Privy Council Appeal No. 36 *of* 1963

Ramdeo Buckett – – – – – – – – *Appellant*

v.

The Queen – – – – – – – – – *Respondent*

FROM

THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

REASONS FOR REPORT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 15TH APRIL, 1964

Present at the Hearing:
LORD MORRIS OF BORTH-Y-GEST
LORD PEARCE
LORD DONOVAN
[*Delivered by* LORD DONOVAN]

On 15th April, at the conclusion of the argument, and after consideration, their Lordships announced that they would humbly advise Her Majesty that this appeal should be dismissed. Their reasons follow.

The appellant, Ramdeo Buckett, a young man just over 20 years of age at the time of his trial in April 1963, was indicted in the High Court of Justice of Trinidad and Tobago for the murder of a man named Harry Persad Chotoo on 9th June 1962. He was found guilty and sentenced to death. An appeal against conviction was heard and dismissed in the Court of Appeal of Trinidad and Tobago in June 1963. On 23rd October 1963 the appellant obtained special leave to appeal *in forma pauperis* to Her Majesty in Council.

The facts are short but unusual. At about 7.30 in the evening of 9th June 1962 a man appeared outside the house of Harry Persad Chotoo in El Socorro Extension Road, San Juan, in the County of St. George, Trinidad. The house rests on pillars some feet above ground level and is reached by outside stairs. Standing somewhere near the foot of the stairs, the man enquired for Chotoo's son, Ishall Chotoo, nicknamed "Sweeto", saying "Where Sweeto?". Chotoo's wife answered from the window of the dining room saying that Sweeto was not there. In fact he was out. After being asked by the man where Sweeto had gone, and saying she did not know, the wife asked the man to remove a hand which he had to his forehead, so that she could see his face better. The man did so but almost immediately fired a shot. The gun was a shot gun and the pellets went through either the open louvres, or the glass, or both, of a window of a bedroom adjacent to the window of the dining room from which the wife was speaking. Chotoo had moved from the dining room into this bedroom at some time during the conversation between the man and his (Chotoo's) wife. It seems that he must have been standing fairly close to the window through which the pellets went. From the shot so fired Chotoo received multiple injuries to the face, neck and chest and was killed by a pellet which entered and lacerated the brain. The room in which he was thus killed was in fact Sweeto's bedroom. The widow's account of the shooting given in evidence at the subsequent trial included the following:

> "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 louvres in my son's bedroom . . . I saw the accused shoot. I saw the gun and I heard a big explosion . . . .".

The same evening at about 8.15 p.m., the appellant called at a police station in the locality complaining that he had been injured by some persons who wanted to take his rum. He shewed a police officer three scratches on his left wrist and said that one Sookrie had inflicted them upon him. The police officer sent him to hospital. The next morning the appellant returned to the police station and signed a written statement. In this he elaborated his previous complaint saying that at about 7.50 on the previous evening (the evening of the murder) he was attacked by three youths whom he named, because he would not give them some of his rum. They inflicted the injuries on his left wrist with some kind of a knife. He got away, went to the police station, then made the report already referred to. After leaving the hospital to which the police officer sent him he went home and did not go out again that evening.

Later in the same day, 10th June 1962, the appellant made a further statement to another police officer who was investigating the murder. In this statement he said that he was single, unemployed, and lived with his parents. He described his movements on the day of the murder and repeated his account of being attacked and injured by three men at about 8 p.m. as a consequence of which he went first to the police station, then to the hospital, and then home. He reached home, he said, at about 10 p.m. There was evidence to the effect that the shop where the appellant said he bought some rum shortly before he was attacked was some three miles from the house where Chotoo was shot: and it has been accepted that if the appellant's statements were true he could not have been the man who fired the shot.

After he had made these statements, however, he was put up for identification with some nine other men. No complaint has been made about the arrangements at the identification parade. After asking to hear him speak, and hearing him say " Sweeto come " the widow of Chotoo identified him as the man who had fired the shot, shaking him and saying " There is the man that shoot my husband ". The appellant made no reply.

Upon the trial of the appellant the widow adhered to her identification of him as the man responsible for the shooting. The prosecution also called the three men accused by the appellant in his written statements of injuring him on the evening of the murder. Each denied the accusation saying that he had not seen the appellant on the day of the murder. The appellant called no witnesses and gave no evidence himself: but he made a statement from the dock denying that he shot Chotoo and saying that his written statements to the police were true.

There was no direct evidence implicating the appellant in the crime other than the evidence of the widow. The gun from which the shot was fired was not produced. There was no evidence that the appellant had possessed a gun or cartridges. There was no evidence of motive. Ishall Chotoo (Sweeto) was killed later in the same year i.e. in or about September 1962, and was therefore unavailable to give evidence at the trial in April 1963. He had, it seems, given evidence in preliminary proceedings, and his deposition was accordingly read at the trial. This deposition has not been included in the record, and their Lordships feel that this must be because it was of no assistance.

From what has just been said it is apparent that the case called for exceptionally careful consideration at the hands of the trial judge and the jury, and it is clear from the record that this was given.

In the course of his summing up however the learned judge gave a direction withdrawing from the jury any question of manslaughter. He said:

> " 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 ".

It is this direction which is now the sole ground of appeal.

At the conclusion of the summing up the jury retired, and after an absence of some three hours were recalled into court. In answer to a question from the clerk they said that they had not arrived at a unanimous decision. The

learned trial judge asked them to retire again, saying, *inter alia*, that each juror must listen to reasonable discussion, and that there must be a willingness to accept reason. After a further retirement lasting 1½ hours the jury returned a verdict of guilty, and sentence of death was duly pronounced.

At the subsequent appeal two points were argued, namely the learned judge's direction regarding manslaughter, and his subsequent exhortation to the jury to reach a verdict one way or the other. The Court of Appeal decided that both points failed. As to the first they took the view that on the evidence no reasonable jury could come to the conclusion that this was a case of manslaughter. As to the second, they held that the judge's remarks to the jury were unexceptionable. This particular matter was not further pursued before the Board. The sole point raised was (as already stated) that the trial judge was wrong in withdrawing the issue of manslaughter from the jury.

Upon the evidence there was no room for a verdict of accident entitling the appellant to be acquitted. The killing was a felonious killing. If it were done with malice express or implied, it was murder. No question of provocation arises. If a verdict of manslaughter were to be returned, some evidence would be required in the light of which the view might reasonably be taken that the shot was fired without malice.

There was no evidence of any express malice. The appellant gave no evidence from the witness box and his motive is unknown. The prosecution claimed however that malice could be implied from the facts. The appellant had taken a loaded gun to the house. He had fired it while it was pointing at the window of the house which he knew to be a dwellinghouse and knew to be occupied. It was not suggested that he was other than a sane person.

Their Lordships think that upon the evidence in the case no view was reasonably possible, once it was found that the appellant fired the gun, other than the view that he must have contemplated that death or grievous bodily harm was likely to result. There was therefore no room for a verdict of manslaughter rather than murder.

Mr. Millner referred to two matters which on his contention required that the issue of manslaughter should be left to the jury. The first was that the shots hit a window adjacent to the window from which the wife was speaking to the appellant and not *that* window. The second is that it was not proved that the appellant knew that the room where Chotoo was killed was occupied at that moment. The first of these considerations does no more, at the most, than suggest that the appellant was not trying to shoot the wife. The second advances the matter not at all. The real point is that there was no evidence to suggest that the appellant thought it was unoccupied and that accordingly no harm could result from firing the gun while it was pointing at that room. Neither of these matters detracts at all from the circumstance that the appellant knew that the house was occupied and nevertheless fired the shot. The Court of Appeal drew attention to the inference that might have been drawn that the appellant saw the figure of Chotoo near the window of the bedroom and fired at it. But as this possibility had not been put to the jury, the court did not found on it, and their Lordships in considering this appeal, have given it no weight. What they have done is to consider whether, upon the whole of the evidence, and upon the view of it most favourable to the appellant, there was anything which could have entitled the jury to return a verdict of manslaughter. Like the learned trial judge, and the Court of Appeal, they must answer this question in the negative.

A number of cases were cited in the course of the appeal, and their Lordships intend no disrespect to the helpful arguments of Counsel by not canvassing them in this judgment. But the conditions under which it is right and proper to leave the issue of manslaughter to a jury where the charge is one of murder are not here in dispute. The question is simply whether any of them existed in the present case. Despite the fact that the appellant's sole defence was an alibi, it was the duty of the trial judge to consider whether the evidence as a whole might support a verdict of manslaughter, and if he thought it

might, it was his further duty to leave that issue to the jury with a proper direction. In this case he took the view that there was no evidence upon which such a verdict could properly be returned, and directed the jury accordingly. Their Lordships concur with the Court of Appeal in thinking that the learned judge's decision was right. They have accordingly humbly advised Her Majesty that the appeal should be dismissed.

(89984) W. 8052 97 80 6/64 Hw.

In the Privy Council

RAMDEO BUCKETT

v.

THE QUEEN

DELIVERED BY

LORD DONOVAN

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1964