JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 34/89

BEFORE: THE HON. MR. JUSTICE CAREY, J.A.
THE HON. MISS JUSTICE MORGAN, J.A.
THE HON. MR. JUSTICE GORDON, J.A. (AG.)

REGINA vs. MORRIS MILLER

Jack Hines for the appellant

Miss Carol Malcolm for the Crown

October 10 and November 2, 1990

MORGAN, J.A.:

In the Circuit Court Division of the Gun Court held in Lucea, Hanover on the 21st February, 1989, before Pitter, J., sitting with a jury, the appellant, Morris Miller, was convicted on an indictment which charged him with murder and sentence of death was imposed. His application for leave to appeal against that conviction and sentence was heard on the 10th October, 1990, when it was treated as the hearing of the appeal.

The incident from which this charge arose occurred on the evening of the 6th December, 1988, at Middlesex, a district in the parish of Hanover. There the appellant, the deceased Eustace Malcolm, otherwise called "Culture" and two eyewitnesses, Beverley and Sonia Samuels, lived in the same house with each occupying separate rooms. That evening, Beverley, Sonia and the deceased had dressed themselves

preparatory to going out on the street. Because it was dusk and the area on the lane through which they were about to travel was bad, Beverley had a lighted torch in her hand and so was able to see what occurred. The deceased was standing in the yard when the appellant, after a friendly hail to each other, entered and went to his room, which adjoins a verandah. The deceased followed, stood at the doorway and addressed the accused, "Morris, you nah tap go inna mi room? Weh you go inna mi room go trouble mi tings fah? Whe you noh stop goh into mi room and trouble mi things?". The accused said words which were not heard and then rushed at the deceased and grabbed him. He then pushed the deceased on to the verandah. The deceased moved backways as if to get away, but was held again and pushed into a corner when the appellant pulled something from his waist in a quick motion and plunged his hand towards the deceased who exclaimed, "A stab you stab me Kippo? You stab me you know". The appellant was seen to pull a knife from the body of the deceased and the sound of the blood gushing from the deceased frightened the girls, who hastily ran away.

The police arrived at the scene within forty-five minutes, received a report and apprehended the appellant the following morning while he was travelling on a minibus with a travelling bag to Montego Bay. In the bag was a plastic bag with vegetable matter and a wooden handle cook-knife with what appeared to be bloodstains on the handle.

When the post-mortem was performed by Dr. Myatt San, he found a clean incised wound on the left side of the chest, the left ventricle of the heart was cut 1 3/4 inches long and in his opinion death was due to cardiac tamponade as a result of injuries to the heart.

The accused made a statement from the dock and said that the deceased had cut him with a knife while wrestling. The knife fell and as the deceased tried to retrieve it, he stabbed the deceased in defence of himself.

The appellant thus raised the plea of self-defence. However, the issue of provocation clearly arose on the Crown's case, as the evidence unfolded that the reaction of the accused came immediately on the words of accusation of theft made by the deceased.

Counsel for the appellant was granted leave to argue the single supplementary ground:

> "The Learned Trial Judge failed to give adequate directions to the jury on the specific defence of Manslaughter in that (a) the jury having made it pellucidly clear after retiring for the first time that they <u>needed a full understanding</u> of Manslaughter the learned Trial Judge thereupon failed to repeat and explain to them the elements of legal provocation and in addition incorrectly and inadequately directed the jury that the only evidence they could possibly consider as amounting to provocation were the words 'Man wey you go in a mi room go trouble me things fa' when there was other evidence which could possibly lead to provocation viz 'that the accused man was cut on his hand by the deceased and that afterwards the deceased was going for the knife which was on the floor'."

The circumstances which gave rise to this complaint are as follows: The learned trial judge, in his summation of the law, directed them to the elements and effect of intention and legal provocation thus:

> "A deliberate and intentional killing done as a result of legal provocation - remember crown counsel spoke to you about that and I will come to that in details - is not murder. It would reduce the charge...If you find that the accused man stabbed the deceased and at the time of the stabbing, the deceased had no knife at all, was never in any possession of any knife at the time and you reject what the accused man is saying, you say you

> "don't believe a word that he is saying, you don't believe his story, but on the evidence coming from the prosecution's case, you find that he was provoked into killing, into acting the way he did, then that would reduce the charge from murder to manslaughter. In that case, if you are satisfied and feel sure about it then you may return a verdict of guilty of manslaughter."

He later gave them a full direction on the law of provocation.

At the end of the summation, in summarizing the verdicts which were available to them, he said in part:

> "If, however, you find that at the time when he stabbed the deceased he was acting under legal provocation - and remember I told you what is legal provocation - then it would reduce this charge from murder to one of manslaughter."

The jury retired to consider their verdict and returned after ten minutes with a split decision. The judge enquired if there was any area in which he could assist and the foreman replied:

> "The manslaughter part of it, everybody didn't get the full understanding about manslaughter." [Emphasis supplied]

The learned trial judge then dutifully re-stated what elements amounted to murder and, also, to an acquittal and continued:

> "If you reject his defence of self-defence; if you find that he wasn't acting under any self-defence, that he wasn't acting under provocation, then it would be open to you to return a verdict of guilty of murder. However, if you reject his plea of self-defence but you find that when he stabbed the accused (sic) man he was acting under provocation, then you return a verdict of guilty of manslaughter, and remember what I told you, what legal provocation is, and the possible evidence that you can consider to amount to provocation, that is the evidence of the accused (sic) man saying, 'Man wey yu go in a mi room go trouble mi things fa'."

Mr. Hines submitted that after this clear request from the jury the learned trial judge said nothing in amplification or explanation of the law of provocation.

Counsel for the Crown submitted that the judge had interpreted the question to mean that what was required was how could they find a verdict of manslaughter and in those circumstances his further directions were adequate.

It is apparent to us that the jury obviously did not understand the directions on provocation and what they now required was a further direction on the law of provocation which was the aspect of the case which could give rise to a verdict of manslaughter.

Such instructions, as the learned trial judge gave thereafter, were singularly unhelpful in their problem. This unusual request required a full explanation again of what is legal provocation and the three elements which they should look for to find it; the provocative act, the loss of self-control and the immediate retaliation, how they arose, their effect and how they could treat them. This was not done and the jurors retired to the jury-room still ignorant of that aspect of the law. In those circumstances, we feel that the jurors could not have applied their minds nor could they have given full consideration to the issue of provocation as to whether or not it arose in the case, and, if it did, whether it attracted a verdict of manslaughter.

We find that there is merit in the submission of counsel for the applicant as the issue clearly arose on the Crown's case. We are unable to say, in these circumstances, that the jury, properly directed, would necessarily have come to the same conclusion. For these reasons we allowed the appeal, set aside the verdict of murder, entered a verdict of Guilty of Manslaughter and imposed a sentence of twelve years imprisonment at hard labour.