

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

(CRIMINAL DIVISION)

SAINT LUCIA

CLAIM NO. SLUHCR 2009/0012

BETWEEN:

THE QUEEN

Complainant

and

KINK CHARLES JOSEPH

Defendant

Appearances:

Mr. Al Elliot for the Defendant

Mr. R. Innocent, Deputy Director of Public Prosecutions for the Crown

2010: March 2 and 8

JUDGMENT ON SENTENCING

- [1] BENJAMIN, J: On October 27, 2009, the defendant was found guilty by a jury for the offence of murder contrary to section 170 of the Criminal Code of St. Lucia, 1992. The case for the Crown as alleged in the Indictment was that on November, 20, 2004 at Cantonment in the quarter of Vieux-Fort, the defendant intentionally caused the death of Clifford Dalsen by unlawful harm.
- [2] Upon conviction and in response to the inquiry by the Court, the learned Deputy Director of Public Prosecutions stated that the Crown was not seeking the death penalty. Accordingly, the Court went into its normal non-capital sentencing mode and ordered that a pre-sentence report be prepared in respect of the defendant for use during sentencing. The report was received on November 16, 2009 and revealed a history of mental illness in the family. Out of an abundance of caution, the Court ordered that the defendant undergo a psychiatric assessment. The report on the latter examination was not received until March 1, 2010.
- [3] Since the death penalty is not being sought the defendant is liable to be sentenced in the normal way and the maximum penalty he faces is life imprisonment.
- [4] The defendant is 26 years of age. He was 21 years old at the time of the offence. He is an unmarried young man with a five year old daughter. Prior to remand, he lived with his mother at Augier, Vieux-Fort where he grew up.

FACTS

- [5] The deceased succumbed to a single stab wound to his left upper abdomen. The pathologist traced the path of the wound to a depth of 20cms or approximately 8 inches from the abdominal wall just below the left rib cage, through the stomach, pancreas and the aorta of the heart and piercing the right side of the diaphragm. The doctor opined that the surrounding abrasion at the skin surface of the wound suggested that at least moderate force was used. The cause of death was given as haemorrhagic shock as a result of the stab wound. The defendant admitted to the Police and at trial that he used a knife to stab the deceased and at the outset of the investigation he handed over the knife to the Police Officer who first detained him after the incident.
- [6] At trial led evidence was led of a prior incident on the night of September 26, 2004 in which the defendant sustained an injury. The defendant was at a dance by Rose's disco at Augier, Vieux-Fort, when, he said, he was attacked by three persons who demanded his stripes. He identified two of the men as 'Java' and 'Kim' but he knew the third person by face. Raymond Emmanuel also called 'Java' was presented as a witness for the Crown and while admitting being present with Kim Caul he gave a different account of the incident and denied that anyone else was involved. In fact, he specifically said that he did not know the deceased. The defendant insisted at trial that the third person was the deceased. The compendious verdict of the Jury did not allow the Court to discern what the Jury found on this point and Defence

Counsel did not insist on a Newton hearing. Accordingly, the Court must construe the evidence in the light favourable to the Defence.

[7] When one accepts that the deceased was among the defendant's assailants in the prior incident of September 26, 2004, it is curious to note that the defendant informed the Police that he did not want any action taken. It is difficult to accept the defendant's denial that he was not annoyed or vengeful as a result of the injury he sustained at the hands of the deceased.

[8] The Crown's case was that on the day in question Terranceson Alexander also known as 'Flush Pick' had an altercation with Ryan Albert, a friend of the defendant at about 4:30 p.m. at the playing field at Cantonment. A football match was in progress. The deceased intervened on behalf of Alexander and spoke to Ryan Albert. At that point, the defendant came up and began to quarrel with the deceased. The defendant was seen to push the deceased who pushed him back. Thereupon, the defendant stabbed the deceased with a knife.

[9] In his statement under caution and at trial, the defendant accused the deceased of ridiculing him by calling him a 'bullar' and of reminding him that he had previously chopped him.

[10] By way of explanation as to why he had a knife, the defendant in his statement said that he had been threatened by one Neil that day. However, at trial he said that he

had the knife to cut coconuts as he was drinking coconut water during the match after consuming alcohol with Ryan Albert.

- [11] The verdict of the Jury indicated a rejection of the defendant's assertion that he was defending himself against the deceased or that he was provoked by the deceased.

PRE-SENTENCE REPORT

- [12] The defendant's mother said that she had a visiting relationship with his father and raised him and his siblings in a single-parent household at Augier. However, the defendant would visit his father at Micoud. The defendant attended the Augier Combined School leaving in Standard V after two unsuccessful attempts at the Common Entrance Examination.

- [13] It is the belief throughout the community that the defendant was well brought up in a good home. Up to the present, he enjoys a close affinity to his mother and siblings. At home, he was well-behaved and kind to his mother. He grew up in the Pentecostal Church attending regularly with his mother. The defendant assisted his mother in the home, in making copra and looking for food in the country.

- [14] According to the defendant's mother, he grew up wanting to be a pastor. However, at around the age of 17, she observed a change in him as he began absenting himself from the house for long periods and even began sleeping under the house.

She attributed this change to obeah. She also recalled that before the change he was taunted as an 'anti-man' and would get beaten up by other persons.

[15] The defendant kept bad company and assumed the role of a 'bad boy'. His brother attested to the defendant smoking marijuana. By his own admission, he consumed alcohol. The addendum to the pre-sentence report makes reference to two other stabbing incidents where the defendant was the alleged perpetrator. However, these matters cannot be considered as they may be still pending before the Court and in any event there has been no conviction recorded.

[16] The defendant's mother and his cousin spoke of his talent and creativity as an artist. As testimony to this, the defendant through Defence Counsel, laid over with the Court lyrical writings and poetry penned by the defendant while on remand.

PLEA OF MITIGATION

[17] Learned Defence Counsel relayed the defendant's regret and contrition for the death of the deceased. He asserted the defendant's drunkenness as the catalyst for the incident. Indeed, when cross-examined at trial he admitted that if he had not been drinking alcohol at the playing field on the day in question, the incident may not have occurred. The Court is inclined to believe this to be the case as the entire episode was initiated by Ryan Albert who was drinking with the defendant at the time.

[18] Counsel further urged the Court to take account of the defendant having voluntarily surrendered to the Police and make a full statement admitting to the stabbing.

[19] The defendant was recommended as a good candidate for rehabilitation. The Court was entreated not to impose an indeterminate sentence, so as to afford the defendant the opportunity to, at some time, re-unite with his daughter, now an infant.

[20] Defence Counsel pointed out that although the defendant was not part of the original altercation, his entry into the affray was not pre-meditated but may have been driven by alcohol.

PSYCHIATRIC ASSESSMENT

[21] The psychiatric report submitted to the Court was woefully abbreviated and obviously misguided as to its purpose. The report falls far short of the level of thoroughness and detail that is desirable in a matter as important as the present. This Court can only hope that this inadequacy is eschewed in the future. The Court can only glean from the report that the defendant has displayed no psychotic features. No attempt was made to delve into the defendant's history and past behaviour. The writers erroneously focused on whether the defendant was fit to plead. Such report has been awaited for almost four months and the Court will nevertheless proceed to sentence.

THE APPROACH OF THE COURT

[22] Section 178 of the repealed Criminal Code of St. Lucia 1992 (which is applicable to the present case) prescribes the penalty for murder as being death. However, the Court of Appeal has decided in the case of Newton Spence and Peter Hughes v. The Queen – Criminal Appeals No. 20 of 1998 and No. 14 of 1997 that the automatic imposition of the death penalty is unconstitutional. This decision has been approved by Her Majesty's Privy Council. Accordingly, the Court has been clothed with a discretion to impose a sentence that is appropriate to the individual case. In the present, since the Crown has elected not to lead evidence in support of the sentence of death, the defendant is liable to a maximum sentence of life imprisonment.

[23] In conducting the sentencing hearing, the Court must receive evidence and representations as to the character and record of the defendant, the nature and gravity of the offence, the design and manner of execution of the offence and the possibility of reform and social adaptation of the offender; these factors were prescribed by Byron, CJ in Spence and Hughes as being applicable to cases involving the death penalty, but are equally applicable in this case. In addition the Court must identify the aggravating circumstances peculiar to the offence and the offender and weigh same against the mitigating factors subjective to the defendant and evident from the facts.

MITIGATING AND AGGRAVATING FACTORS

[24] The defendant has expressed contrition for his act. He has no prior convictions. In addition, he is a young man who was 21 years old at the time. He is close to his family and they all spoke well of him while acknowledging his undesirable life style.

[25] The aggravating factors are to be found in the offence itself. The defendant effectively intervened in a dispute between his friend and another person to the extent that the original parties to the altercation were neither the defendant nor the deceased. It is reasonably clear that, for whatever reason, whether as stated for personal protection, the defendant armed himself with a knife that had a blade long enough to descend to a depth of 20 centimeters or 8 inches; the stab was delivered with enough force to leave an abrasion.

REHABILITATION

[26] The defendant has displayed the signs of one who is prepared to embark on a route towards rehabilitation. Given his age and talent, the defendant ought to be afforded any opportunity to restore the values instilled in him by the church and to give expression to his art and creativity. I wholly agree with learned Defence Counsel that an indeterminate sentence would not be fitting in the circumstances. However, the defendant must be given time to reflect on his past actions and prepare himself to make suitable choices in the future and be a productive citizen.

SENTENCE

[27] The case falls at the lower end of the scale of severity of the offence of murder. Further, the defendant has been on remand for approximately five years before being convicted. Such period of remand ought to attract a suitable reduction of sentence. Having regard to the totality of the circumstances, the Court orders that the defendant be sentenced to period of fifteen (15) years imprisonment.


KENNETH BENJAMIN
HIGH COURT JUDGE