

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL No. 110/74

BEFORE: The Hon. Mr. Justice Luckhoo, Ag. P.
The Hon. Mr. Justice Robinson, J.A.
The Hon. Mr. Justice Zacca, J.A.(ag.).

R. v. ANDREL VASSELL

E. Blake for the applicant.

C. Orr Q.C. and M. Jackson for Crown.

December 4, 5, 1974

ZACCA, J.A.(ag.):

On December 5, 1974 we refused this application for leave to appeal. The Court promised to put its reasons therefor in writing which it now does.

The applicant was convicted and sentenced to death on May 16, 1974 in the Home Circuit Court, Kingston, on an Indictment charging him with having on October 26, 1969 murdered Sidnal Wright.

On the prosecution's case, the deceased received thirteen wounds inflicted with a knife by the applicant. The case for the defence was that these wounds were inflicted by the deceased's brother in the course of an attack upon the applicant. The medical evidence was to the effect that the combined effect of the thirteen injuries resulted in shock and haemorrhage which caused the death of the deceased.

The applicant and one Eloise Thompson lived together as man and wife from 1964 until 1967 when they parted. They, however, resumed living together but parted once more in December 1968. Eloise Thompson, in October 1969, occupied a room at 37 Rousseau Road. She lived there with her three children which included a girl named Andrea, the applicant being the father of this child. In October 1969 the deceased also lived at 37 Rousseau Road in a room across a passage from Miss Thompson's room. After parting the applicant and Miss Thompson remained on intimate terms. Eloise Thompson admitted in evidence that she was on intimate terms with the deceased. The applicant continued visiting Miss Thompson and the

children at 37 Rousseau Road. In his evidence the applicant denied any knowledge of the relationship between the deceased and Eloise Thompson. He however, knew that the deceased lived in a room opposite that of Eloise Thompson.

The main witness for the prosecution was Eulalee Powell. She deponed that she also lived at 37 Rousseau Road along with her children. She denied that she was on intimate relations with the deceased although she cooked for the deceased up to two days prior to his death. Eloise Thompson commenced cooking for the deceased. Mrs. Powell said that on Saturday October 25 the applicant visited the premises at some time between 2 p.m. and 3 p.m. The deceased was in his room and Eloise Thompson was at that time taking dinner to the deceased. The applicant told her (Mrs. Powell) that he did not like the association between the deceased and Eloise Thompson. She said that she falsely told the applicant that she had cooked the food but as she did not wish her husband to know this she had asked Eloise Thompson to take it to the deceased. The applicant then left the premises but returned again at about 7 p.m. that same day. At that time the deceased and Eloise Thompson were with her in her room. The applicant called to her and asked her for Eloise Thompson and for the second time she lied to the applicant. She told the applicant that Thompson had left with a customer to go to the bus stop. (It appears that Miss Thompson was a dressmaker). The applicant then turned away but did not leave the yard. She then spoke to the deceased and Eloise Thompson left the room and went down to one Mrs. Dobson's house which was to the back of the premises. She later heard footsteps in the driveway and on looking out saw the applicant holding Miss Thompson in her bosom and at the same time holding a ratchet knife at her in a stabbing position. Miss Thompson spoke to her saying "Powell talk to Vassell for me."

Mrs. Powell stated that she went up to the applicant, touched his beard affectionately and said to him "darling, rain is going to fall, it sets; trouble coming you can't see it, never mind my dear". She then held the blade of the knife and eventually the applicant let go the knife into her hand. Eloise Thompson gave conflicting evidence on this aspect

of the case. She stated that a lady on the street spoke to the applicant and he closed the knife and put it into his pocket. Mrs. Powell also stated that whilst the applicant was still holding Eloise Thompson, the deceased entered the premises and Thompson said to him, "Jesus Christ Mr. Wright, Vassell say him a go kill me say me deh wid you", that the deceased replied, "No murder here tonight", and that the applicant said, "Man, imagine me a remonstrate with me baby mother and you a butt in. Bear in mind a gwine out you out." Both Miss Thompson and the accused denied having spoken the words attributed to them by Mrs. Powell. Eloise Thompson in her evidence further stated that on this second visit the applicant spoke to her about her relationship with the deceased. She took the deceased to his room and told him to leave them alone. After this the applicant and Eloise Thompson spoke nicely to each other. The applicant later left the premises telling Eloise Thompson that he was coming back to see her the following day. On Sunday morning October 26, he returned and spoke to her telling her that he wished to see her in the evening when he was coming from work. In this regard the applicant denied that he went to the premises that Sunday morning. Mrs. Powell said that the applicant returned to the premises at about 4 p.m. that same day. The deceased and Eloise Thompson were absent from the premises. The applicant asked her for Thompson and she told him that she had gone to Spanish Town. The applicant said "you are swearing for Miss Thompson and the man (meaning the deceased) that they are not friends, but last night when we were having fun, Miss Thompson told me she don't want the man but because he is a port worker and can give her two shilling, for the first time they have sex he gave her ten dollars and the next time he gave her six dollars." The applicant then went away. The applicant denied going to the premises at that time and denied having spoken to Mrs. Powell. He admitted having gone to the premises at between 5.30 and 6 p.m. but said that he did not speak with Mrs. Powell. Mrs. Powell stated that there was a third visit on that Sunday about half an hour later when the applicant said to her, "when the man come, tell him I say last night me a remonstrate with mi baby mother and him dip him mouth, bear in mind say nine o'clock me a go out him out". The applicant denied having said so.

Mrs. Powell said that at about 9 p.m. the applicant returned to the premises. The deceased and his brother Uriah Wright were then sitting on a bench under a mango tree in the yard. The applicant went towards the deceased. Uriah Wright ran out of the yard. The deceased got up and tried to move backwards. The applicant held the deceased with both hands and pushed the deceased backwards up a step into a passage and then into a kitchen. There was an electric bulb in the kitchen and she was able to see clearly what took place in the kitchen. She saw the applicant jabbing at the deceased with the deceased holding up his hands in front of his head. The applicant was heard to say "murder, blood cloth murder, rass cloth murder". She did not actually see a knife but that the applicant and the deceased were the only persons in the kitchen and she counted twelve stab motions. The deceased staggered out of the kitchen and subsequently rolled off the verandah on the ground by the pipe side. The applicant who had gone into Miss Thompson's room came out with a cutlass and chopped the deceased three times whilst he was on the ground saying to him "you blood cloth you, you never fuck another man's woman again." A knife was subsequently found in the kitchen. Mrs. Powell stated that that knife (which was the knife tendered in evidence by the Crown) belonged to the deceased and was always kept in the kitchen. On the other hand Miss Thompson stated that the knife belonged to the deceased but that it was always kept in the house on a dish. Mrs. Powell denied that she had seen the deceased and his brother attack the applicant with a machete.

Uriah Wright, the brother of the deceased, also gave evidence for the Crown. He denied having attacked the applicant and also denied having inflicted any injuries on the deceased. He stated that when he saw the applicant go towards the deceased, he left the premises and went to his cousin at Maxfield Avenue and returned with him in his cousin's taxi cab. The deceased was then taken to the Kingston Public Hospital in the taxi cab.

Another witness for the Crown Inez Dobson stated that she heard a male voice shouting for murder. She went to her door and she saw the applicant leading a bicycle. The applicant said to her "Rescue me no, rescue me ma'am." She asked him what happened and he replied "I kill a

man up so. I know I kill a man up so. I going to Half-Way-Tree, I name Andrei Vassell, I live at 33 Ricketts Crescent. When the police dem come tell them I gone to Half-Way-Tree". The applicant denied having spoken to Mrs. Dobson at all. Mrs. Dobson said that she saw blood on his hand but could not tell if his hand was bleeding.

In his evidence Dr. Depass stated that the injuries were inflicted by a sharp cutting instrument such as a knife and he did not think that a machete would have produced the wounds.

The applicant gave sworn evidence in his defence. He stated that on the Sunday night he went to the premises. He saw no one in the yard and he went into Miss Thompson's room and on coming out in the passage he felt someone grab him from behind around his waist and his two arms were pinned down to his sides. It was the deceased who was holding him. The deceased said to him "where the rass gun you have? Use it and use it very fast because me a kill you tonight." He stated that the deceased called another man who came and both of them held him and forced him into the kitchen. This other man was the deceased's brother Uriah Wright. He tried to get away from them but they were stronger than he was and they subdued him in the kitchen. The deceased then told Uriah Wright to go for the cutlass. The deceased continued holding the applicant and Uriah Wright left but returned with a machete. Uriah Wright was chopping with the machete whilst deceased and himself were 'holding up'. Both deceased and himself received chops. He, the applicant, received a chop on the back of his right thumb. The deceased called out to Uriah Wright "Lord man, you going kill me, is not him getting it is me". Uriah Wright then ran from the kitchen and ran away. There was no light in the kitchen. The applicant further stated that he then eased the deceased off him and he left the deceased in the kitchen and ran out bawling for murder. He denied chopping the deceased with a machete and denied that he had inflicted any injuries on the deceased in the kitchen. He stated that it was after the deceased shouted to him that it is he who was receiving the cuts that Uriah Wright stopped chopping.

Bearing in mind the medical evidence, the evidence of the applicant would suggest that it was not until the deceased had received

some thirteen wounds that he called out to his brother.

Inspector Hibbert a witness called on behalf of the defence stated that on the night of October 26 at about 9 o'clock he saw the applicant at the Half Way Tree Police Station. He was bleeding profusely from a wound on the back of his right thumb.

Samuel Brooks testified on behalf of the defence. His evidence was to the effect that on October 26 at some time prior to 9 o'clock he saw the deceased who was in a vexed passion. The deceased told him that the applicant had threatened to kill him at about 9 o'clock and the man is a knife man so he had to carry his knife. The deceased was then armed with a knife in his waist. He stated that the deceased also told him 'that the man can't beat him for he is a youth and if him to beat him him have to beat him and his brother.' Brooks said he then left the yard and went to a bar where he saw the applicant. He then returned to the premises and told deceased that he did not see the applicant with any weapon. He left the deceased and the deceased's brother in the room. He later saw the applicant arrive and go into Miss Thompson's room. The applicant came out of Miss Thompson's room and as he was going by the passage he was grabbed from behind by the deceased. Uriah Wright was also there behind them. The applicant started to call for murder. He ran to the front of the premises to call one Mr. Creary. He heard everything in the kitchen tumbling down and also heard loud bumping of utensils.

At the hearing of the application it was urged on behalf of the applicant that the verdict of the jury was unsafe and unsatisfactory. In particular it was urged that the evidence of the sole eyewitness Eulalee Powell should not have been accepted by the jury because she had, in giving her evidence, confessed to lying to the applicant on two occasions (as will be seen above) in order to protect the deceased's association with Eloise Thompson. It was further submitted that having lied on these two occasions, she continued to lie in favour of the deceased when she gave her evidence on oath.

This was a matter which was left for the consideration of the jury. It was for the jury, having seen and heard the witness, to decide whether the witness Powell could be accepted as a credible witness.

It is clear by reason of the verdict returned by the jury, that she must have been accepted as a credible witness. No complaint was made with regard to the learned trial judge's summing-up on this aspect of the trial and we are of the view that there is no merit in this ground of appeal.

The Court was referred to other aspects of the evidence on which it was urged that the verdict of the jury was unsafe and unsatisfactory. These all related to the facts in the case which were matters left for the consideration of the jury. We do not feel it necessary to refer to them as we are of the view that there is no merit in these submissions.

Another ground of appeal which was argued was to the effect that "the learned Trial Judge erred in law by directing that the applicant be not pleaded." The records disclose that at the commencement of the trial, the learned trial judge said "Don't bother to plead him, just empanel a Jury." The trial then proceeded on the basis that the applicant was not guilty of the charge. The records also disclosed that the applicant had on a previous occasion been pleaded to the Indictment and had pleaded not guilty. It was not suggested that at the trial the applicant desired to plead guilty to the offence of Manslaughter or any other offence. Indeed even at the hearing of the application it was being urged that the applicant was not guilty of any offence. It cannot be said that the applicant was deprived of any of his rights. He had already pleaded not guilty when brought before the Court on a previous occasion and a plea of not guilty was endorsed on the indictment. From the beginning to the end it is clear that he was urging that he was not guilty of any offence.

We are of the view that there was an abundance of evidence on which the jury could have returned the verdict of guilty of Murder which they did and it cannot therefore be said that the verdict of the jury was unreasonable and unwarranted as was being urged on behalf of the applicant.

For the above reasons we dismissed the application for leave to appeal.