SAINT VINCENT AND THE GRENADINES

IN THE COURT OF APPEAL

HCRAP 2008/020

BETWEEN:

DILLON SAUL

Appellant

and

THE QUEEN

Respondent

Before:

The Hon. Mde. Ola Mae Edwards	Justice of Appeal
The Hon. Mde. Janice George-Creque	Justice of Appeal
The Hon. Mr. Davidson Kelvin Baptiste	Justice of Appeal

Appearances:

Mr. Ronald Marks for the appellant
Mr. Colin Williams, Director of Public Prosecutions with
Ms. Sejilla McDowall and Mr. Colin John for the respondent

2011: January 24, 25.

Criminal Appeal – Murder – appeal against 30 years sentence – whether sentence was excessive – aggravating and mitigating factors – giving effect to deterrence as a penal objective – sentencing guidelines

The appellant was convicted of murder and sentenced to 30 years imprisonment with effect from the date of his arrest. The prosecution's case was that the appellant attacked his deceased cousin while she was taking her 6 year old son to school. He struck her with a piece of pipe on her head and stabbed her several times with a knife after she fell on the ground. One of the prosecution's witnesses testified that he called out to the appellant while he was stabbing the deceased but the appellant continued to stab her and only stopped when he threw a rock at him. The appellant subsequently fled the scene of the crime but later turned himself in at the police station.

At the sentence hearing the trial judge had regard to a social inquiry report, a psychiatric report, and submissions in mitigation from the appellant's counsel. The plea in mitigation made by the appellant's counsel disclosed that the appellant was remorseful, had a problem with alcohol and drugs, and was a skilled 32 year old who had an ongoing rift with

his family (including the deceased) concerning his occupation of their deceased great-grandmother's home. The appellant appealed his sentence on the ground that it is excessive having regard to the facts and the trial judge's failure to take into account two of the mitigating factors.

Held: dismissing the appeal and affirming the sentence of 30 years imprisonment.

1. While the prisoner's remorse and or surrender to the police may justify the sentencer reducing the sentence below the level appropriate to the facts of the offence, the sentencer is permitted to refrain from making an allowance for such mitigating factors in order to achieve a recognized penal objective such as general deterrence. Allowance for mitigation is not considered to be an entitlement of the offender and the more serious the crime, the less weight that would be given to remorse.

2. That the sentence of 30 years imposed by the trial judge reflects that the judge considered that the mitigating factors were outweighed by the aggravating factors in the case; and that a deterrent sentence was required in all circumstances.

3. That the court will vary a sentence of imprisonment only where it considers that the sentencer failed to apply the correct principles in reaching his decision on sentence.

4. That the court does not consider the sentence disproportionate to the offence or wrong in principle and the sentence of 30 years falls within the appropriate range of sentences for that kind of murder.

ORAL JUDGMENT

[1] EDWARDS, J.A.: The appellant was found guilty of murder on 22nd November 2008, and was on 5th December 2008, sentenced to 30 years imprisonment with effect from the date of his arrest.

[2] By their verdict, the jury rejected that the appellant was acting in self defence, or that he committed the murder in circumstances showing legal provocation.

[3] By their verdict, the jury accepted the prosecution's case that the appellant attacked his deceased cousin while she was taking her 6 year old son to school, struck her with a piece of pipe on her head, and stabbed her several times with a knife after she fell on the ground upon being hit with the pipe. One of the

witnesses who is a police officer testified that he called out to the appellant while he was attacking the deceased, saying "police, stop"; but the appellant continued stabbing the deceased, and only stopped after the witness threw a rock at him. The appellant upon running away from the scene of the murder later gave himself up at the Mesopatamia Police Station.

[4] At the sentencing phase, the learned trial judge had the benefit of a social inquiry report, a psychiatric report, and submissions in mitigation from the appellant's counsel Mr. Stephen Williams. The Director of Public Prosecutions who had served notice that the death penalty was being pursued, later withdrew that application. The transcript of the sentencing proceedings reveals that the judge considered the mitigation submissions which he described as "able mitigation on behalf of the prisoner by the learned defence Counsel Mr. Stephen Williams". Those submissions urged the judge to take into account the mitigating factors including the fact that the appellant was very remorseful, had a problem with the use of alcohol, cocaine, and marijuana, and was a 32 year old skilled mason and landscape gardener, who had an ongoing rift with his family (including the deceased), concerning his occupation of their deceased great-grandmother's home.

[5] While the judge specifically mentioned these mitigating factors, neither the appellant's counsel, nor the judge directly referred to the fact that the appellant had given himself up to the police after committing the crime. The judge also referred to the fact that the appellant "had hitherto a record free from serious violence except for one of wounding for which he was fined. He was not a person prone to violence until this incident" although he had been "a visitor to the Mental Health Institution on one or two occasions when he had imbibed alcohol and was reacting abnormally".

[6] The learned judge remarked:

> "It is the view of this court [that] the crime was heinous, unprovoked as per the evidence adduced in court at the trial and that the victim, the female

> cousin of the prisoner was defenceless at the time, and the crime was committed in a senseless, vicious and wicked way."

We find no fault with this statement since it reflects what was accepted by the jury, implicit in their verdict. The judge referred to the governing authorities Mervin Moise v The Queen[1] and Daniel Trimmingham v The Queen[2] and took into account his duty as "a sentencing judge to weigh the mitigating and aggravating circumstances that might be present in order to determine whether to impose a sentence of death or some lesser sentence".

[7] The judge concluded thus:

> "the vicious nature of the crime requires a strong message to be sent to the society. There is an over-prevalence of chopping and stabbing crimes in Saint Vincent and the Grenadines. A sentence to show the society's abhorrence of crimes of this nature is therefore required. The sentence should also reflect a certain amount of retribution, but with rehabilitation in mind. Therefore, having regard to all the circumstances of the case, that is both aggravating and mitigating ... I ...order a term of imprisonment of 30 years with effect from the date of arrest."

[8] The ground of appeal along with the submissions of learned counsel Mr. Marks complained that the sentence of 30 years is excessive having regard to all the circumstances of the case. We have been asked to review the sentence having regard to the facts and mitigating circumstances. On the authority of Harry Wilson v The Queen[3], Mr. Marks submitted that all of the mitigating factors were not considered by the judge. He submitted that sufficient consideration was not given to the genuine remorse shown by the appellant, and the fact that the appellant surrendered himself to the police without any trouble. Mr. Marks also relied on other cases in support of his contention that the murder committed by the appellant was not the worst case of murder deserving of a sentence at the higher end of the scale;[4] and decisions containing statements on the general principles of

[1] Cr. App. No. 8 of 2003 (Saint Lucia)
[2] Cr. App. No. 32 of 2004 (Privy Council) (Saint Vincent and the Grenadines)
[3] Cr. App. No. 30 of 2004 (Saint Vincent and the Grenadines)
[4] Rudy Monelle v The Queen High Court Criminal App. No. 15 of 2007: Blenman J; R v Wilson Exhale referred to by Saunders J.A.[Ag.] in Christopher Remy V The Queen Cr.App No. 6 Of 2002 At Paragraph 13

sentencing.[5] Mr. Marks submitted that a sentence of 20 years would be appropriate where the omitted mitigating factors operate.

[9] This court will vary a sentence of imprisonment only where it considers that the sentencer failed to apply the correct principles in reaching his decision on sentence. We do not consider the sentence disproportionate to the offence, or wrong in principle even if we, individually as sentencers in the High Court, would have passed a lesser sentence. In our view the sentence of 30 years falls within the appropriate range of sentences for that kind of murder. The learned judge may not have listed comprehensively the mitigating and the aggravating factors that he was balancing but this is a matter of style in our view. It does not mean that he omitted to consider the mitigating effect of the appellant's remorse and his surrender to the police, bearing in mind that he stated that he had regard to "all of the circumstances of the case, that is both aggravating and mitigating".

[10] While the prisoner's remorse and or surrender to the police may justify the sentencer reducing the sentence below the level appropriate to the facts of the offence, the sentencer is permitted to refrain from making an allowance for such mitigating factors in order to achieve a recognized penal objective such as general deterrence. Allowance for mitigation is not considered to be an entitlement of the offender.[6] Further, the more serious the crime, the less weight that would be given to remorse.

[11] The sentence of 30 years imposed by the learned trial judge on the appellant also reflects that the judge considered that the mitigating factors were outweighed by the aggravating factors in this case; and that a deterrent sentence was required in all the circumstances.

[12] Accordingly, we agree with the learned Director of Public Prosecutions that the sentence of the trial judge should not be disturbed.

[5] Jhonnaly Garabito v The Queen Cr. App. No. 13 of 2008; Desmond Baptiste and others v The Queen Cr. App. No. 8 of 2003.
[6] See "Principles of Sentencing" The Sentencing Policy of the Court of Appeal Criminal Division, (Second Edition) by D.A. Thomas at page 47 and 194.

[13] The appeal against sentence is therefore dismissed, and the sentence of 30 years affirmed.

Ola Mae Edwards
Justice of Appeal

I concur.

Janice George-Creque
Justice of Appeal

I concur.

Davidson Kelvin Baptiste
Justice of Appeal