JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO: 47/94

COR: THE HON MR JUSTICE FORTE J A
THE HON MR JUSTICE DOWNER J A
THE HON MR JUSTICE GORDON J A

R v ARLENE HEMMINGS

Debra Martin for Crown

No representation for Applicant

November 14 & December 12, 1994

GORDON J A

On 15th June 1994 in the Trelawny Circuit Court held at Falmouth the applicant was convicted for the murder of Alphanso James on 5th March 1992 and sentenced to imprisonment for life. Clarke J ordered that parole should not be considered until she had served ten years. The application for leave to appeal was refused and we now give our reasons for this decision.

The circumstances leading to the death of the deceased involved a triangular love affair. The chief witness for the prosecution, Leonie Brown, was the current girlfriend of the deceased; the applicant the former girlfriend. The witness Leonie Brown testified that on 5th March 1992 she was the pillion passenger on the motor cycle of the deceased Alphanso James as he rode into the village square at Sherwood Content in Trelawny in the forenoon. She saw the applicant with a knife in her hand in the road and the deceased stopped the motor cycle. The applicant then stood astride the front wheel of the motor cycle and asked the deceased what he had brought for their son Javan. The witness left the applicant and the deceased and went towards a friend. She heard someone shout "she stab him" and on looking around she saw the deceased lying on his back on the ground bleeding from his left side.

The deceased sustained two injuries -

(a) a seven inch laceration to the middle of the left arm going deep through muscle; and

(b) a 2/3" in width stab wound to 7th intercostal space in the mid clavicular line. The wound went through a portion of the second rib, through the tip of the left lung and unto the aorta.

The applicant told the arresting officer Corporal Whilby and Inspector Hart who took a cautioned statement from her that she did not mean to kill the deceased but was defending herself.

In defence the applicant said she was struck down by the motor cycle the deceased rode. Thereafter he attacked her and was hitting and kicking her. She rose and removed a knife from the handle of the motor cycle and held out her hand with the knife therein as he approached her **menacingly.** She did not intend to kill him.

The learned trial judge in a careful and clear summation directed the jury on the issues that arose for their consideration. Self-defence and manslaughter as they arose on the defence received fair treatment.

Learned counsel for the Crown submitted that she had been unable to identify any deficiency in the trial judge's summing-up which could give rise to a ground for disturbing the verdict of the jury. We directed her attention to an area which could give rise to concern. This appeared at page 11 of the transcript and runs thus:

> "If you are satisfied that at the material time the accused recognized that death or really serious bodily harm would be virtually certain, barring some unforeseen intervention, to result from her voluntary act, if you find her act was voluntary, then that is a fact from which you may find it easy to infer that the accused intended death or really serious bodily harm, even though she may not have had any desire to achieve that result."

Miss Martin submitted that in the directions which followed immediately after this passage and in subsequent directions given, particularly those appearing at page 20, the trial judge clarified the directions given above and impressed on the jury that for a verdict of murder to be returned by them they had to be satisfied by the prosecution so that they felt sure that at the time the applicant inflicted the injury, if they so found she did, she had the intent to kill or to cause grievous bodily harm.

These are the passages referred to by Miss Martin:

> P. 12 -"She told you that she didn't mean to kill the deceased. And as I have reminded you, the evidence from Acting Corporal Whilby, is that the accused did say so to him, and the accused also, in the caution statement, told Inspector Hart that she did not mean to kill the deceased.
> If you were to conclude that the accused did not intend to kill the deceased or to inflict serious bodily harm on the deceased when she inflicted the injuries, then she cannot be found guilty of the offence of murder, because the prosecution would have failed to prove an essential ingredient of the offence of murder. If the prosecution have failed to prove intention to kill or to inflict really serious bodily harm, then you would have to consider whether or not the prosecution have proved certain other ingredients that I will go through with you in order to determine whether the accused is guilty of some other offence which I may leave to you for your consideration. And that offence that I may leave to you for your consideration, is the offence of mansalughter; let me tell you from now. ...
>
> P.20 " Members of the Jury, if you were to find that the prosecution have proved that the accused deliberately stabbed Alphanso intending at that time to kill him or to inflict really serious bodily harm on him, and that she was not

> "acting in necessary self-defence, then it would be opened to you to return a verdict of guilty of murder. If you were to come to the conclusion that the accused woman was not acting in necessary self-defence when she inflicted the injuries on Alphanso, but that though the act was deliberate she did not intend to kill him or to inflict really serious bodily harm, then you would return a verdict of guilty of manslaughter on the basis of lack of intention to kill or to inflict really serious bodily harm."

The passage first cited conveyed the inpression that the learned trial judge was saying that recklessness on the part of the applicant could give rise to the inference of the meas rea required for murder. We agree however with Miss Martin that the directions which followed immediately on the questioned passage and other directions referred to by her provided adequate clarification and presented a correct exposition on the law. The danger in the questioned passage was therefore more apparent than real.

Having disposed of this we found the application unmeritorious and accordingly it was refused.