

P.C. appeal no 45 of 1977

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE COURT OF APPEAL OF GRENADA

B E T W E E N :

CHARLES FERGUSON Appellant

- and -

THE QUEEN Respondent

CASE FOR THE RESPONDENT

RECORD

1. This Appeal is against conviction
10 by special leave dated the 19th December 1977.

2. The Appellant was charged on the 25th
August 1975 with the murder of Roy Donald on
the 6th April 1974 and was tried before a Judge
(Nedd J.) and a jury and was convicted and
sentenced to death on the 4th January 1975.

3. The Appellant appealed to the Court
of Appeal of Grenada against his conviction. By
his Notice and Grounds of Appeal the Appellant
claimed, inter alia, that the learned Trial
20 Judge failed to give full and/or adequate
direction to the jury on the specific intent
necessary to support a conviction for murder in
Grenada. The Court of Appeal (Maurice Davis C.J.,

St. Bernard and Peterkin J.J.A.) applied the proviso to section 41(1) of the West Indies Associated States Supreme Court (Grenada) Act 1971 and dismissed the appeal.

10 4. The facts given in evidence by the Crown were that the deceased and his wife Louise Donald, his sister-in-law Linette Rock, Angela Drakes and a small child, on the 6th April 1974 at 9.15 p.m. left the deceased's shop at La Poterie, St. Andrews to drive home to their house at River Antoine, St. Patrick. The motor vehicle used was a "pick-up" truck and the deceased was driving with the child near to him whilst the others travelled in the tray of the "pick-up". Louise Donald had a bag containing about 200 Dollars, a bank book, a cheque book, some tablets, a bunch of keys, and letters. On approaching the River 20 Antoine they observed that the bridge was blocked by three sets of stones, one set at the entrance, a second in the centre and the third at the far end of the bridge. The deceased stopped the vehicle and, leaving the headlights on went outside. The other adults except for Louise Donald also alighted and began clearing the road. Angela Drakes went to the

nearest heap, Linette Rock to the middle heap and the deceased to the end heap. Suddenly a man jumped from behind the bridge, pointed a gun at Louise Donald telling her not to move, to stay where she was and demanded "Give me all the money you made today". Louise Donald then handed over the bag and the man said "This is not all, it has more." Louise Donald said "Take the money and leave us alone." Linette Rock who observed what was taking place shouted, "Roy". The deceased looked up and started running towards his wife. The man fired a shot towards the deceased and said "Don't come any closer." The deceased kept coming with his hands in the air and shouting "Kill me if you want to kill me, kill me." The man then shot the deceased in the chest when he was about 6 to 8 feet away, fatally injuring him and then ran away.

5. A post mortem was carried out on the deceased on the 7th April 1974 by Doctor Lawrence Gibbs who gave evidence at the trial. He found a bullet wound, which had penetrated the deceased's chest just below the level of the sternum angle, had penetrated the right atrium of the heart and entered the left lung

causing a massive left haemathorax and that death was a consequence of this injury. He found a spent bullet in the left thoracic cavity and concluded that the gun had been fired at a distance of between 2 and 20 feet.

10 6. Evidence was given for the Crown by Louise Donald inter-alia that she recognised the man as the Appellant whom she knew for about five or six years and who visited her shop approximately twice a week for the last two years. She also gave evidence that the Appellant having robbed her, fired a warning shot at the deceased saying "Don't come any closer," and when the deceased continued to approach him, shot the deceased in the chest at a distance of about 6 feet and then ran away.

20 7. Both Linette Rock and Angela Drakes gave similar evidence as to the warning, the first shot and the second, fatal shot.

8. The Appellant, in an unsworn statement from the dock, put forward the defence of an alibi which was supported by the sworn evidence of Petra Joseph.

9. The learned trial Judge reviewed all the evidence most thoroughly in his

summing up, and directed the jury on the definition of murder as contained in Section 242 of the Criminal Code, Chapter 76 of the Laws of Grenada, that "who-ever intentionally causes the death of another person by any unlawful harm is guilty of murder." The learned trial Judge then further directed the jury on four occasions to the effect the intent must be to cause unlawful harm which resulted in the death of the deceased.

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10. The learned trial Judge further directed the jury on the burden of Proof, that "The Prosecution is not required to satisfy you beyond all doubt; it is required to satisfy you beyond reasonable doubt" and "If you entertain the kind of doubt which might affect the mind of a person in the conduct of important affairs, then you entertain a reasonable doubt." P.49

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11. The learned trial Judge concluded his summing up by directing the jury that "There are no circumstances to warrant a direction from me on the possibility of returning a verdict of manslaughter. You convict of murder or acquit".

12. The Appellant appealed to the Court of Appeal of Grenada. The Court considered the case of Jaganath v. The Queen 1968 11 W.I.R. P. 3115 where it was decided

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that under the laws of St. Lucia and Grenada the intent which was to be proved was an intent to cause death and not unlawful harm and it was for the jury to say whether or not when the Appellant inflicted the harm he intended to cause death. The Director of Public Prosecutions conceded that there had been a misdirection to the jury on the question of intent but submitted that there had been no injustice done. Counsel for the Appellant was asked by the Court whether, in view of the facts of the case there was room for a verdict of manslaughter and replied that on the facts, the verdict of murder was a proper one. The Court then stated that despite the misdirection of law the Appellant had suffered no injustice, applied the proviso to section 41(1) of the West Indies Associated States Supreme Court (Grenada) Act 1971 and dismissed the appeal.

13. It is submitted that on the facts, the admission made by Counsel for the Appellant before the Court of Appeal, that the only proper verdict was murder, was a proper admission to make.

14. It is further submitted that it is the duty of a trial Judge in his summing up to put the facts in relation to the law

clearly and simply before the jury and not to burden a jury with alternative defences which were not raised or could not be supported by the facts. In the instant appeal, the Appellant fired a shot and warned the deceased "Don't come any closer." When he continued to come closer, he shot him at short range. It is submitted that the real issue, which was whether or not the Appellant fired the shot, was clearly and concisely put to the jury.

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15. It is submitted that the principle established in the case of Jaganath should be limited to cases where the facts provide a reasonable alternative verdict of manslaughter on the question of intent.

16. It is further submitted that although complaint was not made by the Appellant either in the Court of Appeal or in his petition for leave, about the trial Judge's direction on the burden of proof, the said directions were full and sufficient and do not amount to a misdirection.

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17. Further it is submitted that since no miscarriage of justice occurred, the Court of Appeal properly exercised their discretion

in applying the proviso to section 41(1) of the West Indies Associated States Supreme Court (Grenada) Act 1971 and dismissed the appeal.

18. By reason of the foregoing the Respondent submits that the Appellant's conviction should be upheld and this appeal dismissed, for the following amongst other

R E A S O N S

- 10 (1) BECAUSE on the facts, the question of intent to kill need not have been left to the jury.
- (2) BECAUSE the case of Jaganath is properly to be construed as limited to the facts of that or similar cases.
- (3) BECAUSE there was no misdirection as to the burden of proof.
- 20 (4) BECAUSE no jury properly directed could have found an alternative verdict of manslaughter had it been left to them.
- (5) BECAUSE the Court of Appeal in the exercise of their discretion properly applied the proviso to section 41(1) of the West Indies Associated States Supreme Court (Grenada) Act 1971 and dismissed the appeal.

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SOLICITORS FOR THE RESPONDENT