SAINT LUCIA

IN THE COURT OF APPEAL

HCRAP 2009/005

BETWEEN:

ELIAS GEORGE

Appellant

and

THE QUEEN

Respondent

Before:

The Hon. Mr. Hugh A. Rawlins	Chief Justice
The Hon. Mr. Davidson Kelvin Baptiste	Justice of Appeal
The Hon. Mr. Ian Donaldson Mitchell	Justice of Appeal [Ag.]

Appearances:

Mr. Leslie Mondesir for the Appellant
Mrs. Victoria Charles Clarke, Director of Public Prosecutions
for the Respondent

2011: July 22, 25.

JUDGMENT

[1] RAWLINS, C.J.: This is a judgment of the court.

[2] On the morning of 12th January 2006, Feliciana Charles and her daughter, Macrina Charles, were brutally battered to death by the appellant, Elias George. At the time, Feliciana lived in a common law relationship with the appellant. They lived together in a house at St. Lawrence Estate in Anse-La-Raye. Feliciana's daughters, Kaza and Macrina, did not live at that house but they sometimes stayed over when they visited. The relationship between Feliciana and the appellant had a history of violence perpetrated by the appellant. Macrina, with her baby, was spending time at the house which Feliciana shared with the appellant when a

quarrel broke out in that house on the morning of 12th January 2006. The appellant was heard to say, among other things, that he could not take it anymore. The appellant was also heard to say that Feliciana and Macrina were plotting to put him out of the house and he was being told to leave when he was the one who built it. He alleged that Feliciana had received a letter which she was concealing because it must have come from a boyfriend. He was further heard to say that he was going to kill Feliciana and Macrina. The appellant was seen on the balcony striking the floor repeatedly with a two-by-four wooden post. He re-entered the house and screams were heard coming from it. He left the house and went to the home of a neighbour, Joseph Cornibert, and told him that he had just killed 2 persons. The appellant then left on his motor cycle. He went to Kaza's home, and threatened to kill her and her boyfriend. He told them that he had already killed 2 persons. He then rode through the village proclaiming that he had just killed 2 persons.

[3] Villagers found Feliciana and Macrina lying dead on the floor of the house in pools of blood with their faces smashed. The appellant returned to the scene that same morning and was arrested by the police. On 13th January 2006, he gave a statement under caution to the police in which he stated that he was involved in a quarrel and a fight with Feliciana and he took the piece of wood and struck her first and then Macrina. The appellant was convicted on 8th May 2009 for the murders of Feliciana and Macrina and he was sentenced to death by hanging. He appealed against his conviction and sentence.

The appeal against conviction

[4] There were three grounds of appeal. The first was, in brief, that the conviction was unsafe and unsatisfactory and should not be allowed to stand. On this ground, Mr. Mondesir, learned counsel for the appellant, submitted that the behaviour of the appellant before, during and after the commission of the offence, coupled with the previous mental history of the appellant, and the clinical examination of the appellant by Dr. Nicole Edgecombe, pointed to this. However, at the hearing

learned counsel, Mr. Mondesir, very wisely in our view, withdrew that ground of appeal.

[5] The second ground of appeal complained that the learned trial judge failed to direct the jury on the defence of provocation, thereby depriving the appellant of the possibility of a verdict of manslaughter. Counsel submitted that this omission was fatal to the conviction for murder. In our view, Counsel correctly stated the principles in relation to provocation, particularly taken from Lewis v The State[1], and, more particularly, the provision of section 91 of the Criminal Code 2004. The latter provides that where on a charge of murder there is evidence on which a jury can find that the person who is charged was provoked, whether by things said or done, or by both, to lose his or her self control, the question whether provocation was enough to make a reasonable person do the act that occasioned death shall be left to be determined by the jury. The provision continues that in determining the question, the jury shall take into account everything both said and done according to the effect which in their opinion it would have on a reasonable person.

[6] During the course of the hearing of the appeal we indicated to Mr. Mondesir that we did not agree that the facts on which he relied, which were mainly from the statement which the appellant gave to the police, were sufficient to raise the issue of provocation as a live issue requiring a provocation direction. We did not see, for example, how it could have arisen because Feliciana and/or Macrina may have threatened to put the appellant out of the house, even if he was mainly responsible for building it, particularly given the history of the abusive relationship. Even if we are wrong in that conclusion, as we indicated at the hearing, the evidence is so overwhelming in pointing to the guilt of the appellant that, in my view, no reasonable jury properly directed on provocation would have reached a different verdict from that which they reached in this case. The evidence leaves no doubt that the appellant was properly convicted of murder.

[1] [2011] UKPC 15 at paragraph 12.

[7] In the forgoing premises, the appeal against conviction is dismissed and the conviction of the appellant for the murders of Feliciana and Macrina Charles is affirmed.

The appeal against sentence

[8] The third ground of appeal is against the sentence of death. It states that the sentence of death was wrongly imposed and manifestly excessive because the trial judge failed to adopt the proper approach to the discretionary death sentence. Counsel relied, in particular, on the decisions of the Privy Council in the case of Daniel Dick Trimmingham v R[2], R v Earlin White[3], Leslie Pipersburgh and Patrick Robateau v R[4], Devon Simpson et al v R[5], and Maxo Tido v R[6]. Mr. Mondesir also relied on the decision of this court in Mervyn Moise v R[7], Harry Wilson v R[8], Dillon Saul v R[9], as well as the recent decision of the Full Court of Appeal of Jamaica in R v Peter Dougal[10]. Basically, the foregoing cases require a sentencing court, before imposing the death penalty, to find:

(a) that the case on the facts of the offence is the most extreme and exceptional: "the worst of the worst" or "the rarest of the rare"; and

(b) that there is no reasonable prospect of reform of the defendant and that the object of punishment could not be achieved by any other means than the ultimate sentence of death. For this latter purpose, the character of the offender and any other relevant circumstances are to be taken into account insofar as they may operate in his favour by way of mitigation and are not to weigh in the scales against him.

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[2] [2009] UKPC 25; 1 LRC 205, UKPC, (22 June 2009).
[3] [2010] UKPC 22, [2010] 77 WIR 165 (29 July 2010).
[4] [2008] UKPC 345; [2008] 4 LRC 345, UKPC, 921 February 2008).
[5] (1996) 48 WIR 270; [1997] AC 1; [1996] 2 WLR 700, PC (7th March 1996).
[6] [2011] UKPC 16, (15 June 2011).
[7] Saint Lucia High Court Criminal Appeal No. 8 of 2003 (unreported) (15th July 2005).
[8] St. Vincent and the Grenadines High Court Criminal Appeal No. 30 of 2004, (unreported) (28th November 2005).
[9] St. Vincent and the Grenadines High Court Criminal Appeal No. 20 of 2008, (unreported) (25th January 2011).
[10] [2011] JMCA Crim 13; [2011] 77 WIR 353.

The Privy Council has confirmed that these two criteria must be satisfied before the court imposes the sentence of death.

[9] In passing, we have noted that learned counsel for the appellant did not seriously pursue the second sentencing ground of appeal, to wit, that the learned trial judge failed to warn the appellant during the trial that the sentence of death was a possible outcome of the trial. This court is satisfied, on reading Articles 86 and 87 of the Criminal Code 2004, that this was not a case where notice was required to be given by the Director of Public Prosecutions pursuant to Article 87(4) of the said Criminal Code. We are confirmed in that view by the judgment of the Privy Council in the case of Devon Simpson et al v R[11]. We agree with the reasoning of the trial judge that although the appellant was convicted of non-capital murder he could have been sentenced to death on the ground that he was convicted of more than one murder on the same occasion. This is pursuant to Article 87(3)(b) of the Criminal Code 2004, which provides that a person who is convicted of non-capital murder may be sentenced to death if he or she is convicted of another murder committed on the same occasion as the one with which he or she is charged.

[10] The first question then, in determining whether the sentence of death is excessive in the circumstances of the present case, is whether this case was the worst of the worst, the rarest of the rare. It is very difficult for us to come to that conclusion when it is compared to the case of Daniel Dick Trimmingham. This was undoubtedly a terrible murder. It is obvious that the appellant killed his girlfriend and her daughter in a frenzy. He had bludgeoned them to death in their house using a piece of 2 x 4 post. However, it does not seem to fall within any of the categories or examples of the worst of the worst given by the Privy Council in the Trimmingham case and later decisions.

[11] Our main concern, however, is, as the learned Director of Public Prosecutions eventually admitted, the trial judge did no analysis in relation to the possibility of reform of the appellant. This is a fatal omission in the light of the Trimmingham

[11] Supra at note 5.

decision. The result is that the death penalty imposed on the appellant did not meet the criteria laid down in the Trimmingham and kindred decisions for the imposition of the ultimate penalty. This is particularly so given that there is some evidence in the probation report, for example, concerning his work and conduct during the time of his incarceration, which evidence points to the possibility of his reform and rehabilitation. We are mindful to state, however, that this will not always be the outcome inasmuch as there may well be circumstances in which the case may be remitted to the High Court for the purpose of the reform analysis.

[12] In the foregoing premises, we feel constrained to allow the appeal against sentence to the extent that the sentence of death is set aside, and, instead, two sentences of life imprisonment are imposed on the appellant for the murders of Feliciana Charles and Macrina Charles, the same to run concurrently. We are here also guided by the case of Bertill Fox v R [No. 2][12] in which the Privy Council quashed the death sentence and remitted the matter to the High Court for sentencing. The Privy Council eventually determined that the sentence was, on each of two counts of murder committed at the same time, a term of life imprisonment on each count to run concurrently. Bertill Fox was convicted for the murders of his girlfriend and her mother at the same time, having left his home with a loaded gun for that expressed purpose and confronting them at their business place in Basseterre, St. Kitts.

Order

[13] The order then is that the appeal against conviction is dismissed and the conviction of the appellant for the murders of Feliciana and Macrina Charles is affirmed. The appeal against the sentence of death by hanging is allowed to the extent that the sentence of death is set aside, and, instead, two sentences of life imprisonment are imposed on the appellant for the murders of Feliciana Charles and Macrina Charles, the same to run concurrently.

[12] [2002] UKPC 13; (2002) 61 WIR 412; [2002] 2 AC 284; [2002] 2 WLR 1077, UKPC.

[14] We express appreciation for the research and very cogent presentation, particularly of the written submissions which Mr. Mondesir and Mrs. Charles-Clarke provided in this appeal.

Hugh A. Rawlins
Chief Justice

I concur.

Davidson Kelvin Baptiste
Justice of Appeal

I concur.

Ian Donaldson Mitchell
Justice of Appeal [Ag.]