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JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 196/88

COR: THE HON. MR. JUSTICE CAREY, J.A.
THE HON. MR. JUSTICE WRIGHT, J.A.
THE HON. MR. JUSTICE GORDON, J.A. (AG.)

R. v. PAULETTE LAWRENCE

Mr. Bert Samuels for Applicant

Crown not represented

19th November, 1990

CAREY, J.A.

In the Home Circuit Court on the 6th October as far back as 1988 this applicant was convicted of the offence of manslaughter on an indictment which charged murder, and sentenced to a term of six years imprisonment at hard labour. She now applies for leave to appeal that conviction.

Mr. Bert Samuels who has appeared before us this morning sought leave to argue a supplementary ground of appeal formulated in these terms -

"The learned trial judge erred, when he directed the Jury to apply the objective test regarding the Appellant's honest belief that her life was in danger. The Learned Trial Judge stated inter alia:

'You must look at the evidence and the circumstances and see whether or not she could have honestly believed that her life was in danger and necessitated her using that type of force.'

Before dealing with this ground the facts need be stated in outline only. This matter arose over a quarrel between the victim and this applicant. On the day in question the applicant

went to the victim's home engaged her in a quarrel, stated that she had just beaten up her man and that she had come to beat her up in the same way. She grabbed her and used an ice-pick to inflict a number of stab wounds to her back one of which pierced her lung and resulted in her death.

The defence was that she was set upon by the victim and other persons who stoned her and she grabbed hold of the victim and stabbed her. The learned trial judge properly left self-defence which is the basis of counsel's attack. At page 21 of the summing-up, the learned trial judge said this:

"..... Now from that she is asking you to say that she the accused acted in self-defence when she did like this in her words and so as a consequence the wounds were inflicted. Now you must look at all the circumstances of the case and you examine this bit of evidence also. If you accept that at the time that she was attacked and she honestly believed that her life was in danger, then she may use such force that she thought was reasonable to repel or resist the attack and if in using such force she killed her assailant, she would not be guilty of any offence, because a person who is attacked, who honestly believes their life is in danger is entitled to use force to repel the attack, in other words, to defend herself. You must look at the evidence and the circumstances and see whether or not she could have honestly believed that her life was in danger and necessitated her using that type of force, in other words to repel the attack that she necessarily believed was being mounted on her, because she tells you that she hugged Charlene,"

Then the learned trial judge dealt with the circumstances in which the applicant stated that she perceived an attack to be made on her.

We find it difficult to appreciate the point that is being urged before us because the directions of the learned trial judge are in complete accord with directions required by their Lordships of the Privy Council in the case of R. v. Beckford [1987] 3 All E.R. 425. The test nowadays is not an objective test as was the

situation prior to that case. It is now wholly subjective. The learned trial judge pursuant to the requirement of that case, gave, in our view, proper directions. Indeed, learned counsel at one time pointed out that a part of the directions was impeccable. In our view, the directions were not partially so, the entire directions were impeccable and cannot be faulted. This is a wholly unmeritorious appeal.

There was an attempt to apply for leave to appeal against sentence out of time. We think that application also is misconceived. The sentence was, if anything, on the lenient side.

In the circumstances, the application for leave to appeal is refused and the Court directs sentence to commence on the 27th of December, 1988.