

J A M A I C A



IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL No.63/71

B E F O R E : The Hon. Mr. Justice Luckhoo - Presiding
The Hon. Mr. Justice Graham-Perkins - J. A.
The Hon. Mr. Justice Robinson - J. A.

R. v. Valentine Francis

Mr. D. V. Daley for the applicant
Mr. Chester Orr, Q.C., Deputy Director of Public Prosecutions, and
Mr. W. L. Morris for the Crown

8th March, 1972

LUCKHOO, Ag. P:

On June 8, 1971 the applicant Valentine Francis was found guilty on an indictment charging him with the murder on April 3, 1971 of Ferdinand Williams, and was sentenced to death. He now applies for leave to appeal against conviction and sentence on several grounds. It is necessary, however, to deal with only one of the grounds of appeal argued on behalf of the applicant, that is, that the trial judge failed to direct the jury adequately as to the defence in that he did not review the evidence of the prosecution witness Canute Treasure to the effect that the deceased ran into a tree and fell backwards; further, that he gave no directions as to the possible effect of this witness' evidence on the jury's deliberations.

Very shortly, the evidence led on behalf of the prosecution was to the following effect: in the evening of April 3, 1971 a dance was being held at premises in the parish of St. Mary. The applicant Francis was at the gate of those premises when the deceased Ferdinand Williams arrived there. It would appear that Williams wished to enter the premises without paying to do so. The applicant remonstrated with Williams and they armed themselves with stones. They were advised by bystanders not to fight. The applicant's uncle Owen Johnson then came up in a threatening manner and the deceased took to his heels. According to Milford Thompson who gave evidence on behalf of the Crown the applicant threw a stone at or in the direction of the deceased who at that point of time was about a chain away. Witness said he heard the sound of a crack and on going some distance away from where he stood he came upon the body of the deceased lying upon the ground. This witness said that he did not see the stone thrown by the applicant strike the deceased.

The deceased died shortly after the incident and a post-mortem examination performed on his body by Dr. Gardner revealed an injury at the back of the head towards the occipital region. Internal examination of the brain revealed the cause of death to be injury to the brain matter as a result of a blow to the back of the head.

On the morning following the incident a search was made of the area surrounding the body and small stones and pebbles were observed lying some distance away from where the body was found. Also found in the area some distance from the body was a stone which was later tendered in evidence at the trial as Exhibit 1. It was the case for the Crown that the injury sustained by the deceased was inflicted by that stone, Exhibit 1. The Crown also led evidence of a witness Canute Treasure a brother of the applicant. Treasure's evidence was to the effect that he had gone on an errand and while returning to his home he saw a man (who later turned out to be the deceased) running. The man ran into the trunk of a tree striking the tree with his stomach and fell backwards on to the back of his head.

It was elicited in cross-examination from the doctor who performed the post-mortem examination that it was possible for the injury he saw on the deceased head to have been sustained by the deceased falling backwards onto a hard surface.

The applicant gave evidence on oath denying that he was present at the time when the deceased sustained his injury. He admitted that there was an altercation between the deceased and himself. He admitted also that he and the deceased had armed themselves with stones, but he said that after being advised not to fight he dropped the stones he held and went into the dance hall.

It is clear, and this has been conceded on the part of the Crown at the hearing of this application, that the learned trial judge failed to remind the jury of the evidence of the Crown witness Canute Treasure and of the doctor in so far as that evidence related to the possibility of the injury being sustained by a fall on to the back of the head. This was one of the issues which arose for the determination of the jury. It is unfortunate that the learned trial judge failed to remind the jury of the evidence in relation to this issue. We cannot say that had he done so the jury would inevitably have returned the verdict which they did return in this case. In the result, it

appears that the accused was deprived of the chance of a possible verdict of not guilty on the indictment.

We have no option in the circumstances but to quash the conviction. We treat the hearing of this application as the hearing of the appeal. The appeal is allowed, the conviction quashed and sentence set aside. In the circumstances of the case we do not feel that we should order a re-trial.