. As far as the evidence for the prosecution was to establish they were the last persons to see Mr. Lynch alive. On Sunday night 24th May at about 10.00 p.m. the next door neighbour Mr. Mallick saw a fire at the Lynch's home coming from a 45 gallon drum. He became alarmed, because the flame was about 15 to 17 feet high. He telephoned to the Lynch's premises, but received no reply. He thereupon ran to the gate of No. 12 and screamed out. Mrs. Lynch appeared and spoke to Mrs. Mallick. She said there was nothing to worry about as she was burning some things just having done some spring cleaning. Mrs. Lynch was told that Mr. Mallick had summoned the Fire Brigade, and she told Mrs. Mallick that she should phone and tell the Fire Brigade not to come as it was not a serious fire. The Fire Brigade however came and remained for about 10 minutes.

The following night, Monday, the night of the Labour Day holiday, Miss Lorna Williams, a long time friend was visited by Mrs. Lynch, who slept there that night having told her that Mr. Lynch had gone to Puerto Rico and she did not wish to stay at home alone. Miss Williams left her there to go to work the next morning. However, before she left, Mrs. Lynch showed her a burn on the back of her leg and told her that hot water from the stove had burnt her. She also showed her a scar on her foot between her toes and said something had fell from the kitchen and hit her there. When Miss Williams returned home later that day, Mrs. Lynch was not at home, but she however turned up at about 10:00 o'clock that night and again remained overnight. On enquiry if she had heard from her husband, Mrs. Lynch told Miss Williams no, but that sometimes he goes away and does not contact her. The Tuesday was a working day after the holiday weekend. Mr. Lynch should have been at a Board Meeting at the

bank on that day. The bank got concerned about his absence and sent officers to check his home but no one was there. Mrs. Lynch phoned the bank to say that Mr. Lynch was off the island and she thought that he was on leave. She told Mr. Dunbar McFarlane, the General Manager Director Designate that Mr. Lynch had gone to Kentucky. This he interpreted as being Kentucky USA. The gardener noticed where fire had burnt the wall by the corner of the house and there was a bag with burnt things inside the grill. There were also burnt pieces of carpet. At about 9:00 o'clock that night Mrs. Lynch visited the gardener at his home to enquire what was the excitement at the house during the day and the gardener told her that the people from the bank had visited. She told him that Mr. Lynch was off the island. When the police first questioned Mrs. Lynch, she gave the story about her husband having gone to Kentucky.

On the 17th of June, the human skull and other remains of Mr. Lynch were found in a remote place called Serpents Circle at Smokeyvale in St. Andrew. The body had suffered a total of twenty-five chops. Some were inflicted before death, specifically those relating to the skull, some after death. Death was due to multiple sharp force injuries consistent with infliction with a sharp instrument such as a cutlass.

Dr. Royston Clifford, the Government Pathologist stated that on examination of the body he found thirteen chops of 2 -5 inches each on the top of the skull. Mrs. Lynch had attributed a small cut on her foot to a cup falling off the freezer and cutting her.

At the trial, Mrs. Lynch gave evidence. She described the relationship between her husband and herself. She told the Court that on the morning of the 24th of May, the Sunday when she was still in bed, her husband got up at about 7.00 o'clock and said that he wanted to talk to her. He complained about her spending and she told him

that he was not giving her enough money to run the house. He complained about the situation at the bank which was not satisfactory to him. She told him, that if he was not happy in the job he should leave the job. He told her he did not want to hear her voice, all he wanted her to do was to listen. She said:

"But this is Jamaica, and as far as I am concerned, this is a free country. Jamaica is not Barbados."

Mr. Lynch was from Barbados. Her evidence was described to the jury by the trial judge as follows:

"She says he moved towards her, and she jumped and stood up. He came right up to me. He spat in my face. I pushed him off, and I said I thought your mouth was for eating, I didn't know it was for spitting on people. And she said she started fighting. After I pushed him, he came back and punched me a few times, and I hit him back. By this time we were all over the place. The beds were not apart. We were fighting all over the place. Piece of the old carpet she says, was removed. The beds were in front of the dresser, about one foot from the dresser, and the bottom of the beds were facing the walk in closet. She says it is not in that position as shown in the diagram we have here. I would say I was getting the better of him, and I noticed he flicked on the air conditioning which we never used because of the light bill situation. She was surprised. He ran from the room and said, 'I am going to fix you, you F...ing cunt.' ...

He came back in suddenly, within seconds with a machete. He didn't go far. He started wielding it like that, wielding it from side to side towards my face, and I did like this, and she showed us, raised her hand like a boxer before her face and started to shield her face. I got some cut on my left index finger and the back of my hand and forearm. She showed you. 'I was so frightened, I wet myself immediately. I tried

to come up to him as close as possible, and reached for his right hand with a machete. I held on to it as firmly as possible, and we struggled all over the room. Mattresses were off the beds, everything were all over the place. He was still fighting me while I held his hand. I held on firmly still. He just plunged the machete down in my right instep.' It bled, and she got out, and she has the mark up to now.

She says realizing this was serious, 'I struggled until I got hold of the cutlass. I started swinging left right, right left, and hitting him with the machete. I held it with both hands and I swung it like this.' And she showed us. 'I swing it to him from his hip downwards. I think it hit him. He was fighting back sameway, and he was in a rage and furious, saying that he is going to kill me. I felt if he had got the machete, he would kill me. I started to move backwards, he kept coming up. I was going backwards to try and go through the door to make my escape, but he kept coming up on me, still fighting me. I started swinging the machete to the head. He was waving his head to the left, right, right left, swinging backwards and forwards. The machete caught him in his head. I fell on my back in his room near the verandah. I still had the machete clinched in my right hand. He fell on top of me, on the front of my chest going down. I think I made about three more chops, and he kept coming up on me until he covered me over completely, because he was still fighting me. He moved up and covered me. He never stopped fighting me. I blacked out after that. I came back to myself and eased myself from underneath him and ran from the room with the machete still in my hand, and then I dropped it in the passage way."

She proceeded to drag the body from the master bedroom to the passage, up the stairs, into the living room, the dining room, and kitchen and then to the carport where she put it into the trunk of the white Volvo car. She decided to dispose of the body.

She cleaned up the place, with the stuff that was kept in the bathroom and bedrooms. She burnt the carpets. While doing this the Fire Brigade came and afterwards left. She went looking for a place to dump the body and kept driving around, eventually she ended up in the hills:

"I couldn't find anywhere to dump the body and eventually I passed this small road and I reversed in it, I reversed in this narrow road, took out the body. I had some gas oil and newspapers. I saturated the newspapers. I removed the car forward, left it running. I left the driving door opened. I lit a match, it was a very big explosion. The fire was very high in the air. I ran from the scene but still I got scorched in the ankles by the flames. I ran to the car and sped away down the hill. I kept driving. I did not know the area but then I got back on the main road. Why, I was frightened. I was petrified. I was frightened. I was upset. I was in a daze. I was not myself, to be frank."

She went back to 12 Sunset Close to try to clean up the house some more.

The learned trial judge directed the jury on self-defence and provocation. It is his direction on self-defence which has resulted in the first of the grounds of appeal advanced by counsel for the applicant Mr. Frank Phipps, Q.C. in this appeal. With reference to self-defence the trial judge directed the jury as follows:

"She said - 'I was acting in self-defence, my husband attacked me and I cut him in self-defence'

Now, this is the law on self-defence -

A person who is attacked in circumstances where he reasonably believes his life to be in danger, or that he is in danger of serious bodily harm, may use such force as on reasonable grounds he believes necessary to prevent and resist the attack and if in using such force he kills his assailant, he is not guilty of any crime even if the killing was intentional.

In deciding the particular case members of the jury, whether it was reasonably necessary to have used such force as in fact was used, regards must be had to all the circumstances of the case. So this is what you have - what you have to consider, members of the jury, when you consider self-defence: that there was an attack upon the accused and the accused believes that she was in imminent danger of death or serious bodily harm and the force used by her must have been used to protect herself either from death or serious bodily harm intended towards her or from the reasonable apprehension of it. Even though her husband may not have, in fact intended to cause her death or serious bodily injury, it is not a question of what the attacker intended, but did she have a reasonable apprehension that she was in danger of death or serious bodily harm."

Mr. Phipps, Q. C. submitted that the proper test for self-defence is what the applicant honestly thought was necessary to protect herself from death or serious injury and not what she reasonably believed and that this formulation constituted a serious misdirection. He relies for this proposition on **Beckford v R** [1987] 3 All E R 425 which indeed so states. The real issue for the jury was whether in fact they accepted or rejected the account given by the applicant. It is clear that the jury rejected that account. In this regard it is appropriate to adopt the language of Rowe, P. in **R. v. Roy Thomas** SCCA No. 185/86 (unreported) delivered on January 29, 1988 -

"This was not an 'honest belief' case. This is a case in which the positive assertions of the appellant included what happened to the weapon which the deceased had subsequent to the stabbing. It would be putting an impossible strain upon a trial judge to require him in all circumstances of self-defence to say: 'Well although the accused has described the attack made upon him in graphic detail, if you reject that

account, you must nevertheless consider whether he honestly believed that those circumstances he has so graphically described existed, even if he was mistaken. This appellant has not relied upon mistaken belief and we do not think that the facts warranted any direction on the subject of honest belief."

(cited by Forte, J.A. with approval in *R. v. Derron Williams* SCCA No. 119/91(unreported) delivered on the 21st July, 1992). In *R. v. Derrick Wolfe* SCCA No. 94/91(unreported) delivered on July 31, 1992, Rowe, P. revisited the matter as follows:

"The Beckford direction must be given where there is a question as to the nature or existence of the attack. When it is clear, however, on the defence that the appellant was being attacked the jury would not be assisted with a direction on honest belief."

In *Vasquez v R* [1994] 3 All ER 674 the trial judge's direction to the jury on self-defence likewise came under challenge. The judgment of the Board delivered by Lord Jauncey reads inter alia:

"...the trial judge stated that the test as being whether the accused had 'a reasonable apprehension of his death at her hands' and 'if a man reasonably believes that his life is in danger or he is in danger of receiving dangerous or grievous harm, which is really serious harm endangering his life or limb'. This was a misdirection, argued the appellant in as much as the proper test was subjective not objective, honest belief rather than reasonable belief. This submission is undoubtedly correct as was accepted by the Crown (see *Beckford v. R.* [1987] 3 All ER 425 at 423 and 433, [1988] AC 130 at 145 & 147) and there was accordingly a misdirection."

There was alleged in Vasquez, another misdirection on self-defence which is irrelevant in the context of this application. Lord Jauncey continues:

“Even assuming that there was a further misdirection in this respect their Lordships do not consider that the two misdirections require that the conviction be quashed. Given the multiplicity of stab wounds inflicted on the deceased and the absence of any similar wounds on the accused, together with the evidence that the deceased was unarmed, whereas accused continued to stab her while dragging her through the hall, it is difficult to imagine that the jury could have reached a different verdict even if they had been properly directed upon the two foregoing matters. In their Lordships’ opinion, no substantial miscarriage of justice has occurred and this is a clear case for the application of the proviso...”.

Lord Jauncey’s words are particularly appropriate on the facts of the case. We hold the view that these facts did not require a direction couched in the terms “honest belief” and the appeal on this ground therefore fails.

However, even if required as per *Beckford v R*, [1987] 3 All E R 425 there has been no miscarriage of justice and we would have applied the proviso.

The second ground of appeal urged by Mr. Phipps was his contention that the trial judge failed to direct the jury as to how to treat the lies told by the applicant. This he maintained must have left the jury with the impression that the lies told by the applicant could have been interpreted as evidence of guilt. The trial judge dealt appropriately tersely with the questions of the lies. He told the jury:

“Well, you remember she said she told you all these lies because she was confused and in a daze and she said she was waiting until she get her Minister or her lawyer and told them what really happen.

That is a matter entirely for you Mr. Foreman and members of the jury."

The trial judge never at any time indicated to the jury that her telling of lies could be interpreted as evidence of guilt. What is of importance is whether or not the jury believed the explanation as to why she lied.

In the *The Queen vs. Dehar* [1969] N.Z.L.R. 763 at 765 Turner J. stated:

"We do not say that in every case in which lies are put forward in aid of the Crown's case to reinforce the other evidence it is always necessary for the trial Judge to give any specific form of direction. How far a direction is necessary will depend upon circumstances."

In *R. v. Sharp* [1983] 3 All E.R. at page 225 Stewart Smith L J at page 230 stated:

"Save in those cases where lies are relied upon as corroboration (*R v. Lucas* [1981] 2 All E R 1008, [1981] QB 720 or as confirmation of identification evidence (*R v Penman* (1985) 82 Cr App R 44 and *R v Francis* [1991] 1 All ER 225, [1990] 1 WLR 1264), it is not as a matter of law incumbent upon a judge to give a direction as to the significance of lies told by the accused."

In *R. v. Bey* [1993] 3 All ER 253 Steyn LJ at 257 restates the two situations in which a direction must be given in cases in relation to lies told by an accused person and having so done continues:

"This line of authority at the very least assumes that there is no mandatory rule requiring a judge to give such a direction except in the two specific instances which we have described. And these cases undoubtedly reveal a clear judicial reluctance to extend the categories in which a direction on lies ought to be given."

In the circumstances therefore, we find no merit in the submission which relies upon the judges direction or absence thereof with respect to the effect of lies told by the applicant.

In the circumstances, we treated the application for leave to appeal, as the hearing of the appeal. The appeal is therefore dismissed and the conviction and sentence affirmed.