JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 10/85

COR: The Hon. Mr. Justice Rowe, President
The Hon. Mr. Justice Carey, J.A.
The Hon. Mr. Justice White, J.A.

REGINA VS. CHARLES LAWRENCE

Mr. Delroy Chuck for appellant

Miss J. Straw for Crown

31st March, 1987 &
6th July, 1987

WHITE, J.A.:

On the 31st March, 1987, after hearing arguments on the application of Charles Lawrence for leave to appeal against his conviction and sentence, we treated the application as the hearing of the appeal. We allowed the appeal. The conviction for murder was quashed, the sentence set aside. We, however, substituted therefor conviction for the offence of manslaughter, for which we imposed a sentence of 10 years imprisonment at hard labour, which sentence was ordered to commence from the date of conviction, viz., 30th January, 1985.

It is in order to give an account of the facts upon which the Crown's case was based, also to consider how the trial judge summed up to the jury, bearing in mind the defence which was raised.

The appellant and his brother, Errol Reid, were both tried for the murder of Leroy Haynes on the 22nd day of January, 1983. The appellant was found guilty of murder; Errol Reid was found guilty of manslaughter and sentenced by Gordon, J., to be imprisoned at hard labour for three years, but was suspended for that period. He did not appeal, so that the facts for consideration are those which peculiarly highlight the role of the appellant in the events leading up to the death of Leroy Haynes. According to the deposition of the doctor who performed the post-morten examination, read at the trial, Leroy Haynes had received several severe incised wounds, not only to his left hand, but to his chest and back. In the opinion of the doctor, death was due to shock and haemorrhage, the result of a stab injury to the chest by a sharp instrument used with a moderate degree of force: That instrument could have been a knife.

The actual events leading up to the infliction of those wounds started with a confrontation between Jennifer Campbell, (who is the sister of both the then accused), and Sandra Griffiths, who had replaced Jennifer in the affections of Leroy Haynes. On the night of the 22nd January, 1983, these two young women came in physical conflict with each other on the street. They blamed each other for the incident. According to Sandra, she ran away from an attack by Jennifer and went home. According to Jennifer, she was attacked and wounded by Sandra. Jennifer said she went and complained to her brother Errol Reid. She and he were walking towards the home of Sandra, when they met Charles Lawrence, the appellant. The three of them reached the home of Sandra.

According to Sandra Griffiths, about 15 minutes after she reached her home, the two accused accompanied by Jennifer Campbell and about seven others came to the gate of her yard. Sandra said she saw when the appellant and Jennifer threw stones and bottles on the premises. Leroy Haynes went out and spoke to them, according to her, trying to make peace. She went out to where they all were and persuaded Leroy Haynes to return to the house. But

then as she turned off, she was attacked by Charles Lawrence who dragged her outside. While Errol Reid was hitting her with a pick-axe stick, the appellant inflicted several cuts all over her body with a knife. She escaped from them, ran back into the premises, and while she was attempting to stanch the flow of blood by washing herself at the pipe, she heard something. When she went out she saw Leroy's body at the gate. She said that at no time did she see Leroy Haynes with a machete, although she said that when Charles Lawrence was cutting her, she glimpsed the deceased coming to where she was.

One witness for the prosecution, Joan (Merle) Haynes stated that the deceased, her brother, had a machete when he approached Lawrence. As to this, the learned trial judge in his summing-up advised the jury "You have to accept that he did have a machete. The Crown has accepted that he did have a machete." (p. 151)

It was Merle who testified that she saw Jennifer and the two accused, on the night in question approaching the gate of the yard where she lived with her brother and the deceased. Errol Reid was armed with a pick-axe stick; the appellant had an open ratchet knife in his hand, and Jennifer had bottles and stones and a machete. She left them on the street and reached her home. While she was in her house speaking to her mother, she heard stones and bottles being thrown on the house. She identified Jennifer as the hurler of the missiles. She followed behind her brother when he went out to talk to the men. There was some talk for some time, and after a while Sandra Griffiths came out. Errol Reid hit Sandra with a pick-axe handle, and she described Lawrence cutting Sandra with the knife "without mercy". She said Leroy went to Sandra's assistance, and, said Merle, when Lawrence stabbed at him, she heard him ask "Where is my cutlass?" He ran into the premises and came back out with his cutlass. She said further, that as he came out with the cutlass, and was going towards the appellant, Errol Reid hit the deceased with a pick-axe stick.

She admitted under cross-examination that the deceased did chop at the appellant but said that this was while the appellant was cutting Sandra. She was not able to say if the machete caught the appellant. As she looked on, Merle said, "Charles Lawrence and Leroy Haynes get entangled in a struggle." She was asked, "The machete, do you know if Leroy Haynes had it at that time when they were struggling? A. Yes. Q. What about the ratchet knife that you speak of that the accused, Charles Lawrence had? A. He had it."

The two men continued struggling with each other. "A few minutes after Charles Lawrence ease him off. When him ease him off Leroy Haynes dropped at number 13 gate, that is the gate beside us." When she looked at the decoased she saw that he was bleeding from a wound in his chest. She was firm in her denial of the suggestion by the defence that it was while Sandra was inside washing the blood from her wounds, that Leroy came out and chopped at Lawrence. She insisted that Leroy was injured when he went to the rescue of Sandra. She also affirmed that Errol Reid struck only one blow on the deceased, and that was when Leroy approached the appellant who was then cutting Sandra.

When Constable Errol Grant arrested and cautioned the appellant, the latter said, "Mi nah say anything, because mi lawyer tell mi wha to do already." When arrested and cautioned, Errol Reid said nothing. The Constable observed an injury to Lawrence's forehead. The appellant told him the deceased had chopped him there with a machete.

In so far as the defence of the appellant as projected at the trial was concerned, the appellant in his unsworn statement said that he saw his sister Jennifer crying on the night in question. She made a complaint to him that she had been attacked by Sandra, to whom the deceased handed a knife to cut her. They were on their way to Leroy's home with the intention of sorting out the matter. He met Merle, the sister of the deceased, and he invited her to go with him to Leroy's home. He saw Leroy at the gate of

the yard where Leroy lived. He spoke to Leroy who challenged the appellant to a fight. The appellant further said that Leroy called out Sandra, who came to the gate with a knife and a stone. She cut Jennifer with the knife. Then he held her and he backed his knife and she got a cut. He next saw Leroy with a machete over his brother, Errol Reid, who was on the ground. Leroy chopped his brother on his leg. When he approached Leroy, and asked him what he was doing, the appellant said he felt a chop, and he received a few injuries. He said he was dodging behind a column and Leroy chopped him about three times and then he ran on to Leroy; they held up; they struggled, and he 'shoobed' the knife in Leroy Haynes.

The account given by Jennifer Campbell of the occurrence at the gate of the deceased's yard, included her accusing Leroy of having caused Sandra to stab the witness. She told of the deceased calling out Sandra, who, when she came to where they were, attacked Charles Lawrence; she tore off his shirt. He cut Sandra. After which she went inside. Leroy went after her. He came out with a machete and according to Jennifer, he and Charles were struggling in a corner. She saw Leroy chop the appellant in his head with the machete. The appellant received a cut on his hand also when he warded off a second chop at him by Leroy. In her version, it was Errol Reid who knocked the machete from the hand of the deceased, who, nevertheless, regained the machete with which he again attempted to cut the appellant. During the melee she saw when Errol fell to the ground, with the deceased standing over him with the machete. When the deceased attempted to chop the appellant for the second time, she saw them wrestling, and it was at this time that the fatal injury was inflicted.

By leave Mr. Chuck argued the following supplementary grounds of appeal:

> "1. The Learned Trial Judge wrongly directed and/or misdirected the jury on the issue of provocation
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> (a) His direction (on pages 170-172 of the transcript) were inadequate, outdated and unhelpful. viz

"(i) Provocation can originate from a third party and not necessarily from the deceased.

(ii) Provocation does not have to be directed to the accused, it may be directed to someone closely connected with the accused.

(iii) His direction seems to indicate that provocation arises out of self defence rather than as a separate defence e.g

'.... It may seem that provocation is far-fetched, but provocation can arise from or in circumstances which amount or arise out of, ..., self defence.' (p. 170)

(b) He failed to point out that the witness Sandra Griffiths used words which may have provoked the applicants to attack her (see pages 74-75) and hence the applicant Charles Lawrence may have been seized by ungovernable passion from the commencement of the whole violent transaction.

2. The Learned Trial Judge's direction on manslaughter were confusing and conflicting, and the circumstances in which the fatal injury was inflicted was not highlighted or dealt with in the context of his direction on manslaughter. In particular, the fatal blow was struck during the 'rassling'.

3. The Learned Trial Judge's direction on the issue of self-defence was wrong. Thus, he says:

> 'I say that is the crux of the matter, whether the attack was by Leroy in defence of his girlfriend or in retaliation. That is a question you have to settle.' (p. 167)

It is suggested that the proper direction in the circumstances of the case is whether, at the time the fatal blow was struck, the accused person believed that his life was endangered and the striking of the fatal blow was to avoid serious injury or death to himself. [See Shannon] (1980) 71 (CAR 192).

4. That the verdict of the jury is inconsistent. On the Crown's case, at what point and in what circumstances did the applicant Charles Lawrence depart from the common design of which Errol Reid was a party?

5. That the verdict of the jury is unreasonable and cannot be supported by the evidence."

Regarding Ground 3, it is convenient to state that Mr. Chuck did not press this point which he conceded was a fine point. This, especially bearing in mind the context of the passage quoted in the complaint. The whole paragraph is as hereunder: (p. 167)

> "The Crown's evidence is that Sandra was under attack. She was being sliced with a knife, (Crown Counsel used the term carved). The deceased went to her assistance unarmed. The knife was swung on him, he backed away and he went for his machete. It is for you to say whether the force he sought to use for the protection of his girlfriend was disproportionate to the harm he thought was to be done to his girlfriend. Weapon for weapon, he went for his weapon -- that is the Crown's case - to assist in defending his girlfriend. I say that is the crux of the matter, whether the attack was made by Leroy in defence of his girlfriend or in retaliation. That is a question you have to settle."

This passage follows from proper directions on the law of self-defence, and the rights of an accused to defend himself against an attack which is imminent as well as pressing. The passage cited is putting the action of the deceased in focus, in the light that the jury had to decide whether the deceased himself had acted reasonably in the defence of Sandra.

As a prelude to the consideration of the issues which arose in the case, the summing-up records the judge as saying: (p. 150)

> "As the case stands, if you find that the attack or the approach by Leroy to Lawrence was made while Lawrence was attacking and cutting Sandra, then there are issues in the case for your consideration, the issue of murder or manslaughter; if you find that this approach was made after Sandra had been released and had gone back inside, then there are no issues for you to consider at all. Your verdict must be one of not guilty of murder, because Leroy's act would be an act of retaliation and not an act in defence of his girlfriend. For there to be a charge for your consideration the Crown must establish that Leroy, at the time he came out with his machete and went to Lawrence was acting in the interest of or the defence of his girlfriend, because it is the law that if a member of your family, a friend or even a stranger is under attack whereby the attacker indicates by his action that he intended to do injury to the victim, anyone is entitled to intervene in the interest of that victim. So the consideration rests on how you view the evidence. Therefore one will look into the evidence with some care."

Here, the learned trial judge has indicated to the jury the conspectus of the deliberations upon which they would embark in considering the details of the facts.

Although he posited that the directions of the trial judge on manslaughter were confusing, learned attorney-at-law acquiesced in the

view that on a fair reading of the summing-up the learned judge had put two material aspects which would likely reduce the killing from murder to manslaughter, viz., lack of intent, and provocation.

As to lack of intent, these are the relevant directions found at page 170:

> "You may find that although Errol was, although Charles struck the blow with that knife, it was a blow struck at night, it was a blow directed at the person of Leroy, it did go into his heart and it did result in his death, and you may find that he didn't intend to kill but he struck a blow which any reasonable person would know, because he said he 'shoobed' the knife at him, would cause some injury; then you may find him guilty of manslaughter and not murder.
>
> You see, to amount to murder there must be the intent to kill or cause serious bodily harm; not merely to use a knife and cut a person but to kill or cause serious bodily harm, but he, as a reasonable person, must know that it was likely to cause some harm, some injury, and this injury resulted in death, but he didn't intend to cause death; then it would be manslaughter and not murder."

The directions with regard to provocation as reported at pages 170-172 must be quoted in extenso in order to realize the force of the argument by Mr. Chuck that in this regard there was a deficiency in the summing-up:

> "There is a distinct possibility that in contemplating the evidence you may find that there was some element of provocation.
>
> Provocation, Mr. Foreman and Members of the Jury, recent decision obliges me to direct you on this area, although it would seem that when persons leave there, wherever they are and travel as the Crown says these people travelled, armed with weapons, to a venue, they meet at that venue and they commit an act which resulted in death, it seems that provocation is far-fetched. It may seem that provocation is far-fetched, but provocation can arise from or in circumstances which amount or arise out of, I should be very careful with what I say, self-defence. Because especially Charles Lawrence is saying that he was defending himself. If you find, on the totality, if you find on the evidence that there was some element of provocation, then you will deal with it as I shall direct you shortly.

> "For provocation to arise there must be a loss of self-control by the accused. That loss of self-control must be the result of something said or something done by the deceased and that something said or done must, in your opinion, be sufficient to have caused a reasonable man to lose his self control and act as the accused man did.
>
> If those conditions are satisfied, then, members of the jury, the accused man is said to be acting under provocation, and he is then not guilty of murder, but of manslaughter. There must, first of all, have been a loss of self control. If there was no loss of self control then provocation cannot arise, and this is so no matter how great the provocation might have been, no matter how great the act of provocation to the accused might have been. Secondly, the loss of self control must be as a result of something said or done or said and done by the deceased. You have to say whether if the accused lost his self control it was as a result of the action of the deceased. Now, the accused said he was attacked, that is Lawrence said he was attacked and he was defending himself. You may reject self defence, but you may find that he was provoked by the act of the deceased. It is for you to say whether you so find or you can so find on this evidence. If he did lose his self control because of the act of the deceased, finally, you have to consider whether those acts could have caused a reasonable man, that is to say an ordinary responsible man capable of reasoning to lose his self control and act as he did. If he did lose his self control as a result of the acts or words of the deceased and those acts or words would in your opinion have caused a reasonable man to lose his self control and to act as the accused man did, then he would be acting under provocation and he would be guilty not of murder but of manslaughter. There is no duty on the defence to prove that the accused was acting under provocation. It is for the prosecution to prove that he was not acting under provocation. So, if you are in a state of doubt, you are not sure whether he was acting under provocation you have to resolve that doubt in his favour and you have to say that he was acting under provocation, then you can only convict him of manslaughter."

It will be clear from this quotation that the directions were particularly concerned with the reaction of the appellant to the acts or words of the deceased only. But it is necessary to identify from the jumble of the evidence, certain facts which were germane to the defence of the appellant and particularly the issue of provocation. These facts are (1) the physical confrontation between Sandra and Jennifer when they first met on the street that night; Jennifer gave evidence that on that occasion she was cut by Sandra after Leroy had given the latter a knife. (2) Jennifer's complaint to her brothers, consequent on which, the three of them with supporters congregated at the gate to the premises where Leroy

and Sandra lived; (3) Sandra grabbing the appellant and according to Jennifer, tearing off the shirt of the appellant; the appellant cutting Sandra with a knife; (4) the retreat by Sandra into her yard to wash the blood from her wounds; (5) the deceased had gone inside expressly for his machete, ostensibly to defend Sandra; (6) his return to the gate with the machete and the subsequent struggle with fatal results between the appellant and the deceased. (7) In addition, under cross-examination Merle gave evidence that when Sandra first came out to the gate, she said something referring to Jennifer. Merle could not remember the words used, but it is clear that they were engaged in a tracing match - in her words, "Woman and woman tracing." (8) Merle herself, according to the defence, flung stones during the incident at the gate.

It therefore becomes apparent that there were several actors in the fracas, so that it was not a simple matter of the appellant vis-a-vis the deceased, and, as Mr. Chuck argued, provocation need not have been caused only by the deceased. It may have arisen from some third person, and need not be directed at the accused but may be directed at someone close to him. All the circumstances of the case have to be considered.

In support of his argument in this regard, Mr. Chuck cited the cases of R. v. George Thompson [1971] 18 W.I.R. 51 and R. v. Davies [1975] 1 All E.R. 890. Both cases considered the directions to the jury that provocation cannot arise if the accused lost his self-control as the result of something done or something said by some person other than the deceased. In the first, it was held that the proper direction in the circumstances arising out of a provocative act on the part of the deceased as well as a provocative act on the part of a person not acting together with the deceased, is that regard may be had to the acts of both deceased and that other person if such acts can be regarded as arising out of one and the same incident.

The facts of the case are stated in the judgment of Smith, J.A., at pages 52H-53C:

> "The charge against the applicant arose out of incidents which occurred on the morning of August 22, 1970, in the district of Thompson Pen in St. Catherine. There was a fight between the applicant and a man named Delroy Thompson, who is called Derrick. They fought on a lane in the district. They were parted. The case for the prosecution was that after the men were parted the applicant took a ratchet knife from his pocket, 'flashed' it open and moved towards Derrick, who ran. The deceased held the applicant and tried to take the knife from him, asking whether he wanted to get himself into trouble. The applicant resisted the deceased and an unknown man went to the deceased's assistance. All three fell to the ground where there was a struggle to take the knife from the applicant. During the struggle the deceased thumped the appellant two or three times. A woman hit the deceased in his back, apparently because of this. The deceased let go of the applicant, got up and turned aside to speak to the woman who had struck him. The applicant got up and made as if to walk away then spun around and stabbed the deceased in his neck with the knife which he still had. The deceased received a wound in the region of the right clavicle which penetrated the subclavian vein and entered the upper tip of the right lung. He died from resulting haemorrhage. In an unsworn statement at the trial the applicant, short of expressly admitting that he stabbed the deceased, admitted in substance the case for the prosecution. He gave the reason for the fight with Derrick. He said that on that morning he was on his way to the river when he saw Derrick 'hold up' a girl. He told him to let her go 'because they rape her the night before'. Derrick boxed him and this started the fight.
>
> The learned trial judge left it open to the jury to find a verdict of guilty of manslaughter on the ground of provocation, but on the question of whether or not the applicant was provoked to lose his self-control he expressly withdrew from the jury's consideration any provocation that might have arisen from the fight with Derrick."

There was, in Thompson's case, no evidence on which it could be said that the deceased was acting with Derrick during the fight between the appellant and Derrick.

The decision of the Court of Appeal (Fox, Smith and Graham-Perkins JJ.A) was laid upon a consideration of the terms of section 3c of the Offences Against the Person Act, which is worded similarly as section 3 of the Homicide Act 1957 (U.K.) [as amended]. The judgment records the expression of view that the section "is sufficiently general in its terms to include a case of provocation given by a person other than the victim or someone acting in concert with him." R. v. Twine [1967] C.L.R. at page 711 per

Lawton J. At page 57c the judgment of Smith, J.A., reads as follows:

> "The question whether or not the ruling of Lawton, J., was right was not fully argued before us. On the view we take of the facts of the case under consideration, it is not necessary to express an opinion on the correctness of LAWTON, J's, ruling. The case we had to consider was not one in which the victim was innocent of any provocative act. This distinguishes it from Simpson's case (1). Though the deceased was a peacemaker and was endeavouring to save the applicant from himself, yet the learned trial judge was, in law, bound, as he did, to leave for the jury's consideration on the question of provocation the fact that the deceased thumped the applicant while the latter was on the ground. The question we had to decide was whether the jury could legitimately add to these acts of the deceased any provocative acts that the applicant may have received from Derrick in the fight with him.
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> We are of the view that the incidents starting with the fight and ending with the stabbing of the deceased were so closely connected that they could properly be regarded as one entire incident. On the issue of provocation the jury had to consider the state of mind of the applicant when he inflicted the fatal injuries on the deceased. Indeed, the whole doctrine of provocation is referable to the state of mind of the accused judged against the standard of the mind of a reasonable man (see Parker v. R. (8) (1962-63), 111 C.L.R. at p. 615, per WINDEYER, J.). Derrick had, apparently, been the aggressor in the fight with the applicant, who appears to have had the worst of the encounter. A prosecution witness, Barrington Dawkins, gave evidence that while the applicant and Derrick were fighting, the applicant was trying to get up and Derrick was pushing him down and the applicant's head "knock the ground". The mental state of the applicant after this fight may have been such that the blows from the deceased were all that was required to tip his mind into a state of loss of self-control; though by themselves these blows might not reasonably have been sufficient to place it in that state. In these circumstances, where all the provocative acts were done to the applicant in the course of one incident, his state of mind when he committed the act of stabbing could not, in our view, fairly be judged without taking all those acts into account. His conduct would, of course, still have to be considered from the standpoint of a reasonable man.
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> Had the jury been allowed to take into account such provocative acts as arose from the fight with Derrick they may well have arrived at the same verdict, but we could not say that they would certainly have done so. It is for these reasons that the appeal was allowed."

The reasoning of the Court of Appeal would, therefore, not preclude the jury considering in this case, if they had been so directed, that

although the appellant and his co-accused and Jennifer had gone armed and accompanied by a crowd to the gate of the deceased, the fracas there was such as developed from the behaviour of Leroy and Sandra. This, notwithstanding the assault by the appellant and his brother on Sandra. Coupled with this must be the behaviour of the deceased in going away from the gate and returning there with his machete.

The facts in R. v. Davies [1975] 1 All E.R. 890, do not disclose a fracas, showing as they do a triangular situation of husband and wife and the wife's lover. The headnote sufficiently summarizes the facts and the decision of the Court of Appeal, Criminal Division.

> "The appellant married in 1970. The marriage was happy until the wife met S in 1972 and began to associate with him. The appellant was extremely resentful and jealous. On one occasion he displayed a gun to his wife and threatened to kill S. The wife left the matrimonial home shortly afterwards and went to stay first with her parents and then with different friends. The appellant continued to threaten his wife on various occasions with firearms. In January, 1973 the appellant went to look for his wife. He had a shotgun with him. In the course of his search he saw S walking towards the library where the wife worked. He followed S, carrying the gun. The wife came out of the library and the appellant went up to her, called her name and shot her. He was charged with murder and at his trial raised the defence of provocation. The judge directed the jury that provocation was an act or series of acts done by the victim, or words uttered by her, to the appellant which would have caused in a reasonable person, and actually caused in the appellant, a sudden and temporary loss of self-control rendering the (appellant) so subject to passion as to make him for the moment not master of his mind. He further left the question of provocation to the jury on the footing that they could review the whole course of the wife's conduct through the year 1972 and decide whether the appellant had been provoked to kill her. The appellant was convicted of murder and appeal on the ground that the judge had misdirected the jury in that he had in effect excluded from their consideration the question whether S's conduct constituted provocation."

But although the facts in that case are much simpler than those of either R. v. Thompson or this case, R. v. Davies deliberated on "the contention of the appellant that in directing the jury as to provocation the learned judge excluded provocation from any other source other than from

"the victim, that is to say other than the wife. The question for us is whether that exclusion is valid or not." This is the succinct statement of the question raised on the appeal, which Lord Widgery C.J., said had to be considered in the light of the amendments introduced by the Homicide Act, 1957, s. 3. Accordingly, at page 896f-g, he said:

> "..... it seems quite clear to us that we should construe s. 3 as providing a new test, and on that test that we should give the wide words of s. 3 their ordinary wide meaning. Thus we come to the conclusion that whatever the position at common law, the situation since 1957 has been that acts or words otherwise to be treated as provocative for present purposes are not excluded from such consideration merely because they emanate from someone other than the victim."

Interestingly, the court opined that the error complained of was due to the overwhelming probability that the defence was on the footing that only the acts of the wife were relevant for the purpose of provocation. At the same time, be it noted that Lord Widgery C.J., in stating that the Court saw the case as one for the application of the proviso, opined thus: (p. 897c-g)

> "The reasons why we think it is a proper case for the proviso are these. The judge again we understand at the request of defence counsel, left the question of provocation to the jury on the footing that they could review the whole course of conduct of the wife right through that turbulent year of 1972 and decide whether the appellant had been provoked to kill her within Delvin J's test. It has been pointed out rightly that that was really too generous a direction from the point of view of the appellant because in all cases of provocation the vital question in the end must hinge on the loss of self-control and the causes of that loss. The background is material to provocation as the setting in which the state of mind of the appellant must be adjudged.
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> Because it was left in that way it was quite impossible, we think, for the jury to distinguish the separate actions of the wife from the actions of Stedman. The two were complementary one to the other. The provocative conduct is summed up by the fact that the wife was leaving the husband at Steadman's enticement, and we can regard the wife's conduct and Steadman's conduct for present purposes as being two sides of the same penny and inseparable one from the other.

> "This is particularly illustrated when one comes to the final act outside the library on the night of 30th January. There you have the wife coming down the library steps to greet her lover. You have the lover approaching from the opposite side of the road to meet the wife. The jury have decided that the wife's conduct was not provocative for present purposes, and we ask ourselves rhetorically how could any reasonable jury, which was satisfied that the wife's conduct was not provocative, find that the conduct of Steadman could be provocative. It seems to us that such a conclusion would be quite impossible, and accordingly we have no hesitation in saying that the simple failure to regard Steadman's presence and movements on the night of 30th January as being matters which amounted to provocation could not have affected the jury in this case, or indeed have appeared to any reasonable jury as ammounting to provocation. We have little doubt in the end that what the jury decided in this case was that it was a premeditated killing and not a question of provocation at all."

The interest of these last comments is in the acknowledgement that the purview of the provocative act must be the entire conduct of the protagonists.

In the event, we express the view that as the summing-up did not direct the jury's attention to the acts and words of Sandra as components of the provocative acts which caused the response of the appellant, there was a misdirection.

Regarding Ground 4, we do not agree that the verdict of the jury relating to the appellant is inconsistent. It is clear that the appellant and Errol Reid and Sandra went to the yard of the deceased openly armed. There was a display of arms. The Crown's case was presented on the basis of common design. As the judge pointed out to the jury at page 165:

> "If you accept the evidence given by either accused or both of them; that in the case of Charles that he was attacked and he was acting in self defence, it was after the incident between himself and Sandra was finished, the attack took place, then you must acquit. If you are in doubt whether to accept or reject you must accept and acquit. If you accept the evidence of Errol Reid that he had nothing to do with the incident, you must acquit. Even if you accept that he struck a blow while Charles was approaching Errol and this was after - while Leroy was approaching Charles, and this was after Charles had cut Sandra and she had gone inside, if you accept that, the evidence or suggestion that that was when it happened that he struck this

> "blow when Leroy was in the act of attacking his brother when there was no cause for him to do so because the attack on Sandra was over, you still find him not guilty, because he would have committed no murder nor manslaughter on that evidence, if you accept it."

And again at page 169 he directed them:

> "If there was a contemplation that the knife would be used but not to cause serious bodily harm and it was used and did in fact cause serious bodily harm, only the person who used the knife can be guilty of murder. The other person charged, if you find that he was a party to the use of the knife on that night to cause harm, would be guilty of manslaughter. You can only find murder if you are satisfied that they went there intending to kill or to cause serious bodily harm, both intended that. If you find that Errol Reid arrived on the scene at a time after the incident had taken place, that is what he said; his sister said he came on the scene before the fatal injury was inflicted, but on her evidence he was struck down."

The judge did put to the jury that according to the Crown's evidence, Errol Reid struck the deceased with the stick when he was going to the assistance of Sandra. "Was the intention of Errol to prevent him from interfering in the exercise of the common design by Charles? ..... If Errol's involvement in that blow was only to prevent Leroy from participating or assist his girlfriend, it would make him guilty of nothing higher than manslaughter. That is the case for Errol."

It is clear that the jury did take the view that the act of Errol Reid was to be regarded as part of the common design as indicated by the summing-up.

This being so, had the jury been properly directed as pointed out above, in respect of the appellant, their verdict might very well have been the same, but as the record shows the omission adverted to, we repeat that it was defective and so resulted in a misdirection with the result as set out at the beginning of these reasons for judgment.