JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 104/70

BEFORE: The Hon. President
The Hon. Mr. Justice Smith, J.A.
The Hon. Mr. Justice Graham-Perkins, J.A.

R. V. WINFORD ELLIOTT

Mr. H. Edwards, Q.C. for the applicant
Mr. C. Orr, Q.C. for the Crown.

7th, 8th, 9th April, 1971

THE PRESIDENT:

The applicant was convicted of the murder of Alwyn Simpson at the Circuit Court for the Parish of Manchester on the 10th December, 1970 and sentenced to death.

He applied for leave to appeal on the 10th December and his application was heard and considered by the Court on 7th, 8th and 9th April, 1971. On the 9th April, the Court refused the application and stated that it would put its reasons in writing. This it now proceeds to do.

The applicant originally filed one ground of appeal to base his application, namely that the verdict was unreasonable having regard to the evidence and could not be supported.

On the 5th of July, 1971, Counsel on his behalf filed six supplementary grounds of appeal as follows -

" 1. The learned Trial Judge wrongly told the jury that "the crown proved a case free of any question of provocation" (please see para. 101) although provocation is clearly established by the evidence of the prosecution witnesses. This was highly prejudicial to the Applicant.

2. The learned Trial Judge made remarks and suggestions that were highly prejudicial to the applicant. Some instances are:-

   (a) the suggestion that the crown had proved that the applicant had a motive - please see p. 95. Please see Lett v R (1963) 6 WIR 92.

   (b) That the crown proved a case free of any question of provocation" page 101; please see Alexander Williams v R. (1960) 2 W.I.R. 134.

   (c) That the crown proved the case free of any question of accident " - page 104;

   (d) "That the crown proved the case free of any question of self defence" - page 104.

3. The Learned Trial Judge misdirected the jury on the law of Self Defence generally at pp. 105 and 124. Some particular instances are:-

   (a) the jury were wrongly told that the "person attacked must do all that he can to avoid the attack, there was no other means of defence available to him - page 105.

   (b) the jury were not directed that even if they disbelieved that the accused went to the assistance of Derek Stephenson self defence could still be applicable.

4. The directions must have confused the jury and Instances are:-

   (a) The jury were wrongly directed as to cooling time at p.102 and p. 103 when such a direction was not called for - Baldeo Dihal v R (1960) 2 W.I.R. 282.

   (b) p. 96 lines 9-11.

   (c) p. 125 - lines 7-5 from the bottom.

5. The defence was inadequately dealt with generally. Some particular instances are:

   (a) the failure to give sufficient directions on the effect of the principle in R v Duffy (1965) 50 C.A.R. 68.

   (b) the jury were wrongly told "if you believe, that is all he did ....then...........you will have to acquit him" at p. 124. At p. 125 the test is whether the jury are "satisfied".

6. The verdict of the jury was unsafe and unsupported by the evidence."

On the 7th July 1971, with leave of the Court Counsel for the appellant filed a further ground of appeal as follows:

" 7. The learned Trial Judge told the jury at p. 125

" if you are satisfied that he was provoked, manslaughter. If you are satisfied he used excessive self defence, Manslaughter"

This was wrong in that:

(a) it placed an onus on the defendant;

(b) it equated the standard of proof with that on the prosecution

(c) he failed to tell the jury that if the evidence for the defence raised a doubt they should acquit. "

Learned Counsel for the applicant with his usual thoroughness carefully took us through the relevant passages in the notes of evidence and those portions of the summing up of the learned trial judge upon which he based his submissions. We considered carefully the evidence brought to our attention and the directions of the learned trial judge and we were satisfied so far as grounds 1 - 6 were concerned that there was no merit in any of the points taken, and so intimated at the end of the submissions of Counsel for the applicant, by calling on Counsel for the Crown only in relation to ground 7. So far as this ground is concerned it was rather unfortunate that the learned trial judge at this stage of the summing up should have used words which were capable of conveying to the jury the impression that it was for the applicant to satisfy them that he was provoked. (vide Johnson v R. (1966) 10 W.I.R., p. 402). We would wish in particular in this regard to refer to the words of the learned Chief Justice in that case at p. 417 -

"In our opinion a trial judge cannot be too careful in his charge to the jury so as to ensure that they are left in no doubt, that not only on the general issue but ordinarily on every issue, the onus rests squarely on the prosecution".

We had brought to our attention by learned Counsel for the Crown numerous passages in the summing up which he had correctly stated on whom the onus lay, and we were of the opinion therefore that this error on the part of the learned trial judge could not have eroded the impression which his previous directions must have conveyed. In the circumstances we felt no miscarriage of justice had taken place, and we accordingly refused the application.