# JAMAICA

**IN THE COURT OF APPEAL**

**SUPREME COURT CRIMINAL APPEAL NO: 121/99**

**BEFORE: THE HON. MR JUSTICE FORTE, P.**
**THE HON. MR JUSTICE BINGHAM, J.A.**
**THE HON MR JUSTICE WALKER, J.A.**

**REGINA V YVONNE GRANT**

**Michael Thomas for the Applicant**

**Georgianna Fraser and Terrel Lawrence for the Crown**

**23rd and 24th October, 2000 and 6th April 2001**

**BINGHAM J.A:**

The applicant was tried on an Indictment for Murder in the Home Circuit Court before Donald McIntosh, J., and a jury, on 16th June and 2nd July,1999. She was convicted of the lesser offence of manslaughter and sentenced to a term of imprisonment of nine (9) years at hard labour.

Her application for leave to appeal having been refused by the single judge, this application was then renewed before the full Court. Having heard the submissions of counsel, we reserved our judgment. This judgment now follows.

## THE EVIDENCE

The evidence in the case as to the circumstances relating to the death of the deceased came from Steveland Mitchell and Sonia Grant, the son and sister of the accused. Mitchell told of being at home on Sunday 12th January, 1997. While

asleep in the early hours of that morning about 4:00 a.m. to 5:30 a.m., he was awakened by a knocking on his door and got up and went to the door. He saw the accused whose first words to him were "it was the kerosene oil." When he asked her "what about it?" She then said "Craig" (referring to the deceased). He was the seven year old son and lived with the accused in a two bedroom apartment at 41 East Queen Street in Kingston.

Mitchell then went around to the accused apartment where he saw Craig lying on a bed. He had on no clothes and was badly burnt. The accused related an account to him that while inside her room she felt sick and wanted some tea.

Steveland Mitchell used one of the accused nighties to wrap around Craig's body and took him to Kingston Central Police Station where he made a report to the police. The accused did not accompany them. The deceased was taken by the police to the Bustamante Children's Hospital where he was sent to the Burn Unit. When he left for the police station the accused was still at the home. On his return to the home about 8:00 a.m. to 9:00 a.m. the accused was nowhere to be seen. He had also accompanied the deceased to the hospital but while there, he did not see the accused come there. As a result later that day he returned to the police station where he made a report.

Mitchell recalled making a number of visits to the hospital. He did not remember the time he last saw Craig (the deceased) alive. On 22nd January 1997, at about 1:00 p.m. he attended a post mortem examination conducted on the deceased.

He said that was the practice of the accused to cook meals and whatever was being prepared from a coal stove which was done at the doorway on the step

leading to the apartment. She used kerosene oil to light the stove and this oil was stored in a bottle. He next saw the accused in the evening hours of the same day at the Kingston Public Hospital. She had bandages on her hands. He later noticed a bottle with kerosene oil at the doorway of his mother's room. It was half-full with oil.

Under cross-examination by learned counsel who also appeared for the accused below, Mitchell said that when the accused woke him on the morning in question she had told him that "she was feeling sick and wanted some tea. She went to catch the fire and threw oil on it but it died down. She catch it up back and it blaze up while she and Craig was outside and it ketch Craig clothes."

**The Medical Evidence**

Dr. Patricia Sinclair, a Registered Medical Practitioner, and a Consultant Pathologist, conducted a post mortem examination on the body of the deceased, Shawn Walters o/c Craig. He was seven years old at the time of his death. She found that seventy percent of the body was burnt and death was the result of the burns suffered. This evidence went unchallenged.

Dr. Junior Taylor, a specialist in reconstructive surgery, and plastic surgery, experienced in treating burn victims, attended to the deceased at the time of his admission to the Children's Hospital on 12th January 1997. He also observed extensive burns on the body of the deceased. He saw him as having a five percent chance of surviving. He nevertheless treated the deceased.

Dr. Taylor tried to find out what caused the burns to the patient. When the doctor enquired from the child as to what had caused the burns, the boy said that "it was the accused who threw kerosene oil on him and lit him afire." This

statement came some five hours after his admission. On an earlier enquiry made by Dr Taylor shortly after admission, the boy had said that he did not remember.

In her sworn statement from the dock, the accused is saying that whatever overtook Shawn Grant on 12th January 1997, about 5:00 a.m. was the result of an accident.

The accused in her statement said that

> "she was at home the night of 12th January 1997, around 5:00 o'clock that morning or in the early morning. She was at home in the room with her two younger sons, Shawn (the deceased) and Assan the baby. She was feeling sick and decided to wake up Shawn to help her. She took him outside and had the stove on the bottom step. She put some wood and some 'scrapings' in the stove and she had the kerosene oil. She was on the top step bending over the stove and was throwing the kerosene oil onto the stove. When she lit the matches the first time the stove did not light. The next time she put more oil and lit more matches and it light and blazed up and she got burnt as also Shawn who was standing beside her. He then ran inside. She went inside after him and saw fire coming from the bottom of his ganzie. She rolled him in a blanket in an attempt to out the fire on him. She then went and called Steveland Mitchell, her elder son, and told him to ask the police to take the deceased to the hospital."

She then took her younger boy, Assan, to the home of her sister, Sonia Grant, at Eleven Miles, Bull Bay, and told her what had happened. Later that day she went to Central Police Station, where she got a letter and went to the Kingston Public Hospital, where she was admitted. She was later referred to the Chest Hospital, where she was also treated and on her return to the Central Police Station she was arrested and charged for murder.

Learned counsel for the applicant was granted leave to argue the following Supplemental Grounds of Appeal viz:

> "1. Misreception of inadmissible evidence
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> The learned trial judge erred in law when he admitted into evidence the deceased's assertion made to Dr. Junior Taylor, some five hours or more after the material incident, to wit: "Is mi mother throw kerosene oil on me and light me."
>
> The wrongful reception of that evidence not being a dying declaration or part of the res gestae, resulted in a miscarriage of justice.
>
> 2. The verdict is unreasonable and cannot be supported having regard to the evidence for the following:
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> > The verdict of manslaughter would not have been based on the Prosecution case, which was one of murder without more, nor the defence case which was a case of accident without more.
>
> 3. Misdirection
>
> The learned trial judge misdirected the jury when he told them (at page 21 of the transcript of his summing up):
>
> A bold statement is that the mother threw kerosene oil on him and lit him with a match does not necessarily mean that she did a deliberate and intentional act. It does not necessarily mean that because if the circumstances were as outlined where she is splashing the kerosene oil over the place trying to light the stove and later throws a match which blazes up and catches him, it could amount to the same thing. It is a matter for you what you think.
>
> The passage cited amounts to a misdirection for the following:
>
> (a) The prosecution's case is that the Applicant deliberately threw kerosene oil on the deceased and then lit him with a match.

(b) 'The circumstances outlined' were never that the Applicant 'was splashing the kerosene oil over the place trying to light the stove and later throws a match' ...

(c) The direction that 'it could amount to the same thing' is in the first place confusing. Further it could possibly have led the jury to find that the following of kerosene oil on the deceased and lighting him with match (an international act) could serve as a basis for them returning a verdict of manslaughter, thus depriving the Applicant of the jury's fair consideration of her defence of accident, and therefore, of the fair chance of a total acquittal of the charge."

**The Submissions**

**Ground 1**

Learned counsel for the applicant submitted that the learned trial judge erred in admitting into evidence the account of Dr. Taylor as to what the deceased said as to how he received the burns to his body. As this statement came some five hours after the incident, counsel contended that it could not be regarded das a part of the res gestae. It also could not have amounted to a dying declaration as to so qualify it would have had to be a statement made by the child after this condition had been brought to his mind following which the statement was made. Not being either of the above to come within the exceptions to the hearsay rule, there was what amounted to a miscarriage of justice.

Learned counsel cited in support ***Regina* v *Ratten*** [1971] 3 All E.R. 801(A) – 802(F). As to the proper test in cases of this nature. In this regard he argued that the elements of spontaneity and involvement in the events are both of critical importance.

Learned counsel for the Crown in responding to the arguments advanced on behalf of the applicant on this ground submitted that it was clear that in coming to

a verdict of guilty of manslaughter, the jury rejected the statement made by the deceased to Dr. Taylor.

There is merit in this contention by the Crown as in coming to their verdict the jury rejected the account contained in the unsworn statement of the applicant that the burn injuries to the deceased which were caused as a result of the fire blazing and catching him was accidental. By their verdict they accepted as evidence the statements made by the applicant to her son Steveland Mitchell and sister Sonia Grant. On that evidence the jury saw the conduct of the applicant and the manner in which she acted in setting the fire as amounting to reckless disregard for the life and safety of the deceased and capable of falling within the category of gross recklessness, and, amounting therefore to the crime of manslaughter. In light of the above, this ground accordingly fails.

**Ground 2**

Learned counsel for the applicant submitted that on the Crown's case a verdict of guilty of manslaughter was not open to the jury. Given the evidence granted on behalf of the Crown this submission is clearly untenable.

Taking the Crown's case at its highest point, namely the account of Dr. Taylor as to what the deceased told him as to how he received his injuries, for the offence of murder as charged on the Indictment to be established, the Crown would have had to establish to the satisfaction of the jury to the extent that they felt sure, that, when the applicant acted in setting fire to the deceased, that she had the requisite intent to kill, or to cause grievous bodily harm to him, and from which act death resulted. The jury by their verdict of manslaughter concluded that the death resulted from an involuntary act due to reckless conduct on the part of the

applicant amounting to a high degree of negligence. Given the evidence of Steveland Mitchell and Sonia Grant, the verdict can be seen as being an acceptance of their accounts of the statements made to them by the applicant as to how the deceased came by his injuries.

On none of these accounts as presented by the Crown could the defence of accident be sustained. While the admissibility of the statement made to Dr. Taylor is open to question, no prejudice was caused to the applicant's case as the jury is coming to a verdict of manslaughter rejected this evidence. This ground accordingly fails.

**Ground 3**

The manner in which this complaint was canvassed by learned counsel for the applicant was misconceived. What was here being addressed by the learned judge in his directions was to focus the minds of the jury on the manner in which the applicant, given the circumstances prevailing on the morning of the incident of the fire, had gone about the task of lighting the stove. In directing the jury, after reviewing the evidence of Dr. Junior Taylor the Burn Specialist, who attended on the deceased, and in addressing the statement made by the deceased to the doctor as to how he came by the burns to his body, the learned judge said:

> "Now Madam Foreman and members of the jury, crown counsel is of course saying that you should accept it as true and this is what really happened. The fact of the matter is that one of the problems that you encounter here is that the person is not here so you can see him and listen to him and understand what he is saying. A bold statement is that the mother threw kerosene oil on him and lit him with a match does not necessarily mean that she did a deliberate and intentional act. It does not necessarily mean that because if the circumstances were as outlined where she is splashing the kerosene oil over the place trying to light the stove, and later throws a

> match which blazes up and catches him, it could amount to the same thing. It is a matter for you what you think."
> (Emphasis supplied)

This passage must be examined and considered against the background of the latter directions in which the learned trial judge once more reminded the jury of where the burden of proof rested in coming to their verdict.

> " ... before you can convict her of murder, you must be satisfied that she deliberately threw kerosene on her own son and then lit him with a match. If you are not sure, if you have a reasonable doubt, then you must acquit her.
>
> The defence is one of accident and as I said before, the accused does not have to prove that Craig or Shawn Walker (deceased) died as a result of an accident. The prosecution must satisfy you that he did not. So that, if you find that he died of an accident then that really is the end of the matter. If you are in a state of doubt where you are not sure whether he died of an accident or not, that is the end of the matter, you must acquit the accused. So if you are sure that he did not die of an accident and that it was a deliberate act of the accused that caused his death, but there was no intention in her to cause him serious bodily harm, you go to consider manslaughter. You consider manslaughter if you find all the other requisites for Murder except the intent to cause serious bodily harm; or if you find that owing to the duty of care to her seven year old son, that on the morning, the 12th January 1997, she acted with such reckless abandon as to by her actions to put her son in such danger that it resulted in his death. Then you find her guilty of Manslaughter.
>
> Please remember that only if you rule out accident that you need to consider murder or manslaughter. If you rule out accident, then you cannot find murder unless you are satisfied so that you feel sure that the deceased was killed as a result of the deliberate act of the accused coupled with an intention to cause death or serious bodily harm; and if you don't find the intent, then, you would consider manslaughter, and you consider that on one of two things.
>
> Either the deliberate intention, a deliberate act, but without the requisite intent resulting into death or such

recklessness on her part, resulting in an injury which she should reasonably have foreseen." (Emphasis supplied)

The underlined words as emphasized in the concluding passages of the learned trial judge's directions to the jury were a direct reference to the evidence of the applicant's son Steveland Mitchell and her sister, Sonia Grant, relating to the account given to them by the applicant as to how the deceased received the burn injury to his body. On either account, if believed, the manner in which the applicant went about the task of lighting the stove was an act fraught with danger to her young son and herself. The risk of some harm, albeit not serious bodily harm, was something which she as a reasonable person must have foreseen.

Accordingly, far from misdirecting the jury, the learned trial judge gave them every possible assistance and was at pains in identifying and explaining the issues arising on the evidence for their determination. This ground also fails.

**Ground 4**

Learned counsel for the applicant during the course of this hearing sought and obtained leave to argue an additional ground of appeal. This ground reads as follows:

"**4** The learned judge did not define accident."

There is no merit in this ground. While the learned judge did not resort to what may be regarded as a classical exposition of the law relating to accident, he nevertheless, in directing the jury as to the defence of accident as advanced on behalf of the applicant which any jury would have had little if any difficulty in understanding. At page 8 of the transcription in treating with this defence, the learned judge said (referring to the applicant):

" ... Her defence basically results to accident.

She is saying that whatsoever overtook Shawn Grant on the 12th day of January, 1997, somewhere about five o'clock that morning, was mere advertent (sic) an accident, something over which she had no control." (Emphasis supplied)

The word 'advertent' appearing in this direction is an obvious error and could not have been the word used by the experienced judge and no doubt ought to have been inadvertence. This direction would have been generous to the applicant as where inadvertence comes into play such an act would not result in any criminal liability. This is further qualified by the words appearing in the remainder of the passage being "an accident over which she had no control."

When these directions are examined as a whole the jury would have been left in no doubt as to what was meant by the defence of accident raised up on behalf of the applicant.

This ground, therefore, also fails.

## Conclusion

This was a matter in which the jury was left with two main options viz the defence of accident put forward on behalf of the applicant on the one hand which if accepted or raising a reasonable doubt would have resulted in a complete acquittal. On the other hand, the conduct of the applicant on the morning of the incident, when taken outside of the statement made by the deceased to the doctor which was rejected by the jury, amounted either to mere inadvertence calling for an acquittal, or if on the other hand, the jury found that the applicant was grossly negligent, then the proper verdict was one of manslaughter.

In the light of the above, we find no basis for disturbing the verdict arrived at in this case.

**Sentence**

Although a Ground of Appeal was filed relating to the sentence passed, learned counsel for the applicant did not seek to argue the matter. The complaint was directed at the length of the sentence which being custodial in nature, was too excessive. A sentence of nine years at hard labour was imposed on the applicant. The antecedent history discloses that the applicant, up to the time of her conviction had an unblemished record and there was no previous complaint of child abuse by her.

Given the gravity of the offence for which the prisoner was convicted, a custodial sentence was clearly warranted. The facts in this case, given the verdict, called for a sentence of a period of incarceration.

Taking all the circumstances into consideration, this Court is of the view that when the justice of the case is looked at as a whole, the sentence of nine years at hard labour is manifestly excessive and ought not to stand. The sentence is accordingly set aside and a sentence of three years at hard labour is substituted.

In light of the above, the application for leave to appeal is treated as the hearing of the appeal, which is dismissed and the conviction is affirmed. The sentence is set aside and a sentence of three years at hard labour substituted.

The sentence is ordered to commence as from 2nd October, 1999.