

IN THE COURT OF APPEAL

CRIMINAL APPEAL No. 143/1973 and 148/1973

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

R. v. REGINALD CORRODUS AND KENNETH CORRODUS

K. St. Bernard for the applicants.

H. Downer for the Crown.

July 8, September 23, 1974

LUCKHOO, Ag.P.:

The applicants Reginald Corrodus and Kenneth Corrodus were tried before White, J. (Ag.) and a jury in the St. Ann Circuit Court on an indictment charging them with the murder of Wilbert Henry on July 19, 1973 in the parish of St. Ann. On October 19, 1973 Reginald Corrodus was found guilty of manslaughter and was sentenced to 12 years' imprisonment at hard labour and Kenneth Corrodus was found guilty of murder and was sentenced to death.

On July 8, 1974, this Court heard their applications for leave to appeal against conviction. At the conclusion of the hearing we refused the application of Kenneth Corrodus and reserved our decision in respect of the application of Reginald Corrodus.

The case for the prosecution was to the following effect. The applicants Reginald Corrodus and Kenneth Corrodus are father and son. They were employed to Douglas Pierce Engineers Ltd., a construction company, at a building site at Ocho Rios in the parish of St. Ann, the father as a handyman and the son as a carpenter. Also employed to the company at the site was the deceased Wilbert Henry, a labourer. On July 19, 1973 at about 10.30 a.m. the deceased and another labourer Mignott were loading sacks of cement onto a Barford truck. The driver of the truck Oscar Bailey was standing in the doorway of the cement house making a count of the number of sacks being loaded onto the truck. The sacks were stored in a building

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some 40 ft. by 20 ft. known as the cement house. The sacks occupied about one half of the floor area. The truck was parked outside one of two doors of the cement house. Bailey testified that while the loading of the truck was proceeding the applicant Reginald Corrodus came to the other doorway of the cement house. There was some loose cement in a corner on the floor of the cement house which came from bags which had burst. Reginald Corrodus, whose employment as handyman included the task of having the site kept in a tidy condition, gave directions to Mignott and the deceased to have the loose cement cleared from the floor and put on the truck. Mignott agreed to do so but the deceased protested that the loose cement was too far away from the truck and that he would not remove it at that time. Reginald Corrodus became annoyed and repeated his directions more than once but without compliance on the part of the deceased. He told the deceased that he had been instrumental in securing him employment at the site whereupon the deceased ^{said} that it was Parsard the project manager who had employed him. Reginald Corrodus then told the deceased "You is a facety boy and I goin' see about you." He then left. Mignott and the deceased continued loading sacks of cement onto the truck. Some minutes later Reginald Corrodus returned and stood outside the door of the cement house at which he had earlier stood. He now had his baton in his hand. He did not speak but kept looking down. Mignott and the deceased continued loading sacks of cement onto the truck. About two minutes after Reginald Corrodus returned with his baton his son Kenneth Corrodus came up armed with an open ratchet knife. As his son came up Reginald Corrodus ran into the cement house and with his baton struck the deceased a hard blow on the top of the head. That blow caused the baton to break in two. The deceased had just loaded a sack of cement onto the truck and was returning to the cement house when he was struck by Reginald Corrodus. The deceased was seen to stagger. Immediately thereafter Kenneth Corrodus ran up to the deceased and stabbed him with the ratchet knife in the chest. Bailey said that upon seeing these two blows, inflicted on the deceased, o

by Reginald Corrodus and the other by Kenneth Corrodus, he ran off in search of Mr. Parsard. After spending about fifteen minutes in search of Mr. Parsard whom he did not find he returned to the scene and saw the deceased at a work bench some distance away. from the cement house. The deceased was bleeding from a wound in the chest and appeared to be dying. Mr. Parsard the project manager employed at the site testified that at about 10.20 a.m. on that day he was in his office on the site when he heard loud noises coming from the direction of the cement house about 50 to 60 feet away. He went to the cement house where he saw the applicant Reginald Corrodus as well as the deceased, Mignott and Bailey. Mignott and the deceased complained to him that Reginald Corrodus had given them instructions different from those he (Parsard) had previously given them that is that Reginald Corrodus had told them to take cement from an area other than that from which he (Parsard) had earlier directed them to do. Parsard said that he told Reginald Corrodus that he had indeed given the men instructions to remove the earlier shipment of cement in stock first and that Reginald Corrodus did not say anything when he told him so. Parsard said that he then left the cement house and went to inspect the work of pile making. Shortly thereafter he saw people running in all directions and then saw someone on a stretcher being put into a van.

Norris Lindsay, a foreman labourer employed at the site testified that both Mignott and the deceased worked under him. At about 10.30 a.m. that morning he gave them certain instructions. Later on he was passing by the cement house when he heard the voices of Reginald Corrodus and the deceased. They were speaking loudly. He went into the cement house where he saw Reginald Corrodus, Mignott and the deceased. Bailey was standing outside the cement house. The talking ceased and he went into the cement house. He asked Reginald Corrodus what had occurred. Reginald Corrodus replied that "these people don't want to hear anything from me". The deceased then said "Mr. Corrodus wants us to take that cement, sir, and you told me to take out this." The deceased then started to

cry saying "Look how Mr. Corrodus want me to go a prison, leave me four dead lef pickney behind." He told the deceased to forget the argument. The deceased continued to load cement onto the truck as did Mignott. He left the cement house. He then saw Reginald Corrodus with a baton in his hand standing in the yard beside the cement house. He spoke to Reginald Corrodus asking "why don't you forget it?" To this Reginald Corrodus replied in a wild manner "I don't care a damn. I am going to teach him a lesson." He then left Reginald Corrodus with the words "Well, if you don't want to hear what I have to say there is nothing I can do." About ten minutes later he heard the sound of voices and as a result went towards the cement house. He saw men running up and down and on seeing many persons standing near to a work shed some thirty yards away from the cement house he went there instead. He saw the deceased lying on his back on a work bench and observed a hole in his chest. A stretcher was brought at his direction and the deceased was placed on it and taken away.

David Henry, brother of the deceased, who also worked on the site testified that he was at the cement mixer some 50 chains from the cement house when he saw some workmen begin to run towards the cement house. He did likewise. He saw the deceased standing outside the cement house with both of his wrists held together by Reginald Corrodus. Blood was coming down the deceased's face. The deceased was also being held across the waist from behind by Kenneth Corrodus while one Baker was holding onto Kenneth Corrodus' other hand pulling him away from the deceased. David Henry said that he asked "A really mih brother unoo kill?" but got no reply. Kenneth Corrodus then let go the deceased and hung onto his (David Henry's) right hand. He managed to free himself and went to the police station. His brother died at about 1.30 p.m. that day. On the following Monday, some four days after his brother did, he returned to the site where Mignott handed him a ratchet knife which appeared to be blood-stained. He later handed the knife to the police.

Trevor Brown, a supervisor employed at the site, was working on a scaffold some 200 yards from the cement house when he heard some workmen near the cement house saying "Fight, Fight, Fight." On looking in that direction he saw two pairs of men holding on in a struggle. Those men were outside the cement house. He recognised the men - one pair being Reginald Corrodus and David Henry and the other pair being Kenneth Corrodus and the deceased. The former pair pair appeared to be struggling, Reginald Corrodus holding David Henry by the hand and pulling him back while David Henry was trying to pull himself away. As to the latter pair Kenneth Corrodus was holding the deceased by the neck and the deceased was struggling to get away. The two pairs were then about five yards apart. Eventually the deceased got away, ran about 20 yards and fell onto a carpenter's bench. Brown said he then got down from the scaffold and hurried to where he had seen the deceased fall. He found the deceased bleeding from the chest and also observed a wound on the deceased's left hand.

Dr. Noel Black the district medical officer at St. Ann's Bay who performed a post mortem examination on the deceased's body on July 20, 1973 found the following injuries on external examination -

- (i) an incised wound on the lower third of the back of the left forearm about 2" long;
- (ii) an incised wound above the right clavicle vertical in direction and about $1\frac{1}{4}$ " in length and $3\frac{1}{2}$ " in depth posteriorly-backwards;
- (iii) an incised wound below the medial edge of the right clavicle, about $2\frac{1}{2}$ " in length and 1" in depth;
- (iv) an incised wound over the left breast about 3" in length and 1" in depth;
- (v) a lacerated wound of the right side of the forehead $\frac{1}{2}$ " in length;
- (vi) a lacerated wound of the left side of the vault of the scalp about 1" in length;
- (vii) a lacerated wound of the right side of the vault of the scalp about $1\frac{1}{4}$ " in length.

On dissection it was found that the wound (iv) over the left breast went medially and downward through the muscle and between the third and fourth ribs, through the pericardium and into the upper part of the left ventricle. There was a lot of blood in the left pleural cavity and in the pericardial sac. Wound (iii) below the medial edge of the right clavicle also went medially and downwards entering the chest between the second and third ribs and cutting the lower part of the upper lobe of the right lung. There was blood in the right pleural cavity. In the doctor's opinion the cause of death was shock and haemorrhage resulting from wound (iv) over the left breast. The incised wounds were consistent with a ratchet knife being used with a severe degree of force in the case of wound (iv) and the lacerated wounds were consistent with a baton being used in each case with a moderate degree of force.

Special Constable Wilson Ewen testified that at about 10.45 a.m. on July 19, 1973, he saw a man running from the construction site and being chased by other men who were shouting "catch him officer him kill a man." Constable Ewen gave chase and caught the man who gave his name as Kenneth Corrodus. Constable Ewen took Kenneth Corrodus to the Ocho Rios Police Station.

Police Constable Lettman testified that he went to the site at about 10.45 a.m. that day and saw Reginald Corrodus sitting in a chair in the office and wearing a bloodstained orange coloured helmet. He took Reginald Corrodus to the Ocho Rios Police Station and there handed him over to Detective Sergeant of Police Campbell.

Det. Sgt. Campbell said that Constable Ewen brought Kenneth Corrodus to the Ocho Rios Police Station that day and made a report to him as a result of which he made certain inquiries. Mignott handed him a broken baton on which there were bloodstains. In the cement house he found a shovel, a pair of eyeglasses with one lens broken and a silver ring. The shovel was lying on the floor near to a wheelbarrow and there appeared to be fresh bloodstains on the handle as well as on the metal part. He observed a small abrasion to the left or right side of the head just above Reginald Corrodus' ear. Reginald Corrodus however did not complain of

receiving any injury. He arrested both Reginald Corrodus and Kenneth Corrodus for the murder of the deceased and cautioned them separately. Reginald spoke first and said "The man threaten me so me call me son and Baker;" and Kenneth said "Me nuh know what happen." David Henry handed him a ratchet knife on July 23, 1973 at the Ocho Rios Police Station and on the following day he cautioned Kenneth Corrodus and showed him the ratchet knife. Kenneth Corrodus then said "Yes sir, a fi me knife."

At the time of the trial Mignott was off the Island. He had testified at the instance of the prosecution at the preliminary inquiry into the charge laid against the applicants.

In their defence each of the applicants made a statement from the dock. Reginald Corrodus spoke of going to the cement house and asking Mignott and the deceased to take up cement scattered on the floor. He said that the deceased told him that he would not be taking up the cement as it was scattered too far from where he was. He repeated his request. Again the deceased refused to comply and told him that he was not taking any blood claut order from him that it is Mr. Parsard who pays him and if he let him lose his job he would kill his blood claut. The deceased repeated this in a temper and added that he has seven children. He (the applicant) then left the cement house. He took his baton and went towards the gate. As he was about to go out of the gate he heard the words "Fight round here. Fight" coming from the direction of the cement house. He went to the cement house and saw the deceased with a shovel in his hand hitting at his son Kenneth Corrodus who was backing away and appeared to be in danger of being killed if the blows were to strike him. He tried to disarm the deceased by striking at the shovel with his baton. He struck at the shovel and the baton went down the handle of the shovel and he thought it struck the deceased on the head. The deceased jumped at him with the shovel and he struck the deceased on his hand and the baton broke. He then backed out of the cement house. As he did so he saw the deceased's brother

who held onto him. They grappled. Then some men came up and one of them indicating him said "Lick out him blood claut for a him cause it". The deceased then rushed on him with the shovel and got him to the ground. He called for help. Someone pulled the deceased off him and he got up and ran to the carpenter's shed. He was pursued by the deceased but eluded him and ran to the office where he locked himself in. Lindsay had been present and had said "Kill the two of them rass" and he advised Kenneth to run to the police station.

Kenneth Corrodus said that he was on the pile bed doing some work when a young man came and told him that his father wanted him at the cement house. He had a hammer in one hand and some nails in the other and left for the cement house. There he saw five or six men. One man armed with a long shovel rushed out on him and started beating him. He had his knife and took it out to scare the men off especially the one who was beating him and they "pen me around". He made motions with his knife to keep them off. His father rushed inside with a baton and struck out with it. His knife was taken away from him by the crowd. Then he heard his father call out to him to run to the police station and he did so.

In short the case for the prosecution was to the effect that Reginald Corrodus smarting under the refusal of the deceased to obey his instructions sent for his son Kenneth and armed himself with his baton to do violence to the person of the deceased; that Reginald Corrodus returned to the cement house to await the arrival of his son who came armed with an open ratchet knife; that almost simultaneously they attacked the deceased, Reginald Corrodus delivering the first blow on the deceased's head with his baton and Kenneth Corrodus following with a stab to the deceased's chest with his ratchet knife; and that thereafter further blows were delivered to the deceased's head and body by the father and son with their respective weapons, the wound to the chest eventually causing the deceased's death.

The case for Reginald Corrodus in short was that the deceased was annoyed at being directed by Reginald Corrodus to pick up the scattered cement and threatened that if Reginald Corrodus caused him to lose his job which thereby would cause his children to suffer he would kill Reginald Corrodus; that Reginald Corrodus went to the gate^{and}/while about to go through he heard a noise coming from the direction of the cement house; that he then saw his son Kenneth being attacked by the deceased armed with a shovel and in danger of death and came to the defence of his son's life by trying to disarm the deceased with his baton and struck the deceased in the defence of his son's life.

The case for Kenneth Corrodus was in short that he received a message purporting to come from his father that he was wanted at the cement house; that he thereupon went to the cement house and on getting there he was set upon by five or six men including the deceased who was armed with a long shovel; that he thereupon took out his knife and made motions with it to keep off his attackers; and that his father came to his rescue armed with his baton and upon his advice he fled to the police station.

In his summing up to the jury the learned trial judge left the issues of self defence and provocation for the determination of the jury in respect of both applicants. By their verdict the jury rejected both self defence and provocation. In returning a verdict of manslaughter against Reginald Corrodus the jury intimated in answer to a question put by the trial judge that that verdict was founded on a lack of the necessary intent in Reginald Corrodus to constitute the offence of murder.

The applicant Kenneth Corrodus has challenged his conviction for murder on one ground only, namely that the learned trial judge failed to contrast the evidence given by Lindsay with that given by Bailey who said that he had not seen Lindsay at the material times and that failure to do so might well have operated to the prejudice of the applicant. This ground did not form any part of the grounds of appeal - original or supplementary - filed on the part of the applicant but nevertheless we allowed Mr. St. Bernard to

adduce argument thereon. At the trial it was put in cross examination to Lindsay by counsel for Reginald Corrodus that the evidence he gave in examination in chief was not true and that he only came to the scene after the deceased was lying on the work bench. Mr. St. Bernard's argument overlooks the trial Judge's direction appearing at the last paragraph of p. 246 of the Record -

"Then Mr. Bailey was asked about several persons.

He knows Lindsay who worked on the site. He didn't see him come there, and the defence is saying, well, if he was at the cement house how come he didn't see Lindsay? That is a matter for you, bearing in mind, Mr. Foreman and members of the jury, that, as one witness said, he can't keep everything in his head. But Mr. Lindsay is big and tall and however short Mr. Bailey is, the defence says he could have seen Mr. Lindsay if if he came there, to the cement house. But bear in mind, Mr. Foreman and members of the jury, that witnesses differ in their observations, in the retention of the images made as a result of their observations, in the ability to relate things that they have seen."

The jury's attention was specifically attracted to the apparent conflict in the evidence given by Bailey on the one hand and Lindsay on the other.

The issue as to whether Lindsay was ever at the cement house that morning prior to the injuries being inflicted on the deceased was left for the determination of the jury upon a full and proper direction by the learned trial judge. We hold that the submission made on behalf of the applicant Kenneth Corrodus was without substance and there being no other arguable ground to be advanced on his behalf we accordingly refused his application for leave to appeal.

In respect of the applicant Reginald Corrodus it was submitted that the applicant's conviction for manslaughter proceeded upon an erroneous direction in point of law by the trial judge and **therefore** cannot stand. The learned trial judge had pointed out to the jury that the case for the prosecution was based on the doctrine of common design in that the applicants were acting together

with the intention of killing the deceased and that it was in pursuance of that intention that the deceased died from the wounds he received. He then told them that the general principle of law is that "where two persons embark on a joint enterprise each is liable criminally for acts done in pursuance of the joint enterprise including unusual consequences arising from the execution of the joint enterprise. But if one of them goes beyond what has been tacitly agreed as part of the joint enterprise the other is not liable for the consequences of the unauthorised act." Then later on the trial judge told the jury -

"Anyhow if you believe Bailey's evidence you can come to the conclusion that the two of them were attacking the deceased, one with a baton and one with a knife. So you will have to decide whether it was within the common design, if you find that there was such, to do violence to the deceased, for a knife to be brought into play. Was it? There is no evidence that there was any previous decision, previous arrangement what should be done. The only indication is the statement allegedly made by the accused Corrodus that he had sent for his son. If you find that the knife was used in circumstances which were not within the contemplation of the accused, Reginald Corrodus, or if you are in any doubt about it, Mr. Foreman and members of the jury, you will have to acquit Reginald Corrodus - unless you can find that there was a concerted action to use violence on the deceased, come what may, regardless of the consequences."

No objection has been taken to these directions so far as they went. However, Mr. St. Bernard has urged that the undermentioned **direction** which later followed the earlier directions referred to above were erroneous in point of law -

"So you will have to enquire whether they were acting together to carry out this concerted act of violence on the deceased regardless of how it was carried out or regardless of the results. If you find that Reginald Corrodus called his son and that son attended at the cement house in answer to that summons, you will

have to ask yourselves did Reginald Corrodus have in mind an intention to kill or did he have in mind merely to give him a beating, to teach him a lesson? You will have to interpret the words that he used. Did he know that his son had a knife? Because if he did not know that his son had a knife you might be inclined to say that the son stepped out of the bounds of the concerted action and if you can reasonably come to the conclusion that he did not know that his son had a knife when he, Reginald Corrodus was attacking the deceased, it may be, Mr. Foreman and Members of the jury that depending on what facts you accept you say that the accused is not guilty of murder but guilty of manslaughter because he will have carried out an act of violence, he would have been doing an unlawful act, subject to this, that an unlawful act causing death of another could not simply because it was an unlawful act render a verdict of manslaughter inevitable. For such a verdict inexorably to follow, you the jury must find that all sober and reasonable people would inevitably recognise it as an act which must subject the other person, in this case Wilbert Henry, to at least risk of some harm resulting therefrom albeit not serious harm. You find what the two accused had in mind to discover they were acting together. Was the accused Kenneth Corrodus acting outside of that concerted design, if you find that there was a concerted design? I suggest to you Mr. Foreman and Members of the Jury, that it is only in the circumstances of the unlawful act as I just defined it, that you would be able to say that the accused Reginald Corrodus is guilty depending on whether you appreciate and properly assess what he had in mind if and when he sent for his son."

These directions to the jury, Mr. St. Bernard submitted, were similar to those given by the trial judge in R. v. Anderson & Morris (1966) 2 All E.R. 644 which were held by the Court of Criminal Appeal in England to be erroneous in point of law and must result in the applicant's conviction for manslaughter being quashed.

Mr. St. Bernard further submitted that in a case of homicide where the Crown's case is one of acting in concert, if a common design to inflict grievous bodily harm or to kill is excluded by the jury

in relation to one or more of the co-adventurers it follows that the killing is the unauthorised act of one only of the individuals with the requisite intent to cause grievous bodily harm or to kill for which the other person charged is not responsible at all.

Reference was also made by Mr. St. Bernard to R. v. Lovesey and Patterson (1969) 53 Cr. App. R. 461 in this regard.

For the Crown Mr. Downer submitted that the impugned directions of the learned trial judge were correct having regard to the evidence adduced at the trial.

We have examined with care the directions which Mr. St. Bernard has criticised and are of the view that his submission that the directions are erroneous in point of law cannot be sustained. The learned trial judge was at pains to point out that a verdict of manslaughter depended on what facts the jury accepted assuming that they were not sure that when he was attacking the deceased Reginald Corrodus knew that his son had a knife. The mere absence of knowledge that the son had a knife would not suffice to afford a complete defence to the charge laid where the evidence might lead to a conclusion that Reginald Corrodus, armed with a baton and using it to deliver no less than three blows on the deceased's head with force sufficient in each case to cause a lacerated wound after the arrival of his son who he had summoned to his assistance, well expected his son to arm himself with a weapon of some kind and to take it at least equally aggressive action against the deceased with at least similar consequences. That the son armed himself with a knife instead of some other less dangerous weapon in order to carry out the joint enterprise enterprise of at least violently assaulting the deceased is immaterial when it is clear that bodily harm to the deceased was intended.

Indeed, there was evidence from which the jury could reasonably have inferred that at the time Kenneth **Corrodus** arrived at the doorway where his father was then standing armed with a baton, Kenneth Corrodus had an open ratchet knife in his hand, and that Reginald Corrodus had himself seen the knife in his son's hand before

they set out on the joint enterprise. It follows that even if the joint enterprise as contemplated by Reginald Corrodus was not to kill the deceased or cause grievous bodily harm to him, (as the jury in fact found), yet if during the course of the concerted attack of violently assaulting the deceased, the son developed an intention to kill or cause the deceased grievous bodily harm and in fact killed him, then Reginald Corrodus who did not develop a similar intention could nevertheless be guilty of manslaughter as the son's act causing death was within the scope of the concerted action or joint enterprise hence the jury's verdict of manslaughter only against Reginald Corrodus - see R. v. Smith (Wesley) (1963) 3 All E.R. p. 597 and the case of R. v. Betty referred to in the footnote at (3) page 602 of the same case.

The verdict of manslaughter might indeed be said to have been a merciful one in the circumstances of this case. We see no reason to disturb the conviction of Reginald Corrodus. His application for leave to appeal is therefore refused.