

C.A. CRIMINALS Murder — Provocation — whether issue
of provocation arose — whether judges
direction in helping with issue in R v Glasford Phillips
Ankeles 10-3 dismissed a (Held) provocation did not arise —
judge mainly reasons in JAMAICA leaving issue of provocation
to the jury. Case referred to
R v Glasford Phillips 13 W.L.R. 356

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 204/87

✓ Comp

BEFORE: THE HON. MR. JUSTICE KERR, J.A.
THE HON. MR. JUSTICE FORTE, J.A.
THE HON. MR. JUSTICE DOWNER, J.A.

Evidence

REGINA v. LEROY SIMMONDS

Mr. B. Samuels for the Applicant

Mr. Lancelot Clarke for Crown

May 25, 1988

KERR, J.A.

On November 6, 1987 in the Home Circuit Court before
Wolfe, J. and a jury the applicant was convicted for the murder of
Maurice Forrester and sentenced to death.

This was a brutal and atrocious murder. In May 1983, the
deceased called "Tony" was living at Belmont in the parish of
Westmoreland and on the Saturday night of the 24th of that month while
in bed with his girl friend, Roselena Brown, about 4:00 a.m., according
to Roselena Brown, upon whose evidence the case for the prosecution
rested, she was awakened by the sound of voices and some one asked her
the deceased to open the door. She recognized the voice to be of one
"Ayatee". The deceased apparently recognizing the voice got up and
opened the door and Ayatee and the applicant, whom she knew by the
name of Sonah entered the room which was then lit with electric light.
She had seen the applicant about six times in the area during two
weeks before. He lived in a house about three chains from that of the
deceased. Ayatee was armed with a dagger and the applicant with a
firearm - a short gun. Applicant pointed the gun at the witness and
deceased and when the witness screamed he hit her with the gun at the

back of her head. To the enquiry of the deceased, Ayatee said they were taking deceased and the witness to Kingston to kill them because the deceased had given information to the police. Roselena Brown and the deceased were marched out of the house in their scanty sleeping attire into the rented Isuzu car of the deceased. There was a driver in that car. 'Driver', so referred to by her she had known before as the chauffeur of one Jackie Sparkes. Deceased and witness sat in the back seat in the middle with applicant beside her on the left and Ayatee on the right beside the deceased. The car set off in the direction of Kingston and after travelling for about half mile their car overtook and stopped in front of a parked car and there was an exchange of drivers and Jackie Sparkes now became the driver of their car. The journey continued with the other car following. Deceased pleaded for his life but the applicant told him that they were going to kill deceased and although he was sorry, he was also going to kill her. On reaching Spur Tree, Ayatee observed that it would soon be daylight and thereupon the cars turned into a dead end road and stopped. Abductors and victims alighted and applicant took deceased some distance off from the car. She attempted to escape but Sparkes held her and took her to where deceased was. Applicant shot deceased in the head. The deceased fell to the ground. He was tied and placed in the Isuzu. Jackie told applicant to shoot her and he fired at her; she was shot in the mouth and fell and was lifted and placed in the Isuzu. Ayatee then threw gasoline on the car and set it alight. The heat stirred her to action; she crept from the car into the nearby bushes. Applicant saw her and said "but the gal nuh dead" but then the horn of the burning vehicle started blowing and they ran and entered the other car and drove away. She came out of the bushes and went to a nearby home and from there she was taken by the Mandeville Police to the Hospital.

In cross-examination, she said she gave a statement to the Police the following Monday morning while in the Kingston Public Hospital. Jackie Sparkes was a friend of the deceased and lived next

door. The police showed her a batch of about 8 photographs of different persons and from among them she picked out that of the applicant.

To the Court - she said she gave the names by which she knew the applicant and the others - "Sonah, Ayatee, Driver and Jackie Sparkes".

Detective Sergeant Clinton Thomas about 6:30 a.m. the same morning acting on report he then received, went to the cul-de-sac at Spur Tree there he saw the Isuzu car still burning. Inside it was the body of the deceased. He tagged the body and had it removed to the Mandeville Morgue. It was burnt beyond the recognition of his sister, Joan Collins, who attended at the Post-mortem Examination. Dr. Mariappa Ramu who performed the Post-mortem Examination on the tagged body said there was a firearm entry wound behind the left ear. The projectile passed through the head and made its exit in the mid parietal region of the skull. Death was due to the gunshot injury to the head. The body was completely charred. The burning was post-mortem.

The applicant was arrested by Senior Superintendent Isadore Hibbert on November 27, 1983 on warrant charging him for the murder of Maurice Forrester. In his statement from the dock, the applicant said he knew nothing about the case, he had never been to Westmoreland; he had been detained in custody pending an identification parade but no parade was held and it was only after habeas corpus proceedings were filed that he was charged for murder.

The learned trial judge gave the jury full and careful general directions on the burden of proof and the essential elements constituting the offence and, on the specific issue of identification, reminded them that the case rested on the evidence of Roselena Brown. He reviewed her evidence on this issue in detail, adverted them to the risks of mistaken identification and the need for careful consideration of the nature and quality of the identification evidence.

Mr. Samuels boldly argued that the issue of provocation arose and the judges directions were not in keeping with those in Reed v. Olesford Phillips 13 W.L.R. p. 356. In our view the learned trial judge was unduly generous in leaving the issue of provocation to the jury. The issue of provocation did not arise. The statement by Ayatee that they had come to kill deceased because he had given information about them to the police, was no more than the motive for what Mr. Samuels eventually conceded was a cold blooded killing.

The jury by their verdict demonstrated their good sense by not finding manslaughter on the ground of provocation. There was sufficient credible evidence to support their verdict of guilty of murder. Accordingly, the appeal is treated as the hearing of the appeal, the appeal is dismissed and the conviction and sentence affirmed.