

CRIMINAL LAW - Munda - Plea of guilty to manslaughter

Sentence

12 years imprisonment at hard labour manifestly excessive having regard to all the circumstances.

Application for leave to

JAMAICA

appeal dismissed an unpreserved and in fact attack sentence a different one which -- was appropriate

IN THE COURT OF APPEAL

and addressed in the circumstances.

SUPREME COURT CRIMINAL APPEAL NO. 185/88

No case referred to

BEFORE: THE HON. MR. JUSTICE CAREY, J.A.
THE HON. MR. JUSTICE CAMPBELL, J.A.
THE HON. MR. JUSTICE FORTE, J.A.

REGINA

VS.

NATHAN DAVIDSON

Application for leave to appeal

Miss Paula Llewellyn for the Crown

January 16, 1989

CAREY, J.A.:

In the St. Catherine Circuit Court held at Spanish Town on the 11th July, 1988, before Gordon, J., sitting with a jury, this applicant pleaded not guilty to a charge of murder, but guilty of manslaughter and was sentenced to twelve years imprisonment at hard labour. He now applies for leave to appeal that sentence on the basis that it was manifestly excessive having regard to all the circumstances, and those circumstances we must now consider.

The allegations of the Crown, were that on the 16th January, 1986, at about 3:30 in the morning the slain man was riding a bicycle in the company of a friend. The applicant approached the slain man and asked him for a ride which was refused. The applicant pursued his victim after this refusal and held onto the bicycle. There was a tussle. At this point the applicant pulled a knife from his pocket and used that to push it into the left chest of the deceased. The injury was a stab wound to the left

chest four inches deep penetrating the right ventricle of the heart. He succumbed to this injury shortly after his arrival at the hospital.

This applicant is an extraordinary fortunate man. The learned crown counsel and indeed the learned trial judge accepted this plea of guilty to manslaughter on the basis that the question of intent would arrive and would have to be left to the jury. The learned trial judge in the course of his address to the applicant when he was imposing sentence indicated that provocation could have arisen on the facts.

It seems to us that if the charge of murder had been left to the jury, and they had returned a verdict of guilty to manslaughter, we would have been inclined to think that that was a pious verdict because on these facts, this was an unprovoked deliberate and brutal attack made upon this unoffending bicycle rider on a public highway. There was no justification whatever for such conduct. The sentence which was imposed was a deterrent one which we think was appropriate and adequate in the circumstances. We are quite unable to accept the view that the sentence was manifestly excessive having regard to all the circumstances. The application for leave to appeal against sentence which we think wholly unmeritorious is accordingly refused. The court directs sentence to commence from the date of his conviction.