

C.A. CRIMINAL LAW - Murder - Evidence - Summary
Counsel for applicant conceded he can find no ground to
argue.

Application for leave to appeal refused

JAMAICA

No case referred to

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 197/87

✓ comp

Evidence

BEFORE: THE HON. MR. JUSTICE CAREY, P. (Ag.)
THE HON. MR. JUSTICE WRIGHT, J.A.
THE HON. MISS JUSTICE MORGAN, J.A.

REGINA

v

JONATHAN FAIRCLOUGH

Robin Smith for Applicant

Garth MacBean for Crown

October 24 and November 17, 1988

MORGAN, J.A.:

The applicant was convicted on the 28th October, 1987 in the Westmoreland Circuit Court before Gordon J. and a jury for the murder of one Derrick Parke and was sentenced to death. His application for leave to appeal from that conviction was refused and as promised, we now put our reasons in writing.

Mr. Smith for the applicant has said that he carefully perused the transcript and could find no ground to argue. We are in agreement with learned counsel's view.

This was a most unfortunate incident. On the 18th July, 1986 about 3.00 p.m., Miss Andrea Ottey was walking along the road in Savanna-la-mar on her way to the library when about three (3) chains ahead of her she saw two men, the deceased known as "Corpi" and the applicant "John". The deceased was holding his bicycle in front of him while the applicant tried to take it away. There was a tussle in which the applicant succeeded. He then pulled a pick-axe stick from his waist and hit the deceased across his back. The deceased held on to the applicant by his

shoulders but he hit him a second time across his back. The deceased staggered at the blow but that did not deter the applicant who hit him a third time across the left side of his face, causing him to fall to the ground. The applicant then punched him in his mouth, hit him across the back with the stick, then jumped on his bicycle and rode away. Miss Ottey said she went up to the deceased on the ground, got some water and sopped his face as people gathered. The deceased valiantly got up, walked a few feet then fell. His face was smashed. She said he had nothing in his hand except the bicycle at any time during the incident. The witness, James Brown who from his account saw and heard the last portion of the incident said that he was at home much nearer to the scene than Miss Ottey and heard "a blast like a man hit a football". After hearing the applicant say, "I am going to kill you", adding curse words, he saw the applicant with a piece of stick with which he hit the deceased as he lay on the ground and then rode away on his bicycle. The deceased lay on the road bleeding. The witness later assisted him to the hospital where he subsequently died.

At a post mortem examination held at the Savanna-la-mar Hospital morgue, the doctor found external injuries viz. a three-inch haematoma over the left parietal temporal scalp with a one-inch abrasion in the centre, and internally on dissection of the scalp he saw subcutaneous and subdural haemorrhage under the haematoma above-mentioned. This was associated with a slightly depressed radiating fracture involving the left parietal temporal bone. Death in his opinion, was due to a fractured skull and a blunt instrument used with a moderate to severe degree of force could have caused the injuries.

In his statement from the dock, the applicant said that he was riding his bicycle on the road, when he was stopped by "Corpi", who held on to his bicycle. There was a tussle with the deceased who let go of the bicycle, held him in his shirt and accused him of having stolen lumber from his "Corpi's" workplace. He said the deceased boxed him and stuck him with a knife. He got away, ran, and hearing the deceased running at him, he picked up a stick and hit the deceased to protect

himself from injury. He denied using an axe-stick. The learned trial judge reviewed the evidence carefully and gave the jury full and careful general directions on the issues of self-defence, and provocation which fairly arose in the case. Learned counsel for the applicant has said that the summation was unassailable and we agree. In our view, there was ample credible evidence to support the verdict of the jury, and we see no reason to interfere.

Accordingly, the application for leave to appeal was refused.