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6/19/65

Judgment
7/4/1966

1.

IN THE PRIVY COUNCIL

No. 10 of 1966

Record

ON APPEAL FROM THE SUPREME COURT
OF TRINIDAD AND TOBAGO

(THE COURT OF APPEAL)

BETWEEN:

RAMNATH MOHAN (Accused No.1)

- and -

DEODATH RAMNATH (Accused No.2)

Appellants

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- and -

THE QUEEN

Respondent

CASE FOR THE APPELLANTS

1. This is an appeal in forma pauperis by Special Leave of the Judicial Committee granted on the 23rd day of March, 1966, from a Judgment of the Court of Appeal of the Supreme Court of Trinidad and Tobago dated the 25th day of October 1965, whereby the said Court dismissed the Appellants' appeal against their convictions and sentences to death at the Port of Spain Assizes (Fraser J. sitting with a jury) on the 24th day of May, 1965, for the offence of murder.

pp.99-100

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pp.93-98

2. The principal questions raised in this appeal are:-

(a) whether, having regard to the fact that the prosecution case rested on the basis that the two Appellants were acting in concert or had a common purpose, the learned trial judge:-

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(i) properly directed the jury on the meaning of a common act or common purpose;

P-C 87086

G49.62

2.

Record

- (ii) properly directed the jury of the evidence necessary to justify an inference that the Appellants had a common purpose;
- (iii) was in error in failing to direct the jury of the legal position if they found that the Appellants had no common purpose, especially in view of the medical evidence that the deceased's death was due to a clot (embolus) resulting from a leg wound inflicted by one of the Appellants and not the other. 10

(b) whether the learned trial judge's directions to the jury on the issues of provocation and self-defence were adequate, and in particular

- (i) whether he directed the minds of the jury to the evidence or to inferences which might properly be drawn from the evidence tending to show that the Appellants were provoked or acted in self-defence; 20

(ii) whether he dealt with the evidence regarding provocation and self-defence separately for each of the Appellants;

(iii) whether certain concluding passages in the summing-up on the issue of self-defence virtually amounted to the withdrawal of this issue from the consideration of the jury. 30

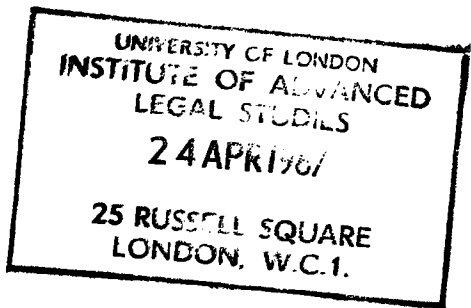
p.341.1.
p.381.43

3. The Appellants are father and son, the Second Appellant being at the time a boy of 18. It was common ground that the death was the end result of an originally trivial incident touching a boy who was, perhaps, somewhat mentally defective.

p.15 1.19

pp.36-38

The Second Appellant's evidence (which was in this respect uncontradicted) was that about 9 p.m. on the 21st September 1964, on coming out of a house he had been visiting, he met this boy, whom he knew and told him to go home. He 40



took the boy's hand, who removed it and proceeded grossly to insult the Second Appellant. At this point a principal witness for the prosecution, Deonarine Ragoobar, appeared in the scene with the deceased, who accused the Second Appellant of wringing the boy's hand. This, the Second Appellant denied.

Record

10 From this point the cases for the prosecution and the defence are contradictory, except that they agree that a brawl ensued.

4. The case for the prosecution was that the witness Deonarine and the deceased, seeing the Second Appellant wringing the boy's hand, went up to him and the deceased snatched away the boy's hand and "chucked" the Second Appellant who "chucked" him back; that Ramnath Mohan, the father of Deodath, then arrived on the scene with a cutlass while Deodath went off. Ramnath said something to the effect that he was going to cut Mootoo Sammy's back. When the deceased saw the father coming towards him with a cutlass, he immediately ran away in the direction of Ramnath Mohan's house. When he got near there, Deodath, the son, emerged from behind a pepper tree with a cutlass in his hand, whereupon the deceased turned in an endeavour to escape, but Deodath attacked him giving him a chop. While he was on the ground the father came along with a cutlass and gave him another chop. Admittedly the deceased received two wounds, on the leg and the other on the back of the chest, but the evidence as to which of the Appellants inflicted which wound is conflicting and unresolved, as is stated in detail in paragraph 16 of this Case

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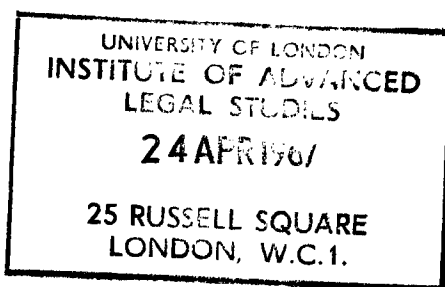
p.15 l 15 to
p.16 l 21

5. The case for the Defence was that, after the Second Appellant had denied wringing the boy's hand, the deceased verbally threatened him and, going to the deceased's car, picked up a piece of iron, and, as the Second Appellant retreated, struck him on the head. The deceased, with the said Deonarine and two others, who were armed with sticks, then chased the Second Appellant into his father's yard nearby where he took refuge under the house, and, on being further attacked

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p.37 l 30 to
p.38 l 4

- Record by the deceased, he "chopped" the deceased.
- p.34 ll.9-27 The First Appellant seeing his son bleeding and taking refuge under the house, came down-stairs, saw the deceased and others, some throwing stones, standing armed outside, and was attached by the deceased with an iron, whereupon the First Appellant picked up a cutlass lying by his house steps, and made a lash at the deceased which wounded him. The deceased fell down wounded on the pavement and as he did so, the Second Appellant gave him another wound. 10
- p.36.L.29
- p.37 L.11-19 There was evidence that the Second Appellant was detained in hospital for four days in consequence of the wound he received on the head.
- p.14.L.33 cf 6. The medical evidence disclosed that the deceased died thirteen days later, on the 4th October. Dr. Valance Massiah, who performed a post mortem on the deceased, found three incised wounds on the body. One of them was a minor wound on the finger. The other two were:- 20
- p.7 L.1
- p.7 (a) An incised wound 15 inches long on the right side of the chest which went right across the middle of the back flowing from right to left.
- p.7 L.13
- p.7 L.38 (b) An incised wound 4 inches long on the right leg.
- p.9 ll.1-31 Dr. Massiah described the cause of death as follows:-
- "Death was due to massive pulmonary embollosis. An embolus may be defined as any clot or particle of fat or particle of cancer cell that become separated from a primary site in one part of a vein or artery and is transported in the circulation. This was due to thrombus arising in the deep vein of the right leg the site of an incised wound of the right leg associated with these was a wound of the right posterior chest wall severing several ribs and cutting three with collapse of the right lower lobe of the lung. 30 40



There was no apparent injury on the front of the body. There was no wound in the axilla or arm pit extending across the front of the chest. If there had been such a wound I would have certainly have seen it.

Record

Cross-examined by Johnson:

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I would say that pulmonary embolism is an uncommon cause of death. Not unusual. It is possible that it could occur after an operation but it is regarded an unexpected tragedy. A massive embolus would cause death in a matter of minutes. i.e. from the time it occluded in the artery. The massive embolus I found was a septic clot. The wound in the process of healing became septic and inflammation was set up in the walls of the veins causing thrombosis and this propagated increasing thrombosis up the venous circuit and at some stage the thrombosis escaped from the morrings.

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Re-examination:

The embolus arose from the site of the wound in the right leg. I found thrombosis nowhere else."

By the Court

p.10 ll 4-11

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"The bone on the leg was cut through and fractured. The leg was sutured. It was not in plaster of any kind when I examined the body. There was no need to reduce the fracture and so it would not have been necessary to place the leg in plaster. It was the embolism which arose in the region of this wound that caused death."

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7. The principal witnesses for the prosecution were Deonarine Ragoobar, Robert Jacob and Nagma Sammy, who gave evidence the effect of which is summarised in paragraph 4 above. All these witnesses were closely related to the deceased in that Nagma Sammy was his mother, Deonarine his nephew-in-law and Robert Jacob's wife, Deonarine's wife and Nagma Sammy were sisters.

p.16 l.38

Record
p.28

p.101 11.
12-25

p.28 1.28

p.30 1.7

pp.102-103

8. David Jack, a Police Constable attached to the C.I.D., testified that on the evening in question he went to Ramnath Mohan's house, who made the following statement under caution - "I do not know nothing about no chopping up business you talking about. All I know is about 9 o'clock tonight Monday 21st September 1964 I see my Son Deonath running by me. I ask him what happened, and he say two fellas run him down then I see Mootoo take up three stones and pelt at my house, my son Deonarth then come back on the road and he and Mootoo start to fight and nobody part them and when everything cool down I see Mootoo bleeding and my Son did bleeding too on the head and he went away. That is all I know, I did not see nobody with cutlass." The Police Constable also testified that on the next day the 22nd September, 1964, he saw Deonath Ramnath at the General Hospital, Port-of-Spain. He said that Deonath Ramnath had a wound on his head when he saw him and that Deonath made a statement under caution as follows:-

"Last night Monday 21st September, 1964 about 9 o'clock in the night I was by Mr. Enos house at a christening and I leave Mr. Enos house and was going home and I meet a little boy like myself and I hold he hand and he said "Let go me focking hand". I lego his hands and he ran a little way off and curse me telling me to mind my mother's cont. At the same time Mr. Mootoo and Mr. Deonarine come out from by Mr. Deonarine house and Deonarine came up to me and tell me that the boy was crazy. I tell Deonarine I did not know that and Mootoo come up to me and tell me he see I wring up the boy hand and I tell Mootoo if he see I wring up the boy hand to do something for it and I was walking away when Mootoo run and pick up a piece of iron from his car and he ran me down and I went to my father's house on the Main Road and hide. After about ten minutes and I did not see any body on the road I came out and it had a pepper tree and Mootoo was inside the pepper tree and he jumped out and hit me on my head with the piece of iron and my head started to

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bleed and I see Deonarine coming with a cutlass and while I was waiting for something to go to the station to make a report Deonarine hit me on my right foot with a piece of wood and he dropped the piece of wood and rushed me with the cutlas, he made a chop at me I got away from it and the cutlass cut Mootoo on his hand and Mootoo fall down on the pavement and people pick him up and carry in by the Hospital and I stopped a car and
 10 went to the station and made a report but I did not cut Mootoo because I had no cutlass in my hand and my father was only standing on the pavement, he did not do nothing. Deonarine tell me when he was coming with the cutlass that he would cut up my mother's cont because he had that for me a long time."

9. Ramnath Mohan the First Appellant gave evidence on oath as follows:-

(In Chief)

20 "Deonath Ramnath is my son. I am 50 - 60 years. On 21st September, 1964 around 11.15 p.m. I saw a constable called David Jack. I gave him a statement. That statement was not true. I was afraid and that is why I gave him that statement. I had not hitherto been charged with acts of violence. I saw my son that day home at me. I saw my son bleeding. I was in my house and I saw him bleeding from his head. When I saw my son
 30 bleeding I heard him making noise under the house. I put on the downstairs light. When I was coming downstairs, I saw Deonarine Roodall Moonoo and Mootoo Sammy and Johnston Ramtahal. They were standing by the road. Mootoo Sammy was in front and he had an iron about as long as my arm. Deonarine had a stick I did not see Roodal with anything. Johnson Ramtahal had two stones. As I came down Mootoo Sammy walked into my yard with the
 40 iron. He rushed me with the iron and he made a lash at me. I picked up a poniard and I made a lash on him and it catch him on his foot and he ran out the yard and he went to the pavement. The balance ran also. I

p.34 11.1-28

Record

did not see my son do anything. I did not see where he went."

Answering questions by the Court he said:-

p.36 ll.30-36

"I now say that I saw my son chop Mootoo. I saw him cut Mootoo with a brushing cutlass. I cut him and then he was falling down and then my son cut him. I was afraid to show the policeman the cutlass. I never saw the cutlass after that night. I did not see Deonarine hit my son."

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10. Deodath Ramnath the Second Appellant gave evidence on oath as follows:-

p.37 L 1 to
p.38 L.6

(In Chief)

"On 22/9/64 at about 12.30 p.m. I was in Ward 3 of the General Hospital, Port of Spain. I saw P.C. David Jack and I gave him a statement. I was then suffering from a head injury. Only certain parts of the statement are true and other parts are not true. I told the police untruths because I was afraid. I was afraid that I would be arrested for chopping Mootoo Sammy so I withheld the truth and I lied. I remained in the hospital for four days. I reported to the Police on the night.

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I was sent to the D.M.O. It was Dr. Beckford. He sent me to the nurse for dressing. She did not dress my wound. We left and we went to the Port-of-Spain hospital where I remained for four days. I was treated by Dr. Hosein. He sent me to Ward 3. I was attended to by a doctor. I went for an X-Ray.

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On 21/9/64 at around 8 - 8.30 p.m. there was a christening at Davis. I live about $\frac{1}{2}$ mile from my father. I went to the christening from my house. At the christening about 8.30 - 9 p.m. I left Davis house and I was coming out. I met a little boy whom I knew. I spoke to the little

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boy and told him to come and go home. It
 was just the house people and one or two
 other persons. I held the boy's hand. I
 saw Deonarine Ragoobar. He came from his
 house. Mootoo Sammy told me what I wringing
 the boy's hand. I told him that I did not do
 so. He told me that when I drink my rum I
 does play bad John and thing and that he
 would pull me down. He left and he went to
 10 his car which was in front of Deonarine
 Ragoobar's house. Mootoo went to the car
 and picked up a piece of iron. He turned
 back and I was going and he struck me with
 the iron on the mole of my head. I saw
 Johnston Ramtahal with two sticks. I saw
 Roodal Moonoo with a stick. Also Ragoobar.
 They ran me down. I ran to my father's
 house. They followed me. My father never
 came up with a cutlass. He never said
 20 anything. When I ran in my father's yard
 they started to throw stones. I was bleeding.
 I went under my father's house. They threw
 stones on my father's house. I was bawling.
 I did not see what happen. I did chop
 Mootoo. He rush me to hit me and I chop him
 on his back. I see my father chop him. I
 do not remember who chop first whether it
 was my father or me chop first. I chop him
 under his arm. I never saw Sundar Singh.
 30 Negam was not there. Roodall leave and run."

11. Two other witnesses, Enos Davis and David Wint gave evidence for the defence.

Enos Davis testified that he heard the argument
 about the little boy. That Mootoo and Deonath started
 to argue and that Mootoo chucked Deonath. That he
 (Davis) tried to separate them and whilst doing
 so received two lashes from a bucket on his
 shoulder. He then told them he was going to leave
 when Johnston Ramtahal came with two stones. He
 40 then saw Deonath in front with Mootoo behind
 with Deonarine and Ramtahal running down the
 road.

David Wint gave evidence about the argument
 over the little boy and that there was a fight
 between Deonath, and Mootoo, Ramtahal and
 Deonarine; that he (Wint) held Deonath's hand

Record

and told him to come home but that Mootoo insisted on fighting; that at the same time he saw the father with a cutlass in his hand coming to where this thing was happening, but that the father turned back and went home. He also testified that he then saw Mootoo take a piece of iron in his hand and hit Deonath and that Ramtahal had a stick; that the three of them Mootoo, Ramtahal and Deonarine then chased Deonath and that when Mootoo ran into the yard Ramnath chopped him on his foot and Deonath gave him a lash. 10

p.2 LL 1-10
p.71 L.14
p.76 L.17

12. The prosecution case clearly rested on the basis that the two Appellants had a common purpose or were acting in concert. That being so, it is submitted that the learned trial judge should have directed the jury fully on this matter. His summing-up on this question was as follows:-

p.70 1.23
p.71 1.21

"In this case the evidence of the Crown is that this man said he would open the back. So that, from the point of view of the direction I have just given in the first part of the definition, that would be of interest to you, in that the case for the Crown is that the man Ramnath said that he was going to open the back and that he had a cutlass and that in fact he opened the back. 20

Now, it may be said that that opening of the back did not cause death, but the Doctor said that while the pulmonary thrombosis resulted from the injury to the leg, that it was accompanied by the other severe injuries to the back. Moreover, if you find that the other accused inflicted the injury to the leg, and you find, as I will in due course direct you, that these two men were engaged in a common act, then the act of the one will have to be attributed to the act of the other, because if you find that the cutting with that brushing cutlass was done with the intention to cause grievous bodily injury and that grievous bodily injury 30 40

resulted in death, then the intention to cause grievous bodily injury, for the purpose of this offence, would be malice.

Record

10 Now, I wish to add just a few words about a common act, because you may feel that though the wound which precipitated the embolism was the wound on the leg that only the person who could be said to have been responsible for that wound could be held responsible for this act. That is not the law. A killing by several persons in circumstances where it cannot be known by whose hand life was actually extinguished is murder on the part of each of the persons carrying out the common act of all and is not merely an attempt to murder. Now, if in this case you take the view - this is the Crown's case - that these two men set upon the victim, the son from in front and the father from behind, and one of them inflicted a blow which ultimately resulted in death while the other inflicted a blow which contributed to the condition which caused death, then you can find that they were both culpable and that express malice has been established."

And again:-

30 "There are always two sides to a question, and you will have to consider the case of each accused separately. What the Crown has said is that they were engaged in a common act, that they both set upon this man and hacked him to death. That is what the Crown is saying."

p.76 11.15-20

40 13. Although the learned judge made references to a "common act", he failed to direct the jury of what is necessary to make an act a "common act". It is submitted that the learned judge should have specifically directed the jury that the Appellants could only be convicted of murder if they were acting in concert or had a common purpose and that this necessitates that the criminal act was done in concert pursuant to a pre-arranged plan; and that if such common intention or purpose is

Record

to be inferred from conduct or circumstances, it must be a necessary inference.

14. It is respectfully submitted that the evidence in the present case, even of the prosecution, falls far short of showing that the Appellants were acting in concert or had a common criminal purpose.

The prosecution evidence is that after the incident concerning the boy, the father (First Appellant) arrived on the scene with a cutlass and that the son (Second Appellant) went away; that the father then chased the deceased; that on arrival at the father's house, the son emerged with a cutlass and wounded the deceased and that the father afterwards made another chop with his cutlass upon the deceased. 10

It is submitted that this evidence shows that the Appellants were acting independently and although they may have had independently similar intentions of wounding the deceased, no inference of a common purpose or concert can be drawn. Even if an inference of a common purpose could be drawn, it is submitted that it is not a necessary inference. 20

15. The learned trial judge's summing up on the issue of which wound caused the death (as shown in paragraph 12) rested on the assumption that the Appellants were engaged in a common act or had a common purpose. The learned judge failed entirely to deal with the position if the jury were not satisfied that the Appellants had acted in concert. It is respectfully submitted that the learned judge should have directed the jury that if the Appellants had no common design or were not engaged in a common act then :- 30

(a) Only the accused who inflicted the leg wound (an embolus from which, according to the medical evidence, caused the death) would be guilty of murder; and

(b) If it is not certain which of the two accused had inflicted the leg wound, both 40

accused were entitled to be acquitted.

Record

16. The evidence as to who inflicted the leg wound is conflicting and the question is entirely unresolved.

Seven prosecution witnesses claimed to have witnessed the incident or part of it, namely (1) Deonarine Ragoobar, (2) Robert Jacob, (3) Nagma Sammy, (4) Sundar Singh, (5) David Jacob, (6) Ramlal Sockhanah and (7) Roodal Noonoo. Of these

10 Number 1 speaks of wound inflicted by each of the Appellants but does not say where; Number 2 did not see any wounds inflicted; Number 3, the deceased's mother, says the Second Appellant inflicted the leg wound and that thereafter the First Appellant inflicted another wound; Number 4 says that the Second Appellant made chops at the deceased but does not say if or where they took effect, though appearing to imply that some or all did so, nor does he say anything of the First

20 Appellant making any attack upon the deceased; Number 5, though he speaks of seeing each of the Appellants with a cutlass, says nothing about either cutlass being used; Number 6 says he saw the First Appellant pursuing the deceased with a cutlass but says nothing about any wound being inflicted; Number 7 speaks of each of the Appellants making a chop at the deceased with a cutlass but only speaks of one wound without saying who inflicted it or where it was.

(1) p.16
LL.2-26, p.17
LL.34-49.
(2) pp. 18-22
(3) p.23
LL.41-44
(4) p.26
LL 11-19.

(5) p.27
LL 17-26
(6) p.29
LL 36-38

(7) p.30
LL 31-37

30 Therefore the only prosecution witness who speaks as to the site of any wound is Number 3, the deceased's mother, who says the Second Appellant inflicted the leg wound.

The defence evidence on this point was given by the Appellants and two witnesses:-

(1) The First Appellant said that, the deceased having attacked him, he lashed at the deceased and wounded him on his foot, and afterwards saw the Second Appellant wound him; (2) the Second

40 Appellant said that, being attacked by the deceased, he inflicted a wound on his back under the arm; (3) one defence witness, Enos Davis, did not speak of any wound being inflicted, and (4) the

(1) p.34
LL 23-27
p.35 LL 1-7
p.36 LL 29-32
(2) p.37 L 47
to p.38 L.4
p.38 LL 30-39
(3) p.39

Record
(4) p.40
LL.26-29
p.41
LL.16-21

other, David Wint, stated that the First Appellant chopped the deceased on the foot and the Second Appellant gave him a lash without identifying where it took effect.

It is submitted that, upon the whole evidence, it was so uncertain who inflicted the leg wound from which the embolus causing the death had detached itself, that the learned Judge should have directed the jury that they could not safely determine that question and that consequently, if the accused were not acting in concert, or with a common purpose, they were each of them entitled to be acquitted of murder.

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It is further submitted that, in the result, as the jury have not purported to determine who was the giver of the wound from which the embolus arose, therefore the conviction of neither of the Appellants can stand.

p.94
LL.8-10

17. The Appellants respectfully submit further that the Court of Appeal were in factual error in stating in their judgment that it was "the first two major wounds which occasioned his death", referring to the wound in the leg and the wound under the arm, whereas the evidence is that it was an embolus from the wound in the leg which was wholly responsible for an unexpected death.

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18. It is respectfully submitted that the evidence in this case clearly raised the defences of - (a) provocation, and (b) self defence for each of the Appellants and that it was the duty of the learned trial judge in his summing-up to the jury to deal with the evidence regarding these two matters for each of the two accused separately.

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19. On the issue of provocation the learned trial judge directed the jury as follows:-

p.72 L.44-
p.74 L.36

"What is provocation? I will deal with that at once. Provocation in law is some act or series of acts done by the deceased to the

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accused which would cause in any reasonable person, and actually caused in the accused, a sudden and temporary loss of control, rendering the accused so subject to passion as to make him for the moment not master of his mind. No provocation whatever can render homicide justifiable or even excusable; provocation may reduce the offence to manslaughter. If a man kills another suddenly without any or, indeed, without a considerable provocation malice may be implied and the homicide amount to murder, but if the provocation were great and such as must have greatly excited him, the killing is manslaughter only. So that, in order to find provocation, you must find that the accused was so incensed by what had taken place between himself and Mootoo that his subsequent conduct towards Mootoo could be said to have been the result of his having for the moment lost control of his mind.

Now, perhaps I could put the position this way. Where in a charge of murder there is evidence on which a jury can find that the person charged is provoked, whether by things done or things said or by both together, to lose his self-control, the question whether the provocation is enough to make an ordinary man do as he did should be left to the jury; and in determining that question the jury should take into account everything that was done and said according to the effect which in your opinion it would have on a reasonable man. The test to be applied is whether the provocation was sufficient to deprive a reasonable man of his self control; not whether it was sufficient to deprive of his self control the particular person charged."

The learned Judge proceeded:-

"In this case the accused" (meaning the 2nd Appellant)"says that Mootoo Sammy chucked him and he chucked back Mootoo Sammy" (which evidence was given by the principal witness for the prosecution, Deodarine, and not by this accused) "and the man Deonarine raised

Record
p.102
LL.35-41
pp.37-39

p.102
LL.26-35

p.37
LL.31-39

"a cutlass at him" (which was in the 2nd Appellant's statement to the police officer but not in his evidence) "This is what he told the Police; that Mootoo Sammy and his friends chased him, and that he was hiding and then they came there again". (The 2nd Appellant's statement to the police officer was that Mootoo Sammy chased him with a piece of iron, wounding him with it on the head; his evidence was that he was chased by Mootoo Sammy and his three named friends and that Mootoo Sammy hit him on the head with the iron, but the learned Judge here does not mention the alleged assault with the iron. Without mentioning it, he proceeded:-) "Well, if you feel that what he described was sufficient to cause a reasonable man to lose control of himself and behave in the way he did, then you can say that he was provoked and that the crime is therefore only manslaughter. But bear this in mind Mr. Foreman and members of the jury; yours is not an easy way out of the situation. I am directing you on the law of manslaughter because of certain issues which have been raised, but you should not take the view that the Judge says that if we are satisfied that the circumstances support a plea of provocation that we can reduce the offence to manslaughter, so that is the reasonable thing to do; that would be sparing the lives of the accused so let us do that. You are not permitted to do this. However simple may appear to be a solution, your oath requires you to do justice. When you are sitting in justice you have got to apply these directions which I have given you to the facts, and if having applied them you take the view that you believe in truth that this is a case of murder, then you will have to say that; if in applying them you believe that it is a case of manslaughter, then you can say it. But you cannot choose the one because it is less onerous than the

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other. If on the other hand you feel that the Crown has not satisfied you, then you will acquit the accused. But bear in mind that you cannot seek or resort to simple solutions because they are easier to adopt; that is not your function.

10 In all the cases, to reduce homicide upon provocation to manslaughter it is essential that the battery or wounding should have been inflicted immediately upon the provocation being given. If there is sufficient cooling time for passion to subside and reason to interpose, and the person so provoked afterwards kills the other, this is deliberate revenge and not in heated blood, and accordingly amounts to murder."

20. Upon the jury returning for further directions the learned trial judge directed them further as follows regarding provocation:-

20 "Now, it is the Crown's duty, as I said this morning, to establish that the act was done without provocation, and not in self defence. If you find that the act was done as a result of provocation, then malice would be negatived; there would be no malice and the offence would be manslaughter. Now, what does provocation mean? I said to you this morning what provocation means, and I will again read to you what has been said about provocation, what would amount to provocation. 30 And the evidence here is that the deceased chucked Deonath and Deonath was chased by the victim Hootoo Sammy. The accused say there was a fight. If you believe that, then you will have to fit in what you believe with what the law is. Provocation is some act or series of acts done by the deceased to the accused which would cause in any reasonable person - we are all presumed to be reasonable people - and actually causes in the accused 40 a sudden and temporary loss of self control, rendering the accused so subject to passion as to make him for the moment not master of his mind. Put another way, where on a charge of murder there is evidence on which

p.85 L.41
to
p.87 L.16

Record

the jury can find that the person charged was provoked, either by things done or by things said, or by both together to lose his self control, the question whether the provocation was enough to make a reasonable man do as he did shall be left to be determined by the jury. And in determining that question the jury shall take into account everything done and said according to the effect which in their opinion it would have on a reasonable man.

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p.15
LL.21-23

Now, according to the witnesses for the Crown, the deceased, Mootoo Sammy, chucked the man Deonath, there was some argument between them, Deonath chucked him back, and you may consider that one chuck was recompense for the other chuck. The question is whether whatever it was that Mootoo Sammy did to him by way of chucking, whether that was adequate to cause Deonath

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p.37
LL.35-38

to lose his reason temporarily. On the other hand the accused says that while they were in Roberts Trace Sammy struck this man on the head. That was what was said by the accused here. In his statement he says that he got struck on the head near his father's house. But, if you believe that this man was struck on the head at Roberts Trace with this piece of iron, then you will have to consider whether that itself may have been a sufficient act of violence to him to have caused him to lose his self control. But in these matters you cannot indulge in speculative and spurious arguments. His story is that a piece of iron was used. The Doctor says that when he examined him he found a superficial abrasion on his skull. The evidence of the Crown witness is that he inflicted that injury with a stick after the cutting. Well, those are the facts. You will have to decide what is the truth. I cannot help you about that. You are reasonable, mature adults, you will have to decide what is the truth. But if you believe that a piece of iron was used, then

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p.13
LL.24-49

p.16
LL. 12-19

that he inflicted that injury with a stick after the cutting. Well, those are the facts. You will have to decide what is the truth. I cannot help you about that. You are reasonable, mature adults, you will have to decide what is the truth. But if you believe that a piece of iron was used, then

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you will have to consider whether the use of a piece of iron on the head of a man would be adequate to cause that man to lose his judgment temporarily and cause him to be so provoked that, not at the same time but a little time after, he inflicts this injury."

Record

21. It is respectfully submitted that although the above directions correctly set out the law regarding provocation, they are insufficient in that -

(a) As regards the 2nd Appellant, Deodath, it does not sufficiently bring out the evidence relating to him which could amount to provocation. For example, there is no sufficient stress upon the evidence of the principal prosecution witness, Deonarine, that it was the deceased who started the trouble by his aggression against the 2nd Appellant i.e. "chucking" him, which chucking is confirmed by the defence witness Enos Davis, the deceased also, according to the 2nd Appellant, threatening "to pull him down" and, as he started to escape, the deceased, who had gone to his car to pick up a piece of iron, struck him upon his head with it (the wound causing his detention in hospital for 4 days) and that, after having been so struck, he was chased by the deceased and 3 others to his father's house, where he was again attacked by the deceased, which, following upon the previous actual wounding, it is submitted could have, and was like to have, resulted in a complete loss of self control resulting in the immediate reaction of "chopping" the deceased which the jury were entitled to find. It is respectfully submitted that, when directing the jury on provocation, it was necessary for the learned judge to have stated fully and correctly the case of the 1st Appellant, even though he had previously recited verbatim to the jury the whole of his evidence when directing them on self defence.

p.15. 1.21

p.39 1.28

p.37 11.33-38

cf p.40 1.22

p.37 1.11

p.37

11.40-47

p.86 1.49 to

p.87 1.2

Record
cf p.13
11.29-49

that, on examination of this injury, he found only a superficial abrasion on the skull, but the Judge did not point out that this evidence might not be reliable, considering that, in the apparently much more important matter of one of the serious wounds inflicted on the deceased (described by him as dangerous to life) he had been mistaken in his description of the wound, both the description of this wound and the wound inflicted upon the 1st Appellant, being taken from his notes.

p.14 11.1-5

p.13 11.2 &
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pp.33-36

(b) As regards the 1st Appellant, Ramnath, it fails entirely to deal with the evidence relating to him which could amount to provocation. For example, there is no reference to his own evidence that he saw his son bleeding, that he saw the deceased, Deonarine, and Ramthahal rushing into his house, with Mootoo Sammy carrying a long iron, Deonarine a stick, and Ramthahal two stones, and that the deceased Mootoo Sammy lashed at him with the piece of iron. It is respectfully submitted that the learned trial judge should have specifically directed the jury that if they accepted this evidence then it was sufficient evidence to indicate loss of self control on the part of the father.

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22. Upon the jury returning for further directions on the issue of self defence, the learned trial judge directed them as follows:-

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p. 87 1.31 -
p.89 1.11

"Now, as to self defence. Both of these accused say that when in the yard of Ramnath, Mootoo Sammy came there at some time having chased Ramnath. The man Ramnath says Mootoo Sammy fired a blow at him with this piece of iron, but he went on to say that it was after the man had turned away and was backing him that he struck out at him with a weapon which he had, which was of course a cutlass. I read to you what is self defence and I explained to you that self defence is not a creation of the law, it is a matter of instinct which is protected by the law. It is action which can make a

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10 killing excusable. Self defence renders a killing excusable in that if you find on the evidence - and I tell you that it would be very amazing to so find - if you find on the evidence that these two men were defending themselves, and that they were in fear of their death and therefore they killed this man, or injured him in such a way that death resulted ultimately, then the law says that such a killing is excusable and they would have to be acquitted. Self defence would not reduce the crime of murder to manslaughter; self defence makes a homicide excusable. But I repeat what I said, If two men fight upon a sudden quarrel and one of them after a while endeavours to avoid any further struggle, and he retreats as far as he can until at length no means of escaping his assailant remains to him, and he then turns round and kills his assailant in order to avoid destruction, this homicide is excusable as being committed in self defence, and, malice apart, it is little matter in such a case which struck the blow first at the beginning of the contest. And the same of course applies where one man attacks another and the latter without fighting flees and then turns round and kills his assailant. But in either of these cases, to show that it was homicide in self defence it must appear that the party killing had retreated, either as far as he could by reason of some wall, ditch, or other impediment, or as far as the fierceness of the assault would permit him, for the assault may have been so furious as not to allow him to move a step without manifest danger of his life or enormous bodily harm, and then in his defence, if there is no other way of saving his own life, he may kill his assailant, instantly. The distinction between this kind of homicide and manslaughter is that in the former the slayer could not otherwise escape, in the latter the slayer would not escape if he could. I explained this morning that self defence makes a homicide excusable. A person who is held to have

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Record

killed in self defence is entitled to be acquitted, but it arises where a person without any means of saving his life but to assault his assailant does so and kills his assailant. That is self defence.

What is the evidence here? If you believe the evidence of the father, well, he says that he did not see his son do anything at all, but that it was against him that Mootoo Sammy made the blow, and he struck out. The son says he did not see his father do anything at all, but it was against him that Mootoo Sammy made the blow, and after he had turned going his way he struck him on his back. Well, I said that you were reasonable people, that you were mature, that you would view your responsibility seriously and soberly. It would be amazing, to say the least of it, if one found on the evidence in this case that self-defence arose." 10 20

23. It is respectfully submitted that this direction on the evidence sufficient to raise an issue of self defence virtually amounted to withdrawing the issue from the consideration of the jury. The Appellants submit that there was in this case sufficient evidence, or inferences to be drawn from such evidence, suggesting that they were acting in self defence when they inflicted the blows on the deceased, and that the learned judge's direction "that it would be amazing to say the least of it if one found on the evidence in this case that self defence arose", amounted to a gross misdirection. Furthermore the statement by the trial judge that the father said that he did not see his son do anything at all is incorrect, because the father clearly stated in answers to the Court (as shown in paragraph 9 above) that he did see the son chop Mootoo. The trial judge's further statement that "the son says he did not see his father do anything at all", is also incorrect, since as shown in paragraph 10 above, the son clearly stated "I see my father chop him. I do not remember who chop first whether it was my father or me chop first." 30 40

24. The jury returned a unanimous verdict of guilty in respect of the two Appellants. They appealed to the Court of Appeal for Trinidad and Tobago on several grounds, but in a Judgment dated the 25th October 1965, the said Court dismissed their appeals. Except for the ground dealing with self-defence, the grounds relied upon in this case were not taken before the Court of Appeal and were consequently not dealt with in the Court of Appeal Judgment.

Record
p.89
pp.93-98

25. It is respectfully submitted that this appeal should be allowed for the following among other

R E A S O N S

1. BECAUSE the learned trial judge failed to direct the jury on the meaning of a "common act" or "common purpose" when two persons are charged with murder.
2. BECAUSE the learned trial judge failed to direct the jury that the accused could only be convicted of murder in pursuance of a common purpose or a common act if the criminal act was done in concert pursuant to a pre-arranged plan.
3. BECAUSE the learned trial judge failed to direct the jury of the evidence required to justify an inference that the two accused had a common purpose.
4. BECAUSE the learned trial judge failed to tell the jury that the evidence in this case did not justify a necessary inference that the two accused had a common purpose.
5. BECAUSE, in view of the medical evidence that the deceased's death was due to a clot (embolus) resulting from the leg wound inflicted by one of the accused and not the other, the learned trial judge should have directed the jury of the legal position if they found that the

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Record

two accused did not have a common purpose.

6. BECAUSE the learned trial judge should have directed the jury that if they found the two accused had no common purpose, then
 - (a) only the accused who inflicted the leg wound which eventually caused the death would be guilty of murder; and 10
 - (b) if it was uncertain which of the two accused had inflicted the leg wound, both accused were entitled to be acquitted.
7. BECAUSE as the jury have not purported to determine who was the giver of the leg wound, both accused are entitled to be acquitted.
8. BECAUSE the Court of Appeal were wrong in saying that it was "the first two major wounds which occasioned" the deceased's death. 20
9. BECAUSE the learned trial judge failed to direct the minds of the jury to the evidence or to inferences which might properly be drawn from the evidence tending to show that the two accused were provoked or acted in self-defence.
10. BECAUSE the learned trial judge failed to deal with the evidence regarding provocation and self-defence separately for each of the accused. 30
11. BECAUSE the learned trial judge virtually withdrew the question of self-defence from the consideration of the jury.

EUGENE COTRAN.

No. 10 of 1966

IN THE PRIVY COUNCIL

ON APPEAL FROM THE SUPREME COURT
OF TRINIDAD AND TOBAGO

(THE COURT OF APPEAL)

B E T W E E N :

RAMNATH MOHAN
(Accused No.1)

- and -

DEODATH RAMNATH
(Accused No.2) Appellants

- and -

THE QUEEN Respondent

CASE FOR THE APPELLANTS

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