

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

SAINT LUCIA

CRIMINAL CASE NO. SLUCRD 2009/1268

BETWEEN:

THE QUEEN

Claimant

AND

KEVIN ALVIN JOHNNY

Defendant

Appearances:

Mr. L. Theophilus for the Defendant

Mrs. Victoria Charles-Clarke, Director of Public Prosecutions, for the Crown

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2011: June 20
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JUDGMENT ON SENTENCING

[1]. **BENJAMIN, J. :** The defendant, Kevin Alvin Johnny, was found guilty of murder by the verdict of a jury rendered on May 18, 2011 after a trial. The Indictment alleged that on Monday 29th day of June 2009 at Agard Lands in Morne Du Don the defendant caused the death of Kenny St. Rose intending to cause grievous bodily injury to the said deceased contrary to Section 85(b) of the Criminal Code of Saint Lucia, 2004.

- [2]. The case is one of non-capital murder within the meaning of Section 87 (1) of the Criminal Code and accordingly the defendant is liable to imprisonment for life. Accordingly, the Court ordered and received a pre-sentence report in aid of sentencing. The defendant has been on remand since being charged on July 1, 2009 and remains on remand to the present.

FACTS

- [3]. The background to and actual circumstances surrounding the incident are to be gleaned from the evidence at trial of Nansha St. Rose, who at the time, was the live-in companion of the defendant and the brother of the deceased aged 18 years at the time of his death. The defendant and Nansha St. Rose lived with her daughter in an upstairs apartment rented from the deceased's aunt. That aunt, the deceased's parents and other family members including the deceased himself lived familiarly in adjoining premises. From all accounts from Nansha St. Rose and the deceased's father, Kenneth Bonaire, at trial, the defendant and the deceased were on very good terms with each other before the incident. This is borne out by the interview between the Probation Officer and the deceased's aunt. Indeed, Nansha St. Rose observed that her brother's relationship with the defendant was better than the one she enjoyed with her own deceased brother. The clear impression from the deceased's father at trial was that the defendant was well-liked by the family he had embraced by entering into cohabitation with Nansha St. Rose.

- [4]. At about 9:00 p.m. on June 29 2009, Nansha St. Rose was at home with the defendant when an altercation arose as a result of him questioning her about a telephone call she had received while in the bedroom. He followed her into the living-room and an exchange of words took place. He took the cell-phone from her and the SIM card got broken. An argument ensued as she warned him not to break the cell-phone as it did not belong to her. She admitted to raising her voice. Subsequently the deceased came knocking on the door to the apartment demanding that the door be opened.
- [5]. The defendant first opened the top half of the door after telling the deceased he had not hit his sister nor had he done her anything. Upon opening the bottom half of the door at the deceased's insistence, the deceased rushed into the house and cuffed the defendant in his face about four (4) times while questioning him as to what 'nonsense' he was doing. The defendant appealed to his sister about her brother's behavior. A scuffle ensued. The defendant had a knife which was being used to peel an apple at the time. Nansha St. Rose managed to get in between them and spoke to both men. The knife fell to the ground.
- [6]. The deceased then abruptly turned and left the apartment. While the defendant and Nansha St. Rose were speaking about what transpired, they heard the deceased say that he had been stabbed. They went to the deceased and he showed them a small hole in his back. The defendant at the time and up to now has expressed incredibility that the deceased had been stabbed.

- [7]. The defendant played the main role in assisting the deceased up the stairs to the main road to await transport. He also accompanied the deceased with others to the Hospital. At the Hospital, he willingly went with Special Police Constable Charles to the Criminal Investigations Department pursuant to the incident. He gave a voluntary statement to the investigator, Sergeant Emmanuel, giving his account of what transpired.
- [8]. The deceased succumbed to his injury while at the Hospital. At a post-mortem examination on the next day, Dr. King observed a single stab wound to the right of the back to a depth of seventeen (17) centimeters or just less than eight (8) inches. The path of the wound was slightly downwards at an angle from back to front into the chest through the lower lobe of the right lung to the upper lobe of the right lung and cutting the upper branch of the pulmonary vein and the right bronchus. The result was that the right lung was collapsed and there was a collection of blood in the right chest cavity. The cause of death was opined to be hemorrhagic shock and respiratory failure caused by a long sharp instrument.
- [9]. The Jury were invited to deliberate pursuant to directions on accident (which was the main plank of the defence), self-defence and provocation in that order of treatment. In arriving at the verdict, it is plain that all defences – complete or partial-were rejected. Nevertheless, as a matter of mitigation, the Court can take into account the entire circumstances of the incident for the purpose of sentencing.

PRE-SENTENCE REPORT

[10]. The defendant is now thirty-four (34) years of age nearly two (2) years after the incident. At the time he was employed with C.O. Williams. Having left school at the age of fifteen (15), he entered into the world of work at Rodney Bay then at the Ladera Resort in Soufriere. He is the eldest of his parents' four (4) children. He is the father of three (3) children aged seventeen (17), fourteen (14) and nine (9) years of age. It would appear that the defendant assumed the male parental role in the family from an early age as his father worked overseas.

[11]. Interviews with the defendant's mother yielded that her son was never disrespectful but rather was responsible and helpful. The defendant's sister and aunt described him as being loving and non-aggressive and being reserved respectively. The co-workers and work supervisors of the defendant all expressed surprise about the defendant's involvement in an incident of this nature.

[12]. In sum, there was unanimity in the view that the defendant is a quiet individual with no history of violence or of aggression in any form. Indeed, shock and disbelief as to his predicament was the universal reaction. This was bolstered by the defendant's characterization as a model prisoner by the authorities at the Bordelais Correctional Facility.

[13]. When interviewed, consistent with what was said to the Police, the defendant voiced to the Probation Officer remorse at the death of the deceased. His actions after the incident can be construed without demur as indicative of an early indication as to how sorry he was at the injury inflicted on the deceased.

SENTENCING PRINCIPLES

[14] Learned Counsel for the Defendant and the Director of Public Prosecutions alluded to the general judicial guidelines to be observed by the Court for sentencing set out in Section 1102 of the Criminal Code. These guidelines, in so far as relevant are:

- (1) the rehabilitation of the offender must be recognized as one of the aims of sentencing; and
- (2) the gravity of the punishment must be commensurate with the gravity of the offence; In the plea in mitigation, it was urged on behalf of the defendant that given the lack of antecedents of the defendant and the unblemished report of his personal life, there ought to be focus on the issue of rehabilitation, ego, that the defendant is a prime candidate for rehabilitation with a view to him being returned to the community after a suitable term of years.

[15]. In conducting this sentencing exercise, the Court is reminded that the defendant is without any criminal conviction. Account must be taken of the aggravating circumstances which must be weighed against the mitigating factors. The Court must be alive to the character and record of the defendant also well as to the nature and gravity of the offence and the design and manner of its execution. The chances of reform and social adaptation of the

offender must also be considered. These factors are prescribed by Byron, CJ in Spence and Hughes v R - Criminal Appeals No. 20 of 1998 and No, 14 of 1997.

- [16]. In the present case, which involves a single stab wound, that matter is the only aggravating feature that can be identified. From the evidence, the defendant did not arm himself in advance but was already in possession of the knife when the deceased accosted him in his own apartment.

SENTENCE

- [17]. The range of sentence is up to a maximum of life imprisonment. The gravity of the offence can attract nothing less than an appropriate term of years tailored to the peculiar features of this case. The single aggravating circumstance is grossly outweighed by the mitigating features which places this case at the lower end of the scale of punishment for the offence.
- [18]. There is no dispute that the deceased approached the defendant in an aggressive manner. Although the Jury were not persuaded that the cuffs to the defendant's face amounted to provocation in law, this Court can treat that as a mitigating factor as I do now. The defendant must have, in some degree, been affected by the unprovoked assault of the deceased in the wake of a domestic dispute between cohabiting adults.

- [19]. The Court is impressed by the character testimonials of family members, members of the community and co-workers alike. These all attest to the defendant's non-violent and non-aggressive disposition. There has been genuine remorse displayed by the defendant from the time it became apparent that the deceased had been injured by his hand.
- [20] The Court is satisfied that the period of rehabilitation required before the defendant can be re-admitted into society need not be long as the process had begun and is well-advanced. It is only left for the Court to recognize the need to have the degree of punishment be commensurate with the gravity of the offence of murder for which the defendant has been convicted.
- [21] This defendant is by no means a threat to the society. However, his actions have resulted in the untimely death of a young person and for that he must be punished.
- [22] In the premises, the defendant is sentenced to twelve (12) years imprisonment commencing from today's date.

KENNETH BENJAMIN
HIGH COURT JUDGE