

11. Criminal law, ^{Must} leave to appeal to Privy Council ^{Notice of Motion}
Conviction for murder: whether point of law of exceptional
public importance involved - state of mind of accused on
issue of self-defence - whether subjective test.
Law on self-defence JAMAICA in relation to mens rea
already set forth in Solomon Beckford The Queen
by Privy Council ^{accorded by Court of Appeal}
IN THE COURT OF APPEAL and applied in his case.

SUPREME COURT CRIMINAL APPEAL NO. 105/86

[Issue - questions raised not new - no point of law of
exceptional public importance requiring further
appeal -

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

Mohan dismissed]

REGINA

VS.

Case referred to
Solomon Beckford The Queen
ROY THOMAS

R. Small instructed by L. Marcus for the Applicant

Miss V. Grant for the Crown

June 13, 1988

ROWE P.:

The applicant Roy Thomas seeks leave to appeal to Her
Majesty in Council from a decision of this Court given on the
29th of January, 1988, dismissing the appeal against his conviction for
murder.

Four points were identified in the Notice of Motion and
referred to by Mr. Small as points of law of exceptional public importance,
on which it is desirable in the public interest that a further appeal
should be brought.

The four questions are identified as:

- "1. Whether in a case where an accused raised the issue that he was apprehensive of an attack and was attacked it is necessary for the accused to expressly state that he believed he was being attacked before it becomes obligatory for a trial Judge to direct the jury on the law of honest belief as set out in the judgment of Solomon Beckford v. The Queen;
2. Whether it is necessary for the trial Judge in a case involving self-defence to direct the jury that the burden is on the prosecution to prove that the accused did not have an honest belief that he was being attacked;
3. Whether in a case where self-defence arises it is essential that the trial Judge should direct the jury that an accused is entitled to the benefit of the law on self-defence even if there was an intention to kill or cause grievous bodily harm;
4. Whether a direction on intent in these terms is correct in law:

'So if a sane, rational individual pick up a sharp machete and come up and chop somebody at his neck you don't know what he intended. But he is sane and rational, you have to look at what he did and you have to say, if this man is not mad he must have intended the result of his act, so that is how you look at it. You have to put two and ~~two~~ together and draw the inference that if a sane and rational man behaves in a certain way he must have intended the results of his acts, because he would have known or he ought to have known that if you take a sharp machete and chop off a man's neck he is going to die, he intended to cause death or serious bodily harm'."

Mr. Small has said that in the application for leave to appeal the central issue before the Court of Appeal was whether the directions

of the learned trial judge as to the state of mind of the applicant on the issue of self-defence was of an objective nature, whereas the proper test in law is a subjective one. We agree that this was in fact the main point discussed on the hearing of the appeal.

Mr. Small has submitted that this Court should take a liberal view of the provisions relating to appeals in criminal cases to Her Majesty in Council. Such a view he said, has already been taken by the Court in relation to civil appeals and criminal cases especially murder cases involve questions affecting the liberty of the subject and therefore the Court should take as liberal an approach as possible in dealing with this Motion.

The Court is of the opinion that the law on self-defence in relation to mens rea was fully set out by the Privy Council in Solomon Beckford vs. Queen - Privy Council Appeal, and has been accepted, as it is bound to do, by this Court, and was in fact applied in the instant case of R. v. Roy Thomas.

The questions raised in this Notice of Motion are not in our view new questions. They have already been decided by the Privy Council and we do not feel that they raise any point of law of exceptional public importance requiring any further appeal.

In the circumstances the Motion is dismissed.

WATSON, J. (dissenting).
I am of the opinion that the law on self-defence was not fully set out by the Privy Council in Solomon Beckford vs. Queen. The law on self-defence is a complex one and the Privy Council's decision in that case is not binding on this Court. I am of the opinion that the law on self-defence should be reconsidered by the Privy Council.