JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 42/73

BEFORE: The Honourable President
The Honourable Mr. Justice Hercules
The Honourable Mr. Justice Swaby (ag.)

R. v. Samuel Thompson

Mr. Keith E. St. Bernard for the applicant Thompson

Mr. G. Andrade for the Crown.

12th & 13th November, 1973

HENRIQUES, P.:

The applicant in this matter was convicted at the St. Thomas Circuit Court, held at Morant Bay on the 22nd of March, 1973, of the offence of murder and sentenced to death. He has applied to this court for leave to appeal against his conviction.

In view of the decision at which the court has arrived, it is unnecessary to refer to or discuss in detail the facts of the case. At the trial the defences raised on the evidence were those of self-defence and provocation.

Learned counsel for the applicant has submitted to this court that the learned trial Judge directed the jury as to the law of self-defence and the law relating to provocation in vacuo. The jury he states, were in most instances given directions which were derived from text books and the learned trial judge failed to apply the law to the facts which were before the jury and so failed to give the jury the assistance which they required in order to resolve a problem which confronted them.

And he submits finally, this exercise on the part of the

/learned trial Judge

learned trial Judge must had succeeded only in confusing the issues before the jury. In particular he has mentioned that in dealing with the matter of provocation, the question of cooling time was time and again referred to by the learned trial judge. That was a matter which, upon a proper view of the facts, he states was entirely extraneous to the issues to be resolved. There again he submits that was an instance of the jury being confused and therefore depriving the applicant of a verdict of acquital in the matter.

There are other instances to which he has drawn the court's attention such as to the introduction of the question of revenge which again was unrelated to the facts of the case. There were further misdirections with regarded to the burden of proof.

Learned counsel for the Crown at the end of the submissions of learned counsel for the applicant stated, that after an intensive study of the case he finds himself unable to support the conviction having regard to the fact that the summing-up to the jury was calculated to and did in fact confuse the jury. That appears to be the position from the record. That portion of the record which deals with the summing-up of the learned trial judge runs for some 36 pages nd in 19 of those pages, somewhere or other, this question of provocation is dealt with; and in 17 of those pages, somewhere or other, the question of self-defence is referred to.

At the conclusion of the summing-up on the 22nd of March, the jury retired at 2:50 p.m.; they returned to court at five minutes past three, and in answer to the usual enquiries stated that they had not been able to arrive at a verdict on the charge of murder, and further stated that they were divided. They were then despatched by the learned trial Judge again to consider their verdict and returned at three minutes past four o'clock, and they were then asked by His Lordship, and here I quote His Lordship:

HIS LORDSHIP: " Mr. Foreman, are you still in any difficulty out there?

FOREMAN: Yes, sir.

HISLORDSHIP: Well, do you think, Mr. Foreman, that there is anything at all in which the court can assist which would help you to arrive at a unanimous verdict?

FOREMAN: Perhaps it would M'Lord, the degree of self-defence and provocation.

HIS LORDSHIP: What point where self-defence is concerned?

FOREMAN: Just provocation alone. The jury are not quite clear on what amounts to provocation.

HIS LORDSHIP: Don't need any help where self-defence is concerned?

FOREMAN: No, M'Lord."

The learned trial Judge then proceeded to repeat some directions which he had already given to the jury, and even in the repetition it may be said that those directions are not entirely free from blemish.

We ourselves have had an opportunity of studying the record in this case with care and the court wishes to say that the least said about this summing-up the better. We are of the view that the issues were not sufficiently clarified and with that particularity to which the applicant was entitled, and this is a matter which in the interests of justice ought properly to be ventilated before the jury.

The hearing of the application will therefore be treated as an appeal. The appeal is allowed, the conviction quashed and the sentence set aside, and in the interests of justice a new trial ordered to take place at the current sitting of the St. Thomas Circuit Court. The appellant in the meantime is to remain in custody.