No. 683

JAMAICA

IN THE COURT OF APPEAL
C.A. No. 98/65

BEFORE: The Hon. Mr. Justice Duffus (President)
The Hon. Mr. Justice Henriques
The Hon. Mr. Justice Moody (Ag.)

R. vs. RAINFORD ANDERSON

Mr. M. Tenn appeared on behalf of the Appellant.
Mr. E. L. Miller appeared on behalf of the Crown.

6th October, 1965

DUFFUS, P:

This is an application for leave to appeal against the conviction of murder recorded in the Circuit Court for the parish of Saint Catherine on the 17th of May, this year, when the applicant was found guilty of the murder of Sheila Brown and sentenced to death by the learned Chief Justice. The case for the Crown, briefly, was that the applicant became friendly with the deceased, Sheila Brown, a girl of seventeen years. He took her away from her parents' home, and then he returned some time later bringing the girl who now had a child for him. The applicant was not welcome in the parents' home, and the position was made clear to him by the father of the girl. The applicant took the girl away again and went to Kingston, and then the mother of the girl got certain information, went after her and brought her back to the home in Saint Catherine. The applicant came there to her and again it was made clear to him that he was not welcome in the home. The father took him to the gate of the home and in his evidence he stated that just as the applicant was going through the gate he said this to the father: "If a kill me nah hang because when me go before the judge me a turn mad man and them must send me a Bellevue." The parents left the home after that and the deceased girl was in the home with her baby and a younger brother. The applicant returned to the home and there was eye witness evidence given of the attack made by the applicant on the deceased, in which he used a knife which he took from his pocket. The deceased was

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severely wounded. She rushed from the house, bleeding from wounds in her throat and collapsed outside, an eye witness testified that he saw the applicant again for the second time attack the deceased girl and again he used the knife on her throat.

The doctor who did the post mortem examination found nine stab wounds including a very severe wound on the left side of the neck, which severed the major blood vessels on that side. He stated that in his opinion, death was due to the acute loss of blood resulting from the many injuries which he saw and which he described in Court. This, in short, was the case for the Crown.

The applicant called no witnesses but he made an unsworn statement from the dock. He stated that he visited the home of the deceased girl and he was invited into the house by her and they proceeded to have an amicable discussion, that she peeled cane and both of them partook of this cane after she had peeled it; and this is the material part of his statement, which I will read:

> "After we finish eat she take up the trash and go outside and throw it away, she come back in and we were there talking a few minutes and she said - I say to her I about to leave now, and she say, 'what happen, you noh mind your baby?' I say well, I don't have any money to give you today, but I will try and see what can be done, and as I say that I don't have any money now, she grab a bottle off the table and hit me into my head. After she hit me she grab the said knife that she used to peel the cane and as she grab the knife I rush her and I don't know what took place again."

That was the case for the defence.

On this statement by the applicant as to what had transpired, the learned Chief Justice in the course of his summing up dealt with self-defence, and he dealt with provocation. On the hearing of the application, learned counsel for the applicant has complained about the directions given by the learned Chief Justice in respect to self-defence,

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and this is the direction given:

> "Now, in law self-defence would be a lawful excuse. A man may be justified in killing another in self-defence if he acts against an assault causing danger or reasonable apprehension of danger or death or serious bodily injury to himself, provided that he uses no more force than was necessary, that he did all that he could to avoid it and there was no other means of resistance available to him and that the weapon used bears some reasonable relationship to the attack made upon him.
>
> In this case you will examine the facts and see if you can find any facts to establish that the accused, if he inflicted the injuries on Sheila Brown, was then acting in self-defence. If he was acting in self-defence, of course, he would be guilty of no offence at all and he would be not guilty. Can you say, therefore, that this girl, Shiela Brown, was attacking him in such a way that he could do nothing else to defend himself, but to kill her in the manner described by the witnesses."

The particular portion of these directions on self-defence to which objection has been taken is what counsel calls "the proviso" to the main directions to wit:

> "Provided he uses no more force than was necessary, that he did all that he could to avoid it and that there was no other means of resistance available to him, and that the weapon used bears some reasonable relationship to the attack made upon him."

It is the submission of learned counsel that the deceased was attacking the applicant and that it was a reasonable inference for the jury to draw that the applicant had reasonable grounds for apprehending a felonious attack upon him. Learned counsel, in the course of his submissions, referred this Court to R. v. Shaw (No. 2) (1963) 6 W.I. Reports 17, and in particular to what the Court said in that case on pages 21 and 22:

> "The Court sees no reason to doubt the accuracy of the statements of the law on this point as expounded in Foster and summarised in Archbold. In our opinion, the authorities referred to above establish that for the prevention of, or the defence of himself or any other person against, the commission of a felony where the felon so acts

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> as to give him reasonable ground to believe that he intends to accomplish his purpose by open force, a person may justify the infliction of death or bodily harm, provided that he inflicts no greater injury than he, in good faith might in the circumstances reasonably believe to be necessary for his protection; and that in such cases he is under no duty to retreat but may stand his ground and repel force by force. Put shortly, a person thus attacked may justify the use of necessary force, if unavoidable, in self-defence, but he is under no obligation to retreat."

As I said, counsel complained that the evidence here, that is to say, the evidence which came from the unsworn statement of the prisoner, was sufficient to enable the jury to draw the inference that a felonious attack was being made on the applicant and that in the circumstances the Chief Justice's directions fell short of the directions which were approved of by this Court in Shaw's case. We have examined with the aid of learned counsel for the applicant, the evidence in this case with a great deal of care and the Court is satisfied that in the circumstances of this case, the directions as given by the learned Chief Justice were adequate and were correct. There was really no evidence to support the suggestion of a felonious attack being made on the applicant and there was no evidence from which any reasonable person could have drawn a reasonable inference, that the applicant may have apprehended danger to his life or person. The evidence of murder in this case was overwhelming. The directions as given by the learned Chief Justice were adequate. The Court therefore refuses leave to appeal.

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