

ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

(CRIMINAL)

CRIMINAL NO 2005/0013

BETWEEN

THE QUEEN

v.

MIGUEL SANTANA DEMORISIS

**Appearances:**

Mr Gene Pestaina Senior Crown Counsel with Mr Adalai Smith  
Crown Counsel II for the Crown  
Mr Steadroy Benjamin with Mr Damien Benjamin for the Defendant

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**2006:** March 6<sup>th</sup> 7<sup>th</sup> 8<sup>th</sup> 9<sup>th</sup> 10<sup>th</sup> 24<sup>th</sup>  
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**JUDGMENT ON SENTENCING**

[1] **Blenman, J:** Mr Miguel Santana Demorisis (Mr Demorisis) was convicted on 10<sup>th</sup> March 2006 of manslaughter contrary to common law and is before the court for sentencing.

**Facts**

[2] On 3<sup>rd</sup> day of August 2004 Mr Demorisis left his home to attend carnival celebrations at the St John's Cricket Ground in Antigua and Barbuda. While at the ground, during the festivities, there were several food and drinks stalls and many persons were present.

[3] The deceased Mr Eric Christian (Mr Christian), who was 19 years old, at the time, was at the cricket ground at the same time with his girlfriend Ms Marrisol Jarvis together with other friends. Ms Jarvis is an attractive teenager and at that time was approximately 15 years

old. Mr Demorisis was attracted to Ms Jarvis and sought to make his feelings known by signaling to her and calling her.

- [4] Mr Christian was displeased with this and approached Mr Demorisis to enquire why Mr Demorisis was calling Ms Jarvis, an argument ensued and a fight resulted between the two young men. During the fight, Mr Christian hit Mr Demorisis and the latter fell upon his buttocks on the ground. The fight continued with Mr Christian being on top of Mr Demorisis. The two young men kept on fist punching and slapping each other. During the fight and while still on the ground, Mr Demorisis pulled out a knife and wounded Mr Christian.
- [5] After Mr Demorisis had wounded Mr Christian he (Mr Demorisis) used his feet to push Mr Christian from on top of him and he ran away. Mr Christian, deceased straightened up and went for a cutlass and pursued Mr Demorisis with the cutlass in his hand. They ran along the cricket ground and unto the street with Mr Demorisis in front being pursued by Mr Christian who still had the cutlass in his hand. Eventually Mr Christian succumbed to his injury and could run no more, he leaned on a car and eventually a police officer took the cutlass from him. Mr Christian collapsed and lay on the ground bleeding.
- [6] On the said night, he was taken to the Holberton Hospital where he was pronounced dead by Dr Koppella.
- [7] Dr Patricia Stranahan, the Pathologist performed the port mortem examination on the body of Mr Christian on 15<sup>th</sup> August 2004.
- [8] The Director of Public Prosecutions indicted Mr Demorisis for murder contrary to common-law for murder. He was tried at assizes and there was a hung jury.
- [9] The DPP then indicted him for manslaughter. As stated earlier, he was tried and convicted unanimously by a mixed jury for this offence.

[10] He is before the court for sentencing.

### **Law**

[11] Under section 5 the offences Against the Persons Act Cap 300 Laws of Antigua and Barbuda the maximum penalty for manslaughter is 35 years with or without hard labour.

### **Evidence**

[12] Mr Irvin Henry, Probation Officer provided the court with a probation report which presented a very good, if not impeccable character of Mr Demorisis. He seemed to have come from humble beginning and has tried to do good for himself. Mr Irvin Henry indicated that the accused was very remorseful and that all of his relatives with whom Mr Henry had spoken were very high in their praises of Mr Demorisis.

### **Submissions**

[13] Learned Defence Counsel Mr Steadroy Benjamin has put in a very able and impassioned plea in mitigation. Essentially he implores the court to consider the time the accused has spent on remand and to be as lenient as possible in its sentence. Counsel says that the deceased was the aggressor. He asks that the court give the accused one chance to correct his error and to seek to make a meaningful contribution to society.

### **Legal Principles**

[14] I now turn to the legal principles. The legal principles that a court should take into account in sentencing an offender are those of Rehabilitation, Deterrence, Retribution and Prevention.

### **Rehabilitation**

[15] This seeks to ensure that an offender is provided with facilities or services aimed at improving his behaviour. While Mr Demorisis seems not to have a temper problem the court must take note of the fact that he seemed to have had the knife in his possession. Counseling facilities are required to assist him in dealing with other difficult situations. There are situations that require removing oneself from them altogether. The court must

ask itself why did Mr Demorisis have a knife at a social function, to the extent that he was able to use it? The time has come when our young men must be equipped with the social skills to deal with difficult situations that they may find themselves in. It is hoped that the facilities provided by the prison authorities would assist him in this regard.

### **Deterrence**

- [16] There are two levels at which deterrence operates namely the general and specific. There is no need for specific deterrence. General deterrence is that the court role in deterring other wrong doers. Crimes of violence involving the use of knives are all too frequent in Antigua and Barbuda, particularly those involving young men. A message must be sent to other young men who are inclined to commit similar offences that the court frowns on this conduct. Indeed it is disconcerting that there are so many very young men are appearing before the courts in Antigua and Barbuda and convicted for offences against the person in which a knife was used to inflict wound. The sentence of the court should serve, as deterrence to all would be offenders.

### **Retribution**

- [17] This is a reflection of society's violence for criminal conduct. The sentence must reflect the court's outrage at the crime.

### **Prevention**

- [18] This sort of sentence is more applicable to repeat offenders .In the court's view it is not applicable to the case at Bar.

### **Court's analysis**

- [19] It is not disputed that the accused has spent nearly 2 years on remand. As stated earlier, he was tried at a previous assizes and after the jury failed to arrive at a verdict a retrial was ordered. The court will take into consideration the time he has spent on remand.

- [20] In determining the appropriate sentence, the court must pay regard also to the medical evidence. On 10<sup>th</sup> August 2004, Dr Stranahan performed a post mortem examination on

the body of the deceased. She found right below the nipple of the deceased a sharp penetrating wound approximately 1.4 cm wide and it went approximately 18 cm deep into the deceased's body. The penetrating wound went between the ribs through the left thoracic cavity through the pericardial sac in which the heart lies and ended in the main pulmonary trunk. The wound had avoided all bones. In the pathologist's opinion, excessive force was used to occasion that wound. Dr Stranahan said that the *"cause of death was sharp penetrating wound causing a cut in the big artery filling up the pericardial sac with blood so that the heart could no longer beat."*

[21] Further, in the court's determination of the appropriate sentence, it has had regard to the social inquiry report of the probation officer Mr Irvin Henry. Mr Demorisis is regarded as loving, a kind person who does not have a bad temper. This seems to be out of his character. It appears that he has a very close relationship with his mother and sister but that his father did not play a very active role in his life. His relatives are all surprised that he could have been involved in a matter of this nature. Before the incident he was employed at the Bargain Centre Supermarket. He is not known to smoke Marijuana. He has expressed through the report and learned defence counsel his remorse.

[22] The court in sentencing an offender is obliged to take the circumstances of the offender and the circumstances of the crime into consideration.

[23] The court is also obliged to weigh the mitigating factors in this matter against the aggravating factor. The mitigating factors are as follows: Mr Demorisis was a young man of 19 at the time. He had no previous convictions and therefore had a clean record .he is not known to the law. He is now 22 years old. He is the father of a young child. He appears remorseful in the court and his character remains untarnished.

[24] The aggravating factors are that Mr Demorisis used a knife on the deceased forcefully and with severe excessive force in so doing thereby cutting the deceased's pulmonary trunk and occasioning the latter's death. In the court's view, the mitigating factors and the aggravating factors are about equal (they balance out each other)

[25] Guidelines have been set in our Court of Appeal as to what is the appropriate sentence that the court should impose for the offence of manslaughter. Indeed, in **Dennis Alphonse v the Queen Criminal Appeal St Lucia No.1 of 1995** **James v Baptiste Criminal Case No. 29 of 1994** there seems to be a bench mark of 15 years in prison for manslaughter. Circumstances will sometimes require that the court depart from the benchmark. The starting point should be the fifteen years and the court is clothed with the discretion to impose a reduced sentence, based on the facts of the specific case and the relevant circumstances of the offender.

[26] In the case at bar, taking all of the mitigating factors and weighing them against the aggravating factors, as stated earlier, I am of the view that the sets of two factors just about balance out each other.

[27] A review of the recent decisions our Court of Appeal indicates that the court has imposed sentences of 5 years to 10 years on persons convicted of manslaughter depending on the circumstances of the case. This range can be scaled up or down depending on the justice of the case.

### **Conclusion**

[28] In view of all of the circumstances and for the above reasons, I am of the view that even though this is Mr Demorisis' first offence it is indeed a very serious one. I take into consideration the fact that he has spent nearly 2 years in custody and have no doubt that a custodial sentence should be imposed on Mr Demorisis. I therefore sentence Mr Miguel Santana Demorisis to 5 years in prison to take effect from 24<sup>th</sup> March 2006, (and in so doing and by way of emphasis) I have taken into consideration the fact that he has spent nearly 2 years in custody.

Louise Esther Blenman  
**Resident High Court Judge**