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JAMAICA

IN THE COURT OF APPEAL

CRIMINAL APPEAL No. 93 of 1970

BEFORE: The Hon. President.
The Hon. Mr. Justice Edun, J.A.
The Hon. Mr. Justice Graham-Perkins, J.A.

R. v. NEVILLE SEGREE

Horace Edwards, Q.C. and L.H. McLean for the applicant.

Chester Orr, Q.C. and C.A. Patterson for the Crown.

15th and 16th June and 30th July 1971

GRAHAM-PERKINS, J.A.

The applicant was convicted of murder before Rowe, J. and a jury on the 22nd of October 1970, and sentenced to death. His application for leave to appeal against this conviction was heard by this court on the 15th and 16th of June 1971. On the latter date the court, having granted leave, treated the application as the appeal which it allowed, set aside the conviction, and ordered a new trial. We promised to put our reasons in writing and this we now do.

Mr. McLean, who appeared for the applicant at his trial, filed some eighteen grounds of appeal on the 4th November 1970. On the 11th June 1971 Mr. Edwards filed two further grounds. Mr. McLean, not to be outdone, however, filed two supplementary grounds on the 14th of June. During the hearing of the application Mr. Edwards, at the invitation of the court, sought and obtained leave to argue yet another supplementary ground. Somewhat ironically, however, the precise ground on which this court allowed the appeal was not, for some quite unaccountable reason, formulated as such among the twenty-three grounds on which the application was founded. Indeed, only three of these grounds were argued. We are constrained to observe that this approach of counsel reflects an attitude that may fairly be described as casual, and one that suggests a disturbing lack of sympathy for, and appreciation of, the vast volume of work with which this court is constantly engaged. We trust that this observation will not go unheeded.

The evidence led by the prosecution in support of the indictment disclosed the following broad picture. At about 7.00 p.m. on the 27th of August, 1970 the deceased, Daphne Thompson and Dorothy Campbell, journeyed by bus to South Road in Lower St. Andrew where they saw the applicant. The applicant approached Campbell who, up to a few months before had been his girl friend. After a short exchange of some heated words the applicant hit Campbell causing her to fall to the ground. Thereafter he delivered one, two, or three kicks to her body. At some point of time, either during or after the period in which these kicks were delivered, the deceased advanced towards the applicant and punched him on his chest. The applicant staggered backwards as the deceased, a bigger man, continued his advance. The deceased again punched the applicant and, as it appears, demonstrated by his conduct an intention to hit the applicant a third time. At this point the applicant took a penknife from one of his pockets and stabbed the deceased inflicting an injury which resulted in the deceased's death.

In a statement from the dock the applicant related the circumstances in which he came to strike the fatal blow in terms which the learned trial judge described as involving "all the classic ingredients of self-defence".

In dealing with the issue of self-defence the trial judge said:

> "Now, the Crown says on the Crown's case there is no question of self-defence because on the Crown's case the Crown is saying, our witnesses, the two women - only Mr. Beckford did not see the deceased man attempt to take any weapon whatever from his pocket. On the other hand the accused man has told you in his statement from the dock how the deceased punched him more than once; how he retreated, going backwards; how the deceased came at him; how the deceased put his hand to his pocket, back pocket and came at him with the fist clenched. He has told you that he was afraid of him. He has told you that he was backed into a fence, he nearly fell over a garbage tin and it was when he was backed into this fence by this bigger man that he made a slash at him. In fact he also said that the deceased was making slashing movements at him when he, the accused, was going back and before he, the accused, made the slash, and he was afraid of the deceased all this time. <u>And on that squarely is raised the defence of self-defence</u>."

He then proceeded to deal at some considerable length with the law as it related to self-defence. We observe, parenthetically, that there are

passages in this part of the trial judge's charge which involved a serious misdirection in law. Happily, however, he put the matter right at the end of his summing up on being requested to do so by counsel for the applicant. Nowhere did the trial judge assume the responsibility of telling the jury whether or not it was open to them to consider the issue of self-defence from the point of view of the evidence led by the prosecution. He was content merely to tell the jury what the view of the prosecution was. He then dealt with this issue of self-defence exclusively on the premise that it arose only on the accused's statement in the dock. And in so doing he said:

> "I am to tell you that if you are not sure, if you are left in a state of doubt as to whether or not the accused was acting in self-defence, then in those circumstances the crown would not have discharged its duty and you would have to acquit the accused. Only when you are satisfied so that you feel sure that this accused was not acting in self-defence as he described it to you in his statement from the dock could you say that he was guilty of murder, having regard to the crown's case. Only if you reject it completely."

We are of the clear view that the implications in this passage could not possibly have failed to have a singularly adverse effect on the trial of the accused. The jury were told in unmistakably clear terms, firstly, that they could find a verdict of guilty of murder if they rejected completely the accused's version of the circumstances culminating in the death of the deceased, and secondly, that if they were sure that he was not acting in self-defence as he described it in his statement from the dock they could find him guilty of murder, "having regard to the crown's case." Here, the learned trial judge quite inexplicably failed to appreciate that there emerged from the crown's case itself evidence on which it was clearly open to the jury to find that the issue of self-defence was capable of being resolved in favour of the accused. This evidence lent some measure of support to the accused's version. In effect, however, the trial judge was, quite wrongly we think, endorsing the view projected by the prosecution at the trial that, on the crown's case the issue of self-defence did not arise. Both on principle and on clear authority, we are obliged to say that from the view endorsed by the trial judge, and from the implications contained in the above quoted passage, we desire to record

our most emphatic dissent. It is for the foregoing reasons that we allowed the appeal and ordered a new trial.

Before parting with this case we desire to make the following observation: The summing up by the learned trial judge accounted for some forty-eight pages of transcript. By far the greater part was taken up by an almost verbatim repetition of the evidence which the jury had listened to over a period of three days. We think that this is quite unnecessary and must involve an unwarranted imposition on the time and patience of the jury. We do not in any way attempt to dictate to a trial judge as to the manner in which he should charge the jury, but we would respectfully remind trial judges of that part of the judgment in R. v. Wright 33 C.A.R. 22, at p.29, dealing with the duty of a trial judge:

> "The duty of the judge in any criminal trial or for that matter in any civil trial, is adequately and properly performed if he gives the jury an adequate direction on the law, an adequate direction upon the regard they are to have to particular evidence on such matters as accomplices or matters which require by law or practice corroboration, and if he puts before the jury clearly and fairly the contentions on either side, omitting nothing from his charge so far as the defence is concerned of the real matters upon which the defence is based. He must give to the jury a fair picture of the defence but that does not mean to say he is to paint in the details or to comment on every argument which has been used, or to remind them of the whole of the evidence, which has been given by experts or anyone else."