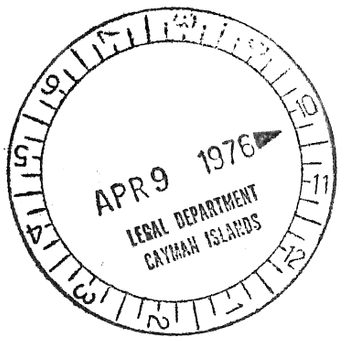
JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL No. 57/1975

BEFORE: The Hon. Mr. Justice Hercules, J.A.(Presiding).
The Hon. Mr. Justice Robinson, J.A.
The Hon. Mr. Justice Watkins, J.A.(ag.).

REGINA v. ELIJAH BECKFORD



Mr. Granville James for Crown.

Dr. Adolph Edwards for Applicant.

November 6, 1975
December 5, 1975

HERCULES, J.A.:

The Court refused this application and indicated that the reasons would be put in writing. The reasons follow.

Applicant was convicted on 9th May, 1975, of murder before Parnell J. and a jury in the Hanover Circuit Court. He was found guilty of the murder of Melvin Beckford in the village of Georgia on 27th December, 1974.

A Crown witness, Marcia Beckford, gave evidence that in the month of June she saw Applicant pass her gate and remarked that her (Marcia's) father "want to kill because he is a police informer." Applicant himself in a statement to the Police indicated bad blood between himself and members of the Georgia community.

Marcia's evidence was that on the material night she saw her father in his bed clothes. Then during the night she heard a knock and a voice saying "Lord God me dead now". Her father was not in his room. Then she saw fire under the house which she put out. She left the house and went towards her grandmother's house. On the way she saw Applicant with a machete. She threw a bottle at Applicant because he looked cross. Applicant smiled and walked away. After this Marcia was told something by Vincent Clarke as a result of which she went to a spot about 10 chains from her home where she saw her father lying dead in his night clothes.

Vincent Clarke heard Melvin Beckford's voice during the night calling out "Murder, Murder". Clarke looked out and saw Applicant with a machete running after Melvin. Melvin ran for some distance and dropped. Applicant was over Melvin and Clarke called out "Rasta man why you chopping the man like that". Applicant made no answer, but went towards Melvin's house. Then Clarke saw fire under Melvin's house. Clarke now proceeded to the spot where Melvin lay and found he was dead.

Another witness, Donald Brown supported Clarke's evidence substantially. Also there was Special Constable Kistner who testified that Applicant voluntarily came to the Police post with a machete about 11.45 p.m. and reported: "I kill a man and I come to give up myself because I don't want to give anyone any worries." Applicant also gave a statement to Corporal Stanley.

Dr. Watson found some 14 wounds on Melvin Beckford's body. Death was caused by shock resulting from multiple fractures and loss of blood due to haemorrhage from the multiple wounds.

Applicant made an unsworn statement from the dock. There he stated that he would abide by the cautioned statement he gave the Police. It is necessary to quote from the record (page 42) what took place when Applicant made his statement from the dock since Dr. Edwards used this as a ground of complaint:

STATEMENT FROM THE DOCK BY ACCUSED ELIGIHA BECKFORD

"I agree to the statement that I give Corporal Stanley, and it was from provocation from a long time of the man. Now, just because when he came on to molest me and threaten me, just because I don't have no one around, he made an attempt to kill I, and I reported it to the police and I ask them to come and make peace and I don't get no one to make peace and after I go home back I see this man come with his machete. After I go home I was in my cultivation and then I hear a stumbling, then I see this man coming up with the machete in his hand and he went inside I hut and take out a bottle from his pocket and begin to sprinkle all over the bed where I was .....

HIS LORDSHIP: If this is the same thing that he has in the statement already, because if it is the same thing, we have it already, so perhaps you could advise him.

DEFENCE COUNSEL: Thank you, m'lud.

A. Is the provocation that came and burn down I hut that cause I to lose I temper and because I don't have anything I have to - he burnt down I hut ...

HIS LORDSHIP: He burnt down your hut?

A. Yes, sir, because I don't have anybody around. Yes, sir, that is all.

DEFENCE COUNSEL: That closes the case for the defence, m'lud."

Dr. Edwards' ground on this matter reads as follows:-

"5. The Appellant was prevented from completing his unsworn statement and accordingly the jury were deprived of hearing it. In the circumstances the jury were not able to properly assess the statement and give it whatever value they thought fit."

From the record we do not see how it can be urged that Applicant was prevented from completing his unsworn statement. Applicant was represented by an Attorney and it was always open to either or both of them to insist on repeating all of what emerged from the cautioned statement given to the Police. This however was not done. Dr. Edwards' point was that if Applicant had repeated the statement himself his demeanour in so doing might have impressed the jury. But what could be the value of any demeanour in a statement not open to the test of cross-examination?

Dr. Edwards argued that ground first, because, as he said, he thought it was his strongest ground. We however found no merit in it, - especially as the evidence on the whole was quite overwhelming.

Ground 4 complained that the defence of self-defence was withdrawn from the jury. We are entirely in agreement with the learned trial judge on that course. The basis of our agreement is to be found at page 74 of the record in the cautioned statement Applicant gave the Police:-

"Then he came outside with his machete and take a light from his pocket and the hut which I was living was tatch and bamboo and draw the light and caught the tatch a fire. So after there and I see him doing that I couldn't stand it anymore. I bawl him out and then he ran towards the direction to his home and then I chased him to the direction to his home. He got inside and locked up and then I was in wrath because I have nowhere to live and then I suddenly formed something around like bamboo and trash and caught his house. Set on fire. Then he open the door and come outside with his machete in his hand and then I was standing near by

> to the fire. Then he try and make a chop after I. His hand bounce on a post of the verandah and the machete drop and then I made a chop after him and it caught him, then he jumped outside and then is there the battle start. He tried to find something to throw it on me and then I chopped again and then he began run and then I chased him to a distance where he drop and then I give him some more chop and stop. Because the reason why I was in fear of him I afraid of him because he want to kill I."

On his own showing Applicant did more than what was reasonably necessary. His conduct ran counter to the criteria laid down in the well-known and much-canvassed case of Sigismund Palmer. See Palmer v. R. (1971) 16 W.I.R. 499 - in particular page 510. Ground 4 therefore failed.

Ground 3 complained "that the learned trial judge failed to give the jury adequate directions on the law of provocation." There was no substance in this complaint, since on pages 63, 64 and 65, can be found abundant and fair directions on the issue of provocation. We consider it unnecessary to reproduce those directions.

Finally, grounds 1 and 2 were as follows:-

> "1. That the evidence of Marcia Beckford that the Appellant had said in June, 1974 that the deceased "want to kill, because he is a police informer" was prejudicial and its prejudicial effect was disproportionate to its probative value.
> 2. That the learned trial judge ought to have given clear and precise directions as to how those said words should be treated."

Those matters are dealt with at pages 45/46 as follows:-

> "Now, a man who is not a mad man does not attack another intending to kill him unless there is a reason for it. What you call in Law a motive. A gunman going along the street may suspect that the man walking behind has hundreds of Dollars on him. He attacks him, shoots him, or stabs him, but the object there is to rob him, to get the money. So that is the motive. Another man attacks another because he has it against him for a long time. You call it revenge. Another man attacks for jealousy, a man interfering with his wife or girlfriend. So when you have a very serious offence like Murder, the jury generally look to see whether there is anything in the case to suggest a reason or motive for the act alleged against the accused.

Now in this case you have evidence from one prosecution witness and there is evidence from the statement which the accused voluntarily gave to the police, and remember that was not challenged at all; as a matter of fact the officer was not asked one question in cross-examination and the accused in his statement told you that he abided by it. In that statement there is something in it which would also show the motive.

Now we have from the witness Marcia Beckford, the fourteen year old daughter of the deceased that from some time in June of last year she heard the accused say something; the accused was passing her gate and he used words that her father want to kill because he is a police informer. That was from June, and then we have from the statement given by the accused that the people in Georgia area had it up against him, had it up for him. That statement which was read to you yesterday and which I shall analyse with you later on; so it would be on a case where he had issued threats as to why this man should be killed because he is a police informer. Alongside that the statement which he gave to the police that the deceased had been threatening him and the people don't like him, and the people were as it were brutalizing him. So was this a revenge killing? A man avenging himself, decides to call it a day and to move with one of them because this is the history that we have?"

In an overall view of the case, the history of the relations of Applicant with his fellow villagers, was germane to the culminating incident of 27th December, 1974. Accordingly, it was not prejudicial to introduce in evidence the remark made to Marcia Beckford in June. In our view the learned trial judge dealt with the matter fairly and clearly. In the result we refused the application for leave to appeal.