*Privy Council Appeal No. 59 of 1986*

**Eric Joseph** *Appellant*

*v.*

**The State** *Respondent*

FROM

# THE COURT OF APPEAL OF DOMINICA

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## JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 6TH OCTOBER 1988

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*Present at the Hearing:*

LORD KEITH OF KINKEL
LORD ROSKILL
LORD TEMPLEMAN
LORD ACKNER
LORD JAUNCEY OF TULLICHETTLE

*[Delivered by **Lord Keith of Kinkel**]*

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This appeal from the Court of Appeal of the Commonwealth of Dominica purports to be presented as of right under section 106(1)(c) of the Constitution of Dominica, which provides:-

> "An appeal shall lie from decisions of the Court of Appeal to the Judicial Committee as of right in the following cases -
>
> ....
>
> (c) final decisions in any civil or criminal proceedings which involve a question as to the interpretation of this Constitution.
>
> ...."

The particular provision of the Constitution the interpretation of which is said to be involved in the proceedings is section 8(1), which is in these terms:-

> "If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law."

The appellant was charged on indictment with having murdered, while acting with others, one Edward Lancelot Honychurch on a date in 1981. His trial in the High Court before S. Singh J. and jury commenced on 12th May 1983 and on 20th May 1983 the jury returned a unanimous verdict of guilty and the appellant was sentenced to death.

The prosecution evidence was to the effect that on 12th February 1981 a group of about eight men, including the appellant, arrived at the house of the victim Honychurch carrying guns. The gang belong to a cult called the "dreads" or "rastas" and were led by one Leroy Etienne alias Pococion. The gang questioned Honychurch about the alleged killing by the police earlier that day of two members of the cult. After destroying the Honychurch house by an explosion and fire, and after the appellant had shot dead his dog and his parrot, the gang took away at gunpoint Honychurch, his wife, and two workers. They were taken to the cult's settlement at Bayline River, where Honychurch and his wife were forced to sign a letter to the Attorney General complaining about police harrassment of the cult and threatening that unless a public inquiry was held and three members of the cult (including two under sentence of death) were released from custody Honychurch and his wife would be killed. The wife and the two workers were later released with instructions to take the letter to the Attorney General. During the following night Honychurch attempted to escape. He stabbed one of his captors with a penknife, inflicting a minor injury, and ran away. Members of cult, including the appellant, pursued him and found him hiding behind a rock. Honychurch attacked one of the men with the penknife and inflicted wounds as a result of which he died soon afterwards. The appellant shot Honychurch in the head with a rifle and so killed him. According to a statement made by the appellant to a police officer, admitted in evidence after a *voir dire*, Honychurch was already weak when the appellant shot him, having been beaten about the head with guns by others of his pursuers. Later the body of Honychurch was burnt and that of the deceased member of the cult was buried. The gang then made off elsewhere by night and the appellant, bringing up the rear, fell down a precipice and seriously injured himself. He was eventually picked up on 9th March 1981.

The appellant gave evidence at the *voir dire* but not in the trial itself. He made an unsworn statement from the dock in the course of which he said that he knew nothing whatever about the killing of Honychurch.

The appellant appealed to the Court of Appeal upon six grounds (the last of which was abandoned at the

hearing) the most important of which was that the trial judge wrongly admitted in evidence as voluntary two statements made by the appellant to police officers. The other grounds related to the trial judge having allowed the indictment to be amended in the course of the trial so as to add the words "and others" after the name of the appellant in the particulars of offence, to his having allowed a further amendment, after the jury had returned its verdict, so as to alter the date of the alleged offence, and to his having failed to direct the jury correctly on a particular point in the evidence. The Court of Appeal (Sir Neville Peterkin C.J., Berridge and Robotham JJ.A.) dismissed the appeal on 24th October 1983, the court's reasons for the decision being given on 12th December 1983. It was clearly right to do so. None of the grounds of appeal had any substance whatever.

On 11th November 1983 counsel for the appellant gave notice of intention to move the Court of Appeal to grant leave to appeal to the Judicial Committee of the Privy Council against the decision of 24th October 1983 upon the five grounds argued in the Court of Appeal. On 19th September 1984, notice was given of certain additional questions which it would be sought to raise in the application for leave. These were:-

"(1) Whether or not under Section 8(1) of the Constitution of the Commonwealth of Dominica 'a fair hearing' of a case of murder requires in a trial by jury that the trial judge put to the jury the defences open to the accused on the evidence.

(2) If the answer to (1) is in the affirmative whether or not in the instant case that requirement was satisfied with particular reference to (a) self-defence (b) the defence of other persons and (c) provocation."

The Court of Appeal, on 27th September 1984 granted leave to appeal to the Judicial Committee upon the usual conditions as to surety for due prosecution and for costs and as to procuring the transmission of the record to the Privy Council.

The printed case for the appellant placed before the Board made no reference to any of the five grounds of appeal rejected by the Court of Appeal. The questions which it sought to raise were (i) whether the trial judge erred in law in omitting to direct the jury on self-defence, (ii) whether he erred in law in failing to direct the jury that it was open to them to bring in a verdict of manslaughter on the ground of provocation, and (iii) whether if both or either of those questions were

answered in the affirmative there had been a substantial miscarriage of justice so that the appellant was denied the substance of a fair trial. The printed case made no reference to section 106(1)(c) or section 8(1) of the Constitution of Dominica and contained no submissions upon the interpretation of the latter provision. The oral argument before the Board by counsel for the appellant made only passing reference to these provisions, being concerned primarily with the three questions above mentioned.

Their Lordships are clearly of opinion that both the first and the second of these questions, neither of which was raised at the trial or before the Court of Appeal, must be answered in the negative, so that the third does not arise for answer. There was no evidence whatsoever before the jury capable of supporting a finding of self-defence or one of provocation. The prosecution evidence effectively excluded both these defences. The principal witness against the appellant was Syl Maximae, another member of the cult present at the scene of the killing. Nothing which he said in evidence suggested that the appellant shot Honychurch because he believed he or anyone else was in imminent danger from him or because Honychurch's actions had caused him to lose self-control. The appellant's own statement of 26th February 1982 said that Honychurch when shot was already weak and bleeding from the head having been beaten over the head by others with their guns, and that Pococion ordered the appellant to shoot Honychurch and finish him. It is no more than a speculative possibility that the appellant might, because Honychurch in his attempts to escape his captors had stabbed two of them, in one case with fatal results, have believed that he was in imminent danger or might have been provoked into losing his self-control. There was no evidence whatever to indicate that either of these things actually happened. In the circumstances the trial judge was under no duty to direct the jury either upon self-defence or upon provocation.

This is a case where an application to the Board for special leave to appeal would undoubtedly have been dismissed on the ground that there was no room whatever for the view that a substantial miscarriage of justice might have occurred. The Court of Appeal was, however, induced to grant conditional leave to appeal on the basis that a question of construction of the Constitution was involved. The question whether a case has received a "fair hearing" within the meaning of section 8(1) of the Constitution is not a question of interpretation of that enactment. It is a question of the application of these words to the facts of the particular case. Various mistakes may arise in the course of a criminal trial.

Evidence may be wrongly admitted or rejected, or there may be a misdirection in law on a matter of some importance. The Court of Appeal exists to correct such mistakes and to do justice accordingly. In extreme cases the Board may grant special leave to appeal. The fact that some such mistake has occurred does not, however, mean that the case has not received a fair hearing. The whole process of trial, appeal to the Court of Appeal and in appropriate circumstances to this Board has the effect that the case does have a fair hearing. Section 8(1) does not have the effect that any mistake by the trial judge in the course of a trial gives an automatic appeal as of right to the Judicial Committee.

In *Frater v. The Queen* [1981] 1 W.L.R. 1468 this Board dismissed an appeal purporting to be made as of right under section 110(1) of the Constitution of Jamaica. Lord Diplock at p. 1470 expressed the opinion that while the application of the particular constitutional provision might have been in issue no question as to its interpretation properly arose. He continued:-

> "In *Harrikissoon v. The Attorney-General of Trinidad and Tobago* [1980] A.C. 265 this Board had occasion to point out the danger of allowing the value of the right to apply to the High Court for redress for contravention of his fundamental rights and freedoms which is conferred upon the individual by section 6 of the Constitution of Trinidad and Tobago (of which the corresponding section in the Constitution of Jamaica is section 25) to become debased by lack of vigilance on the part of the courts to dispose summarily of applications that are plainly frivolous or vexatious or are otherwise an abuse of process of the court. In their Lordships' view similar vigilance should be observed to see that claims made by appellants to be entitled to appeal as of right under section 110(1)(c) are not granted unless they do involve a genuinely disputable question of *interpretation* of the Constitution and not one which has merely been contrived for the purpose of obtaining leave to appeal to Her Majesty in Council as of right."

The circumstances under which the instant appeal has been presented provide an opportunity for reiterating and emphasising the need for vigilance on the part of Courts of Appeal in dealing with claims to be entitled under similar constitutional provisions to appeal as of right to this Board or to Her Majesty in Council.

Their Lordships accordingly dismiss the appeal.