NMLS

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 89/95

BEFORE: THE HON. MR. JUSTICE FORTE, J.A.
THE HON. MR. JUSTICE PATTERSON, J.A.
THE HON. MR. JUSTICE BINGHAM, J.A.

REGINA v. PETER SEGREE

Terrence Williams for the appellant

Kent Pantry, Q.C. and Miss Carol Edwards for the Crown

October 7 and November 4, 1996

BINGHAM, J.A.:

The appellant was convicted in the Portland Circuit Court on 20th June, 1995, before Panton, J. and a jury of the offence of murder committed on 29th April, 1994. He was sentenced to a term of imprisonment for life at hard labour, and the court specified that he should serve fifteen years before becoming eligible for parole.

On 7th October, 1996, having heard the arguments of counsel we dismissed the appeal and affirmed the conviction and sentence passed. We promised then to put our reasons into writing and this is a fulfilment of that promise.

The facts are as follows: On the night of 29th April, 1994, around 9:00 p.m. one Christopher Thomas was in one Miss Jemmy's shop at Mullet Hall in Portland. He had been with the deceased Sonny Roberts who is called "Sonny" for the better part of that day during which period the deceased bought him two Red Stripe beers and drank one soft drink. While they were having the drinks, he saw the appellant who is also called "Bang Gut" beating one Bruce, a little boy. The appellant was kicking and punching the boy, who then ran into the shop in which the deceased and Thomas were. He was followed into the shop by the appellant.

At this stage, Miss Jemmy, the shopkeeper, told the appellant to "come out di shop" and to "mind dem mash up the shop." The appellant did not leave the shop whereupon the deceased then said to him, "Oono nuh hear the lady seh to come out di shop?" The deceased took up a piece of stick and used it to shove the appellant out of the shop. The little boy remained in the shop. The appellant was next seen by the witness Christopher Thomas walking fast coming in the direction of the shop with a ratchet knife in his hand and he went up to the deceased and stabbed him in his left breast with the knife. At the time of the stabbing the deceased was standing in the shop.

Christopher Thomas' account was supported by that of Donovan Grapine. He told of walking on a bush road and reaching a swinging bridge about one chain from Miss Jemmy's shop. While peeling a piece of sugar cane with his knife the appellant came up to him and requested to "borrow his knife." Before he could respond to the request the appellant grabbed the knife out of his hand and went in the direction of the shop. He then heard Miss

Jemmy shouting out, "Bang Gut stab Sonny", and he saw the appellant running away down the road.

The post mortem examination performed on the body of the deceased by Dr. Robert Taylor revealed a stab wound on the left haema-thorax at the level of the sixth intercostal space. On dissection a one inch stab wound was seen. The left ventricle of the heart had been traumatised by this injury and he opined that death was due to severe shock due to internal haemorrhage in the thoracic cavity as a result of the stab wound. The doctor also opined that a mild degree of force could have caused the stab wound as the blade went between the muscles of the heart.

In his defence the appellant gave sworn evidence and called a witness. He told of being on the road at Mullet Hall on the night of the incident around 9:00 p.m. He saw his twelve year old nephew Bruce Thompson, for whom he was the guardian, involved in a fight with another youth. He told him to go home. His nephew insisted on remaining and defending himself. He hit the nephew and ordered him to go home. Other persons present entreated him to allow the youngster to remain and he did so. He later went over to Miss Jemmy's shop and saw Bruce in there. He attempted to get hold of him and Miss Jemmy told them to leave the shop before "they mash up her things on the shelf." The deceased who was in the shop then attacked him and boxed him twice in his face and was hitting him in his back with a stick. He made to leave the shop and as the deceased made to hit him a third time with the piece of round wood Grapine passed a knife to him saying "he must use it to defend himself." As the deceased raised the wood to hit at him he stabbed at him with the ratchet knife. He then turned and ran away. He took the knife to one Errol Brown's yard

and left it there. The following morning he heard from one Wesley Greg that Roberts (the deceased) had died. He ran after the incident not because he had done anything wrong but because the deceased appeared to him to be in a serious mood. He never felt like killing the deceased. He just felt "like injuring him, doing him something but not to kill him."

Bruce Thompson also gave evidence for the defence. He was unable to assist the court as to the incident between the deceased and the appellant, as he denied being in the shop when the stabbing took place.

Given these two diametrically opposite versions, the jury's verdict can be seen as an acceptance of the accounts as related by the witnesses Christopher Thomas and Donovan Grapine as being a credible narrative of the manner in which the killing took place. On this version, the defence of self-defence clearly did not arise. Having regard to the incident in the shop, in which the deceased used the piece of wood to "shove" the appellant from the premises, there was some evidence capable of amounting to provocation in law fit to be left to the jury for their consideration. Self defence as an issue to be determined by the jury arose based upon the account as related by the appellant. When examined, he was, in stabbing the deceased, defending himself from a sustained attack by the deceased who was armed with a stick. The jury by their verdict rejected that in stabbing the deceased he was acting in self-defence or that the killing was the result of legal provocation.

Before us counsel for the appellant advanced the following ground of appeal:

> "The learned Trial Judge's directions on self defence were inadequate, particularly in relation to the issues in the case."

The issues identified as arising on the evidence were self defence and provocation. There has been no complaint made by learned counsel for the appellant in relation to the directions on provocation and on examination these directions were in all respects proper.

Given the complaint made, it is necessary, therefore, to examine the directions of the learned trial judge on self-defence. Having summarised the case as presented on behalf of the Crown and the defence, the learned trial judge proceeded to give a clear exposition of the law as it relates to self-defence. In this regard he expressed himself in the following manner:

> "Under our law, any person who is attacked in circumstances where he believes his life to be in danger or that he is in danger of serious bodily harm may use such force as is reasonable in the circumstances as he honestly believes them to be to prevent or resist the attack, and our law says that if in using such force he kills or does injury to his attacker, he is not guilty of any crime. Once self-defence is raised, it is not the accused man who must show that he was acting in self-defence, it is for the prosecution to show that he was not acting in self-defence. The prosecution has to satisfy you on the evidence that the story told by Mr. Segree is untrue. The burden remains on the prosecution and if after you have considered all the evidence you are left in doubt whether the injury may not have been in self-defence, the proper verdict would be not guilty. If you find that the accused man was acting in self-defence, of course, the verdict would be not guilty. If you are sure, however, that he was not acting in self-defence and you accept the story of the prosecution then it would be open to you to find the accused man guilty.
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> So, Mr. Foreman and Members of the Jury, in considering this case, this question of self-defence, you ask yourselves, was the act done by Mr. Segree to protect himself from death or serious bodily injury? Did he use that knife to protect himself from death or serious bodily injury, or ask yourselves, did he act as he did in order to protect himself from an apprehended attack, if you answer that, yes, the verdict would be not guilty. If you are not sure what your answer should be, the verdict would also be not guilty. However, if your answer to either question is no, if your answer to both questions is no, then it

> "is open to you to return a verdict of guilty if you accept the evidence presented by the prosecution and in this case the key evidence present by the prosecution comes from the mouth of Christopher Thomas."

The complaint by learned counsel for the appellant is levelled at the direction which follows thereafter. There the learned judge expressed himself thus:

> "Now, in deciding this question of self-defence, you have to consider the extent and the nature of the force used on the accused and the force used by him to repel it. If you find that he used excessive force then what he did would not have been done in self-defence, and in deciding whether it was necessary to have used as much force as in fact was used you give due regard to all the circumstances that existed at the time, and of course, you bear in mind, Mr. Foreman and Members of the Jury, that under our law a person who is under attack or who apprehends that he is about to be attacked is under no duty to run away and hide. In all your deliberations on the question of self-defence everything depends on what view you take of the facts and the circumstances of the case,..."

Learned counsel for the appellant submitted that the learned trial judge in dealing with the question of excessive force he ought to have gone on further to direct the jury that:

> "A person defending himself cannot weigh to a nicety the exact measure of a defensive action"

He relied in support for this proposition on *Palmer v. R.* [1971] Vol. 55 Cr. App. R. 223 at 242; [1971] 12 J.L.R. 311. He submitted that a failure to so direct the jury would result in the summing-up being deficient.

Mr. Pantry, Q.C. for the Crown in reply submitted that the direction in *Palmer* (referred to supra) was not laying down any hard and fast rule hence a failure by the learned trial judge to so direct the jury would not, therefore, be fatal to the conviction.

With this submission we are entirely in agreement. A reference to the headnote of *Palmer* (supra) is sufficient to provide a complete answer to the arguments of learned counsel for the appellant. It reads as follows:

> "There is no rule that in every case where the issue of self-defence is left to the jury on a charge of murder they must be directed that, if they consider that excessive force was used in defence, they should return a verdict of manslaughter.
>
> There are no prescribed words which must be employed in or adopted in a summing-up when the issue of self-defence is left to the jury on a charge of murder. All that is needed is a clear exposition, in relation to the particular facts of the case, of the conception of necessary self-defence."

On the facts in this case, as it related to the account given by the appellant in relation to the stabbing incident, there was what could be regarded as a sustained attack by the deceased on the appellant resulting in him using the ratchet knife on the deceased in defence of himself. In short, the defence being advanced amounted to a straightforward case of justifiable conduct on his part, given the circumstances with which he was confronted. There was, therefore, an absence of any evidence calling for a direction by the learned trial judge along the lines suggested by learned counsel for the appellant. It was the particular facts and circumstances in *Palmer* (supra) which prompted Her Majesty's Board in that case to resort to the statement which learned counsel sought to rely on as a basis for his complaint before us. It was the pursuit launched by the deceased and others from the Higgin Town District in the hills of Saint Ann in search of the appellant and other intruders in an attempt to recover their ganja which had been taken from them by men including the appellant, leading to the fatal shooting of the deceased that provided the material for the

statement by the Board in that case. It may be instructive to state what follows in the remainder of the passage cited from the headnote: ([1971] 12 J.L.R. 311 (E-F) )

> "If there has been an attack so that defence is reasonably necessary, it will be recognised that a person defending himself cannot weigh to a nicety the exact measure of his necessary defensive action. If a jury thought that in a moment of unexpected anguish a person attacked had only done what he honestly and instinctively thought was necessary, that would be most potent evidence that only reasonable defensive action had been taken. A jury will be told that the defence of self-defence, where the evidence makes its raising possible, will only fail if the prosecution shows beyond reasonable doubt that what the accused did was not by way of self-defence."

On the facts in this case, therefore, specifically having regard to the case as put for the defence a killing of the deceased by the use of excessive force on the part of the appellant did not arise and consequently there was no necessity for such a direction to be given by the learned trial judge.

In the result, we came to the decision as is set out at the commencement of this judgment.