

CRIMINAL LAW — Murder — Defence Counsel states he can find no basis to criticise judge's summing-up.  
Application for leave to appeal refused.  
No case referred to JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 85/86

BEFORE: The Hon. Mr. Justice Kerr, J.A.  
The Hon. Mr. Justice Campbell, J.A.  
The Hon. Mr. Justice Downer, J.A. (Ag.)

REGINA vs. DUDLEY SMITH

Delroy Chuck for the applicant

John Moodie for the Crown

July 23, 1987 &  
June 30, 1988

DOWNER, J.A.:

At the conclusion of the hearing of this application for leave to appeal against the conviction for murder in respect of the applicant, we refused the application and promised to put our reasons in writing. We now proceed to do so.

The applicant was jointly charged and tried on an indictment which averred that Dudley Smith and Venetia Hobson on the 10th day of July, 1985 in the parish of St. Ann, murdered Sylvester Smith. They were tried by Gordon, J., and a jury, during the period October 13 - 16, 1986 at the conclusion of which they were sentenced to suffer death in the manner authorised by law.

There were two principal crown witnesses as to the actual murder. Firstly, the little boy Andrew Smith whose evidence was neatly

summarised by the learned judge at page 174 of the record. It is useful to point out at this stage that this was a domestic murder and the grandson gave evidence which implicated the parents in the murder of his grandfather. The evidence was to the effect that his father and mother assaulted his grandfather, that his mother held him while his father administered blows with a hammer to his head. The hammer was later placed under the cellar of the house. He also reported that his parents removed some items from the house and subsequently he turned over the hammer to the police. His view was from the window of his home and although it was in the night he said the houses were near and the distance was demonstrated in Court.

These graphic details were supported by another witness who was not on the scene at all. During the mother's imprisonment before trial, she confided to a fellow prisoner, Phillip Brown. He told the Court that Venetia Hobson told him that her boyfriend forced her to hold the deceased while he hit him with a hammer and that it was the youth who gave the police the hammer. In this complex family affair it seems that there were matrimonial problems between the grandfather and his wife and Venetia explained that that might have been the cause of the incident. She further explained how items were removed from the house and that this includes \$400.00 which was concealed under a hill of yams. The learned judge's careful summing-up directed the jury as to how this evidence could be used to support the evidence of Andrew Smith in respect of Venetia Hobson.

This basic structure of the Crown's case was supported by the doctor who accounted for the death of the father by stating that in his opinion death was due to the fracture of the skull and the analyst who said that she found blood on the hammer which was handed over to Inspector Coombs, and Inspector Coombs who investigated the case got the hammer from the boy Andrew.

There was certainly an underlying dispute in this family and part of it was that the accused were given notice to quit their home by the father and it also seems that other sons had separate disputes with their father.

Although there were witnesses for the defence, the principal feature was the unsworn testimony of the two accused. Venetia Hobson denied that she played any part in the incident and as to the evidence adduced by Phillip Brown, she said a lie was told on her because she accused him of having lice in his hair. She had lent him a comb and had detected the lice when the comb was returned. Her denial of the Crown's case in Court was in marked contrast to Phillip Brown's evidence, whom she had told that she was forced to hold the father on that fateful night.

As for Dudley Smith, he denied that he was ever at his father's home at the time of the incident and said that he first knew of his father's death when Ann-Marie, his daughter, was sent for fire the following morning and reported that her grandfather looked as if something happened to him. Ann-Marie gave evidence to that effect. Indiana Smith, the deceased's estranged wife also gave evidence for the defence but it was not pertinent to the issue in the case.

It was in the light of this evidence that the learned judge summed up and left murder and manslaughter on the ground of lack of intent and not guilty to the jury. Mr. Chuck candidly told the Court that he could find no basis on which to criticize the learned judge's summing-up and as we agreed with that, we refused the application for leave to appeal.