

J A M A I C A

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL No. 99 of 1975

BEFORE: The Hon. Mr. Justice Luckhoo, P. (Ag.)
The Hon. Mr. Justice Hercules, J.A.
The Hon. Mr. Justice Watkins, J.A. (Ag.)

R. v. MIGUEL BROOKS

P. Atkinson for the applicant.

Dr. W. Waters-McCalla for the Crown.

February 25, 1976

Luckhoo, P. (Ag.):

The applicant was convicted in the Home Circuit Court on July 23, 1975 on indictment for the murder on December 22, 1972 of Maisie Guscott and was sentenced to death. His application for leave to appeal against conviction was refused by us on February 25, 1976 and we now set out our reasons for so doing.

The evidence for the prosecution was to the effect that the applicant Brooks and the deceased Maisie Guscott had been on intimate terms for some time prior to December 21, 1972. The deceased was estranged from her husband and resided alone in one part of a dwelling house at 20 Coolshade Drive, Havendale while Mrs. Joycelyn Hylton and her children, including a daughter Joy Hylton, occupied the remaining part. The applicant would visit the deceased from time to time. In the evening of December 21, 1972 the deceased and a man were seen by Mrs. Hylton seated on the verandah of the deceased's dwelling house in apparently amicable conversation. Mrs. Hylton had come from her room to get some medicinal tablets from the deceased. The deceased left the man and gave Mrs. Hylton the tablets which she fetched from her apartment. Mrs. Hylton returned to her room. It was then about 11 p.m.

Shortly thereafter Mrs. Hylton heard the sound of someone crying and on opening the door of her room observed the deceased on her knees and hands on the floor of her living room. The deceased was crying. She saw the man strike blows at the deceased who attempted to ward off the blows by holding up her hands. The deceased got up, turned and ran the length of her living room into her kitchen. The man pursued her. The deceased ran along a passageway back into the living room and then through the doorway of Mrs. Hylton's bedroom. The man pursued the deceased into that bedroom. Mrs. Hylton observed that he had an object in his hand like a knife.

Joy Hylton had similarly observed what her mother said she had seen and recognised the man chasing the deceased as the applicant. She said she saw the applicant with a knife in his hand stab at the fleeing figure of the deceased while chasing after her. Joy returned to the bedroom she occupied with her mother. The deceased then ran into the bedroom. She was crying loudly. The applicant also ran into the bedroom. He still had the knife in his hand. The deceased fell on her back onto the bedroom floor. The applicant got astride her and stabbed her a number of times with the knife while they were in that position. He then left the room. Mrs. Hylton in the meanwhile had remained outside the bedroom and on the applicant leaving the bedroom he cut Mrs. Hylton on the right arm when she enquired of him what was the trouble. The applicant then left the premises. Shortly thereafter the deceased was seen to be staggering across the lawn outside her house and Mrs. Hylton put her to lie down. The police were summoned. The deceased was bleeding from several wounds on her body. On the arrival of the police at about 11.15 p.m. the deceased was placed in a police car and taken to the Kingston Public Hospital. She was admitted a patient. There she underwent an emergency operation performed by Dr. George Bernard in the early hours of the morning of December 22, 1972. She died later that morning.

At about 11.45 p.m. on December 21, 1972 the applicant went to the Maverley Police Station and asked Constable Johnson to be taken to a doctor. He had a cut on one of his hands. Upon enquiry by Constable Johnson why he wished to see a doctor the applicant replied that he cut up two women at 20 Coolshade Drive and he believed them to be dead. He was then detained and was later taken by Constable Johnson to the Kingston Public Hospital where Constable Johnson informed Det. Constable Cameron of what the applicant had told him at Maverley Police Station. The applicant thereupon burst into tears and said "I lost my head." Later on December 22, 1972, police investigations at the scene of the tragedy revealed a large pool of blood at the spot in the yard where on their arrival the police had found the deceased the previous night. A trail of blood was seen along the driveway to the verandah, on the verandah itself and in the living room. Blood was seen on the walls of the living room, in the passageway and in a room occupied by Mrs. Hylton. An open ratchet knife with a blade some 4" long was found on the lawn in front of the deceased's home.

Dr. Bernard who performed an emergency operation on the deceased shortly after she had been brought to the Kingston Public Hospital observed that the deceased had received a number of wounds and that she was in a state of shock. The more serious wounds he sutured. These included a penetrating stab wound above the right breast and a deep seated laceration in the upper abdomen. He probed the stab wound above the right breast digitally to discover whether it had penetrated into the chest cavity but could discern no sign of such penetration. Neither by probing nor by auscultation did he discover any sign of blood in the chest cavity. He therefore sutured that stab wound. He formed the view that the main reason for the deceased's state of shock was the injury to her abdomen. He accordingly performed a laparotomy. On opening the abdomen he discovered a great deal of blood. There were two lacerations 1½" and 1" respectively in extent on the right lobe of

the liver as well as a laceration $\frac{3}{4}$ " in extent to the right side of the diaphragm. He sutured those lacerations and closed the abdomen leaving a drain in the abdominal cavity to allow drainage of blood that might occur after the operation. Subsequent to Dr. Bernard performing the emergency operation other surgeons at the hospital saw the deceased and ordered that an X-ray of the chest be taken. Unfortunately, the deceased succumbed to the injuries before that could be done.

A post mortem examination carried out by Dr. DePass on the deceased's body on December 29, 1972 revealed that the deceased had suffered the following injuries -

- (1) an incised wound $2\frac{1}{2}$ " long over the right axilla and breast;
- (2) a wound 9" long on the outer aspect of the right arm extending to the antecubital fossa and the interior surface of the mid third of the right forearm;
- (3) a wound $\frac{3}{4}$ " long on the anterior surface of the mid third of the right arm;
- (4) two small wounds $1\frac{1}{4}$ " and $\frac{1}{2}$ " long respectively on the lateral aspect of the middle third of the right forearm;
- (5) a wound $\frac{3}{4}$ " long on the posterior surface of the mid third of the right arm;
- (6) a wound between the middle and ring finger and another on the medial border of the left hand near the root of the little finger extending from the back to the palm of the hand;
- (7) a U-shaped wound $\frac{3}{4}$ " long on the medial border of the mid third of the right forearm;
- (8) an incised wound $1\frac{1}{2}$ " long on the right lower chest;
- (9) a transverse wound 2" long at the upper end of the abdomen at the right side;
- (10) a superficial wound 2" long on the anterior surface of the lower third of the right thigh;
- (11) a U-shaped wound 2" long on the lateral border of the mid third of the left forearm;
- (12) a wound 2" long on the posterior medial aspect of the left wrist;
- (13) a wound on the lateral aspect of the palm of the left hand near the forefinger;
- (14) a wound on the lateral border of the left forefinger near the distal inter-phalangeal joint;
- (15) a transverse wound $1\frac{1}{2}$ " long in the region of the left loin;

(16) a vertical wound 1" long over the left lumbar region.

Those were the injuries found on external examination. On dissection Dr. DePass found in the section of the chest two separate stab wounds. The right fourth rib had been severed in a vertical direction and the right fifth rib was cut obliquely at the right border of the sternum. Approximately just under two pints of blood and clots were present in the right chest cavity. The right lung was collapsed and there were sutures in the diaphragm - the fibrous membrane which separates the chest from the abdomen. Those sutures had been inserted by Dr. Bernard in the course of his emergency operation. Dr. DePass also found two sutures in the abdomen (inserted by Dr. Bernard) in the anterior surface of the right lobe of the liver. The cause of death in Dr. Depass opinion was shock and haemorrhage secondary to the stab wounds in the chest. Dr. DePass was of the opinion that the wounds he found could have been inflicted with the ratchet knife found at the scene of the tragedy.

As part of the case for the prosecution there was tendered in evidence a cautioned statement made by the applicant to the police shortly after he was taken into custody on December 22, 1972. After relating his earlier association with the deceased the applicant said -

"Mrs. Guscott and I were sitting on the verandah for about two hours, then she asked me to go inside with her, because she had to do some typing and she brought out a typewriter. I asked her if she had seen my mother recently and she said no.

"At this point she said somethings referring to my mother that I did not like, then we began to fight. She pulled away a knife which I had in one of my hands which I was showing to her. I tried to take the knife away from her again and then I felt the cut on my hand. We were pulling and pulling to get the knife. I decided to run away from the house and she was screaming very hysterically.

"I took away the knife, and was in the act of escaping through the door, when Mrs. Guscott and the other lady blocked my way, and I fell to the ground on three occasions. I was then wielding the knife blindly and I was in a state of panic that time. Well after that I ran out, I got to the gate and I jumped over the gate. I continued running without stopping until I reached the police station at Maverley where I turned myself in to the officer in charge."

In his defence the applicant made a statement from the dock. He related his earlier intimate association with the deceased and continued -

"On this particular night of the - on the 21st of December I went to visit Maisie at her home as I did regularly. I remember that it was a Thursday night and she greeted me in her usual very friendly manner. That was at about eight o'clock, eight o'clock in the night and we were sitting on the verandah of her home. We were having a few drinks and we were conversing in a most friendly manner and I remember that a lady came out to the verandah and saw us sitting there. At that moment we were embracing and this lady spoke to Maisie and she went back inside. Shortly afterwards Maisie confronted me with a question. She asked me why I did not go to her - why I did not go to take her out on the previous Saturday night. Well, I explained to her that I caught up with some friends and I was unable to come on that Saturday night but she said no, that a friend of hers told her that I was seen on that Saturday night with another young lady.

At this time, well, Maisie was - she was crying and she was saying this and so I tried to change the conversation. I asked her when last she had seen - when last she had been to see my mother who she knew and she had visited a few times before. So Maisie replied that she had not seen my mother recently and that she would not be visiting her because she knew that my mother did not approve of our relationship and she said that it seems as if my mother wanted to keep me for herself. And she also said that she knew that I am already living with my mother. She was actually yelling when she said this to me. At the same time I was surprised to see that, well, there was, as I mentioned before, drinks. There was a little table there with drinks and there was also a knife that we had used to open bottles because Maisie could not find a bottle opener. So, as I said, I was surprised to see that she grabbed the knife, took the knife from the table and she stabbed at me, at my face but I managed to block the blow with my hand and I held on to her. I held on to her wrist, the hand that she had the knife in and we started fighting. I realised that my hand was cut and I sincerely don't remember anything else that happened immediately after. Well, what I do remember is that I suddenly found myself in one of the bedrooms of the home with Maisie and she was on the ground. I was also on the ground with her but I noticed that there was the knife sticking out of her chest and of course I was in a state of panic, I was in a rage and I instinctively took out the knife out of her chest and I ran out of the house. I stumbled about two or three times until I reached to the gate and I noticed that the gate was padlocked so I had to jump over the gate and I ran continuously to the nearest police station that I could think of. I arrived at the Maverley Police Station and there I spoke to the duty officer and I told him the address of Maisie's home and that medical attention is urgently needed. I was then taken to another Police Station, the Constant Spring Police Station, where I spoke to Inspector, Mr. Spaldings, and he told me that it did not matter, that I was not under the obligation to make any statement but I insisted on him that I would like to make a statement about the incident because I didn't have anything to hide and I wanted to cooperated with their investigations of this incident, so I dictated a short statement to him and I signed it. And I was taken to Public Hospital by the police to have my wound treated, and at the hospital I made enquiries about the state of Maisie.

"I was told that she underwent surgery and that she was in recovery. Some time later, the following day, I was informed by the police that she had died and I would like to say very sincerely that this distressed me very, very much for many reasons. First, I was very surprised that she died because I did not imagine that she was so seriously wounded and also because our relationship was a very good one; we were on very loving terms and everything ended in a tragedy for both of us. Finally, I would like to say that under no consideration I would harm or hurt Maisie because of the bond of love that kept us together and I was dismayed to learn that she had died because of inadequate medical attention."

The applicant was found guilty of murder with a recommendation to mercy.

The original grounds of appeal filed were as follows -

- "Ground (1) The learned trial judge misdirected the Jury by saying not to consider the self defence as part of the defence case.
- (2) Expert medical testimony disclosed that death was caused by gas and improper medical procedure in diagnosis and in the subsequent clinical handling of the patient now deceased.
- (3) The prosecutor used unwarranted and improper language in his summation to the Jury causing them to be passionately inflamed and forcing the trial judge to object to his choice of words before the Jury."

At the hearing before us Mr. Patrick Atkinson for the applicant abandoned the second and third grounds filed and sought and obtained leave to amend the first ground to read as follows -

"The learned trial judge misdirected the jury on the defence as to all the relevant areas open for their consideration and as to all the proper findings open to them, thereby prejudicing the applicant in that -

- (a) the jury were misdirected not to consider self defence;
- (b) there were no proper directions concerning defence of accident;
- (c) no directions given as to excessive force in self defence;
- (d) the directions as to provocation were prejudicial and inaccurate;
- (e) no direction was given as to the effect of a finding of a lack of intention to kill or cause grievous bodily harm."

As regards paragraphs (a) and (b) of the amended ground we were clearly of the view that no issue of self defence or accident arose on the evidence at the trial and indeed this was the view taken by Mr. Atkinson at the trial. As regards paragraph (c) of the ground in the circumstances no question of a direction on excessive force in self defence arose.

Mr. Atkinson argued paragraphs (d) and (e) of the ground together. We were of the view that on the most favourable view a jury might be disposed to take of the applicant's statement from the dock there was no room for a verdict of manslaughter on the ground of lack of an intention to kill or cause grievous bodily harm. Mr. Atkinson's main complaint was that the directions given by the learned trial judge as to provocation were prejudicial and inaccurate. We could discover no inaccuracy in the trial judge's summing-up on this aspect of the case. It was contended that the learned trial judge ought specifically to have told the jury that all but four of the injuries found on the deceased's body might have been sustained by her "accidentally" in the course of a struggle with the applicant for possession of the knife and that had the trial judge done so the jury might reasonably have concluded that by reason of the provocation suffered by the applicant his mode of resentment bore a reasonable relationship to the provocation. Instead, **it was urged**, the trial judge sought to relate the mode of resentment to the narrative of events given in evidence by the witnesses for the prosecution Mrs. Hylton and her daughter Joy. It is not without significance that in the course of cross-examination of the several doctors who testified at the trial no suggestion was even put to those witnesses that any of those several wounds could have resulted in the way now suggested by counsel for the applicant. Further, we think that at least nine of the **wounds listed** above as having been found by Dr. DePass could hardly have been inflicted as a result of a struggle between the deceased and the applicant of the nature suggested to us by Mr. Atkinson.

In the result we were of the view that the application for leave to appeal was without merit and we accordingly refused it.