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J A M A I C A

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO 224/62

MARCH 20, 1963

BEFORE: The Hon. Mr. Justice Duffus — Presid
The Hon. Mr. Justice Lewis
The Hon. Mr. Justice Moodie, (Ag.)

REGINA v RONALD CAMPBELL

Mr. Trevor Levy for the appellant
Mr. Churchill Raymond for the Crown

JUDGMENT OF THE COURT DELIVERED

BY THE ACTING PRESIDENT

The applicant in this case, Ronald Campbell, was convicted on a charge of murder in the Circuit Court for the parish of St. Mary, on the 11th of December last year, and he seeks leave to appeal against conviction.

He was charged that on the 10th of July last year in the parish of St. Mary he murdered Walter Hamil. He sought the leave of this Court to call a witness that was not called at the trial — one Raphael Lorenzo of Belfield, St. Mary. But learned counsel for the applicant informed us yesterday that he did not wish this witness called; and he was abandoning the application.

The evidence for the Crown disclosed that the applicant and the deceased were neighbours. They occupied lands on opposite sides of a surveyors track which connected two parochial roads in the area of Belfield, in the parish of St. Mary.

It appears from the evidence of Alfred Danvers that there was a short cut which shortened this surveyor's track in some way, and this short cut went across the land of the deceased for a distance of approximately quarter of a chain.

Constable Burey, a witness for the crown, in his evidence stated that on the day before the killing, that is to say on the 9th of July, the applicant spoke to alleging a complaint against the deceased man Hamil, and as a result of this complaint the constable proceeded to Hamil's lands, and there he spoke with both men — the applicant and the deceased. Apparently there had been some trouble over a pig. The pig belonging to the applicant appears to have gone on this short cut or track on Hamil's land, and Hamil, the deceased had chopped the pig and had threatened also to chop the applicant.

The constable, after speaking to the two men felt that he had made peace between them, and that all was well. He however says that he told the applicant that he should attend at the police post at Belfield and give a statement in writing, but this was not done by the applicant.

On the 10th of July the witness Alfred Danvers stated that he had passed along the track leading through Hamil's property and there he saw Hamil at work in his field "sticking" some yams. He did not see him with anything in his hands. After he had left Hamil for a distance of 5 or 6 chains he heard the voices of Hamil and the applicant. He says both men appeared to be quarrelling. He recognised some of the words that were spoken. The first voice that he recognised was that of Hamil saying "you think you are a bad man"; and then he heard the applicant's voice saying the same thing "you think you are a bad man". Then he heard Hamil repeat the same words, and the applicant used the same words again with the addition of a very common bad word — rass — "you think you are a rass bad man". The witness was on his way to catch a bus, and he did not think that he should turn back. He proceeded along the track for a further two chains, and he says he still heard the voices of the two men who apparently were still quarrelling; and then when he would have been a distance of about 7 chains away from them he heard deceased man Hamil calling out "neighbour, come here". He says it was used in the same tone of voice as if the men were still quarrelling, and he knows nothing further of importance about the matter.

The next witness for the Crown was one Ricaldo Arnett. At about 7.30 in the morning he was walking on this surveyor's track, and he met the applicant, Campbell coming towards him with a bankra basket in his hand, and a machete. He greeted the applicant in the common Jamaican word of greeting — "what happen?" — and the applicant told him "ah done away with Hamil". The witness says that he said to him "Yuh foolish man. How you mean that you done away with Hamil?", and the applicant then said to him that he had killed Hamil and he handed over the bankra basket to the witness. The witness opened the basket and therein he saw Hamil's head. There was blood in the basket and blood on the machete which the applicant was carrying. The basket was handed back by the witness to the applicant who told him he was going to the station — presumably the police post at Belfield — and both men proceeded along the track. The witness saw District Constable Stewart and made a report to him.

Another witness named Freeman also met the applicant with the machete and the bankra basket, and he noticed blood running from the basket; and he spoke to the applicant. He said "Hello Mass Ron", and the applicant said "Right Mass John".

That was all that happened of importance as far as that witness was concerned.

District Constable Stewart said that having received this report he hurried after the applicant. He saw the applicant at the police post. He noticed the basket on the ground and the machete near to it. The district constable went up and spoke to the applicant and said "Ronald, what happen to you?", and the applicant said "Me and Hamil had a fuss yesterday, and I go to report it to Mr. Burey, and Mr. Burey came there and told us we are neighbours, we should live good". The district constable then asked him "Then what happen to you this morning?" The applicant said he was going to his field and he had with him a fork, cutlass, basket and a grater in the basket and a pan, and when he reached in the track he met Hamil ... " .. and him tell me to turn back and I turn back, and when I reach to the other end of the track Hamil met me there again and tell me to turn back again, and this time I wouldn't turn back and we started to fight". The applicant said nothing further. He then held out his hands and invited the district constable to handcuff him and see that no one ill-treated him.

The district constable looked in the basket after he had handcuffed him and there he saw the head of the deceased. He noticed the machete which was nearby had blood on it. The district constable then reported to the Highgate police station and with other police officers went to the scene of the crime which was on this track running through Hamil's field. There the headless corpse of Hamil was seen lying on its back in the track.

There was evidence given by constable Burey and by other witnesses that the agricultural fork was seen sticking in the ground 3 to 5 feet from Hamil's body, and a long sow machete was also fairly close at hand. And I think the ~~greater~~ grater and pan which had been referred to by the applicant were found close to the body. When the body of the deceased man was turned over a "domestic" knife was found lying underneath the body.

There was evidence from one of the police witnesses — I think it was Detective Corporal Elliott — that he saw ~~signs~~ of trampling in the area of the body, as if some sort of struggle may have taken place there. There was also the evidence of Theoropha Morris who gave a contrary opinion as to this. He said it did not appear to him that any struggling had been ~~taking place in the area.~~

The post mortem examination was performed by Dr. Reginald Peat. He went to the scene of the crime and saw the body lying in the track. First of all he fitted the decapitated head to the body and was satisfied that it was the head

that belonged to that body. He examined the head; he found therex was a punctured wound one inch above the left eye-brow which admitted the tip of a finger. This wound punctured the skull and entered the left frontal lobe of the brain, and it was his view that it could have been caused by one of the prongs of the agricultural fork which was found on the spot and which had blood-stains on the prongs.

The doctor found a number of other injuries on the head. There were four wounds on the head which he formed the opinion had been inflicted after death. These wounds he numbered 2 to 5. The wound which he numbered 6 was the wound on the neck of the deceased. It was his view that this wound was responsible for the almost complete severance of the head from the body and it was his view that this wound, number 6, had been inflicted while the deceased man was still living, and it was this wound which was responsible for the death of the deceased. He gave as his opinion that the punctured wound in the head which he thought may have been inflicted by the fork must have been the first wound inflicted, and the second wound inflicted was this wound on the neck.

It is not necessary for me to go into the reasons given by the doctor for his conclusions, but they appeared to be reasons which he could support by the evidence from the wounds themselves. It was the doctor's view that the wound on the neck must have been inflicted by someone standing over the body of the deceased man — possibly astride of him, but not necessarily so — and while the deceased man was lying on the ground, and that if the deceased man had first received the wound in the head from the fork he would have fallen on the ground from this injury.

The case for the defence proceeded along three lines: firstly that the applicant was suffering from such abnormality of mind at the time of the incident that the defence of diminished responsibility would apply; and in support of this the applicant gave evidence on oath that one of his brothers named Adolphus had been a patient in the asylum, or mental hospital, and three of his uncles were also inmates in this mental hospital. And he called Dr. Lawson Coore in respect of this. Well the jury quite obviously rejected diminished responsibility, and there has been no appeal in respect of this.

Therefore I pass on to the next two matters. Self defence was raised, and provocation was raised. The applicant's evidence dealt first of all with the incident on the day before the crime, relating to the pig and the threats that had been used to him by the deceased man. And then he gave evidence of what happened on the 10th of July. He stated that at about 7.30 in the morning he was

walking on the track and he saw deceased. Neither of them spoke, they approached each other and when seven feet apart deceased called out "neighbourhood hoy". The applicant had a cutlass and fork in his hand. He said deceased man had a machete in his hand and a piece of stick, and the deceased chopped at him and the applicant ran over the fence back to his land. Now at that stage he says deceased man called out and said "yesterday you go over Mr. Burey at Babylon and bring him down here, I am going to cut off your little head"; and the deceased man further said to him that he was God and that his uncle should have let applicant know that the deceased man was God.

Well it appears from his evidence that a little after this the applicant went back on the track and was walking along it when he felt a blow from behind. He turned around and saw deceased man with a cutlass and stick. The applicant says that he then had with him the agricultural fork and the other articles which I mentioned before, namely the pan and the grater, and that these things dropped and the deceased man proceeded to hit him about eight times with a stick, so much so that the stick was smashed up.

He says deceased man threatened him, told him "I born yah and you must behave yuh dam little self" and chopped at him with the cutlass. The applicant says he caught after deceased" and two of them fell down to the ground and he took away the cutlass from him and that at this stage he saw deceased take a knife, which he identified as the knife that was found on the scene. He took it from his pocket and came after him he says — to "poll him" — whereupon he took the cutlass which was deceased's cutlass which he had taken away from him when they were lying on the ground, and he used the cutlass to shy off, or ward off deceased, and the cutlass caught the deceased in his neck. Well apparently the applicant then suffered a black out.

He does say that they were fighting, deceased man had kicked him and bucked him and hit him with the stick. Now Dr. Peat made a very careful examination of the accused man and he found no evidence of any wounds or blows on accused, but in cross-examination he said it was possible that the applicant could have received blows from a blunt object which may have left no visual signs.

As I understand the defences as raised in the Court below on what happened at the scene of the crime were, firstly, self defence and secondly, that there was such provocation that a reasonable jury properly directed should have arrived at a conclusion that there was sufficient provocation by the deceased man to the applicant as to have caused him to have done what he did in the heat and passion, and thereby reduce

the crime of murder to manslaughter; that is assuming that the jury rejected diminished responsibility and rejected also self defence.

Learned counsel for the applicant informed the Court yesterday that he proposed arguing before us that on the evidence as a whole the jury should reasonably have drawn the inference either that the killing was provoked or that it was done in self-defence. Then he proceeded to draw the attention of the Court to various indidents which came from the prosecution's case, on which he submitted that a jury assuming that they had rejected completely the applicant's evidence — could have arrived at the conclusion that what was done was done either in self-defence or in provocation.

I don't think it is necessary for me to relate in detail the various incidents referred to by Mr. Levy. In brief, he referred to the quarrelling on the day before and the incident with the pig reported to constable Burey. Then he referred to the evidence of the quarrel on the day of the crime immediately before the crime itself committed, and he referred also to the nature of the track, the presence of the fences — I think a barbed wire fence on one side, and a bamboo fence on the other side, and the evidence of a struggle having taken place there.

The Court of its own volition drew the attention of counsel to the summing up of the learned trial Judge. ~~It appears~~ Learned counsel for the applicant himself did not take any point or make any submissions on the summing up, but there were certain aspects of it which the Court was not happy about. One of these was, had the Judge in the course of his directions related the evidence to the law sufficiently adequately for the jury's guidance in murder and manslaughter? And the other matter was whether the directions (p 79 & 100-101) relative to murder and manslaughter, were sufficient in view of the circumstances of this particular case.

The Judge in defining murder on page 77 said this:

> "Murder, I must tell you, is the unlawful, unjustified, unprovoked killing of another human being with the intention to kill or with the intention to do grievous bodily harm likely to cause death and from which death results. In murder, the Crown must prove that the prisoner killed the deceased with the intention at the time to cause death or to do him grievous bodily harm likely to cause death."

And he proceeds to give an illustration immediately after that definition:

> "You judge a man's intention by his actions. And if a man were to level a loaded pistol, shall we say, at a person within range and were to pull the trigger, what intention is disclosed by his very action? Isn't it at least an intention to do bodily injury? If therefore death results, that is murder."

On page 79 he says dealing with provocation and self defence:

> "Now the defences of provocation and self-defence have been raised, and it is my duty also to tell you what these mean, what they are. Provocation is something which is received by the accused from the person whom he kills which caused him to lose his temper, and in the heat of passion, because of the provocation which he has received, he strikes a blow which eventually results in death. That has the effect of reducing murder, which is an intentional killing, to manslaughter which is an unlawful killing, causing death by means of an unlawful act."

And then he proceeds:

> "The provocation must be such as would deprive a reasonable man of his self-control. The provocation must be recent and the killing must follow upon the receipt of the provocation; and the weapon used in, shall we say, counter-attack must bear some relation to the weapon used in attack. It is not only blows which can cause provocation; words may also cause provocation; blows or words or blows and words together may cause provocation."

And then he proceeds to deal with self defence. I will not deal with his definition of self defence. We are satisfied that it was quite adequate, and as learned counsel for the applicant himself says, he had no fault to find with it.

Now turning to page 100 in conclusion of the Judge's summing up he says this:

> "If you are sure, having considered all the evidence given in this case, that the prisoner killed the deceased with intention at the time to cause his death or to do him grievous bodily harm likely to cause death, and that at the time he was not suffering from any abnormality such as I have described to you — abnormality of mind — then if you find that, members of the jury, it would be your duty to find him guilty of murder."

And two lines further down after he deals with self defence he says this:

> "If you find that the prisoner killed the deceased but killed him as a result of provocation such as I have described to you, then it would be your duty to find him guilty of manslaughter."

Now it is to be observed from the definition given on page 79 that he used these words "murder which is an intentional killing", and then he refers to manslaughter as "causing death by means of an unlawful act". He does not here point out to the jury that even if they found that there had been an intention to kill, or intention to do grievous bodily harm that the offence need not necessarily be murder, but might also be the offence of manslaughter — if they also found that the intention to kill or the intention to do grievous bodily harm had arisen from provocation.

Similarly in his concluding remarks to the jury when he again referred to the intention of the accused and said this:

> "Having considered all the evidence given in this case that the prisoner killed the deceased with intention at the time to cause his death or to do him grievous bodily harm likely to cause death, ... it would be your duty to find him guilty of murder".

He makes no reference in that sentence to the effect of provocation. He is there contrasting intention in murder with the abnormality of mind in diminished responsibility. I read the full sentence a while before. And then having interposed self-defence he comes back to provocation:

> "If you find the prisoner killed the deceased but killed him as a result of provocation . . . . . then it would be your duty to find him guilty of manslaughter".

Again there is no reference made here to what the position would be if the jury found that the applicant had an intention to kill or to do grievous bodily harm, which on the facts of this case the jury was almost bound to find, when the intention to do so arose from sudden passion involving loss of self control by reason of provocation — A.G. for Ceylon v Perera (1953) A.C. 200, R. v Clifford Humphrey (1953) 6 J.L.R. 271 and Lee Chun-Chuen v R (1962) 3 WLR,1461.

It is our view that the directions given fell short of the directions which should have been given in this case. It is our view that this was essentially a case in which the learned Judge should have given very clear directions on this aspect of the matter; that the jury should not have been left with the idea in their minds that so long as they found the killing was intentional that it was murder and nothing else.

Learned counsel for the Crown has submitted that taking the evidence as a whole on the learned Judge's directions on provocation the jury could have understood that so long as they found provocation that they then must find that the offence committed was manslaughter, and not murder. I personally do not take the view that the jury could have so understood the position on these directions. Then learned counsel for the Crown suggested to us that this would be a fit case in which the application of the proviso should be considered as there was an abundance of evidence to support the charge of murder; but it is my view that although it is perfectly correct to say that, while there is an abundance of evidence to support the charge of murder, similarly there was evidence to support the issue of provocation which was raised. The evidence was pointed out to us by Mr. Levy.

There was the evidence of the quarrel the day before, which by itself would certainly not be sufficient to support provocation. But then there was clear evidence of what appeared to be a very heated quarrel immediately before the crime was committed. And then there is evidence to be derived from the medical testimony, that the applicant must have been in a frenzy -- certainly to a complete loss of self-control if he proceeded, as the doctor thinks he did, after severing the man's neck to have given him three or four severe wounds in the head. There is the evidence of Dr. Coore for the defence, that if the wounds were as found by Dr. Peat and if his opinion was correct as to the cutting off of the head after death as he says, it would point to a complete lack of self-control. The applicant himself says in his evidence that he was vexed, and he did not know what he was doing at certain stages of the incident. It is not a case in which we could apply the proviso.

It is also our view that the learned Judge did not in the course of dealing with the evidence adequately relate the facts to the law which he had given to them. It was essentially a case in which the jury should have received very clear guidance on how to apply the law to the facts as they found them; and this does not appear to have been done, although it is perfectly correct that the learned Judge dealt very fully with the evidence as given by the witnesses.

I refer to R v Brooks (1961) 3 W.I.R., 159 decision of the former Federal Supreme Court. That was also a case of murder. The issues of manslaughter and provocation were considered by the Court. Provocation was an issue. The directions given by the learned trial Judge to the jury were considered by the Court, and on p 161 at paragraph F this appears:

> "He . . " -- that is the Judge ". . . then gave directions on insanity, diminished responsibility and drunkedness, and summarised the evidence, including that of the appellant in the passage quoted in this judgment. He did not further specifically relate that evidence to his directions on the law of provocation.
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> "Our attention has been drawn to the following passage of Stephen's 'History of the Criminal Law', (1883) cited in Roscoe's 'Criminal Evidence'
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> > " 'I think that a judge who merely states to the jury certain propositions of law and then reads over his notes does not discharge his duty . . . I further think that he ought not to conceal his opinion from the jury, nor do I see how it is possible for him to do so if he arranges the evidence in the order in which it strikes his mind ... The act of stating for the jury the questions which they have to answer, and of stating the evidence bearing on those questions, and showing in what respects it is important, generally goes a considerable way towards suggesting an answer to them, and if a judge does not do as much at least as this, he does almost nothing. The judge's

position is thus one of great delicacy
... it is not easy to be true and just ..'"

And their judgment proceeds:

> "Undoubtedly it is desirable that a judge should specifically relate his direction of the law to the evidence, so that the jury may correctly apply the law to the facts, but this, although desirable, is not obligatory in all cases."

R v Zelinski (1950) 34 CAR, 193 was referred to and then the judgment proceeds

> "The guiding principle when objection is taken to the failure of the judge to relate the facts specifically to the evidence is this: are the jury in the particular circumstances of each case, likely to have failed in their task because this has not been done, and, in particular were the law and the facts relied on by the defence adequately put to the jury ..."

Now we have arrived at the conclusion that the summing up of the learned judge in this case on the question of intention as applied to provocation was unsatisfactory, and also it was unsatisfactory because the facts, whether for the Crown or for the defence, should have been sufficiently related to the law in order to assist the jury in what was a difficult matter.

It is possible that the jury who retired for only six minutes may not have given proper and full consideration to the question of provocation; perhaps they may have been unduly influenced by the apparent ferocity of the attack, and the unusual circumstance of the prisoner taking his victim's head in the victim's own basket to the police station, and then handing it over calmly and dispassionately. don't know, but it is possible.

We propose therefore treating this application as the appeal and by virtue of Section 23, (2) of Law 15, 1962 under which this Court functions, substituting for the verdict passed by the jury of guilty of murder, a verdict of guilty of manslaughter.

Now on the question of sentence; it was a serious offence and the circumstances in which it was commited were undoubtedly such that the Court would not be justified in regarding it in any way leniently. It is our view that the correct sentence in this case be one of life imprisonment. We so order.

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