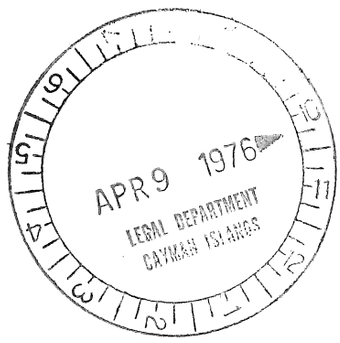
JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL No. 52/1975

BEFORE: The Hon. Mr. Justice Luckhoo, P.(Ag.).
The Hon. Mr. Justice Hercules, J.A.
The Hon. Mr. Justice Watkins, J.A.(Ag.).

R. v. DAVID CHAMBERLAIN




Granville James for Crown.

Sylvester C. Morris for Applicant.

3rd December, 1975

HERCULES, J.A.:

This Applicant was convicted of murder before Lopez J. and a jury in the St. James Circuit Court on 14th April, 1975.

The evidence was that Applicant lived in a garage at Barrett Hall property, St. James. On 12th October, 1974, Applicant missed 5 bags of pimento from the garage. Next day, 13th October, 1974, in the presence of two witnesses, he inflicted several chops with a machete about the head and body of Joseph McLean, suspecting that McLean had stolen his pimento. Dr. Elizabeth Kenton testified that the cause of death was severe injuries from blows by a sharp instrument with the use of considerable force.

The defence in an unsworn statement from the dock was an alibi. It is not surprising that, with the overwhelming evidence of the Crown, the jury rejected the alibi.

The summing-up of the learned trial judge was quite painstaking and even generous to the Applicant. For instance, on the evidence, we think it was totally unnecessary to have left to the jury the question of Manslaughter on the grounds of provocation and of lack of intent to kill or to do grievous bodily harm. Yet this is precisely what the learned trial judge did.

Indeed, Mr. Morris conceded that the learned trial judge was rather generous to the Applicant. But the complaint was however that the learned trial judge expressed strong opinions on the facts in a manner

that the jury could only have concluded that the opinions expressed by the learned trial judge, adverse to the Applicant, were the opinions they should adopt.

We do not agree with Mr. Morris' contention. It seemed clear that the learned trial judge was of the view that the Crown had made out a case, but at divers points in his summing-up, he kept reminding the jury that the facts were entirely for them to decide.

Therefore we do not consider there is any merit in Mr. Morris' submission and have no hesitation in refusing the application for leave to appeal.