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JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 3/88

BEFORE: THE HON. MR. JUSTICE ROWE, P.
THE HON. MR. JUSTICE WRIGHT, J.A.
THE HON. MR. JUSTICE GORDON, J.A. (Ag.)

R. v. VIOLET MOITEN

Application for leave to appeal

Carolyn Reid for Crown

25th July, 1989

GORDON, J.A. (Ag.):

Violet Moiten was convicted in the St. Catherine Circuit Court on 14th December, 1987 before Bingham, J., and a jury for the crime of manslaughter and sentenced to three years imprisonment at hard labour. From this conviction and sentence she sought leave to appeal.

The facts in the case are that the applicant lived with Earl Campbell at Roari River, St. Catherine, for seventeen years. The union produced six (6) children. Mr. Campbell developed an association with Valda Freeman who lived in the adjoining village of Duxex.

On the night of the 25th July, 1986 Mr. Campbell visited Miss Freeman. He did not remain there long and shortly after he was let out of the house a rap was heard on the door. Miss Freeman went to the door opened it and was heard to exclaim, she retreated to her bed, slumped on it and expired. This was the unchallenged testimony of

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Carmen Russell. The postmortem by Dr. Royston Clifford revealed Miss Freeman received three stab injuries, the fatal one penetrated the lung cavity and the aorta.

The Crown's case was based on a cautioned statement given by the applicant to the police in the presence of Mr. Edgar Cockburn a Justice of the Peace on 29th July, 1986 and a statement made by the applicant to Corporal Jacobs at the Spanish Towh Lock-up when he told her she was a suspect in the crime. She then said "a de gal cause it. A she why me have fi sleep a bush two nights."

The defence at the trial was an alibi. The applicant testified that at the time the crime was committed she was visiting her mother who was ill. She further said that in the seventeen years she lived with Earl Campbell they lived in peace and harmony, they never had a fuss.

In the cautioned statement the applicant told of a life of misery consisting of beatings and threats to kill her and her family emanating from Mr. Campbell. She had on occasions left the house because of the threats meted out to her but on every such occasion he sought her and took her back home. She had reported his threat at the Lluidas Vale Police Station. On the 25th July, 1986 he again threatened to kill her and left to visit his girlfriend's home. She followed him with a knife she had discovered hidden under the mattress. She said she "kept the knife as a guidance because him threaten me." On reaching Miss Freeman's home the applicant said she "made a noise", someone came to the door, she thought the person was Earl Campbell and she used the knife three times and went home. She used the knife because she was frightened.

The learned trial judge in summing-up dealt with all the issues raised and expanded on provocation. The jury was invited to consider the confession. Provocation was dealt with as arising on the confession adduced by the prosecution. The applicant however in evidence

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denied the cautioned statement and sought to establish an alibi. In so doing the applicant could not claim to benefit from the exculpatory aspects of her cautioned statement as provided for in R. v. Trevor Lawrence S.C.C.A. 111/83 dated 10th July, 1988 (Unreported) but rather her case falls within the ambit of R. v. Allan McGann S.C.C.A. 7/87 dated 30th May, 1988.

In R. v. Trevor Lawrence (supra) the applicant on arrest made a mixed statement which was adduced by the Crown at the trial. At the trial he said nothing. The issue of provocation arose on the exculpatory aspect of the mixed statement but the trial judge withdrew manslaughter from the jury's consideration. This Court following R. v. Sharpe (1988) 1 All E.R. 65 held that the entire statement should have been left for the consideration of the jury. In R. v. Allan McGann (supra) the appellant made a mixed statement to the police. At the trial he denied the contents of the statement. This Court held that the learned trial judge was correct when he left for the jury's consideration only the incriminating aspects of the mixed statement.

Having by her evidence sacrificed the benefit of the explanation for her acts, the bald fact that should have been placed before the jury is her admission that she went to the home of the deceased armed with a knife, lured her outside and killed her. The learned trial judge very generously in his charge withdrew from the jury's consideration the charge of murder and left for their contemplation a verdict of acquittal or of manslaughter. The jury found the applicant guilty of manslaughter and we find this conviction unassailable.

The application for leave to appeal is refused: the sentence is to commence on 16th March, 1988.

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