

IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
GRENADA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. GDAHCR2011/0005

BETWEEN:

REGINA

V

WINSTON MURRAY

Appearances:

Mr. Anslem Clouden for convicted man

Ms. Crisan Greenidge for the Crown

2013: November 4

JUDGMENT ON SENTENCING

- [1] PRICE FINDLAY, J.: The convicted man was indicted for the offence of murder of Keisha Romaine. The offence was committed between the 2nd and 3rd days in June 2010 at Paraclete in the parish of St. Andrew. The accused was found guilty by a jury on the 8th day of July, 2013. The Court ordered a Social Inquiry Report and a Psychiatric Assessment Report on the convicted man, and a date was fixed for sentencing.

FACTS

- [2] The convicted man lived in Paraclete, as did the deceased. On the night of 2nd June, 2010, or in the early hours of the morning of the 3rd June, 2010, the deceased was seen walking along the Paraclete Road going towards Paraclete. She was being followed by the convicted man. The next time the deceased was seen, she was lying under a lime tree, covered by bluggoe leaves on the property

belonging to Cletus Godfrey. She had been manually strangled and there were several lacerations all over her body.

[3] The body of the deceased was examined by Dr. Keith Johnson at the scene. He found numerous injuries to the deceased. These injuries were as follows:-

- (1) Laceration on the right forearm approximately 2 inches long by 2 inches deep;
- (2) Laceration on the right arm approximately 1.5 inches long by 1.5 inches deep;
- (3) Laceration on the right arm approximately 1 inch long by 1 inch deep;
- (4) Laceration on the right side of the forehead approximately 0.5 inch long;
- (5) Multiple abrasions on other areas of the forehead;
- (6) Superficial laceration of the right breast;
- (7) Two abrasions on the lower aspect of the right breast;
- (8) Superficial laceration to the right upper back approximately 2 inches long;
- (9) Puncture wound on the left index finger approximately 0.5 inch wide;
- (10) Multiple abrasions on the lips of the vagina with the internal surface of the vagina bruised and swollen.

[4] The Court had the benefit of a social inquiry report on the convicted man and a report and oral testimony from psychiatrist Dr. Melba Ramirez Romaguera.

[5] In the Social Inquiry Report, the officer found that the convicted man was inarticulate and below average intelligence. The convict presented accounts and stories of situations which appeared to be disjointed and farfetched. He expressed no remorse and insinuated that he had been framed by the police.

[6] Inquiries in the Mt. Horne community where the convict lived and where the incident took place revealed that the community was guarded towards the convict but he was not known as a violent person. He attended church regularly and participated in church related activities.

- [7] Mr. Jude Bernard, an elder of the Seventh Day Adventist Church, described the convict as an individual keen on improving his life and putting his difficult upbringing behind him, and living a life devoted to God.
- [8] The convict attended Primary School but did not attain the Common Entrance standard but he could not recall when he left school. After leaving school he worked land with his parents, worked as a labourer, worked at a sugar factory and thereafter in the security field.
- [9] The convict spent three (3) weeks at the Mt. Gay Hospital in 2009, but says he was never given a formal diagnosis but the report produced to the Court states that he was diagnosed as suffering from a psychotic illness.
- [10] The social inquiry report stated that it was difficult to present a coherent risk assessment for the convicted man as they were unable to interview persons of significance to him. His immediate family refused to take part in the Social Inquiry process, and his estranged wife could not be located.
- [11] There was no indication as to whether he was at risk to be a repeat offender, as this risk assessment could only be presented when a detailed psychiatric report was tendered.
- [12] Dr. Ramirez Romaguera testified and read her report into the record. She was extensively cross-examined by Counsel for the accused man. She had assessed the convict on 19th July, 2013.
- [13] She stated that the convicted man was initially hostile but once he was persuaded to co-operate he did so.

- [14] He refused to speak about the incident but he denied killing anyone. He admitted that he knew the deceased and had a close relationship with her parents.
- [15] She opined that: "During the interview he displayed personality traits that might be considered paranoid; he displayed guarded or defensive behaviour, and a tendency to react to minor occurrences with anger."
- [16] She found him to be coherent and logical but that his mood was irritable. He denied having hallucinations or delusions. She concluded that the convict presented no features of any psychotic illness.
- [17] She was cross-examined by Counsel as to the test that she utilised to assess the convicted man. She indicated that she did not do a psychometric test nor did she do an intelligence test; she conducted a clinical interview with him. She was assisted by two other doctors.
- [18] She testified that part of a psychiatric evaluation would be an assessment of the patient's intellectual level.
- [19] She testified that she assessed the clinical symptoms of the convict and at the time of the interview he showed no symptoms.
- [20] She knew that the convict was a patient at Mt. Gay in 2009 and she knew that he had been diagnosed at that time with acute psychosis. She said that a person can make a full recovery and there be no recurrence of psychotic problems. She also stated that there could be a recurrence if the patient is faced with disturbing events or uses drugs. She denied that her report was biased. She repeated that during the testing the convict exhibited no problems. She expressed no opinion as to the probability of the convicted man re-offending.

[21] The deceased was 29 years old and the mother of two infant children at the time of her death. She resided at Mt. Horne, and according to her sister, Caroline Romaine, she was a peace loving individual who got on well with all in her community. She was described as a loving and devoted mother, sister and aunt. Her family took her death very hard, especially her parents and children. The burden of her death was described as “traumatic”, and the family was still trying to cope with the loss.

[22] The convicted man did not testify nor did he call any witnesses on his behalf. The aggravating factors include:

- (a) The loss of a life of young mother of two small children;
- (b) The manner in which she was killed;
- (c) That he manually strangled and then mutilated the body of the deceased;
- (d) That the attack was totally unprovoked.

[23] The mitigating factors were stated by Mr. Clouden as follows:

- (i) No evidence that a knife was used in the attack that caused the death of the deceased;
- (ii) The character and record of the convict;
- (iii) What informed the conduct of the convict.

[24] This Court has carefully considered all of the evidence adduced at the sentencing hearing as well as the submissions of Counsel.

THE LAW

[25] A convenient starting point would be to examine the classical principles of sentencing. The classical principles of sentencing, namely retribution, deterrence, prevention and rehabilitation were laid down by Lawson LJ in the celebrated case of *R v James Henry Sargeant* [1974] 60 Cr. App. R. 74¹. in that decision Lawson

¹ *R v James Henry Sargeant* [1974] 60 Cr. App. R. 74

LJ stated that *'any judge who comes to sentence ought always to have those four classical principles in mind and to apply them to the facts of the case to see which of them has the greatest importance in the case with which he is dealing'*

- [26] In *Desmond Baptiste v Regina*² CJ Sir Dennis Byron embraced and applied these principles. Sir Dennis stated as follows:

“Retribution

Retribution at first glance tends to reflect to the Old Testament biblical concept of an eye for an eye, which is not tenable in the law. It is rather a reflection of society's intolerance for criminal conduct. Lawton LJ stated at page 77 that:

“... society through the courts, must show its abhorrence of particular types of crimes, and the only way the courts can show this is by the sentences they pass.”

Deterrence

Deterrence is general as well as specific in nature. The former is intended to be a restraint against potential criminal activity by others whereas the latter is a restraint against the particular criminal relapsing into recidivist behaviour. Of what value, however, are sentences that are grounded in deterrence? Specific deterrence may be an ineffective tool to combat criminal behaviour that is spontaneous or spawned by circumstances such as addictions or necessity. Drug and alcohol addiction as well as need may trigger high rates of recidivism. Experience shows that general deterrence too is of limited effect. These sentences tend to lose their potency with the passage of time.

Prevention

The goal here is to protect society from those who persist in high rates of criminality. For some offenders, the sound of the shutting iron cell door may have a deterrent effect. Some, however, never learn lessons from their

² *Regina v Desmond Baptiste Cr. App. 8 of 2003*

incarcerations and the only way of curbing their criminality is through protracted sentences whose objective is to keep them away from society. Such sentences are more suitable for repeat offenders.

Rehabilitation

Here the objective is to engage the prisoner in activities that would assist him with reintegration into society after prison. However, the success of this aspect of sentencing is influenced by executive policy. Furthermore, rehabilitation has in the past borne mixed results. Of course, sentencing ought not to be influenced by executive policy such as the availability of structured activities to facilitate reform.”

RETRIBUTION

[27] The facts of this case disclose that the deceased was a young mother of two small children. On the night she was murdered, she was last seen walking the Mt. Horne road heading towards Paraclete where she resided with her two children. For some unknown reason the convicted man, who was seen walking behind her on the road that night, said that something came over him and he pushed her down and proceeded to manually strangle the deceased.

[28] While it does not seem that this killing was premeditated, the fact that the convicted man resorted to this type of violent conduct on a person with whom he had no quarrel or angst must be frowned upon by the Court.

DETERRENCE

[29] The convicted man for the purposes of this matter would be considered to have a clean record. He has two convictions for minor offences in 2009 and 2010, and a conviction for indecent assault in 2011. There was no risk assessment as to the possibility of re-offending from either the psychiatrist, or the social worker who

prepared the Social Inquiry Report. There was no evidence of any relationship between the convicted man and the deceased. The Court must, however, impose a sentence which would send a clear message that this type of behaviour will not be tolerated by society, a sentence which will deter others from committing similar offences, as the Court is aware that the offence of murder has been on the increase over the past five or so years.

PREVENTION

- [30] As stated earlier, I will treat the convicted man as a first time offender, thus a sentence to prevent him from offending in a similar manner in the future may not be necessary.

REHABILITATION

- [31] I find that the convicted man ought to continue receiving either psychiatric treatment or counselling. Given what the doctor has testified to, and his previous history, he needs to receive some sort of treatment or counselling. Based on everything that I have heard, he needs to be monitored and the appropriate steps taken to help him in his efforts to rehabilitate himself.

- [32] In coming to a conclusion as to what is the appropriate punishment for any offence, more so the offence of murder, the Court has to consider the following:

“That it is a mandatory requirement in murder cases for a judge to take into account the personal and individual circumstances of the convicted person. The judge must also take into account the nature and gravity of the offence, the character and record of the convicted person, the factors that might have influenced the conduct that caused the murder, the design and execution of the offence and the possibility of reform and social re-adaptation of the convicted person” per Rawlins JA.³

³ Regina v Harry Wilson, Crim. App. 30 of 2004

- [33] The judge has to consider fully two fundamental factors:
- (1) The facts and circumstances surrounding the commission of the offence, and
 - (2) The character and record of the convicted person.
- [34] Applying the above-mentioned principles and having examined the facts of this case, I find that this was a senseless killing, and it was executed in a brutal and heartless manner. The deceased woman never had a chance; she was attacked and had no chance of defending herself from the convicted man's attack. She had no chance of surviving. She had done nothing to provoke what was a cowardly attack.
- [35] The convicted man covered the deceased's body with bluggoe leaves and left the lower portion of her body exposed, and left it there and returned to his home. He took the life of a young woman and a devoted mother for no apparent reason.
- [36] However, the convicted man had no previous history of violent behaviour and acted in a manner which was neither pre-meditated or apparently planned. There was no evidence of any bad blood or conflict between the convicted man and the deceased.
- [37] Murder is one of the most heinous crimes known to mankind and the sentence imposed must reflect not only the Court's but society's abhorrence of such an act.
- [38] The Court cannot condone the behaviour of the convicted man, the manner of the death of the deceased, whereby she was overpowered and subsequently manually strangled and mutilated.

- [39] The convicted man has already spent almost three years in prison, most of it being pre-trial incarceration. I will take this time into account for the purpose of sentencing.
- [40] Having considered all the relevant matters which were placed before the Court, I sentence Winston Murray to thirty (30) years imprisonment to run from the date of remand.
- [41] It is my recommendation that the convicted man be given psychiatric counselling during the term of his incarceration.
- [42] I wish to thank Counsel for their assistance.

Margaret A. Price Findlay
High Court Judge