

21925

In the Privy Council.

LONDON

No. 23 of 1949.

ON APPEAL FROM THE COURT OF
APPEAL, JAMAICA.

UNIVERSITY OF LONDON
W.C.1.
17 JUL 1953
APPELLANT, ADVANCED
LEGAL STUDIES
RESPONDENT.

BETWEEN
CYRIL WAUGH
AND
THE KING

CASE FOR THE APPELLANT.

RECORD

1.—This is an Appeal by special leave from an Order of the Court of Appeal, Jamaica, dated the 4th April, 1949, refusing leave to appeal from the conviction and sentence of death passed upon the Appellant in the Supreme Court of Judicature of Jamaica on the 1st March, 1949. p. 74 p. 66

2.—The Appellant Cyril Waugh is a ranger employed by the Richmond Estate in St. Ann, Jamaica, and one of his duties is to patrol the estate with a gun supplied by the proprietors in order to protect the coconuts from prædial thieves.

10 3.—On the 25th October, 1948, at about 4.15 p.m., two neighbours, Thomas Ridley and Seaford Tait, heard a single shot fired in the plantation, and the Appellant's voice calling for help. p. 47 p. 51

20 4.—Ridley and Tait are the chief witnesses offered by the prosecution in this case, and their description of what they saw and heard is accepted as substantially correct by the defence. Ridley was the first to reach the spot where the Appellant was found holding a gun. Ridley asked the Appellant "Cyril what is wrong" and the Appellant informed him that he had found a man identified by his description as Phillip Newby with a bag of coconuts. That when challenged Newby dropped the coconuts and threw an iron tool used for husking the nuts at the Appellant, but missed him, and then attacked him with a machete or cutlass, whereupon p. 47, l. 35 p. 47, l. 40

INSTITUTE OF ADVANCED
LEGAL STUDIES,
25, RUSSELL SQUARE,
LONDON,
W.C.1.

p. 45, l. 12 the Appellant fired. In reply to Ridley's further question the Appellant
 p. 45, l. 4 said "I believe he got the bullet somewhere on his foot, and has gone in
 p. 45, l. 10 the direction of the gully." Ridley saw the bag of coconuts and at a little
 p. 52, l. 2 distance the iron tool and his story is confirmed by Tait, who saw the bag
 p. 52, l. 15 lying on the ground, and the iron tool in the Appellant's hand. To this
 man also the Appellant said that "the man was resisting against him with
 "a cutlass to cut and he shoot him" and showed the direction in which
 the man ran.

p. 48, The witnesses were led by blood tracks through the plantation to the
 ll. 34-41 other side of a gully, where they found Phillip Newby gravely wounded
 p. 52, l. 43 in the lower part of the abdomen and genitals. 10

p. 17, l. 12 5.—When the police arrived the Appellant repeated his story, and
 pointed out the relevant positions of himself and Newby, and the map was
 subsequently prepared on the information given by him. Later the
 p. 67 Appellant made a further statement at the police station, and there is no
 material difference between the statements of the Appellant and the oral
 evidence of the witnesses and the material evidence afforded by the
 p. 17, l. 29 coconuts so in the bag, some husks found by the police under a tree and
 In folder the iron tool, and the map, which shows that the incident took place inside
 the plantation where there was no track, at about two chains distance from
 the shore. 20

p. 49, l. 5 6.—Newby was not unconscious when he was found, but at the hospital
 in the night his condition became grave, and at his own request a statement
 made by him in the presence of the doctor was taken down by the police.

p. 71 This statement, which was not on oath, was unfinished and unsigned
 was as follows :—

"I got shot innocently. I was going to bathe going from
 "Llandovery direction and about $\frac{1}{2}$ chain from the sea-side
 "and just about to take off my clothes behind a grass root. I saw
 "a man approach with a gun and he shoot me innocently, and
 "the man say that anybody he saw down there he is going to 30
 "shoot because they are stealing coconuts down there. I was
 "not carrying any bag with coconuts I was not carrying any
 "iron, not even a pocket-knife. After I shot I feel it, when I feel
 "the shot I try to run because the man say he was going to shoot
 "me. When he fire the shot, he missed the other man. The
 "man has an old grudge for me simply because"

At this point Newby fell into a coma from which he never recovered.

It is submitted that such a statement, which sets out a defence of
 Newby himself on the charge of theft and carrying a weapon, and mentioned
 a third person as the object of the shot is self-contradictory and open to 40
 grave suspicion. It is submitted moreover that the said story was highly

improbable since it was inconsistent with uncontradicted facts such as the bag of coconuts and the husking iron, the coconut husks found in the vicinity and the fact that the deceased was in a part of the plantation where there was no track, that it was two chains distance from the shore, that no grass root was seen by the witnesses for the prosecution and that the deceased had no right to be at the said spot and it was your Appellant and not the deceased who was summoning help in order to capture his assailant. The police accepting the Appellant's story as borne out by statements made by others and by circumstantial evidence, did not prosecute until ordered to do so by the coroner-magistrate on the 10th November, 1948.

RECORD
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p. 21, l. 26

7.—After receipt of the said order, the Appellant was put on trial in the Supreme Court of Judicature before Mr. Justice McGregor and a Jury.

p. 10

8.—Under the Rules framed under the Defence of Poor Persons Act, the defence of the Appellant was assigned to a young barrister Mr. Locksley Moody. In such cases no Solicitor is employed, but the Counsel interviewed and obtained the instructions of the Appellant. He took a deposition in order to examine him as a witness, and the Appellant was at all times ready to give evidence.

20 A statement made by Mr. Locksley Moody as to his conduct of the Case, and the statement made to him by the Appellant are printed as an Appendix to this Case (see para. 11 below).

9.—The Case for the Prosecution consisted of the statements made by the prisoner to the police, and of the evidence of Ridley and Tait in support of those statements. They also produced a surveyor to prove a map prepared mainly on the information given by the prisoner as checked by the police, and the Government chemist to prove that the shot was fired at a distance of from 2 to 3 feet. They also produced formal evidence as to the clothing of the deceased, and medical evidence as to the cause of death. The investigating police officer proved the prisoner's statements. The final statement so proved made at the police station on the evening of the 25th October, 1948, is as follows :—

p. 12

p. 37

p. 16

40 “ Cyril Waugh states :—I am a ranger employed to the
 “ Richmond Estate in St. Ann and I live on the property. My
 “ postal address is Laughlands. I live three miles from St. Ann's
 “ Bay, I knew Phillip Newby by sight but not his name. I always
 “ saw him working at Richmond Estate after the crop working
 “ in the field. On Monday the 25th October, 1948, about 4.15 p.m.,
 “ I was patrolling alone on a portion of the property known as
 “ Fig Tree Bay with the single barrel cartridge gun belonging to
 “ the estate. This section is by the sea-side. On arriving at
 “ this section I saw a man carrying a crocus bag with something
 “ in it over his left shoulder and a cutlass under his left arm and

p. 67

RECORD

“ a piece of iron in his right hand. That was in the coconut
 “ plantation and he was coming from the inner part of the property
 “ towards the sea-shore. When I first saw him he was about
 “ 8 yards from me. A young almond tree was between us and
 “ that is why I didn’t see him before. I recognised his face to be
 “ the man I always saw working on the estate, and whom I got
 “ to know later to be Phillip Newby. I called to him saying
 “ ‘ Its you taking the coconuts from down here ? ’ As I said that
 “ to him he fling the piece of iron at me that he had in his right
 “ hand. He was then about 7 feet from me. The iron didn’t 10
 “ catch me. He then drew his machete from under his arm,
 “ dropped the bag and started to approach me with the machete
 “ raised in his hand. I stepped back and said to him ‘ stop.’
 “ I raised the gun but he didn’t stop and I fired one shot at him.
 “ He turned and started to run inwards the property towards the
 “ river. I ran after him and bawled out ‘ help, help ’ several
 “ times. I chased him for about 2½ chains in some tall grass
 “ and I noticed blood-stains along the path he was running.
 “ As I saw the blood I turned back to the bag and then about
 “ 3 minutes after I saw Thomas Ridley and Seaford Tait coming. 20
 “ Shortly after I saw Lestre Trench, known as Trenchie, come on
 “ the scene. No one was present when the incident between us
 “ took place. I showed them where Newby ran and the blood-
 “ stains on the grass along the path. A crowd came on the
 “ scene, and I took the bag and contents which I found was
 “ coconuts and the iron to my house I didn’t find the machete.
 “ He had run with it. Shortly after the police came and I showed
 “ them the bag with coconuts and the iron Newby was carrying
 “ and told them of the incident. I then took the police back to
 “ the spot and along the path Newby ran. By that time Newby 30
 “ had been taken away to the hospital so I didn’t see him. I then
 “ went to the St. Ann’s Bay Police Station and gave this statement
 “ which was read over to me and which is correct.”

This is endorsed :—

“ Taken by me this 25.10.48 at about 8 p.m. at St. Ann’s
 “ Bay Station and read over to the witness.

“(Sd.) J. WRIGHT Sgt.

Sd. SYRIL WAUGH.

“ 25.10.48.”

p. 68

A further signed statement made on the 9th November, 1948, was
 also proved. 40

“ At the time I spoke to Thomas Ridley who first came on
 “ the scene I did not say to him ‘ You know the boy Phillip that
 “ ‘ is along with Samuel’s daughter from Lewis ? ’ What I actually
 “ said to him was ‘ the boy that is along with Joe Samuel’s

“ ‘ daughter from Lewis ’ I couldn’t mention his name for RECORD
 “ I never knew Newby’s name before.”

The said Statements were entirely consistent with the account given by your Appellant immediately after the occurrence to the witnesses pp. 48-51
 Ridley and Tait.

It is submitted that his account was inherently probable and consistent with all the known and uncontradicted facts and that it instituted a complete answer to the charge and if accepted afforded a complete Defence, or if there was a reasonable doubt as to whether it was true or false your
 10 Appellant was entitled to be acquitted.

10.—The only other evidence produced by the prosecution was the statement of the deceased (see para. 6 *supra*) which, it is submitted, was p. 71
 improbable, self-contradictory and inconsistent with the known and uncontradicted facts.

11.—In the course of the trial Counsel for the Defence took objection to the admission of the dying statement, but the Judge ruled that it was admissible except for the unfinished sentence. Counsel however relying on the fact that the prosecution case entirely supported the defence, except for the uncorroborated dying statement, which is clearly open to exception
 20 on several grounds, decided not to offer the prisoner as a witness and advised the prisoner accordingly. In a statement made by him for the purpose of this appeal Counsel wrote “ Indeed as there was no other eye
 “ witness the prosecution could not save possibly by cross-examination
 “ of the prisoner to the effect that his statement was untrue, prove beyond
 “ reasonable doubt that the deceased met his death as a consequence of
 “ being murdered.”

The Appellant accepted his Counsels’ advice.

12.—In his summing up the learned Judge emphasised the importance of a dying statement, and constantly directed the attention of the Jury to
 30 the fact that the accused did not give evidence on oath.

At the very outset he blamed the police for not prosecuting in the first instance. He said : “ It seems quite clear that until the papers reached p. 54, l. 4
 “ the Resident Magistrate as Coroner for this Parish the police seem to
 “ have considered ‘ Oh here is a thief a coconut thief who has got his
 “ ‘ deserts, let us get rid of it in the easiest possible way.’ How such an
 “ idea could have remained in the minds of any responsible officer, any
 “ officer of experience after they had read that statement which the
 “ deceased gave on the night that he was shot I do not know.”

He proceeds : “ You have got to adjudicate this case I may almost p. 54, l. 28
 40 “ say on unsworn statements. Two men were present at the time. One
 “ has since died, and the other has not seen fit to go into the witness-box
 “ and tell you what happened. He is relying on statements which he
 “ made from memory afterwards, and has not seen fit to go there in the

RECORD “ witness-box and say ‘ the statement that I gave is true word for word,
 — “ ‘ and I stand up here and submit myself to cross-examination to have
 “ ‘ my story tested.’ He has not done it. Why not ? You are entitled
 “ to ask yourselves that. Two persons were present ; one is dead and the
 “ other is in the dock and he does not tell you his story.”

p. 65, l. 10 At eight other places in the summing up reference is made to the failure of the Appellant to give evidence, for example in dealing with the doctor’s evidence as to the direction of the shot he said “ But as I have “ said before, the prisoner has not told you how it happened you have “ not been able to ask him one question ; the one person alive to-day to 10 “ tell us what happened, does not see fit to go there (pointing to the “ witness-box) and tell you what happened.”

p. 57, l. 20 13.—On the other hand dealing with the dying statement the learned Judge impressed upon the Jury the value of such a statement made in the certainty of death, and failed entirely to point out that it is clearly designed as a defence of the injured man against the allegation that he was stealing coconuts, and that the reference to a third person missed by the shot is unintelligible in view of the fact that the shot was fired at the deceased directly in front at point-blank range.

14.—On the possible finding of manslaughter the learned Judge 20 directed the Jury as follows :—

p. 54, l. 38 “ As far as I can see there are two verdicts which are open “ to you. The first that he is guilty of murder, and the second “ that he is not guilty. I cannot see that any verdict of “ manslaughter is open to you in this case.”

15.—At the conclusion of the summing up after telling the Jury that if the prisoner was acting in self-defence he should be acquitted, the learned Judge said :—

p. 65, l. 40 “ But on the other hand not because a man is a prædial “ thief, not because a man is stealing coconuts are you entitled 30 “ to shoot him there and then. And if you are satisfied that this “ man went there, Newby went there either for a bath or perhaps “ for stealing coconuts, and that the prisoner there and then “ met up this man and shoot him, then members of the Jury, “ whatever are your findings in the matter, you have a duty to “ perform and that duty would be to find him guilty of murder.”

It is submitted that if the possibility that Newby was a thief is admitted, his statement must be discarded as being absolutely false, and the Jury should have been so directed.

p. 66, l. 19 16.—The Jury at first disagreed, but subsequently returned a verdict 40
 p. 66, l. 32 of “ Guilty with mercy.”

17.—The Judge thereupon sentenced the Appellant to death.

p. 67

18.—The Appellant sought leave to appeal to the Court of Appeal Jamaica under Section 15 Cap. 431 of the Laws of Jamaica set out in an Appendix to this case. The learned Chief Justice refused leave. The points considered were (1) general grounds of misdirection, (2) improper admission of the dying declaration, and (3) undue comment on the fact that the Appellant had not given evidence.

pp. 72-73

p. 74

On the last point the learned Chief Justice said :—

10 “ Finally it was argued that the Judge commented unduly
 “ on the fact that the applicant had not given evidence. We do
 “ not agree with this criticism and in this connection we would
 “ refer to what the Lord Chancellor said in *Kops v. The Queen*
 “ L.R. (1894) Appeal Cases 652 :—

“ It is legitimate for the Judge in commenting upon
 “ the facts to refer to the capacity of the prisoner to give
 “ evidence on his own behalf and so explain matters which
 “ would be naturally within his own knowledge and of which
 “ an explanation would be important in view of the evidence
 “ already given.”

20 19.—In Jamaica under Cap. 468, Section 9 (b) of the Criminal
 Procedure Ordinance set out in full in an Appendix to this Case “ The
 “ failure of any person charged with an offence to give evidence
 “ shall not be made the subject of any comment by the prosecution.”
 Although the power of a Judge to comment on the fact that such evidence
 has not been given is not disputed, it is submitted that in Jamaica as in
 England such comment should only be made in suitable cases and with the
 greatest care. In this case the learned Judge went beyond fair comment,
 and virtually implied that the Jury should base their finding on the failure
 of the prisoner to reply in the witness-box to the allegations made in the
 30 dying statement. This he could hardly have done had he known that the
 prisoner was anxious to give evidence, but was restrained by his Counsel.

20.—It does not appear that the Court of Appeal appreciated the fact
 that the Appellant was merely acting on the advice of Counsel.

21.—It is submitted that no reasonable Jury would have convicted
 your Appellant had they been sufficiently directed by the learned Judge
 and that the summing up by the learned Judge has resulted in substantial
 and grave injustice to your Appellant.

22.—Special Leave to Appeal to His Majesty in Council was granted
 on the 19th July, 1949.

23.—The Appellant prays that His Majesty in Council may be graciously pleased to allow this Appeal and quash the sentence and conviction of the Appellant or take such other action as may to Your Majesty in Council seem proper for the following among other

REASONS

1. BECAUSE the emphasis laid by the Judge on the fact that the Appellant did not give evidence at the trial amounted to a misdirection.
2. BECAUSE neither the Judge nor the Jury were aware that the Appellant had always been anxious to give evidence, but was restrained from doing so by the advice of his Counsel. 10
3. BECAUSE the Judge misdirected the Jury as to the value of the uncorroborated statement of the deceased.
4. BECAUSE the Judge further misdirected the Jury in withdrawing from their consideration the question of manslaughter.
5. BECAUSE the use made by the Judge of the fact that the Appellant did not give evidence is contrary to the spirit of the law, which forbids the prosecution to comment on this fact and which cannot be relied upon as corroboration. 20
6. BECAUSE the Court of Appeal were in error in the interpretation put by them on the case of *Kops v. The Queen*.
7. BECAUSE the evidence called by the prosecution established the defence that the Appellant shot the deceased in self-defence and the conviction for murder was contrary to the Evidence.

J. D. CASSWELL.

A. G. P. PULLAN.

APPENDIX.

STATEMENT OF MR. LOCKSLEY T. MOODY.

I am a Barrister-at-Law and I live at No. 2 Red Church Street, Spanish Town, Jamaica, B.W.I. My Chambers are situated at No. 53 Church Street, Kingston, Jamaica, B.W.I.

By a letter dated 5th February, 1949, I was assigned by the Crown to defend Cyril Waugh who was charged with Murder. The assignment was made under Section 4 of the Rules for the Defence of Poor Persons. These rules are published in the Jamaica Gazette of the 23rd of August, 10 1939, and are the Rules made under Law 23 of 1938, the Defence of Poor Persons Act.

In practice no Solicitor is assigned to instruct Counsel on these assignments so that Counsel himself interviews the Prisoner receives instructions and prepares the defence.

Assignments are in practice made to Young Counsel who have previously indicated to the Registrar of the Supreme Court of Jamaica their willingness to undertake the Defence of Poor Persons.

I was called to the Bar in June 1945 and was appointed a Clerk of the Resident Magistrates Courts Jamaica.

20 These Magistrates Courts are a creature of Statute with a limited jurisdiction in Civil and Criminal matters (vide Chapter 432 Revised Laws of Jamaica).

My duties would include the conduct of the Prosecution in Criminal cases and the examination of witnesses at Preliminary Examinations before the Magistrate in cases to be held at the Assizes, and performing the duties of Registrar when the Assizes are held in the Parish. (Three times each year).

I left the Civil Service at the end of November, 1948, and opened Chambers in January, 1949, and this case was the second Murder trial in 30 which I appeared for the defence and in each instance on assignment by the Crown.

The statement I took from the prisoner is attached.

The Prisoner was at all times prepared and willing to give evidence on his own behalf at the trial and he understood that I intended that he should give evidence. It was shortly before the case for the Prosecution closed that I formed the opinion he should not be called. I spoke with

him and advised him against giving evidence. He expressed himself as being quite prepared to act on my advice.

In the Notes of evidence the witness, a Sergeant of Police of 25 years experience, stated—"We were not contemplating a charge of Murder." That meant there was nothing to cause the witness or his two superior officers, one of whom was the Officer in charge of the Division for the Parish, to doubt the truth of the Prisoner's story as set out in his statement even after reading the Dying Declaration. The prisoner's story was corroborated by the presence of the coconuts and the Iron on the spot.

The witness Ridley had heard the Prisoner's shout for help (customary mode of spreading alarm—hue and cry) and had arrived on the scene while the Prisoner was still calling for help. He saw blood on the grass just a few steps from where the bag of coconuts and the Iron was, leading to where the deceased was lying. 10

The husks of freshly husked coconuts were found in the direction from which the prisoner states he noticed the deceased was coming.

The evidence of the Government Chemist showed the deceased was between 2-3 ft. from the muzzle of the gun (length of Barrel 2 ft. 8 in.) and according to the prisoner the deceased was advancing from a spot 7 ft. away when he fired. The evidence of the Doctor indicated the shot travelled obliquely and downwards consistent with deceased being in the position of his left foot in advance—left shoulder forward, the right foot behind and the right arm upraised holding a cutlass and about to strike. The height of deceased is stated to be 5 ft. 8 in. and he was not as tall as the prisoner. 20

A large crowd had gathered before any search was made for the cutlass or machette and any member of that crowd may well have taken the cutlass.

The Dying Declaration contained two stories—one that the prisoner approached the deceased and shot him, the other he fired at another man and missed the other man : (presumably as only one shot was fired the shot which missed the other man caught the deceased). 30

The spot where deceased indicated he was ($\frac{1}{2}$ chain from the seashore) was approximately 87 ft. from the spot indicated by the prisoner.

The Prosecution had elected to put in evidence the statement taken from the Prisoner which negatived the uncorroborated and contradictory account of the deceased in the declaration. The result of the Prosecution introducing the prisoner's statement as a part of their case was to cast further substantial doubt upon their case to the point of contradicting

such *prima facie* case as the Dying Declaration tended to establish. Indeed as there was no other eye witness the Prosecution could not, save possibly by cross-examination of the prisoner to the effect that his statement was untrue, prove beyond reasonable doubt that the deceased met his death as a consequence of being murdered.

In fact the prosecution had nowhere shown the prisoner's statement to be untrue save that it was contradicted by the Dying Declaration.

These circumstances moved me not to call the prisoner to the witness box.

- 10 The Court did not accept the position that the Prosecution had contradicted its own case as disclosed in the Declaration of the deceased but rather treated the statement of the Prisoner put in by the Prosecution as the defence to the case disclosed in the Declaration.

This did not appear until during the summing-up by the Learned Judge.

I regret that my opinion was wrong in that I should have advised the prisoner to give evidence.

L. T. MOODY.

STATEMENT OF ACCUSED MADE TO MR. LOCKSLEY T. MOODY.

- 20 25.10.48: 4.15 p.m. left home on patrol taking a gun and 3 cartridges. I loaded the gun on entering property, but it was not cocked. I reached spot going through a Coconut walk with the seaside on my right, major portion of coconut walk in front and to my left. A small almond tree before me as I went. I saw a man come into view as I cleared the almond tree coming in opposite direction and from the inner part of the property carrying a crocus bag (coconuts) over his left shoulder a cutlass under his left arm and a piece of iron in his right hand. No recognised track or road there. When I first saw deceased he was (indicates 18 ft.) away. I did not then speak to him. He saw me and stopped. I went towards
30 him about half the distance and stopped. After we first saw each other nothing interrupted our view of each other. I then said "Oh its you taking away these coconuts downhere." Deceased said nothing but immediately threw the iron at me. I then stepped backwards and to the left side to avoid the iron. He said nothing when he flung iron. He then dropped the bag drew the cutlass from under his arm and came at me with it raised over his right shoulder as if to chop me. I said "Stop" once only. He did not stop he continued. I fired before he reached me. He never said anything to me. Deceased immediately turned and ran with

the cutlass leaving the bag and Iron where he had thrown them. I chased him carrying the gun for about $2\frac{1}{2}$ chains calling out " help " several times. I then noticed blood on the grass. I stopped and looked and turned back to where the bag was. Until I saw the blood I did not know deceased was shot. Before seeing the deceased I was carrying the gun under my left arm, on seeing deceased I held the gun in my right hand (right handed). After I dodged the iron which passed on my right I then held the gun with both hands hip high. When I noticed that he did not stop on my calling to him I pulled hammer of gun back with my thumb and fired from the same hip high position with the barrel pointing towards his knee. As I walked back to the spot I had fired I saw Ridley coming up. When he came I showed where the bag and Iron were I had not then touched them. I told him what had happened. After telling Ridley what happened Tait came up. 10

Ridley saw blood at a spot nearer to the spot from which I had fired the gun. I had not seen it before he showed me. Ridley and I left to trail the deceased. In going about $\frac{3}{4}$ chain I saw the crowd coming down and I turned back. Tait then came up and after him Trench. I had noticed Tait approaching when Ridley and I were moving off. I went home taking bag and iron and gun. I sent a message to the overseer and remained at home until about 5 p.m. when the Police came. I made a report to them and handed over the exhibits. Ridley was present when the Police came and was asked if he saw the bag with nuts tied just as it then was and he said " Yes." The Police stayed at my house about half an hour and we all went to the scene where I pointed out the several spots. No notes were taken or pegs driven at the scene. We went to Hospital about 6 p.m. then dark from there I was sent to Station where about an hour later a statement was taken from me. Dry coconuts are husked with an Iron. The Police saw freshly husked coconuts. Husks corresponding with the condition of the nuts in the direction from which I saw the deceased approach. 20 30

L. T. MOODY.

LAWS OF JAMAICA.

COURT OF APPEAL.

PART IV.

CAP. 431.

SECTION 15.

APPELLATE CRIMINAL JURISDICTION (SUPREME COURT).

15.—A person convicted on indictment in the Supreme Court may appeal under this Law to the Court of Appeal—

(a) against the conviction on any ground of appeal which involves a question of law alone ; and

10 (b) with leave of the Court of Appeal, or upon the certificate of the Judge who tried him that it is a fit case for Appeal, against his conviction on any ground of Appeal which involves a question of fact alone, or a question of mixed law and fact, or on any other ground which appears to the Court to be a sufficient ground of Appeal ; and

(c) with the leave of the Court of Appeal against the sentence passed on his conviction unless the sentence is one fixed by law.

LAWS OF JAMAICA.

CAP. 468.

SECTION 9.

EVIDENCE.

9.—Every person charged with an offence, and the wife or husband, as the case may be, of the person so charged, shall be a competent witness for the defence at every stage of the proceedings whether the person so charged is charged solely or jointly with any other person provided as follows :—

(a) a person so charged shall not be called as a witness in pursuance of this law, except upon his own application ;

(b) the failure of any person charged with an offence, or of 10 the wife or husband, as the case may be, of the person so charged, to give evidence, shall not be made the subject of any comment by the prosecution.

* * * * *

(g) Every person called as a witness in pursuance of this Law, shall, unless otherwise ordered by the Court, give his evidence from the witness-box or other place from which the other witnesses give their evidence.

CAP. 443.

JURY LAW (AMENDMENT 1943)

SECTION 38A.

(1) On trials on indictment for murder or treason, the unanimous 20 verdict of the jury shall be necessary for the conviction or acquittal of any person for murder or treason.

(2) On a trial on indictment for murder after the lapse of one hour from the retirement of the jury a verdict of a majority of not less than nine jurors of manslaughter may be received by the Court as the verdict of the jury.

* * * * *

(4) Whenever the verdict of the jury is not unanimous the Judge may direct the jury to retire for further consideration.

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