

**IN THE CARIBBEAN COURT OF JUSTICE
Appellate Jurisdiction**

ON APPEAL FROM THE COURT OF APPEAL OF BARBADOS

**CCJ Application No. BBCR2020/001
BB Criminal Appeal No. 6 of 2012**

BETWEEN

WINSTON ALEXANDER

APPLICANT

AND

THE QUEEN

RESPONDENT

Before the Honourables:

**Mr Justice A Saunders, PCCJ
Mr. Justice W Anderson, JCCJ
Mr Justice D Barrow, JCCJ
Mr Justice A Burgess, JCCJ
Mr Justice P Jamadar, JCCJ**

Appearances

Mr Bryan L Weekes for the Applicant

Mrs Donna C B Babb-Agard QC and Ms Krystal Delaney for the Respondent

REASONS FOR DECISION

of

**The Honourable Mr Justice Saunders, President
and the Honourable Justices Anderson, Barrow, Burgess and Jamadar**

Delivered by

**The Honourable Mr Justice D Barrow
on the 23rd day of July 2020**

- [1] The Court refused the application by Mr Winston Alexander for special leave to appeal his murder conviction after a virtual hearing on 16 July 2020, with reasons to follow.
- [2] It was only one of the five grounds that the applicant wished to argue on appeal that the Court fully considered to decide if the applicant had an arguable case. This was because the applicant was proposing to be permitted to argue grounds which did not arise out of the decision of the Court of Appeal. But, as indicated to counsel for the applicant, an

appeal to this Court lies from a decision of the Court of Appeal; it does not lie from the decision of the trial court.¹ As this Court stated in *Andrew Lovell v The Queen*², an appellant must bring to the Court of Appeal the whole case he has and will not be allowed to bring different aspects of his case before different appellate tribunals. The Court will treat the attempt to do so as an abuse of process unless there are exceptional reasons for doing otherwise and it would be a miscarriage of justice to refuse to permit the new ground to be argued. In the present case, this Court considered the new grounds and was satisfied there was no potential miscarriage of justice in refusing to permit the applicant to rely on them as proposed grounds of appeal.

- [3] The sole ground, then, on which the application was permitted to proceed was that the Court of Appeal erred in not allowing the appeal and setting aside the conviction for murder; that court having found that the trial judge did not properly direct the jury on the defence of accident. The Court of Appeal had accepted that the trial judge had not given a full direction on the defence of accident. Instead of allowing the appeal, however, the Court of Appeal applied the provision in section 4(2) of the Criminal Appeal Act Chapter 113A, commonly called ‘the proviso’ by lawyers for historical reasons, which reads: ‘the Court may, notwithstanding that it is of the opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred.’
- [4] This Court was satisfied that the applicant did not have an arguable case that the Court of Appeal erred in applying the proviso. The principle we applied in arriving at that decision is that where this Court is satisfied that the Court of Appeal gave proper consideration to whether to apply the proviso and committed no error of principle and did not misdirect itself, this Court will not interfere.³ It will not review the exercise of judgment by the Court of Appeal with a view to substituting its own determination, even in a case where it may have decided differently; and in this case the applicant has pointed to nothing to make this Court think it may have been minded to decide differently.
- [5] It is sufficient to refer to the judgment of the Court of Appeal in this case, *Winston Alexander v The Queen*⁴ for an appreciation of the issues that arose relating to the defence of accident in a murder case, especially one in which a motor vehicle was the

¹ See s 8 Caribbean Court of Justice Act, Cap 117

² [2016] CCJ 6 (AJ) at [19]

³ See *Fazal Mohammed v The State* (1990) 37 WIR 438 at 445 Quoting from *Lee Chun-Chuen* [1963] AC 220 at 231

⁴ Criminal Appeal No 6 of 2012 (judgment delivered 6 February 2020; unreported)

instrument of death. The judgment dealt helpfully⁵ with the duty of the trial judge to direct the jury on that defence, the contents of such a direction and especially on the need to state, in that specific direction, that the burden lay on the Crown to satisfy the jury that it was no accident, that it was not for the accused to prove accident, and what was the standard of proof.⁶

[6] When the Court of Appeal proceeded to apply the proviso, it did so after adumbrating these elements and identifying the ones where the trial judge fell short.⁷ It identified what the judge should have said but did not say. Further, and notably, before applying the proviso, the court also went on to consider the weight of the evidence in the process of considering the reliability and fairness of admitting the statements made by the accused, and the strength of the evidence of his guilt.⁸ It was, therefore, on that considered basis that the Court of Appeal exercised its judgment to conclude that a properly directed jury would inevitably have found the accused guilty.

[7] As indicated, there was no arguable case that this Court would have any reason to interfere with the decision of the Court of Appeal to apply the proviso. Accordingly, this Court found no ground on which to grant leave.

/s/ A Saunders

The Hon Mr Justice A Saunders

/s/ W Anderson

The Hon Mr Justice W Anderson

/s/ D Barrow

The Hon Mr Justice D Barrow

/s/ A Burgess

The Hon Mr Justice A Burgess

/s/ P Jamadar

The Hon Mr Justice P Jamadar

⁵ At [44] and following

⁶ At [48]

⁷ *ibid*

⁸ At [50] and following.