C.A. Criminal Law - Murder — Definition of murder — Whether judge's direction to jury that "the offence of murder is committed when somebody intentionally and deliberately kills another person" inadequate.

JAMAICA

Application for leave to appeal dismissed. Direction on murder although not as full as it could have been was adequate for the purpose — facts simple — evidence overwhelming

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 15/88

V Comp

BEFORE: THE HON. MR. JUSTICE CAMPBELL, J.A.
THE HON. MR. JUSTICE WRIGHT, J.A.
THE HON. MISS JUSTICE MORGAN, J.A.

No case referred to

REGINA

v

ANTHONY LEWIS

Miss Janet Nosworthy for the Applicant

Canute Brown for the Crown

December 5 and 20, 1988

MORGAN, J.A.:

On the 19th day of January, 1988 this applicant was convicted for the murder of Calvin Jennings and was sentenced to death. From this conviction he now seeks leave to appeal.

Counsel on his behalf was granted leave to argue one ground in support of the application, namely, that the learned trial judge's definition of murder was inadequate and his directions to the jury in respect of the elements of murder were insufficient and accordingly the applicant was denied the opportunity of an acquittal of murder. The learned trial judge in his directions on murder said at page 99 of the record:

> "I don't think I told you what murder is. Anyway, the offence of murder is committed when somebody intentionally and deliberately kills another person, that's our law."

No other reference was made in the summing-up to this aspect of the law.

The facts upon which the prosecution rested were that about 4.15 p.m. on the evening of the 24th April, 1986, the deceased stood on the sidewalk at a corner at Ramsay Road, Maxfield Avenue, talking with a

Miss Valentine, when the applicant known as "Ticky" along with one "Pleasure" approached them. "Ticky" shot the deceased and they ran away. Miss Valentine says after she saw the face of the accused she fell to the ground to avoid being shot. She did not know him before, did not attend an identification parade but pointed him out at the trial as the person who shot the deceased.

Another witness, Mr. Rainford having seen and spoken to the deceased and Miss Valentine had just walked off, when he heard the sound of gunfire. He turned back in time to see the applicant, whom he knew very well for several years, and "Pleasure" running away from the scene. He called to "Ticky" who turned, faced him and replied "Bwoy you ah go dead to".

On the 16th May, 1986 about 8.30 p.m. the police were conducting spot checks on motor vehicles on the Mountain View Road when the applicant was taken from a minibus with a bag, the strap of which hung around his neck. This bag when searched revealed a .38 Smith and Wesson revolver loaded with three rounds of ammunition.

At the post-mortem examination performed on the body of the deceased by Dr. Bhatt, the pathologist, four firearm entry wounds were found and two bullets were taken from the body. Tests were conducted on these bullets and on the gun taken from the applicant by Assistant Commissioner Daniel Wray, the Government Ballistic expert. He concluded that the bullets were discharged from that gun.

The applicant in an unsworn statement denied any knowledge of the charge. He was at work he said and had gone to the airport and was informed of the incident on his return; allegations were made only because he was acquainted with "Pleasure".

The issue was one of identification which was thoroughly dealt with by the learned trial judge in his summing-up. In the event, counsel conceded that the absence of the directions with respect to the elements of murder namely, intention, accident, self-defence and provocation did not in anyway operate to the prejudice of the applicant. A trial judge is only required to give directions on such aspects of the law as are

applicable to the circumstances of the case to enable the jurors to properly understand the issues for their determination.

In this case the direction on murder although not as full as it could have been, was adequate for these purposes. The facts were simple, the evidence the jury had to consider was overwhelming and in the circumstances we see no reason to interfere. The application for leave is refused.