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IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL No. 41 of 1974

BEFORE: The Hon. Mr. Justice Luckhoo, P. (Ag.)
The Hon. Mr. Justice Swaby, J.A.
The Hon. Mr. Justice Zacca, J.A. (Ag.)

R. v. MIGUEL BROOKS

P. Atkinson for the applicant.

N. Sang for the Crown.

23rd September; &
22nd November, 1974

ZACCA, J.A.(Ag.):

The applicant Miguel Brooks was convicted in the Home Circuit Court on February 21, 1974 on an indictment which charged that on December 22, 1972 he murdered Maisie Guscott in the parish of St. Andrew. He was sentenced to death, and he now applies for leave to appeal against conviction.

The Crown's case was that on the night of December 21, 1972, at about 11 p.m. the deceased was sitting on her verandah at 20 Coolshade Drive, Havendale along with the applicant. Joycelyn Hylton who along with her three children including Joy Hylton also lived in the same house as the deceased but occupied different rooms, went and spoke with the deceased. The deceased gave Mrs. Hylton some magnesia tablets. Mrs. Hylton retired to her bedroom. Mrs. Hylton stated that a few minutes later she heard someone crying and on opening her door she saw the deceased in a stooping position on the floor of the living room. The deceased was crying. A pool of blood was later found at the spot where the deceased was seen stooping. A man came from the direction of the verandah to attack her and the deceased sprang up and ran through the

/dining room

dining room and into the kitchen. The man followed her into the kitchen. In his hand was seen an object, the end of which looked like a knife. The deceased ran from the kitchen, along a passage, through the living room and into Mrs. Hylton's bedroom. Joy Hylton was in this bedroom. Mrs. Hylton eventually went up to the door of her bedroom. The deceased and the applicant were also in the bedroom and Joy was heard to call out "Mama, come in because the man is cutting her". There was an electric light burning in the bedroom but Mrs. Hylton was unable from where she was standing to see either the deceased or the applicant in the room. Mrs. Hylton further deponed that the man came out of the room and cut her on her right arm with a knife. The man then ran away. She later saw the deceased who had blood all over her clothes. The deceased was placed on the ground.

Joy Hylton, 18 years of age, also gave evidence for the prosecution. She deponed that during the night she got awake hearing a crying. She got out of bed and she saw a man chasing the deceased. The man had a knife in his hand. They ran into her bedroom. The deceased fell to the floor on her back and the applicant went astride over her and stabbed her more than four times with the knife. The applicant left the room with the knife still in his hand.

At about 9 a.m. on December 22, a knife which had blood stains on it was found by one Keith Dennis on the lawn of 20 Coolshade Drive and handed over to the police. Dr. Marsh, a Pathologist, told of having examined this knife and of his finding traces of human blood on both sides of the blade and handle.

The deceased was taken to the Kingston Public Hospital where she was seen by Dr. George Bernard who performed an emergency operation. He stated that he examined her chest and at that time

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formed an opinion that she had no injury to her lungs. She was however bleeding in her abdomen. The deceased died later that morning at about 11.30 a.m.

A Post Mortem examination was performed on the body of the deceased by Dr. Eric Depass. She was seen to have a total of eighteen wounds. The most serious of these wounds was one to the right breast which severed the fourth and fifth ribs. There were approximately 900 c.c. of blood and clots in the right pleural cavity, the right **lung** was collapsed and there were sutures in the diaphragm. In the opinion of Dr. Depass, death was due to shock and haemorrhage, secondary to stab wounds of the chest. Ten of the eighteen wounds were to the back of the deceased. The Doctor also stated that the knife which was found by Dennis could have inflicted the injuries.

Constable Johnson in his evidence stated that at about 11.45 p.m. on December 21, 1972, he was on duty at the Maverly Police Station. The applicant came to the station and said to him "I want you to take me to the Doctor". He is alleged to have also said to the Constable "I cut up two women up by 20 Coolshade Drive and I believe them dead".

Detective Hopeton Cameron told the Court that he received a report and proceeded to 20 Coolshade Drive where he saw the deceased bleeding from several wounds and that she appeared to be unconscious. He also saw Mrs. Joycelyn Hylton bleeding from a wound on her right arm. The deceased was taken to the Kingston Public Hospital. He then proceeded to the Maverly Police Station where he saw the applicant. The applicant is alleged to have said in the presence of Constable Johnson and Detective Cameron "I lost my head".

On the morning of December 22, Detective Cameron returned to 20 Coolshade Drive and made certain observations. He told of seeing bloodstains along a tiled passage and a pool of blood in the living room, and also in two bedrooms. Later that day he arrested the applicant for the murder of Maisie Guscott and after caution the applicant said "I lost my head".

The applicant in his defence made an unsworn statement. He stated that he was a Spanish Language teacher and translator. The deceased and himself were intimate friends for over one year. That on the night of December 21, he went to visit the deceased. They were both sitting on the verandah having drinks and chatting in a very friendly manner. They were on loving terms and they were embracing and kissing. There was a knife on the verandah which he had used to open a bottle. The deceased asked him why he had not come to take her out the previous Saturday night and she accused him of being seen out with another young lady. He also stated that the deceased was angry and upset and also told him that she did not wish to see his mother again, because his mother did not approve of their friendship and that he was living with his mother **and that he** was trying to make a fool of her. Deceased grabbed the knife and they began wrestling for it. They struggled into the living room and he took the knife from her and she fell down on one knee. The deceased sprang up and they continued struggling into the kitchen and into a bedroom. The deceased stumbled and fell on her back and he fell on top of her. He then realised that the knife had penetrated her chest and he became frightened. He pulled out the knife **and ran** wielding the knife as he was in a state of panic. He saw someone blocking his way at the door. He ran towards the gate, and continued running until he reached the Maverly Police Station where he was arrested. He gave Inspector Spaulding a statement at the Constant Spring Police Station. He received a wound on the back of his left hand during the struggle. He further stated that it was a most unfortunate incident. He did not intend any harm to the deceased but was only trying to keep the knife from her and trying to get away **as she was** in a state of panic. He did not want her to die because he loved her very much.

Mr. Atkinson on behalf of the applicant argued several grounds of appeal but for the purpose of this application it will only be necessary to consider grounds 4 and 5 which read as follows:

- "4. That the learned trial judge failed to direct the jury that your applicant's real defence was one of accident and prejudiced the case for the defence by telling the jury that it was one of self-defence and it is submitted that this misdirection must have caused your applicant's case grave prejudice.
5. That the case for the defence was not sufficiently and or adequately put to the jury in the learned trial judge's summation and that the directions given were a non-direction amounting to misdirection."

During the hearing of the application the Court **intimated** that there was no merit in the submissions with respect to the other grounds of appeal.

The learned trial judge in his summing-up to the jury dealt extensively with the Law relating to self-defence (pp. 191 - 197) indicating to the jury that the applicant was relying on this defence. Having thus directed the jury on self-defence, the learned trial judge then briefly dealt with the question of accident.

This Court has analysed the evidence which was led on behalf of the Crown and the defence and we are unable to see where the issue of self-defence was raised. It is clear from the unsworn statement made by the applicant that he was projecting the defence of accident. Of course the issue of provocation also arose and this the learned trial judge fully dealt with in his directions to the jury.

In our view, telling the jury as he did in his directions that the applicant was saying that he inflicted the injuries but that they were done in self-defence and then immediately following this with directions on the issue of accident would tend to discredit the defence of accident which the applicant was relying on. The jury would have had to consider that the applicant was saying that he inflicted the injuries but that they were done in self-defence and at the same time that the injuries were received by the deceased as a result of an accident. We cannot in these circumstances say

that the jury fully **applied** their minds to the real issue raised by the applicant, that is, accident. The application is therefore granted. The hearing of the application is treated as the hearing of the appeal. The appeal is allowed, the conviction quashed and the sentence set aside. In the interest of justice a new trial is ordered to take place before the present session of the Home Circuit Court.