

EASTERN CARIBBEAN SUPREME COURT

**IN THE HIGH COURT OF JUSTICE
(Criminal)**

SAINT LUCIA

CASE NO. 27/2003

BETWEEN:

THE QUEEN

VS

THOMAS GONZAGUE

Defendant

Appearances: Mrs. Victoria Charles-Clarke
Ag. Director of Public Prosecution
For The Crown

Mr. Marcus Foster
For the Accused

Thursday 22nd January, 2004

JUDGMENT ON SENTENCING

1. **EDWARDS J:** On the 4th December 2003, the accused pleaded guilty to Manslaughter on an Indictment which charged him for the Murder of Uriah Mathurin on 29th May 2000.

2. The facts disclosed by the Deputy Director for Prosecution and the depositions reveal that during the course of an unfriendly argument between them, the deceased slapped the accused in his face several times and gave him a “gorghet”.
3. The accused then moved away from the deceased and pulled a gun from his pants.
4. He discharged a 38 Calibre bullet in the base of the left side of the deceased’s neck.
5. The bullet damaged the deceased’s upper vertebrae column second and third ribs and the upper part of his right lung. This resulted in extensive internal bleeding in his right chest cavity.
6. After receiving medical attention at the Victoria Hospital, the deceased developed complications from a chest infection while in the Intensive Care Unit on the 31st May 2000.
7. He died on 2nd June 2000, from respiratory failure because of the damage to his right lung and further damage to both lungs caused by low blood pressure and hemorrhagic shock.
8. The accused has 8 previous convictions recorded against him between 9th June 1976 and 29th November 1993. I will not take any of them into account because the 6 convictions between 9th June, 1976 and 27th April 1987 are spent and the other 2 are of a type dissimilar to the present offence.

9. The Pre-Sentence Report of the accused discloses that the accused, born 13th January 1962, is now 42 years old.
10. He has 10 children ranging in ages from 5 years to 22 years old. He also has a common law wife who describes him as a good father. He is known for his generosity to his family, relatives and community members. However, there are some members of the community including the deceased's relatives who accuse him of drugs dealing and describe him as a greedy envious person. The accused has denied these allegations.
11. The accused is a fisherman who had a business with the deceased his friend. After their partnership broke up, their relationship deteriorated, resulting in the incident for which the accused is before the Court. .
12. The accused has shown remorse for his conduct and regrets killing the deceased.
13. The accused has been diagnosed to be suffering from the disease Lupus Erythematosus since April 1994 which is a chronic, non contagious incurable disease. In some persons it can progress to Systemic Lupus Erythematosus. If Systemic Lupus Erythematosus is left untreated it can be fatal.
14. There is therefore no medical evidence before this Court showing that the accused has Systemic Lupus Erythematosus. In fact the Medical Report of Dr. Joseph dated 18th

December 2003, shows that he is presently an out-patient of the Dermatology Department of the Victoria Hospital and that the Lupus is confined to his skin. He received medical treatment up to 8th September 2003 according to this Report.

15. In light of these Medical Reports, I have concluded that there is no evidence before me that accused is terminally ill.

16. Consequently, Counsel Mr. Foster's submission regarding the illness of the accused and the effect that it should have on the Court in determining Sentence has little impact in the circumstances.

17. I must therefore impose a Sentence which reflects the culpability of the accused, by taking into consideration the seriousness of the offence and the established pattern of sentences for offences of a similar nature, but I must also make allowance for mitigating factors which may serve to reduce the accused culpability.

18. The Maximum penalty for Manslaughter committed after provocation is life imprisonment under Section 169 (2) of the Criminal Code.

19. Our Court of Appeal in the Eastern Caribbean has shown consistency in their approach to the period of incarceration that should be imposed on an accused who is convicted for the offence of Manslaughter after provocation. The benchmark period established by the following cases 15 years imprisonment.

SEE: Cases –

- (a) Hillary Patrick Tench vs The Queen, (St. Lucia) CR. App. No. 1 of 1991 dated 27th January 2002;
- (b) Bertram Abraham vs The Queen, (St. Vincent) CR. App. No. 12 of 1995 delivered on 12th February 1996;
- (c) Denis Alphonse vs The Queen, (St. Lucia) CR. App. No. 1 of 1995 delivered on 12th February 1996;
- (d) James Jn. Baptiste vs The Queen, (St. Lucia) CR. App. No. 10 of 1994 delivered 12th February 1996.

20. Decided English Cases discussed in **Blackstones Criminal Practice 2002** at Par B-1-31 show that I must be mindful of the necessity to ensure that the convicted accused expiates his offence, by imposing a term of imprisonment in most cases. Further, that although it may seem illogical where there is provocation, the sentence imposed should be a lesson to other people that they should keep their tempers and not be provoked into doing similar acts in such circumstances. I should then determine a minimum period reflective of these considerations.
21. In considering the Sentence, in my opinion also must take into account the weapon used to commit the offence. Firearms are a menace to the Society and the case with which there dangerous weapons are being imported and acquired to inflict harm on others is cause for serious concern.

22. The accused had the firearm apparently unlawfully, and used it to cause dangerous harm to the deceased resulting in his death. This is a fact that cannot be ignored.

23. The Mitigating Factors are that accused has pleaded guilty and the provocation was in public and caused him obvious humiliation. I therefore regard this as serious provocation.

24. The accused has also spent a prolonged period in custody prior to conviction. He has been in custody since May 2000, over 3 ½ years. He also has no previous convictions for violence that this Court can take into account. He is remorseful.

25. I have taken all these things into account along with the other information in the Pre-Sentence Report.

26. In a case where this accused carried a gun as a weapon and used it to cause death, after being provoked, a sentence of 9 years minimum is not too high in my opinion, given the present mitigating and aggravating factors.

27. The Sentence of the Court is therefore 9 years imprisonment.

Dated this 26th day of January 2004.

OLA MAE EDWARDS
HIGH COURT JUDGE