

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

SAINT LUCIA
CASE NO. SLUCHRD2014/1614

BETWEEN

THE QUEEN

vs.

ALEXANDER BONNET

Appearances

Mr. Daarsreen Greene of Counsel for the Defendant
Mrs. T Calderon, Crown Counsel for the Prosecution

2016: 12 April, 30 May

Sentencing – Manslaughter – Provocation – Assumptions applicable – Defendant justifiably lost self control – Benchmark sentence of 15 years – Strong Mitigation – 8 years spent on remand – Whether appropriate sentence should result in immediate release.

DECISION

- (1) **RAMDHANI J. (Ag.)** On the 21st January 2016, the court accepted a plea of guilty to manslaughter from the defendant. He had been charged on an indictment filed on the 17th August 2009 with non-capital murder committed on the 29th February 2008, contrary to section 85(a) of the Criminal Code Cap 3:01 of the 2008 Revised Laws of St. Lucia
- (2) I have accepted that in the circumstances of this case, the defendant did not simply lose his temper but that he had really lost his self control. I have accepted that this lost of self

control was reasonable having regards to all the circumstances existing bearing in mind that people are expected to exercise reasonable control over their emotions. His loss of self control in these circumstances was sufficiently excusable to justify the plea.¹

- (3) On the 12th April 2016, the defendant was sentenced with the court providing oral reasons for the sentence imposed. There was an indication that the oral sentencing decision would be reduced into writing. This fulfils that indication.

The Basis of the Plea

- (4) The Court accepted the plea on the basis of the provocation involved in the commission of the offence and which was accepted by the Crown.
- (5) The prosecution evidence shows that the defendant and the deceased lived as man and wife at Malgretoute, Monchy, Gros Islet. At the date of the offence they had two minor children one of whom was an infant of eight months.
- (6) The prosecution's case does provide any depth with regards their lives except that they lived a normal life marked by only a few altercations. This has made the events of the fateful day even more bizarre and would have remained so, except for explanations which came out more recently and which have not been disputed.
- (7) On the prosecution's case, it has been accepted that the defendant and the deceased were at home when he received a telephone call. This made her angry. They began to argue and she stabbed him twice with a knife. He in turn retaliated and using a hammer he struck a fatal blow to the side of her head. He made a telephone call to his sister, Sabina Dorville.

¹ See *Generally Attorney General's Reference (Nos. 74, 95 and 116 of 2002) (Suratan and others)* [2003] 2 Cr App R 42

- [8] At the time Sabina Dorville lived next door. She heard her brother, the defendant, on the other end of the phone gasping for breath. Apprehensive, she went across to his home and as she opened his door she saw blood on the floor. She found both of them lying 'back to back' in the laundry room. She saw him lifting his head and heard him calling out for her. She called 911.
- [9] The ambulance took away the defendant from the scene and he spent several days in the hospital. He was found to have multiple stab wounds causing intra abdominal hemorrhaging and respiratory depression. It was opined that these injuries were caused by a sharp instrument as a result of moderate to severe force. He was found to have a laceration of the larynx and an endotracheal tube was surgically inserted. This was removed 10 days later.
- [10] The deceased was declared dead at the scene. According to the post mortem report the cause of death was haemorrhagic shock as a result of three incised wounds to the neck, sterna notch and cheeks. She also had multiple contusions.

The Impact of this Offence on Surviving Family

- [11] The children have lost their mother permanently and since the 29th February 2009 (the date of the offence), for all intents and purposes, they have also lost their father. When he was arrested for this offence, they were forced to move in with their maternal grandmother.
- [12] The grandmother continues to lament the loss of her daughter with whom she was very close. She has become depressed and would sit in the dark crying. She lived alone before this tragedy but her other daughter was compelled to move in with her to support her and assist with the children. The children are growing up but this tragedy remains with them and all others. No one had had any clear reason why the defendant took the life of his common law partner and the mother of his two children. All of them, including the

defendant's own children wish to know. There is need for closure. Other information available at the sentencing. Whether this gave closure would be a matter for time.

The Pre Sentence Report

- (13) The defendant was presented to the court as a 47 year old man who before this incident lived with his common law spouse (the deceased) and his two children at Monchy, Gros Islet. He grew up with his mother and for most of his young life with his step father. There was no support from his biological father. The relationship between his mother and stepfather was an abusive one and it ended when he was in his teens. Shortly thereafter he found a mentor (the father of one of his friends) who is a former police officer and who assisted in making his young life a positive one.
- (14) As he became an adult he was involved in several relationships and have four children two being from his last relationship with the deceased victim in this case.
- (15) He was a family man who had held a number of jobs by 2008. He had been an employé at Cable and Wireless (fired for making an illegal connection), later at Le Sport Hotel as a junior engineer and at Cox Cable Company. He was forced to resign because of his medical condition (ulcerated stomach) to seek treatment overseas.
- (16) Since he has been remanded he has pursued studies in CXC with a grade 3 pass in Social Studies. He is presently pursuing studies in mathematics and English Language.
- (17) The defendant has no previous convictions and reports from his community present him as a quiet and decent community member. The defendant has expressed remorse for causing the death of the deceased.

The Court's Consideration on Sentence

- [16] Pursuant to section 93 of the Criminal Code Cap 3:01, of the Laws of St. Lucia, the maximum penalty for manslaughter is life imprisonment. It has been accepted that this is a whole natural life sentence. The court has a wide discretion to give any less term of imprisonment than the prescribed maximum.²
- [19] In deciding the appropriate sentence, the court is to have regard to all of the principles of sentencing as well as those guidelines that had fixed by either the legislation or the Court of Appeal. The court is mandated to have regard to considerations that rehabilitation is one of the aims of sentencing.
- [20] It hardly needs to be said that the offence of manslaughter by provocation is a serious offence. Our courts have clearly approached this offence as one that would presumptively attract a custodial sentence³ and has accepted that the starting point is not necessarily or usually the maximum penalty. The courts have accepted that the maximum penalty must usually be appropriate only for the worst of cases both from the standpoint of the offence itself and the offender.
- [21] Some courts have been generally imposing a sentence of 15 years imprisonment for this offence. This in turn has been approved as a 'benchmark' sentence by Eastern Caribbean Court of Appeal. See **Hillary Patrick Tench v R** Criminal Appeal No. 1 of 1991 St. Lucia (Unreported); **James Jn Baptiste v R** Criminal Appeal No. 10 of 1994 St. Lucia (Unreported); **Denis Alphonse v R** Criminal Appeal No. 1 of 1995 St. Lucia (Unreported); **Bertrand Abraham v R** Criminal Appeal No. 12 of 1995 St. Vincent and the Grenadines (Unreported); **Sherwin Fahie v R** Criminal Appeal No. 2 of 2002 BVI (Unreported).⁴

² Section 1123(1) of the Code states: "Subject to the provisions of this Code or of any other enactment relating to any offence, the High Court before which any person is convicted of any offence may, in its discretion, sentence the person to any less term of imprisonment than that prescribed by this Code, or such other enactment, for such offence."

³ The UK Sentencing Guidelines states that: "A Sentence for public protection must be considered in all cases of manslaughter."

⁴ Note the Court's discussion in *Vern Green* on starting point sentences.

[22] Accordingly, this court will follow the 'benchmark' or starting point sentence of 15 years.⁵

[23] The benchmark sentence being identified, the exercise then of getting to a final sentence is really an evaluative one that requires the court to weigh the aggravating features and general and personal mitigating features. With such crimes of violence, it is important to bear in mind not only the seriousness of the offence but also the level of culpability of the offender.⁶ In measuring culpability, the point has been well made that if the aggravating features outweigh the mitigating features, the tendency must be towards a higher sentence. It is equally logical and proper that if the mitigating features outweigh the aggravating features the tendency should be towards a lower sentence. After the nominal sentence is arrived at, then considerations will be given to reduction for the guilty plea, and then to whether the time spent on remand should affect that sentence.

[24] I now turn to consider the aggravating and mitigating features of this case.

Aggravating Features

[25] Offences which resulting death is always to be regarded as serious offences. The very nature of this offences means that there is a death involved. So the fact that there has been a death is not to be regarded as an aggravating feature of the offence of manslaughter for the purpose of increasing the sentence. All manslaughter involves a killing. The seriousness of the offence has informed the starting point sentence.⁷ Aggravating and mitigating features will then be considered to fashion the final sentence.

⁵ Even Mr. Innocent on his behalf accepts that a starting point of 15 years is appropriate. See paragraph 8.2 of the submissions on mitigation.

⁶ *R v Haynes* [2015] EWCA Crim 199 – the defendant a 17 year old was pumped and angry and was in a confrontation with someone at a party when the deceased attempted to intervene. The defendant got further angry and struck the deceased tell him to get out of the way. The deceased and struck his head and died as a result. The court had regard to the his youth and his previous exemplary character and sentence him to 45 months custody.

⁷ See Practice Statement (crimes: life sentences) [2002] 3 All ER 412, [2002] 1 WLR 1789, *R v McCandless* and other cases [2004] NICA 1, *R v Williamson* - [2007] EWCA Crim 44

(26) The fact that the offence is prevalent will also not aggravate the sentence: it would mean that the sentence should start at the higher end of the scale.⁶ In this case, it has also guided this court in accepting that the benchmark (starting point) should be 15 years.

(27) It is an aggravating feature in this case that the defendant used a weapon, to wit a knife and a hammer on his own admission.

(28) The aggravating features in this case show that this defendant committed this offence with a medium range degree of culpability.

Mitigating Features

(29) The Crown has identified a number of factors that it suggests may be regarded as mitigating the offence. The true mitigating factors related to this offence and the offender are the facts that this incident was a spontaneous event. There was no pre-mediation and this court could hardly find that he had any intention to grievously harm the mother of his children.

(30) He is a first time offender. From the time of the incident he has expressed his regret. Today the court is convinced that he is truly remorseful.

(31) He has since the incident taken clear steps towards his own rehabilitation. He has been pursuing education courses in prison and sat exams.

Fixing the Nominal Sentence

(32) This is a tragedy. Everyone has been a victim in this case. The children have lost their parents, their mother permanently and their father since he was arrested. Their lives will be

⁶ *Lastley and Another v Singh* - [2014] 5 LRC 649 decision of the Caribbean Court of Justice; *R v. Gomes-Monteiro and Others* [2014] EWCA Crim 747

forever affected by this. I cannot imagine how they might have any normal relationship) ever again with their father

(33) Quite apart from the evidence on the prosecution's case the author of the pre sentence reports recounts certain matters which have bearing on the crime. This account shows that the relationship between the defendant and deceased were marked by disagreement between them in relation to his continued relationship with his eldest daughter who lived in Canada. Because of deceased stance, the defendant was forced to secretly communicate with his daughter who he also secretly supported financially.

(34) Shortly before the tragedy, his eldest daughter returned to St. Lucia and circumstances led him to invite her to live with him and his family. This was a difficult and uncomfortable time for all of them. The deceased was not happy with his daughter being there. The defendant recalls the deceased would treat his daughter badly and even went to the extent of referring to her as a 'bitch'. He stated that he was very hurt by this and he was forced to take his eldest daughter back to her mother.

(35) He told the probation officer that in the day in question, he was talking to a female friend on an overseas call when he mentioned to that friend that he would marry her (the friend). The deceased overheard this conversation and became enraged, and an argument began between the two. He at the time had the eight month old baby in his arms. He placed him on the ground and the confrontation continued. He tried walking away to the other room and she followed him. He then saw her with a knife and then she suddenly stabbed him in his throat. He said that he felt weak and felt he was going to pass out. There was hammer nearby. He took it and struck her with it. She fell and before he passed out he recalled making a call. (He must have also stabbed her having regard to the medical report.)

(36) I have chosen to include this account as it has been unchallenged by the Crown, and because the relatives and all concerned have lamented that they continue to remain in the

dark about why this tragedy occurred. This is his version of the incident. This court sees no reason to doubt him at this point.

[37] There was considerable provocation in this case. The deceased was provoked by hearing that the father her children was telling someone on the phone he was going to marry that person and that made her very angry leading to her attack on him. He on the other hand was upset with her over the years with her treatment of his first child and the fact that he had to secretly continue that relationship with his child because of the deceased's manner. The legal provocation for the defendant was the attack on his person. He was stabbed several times before he managed to get the knife away and in turn retaliated by also stabbing her. As they lay on the ground, she dead and he seriously injured, their infant child was on the floor innocent and unaware of the horror which had just been unleashed on her little life.

[38] I have considered the aggravating and mitigating features and I have considered the harm which continues to flow from this tragedy. I have noted the good character otherwise of the defendant and his genuine remorse. I have noted that he has made positive strides in his life. All of this would have significantly brought the starting point sentence downwards. A nominal sentence of 12 years would have been proportionate for this offence. Then there is his guilty plea. It is late plea but he would still be entitled to at least 10 per cent for it. Then of course, there is the delay, and the time spent on remand.

[39] This man has been on remand since February 2008. He has spent 8 years in prison awaiting trial. This delay is to be placed substantially at the feet of the State. In prison years this would amount to more than 12 years. I do believe that the only justifiable sentence in this case would be an order which takes all these matters into consideration. That would ground proportionality and satisfy the relevant aims of sentencing.

Disposition

- (40) The Defendant is sentenced to 9 years imprisonment, which having regard to the court's own calculation of the time which the defendant has spent on remand which will be equivalent to 'Time Served'. He is to be released forthwith.



Darshan Ramdhani
(High Court Judge Ag.)