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 ... Appellant

- and -

THE QUEEN ... Respondent

CASE FOR THE RESPONDENT

RECORD

1. This is an appeal from a judgment, dated the 4th January, 1957, of the Court of Criminal Appeal of Trinidad and Tobago (Camacho, Archer and Blagden, JJ.), dismissing an appeal from a conviction and judgment, dated the 19th November, 1956, of the Supreme Court of Trinidad and Tobago (Corbin, Ag.J. and a jury), whereby the Appellant was convicted of murder and was sentenced to death. pp.31-34 p.18,11.15-16.

2. The indictment charged the Appellant with the murder of one Eugene Layne on the 23rd July, 1956. The common law of England relating to criminal matters prevails in Trinidad and Tobago. p.1.

3. The trial took place before Corbin, Ag.J. and a jury on the 16th and 19th November, 1956. The evidence for the Crown was to the following effect:-

(i) Andrew Mejias, the District Medical Officer of San Fernando and South Naparima, said that he had performed a post mortem examination on the 24th July, 1956 on the body of Eugene Layne. Externally there was a stitched wound over the right temporal bone, and a stitched semi-circular wound right across the top of the head. Death was due to shock and haemorrhage from a fractured skull. This could have been caused by a blow with a heavy blunt instrument, like a hatchet, delivered with a moderate degree of force. If the assailant was right handed, he would have been at the back of the injured man when the blows were struck. The first blow might have been delivered with a back-hand stroke if the men had been facing each other, but it was highly unlikely that the second blow could pp.3-4

have been delivered in this way. The two wounds could not have been caused by one blow. Both injuries were far more likely to have been inflicted from behind.

pp.6-7 (ii) James George said he was a carpenter. In July, 1956 he had been employed by Eugene Layne, and had been working with the Appellant on the house being built by Layne at Corinth. On the 23rd July, 1956 he had heard the Appellant telling Layne that he wanted his money that day. The Appellant had followed Layne around and Layne had eventually said that he would pay him (the Appellant) when he (Layne) returned from work that day. Layne had left the house, followed by the Appellant, who had then been carrying a hatchet. They had walked towards the Nap-Mayaro Road. About 15 minutes later the Appellant had returned, still carrying the hatchet, and had said that he was waiting until Layne's family came back to kill them.

pp.7-9 (iii) Cephas Moore said that he had been at Corinth about 7.15 a.m. on the 23rd July, 1956, and had heard Layne and the Appellant talking loudly as they walked towards the Naparima-Mayaro Road. The Appellant had said that he wanted his money, and Layne had replied that he had no money then and that the Appellant would have to wait until he (Layne) returned from Usine (his place of work). The Appellant had been carrying a hatchet. Moore had taken the hatchet from him, but the Appellant had pulled it back, saying that it was his tool that he worked with. On the main road Layne had stopped a car; the Appellant had got into the back and Layne into the front and the car had driven off towards Usine. About a quarter of an hour later the Appellant had returned and had said to Moore, "Pardner I gave him two with this", raising the hatchet. He had also said: "When he comes back if he does not pay me my money I will give him the balance".

pp.9-12 (iv) Fitzgerald Chapman said that on the 23rd July, 1956, between 7.0 and 7.30 a.m., he had been travelling in his car along the Naparima-Mayaro Road. He had seen Layne at the junction of Corinth Road. He had stopped to give Layne a lift, as they both worked at the same office. He had opened the back door for Layne, but the Appellant, saying that Layne owed him $60.00 and would not pay him, had got into the back, sat down, and put the hatchet on his lap. Layne had said, "Do not worry with that man, Mr. Chapman, he is a mad man. I do not owe him any $60.00", and had got into the front seat. Layne had said as they drove along that, even if he owed the Appellant money, the Appellant would have to go to Usine for it. The Appellant had replied that Layne

did not want to pay him. When the car had turned into the Manahambre Road the Appellant had shouted: "Oh God, I want my money, I want my money", and at the same time had struck Layne on the back of the head with the hatchet. Layne had appeared to be stunned, and the Appellant had then given him another blow across the side of the face with the hatchet. Layne had then fallen into Chapman's lap, bleeding profusely. Chapman had stopped the car, and the Appellant had got out and walked away. All the time Layne had been facing the front. He had not leaned to the back of the car and put his knees on the back and tried to choke the Appellant. When the Appellant struck Layne, the latter's hands had not been clutching the Appellant's throat.

(v) Emerson Denny, a police corporal, said that during the morning of the 23rd July, 1956 Fitzgerald Chapman had made a report to him. Layne had been on Chapman's lap bleeding at the time. Between 8 and 8.30 a.m. he had seen the Appellant at Cocoyea Village, had told him of the report and had cautioned him. The Appellant had replied: "Yes, Corporal, I gave him two or three lashes with my hatchet". Later that day he had cautioned the Appellant and charged him with wounding, whereupon the Appellant had made a voluntary statement to the following effect:- pp.12-14 pp.37-38

That morning Layne had said that he would give the Appellant $60 that day but he had no money on him. The Appellant had then asked him for $8, to which Layne had replied that if the Appellant would go to Usine with him, he would pay him. They had then gone to the main road, still arguing about the money. There Layne had stopped the car of a man who was also working in Usine. While they were still arguing about the $60, Layne had got into the car and told the driver to drive off; but the driver had said that as the Appellant was being taken to Usine for the money, he too could get in. The Appellant had got in. As they were driving along, Layne had asked the Appellant whether he was really going to Usine to make him (Layne) lose his job. The Appellant had replied that it was Layne who was taking him to Usine for the $60. Then Layne, who was sitting in the front, had scrambled the Appellant, who was sitting in the back, in the neck and had started to choke him. The Appellant had then picked up the hatchet, which was on the seat beside him, and had hit the deceased in the face twice as the latter was holding over him.

Emerson Denny continued that the same day at pp.13-14

about 3.30 p.m. he had told the Appellant that Layne was dead and that he would be charged with murder. After caution, the Appellant had said: "Oh God, you see how people does get in trouble for their own money". When he had first seen the Appellant, the Appellant had not told him that Layne had held him and choked him in the car. At about 7.30 p.m. the Appellant had been charged with murder and cautioned, and had said: "I gave you a statement of what happened already. I ain't tell no lies. I am a Baptist. God knows I am in trouble for my money".

pp.14-17

4. The Appellant have evidence in his own defence. He said that on the 23rd July he had told Layne that he wanted $160.00 that morning as the men were pressing him. Layne had replied that he would give him $60.00 later. He had then asked Layne to give him $8.00 immediately, and Layne had said that he would take the Appellant to Usine for the $8.00. They had walked peacefully to the main road, the Appellant carrying a paper bag and a hatchet. When they reached the main road a car had stopped, Layne had got into the front and the Appellant into the back, and the car had driven off. On the way the Appellant had asked Layne whether he would give him the money. Layne had replied, "If not, what will you do?" The Appellant had said that he would report Layne at Usine. Layne had then said: "You going to make me lose my work", and had grabbed the Appellant by the neck and started to choke him with his left hand and cuff him with his right. The Appellant had then picked up the hatchet and given him two blows, because he was being strangled. Eventually the car had stopped and the Appellant had gone back to work. Later his stomach had begun to hurt, so he had decided to go to hospital. On the way to hospital the police had met him, and he had told Corporal Denny that he had been beaten in a car, and would like to go to hospital. The Corporal had taken him to the police station, and there had given him two slaps, and showed him a statement and told him to sign it. He had done so. He said he would not have hit Layne with the hatchet if the latter had not held his throat. When Layne was choking him in the car, one of Layne's feet had been over the back of the front seat and the other had been resting on the front seat. When he had struck Layne they had been facing one another.

p.18,l.23-
p.19,l.27.

5. Corbin, Ag.J. began his charge by telling the jury what their duty was. The most important direction in law, he said, which he had to give them was that the onus of proof was always upon the Crown. It was never for an accused person to establish his innocence. They could convict the Appellant only if

on the evidence led by the Crown they could feel certain of his guilt. The learned Judge then described the elements of murder, and directed the jury that it was not open to them to return a verdict of manslaughter on the ground of provocation. He then summarised the evidence, and said a verdict of manslaughter was not open because the Appellant had not said that he had acted as a result of provocation by Layne. Turning to self-defence, the learned Judge explained the elements of that defence, and said the jury had to decide whether they believed that Layne had been attacking the Appellant as the Appellant had described. They had to decide whether they accepted the evidence of Chapman and Dr. Mejias, and whether they could believe the Appellant's description of the struggle. He reminded the jury that the Appellant said he had hit Layne with the hatchet because Layne had been strangling him and he had to defend himself, and told them to bear in mind the general directions in law which he had given. Finally the learned Judge recalled certain points in the evidence, and said that, if the jury believed the evidence for the Crown and did not believe that of the Appellant, it was a clear case of murder; if, on the other hand, they did not believe the evidence of the Crown and accepted that of the Appellant, the Appellant was entitled to be acquitted.

p.19,l.28-p.20, l.16.
p.20,l.17-p.24, l.5.
p.24,l.6-p.25, l.34
p.26,l.5-p.27, l.19.

6. The jury found the Appellant guilty of murder, and he was sentenced to death.

p.18,ll.15-16.

7. The Appellant appealed to the Court of Criminal Appeal. His Notice of Appeal, dated the 26th November, 1956, contained the following grounds:-

pp.28-29

(i) that the learned Judge had misdirected the jury in telling them that a verdict of manslaughter was not open because the Appellant had not said that he had acted as a result of provocation by Layne;

(ii) that he had not told the jury that, even if the Appellant had not said this, a verdict of manslaughter was open if the evidence shewed any reasonable provocation;

(iii) that he had failed to direct the jury that there was in fact evidence of reasonable provocation.

8. The judgment of the Court of Criminal Appeal (Camacho, Archer and Blagden, JJ.) was given on the 4th January, 1957. The learned Judges first dealt with the law relating to provocation, and referred to Mancini v. D.P.P. (1942), A.C.1. They went on to state the facts, and said that the learned Judge

pp.31-34
p.31,l.19-p.32,l.3.
p.32,l.4-p.33,l.42

had quite properly left the issue of self-defence to the jury. The jury had obviously rejected the Appellant's evidence, and in view of the evidence of Chapman and Dr. Mejias they (the learned Judges) would have been surprised if the jury had done otherwise. It had been argued on behalf of the Appellant that Corbin, Ag.J. should not only have directed the jury on the issue of self-defence, but should further have directed them that they could bring in a verdict of manslaughter on the ground of provocation. The learned Judges were unable to agree with this proposition. The Appellant's evidence had been rejected by the jury, and apart from this there was no evidence on which the issue of provocation could be based. Accordingly, the appeal was dismissed.

p.33,l.43-
p.34,l.37

9. The Respondent respectfully submits that Corbin, Ag.J. was right in withdrawing the issue of manslaughter from the jury. There was no evidence upon which the jury would have been entitled to find that the Appellant killed Layne upon such provocation as to reduce the offence to manslaughter. The only provocation suggested was an attack allegedly made upon the Appellant by Layne, from a position of great disadvantage, with his bare hands. The Appellant killed Layne by hitting him more than once on the head with a hatchet. Even if the alleged provocation had taken place, the repeated use of so deadly a weapon would, in the Respondent's submission, have been out of all proportion to the provocation, and the killing would still have been murder.

10. The Respondent respectfully submits that the withdrawing from the jury of the issue of manslaughter has worked no injustice. The only material upon which provocation could possibly have been found was the Appellant's evidence. Corbin, Ag.J. directed the jury, quite rightly, that they could convict the Appellant only if they believed the evidence for the Crown and did not believe that of the Appellant. It is therefore clear from the conviction that the jury rejected the Appellant's evidence. It follows that upon the facts as found by them no question of provocation could have arisen, and even if the learned Judge had left the issue of manslaughter to the jury the verdict must have been the same.

11. The Respondent respectfully submits that the judgment of the Court of Criminal Appeal of Trinidad and Tobago was right, and this appeal ought to be

dismissed, for the following (amongst other)

R E A S O N S

1. BECAUSE there was no evidence of such provocation as could have reduced the Appellant's crime to manslaughter:

2. BECAUSE Corbin, Ag.J. was right in withdrawing the issue of manslaughter from the jury:

3. BECAUSE the action of the learned Judge in so withdrawing this issue has worked no injustice.

J.G. LE QUESNE

No. 12 of 1957

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JOSEPH BULLARD ... Appellant

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CASE FOR THE RESPONDENT

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