

IN THE PRIVY COUNCIL

No. 34 of 1976

O N A P P E A L

FROM THE COURT OF APPEAL OF JAMAICA

B E T W E E N :

THE DIRECTOR OF PUBLIC PROSECUTIONS Appellant

- and -

FREDERICK DALEY and BURNETT McGHIE Respondents

CASE FOR THE RESPONDENT

10 1. This is an Appeal from the majority Judgment
of the Court of Appeal (Graham Perkins, Watkins
(Ag) and Zacca J.J. dissenting) dated the 15th
day of June, 1978, which having quashed the
Respondents' conviction by the Supreme Court of
Jamaica (Melville J., and a Jury) on the 8th
day of December, 1975, of the unlawful killing
of one Sidney Smith, allowed the Respondents'
20 appeal and set aside the sentence imposed upon
each of them of thirty months imprisonment at
hard labour.

Record
p. 441

2. This Appeal raises, as the principal
question, whether the learned trial Judge, in
the particular circumstances of the case, ought
to have left it to the Jury to find a verdict
of constructive manslaughter.

p. 449

3. The Respondents were indicted on the
charge that they, on the 22nd day of April, 1975,
in the Parish of Clarendon in the Island of
Jamaica, murdered Sidney Smith.

30 4. The trial took place in the Michaelmas
Session of the Supreme Court held at May Pen
between the 2nd and 8th day of December, 1975.
The prosecution called material evidence which
is summarized in the Summing-up of the trial
Judge at pages 370-412 of the Record of
Proceedings herein; the essence of the case
for the prosecution being set out in the

pp.370-412

Record

- pp.442-446
pp.446-447
- Judgment of the Court of Appeal at pages 442-446 of the Record and that of the Defence at pages 446-447 of the Record.
- pp.442-446
pp.442-446
5. In essence, the case for the Prosecution was to the effect that the Respondents having had some dispute with the deceased, stoned him to death.
- pp.446-447
6. The Defence, on the other hand, contended that the deceased was the author of his own death in that while running to obtain a weapon he tripped over some concrete and fell, fracturing his skull, and further that throughout the entire incident they did not throw a single stone. 10
- pp.445-446
7. The medical evidence lent weight to the Defence and discredited the Crown's case in that despite the allegation by one witness (Cephas Laidford) that some eight stones hit the deceased in his head, there were no external signs of injury to the head of the deceased. 20
- p. 446
8. In addition, learned Crown Counsel in opening to the Jury, had invited the Jury to the view that on the evidence to be presented it would be a case of "Murder or at least, manslaughter by provocation".
- pp.269-309
9. When it became evident after the evidence of the Doctor (see pages 269-309 of the Record) that the entire fabric of which the Prosecution's case had been woven was destroyed, Counsel for the Crown, for the first time, in his closing address to the Jury, invited them to the view that even if they disbelieved the Crown witnesses who testified that the Respondents had stoned the deceased to death, if they believed indeed that those stones which were thrown had missed and that these stones had caused the deceased to flee for his safety and tripped in the manner which the Respondents have been maintaining all along, then in those circumstances it would be open to the Jury to hold that the Respondents were guilty of constructive manslaughter (or manslaughter by flight). 30 40
10. On the 8th day of December, 1975, the Jury returned the unprecedented verdict of:-

- a. Not guilty of Murder
- b. Not Guilty of Manslaughter by Provocation pp.429-430
- c. Guilty of Manslaughter by Flight.

The Respondents were each sentenced to thirty months imprisonment at hard labour.

10 11. The Respondents applied for leave to appeal against their convictions and sentences to the Jamaica Court of Appeal (Graham Perkins, Watkins (ag.) and Zacca J.J.). After a hearing of two days, the Court of Appeal, in a Judgment dated the 15th day of June, 1976, allowed the Respondents' appeal, quashed the convictions and set aside the sentences imposed upon the Respondents. By his dissenting Judgment of the same date, Zacca J.A., stated he would have dismissed the Respondents' applications for leave to appeal. pp.438-441

20 12. Having summarised the case for the Prosecution, the Court of Appeal singled out of the eight grounds of appeal filed herein on behalf of the Respondents the "really important question raised in this appeal is whether the trial Judge ought to have left it to the Jury to find a verdict of constructive manslaughter". p. 449

30 13. The Court of Appeal Judgment also contained a discussion as to whether on an Indictment for Murder it is permissible to return a Verdict of Manslaughter save in the case of provocation or absence of intention to kill and whether the issue of manslaughter arose in the evidence as well as an examination of the line of authorities culminating in Mackie's case (1973.S7 Cr. App. Cases 453) on the question of causation in criminal cases, but as these discussions represented "obiter dicta" and formed no part of the "ratio decidendi" these "discussions" were essentially of academic interest. pp.449-454
pp.463-470

40 14. The Court of Appeal having concluded "that the trial Judge ought not to have asked the Jury to consider constructive Manslaughter for the simple reason that it was never an issue between the prosecution and the Appellants" found it unnecessary to deal with any of the grounds filed.

15. On the 12th November, 1976, the Court of

Record

Appeal (Swaby J.A., Watkins J.A., and Henry AG. J.A.) granted Final Leave to Appeal to Her Majesty in Council from the decision of the Court of Appeal of the 15th June 1976.

16. The Respondents respectfully submit that this Appeal should be dismissed; that the majority judgment of the Court of Appeal is correct and ought to be affirmed and that this appeal ought to be dismissed for the following among other

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R E A S O N S

1. BECAUSE the Respondents had completely and satisfactorily discredited the allegations preferred against them.
2. BECAUSE of the fact that the Respondents denied throwing any stones whatsoever no support for a verdict of constructive manslaughter could be derived from the defence on the vital issue of whether or not the "stone throwing" prompted the deceased's fall.
3. BECAUSE the circumstances relied on by the prosecution to secure a conviction were advanced for the first time in Crown Counsel's closing address to the Jury, the Respondents had no opportunity to challenge or answer same and were accordingly severely prejudiced thereby.
4. BECAUSE in addition to the ground of appeal relied on by the Court of Appeal the grounds of appeal to that Court as filed provided sufficient cause for reversing the Jury's decision.

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HOWARD HAMILTON

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Appellant

- and -

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Respondents

CASE FOR THE RESPONDENTS

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