~~P.C.~~
~~S.149.62~~

Judgment 24.1.1966

IN THE PRIVY COUNCIL No. 10 of 1966

ON APPEAL FROM THE SUPREME COURT OF TRINIDAD AND TOBAGO

(COURT OF APPEAL)

B E T W E E N :

RAMNATH MOHAN and DEODATH RAMNATH
Appellants

- and -

THE QUEEN ... Respondent

CASE FOR THE RESPONDENT

Record

P.99

1. This is an appeal, by special leave granted the 23rd March, 1966, from a judgment of the Court of Appeal, Trinidad and Tobago, (Wooding, C.J., McShine and Phillips, J.J.A.) dated the 25th October, 1965, which dismissed an appeal by both Appellants from their conviction and sentence in the High Court of Trinidad and Tobago (Fraser J. and a Jury) dated the 24th May, 1965, whereby the Appellants were found guilty of murdering one Mootoo Sammy and were condemned to death.

Pp.93-98

P.89

Pp.1-2

2. The Appellants had been indicted with the offence of murder in that they on the 4th day of October, 1964, in the County of Caroni murdered Mootoo Sammy.

3. The trial took place in the High Court of Justice, Trinidad and Tobago, before Fraser J. and a Jury at Port of Spain between the 17th and the 24th May, 1965.

The evidence called on behalf of the prosecution included:

Pp.5 lls.16-31
P.6 lls.1-32

(a) Dr. R. Hosein said that he had examined the deceased at 10 p.m. on 21st September 1964, at the general Hospital; on examination he

found a number of incised wounds on parts on the body caused by a sharp cutting instrument, and a compound fracture of the right leg; some of the wounds were inflicted by a moderate degree of force and some by a severe degree of force.

P. 6 to 9 (b) Dr. V. Massiah, a pathologist, had, on the 5th October 1964 performed a postmorten on the body of the deceased. There had been three incised wounds on the body: one measuring 15" across the right chest, one on the right hand, and one 4" long on the right shin, which had broken the leg bone; this latter would had caused thrombosis, which had caused a massive embollus to become lodged in the lungs, which was the cause of death.

P.15 to 16 (c) Deonarine Ragoobar said that he remembered the incident in September, 1964, between 7.30 and 8.00 p.m.; he had seen the second Appellant wringing a boy's hand while he was with Johnson and the deceased, about 15 ft. away; the three had gone up to the second Appellant and the deceased told him that the boy was cracked and not to wring his hand; the deceased had snatched away the boy's hand and said let go his hand, and had chucked the second Appellant; the second Appellant chucked him back and then rushed to a cart which was parked near by and tried to get a piece of wood; he was not successful; the first Appellant came up and asked the second Appellant what had happened, the first Appellant said "fix up them ass, don't frighten"; the first Appellant then came up with a cutlass in his hand, and when asked where he was going, said "where is Mootoo Sammy, I am going to open his back"; the deceased then started to run towards the Sourthern Main Road. The deceased had been in front with the first Appellant behind him and the witness behind them; when they came to the main road then ran southwards; the second Appellant came out from his father's yard to which he had gone after his father had come up with a cutlass; as the deceased was approaching the yard, he was

P.16 ls. running on the pavement; the second Appellant

then came out of the yard and the deceased turned back upon seeing him; the second Appellant then made a chop with a cutlass at the deceased, who received it on some part of his body and fell down on the pavement; while he was lying on the ground the first Appellant then made a chop at him; the witness picked up a piece of wood and hit the second Appellant while he was attacking the deceased; the first Appellant had then swung round with his cutlass and the witness ran off.

(d) Robert Jacob said that he was at home in his house in Robert Street on the 21st September about 8.50 p.m; having heard a noise, he looked out and saw the first Appellant going towards the noise in Robert Trace; he told him not to go down and put himself in trouble, to which the first Appellant replied "I am going to open his back"; the first Appellant had had a cutlass in his hand, holding it behind his back; he had continued down to where the noise was; a few seconds after, the witness saw several persons running along the road towards him; the first was the deceased and behind him the first Appellant with a cutlass held up about 20-25 ft. behind the deceased, and he had said as he passed "I am going to open Mootoo back tonight"; the witness had followed the men down the road to the Southern Main Road where he had seen a number of people by the first Appellant's house. He had then gone up, and seen the deceased lying on the pavement with a number of injuries.

P.18
P.18 l.33
P.19 ls.9 & 10

(e) Nagma Sammy, the mother of the deceased, had heard a noise about 8 p.m. on the 21st September near her house; she was going out along the Southern Main Road, and as she was going on her way she saw the second Appellant standing by a pepper tree on his father's property; as she got near to she saw her son running past her followed by the first Appellant with a raised cutlass in his hand; she shouted at them, and then she saw the second Appellant come out from his father's yard and strike the deceased on his foot with a cutlass, whereupon the deceased fell to the ground. The first Appellant ran up and both Appellants then started to chop the deceased,

P.23 l.16
P.23 l.33 to 49

P.24 ls.1-24

and the witness went and tried to hold the second Appellant; the deceased had tried to ward off some of the blows with a tin, and the shouting of the witness brought several people to the scene, of whom one struck the second Appellant with a stick; the others had restrained the first appellant, but the deceased had cuts on his body and was taken away to Hospital.

P.26 ls.12-25.

(f) Sunder Singh, a night watchman, had been walking in the road between 8 and 8.30 p.m. when he saw the Second Appellant make a chop with a cutlass at the deceased, who fell to the ground; the second Appellant had come from inside his father's house and had made several blows with cutlass; the first Appellant had then come with a cutlass also; the deceased had not had anything in his hand.

P.27 ls.11-26.

(g) David Jacob had seen people quarrelling in the street and had run out onto the Southern Main Road; he had seen the first Appellant with a cutlass in his hand and had taken it away from him; he then saw the second Appellant also with a cutlass coming towards him, and asked him to hand over the cutlass, to which the second Appellant replied "look how they burst me head"; he had then thrown the cutlass into his father's yard.

P.30 l.19 to P.31 l.1

(h) Roodal Moonoo said that he had been present at the argument about his boy between the second Appellant and the deceased; after the argument the second Appellant walked away towards his father's house, and the witness and the deceased left to go to the Southern Main Road; when they reached the first Appellant's house, the second Appellant chopped the deceased with a cutlass; the deceased had tried to run and the first Appellant made a chop at him also; the deceased had nothing in his hand; the witness had nearly been struck by the first Appellant with his cutlass and had called the police.

P.28 ls.10-19 P.101

(i) P.C. Jack had gone to the scene, and seen a bloodstain on the ground; the first Appellant had made a statement in which he had said that he did not know anything about

any chopping up business, and that on the 21st September he had been at home when his son had run in and said that he had been attacked, after which he had seen the deceased throw three stones at the house, whereupon, his son went out on the road and fought with the deceased; when things cooled down the deceased and his son were both bleeding, but he had not seen anybody with a cutlass. The next day the witness had taken a statement from the second Appellant, in which he said that, after an argument over a small boy, the deceased had picked up a piece of iron and chased him into his father's house; he had then come out again and the deceased had struck him on the head with a piece of iron, and the witness Deonarine had hit him on his foot with a piece of wood and attacked him with a cutlass; the witness had missed him with the cutlass, but had hit the deceased on his hand and the deceased had fallen down, and had been taken away to hospital; the second Appellant had denied cutting the deceased because neither he nor the first Appellant had had any cutlass. When the statement was taken, the second Appellant had had a head wound.

P.28 l.34

Pp.102-103

4. Both Appellants gave evidence. The first Appellant said that on the day in question he had been in his house when he had seen his son, the second Appellant, underneath the house and bleeding from his head; the deceased and other witnesses had been on the road in front of the house, and the deceased was carrying an iron about two feet long; as he came out of the house the deceased rushed at him with the iron and hit at him; the first Appellant picked up a poniard and struck him on his foot, whereupon the deceased ran out of the yard onto the pavement with the other witnesses; the second Appellant had done nothing. The Statement made by him to the police officer had not been true, as he had been afraid at the time. In answer to questions by the learned Judge, the first Appellant said that he had in fact seen his son chop the deceased with a cutlass, after he had struck him first and the deceased had fallen down. He had been afraid to show the Policeman the cutlass.

P.34 ls.9-26

P.36 ls.29-33

The second Appellant said that only part of his

P.37 ls.1-47

statement to the Police was true, because he had been afraid. He said that on the occasion in question he had met a small boy who he knew and held his hand, and the deceased had hold him not to do so and had argued with him; the deceased had then gone away to his car and picked up a piece of iron, and as the second Appellant was leaving the deceased struck him on his head with the iron; the deceased had run to his father's house and went underneath it, because the deceased and the other witnesses were throwing stones; he did chop the deceased, because the deceased rushed at him to hit him and the second

P.38 ls.1-2 Appellant chopped him on his back; he had also seen his father chop the deceased, but could not

P.38 ls.29 & 30 ls.36-38 remember who had chopped first. In cross-examination, he said he had picked up a cutlass which he had found under the house, and that he chopped the deceased after his father had hit him on the leg, upon which the deceased had run and fallen.

P.40 ls.19 & 20 David Wint, called by the Defence, said that after an argument between the deceased the second Appellant, he had seen the first Appellant with a cutlass in his hand coming to where the incident happened, but he had turned back home.

l.4 At his house the deceased had struck the second Appellant, who had been chased by the other witnesses; the deceased had run into the yard of the first Appellant's house, where the first

l.27 l.28 Appellant had struck him on the foot, and the second Appellant at the same time also struck him.

Pp.44-49 5. The learned trial Judge began his summing up by reminding the Jury what their function was in a criminal trial; he warned them not to pay any attention to outside considerations, and in particular in relation to the Institution known as the Panchait; the Jury were the sole judges of the facts, and if his summing up contained any comments upon matters of facts, they were not bound by such remarks, but were entitled to reach their own conclusions; the onus of proof was upon the Crown, and in the present case did not shift in any respect to either of the accused; the case for the Crown was that the act that resulted in the death of the deceased was an intentional cruel deliberate act done without provocation and in a situation where the deceased

was unarmed, and indeed not in an offensive position, and the accused, both with dangerous weapons, inflicted the injuries which resulted in his death. The Jury had heard the witnesses, and the learned Judge was not going to examine all the evidence in detail, although the Jury must take it all into account in reaching their verdict. P.51 ls.5 to 11

There was no real dispute over the medical testimony; death was caused by an incised wound five inches long on the upper right leg which caused a compound fracture; this had ultimately led to the embolism described by the pathologist; there had also been an incised wound on the right side of the chest approximately twelve inches deep; both these wounds were dangerous to life; death had been due to the thrombosis arising in the right leg, associated with which was the wound on the right chest; the law was that if one person inflicts an injury on another and the other dies from a cause which has its root in the injury, the person causing the injury is responsible for the death; no issue had been raised that the death of the deceased was not a direct result of the injuries which he received. The learned Judge then considered the evidence of the witnesses Deonarine, Jacob, Nagma Sammy, and that of P.C. Jack. The Jury were then directed that a man was entitled to protect his property if it was being stoned, and told that it was not the law that an owner could go and kill anybody who was throwing stones at his house. The learned judge then directed the Jury upon the definition of murder, and the matters upon which they would have to be satisfied to return such a verdict; the issue of manslaughter was raised in the present case and they must be satisfied that there had been malice to a sufficient degree required by law before returning a verdict of murder; if they believed the evidence of the witness Jacob, they were entitled to take the view that the first Appellant had expressed an intention to do grievous bodily harm at a time when he had a cutlass with him; when he struck the deceased across the back, there was at that time evidence of express malice; the learned Judge then dealt with the question of common design as follows:

P.51 1.43

P.55 ls. 1 - 5

P.55 ls.10-13

Pp.55-64 P.66 ls.23-27

P.68 ls.18-48 P.69 1.1

P.69 ls.46-49

P.70 ls.2-7

> "In this case the evidence of the Crown is that this man said he would open the back.

P.70 ls.23-48

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.

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

P.71
ls.1-23

Now I wish to add just a few words about a common act because you may feel that those wounds 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. One way of looking at this question of malice is to examine the nature of the act."

5. The learned Judge continued his summing up by directing the Jury upon implied malice and the defence of provocation; the direction that provocation was given because of certain issues which had been raised, but the Jury was not to take the view that they were bound to reduce the verdict to manslaughter by reason of provocation; if a killing had taken place in the course of fighting, it might either be murder or manslaughter, or homicide in self-defence, according to the circumstances; the defence had been made that this had been a killing in defence of personal property; there were always two sides to a question, and the Jury would have to consider the case of each accused separately; what the Crown had been saying was that the two men were engaged in a common act, that they had both set upon the deceased and hacked him to death; motive was not an essential element in murder, and should not be a subject for speculation. The learned Judge then considered the evidence of both Appellants in detail; the Jury were then directed upon the law relating to self defence, and the law relating to killing in defence of property. In conclusion, the Jury were directed that if they believed that the Crown had put before them, then their duty would seem clear, but if they were in some doubt the Crown would not have discharged its onus of proof.

P.71 ls.44-47
P.72 ls.1-11
P.74 ls. 2-10
P.74 ls.37-44
P.76 ls. 4 & 5
P.76 l.15
P.76 ls.17-29
P.76 ls.42-47 to Pp.77-79
P.80 ls.36-47 to Pp.81-84

After retiring, the Jury returned and asked for further dirctions upon self defence, manslaughter, malice express and implied, murder, and murder premeditated. The learned Judge then repeated the directions as to murder and manslaughter previously given, and further directed the Jury upon the law relating to provocation and self defence, in relation to which he said that it would be amazing if self defence arose on the evidence given in the case.

P.84 ls.23-26
P.84 l.27 - P.89 l.12

The Jury retired again and returned to give a verdict of guilty of murder against both Appellants.

P.89 l.31 and l.38

6. Both Appellants appealed to the Court of Appeal of Trinidad, and their appeals were dismissed by the Court of Appeal (Wooding, C.J., McShine and Phillips JJ.A.) by a Judgment dated the 25th October, 1965. The judgment of the Court

P.93-98

of Appeal was delivered by Wooding, C.J. in which he began by stating the case put by the prosecution on the evidence given by the prosecution witnesses; if the facts of that case had been accepted by the Jury, the learned Chief Justice continued, the Appellants were clearly guilty of murder. However a number of defences had been raised, and it had been the duty of the trial Judge to put to the Jury the law in respect of any defence which was expressly raised or which in any way had been adumbrated. The last ground of appeal had been a complaint that the learned trial Judge had withdrawn from the Jury any consideration of the submission that the case for the prosecution came about as a result of a "panchayat". There had been no evidence to suggest that any such matter had taken place, and the furthest the evidence had gone was to show that a number of Crown witnesses were related, and the only evidence upon the matter was a denial of any such event taking place.

P.94 ls.12-14

P.94 l.23 - P.95 l.23

P.95 ls.23-49
P.96 ls.1-30

Sufficient directions had been given to the Jury upon the defence of self defence, and it was not correct to suggest that that issue had been withdrawn from the Jury; such a suggestion was made on the basis of one isolated passage, which had to be read with the rest of the summing up, which showed clearly that the defence had been left to the Jury. Since the Jury had returned and asked for further directions upon the defence of self defence, and it had been admitted that such directions were not open to complaint, this ground of appeal must fail. As to the ground of appeal turning on statements attributed by the learned trial Judge to the two Appellants, the Judge had apparently been in error in attributing a statement made by one to the other; this was certainly an error, but, by itself, was far from sufficient to cause the Court to vitiate the verdict recorded against that Appellant; as regards the other Appellant, no complaint could be made. The ground of appeal put forward was that the learned trial Judge had wrongly discussed with the Jury the validity of a defence to a charge of homicide while acting in defence of property; this defence had indeed been raised, and in any event the Judge was bound to give the Jury some direction upon a defence which had been raised or which might reasonably have been raised,

P.96 ls.32-48
P.97 ls.1-27

even though it was not. It had been essential for him to deal with this defence in order that the Jury should have a clear appreciation of what had to be proved to establish it. The final ground of appeal was that certain witnesses for the Crown had an interest of their own to serve and that the Jury should have been directed that their evidence ought to be corroborated; in the view of the Court, the learned trial Judge had acted correctly in putting to the Jury that they had to determine whether the Crown witnesses were to be believed, and whether the Jury were satisfied that they had spoken the truth; if they believed them it is plain that in respect of two of them, at any rate, there would have been no interest of their own to serve; the fact that the Jury had convicted the Appellants indicates beyond doubt that they rejected the suggestions about self defence and had accepted the evidence of the prosecution in all relevant respects. Since all the grounds of appeal argued had been rejected, the appeal must be dismissed and the convictions and sentences of the Appellants affirmed.

P.97 l.28 - P.98 ls.1-37

P.98 ls.38-44

7. Both Appellants were granted special leave to appeal on the 23rd March, 1966.

P.99

8. The Respondent respectfully submits that the Judgment of the Court of Appeal of Trinidad and Tobago should be affirmed and that the appeal should be dismissed. It is submitted that the Jury were sufficiently and properly directed by the learned trial Judge in respect of all the issues which arose at the trial. In particular, it is submitted that the directions upon the defences of provocation and self defence were clearly and accurately put to the Jury, who were justified upon the evidence in rejecting such evidence as could give rise to either or both of those defences. The learned trial Judge was not obliged, having regard to the evidence in the case, to direct the minds of the Jury to all the evidence for inferences which might properly be drawn from the evidence which might reflect upon such defences, and, it is submitted, that the case of each Appellant was put separately to the Jury, and the Jury were sufficiently directed upon the need to consider each case separately, and the evidence relating to any

defence open to either Appellant. It is further submitted that it is clear from the terms of the summing up, and in particular the lengthy direction upon the law, that the learned Judge never withdrew the defence of self defence from the Jury. The learned trial Judge directed the Jury upon the question of common design, and it is respectfully submitted that the Jury were adequately directed upon the necessity of considering that before convicting either Appellant of the charge against them, they had to be satisfied that such Appellant was acting in the course of a common design to commit the offence. The direction upon common design was correct and adequate having regard to the facts of the case.

9. It is further respectfully submitted that in any event the Appellants suffered no miscarriage of justice. The broad issue at the trial was whether the evidence of the prosecution witnesses was correct, or whether the Jury ought to prefer the evidence of the Appellants and witnesses called by them. The verdict of the Jury showed quite clearly, as was found by the Court of Appeal, that they preferred the evidence given by the witnesses for the prosecution. In particular, the medical evidence showed that the deceased had received two serious injuries which were dangerous to life, and the other evidence showed that both injuries, according to the prosecution case, were received in the course of the carrying out of what could only have been a common design by the Appellants, who were father and son, to inflict at least grievous bodily harm upon the deceased. It would only have been open to the Jury to accept that the Appellants were not acting in common design if they had rejected the whole of the evidence given in the case, including that of the Appellants themselves. It is submitted that, even upon the Appellants' own evidence, the only proper inference to be drawn was that the Appellants had been acting in common design when each of them had inflicted a dangerous wound upon the deceased; it was irrelevant for this purpose which of the wounds had in fact caused the death.

10. The Respondent respectfully submits that the judgment of the Court of Appeal of Trinidad and

Tobago was correct and should be upheld, and that this appeal should be dismissed for the following (among other)

R E A S O N S

1. BECAUSE the Jury were fully and properly directed upon all the issues arising at the trial.

2. BECAUSE the issue of self defence was not withdrawn from the Jury.

10 3. BECAUSE the Jury were properly directed upon the issues of provocation and self defence.

4. BECAUSE the Jury were properly and adequately directed upon the question of the Appellants acting in concert.

5. BECAUSE in any event, the Appellants have suffered no miscarriage of justice.

MERVYN HEALD

No. 10 of 1966

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(COURT OF APPEAL)

B E T W E E N :

RAMNATH MOHAN and DEODATH RAMNATH — Appellants

- and -

THE QUEEN — Respondent

CASE FOR THE RESPONDENT

CHARLES RUSSELL & CO.,
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