C.A. Criminal Law — Manslaughter — Summing up : self defence provocation — Circumstantial evidence — whether adequate whether misdirection. Sentence of 10 years imprisonment — whether excessive Application for leave to appeal against conviction and sentence refused. No cases referred to JAMAICA ✓ comp

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 92/90

BEFORE: THE HON. MR. JUSTICE FORTE, J.A.
THE HON. MISS JUSTICE MORGAN, J.A.
THE HON. MR. JUSTICE WOLFE, J.A. (Ag.)

REGINA vs. HORACE BANTON

Criminal Practice

Miss Paulette Williams for the Crown

Applicant unrepresented

Evidence

December 7, 1992 and July 29, 1993

WOLFE, J.A. (Ag.):

The applicant was indicted for the offence of murder arising out of the death of Sylvester Williams, which occurred on the 13th September, 1989, in the parish of Trelawny. He was tried before Langrin, J., sitting with a jury, in the Trelawny Circuit Court on the 4th June, 1990. The jury found him not guilty of murder but guilty of manslaughter, whereupon he was sentenced to be imprisoned for ten years at hard labour. He now seeks the leave of the court to appeal against the conviction and sentence.

The evidence relied upon by the prosecution to establish the guilt of the applicant was largely circumstantial. Michael Eccleston, a farmer, testified that on Wednesday, September 13, 1989, he went to the field of the applicant at Max Spring at about 8:00 a.m. On arrival there he saw the applicant, one Roy Powell and Errol, the applicant's son. Eccleston stated that his reason for going to the applicant's field was to assist him in digging yams. While there the deceased, Sylvester Williams, arrived on the scene and called the applicant. At that stage Eccleston and Powell left the

scene and went to the applicant's farm where they began to work. They remained there until 3:00 p.m. but up to that time the applicant was not seen although he had promised to bring lunch for them. He next saw the applicant the following day in the company of the police and Roy Powell. On the same day he saw the dead body of Sylvester Williams in a woodland. Eccleston further testified that while they were proceeding to the Warsop Police Station the applicant alleged that it was Roy Powell who had cut the deceased's throat and chopped him, the applicant, in his head.

Roy Powell gave evidence in terms similar to Eccleston. He also asserted that the applicant in his presence told the police that it was he, Powell, who had killed the deceased.

Michael Banton, otherwise called Errol, aged twelve years, the son of the applicant, in giving evidence, said that his father, the deceased and himself were walking along the road when the two men turned through a woodland. On the advice of his father he continued along the road with a donkey. He said his father was carrying a machete. On the following day he observed his father with a cut on one of his fingers and when he questioned his father as to how he had sustained the injury his father replied that he had been cut by bush.

Dr. Palvoi Srinagesh, who performed the post mortem examination on the body of the deceased found the following injuries:

> "1. A clean laceration at the neck just about the super clavicle region, severing all the parts including the trachea, oesophagus, major blood vessels and the cervical spine. The neck was completely severed and only a piece of skin remained between the neck and the trunk.
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> 2. There were large irregular lacerations on the right forearm severing the muscles and exposing the bones of the forearm. Death was due to the cutting off of the blood supply by the severing of the cervical spine and could have been instantaneous. The injuries he observed were consistent with infliction by a sharp instrument such as a machete.

The doctor examined the applicant on the 20th September, 1989, and found him with the following injuries:

1. A healed abrasion on the back of the left shoulder.

2. Healed abrasions on the right forearm and left upper arm.

3. Healing injury to the side and back of the head.

4. A small laceration on the chin.

Detective Acting Corporal Clive Cole visited Carterwood District in Trelawny along with Detective Inspector Gayle on the 14th September, 1989, where he saw the dead body of a male person lying in the bushes with multiple wounds. The applicant was pointed out then and on examination he noticed the applicant had injuries to his body. When questioned about the injuries the applicant said he had fallen from a donkey and sustained the injuries on the previous day. The applicant, he said, pointed out Michael Eccleston and Roy Powell and said that they had assisted him to kill the deceased.

Detective Inspector Clinton Gayle corroborated the testimony of Acting Corporal Cole.

The applicant, as is the custom in this jurisdiction, made a statement from the dock in which he alleged he was attacked by the accused with a machete and in defence of himself he chopped the deceased with a machete and ran away. He recanted from the earlier allegation that Eccleston and Powell had assisted in killing the deceased. He said he called their names because he feared the police would have killed him.

In a very careful summing-up Langrin, J. directed the jury fully on the law of self-defence and provocation. The directions to the jury on these aspects of the law were impeccable. He left for the consideration of the jury the lesser offence of manslaughter on the basis of provocation. Provocation was left for the consideration of the jury on the basis of words which the applicant said the deceased man used to him, to wit, "A boast you a boast and you dey a bush a fuck cow."

We are of the view that the learned trial judge was eminently correct in so doing. There can be no justifiable complaint about the manner in which the judge left the case for the defence and prosecution to the jury.

The jury, having been properly directed, rejected the plea of self-defence and found the applicant guilty of manslaughter.

There was one area of the summing-up which gave us some concern, namely, the directions on circumstantial evidence, but having regard to the nature of the defence, we concluded that such defects, as appeared in the directions on circumstantial evidence, were of no moment as the defence was not one of denial of involvement in the death of the deceased.

For the reasons contained herein, we concluded that the conviction is unassailable. We, therefore, refused the application for leave to appeal against the conviction and sentence. A sentence of ten years, in the circumstances of the case, cannot be said to be manifestly excessive. The sentence will commence as from the 6th September, 1990.