

1971

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IN THE COURT OF APPEAL

CAYMAN ISLANDS GRAND COURT CRIMINAL APPEAL No. 3/1970

BEFORE: The Hon. Mr. Justice Luckhoo, Presiding
The Hon. Mr. Justice Edun
The Hon. Mr. Justice Hercules (Ag.)

BERTRAM GALBRAITH v. R.

Norman Hill, Q.C., for Crown.

Roy Taylor for Applicant.

1st and 17th December, 1971

HERCULES, J.A. (AG.):

On 20th November, 1970, the Applicant was convicted of Manslaughter in the Grand Court of the Cayman Islands, sentenced to 12 months imprisonment with hard labour, and disqualified from holding a driving licence for 5 years from the expiration of the sentence.

There was evidence for the Crown that one Orell Bodden and her brother Vibert Foster were walking in an easterly direction along the soft shoulder of the northern side of a road, when Bodden heard the sound of a car coming from behind. She was knocked unconscious and Foster was also hit and killed. One witness (William Dacres) testified that he saw Applicant's car travelling from west at about 40 miles per hour. This witness also saw Applicant's car swing from right to left in the road. Yet another witness (Lemuel Bodden) saw Applicant driving in the middle of the road coming towards him.

/Applicant swung.....

accepted Applicant's version, or if that version created doubt in their minds, they should acquit Applicant.

We recognise of course that the learned trial judge in his general directions, early in the summing-up, told the jury: "The Accused is not bound to prove anything. He leads evidence with a view to raising doubts on the prosecution case. You must consider all the evidence in the case and if it leaves you with a reasonable doubt you must acquit the Accused."

Nevertheless his omission specifically to relate those directions to his statement of the evidence of Applicant, does give some substance to the contention that the defence was not properly put.

On consideration of the summing-up as a whole, however, we are satisfied that the true issues were ultimately left to the jury, and on the evidence they could reasonably arrive at the verdict of guilty of Manslaughter. Indeed, there are several factors which made the Crown's case somewhat overwhelming. There was the question of street light near the spot, then the position in the road of the pedestrians involved and the manner in which the Applicant was driving. In all the circumstances, if we considered it necessary, we would not hesitate to apply the proviso.

We therefore conclude that the application should be refused. It is accordingly.