

EASTERN CARIBBEAN SUPREME COURT

TERRITORY OF THE VIRGIN ISLANDS

IN THE HIGH COURT OF JUSTICE

(CRIMINAL)

CLAIM NO BVIHCR2019/0033

BETWEEN:

THE KING

and

ROHAN WILLIAMS

Accused

Appearances:

Mrs. Kellee-Gai Smith Principal Crown Counsel and with her Ms. Khadija Beddeau
Senior Crown Counsel and Mr. Jamal Bridgewater Crown Counsel

Mr. Michael Maduro for the Accused

2024: May 10th

RULING

- [1] **Teelucksingh, J:** The accused, Rohan Williams, is indicted on two counts, namely,
Count 1: Murder contrary to Section 161 of the **Criminal Code** 1997 (as amended) of
the Laws of the Virgin Islands; and
Count 2: Rape, contrary to section 131 of the **Criminal Code** 1997(as amended) of
the Laws of the Virgin Islands.

It is alleged that the accused committed both offences relative to Lenia Green on 26th May, 2019 in Tortola.

- [2] On 15th February 2024, Defence Counsel filed a motion objecting to the admissibility of the Affidavit of Lenia Green in support of the application for a Protection Order, the Court Transcript for the Final Protection Order and the Final Protection Order.
- [3] While the Defence is also objecting to the admissibility of the Application for a Protection Order, to date, this Court notes that this particular document has not been officially filed by the Crown.

Summary of Evidence

- [4] On Sunday 26th May 2019 about 7:45pm, J.S¹ was on her way home when she observed the body of a mature female lying in the middle of the road. The body was at the junction of George's North Side near the Watch Tower. She got out of her vehicle and spoke to the woman who indicated that she was raped and shot.
- [5] J.S. observed what appeared to be a gunshot to the woman's right forearm and to her right back. The victim also informed her that her name was Lenia Green, and that the person who had committed such acts, was Rohan Williams.
- [6] The woman provided information as to her husband's name and telephone number. The husband of the deceased was then contacted. A black GMC 5 door jeep Regimental No PI 250 was also parked on the scene.
- [7] Lenia Green was then transported to the hospital where she later died.
- [8] The cause of death of the deceased was multiple gunshot wounds with gunshot trauma to the right chest and right lung hemorrhage and hypovolemic shock.
- [9] The sons of the deceased attempted to contact their mother but were unsuccessful. On arrival home, one of the deceased's sons observed that the screen for the house's window was removed. When he picked it up, he noticed that it was damaged. He checked the master

¹ The initials of the witness is used solely in this Ruling as per the application of Crown Counsel and the consent of Defence Counsel

bedroom and bathroom and noticed that the television was on and that his mother's phone was on the edge of the bed.

[10] Officer Jerome Morris then proceeded to the crime scene with Inspector Ballantyne and Detective Sergeant Etienne at George's North Side. The police continued enquiries into the death of Lenia Green and interviewed several witnesses including Lesia Donovan, Bernice Fenton and Muriel Smith.

[11] The accused gave an interview under caution and was subsequently charged for the offences of rape and murder of the deceased, Lenia Green.

Summary of Contents of the Application for Protection Order

[12] The Crown seeks to rely on and to admit the following evidence-

- (i) The Affidavit of the deceased dated 2nd November, 2018 in support of an application for a Protection order made pursuant to the **Domestic Violence Act** No. 15 of 2011 of the Virgin Islands;
- (ii) The Court transcript for the Final Protection Order wherein the deceased applied for and was granted a protection order related to the Accused; and
- (iii) The Final Protection Order

These documents were filed by the Crown as additional evidence on 23rd January, 2024.

(i) Affidavit of the deceased, Lenia Green

[13] The applicant/deceased in her affidavit indicated that in late 2015, she had an affair with the accused, Rohan Williams. It was around May to June 2017, she indicated in her affidavit, that she no longer felt comfortable with their relationship.

[14] In December 2017, she told the accused that she had become a Christian and it was at that stage, *"his erratic behaviour began and he started making my life a living hell"*. The applicant/deceased further stated that he *"did not want to let me go so he blackmailed me"* and that the respondent/accused ordered her *"to pay for the time"* he spent with her. He threatened to tell her husband, her co-workers and members of her church, about their affair and to share nude photographs of her which she had given to the accused during the course

of the affair. She indicated that over several months, the accused/respondent had made numerous promises to delete the photos and also to return the money "*if I would come back to him.*" According to the deceased/applicant in her affidavit, "*I kept telling him I cannot be with him but he didn't want to hear that*". She explained in her affidavit that what led to her applying for a protection order was that during the weekend of 19th October, 2018 he started to "*harass me again about being with him and of course I refused.*"

- [15] The accused/respondent further showed up at her office, demanding that she speak with him. In her affidavit, the applicant/deceased described that she was forced to leave the building. She stated that he kept calling her phone but she refused to answer his calls. The applicant/deceased indicated that the same night the accused sent nude photos of the deceased to her two sons, and the next day he texted her and threatened to put nude photographs on social media and to inform her husband. The accused did in fact text the deceased's husband. That evening she and her family went to the accused's home as he lived next door. The purpose of that visit was for the accused to return her money. The accused later appeared and further denied that he had any money for her.

(i) **The Transcript of the Court Proceedings relating to granting of the Final Protection Order**

- [16] The learned judge in those proceedings for the Final Protection Order, indicated that the application had been adjourned to be heard *inter partes* to give the accused/respondent, the opportunity to be present and to make representations in respect of the matters alleged by the deceased.
- [17] Initially the accused/respondent indicated he had no comments to make, and that he was not contesting the application of the deceased. The judge then ordered that the accused return the nude photographs to the deceased and not to disclose to any third person the said photos. Furthermore, he was to return the sum of \$2,000.00 to her. In the proceedings the accused/respondent stated thereafter "*I want to make a comment on second thoughts.*"
- [18] He stated inter alia that he had been in a relationship with the deceased for over six years and that she had called him and said that she no longer wanted to continue the relationship, and that she was a Christian. In the proceedings, pursuant to the application for the Final

Protection order, the accused told the judge *inter alia* "I am not a Christian. And I am seeing somebody for six years you call me out of nowhere like that and I was hurt, your Honour, I was really hurt. I were hurt. To be honest, all now I hurt. I am really hurt, but it got to a point like I got over it, you check I get over it."

(Transcript p. 8 lines 11-16)

- [19] He told the judge he got over the end of their relationship. According to the accused/respondent, he asked the deceased if they could get together and discuss their relationship but she refused. He requested \$8,000.00 for the years that they were together and admitted the deceased paid him \$2,000.00. According to the accused/ respondent "*I tell Lenia I need my money, I need my money.*" The accused/ respondent explained to the judge that "*Your Honour we were together and I was really hurt.*" He denied telling the deceased's husband about their affair.

(Transcript p. 9 lines 6-7, lines 19-20)

- [20] On being questioned by the learned judge about deleting the nude photographs of the deceased/ applicant, the accused/respondent further indicated to the judge that he had sent the nude photographs to the sons of the deceased to show them "*the kind of mother she is.*"

(Transcript. p.13 lines 21-22)

- [21] During the court proceedings, the accused/respondent also said to the judge "the fact of the matter is that she was being rude and she cheated on her *husband and we had plans and she didn't keep up to her saying. She lied to me. And to be honest your Honor I was really hurt because I only leave my girlfriends because of her. I was really hurt and I am still hurt, I am.*"

(Transcript: p. 14 lines 15-21)

- [22] The accused/respondent further told the judge that he released the photographs because the deceased was taking "*too long*" to pay him the balance of the money as he requested.

- [23] The following portion is cited from the said transcript after the accused/respondent persisted that he wanted the balance of the money that he considered the applicant/deceased owed him for "*hurting*" him by ending their affair and refusing to return the \$2,000.00 she had initially paid him –

"The COURT: ... So you could be investigated by the police and prosecuted. Do you want to go down this route? Is that where you want to go?

Mr Williams: Your honour, if that's the case, I will do that.

The Court: You prefer to be prosecuted?

Mr Williams: I will do that, your Honour.

The Court: I see

Mr Williams: Even though I have to serve time for Lenia, I will do that.

The Court: Sir that's not rational thinking, what's going on with you?

Mr Williams: Yes because I don't like people lie on me. I don't like that. She is lying..."

(Transcript: p.17 lines 9-25 18 line 1)

- [24] The judge indicated that she did not believe the accused had forgotten about the applicant/deceased as he claimed and warned him *"And the sooner you come to realise that, the better for you. You have to deal with it."*

"... But from June 2017, she started to realise that what she was doing was not right and by December she came to peace with it. So since December 2017, we are now in December 2018, over a year has past and you are still basically in the same position that you were..."

(Transcript: p.22 lines 3-5, lines 19-24)

- [25] The accused told the judge that she had texted his phone after she had ended the relationship and did not agree with the judge's suggestion that the photograph be deleted and the money returned. He replied to the judge:

"No, because she misses me. She miss me. I pretend like I don't know. Who this is and she said "oh you don't know who this is". "I said no "and she said" this is Lenia" ... "she call me from her office phone..."

(Transcript p.23 lines 18-22)

- [26] On being directly questioned by the judge if he (the accused) had any intention of returning the money, the accused/respondent agreed that he would not do so because according to him *"she gave it to me"* and further did not agree to desist from releasing photos to any third party in the future.

(Transcript: p. 24 lines 3-19)

[27] It is noted that in reply to the deceased's question whether there was any 'end' the judge replied "*Ma'am, he has made that more than clear, there is no end.*"

(Transcript p. 25 lines 4-7)

[28] The judge summarized the position of the accused/respondent, who confirmed that he would not return her money, did not care whether the matter was criminally prosecuted as he was prepared to go to jail, that the applicant/deceased had lied, he, the accused/respondent was hurt and did not intend to delete the photographs from his phone.

(Transcript p. 25 lines 18-2, p. 26 lines 1-8)

[29] The judge subsequently granted the Final Protection Order and advised the accused/respondent to seek counselling as he was still "*very much invested in the relationship*" and "*carrying quite a bit of anger.*"

(Transcript p. 27 lines 20-25, p. 28-29)

(ii) Final Protection Order

[30] The learned judge considered the application and affidavit for the Protection order and heard both the deceased and the accused/respondent. It was after hearing both parties the judge was also satisfied that the accused/respondent had engaged in 'controlling and abusive behaviour which harmed or which may harm the health safety and well-being of the applicant' and was satisfied that he had engaged in acts which "*amount to emotional and psychological abuse intended to degrade and humiliate the applicant*" and the judge was also satisfied that "*unless restrained the Defendant is likely to continue to engage in such conduct and on his own admission is prepared to share, forward, publish or otherwise disclose personal photographs of the Applicant to third parties with the malicious intention of degrading and humiliating the Applicant.*"

[31] It was upon this basis the following was ordered:

- "1. The Final Protection Order was granted
2. That the Respondent was ordered not to commit the following acts of domestic violence against the Applicant

- (a) Not to engage in emotional or psychological abusive behaviour intended or degrading or humiliate the Applicant or cause her personal or public embarrassment; and
 - (b) Not to intimidate the Applicant by making utterances, conveyances or causing the Applicant to receive any threats which induce fear of further emotional or psychological abuse or which would be otherwise intended to maliciously extort money or other favours from the applicant.
3. The Defendant was not to enlist the assistance of any other person to commit the acts of domestic violence specified in paragraph 2 above.
 4. This matter together with a copy of this Order and the transcript of the proceedings before the Court on the 18th December, 2018 and 14 January, 2019 were to be referred to the office of the Director of Public Prosecutions for her consideration."

[32] In summary, it was further ordered that the Order was to be deposited at the Road Town Police Station and that "a warrant be authorized for the arrest of the respondent, the execution of which would be suspended subject to respondent's compliance with the provisions of the Order" once it had been served on the respondent. The Order was also to be served on all parties, the Road Town Police Station and the Director of Public Prosecutions to take effect from 16th January, 2019 for a period of two years.

Submissions of Counsel

[33] On 6th February, 2024, Defence Counsel filed written submissions and made oral submissions where he challenged the admissibility of the contents of the affidavit of the deceased in support of the Final Protection Order, and the Court transcript relative to the Final Protection Order. The basis of such objections were namely,

- "(a) *the Crown has not identified the justification for such evidence, that is what is difficulty or incompleteness or incomprehensibility of their case that the jury has to consider or appreciate;*
- (b) *the admission of an indiscriminate quantity of materials relating to unspecific incidents over an extended period of time more particularly the peculiar nature of the material being adduced, that is the records and documents of the previous High Court Proceedings and the adverse decision/ reasoning of the judge (in essentially private proceedings) has the potential of distracting*

the jury from the central issues of this trial and focusing their attention on peripheral issues that are not germane.

- (c) *admission of this evidence raised the issue of the accused/ Objector's character and whether he can receive a fair trial*
- (d) *the prejudicial effect of such evidence far outweighs the probative value thereof. "*

[34] Defence Counsel challenged the admissibility of this evidence contained in the aforementioned documents and invited the Court in the interest of justice to exercise its discretion so as to exclude the evidence on the basis that such evidence was extremely prejudicial and would affect a fair trial.

[35] Several authorities were cited by Defence Counsel in his written and oral submissions, and contended that when considering the facts underpinning the granting of the protection order, that is blackmail and extortion, the evidence did not demonstrate that the accused had the requisite animus towards the deceased. Defence Counsel further argued that the admissibility of this evidence can potentially distract the jury from their focus on the central issues of the case onto collateral issues by the admission of 'a very substantial quantity of documents and materials relating to specific incidents over months and years' which were unrelated to the incident. There was a danger that the jury may place substantial reliance on this evidence which would have the detrimental effect of the accused not being able to receive a fair trial.

[36] Crown Counsel filed written submissions in response, on 15th February, 2024 with authorities cited and further contended orally that this evidence provided context that both parties were involved in an intimate relationship.

[37] Crown further submitted that the contents of these documents, namely, the Final Protection Order, the affidavit of the deceased/applicant for the said Protection Order, and the Court transcript relative to the Final Protection Order, are admissible as the attitude of the accused is seen to be that of an angry person, akin to a jilted lover. These three pieces of evidence proved motive on the part of the accused and established a persistent nature of conduct on the part of the accused towards the deceased. The Crown noted that the Protection Order proceedings were approximately 5-6 months prior to the murder and rape of the deceased.

Such offences were committed on the deceased during the period that a Protection Order was in effect relative to the accused.

- [38] Crown Counsel further contended that the material sought to be adduced was not a very substantial quantity of documents so as to cause the jury to be distracted by satellite issues.
- [39] Crown Counsel however was not of the view that this was a case where the prejudicial effect outweighed the probative value of the evidence and argued that appropriate directions and warnings can be given by the trial judge to the jury with respect to this evidence and further suggested that once the evidence was admitted such can be subjected to any potential editing.

LAW, ANALYSIS & REASONING

- [40] Lord Hughes in the case of **Myers and ors v The Queen** stated (2015) UKPC 40
- “Para 37: The starting point is that evidence is not admissible unless it is relevant. It is relevant if, but only if, it contributes something to the resolution of one or more of the issues in the case. It may so do directly or indirectly*
- Para 38: The second important proposition is that not all relevant evidence is admissible. At common law, relevant evidence falls to be excluded if, in the judgment of the trial judge, its admission will be unfair to the defendant, in the sense, as it is conventionally put, that its prejudicial effect exceeds its probative value...”*
- [41] In examining and determining the issue of relevance and admissibility, in the absence of statutory provisions such as sections 98 -113 of the **Criminal Justice Act 2003** United Kingdom, this Court relies on the common law authorities to determine such questions of admissibility in the jurisdiction of the British Virgin Islands.
- [42] This Court found the case of (i) **R. v. Clarence Ivor Williams** (1987) 84 Cr. App. R. 299 to be instructive. In that case, evidence of the previous offences committed during the relationship of the appellant and the deceased were admitted to establish motive or intention.
- [43] This Court notes on a charge of making a threat to kill, such evidence of past behaviour, was permitted by the trial court in **Clarence Ivor Williams** (supra) which involved details of the relationship between the appellant and the deceased where they met around 1983, engaged in a sexual relationship until March 1984 when the relationship deteriorated.
- [44] Evidence was admitted in that trial to show that the appellant did not accept that the relationship with the deceased had ended and so wrote her many letters and made several

telephone calls, sent her pornographic magazines, there were criminal proceedings that were brought against him and heard on 31st October 1984, the day before, there was evidence allowed in court that he injured the victim while he was driving a van. There was also evidence that on 23rd July, 1985, the appellant pled guilty to assault occasioning actual bodily harm and was sentenced to nine months' imprisonment. He was thereafter released from prison on 13th January, 1986, about six weeks before the alleged threats.

[45] This evidence of past misbehaviour of the accused was admitted by the trial judge in that case, and was relied on by the Prosecution to establish motive.

[46] The appellant was convicted at trial. On appeal, it was contended that the judge erred in the exercise of his discretion in allowing evidence of these previous offences.

[47] On appeal, the Court of Appeal relied on **Archbold** (42nd ed.), paragraphs 13-29: "Similar facts and motive.

(1) A distinction should be drawn between evidence of similar facts, usually relating to offences against persons other than the alleged victim of the offence charged, and evidence of other acts or declarations of the accused indicating a desire to commit, or reason for committing, the offence charged, i.e. motive. This distinction is sometimes blurred in reported decisions.

*(2) Although the prosecution do not have to prove motive, evidence of motive is always admissible in order to show that it is more probable that the accused committed the offence charged. The position is well stated in a dictum of Lord Atkinson in R. v. Ball (1911) 6 Cr.App.R. 31; [1911] A.C. 47 (see **Archbold** (42nd ed.), paragraphs 13-21. ante). At [1911] A.C. 47, 68 he said: 'Surely in an ordinary prosecution for murder you can prove previous acts or words of the accused to show that he entertained feelings of enmity towards the deceased, and that is evidence not merely of the malicious mind with which he killed the deceased, but of the fact that he killed him. You can give in evidence the enmity of the accused towards the deceased to prove that the accused took the deceased's life. Evidence of motive necessarily goes to prove the fact of the homicide by the accused, as well as his "malice aforethought," in as much as it is more probable that men are killed by those that have some motive for killing them than by those who have not.' As R. v. Ball (supra) was a case of incest, it is clear that Lord Atkinson's remarks were of a general application, and not confined to murder. Other authorities are Buckley (1873) 13 Cox C.C. 293 (see **Archbold** (42nd ed.), paragraphs 13-20 ante), and the cases cited in the note to Dossett (1846) 2 C. & K. 306." (emphasis mine)*

[48] Two unreported decisions of **Campbell** December 20, 1984 (2284/C/84) and **Pettman** May 2, 1985 (5048/C/82) were considered. In the latter case, after referring to **Campbell**, Purchas

L.J. in giving the judgment of the Court said this:

"Although the facts in Campbell were different from those in the instant case, in our judgment the principle remains the same, namely, that where it is necessary to place before the jury evidence of part of a continual background or history relevant to the offence charged in the indictment, and without the totality of which the account placed before the jury would be incomplete or incomprehensible, then the fact that the whole account involves including evidence establishing the commission of an offence with which the accused is not charged is not of itself a ground for excluding the evidence."

[48] Cross on Evidence (6th ed., 1985) was further cited at p.316: *"In some cases the revelation that the accused has committed a crime is inherent in the background to the facts of the case and no one even considers making an objection."*

[49] Defence Counsel before the appeal court, did not contend that the evidence sought to be adduced was inadmissible; but that the judge ought to in his discretion exclude the evidence.

[50] The Court of Appeal stated *"If it is accepted that the question whether the evidence should be admitted or not is for the judge in his discretion to decide, this Court would only interfere with that discretion on the usual well-known grounds, which certainly do not seem to us to apply here. In fairness to the judge, we might add that no member of this Court would have exercised the discretion differently."* (emphasis mine)

[51] The Court of Appeal in **Clarence Williams** at p. 303 (supra) of its judgment re-examined the case of **R. v. Ball** [1911] A.C. 47 where Lord Loreburn L.C. at p.68 cited what Kennedy J. had said in **Bond** [1906] 2 K.B. 389, 401 :

"The relations of the murdered or injured man to his assailant, so far as they may reasonably be treated as explanatory of the conduct of the accused as charged in the indictment, are properly admitted to proof as integral parts of the history of the alleged crime for which the accused is on his trial." (emphasis mine)

[52] Lord Loreburn concluded at p.71:

"My Lords, I agree that Courts ought to be very careful to preserve the time-honoured law of England, that you cannot convict a man of one crime by proving that he had committed some other crime; that, and all other safeguards of our criminal law, will be jealously guarded; but here I think the evidence went directly to prove the actual crime for which these parties were indicted."

[53] The Court of Appeal noted that while *“there is a good deal of early authority to support the dicta of Lord Atkinson and Kennedy J. Since then, until recently, the question of the admissibility of evidence of previous offences to establish motive or intention has not been the subject of litigation. We suspect that this is because, as Professor Cross wrote: “No one considers making an objection.”*

[54] At page 304 of its judgment in Clarence Williams, the Court of Appeal cited the case of Dossett (1846) 2 C. & K. 306 where on a charge of setting fire to a hayrick by firing a gun close to it, evidence was admitted that on a previous occasion the rick had been on fire and the prisoner was then close to it with a gun in his hand. In a note to the report, other cases are referred to which support the statements of the law by Lord Atkinson and Kennedy J. in Bond [1906] 2 K.B. 389.

[55] In Buckley (1873) 13 Cox’s C.C. 293 it was held *inter alia* that:

“In order to prove malice or motive (in a murder case) against the accused, the deposition of the deceased against him, taken before the magistrates on another charge, and for which he was afterwards convicted was held to be admissible.”

[56] The Court of Appeal in Clarence Ivor Williams referred to Campbell (*supra*), which was a case of attempted murder in October 1983, where the trial judge admitted evidence that on a day previously in April, the appellant had hidden in the back of the victim’s car wearing clothing that was described as *“somewhat bizarre,” had frightened her and thereafter made certain remarks as to his intentions, namely that he was “going to kill her.”*

The Court of Appeal in that case cited the well-known passage in the speech of Lord Hailsham in Boardman v. D.P.P. (1974) 60 Cr.App.R. 165, 180, [1975] A.C. 421, 451, held that the evidence was properly admitted. The particular portion in Lord Hailsham’s speech relied upon was as follows:

“On the other hand, the mere fact that the evidence adduced tends to show the commission of other crimes does not render it inadmissible if it is relevant to an issue before the jury and it may be so relevant if it bears upon the question whether the acts alleged to constitute the crime charged in the indictment were designed or accidental or to rebut a defence which would otherwise be open to the accused.”

[56] Referring to the case of Pettman, the Court of Appeal in Clarence Ivor Williams noted that the evidence was admitted as relevant despite the fact that it disclosed the commission of a crime with which the appellant was not charged and having re-examined Ball (*supra*) in the

light of authorities, the Court of Appeal concluded that the dicta of Lord Atkinson and Kennedy J. correctly represented the law and 'that no further doubt about the matter need be felt.'

[57] This Court notes that such evidence of past misbehaviour that was adduced at the trial in **Clarence Ivor Williams** (supra) was arguably extensive and was not restricted to previous acts of violence towards the victim namely, there was evidence of the persistent messages and telephone calls made by the appellant to the victim subsequent to the termination of their relationship, -and there was evidence also that he sent her pornographic pictures, and there was evidence of a past court proceeding involving the accused.

[58] In the present case, the proposed evidence of prior misbehaviour of the accused as per the contents of the transcript of a past court proceedings relative to the Protection Order under the **Domestic Violence Act**, the Final Protection Order and the contents of the Affidavit of the applicant/ deceased, all indicate, that subsequent to the end of his relationship with the deceased, the accused in this case, like Clarence Ivor Williams, continued to harass the victim.

[59] In this case, this accused is said to have shared nude pictures of the deceased with her sons, extorted \$2,000.00 from her as compensation for the 'pain' he felt over the end of their relationship and was demanding a further \$6,000.00 from her, he was threatening to tell her husband about their affair, appeared at her work place demanding to see her, made several phone calls and constantly messaged the deceased.

[60] This Court is of the view that such evidence of the past misbehaviour of the accused subsequent to the termination of the affair, is relevant and admissible as the evidence demonstrate that he bore ill will and hostility towards Lenia Green and had the motive and inclination to harm her.

[61] This Court relies on the case of (ii) **R. v. Dominic Josef Fulcher** (supra) where the evidence of the appellant's behaviour towards the deceased in the past, was admitted to prove the appellant's motive to kill the infant deceased.

[62] In that case, the appellant's mother-in-law gave evidence that the appellant used to get upset or annoyed if the baby cried. During police interviews the appellant denied causing any harm to the child. There was no direct evidence as to who inflicted the fatal injury, but the prosecution produced medical evidence to show the severity of the fatal injury and also that

the child had on earlier occasions received injuries of a kind which were unlikely to have been caused accidentally. The earlier injuries also tended to demonstrate that up to the time of the fatal injury, the child would have been in some pain, and so more liable to sustain a fracture than a normal healthy baby. The appellant did not give or call any evidence. He was convicted of murder of the deceased infant. One of the grounds of appeal was the judge had wrongly allowed the prosecution to adduce evidence of the appellant's disposition and propensity to commit crimes of violence.

- [63] KENNEDY L.J., in **Dominic Fulcher** referred to the cases of **R. v. Ball** [1911] A.C. 47 and to the statement of Lord Atkinson at page 68. That passage was doubted by this Court of Appeal in **Berry (David)** (1986) 83 Cr.App.R. 7, but those doubts were dispelled, again by the said Court of Appeal, in **Williams (Clarence Ivor)** (supra).
- [64] At page 257, Kennedy LJ stated "*the prosecution was then, in our judgment, entitled to lead evidence to show how on other occasions the appellant reacted to the crying baby, so that they could invite the jury to infer that on the critical occasion the appellant was so irritated that he resorted to gross violence. In other words, the evidence now challenged was evidence of motive. It went to the actus reus and the mens rea. It was not intended as evidence of similar facts, and any objection to it on the basis that it was similar fact evidence would have been misconceived.*" (emphasis mine)
- [65] (iii) In **R. v. Dolan** (2003) 1 Cr App. R 18, the appellant was convicted of murdering his three and a half month old son. The appellant denied killing the child. One appeal it was argued that the trial judge should not have admitted as background evidence, incidents showing the appellant had a bad temper. It was further contended that such evidence demonstrated that the appellant's violence was towards inanimate objects when in temper, at times, which were not proximate to the killings.
- [66] Several cases were cited in **Dolan** including **R. v Fulcher** (supra) and **R. v Underwood** [1999] Crim LR 227, a domestic violence case, where evidence was admitted of incidents of violence other than those charged because, as the Court said, it went to intent and rebutted the defence of accident. The Court agreed that the evidence was admissible both because it was similar fact evidence and relevant background.

[67] The appeal in Dolan was allowed where it was held that it was proper where necessary to place before the jury evidence of part of a continual background of history relevant to the offence charged and without which the account placed before the jury would be incomplete and incomprehensible (R.v.Pettman unreported May 2, 1985). However, the Court of Appeal stated at pages 284-285 that:

“background evidence might be a vehicle for smuggling in otherwise inadmissible evidence for less than adequate reasons. Relevance and necessity were the touchstones of the principle. The fact that a man who was not shown to have any tendency to lose his temper and react violently towards human beings became frustrated with and violent towards inanimate objects was irrelevant.”

[68] This Court also relies on the helpful case of (iv) R v Philips (Alun Charles) (2003) 2 Cr App R 35 where detailed evidence of past misbehaviour of the appellant and details of the state of his marriage were admissible to show motive of the accused. This evidence was admitted in order to rebut the appellant’s claim that the marriage had been happy.

[69] It was the prosecution case that the appellant had murdered his wife after their marriage had broken down, and that he had made previous threats to kill her if she attempted to leave him or in order to avoid a messy divorce. In that case the appellant was charged with the murder of his wife who died on the night of May 15/16, 2000. He denied murdering his wife and his case was that he was a caring husband in a loving marriage.

[70] The trial judge allowed the Prosecution to adduce the following evidence of the state of the marriage, namely, evidence from the deceased’s brother who stated after the appellant and deceased moved, they seemed to lead separate lives; “a friend stated the appellant lamented that the mother always seemed to get custody of the children; the appellant’s mother-in-law said in 1996 the appellant showed her some video film of him looking after the children when his wife was away on holiday; he said that he did not need his wife any more.” Further evidence about the state of the marriage was adduced: “Sarah Springett said that in 1996 or 1997 the appellant told her that he kept a record of all the arguments he and his wife had, because he told her “you never know when you might need the information”; Mrs. Mazzetta said “in 1997 the appellant told her that the deceased had gone away “whoring” and that the children did not need her- while the children cried for their mother; the appellant threatened if the deceased left him he would ‘screw her into the ground and make sure that she never saw the children again and she knows that’; there was also evidence where the police found a note in the house

in the appellant's handwriting in which he referred to 'me, girlfriend and LJ and F': the initials were those of the three children."

[71] Further evidence was adduced where in July 1998, the appellant spoke to Sarah Springett about his marital problems where he complained that his wife was "cold and did not want to be touched;" the deceased had said she was unhappy in her marriage and mentioned divorce; 'in 1999, Sarah Springett said that the appellant showed her a note written by Nadine to the appellant before they were married. In it she talked about their problems.' The appellant said "see we had problems even then." "...Patricia O' Toole said she knew that Nadine was unhappy in the summer of 1999.." and evidence from Sarah Springett was elicited where she said in the months before Nadine's death she thought that "they both seemed to agree on a way of living a shell marriage".

[72] The appellant denied murdering his wife however was convicted of murder. He appealed on the ground that the judge should have ruled the aforementioned pieces of evidence as inadmissible with the exception of one threat earlier in 2000.

[73] Dyson LJ at page 532 stated that-

"The evidence that his marriage had broken up was in our view admissible both to rebut his claim that it was a happy marriage, and to show that he had a motive (albeit an irrational motive) for killing her. The reason why he claimed at interview that the marriage was happy was to show that he had no motive for killing her, and that he therefore did not kill her. The link between motive and his claim was clear. So too was the link between the evidence adduced to rebut the claim and to show that he had an admittedly irrational motive for killing her. In our judgment, a motive is not disqualified from being such simply because it would not move a rational person to act in a particular way. In so far as Berry tends to suggest otherwise, we respectfully disagree with it.

In this case, we consider that the evidence that the marriage was not happy was plainly relevant. It was relevant to rebut the appellant's claim that the marriage was happy and that he, therefore, had no motive for killing his wife. By the same token, it was relevant because it showed that the appellant had a motive for killing her. Conversely, Mr. Ferguson had made it clear to the judge that the state of the marriage after 1997 was relevant to the sole issue in the case, namely whether the appellant had committed the murder. This was hardly surprising in the light of the statement made by the appellant in interview that the marriage was a happy one. For this reason, we are unable to accept Mr. Birnbaum's characterisation of this remark by the appellant as a mere "hyperbolic assertion of innocence". It was far more than that, as was made clear when the position was explained by Mr. Ferguson to the judge on

November 6. We do not accept that, in arguing for a 1998 cut-off date, Mr. Ferguson was making an erroneous concession. As Mr. Hilliard points out, it is clear that Mr. Ferguson had made a deliberate decision to conduct the defence on the basis that from 1998 onwards, this was a happy marriage and that the appellant had therefore no reason to kill his wife. This defence had been foreshadowed by the appellant himself at interview.”

It was held in **Philips (Alun Charles)** dismissing the appeal, that the evidence about the state of the marriage was admissible as part of a continual background of the history relevant to the offence.

[74] The Court in that case further stated at page 536 “*We would add that we think that evidence about the state of the marriage was admissible in any event as what was described in Pettman as “part of a continual background of history”. In a case where one spouse is charged with the murder of the other, it will often be relevant for the jury to know about the matrimonial relationship in order to make a properly informed assessment of the entire evidence. In our view, this would have been a sufficient basis, on its own, to admit the evidence in the present case. If the jury had not been furnished with background material about the marriage, they would have been perplexed. They would have known that the appellant used to sleep in a bed by himself in his office, and used to communicate with his wife by sending her notes. They would certainly have wanted, and, in our judgment, would have been entitled, to know a great deal more about this marriage.”*

[75] Also relevant was any safe and reliable evidence to demonstrate that the appellant had previously thought of murder, either as revenge (she had a brief affair with another man), or as his way out of the marriage.

[76] Similarly in **this present case** the evidence of past misbehaviour of the accused as contained in the documents pertaining to the Protection Order are admissible to prove motive on the part of the accused and feelings of ill will and resentment that he harboured towards the deceased that presented on the termination of their relationship. Ill will was not only demonstrated by his actions of harassing the victim at her work place, constantly calling and messaging her, blackmailing her for money but was clearly evident in his words during the proceedings for the Final Protection Order on 14th January, 2019. He refused to return her money as advised by

the judge during the proceedings and explained the purpose why he sent the deceased's sons the nude photos of their mother was to show the children what kind of mother she was. He said also to the judge in those proceedings that he was prepared to go to jail for the deceased. It was also in those circumstances that the state of the relationship after its termination by the deceased was admissible in any event as what was described in Pettman as "part of a continual background of history". It is relevant for the jury to know about details of the broken relationship in order to make a properly informed assessment of the entire evidence. If the jury is not furnished with background material about the relationship, they would be perplexed as to why the deceased uttered to J.S that the accused, Rohan Williams had been responsible for her injuries.

- [77] This Court relies on another helpful authority of (v) **Bruce Golding and Damion Lowe v Regina** [2009] 12 JJC 1802 where the evidence of an incident prior to the shooting of the deceased was held by the Court of Appeal to be properly admitted as evidence of motive and background. The Court also found that such evidence assisted on the issue of the correctness of the identification of the assailants in the events later that day. In that case, the applicants were both convicted of murder. The main issue was the question of identification.
- [78] The case for the Prosecution was that at some time after 10:30 p.m. on the night in question, the deceased, his cousin Mr. Junior Bowes and their friend, Mr. Horace Hall were on their way home. While on their way, "the deceased said something which attracted the attention of the others to a group of armed men walking about 25 feet behind them in the same direction in which they were headed." The four men ran after then resulting in the deceased being shot and killed. Mr. Bowes recognised all four of these men and subsequently pointed to them at identification parades and in court, he identified Damion Lowe as "Damion" (Applicant No. 1) and the Bruce Golding as "Bear". (Applicant No. 2). Mr. Hall subsequently pointed to Golding at an identification parade as he testified that he had recognized him that day of the shooting.
- [79] Also giving evidence for the Crown was Mr. Andre Blake, the brother of the deceased who described an incident on the morning of the murder where he and the deceased had left home together on foot at about 8:30 a.m. While walking, a taxi-cab came along headed in the opposite direction (towards Mount Salus) and the deceased got into it, leaving Mr. Blake to continue walking. He saw "Bear" (by which name the applicant Golding was also known to

him) standing in front of a shop. As he approached him, "Bear" walked away. Mr. Blake "continued on his way, passing the shop where he had seen "Bear" and, as he proceeded further along the road past a house on the corner, he looked behind him and saw "Bear", a man known to him as "Judah" and another man known to him as Damion or "Redman" and a fourth man known to Mr. Blake as 'Tazza'..." They were armed with cutlasses and started chasing Andre Blake. The taxi-cab which the deceased had taken was at that point coming back in the direction in which Mr. Blake, pursued by the four men, was running and, as it came alongside him, the deceased alighted and started to run with him. According to Andre Blake, the four men continued to chase Mr. Blake and the deceased until a lady intervened and stopped the men. Damion it was, according to Mr. Blake, who replied saying "we must pass back later", and all four men then turned back. Mr. Blake and the deceased proceeded to catch a bus to Stony Hill, where they made a report at the police station.

[80] Both Lowe and Golding denied being involved in the early morning attack on the deceased and his brother and further denied their involvement in the shooting of the deceased.

[81] With respect to the evidence of Andre Blake, it was contended by Defence Counsel for Goldson that this evidence as to the events of the morning of the murder was irrelevant and therefore inadmissible or, alternatively, that its prejudicial effect outweighed its probative value. Even if the evidence was admissible, Defence Counsel submitted, the judge did not do enough in her summing up to assist the jury as to how it should be approached. Crown Counsel submitted that the evidence was admissible as proof of motive and to provide the context or background in or against which the offences charged took place.

[82] At paragraphs 79 to 81 of the judgment in this case, Justice of Appeal Morisson relied on **Archbold** (2003) paras. 13–34 to 13–36, the cases of **R v Williams**, **R v Pettman** (unreported judgment of the Court of Appeal, 2 May 1985 and that of **R v Sawoniuk**, where Lord Bingham CJ, as he then was, said this (at page 234):

"Criminal charges cannot be fairly judged in a factual vacuum. In order to make a rational assessment of evidence directly relating to a charge it may often be necessary for a jury to receive evidence describing, perhaps in some detail, the context and circumstances in which the offences are said to have been committed."

[83] Justice Morisson in **Golding and Lowe** (supra) concluded at paragraph 84

"On this basis, it appears to us that the evidence of Andre Blake, to which no objection was taken by either of the applicants at the trial, was clearly relevant and admissible, not only for the purpose of showing context and motive, but also as a factor which the jury would have been entitled to bear in mind when considering whether they could safely act on the evidence (particularly with regard to identification) of the later events of 3 December 2001. We therefore consider that the trial judge was correct when she told the jury that this was evidence which, if they accepted it, "may provide some background information of the circumstances leading up to the incident on the night of December 3, 2001", and that it was for them to decide "whether it offers any support to the evidence of identification given by Mr. Hall and Mr. Bowes". (emphasis mine)

[84] This Court refers again to the case of (vi) **Myers v The Queen, Bragman v The Queen and Cox v The Queen** (2015) UKPC 40

In discussing motive, Lord Hughes stated the following:

"43. In a case of murder or attempted murder, as in most criminal cases, evidence of motive is relevant but not necessary. Often the Crown may be able to prove what happened, and who did it, without knowing why. But where there is evidence that the defendant had a motive to kill the victim, that goes to support the case that it was him, rather than someone else, and/or that he did it with murderous intent, rather than accidentally or without intent to do at least grievous bodily harm. It may equally be relevant to rebut asserted self-defence or provocation. Admissible evidence of motive may sometimes necessarily involve showing bad behaviour by the defendant on occasions other than that charged. If that is the case, this is an example of the second sentence of Lord Herschell's principle in Makin; that the evidence relevantly proves motive may be a justification for its admission notwithstanding that it also shows bad behaviour." (emphasis mine)

[85] Lord Hughes, in the cases of **Myers and of Cox** also said:

"the murderous intention of the gunmen could not be, and was not, in dispute, so the evidence of motive did not go to that issue. But the evidence that there existed a feud between gangs was relevant to identity, which was the core issue in dispute. It went to show that those two defendants had a motive to kill the victims. It showed that they were members of a group which was likely to have felt aggrieved and, moreover, to have reacted by targeting the deceased on grounds of his membership of the opposing association. In each case, the evidence contributed to the proposition that it was the defendant who had done it, by supporting the other evidence that it was he who was responsible."

[86] Lord Hughes continued "As will become clear, the Board shares some of the concerns voiced by Auld JA in the appeals of Myers and Cox as to the dangers of gang evidence. But it does not agree with his proposition, on which those two appellants rely, that in order to be

admissible motive must be harboured uniquely by the defendant. Evidence of a shared motive can be just as relevant. In the case, for example, of a feud between neighbouring families, the motive may well be shared by several members of a family, of whom the defendant is one, but it is still relevant to show that he had a reason to do what is alleged. It does not become irrelevant simply because others had the same motive.”

- [87] This Court also relies on the case of (vii) **Phillip v The Director of Public Prosecutions** (St Christopher and Nevis) (2017) UKPC14 where the appellant was convicted of the murder of his estranged wife. His appeal to the Eastern Caribbean Court of Appeal against his conviction was dismissed and leave to appeal to the Privy Council was subsequently granted.
- [88] The facts are that both the appellant and the deceased wife lived on Nevis and worked at the Four Seasons Hotel and Resort complex. They had been separated since May 2006, and had not been in each other's company for about two months before her death. The deceased was found dead in her car in the yard of her home on 16th February, 2007, dressed for a retirement party. She had been killed with a knife.
- [89] The prosecution case against the appellant, Phillip, consisted of three independent strands, namely, '(i) the appellant had demonstrated hostility, violence and possessiveness towards the deceased; he was plainly resentful that she had left him; (ii) the appellant's red pickup truck was seen a few yards from the deceased's home at about 7.20 pm and its number noted by one of the two witnesses who saw it (iii) DNA matching the deceased was found on both of the appellant's hands after his arrest later on the evening of the murder despite they had not been in each other's company for several weeks.'
- [90] The principal ground of appeal, for which leave was granted by the Board, related to the evidence adduced by the prosecution of the history of the relationship between the appellant and estranged deceased wife.
- [91] Such evidence of the past history consisted of the following -: there was evidence of the deceased's mother and of her friend, Yvonne Glasgow, that the appellant had over the years exhibited physical aggression and possessiveness towards the deceased. Between them, these witnesses gave evidence of four incidents.

[92] The first incident was in 2003, where the mother had seen her daughter with a swollen arm who then confronted the appellant about the beating. He had wept and apologized, saying that it would not recur.

Secondly, in February 2006, a friend, Ms. Glasgow, had received a late night telephone call from a distressed deceased. She had spoken to the appellant who told her that she should “keep out of his affairs.” The following day, the deceased had a red and swollen ear.

A third incident occurred a few days after that telephone call, when the deceased went to Ms. Glasgow’s home at night and later proceeded to find her mother. They had been followed for some distance by the appellant in his car who “forced their car to stop, rushed up, cursing, had removed the ignition key, and had demanded” that the deceased returned home with him. There had been a row in which he had accused both Ms. Glasgow and the deceased’s mother of interfering and damaging the marriage. The deceased had corrected him to say that the problem in the marriage was that he would not stop hitting and abusing her. The appellant had sought “to justify himself by saying that the deceased had refused to tell him where she was going.” At the end, he apologized and promised not to hit her again. In May 2006, the deceased left the appellant, arriving with some possessions at Ms. Glasgow’s home. Within a few weeks she had moved to the rented house in Prospect where she was eventually killed. The appellant either stayed from time to time with her there or for a short period lived there, until about November/December when he left and she changed the locks to prevent his entry.

The fourth incident occurred later in December 2006 when the appellant “arrived unannounced and insisted on removing household items including the washing machine, which he disconnected”, and even a clothes’ line, which he removed.

The mother of the deceased testified as to his hostility when he seized a necklace which she wore and was going to throw a bottle of water at her but was prevented from so doing by the deceased’s mother.

[93] Lord Hughes stated at paragraph 7 of that judgment

“It is of course correct that, absent a statutory provision such as sections 98-113 Criminal Justice Act 2003 in England and Wales, evidence which does no more than demonstrate that the defendant is a violent person will ordinarily be inadmissible: Makin

v Attorney General for New South Wales [1894] AC 57, as explained recently by the Board in Myers Cox and Brangman v The Queen [2015] UKPC 40; [2016] AC 314, paras 37-41. But this was not the present case. The present case is a typical example of evidence which is undoubtedly admissible. The evidence was not simply (or indeed at all) that the appellant was given to outbursts of violence or temper in general. It was that he exhibited persistent hostility towards the deceased in particular, which he expressed in violence to her. Born out of frustration his behaviour may have been, but the evidence showed that he resented her leaving him and bore her active and violent ill will. That went to support the case that it was he, rather than some stranger, who accosted her in her own yard and killed her. It was evidence of motive to harm the particular victim of the offence. Such evidence has always been admissible, certainly where the identity of the killer is the issue. It may also be admissible where the killing is admitted by the accused but the issue is the intention with which it was done, or whether it was provoked, but those circumstances are not this case. (emphasis mine)

[94] In paragraph 8 of the judgment, Lord Hughes further stated that this commonplace principle was recognised in **R v Ball and Ball** [1911] AC 47 and noted that in “the course of argument Lord Atkinson offered (at p 68) an observation which has been treated ever since as axiomatic and cited for generations in *Archbold’s Criminal Pleading* (see currently the 2017 ed at 13-31.”

[95] At paragraph 9 of the said case **Phillip v The Director of Public Prosecutions**, Lord Hughes stated that the same point was made by the Board in **Myers** (supra) at paragraph 40:

“.... Mere propensity to behave badly is to be excluded as unfair. Admission requires justification beyond such mere propensity. An example of such justification is so-called similar fact evidence (which was in question in Boardman, and see now Director of Public Prosecutions v P [1991] 2 AC 447); in such a case the justification arises because the evidence is sufficiently compelling to have real value in controverting innocent coincidence. Another example is the kind of case where there has been a course of violent dispute between the defendant and the victim; there the evidence may be admissible (inter alia) to show either who was responsible for the last (charged) occasion, or the intention with which the defendant acted on that occasion, or to explain the reactions of the two parties. Likewise, in a case of alleged sexual abuse, the history and nature of a relationship said to have been abusive will often be relevant to proving a particular incident charged, even though it also shows prior misbehaviour by the defendant. It is impossible to catalogue every situation in which such justification may be present. But unless it is, evidence of misbehaviour unconnected with the offence charged is not admissible....” (emphasis mine)

[96] At paragraph 12 Lord Hughes continued in Phillip v The Director of Public Prosecutions:

“The Board nevertheless draws attention to the importance, where evidence of misbehaviour other than that charged is advanced at the trial, of carefully observing the basis on which it can be considered. Counsel on both sides, as well as the judge, must start with Makin. The admission of evidence of this kind must be justified. It is not enough that it is “part of the background”. That is too easy a generalisation and fails to distinguish the admissible from the inadmissible. If the accused has previous convictions for violence in bar-room brawls that might be described by some as part of the background, but it would not make it admissible on a charge of murdering his wife. If the accused has in the past conducted one or more extra-marital affairs, that might be described as part of the background, but that is unlikely to be admissible unless there is, additionally, a proper basis for saying that it is relevant beyond simply showing that he is a bad man. Such a proper basis might exist, but it must be demonstrated, such as, for example, good reason to suggest that he killed his wife in order to further a fresh affair, or that he had been encouraged by a lover to get rid of her, or to rebut untruthful protestations by him of his deep devotion to her. Nor is the facile argument based upon “background” improved by reference to R v Pettman (unreported, 2 May 1985), as to which the Board repeats what it said in Myers at paras 51-55. Similarly, the easy assertion in some of the written arguments placed before the Board that the evidence in the present case was admissible because it “went to credibility” must be rejected. The appellant did not give evidence, and his credibility was scarcely in issue in the trial. To the extent that it was, because he relied on what he had said to the police, it would not have been open to the prosecution to adduce evidence that he was, generally, an untruthful person. The evidence of past violence to the deceased did not go to his general credibility; it went to show that he bore her ill will and had the motive and inclination to attack her. It was indeed relevant to whether the allegation against him was true, but that is not “credibility.” (emphasis mine)

[98] Lord Hughes at paragraph 14 was of the view that the trial judge could have gone further in her direction in explaining the relevance of the evidence to the jury by directing that they “... should consider whether the historical evidence demonstrated an ill-will towards the deceased which supported the case that the killer was the appellant rather than some unknown person” (emphasis mine)

[99] In this case the contents of Affidavit of the deceased for a protection order, the Final Protection Order of the Court and the transcript of the associated court proceedings relative to the Protection Order, all constitute evidence of prior misbehavior, where the accused, Rohan Williams exhibited ‘persistent hostility towards the deceased’. He expressed such hostility in several phone calls to the deceased, going to the work place of the deceased,

distributing nude pictures of the deceased to her sons and extorting money from her to compensate him for the pain he felt over the deceased's decision to terminate of their relationship and her refusal to answer his calls to discuss the future of their relationship.

[100] This persistent hostility and ill will towards the deceased were also verbally and voluntarily expressed by the accused to the trial judge during the proceedings for the Protection Order as evidenced by the transcript. There was the unequivocal assertion of the accused to the learned trial judge that he was prepared to go to jail for the deceased. He refused to return to the deceased the \$2,000.00 he had received, despite the judge warning him that he was committing the offence of blackmail. He repeatedly expressed to the judge that he felt pain by the decision of the deceased to end their relationship as initially she had promised to leave her husband and he, the accused, had severed relationships with other women, to pursue one with the deceased.

[101] Similar was the case of the appellant in **Phillip v The Director of Public Prosecutions** (St Christopher and Nevis) (2017) UKPC14, where it was held that evidence of prior misbehaviour was admitted to show persistent hostility of the appellant towards the deceased, albeit in that case, was expressed in violence.

[102] Applying the findings of the Law Lords in the Privy Council case of **Phillip (St. Christopher and Nevis)** to the matter before me, this evidence of the past history of the relationship of the accused Rohan Williams and the deceased show that "he resented her leaving him and bore her actual violent ill will that went to support the case that it was he, rather than some stranger who killed the deceased." In these circumstances, such evidence as contained in the aforementioned court documents are admissible in this case (as was in the case of **Phillip**) as evidence of motive on the part of the accused, to harm the victim namely, Lenia Green. It was a matter of a few months after the granting of the Full Protection Order by the Court that the deceased was killed.

[103] In **Phillip (St Christopher and Nevis)** (supra), it was held that such evidence "*has always been admissible where the identity of the killer is in issue*". Similarly, in this case, the identity of the perpetrator is in issue, as accused Rohan Williams, has denied to the police his

involvement in the murder of the deceased and challenges the evidence of the Crown's witness J.S that the deceased identified him as the person responsible for her injuries.

Remoteness of the past relationship

- [104] Such an issue was examined in the case of **Philips (Alun Charles)** (supra) where the trial judge allowed the prosecution to adduce evidence about the state of the marriage over a number of years in order to rebut the appellant's claim that the marriage had been happy. The Court although conceding that there were limits to evidence of this kind, stated:

“...But in this case, the evidence as to the unhappy nature of this marriage covered the period from 1996 to 2000.It calls for an assessment of how much material can truly be regarded as relevant. There are no hard and fast rules, and much will depend on the issue to which the evidence is said to be relevant..., it is a question of fact and degree how much material of that category should be admitted.” (emphasis mine)

- [105] Turning to the present case, in examining the timeline of the relationship of the accused and the deceased as per the affidavit of Mrs. Green, the parties entered into a sexual relationship, which ended in December 2017. It was thereafter the 'erratic behaviour' of the accused made her life a 'living hell'.
- [106] In paragraphs 3-6 of the deceased's affidavit, she proceeded to detail the blackmail of the accused, and the persistent behaviour of harassing her by going to her workplace. It is noted that references in her affidavit as to his behaviour during this period, are supported partially by certain Crown witnesses. This persistent misbehaviour of the accused was the premise of the deceased's application for a Protection Order and the subsequent granting of same by the learned trial judge. During the Court proceedings, the accused's refusal to return/ delete the nude photographs of the deceased and to repay her \$2,000.00, the constant referral to the pain the deceased caused him, can potentially be construed that that he was unable to move on from this relationship.
- [107] The court proceedings, Final Protection Order and Affidavit of the deceased dated 2nd November 2018, are about six months prior to the murder of the deceased.
- [108] This Court is of view, as (was done by the Court in **Philips** (Alun Charles) case, that to exclude this evidence of the accused's prior misbehaviour after the ending of the affair from the period starting from December 2017 (culminating in the death of the deceased on May 26th 2019)

as evidenced in the documents relating to the Protection Order, to use the words in the **Philips (Alun Charles)** case, would be “artificial and unrealistic”.

- [109] It is the evidence of his prior misbehaviour which occurred on the termination of their affair by the deceased, is being relied on by the Crown to prove the accused’s motive to kill the deceased as he harboured ill will and resentment towards the deceased.

Is the admissibility of the evidence of the ‘bad character’ of the accused adverse to a fair trial?

- [110] In the case of **Mapp and Bissoon v The State** Crim App Nos. 13 and 14 of 2012, the Court of Appeal of Trinidad and Tobago stated at paragraphs 136-137:

*“136: Although a piece of evidence may be admissible having met all the legal requirements, the judge enjoys a general discretion to exclude such evidence on the basis that it would be unfair. This is a very powerful tool in the hands of the trial judge and it has been described as “theoretically having the potential to render all other rules of evidence obsolete and to undermine the role of the trier of fact. In practice, the courts exercise restraint in applying the discretion.” **White** (1998) 2 S.C. R72*

*137: In deciding whether the admission of the evidence would render the trial judge should engage in a balancing exercise, balancing the probative value of the evidence against its prejudicial effect. The probative value of evidence has been described by the Canadian Court in **McIntyre** (1994) 2 SCR 480 as “tending to prove an issue and questionable evidence will have less of that tendency” Prejudice in this context refers to the danger that the jury will use such evidence for an improper purpose despite the judge’s instructions to the contrary: **Vivar** 2003 Can LII 49365 (ONSC)”*

- [111] In examining the common law power under which the judge may exercise in his or her discretion to exclude evidence which the prosecution is seeking to adduce, the prejudicial effect outweighs its probative value, this Court relies on the Privy Council case of **Noor Mohammed v R** (1949) AC 182, where the appellant’s appeal was allowed and his conviction was quashed. The evidence in respect of his wife’s death was found to be inadmissible in his murder trial relative to another woman with whom he was living.

- [112] The Privy Council found that such evidence offended against the principles laid down in **Makin v Attorney General** for New South Wales (1894) AC 57 in that it “plainly tended to show that the appellant had been guilty of a criminal act which was not the act with which he was charged.”

- [113] This Court also relies on the said case of **Phillip v DPP (St Christopher and Nevis)** **particularly** at paragraphs 7 to 10.

At paragraph 10 in particular, Lord Hughes thereafter concluded in his Ruling that:

“For the same reasons, any application to the judge to exclude this evidence as unfairly prejudicial under the principle in Noor Mohammed v The King [1949] AC 182, 192 (and see -now- section 123 Evidence Act No 30 of 2011) would have been doomed to failure. There is nothing unfair about proving that the accused has an animus against the particular victim whom he is charged with injuring.” (emphasis mine)

- [114] This Court similarly shares the view of Lord Hughes in the case of **Phillip v DPP** (supra) and applies such reasoning to this case, and find in the case before me, there is nothing unfair about the Prosecution relying on this evidence of the accused’s past behaviour proving that he has an animus against Lenia Green for whose murder and rape he is now before the Court. In conducting the balancing exercise, I am of the view that the probative value of the evidence far outweighs any prejudicial effect that such evidence may have in the trial. It is in these circumstances, this Court will not exercise its common law discretion to exclude this evidence.

- [115] This Court is cognizant that in addressing its mind to its duty to ensure fairness there is an option to edit the evidence to omit any prejudicial and irrelevant material. This Court refers to paragraph 124 of the case of **David Baptiste v The State** Cr App. No. 23 of 2016 the Court of Appeal noted in its majority decision at paragraph 124:

“The editing and redaction of evidence is not a feature that is by any means uncommon in a criminal trial. By this process, the potential probative value of the evidence can be maintained with no danger of artificial distortion. The ability of a trial judge to perform the editing exercise is crucial in his necessary arsenal of (statutory) and common law powers which exist to promote and ensure the fair trial of a defendant.”

- [116] While it is the ruling of this Court that the past misbehaviour of the accused is admissible as per the subject of this application, in the interest of ensuring a fair trial, this Court invites any further submissions from attorneys as to the editing of any portion(s) of the said evidence before it is admitted before the jury.

- [117] To ensure fairness of the trial, this Court will also give the necessary directions to the jury at the appropriate stage relative to the use of this evidence of past misbehaviour of the accused.

Privilege against self-incrimination and a fair trial

[118] Defence Counsel contends in his submissions that the trial judge in the proceedings relative to the protection order caused the accused to incriminate himself and was therefore not afforded a fair trial.

119. The Court refers to Section 116 (1) of **Evidence Act** of the BVI

“where a witness objects to giving evidence on the ground that the evidence may tend to prove that the witness -

- (a) has committed an offence against, or arising under a law of; or in force in, the Virgin Islands or the law of a foreign jurisdiction; or*
- (b) is subject to a civil liability,*

the court shall, if there are reasonable grounds for the objection, inform the witness of the matters contained in subsection (2)

(2) The matters referred to in subsection (1) are-

- (a) that he or she need not give evidence but that, if he or she gives the evidence, the court will give a certificate under this section; and*
- (b) that the court will explain the effect of the certificate.*

(3) where a witness referred to in subsection (1) declines to give evidence, the court shall not require that witness to give evidence.

(4) Where a witness objects to giving evidence pursuant to subsection (1) and

- (a) the objection has been overruled; and*
- (b) after the evidence has been given, the court finds that there were reasonable grounds for the objection, the court shall cause the witness to be given a certificate in respect of the evidence.*

(5) Evidence in respect of which a certificate under this section has been given, is not admissible against the person to whom the certificate was given, in any legal or administrative proceedings, not being criminal proceedings in respect of the falsity of the evidence.

(6) subject to section 150(5) in Criminal proceedings, this section does not apply in relation to evidence that an accused-

- (a) did an act the doing which is a fact in issue; or*
- (b) had a state of mind the existence of which is a fact in issue.*

Section 150 (1) of the Evidence Act of British Virgin Islands states:

“Where the determination of a question whether –

(a) evidence should be admitted whether in the exercise of a discretion or not; or
 (b) a witness is competent or compellable,
 depends on the court finding that a particular fact exists, the question whether that
 fact exists, is for the purposes of this section, a preliminary question
 (5) Section 116(6) does not apply in a hearing to determine a preliminary question.”

[120] In relation to this case, it is evident from the transcript of the proceedings for the Final Protection Order that the statements made by the accused/respondent to the learned trial judge were voluntary.

[121] Initially, the accused indicated he had no comments to make and that he was not contesting the application of the deceased. The judge ordered that the accused return the photographs to deceased and not to disclose same to any third person and that he was to return the sum of \$2,000.00 to her. In those proceedings the accused stated "*I want to make a comment on second thoughts.*"

[122] The judge in those proceedings was seeking to clarify the answers given by the accused as she was entitled to do in an inter parte hearing. This was seen for example, when the accused explained that he was hurt and requested from the deceased money when she terminated the relationship, the judge sought clarification:

"The Court: let me ask you this. You wanted 8000 for being in a relationship with somebody as compensation?"

Mr Williams: She agreed to pay me it

...The Court Yes but why would she be paying you \$8000 for being in a relationship for six years? That's a thing?

Mr Williams: Your honour, we were together and I was really hurt.

The Court: Oh so she is paying you 8000 so you could get over your pain?

Mr Williams: Yes."

(See Transcript p. 9 lines 8-22)

[123]. The judge was making enquiries as she was entitled to if the accused would return the nude photographs of the deceased, and whether he would return \$2,000.00 already paid by the deceased on the termination of the affair. These were all the subject of the application for the protection order before the learned trial judge.

- [124] The judge told him that by distributing the pornographic images amounted to an offence and in so doing she was effectively warning him. Having been warned, the accused sought to justify all actions that the images were sent to him by the deceased and she did not object to him distributing same.

(See Transcript p16 lines 1-11)

- [125] The judge further warned him he could be investigated and prosecuted by the police and asked him if he wanted to go that route, to which he answered

“Your honour if that’s the case, I will do that.

The Court: You prefer to be prosecuted?

Mr Williams: I will do that, your Honour

The Court: I see

Mr Williams: Even though I have to serve time for Lenia, I will do that.”

(See Transcript p. 17 lines 9-21)

This Court is of the view that this was not a case where the accused was forced to incriminate himself in any way by the then trial judge.

Admissibility of the Affidavit of Lenia Green Hearsay Evidence

- [126] In determining the issue of the admissibility of the hearsay evidence contained in the Affidavit of the deceased, this Court relies on Section 71 of the **Evidence Act** of the Virgin Islands which addresses situations in criminal proceedings where the maker of a statement is unavailable at trial.
- [127] This Court further relies on the Privy Council’s case of **Stoutt** (2014) UKPC 14 which referred to this particular section where five pieces of hearsay evidence consisting of statements made by the deceased to identify the appellant were admitted into evidence and the conviction in that trial was subsequently affirmed by the Privy Council.
- [128] Section 71(1) states *“this section applies in criminal proceedings where the person who made a previous representation is not available to give evidence about an asserted fact.*
(2) the hearsay rule does not apply in relation to evidence of a previous representation that is given by a witness who saw, heard or otherwise perceived the making of the representation which is a representation that was-
(a) made under a duty to make that representation or to make representation of that kind;
(b) made at or shortly after the time when the asserted fact occurred and in circumstances that made it unlikely that the representation is a fabrication;

(c) made in the course of giving sworn evidence in a legal or administrative proceeding if the defendant, in that proceeding, cross examined the person who made the representation, or had reasonable opportunity to cross examine that person about it; or
(d) against the interests of the person who made it at a time when it was made.

(3) for the purposes of subsection (2)(c) a defendant who was not present at a time when the cross examination of a person might have been conducted but could have reasonably have been present at that time may be taken to have had a reasonable opportunity to cross examine the person.

(4) if a representation tends-

(a) to damage the reputation of the person who made it;

(b) to show that person has committed an offence; or

(c) to show that person is liable in an action for damages.

then, for the purposes of subsection (2) (d) the representation shall be taken to be against the interest of the person who made it.

(5) The hearsay rule does not prevent the admission or use of evidence of a previous representation adduced by a defendant, being evidence that is given by a witness who saw, heard or otherwise perceived the making of the representation.

(6) where the evidence of a previous representation about a matter has been adduced by a defendant and has been admitted, the hearsay rule does not apply in relation to evidence of a previous representation about the matter adduced by some other party, being evidence given by a witness who saw, heard or otherwise perceived the making of the second-mentioned representation.”

[129] In the case **Stoutt** (supra) in a murder trial, the judge admitted prior complaints made by the deceased documented in computer entries at the police station and a detailed written statement that the deceased gave to the police. These were complaints of a threat made about an unknown man during the course of a minor accident and of a further threat made by the same man in a Suzuki jeep. Other pieces of hearsay evidence were also admitted, namely, the record of an E999 call made by the deceased shortly before his murder where he reported that the same man against whom he had complained, had just accosted him again with a gun. While on the call, an argument was heard involving the deceased followed by three gunshots. Also admitted into evidence were statements by the deceased made to a police officer who spoke to him as he lay bleeding on the road. The deceased identified to the officer that he had been shot by someone and the person lived in an adjacent house.

[130] In the trial, Defence Counsel cross examined on a hearsay conversation between the brother of the deceased and the deceased in the period between October and his death, where the deceased had spoken on more than one occasion of “guys” in the East End of Tortola who

were harassing him, and had said that if they continued to do so, he may have to defend himself.

The Privy Council noted with particular reference to that conversation between the deceased and his brother while the Court of Appeal was correct in ruling that such conversation was hearsay, Lord Hughes at paragraph 20 stated:

“.... More importantly, whilst this evidence was certainly hearsay, it was not in fact inadmissible. Hearsay is regulated in the British Virgin Islands by sections 67-74 of the Evidence Act 2006 and section 71 makes it admissible in criminal proceedings in defined situations. There might be scope for argument as to whether this piece of hearsay evidence was admissible under section 71(2)(b), as made at or shortly after the time when the asserted fact occurred and in circumstances which made it unlikely that the representation was a fabrication. But whatever the position might be under that subsection, this evidence was admissible under section 71(5), which provides: “The hearsay rule does not prevent the admission or use of evidence of a previous representation adduced by a defendant, being evidence that is given by a witness who saw, heard or otherwise perceived the making of the representation.”

[131] The Board considered all pieces of the hearsay to be legally admissible pursuant to sections 64 to 74 of the **Evidence Act 2006** No. 16 of 2006 and concluded despite certain irregularities of treatment of the hearsay evidence, there was no miscarriage of justice in the case and the appeal was dismissed.

[132] Based on the above mentioned authorities cited, this Court is of the view that particularly pursuant to Section 71(5) of the **Evidence Act** of the Virgin Islands, that the contents of the Affidavit of Lenia Green outlining prior misbehavior of the accused, are admissible, albeit constituting hearsay evidence. This Court also finds the Affidavit of the deceased where she complained that the accused harassed her and extorted money from her, as previously indicated in the ruling, are admissible and relevant as they demonstrated the ill will the accused had towards the deceased.

(B) Further oral objections by Defence Counsel to the admissibility of contents of conversations between the deceased and witnesses (i) Lesia Donovan, (ii) Bernice Fenton and (iii) Muriel Smith

[133] **Objections by Defence** - Defence Counsel contends inter alia that conversations with the deceased and with each of these witnesses amount to hearsay and are therefore inadmissible. The accused was not present for any of these conversations. Ms. Lesia Donovan/ Bernice

Fenton/ Muriel Smith have not witnessed themselves any of the incidents referred to by the deceased, and are just simply relaying what was told to them by the deceased.

[134] Defence Counsel contends that the details of the incidents referred to for example, by witness, Leisa Donovan, in her deposition, were not referred to by the deceased in her affidavit for a Protection Order. Defence Counsel sought to distinguish the case of **Stoutt** case (supra) where documentary evidence namely reports of the deceased to the police, were admissible.

[135] Defence Counsel further objects to the evidence of each of the aforementioned witnesses, as there is no timeline relating to the incidents reported by the deceased. He stated that in the case of **Stoutt** (supra) there were various pieces of hearsay evidence that were admissible where the deceased's statements were made shortly thereafter the incident. Defence Counsel also argued that such statements had no probative value.

[136] Defence Counsel contends that the incidents referred to in these conversations with the deceased as reported by these witnesses, are too remote in time to the murder and rape of the deceased and cannot be regarded as relevant. Defence counsel refers to the case of **Phillip** (St Kitts) and states that in instant case it cannot be said that 'every negative interaction' is admissible. There must be a past history of animus between the deceased and the accused to be relevant which 'must raise to a certain level of animus' to be relevant.

[137] Crown Counsel responded inter alia based on the case of **Stoutt** (supra) and in particular to section 71(5) of the **Evidence Act** of the Virgin Islands, the statements of the deceased to each of these respective witnesses are admissible. The Crown contends that there is no requirement in the **Stoutt** case and in particular section 71(5) of the Evidence Act that for statements of the deceased in the **Stoutt** case to be admitted, they are limited to when they are made shortly after the incident.

[138] Crown Counsel disagrees with the Defence's argument there is no timeline of the incidents mentioned in the alleged conversations with the deceased and that aforementioned witnesses. Crown points out that for example, these conversations are said to have occurred around April 2018 as per witness Lesia Donovan.

Furthermore, Crown Counsel indicated that the above cited statements of the deceased where she complained that the accused harassed her and extorted money from her, are admissible

and relevant as they demonstrated the ill will and motive the accused had towards the deceased.

[139] This Court will now examine the evidence of each witness:-

(i) Lesia Donovan

Lesia Donovan, sister of the deceased, indicated in her statement filed as part of the paper committal proceedings, that in 2018, the deceased confided in her that she had an affair with the accused which she subsequently ended and the deceased spoke to her on another occasion that year that the accused was threatening to expose nude pictures of her if she did not give him money.

[140] On another occasion in 2018, the deceased further complained to her sister that the accused was constantly calling her phone so that the deceased was forced to block him. The deceased also admitted that she was forced to pay \$2,000.00 to the accused to keep away from her.

[141] The following are the excerpts of the conversations between the deceased and Ms. Donovan as per statement filed in paper committal proceedings-

"one day sometime in 2018, Lenia and I were having lunch inside my vehicle at St John's Hole, which is something we would do three times a week. She told me that she and Rohan were having an affair but it is finish as she had called it off. She said she explained to him that she was a Christian and that she wants to live her life clean but Rohan didn't take it lightly....

...Within the same year she called my phone crying. She stated that Rohan is at her workplace saying that he's going to expose her about some nude pictures of her which he had on her phone....

....my sister told me that that he even asked her to pay him \$8000US to keep quiet.....

.... One day she called me from First Bank International and told me that she was getting the money. I asked her what money she was speaking about. She said it was the money for Rohan. I advised her not to give him any money.

.. There was another incident within that same year. Lena came to my workplace and told me that Rohan was around the building. This keeps on happening on several other occasions. He would even ring her phone. She even told me that she had blocked him but he would change his number and call again. I remember that we were speaking when she told me she was preparing a Restraining Order against Rohan. During that period, she told me that she paid him \$2000US in cash to keep away from her because he was blackmailing her..."

(ii) Bernice Fenton

[142] Ms. Fenton is a close friend of the deceased, Lenia Greene. According to Ms. Fenton, it was in late April, 2018 to early March 2018, she received a whatsapp text from a number she did not recognize. She showed her husband who was also unfamiliar with the number. She then showed it to the deceased at work who explained it was the accused, a family friend.

[143] According to Ms. Fenton, the deceased confided in her that both she and the accused, Rohan Williams, were in a sexual relationship and that there was an occasion in 2018 that the Accused blocked her path preventing her from leaving her work. She was forced to drive in the opposite direction through a one way and was again blocked by the accused as she drove onto the highway. According to Ms. Fenton, the deceased told her that she reported the incident to the police.

[144] The following are excerpts from Bernice Fenton's statement tendered as part of the paper committal proceedings, as to her conversations with the deceased: -

"...She told me that she would work late and Rohan will pick her up from work and they would go and have sexual intercourse. She also told me a Saturday of 2018 when she and I came to work and when she was leaving her jeep, she saw Rohan pull up in a jeep and block her off from leaving. As a result, she had to reverse and exit through an enter only roadway. She then drove on the highway close to Treasure Isle and Rohan came again in a jeep and block her from driving forward on the highway. She told me that cause traffic to back up on the highway. She was able to drive off and drove to the Police Station and made a report. Lina never told me if she was scared"

".. one time Linia told me Rohan came on the job and I asked her where he is so I can see him..."

(iii) Muriel Smith

[145] Muriel Smith, aunt of the deceased, in April 2018 witnessed an incident in which the deceased and the accused were speaking about money and a picture. The deceased admitted to Mrs. Smith that she and the accused had an affair which ended. On another occasion, the deceased requested Ms. Smith to be quiet because she did not want the accused to know she was at home by herself.

[146] In early 2019, the deceased indicated to Mrs. Smith that she will be updated on the relationship with the accused and that the deceased had a restraining order against the accused.

- [147] The following are excerpts from the statement of Muriel Smith tendered as part of the paper committal proceedings -

“...One morning sometime in April, 2018, I was on my way to the office passing between Digicel Building and Trident Office building owned by the DeCastro family. During this period, I met Lenia having a conversation with a man unknown to myself. ... from the conversation between Lenia and the man I gathered that the man had outstanding monies owed to Lenia and she Lenia had a picture in her possession that the man wanted to get from her...”

“I ask Lenia what was the man’s name and what was going on. Lenia mentioned the man’s name is Rohan and that they had a brief affair, which was now over....”

“... Lenia at some point during the same day said to me that she and Rohan had a brief affair and her husband knows about the situation. She also stated that she was working things out with her husband so not to worry. I mentioned that I was not going to judge her but encouraged her to fix the situation...”

“.... On the afternoon of April 9th 2018, I stopped by Lenia’s home as she felt like talking. Whilst I was there with her, she showed me through the garage window, Rohan looking across at her house trying to figure out who was driving my car. She asked me to be quiet because she didn’t want him to know she was at home by herself...”

“...A few days after running into both Rohan and Lenia on April 20, 2019, I received a whatsapp message from Rohan..... I did not respond to the message but instead showed it to Lenia who then called Rohan and asked him why he was bothering her aunt and not to show up at her workplace....

“... in early 2019 I enquired from Lenia if there were any other problems or encounters with Rohan, she stated that it was a long story which she will update me on and that she had placed a restraining order on him so he would not be bothering her anymore ...”

Law & Analysis relative to conversation with witnesses and deceased

- [148] This Court relies on the Privy Council case of **Stoutt (Appellant) v The Queen** (Respondent) (2014) UKPC 14 where sometime between October and his death (January 2007), the deceased had spoken to his brother on more than one occasion that there were men in East End, Tortola who were harassing him and indicated that if they continued to do so, he, the deceased, may have to defend himself. The Privy Council found such a conversation to be admissible.
- [149] This Court notes that in the case of **Stoutt** (supra) there was nothing to suggest that the brother of the deceased had given a witness statement shortly after such conversations. Interestingly, the timing the brother of the deceased gave such witness statement in the matter

which referenced such conversation with the deceased, appears to be after the death of the deceased and not proximate to such conversations with the deceased. This Court relies on in particular, what was stated by the Privy Council at paragraph 20 in **Stoutt** relative to the conversation with statements of the deceased to the brother of the deceased.

[150] Lesia Donovan, Muriel Smith and Bernice Fenton, like the brother of the deceased in the **Stoutt case**, do not have firsthand knowledge of any of events described by the deceased. The witnesses in this case like the brother of deceased in **Stoutt**'s case are testifying as to the contents of statements made by the deceased person to each of them.

[151] This Court finds that conversations of each of the respective witnesses: Mrs. Donovan, Ms. Fenton and Mrs. Smith with the deceased, as to prior misbehavior of the deceased are admissible albeit hearsay, pursuant to section 71(5) of the **Evidence Act** of the Virgin Islands.

[152] This Court is also of the view that any difference (s) between in the accounts as per the conversation between the deceased and Ms. Fenton/ Mrs. Smith/ Mrs. Donovan and that contained in the affidavit of the deceased, affect not admissibility but is a question of weight for the jury.

[153] Furthermore, this Court finds that the evidence as to the contents of the deceased's conversations with Lesia Donovan, Muriel Smith and Bernice Fenton as to the accused harassing the deceased at work and on phone, blackmailing her, extorting money, and blocking of deceased's car pathway which occurred on the termination of their affair by the deceased, are evidence of the accused's prior misbehavior. Such evidence of the past misbehaviour of the accused which constitute (at least) psychological harm (albeit not acts of physical harm) are admissible and relevant to prove the accused 's motive to kill the deceased as this prior misbehaviour demonstrate that he harboured ill will and resentment towards the deceased.

[154] On the issue of remoteness of the incidents as described by the deceased of past misbehaviour, the case of **Philips (Alun)** (supra) continues to be instructive where the trial judge allowed the prosecution to adduce evidence about the state of the marriage during the years 1996 and 1997 in order to rebut the appellant's claim that the marriage had been happy.

As was stated in that case...” There are no hard and fast rules, and much will depend on the issue to which the evidence is said to be *relevant*...”

“...In our view the judge was entitled to conclude that it would be “artificial and unrealistic” to exclude evidence about the marriage during the period 1996 and 1997.”

[155] Based on the **Philips (Alun Charles)** case, to exclude this evidence of the Accused’s prior misbehaviour as per the evidence of contents of the conversation with the deceased with each of the aforementioned witnesses (occurring sometime in 2018 and later in 2019), to exclude such evidence as to the prior misbehaviour of the accused would be “artificial and unrealistic.”

[156] This Court continues to rely on the case of **Ball** (supra) and the passage in Archbold cited therein by Lord Atkinson at page 68 “*evidence of motive necessarily goes to prove the fact of the homicide by the accused, as well as his ‘malice aforethought,’ in as much as it is more probable that men are killed by those that have some motive for killing them than by those who have not.*”

[157] In conducting the balancing exercise, I am of the view that the probative value of the evidence of the deceased’s conversations with the aforementioned witnesses as to the prior misbehaviour of the accused, far outweigh any prejudicial effect that such evidence may have in the trial. It is in these circumstances this Court will not exercise its common law discretion to exclude the contents of the conversations with the deceased and these witnesses as to the prior misbehaviour of the accused.

[158] I wish to commend and thank both the Crown and Defence Counsels for their thorough submissions and assistance.

Angelica Teelucksingh
High Court Judge

By The Court

Registrar