

GRENADA

IN THE COURT OF APPEAL

CRIMINAL APPEAL NO. 1 OF 1992

BETWEEN:

LEROY PASSEE

Appellant

and

THE QUEEN

Respondent

Before: The Rt. Hon. Sir Vincent Floissac - Chief Justice
The Honourable Mr. Justice Byron - Justice of Appeal
The Honourable Mr. Justice Singh - Justice of Appeal

Appearances: Mr. Lloyd Noel for the Appellant
Miss Velma Hylton Q.C., D.P.P. for the Respondent

1992: July 8, 9;
November 9th.

JUDGMENT

SATROHAN SINGH, J.A.

In *R. v GALBRAITH* (1981) 2 All E.R. 1060 at page 1062, Lord Lane, in giving guidelines to be followed by a trial judge on a submission of no case to answer, prescribed that where the Crown's evidence is such that its strength or weakness depends on the view to be taken of a witness' reliability, or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there is evidence on which a jury could properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury.

On an indictment for the offence of murder, the appellant was on March 11, 1992 convicted by a jury before St. Paul J. of the offence of manslaughter and on March 16, 1992 sentenced to imprisonment for four years. At the close of the case for the prosecution at the trial, because of the obvious unreliability of a prosecution witness, Glenroy Passee, a submission of no case to answer was made by Mr. Lloyd Noel on behalf of the appellant on the

principles set out in *R. v GALBRAITH*. His submission was overruled by St. Paul J. This is an appeal from that conviction and sentence and the first ground of appeal argued by Counsel for the appellant challenges this ruling of the learned Judge.

The case for the prosecution rested mainly on two alleged eye witnesses, Glenroy Passee and Joseph Noel and to a lesser extent on a statement made by the appellant under caution. Glenroy Passee's evidence was so discredited as a result of cross-examination that it became manifestly unreliable and if it stood alone, no reasonable tribunal could have safely convicted on it. This is conceded by the Director of Public Prosecutions Miss Hylton, Q.C. Joseph Noel's evidence however, which was to some extent supported by the statement of the appellant under caution, was evidence where, upon one possible view of the facts, a jury could have come to the conclusion that the appellant was guilty.

Counsel for the appellant argued that Joseph Noel's evidence should have suffered the same fate as Glenroy Passee. I do not agree. I do not find unreliability in this witness' testimony as contended by learned Counsel. His evidence in examination-in-chief was not contradictory within that examination or with his evidence in cross-examination. What the cross-examination did was to elaborate on his evidence in examination-in-chief and establish facts upon which the defence of self-defence was grounded. The main thrust of his evidence throughout his testimony was that the deceased was killed as a result of knife wound inflicted on his throat by the appellant. His evidence introduced and left the issue of self-defence for the consideration of the Jury. I also do not agree with the submission of Counsel that as a result of the taint on the Crown's case because of the unreliability of Glenroy Passee's evidence that the learned trial Judge should have withdrawn the case from the Jury. A jury in deliberating, can accept the evidence of one witness and reject that of another witness, it can also accept part of witness' testimony and reject

another part.

In February, 1962 Lord Parker C.J. issued the following practice note [1962] 1 All E.R. 448: -

"A submission that there is no case to go to a jury may properly be made and upheld:

- (a) Where there has been no evidence to prove an essential element in the alleged offence.
- (b) Where the evidence adduced by the prosecution has been so discredited as a result of cross-examination or is so manifestly unreliable that no reason-able tribunal could safely convict on it."

In 1977 Lord Widgery in *R. v BARKER* (1977) 65 CAR 287 at p.288 said: -

"It cannot be too clearly stated that a judge's obligation to stop the case is an obligation which is concerned primarily with those cases where the necessary minimum evidence to establish the facts of the crime has not been called. It is not the judge's job to weigh the evidence, decide who is telling the truth and stop the case merely because he thinks the witness is lying. To do so is to usurp the functions of the jury."

Putting aside the evidence of Glenroy Passee, the remaining evidence left with the Crown on the material issue, was the evidence of Joseph Noel and the caution statement of the accused. The jury thereby had the necessary "minimum" evidence sufficient to establish the facts of the crime and it cannot be said that this evidence was manifestly unreliable.

Applying the aforementioned principles enunciated by Lord Lane in *R. v GALBRAITH* to these circumstances, I find no merit in this argument and this ground of appeal must fail.

Counsel for the appellant then challenged the trial Judge's direction to the jury on the matters of intent and provocation. I find consideration of these matters irrelevant to this appeal, these matters being germane to the offence of murder, the offence of which the appellant was acquitted. I also find no misdirection by the trial Judge on the issue of manslaughter.

The fourth ground of appeal argued by learned Counsel was that the trial Judge failed to give any sufficient direction to the jury on the issue of accident. I do not find any such direction necessary, the evidence not disclosing the existence of any such defence. The main thrust of the defence as can be gleaned from the evidence is one of self-defence. As I understand Counsel's argument, the accident to which he refers is the death of Kester Peters; the result of the appellant's action in allegedly defending himself and nothing else. Consequently, the determination of the issue of self-defence would determine whether or not the deceased was killed accidentally. In any event, the trial Judge, without elaborating, did leave the issue of accident for consideration of the jury. This ground fails.

Learned Counsel then argued that the trial Judge failed to direct the jury on the appellant's defence of self-defence. A perusal of the learned trial Judge's summing-up shows these directions to the jury on this issue:

"While on self-defence, I tell you it is an essential element of the offence of murder that the killing was done by unlawful harm and the accused person intended to cause the death of the deceased. And the law is: -

'A person has the right to protect or defend himself from physical attack and if necessary he can inflict violence on his attacker in so doing, but he must use no more force than is necessary to defend himself from his attacker. If he uses no more force than is necessary in the circumstances,

the force used is not unlawful, and no crime is committed. I repeat, a person attacked has the right to defend himself from his attacker, but he should use no more force than is necessary. If you find the force used was no more than necessary, then he has committed no crime. If you come to the conclusion that the accused Leroy Passee honestly believed or may have believed that force was necessary to protect himself or any other person for that matter, in that case Paul Passee, then the Prosecution would have failed to prove the case and you must return a verdict of not guilty. I repeat. If you come to the conclusion that the accused Leroy Passee honestly believed or may have believed that force was necessary to protect himself or any other person for that matter, in this case Paul Passee, then the Prosecution would have failed to prove the case and must return a verdict of not guilty. You see, if a person is attacked and he honestly believed his life was in danger, he may kill his assailant in defending himself or defending any other person who he honestly believed life was in danger. It is always the duty of the Crown, that is the Prosecution, to disprove self-defence if raised as an issue. Once self-defence is raised as an issue, the duty is on the Crown to disprove that. To show it does not apply. It cannot hold water. It cannot be right. It is not true. The Crown must disprove that. If they fail to do so, then you must return a verdict of not guilty. Moreover, if you find the accused was acting in self-defence, but used more force than was necessary, he is guilty of manslaughter. Listen carefully. If you find the accused was acting in self-defence, but you find he may have used more

force than was necessary, he will be guilty of manslaughter. If a person is attacked and he honestly believes that his life is in danger, he does not have to wait and see what is going to happen. He can make a pre-emptive strike. He can hit before he is hit.' This is the law."

I find these directions fair and adequate and this ground fails.

During his summing up to the Jury, the trial Judge gave these directions to the jury: -

"If you are left in reasonable doubt of the guilt of the Accused for the offence of murder, you must acquit them of murder. I repeat, if you are left in reasonable doubt of the guilt of the Accused for the offence of murder, you must acquit them of murder. If you are left in reasonable doubt of the guilt of the Accused for the offence of manslaughter, here again you must also acquit them of manslaughter. If you are left in reasonable doubt as to whether the offence was murder or manslaughter, you may convict of manslaughter....."

As regards the last two lines, Counsel for the appellant contends that the Judge here directed the jury that they must convict for manslaughter. I do not agree. What the trial Judge was doing here was to direct the jury on the possible different verdicts they could return as their deliberations progressed in the event of their finding themselves in a reasonable doubt at different stages of their deliberations.

Having found no merit in these grounds of appeal, I can find nothing to support the final ground of appeal argued by learned Counsel for the appellant that the verdict was unsafe and unsatisfactory. This was a case of the deceased and the appellant

being involved in an altercation with the deceased being the aggressor attacking the appellant's brother and breaking a bottle on his shoulder. The appellant's defence was that he intervened to save his brother and in the conflict that ensued he was forced to use a knife he had in his possession to avoid being injured by the deceased who had the broken bottle with him. The doctor found death to be caused from a wound in the neck of the deceased and the evidence is pellucid that the wound was caused by the appellant with the said knife. As earlier stated, the learned trial Judge gave proper directions to the jury on all issues relevant to the offence of manslaughter of which the appellant was convicted, the jury had all the evidence for their consideration and they returned with a guilty verdict. I can see no legal or justifiable reason to interfere with the verdict.

For these reasons I would dismiss this appeal and affirm the conviction and the sentence, Counsel for the appellant not providing this Court with any material upon which interference with the sentence could be considered.

(Signed) S.SINGH

 SATROHAN SINGH
 Justice of Appeal

I concur.

(Signed)

 SIR VINCENT FLOISSAC
 Chief Justice

I concur.

(Signed) C.M.D.BYRON

 C. M. D. BYRON
 Justice of Appeal