18, 1957

IN THE PRIVY COUNCIL No. 12 of 1957

ON APPEAL FROM THE COURT OF CRIMINAL APPEAL OF TRINIDAD AND TOBAGO

B E T W E E N : JOSEPH BULLARD Petitioner

- and -

THE QUEEN ... Respondent

CASE FOR THE APPELLANT

RECORD

1. This is an appeal in forma pauperis by special leave from a judgment of the Court of Criminal Appeal of Trinidad and Tobago dated the 4th January, 1957, dismissing the Appellant's appeal from his conviction of murder in the Supreme Court of Trinidad and Tobago (Corbin Ag.J. and a jury) on the 19th November, 1956. p.31 p.27

2. The principal grounds of appeal are as follows-

(a) That the learned trial judge misdirected the jury as to the burden of proof in relation to a defence of self-defence.

(b) That although the evidence established that there was a case with regard to the defence of provocation fit to be left to the jury the learned trial judge expressly withdrew the issue of provocation from the jury and directed them that it was not open to them to return a verdict of manslaughter.

(c) That the judgment of the Court of Criminal Appeal was founded upon a misunderstanding of the judgment in Mancini v. Director of Public Prosecution (1942) A.C.1 and an erroneous application of the last mentioned judgment to the facts of this case.

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3. The charge against the Appellant was that he, on the 23rd day of July, 1956, at St.Clement's Village, in the County of Victoria, murdered Eugene Layne.

4. The case for the prosecution was that on the 23rd July, 1956 the Appellant struck Eugene Layne (hereinafter called "the deceased") with a hatchet, thereby causing injuries from which he later died.

5. The defence was that when he struck the deceased the Appellant was acting either in self-defence or under such provocation as would justify a verdict of manslaughter.

pp.3-14 6. The evidence of the prosecution was that on the morning of the 23rd July, 1956 the Appellant, who was employed by the deceased on building a house, at Corinth, repeatedly asked the deceased for money which he said was owed to him, and the deceased said he could not pay the Appellant then but that he would have to wait until the deceased returned from his work at Usine Ste. Madeleine; that when the deceased left the said house the Appellant followed him, carrying a hatchet and continuing to ask for his money; that the Appellant refused to allow one Cephas Moore to take the said hatchet from him, saying it was his tool with which he worked; that a friend of the deceased stopped his car to give the deceased a lift to the Usine whereupon the Appellant got into the back seat of the said car and the deceased into the front seat and it was driven off; that while the said car was moving, after the deceased and the Appellant had continued to argue about money, the Appellant struck the deceased's head twice with the said hatchet; and that some eight hours later the deceased died from fractures of the skull.

7. In cross-examination the driver of the car, one Fitzgerald Chapman, said, inter alia:-

p.12 "Layne did not lean around to the back of car and get his knees on to back of car. Layne did not scramble the accused by his neck and begin choking him. I did not have to tell Layne to stop it. He was doing nothing to cause him to rub against me.

I heard accused cry out 'He does not mean to pay me my money.' When car had gone about 100 feet along Manahambre Road accused said something and struck first blow. Layne was sitting next to me and I could easily glance across to my left.

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I have not come here to omit important points because of my friendship with Layne. When accused struck Layne, Layne's hands were not clutching accused's throat."

8. The Appellant made a statement to the police about an hour and a half after striking the deceased which was wholly consistent with his evidence in court, and which included the following passage:- p.13 p.37

"When the car turn St. Clement Junction going to Usine Mr. Layne ask me so you really going to Usine to make me lose my job, I tell him me ent going to Usine, it is you who carrying me for the sixty dollars. He then scramble me in my neck as I was sitting in the back seat and he was sitting side of the driver and began choking me. The driver then said all you wait nah, and he had to hold up as Mr.Layne was rubbing against him and causing him to loose control, I then pick up my old hatchet that was in the seat side of me with a piece of bake, and I fire two lash at his face and hit him in the face while he was holding over me."

9. The Appellant gave evidence on oath and in examination-in-chief said, inter alia :- pp.14-17

"I do carpenter mason and all round work. I was working with Eugene Layne for about 9 or 10 weeks before the day of incident, doing mason work, carpentry and dirt digging. I used to get paid either Friday or Saturday. p.14

On 23.7.56 Layne owed me personally $160.00. On previous Saturday which was a pay day he had paid me $5.00 and told me that when he had giving Mr. Goodridge a certain amount of money he did not have any left to pay me. I think he paid Goodridge about $80.00. Layne told me that later he would give me a certain amount of money. He was always promising to pay me but never did so.

I have to maintain my whole family. When he gave me $5.00 I said 'but you have given everyone else money and not me.' He said he would give me later.

. . . . . .

On 23.7.56 I went to the house at about 6.30 a.m. Saw Layne and told him I wanted $160.00 that morning because the men were pressing me. He said he would give me $60.00 later. I asked him to give me even $8.00 to fix my business at home. He said that he would take me to Usine for the $8.00. p.15

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He and I walked peacefully out of house to main road. I had hatchet and a paper bag. When we got to road a car came along and stopped. The driver said 'Mr. Layne come in car.' Layne said he had a man to take to Usine. Layne got in front seat, I got in back. Car drove off.

On way I asked Layne if he would give me the amount of money he was taking me to Usine for. He said 'if not what will you do' I said 'I will report you at Usine.' He said 'You going to make me lose my work'. He then grabbed me by my neck and started to choke me with his left hand and cuff me with his right. I then picked up hatchet and gave him two blows. I suppose it must be the back of the hatchet that struck him. I made the blows because he was strangling me.

. . . . . .

If Layne had not held my throat I would not have hit him with the hatchet."

And in cross-examination said, inter alia:-

p.16 "When Layne was choking me in the car my head was going backwards all the time as I demonstrated. My head reached the back of the seat and could not go any further. One of Layne's feet was over the back of front seat and the other was resting on the front seat. Layne gave me about 12 or 14 cuffs on my ribs and face. One cuff caught me in my jaw. It was while he was cuffing me that I swing the two blows with hatchet.

. . . . . .

I had the hatchet in the car with me because while I was working that morning I found it was dull and Layne said to bring it with me. When I was going to Usine he would get it sharpened."

And in re-examination said, inter alia:-

p.17 "I used the hatchet because the man was strangling me."

10. A witness for the defence, one Rampersad Ramsawack, gave evidence that on the previous Saturday the Appellant complained to the deceased of the money he owed the Appellant and that the deceased said that he would pay on Monday (i.e. the 23rd July 1956).

p.18 11. The learned trial judge's note of the address to the jury of defence counsel reads as follows:-

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"Accused admits he struck two blows but says there were certain circumstances. Defence here is self-defence. Part of defence here is also provocation.

"Hatchet was dull."

12. In the summing-up the learned trial judge expressly withdrew the issue of provocation from the jury and directed them that the only two verdicts open to them were either "guilty of murder" or "not guilty" on the ground of self-defence. On this aspect of the case the summing-up included the following - pp.18-27

"Now, every person is presumed to be sane and to be responsible for his crime until the contrary is shown. In this particular case there is no suggestion that the accused was insane at any time. In some indictments it is open to the jury to return a verdict of not guilty of murder, but guilty of manslaughter on the ground of provocation. As a matter of law it is my duty to direct you that in the circumstances of this particular case that verdict is not open to you for reasons which I shall show you later. And since no defence of insanity has been put up, and therefore you cannot return a verdict of guilty, but insane, the only two verdicts which will be open to you are either "guilty of murder", or "not guilty at all" on the ground of self-defence.

....

"That is a summary of the evidence adduced by the Prosecution. That is the evidence which you will have to say whether or not you believe. You will have to ask yourselves and to consider whether Chapman, a cashier employed at the Usine Ste. Madeleine Sugar Company, and Moore, a switchboard operator at the Trinidad Oilfield Company, both apparently responsible individuals, who I suggest to you appear to understand the nature and sanctity of the oath which they have taken here - you will have to ask yourselves whether having seen them, the way in which they have given their evidence, they impress you as being the sort of people who would come here to lie. You will have to say, viewing their evidence in the light of those circumstances, whether you consider them to be witnesses whose pp.21-22

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evidence you do not believe, bearing in mind the fact which I have just mentioned to you of the opinion expressed by the doctor as to the position of the assailant at the time when the injuries were inflicted.

"Now, let us see what effect the defence has on that evidence led by the prosecution.

. . . . . .

p.23 "And now, this is the part which I suggest to you is very important: 'If Layne had not held my throat I would not have hit him with the hatchet'.

"Well, that is the evidence given in chief by the accused Bullard. In that will lie his defence. You must give due consideration to his defence and you must give to it the weight and the attention which you think it deserves. But I have directed you that it will not be open to you to return a verdict of manslaughter on the ground of provocation, because it is from the evidence that you must get the provocation if there is any. And putting the most favourable construction on this evidence given here on oath by the accused he has not himself told you that what he did was a result of any provocation given to him by Layne.

. . . . . .

pp.23-24 "I am directing you that nowhere in his statement, his evidence given on oath, will you find that he committed this act because he was provoked by Layne's refusal or failure to pay him the money. His evidence here is that if Layne had not held my throat I would not have hit him with the hatchet.

The Appellant submits -

(1) That the evidence established that there was a case with regard to the defence of provocation fit to be left to the jury and therefore, as the learned trial judge withdrew this defence from the jury, the verdict of guilty of murder ought not to be allowed to stand.

(2) That the learned trial judge erred in relying upon the view that the Appellant had not himself stated that what he did was a result of provocation by Layne, as a reason for withdrawing the issue of provocation from the jury.

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(3) That the learned trial judge erred in taking the view that on "the most favourable construction" of the Appellant's evidence he had not himself told the jury that what he did was the result of provocation.

(4) That the learned trial judge erred in relying upon the fact that the Appellant did not state that he was provoked by Layne's refusal or failure to pay the money as a reason for withdrawing the issue of provocation from the jury.

(5) That the learned trial judge erred in (apparently) taking the view that the only matter which might fall to be considered as provocation was Layne's refusal to pay the money.

13. With regard to the issue of self-defence, the learned trial judge, although he opened by directing the jury that the onus of proof was on the prosecution and it was not for an accused to establish his innocence, proceeded to misdirect the jury on the evidence in relation to the burden of proof. The summing-up included the following passages -

"You must be satisfied by the evidence led by the prosecution that you can feel certain of the guilt of the accused. And if you do not feel that certainty on the evidence led by the prosecution than it is your duty to acquit the accused. p.19

. . . . . .

"So, now we must turn to the other aspect of the defence, because, as counsel for the defence pointed out to you, the defence was two-fold, and the other aspect of the defence is the ground of self-defence. p.24

. . . . . .

"Then what you have to turn your attention to is the question of fact as to whether or not you believe that Layne was attacking him in the manner in which Bullard has described. p.24

. . . . . .

"You will then ask yourselves whether that description appeals to you as intelligent men as a description which you consider worthy of believing. p.25

. . . . . .

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p.26 "So that you now have to decide whether you believe Chapman that Layne was sitting quietly in the front of the car looking ahead of him when the accused dealt him these two severe blows, or whether you believe Bullard that Layne had leaned over and was strangling him in such a manner that it was necessary for him to use extreme methods to defend himself.

. . . . . .

pp.26 and 27 "Consider whether the evidence as given by the witnesses for the prosecution strikes you as being evidence of truth or not. Consider whether the explanation given you by the accused strikes you as being such that you can honestly and intelligently say that you accept the evidence that he was being strangled by Layne; that it was because he was being strangled by Layne that he had to use the hatchet on him to inflict blows on the right side of Layne's cheek. See whether that strikes you as being the sort of story that you can believe. So then if you believe the evidence given by the witnesses for the prosecution and you do not believe that evidence given by Joseph Bullard, if you do not believe that he was acting in self-defence, this is one of the clearest possible cases of murder that you could imagine.

"If on the other hand you do not believe the evidence of the witnesses for the prosecution; if you do not accept Chapman's evidence, and you accept the evidence given by Joseph Bullard that he was being strangled and that he had to use the hatchet in self-defence then he is entitled to have you say he is not guilty on the ground of self-defence."

The Appellant submits that this summing-up was defective in that the learned trial judge (a) failed to direct the jury that if on the whole of the evidence the jury were left with a reasonable doubt they must return a verdict of not guilty, (b) directed them that they must believe either the Appellant or the prosecution witness Chapman and (c) directed them in such a way as to convey to them that the burden of proving self-defence rested upon the Appellant.

pp.28-29 14. The Appellant's grounds of appeal to the Court of Criminal Appeal were as follows -

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"1. That the learned Trial Judge misdirected the Jury on the law by directing them that it was not open to them on the evidence before them to return a verdict of Manslaughter because the Accused in his sworn evidence at the Trial had never stated that he had inflicted the injuries on the deceased as the result of his having been provoked by any act on the part of the deceased, but instead had stated that he had so acted because the deceased was at the time choking his neck and that he, the Accused had so acted to free himself from being strangled.

2. That the learned Trial Judge failed to direct the Jury that even though the accused may not have stated in his evidence that he had been provoked by the acts of the deceased into doing what he did, nevertheless, if the evidence before them showed any reasonable provocation, it was open to them to return a verdict of Manslaughter;

and

3. That the learned Trial Judge failed to direct the Jury that there was in fact before them evidence of reasonable provocation, viz: the evidence of the Accused, that he was being strangled by the Deceased at the time he inflicted the said injuries on him."

15. The Court of Criminal Appeal (Camacho, Archer and Blagden J.J.) dismissed the appeal against the conviction on the 4th January, 1957. The judgment was founded upon the reasoning that the jury by rejecting the defence of self-defence must be taken to have rejected the Appellant's evidence as to what occurred, and that as the defence of provocation must rest on the same evidence "there was no evidence on which the issue of provocation could be based". In applying this reasoning the Court purported to follow and apply the judgment of Viscount Simon L.C. in Mancini v. Director of Public Prosecution (1942) A.C.1. The judgment contained the following passage-

"We are strengthened in our opinion by a further passage from the speech of the Lord Chancellor in the Mancini case. In that case the appellant was charged with the murder of one Distleman and in his defence alleged that he had heard the voice p.34

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of a witness, Fletcher, threatening him with a knife and that Distleman came at him with an open pen-knife in his hand. We quote from the speech of the Lord Chancellor at p.9:

"Before, therefore Justice Macnaghton's summing-up can be criticised on the ground that it did not deal adequately with the topic of provocation, we have to see what was the extent of the provocation as disclosed by the evidence which the jury had to consider, and for this purpose we have to exclude altogether the allegation made by the appellant that he heard the voice of Fletcher threatening him with "knifing" and that Distleman came at him with an open pen-knife in his hand. The judge had already instructed the jury fully on these matters and had directed the jury to acquit the appellant altogether if they felt they could accept the appellant's story. The alternative case, therefore, as to which it is suggested that a defence of provocation was open, must be regarded on the basis that the appellant's story was rejected'.

"That is the exact position in this case. We are satisfied that apart from the appellant's story which was put to the jury as self-defence and rejected by them, there was no evidence on which the issue of provocation could be based."

The Appellant submits that the Court of Appeal -

(1) Failed to distinguish the facts in the case of Mancini from those in this case.

(2) Failed to observe that in the case of Mancini the learned trial judge left to the jury the alternative of returning a verdict of manslaughter.

(3) Erred in taking the view that the issue of provocation could not be left to the jury on the same evidence as that upon which the defence of self-defence rested.

(4) Erred in taking the view that the defence of provocation rested solely upon the same evidence as that upon which the defence of self-defence rested.

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(5) Erred in taking the view that by rejecting the defence of self-defence the jury necessarily rejected the Appellant's evidence as to what occurred.

(6) Wrongly decided that there was no evidence on which the issue of provocation could be based.

(7) Failed to correct the misdirections of the learned trial judge.

16. Special Leave to appeal in forma pauperis to Her Majesty in Council was granted by Order in Council, dated the 29th April, 1957. pp.35-36

17. The Appellant humbly submits that this Appeal should be allowed and the said judgment of the Court of Criminal Appeal of Trinidad and Tobago, dated the 4th January, 1957, should be set aside and his conviction and sentence quashed for the following among other

REASONS

1. Because the learned trial judge failed to direct the jury that if they were in doubt as to whether the Appellant acted in self-defence they must acquit him.

2. Because the learned trial judge misdirected the jury that they must believe either the Appellant or the prosecution witness Chapman.

3. Because the learned trial judge directed the jury in such a way as to convey to them that the burden of proving self-defence rested upon the Appellant.

4. Because the learned trial judge wrongly withdrew the issue of provocation from the jury.

5. Because the learned trial judge wrongly directed the jury that it was not open to them to return a verdict of guilty of manslaughter.

6. Because the evidence established that there was a case with regard to the defence of provocation fit to be left to the jury.

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7. Because on the evidence the verdict of manslaughter was open to the jury.

8. Because the Court of Criminal Appeal erred in holding that Mancini v. Director of Public Prosecutions (1942) A.C.1 was authority for dismissing the appeal.

9. Because the Court of Criminal Appeal erred in taking the view that the issue of provocation could not be left to the jury on the same evidence as that upon which the defence of self-defence rested.

10. Because the defence of provocation did not rest solely upon the same evidence as that upon which the defence of self-defence rested.

11. Because the Court of Appeal erred in taking the view that by rejecting the defence of self-defence the jury necessarily rejected the Appellant's evidence as to what occurred.

12. Because in view of the misdirections the verdict of guilty of murder ought not to be allowed to stand.

RALPH MILLNER

J.R. BISSCHOP

No. 12 of 1957

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CASE FOR THE APPELLANT

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