Privy Council Appeal No. 8 of 1965

James Rolle — — — — — — — *Appellant*

v.

The Queen — — — — — — — — *Respondent*

FROM

THE SUPREME COURT OF THE BAHAMA ISLANDS

REASONS FOR REPORT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 23RD JUNE, 1965

Present at the Hearing:
LORD HODSON
LORD GUEST
LORD PEARSON
(*Delivered by* LORD PEARSON)

On the 22nd October 1964 the appellant, having been tried for murder in the Supreme Court of the Bahama Islands by the Chief Justice and a jury, was convicted of murder and sentenced to death. The appellant appealed *in forma pauperis* by special leave of Her Majesty in Council granted on the 29th January 1965. On the 23rd June 1965 their Lordships having heard the appeal, announced that they would humbly advise Her Majesty that the appeal should be allowed; that the verdict of guilty of murder should be set aside; and that the case should be remitted to the Supreme Court of the Bahama Islands with a direction to record a verdict of manslaughter and to impose sentence accordingly. Their Lordships stated that they would give their reasons later, and they are now giving these reasons.

The story of what occurred on the 22nd October 1964 is a simple one and the main facts are not in dispute. At about 8 a.m. the Appellant called at the house of James Pratt and demanded some tools, which apparently belonged to the Appellant but were then in Pratt's house. Pratt went to fetch the tools from inside the house. A neighbour, Isaac Glinton, who had heard the appellant using offensive language to Pratt, remonstrated with the appellant. There was an angry altercation between the appellant and Glinton in the street. There may have been a short interval when the appellant was called into a bar and given a drink, but, if so, the appellant went back into the street and the altercation was resumed. It seems plain from the evidence, as the Chief Justice said in his summing-up, that the first blow was struck by Glinton. The evidence showed that Glinton went back to a wall, picked up a piece of wood, came forward again and struck the appellant with the piece of wood on his left cheek bone, and the blow was hard enough to cause a bruise and a swelling which were seen later in the day by a Police Officer. After receiving that blow the appellant took out an ice-pick from his belt or his pocket and stabbed Glinton, piercing the heart. Glinton died soon afterwards. The Appellant, not knowing that he had killed Glinton, walked home.

The ice-pick was of a type used for breaking up large pieces of ice into smaller pieces for cooling drinks. It had a wooden handle and a thin, pointed steel blade, and it could be used as a lethal weapon.

The appellant in his evidence, after saying that Glinton struck him with a piece of wood, went on to say, as recorded in the notes of evidence:—" I struck Glinton. I did so to defend myself. I was afraid he would knock me

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again. I hit him with an ice-pick which was in my pocket. Then I walked home. I threw it away. The ice-pick in court is not the one I used. I carried it for my protection. I was afraid he would knock me again. I did not intend to kill him. I did not think it was likely I would kill him. I did not know that I had killed him when I left him." In cross examination the appellant said " I was afraid of him ".

As the Chief Justice pointed out, there was no pre-meditation on the part of the appellant. Having received the blow from the piece of wood, he retaliated by striking the blow with the ice-pick. Also it is evident that there was a highly provocative act committed against the appellant, and that he had reason to be afraid, because, if Glinton had been able to strike another blow at the appellant's face, it might have hit him in the eye or the temple and caused serious or perhaps even fatal injury.

The law applicable to this case is contained in the Penal Code of the Bahama Islands. Sections 335 and 336, contained in Title XX, provide as follows:

> " 335. Whoever causes the death of another person by any unlawful harm is guilty of manslaughter. If the harm was negligently caused, he is guilty only of manslaughter by negligence.
>
> 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."

In Title VII, comprising Sections 97–114, there are provisions dealing with justification for the use of force and the causing of harm. If the jury had found that the Appellant acted in self-defence and did not use force extending beyond the amount and kind of force reasonably necessary for that purpose, it would have followed that the harm caused by him was not unlawful and the proper verdict would have been not guilty. If the jury had found that the harm was unlawful, but the appellant did not intentionally cause the death of Glinton, the proper verdict would have been guilty of manslaughter. These issues were duly left to the jury for them to decide, and directions were given, and there has been no complaint of the summing-up on these issues, which the jury evidently decided against the appellant.

The complaint is that no question was left to the jury, and no directions were given, under the concluding words of section 336—" 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 ".

Section 345, so far as it is material for this case, provides that:—

> " 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 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 the harm which 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; . . . "

Further provisions relating to extenuation by extreme provocation are contained in sections 346 and 347. The appellant had a *prima facie* case of such extenuation under section 346 (1) and (2) by reason of the assault and threatening attitude of Glinton, but there would have been questions for the jury's decision under section 347 (1) (a) and (d) as to whether the appellant was in fact deprived of his power of self-control by the provocation and whether his act in using the lethal weapon was disproportionate to the provocation.

The extenuation by fear required that the appellant should have been deprived of the power of self-control by the terror of immediate death or

grievous harm, and that he should have had justification for causing some harm though less than the harm which he in fact caused. There would have been questions for the jury's decision under Title VII of the Penal Code, and especially under section 107 (6) as to whether the Appellant was at the material moment engaged in or maintaining an unlawful fight otherwise than solely in pursuance of his " matter of justification " i.e. defence against attack.

There was in this case no direct evidence of the Appellant having lost his power of self-control, and, as there was no mention of matters of extenuation in the summing-up, it is probable that they were not relied upon by the appellant's counsel at the trial. On the other hand there was a possible inference from the facts of the case, including the gravity of the provocation and the threat of further attack and the appellant's quick and excessive retaliation, that the appellant momentarily lost the power of self-control. The jury might not unreasonably have decided in favour of the appellant on the issue of extenuation, if that issue had been left to them and they had received proper directions upon it. The jury would not necessarily have so decided, but they might have done so, and, if so, the crime would have been reduced from murder to manslaughter under sections 336 and 345.

In that situtation it was the duty of the Chief Justice and the trial judge to leave the issue of extenuation to the jury and to give suitable directions. " Every man on trial for murder has the right to have the issue of manslaughter left to the jury if there is any evidence upon which such a verdict can be given ". *Bullard* v. *The Queen* [1957] A.C. 635 at p. 644. It was said in *Lee Chun-Chuen* v. *The Queen* [1963] A.C. 220 at pp. 232–3

> " Their Lordships agree that the failure by the accused to testify to loss of self-control is not fatal to his case. *Rex* v. *Hopper* [1915] 2 K.B. 431, *Kwake Mensah* v. *The King* [1946] A.C. 83, *Bullard* v. *The Queen* [1957] A.C. 635 and *Reg*. v. *Porritt* [1961] 1 W.L.R. 1372 were cited as authorities for that. These were all cases in which, as in the present case, the accused was putting forward accident or self-defence as well as provocation. The admission of loss of self-control is bound to weaken, if not to destroy, the alternative defence and the law does not place the accused in a fatal dilemma. But this does not mean that the law dispenses with evidence of any material showing loss of self-control. It means no more than that loss of self-control can be shown by inference instead of by direct evidence. The facts can speak for themselves and, if they suggest a possible loss of self-control, a jury would be entitled to disregard even an express denial of loss of temper, especially when the nature of the main defence would account for the falsehood."

In their Lordships' view the appellant was entitled to have the issue of extenuation left to the jury, and to be convicted only of manslaughter and not of murder if the jury should be in his favour on that issue, and, as he was deprived of his rights in that respect, the verdict of guilty of murder should be set aside and a verdict of guilty of manslaughter should be substituted.

There were two additional grounds of appeal which should be mentioned but they can be dealt with shortly.

(1) It was said that owing to the absence of a mechanical recording apparatus the trial was irregular and contrary to the provisions of section 57 of the Supreme Court Act 1897. That section provides that

> " There shall, whenever possible, be provided adequate equipment for recording mechanically the evidence and proceedings in every cause or matter, whether civil or criminal, heard before the Supreme Court in its various jurisdictions and on its several sides."

There is a proviso enabling the trial judge in certain cases, one of which is " where the equipment is out of order ", to dispense with this requirement. It was said that the equipment was out of order and that no direction was given dispensing with the requirement. There was however no evidence that it was possible in the circumstances to provide adequate equipment for mechanical recording at this trial. There is no substance in this ground of appeal, whether or not there may have been a technical irregularity.

(2) After the jury had retired and deliberated for about an hour they returned to the Court, and the foreman said they were unable to agree upon a verdict since one of the jurors did not agree with capital punishment. Then the Chief Justice gave further directions to the jury. No complaint is made of these further directions as they appear in the record. It was alleged however that the record is wrong and the Chief Justice in fact gave a misdirection, telling the jury that the eleven of them who were in favour of a verdict of guilty of murder were not entitled to change their minds. On behalf of the respondent it was denied that any such misdirection was given. It appeared also that in a conversation on the 6th March 1965 the Solicitor-General for the Bahama Islands invited the counsel who had acted for the appellant at the trial and was still acting for him to apply within one week to the Court for amendment of the record, but that no such application was made at any time. The appellant does not establish his allegation, and it must be assumed that the record is correct.

(92542) Wt. 8052/124 80 10/65 Hw.

In the Privy Council

JAMES ROLLE

v.

THE QUEEN

DELIVERED BY

LORD PEARSON

Printed by HER MAJESTY'S STATIONERY OFFICE PRESS,
HARROW

1965