

SAINT CHRISTOPHER AND NEVIS

IN THE HIGH COURT OF JUSTICE

SAINT CHRISTOPHER CIRCUIT

(CRIMINAL)

A.D. 2009

SUIT NO. SKBHCR2007/0063

BETWEEN:

THE DIRECTOR OF PUBLIC PROSECUTIONS

V

**LUMUMBA MATTHEW
JUSTIN BASS**

Appearances: Mrs Pauline Hendrickson, The Director of Public Prosecutions
Ms Rhonda Nisbett-Browne and Mr Renold Benjamin for the Prosecution
Mr Chesley Hamilton for Lumumba Matthew and Mr J Hamilton for Justin Bass

2008: 22 October

JUDGMENT ON SENTENCING

- [1] **BELLE J:-** Lumumba Matthew and Justin Bass were convicted on 10th of July 2008 for the murder of Darren Berry of Keys Village, St. Kitts. The facts of the case in a nutshell were that Matthew and Bass were friends who were regularly seen together and who had a mutual passion for horses. Some time before the murder Matthew had telephoned Richie Henry and later visited his farm in Phillips expressing an interest in purchasing his horses. He was quoted a price and he said that he would round up the cash to make the purchase. A few days later the horses disappeared. When Matthew was told of this he said that if anybody called his name in relation to this theft he would shoot them in their face.
- [2] It so happened that the persons who went looking for the horses and found them used a vehicle which used to belong to Justin Bass and which had been sold to Delvin Benjamin who in turn had sold it to Dion Berry shortly before the murder. On the morning after the

horses were recovered Dion Berry was driving the said vehicle with Richie Henry as passenger in the Brighton area when they saw Matthew and Bass turn the motorbike they were riding and started to pursue the vehicle. Lumumba Matthew was driving the motorbike with Bass riding behind him and Dion Berry was driving the Suzuki Jeep. When Richie Henry and Dion Berry reached the Cayon Police Station, Berry swung the vehicle towards the Station and Matthew and Bass who had followed them to this point, turned around and headed towards town.

- [3] Later on the 12 January 2007 Matthew was seen in a number of locations and he spoke to Richie Henry about buying the horses again. The Berrys had traveled to town selling the produce from their farm and making some purchases. They stopped at Prince Henry aka N'Kosi's house and picked up some CD's. This same friend who lives in Stapleton said that he saw Lumumba Matthew pass up in the afternoon before he spoke to the Berrys and Bass passed also driving his mother's car both going in the direction of Bayford's where the murder took place.
- [4] Normally the Berrys who were heading to their farm would have taken another route but apparently because of their location in the Stapleton Village area they decided to head to the farm via Bayford's. It was in about the middle of this unpaved road in a remote and heavily wooded area that Matthew and Bass ambushed and wounded the Berrys causing the death of Darren Berry and severely injuring his brother Dion.
- [5] The ambush was executed with clinical precision. One attacker came from the left and rear side, the other from the front. The Berrys had no way of escaping in this very narrow track with embankments on both sides and no room to turn or accelerate out of harm's way. Having been shot it would take some time to call for help and it was almost a miracle that Dion was able to do so while having suffered gunshot wounds in both arms.

The Law

- [6] This is a sentencing hearing and it therefore proper for me to explain the legal basis for this procedure. In **Newton Spence v The Queen** and **Peter Hughes v The Queen**,

Criminal Appeal No. 20 of 1998 the Court of Appeal of the Eastern Caribbean Supreme Court held that the death penalty should not be automatic in cases of conviction of the offence of murder. This decision was upheld by the Privy Council which was of the view that the trial judge would be competent to weigh the relevant aggravating factors from the trial and evidence of mitigating factors along with relevant submissions from defence counsel in a sentencing hearing before imposing the appropriate sentence. Consequently it has become customary to order Social Inquiry Reports and Psychiatric Reports on the convicted persons as part of this process.

- [7] This court is also bound by the dicta of Rawlins JA as he then was in **Mervyn Moise v The Queen** Criminal Appeal No.8 of 2003. In **Moise** Rawlins JA stated that the convicted person is to raise mitigating circumstances at the sentencing hearing by adducing evidence unless the mitigating factors are obvious from the evidence given at trial. The burden to rebut the presumption then shifts to the Crown. The Crown must negative the presence of mitigating circumstances beyond a reasonable doubt. The duty of the sentencing judge is to weigh the mitigating and aggravating circumstances that might be present in order to determine whether to impose a sentence of death or some lesser sentence.

Aggravating Factors

- [8] An examination of the facts in this case exposes the aggravating factors without any difficulty. The convicted men planned and executed an ambush on the deceased and his brother in a remote area of the countryside where gunshots may not have been heard by many and where but for the use of a cell phone both of the Berry brothers would have died from the wounds which they received. Based on the number of shots fired it is not at all far fetched to conclude that the attackers intended to kill both of the brothers and only stopped firing when they thought that they had accomplished just that or when they had run out of ammunition. The plan was executed in such a fashion that it was virtually impossible for the victims to escape and knowing this the attackers did not find it necessary to wear any disguise.

- [9] The attack was brutal and relentless. It was the kind of attack that would be executed during a period of war against an enemy who one expected to be equally brutal. There was no opportunity for surrender or negotiation. It was a planned execution without the sanction of law. It was a most heinous and despicable act. These are extreme circumstances. The convicted men showed no compassion and leave little scope for a compassionate response.

Mitigating Factors

- [10] Lumumba Matthew is 25 years old. He is a father of two and plays the role of father towards two others who are his girlfriend's children. He was known to be quiet and stuck to a task when he was given one to do. He has been very helpful to his girlfriend with the children and around the house and that helpfulness was also extended to his friends based on the evidence. He was never known to be rude to employers or anyone else. But when he was told of the theft of the horses according to the witness Richie Henry, he vowed to shoot in the face anyone who called his name in association with this theft.
- [11] No peculiar mitigating factors arise from the Social Inquiry Report or the Psychiatric Report in relation to Matthew. Although his history is not spotless he did not have a long record of violent crime. No doubt Matthew is capable of achieving greater and better things in life.
- [12] Justin Bass, 23 years old, had had a few brushes with the law but no previous convictions. He too was a father of one little girl and he too had not settled for unemployment. He was said to be interested in bettering himself. He was always helpful in his home and to his family. He also did not have a known history of violence. Indeed he had been the victim of a shooting in his area during the St Peters gang feud earlier in the decade
- [13] Justin Bass was estranged from his father but so were many well adjusted young men in St. Kitts and Nevis. Dr. Sharon Halliday Consultant Psychiatrist at the JNF Hospital, Basseterre, St. Kitts concluded that Justin Bass did not appear to have any abnormal mental state but he screened positive for mild depression in an otherwise normal mental

state. Lumumba Matthew had a normal Mental Status Examination but admitted to feelings of depression and anxiety on several days during his incarceration.

- [14] The Social Inquiry Reports on both convicted men were done by Probation Officer Mr Gerald Connor. In relation to Lumumba Matthew the main point made is that Lumumba has never seen his mother or sisters who reside in the United States since his mother's departure from the Federation to reside there when he was two years old. Lumumba Matthew was raised by his grandmother. His father also left the Federation to live in the United States soon after his mother. Lumumba never developed a relationship with his father even after his father returned to the Federation.
- [15] It was observed that Lumumba Matthew was able to find a number of jobs between 2000 and 2006. One of these employers Mr David Payne said that he did not have a positive attitude towards other workers but was always early and always present. Lieutenant Kayode Sutton of the St. Kitts and Nevis Defence Force stated that on joining the Defence Force Lumumba Matthew was a good soldier physically but found difficulty with the academics. Matthew was particularly interested in the weapon handling aspect of the training but showed behavioural problems which are common among young men who are learning to be on their own, and accept responsibilities for their actions. Matthew was dishonourably discharged from the Defence Force after going AWOL (absent without leave). Lumumba Matthew had two previous convictions one for Battery and the other for malicious damage to property.
- [16] Mr Connor made the point that Justin Bass had a strong family support network around him even though he had no relationship with his father. He was very close to his mother and his sister Dibye. He had many positive role models in his family tree even though his father was absent from his life. But one of the male figures remarked that the more they warned Justin Bass about the company he kept, the worse things got. Relatives were of the view that he had been involved in a gang war between the Upper and Lower St. Peters communities and was shot in his hand in 2004. Indeed a number of Justin Bass friends had been murdered over the years. However the most poignant observation made by

Mr Connor was the fact that his mother would always find excuses for him even though she asked for help to keep him in line. The principal of the Washington Archibald School which Bass attended put it this way:

"Justin came to school as a very quiet child, after his first year we started to encounter some problems with him in relation to his behaviour, he was getting into fights and not attending school on a regular basis. The school relayed certain information on Justin's behaviour to his mother but Ms Bass always found an excuse for her son's delinquent behaviour."

- [17] Counsel for both men portrayed the images of family oriented young men, both fathers, with Matthew being the biological father of two but playing the role of father to his girlfriend's children. Matthew was a source of strength to his girlfriend and maintained both her and the children. Bass was very supportive to his mother and not only supported his girlfriend and his own child but also the girlfriend's child by another father. Both convicted men showed some form of ambition and were able to find and maintain employment. Indeed what came through in this episode is that these men are capable of compassion. But they showed no compassion for the Berry brothers. It is obvious that their compassion is reserved for their friends and their loved ones. But a community demands much more than that of us. This only serves to make the story that more tragic. But the tragedy must be faced as the consequence of making the wrong turn at a crucial moment.
- [18] The question that arises is how did these apparently average and normal young men end up in this position? We sometimes want to believe that a murderer has to have a certain profile which will make him or her stand out and we would immediately understand why he/she resorted to killing. But clearly this is not the case. Neither convicted man has admitted to the killing nor shown remorse other than to say that they are sorry for the Berry's loss. Indeed they still have a right to pursue and appeal and therefore need not admit anything.
- [19] But having confidence in the trial process it is clear that the jury who had been directed on identification in difficult conditions had no problem believing the victim Dion Berry who survived the shooting. It is my view that not unlike the cases of a number of other persons

who have come before this court accused and eventually convicted of crimes which they committed, the individuals who are close to them do not know the side of them that has been exposed to the value system which encourages and supports the kind of criminal behaviour displayed in this case. A mitigation based on the best that one can say is therefore not necessarily balanced in portraying the character of the person who was convicted of the offence charged.

- [20] In **Moise Rawlins** JA expressed the view that the death penalty should only be imposed in those exceptional cases where there is no reasonable prospect of reform and the object of punishment would not be achieved by any other means. The crime must be very grave and the offenders must be beyond "reasonable prospect of reform." Rawlins JA outlined the essential components of the sentencing hearing process. He said the following:

"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.

.....

In summary, the sentencing judge is required to consider, fully, two fundamental factors. On the one hand, the judge must consider the facts and circumstances that surround the commission of the offence. On the other hand, the judge must consider the character and record of the convicted person. The Judge may accord greater importance to the circumstances, which relate to the commission of the offence. However, the relative importance of these two factors may vary according to the overall circumstances of each case."

- [21] Having considered the evidence in this case, and noting the aggravating and mitigating factors, I am of the view that the aggravating factors outweigh any mitigating factors in this case. Indeed although I can find something of worth in the character of the two convicted men I also find as I have previously stated, that such kindness and compassion as there may be in their character appears to be preserved for family, loved ones, friends and

close associates. Others do not seem to matter. Based on that perspective the lives of the Berry brothers were extinguishable.

- [22] It is my view that for this kind of crime based on this kind of outlook the court, as society expects, must impose the maximum penalty. That penalty is death. I therefore sentence both Lumumba Matthew and Justin Bass to be put to death in the manner prescribed by law. To be complete even if it may appear academic I also sentence each of the convicted men to 10 years in prison with hard labour for the offence of attempted murder, since this offence was committed before the recent amendment to the Offences Against the Person Act increased the maximum penalty for attempted murder substantially.



FRANCIS H V BELLE
High Court Judge