Judgment
18/1964

IN THE PRIVY COUNCIL No.36 of 1963

ON APPEAL

FROM THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

B E T W E E N :

RAMDEO BUCKETT Appellant

- and -

THE QUEEN Respondent

CASE for the APPELLANT

Record:

1. This is an Appeal in forma pauperis from a Judgment of the Court of Appeal of Trinidad and Tobago, dated the 14th day of June, 1963, dismissing the Appellant's appeal against a Conviction of Murder and sentence of Death in the High Court of Justice, Port of Spain Assizes, on the 22nd day of April, 1963. p.69 p.63

2. The learned trial Judge (Fraser J.) expressly withdrew from the jury the question of manslaughter, and directed them that this was "a case of murder, unqualified, unadulterated murder". The Appellant submits that in so doing the learned trial Judge mis-directed the jury both in law and upon the facts, and that the jury ought to have been given the alternative of bringing in a verdict of manslaughter. The principal question which arises for consideration upon this appeal is whether that submission is right. p.57, l.39.

3. The Appellant was tried upon an Indictment charging him with the murder, on the 9th day of June, 1962, at San Juan, in the County of St. George, of Harry Persad Chotoo. He pleaded Not Guilty. p.1 p.2, l.11.

4. The case against the Appellant rested principally upon the evidence of one Sarraijah Chotoo, the widow of the deceased. She stated

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inter alia as follows (referring to the Appellant as "the accused") :-

p.3, l.6. "On 9/6/62 about 7.30 p.m. I was at home. My husband Harry Persad was at home with me. My son Ishall also lives in that house. My son is also called "Sweeto". "Sweeto" was not at home that night.

Between 7 and 7.30 p.m. my husband was sitting at the dining table where we take dinner. My son has a bedroom in the house and my husband was sitting near to my son's bedroom. I was sitting on a chair in the drawing room. While there I heard a noise outside. I had electric lights in my house. The lights were burning at the time. When I heard the calling at the front steps. I answered. The voice called "Sweeto". I answered. When I heard the call I got up and I was standing by the louvres. When I looked through the Louvres I saw that it was the accused calling. The accused asked me "Where Sweeto". When the accused was speaking to me he had his left hand to his forehead, (witness demonstrates). I could not see his right hand. "..... 10 20

p.3, l.34 "I told the accused that Sweeto was not there. The accused asked me where Sweeto gone. I told him that I did not know. The accused told me that he had a message from Barataria. I told him that if he had a message from Barataria he must move his hand so that I could see his face better. The accused removed his hand and I saw his face better. After the accused moved his hand. He said, "You want me to move my hand" and from the time he move his hand he shot at the louvres in my son's bedroom. When I watch I did not see my husband at the table. As I pass to go to the kitchen I saw my husband in my son's bedroom lying bleeding. I saw the accused shoot. I saw the gun and I heard a big explosion. I did not see the accused again that night."..... 30 40

Cross-examined

p.4, l.39. "No one was present beside myself and my husband when I heard a voice calling "Sweeto". "...

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"When I left to go to the louvres my husband was sitting at the table. He did not come to look through the louvres with me. I did not know when he removed from the table. I did not know when he went into my son's room. I was talking to the person through the louvres in the drawing room. My husband got shot through the louvres in my son's bedroom which is a different room altogether. I do not know if he looked through the louvres. When I heard the explosion I did not know where my husband was." p.7, l.9

The deceased was found to have multiple puncture wounds on his face, left eye, front of the neck and chest. The cause of death was shock and haemorrhage as a result of injuries to the brain caused by a pellet. p.8, l.4.

5. There was no evidence that the Appellant knew, when he fired the gun, that the deceased (or anyone) was in the bedroom. The situation of the bedroom is described in the Judgment of the Court of Appeal as follows:-

".....this particular bedroom being more or less at right angles to the far end of the drawing room through the louvred windows on the side of which (Sarraijah Chotoo) was speaking." p.73, l.21.

An Inspector of Police, who went to the house after the shooting, described the part of the house in which the bedroom was situated as "the northern wing of the house". p.16, l.34. p.18, l.9.

6. The Appellant submits that upon the evidence, and in particular having regard to the absence of any evidence that he knew that anyone was in the bedroom, the jury (if the question of manslaughter had been left to them) might well have taken the view that he may have fired the gun in order to frighten Sarraijiah Chotoo, or possibly out of pique, or for some other reason not involving the malice necessary to constitute murder, and therefore might have brought in a verdict of manslaughter. The learned trial Judge, however, did not invite the attention of the jury to this aspect of the evidence.

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pp.79,80. pp.4-33. 7. The Appellant, in written statements made to the police before the trial, had put forward the defence of an alibi, and much of the evidence at the trial was directed solely to the question of identification. The Appellant made an unsworn statement from the dock, in which he adhered to his defence of an alibi, and called no evidence.

p.35. pp.35-37. pp.37-38. pp.57-59. 8. The learned trial Judge, in his Summing-up directed the jury generally as to their function, and gave appropriate directions as to the burden and the standard of proof, then reviewed at length the evidence relating to the question of identification, and finally proceeded to direct the jury as to the meaning of murder and on the evidence relative thereto.

9. The directions relative to murder included the following two passages :-

p.57, l.35. (A)" "Unlawfully killed": Every unlawful killing is not murder. An unlawful killing may be murder or it may be manslaughter. In this case the question of manslaughter does not arise at all. This is a case of murder, unqualified, unadulterated murder. This is a case of that kind and the killing in this case is an unlawful killing for it cannot be justified by law. A legally justified killing occurs where, perhaps, the killing takes place in war or where officially a man has carried out his duty. Well, that is justifiable killing. Although, perhaps, if a person kills in self-defence, one might say that that is an excuse. That does not arise here. So, there is no excuse or justification for the killing which the Crown alleges took place. So you may find that it is an unlawful killing." ...."

p.58, l.37. (B)" "With malice aforethought either expressed or implied": "Aforethought" here does not mean premeditation. You do not have to prove that this murder was premeditated in order to establish aforethought; nor have you got to prove motive. Express malice does not arise in this case because there is no suggestion that the accused had ever at any time expressed some desire or intention

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of killing. So that, it would be implied malice. What the Crown is saying is that this is a case of implied malice aforethought. Now, what is implied malice? Where a person, without provocation, and not in self-defence, does an act deliberately and intentionally, an act which is cruel and which is likely to cause death, and in doing that it does in fact cause death, then that act is an act from which malice may be implied. As I say, it may be implied from a deliberate and cruel act committed by one person against another.

What is the evidence in this case: that the person is alleged to have fired a gun which in its explosion injured Harry Persad Chotoo and the injury to the brain caused his death. Such an act is one which the law treats as capable of implying malice; bearing in mind that you may well find, and I do not think you have any alternative but to find that the act which caused death satisfies that definition. That is not a finding that the accused did it. Once you are satisfied that the act was a deliberate act, then there was implied malice in it, and you would be quite justified in saying that the deceased was murdered; and I am directing you that there is no other finding that you can make but that the act in this case was deliberately and intentionally performed without provocation."

10. It is submitted that the direction contained in the first of the said two passages, viz. that it was not open to the jury to bring in a verdict of manslaughter, and that murder was the only form of unlawful killing which they were to consider, was a misdirection; and that it appears to be founded upon, and bound up with, misdirections in relation to the question of implied malice which are contained in the second of the said two passages. As regards the latter, the Appellant submits as follows:-

(i) that it was a misdescription and a misdirection to suggest that the firing of the gun by the Appellant was "an act which is cruel and which is likely to cause death", p.58, ll.30 et seq.

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and (as such) "an act done deliberately and intentionally", and as "a deliberate and cruel act committed by one person against another." The use of those phrases closed the door to any consideration of the significance of the fact that there was no evidence that the Appellant knew that there was anyone in the bedroom.

p.58, l.40 (ii) That it was a misdirection to say that the gun "in its explosion" injured the deceased. The fatal injuries were caused by a pellet fired from the gun, which penetrated into the bedroom, and struck the deceased. Although the "explosion", i.e. the firing, of the gun may have been deliberate it does not necessarily follow that it was fired with an intention constituting the malice aforethought which is a necessary ingredient in murder.

p.59, l.1.4 et seq. (iii) That the words "and I am directing you that there is no other finding that you can make but that the act in this case was deliberately and intentionally performed without provocation", in their context, amounted to a positive direction that the jury must find implied malice. The question of the intent (if any) with which the gun was fired was therefore effectively removed from the jury's consideration.

In substance, therefore, the effect of those two passages in the summing-up was (it is submitted) that the jury were directed that, if they were satisfied that the Appellant was the person who fired the gun, they must find him guilty of murder.

p.63, l.1. 11. The jury returned after over two hours' retirement and intimated that they had not agreed upon a unanimous verdict. The learned p.63, l.17. trial Judge requested them to retire again in order to seek to arrive at a verdict. After a further retirement of over an hour, the jury brought in a verdict of Guilty.

p.65. 12. The Grounds of Appeal complained of misdirection, based upon the passages in the summing-up which are set out above, in paragraph 9 hereof.

13. The judgment of the Court of Appeal (Wooding, C.J., Hyatali and Phillips, J.J.) rejected the contention that the learned trial Judge ought to have left to the jury the alternative of bringing in a verdict of manslaughter. It is submitted, however, that in giving their reasons for rejecting this contention, the Court of Appeal raised and gave consideration to questions of fact (including inferences) relating to the intention of the Appellant which are precisely the questions, or the kind of questions, that it was within the province of the jury to consider, but which they were never given an opportunity to consider. The relevant passages in the Judgment of the Court of Appeal are the following :-

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p.69.
p.74, 1.46.

> "In the view we take, this is not a case where there can be any question of seeking to frighten the wife of the deceased man at all. What purpose there would be in seeking to frighten her is not discoverable from the evidence since she was making a simple inquiry in answer to his request that she deliver a message to her son when he came in. Her inquiry was solely to ascertain who the person was who was seeking to deliver this message. There was nothing to provoke or to excite a desire to frighten or anything of that kind. Also, as I have said, the gun had been previously loaded. Further, the house, as I have said, stands some distance off the ground which means that this loaded gun was deliberately pointed at the louvred windows of this bedroom and indicates clearly the desire on the part of the Appellant to shoot, at least, at and through that window. Now the significance is that that window was a window to a bedroom, and it happened also to be the bedroom of the son for whom he was asking. This incident happened, moreover, at night, between 7 and 7.30 on what is said to have been a dark night, although there were very bright lights outside the house which enabled this woman to see who the man was as he removed his left hand from covering his face. In these circumstances, it seems impossible to come to any conclusion but that the reasonable and normal human being, if he thought about the matter at all, would have considered that the natural and probable result of shooting at the bedroom window with its louvres

p.73, 1.33

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would be the likelihood of causing death to some person who was or might be expected to be in that room at the time. We would point out also, although this must not be taken to be the ground on which we base our decision, that the husband of the woman who had been speaking to this man had been in the dining room at the time when the conversation began and must, therefore, have moved from the dining room to the bedroom almost immediately before the gun was fired. It may very well be, and, indeed, it is most likely that the jury would have come to the conclusion if they had been asked to consider the point specifically, that the man outside saw that somebody had entered the bedroom and consequently shot at him. But, as I say, we do not wish to base our decision on that ground because there is no evidence that he did see the person enter the room. It is merely an inference which it was open to the jury to draw. But we do say that when a man with a loaded gun shoots at the louvred windows of a bedroom in a dwellinghouse at night, at a time when it was reasonable to expect that there would be somebody in that bedroom, then there can be no question whatever, if somebody there gets shot as a result, that it is a case of murder rather than of manslaughter. That being so, we hold it was not necessary for the trial judge to go into the distinction between murder and manslaughter. "

. . . . . .

p.75, l.36

"Now in the present case before us here the circumstances and the nature of the Appellant's acts were these: that he went to these premises with this loaded gun and there is nothing whatever to suggest that when he fired that gun he was seeking to frighten anybody; that he pointed it at the louvred windows of a dwellinghouse at night - not merely of a dwellinghouse but of a bedroom in the dwellinghouse - and, therefore, the common-sense presumption, as we see it is that he would have considered, looking at the matter objectively as the ordinary normal and reasonable man, that

the natural and probable result of so doing was that somebody in that bedroom would have been killed or grievously harmed." Record

14. In those passages, the Court of Appeal appears to assume that the Appellant must have expected, when he fired the shot, that there was someone in the bedroom. On the evidence, such an assumption (it is submitted) is entirely unwarranted. Indeed, this fact assumed by the Court of Appeal relates to the vital question of intention which the Appellant submits ought to have been left to the jury. p.74, l.38. p.76, l.2.

15. The Court of Appeal also appears to assume that the Appellant was aware of the fact that the room into which the shot was fired was a bedroom, a fact which the Court described as being of "significance". It is submitted that there was no evidence to warrant the assumption of any such knowledge on the part of the Appellant. p.74, l.2. p.74, l.40. p.75, l.44.

16. The Court of Appeal, in the first of the passages quoted above, expressed a view as to what "the reasonable and normal human being" would have considered "the natural and probable result" of shooting at the bedroom window. The Appellant respectfully submits both that the view expressed by the Court of Appeal is erroneous, having regard to the evidence, and that (in any event) such a question is one which it is peculiarly within the province of a jury to decide, and one which therefore ought to have been left to the jury, assuming that it was proper, as a matter of law, to raise this question in the present case. p.74, l.13.

17. The Appellant further submits that, even if the question of implied malice had been left to the jury, as he submits it ought to have been, the relevant question for the jury would not have been merely what the "reasonable and normal human being" would have considered to be "the natural and probable result" of the shooting, but what the Appellant's actual intention was.

18. The Court of Appeal also referred to the Director of Public Prosecutions v. Smith (1961) A.C. 290 in their Judgment. It is submitted that, upon any view of the effect of that p.75.

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authority, it provides no support for the decision arrived at in the said Judgment.

19. The Appellant submits that by his said conviction and sentence and by the said Judgment of the Court of Appeal he has suffered a substantial and grave injustice.

20. Special leave to appeal to their Majesty in Council was granted on the 23rd day of October, 1963.

21. The Appellant respectfully submits that his said Appeal should be allowed with Costs and his conviction and sentence quashed, for the following, amongst other,

R E A S O N S

(1) BECAUSE the learned trial Judge ought to have directed the jury in such a way as to leave to them the alternative of bringing in a verdict of manslaughter against the Appellant.

(2) BECAUSE the learned trial Judge misdirected the jury in withdrawing from them the question of manslaughter and directing them (in substance) that the only form of unlawful killing which it was open to them to consider was murder.

(3) BECAUSE the learned trial Judge misdirected the jury on the question of implied malice, having regard to the evidence in the case.

(4) BECAUSE the substance of the directions on the evidence was that if the jury were satisfied that the Appellant was the person who fired the gun, they must find him guilty of Murder; and that was a misdirection.

(5) BECAUSE there was no evidence that the Appellant knew, when he fired the gun, that either the deceased or anyone-else was in the bedroom.

(6) BECAUSE there was no evidence that the

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Appellant knew that the room into which the shot went was a bedroom; or that he knew that it was Sweeto's bedroom.

(7) BECAUSE the Court of Appeal purported to decide questions of fact, relative to the issue of the Appellant's intention, which ought to have been left to the jury.

(8) BECAUSE the Court of Appeal erred in assuming that the Appellant must have expected, when he fired the gun, that there was someone in the bedroom.

(9) BECAUSE the Court of Appeal erred in assuming that the Appellant was aware of the fact that the room into which the shot was fired was a bedroom.

(10) BECAUSE the Court of Appeal erred in the view which it took as to what "the reasonable and normal human being" would have considered "the natural and probable result" of the shooting.

(11) BECAUSE the test of "the reasonable man" (assuming that it was proper to apply that test in this case) ought properly to have been applied by the jury and not by the Court of Appeal.

(12) BECAUSE the Court of Appeal erred in law in the manner in which it applied or sought to apply the test of "the reasonable man".

(13) BECAUSE in relation to the issue of implied malice, the relevant question was what the Appellant's actual intention was.

(14) BECAUSE the question of the Appellant's actual intention ought to have been left to the jury.

(15) BECAUSE Director of Public Prosecutions v. Smith (1961) A.C.290 provides no support for the decision arrived at by the Court of Appeal.

(16) BECAUSE in all the circumstances and in the light of the evidence the Appellant's Conviction ought to be quashed.

RALPH MILLNER.

No.36 of 1963

IN THE PRIVY COUNCIL

ON APPEAL FROM THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

BETWEEN:

RAMDEO BUCKETT — Appellant.

- and -

THE QUEEN — Respondent.

CASE FOR THE APPELLANT

T.L.WILSON & CO.,
6, Westminster Palace Gardens,
London,
S.W.1.
Solicitors for the Appellant.