JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO: 137/90

BEFORE: THE HON. MR. JUSTICE FORTE, J.A.
THE HON. MISS JUSTICE MORGAN, J.A.
THE HON. MR. JUSTICE GORDON, J.A.

R. V. BASIL FACEY

Applicant unrepresented

Hugh Wildman for the Crown

9th December, 1991

GORDON, J.A.

On the 19th day of September 1990 in the Saint Catherine Circuit Court the applicant was convicted of manslaughter on an indictment which charged murder and sentenced to a term of ten years imprisonment at hard labour.

The evidence given on behalf of the Crown came from two witnesses as to facts: one Eudaline Thompson and one Irene Young. Miss Thompson and the deceased Percival Cespedes resided with their children in the parish of Saint Catherine, and in the morning of the 15th of July 1988 the home was visited by the applicant who requested of the deceased, money. The deceased indicated that he had none to give, and an argument developed. In the course of the argument, the applicant was ordered out of the premises by the deceased, and in leaving, the applicant was reported to have said "I am going to kill you, and if I don't catch you to kill you today, I am going to kill you the next day." After he made that statement he went into the road, and the deceased went out to him and they confronted each other. The applicant is alleged by Miss Thompson to have had a knife, the deceased a stone when they facedeach other,

but they were parted by persons. The deceased went on his verandah, the applicant left the scene. Shortly after the applicant returned and stoned the deceased as he sat on his verandah. The deceased left the verandah and went on to the roadway where the applicant was. There was another confrontation and the deceased was stabbed by the applicant in the left breast from which injury he subsequently died. The injury was found to have penetrated the chest cavity, and cut through the third rib and the right ventricle of the heart. The pathologist who performed the postmortem said that the injury was inflicted with a sharp instrument with a severe degree of force. The force was sufficient for this knife to have cut through the third rib before it penetrated the chest cavity and the right ventricle.

The defence of the applicant was that he was attacked by the deceased who had a knife and in defending himself the injury was inflicted.

As I indicated before, there were two witnesses for the prosecution, Eudaline Thompson and Irene Young. The evidence of Irene Young was in part in conflict with the evidence of Miss Thompson, in that she indicated in her evidence that at the time when the applicant stabbed the deceased, the deceased also had a knife in his possession. The evidence as it unfolded, was left for the consideration of the jury by the learned trial judge, who dealt with all the issues that arose competently, carefully, and indicated to the jury that they had a choice between the evidence of Thompson and the evidence of Young in determining where the truth lies. In dealing with Miss Young's evidence, he told the jury that they could avail themselves of her evidence in favour of the applicant, he said this:

> "So in these circumstances, you have to ask yourselves was there an attack by the deceased man? That is on Miss Young's evidence on the accused man, if you accept what she said, because it is a question of fact for you that he grabbed at him with one hand and a ratchet knife in the other. Now, what operated then in the mind of the accused man? Did he honestly believe that at that stage that he was in some serious danger? It is a question of fact for you, for if so, in those circumstances, was the use of the ratchet knife necessary in defending himself? That is a question of fact for you."

And again at page 24 he said:

> "You remember how I told you you should treat his unsworn statement, but that is to where the question of self-defence would arise, either on Miss Young's evidence or on the statement of the accused. Of course if you accept that, it would appear that he was under if, that is true he was under severe attack from the deceased, and you ask yourself in those circumstances was it reasonably necessary to have used the ratchet knife, that is a matter entirely for you."

The learned trial judge told the jury that on that evidence they should acquit if they accepted the evidence of Miss Young and/or that of the applicant giving his statement from the dock or if they were left in doubt whether to accept it or not, they should acquit. He indicated the only way they could convict was if they were satisfied so that they felt sure of his guilt on the evidence of Miss Thompson. He dealt with provocation as it arose from the defence of self-defence and after having given them proper directions, adequate, fair and full the jury returned the verdict of manslaughter.

On questions of fact the jury is paramount. Learned counsel for the Crown has indicated that he has considered the evidence in the case and the summation of the learned trial judge and he has found nothing to urge in favour of the applicant. We ourselves have given this matter serious, earnest, prolonged consideration. We are of the view that the verdict of the jury must stand, the application is accordingly dismissed.