19,1965

IN THE PRIVY COUNCIL No.8 of 1965

ON APPEAL FROM THE SUPREME COURT OF THE BAHAMAS ISLANDS

B E T W E E N :- JAMES ROLLE
Appellant

and

THE QUEEN
Respondent

CASE FOR THE RESPONDENT

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1. This is an appeal, by special leave of the Judicial Committee dated the 14th January 1965, from a judgment of the Supreme Court of the Bahamas (Sir R. Campbell C.J. and a jury) dated the 22nd October 1964, whereby the Appellant was found guilty of murder and sentenced to death. P.19 P.18

2. The appellant was indicated on the charge that he on the 6th July 1964 at New Providence, Bahamas, had murdered Isaac Emmanual Clinton. P.1 l.17

3. The statute law of the Bahamas provides:

PENAL CODE (Cap.69)

.....

335. Whoever causes the death of another person by any unlawful harm is guilty of manslaughter

336. Whoever intentionally causes the death of another person by any unlawful harm is guilty of murder, unless his crime is reduced to manslaughter by reason of such extreme provocation, or other matter of partial excuse as in this Title hereafter mentioned

.....

345. A person who intentionally causes the death of another person by unlawful harm shall be deemed to be guilty only of manslaughter, and not of murder, if any

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of the following matters of extenuation are proved on his behalf, namely:-

(1) that he was deprived of the power of self-control by such extreme provocation given by the other person as is mentioned in section 346; or

(2) that he was justified in causing some harm to the other person, and that in causing harm in excess of harm he was justified in causing, he acted from such terror of immediate death or grievous harm as in fact deprived him for the time being of the power of self-control;.....

346. The following matters may amount to extreme provocation to one person to cause the death of another person, namely:

(1) An unlawful assault and battery committed upon the accused person by the other person, either in an unlawful fight or otherwise, which is of such a kind, either in respect of its violence or by reason of accompanying words, gestures or other circumstances of insult or aggravation, as to be likely to deprive a person being of ordinary character, and being in the circumstances in which the accused person was, of the power of self-control;

(2) the assumption of the other person, at the commencement of an unlawful fight, of an attitude manifesting an intention of instantly attacking the accused person with deadly or dangerous means or in a deadly manner.....

347. (1) Notwithstanding proof on behalf of the accused person of such matter of extreme provocation as in Section 346 is mentioned, his crime shall not be deemed to be thereby reduced to manslaughter if it appears either from the evidence given on his behalf or from evidence given on the part of the prosecution:-

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(a) that he was not in fact deprived of the power of self control by the provocation;

(b) that he acted wholly or partly from a previous purpose to cause death or harm to or engage in an unlawful fight, whether or not he would have acted on that purpose at the time or in the manner in which he did act but for the provocation;

....

(d) that his act was, in respect either of the instrument or means used or of the cruel or other manner in which it was used, greatly in excess of the measure in which a person of ordinary character would have been likely under the circumstances to be deprived of his self-control by the provocation.

4. The trial took place on the 21st and 22nd October 1964 before Campbell C.J. and a jury. The evidence called for the prosecution included:

(a) Dr. Tendero had conducted an autopsy on the body of Isaac Clinton on the 6th July. Death had been caused by a single stab wound in the chest which had penetrated the heart: it was 5mm. in diameter and 4 to 6 inches deep, and was consistent with a blow from an ice pick, but could not have been caused by a knife. P.2 1.2

(b) James Pratt of Strachan's Corner said that on the 6th July 1964 at 8 a.m. he had had an argument at his house with the Appellant who demanded some tools; the witness went to fetch the tools and on his return found the Appellant facing the deceased in the street: he saw the Appellant stab the deceased with a small instrument, whereupon the deceased fell in the road. In cross-examination he said he had not seen the deceased do anything to the Appellant, nor had the deceased had anything in his hand. P.4 1.18 p.5. 1.18

(c) William Newbold said that he operated a bar at Strachan's Corner. About 8 a.m. on the 6th July he heard an argument between the deceased and the Appellant: the deceased had got a piece of board: The Appellant p.5. 1.33 p.6. 1.7

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threatened him with his hand up, and the deceased struck the Appellant with the board: a piece fell off because it was rotten: the Appellant then struck the deceased in the chest with a weapon which the witness
P.6 L.29 did not see and the deceased fell to the ground. in Cross-examination he said that the affair last 10-15 minutes and both men appeared to
P.6 1.40 be sober.

P.7 1.8 (d) Rudolph Thurston said that he had seen the Appellant and the deceased arguing and the first thing he saw was the Appellant who took out an icepick and stabbed the deceased. He did not see any piece of wood.

P.8 1.13 (e) Joseph Parker was tendered for cross-examination. He said he had seen three men arguing in the road, and the deceased had had a piece of wood in his hand similar to that exhibited which he saw later near the body.

P.8 1.33 (f) John Williams, aged 12, had seen the deceased and the Appellant arguing. At first
P.9. 1.3 they passed blows with their fists but later
P.9. 1.11 the deceased had a piece of wood in his hand with which he hit the Appellant on the left wrist. The Appellant had then taken an ice pick from his waist and stabbed the deceased.

P.9 ls.19-24(g) Superintendent Bailey said that he found the deceased's body lying in the roadway at Strachan's Corner at 8.55 a.m. on the 6th July. Near it was a piece of board which he identified.

P.10.1.23 (h) Inspector Thompson had arrested the Appellant
P.10.1.31 and taken a statement from him. On objection to the statement being put in evidence, it was not put in by the prosecution. The
0.11. 1.8 witness had searched the Appellant's house and found an icepick with a cork on the tip. At the police station he had noticed that the
P.11. 1.12 Appellant had a swelling on his left cheek bone, which he said was where the deceased had hit him with a stick.

P.12. 1.5 (i) P. Corporal Sawyer said that he had arrested the Appellant. After caution, the Appellant
P.12 1.8 had said: "Me and Glinton had a fight at Strachan's Corner. He hit me with a piece

of stick".

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5. The Appellant gave evidence. On the morning in question he had gone to Strachan's Corner and had spoken to Pratt about his tools: he had then gone to Nicky's Bar and had a beer: he had drunk half the beer and then walked outside. He had got to the corner and was talking to Nicky when the deceased struck him with a piece of wood. He had then struck the deceased with an icepick which was in his pocket: he had done so to defend himself, he had been afraid the deceased would knock him again. He had then walked home and on the way had thrown the icepick away; he had not used the one in Court. He had not intended to kill the deceased and did not know he was dead when he left. In cross-examination he said that the handles of the icepicks were different but the blades of both were similar: he had not thought that the blow would kill the deceased.

P.12
p.13 l.3
p.13 l.8
p.13 l.14
p.13 l.17
p.13 l.21
p.13 l.31c
p.13 l.39

6. The learned Chief Justice began his summing up by directing the jury as to the burden of proof, and of their duty in regard to the facts. He said that the facts of the case were very simple and it was noteworthy that they were scarcely challenged by the Appellant. He reminded the jury of the evidence of the eyewitnesses, and then said that whether or not it was possible to get to the bottom of the quarrel, one thing was clear and that was that the deceased had struck the Appellant with a piece of wood on the cheek. After that the Appellant had retaliated by taking his icepick and stabbing the deceased in the heart: he had not denied stabbing the deceased.

p.14
p.14 l.27
p.14 l.29
p.15 l.15
p.15 l.16
p.15 l.25

The learned Chief Justice then directed the jury as to the definition of murder and in particular the word "unlawful": the Appellant had said that his stabbing was lawful as he was exercising his right of self defence: it was for the jury to say whether the Appellant was entitled to stab the deceased as he had. They had seen the icepick in Court and they might think it was a very lethal weapon indeed. The jury might conclude that the Appellant ought to have walked away or only used his hands or another piece of wood, but on the other hand they might think that he had had no other means of escaping further harm.

P.15 l.32
p.15 l.38
p.15l.40-
p.16 l.22

7. The killing must be intentional for the jury to find the Appellant guilty of murder, continued the learned Chief Justice: intention might be

p.16 l.23
p.17 l.8

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presumed from the likely consequences of the act. The jury should consider the nature of the weapon. If the killing was not intentional then the killing could not amount to more than manslaughter. If the Appellant was acting in self defence he should be acquitted; if he had exceeded a lawful right of self-defence, that was no defence at all. If the jury found that the killing was intentional and unlawful, it was their duty to convict.

p.17 l.10-50 The learned Chief Justice then said that it was not alleged that there was any question of premeditation in the case. It did not matter where the Appellant had been keeping the icepick, or, whether he later tried to conceal it. The jury could take with them the statement which the Appellant had made to the police, and they should remember that what he had said to Corporal Sawyer. They should give proper consideration to the Appellants' evidence: what he had said was substantially what the prosecution witnesses had said. It was for the prosecution to prove their case beyond reasonable doubt. They should consider their verdict.

p.18 l.9

p.8 ls.14-30 8. After the jury had retired for an hour, they returned and the foreman said "We are unable to agree on a verdict since one of the jurors does not agree with capital punishment". The learned Chief Justice said that such a consideration was immaterial, the question of punishment was not for the jury, and in case of murder was mandatory: he must ask the jury to retire again and try and reach a verdict which must be unanimous.

p.18.l 31-36 After a further retirement the Jury unamimously found the Appellant guilty and he was sentenced to death.

9. The Respondent respectfully submits that there was ample evidence upon which the jury could come to their verdict, that they were properly directed. and that the verdict should not be disturbed. The learned Chief Justice was correct in directing the jury that there was no substantial conflict of evidence, and it is submitted the Appellants' evidence was virtually an admission of the charge against him. The Appellants only defence was that he had acted in self defence: that was properly put to the jury in the summing up, and, it is respectfully submitted, properly rejected by their verdict. The defence of provocation was, it is submitted, not open on the evidence: there was no evidence that the Appellant had lost his self control, nor was

his action such as would have been carried out by a normal individual who had lost his self control. It is further submitted that the Appellant was not justified in causing any harm to the deceased. It is respectfully submitted that the Chief Justice was correct in not leaving a possible verdict of manslaughter to the jury, except in the event that they were not satisfied that there had been any intent to kill.

10. It is respectfully submitted that the trial was throughout conducted fairly and properly in accordance with the law of the Bahamas. The effect of the summing up was to put the issues properly before the jury and if the learned Chief Justice made any factual errors in the summing up they were not of a nature to, and did not, cause any injustice to the Appellant. The record of proceedings does not show any procedural errors or misdirections which could have cause any prejudice to the Appellant.

11. The Respondent respectfully submits that the judgment of the Supreme Court of the Bahamas was correct and should be affirmed, and that this appeal should be dismissed for the following (among other)

R E A S O N S

1. BECAUSE the trial was throughout conducted fairly and properly in accordance with the law of the Bahamas.

2. BECAUSE the jury was fully and properly directed upon the issues at the trial.

3. BECAUSE the Chief Justice was right in not leaving the issue of provocation to the jury.

4. BECAUSE there was no evidemce upon which a defence of provocation could be based.

5. BECAUSE the Appellant did not prove, and did not seek to prove, that any issue of provocation arose.

6. BECAUSE the jury were correctly directed upon the defence of self defence.

7. BECAUSE the verdict of the jury was justified by the evidence at the trial.

8. BECAUSE the Appellant has suffered no miscarriage of justice.

MERVYN HEALD

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- and -

THE QUEEN Respondent

CASE FOR THE RESPONDENT

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