JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 52/2006

BEFORE: **THE HON. MR. JUSTICE SMITH, J.A.**
THE HON. MR. JUSTICE HARRISON, J.A.
THE HON. MISS JUSTICE G. SMITH, J.A. (Ag.)

LENWORTH HALL
V
REGINA

Leroy Equiano for the Appellant

Miss Paula Llewellyn, Q.C, Director of Public Prosecutions and Mrs. Karen Seymour-Johnson, Crown Counsel, for the Crown.

June 23, 2008 and April 3, 2009

SMITH, JA. (Ag.)

1. The applicant was tried and convicted for the offence of murder before Mrs. Justice Marva McIntosh and jury in the St. Catherine Circuit Court on the 7th day of March, 2006. On March 16, 2006, the learned trial judge sentenced him to Life Imprisonment with a stipulation that he should not become eligible for parole until he had served a period of fifteen years imprisonment.

2. An application for leave to appeal against conviction and sentence was refused by the single judge on March 18, 2008. The applicant renewed his

application for the consideration of the court and on June 23, 2008 leave was granted for him to appeal against conviction and sentence.

3 On June 23, 2008 the Court allowed the appeal, set aside the verdict of guilty of murder and substituted a verdict of guilty of manslaughter. A sentence of 12 years imprisonment at hard labour was substituted for the original sentence. On that occasion we promised to put our reasons in writing and we do so now.

CROWN'S CASE

4. The Crown's case was that on the 22nd day of May 2003 at approximately 6 p.m. the witness Barrington Dawes, the deceased Donovan Beckford and others were walking on the Caymanas Estate compound on their way from a football match, when on reaching the vicinity of a bridge, the deceased stopped to converse with some persons.

5. Mr. Dawes stated that he then left the deceased behind talking with these persons. As he continued on his way the appellant whom he knew before rode past him on a bicycle going in the direction where he had earlier left the deceased. A few seconds later he reported that he heard a voice shout "wow, look how di man stab the man." The witness said when he turned around he observed the appellant with a knife in his hand with blood dripping from it. The deceased who was close by was seen clutching his left hand with his right hand and was walking backwards as if he was injured. The appellant got on his

bicycle and rode away from the scene. Subsequently Donovan Beckford died from the injuries he received and the Appellant was arrested and charged for the offence of Murder.

APPELLANT'S CASE

6. The appellant gave sworn evidence that it was the deceased who had attacked him and that he merely acted in self defence. He stated that there was a confrontation between the deceased and himself about a previous incident where it was alleged that the deceased had hit his daughter in her face. He further asserted that as a consequence of this confrontation the deceased threatened him by using certain words to him, pulled open a ratchet knife, and then advanced towards him in a challenging manner. In response he pulled his knife, swung it at the deceased and stabbed him. The opened knife that the deceased had in his hand fell to the ground and as he attempted to reach for a stone nearby, the appellant got onto his bicycle and rode off.

7. **Grounds of Appeal**

The appellant's grounds of appeal may be summarised as follows:

(i) That the learned trial judge's directions on self-defence were inadequate and the appeal should be allowed and a verdict of acquittal entered; and

(ii) That the learned trial judge's directions on provocation were unfair and inadequate especially when she stated that 'there was no evidence of provocation'.

8. **Ground 1.**

In support of Ground 1 Mr. Equiano for the appellant submitted that the directions by the learned trial judge on the issue of self-defence were inadequate. He contended that the learned trial judge's directions on self defence in theory may appear to be perfect but the particular directions must be related to the instant case. In other words a direction to the jury should be custom-built to make the jury understand their task in relation to the particular case. In this case he argued that the learned judge failed to relate the law to the evidence presented.

9. On an examination of the transcript the following directions emerged from the learned trial judge's summation at page 70 lines 3 -25 and page 71 lines 1 - 9 she stated:

> "In effect what the accused is saying is that he was acting under self defence. Normally, where one person using deliberate violence towards another and injuries and kills him, he acts unlawfully. However, it is both good law and good sense that a person who is attacked or believe he is about to be attacked use some force as is reasonably necessary to defend himself. If that is the situation, then he is acting in lawful self-defence and is entitled to be found not guilty, as it is the prosecution's duty to prove the case. It is for the prosecution to make you sure that the accused was not acting in lawful self-defence. The accused does not have to prove that he was acting in lawful self defence. It is the law that the person only acts in lawful self-defence if he actually believes it is necessary for him to defend himself and any amount of force he uses is reasonable.
>
> It follows, therefore, in relation to this issue, you must ensure this main question, did the accused

> believe or may have honestly believe (sic) that it was necessary to defend himself? A person who injures another in the act of revenge or retaliation acts unlawfully. It is not necessary for him to use force at all. If the prosecution has made you sure that the accused did not injure the deceased in the belief that it was necessary for him to defend himself, then self-defence does not arise in this case "[Emphasis mine]

Then at pages 72- 74, line 1 et seq she went on to state:

> "If you decide that he was acting in self defence or may have been acting in that belief, you must go on and answer the second question which I told you about, the two questions and that question is having regard to the circumstances as the accused believed them to be, was the amount of force which he used reasonable? The law is that the force used in self defence is unreasonable if it is out of proportion to the nature of attack or if in excess of what is really required of the accused to defend himself for. It is for you the jury to decide whether the force used by the accused is reasonable, your judgment about that must depend on the facts of this case.
>
> In considering this matter, you should have regard to all the circumstances and those may include: What was the nature of the attack upon him? Was a weapon used by the attacker? What kind of weapon? Was the attacker on his own, or was he with someone else? These do not all necessarily apply to this case but you will have to look at the circumstances as I indicated to you. You need to look at the circumstances of the case in coming to that decision. Each case which comes before the court is different. There are many possibilities that the law does not attempt to provide a scale of answers to jurors. These matters are left to your common sense, your experience, knowledge of human nature and of course, your assessment of what actually happened at the time of the incident.
>
> In deciding this, you must judge what the accused did against the background of honest belief. You must

> also bear in mind that a person who is defending himself cannot, in the heat of the moment, judge the amount of defensive action which is necessary. The more serious the attack, the more difficult his situation would be. If, indeed, there was an attack, in your judgment, the accused believed or may have believed that he had to defend himself and he did no more than what he honestly and instinctively thought was necessary to do, that would be very strong evidence that the amount of force used by him was reasonable. If, bearing these matters in mind, you are sure that the force used by the accused is reasonable ten you must acquit him. If on the other hand, you are sure that the force used by the accused was not reasonable, that he was not acting in lawful self-defence then you are entitled to find him guilty."

Again at page 88 lines 19 – 25 and page 89 lines 1 – 4 the learned trial judge said:

> "...Mr. Beckford pulled a Three Star ratchet knife from his pocket and was coming towards him in an attacking form. He said he just happen to have a medium kitchen knife in his waist in a cardboard shield, and Mr. Beckford coming to him and he said "I pull my knife and swing it and stab Mr.Beckford..."

Finally at page 90 lines 4 - 13 she stated:

> "...He said that he was acting in self defence. It is a matter for you, Madam Foreman and members of the jury, you will have to look on the evidence which was led by the prosecution to see whether, in fact, this accused was acting in self–defence....because the Crown has to negative self–defence, and the Crown negative (sic) self-defence by the evidence that has been led..."

10. What is evident and instructive from the foregoing passages and the learned judge's summation generally is that her analysis of the evidence and

application of the law on the issue of self-defence were impeccable and cannot be faulted or impeached. She demonstrated in our view, in a fair and balanced summation that she was cognizant of the law of self-defence as well as its applicability to the facts in the instant case. We concluded that this ground had no merit and therefore should be dismissed.

11. **Ground 2**

Mr. Equiano in his submissions in support of Ground 2 argued as follows:

> "(a) That the directions by the learned judge would have been in order save and except for comments made by her at page 90 lines 20 – 25 and page 91 – line 1, when she stated:
>
> > "It is also for the prosecution to satisfy you that there was no provocation. There were (sic) no circumstances that could give rise to the accused being provoked and you heard no evidence of the provocation. The witness said he heard no words passing between the accused and the deceased."

The foregoing comments he contended were erroneous and misleading as there was in fact evidence of provocation which arose on the case for the defence which ought to have been left to the jury for their consideration.

> "(b) That these comments by the learned judge coming so near to the end of the summation were prejudicial and would give the jury the impression that no such evidence existed, thus diminishing the appellant's chances of being found guilty of the lesser charge of manslaughter."

12. On this ground the learned Director of Public Prosecutions, Miss Paula Llewellyn Q.C., candidly and graciously conceded that the learned trial judge erred when she directed the jury that "there were no circumstances that could give rise to the accused being provoked and you heard no evidence of the provocation." She submitted that a careful examination of the defence's case revealed that the issue of provocation was in fact raised. Further it was her view that the learned trial judge had a duty to leave the issue of provocation for the jury's consideration and ought to have indicated to them the evidence that was capable of amounting to provocation.

THE LAW

13. Where on a charge of murder provocation is relied on by the defence, then the jury ought to be directed that the prosecution has the onus of proving the absence of provocation which onus remains on the prosecution throughout the case and never shifts. Secondly, that if the jury are left in doubt as to whether or not the facts show sufficient provocation to reduce the killing to manslaughter, that issue must be determined in favour of the prisoner. See **R. v McPherson** (1957) 41 Cr. App. Rep 213.

14. This court applied the proposition of law as was enunciated in **R v McPherson** (supra) in the case of **R. v Richards** 11 W.I.R 102. In that case the appellant was convicted of murder and was sentenced to death. At the trial there was some evidence of provocation and the judge left this issue to the jury

for their consideration. He gave them full directions on the law of provocation but omitted to tell them that if they were in doubt as to whether or not there was provocation they should resolve that doubt in favour of the accused and find him guilty not of murder but of manslaughter. The Court held that the jury should have been told that if they were left in doubt as to whether or not there was provocation they should resolve that doubt in favour of the accused and find him not guilty of murder but guilty of manslaughter.

15. In the instant case it is our view that the learned judge erred firstly when she indicated to the jury that "there were no circumstances that could give rise to the accused being provoked" and secondly when she stated that there was "no evidence of the provocation."

16. The appellant in his sworn evidence stated that his daughter had previously made a complaint to him about the deceased and that on the day of the incident he saw the deceased and said to him:

> "What was the reason for him to 'tump' my daughter in her face ... and his reply was 'who dah pussy yah ah ask questions...' While addressing me that way he pulled a Three Star ratchet knife from his pocket."

The foregoing passage was in our view evidence which might have been capable of amounting to circumstances that could give rise to the appellant being provoked and ought properly to have been pointed out to the jury and left to them for their consideration.

17. CONCLUSION

We have treated the hearing of the application for leave as the hearing of the appeal. As was stated previously, the appeal is allowed, the verdict of guilty of murder set aside and a verdict of guilty of manslaughter substituted. The conviction for murder is quashed and the sentence of life imprisonment set aside. Instead a sentence of 12 years imprisonment at hard labour for manslaughter was substituted. Sentence to commence on June 16, 2006.