JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL No. 163 of 1973

BEFORE: The Hon. Mr. Justice Luckoo, Ag. P.
The Hon. Mr. Justice Graham-Perkins, J.A.
The Hon. Mr. Justice Grannum, Ag. J.A.

R. v. VIOLA WATSON

S.C. Morris for applicant.

H. Downer for the Crown.

May 29, June 18, 1973.

LUCKOO, Ag. P.:

This is an application for leave to appeal against a conviction for murder in the Home Circuit Court on October 20, 1972 before Rowe, J. and a jury.

The deceased Lupeta Henry died as a result of injuries inflicted on her by applicant Viola Watson on the night of February 16, 1971 at the corner of Lothian Avenue and Olympic Way, Lawrence Tavern in the parish of St. Andrew. At the time of her death the deceased was living with one Percival Saddler as her common-law husband at 35 Lothian Avenue. Saddler had lived with the applicant as man and wife for some years and they parted before Saddler began living with the deceased. The applicant had borne Saddler three children whom Saddler kept when he parted from the applicant. It would appear that the applicant resented Saddler's attachment to the deceased for on several occasions she came to the premises at 85 Olympic Way where Saddler and the deceased resided and made a fuss. As a result Saddler and the deceased went to reside at 35 Lothian Avenue.

On the morning of February 16, 1971, Saddler went to his work as a machine operator while the deceased went to a restaurant or shop on Olympic Way some two chains away from their home where she worked as a cook and washer. It was the deceased's day off duty but she nevertheless went to the shop to help. Saddler in returning home at about 7 p.m. went to the deceased who was still at her workplace and collected the keys to his apartment. He went to his apartment and was speaking with his landlady Ethlyn Carter when his attention was attracted by the landlady to the sound of a woman's voice. They ran towards Olympic Way and Lothina Avenue and came upon the deceased who appeared to be bleeding severely in the region of her back on the right side. It was then about 7.30 p.m. A crowd gathered. A car was summoned to take the deceased to hospital. While Saddler was about to place the deceased in the car the applicant was brought to the scene by a number of men. On being told by Saddler "look how you kill this poor child for nothing" the applicant replied "I never stab her to kill her". The deceased was taken by Saddler to the Kingston Public Hospital where she later died.

Clive McFarlane, a handyman employed at a tailor's shop on Olympic Way had spoken with the deceased at that shop a few minutes before the deceased received her injuries. His shop was situate opposite to the deceased's workplace. He noticed that she had what he described as "a soap" in her hand. After she left him he saw two men run along Olympic Way in the general direction of Cling-Cling Avenue (where the applicant resided). He saw the deceased staggering towards a fire hydrant. There was another person running in front of the two men. He then saw the two men returning with the applicant. They were holding on to the applicant and he (McFarlane) held on to her also and they went up to where the deceased was lying on the ground. He released his hold on the applicant on being told to do so by someone in the crowd which had gathered.

The applicant was later apprehended by the police and taken to Hunts Bay Police Station. On February 21, 1971, she was seen at that station by Det. Cpl. of Police Dudley Reynolds who told her that he was making enquiries into the death of the deceased and cautioned her. She then said "Lawd help me, me never stab her to kill her". She was thereafter arrested and charged. According to Det. Cpl. Reynolds the applicant complained of an injury to her left hand. The hand appeared to be swollen and there were bruises and scratched on her face and hands. The applicant was examined by Dr. Dawson at Hunts Bay Police Station on February 22, 1971 who, called on behalf of the defence, testified that he found the applicant to be suffering from the following injuries -

(1) a broken lower end of the left forearm, the lower end of the forearm being swollen;
(2) abrasions of the right upper forearm;
(3) a slight abrasion of the left side of the back in the scapula;
(4) tender swelling on the right side of the head.

In Dr. Dawson's opinion these injuries were about 7 days old. This was constituted with the applicant having sustained them on or about February 16, the day the deceased was fatally injured. Those witnesses who testified for the prosecution as to their seeing the applicant being brought to the scene after the incident said that they did not observe any sign of injury to the applicant at that point of time.

A post mortem examination on the body of the deceased performed by Dr. DePass revealed the following injuries -

(1) an incised wound at the right side of the neck just above the medial third of the right clavicle ½" long communicating with the right chest cavity;
(2) an incised wound in the left posterior axillary line at the level of the left breast;
(3) an incised wound vertical in direction 1½" long to the right midline at the level of the lower angle of the scapula passing

medially and upwards;

(4) a superficial incised wound on the medial border of the middle third of the right forearm.

Both lungs were largely collapsed. The jugular vessel, the larynx vessel were collapsed. Death was due to shock and haemorrhage secondary to the stab wound in the chest. In Dr. DePass's opinion injury (3) was inflicted either from behind or when the deceased was bending down.

The appellant in her defence made a statement from the dock as follows -

"I am Viola Watson. On the 16th of February last year in the evening about 7.30 p.m. I was coming from the grocery on Henderson Avenue while Lupeta Henry attack me with a brick. She hit me on this hand here and break me hand then she started hitting me in my head with a bottle and a knife fell from underneath her dress. She then wanted to pick up the knife and say that she going to kill me because I won't leave out the man. I push her away and manage to pick up the knife before she reach it. She takes up back the bottle and break it along the gutter on the sidewalk and she came down on me with the broken bottle and back me up in a fence and say she going to kill me. I stick the knife after her and she keep on coming down to me with the broken bottle in her hand and I stick at her each time and she grab me in my hair and buck me and I didn't know what happen again and until I feel a man hold on to me and say 'you see how you cut her'. After I was arrested the police take me to the doctor."

A dress torn all the way down the back was exhibited at the trial as having been pointed out by the applicant to the police at her home as the dress she was wearing when the incident took place.

It was never a matter in issue that the deceased's injuries were inflicted by the applicant with a sharp cutting instrument.

In his summation the learned trial judge told the jury that it was for the prosecution to prove that the killing was

unprovoked and was not done in self defence. He later gave the jury directions on the questions of provocation and self degence relating those directions to the evidence in the case. He also pointed out to the jury (at p.54) that if they found that the applicant did the act which caused the deceased's death but she had no intention to kill it would not be murder. This direction was given in the light of the evidence adduced that the applicant had when brought back to the scene and also when interviewed by Det. Cpl. Reynolds said ".... I never stab her to kill her". In concluding his directions on the question of self defence the learned trial judge told the jury that if they accepted as true the account of the incident the applicant had given from the dock or if they were left in doubt as to whether or not it was true they would have to acquit. Then he went on to deal with the circumstances in which they could find a verdict of manslaughter if they decided that the applicant in inflicting the injuries on the deceased had not acted in self defence.

A number of grounds of appeal were urged on behalf of the applicant. The only ground which we think merits consideration is that which relates to the learned trial judge's treatment of the prosecution's contention that it was open to the jury to conclude that the applicant came by the injuries, observed by Det. Cpl. Reynolds on February 21 and by Dr. Dawson the following day, at the hands of the crowd which had gathered after the deceased received the stab wounds. Mr. Morris for the applicant submitted that there was no evidential basis upon which the jury could infer that the applicant's injuries were or might have been inflicted at the hand of the crowd and that in leaving such an inference as one possible for the jury to draw the learned trial judge was in error whereby the applicant was deprived of an opportunity of securing a verdict of not guilty on the indictment.

In dealing with the statement made by the applicant from the dock the learned trial judge reminded the jury of the fact that the applicant undoubtedly had bodily injuries which

according to Dr. Dawson's evidence were some 7 days old and which would therefore have been sustained on the night of the incident. The learned trial judge then went on -

> " The prosecution says well, you are Jamaicans, you know what happens when a crowd catches somebody and brings the person back to the scene; the prosecution says to you the inference to be drawn is somehow in that crowd somebody, some person in that crowd inflicted the injuries on the accused. The accused says no, it didn't happen that way, it is the deceased who caused the injuries to be made."

No doubt in asking the jury to draw the inference that someone in the crowd inflicted the injuries found on the applicant, counsel for the Crown had in mind the evidence of those witnesses who testified that they observed no sign of injury to the applicant when she was brought back to the scene (which by itself does not prove that in fact she was at that stage uninjured) as well as (and this is a matter of importance) the fact that the applicant in making the statement at the scene in answer to the query "look how you kill this poor child for nothing" said "I never stab her to kill her". There was no refutation in her answer of the accusation that the "killing" was "for nothing" nor was there any suggestion of an attack or of injury inflicted upon her at the hand of the deceased. Likewise on the following day smarting from the injuries she undoubtedly had by then sustained and complaining of the injury to her hand the applicant did not tell Det. Cpl. Reynolds that the deceased had attacked her. While the applicant could have remained silent after being cautioned she did not do so and what she did say is significant in its terms "Lawd help me, me never stab her to kill her", as well as in the fact that it does not allege any attack on her by the deceased as giving rise to what she had admitted doing.

We are unable to see that the inference counsel for the Crown asked the jury to draw as to how the applicant sustained her injuries was one which the jury might not reasonably draw in these circumstances. We do not agree that the judge was in error in

leaving the matter to the jury in the way he did. For these reasons this ground of appeal fails.

The other grounds urged on behalf of the applicant we consider to be without merit.

The application is accordingly refused.