

Barbados

Indictment No: 125 of 2010

The Queen vs. Teerath Persaud
SENTENCING JUDGMENT

Teerath Persaud,

[1] On Monday, October 22nd, 2012 you were arraigned and pleaded not guilty to the murder on the 8th, November, 2008 of Anna Druizhinina but “guilty” to manslaughter.

[2] **Basis on which the plea was accepted:** Your plea was accepted by the Director of Public Prosecutions, who appeared for the Crown. After he had outlined the facts, the learned Director explained that the plea had been accepted on the following basis:

“... with the abolition of the felony murder rule or the doctrine of constructive malice, which had formerly said that once you do something like this it would constitute murder...the Prosecution now is required to prove specifically an intention to kill.... and from the evidence on this file, we cannot establish a specific intent to murder. And it is for that reason I am obliged to accept... the plea of manslaughter. Because what I can specifically establish is ... conduct that is so reckless that constitutes manslaughter at its highest, very borderline to murder, but I can't establish a specific intention to kill Anna on the evidence. And it is for that reason I have so acted....”

[3] **The Facts as Outlined:** The facts and circumstances surrounding the senseless and bizarre manner in which Anna Druizhinina, a girl of 16 years met her tragic death at the hands of yourself and your co-accused inside her parents' home at Palmers Plantation, St. Philip on that fateful evening of Saturday, November 8th, 2008 were outlined by the learned Director on October 22nd, 2012 following your “guilty plea” and were accepted by Defence Counsel, Mr. Adjamu Boardi.

[4] The Director told the Court that you had been formerly employed as an agricultural labourer with Mr. John Jackson, owner of Palmers Plantation in St. Philip and his wife Larissa. You were subsequently transferred to the Jackson's Black Rock business establishment where you were employed as a caretaker/watchman and given rent-free accommodation.

[5] In September of 2008, following a confrontation between Mr. Jackson and yourself over a large sum of money which the Jacksons claim had gone missing from Mrs. Jackson's bag you allegedly attacked Mr. Jackson with a knife and in the process received a gunshot injury to your left shoulder. As a result of that incident, Mr. Jackson was charged by police for causing you serious bodily harm and, needless to say, your employment with the Jacksons terminated.

[6] On Saturday, November 8th, 2008, approximately two months following the altercation between you and your former employers, the Jacksons left their home at Palmers Plantation for their Black Rock business to do their usual Saturday work. They left their 16 year old daughter, Anna Druizhinina at home to do her Saturday chores.

[7] During the course of the afternoon, you and your co-accused arrived at the Jackson's house in furtherance of a joint enterprise to steal. Due to your knowledge of the area and your familiarity with the Jackson's dogs which you had gained as a former employee of the plantation, you and your co-accused entered the premises without any difficulty.

[8] However, you were surprised at finding Anna at home. Knowing that she would recognize you, you and your co-

accused then embarked on a most reckless and dastardly plan to silence her while the house was searched for items to steal.

[9] According to your written statement, after he had gone upstairs and apprehended the girl on the balcony, your co-accused entered the house and placed her on the rug on her belly. He then tied Anna's face up with a towel and, according to you, requested your assistance in bringing wire to tie her up.

[10] Due to your obvious familiarity with the layout of the house you went downstairs and took up old electric wire from a room where you knew the wire was kept, brought it back upstairs and gave it to your co-accused who then tied both the girl's hands behind her back and both her feet together.

[11] According to you, your co-accused then used a long piece of wire, made a draw knot and put it around her neck and carried her to the top of the step and told you to bring two tin cans.

[12] Once again, you had little difficulty finding and bringing to your co-accused a varnish tin and a plastic bucket which you then placed on the ground one on top of the other as instructed.

[13] According to you, you then watched as your co-accused climbed up onto the railing of the stairs, threw the wire over a beam and then put the girl to stand on the bucket and tin. He then fastened the other end of the wire which he had earlier placed around her neck to the railing and left her precariously perched on the bucket and tin at the top of the stairs before starting his search of the house.

[14] According to your statement, the possibility that your co-accused may have intended to kill the girl occurred to you. But there is no evidence that you protested to him about what he was doing or that you tried to assist the terrified and helpless girl as she was balancing precariously on the bucket and tin which you had placed at the top of the stairs as instructed.

[15] The Court has taken note of the fact that this was a girl that, on your own admission, you had known from the time that her mother had brought her to Barbados.

[16] According to you, you did not participate in the search of the house and remained on the balcony the entire time while your co-accused hunted the whole house looking for items to steal.

[17] According to you the room hunting went on for a very long time and eventually, your co-accused came back to the balcony where you were and told you that the girl had jumped off the bucket and tin.

[18] A post mortem examination subsequently conducted by Pathologist, Dr. Stephen Jones confirmed that Anna's death was as a result of ligature strangulation.

[19] You then watched while your co-accused lifted the girl's body down and carried her to her bedroom and placed it on her bed. According to your statement, you then both sat for a while on the balcony and according to you, after he had rested for a short while in the balcony, your co-accused announced that he was going downstairs to find gasoline.

[20] You then observed him return with a yellow pail and a red 2-gallon container jar with a funnel. According to you, your co-accused returned to the girl's bedroom, where you observed him remove the wire from the girl's neck, while leaving the cloth around her face and saw him carry her into the computer room.

[21] According to your statement, your co-accused then came out of the house where he was and told him that he had set fire to the bed upstairs. On seeing the headlights of the Jackson's car turning in to the entrance to the Palmers plantation, you ran downstairs, through the gully and the cane fields and made good your escape.

[22] On your arrival home much later, you washed your clothes and hung them on the line before retiring to bed.

[23] The police arrived soon afterwards and you were taken to the police station where investigations continued.

During the police investigations, you made a number of oral statements and gave them a written statement 3 days later.

[24] The Court was informed that you have no criminal record and that this is your first offence.

[25] **Your Pre-Sentence Report:** As requested by Defence Counsel, Mr. Boardi and for purposes of the *Penal System Reform Act, Cap. 139*, a Pre-sentence Report was obtained and was read into evidence by Probation Officer, Miss. Angela Dixon on December 4th, 2012 and has been reviewed by the Court.

[26] The Report has shed some light on your family, educational and social background, your education and employment history and your current attitude to the offence.

[27] Although you admitted to police that you were present in the Jackson's home when Anna Druizhinina fell off the cans and were intimately aware of the circumstances of her death, you quite curiously told the Probation Officer that you were "*saddened to hear of death of the victim*" and that she was "*a good girl who never showed [you] a bad face*". Far from conveying true remorse and a recognition that your acts and those of your co-accused had resulted in the victim's death, your comments instead suggested to the Court a level of detachment from the victim - a girl you had known for many years which the Court found somewhat disconcerting.

[28] **Discussion:** It is now for this Court to determine what is the appropriate sentence to be imposed upon you in this matter having regard to its judicial obligations under sections 35 to 41 of the *Penal System Reform Act, Cap. 139*.

[29] While not attempting to take away from the fact that a young lady lost her life and that a mother has lost her child, Mr. Boardi submitted in mitigation that this was a case where there were numerous mitigating factors and where, the only aggravating factor was the fact that the act had occurred in someone's home. He submitted that the case properly fell within Guideline 3 of *Pierre Lorde*[1] and suggested that a sentence of 10 years would be appropriate.

[30] For his part, the learned Director of Public Prosecutions, Mr. Leacock, Q.C. submitted that your culpability in relation to the offence was much more profound than as Mr. Boardi had stated in his mitigation. He pointed out that even if your co-accused in dealing with the girl as he did, had embarked on an enterprise of his own, the facts showed that you did not withdraw from the enterprise and in fact had participated in the unlawful actions in relation to Anna Druizhinina which led to her eventual strangulation.

[31] For his part, the learned Director of Public Prosecutions submitted that the case was a special and exceptional one which fell outside the four (4) *Pierre Lorde* Guidelines. He referred to a number of cases and suggested that the Court could justifiably use a starting point for sentence of 25 years fully discounted for the time spent on remand and your guilty plea.

[32] **Reasons for imposition of Custodial Sentence - Section 35(4):** As required by section 35(4) of the *Penal System Reform Act* and after considering the outline of facts and manner in which this cowardly offence was committed, together with the Pre-sentence Reports the Court has formed the opinion that subsection (2)(a) applies and that this offence is so serious that only a custodial sentence should be passed in this case for the following reasons.

[33] The Court determined the seriousness of the manslaughter offence in this case having regard to the following factors:

- i. The fact that the offence was committed inside the home of your former employers which you and your co-accused had targeted for theft pursuant to a joint enterprise and had entered as

trespassers;

- ii. The fact that having been surprised by Anna Druizhinina's presence in the house, and knowing that you in particular would be recognized, you both embarked on a most bizarre and reckless plan to silence her in order to facilitate your ultimate plan to rob the house;
- iii. The fact that you stood and watched as (according to you) your co-accused caught the girl, took her inside the house where he tied up and covered the girl's face with a towel;
- iv. The fact that using your knowledge of the house and its contents, and at the request of your co-accused, you located and gave him the electric wire which (according to you) your co-accused used to tie the girl's hands behind her back and her feet;
- v. The fact that you stood and watched as (according to you) your co-accused made a noose using a long piece of wire with which he made a draw knot and which he placed around her neck;
- vi. The fact that at the request of your co-accused, you then located the bucket and tin and placed them to stand one on top of the other at the top of the stairs;
- vii. The fact that you then stood and watched as your co-accused climbed up onto the railing of the stairs, threw the wire over a beam and then put the girl to stand on the bucket and tin;
- viii. The fact that you watched as your co-accused then fastened the other end of the wire which he had earlier placed around her neck to the railing and left her precariously perched on the bucket and tin at the top of the stairs with her hands tied behind her back and her feet tied together before starting his search of the house;
- ix. The Court found that the seriousness of this offence was aggravated by the bizarre and terrifying manner in which the young victim in this case eventually met her slow and terrible death. No gun or intrinsically dangerous weapon was used to bring about death, but the facts clearly show that her head was covered in a towel and she was unable to see. Her hands were tied behind her back and her feet trussed together. She was placed to stand on a precarious perch with a noose round her neck and in the view of the Court the victim suffered a thousand deaths before her inevitable death by strangulation took place. Surely such a death recklessly brought about by you and your co-accused must place this offence on the borderline of murder;
- x. The Court found that the seriousness of the offence and your culpability in relation to the offence was aggravated by the fact that, as your statement clearly shows, you were aware that the actions of yourself and your co-accused were dangerous acts inasmuch as you had adverted to the possibility that he may have intended to kill the girl;
- xi. The Court found that the seriousness of the offence was further aggravated by the fact that despite knowing the dangerous situation in which the victim had been placed, you did nothing to assist the victim and recklessly stood on the balcony until the inevitable occurred and (according to you) your co-accused returned following his search of the house and told you that the girl had jumped off the tin and bucket; [In this regard, the Court found that since (as you say) you did not participate in the search of the house, you had both the time and the opportunity if you so wished to resile from the actions of your co-accused and to go to the assistance of the terrified girl and to cut her down from her perch. The fact that you adverted to the danger and had the

opportunity to do something about the perilous situation in which the victim had been placed and chose to do nothing makes you reckless in the extreme and, in the view of the Court, equally culpable as your co-accused for her death.

xii. The Court found that the offence was also aggravated by your callous lack of concern for the victim following the news that she had “jumped off the tin and bucket”. Your statement clearly shows that you expressed no human concern for the victim. There was no evidence that you sought to revive her and (according to you) merely watched as your co-accused took her down and put her to lie on her bed while you remained outside;

xiii. The Court found that the offence was aggravated by the fact that following news of the victim’s death, and knowing that your co-accused was planning to look for gasoline and had returned upstairs with a yellow pail and a red 2-gallon container jar, you took no action to actively discourage or prevent his stated intention to burn down the house (and the body lying inside it) before you made good your escape;

xiv. Finally, the Court found that the offence was aggravated by the fact that you knew the young victim and her parents personally and the fact that you used your familiarity with the Jackson’s house where you had once worked to locate the electric wire and the other articles used in the commission of the offence.

[34] In summary, the Court is satisfied that this was a serious case of manslaughter on the borderline of murder with numerous aggravating factors and no mitigating circumstances in relation to the offence. The Court found that your conduct during the commission of the offence as reflected in the aggravating factors outlined earlier, was particularly callous and reprehensible.

[35] Additionally, the offence was one which gave rise to much public concern and outrage, given the age of the victim and the senseless manner in which she met her death.

[36] Ultimately, the Court was also satisfied that your conduct as the offender took the offence beyond the threshold for non-custodial punishment and into the realm of custodial punishment.

[37] The Court adverted to section 6 of the *Offences Against the Persons Act, Cap. 144* which stipulates that the permitted maximum custodial sentence which may be imposed on any person convicted of manslaughter is imprisonment for life.

[38] However, as is clear from the manslaughter guidelines established by the Barbados Court of Appeal in ***Pierre Lorde***, the statutory penalty of imprisonment for life is to be reserved only for the most serious manslaughter offences.

[39] In issuing its manslaughter guidelines in ***Pierre Lorde***, in 2006, the Barbados Court of Appeal, however, stressed that the guidelines were “*not to be construed as putting sentencers in a kind of straight jacket or fettering in any way the judicial discretion which must remain at the heart of the sentencing process.*”

[40] In the 2011 Barbados Court of Appeal decision of ***Curtis Joel Foster, (DPP’s Reference No 1 of 2010, unreported decision of 11 February, 2011) Peter Williams JA*** observed that the guidelines in ***Pierre Lorde*** are now well established and are routinely followed. He suggested that it is helpful to consider the 4 guidelines in ***Pierre Lorde*** on a sliding scale of 1 to 4, with 1 being reserved for the most serious offences and 4 for the least serious.

[41] At paragraph [36] of ***Pierre Lorde***, the Barbados Court of Appeal recognized that there may be from time to time, the odd case whose special or exceptional facts fall outside the established guidelines and, clearly stated that nothing

in the Judgment should be construed as fettering the discretion of Judges to deal with those special or exceptional cases as the justice of the case requires.

[42] Against the foregoing background, the Court was satisfied that the task which lay before it in its role as sentencer in this matter, was in the first instance to seek where possible to position this case within the appropriate ***Pierre Lorde*** guideline while at the same time complying with the procedures set out in the *Penal System Reform Act*.

[43] Keeping the case of ***Pierre Lorde*** firmly in mind, the Court was nonetheless cognizant that while no gun or intrinsically dangerous weapon was used to bring about death, the special and exceptional facts of the present case clearly showed that Anna Druizhinina's life was not taken from her with the flash of a gun or the thrust of a knife. Nor was any intrinsically dangerous weapon used. Hers was no quick or sudden death.

[44] As the facts disclose, her head had been covered in a towel and she was unable to see. Her hands were tied behind her back and her feet had been trussed together. She had been placed to stand on a precarious perch with a noose round her neck. In short, in the view of the Court, Anna Druizhinina would have suffered enormous mental anguish and torment before her inevitable death by strangulation took place when she would have toppled almost inevitably from her precarious perch atop a tin and a bucket.

[45] The Court considered that such a terrifying death, recklessly brought about by the callous actions of you and your co-accused placed this offence firmly on the borderline of murder and at the top of the manslaughter scale.

[46] Ultimately, the Court was satisfied that given the special and exceptional facts of this case, the parameters currently provided for in the four Guidelines coupled with the suggested range of sentences set out in the ***Pierre Lorde*** Guidelines as currently framed are woefully inadequate to enable the Court to do justice in this case.

[47] The Court is also satisfied that the Guidelines, with their obvious bias towards deaths caused by a firearm, do not appear to have anticipated a terrifying and horrendous death such as has been disclosed by the special and exceptional facts of this case falling within the top end of the scale.

[48] Accordingly, having regard to the flexibility provided within paragraph [36] of ***Pierre Lorde*** and having regard also to the special and exceptional facts of this case and doing the best that it can do within the framework of the existing ***Pierre Lorde*** Guidelines which may be in need of urgent revision, the Court in the unfettered exercise of its sentencing discretion, established 30 years as the appropriate starting point for determining the length of your sentence.

[49] **Length of the Custodial Sentence- Section 36:** Having considered the gravity of the offence and established the appropriate starting point for your sentence, the Court was also mindful of the general judicial guidelines set forth in section 41(2) of the Act, which require, *inter alia*, that the gravity of the punishment must be commensurate with the gravity of the offence. The Court next turned to section 36 of the *Penal System Reform Act* and considered the issue of proportionality with a view to determining what length of sentence would be appropriate to do justice in this case.

[50] Focusing next on you as the offender, the Court then took into account the factors which, in the view of the Court, have reduced the seriousness of the offence and reflect a level of personal mitigation of you as the offender. These were, firstly, (i) your guilty plea and in this regard, a discount of 4 years was

allowed.

[51] An appropriate discount was also allowed to take account of: (ii) the fact that you have no known offences and your hitherto clean record; (iii) the fact that you cooperated with the police investigations; and (iv) the remorse which you have since the Pre-Sentence Report expressed for your actions.

[52] **Time spent on Remand:** According to Prison Officer Mr. Bentley Boucher, as at December 4th, 2012 you have spent a total of 1,479 days on remand awaiting the trial and final disposition of this matter. To this period the Court has added the additional 7 days which have elapsed since December 4th, 2012 up to today's date. In keeping with the CCJ decision in **Romeo Hall [2]**, you will be given full credit for the 1,486 days [i.e. 4 years and 26 days] you have spent on remand to date awaiting your trial and the final disposition of this matter.

[53] **Order of the Court: Teerath Persaud**, you are hereby sentenced to a term of imprisonment of 25 years for this offence to commence with immediate effect. From this sentence and in keeping with the CCJ decision in **Romeo Hall**, there will be deducted, the full period of 1,486 days [i.e. 4 years and 26 days] which you have to date spent on remand since November 17th, 2008 awaiting final resolution of the matter.

[54] In the result, you will be required to serve the additional 20 years and 339 days in custody for this offence.

[55] This is the order of the Court.

Maureen Crane-Scott
Judge of the High Court
2012-12-11

[1] *Pierre Alexander Lorde v. The Queen* - Barbados Court of Appeal Crim App No: 11 of 2003 Decision of 24/2/2006.

[2] *Romeo DaCosta Hall v. The Queen* – Caribbean Court of Justice Appeal No: CR 1 of 2010 delivered on 15/4/2011.