JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 203 of 2002

BEFORE: **THE HON. MR. JUSTICE BINGHAM, J.A.**
THE HON. MR. JUSTICE SMITH, J.A.
THE HON. MR. JUSTICE HARRISON, J.A. (Ag.)

REGINA
v
JEFFREY DAVIS

Alanzo Manning for the Appellant

Miss Tricia Hutchinson for the Crown

June 30 and December 20, 2004

HARRISON J.A. (Ag):

The appellant was convicted of murder on the 25th November 2003, before Marsh J. and a jury in the St. Catherine Circuit Court held at Spanish Town. The particulars of the offence were that on a day unknown between the 26th December 2001, and the 2nd January 2002, the appellant murdered Damion Thomas. Following the appellant's conviction the learned trial judge ordered that he should serve a period of eighteen years before becoming eligible for parole.

The appellant appealed his conviction and sentence and on the 30th June 2004 we allowed the appeal, quashed the conviction, and set aside the sentence imposed on him. In the interests of justice we ordered

a new trial of the case and for this to take place at the earliest opportunity. We now give our reasons as promised.

In view of the manner of disposal of the present appeal, we consider it unnecessary, to go into a detailed examination of the facts.

The case for the prosecution was that the deceased and friends had attended a Christmas treat for children at Kitson Town square on the 26th December 2001. The appellant was standing in close proximity of the deceased when suddenly he ran in the direction of his house. He returned in a short time with a machete in his hand. His sister shouted; "See a Cottage boy deh". The appellant then chopped the deceased in his head with the machete and ran off.

Larkland Williams, an eyewitness to the chopping, said the deceased had a bottle of beer and a closed ratchet knife in his hand at the time he was chopped. He had used the knife to open the bottle of beer. Williams also testified that he did not see the deceased or anyone attack the appellant that night.

The deceased succumbed to his injury and as a consequence, the appellant was charged with the offence of murder. The cause of death was due to a chop wound to the right side of his head accompanied with compound fractures.

The appellant testified that during the night of the 26th December 2001, he was at Kitson Town square when the deceased and others

attacked him and had "beat him up". He said, one of his attackers was armed with a machete in his waist and when that man was about to pull it out, he held on to it, pulled his knife, and used it to cut him in his face. After cutting the man he ran off towards his gate and whilst he was at the gate, seven men attacked him. He said these men were armed with sticks and they started to beat him. The deceased who had an open ratchet knife in his hand confronted him and accused him of stabbing his friend. The deceased man then stabbed at him and he swung the machete he had pulled from the waist of the man whom he had cut earlier. He further testified that he "feel it connect". The deceased was the person he had chopped and immediately thereafter the appellant ran into his yard.

The single Judge granted leave to appeal, on two bases, namely:

(1) The learned trial judge's summing-up to the jury, may have given the jury the impression that the defence of provocation should be examined before the projected defence of self defence; and

(2) That the directions in respect of provocation lacked a comprehensive analysis of the evidence.

I now turn to the grounds of appeal. The original grounds of appeal are:

1) Unfair trial; and

2) That the verdict of non-capital murder and life imprisonment is unreasonable having regards to the circumstances that it was in self defence."

In addition to these grounds, two supplemental grounds of appeal were filed. The complaint in these supplemental grounds are:

1) That the learned Judge's direction to the jury must have left them confused; and

2) That the appellant's case was based entirely on self defence, and was not clearly and adequately put to the jury.

In his defence the appellant testified that there was a concerted attack upon him by several people including the deceased. It was in these circumstances, that he said, he had to defend himself. Self-defence was therefore the cardinal line of defence canvassed by the appellant, so it was necessary for the learned trial judge to have presented to the jury, the case for the defence bearing this in mind.

It is our view, after a careful examination of the transcript, that the learned trial judge fell into error when he gave the jury the impression that legal provocation should be examined first before self-defence. In the result, we hold that the critical defence raised by the appellant, was whittled down by the learned trial judge when he prioritized provocation over self-defence. In the circumstances of this case, the appellant's defence, called for a careful presentation of the facts by the trial judge as well as a painstaking examination of the details in assisting the jury in their assessment of the evidence. It was therefore incumbent on the trial judge to deal with the salient points arising in the evidence, and to put the essential thrust of the defence before the jury.

This court has in innumerable cases, pointed out the duty of a trial judge in his charge to the jury. It has been the practice from time immemorial, that a person faced with a serious charge, is entitled to have his defence laid before the jury in a form that they can appreciate. Where therefore, the summing-up did not deal properly and adequately with the defence, it is in general, impossible to say that the conviction is safe. The court will in these circumstances, quash the conviction.

We are in full agreement with the learned trial judge in leaving the issue of legal provocation for the jury's consideration. If properly left, it has the effect of reducing murder to the offence of manslaughter.

In his charge to the jury, the learned trial judge directed them in general terms, on legal provocation. This is what he said at page 150 of the transcript of evidence:

> "Mr. Foreman and your members, what in law is provocation? Provocation is some act or serious act (sic) done and or words spoken which causes the defendant a sudden and temporary lost (sic) of self control. And which could cause a reasonable person to lose his self control and to behave as the defendant did. Therefore you have to consider two questions. Did the allegedly provoking conduct or words, cause the defendant to lose his self-control? And would that conduct have caused a reasonable person to behave in the way that the accused did and to lose his self-control? (sic) After the second question, you should take into account everything said and done according to the effect in which, in your opinion, it would be an unreasonable manner. (sic) A reasonable man is a person having the powers of control to be

> expected of an ordinary person like the accused man.
>
> Now because the prosecution must prove the defendant's guilt, it is not for the defendant to prove that he was provoked. It is for the prosecution to make you sure, (sic) that the defendant was not so provoked, before you can convict him of murder. If you are satisfied that he was provoked, or if you think that he may have been provoked, then you can only convict him of the offence of manslaughter."

It is our view that these directions do not reflect the actual words used by the learned trial judge. However, there was a failure to correlate the evidence with the legal principles. The learned trial judge ought to lay before the jury all the evidence that supports or tends to support a defence raised, in language they can easily appreciate and assist them to evaluate it in its proper context: see ***R. v Badjan*** 50 Cr. App. R. 141. The authorities also make it clear, that where a trial judge is obliged to leave provocation to the jury, he should indicate to them, unless it is obvious, what evidence might support the conclusion that the defendant had lost his self-control: see ***R. v Stewart*** [1996] 1 Cr.App.R. 229, CA; ***R. v Humphreys*** [1995] 4 All E.R. 1008, CA.

In our view, the directions on provocation were deficient and amounted to a misdirection so material, as to render the conviction bad.

In view of the above, learned Counsel for the Crown did not seek to support the conviction. She properly conceded that the defences were not properly left with the jury.

It is for the reasons set out above, that we allowed the appeal, quashed the conviction, set aside the sentences and ordered a new trial.