SAINT LUCIA

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

CASE NO. 56 OF 2003

BETWEEN:

THE QUEEN

and

TRUDY EDWARD a.k.a. SHAWNETTE

Appearances:
Ms. Victoria Charles-Clarke DPP [ag] for the Crown
Mr. Marcus Peter Foster for the Accused

2004: April 05
April 07

JUDGMENT ON SENTENCING

1. HARIPRASHAD-CHARLES J: The accused, Trudy Edward a.k.a. Shawnette was indicted for the offence of murder contrary to section 178 of the Criminal Code of Saint Lucia. The accused has pleaded not guilty to murder but guilty to manslaughter. The Crown has accepted the plea of manslaughter. The accused is therefore before the court for sentencing.

The facts

2. The facts as disclosed by the Learned Director of Public Prosecutions and the depositions reveal that on Friday, 11th April 2003, Alicia Demar was near Buccaneer Bar at Sarrot when she saw Trudy Edward. Alicia walked up to Trudy and said to her "look me you say you going to prick." Trudy then said to her 'you said you will prick me, so prick me." Alicia

then said again" it was you who said you will prick me so prick me." The accused then took a knife out from her waist and she pricked Alicia. Alicia took out a pair of scissors but fell on her back. The accused ran away.

3. The accused headed straight to Central Police Station where she reported the incident to P.C. 490 George Leopold. She handed him the knife which she had used to stab Alicia. The knife was subsequently handed over to the investigating officer, Cpl. 60 Labadie.

4. At about 9.30 p.m. that said night, Corporal Labadie received a report and proceeded to Sarrot near Buccaneer Bar where he interviewed various witnesses. He carried out further investigations into the matter and later arrested and charged the accused for the offence of murder. When she was formally charged and cautioned, she made a voluntary statement which was recorded in writing. In the statement, she said that Alicia and 2 other girls attacked her. She had a knife which she had used to peel an orange and she stabbed Alicia with it.

5. On Tuesday, 15th April 2003, Dr. Stephen King, Chief Medical Officer and Consultant Pathologist at Victoria Hospital performed a post mortem examination on the body of Alicia Demar. Dr. King opined that Alicia died from haemorrhagic shock as a result of a single stab wound to the upper chest in the 2nd left inter costal space which entered the right ventricle of the heart. The depth of the wound was 12 cm. The left lung collapsed. He also opined that there was no chance of survival given the extent of the injury to the heart.

Sentencing

6. Section 169 (2) of the Criminal Code of St. Lucia provides that the maximum penalty for the offence of manslaughter is life imprisonment.

7. Our Eastern Caribbean Court of Appeal has shown some consistency in the sentencing of accused persons in cases of manslaughter. In cases where provocation or other defences reduces the offence to manslaughter, the benchmark period established is 15 years

imprisonment.[1] The benchmark, to my mind gives some guidance on sentencing with the intention of achieving some consistency in the approach to sentencing. However, circumstances will differ necessitating a departure from the benchmark: see the Saint Lucian cases of *Frederick Jackson v The Queen*[2] and *Janice Hamilton v The Queen*[3]. In Jackson's case, he was indicted for murder but a jury convicted him of the offence of manslaughter after provocation. He was sentenced to 15 years imprisonment. In the latter case, Hamilton was indicted for murder but pleaded guilty to manslaughter. She was sentenced to 15 years imprisonment. They both appealed. The Court of Appeal reduced both sentences to 10 years respectively.

8. Blackstone's Criminal Practice 2002 ed. at para. B1.31 at pages 130-140 states that the sentencing bracket for offences of manslaughter committed after provocation has normally been set at a period between 3 and 7 years, although longer sentences have occasionally been upheld.

9. According to Shaw L.J. in *Bancroft*[4] at page 120:

> "Notwithstanding that a man's reason might be unseated on the basis that the reasonable man would have found himself out of control, there is still in every human being a residual capacity for self-control, which the exigencies of the given situation may call for. That must be the justification for passing a sentence of imprisonment, to recognize that there is still left some degree of culpability… "

10. Lord Lane CJ in the English case of *Taylor*[5] commented that sentencing in these circumstances is an almost impossible task. But a Judge must be mindful of two objects: firstly, the necessity to ensure that the accused expiates his offence by the imposition of a term of imprisonment and secondly, although to some extent where there is provocation it

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[1] See: (1) Hilary Patrick Tench v The Queen (Crim. App. No. 1 of 1991) (Saint Lucia) (unreported)
(2) James Jn Baptiste v The Queen (Crim. App. No. 10 of 1994) (Saint Lucia) (unreported);
(3) Denis Alphonse v The Queen (Crim. App. No. 1 of 1995) (Saint Lucia) (unreported);
(4) Bertram Abraham v The Queen (Crim. App. No. 12 of 1995) (St. Vincent & The Grenadines)

[2] Crim. App. No. 6 of 2001) (unreported)
[3] Crim App. No. 9 of 2002) (unreported)
[4] (1981) 3 Cr. App. R. (S) 119
[5] (1987) 9 Cr. App. R (S) 175

may seem illogical, it has got to be a lesson to other people that they should keep their tempers and not be provoked in such circumstances.

11. With these factors in mind, I should then determine a minimum period reflective of those two matters.

12. The actual sentence imposed will depend upon the existence and evaluation of aggravating and mitigating factors as well as an evaluative process.

Aggravating Factors

13. There appears to be no aggravating factors in this case.

Mitigating Factors

14. The following are factors identified by Mr. Foster which have been recognized as mitigating sentences:

    (i) The accused is fairly young or fairly old.

    (ii) The accused has no previous convictions.

    (iii) The accused has pleaded guilty and saved the court a considerable lot of time.

    (iv) The accused has shown remorse for her conduct and regrets the killing.

15. The pre-sentence report of the accused discloses that she was 19 years old when she committed this senseless act of killing. Not only was she a teenager but she was also in her first trimester of pregnancy. Her second child, Leshon was born during her incarceration. The infant is now 5 months old and he has not bonded with his mother.

16. The accused is remorseful about the whole incident which she agreed was a 'foolish' act. She was moved to tears during the interview. She was co-operative and forthright. She also expressed a deep sense of regret. She expressed the wish to apologize to the families of the deceased who are very emotional and vocal on the matter and wish the worse for the accused.

17. The residents of the community of Sarrot are deeply divided on the consequences that should be meted out to the accused. Some empathized with her; others wish the worse for her and her family. I must state here that societal sentiments should not be a consideration to the court in determining sentence unless the accused poses a risk to society.

18. The Accused has a clean record and is a first offender before the court in a serious matter. She has been on remand for a year now. She is described by the Correctional Officers including the Deputy Director at the Bordelais Correctional Facility as a model inmate. Her skills are being utilized in some of the outreach programmes. They also opined that she is a source of inspiration to fellow inmates.

19. In considering the appropriateness of sentence, I must have regard to the culpability of the accused by taking into consideration the seriousness of the offence and the established benchmark making adequate provisions for a scaling up or a scaling down. I must also be cognizant of the mitigating factors which will reduce the accused's culpability.

20. I am obligated to carry out an evaluative process as well before I arrive at the actual sentence to be imposed. It seems to me from the evidence of the eye-witness for the Crown, Ms. Cynthia Charles that the deceased was the aggressor on the night in question. She started the fracas. Ms. Charles deposed " I was just standing by the road. While there I saw Shawnette (the accused) going down the road and Alicia (the deceased) was standing lower down and when Shawnette was going down, Alicia cross to the other side of the road from where I was standing. Alicia was standing on the same side of the road as me and she cross to the other side and she and Shawnette collided – Alicia bumped into Shawnette. Alicia said to Shawnette 'Look me you say you going to prick.' " And then more words were exchanged and the senseless killing took place.

21. The appropriate punishment in these cases seems to turn upon the amount of provocation, the 'cooling-off' time, the extent to which the offender was at fault in bringing about the situation in the first place, and the means used to kill the victim.

22. The weapon used was a knife about 5 inches long which passed into the left chest and into the pericardium. It entered the right ventricle of the heart. It entered the septum of the heart, went through the mitral valve into the left atrium. The left lung collapsed and there was 3.5 litres of blood in the left chest cavity. Death was instantaneous. Nothing could have saved Alicia. The injury was fatal.

23. It is difficult to obliterate that a life has been lost; albeit a young one also. The deceased was 24 years old. She has left behind a young 5 years old child. .

24. In my judgment, despite the fact that the accused was pregnant and a teenager, she could have controlled her emotions. She was too hasty to pull out that deadly weapon. As Shaw LJ said in the *Bancroft* case, "there is still in every human being a residual capacity for self-control, which the exigencies of the given situation may call for. That must be the justification for passing a sentence of imprisonment, to recognize that there is still left some degree of culpability… "

25. Having taken all factors into consideration, the sentence of this court is that the accused, Trudy Edward be sentenced to 7 years imprisonment.

Indra Hariprashad-Charles
High Court Judge