

C.A. MURDER — (Defence counsel admits he can find nothing to argue in support of application for leave to appeal)
 Comments by Judge on passing sentence — C.A. expresses disapproval of "practice of persons convicted of murder being harangued by Bench before being sentenced." (JAMAICA and refers to provisions of relevant law re passing of sentence of death — Sec. 3(1) Offences Against the Person Act.)

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 234/87

Application dismissed

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

No case referred to

REGINA

v

LYNDON MARRIOTT

P. Sutherland for the Applicant

V. Bennett for the Crown

October 3, 1988

WRIGHT, J.A.:

This is an application for leave to appeal from conviction and sentence of death for the murder of Aston Nugent for which he was convicted and sentenced on the 15th day of December, 1987. Mr. Sutherland, with commendable candour, admitted that having read the transcript he could find nothing which could be usefully argued in support of the application. With this concession we agreed and accordingly dismissed the application but in keeping with the current practice in these matters, we place this short judgment on record.

There is no doubt that this was a callous murder at the centre of which was a teenage girl whom we shall call Miss "X" who made the shocking disclosure that while she was yet in school she and the applicant "did deh" meaning that they were in a common-law relationship. This relationship continued while Miss "X" lived at her mother's house. Eventually, she left her mother's house to live with the applicant at the house of the deceased — a one room house with one bed which the three of them shared. This most unwholesome and awkward arrangement lasted for just about three weeks after which the applicant left to live at his mother's house leaving the deceased

LEGAL PROFESSION STATUS
 (Judicial Ethics)

and Miss "X" at the deceased's house.

That the relationship with the applicant must necessarily have been a fickle one is attested to by the fact that Miss "X" contends that the deceased, Aston Nugent, was the true object of her love. On the early morning of March 12, 1987 both Miss "X" and the deceased were in bed when the applicant came to the door and called "Crow", the deceased's nickname. Against Miss "X's" advice, the deceased went out to him but returned within about three minutes. Next the applicant entered the room, grabbed Miss "X" by her hair and said "Gal, get up out a de bed and go home". So Miss "X" got up and combed her hair and then went next door to the house of Miss Dorette Williams ostensibly to borrow a bag to convey her belongings but in fact she was reluctant to make the move back to her mother's house. In the meantime, the deceased sought to clarify the position by saying to the applicant, "The girl told you that she is not along with you". It was then that Miss "X" left to Miss Williams' house where the deceased arrived shortly afterwards. When Miss "X" looked out she saw the applicant standing at Miss Williams' gate from where he called to her saying if it was a bag she wanted he could give her one. To this she responded, "A don't ready as yet, so you must gwaan leave mi". And having said so, she returned to the deceased's house. The applicant followed and with him came a rise in tempo.

He held on to the front of her blouse and the deceased who was by then standing nearby remonstrated with him thus: "let go offa de girl. The girl tell you that she not along with you, so you must gwaan and leave her". In the meantime, Miss "X" was trying, but in vain, to have the applicant release his hold of her. So the deceased intervened by holding the applicant's hand. The applicant's response was - "If you keep holding on to mi hand a going stab yuh" or, as Miss Williams put it, "shub de knife ina you". This marked a change in mood because apart from "Undecent" language being used by the applicant, according to Miss Williams who was watching from close by, there had been no violence except, of course, the holding by the applicant of Miss "X".

No sooner had the applicant issued his threat than he shifted his right hand with which he was holding Miss "X" to his waist, held her with his left hand, drew his right hand from his waist with a "gritty-gritty knife" which without delay he plunged into the left breast of the deceased. The knife was left stuck in the breast and then the applicant produced a machete also from his waist and at the sight of the machete, Miss "X" ran to some nearby bushes for cover.

The deceased still standing, tried in vain to extricate the knife, nor was Miss Williams to whom he appealed for help, anymore successful. The deceased fell on his back with the knife still wedged in his breast. And while he lay gasping on the ground the applicant went up to him, pulled out the knife and went away with it. Both Miss "X" and Miss Williams were emphatic that the deceased was not armed and that he offered no violence to the applicant.

Evidence was given by one Rosemarie Barnett which adds a new dimension to the morning's tragedy. She knew the deceased as "Crow" and the applicant as "Chuckie" and it was her evidence that at about 7.00 a.m. on the fateful March 12, "Chuckie" came to her home about one mile from "Crow's" home and told her he was going to kill Aston; but she did not believe him. He spoke and ran off in the direction of Aston's house. Then about 8.00 a.m. he returned, showed her a brown handle knife and said he had killed "Crow". But still she could not get herself to believe him. There was blood on the handle of the knife, the blade of which was about six inches long. He then ran off saying "Me wi see you". Miss Barnett confirmed the sorry truth by a visit to the house of the deceased.

The cause of death supplied by the evidence of Dr. Royston Clifford was shock and haemorrhage due to the stab wound to the chest. The wound, inflicted with moderate to fair degree of force had penetrated to a depth of 2 to 3 inches and had severed the ascending aorta.

Having received a report of the killing, Constable Edward Mason visited the scene and viewed the dead body then he went to the applicant's home about 12.30 p.m. where he saw and spoke to the applicant's mother and when he was about to leave, he saw the applicant in bushes on the premises.

Upon his calling, the applicant's name "Lyndon" and moving towards him the applicant ran. However, by about 6.00 p.m. Constable Mason saw the applicant in custody at his station, the Lawrence Tavern Police Station. He cautioned the applicant and told him he had a report that he had stabbed Aston Nugent to which the applicant replied, "Mr. Mason, me never mean fe kill him sar". Arrested and charged with murder, he made no further statement.

In an unsworn statement from the dock the applicant related that he had gone to fetch Miss "X" because her mother had asked him how he had taken her daughter from her house and was then living at a different place from her. At the point during the incident when he was alleged to have held Miss "X" in her blouse, he said it was on her shoulder he had held her after the deceased had told him that she then had another man but refused to say who the man was. On his version of the incident, the deceased then pushed and thumped him and he pushed back the deceased who responded with an upraised knife to stab him. He held on to the deceased's hand with the knife and they started to "wrassle" during which he heard the deceased cry out that "the knife jook him". "You see it, you see if you never draw knife on me that wouldn't happen to you" was his response to the cry of the deceased. Just then he saw the deceased's brother approaching with a machete and he ran off to his mother's home and was there when Constable Mason came, called his name and told him not to run but, upon hearing a shot fired, he ran. He did not say how far he had fled before he was held by a number of youngsters from a district called Unity and taken to the Police Station. This is the sole redeeming feature in the ghastly episode. The applicant made no mention of Miss Rosemarie Barnett.

In a summing-up which attracted no complaint, the learned trial judge left accident as the applicant's defence which the jury, in our view, quite properly rejected, and returned a verdict of guilty of murder which required thereafter the passing of the sentence of death by the learned trial judge. Indeed the evidence was so straightforward that the jury had no option but to return a verdict of guilty of murder.

Before parting with this case, we feel constrained to call attention to what transpired before sentence of death was passed which is another unfortunate example of what is observed to be a growing, but highly undesirable, practice of persons convicted of murder being harangued by the Bench before being sentenced. The jury's verdict coupled with the awful sentence of death is enough comment so far as an accused person is concerned.

The learned trial judge delivered himself thus:-

"Stand up Lyndon Marriott, I think the jury has returned a true verdict according to the evidence. I say that despite the fact that you say you are not guilty. They think you are and I agree with their verdict. It was a cruel act, and maybe one of these mornings I will take up the paper and I will see "Lyndon Marriott to hang this morning". But maybe you will not have the opportunity of seeing that paper."

As far as such trials are concerned, we are of the opinion that where the trial judge feels that he may appropriately comment on the case, the more humane thing to do is to pass the sentence of death and thereafter, in the absence of the accused, to make his comments. In support of our view, and for emphasis, it is apposite to state the provisions of the relevant law, Section 3(1) of the Offences Against The Person Act which reads:

"Where by virtue of this subsection, a person convicted of murder is sentenced to death the form of the sentence shall be to the effect only that he is to "suffer death in the manner authorized by law".

We are strongly of the view that no greater burden than is here provided for should be laid on such a convicted person.