

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

CrA. NO. 73 OF 2001

BETWEEN

ASHTON LEE

APPELLANT

AND

THE STATE

RESPONDENT

CORAM: Sharma, J.A.  
Jones, J.A.  
R. Nelson, J.A.

APPEARANCES:

Ms D. Seetahal appeared on behalf of the Appellant.

Ms. M. Wilson appeared on behalf of the Respondent.

DATE DELIVERED

11<sup>th</sup> April 2002.

## JUDGMENT

Delivered by Jones, J.A.:

The appellant Ashton Lee was charged with murder. On the 8<sup>th</sup> day of October 1999, he murdered Theodora Lewis also called Thora. He was found guilty by a jury at the Assizes on September 25, 2001, and sentenced to death.

The evidence at the trial from the prosecution witnesses revealed that the appellant and the deceased had a common-law relationship and lived together at San Pedro Poole in Rio Claro for some five years until some time in September 1999. In October 1999, the deceased lived at the said address with her 18-year-old son Florent Lares and his friend Julien Garcia. Around 9:30 p.m. on the 7<sup>th</sup> October 1999, one Andy Ravello was in the district when he saw the appellant whom he referred to as his cousin. The appellant told him that he wanted to speak with the deceased and that he wished Ravello to inform her of that. He continued by saying that if he did not speak with her he would damage her. However, Ravello himself regarded the statement as simply a joke.

Around 11:00 p.m. on the 7<sup>th</sup>, October 1999, Florent Lares was at home when his mother, the deceased, called out to him. He got up, opened the gate for her, and she, who was a taxi driver at the time, drove her vehicle under the house. Florent then secured the premises.

Some time around 2:30 a.m. the following morning, the 8<sup>th</sup> October, Florent Lares got up when his mother called out to him. He spoke with her and went to the living room where he observed a number of glass louveres missing. He replaced them and retired to bed thereafter. Some ten minutes afterwards he heard the deceased screaming. He went into her room, put on the lights and there he saw the appellant on top of the deceased, stabbing her several times about her body with what appeared to be a long knife. The appellant turned around, saw Lares and moved towards him. Lares got out of the way but in the encounter he suffered a small cut on the shoulder. He,

however, ran out to the back door and from there he saw the appellant coming down the front steps with a knife in his hand which appeared to have blood on it. He called out to a neighbour, his uncle, who came towards the deceased's home. They saw the appellant whom they recognised as the person who had just left the premises. Lares returned home and found his mother bleeding about her body.

The matter was reported to the police and Sergeant George and other police officers visited the scene and made observations. There was a wooden door which led to the deceased's bedroom which was broken down. The police were also given a pair of sneakers, which were found on the premises. The district medical officer visited the scene, examined the body of Theodora and pronounced her dead. A post mortem was performed by Dr. Chandu Lal who found eight injuries on the body of the deceased which he opined were inflicted by a sharp instrument. He concluded that she died from shock and hemorrhage as a result of those injuries.

On the 14<sup>th</sup> October 1999, police officer Vincent Cole and Sergeant George saw the appellant at Watts Trace in a car, told him of the report and cautioned him. Thereupon the appellant said to George, "Thora and Ann came home by me, take my clothes and burn it up and they leave me without anything and I get trip off and I done she." Sergeant George asked him who was Thora and he identified Thora as the deceased, his common-law wife.

The appellant was taken to the Rio Claro Police Station, and there the sneakers, which were found on the scene, were shown to him. He said, "Yes, those are my sneakers, I left it by the house when I stab Thora." He was again cautioned and he elected to give a statement, which he dictated the following morning in the presence of his sister, whom he requested to be present. That statement was also dictated in the presence of a Justice of the Peace.

In that statement the appellant spoke of his relationship with the deceased with whom he had lived for some eight years. He told how she had beaten him in a bar and later refused to allow him to bathe at their home. She also threw out his clothes. He left home but later returned when the deceased renewed interest in him as he began to win play whé marks. She,

however, later obtained a restraining order against him and he was subjected to harassment from the deceased's family.

On the day of the incident, the deceased had invited him to her home and although at first reluctant to go there, he eventually accompanied her to her home. He sat on the bed and they conversed for some four to five hours during which time she requested that he make love to her. He refused. She however, persisted and he got up to leave. He held on to the door handle and the door fell down. The deceased began to scream and he saw a knife in her hand. He tried to get away and he came into contact with her and she said, "Keith like I get chook". He then ran out of the house. While down the road he heard that she had died.

The statement was admitted without objection

The appellant gave evidence on his own behalf. His account was however, not identical to the statement he had given. He said that he lived with the deceased some seven or eight years and he supported her and her two children. He said the relationship deteriorated some time in September 1999, and they had started to have lots of quarrels because the deceased used to drink and lime a lot. Because of this drinking problem he had taken her to Alcoholic Anonymous. Subsequently he himself was put out of the house by the deceased.

Some time in September he saw her at a bar where he spoke to her. She, however, beat him up in the bar in the presence of his friends and later threw his clothes out. She took him to court and got a restraining order against him, putting him out of the premises. However, on the night of the incident he went looking for her. He got into the premises. He saw her and inquired of her why she had taken his clothes. He said she got on her high horse and started to speak loudly and she said she wanted him to be like a vagrant.

He said he observed that she had a knife in her hand and tried to talk to her about it. The deceased refused to put down the knife. There was a scuffle and during the course of the scuffle he tried to get the knife from her. Her son ran out. The appellant did not get the knife from her. He decided to

leave the house. As he left the house he saw the deceased's brother on the main road.

He admitted giving the police some information but he said he did not read the statement he gave to the police and he denied telling the police that he tripped off and that he had "done she". He also denied telling the police that he went to the house of the deceased and the deceased wanted him to make love and when he refused he held the door and he pulled it and the door fell. He denied, as well, telling Anthony Ravello that he wanted to speak with the deceased and if he did not he would damage her. He denied stabbing the deceased.

The appellant, through his Counsel, filed four grounds of appeal, all alleging misdirection by the learned trial judge. One ground was in respect of his directions on self-defence and the others with respect to his directions on provocation.

The first ground was that the learned trial judge misdirected the jury on self-defence when he told them that the critical ingredient before you embark on deciding on whether he was acting in self-defence is that you must find as a fact that he was attacked by Theodora Lewis.

Counsel's submission was that the trial judge ought to have raised with the jury the possibility that there could have been an honest belief on the part of the appellant that he was being attacked by the deceased and, that could be so even if, in fact, there was no such attack.

We fail to see how this question arises on the facts of this case, either from the statement of the appellant or his evidence in the witness box. The appellant recounted an atmosphere of hostility at the time he saw the deceased with a knife in her hand. To consider that the appellant could have been mistaken as to whether or not he faced an imminent attack is to fail to have regard to the context in which the events unfolded. The trial judge, however, did leave the question of honest belief with the jury later on in his summing up. He said this:

"In deciding this, judge what the accused did against the background of what he honestly believed the danger to be. Accordingly, if he honestly believed that he was being

attacked with a knife, his actions are to be judged in that light, even if you find as a fact that he was not being attacked with a knife. I will repeat that. If he honestly believed that he was being attacked with a knife, his actions are to be judged in that light, even if you find as a fact that he was not being attacked with a knife.

You should also bear in mind that a person who is defending himself, cannot be expected in the heat of the moment to weigh precisely the exact amount of defensive action which is necessary. The more serious the attack or threatened attack upon hi, the more difficult this situation will be.

If, in your judgment, the accused believed or may have believe that he had to defend himself against an attack by the deceased, and he did no more than what he honestly and instinctively thought was necessary to do so, you may think that is strong evidence that the amount of force used by him was reasonable”.

There is accordingly no merit in this ground.

Now, the other three grounds, as I indicated earlier, were in respect of the issue of provocation. The first two of those grounds we could dispose of very shortly. The first ground was that the learned trial judge erred in law in that he did not define provocation to the jury although he referred to it throughout the summing up as reducing the offence of murder to manslaughter.

While it is true that the trial judge did not recite verbatim the provisions of Section 4(b) of the Offences Against the Persons Act, Chapter 11:08, he nevertheless in his directions to the jury alluded to the matters they ought to consider when deliberating on the issue of provocation. In our view the learned trial judge dealt adequately with those matters. Failure to state that he was in the process of defining provocation did not, in any way detract from his clear directions on that issue.

The third ground is that the learned trial judge gave inadequate directions on onus of proof in relation to provocation in that he omitted to tell the jury that if they had reasonable doubt whether or not the appellant was provoked, they should resolve that doubt in his favour.

The particular passage to which Counsel referred was this:

“if you find that he was excused by reason of provocation, it would be open to you to find him guilty of the lesser alternative count of manslaughter. And if you find he was provoked and the reasonable man would have reacted in the way he did, which is to stab the deceased, if you so find the accused would be entitled to a verdict of manslaughter by reason of provocation.”

Complaint, however, was that the trial judge did not tell the jury, in effect, that if they were in doubt whether or not there was provocation, that the appellant ought to be convicted of manslaughter.

With all due respect to Counsel, we think that the trial judge did allude to what should follow if they entertained any doubt, when he said:

“I now come to give you in a formal way the directions that apply to that issue of provocation. Before you can convict this accused of murder, the Prosecution must make you sure that he was provoked to do as he did. Provocation has a special meaning in this context which I will explain to you. If the Prosecution does make you sure that he was not provoked to do as he did, he will be guilty of murder.”

The trial judge continued, and I quote:

“If, on the other hand, you conclude either that he was or that he may have been provoked, then the accused would be not guilty of murder, but guilty of the less serious offence of manslaughter.”

We think by so directing the jury the trial judge was clearly indicating to the jury that if they were sure that he was not provoked he would be guilty of murder. But, if they were not sure that he was provoked, that is if he may have been provoked, therefore they should find him guilty of manslaughter. We think, therefore, that there is no merit in this ground of appeal.

We now come to consider the substantial complaint in this matter. Ground 4 was framed in this way, “that the learned trial judge erred in dealing with the evidence of provocation of the appellant in the case in that, (a) he restricted the jury’s attention on cumulative provocation to consideration only of the taking away of his clothes and shut out the build-up which included his

being thrown out of the house, the burning of the clothes as well as the restraining order. (b) He failed to analyze to the jury the various strands of the provocative conduct at successive stages starting with being thrown out of the house and culminating in the killing.

It is clear to us from the evidence that provocation arose both on the case as presented by the prosecution and that of the defence, although the defence did not expressly put forward provocation as a defence. While it is true that the trial judge gave general directions on the issue of provocation, we think he failed to relate the general principles as he pronounced them with the evidence. For instance, when the appellant told the police officers that he lost it and he had done her, he was there indicating that he had killed the deceased but had done so in circumstances which required careful directions from the trial judge. It was incumbent, therefore, on the trial judge to have alluded to the history of the relationship between the appellant and the deceased, the humiliation, the burning of his clothes, and all those other matters contained both in his written statement to the police and his oral statements. And, he must do so in order to enable the jury to fully appreciate what his case was. Furthermore, the trial judge must then leave it to the jury to determine whether they were satisfied against that background, that the reasonable man in the person of this appellant, would have reacted as he did. The jury, in our view, got no such assistance.

In addition, the evidence of the multiple stab wounds raises the question of a frenzied attack, which might be relevant evidence of loss of self-control. The trial judge ought to have put these matters squarely for the jury's consideration. This he did not do. He ought also to have dealt separately with provocation arising on the case for the prosecution as well as the case for the defence.

There was also the judge's misunderstanding of the case as presented by the defence. Although reciting the history of the

relationship, nowhere did the applicant say that he inflicted the injuries on the deceased. The trial judge proceeded on the basis that the applicant had inflicted the injuries, which, in fact, he never said he did.

It is clear that in any summing up a trial judge ought to put squarely and clearly to the jury what the defence case is. This is so more so in a situation where provocation arises on the evidence but is not specifically relied on by the defence. In such circumstances, the learned trial judge ought to have extracted from the evidence all that could be advanced in the appellant's favour and draw the jury's attention to the matters they ought to consider in determining whether or not they should find the appellant either guilty of murder or manslaughter.

We think that the directions of the trial judge, fell woefully short of conveying to the jury precisely all the events they must consider and which culminated in the fatal stabbing on the night in question.

We think that the trial judge in a matter of this nature ought to have gone into greater detail and ought to have drawn clearly to the jury's attention what they were required to consider; the full history of the relationship between the appellant and the deceased leaving it to them to decide whether they were satisfied that this was a case of provocation reducing murder to manslaughter or other wise.

In the premises, the appellant did not have his case adequately put by the trial judge.

We have considered whether or not the proviso should be applied in a case such as this. The case for the prosecution was a strong one. The issue of provocation arose on both the prosecution and defence cases and therefore it was incumbent on the trial judge to put the matter squarely and fairly before the jury.

In considering the proviso, we have looked at the case of Confessor Valdez v the Queen Privy Council Appeal No. 70 of 2000. In that case, the Privy Council had considered the question whether provocation was raised on the evidence but there was misdirection by the trial judge, a Court of Appeal should apply the proviso. Their Lordships held that it would only be in very rare cases that a Court of Appeal would do so. We do not think this is one such case and therefore we would not apply the proviso.

We have looked at all the circumstances of this case. We think that on the evidence had there been proper directions from the learned trial judge there was a fair chance that this appellant would have received the benefit of a manslaughter verdict. The trial judge having failed to direct the jury adequately we must now consider whether there should be a retrial. We must consider whether or not a jury, on the basis of the evidence, if properly directed, would have returned a verdict of manslaughter. We cannot say for certain but we are of the firm view that there was a strong chance that a jury properly directed, might very well have arrived at the same verdict. We therefore come to the conclusion that there ought not to be a retrial. The other option open to us is that we could here substitute a verdict of manslaughter and we so order.

On the question of sentence, we have taken into account all that have been said on the appellant's behalf by his Counsel. We, however, cannot ignore the fact that a life has been taken, a life has been lost. By substituting the verdict of manslaughter we have taken into account the circumstances in which this offence was committed.

We must, however, send the message that it is not open to anyone, whatever the circumstances, to react in the way, in which this appellant had acted. We appreciate that there might have been trying circumstances, but however, we do not feel that domestic problems

should be settled in that fashion. There are other lawful and reasonable ways to deal with such matters, and no one ought to be allowed to take the law into their own hands.

Having weighed all these factors into account we come to the conclusion that the appropriate sentence in this case is one of 20 years hard labour commencing from today.

S. Sharma,  
Chief Justice.

L. Jones,  
Justice of Appeal

R. Nelson,  
Justice of Appeal.