

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CRIMINAL DIVISION)**

SAINT LUCIA

CASE NO. SLUHCRD2007 /1340

BETWEEN:

THE QUEEN

Complainant

-v-

MARLON CHARLES

Defendant

Appearances:

Mr. Henry Joseph for the Defendant
Mrs. Victoria Charles-Clarke, Director of Public Prosecutions
Ms. Tina Mensah with the DPP, for the Crown

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2011: July 15 and 29
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JUDGMENT ON SENTENCING

[1]. **BENJAMIN, J:** Bertran K. Giraudy also known as Patrick Giraudy died on Sunday, November 4, 2007 at Giraud in the quarter of Laborie. At the time he lived with his wife, Helena Giraudy, in their residence at Giraud.

- [2]. Upon an indictment laid by the Director of Public Prosecutions (DPP) on August 17, 2009, The defendant was charged for the offence of murder in respect of the death of Bertran Giraudy contrary to section 85 (b) of the Criminal Code of Saint Lucia, 2004. The defendant was tried by a Judge sitting with a mixed jury and a verdict of guilty of murder was returned against the defendant. The defendant is before the Court for sentencing. The conviction is one for non-capital murder for which a sentence of life imprisonment is prescribed by section 87 (2) of the Criminal Code.

FACTS

- [3]. On Saturday, November 3, 2007, Mr. and Mrs. Giraudy retired to bed. At around 11:00 p.m., Mrs. Giraudy got out of bed and closed the bedroom door. Shortly after, she again observed that the door was open and a masked man armed with a cutlass walked into the room. The intruder proceeded to demand money while striking the couple about their persons with the cutlass. Mr. Giraudy was then trussed up with a belt and a tie. Mrs. Giraudy was taken into another bedroom. In her bid to escape through the kitchen door, Mrs. Giraudy was grabbed and struck on the face with the cutlass by the same intruder who ordered her back into the house.
- [4]. Mr. Giraudy was later found by persons in a yard opposite to his home. He was tied up and lying covered with glory cedar branches in a dark area. The ambulance took him to the St. Jude's Hospital where he was pronounced dead.
- [5]. A search of premises occupied by the defendant and blood found on a pair of camouflage trousers recovered was matched by DNA to the blood of the deceased. In addition, a torchlight and a watch taken from the defendant were identified as belonging to the deceased.
- [6]. In a statement to the Police, the defendant admitted removing louvre panes and entering the Giraudy's house to steal. He admitted striking the deceased with a cutlass and tying

him up. He also stated that he took a torchlight, a watch and a cell phone while in the house. It was asserted that someone named Kim accompanied him to the premises. The statement suggested that while he was in another part of the house, the deceased left or was taken from the bedroom by someone else.

[7]. The jury clearly rejected the defendant's version of how the deceased came to be found outside of his residence. In the course of investigation, no one by the name of Kim was located.

[8]. A post mortem examination conducted by Dr. Stephen King, the pathologist, on the body of the deceased revealed multiple bruises and fracturing of both cheek bones. The cause of death was given as intra-cranial haemorrhage and brain damage as a result of blunt force trauma to the head. A contributing cause was also opined, namely, respiratory compromise from aspirated blood in the airways.

PRE-SENTENCE REPORT

[9]. A pre-sentence report was prepared and furnished for the use of the Court as is mandated by section 1098 (1) of the Criminal Code. The Court is grateful to the Probation Officer who authored the report.

[10]. The defendant is now thirty-four (34) years of age. He resided with his mother at Morne du Don, Castries before leaving for Tortola with his maternal aunt when he was around six or seven years old. He resided in British Virgin Islands until he returned to St. Lucia at the age of fifteen (15) years. He attended primary school in St. Lucia and Virgin Gorda and had secondary education at the High School in Virgin Gorda. Upon his return to St. Lucia, he completed a course in bar-tendering under the auspices of the National Skills Development Centre at Bisee, Castries for six (6) months in the year 2003.

- [11]. The defendant has spent most of his life living with his maternal aunt both in St. Lucia and in British Virgin Islands (BVI) as his mother travelled to the Virgin Islands to seek employment as a domestic servant. His father has never played any role in his upbringing.
- [12]. His aunt speaks well of him and told the Probation Officer that the defendant assisted her around the house situated at Giabois, Saltibus. His mother and aunt both miss his presence. His aunt says that over the years the defendant has not presented any problem to her.
- [13]. In the community of Giabois, the defendant prepared and sold cakes for a living for about seven (7) years prior to the incident. A Police witness made mention of this fact in the course of his testimony. The defendant also cultivated food crops on a piece of land purchased for him by his aunt for the purpose. The produce was sold in Vieux Fort Town by the aunt with the defendant's assistance.
- [14]. The Probation Officer was unable to canvass the views of members of the community as access to the Giabois community proved to be difficult and suitable transportation was not available.
- [15]. The defendant admitted five previous convictions for the offences of house-breaking, stealing from a dwelling house, escaping lawful custody and stealing between August 1997 and July 2008. He has served a sentence of imprisonment for stealing from a dwelling-house.
- [16]. There was no remorse heard or detected by the Probation Officer in his interview with the defendant. As he did in his statement to the Police, the defendant maintained in the said interview that he tied up the deceased and left him in the bedroom but he could not account for what happened to him thereafter. He did confess to having struck both the deceased and Mrs. Giraudy with the cutlass.

[17]. In mitigation of sentence, learned Counsel relayed to the Court that the defendant stated that he was fed up with the life he had previously embarked upon and is now prepared to review the choices he has made. It was highlighted to the Court that the defendant was a caring individual to his aunt and mother having regard to his assistance to his aunt and in cultivating food crops for sale. In addition, it was said that the defendant has expressed remorse at the tragic outcome of the burglary and sorrow at the death of the deceased. The Court has asked to consider the potential for the defendant to be productive with his culinary skills.

[18]. The pre-sentence report makes reference to the defendant having two children aged fourteen (14) and eleven (11) years residing with their respective mothers. However, learned Counsel made the correction that the defendant in fact has three children and he is in contact with two of them. The report did not elaborate on the defendant's relationship with his children, apart from a suggestion that he may have been in communication with one of them as he was not sure where the other lived. In the mitigation address, the Court was told that the defendant endeavoured to provide financial support for two of the children when he visited Castries. All in all, there appeared to be no close bond between the defendant and his offspring.

SENTENCING

[19]. Given the conviction for non-capital murder, the Court is guided in its approach to sentencing by the guidelines set out in the Criminal Code and the general principles as to sentencing identified by Byron, CJ in Desmond Baptiste v. R. Criminal Appeal No. 8 of 2003 (Saint Vincent and the Grenadines), namely, retribution, deterrence, prevention and rehabilitation. Further, the general guidelines to sentencing as provided for the section 1102 of the Criminal Code must be observed by the Court. As such, the rehabilitation of

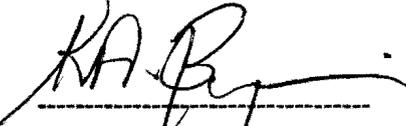
the offender is to be treated as one of the aims of sentencing and the overarching principle is that the gravity of the punishment must be commensurate with the gravity of the offence.

[20]. Over and above the criminal antecedents of the defendant, there are aggravating factors arising from the manner and execution of the offence. The events began with an invasion of the house of the deceased who, like his wife, were obviously elderly persons. The couple were not only terrorized by a marked person armed with a cutlass demanding money but the deceased was beaten with that cutlass and demeaningly tied up. The deceased was left in the open, bound and covered with three branches. These matters are of extreme aggravation.

[21]. The only mitigating feature is subjective to the defendant. He assists his aunt and mother in cultivation crops for sale for their upkeep and assists his aunt in the upkeep of her living accommodation. This does very little to outweigh the disturbing aggravating factors.

[22]. As to rehabilitation, the defendant, is still a young man and he was demonstrated talents as a maker of cakes and as a small farmer. Such potential can be developed prior to the defendant's re-entry into society.

[23]. This offence was as heinous as it was callous. A lengthy period of incarceration is inevitably attracted. Allowance must be made for time spent on remand. Accordingly, the defendant is sentenced to twenty (20) years imprisonment.



KENNETH A. BENJAMIN
HIGH COURT JUDGE