

ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CRIMINAL CASE NO: 0015/2007

BETWEEN

THE QUEEN

AND

RUDY MONELLE

Appearances:

Mr. Anthony Armstrong Director of Public Prosecutions, Mrs. Joanne Walsh Crown Counsel I and Mr. Kayode Omarde Crown Counsel II for the Crown
Mr. Cosbert Cumberbatch for the Defendant

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2008: July 9th

September 18th
.....

JUDGMENT ON SENTENCING

[1] **Blenman, J:** Mr. Anthony Armstrong, Learned Director of Public Prosecutions indicted Mr. Rudy Monelle of the murder of Lisa Phillip. He was tried by a mixed jury; and the Crown adduced evidence through 35 witnesses. The Crown's case was based on very strong circumstantial and forensic evidence. He was convicted for the murder of Lisa Phillip. The Court ordered that the requisite Social Investigation Report and the Psychiatric Report be provided. He was remanded into custody in order to await sentence.

[2] He is now before the Court for sentencing.

[3] The Learned Director of Public Prosecutions did not give notice that he intends to submit that the death penalty is the appropriate sentence.

[4] **Facts**

Mr. Rudy Monelle and Ms. Lisa Phillip shared a romantic relationship for about 4 years and baby Rodain Monelle was born to both of them. They lived in a room of the house owned by Lisa's father. Lisa was a security guard and she would work until late in the night. On the night of 2nd January 2006, Lisa returned home from work around 11:15pm and met her friend Desdemona Charles, who was visiting. The two of them chatted with Rudy Monelle; Lisa then left and went into the bedroom in which Rodain was sleeping. After chatting with Lisa and Rudy, Desdemona left their home after 12:15 am to return to her home. Lisa followed her part of the way home and turned back to return to her baby Rodain. Desdemona reached home around 12:30 am. Approximately half an hour later, Rudy went to Desdemona's home and took baby Rodain, some personal effects and cereals for the baby. He gave Desdemona the baby telling her not to give baby Rodain to Lisa's relatives since Lisa was already dead, and that if she gave them the baby, he would kill her. He was sweaty and left in a hurry. A few minutes after, Desdemona heard the sound of the fire truck and saw that the house in which Lisa and Rudy lived was on fire. At the scene of the fire, Rudy Monelle was seen with burns to his face and the tips of his finger; and when he was asked for Lisa, he told the police and fire officers that she had gone to work. The firemen extinguished the fire and the burnt remains of a female were found lying on a bed. The forensic evidence revealed that the remains were Lisa's. She was burnt beyond recognition and portions of her upper and lower limbs were totally burnt off. In fact, portions of all four limbs were missing.

[5] Dr. Lester Simon, renowned pathologist, who performed the post mortem, stated that Lisa died from 100% burns of the body and the burns were third degree. There was charring of all the tissues including the bones of the skull, the chest and all of the bones.

[6] Based on the Crown's case, the overwhelming evidence revealed that Mr. Rudy Monelle used a catalyst or accelerant to burn Lisa Phillip after he had "knocked her out".

[7] **Social Investigation Report**

Probation Officer, Mr. Alvin Jarvis provided the Court with a Social Investigation Report; it paints a picture of the defendant as a person who though having a quiet appearance, may not be as quiet as he appears. The Social Investigation Report reveals that the defendant has come from a stable family background but did not do well in school. He presents a reserved picture to members of the public and had a quiet disposition to outsiders. However, the relationship between Rudy and Lisa was not harmonious. There is another view that he was aggressive. Lisa's family stated that Rudy and Lisa had several misunderstandings and were unable to resolve them amicably. She lived in fear. The Report in this regard is clear. Also, he did not get along with her relatives and threatened to "wipe them out".

[8] **Psychiatric Report**

Dr. Venkata Kumar Mali provided the Court with the psychiatric report. The psychiatric report does not indicate that Mr. Monelle suffers from a mental disorder or that his mental condition may, in any way, have been affected. The doctor stated that Mr. Rudy Monelle is mentally stable and is not suffering from any mental illness. There is no evidence of him ever having suffered from any mental condition.

[9] **Plea in mitigation**

In an emotive and impassioned plea, Learned Counsel Mr. Cosbert Cumberbatch implored the Court not to impose a lengthy custodial sentence. He said that Rudy Monelle is a quiet person who has a good character and is thought well of by his community. Mr. Cumberbatch commended the Social Investigation Report to the Court and asked that significant weight be attached to the fact that the defendant has no previous convictions. Counsel urged the Court to temper justice with mercy and to give Mr. Rudy Monelle his first chance so that he could leave prison while still a young man. Rudy Monelle is 30 years old and his son needs his father. Learned Counsel also stated that Mr. Rudy Monelle

is not a threat to the society so the Court should not order his incarceration for any lengthy period of time. Learned Counsel said that based on the defendant's dock statement, it's clear that he regrets the entire incident.

[10] **Law**

Section 2 of the Offences Against the Persons Act states that the maximum sentence for the offence of murder is death.

[11] **Court's consideration**

Our Court of Appeal in **Peter Hughes and Newton Spence v Queen Criminal Appeal No.20 of 1998 and 14 of 1997** ruled that the automatic imposition of the death penalty for the offence of murder was unconstitutional. The Privy Council in **Peter Hughes and Newton Spence v Queen** approved the decision of the Court of Appeal. As a consequence, the Court is given the discretion to impose a sentence other than death for the offence of murder. The Privy Council confirmed that the death penalty is not mandatory for the offence of murder. The law now requires the trial judge to conduct a sentencing hearing and to determine the appropriate sentence to impose on a defendant who is convicted of murder. Therefore, while the death penalty remains the maximum sentence for the offence of murder, the trial judge is now clothed with the discretion to impose a lesser sentence.

[12] In order for the Court to have the option to impose the penalty of death on a defendant who is convicted of murder, the prosecution has to give notice to the Court that it intends to seek the death penalty as the appropriate sentence. Saunders JA in **Evanson Mitchum et al v The Director of Public Prosecutions Criminal Appeals No.10, 11, 12 of 2002 Saint Christopher and Nevis**, laid down the procedure that should be followed where the prosecution intend to recommend the death penalty for the offence of murder. His Lordship stated:

“If the prosecution intend to submit that the death penalty is appropriate in the event that the accused is convicted of murder, then notice to that effect should be

given no later than the day upon which the offender is convicted in which case it may be given orally.”

- [13] In determining the appropriate sentence to impose on the defendant, I must take into consideration the character of the defendant, the nature and gravity of the offence, the design and manner of the execution of the offence, the subjective factors which may have influenced the defendant’s conduct and the degree of the defendant’s culpability. Also, the sentencing guidelines stated in **The Queen v Spence and Hughes** *ibid* enjoin me to take into account any mitigating factors obvious from the evidence and the pre-sentencing reports or otherwise adduced by the defendant.
- [14] In **Evanson Mitchum** *ibid*, Saunders JA further stated that at the sentencing hearing, “The burden of proof shall lie on the prosecution and the standard of proof shall be beyond reasonable doubt”.
- [15] The procedural guidelines as laid down in **Spence and Hughes v R** were applied in **Harry Wilson v The Queen Criminal Appeal No.30 of 2004 and Evanson Mitchum et al** *ibid*.
- [16] The Court has complied with the above sentencing guidelines, in the case at bar. The defendant was given the opportunity to call witnesses to speak on his behalf. He has called no witness.
- [17] In considering the appropriate sentence to impose on Mr. Monelle, I find very instructive the pronouncements of Rawlins JA in **Harry Wilson v The Queen** *ibid*:
- “The sentencing Judge is required to consider, fully, two fundamental factors. On the one hand, the Judge must consider the facts and circumstances that surround the commission of the offence. On the other hand, the Judge must consider the character and record of the convicted person. The Judge may accord greater importance to the circumstances, which relate to the commission of the offence. However, the relative importance of these two factors may vary according to the overall circumstances of each case”.

[18] The Court must also weigh the mitigating and aggravating factors. In **Harry Wilson v The Queen** *ibid*, Rawlins JA stated that even though the mitigating factors were detailed, the trial Judge did not weigh them. His Lordship, Justice Rawlins, helpfully stated the way in which the Court should approach the weighing of the mitigating and aggravating factors, in order to objectively analyse the defendant's prospects for reform and social re-adaptation. In that case, based on the very strong mitigating factors, including the defendant's good chances of rehabilitation, coupled with his clean record, the Court quashed the sentence of death and substituted a sentence of life imprisonment.

[19] Further, in **Criminal Appeal No.80 of 2003, Mervyn Mose v The Queen**, Rawlins JA, as he then was said as follows;

“At the sentencing hearing, it is the duty of the Crown to present evidence of the character and record of the convicted person, as well as evidence of the factors that might have influenced his action. The Court should, in all cases, request a Probation and/or Social Investigation Report, which should contain a psychiatric report of the convicted person. This would afford the Court findings which it could consider, particularly alongside any Report that is provided on behalf of the convicted person. Any person who presents or participates in the writing of any part of a Report should always be available for cross-examination”.

[20] Further, in **Harry Wilson v The Queen** *ibid*, Rawlins JA stated: “that it is a mandatory requirement in murder cases for a Judge to take into account the personal and individual circumstances of the convicted person. The Judge must also take into account the nature and gravity of the offence, the character and record of the convicted person; the factors that might have influenced the conduct that caused the murder, the design and execution of the offence, and the possibility of reform and social re-adaptation of the convicted person”.

[21] **Sentencing principles**

In determining the appropriate sentence, the Court is obliged to apply the well known legal principles of sentencing. The general principles that the Court should apply in sentencing

were dealt with in **R v Sergeant 60 Cr App R 74 at 77**. Lawton LJ identified the classical principles of sentencing as being retribution, deterrence, prevention and rehabilitation. These principles were judicially acknowledged by Byron CJ in **Desmond Baptiste v The Queen No.8 of 2003**. Sir Denis stated as follows:

“Retribution

This limb should reflect the society’s intolerance to criminal conduct. The Court must show society’s abhorrence of particular types of crimes by the sentence I pass.

Deterrence

Deterrence is general as well as specific in nature. The former is intended to be a restraint against potential criminal activity by others whereas the latter is a restraint against the particular criminal relapsing into recidivist behaviour. Of what value however are sentences that are grounded in deterrence? Specific deterrence may be an ineffective tool to combat criminal behaviour that is spontaneous or spawned by circumstances such as addictions or necessity. Drug and alcohol addiction as well as need may trigger high rates of recidivism. Experience shows that general deterrence too is of limited effect.

Prevention

The goal here is to protect society from those who persist in high rates of criminality. For some offenders, the sound of the shutting iron cell door may have a different effect. Some however never learn lessons from their incarcerations and the only way of curbing their criminality is through protracted sentences whose objective is to keep them away from society. Such sentences are more suitable for repeat offenders.

Rehabilitation

Here the objective is to engage the prisoner in activities that would assist him in reintegration into society after prison. However the success of this aspect of sentencing is influenced by executive policy. Furthermore, rehabilitation has in the past borne mixed results. Of course sentencing ought not to be influenced by executive policy such as the availability of structured activities to facilitate reform”.

[22] I come now to apply the above principles to the case at bar.

[23] I am aware that murders vary in seriousness. Based on the evidence presented, I am of the view that this is a serious case of murder even though it does not fall within the category of the worst case of murder as stated by Saunders J in **R v Winston Exale**. Saunders J illustrated worst cases as follows:

“For example, this was not a murder that was carefully and deliberately planned. This was not a murder where the victim was a judicial officer or a member of the security services or correctional force in execution of a duty or a judicial officer. This was not a contract killing. This victim was not murdered because of his status as a juror or as a witness or party in litigation”.

In the case at bar, the deceased was treated in a very brutal and inhumane manner. It is a heinous crime and was executed in a degrading manner.

[24] **Retribution**

As stated earlier, this crime was very brutal. I am therefore required to punish the defendant appropriately and reflect society’s abhorrence for the heinous crime the defendant has committed. The sentence the Mr. Monelle receives must be commensurate to the crime he has committed.

[25] **Deterrence**

Mr. Rudy Monelle has a clean record; he has no conviction. There is no need to deter him, even though based on the Crown’s case there is evidence that he and the deceased family fought. The Social Investigation Report indicates that he had threatened to “wipe out” the deceased family. A greater part of the sentence that I impose must reflect the need to deter other persons from committing similar offences. While this offence seems to be out of character for the defendant, and there may be no need to deter him, there are far too many murders in Antigua and Barbuda. I digress to state that Mr. Monelle is the sixth person to have been tried for the offence of murder during the last Assizes. I also note that on an occasion prior to the incident, the defendant and the deceased had an argument and he threw gasoline on the floor of the house in which they lived.

[26] **Prevention**

In so far as Rudy Monelle is a first offender, there may be no need to reflect in his punishment the need to prevent him from committing other offences. I hasten to add however, that based on the Social Investigation Report, there is some concern as to whether his alleged threats to Lisa's family should be taken seriously.

[27] **Rehabilitation**

I have had the benefit of listening to the evidence and also to hear Mr. Monelle and observe him in Court. I found this to be very enlightening. In addition, Social Investigation Report was very useful. It seems to me that the defendant is in need of counseling. Anyone who can be moved to kill someone in such a horrible manner evinces a certain level of depravity. This in no way detracts from the fact that I have given detailed consideration to the very helpful Psychiatric Report which Dr. Kumar has provided. On the question of Rehabilitation, the Social Investigation Report stated that "the defendant did not speak with any hostility and vendetta and this suggests that he might be willing to review his current status and adapt to any rehabilitation programme". The Probation Report paints a picture of someone who has a quiet and calm exterior, does not associate or verbalise much, but was very jealous and suspicious. He was very controlling. I have no doubt that he was very friendly and warm to his friends. Of note is the Probation Officer's view that Mr. Monelle said he is sorry about the entire incident. (The question that remains however is whether he is genuinely remorseful). The Probation Officer stated that Mr. Rudy Monelle "did not seem to be genuinely remorseful and considers himself to be the victim". I accept that Mr. Rudy Monelle came from a stable family and there is no history of violence in his childhood. He had a normal upbringing and as a child he seemed to have received the appropriate discipline and guidance at home. While the defendant's mother and the deceased got along very well, I have no doubt that the relationship between the defendant and the deceased family, though initially congenial, deteriorated. He did not get along with Lisa Phillip's siblings. The Probation Officer concluded that Mr. Monelle has the ability to manipulate the situation to meet his needs. This explains why some persons regard him as quiet and warm, and others as violent and aggressive (as stated in the Report). There is no obvious sign that the defendant is psychologically challenged.

[28] I have no doubt that the Probation Officer was unable to give a conclusion or definite view on the defendant's ability to reform. One thing that is clear is that the Court is uncertain of the effect the counseling is likely to have on this defendant, who has so skillfully manipulated others. I am also of the view that the defendant has been able to conceal his true feelings from his relatives and friends.

[29] **Mitigating and Aggravating factors**

The Court must pay attention to the mitigating and aggravating factors. The Court deals more severely with a defendant where the aggravating factors outweigh the mitigating factors. Through mitigating factors the offender's culpability is enhanced. Aggravating factors include violence of a gratuitous or excessive nature, that is, violence over and beyond the violence necessarily involved in the act itself.

[30] The mitigating factors include the fact that Rudy Monelle is 30 years; has no previous convictions; he seems to be a quiet person (even though there is evidence that he and Lisa quarreled and he also fought with Lisa's family). He worked as a landscaper. He is the father of baby Rodain; the latter who has lost his mother. While he seemed to have gotten along well with his colleagues, I am not of the view that he is as quiet as he appears (Based on the Crown's case, the evidence clearly indicates that he has an underlying aggressive personality). I believe the Crown's witnesses, who told the Court that he did not get along well with some of the deceased family.

[31] The aggravating factors in the matter include the method by which Lisa met her death. Based on the Crown's case, the defendant knocked her out and then used an accelerant to burn her body. The gratuitous or excessive nature of the violence used by the defendant has given me cause for pause. Of concern to the Court is the fact that the deceased sustained 100% burns to her body and they were third degree. As stated above, this is a very brutal and inhumane manner to treat a person. There is no evidence that the defendant was provoked, even though something must have caused him to injure Lisa so severely and fatally. The murder was degrading and he has shown very little, if any remorse. What is of concern to the Court is that he considers himself to be the victim.

Another matter that is noteworthy is the fact that he sought to conceal the crime that he had committed by telling the lawmen that Lisa was at work. The Court has noted with interest that the Mr. Monelle refuses to accept responsibility for his actions, even as late as at the sentencing hearing.

[32] The Court must give due attention to the aggravating and mitigating factors which should be weighed with the main objects of punishment, deterrence, prevention, reformation and retribution. I am required to attach the relevant weight to the mitigating and aggravating factors and having done so, in my view, the two sets of factors just about balance out each other.

[33] The following are some of the other relevant factors that a sentencer should take into consideration when sentencing an offender for murder: the partial excuses including an element of provocation, lack of premeditation, character, capacity for reform and continuing dangerousness.

[34] Usually, the Court tends to accept that the presence of genuine remorse is an important mitigating factor; similarly, the absence of genuine remorse has been treated as an aggravating factor. In the case at bar, I am not at all of the view that the defendant is genuinely remorseful. The Court's view is also held by the Probation Officer.

[35] It is well accepted that there are varying degree of premeditation. Further, the absence of any long premeditation or pre-planning is a strong mitigating factor. Based on the Crown's case, I am not of the view that this was a case of long premeditation to kill. However, the Court has cause for concern, based on the evidence, about the defendant's continuing ability to do others harm, as he has threatened. (Based on the Crown's case, he has threatened to do harm to Lisa's family if baby Rodain is given to them; the baby is in her relative's possession).

[36] **Circumstances of the case**

In this case, I am of the view that the circumstances of the commission of the offence should be accorded significant weight. The very high degree of criminality involved in this murder, is of concern due to their distinguishing features which are:

- (a) The murder was particularly brutal. The deceased had no chance of survival.
- (b) There is no evidence that the defendant was provoked or that he was attacked by the deceased.
- (c) The murder was carefully executed; an accelerant was used to inflict third degree burns to her entire body. Her bones were burnt and her upper and lower limbs were burnt off.
- (d) The defendant sought to hide the crime by telling the police and fire officers that the deceased was at work.

[37] **Gravity of the offence**

The offence for which Rudy Monelle has been convicted is very serious- murder. In fact, it is a heinous and brutal murder. The defendant treated the deceased with a callous disregard as a human being.

[38] **Mode and design of the execution**

Based on the Crown's case, and as stated earlier, Mr. Rudy Monelle knocked out Lisa Phillip then used an accelerant to inflict third degree burns to 100% of her body. The remains of her body were found on the bed in the bedroom they shared; she was in a lying position, with her arms stretched out. Her hands and feet were burnt off. The bones of her skull and limbs were charred. A catalyst or accelerant was used to create the fire (since an ordinary fire could not have caused such damage in such a short space of time).

[39] The above factors will be put into the mix in my determination of the appropriate sentence to impose on the defendant. I am mindful of the fact that the sentence I impose on Mr. Rudy Monelle must reflect his culpability, while taking into consideration the seriousness of the offence and the established pattern of sentences for offence of a similar nature. However, I must take allowance for mitigating factors which may serve to reduce the

defendant's culpability. In so doing, the Court must pay regard to the circumstances that may have led to the defendant killing Lisa Phillip. This would include any provocation. However, from the evidence it is unclear as to what caused the defendant to commit such a brutal act. In his dock statement, the defendant said that he was the victim; however he provided no reason for his action in the Social Investigation Report, or through his counsel. While I am aware that the defendant could have decided not to give any explanation, at the trial, for the killing since it could have undermined his defence, it is clear to me that he has not even, at the date of the sentencing, accepted responsibility for the killing. The defendant gave no explanation for the killing and there is no reason before me, which I could take into account as an aspect of the mitigating factor.

[40] **Sentences**

The Court has the discretion in sentencing a defendant; the sentence the Court imposes should reflect the seriousness of the offence. A sentencer has a wide range of sentence from which to select for the offence of murder. Indeed, a perusal of the cases from our jurisdiction reflects that our Court has imposed various sentences for the offence of murder, depending on the totality of the circumstances. Life imprisonment for murder is by no means the norm or the starting sentencing. The appropriate sentence is determined based on the particular facts. There are many cases in which our Court has imposed a determinate sentence for the offence of murder.

[41] However, there are a number of decisions from our Court, in which the Court has imposed the sentence of life in prison for the offence of murder. In **Nardis Maynard v The Queen No.12 of 2004, Saint Christopher and Nevis**, the appellant was convicted of murder and sentenced to imprisonment for life. At the time of the sentencing, he was 22 years old and had an impeccable record. He grew up without a father and lacked parental guidance. On appeal, the sentence and conviction were upheld. Rawlins JA, as he then was, stated:

“Sentencing in murder cases is at the discretion of the Judge, who may impose such sentence as the circumstances of the crime and the aggravating and mitigating factors demand. Judges usually try to be consistent and are entitled to consider similar cases”.

I find Rawlins JA's pronouncements very helpful and I am guided by them.

- [42] In **Kamal Liburd and Jamal Liburd, Criminal Appeal No. 9 & 10 of 2003**, two brothers aged 24 and 20 years, were convicted of murder and manslaughter. Kamal was convicted for the offence of murder and was sentenced to life imprisonment, and Jamal was sentenced to thirty years for the offence of manslaughter. On appeal, their sentence and conviction were upheld.
- [43] In **The Queen v Lyndon Lambert Criminal Case No.0057 of 2003, Grenada**, the defendant, who was 20 years old at the time of the offence, was convicted of murder. The Court sentenced him to life in prison.
- [44] In **Java Lawrence v The Director of Public Prosecutions, Criminal Appeal No.1 of 2008**; the appellant who was convicted of murder and sentenced to life in prison had his conviction and sentence upheld.
- [45] In **Roger George v The State, Criminal Appeal No.4 of 1999**, the appellant was convicted of murder. On appeal, his conviction of murder was quashed and the conviction of manslaughter was substituted. On appeal he was sentenced to life imprisonment. Byron CJ stated:
- “We were asked to exercise leniency and to impose a fixed term of years on a young man of 25 years who could be rehabilitated after serving a custodial sentence. This crime, however, falls within the category of domestic violence. This man who killed his woman because she was going to leave him and because she had been having an affair with another man for a long time. The community is paying more attention to these crimes which are on the increase”.
- [46] In **Augustine McPierre v The Queen, Criminal Appeal No.12 of 2002, Saint Vincent and the Grenadines**, the appellant was convicted for the murder of his common law wife and sentenced to life imprisonment. On appeal, both his conviction and sentence were upheld.

[47] As stated earlier, this was not a crime that was planned for a long time. I have no evidence to that effect. No one knows exactly what caused Mr. Monelle to act the way he did, but something must have triggered his acts of severe violence and brutality towards the deceased. I have no doubt that the crime was savage in its execution and manner. The fact that the deceased met her death in circumstances of domestic violence is not lost on the Court.

[48] From the very strong forensic and medical evidence, together with the other powerful circumstantial evidence adduced, the deceased was burnt while she was lying on a bed. There is no evidence that she resisted or even tried to avoid the fire. She was injured before being set alight; burnt body was found on a bed with her arms and legs outstretched. She was deliberately set alight by the defendant, based on the Crown's case. The deceased had no chance to escape death. The violence utilised by the defendant is, clearly, excessive. The Court must deal condignly with the defendant.

[49] The Court is of the view that the sentence of life imprisonment is appropriate where the defendant has committed a very violent and serious offence, as in the case at bar, and where the Probation Report seems unable to state with any conviction, that the defendant could be reformed, and where there is information in the Report that Mr. Monelle has threatened to "wipe out" the deceased family. The Psychiatric Report fortifies my position, since it states that Rudy Monelle does not have or ever had any mental condition. In any event, the sentence of life imprisonment could also be imposed on a defendant who may have some prospects of social re-adaptation.

[50] I am of the view that Mr. Monelle is a danger to the deceased family, who he has threatened to kill if the baby was given to them. As stated earlier, the relatives have the baby. This danger will continue for a period of time which I cannot reliably estimate at this time. I take into account the fact that Mr. Monelle has been in custody for in excess of two and a half years, in determining the appropriate sentence.

[51] **Conclusion**

In view of the totality of circumstances, including the fact that Mr. Rudy Monelle has spent two and a half years on remand, together with the other mitigating factors in his favour, the sentence that would serve the interests of justice is that of life in prison. The Court so orders.

[52] The Court gratefully acknowledges the assistance of the Learned Director of Public Prosecutions, Mr. Anthony Armstrong and the Learned Defence Counsel, Mr. Cosbert Cumberbatch.

Louise Esther Blenman
High Court Judge