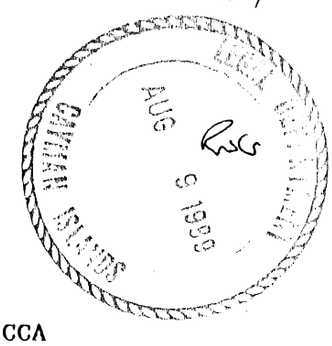
D/S



IN THE CAYMAN ISLANDS COURT OF APPEAL

HOLDEN AT GEORGE TOWN, GRAND CAYMAN

C.I.C.A. NO. 48/88

BEFORE: THE HON. PRESIDENT, MR. JUSTICE ZACCA
THE HON. MR. JUSTICE GEORGES, J.A.
THE HON. MR. JUSTICE HENRY, J.A.

GEORGE ORILEAH SHANNON vs REGINA

The Appellant in Person

Mr. Sheehan for the Crown

Thursday, 13th April and Monday, 7th August, 1989

J U D G M E N T

The appellant was charged with having raped Kathy Jean Christy at the Beach Club Colony on 7th August, 1988. He was convicted and sentenced to a term of 4½ years imprisonment.

Mrs. Christy was on that day a guest of the hotel. The appellant had gone to the hotel to meet a friend. While waiting for the friend he had a drink and walked around the gardens and public areas. In the course of doing this he met Mrs. Christy. She says he spoke to her first and he says she spoke first. This contact led to their going together to Periwinkle where they had dinner for which he paid.

After dinner he suggested a walk. She preferred to return to the hotel. He stated that he had held her hand at the table while having dinner and that as they walked out after dinner, he put his arm around her. She denies this. She agrees that he did ask her to

grabbed his hand and stabbed him in his chest. After she stabbed him, the cutlass fell from his hand and they struggled and fell on the bed. She was on top of him. He was calling out for his uncle. She put her hand on his mouth. He bit her thumb and caught her round the back of the neck. She didn't have a chance to get away and "kept juking him with the knife" trying to get him to let go her neck, until she felt his hand release from round her neck.

Two friends of the Appellant gave evidence for the Prosecution of independent admissions by the Appellant to them that she had killed the deceased. In neither account did the Appellant mention a machete ot suggest that the killing was in self defence, although she said that the deceased had made an indecent proposition to her and, when she refused he had boxed her whereupon she pushed him and flung a knife at him hitting him in the stomach. The body of the deceased bore 12 stab wounds, some of them superficial but three of which penetrated the heart, the pleural cavity and the liver respectively.

The learned trial judge rejected the defence of self defence. The principal ground of appeal is that he was in error in so doing having regard to his findings:

(i) The deceased made sexual advanced to the Appellant in her bedroom on the night in question;

(ii) The Deceased was wearing his underclothes at the time;

(iii) The deceased started the fight attacking the Appellant with a machete;

(iv) That the Appellant did not appear to be a patently obvious liar.

The learned trial judge correctly approached the issue of self defence on the basis of Beckford v R (1987) 3 All ER 426

that the test was a subjective one and a person could use such force in the defence of himself or another as was reasonable in the circumstances as he honestly believed them to be. He expressed himself as not believing "that the defendant thought she was in danger of bodily injury from Connolly". He was clearly influenced by evidence from a prosecution witness Mrs. Dawes of an occasion on which the deceased had lifted a cutlass to her and put it down when she raised a hand. The learned trial judge observed that "Mrs. Dawes had obviously not taken the old man's earlier threat of herself seriously and she was a slighter and older man than the defendant". The deceased, a man of 72, was described as "a small man. He wasn't heavy. He had a stomach problem. He was physically not frail. Looks wiry. Walked brisk". There was, however, evidence that the deceased was "hardly ever sober" and that "when drunk he was a violent man". There was no evidence as to his condition or as to the circumstances in which he lifted a cutlass to Mrs. Dawes, nor was there evidence that the Appellant knew of the incident. Once the learned trial judge accepted that the deceased started the fight armed with a cutlass and concluded that "the truth of the matter was probably not far removed at all from her account" it is difficult to see how he could refer to the subsequent struggle as the Appellant persisting in her attack". The Appellant was, on those findings by the learned trial judge, alone at night facing a man, albeit far older and apparently frailer than she, armed with a cutlass which he appeared to be about to use to attack her. We do not consider that there was sufficient other evidence to refute her evidence indicating her apprehension or to justify the conclusion

of the learned trial judge that the Appellant did not think she was in danger of bodily injury from the deceased. If she did believe she was in danger of bodily injury she would have been justified in using in self defence such means as were at her disposal and which were reasonable in the circumstances. She did not go in search of a knife. One was to hand when the deceased attacked her. Its use to repel an attack with a cutlass would have been reasonable in the circumstances. Even if it could be said that, after the machete fell from the deceased, the Appellant was not justified in continuing to use the knife to inflict so many stab wounds, the first stab to the chest which she inflicted would clearly have been in self defence and may well have been the one which ultimately caused death. For these reasons we were of the view that the plea of self defence ought to have succeeded and we allowed the appeal.