

GRENADA

IN THE COURT OF APPEAL

CRIMINAL APPEAL NO.20 OF 1990

BETWEEN: ' WILSON SEPTEMBER - Appellant

and

THE QUEEN - Respondent.

Before: The Rt. Hon. Sir Vincent Floissac - Chief Justice
The Hon. Dr. Nicholas J.O. Liverpool - Justice of Appeal
The Hon. Mr. Satrohan Singh - Justice of Appeal

Appearances: Mrs. C. Edwards for the Appellant
Mr. K.H.W. Friday (D.P.P.) for the Respondent

1993: November 8, 9

JUDGMENT

SIR VINCENT FLOISSAC, C.J.

On 13th December 1990, after a trial by jury presided over by St. Paul J., the appellant was convicted of murder of Ricky "Charlo" George and was sentenced to death. He has appealed against his conviction and sentence. This Court is now required to determine the appeal without the benefit of a transcript of the trial judge's summing up to the jury. We are told that the transcript is not available.

Counsel for the appellant has assured us and the Director of Public Prosecutions does not deny that the trial judge failed to direct the jury that in the light of the evidence, it was open to them to return one of three verdicts. The first was a verdict of murder if they were sure beyond reasonable doubt that the appellant caused the death of the deceased by unlawful harm and that the appellant intended to kill the deceased. The second was a verdict of manslaughter if they were sure beyond reasonable doubt that

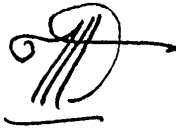
although the appellant did not intend to kill the deceased, the appellant nevertheless caused the death of the deceased by unlawful harm. The third was a verdict of acquittal if they were not sure beyond reasonable doubt that the fatal harm inflicted by the appellant on the deceased was unlawful in view of their answer to the question whether the harm was justifiable on the ground that it was necessary for the prevention of or for the defence of the appellant or any other person against murder, manslaughter, robbery, burglary, house-breaking or any of the other crimes specified in the Section 62(4) of the Criminal Code.

As a result of this non-direction amounting to a misdirection of the jury, the appeal should be allowed unless we can invoke the proviso to Section 41(1) of the Supreme Court Act No. 17 of 1971 and should thereby dismiss the appeal on the ground that we consider that no substantial miscarriage of justice has actually occurred. In this regard, I feel sure that the jury (acting reasonably and properly) would have acquitted the appellant of murder, had they been properly directed. From the evidence adduced, they would have had great difficulty in inferring an intent to kill. They would have returned a verdict of manslaughter or would have acquitted the appellant altogether.

I would therefore allow the appeal. I would quash the conviction and order a new trial on the lesser alternative charge of manslaughter. I would do so because it is in the interests of the public, the prosecution and the appellant that the guilt or innocence of the appellant of the offence of manslaughter should be determined finally by a verdict of a jury.

I heed the advice of the Privy Council in *Au Pui-kuen v Attorney-General of Hong Kong* [1979] 1 AER 769, where Lord Diplock said (at p772):

"If a new trial is to be ordered it is often the case that in the interests of justice at the first trial, the less said by the Court of Appeal, the better."



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SIR VINCENT FLOISSAC
Chief Justice

I concur.

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NICHOLAS J. O. LIVERPOOL
Justice of Appeal

I concur.

Satrohan Singh.....
SATROHAN SINGH
Justice of Appeal