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Judgment  
18/1964

IN THE PRIVY COUNCIL

No. 36 of 1963

O N A P P E A L

FROM THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

B E T W E E N :-

RAMDEO BUCKET	...	...	<u>Appellant</u>
	-	and	-
THE QUEEN	...	...	<u>Respondent</u>

C A S E FOR THE RESPONDENT

RECORD

10 1. This is an appeal from a judgment of the Court of Appeal of Trinidad and Tobago (Wooding, C.J., Hyatali and Phillips, JJ.) dated the 14th of June, 1963, dismissing an appeal against a judgment of the High Court of Trinidad and Tobago (Fraser, J. and a jury) dated the 22nd of April, 1963, whereby the Appellant was convicted of murder and was sentenced to death. p.69  
p.35

2. The questions arising in this appeal are the following:

- 20 (a) whether the learned Judge (Fraser, J.) wrongly withdraw from the jury the question of manslaughter;
- (b) whether the learned Judge misdirected the jury on the questions of malice and intention;
- (c) whether on any view there has been such a miscarriage of justice as should cause Her Majesty in Council to interfere with the course of these criminal proceedings.

30 3. On the 17th of April, 1963 the Appellant was arraigned before the High Court on an indictment charging that on the 9th of June, 1962 at San Juan in the County of St. George he murdered Harry Persad Chotoo. He pleaded 'Not Guilty', and the p.1

trial began on that day, the 17th of April, and continued on the 18th, 19th and 22nd of April, 1963. The case for the Crown was that on the 9th of June, 1962, at about 7.30 p.m., the Appellant came to the house of the deceased. The deceased was sitting at the dining table and his wife in the drawing room. The Appellant called for 'Sweeto' the deceased's son, who was not at home. The deceased's wife, Sarraijah Chotoo, went to the window and spoke to the Appellant. While they were speaking the deceased went into his son's bedroom, which was at right angles to the room from which his wife was speaking to the Appellant. The Appellant fired a shot-gun through the glass louvres of the bedroom window and killed the deceased. The deceased was found to have had multiple puncture wounds on his face, left eye, front neck and front of the chest. The cause of his death was shock and haemorrhage as a result of injuries to the brain caused by a pellet.

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p.3

4. The principal witness for the Crown was Sarraijah Chotoo, the widow of the deceased. She stated, inter alia, as follows:-

p.3 L.5-  
p.4 L.7

"I live at El Socorro Extension Road. I am a widow. On 9th June, 1962 about 7.30 p.m. I was at home. My husband Harry Persad was at home with me. My son Ishall also lives in that house. My son is also called 'Sweeto'. 'Sweeto' was not at home that night.

Between 7 and 7.30 p.m. my husband was sitting at the dining table where we take dinner. My son has a bedroom in the house and my husband was sitting near to my son's bedroom. I was sitting on a chair in the drawing room. While there I heard a noise outside. I had electric lights in my house. The lights were burning at the time. When I heard the calling at the front steps, I answered. The voice called "Sweeto". I answered. When I heard the call, I got up and I was standing by the louvres. When I looked through the louvres, I saw it was the accused calling. The accused asked me 'Where Sweeto?'. When the accused was speaking to me he had his left hand to his forehead" - witness demonstrated - "I could not see his right hand. The accused had on a short pants

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and black jersey and he had on a black cap. I could see his face. I saw his face because he was facing me and I was facing him. I was speaking to him. I do not remember if it was a dark night or a moonlight night. I also had a light with a 200 watt bulb at the front step outside the house.

10 I told the accused that Sweeto was not there. The accused asked me where Sweeto gone. I told him that I did not know. The accused told me that he had a message from Barataria. I told him that if he had a message from Barataria he must move his hand so that I could see his face better. The accused removed his hand and I saw his face better. After the accused moved his hand, he said, 'You want me to move my hand', and from the time he move his hand he shot at the louveres in my son's bedroom. When I watch I did not see my husband at the table. As I pass to go to the kitchen I saw my husband in my son's bedroom lying bleeding. I saw the accused shoot. I saw the gun and I heard a big explosion. I did not see the accused again that night".....

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30 "The next day, 10th June, 1962, I returned to the police station. When I got there, I attended a parade at the station. There was a line of men. I saw the man who had shot my husband at the parade. When I saw the man I collared him and I said, 'This is the man who shot my husband'. The accused was the man I collared. When I collared him the accused said nothing. p.4 Ll.14-36

The louveres got broken when the accused shot at the louveres.

40 I knew the accused before the night of the 9th June, 1962. I had known him around three months before. I got to know him when he came to me one day to ask for a man named Sahadeo. The accused came to speak to me at my gap on my bridge. Sahadeo is my neighbour who lives opposite to me. That was the first time the accused spoke to me and the second time was the day he shot my husband .... I am sure the accused is the man who fired the shot that killed my husband".....

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Cross-examined:

p.4 L.39 "No one was present beside myself and my husband when I heard a voice calling

p.4 L.42- 'Sweeto'.... My house is an upstairs house.

p.5 L.12 When I heard the voice calling I looked through the louvres. I saw the man in the yard while I was looking through the louvres. I spoke to the person while I was looking through the louvres. When the person fired the shot I was still looking through the louvres. I could see his face while his left hand was on his forehead. I was upstairs" - witness demonstrated. "The man had on a black cap. I could not see what was in his right hand. The man kept his hand up while he was talking to me. His removal of the hand and the firing of the shot happened very quickly and very suddenly. I asked the man to remove his hand because I thought the light dazzled his eyes. I said 'Take your hand from your face and let me see good who the person is'....." 10

p.7 Ll.6-19 "When the shot was fired I did not turn to look at my husband. I did not know my husband got shot.

When I left to go to the louvres my husband was sitting at the table. He did not come to look through the louvres with me. I did not know when he removed from the table. I did not know when he went into my son's room. I was talking to the person through the louvres in the drawing room. My husband got shot through the louvres in my son's bedroom which is a different room altogether. I do not know if he looked through the louvres. When I heard the explosion I did not then know where my husband was." 30

p.16 5. Another witness for the Crown, Inspector Winfield Hinds, gave evidence that the louvres of the deceased's house were made of glass. Speaking of the louvres of the bedroom shortly after the shooting he said, "There are glass louvres in a three set pattern and of the centre set I saw the second to last louvre broken and the 3rd to last missing". He then continued - 40

p.17 Ll.7-10

"I also observed that the celotex roofing" (of the bedroom) "had what appeared to be pellet holes in the roofing. I see Ex.O.D.2. This represents what the roofing looked like. The night of 9th June, 1962 was a dark night. The entire yard was flood lit by electric bulbs fitted outside the house. There were at least four bulbs fitted at the four corners of the house. I remember that the front bulb was a 200 watt and that was lighted."

10 6. In a photograph of the deceased's house (exhibit O.D.4) taken with the camera facing east, the louvred window at which the Appellant shot is shown immediately above the first landing of the stairway leading to the building. Another photograph (exhibit O.D.2) shows a close up view of this window.

7. The Appellant put forward an alibi. He did not call witnesses or give evidence, but made an unsworn statement from the dock. There was no evidence to suggest that the firing of the shot  
20 which killed the deceased (whoever did it) was other than deliberate and intentional, whether the gun was aimed at the deceased himself or merely at the window.

8. Fraser, J. dealt fully in his summing-up with the evidence of identification and the defence of an alibi. By their verdict the jury showed clearly that they believed there was no truth in the alibi, and that they were satisfied that the deceased had been shot by the Appellant. p.35 p.46 L.8- p.57 L.4

9. The learned Judge then proceeded to direct the jury on the principles of law relating to murder. Having given a definition of murder, he explained the phrase "unlawfully killed", as follows:- p.57 Ll.8- 34

40 "Every unlawful killing is not murder. An unlawful killing may be murder or it may be manslaughter. In this case the question of manslaughter does not arise at all. This is a case of murder, unqualified, unadulterated murder. This is a case of that kind and the killing in this case is an unlawful killing for it cannot be justified by law. A legally justified killing occurs where, perhaps, the killing takes place in war or where officially a man has carried out his duty. Well, that is justifiable killing. Although, perhaps, if a p.57 L.35- p.58 L.4

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person kills in self-defence, one might say that that is an excuse. That does not arise here. So, there is no excuse or justification for the killing which the Crown alleges took place. So you may find it is an unlawful killing."

Later he explained the meaning of the phrase, "malice aforethought either express or implied", and said:

p.58 L.22-  
p.59 L.8

"Express malice does not arise in this case... So that, it would be implied malice. What the Crown is saying is that this is a case of implied malice aforethought. Now, what is implied malice? Where a person, without provocation, and not in self defence, does an act deliberately and intentionally, an act which is cruel and which is likely to cause death, and in doing that it does in fact cause death, then that act is an act from which malice may be implied. As I say, it may be implied from a deliberate and cruel act committed by one person against another.

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What is the evidence in this case: that the person is alleged to have fired a gun which in its explosion injured Harry Persad Chotoo and the injury to the brain caused his death. Such an act is one which the law treats as capable of implying malice; bearing in mind that, you may well find, and I do not think you have any alternative but to find, that the act which caused death satisfies that definition. That is not a finding that the accused did it. Once you are satisfied that the act was a deliberate act, then there was implied malice in it, and you would be quite justified in saying that the deceased was murdered; and I am directing you that there is no other finding that you can make but that the act in this case was deliberately and intentionally performed without provocation."

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p.34 Ll.16-  
23  
p.64 L.33

10. When the jury had been out for three hours, the learned Judge called them into Court. They had not agreed upon their verdict. The learned trial Judge then addressed them as follows:-

p.63 Ll.6-17

"On the assumption that it is reasonably probable that you would arrive at a verdict,

10 I propose to ask you to retire again. In performing the functions of a jury, it is not reasonable for a juror to take a stand one way or the other and refuse to listen to reasonable discussion. That is not how a juror's function must be performed. There must be give and take in the discussion and there must be a willingness to accept reason. I am quite sure that if all twelve gentlemen of the jury remember that this is the way they must approach their work you ought, quite reasonably, to arrive at a verdict one way or the other. I must, therefore, ask you to retire again."

The jury then retired again, and returned later agreed upon a verdict of guilty. The learned Judge then passed sentence of death upon the Appellant. p.34 L.23- p.35 L.9 p.64 Ll.34-43

20 11. The Appellant appealed to the Court of Appeal of Trinidad and Tobago. The Grounds of Appeal alleged misdirection by the learned Judge in three respects, viz: p.65

(1) In stating that manslaughter did not arise at all and that it was a case of unqualified murder, and on the question of implied malice and intention; p.65 L.9

(2) on the question of identification; p.66 L.13

(3) in the words which he addressed to them when asking them to retire for the second time. p.68 L.16

30 12. The judgment of the Court of Appeal (Wooding, C.J., Hyatali and Phillips, JJ.) was delivered by the Chief Justice on the 14th June, 1963. He stated that substantially two grounds of appeal had been submitted on the Appellant's behalf - the first and third of the misdirections alleged in the Grounds of Appeal. p.69 p.69 L.31

40 13. Dealing with the first alleged misdirection, the learned Chief Justice quoted Fraser, J's statement that the question of manslaughter did not arise at all. He said the learned Judge had taken the view that it was a case of a deliberate act, of which the only natural and probable result p.70 L.2 p.70 L.5 p.70 L.20

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p.70 L.29 was death or grievous bodily harm; so that he should direct the jury that, if they accepted the prosecution's case, the issue was of murder only.

p.74 L.11 While generally it was the duty of a Judge to leave the question of manslaughter to the jury where there was any evidence to that effect, it was not necessary for him to do so if the acts charged were such that no reasonable jury could possibly come to the conclusion that the offence committed was manslaughter rather than murder. In the circumstances of the present case, any reasonable and normal human being would have considered that the natural and probable result of shooting at the bedroom window would be the likelihood of causing death to some person who was, or might be expected to be, in that room. If a man shot at the window of a bedroom at night, at a time when it would be reasonable to expect somebody to be in the room, and somebody got shot as a result, there could be no doubt that it was a case of murder rather than manslaughter. It had, therefore, not been necessary for Fraser, J. to go into the distinction between these offences. The common sense presumption was that the Appellant, looking at the matter as an ordinary and reasonable man, would have considered that the natural and probable result of what he did was that somebody in the bedroom would be killed or grievously harmed. 10

p.74 L.38

p.74 L.46

p.75 L.45

p.76 L.6-  
p.77 L.9

14. The Court of Appeal also rejected the second ground of appeal argued. They held that the learned Judge's words to the jury when he asked them to retire a second time in an endeavour to reach a unanimous verdict constituted exhortation rather than coercion, and so were not impeachable. 20

15. The Respondent respectfully submits that the learned Judge was correct in withdrawing the question of manslaughter from the jury, because there was no evidence upon which the jury could properly have reached a verdict of manslaughter. 30

16. The evidence left no room for doubt that the firing of the shot was deliberate and intentional, and the jury believed that it was the Appellant who fired it. The only remaining question, therefore, was whether he fired it maliciously. The Respondent respectfully submits that on the evidence only one answer to this question was possible. The 40



Appellant approached at night a house in which lights were burning, and deliberately fired a shot through one of its windows; no reasonable person doing this could have had any other expectation than that the probable result would be death, or grievous bodily harm, to somebody inside. This malicious intention was therefore established, and Fraser, J's. direction to the jury is not open to criticism.

10 17. The Respondent respectfully submits in the alternative that the nature of the deceased's wounds (multiple puncture wounds on the face, left eye, front neck and the front of the chest), the angle at which the gun was fired, the position of the deceased's body and the Appellant's act (otherwise unexplained) of suddenly shooting deliberately at Sweeto's bedroom window are consistent only, in the absence of any evidence by the Appellant, with the conclusion that the Appellant saw the deceased at Sweeto's bedroom window, and then  
20 deliberately shot at him.

18. The Respondent respectfully submits that the judgment of the Court of Appeal of Trinidad and Tobago was right and ought to be affirmed, and this appeal ought to be dismissed, for the following (amongst other)

R E A S O N S

- (1) BECAUSE Fraser, J. was right in withdrawing the issue of manslaughter from the jury;
- 30 (2) BECAUSE upon the evidence the only reasonable view which could be taken was that the Appellant acted with a malicious intent;
- (3) BECAUSE the only proper inference from the evidence was that the Appellant deliberately shot at the deceased;
- (4) BECAUSE of the other reasons given in the judgment of the Court of Appeal;
- 40 (5) BECAUSE there has been no such miscarriage of justice as would justify the interference by Her Majesty in Council with the course of these criminal proceedings.

J. G. LE QUESNE  
DAVID KEMP

No. 36 of 1963

IN THE PRIVY COUNCIL

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O N A P P E A L

FROM THE COURT OF APPEAL OF TRINIDAD  
AND TOBAGO

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B E T W E E N:-

RAMDEO BUCKET Appellant

- and -

THE QUEEN Respondent

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C A S E FOR THE RESPONDENT

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