SAINT LUCIA

IN THE COURT OF APPEAL

CRIMINAL APPEAL NO.4 OF 2003

BETWEEN:

[1] FRANCIS PHILLIP
[2] KIM JOHN

Appellants

and

THE QUEEN

Respondent

Before:

The Hon. Mr. Adrian Saunders	Justice of Appeal
The Hon. Mr. Brian Alleyne, SC	Justice of Appeal
The Hon. Mr. Michael Gordon, Q.C.	Justice of Appeal [Ag.]

Appearances:

Mr. Kenneth Foster Q.C., Mr. Shawn Innocent and Mr. Jeannot Walters for the Appellants
Mr. Anthony Astaphan, S.C. and Mr. Leslie Mondesir for the Respondent

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2004: April 28;
May 24.

JUDGMENT

[1] ALLEYNE, J.A.: On 16th April 2003 the Appellants Francis Phillip and Kim John were each convicted on two counts of murder and on 30th April each was sentenced to death after a sentence hearing held on the day before. They have each appealed against conviction and sentence. Their appeals were heard together.

[2] A number of grounds of appeal, including additional grounds, were filed. However, argument was addressed on behalf of the Appellants only on the issues of the

defence of insanity, and on sentence. Following representation by Mr. Kenneth Foster Q.C. for the Appellants, and with the leave of the Court, Mr. Shawn Innocent argued the issue of insanity and Mr. Foster Q.C. presented arguments on the issue of sentence. Mr. Anthony Astaphan S.C. replied for the respondent.

Factual background

[3] Francis Phillip and Kim John both claim to be members of the Rastafarian movement. On the night of Saturday 30th December 2000 they went to the Morne gas station with two jerrycans, which they filled with gasoline purchased at that station. According to the voluntary caution statement of the Appellant Francis Phillip given to the police on 1st January 2001, "we had already plan to burn the church the Vatican and anyone inside of it. Not the innocent ones, but for the freedom of my nation." They returned to their home where they slept the night and on the following morning, Sunday 31st January 2000, they collected the jerrycans of gas, a few pieces of cloth and set out for the Catholic Cathedral, which they apparently chose because, in the words of Phillip, it was the closest church, but no doubt also because it was the principal symbol of "the Vatican". They collected two pieces of wood and made torches, and at the square outside the Cathedral they soaked their torches with gas, which they lit. They entered the Cathedral where, as they were aware, Mass was being celebrated. They began pouring gas in the building and setting it alight. People began to run in panic, and some got burned. Kim John went towards the altar which he set on fire. The priest, Father Charles Gaillard, ran to the back of the church where, as Kim John said in his voluntary caution statement given to the police on the same day, "I found the priest with a silver cup in his hand, he was there crying and he said in patois 'Don't do that'. I continued doing what I was doing, I poured gas on him and catch him with fire and when I lit him he ran out on the street. I also saw a white woman with nun clothes on her coming inside the church from Peynier Street and when she saw me she turned back and I struck her with the 2x2 at the back of her head and she fell down. … Apart from the priest I actually caught one or two other people on fire."

[4] The 'white woman with nun clothes', Sister Theresa Egan, died the same day from her injuries, and the priest, Fr. Charles Gaillard, died as a consequence of his injuries on 19th April 2001.

[5] At trial both Appellants made unsworn statements. Francis Phillip in recounting the event in the church said:

> "Kim make the strike with the match and I light my torch. Kim light his also. We walked in and sprinkle them with the gas and light them up. People were trying to take the post (lighted torch) from my hand, I was sprinkling them (with gas) and lightening them up. Pass we passing through and Kim do his part and I do my part. … There were men trying to take the post from my hand so I go striking them because to my thinking if they take the post from me is me they gone strike. … Then we left and went to the altar part. That is where I saw father Gaillard rushing, from the side of the sacristy with a silver cup in his hand. He came like he wanted to strike us with it. So brother Ises (Kim John) sprinkled in my presence and the post he had still had flames on it; he got the blaze and … we saw one coming on with a blue and white garment and she ran coming towards us. My brother still had a post in his hand and she said 'don't do that, don't do that.' In her running she got struck by my brethren, then we walked away …"

He continued:

> "The great purpose of my work is that I am fighting for the freedom of my nation; for black people where we have taken away from Africa and living in desolate places in tenement yard. Behind the iron curtains where bear war and crime which is being misled by false leaders which is no caring, no meditation for the bare …, false schools, bare starvation and hunger, motherless, fatherless, bare exploitation. We are the ones who are fighting to be free.
>
> We are here not as freedom fighters fighting against war and crime. We find the system living under false pretence and we are there to repatriate for all Africans together as one, by organizing and centralizing that we should like as one in love and unity where we will not be arrested by the cops for no drugs, no rape, no shoplifting and things that will condemn us in the system. We are to lift up every ghetto youths, each and every one from all areas; every corner over hills and valleys; over land and sea. That is my purpose."

[6] Kim John in his unsworn statement affirmed the statement of facts as put forward by his co-accused, and added at length his philosophical justifications for his acts, reflecting resentment at the perceived social and economic status of black St.

Lucians "under the European law led by Queen Elizabeth 11 and Pope John Paul 11" and culminating in this declaration:

> "It has been too long that we have been taken for granted so we shall stand and fight against the oppressors (black and white) until Africa is free. Africans belong to Africa and are not slaves no more in Babylon system. We need to be free from captivity, chains of slavery (psychological and mental), white collar crimes and if we are not free and equal rights and justice is not given to the poor so that the rich man and women would need a weapon. We will burn down the city and all lock ups where we suffer our worst every day for the having marijuana in our possession and crack and cocaine, prostitution, guns, brutalisation have been our dearest friend from society and if we not free to smoke, which belongs to I and I marijuana in peace away from your privacy, which we have none at this time, so we need to repatriate each other living in love on mountains where we will plant and be with creation once more.
>
> We know that all guns are aiming at we but we will not give up the fight until equal rights and justice is given to the poor so burn a fire on the pope of Vatican and the Queen of England for crimes against humanity which is of the black race – African."

Whether the death penalty is unconstitutional

[7] By ground 5 of the Notice of Appeal the Appellants contend that the death penalty is unconstitutional being contrary to section 5 of the Saint Lucia Constitution Order 1978 as being inhuman, cruel and degrading punishment. They rely on the 'legal enunciations' of Sir Dennis Byron C.J. and Saunders J.A. in Spence v The Queen, Hughes v The Queen[1], consolidated appeals decided on April 2nd 2001, and Patrick Reyes v The Queen[2]. The Appellants have not pursued this ground and with the greatest respect, these cases do not support any such proposition. I need only quote Lord Bingham of Cornhill at paragraph 29 of the judgment in the latter case:

> "The constitution of Belize plainly sanctions the death penalty. The question whether the passing and implementation of sentence of death are themselves inhuman and degrading are questions which do not and cannot, under this constitution, arise."

[1] Criminal Appeal No. 20 of 1998, St. Vincent, and 14 of 1997, St. Lucia, Eastern Caribbean Court of Appeal
[2] Privy Council Appeal No. 64 of 2001

[8] Byron C.J. at paragraph [5] of the judgment in Spence & Hughes said this:

> "It is important to state at this stage that the Appellants conceded that the Savings Clause prohibits any challenge being made to the imposition of the death penalty by hanging because that was a description of punishment which was lawful before the constitution came into force. I think that is a fair and accurate statement of the position."

Saunders J.A., for his part, at paragraph 184 of the judgment, said:

> "Death by hanging, for the offence of murder, was a punishment that was lawful … in St. Lucia immediately prior to the date of commencement of Associated Statehood. Paragraph 10 therefore debars one from challenging that form of punishment for that offence on the ground that it is inhuman and degrading."

[9] The question thus is now beyond argument. The authorities have clearly declared the death penalty (in contrast to the mandatory death penalty) to be lawful punishment under the relevant legislation in St. Lucia and this ground of appeal must clearly fail, as the Appellants' Counsel have conceded.

Insanity

[10] The defence of insanity under the law of St. Lucia arises under section 21 of the Criminal Code which reads as follows:

> A person accused of crime shall be deemed to have been insane at the time he committed the act in respect of which he is accused
>
> [a] If he was prevented, by reason of idiocy, imbecility, or any mental derangement or disease affecting the mind, from knowing the nature or consequences of the act in respect of which he is accused, or if he knew it, he did not know that what he was doing was contrary to law.
>
> [b] If he did the act in respect of which he is accused under the influence of a delusion of such a nature as to render him, in the opinion of the jury or of the Court, an unfit subject for punishment of any kind in respect of such act.

Counsel for the Appellants conceded that the facts of this case do not support a finding of insanity under paragraph (a), and restricted his submissions to paragraph (b) of the section.

[11] Learned Counsel Mr. Innocent for the Appellants submitted that the summing up, taken as a whole, had the overall effect of resulting in an unfair trial and an outcome which was likely to be unjust. He contended that the learned trial judge failed fairly and/or adequately to put the defence of insanity to the jury. Learned Counsel urged that at the trial the defence was that at the time of the commission of the offence the Appellants were labouring under a delusion; that although they knew what they were doing, and although their acts were planned, they were prevented by their delusional condition from knowing that what they were doing was contrary to law. Indeed learned Counsel submitted that the delusional disorder prevented the Appellants from having any reason at all.

[12] It was the submission of Counsel that the prosecution argued that the acts of the Appellants were rational and planned, and that this led to the issues being obscured because it was assumed by the learned Judge, who conveyed this in her summing up, that if the Appellants knew what they were doing, and that their acts were intentional and premeditated, they could not avail themselves of the defence of insanity. Counsel urged that even if an accused person committed the acts complained of intentionally, the defence of insanity may still avail. This principle is well established. The question is, did the learned trial Judge misdirect the jury or create confusion in the minds of the jury on this issue by her direction, as contended by learned Counsel for the Appellants?

[13] The learned trial Judge in making her summation directed the jury as follows:

> "The defence are asking you to find that these two accused were suffering from delusional disorder, a disease of the mind and did not know the nature and consequences of the alleged act; or if they knew it, they did not know that what they were doing was contrary to law. You will have to decide whether there was an intention to kill and whether the acts of the two accused were intentional, premeditated and calculated."

[14] Learned Counsel submitted that this was a misdirection causing confusion in the minds of the jury, and that this was compounded by the learned trial Judge's further directions, towards the end of her summing up, as follows:

> "As I just told you, the Defence raise the defence of legal insanity. If you accept on a balance of probabilities that these two accused were at the time of the commission of the offences ignorant of the nature or the consequences or unlawfulness of the acts and that ignorance was caused by disease affecting the mind, or that the accused were suffering from a delusion of such a nature so as to render them unfit for punishment, then you will return the special verdict of "guilty but insane".
> If you reject their defence of insanity, you do not automatically convict. You put aside the defence as raised by the two accused; then you fall back on the prosecution's case; and if you are not sure of the prosecution's case that is of the guilt of these two accused, then you must also acquit them. You can only convict if the prosecution have satisfied you to the extent that you feel sure of the guilt of these two men.
> If the prosecution have satisfied you to the extent that you feel sure of the guilt of these two accused, you are duty bound to return a verdict of guilty."

[15] Before considering whether the learned trial Judge's directions may have caused confusion in the minds of the jury as submitted by Counsel, we should perhaps first consider the character and value of the evidence in support of the defence of insanity. In that regard, we need to determine the precise meaning, scope and purport of paragraph (b) of section 21 of the Criminal Code. Unfortunately, neither Counsel for the Appellant nor Counsel for the Respondent were able to be of much assistance to the Court on that question. Neither party was able to direct the Court's attention to any authorities or judicial declarations on this or similar provisions.

[16] Archbold Criminal Pleading Evidence & Practice 2000 under the rubric Insanity at Time of Offence[3] states the general rule in these terms:

> Every person of the age of discretion is, unless the contrary is proved, presumed by law to be sane, and to be accountable for his actions. Insanity at the time of the commission of the alleged offence is merely a particular situation where *mens rea* is lacking. It differs from other such situations in two respects.
> [a] The onus is on the defence to establish such insanity on a balance of probabilities.
> [b] (This second matter is not relevant to the issue before us)

[3] Paragraph 17-74

> As the defence of insanity is based on the absence of *mens rea*, the mental condition recognised by the law as insanity for this purpose is not the same as insanity, or mental illness as recognised by medical science.

[17] A recognition of this basic principle is essential, in my view, to a proper appreciation of the issue raised in connection with the interpretation and application of section 21(b) of the Criminal Code. This section must be understood as relating to insanity in the context of the legal, as distinct from the medical appreciation of the condition of the mind of the accused person, and relates to the issue of the absence of *mens rea* as a necessary element in the effort to prove criminal responsibility, or to attach such criminal responsibility to a particular accused. We start with two presumptions; first, the presumption of innocence, and second, the presumption that every person of the age of discretion is sane.

[18] Before an accused person is called upon to defend himself against a charge, the prosecution must prove, in relation to the accused person, all the elements of the crime charged, and must do so to the standard that the jury feel sure of the guilt of the accused. The prosecution must prove beyond reasonable doubt that the accused did the act or made the omission charged. It is only after the prosecution has met that requirement, but given the presumption of sanity, that the accused person may be called upon to answer the charge. However, there is no onus on the prosecution to prove that the accused person is sane. That is presumed by law to be the case. If the prosecution has failed to prove that the accused did the act or made the omission charged, the accused is entitled to be acquitted whether or not he was insane at the time of the alleged offence; Attorney-General's Reference (No. 3 of 1998)[4].

[19] If, at the close of the case for the prosecution, sufficient evidence has been produced on which the guilt of the accused person may have been established, to the satisfaction of the jury according to the relevant standard, the accused person may choose to raise the defence of insanity, whereupon the burden rests on him,

[4] [1999] 3 All E.R. 40, CA.

but on the lesser standard of the balance of probabilities only, to prove that at the time of the commission of the alleged offence he was insane according to the legal definition of insanity.

[20] The nature of legal insanity, as defined by the classic case of M'Naghten[5] and further developed and elaborated upon by a series of subsequent cases, is examined and explained in a number of questions to, and answers of the Judges set out in Archbold 2000 *supra* at paragraphs 17 – 78 to 17 – 82. The questions and answers refer specifically to 'partial delusions', and in relation to this appeal the answer to question 1 is instructive. I quote:

> "Assuming that your lordships' inquiries are confined to those persons who labour under such partial delusions only, and are not in other respects insane, we are of the opinion that, notwithstanding that the party did the act complained of with a view, under the influence of insane delusions, of redressing or revenging some supposed grievance or injury, or of producing some public benefit, he is nevertheless punishable, according to the nature of the crime committed, if he knew, at the time of committing such crime, that he was acting contrary to law, by which expression we understand your lordships to mean the law of the land."

[21] The use of the expression in section 21(b) of the Criminal Code "of such a nature as to render him an unfit subject for punishment of any kind in respect of such act" tends perhaps to create a degree of uncertainty as to whether the paragraph relates to punishment or to guilt. It may also raise the issue, if it relates to guilt, as to what, if anything, the paragraph adds to or subtracts from, paragraph (a) of the same section. Perhaps the answer lies in the use of the words "idiocy, imbecility, or any mental derangement or disease affecting the mind" in the first paragraph. The drafter might well have been concerned about the possible application of the maxim *inclusio unius est exclusio alterius* to the section, and therefore decided *ex abundanti cautela* to provide specifically for delusion as a separate category of the defence of insanity. However that may be, I am satisfied that the general rule applicable to the plea of insanity applies equally to the plea based on delusion, and that to succeed on the plea, the accused person must prove, on the balance

[5] (1843) 10 Cl. & F. 200.

of probabilities, not only that he was suffering from a delusion, and that that delusion could properly be described as an insane delusion, but also that he did not know, at the time of committing the crime of which he is accused, that he was acting contrary to law. The cases of R. v Windle[6] and R. v Sullivan[7] make it clear that these principles apply whenever the defence of insanity at the time of the alleged offence is raised.

[22] Referring to the issue of knowledge that the accused was acting contrary to law, Archbold 2000[8], in relation to the questions put to and answered by the Judges, discourages putting the question generally and in the abstract, because it might tend to confound the jury by inducing them to believe that actual knowledge of the law of the land was essential in order to lead to a conviction. Instead, the Judges have preferred a direction that:

> "If the accused was conscious that the act was one which he ought not to do, and if that act was at the same time contrary to the law of the land, he is punishable; and the usual course, therefore, has been to leave the question to the jury, whether the party accused had a sufficient degree of reason to know that he was doing an act that was wrong, … accompanied with such observations and explanations as the circumstances of each case may require."

[23] The only medical evidence of insane delusion was given by defence witness Glenn Elmer Griffin, a Clinical Psychologist and Forensic Psychologist who was deemed by the Court an expert in clinical and forensic psychology. After interviewing and evaluating each of the Appellants for approximately 10 hours, he diagnosed them both as suffering from delusional disorder of persecutory type. In addition, Kim John had experienced auditory hallucinations of his delusional disorder, which was of a paranoid type, and that he was suffering intensely from this delusional disorder which was severe at the time of the crime. The delusional disorder in both Appellants could lead to violence. Professor Griffin defined delusion as a false belief based on incorrect inferences about external realities

[6] [1952] 2 Q.B. 826.
[7] [1984] A.C. 156 H.L.
[8] Paragraph 17 – 80.

that are firmly sustained despite what almost everyone else believes and despite what constitutes incontrovertible obvious evidence to the contrary. Persecutory type applies where the central theme of the delusion involves the person's belief that he or she is being conspired against, cheated, spied on, followed, poisoned or drugged, harassed etc. The subject is often resentful and angry, and may resort to violence against those they believe are hurting them.

[24] Professor Griffin was of the view that the Appellants were unable to conform their behaviour to the requirements of the law. However, he also said that they knew that they were in the Cathedral, knew they were armed with sticks and fire, that they were burning people up, and, in response to a question by the Court, that they knew that they had killed people, they knew the physical reality of what they did, and that what they did was contrary to law.

[25] The Appellants themselves in their statements from the dock and in their caution statements gave every indication that they were fully aware of what they were doing and that their actions were unlawful and were acts which they ought not to do. The entire tone of the statements, in my view, makes that clear.

[26] It fell to the jury to decide whether the evidence in the case established, on a balance of probabilities, the elements or ingredients necessary to be proved to raise the defence of insanity, whether under section 21(b) of the code or otherwise. Even if the jury found, which they might have on the basis of Professor Griffin's evidence, that the Appellants were suffering from insane delusions, they would then have to go on to consider whether the evidence would support a finding that the appellants were not conscious that their acts, which were undoubtedly contrary to law, were acts which they ought not to do. On the contrary, Professor Griffin was of the opinion that they knew that their acts were contrary to law, and therefore they ought not to have done them. On that basis, the jury might well have come to the conclusion that yes, the appellants were

suffering from insane delusions, but that they knew what they were doing, and that what they were doing was contrary to law and that they ought not to do it.

[27] The jury might well have concluded, indeed I might even say would almost inevitably have concluded, that the evidence fell short of proof on the balance of probabilities that at the time of the commission of the offence the Appellants were not conscious that their acts were contrary to law and acts which they ought not to do; Tench v The Queen[9]; Abraham v The Queen[10].

[28] In support of his contention that the learned trial Judge misdirected the jury on the issue of insanity, learned Counsel pointed to several passages in the Judge's summing up where Counsel asserted that the jury would have been confused, and would have been led to believe that where intention had been established, where there had been planning and premeditation, the defence of insanity would not prevail. I do not agree. It seems to me that the summing up, taken as a whole, provided appropriate and correct guidance to the jury on the respective cases for the prosecution and the defence, and directions on the applicable law.

[29] Even if, as learned counsel for the appellants argue, the learned trial judge's directions on the issue of insanity were flawed, the evidence is so overwhelming that I am of the view that any jury, properly directed, would have returned no different verdict. On that basis I would apply the proviso to section 35(1) of the West Indies Associated States Supreme Court (Saint Lucia) Act[11] and dismiss this ground of appeal on the basis that no that no miscarriage of justice has actually occurred.

[30] I would therefore dismiss the appeal against conviction.

[9] Criminal Appeal No. 1 of 1991, St. Lucia, per Floissac C.J.
[10] Criminal Appeal No. 12 of 1995, St. Vincent, per Byron, J.A. at pages 3 and 4.
[11] Act No. 17 of 1969.

Sentence

[31] Learned Queen's Counsel Mr. Kenneth Foster submitted on behalf of the Appellants that the learned trial Judge in deciding on sentence failed to take into account the evidence that the Appellants were suffering from a delusion which led them to believe that their actions were in pursuance of the objective of the liberation of the black race. Learned Counsel contended that the fact of a guilty verdict leading to the possible inference that the jury might have rejected the opinion of Professor Griffin did not obviate the need to take into account the evidence of delusion. He also submitted that the mere fact of dual murders was not in itself exceptional circumstances sufficient to justify the death penalty. Learned Counsel illustrated the latter point by reference to the cases of Patrick Reyes and Bertil Fox.

[32] Lord Bingham of Cornhill, in delivering the judgment of the Privy Council in the case of Patrick Reyes v The Queen[12], an appeal from the Court of Appeal of Belize, had this to say:

> "It has however been recognized for very many years that the crime of murder embraces a range of offences of widely varying degrees of criminal culpability. It covers at one extreme the sadistic murder of a child for purposes of sexual gratification, a terrorist atrocity causing multiple deaths or a contract killing, at the other the mercy-killing of a loved one suffering unbearable pain in a terminal illness or a killing which results from an excessive response to a perceived threat. All killings which satisfy the definition of murder are by no means equally heinous."

[33] His Lordship quoted a number of sources to the effect that 'There is probably no offence in the criminal calendar that varies so widely both in character and in degree of moral guilt as that which falls within the legal definition of murder', and that 'murders differ so greatly from each other that it is wrong that they should attract the same punishment'. The conclusion drawn from the modern authorities by the Court may be summed up in the words of the judgment at paragraph 14,

[12] Privy Council Appeal No. 64 of 2001 at paragraph 11.

citing the South African case of State v Nkwanyana[13], that 'the death penalty should only be imposed in the most exceptional cases where there was no reasonable prospect of reformation and the object of punishment would not be properly achieved by any other sentence.' As his Lordship pointed out, this was also the approach adopted in India.

[34] In Reyes, at paragraph 27, it was held in relation to the constitutional requirement of humanity in punishment, that this incorporates 'the precept that consideration of the culpability of the offender and of any potentially mitigating circumstances of the offence and the individual offender should be regarded as the *sine qua non* of the humane imposition of capital punishment.'

[35] In line with the philosophy expressed in these cases, Saunders J.A. (Ag.) as he then was, in a dissenting judgment in the case of Christopher Remy v The Queen[14] expressed the view that capital punishment should be reserved for the most extreme cases of murder, and that in considering sentence the trial Judge should ask 'am I satisfied beyond reasonable doubt that this offence falls into the worst, the most extreme case of murder?'

[36] In passing sentence in the case of Wilson Exhale in the High Court of Saint Lucia, Saunders J. opined that it is the duty of the trial Judge to consider fully two fundamental matters, firstly the facts and circumstances surrounding the commission of the murder, and secondly the character and record of the convicted murderer. His Lordship continued that these two matters do not carry equal weight, and that the facts and circumstances surrounding the commission of the murder ought to be accorded much greater importance. While I fully accept the first proposition, I am not at this time prepared to agree that in every case the second proposition holds good. The relative importance of the two considerations may vary from case to case. Be that as it may. There is a heavy duty on the

[13] [1990] (4) SA735 at 743 – 745.
[14] Criminal Appeal No. 6 of 2002, St. Lucia, page 22, para. [8].

sentencing Judge to give full consideration and due weight to both issues in every case.

[37] In the landmark case of Newton Spence v The Queen; Peter Hughes v The Queen[15] Sir Dennis Byron C.J., in a majority decision subsequently affirmed by the Privy Council, held that the Court must have the discretion to take into account the individual circumstances of an individual offender and offence in determining whether the death penalty can and should be imposed, if the sentencing is to be considered rational, humane and rendered in accordance with the requirements of due process. Indeed we have now gone beyond these first tentative steps in speaking of a discretion and it would I think now be universally agreed that consideration of these issues is a mandatory requirement in considering whether the death penalty or some lesser appropriate punishment should be imposed in every case of a conviction of capital murder.

[38] In the case of Abraham v The Queen[16] Byron J.A. as he then was held in a unanimous decision that the evidence of the Appellant's mental illness is a circumstance which could invite leniency and mercy, and undoubtedly that is so in an appropriate case. His Lordship also recognised the obverse side of the issue in holding that on the other hand, in the case under consideration, there were no favourable answers to the legitimate concern that the prisoner in that case might constitute a continuing threat to the safety of members of the public.

[39] The law of St. Lucia provides for the imposition of the death penalty. As indicated earlier, that penalty, while no longer mandatory on a conviction of murder, is nevertheless a legitimate and permitted punishment on such a conviction.

[40] The learned trial Judge in her deliberations on the issue of sentence found that the Appellants carried out a premeditated, wilful and cold-blooded attack in broad

[15] Criminal Appeals No. 20 of 1998, St. Vincent, and 14 of 1997, St. Lucia.
[16] Criminal Appeal No. 12 of 1995, St. Vincent.

daylight on innocent worshippers on a Sunday morning in the Minor Basilica in Castries. Her Ladyship acknowledged the presumption in favour of the unqualified right to life, the need to consider the mitigating factors, and that the death penalty should be imposed only in the most exceptional and extreme cases of murder. Her Ladyship said that a direct corollary of these principles is a rebuttable presumption against the death penalty, and that the onus of rebutting that presumption falls on the prosecution, at the criminal standard of proof beyond a reasonable doubt; State v Makwanyane[17]. The learned trial Judge also directed herself on the principles pronounced by Byron C.J. as necessary to be taken into account in considering sentence in such a case, including the gravity of the offence, the character and record of the offender, the subjective factors which may have influenced the offender's conduct, the design and manner of the execution of the offence and the possibility of reform and social re-adaptation of the offender.

[41] The learned trial Judge, having taken account of the evidence of Professor Griffin, considered that there was no evidence that either of the Appellants 'has a history of any mental disorder'. The evidence of the Professor is to the contrary, in that he expressed the view that they both suffered delusions, a form of mental disorder, a view contradicted by Dr. Mahy, in whose evidence the learned trial Judge obviously placed much store. I am led to the conclusion that the learned trial Judge was satisfied beyond reasonable doubt, on the basis of the evidence of Dr. Mahy and other evidence in the case, that the prosecution had proved to her satisfaction that neither of the accused had 'a history of any mental disorder.' Be that as it may, this Court may proceed on the basis that there was evidence of mental disorder, and that is the basis on which I, for my part, intend to proceed.

[42] The learned trial Judge found that the Appellants set out to 'burn the Vatican and the demons therein', symbolising the pope and the Queen of England for the crimes against humanity of black African people. She also found a clear intention to destroy the Cathedral.

[17] [1990] (4) SA735, (1995) No. CCT/3/94.

[43] The learned trial Judge found that the two accused knew the nature or the consequences or the unlawfulness of their act, that they were perfectly sane and normal, and were not under any delusional disorder when they carefully planned and executed their plan to burn down the Cathedral and indiscriminately set fire to everyone who was within their reach and those who retaliated. For myself, I would hesitate to describe the Appellants, or indeed anyone, as 'perfectly sane and normal', just as I would not, in the context of a determination of the issue of insanity in a criminal trial, encourage the use of the word 'mad' in directing the jury.

[44] The Judge took into account the Probation Officer's report on the history of the Appellants, including their 'abusive' childhood experiences and their educational and employment histories. She noted the absence of remorse in either Appellant and indeed their continuing sense of mission in relation to the acts perpetuated by them and of which they have been convicted. She found that they are convinced that their actions are justified and that they should be allowed to continue their mission. She found that they are happy that their deeds will be recorded in the annals of history and that this incident will always be remembered.

[45] The learned trial Judge gave reasons for her decision to impose the death penalty. She said, at paragraph 25 of the sentencing judgment:

> "I believe that this willful, deliberate and premeditated plan to burn down the Cathedral and the persons therein, the lack of mercy when begged to be merciful, the innocence of the victims, the lack of remorse, the clear intention to continue their mission, that they were not under the influence of drinks or drugs and that it was a multiple murder can only be described as one of the worst cases of murder. Some witnesses described the incident as a nightmare. Some were too scared even to move or talk. Others ran helter-skelter as they helplessly watched their priest, Father Charles Gaillard being set ablaze on fire and Sister Theresa Egan, a 73 year old Irish nun being bludgeoned to death in the most gruesome and horrifying manner."

[46] It seems to me that in exercising her discretion on the matter of sentence the learned trial Judge took into account all the matters relevant to the issue, applied

the correct principles, and came to a reasonable conclusion on the issue. It is a general rule that the Court of Appeal will not generally reduce a sentence unless it is manifestly excessive or wrong in principle, and will not alter a sentence merely on the ground that the members of the Court would have passed a different sentence if they had been trying the case[18]. In the present case I see no reason to interfere with the sentence passed by the learned trial Judge, and I would dismiss the appeal against sentence.

[47] In the result, the appeal against conviction and sentence is dismissed, and the conviction and sentence of the Court below are affirmed.

Brian Alleyne, SC
Justice of Appeal

I concur.

Adrian Saunders
Justice of Appeal

I concur.

Michael Gordon, Q.C.
Justice of Appeal [Ag.]

[18] Halsbury's Laws of England 4th edition volume 11, paragraph 664.