JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO: 129/91

COR: THE HON. MR. JUSTICE CAREY, P. (AG.)
THE HON. MR. JUSTICE FORTE, J.A.
THE HON. MR. JUSTICE GORDON, J.A.

R. v CARL ANGLIN

Glen Cruickshank for Applicant

Lancelott Clarke, Jnr., for Crown

17th November & 18th December, 1992

GORDON, J.A.

This is an application for leave to appeal from a conviction for murder in the St. James Circuit Court on 18th September, 1991. Sentence was imposed on 4th October, 1991 after investigations to ascertain the age of the applicant were completed. The applicant was charged on indictment for the murder of Vida Cooper, his grandmother, on 4th February, 1989.

The case for the prosecution depended on the evidence of 16 year old Golley Bushard and 13 year old Abraham Carey, his bother, who together with the applicant Carl Anglin, their cousin, lived in the home of their murdered grandmother at Whymes Road in St. James. The three youths occupied one house in the grandmother's premises while the deceased lived in a separate house. On the morning of the 4th February, 1989 Vida Cooper went to the home of the witnesses and enquired of them which one had stolen meat she had in her home. The response she got proved unsatisfactory and she proceeded to chop in four quarters a dasheen the youths were preparing to cook for a meal. The applicant, after she departed, voiced his intention to kill her.

Later in the evening Miss Cooper left her home to go to the shop. The applicant invited the witnesses to accompany him. They all "trailed" her and afterwards lay in wait for her return.

The applicant had a knife with one edge serrated described by the witnesses as a "Rambo" knife. When she came in sight on her return journey, the applicant threw two stones at her and then he sprung on her. They wrestled and fell over the edge of the road into a gully. Bushard said he heard the deceased say "Don't use the knife on me." Carey said she said "him will give him anything else wey him want." After a short while, the applicant returned to the road and told the witnesses that his victim despite several stabs did "not dead", he had to cut her throat. The witnesses said the knife he had in his hand was bloody so were the clothes he wore. The applicant left the knife with his cousins and went away.

On 7th February, 1989 Det. Cpl. Wayne Brown received a report from Abraham Carey at the Adelphi Police Station. He went to Whymes Road in the district of Adelphi and there in a cane-field he saw the decomposing body of a female "lying on its back with throat cut, left hand severed and the head skinned; the scalp was taken off." The body was identified to be that of Vida Cooper.

The applicant was arrested by Cpl. Brown on 31st March, 1990. After caution, he said "All me know, mi never use no knife pon her. Mi only lick her with a stone."

The applicant in a lengthy unsworn statement recounted the events of the morning as given by the Crown witnesses. He stated that in the evening he was on the road with his cousins when he saw a shadow in the road. At that time he had a knife in his hand. Someone grabbed him and they struggled, wrestled and fell in the gully. His assailant got away and ran down the gully. In the struggle, he sustained a cut on his hand. He and his cousins then went to a dance that night. He subsequently went to Westmoreland. He returned from Westmoreland and was held by the police. He was beaten by the police and questioned but he did not give a statement.

Mr. Cruickshank who did not argue the grounds of appeal as filed, made submissions on the learned trial judge's directions on the accomplice evidence, on the absence of corroboration, and on conflicts in the evidence. He submitted that the learned trial judge's direction on accomplices and the warning he gave on the approach that should be taken by the jury in assessing the evidence of the two witnesses was complete and adequate and could not be challenged. But, he said the judge should have directed the jury's attention to the fact that there were discrepancies which could point to either accomplice seeking to exculpate himself. He also submitted that there was a lack of corroboration.

The directions given by the learned trial judge are clear, fair and correct. The two witnesses, he pointed out, said they were present but they did not participate in acts of violence nor did they aid, abet or assist the applicant in the fellonious assault. In this regard they sought to exculpate themselves and the learned trial judge in clear terms directed the jury to consider their evidence with this in mind. He ruled that there was evidence on which the jury could find they were accomplices and he gave the directions which were required in the circumstances. Having pointed out the care required he left it to the jury to determine whether they were accomplices. The discrepancies that there were between the two witnesses' evidence will be dealt with later. These discrepancies did not affect the prosecution case which was that the applicant deliberately inflicted the fatal injuries on the deceased.

On the question of absence of corroboration it is instructive to examine the case for the Crown vis-a-vis that for the defence. The facts on both sides are that:

(a) The applicant and his cousins were on the road at night.

(b) The applicant was armed with a knife which he had in his hand.

(c) The applicant and another person clashed and were engaged in a struggle.

(d) They fell and rolled over into a gully.

(e) The applicant alone came up out of the gully.

(f) The applicant had blood on him.

(g) The applicant on arrest said that he had hit his victim with a stone.

This evidence coming from the applicant was corroborative of the evidence of the two prosecution witnesses and demonstrates the lack of merit in the submission of the applicant.

The Crown's case is at variance with the defence as regards how the encounter occurred. The applicant said he was attacked by an unknown person. The Crown witnesses said he attacked the victim.

The learned trial judge gave directions on corroboration and on self-defence as it arose on the defence which were full, fair and correct. We can find no support for Mr. Cruickshank' submissions.

Mr. Cruickshank further submitted that the learned trial judge should have directed the minds of the jury to glaring discrepancies in the evidence of the witnesses and advised them to scrutinize the evidence with care. He submitted that the directions given although correct did not go far enough.

We have scrutinized the transcript with care and find there is no merit in this submission. There were discrepancies between the two witnesses in their narrative of events leading up to the killing of the victim and events subsequent to this act. These discrepancies were minor and the learned trial judge dealt with them adequately. When the applicant threw stones at the deceased and they grappled and fell into the gully, it was dark and visibility was limited. The witnesses were at variance (a) as to whether the stone thrown, struck the victim, (b) as to what

was said by the victim from the depth of the gully, and (c) as to what the applicant said when he rejoined the witnesses. In this latter regard, Bushard related that the applicant said he had killed the victim whilst Carey testified that the applicant said he had cut her throat. These discrepancies we find were not substantial and the jury, properly directed, dealt with them as such.

The jury had to decide on the evidence before them whether they accepted that of the accomplices or that of the applicant that he acted in self-defence. They elected to accept the evidence of the brothers. The learned trial judge dealt with the issues fairly and competently and we can find no cause to disturb the verdict of the jury. The application for leave to appeal is refused.

We now turn to a consideration of the application of the Offences of the Person (Amendment) Act 1992. This case falls to be considered under the provisions of the Act by virtue of section 7 (1). The offence of murder for which this applicant was convicted does not fall within the parameter of section 2 (1) of the Act and therefore is classified as non-capital murder by virtue of the provisions of section 2 (3) of the Act.

The applicant has displayed a mean streak in committing what must be described as a vicious and brutal murder. We direct that he be imprisoned for life and recommend that he be not considered eligible for parole until after he has served fifteen years imprisonment.