

EASTERN CARIBBEAN SUPREME COURT
ST. CHRISTOPHER CIRCUIT

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SKBHCR2018/0010

BETWEEN:

DIRECTOR OF PUBLIC PROSECUTIONS

V

CLEVAN LEE

Appearances:-

Mr. Vaughn Woodley and Ms. Lanein Blanchette, Crown Counsel for the Director
of Public Prosecutions.

Mr. Jason Hamilton for the defendant.

2018: October 29th

JUDGMENT ON SENTENCE

Introduction

- [1] WARD J.: On 8th June, 2018 the defendant pleaded guilty to manslaughter. The court ordered that a Social Inquiry Report be prepared and deferred sentencing pending its receipt. The court has since received a Social Inquiry Report dated 18th July, 2018. On application of the Director of Public Prosecutions, sentencing was adjourned in order to facilitate certain enquiries deemed relevant to the sentencing exercise.

- [2] On 19th October, 2018 the court received oral and written submissions on sentence by the prosecution and defence counsel. I have also taken **account of the contents of the Social Inquiry Report. This is the court's** judgment on sentence.

Summary of facts

- [3] The defendant and the deceased shared a common law relationship for about three years and co-habited at Station Street, Old Road, St. Kitts. The defendant, a national of St. Vincent and the Grenadines had migrated to the Federation to reside with her.
- [4] In or about May, 2016, the relationship began to deteriorate as the frequency with which the deceased began attending parties and staying away from the residence for entire weekends increased. This bred suspicion as the defendant accused her of infidelity.
- [5] On 11th July, 2016 the defendant observed the deceased lying in bed taking nude photos of herself with her cellular phone. The following day he observed her engaged in a similar activity. On 13th July the defendant and the deceased became embroiled in an argument during which he confronted her about the nude photographs. He told her that he intended to move out of the home because she was being unfaithful. She denied that she was being unfaithful. He then took her phone and read and showed her messages that she had sent to the other man. His threat to call the number of the other man prompted her to confess her infidelity.
- [6] Things rapidly escalated thereafter. At one point, the defendant took hold of a nearby hammer which it seemed the deceased was reaching for. He used this hammer to inflict severe injuries to her head and face. He then

discarded the hammer, retrieved a knife from the kitchen and stabbed the deceased in her throat and about the body.

[7] When he was through, the defendant ingested multiple aspirins and Clorox and cut himself in an apparent suicide attempt.

[8] **He then took photos of the deceased's body and sent them to a friend as** well as to a family chat in St. Vincent informing them of what had transpired. He then went to the nearby Old Road Police Station and reported the tragic deed.

Discussion

[9] In the Federation of St. Christopher and Nevis, the maximum penalty prescribed for manslaughter is life imprisonment.

[10] In performing the sentencing exercise the cardinal principles of sentencing are uppermost in my mind:

Punishment: **The objective here is to reflect society's abhorrence of** criminal conduct especially of this type of offence;

Deterrence: This specific or general and is aimed at not only deterring the particular offender from relapsing engaging in recidivist offending but also to deter like-minded people from engaging in similar deviant behavior;

Prevention: This is aimed at protecting society from offenders who persist in high rates of criminality by imposing protracted sentences designed to keep them away from society.

Rehabilitation: Here, the court considers whether the offender is capable of rehabilitation and reintegration into society as a contributing member of society. The court is concerned to shape the sentence in a way that assists in achieving this objective.

- [11] In some cases, all of these aims may not necessarily be met. The duty of the court is to consider which of these will be best served by the sentence to be passed on a particular offender.
- [12] In this case, the aims of deterrence and prevention can be discounted. This crime was a spontaneous and uncontrollable reaction. I respectfully adopt the reasoning of the Court of Appeal in *Kenneth Samuel*,¹ urged upon me by learned counsel M. Hamilton, where Barrow J.A. stated: “A spontaneous and uncontrollable reaction does not lend itself to being deterred either in the offender or in others.”
- [13] As to prevention, which is aimed at protecting society from offenders who persist in high rates of criminality by imposing protracted sentences designed to keep them away from society, the defendant presents as a person of previously good character. Thus this element of sentencing does not attain prominence in this sentencing exercise. More relevant is the aim of punishment.
- [14] In constructing a sentence for manslaughter based on provocation it must be assumed that the offender, at the time of the killing, lost his self-control; by things done or said by the deceased and that the loss of self-control was reasonable in the circumstances sufficient to justify the case being reduced from murder to manslaughter.
- [15] The first step in constructing the sentence is to establish the starting point which requires an assessment of the seriousness of the offence by examining the consequences of the offence by reference to the degree of harm caused and the culpability of the offender.

¹Criminal Appeal no.7 of 2005 - *Kenneth Samuel v The Queen*

- [16] In cases of manslaughter by reason of provocation a custodial sentence is invariably presumptively appropriate. The words of Shaw LJ in *Bancroft* are apt to explain the rationale:

“Notwithstanding that a man’s reason might be unseated on the basis that the reasonable man would have found himself out of control, there is still in every human being a residual capacity for self-control, which the exigencies of the given situation may call for. That must be the justification for passing a sentence of imprisonment; to recognize that there is still left **some degree of culpability...”**

- [17] Authorities in the ECSC suggest a 15 year starting point for the offence of manslaughter. However, relevant to the calibration of an appropriate starting point is the degree of provocation as shown by its nature and duration. In this case the immediate or proximate cause and nature of the provocation **is the deceased’s infidelity as revealed by the discovery of the** deceased taking explicit photos of herself with her cellular phone two days prior and telephone messages sent to a male who was the recipient of these erotic photos. When the defendant confronted the deceased with these allegations she confessed her infidelity. This prompted an immediate loss of self-control.

- [18] By itself, it seems a low degree of provocation. However, set against the background of a pattern of behavior whereby the deceased had taken to increasingly absenting herself from the house on weekends in order to **attend parties, which had already aroused the defendant’s suspicion, the** discovery of the photos and messages and confirmation of infidelity proved to be the tipping point. This combination of factors leads me to view the circumstances as constituting substantial provocation as the impact of provocative behavior would have built up over some time.

- [19] Accordingly, I ascribe a starting point of 15 years.
- [20] I next consider whether there are aggravating or mitigating factors relative to the offence. In this regard, I consider the extent of the retaliation visited upon the deceased. The defendant first used a hammer to bludgeon the deceased before retrieving a knife from the kitchen with which to complete the savagery. While it seems the hammer happened to be at hand, the knife was deliberately retrieved from the kitchen and used to stab the deceased in the throat and about the body. This was by any standard a brutal slaying employing more than one weapon.
- [21] Further, the defendant heaped indignity upon the deceased even in death by taking photos of her battered and mutilated corpse and circulating them on social media. I cannot accept the submission of learned counsel for the defendant that this may be viewed as an act of early confession and of taking responsibility for his deeds. That objective could have been achieved without the callous and insensitive dissemination of those photos.
- [22] These aggravating factors warrant an uplift in the starting point to 20 years. There are no mitigating factors relevant to the offence.
- [23] I turn next to consider whether there are any aggravating or mitigating factors personal to the offender. There are no aggravating factors relevant to the defendant. However, by way of mitigation, he comes before the court with a clean record. His post-offence conduct revealed that he eventually reported the matter to the police with some promptitude and cooperated fully with them. I am also satisfied that he is genuinely remorseful. Accordingly, he is credited for these mitigating factors. The provisional sentence is adjusted downwards to 18 years.

- [24] I next consider credit for a guilty plea. In this case the defendant pleaded guilty at the earliest reasonable opportunity. He is therefore credited with a one third discount. This leaves a sentence of 12 years.
- [25] It is also settled that a prisoner who fails to be sentenced should be credited for time spent in pre-sentence custody. The court has been advised that as at 30th October, 2018 the prisoner would have spent 2 years, 3 months and 15 days in pre-sentence custody. This period is deducted from his sentence.
- [26] In shaping the sentence, I have had regard to the contents of the Social Inquiry Report and the submissions of Counsel and the authorities cited
- [27] The court has sought to arrive at a sentence that meets the aims of punishment and rehabilitation and eventual re-integration as a productive member of society.
- [28] Clevan Lee the appropriate sentence in this case would have been 20 years imprisonment. However, taking account of your personal mitigation, credit for guilty plea and time served you will serve a sentence of 9 years, 8 months and 15 days commencing today.

Trevor M. Ward, QC
Resident Judge

By the Court

Registrar