

ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE
(CRIMINAL)

CRIMINAL NO 2005/0029

BETWEEN

THE QUEEN

v.

ALTON TREVOR THOMAS

Appearances:

Mr Anthony Armstrong, Director of Public Prosecutions, Mr Gene Pestaina Senior Crown Counsel, Mrs Joanne Walsh Crown Counsel I for the Crown
Mr Kendrickson Kentish with Mr George Lake for the accused

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2006: April 6th 10th
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JUDGMENT ON SENTENCING

- [1] **Blenman, J:** Mr Alton Thomas was indicted by the learned Director of Public Prosecutions for the murder of Ms Angelina Simon. He was tried by a mixed jury and on the 6th April 2006 he was convicted of the alternative offence of manslaughter.
- [2] The court adjourned his sentencing to the 10th April 2006, on the request of learned Defence Counsel Mr Kendrickson Kentish.
- [3] He is now before the court for sentencing.
- [4] The Crown adduced evidence through 30 (thirty) witnesses in proving its case. The Crown, in so doing, relied mainly on circumstantial and documentary evidence. The crown's

theory was that the offence was rooted in the jealousy, anger and rage of the accused towards the deceased.

Facts

- [5] The accused and the deceased were both employed at LIAT (1974) Ltd. At one period of time, they lived together as man and woman. They had a child. The relationship between the deceased and accused was rocky and stormy. The accused was jealous and controlling, their relationship ended and the parties went their separate ways. The deceased returned to live near her family's home and the accused returned to live with his mother. However, they were still in communication with each other and the accused would take their child from the deceased's home to school everyday and would return the child to the deceased's home.
- [6] The deceased owned a Mitsubishi Towny car registration number A19792 that was malfunctioning. The accused is a mechanic by profession. They discussed the possibility of the accused repairing her car.
- [7] On Friday 12th November 2004, they agreed to meet by the New Thriving Restaurant for him to assist her in repairing the car. The deceased went to New Thriving restaurant where she met the accused. At the New Thriving restaurant, the accused suggested to the deceased that he would check the car there. She was however of the view that they should do it "somewhere comfortable so she could eat while he checked her car." He agreed. The deceased drove the accused in her car, to Piggott's road in order for him to repair her car. She turned onto the road by St Georges Church and stopped the car. While there, the accused check her car while she ate.
- [8] After the accused had completed, he re-entered her car, which the deceased drove. While the deceased was driving, the accused asked the deceased "how much man was enough for her?" She asked him what he was talking about and stopped the car. The accused then told her that she knew what he was talking about "so drive the dam car and let's go". The deceased tried to take the keys out of the car, came out of the car and started to run.

The accused then took over the driving of the car and "pulled up" beside her and told the deceased to get into the car and "lets go away from here"

[9] The deceased got back into the car and the accused put his hand across her neck and told her to look out and drive the car. He was "pressing her across her neck and telling her let's go when he heard her wheezing and like a snoring sound" by this time they were by the well. He took off his boots and ran towards the well and got water and "sapped her face" but she was not responding. He drove her car by the tree by the well and took her out of the car and put her on the wall of the well and started to sap her face. He noticed that her tongue changed colour. He tried more water and she was just snoring as if she was sleeping. The accused then left her on the wall that borders the well, which was almost full of water. The wall is very narrow.

[10] Later that afternoon, the accused returned to the New Thriving restaurant where he parked the deceased's car. Subsequently, he took the deceased's car to Shell Beach where he burnt it.

[11] The following day the deceased's body was found floating in the well.

[12] Renowned pathologist, Dr Leslie Simon performed the post mortem on the body and stated that Ms Angelina Simon died by drowning.

[13] Based on the strong circumstantial and documentary evidence led by the Crown, as stated earlier the accused was found guilty of manslaughter.

The Law

[14] Section 5 of the Offences Against The Persons Act Cap 300 Laws of Antigua and Barbuda authorizes the court to impose a maximum period of 35 years with or without hard labour for the offence of manslaughter.

[15] Our Court of Appeal has given guidelines as to the range of sentence to be imposed for the offence of manslaughter. The court has established a benchmark of 15 years. The benchmark can be scaled down depending on the circumstances of the case. The court has indicated that the guidelines are to be utilized by the trial judge in whom there is discretion to determine what is the appropriate sentence. Further, a review of the recent decisions of our Court of Appeal indicates that the court has approved sentences ranging from 5 – 30 years for the offence of manslaughter depending on the facts of the case.

[16] **Plea in mitigation**

Mr Kendrickson Kentish learned counsel put in a plea in mitigation on behalf of Mr Thomas. Counsel very kindly extended condolences to the family of the deceased on his (counsel's) own behalf. He asked the court to impose the appropriate sentence on the offender and to allow the accused the opportunity to reunite with his young son. Counsel indicated that the accused cares a lot about his son and since the child has lost his mother he should be provided with opportunity to continue the relationship with his father. Counsel implored the court to utilize the benchmark set by our Court of Appeal for the offence of manslaughter namely 15 years. Counsel did not seek leniency from the court but rather, as stated earlier, urged the court to impose the appropriate sentence that will enable the accused, who is a relatively young man, to continue with his life.

[17] The accused has not shown any remorse. The accused's lack of remorse may be explained by the nature of his defence – alibi. This defence, the prosecution has obviously negated beyond a reasonable doubt – hence the reason for the jury's decision.

[18] However, the accused's demeanour during the sentencing hearing leaves much to be desired, to say the least.

[19] **Court's analysis**

The court in determining what is the appropriate sentence must weigh the mitigating factors against the aggravating factors.

[20] **Mitigating factors:**

- (a) The accused has no previous convictions. He is 36 years old.
- (b) The accused did not use a weapon to inflict injury on the deceased.
- (c) The evidence does not disclose that the accused had planned to harm the deceased before hand.
- (d) The accused has a young son, who is the child of the deceased and, with whom he is eager to be reunited.

[21] **Aggravating factors:**

The following are the aggravating factors:

- (a) The accused's history of aggression towards the deceased.
- (b) He has shown no remorse.

[22] In the court's view the above two sets of factors just about balance out each other.

[23] The principles, which the court should apply in sentencing, offenders are: Prevention, Deterrence, Rehabilitation, Retribution and Punishment.

Prevention

[24] This sort of sentence is applicable to repeat offenders and is not applicable to the case at bar.

Deterrence

[25] In a specific sense, deterrence does not appear to be applicable to the accused. However the court must indicate that the evidence adduced in this case in relation to the accused gave the court cause for pause."

General Deterrence

[26] This aspect focuses on the need to deter other persons from committing crimes in general and this type of crime in particular. It is not unknown for these types of crimes to be committed in Antigua and Barbuda. A review of the decisions of our court would confirm

this. The court must impose an appropriate sentence in order to deter other potential wrong doers.

Rehabilitation

- [27] A sentence imposed under this limb seeks to ensure that the offender is provided with facilities or assistance aimed at improving his behaviour and to provide him with the skills necessary for his reintegration into the society on his release from custody. This limb is very applicable to the accused.

Retribution

- [28] This sentence reflects society 's abhorrence at the crime.

Punishment

- [29] This is self-explanatory.
- [30] In addition, the court is obliged to take the circumstances of the offender and the circumstances of the offence into consideration in imposing a sentence on the offender. The Appeal Court has indicated that where the offence with which the accused has been convicted is a very serious one the fact that the accused had no previous conviction should be accorded less weight as against where he is convicted of a minor offence
- [31] The circumstances of the offence were very grave.
- [32] The court must impose a sentence on the accused which is aimed at preventing the occurrence of these types of crime, which have become all too frequent in Antigua and Barbuda, which at the same time offering offenders real opportunity for rehabilitation.
- [33] It is the court's fervent wish that the accused makes good use of the counseling facilities Her Majesty's Prison provides so that he could develop the requisite social skills to deal with difficult situations.

Sentence

- [34] The accused Mr Alton Thomas has no previous convictions but even though this is his first offence it is a serious one. The court is of the view that the appropriate sentence that should be imposed on the accused, taking into consideration all of the relevant factors, is 20 years in prison with effect from today's date.

Louise Esther Blenman
Resident High Court Judge