

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NOS: 27 & 28/1998

**CORAM: THE HON MR JUSTICE BINGHAM, J.A.
THE HON MR JUSTICE HARRISON, J.A.
THE HON MR JUSTICE WALKER, J.A.**

**REGINA V DAISY ROBINSON
WINSTON RANKINE**

Leonard Green for both appellants

**Paula Llewellyn, Actg. Snr. Deputy Director of Public Prosecutions
and Anne-Marie Grainger, Crown Counsel for the Crown**

March 4, 5, 2002 & April 11, 2003

BINGHAM, J.A:

The appellants were both tried and convicted in the Home Circuit Court on November 24 1994, on an indictment for non-capital murder committed on Leroy Jones. They were each sentenced to be imprisoned for life. Winston Rankine was recommended to serve ten years before parole could be considered, and Daisy Robinson was recommended to serve nine years before eligibility for parole.

Application for leave to appeal having been considered and refused by a single judge these applications were renewed before the Full Court.

Having heard the submissions of counsel, at the end of the hearing, we granted the applications for leave to appeal. We treated the hearing of the applications as the hearing of the appeals, allowed the appeals, quashed the convictions and set aside the sentences.

In the case of Winston Rankine we substituted a conviction for manslaughter and imposed a sentence of fifteen years at hard labour. We ordered that the sentence commence as from 17th May 1998. In the case of Daisy Robinson, we entered judgment and a verdict of acquittal.

We promised at the time of handing down our decision to reduce our reasons into writing. This we now do regretting the long delay that has ensued since then.

The facts

The circumstances leading up to this tragic incident may be summarized as follows:

The prosecution's case

This came from the witness Rosalee Hutchinson, the common-law-wife of the deceased Leroy Jones. She testified to living "along with" the deceased at the same premises as did the two appellants. She lived

upstairs the two-storey dwelling house and the appellants lived downstairs.

Miss Hutchinson testified that on the afternoon prior to the incident the appellant Winston Rankine accosted her while they were both on their way to the premises where they resided. He accused her of "carrying his name about making advances to her." She denied this and an argument ensued during which she was boxed by him. Police who were in the area were summoned and the fuss was calmed down. When she got home she complained to the deceased about what had happened.

The following morning, ~~the 24th November, 1994,~~ in the early hours around 6:00 a.m., there was an argument between the deceased and the appellant Rankine downstairs the premises. This led to a fight during which the deceased fell to the ground. While lying prostrate he was stabbed by the appellant Rankine with an ice pick in the region of his chest causing massive bleeding and resulting in his death.

While this attack was taking place, the female appellant Daisy Robinson was present armed with a machete. She however, took no part in the attack on the deceased.

Miss Hutchinson said that she was not present at the time the incident started. It was upon hearing a commotion and noise that she went downstairs and saw the two appellants each armed with implements. The male appellant Rankine was astride the deceased on

the ground making stabbing motions at the deceased who was lying on his back. She took up some stones and bottles and threw them at the appellants in an attempt to get them to desist from attacking the deceased. When they moved away she then called out to the deceased telling him to "Run Leroy run!" The deceased got up from the ground and went upstairs. She then followed in the direction he had gone and found him lying on the floor bleeding from the area of his chest. Her daughter was attempting to stop the bleeding with some old clothing. Mouth to mouth resuscitation was also attempted in an effort to revive him but this was unsuccessful.

Miss Hutchinson then left the premises and made a report at the Allman Town Police Station.

On 30th November 1994, having received a report Miss Hutchinson went to the Kingston Public Hospital morgue where she identified the body of her common-law husband Leroy Jones, to Dr Royston Clifford, a Registered Medical Practitioner and Consultant Pathologist, who performed a post mortem examination on the body.

The injuries described by the doctor were that on external examination he found two stab wounds, each $\frac{3}{8}$ inch in length, and $\frac{1}{2}$ inch apart. They were on the left front of the chest about 20 inches below the top of the head and 4 inches to the left of the midline. Each wound went into the underlying chest cavity and perforated the left ventricle of

the heart. Both stab wounds were 3 inches deep. This was associated with massive bleeding. There was also a 1/2 inch laceration to the left side of the forehead. Death was caused by the stab wound to the chest. It could have been caused by an ice pick requiring a moderate to severe degree of force.

Detective Sergeant Watson is now stationed at Central Police Station in Kingston. He told of receiving a report around 6:30 a.m. on 24th November 1994. As a result he went to 25 Hampton Street in Allman Town, where he saw a large crowd. He went upstairs to a room. There he saw the dead body of a male identified to him as being that of one Leroy Jones. The body was photographed and then removed to the Kingston Public Hospital morgue. He took into custody the female appellant Daisy Robinson. She complained of pain from being hit on her left hand and she had a swollen ankle. She was taken to the Allman Town Police Station. At the station he saw the appellant Winston Rankine. He had come to the station earlier with a report that "he had just killed somebody". He also said that "me just kill a man round deh road deh". The appellant Rankine also told the police that he had got his wounds as a result of fighting with the deceased. The police saw some scratches to the hand of the appellant Rankine.

The defence's version

(a) The appellant Daisy Robinson's account

In her statement from the dock she told the Court that on 24th November, 1994, she was living at 24 Hampton Street, Kingston. She woke up that morning about 5:45 a.m. to do some washing. She saw the deceased downstairs armed with a machete. He told her that "You man box mi woman last night and it nah go so". She told him "Cho man, go on because it too early". Winston Rankine then came from the direction of the bathroom. The deceased then rushed him with the machete. Rankine was retreating. There was a bucket on an old stove. It had in it his scale, an ice pick and other equipment which he used as a fish vendor. As he retreated he grabbed the ice pick from the bucket. The deceased chopped at Rankine with a short machete. During this Rankine made a lunging motion towards the deceased who fell backwards to the ground. While this was going on Rosalee Hutchinson, (the deceased's common-law-wife) was flinging stones and bottles at Rankine and herself. She received a blow to her left ankle which was cut and swollen. She denied that she took any part in the incident leading to the stabbing of the deceased.

(b) The appellant Winston Rankine's account

Mr. Rankine gave sworn evidence. He said that he lived at Hampton Street with Daisy Robinson and was a fish vendor. On the afternoon prior to the morning of the incident he was coming from a football game. He saw Miss Hutchinson and spoke to her accusing her of calling his name. He had heard that she said "He was making passes at her." Miss Hutchinson started to get on bad using a lot of provocative words and arming herself with stones. A police vehicle drove up and he made a report to them. He told the police "he did not know why she was calling up his name, going on bad and using a lot of bad words". The policeman asked her "why you going on so for?" Miss Hutchinson said "the man (referring to Rankine) box me". The police sent her home and followed him to his gate to ensure that he got there safely.

The following morning at daylight he was up and busy getting ready to go out to purchase fish at the Greenwich Farm Beach. On his way from the bathroom he noticed someone dressed in black shadowing him from the rear. This person was armed with a machete. The man came after him swinging the machete at his head and he ducked. The chopping motion continued causing him to have to "bob and weave". He was chopped several times with the machete. He retreated until he managed to get the ice pick from the bucket and he then made a forward motion at the deceased who was furiously attacking him with the

machete. The deceased slipped and fell to the ground scraping his forehead. The deceased got up and went upstairs with the machete. He left and went with Miss Robinson to the Allman Town Police Station. He told the police "a man just attack me up a mi yard with a machete. I could not do anything but take up an ice pick and shub it out two fimes and it look like one a dem catch him".

On the prosecution's case it is clear that Miss Rosalee Hutchinson, the sole witness for the prosecution as to the facts and circumstances leading up to the stabbing, was not present when the incident started on the morning in question. From her account, she came on the scene after the deceased had fallen to the ground and was in the process of being mortally wounded.

The situation at that moment in time was one of a deceased who was overpowered and was now at the mercy of his attacker who was armed with an ice pick. The appellant Rankine was not seen to be at that moment in any apparent danger of any injury or harm from the deceased. For him to stab the deceased in those circumstances as testified by the witness Rosalee Hutchinson, was conduct on his part which caused her to have to resort to throwing bottles and stones at the appellant in an effort to cause him to desist from attacking the deceased.

On Miss Hutchinson's account a killing done in those circumstances taken at its highest would have amounted to one done more out of a

desire for revenge on the part of the male appellant and therefore amounting to murder. At its lowest, given the harmless possession of the short machete with which it is being said the deceased was armed, the manner of the retaliation by the appellant Rankine, would have been clearly out of proportion to the nature of the attack being made on him. Brought on in the course of the encounter were acts of provocation done by the deceased, which while not justifying the killing by the appellant in those circumstances raises an issue of manslaughter.

On the accounts related by both appellants the deceased was stabbed in circumstances in ~~which he was in the process of attacking the~~ male appellant with a short machete about two feet in length. On this account self-defence arose and the only remaining question falling for determination was whether, given the nature of the attack made by the deceased upon the appellant Rankine, the manner of his retaliation by inflicting two stab wounds which penetrated the chest area of the deceased resulting in massive bleeding was done in necessary self-defence thereby justifying the killing of the deceased.

The jury in coming to their verdict clearly rejected self-defence. As it is common ground that the appellant Rankine also received minor injuries during the incident, provocation as a matter of law was an issue calling for a particular direction by the learned trial judge. A careful

examination of the printed record however, reveals that no such direction was given to the jury.

Learned counsel for the appellant obtained leave to argue some seven grounds of appeal on behalf of the appellants.

Grounds 1 and 2 which related to the female appellant challenged the directions of the learned judge as to:

- (1) Common design
- (2) The sentence imposed on the appellant Daisy Robinson

In the light of a concession with which we agreed, made by Miss Llewellyn for the Crown in respect of the conviction of the appellant Robinson, these grounds now become of academic interest. An examination of the transcript bears out that Miss Robinson although present at the time of the incident was not an active participant in the events that took place on the morning in question. Moreover, she could be seen more in the role of a peacemaker as on the morning when the deceased appeared annoyed and said that "you man box mi woman and it nah go so" she spoke to him using comforting words in an attempt to appease his anger, regrettably to no avail.

Counsel argued that there was evidence from Rosalee Hutchinson that Miss Robinson was armed with a machete standing near to where the appellant Winston Rankine and the deceased were seen engaged in a struggle. The learned trial judge was correct in leaving the case against

the female appellant to the jury. As she was not shown to be an active participant in the attack on the deceased, however, this would have called for a direction by the learned judge for the jury to consider whether Miss Robinson was guilty of conduct which cast her in the role of an aider and abettor. As no such direction was given she would have been deprived here of the opportunity to have her defence fairly and adequately left to the jury. It was in the light of this non-direction that learned counsel Miss Llewellyn with commendable frankness did not support the conviction in respect of the female appellant.

A direction on common design therefore, in the absence of any evidence calling for such a direction would render the conviction reached in respect of the appellant Daisy Robinson bad and constitute a miscarriage of justice.

Grounds 1-5 (the appellant Winston Rankine)

These grounds read as follows:

"1. The learned trial judge erred in that he failed to give a clear pronouncement on the law of self-defence and commented so as to give the jury a confused explanation of the principle when he said at page 10 "so that for example if the accused began by defending himself but then totally over-reacted turning an act of self-defence into a punitive attack and caused death in the course of that attack, that would be unlawful.

2. The learned trial judge failed to give a balanced assessment of the evidence of the prosecution witness Maurice Palmer and

commented to the point of ridiculing that witness' evidence as it related to the injury that the accused man Winston Rankine had when he attended the police station on the morning of the incident.

3. The defendant Winston Rankine failed to have his case properly put due to defence counsel's inability to properly represent both himself and his co-accused Daisy Robinson for this most serious charge of Murder.

4. The learned trial judge was unhelpful to the jury as it related to two critical issues raised in the defence of Winston Rankine that is to say:

a) A matter of the injuries that both prosecution witnesses Sergeant Watson and Constable Palmer agreed he had on his hand; and

b) the fact that the only witness upon whom the prosecution relied for the purpose of establishing its case against the defendant was very much a part of the fight on the side of the deceased and would in those circumstances have an interest to serve.

5. The learned trial judge failed to leave manslaughter to the jury as an alternative verdict and in his summing up fail to deal with the evidence which might show that the crime committed was manslaughter and not murder".

Ground 1 (The complaint as to the directions on self-defence)

Learned counsel argued that the directions on self-defence were split into two segments using a formulation which was confusing and in which the learned judge failed to explain for the benefit of the jury the principle of self-defence as it relates to honest belief. Nowhere in these

directions did the learned judge once tell the jury that if in the circumstances defensive action was taken in the belief that harm was intended such action would justify a plea of self-defence.

Miss Llewellyn for the Crown in responding has submitted that the directions given on self-defence were not only adequate but extremely generous to the appellant. This was so, as on the facts of the case the direction on honest belief was redundant. The directions on self-defence were focused on the principle of honest belief as adumbrated by the Board of the Privy Council in **R v Solomon Beckford** [1987] 3 All E.R. 425. Counsel relied on **R v Mary Lynch** S.C.C.A. No. 30/94 (unreported) delivered 24th June 1996, per dictum of Rattray, P. at pp. 7-9. In that case like the instant one, there were two diametrically opposite accounts relating to the killing of the deceased and the sole crown witness gave an account ruling out self defence. There the learned President of the Court followed the dicta of Rowe, P. in **R v Roy Thomas** S.C.C.A. No. 185/86 (unreported) delivered 29th January, 1988, and cited by Forte, J.A. (as he then was) with approval in **R v Derron Williams** S.C.C.A. No. 119/91 (unreported) delivered on 21st July 1992. Rowe, P. in **R v Thomas** (supra) had seen as placing an unnecessary and unwarranted strain on trial judges, a need for the honest belief direction in every case where self-defence was raised. In **R v Derrick Wolfe** S.C.C.A. No. 94/91 (unreported) delivered on July 31, 1992, Rowe, P. had revisited the matter and said:

"The **Beckford** direction must be given where there is a question as to the nature or existence of the attack. When it is clear, however, on the defence that the appellant was being attacked the jury would not be assisted with a direction on honest belief".

In the instant case the appellant Winston Rankine had testified that the deceased who was armed with a machete was carrying out an attack on him when the killing took place. In such circumstances following the authorities referred to, there was no need for a direction based on honest belief to have been given to the jury. The submission of learned counsel for the Crown is therefore well founded and this ground fails.

Ground 2

This complaint relates to certain comments made by the learned trial judge in his summation while reviewing the evidence he recalled during the trial. Learned counsel for the appellants submitted as being impermissible the learned judge's remark about Constable Maurice Palmer who was stationed at Allman Town Police Station, and who received a report from the appellant Winston Rankine, on the early morning following the incident. Describing the said constable as being inexperienced, was in the circumstances impermissible.

The relevant portion of this direction appears at page 26 of the transcript. At lines 11-20 the learned trial judge in his directions said:

"the next witness for the prosecution was Maurice Oscar Palmer, a constable now at Preventive Services. I don't know what picture you formed of him but he was obviously a young constable, obviously, an inexperienced police officer. He told you that on the morning of November the 24th 1994, he was on guard duty at the Allman Town Police Station. While on guard duty, he saw the accused man the male accused Mr Winston Rankine, came to the station. He told you that he came there alone."

(Emphasis added)

It was common ground that following the incident the male appellant went to the Allman Town Police Station and told Constable Palmer that he had just killed somebody.

Before his directions on the law, at the commencement of his summation, the learned trial judge in adverting the minds of the jury to their area of responsibility in the case said thus; (page 3 of the transcript):

"The facts of this case are your responsibility. You should of course take into account the arguments in the speeches you have heard made by counsel for the prosecution and for the accused. You are not bound to accept them. Equally, in the course of reviewing the evidence, I express my view concerning the facts or emphasize any particular aspect of the evidence, do not adopt to the view unless you agree with them."

(Emphasis supplied)

From the cited passages the learned trial judge in language which could not have been clearer made the jury fully aware that any views (or comments) expressed by him were subject to their approval having regard to their role and function in the trial.

The learned trial judge then went on to review the evidence of Constable Palmer as to the statement made by the appellant, a matter in respect of which the facts elicited were uncontroverted. The comment made by the learned trial judge can be viewed as proper. This complaint was therefore unwarranted and totally lacking in merit.

Ground 3 – The complaint as to need for separate representation

This ground of complaint has to be examined against the provisions in section 20(6) of the Constitution which provides inter alia that:

“Every person who is charged with a criminal offence -

(a) ...

(b) ...

(c) shall be permitted to defend himself (herself) in person or by a legal representative of his own choice.”

The underlined words expressly ensure to the appellant the inalienable right to legal representation by obtaining counsel of his own choice.

From a careful examination of the printed record available, there is nothing to suggest that such legal representation that was obtained was not used to ensure that the appellants were not properly represented at the trial. It is of particular significance that in the Form 1 that was filled out by the appellants both appellants in responding to question 4:

“Is any attorney-at-law acting for you? If so give his name and address. ...”

wrote in response, naming the same attorney-at-law who represented them at the trial and giving his address.

In the light of the above although, given the nature of the charges, separate representation may have been desirable it was not essential to a fair trial of the matter. There was no statutory provision laying down such a requirement as a pre-condition. Counsel also had advanced no arguments to indicate that the hearing below resulted in a miscarriage of justice having regard to the nature of the representation afforded to the appellants. Nor was there any conflict or apparent conflict in the defence of each appellant. This ground therefore fails.

Grounds 4-5

These grounds may be considered together as they relate to the same matter. Having regard to the injuries inflicted on the appellant Winston Rankine, there was evidence pointing to an armed combat rendering the need for the learned trial judge to give a direction on self-defence and provocation.

Learned counsel for the appellant Rankine submitted that as on the prosecution's case there was evidence establishing that the appellant had injuries to his hand suggesting an armed fight between the deceased and the male appellant, manslaughter ought to have been left to the jury. As there was no such direction, the appellant was deprived of the opportunity of being convicted of the lesser offence.

Miss Llewellyn for the Crown has submitted that the learned trial judge's failure to have manslaughter left to the jury as an alternative verdict to murder was not a non-direction as there was no evidential basis for such a direction. Miss Rosalee Hutchinson the sole prosecution witness as to fact in her account (and given the direction of the learned judge) said:

"When I threw those stones they were over my man, one stabbing him and one standing over him with a machete. It is in those circumstances I threw the stones and bottles."

and in view of the direction of the learned judge in that regard this evidence has to be viewed against the background of a situation in which Miss Hutchinson was not present when the incident started. Her account as to what was taking place when she came on the scene, therefore, does not rule out the possibility that the injuries suffered by the appellant Winston Rankine could have taken place during the armed encounter between the deceased and himself prior to the killing. This evidence called for a very careful analysis by the learned trial judge.

It is trite law that where there is evidence in a case it is the duty of the learned trial judge to direct the jury on the law relating to all issues raised on that evidence. As previously mentioned, self-defence was the critical issue to be determined by the jury. Nevertheless, provocation in law reducing the offence to manslaughter was an issue raised on the evidence. A failure on the part of the learned judge to leave this

defence to the jury amounted to a misdirection based on a non-direction thus resulting in a miscarriage of justice, rendering the conviction of non-capital murder bad.

Conclusion

On the evidence while self-defence may have been the cardinal line of defence canvassed by the appellants there was the other defence of provocation which arose calling for a particular direction by the learned trial judge. An examination of the printed record does not reveal that manslaughter as an alternative verdict was left for the jury's consideration.

In the result, the appellant Winston Rankine was thereby deprived of the opportunity of having manslaughter, based on the fact of provocation as outlined, left to the jury thus obliging us at the end of the submissions, for these reasons, taking the course that we did.