

C.A. Criminal Law - Murder - Offences Against the Person (Amendment) Act 1992. - whether capital or capital murder - considerations -
Held appellant guilty of capital murder. [committed in course of furtherance of robbery and being gay]
No cases referred to
Vcomp

JAMAICA

IN THE COURT OF APPEAL
SUPREME COURT CRIMINAL APPEAL NO. 33/92

Criminal Practice

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

R.v. RICHARD HALL

L. Jack Hines for applicant
Cheryl Richards, Deputy Director of
Public Prosecutions for Crown

May 12 & 25, 1993

PATTERSON, J.A. (AG.)

On the 12th May, 1993, we refused the application of Richard Hall for leave to appeal his conviction for murder and the sentence of death. In light of the Offences against the Person (Amendment) Act, 1992, ("The Act"), which came into operation on the 14th October, 1992, the question arises as to whether or not the sentence of death is the appropriate sentence in the circumstances of this case.

The Act repealed section 2 of the Offences against the Person Act ("the principal Act") which provided that "whosoever shall be convicted of murder shall suffer death as a felon", and substituted therefor provisions which divide murder into two distinct offences, namely, "capital murder" and "non-capital murder", depending on the circumstances in which it is committed.

There are circumstances, however, where two or more persons are guilty of murder, but nevertheless, it will be capital murder in only one such person. Such circumstances are mentioned in section 2, subsection (2) of the principal Act (as amended), which reads as follows:

"If, in the case of any murder referred to in subsection (1) (not being a murder referred to in paragraph (c) of that subsection), two or more persons are guilty of that murder, it shall be capital murder in the case of any of them who by his own act caused the death of, or inflicted or attempted to inflict grievous bodily harm on, the person murdered, or who himself used violence on that person in the course or furtherance of an attack on that person; but the murder shall not be capital murder in the case of any other of the persons guilty of it."

The Act further repealed section 3 of the principal Act, which provided for the sentence of death to be pronounced on every conviction for murder (with certain exceptions), and substituted therefor provisions where the sentence of death shall be pronounced only on a person who is convicted of capital murder (with certain exceptions), and that the sentence on conviction for non-capital murder shall be imprisonment for life (with certain exceptions).

Before us, Mr. Hines submitted that there is no evidence to support a finding that the applicant is guilty of capital murder. He argued that there is no direct evidence or inferential evidence which proves beyond reasonable doubt that it was the applicant who fired the fatal shot, and in those circumstances, he submitted that the applicant could only be guilty of non-capital murder. He relied strongly on the evidence of Mrs. Woolery where the transcript

states (at p.5.) that she said:

"He call to his friend, same come man, come just one little old man and one little old woman in yah." (It is obvious that the word 'same' should really be 'saying').

He urged that this clearly shows that the witness must have seen one other person at the doorway with the applicant and therefore in those circumstances, the inference ought not to be drawn that it was the applicant who fired the shot.

Miss Richards for the Crown contended that the evidence of Mrs. Woolery and the pathologist, Dr. Ralston Clifford, clearly support a finding that the applicant is guilty of capital murder pursuant to section 2 subsection (2) of the principal Act. She submitted that the inescapable inferences to be drawn from their evidence are firstly, that it was the applicant who fired the fatal shot and secondly, that the applicant used violence on the deceased in the course or furtherance of an attack on the said deceased.

The evidence of Mrs. Woolery establishes the sequence of events to be as follows:

- (i) The witness and her husband are awakened during the night by the sound of stones falling on the roof of their house. They get out of bed and stand in the room.
- (ii) They hear the door to their room being forced open, and the husband went and braced it, while facing it.
- (iii) The door is forced open, and immediately the husband is shot and he fell to the floor.
- (iv) The applicant entered the room through the wide open door with a gun and a flashlight in his hand. He stopped over the husband on the floor.
- (v) The applicant ordered the witness to lie on the bed.
- (vi) The witness said that after this, two other armed men entered the room. The transcript of the evidence reads:

- A. "He call to his friend, same come man, come, just one little old man and one little old woman in yah.
- Q. Yes, what next happened, what was the next thing that happened?
- A. And them start to search up the place, two minutes to three minutes after they were in the house, no time at all they come in.

HIS LORDSHIP: What is that?

WITNESS: They come in the house.

HIS LORDSHIP: What you say about two to three minutes?

WITNESS: No time after they run into the house.

- Q. Now, how many other men entered your room?
- A. Three of them come in the house, three of them and they search up everywhere, mattress, dresser draw, everything they start to search."

The pathologist's evidence establishes that the deceased died as a result of a "gunshot wound on the upper right anterior chest, measuring three-eighths of an inch in diameter." It was surrounded by gun powder stippling up to one and a half inches wide, which signified that the gun was held within twenty-four inches of the deceased when it was fired.

We agree with the submissions of Miss Richards that the inferences are quite inescapable. Although the applicant and the other two men were undoubtedly on a joint enterprise, the object of which was burglary and robbery, the evidence clearly establishes that the applicant played the dominant role. The violence used in forcing the door open as the deceased braced against it was plainly the act of the applicant alone; he was the only person that Mrs. Woolery saw when the door flew open.

The deceased was shot at very close range immediately after the door flew open, and Mrs. Woolery saw the applicant alone enter the room, stepping over the deceased who had fallen on the floor. She did not see the other two men then. Those two men did not enter her room until after the applicant had ordered her to lie on the bed; it was only then that the applicant called to them, telling them to come in, and they did.

We are satisfied that the murder was committed in the course or furtherance of robbery and burglary, and that the applicant, by his own act, inflicted grievous bodily harm on the deceased resulting in his death. In the circumstances, the applicant is guilty of capital murder pursuant to section 2(1) (d)(i) & (ii), & (2) of the principal Act (as amended), and the appropriate sentence, pursuant to section 3 (1) of the principal Act (as amended) is that which was imposed.