

SAINT VINCENT AND THE GRENADINES

IN THE COURT OF APPEAL

CRIMINAL APPEAL NO: 13 of 1993

BETWEEN:

MARK LAMMY

APPELLANT

AND

THE QUEEN

RESPONDENT

Before: The Rt. Hon. Sir Vincent Floissac - Chief Justice
The Honourable Mr. Justice N.J.O. Liverpool J.A.
The Honourable Mr. Justice S. Singh J.A.

Appearances: Mr. Adrian Saunders with Mr. Stephen Huggins for the Appellant
Mr. Donald G. Browne Senior Crown Counsel for the Respondent

1993: December 7

The Appellant was convicted of the murder of Roslyn Shallow and was sentenced to death. He has appealed against his conviction on various grounds. The only ground worthy of consideration is ground three, which reads as follows:

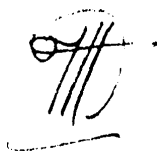
"The learned Trial Judge misdirected the jury in failing properly to direct them on the law relating to provocation, in that the jury must have been left with the erroneous impression as a result of the learned Judge's directions to them, that they were not to take into account as elements of provocation all the evidence adduced as to what had transpired between the time when the Accused left his home with the knife and the time of the fatal injury to the deceased."

It was submitted by counsel for the Appellant and conceded by counsel for the Crown that in directing the jury on the issue of provocation the learned Trial Judge confined the possible acts of provocation to the meeting between the Appellant, the deceased and Marcus Bailey. In so doing, the learned Judge impliedly and improperly withdrew

from the jury possible acts of provocation after that meeting. These acts include the struggle between the Appellant and the deceased and the allegation by the Appellant that the deceased attempted to grab his testicles.

There is no certainty that the jury, if properly directed on the issue of provocation, would inevitably have returned the same verdict of guilty of murder. A substantial miscarriage of justice has therefore occurred as a result of this misdirection.

For this reason, acting under section 41(2) of the Eastern Caribbean Supreme Court (Saint Vincent and the Grenadines) Act (Cap 18), we substitute a verdict of manslaughter and sentence the Appellant to life imprisonment.



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Sir Vincent Floissac
Chief Justice

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N.J.O. Liverpool
Justice of Appeal



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Satrohan Singh
Justice of Appeal