

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

Cr.A. No. 36 of 1999

BETWEEN

PATRICK MONROE

APPELLANT

v

THE STATE

RESPONDENT

CORAM: HAMEL-SMITH, J.A..
JONES, J.A
KANGALOO, J.A.

APPEARANCES:

Miss. M. Rose for the Appellant.

Mrs. C. Brown-Antoine for the Respondent.

Delivery Date: 18th December, 2002.

JUDGMENT

Jones, J.A.

On the 25th of March 1999, Patrick Monroe, the appellant, was convicted of manslaughter and sentenced to 10 years hard labour at the San Fernando Assizes. The charge arose out of an incident at Mucurapo Street in San Fernando during which Cecil Bonas, the deceased, was fatally stabbed. The main prosecution witness was one Angela Sirjusingh, a companion of the appellant, who was present throughout the altercation.

She testified that on the day of the incident i.e. the 29th of June 1996, around 7.45 a.m. the appellant and herself came out of the appellant's apartment intending to go to a taxi stand as she was on her way to her own home. The appellant, she said, had a pouch around his neck in which he had some salt and a knife. As they walked along, they were approached by the deceased who began to quarrel and told the appellant that he was going to stab him. He then took away from the appellant a plastic bag, which contained pepper, and also a brown bag in which there was a side of sandal and threw them across the road. Presumably one of those bags had the salt and the knife. Sirjusingh said she retrieved the bag and while doing so, saw the appellant and the deceased struggling and the deceased striking the appellant's head against the ground. Bystanders separated them and while she was in the process of "calming" the appellant who was, in her view, visibly shaken, the deceased was observed to be searching on the ground for something. What it was was never revealed.

At that stage Sirjusingh saw the knife protruding from the appellant's pouch and she transferred it to the bag with the sandal. The deceased renewed his attack on the appellant, this time slapping him. The appellant responded by saying, "he can't do that to me again"; at the same time grabbing the bag with the sandal and pushing Sirjusingh to the ground. She saw the knife fall out of the bag and the appellant and the deceased "fighting" for it. She saw the appellant take hold of the knife and the deceased walked away. She did not see what immediately followed but after she got up she saw the deceased on the ground covered with blood.

We think we ought to make reference to one other bit of evidence from the prosecution, which we consider to be of some significance in light of certain directions by the trial judge. It was the evidence of Police Constable Lester McIntosh who was the first police officer on the scene. He said when he got there he saw the body of a man and that the man was holding a broken spectacles in his right hand.

The appellant after his arrest voluntarily gave a statement to the police, the contents of which he said were correct when he testified before the jury. He also gave oral evidence along the lines of the statement. The account given by the appellant both in his statement and his oral evidence are substantially similar to that given by the prosecution witness, Angela Sirjusingh.

Five (5) grounds of appeal were filed but only four were pursued. The grounds are set out hereunder.

1. The learned trial judge failed to properly direct the jury on the subjective element of self defence.

2. The learned trial judge failed to properly analyse the evidence in relation to self-defence.
3. The learned trial judge erred in law by summing up the case to the jury on the basis of involuntary manslaughter; and
4. The learned trial judge erred in law when directing the jury on intention and its relation to self-defence.”

Grounds 3 and 4 were taken together and with our leave were argued first.

From the summing up it is clear that the trial judge treated the case as one of involuntary manslaughter that is an unlawful killing without intent to kill or cause grievous bodily harm. Miss Rose for the appellant submitted that by putting the case to the jury on that basis must have caused severe prejudice to the appellant. She pointed to the evidence of Sirjusingh in which the appellant is said to have remarked, “This can’t happen to me again” after he was attacked a second time by the deceased. She submitted that those words could well have been interpreted by the jury as evidencing an intention on the part of the appellant to kill or cause grievous bodily harm. This must have meant that when the trial judge put the case on the basis of involuntary manslaughter, in which there was no requirement that the prosecution establish an intention to kill or cause grievous bodily harm, this utterance by the appellant must have influenced the jury in convicting him. As we understood Miss Rose, she was contending that the jury were forced to convict for manslaughter since they could not on the evidence acquit the appellant. Had the charge been one of murder as it should have been, she submitted, then the jury would have been told that an intention to kill or cause grievous bodily harm was not inconsistent with self-defence, which the appellant was raising.

With all due respect to counsel, while she was indeed stating a correct principle of law, we fail to see how the appellant could have been prejudiced in the circumstances of this case. Whether the case is one of voluntary manslaughter, and we agree this case was such a case, or involuntary manslaughter, as it was put by the trial judge, the defence of self-defence is open to an accused. Once the jury is properly directed on how they should treat with such a defence, no prejudice can be suffered by an accused person.

The trial judge at no time dealt with the question of intention to kill or cause grievous bodily harm. It was a concept that the jury had no directions on. Therefore it is inconceivable that they would have made anything else of the statement by the appellant – “This can’t happen to me again”, except that he intended to resist any further attacks by the deceased.

It seems to us that the only question that arises in this case is whether or not the appellant’s defence was properly put. While we agree that the application of the defence of self defence can vary depending on the facts, we do not see the case as put by the trial judge creating any prejudice.

We were referred to the case of *Julian v The Queen* 123 W.I.R.66. In that case, the prosecution had advanced three different versions as to the manner in which the virtual complainant received his wounds. This was compounded by the omission of the trial judge to review the evidence with the jury. In such circumstances, clearly the application of the defence might have been different depending on which version the jury accepted. Lewis C.J. addressed this question and stated at p. 72:

“.....the application of the law of self-defence would be different according as the jury accepted one or the other of the three versions put forward by the witnesses for the prosecution, and also different to the extent that they might have accepted the defence. In the opinion of this court this was a case in which a careful direction applying the law of self-defence to the facts as put forward by both sides was necessary. It was not sufficient just to give a theoretical discourse on the law of self-defence and leave the jury to apply it to whatever versions of the case they might find. It is also necessary to remember that an accused person is entitled to have his defence put by the judge to the jury and to have the law as it related to the defence carefully explained to them”.

There is no similarity with this case and the instant appeal. We therefore find no merit in these grounds.

We turn now to grounds 1 and 2, which again were taken together. Two issues were raised under these grounds. One, the trial judge had failed to deal with the question of the honest belief of the appellant and two, he failed to properly analyse the evidence in relation to self defence to the extent that he caused the jury to speculate.

In order to appreciate the complaint here it is necessary to rehearse briefly part of the evidence of Angela Sirjusingh. She testified that as the appellant and herself were walking towards a taxi stand, they were accosted by the deceased who started to quarrel and told the appellant that he was going to stab him. Thereupon he took away a bag that the appellant was carrying and threw it on the road. Sirjusingh retrieved the bag. In the meanwhile the deceased attacked the appellant and they fell to the ground. They were separated and the deceased began “searching on the ground”.

The knife, which the appellant had in his bag, was now showing and Sirjusingh removed it and placed it into another bag. The deceased then slapped the appellant and the appellant at that stage said, “He can’t do that to me again”. The appellant then

grabbed the bag, pushed Sirjusingh to the ground and the knife fell out of the bag. She said the appellant's hand fell on the knife and the deceased walked away. She did not see what happened immediately after but when she got up the deceased was lying on the ground covered with blood. When the police arrived the deceased was seen to be clutching a pair of broken spectacles in his hand.

There is not much difference between this account given by Sirjusingh and that given by the appellant in his statement to the police and his testimony in Court. If anything he filled the gap left by Sirjusingh between the time the appellant's hand "fell" on the knife and the deceased was seen lying on the ground. The appellant in his statement to the police stated that when the deceased and himself started to fight, the knife fell from a hole in the pouch. He took it up and 'stab him' with the knife on the left side of his chest. In his evidence in Court he said that the deceased got stabbed while they were struggling. He said he couldn't recall if the deceased was wearing spectacles when he stabbed him. He knew that the deceased wore spectacles and when he stabbed him they were struggling for the knife.

The trial judge directed the jury in these terms:

"You would also recall her saying that he was on the ground searching for something. It is open to you, was he searching for the knife? Or do you accept the evidence of Officer McIntosh who said when he reached on the scene and saw the body; Cecil Bonas was clutching a pair of broken spectacles in his hand. And it is not disputed that he used to wear spectacles.

So you have to look at the evidence, how did the spectacles get in his hand? He was clutching it and holding on to it. It is open to you to ask yourselves, when he was searching the ground – man wearing glasses – was he looking for those spectacles, and were those the spectacles he was holding? All these are open to you.

What does acting in lawful self-defence mean? The law is, a person only acts in lawful self-defence, if, in all the circumstances, he believes it is necessary for him to defend himself, and the amount of force which he uses in doing so is reasonable. So there are two questions for you to answer. Did the accused believe, or may he honestly have believed that it was necessary to defend himself in the way he did?"

Later, he said:

“So if the Prosecution has made you sure that the accused did not stab Cecil Bonas in the belief that it was necessary to defend himself, then self-defence simply does not arise in this case and he is guilty. But if you decide that he was or may have been acting in the belief, then you must go to answer the second question. So the first is: If the Prosecution has made you sure, and they have negated self-defence, that the accused did not stab him in the belief that it was necessary to defend himself, then self-defence does not arise. But if you decide that he may have been acting in that belief, then you go to the second question. Taking the circumstances as the accused believed them to be, was the amount of force, which he used, reasonable? The law is, that force used in self-defence is unreasonable and unlawful if it is out of proportion to the nature of the attack, or if it is in excess of what is really required of the accused to defend himself.”

He continued:

“In deciding this, you must judge what the accused did against the background of what he honestly believed the danger to be. It is open to you to ask yourselves the question: In those circumstances what did he honestly believe the danger was in order to inflict the stabs?”

He further said:

“The Defence, on the other hand, has raised the issue of self-defence. They don't have to prove it, the Prosecution has to negative it. And what he has said is, “This man slapped me, and having slapped me, fought with me. While we were on the ground he was trying to get the knife. My hand fell on it, I stabbed him and then I fired a few more, the knife may have broke”. So therefore he is saying, in other words, if you accept what he says, bearing in mind all the circumstances that there was a struggle for the knife and he got it first and he decided to use it because if Bonas had gotten it, Bonas might have used it. Then he is acting reasonably. It is open to you to find that. But if, on the other hand, in the circumstances you are saying that Bonas had his glasses in his hand, and if, as the accused said, Bonas was on top of him, how come he got that stab in the area as indicated in the post mortem report”.

Miss Rose's complaint was directed at the first passage we have quoted of the judge's summing up. She contended that the trial judge had caused the jury to speculate by his suggesting that they might find that when the deceased was searching on the ground, he was not searching for the knife but for his spectacles, which were found in his hand. She submitted that even if it was open to the jury to so find then it

was incumbent on the trial judge to tell them that they must view the situation in the way the appellant perceived it to be. In other words they ought to have been told that they ought to consider whether the appellant honestly believed that the deceased was searching for the knife and defended himself in those circumstances even if he was in fact searching for his glasses. Once the appellant honestly believed that to be the case then he would have acted reasonably regardless of how unreasonable his belief was.

In our view such a direction will only be required if there is evidence that there was some mistaken perception of a situation being different from what it actually was. There was absolutely no basis upon which the trial judge could have invited the jury to find that the deceased might have been searching for his spectacles, instead of the knife. The prosecution's case as well as the defence was that the deceased and the appellant were scrambling for the knife which had fallen to the ground. There was no evidence that the deceased was at any time searching for his spectacles.

Sirjusingh had testified that she had seen the deceased searching on the ground but that was sometime before the final attack on the appellant. There was no evidence as to what that search was about. The trial judge, however, fell into error by improperly linking this earlier search with the evidence of the police that the deceased was clutching a pair of broken spectacles when his body was viewed. That was to the appellant's detriment.

The appellant was entitled to the benefit of even an unreasonable belief that he was under attack once he held that belief honestly. The only question therefore was whether or not the force used by the appellant was reasonable in the circumstances, as he believed them to be. By the trial judge directing the jury that it was open to them to find that the deceased was searching for his spectacles when he was stabbed, the jury were in effect being asked to find that the appellant used unreasonable force or, far worse, he was in no danger and therefore not acting in self-defence. That this was what

the trial judge intended to convey is borne out by his comments when passing sentence on the appellant. He said of the jury:

“They therefore have accepted the evidence that Sirjusingh attempted to calm you down but you said, “You cah do this to me again,” and thereafter that particular period the force used was excessive because it is quite clear in the evidence and they may have found that, that Bonas had his glasses in his hand.”

We think there has been a miscarriage of justice. In the premises we quash the conviction. In view of the fact that the prosecution’s case was supported almost to the letter by what the defence had contended we see no basis for ordering a retrial in this matter. The appeal is accordingly allowed and we order the appellant to be released from custody forthwith.

R. Hamel-Smith,
Justice of Appeal.

L. Jones,
Justice of Appeal.

W. Kangaloo,
Justice of Appeal.