

BARBADOS

Indictment No: 0094 of 2013

THE QUEEN V. CARSON ANTHONY ISMAEL

-
SENTENCING JUDGMENT

Carson Anthony Ismael,

- [1] **Background:** On Wednesday, September 25th, 2013 you were arraigned and pleaded “not guilty” to murdering Callista Alleyne, but “guilty” instead to manslaughter.
- [2] **The Outline of Facts:** Following your plea, the learned Director of Public Prosecutions, Mr. Charles Leacock, Q.C. outlined the facts and described the violent and horrendous circumstances in which your partner, Callista Alleyne, died at your hands following a domestic dispute at your home in the early morning hours of May 26th, 2010.
- [3] The Court was informed that you and the deceased woman had been in an intimate relationship and both lived in the Tichbourne, Ivy, St. Michael area.
- [4] On the morning in question, your neighbor, Mr. Ronnie Cook, spotted you walking outside your house with blood on your body and a gash to your neck and dutifully alerted the police.
- [5] When the police arrived on the scene at about 5:40 a.m., they found you still in your bloodstained clothes, sitting in the patio of your house with your throat cut. The floor inside the house leading to the back door was found covered with blood and the naked body of the deceased, Callista Alleyne was discovered in the backyard with multiple injuries to her neck, shoulder, hand and face.
- [6] Crime scene photographs were taken and a number of items, including a bloody cutlass and knife, were recovered from the scene.
- [7] You were taken by ambulance to the hospital for treatment. You sustained an 11 cm long laceration to the front of your neck and the cartilage of your larynx was exposed. Due to your injuries, you were unable to speak to the doctor in the Emergency Department, but were, however,

able to write the name of the deceased on a piece of paper. You also wrote down on the paper your brief version of what had happened, stating simply that: *"The woman cut my throat and I hers and she dead."* You signed the note and gave it to the Senior Registrar at the hospital who subsequently handed it to police.

[8] The deceased's body was pronounced dead at the scene and removed to the morgue and Pathologist, Dr. David Gaskin, subsequently performed a post-mortem examination on the body. He attributed the cause of death to a chop wound to the neck and described the wound as one which had almost severed the neck from the body.

[9] Dr. Gaskin also identified 6 other injuries to the deceased's body. These were: (i) a wound to the right shoulder; (ii) a wound to the upper right back; (iii) a wound to the left upper back; (iv) a wound to the left hand that almost resulted in the severance of the left thumb; (v) a wound to the right wrist; and (vi) a wound to the mid back.

[10] On June, 17th 2010 you were interviewed by the police. After being informed of your rights, you made oral statements admitting your role in the deceased's death and after being cautioned, you also gave police the following written statement:

"...I get up in the morning after 6:00, then I went and pass water in the yard. While coming back in Callista was on the bed lying down then she had my phone. She tell me that she was trying to call her daughter cause her phone does not have any money. Then I take up the phone cause she put it down and I dial back the number and a man answer the phone. I give her back the phone and she answer it and walk away from the bed. She get vex and slam down the phone on the floor and she then take it up from on the ground and start breaking the chip. She take up the phone that I did buy for she the day before and she mash it up. She ask me for the chip for she phone and she asked me if I mash it up. I tell her look it there on the ground, it break and I did by the back door. Then she say, "You is a madman," and all I know is that I feel this knife in my neck. I feel this knife cut my throat and I grab the knife in her hand. We fall down in the backyard and the knife fell out my hand. They had a cutlass by the back door and I start feeling weak and I take up the cutlass and give her two chops on her shoulder with the cutlass. When I see that my neck cut I rub the blade on she neck too and that is what happened..."

[11] After your written statement was recorded, police investigations continued and you were duly cautioned and questioned about aspects of the statement. You gave specific answers to the questions and the questions and your answers were duly recorded by the police investigators and formed part of the case against you.

[12] The learned Director of Public Prosecutions also told the Court that during the Preliminary Inquiry on June 18th, 2013, when asked by the Magistrate whether you wished to say anything in answer to the charge, you told the Magistrate:

“This thing (incident) that happened is nothing I did willfully. This lady attacked because we had a little dispute. She attacked me from behind my back. I had to defend myself in the matter where in doing so my throat get cut. I sorry it happened sir.”

[13] **Basis on which the plea was accepted:** The learned Director of Public Prosecutions then explained the basis for his having accepted the manslaughter plea as offered in the following terms:

“So, this case is bedded in domestic turbulence in which the accused did sustain a very serious injury. There is no evidence that the injury was actually self-inflicted because that is the first thing I looked for as to whether the injury could have been self-inflicted and this was a defence being fabricated, but on the prosecution’s case it cannot be negative[d] that the injury was as said in the depositions. So it seems that he was injured by the deceased and in which case he certainly retaliated with the ferocity of the attack that almost decapitated the deceased.

We do not have any other version of events that occurred in that fateful house on the dreadful day, and as such, we cannot dispute his version of the events and so I have to accept it and rely on it, because this is being a court of record and a court in which we can only act on evidence, that’s all we can go on. And the evidence in this case is that she injured him and he retaliated with such ferocity that he almost decapitated her. If that is the case it would be a clear case of provocation as we cannot dispute otherwise, and in those circumstances, I am obliged to accept his defence and his explanation as to what has occurred, since the medical evidence also cannot dispute the fact that injury was [not] self-inflicted.”

[14] The facts as outlined by the learned Director of Public Prosecutions, together with the basis of the plea were accepted on your behalf by Defence Counsel, Mr. Pilgrim, Q.C. and have accordingly been accepted by the Court for sentencing purposes.

[15] **Your Criminal Antecedents:** The Court was informed that you were convicted on March, 22th 2013 in the Supreme Court of assault occasioning actual bodily harm and were sentenced to 16 months imprisonment which sentence was suspended for a period of 2 years.

[16] While this is your first conviction for manslaughter, it is clear, based on your record, that this is not your first offence involving violence under the ***Offences Against the Person Act, Cap. 141***.

[17] **Your Pre-Sentence Report:** As required by the *Penal System Reform Act, Cap. 139*, this Court ordered the preparation of a Pre-Sentence Report. Your Report was prepared by Probation Officer, Ms. Linda-Kay Robinson and read into evidence on Tuesday, 10th, December, 2013.

[18] The Court has considered the Report which has provided valuable insight into your family, educational and social background, as well as your employment history and your current attitude to the offence. The Report also contains a short Victim Impact Statement from the daughter of the

deceased, Mrs. Orma Shorey.

- [19] The Report revealed that you were born in Barbados to St. Lucian parents. You emigrated to St. Lucia at a young age and were raised by your grandmother there.
- [20] You returned to Barbados at age 16 and took up residence with your mother. However, you left your mother's residence at age 17 and went to live with a friend in Carrington Village, St. Michael and later in Passage Road, St. Michael for the period 1981 to 1988.
- [21] You returned to St. Lucia in 1990 and worked there for 10 years as a farmer and as a baker. In that same year you commenced a common-law relationship with Ms. Maylene Matthew (now deceased) whom you subsequently married in 1993. That union produced three children.
- [22] You then returned to Barbados in the year 2000, leaving your immediate family in St. Lucia. You indicated that you did this as you were seeking a better life for them. You sent for your family in 2001, however, you and your wife separated in 2005.
- [23] You informed the Probation Officer that you and the deceased commenced an intimate relationship in 2010 and that that relationship was amicable.
- [24] Your mother, Ms. Veronica Ismael, informed the Probation Officer that she did not know the deceased very well, but that you and the deceased appeared to be happy together. She indicated that she was not certain what would have changed in that relationship and that she was in disbelief when she heard about the incident. She also informed the Probation Officer that you have never been violent towards her.
- [25] Reports from your community revealed that you are industrious, quiet and are not known to be aggressive or to settle conflicts with any form of violence.
- [26] As to your attitude towards this offence, the Report reveals that you have deep expressed remorse for your actions. You stated that you loved the deceased very much and never intended for her to lose her life and that, if you could, you would give your life to bring her back.
- [27] A victim impact statement was taken from the victim's mother Mrs. Orma Shorey. She reported that she met you in 2010 and you appeared to be a quiet, jovial man who never gave any indication

of being violent. You would always tell her mother that you loved her, and that pleased her very much. She further reported that she loved her mother and expressed feelings of disappointment and betrayal by you since she never expected this situation to occur.

[28] **Discussion:** It is now for the Court to determine 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] *Reasons for imposing Custodial Sentences - Section 35(4):* As required by *section 35(4)* of the *Penal System Reform Act* and after considering the outline of facts and the circumstances of the offence, together with the Pre-sentence Report, 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 upon you in this case for the reasons which now follow.

[30] In determining the seriousness of the offence in this case the Court adverted to the **Suratan** sentencing guidelines adopted by the Barbados Court of Appeal in the case of **Ricardo Deverne Griffith v The Queen Criminal Appeal No: 6 of 2007; 2009-06-19**.

[31] I have taken into account that this is a case in which the Crown has accepted a plea of not guilty of murder but guilty of manslaughter on the basis of provocation. As the sentencing judge, I am therefore obliged to make a number of assumptions in your favour by way of mitigating the seriousness of the offence.

[32] *Assumptions:* Applying the **Suratan** guidelines, the Court has firstly assumed that, the seriousness of this offence has been mitigated by the fact that at the time of the killing, you lost your self control.

[33] The Court has, secondly, assumed that you were caused to lose your self control by the following facts and circumstances disclosed on the record.

i.) I have accepted the fact that in the early morning hours of May 26th, 2010, you and the your girlfriend, Callista Alleyne had an argument which stemmed from your having redialed the phone and essentially, having caught her having used your cell-phone to telephone an unidentified man;

ii.) I have also accepted that having been caught out in a lie to you about her trying to call her daughter, the deceased had lost her temper and smashed your phone on the ground,

destroying the chip;

- iii.) I have also accepted that during the altercation, a cell phone which, according to you, you had bought for her the previous day, was also destroyed;
- iv.) I have also accepted that the deceased woman had then asked you if you had mashed up the chip for her phone and had then called you a madman; and had approached you from behind at the back door of the house where you had been standing and had put a knife at your throat and cut you;
- v.) I have also accepted that after grabbing the knife from her, you had both fallen out into the backyard at which point the knife had fallen out of your hand;
- vi.) I have further accepted that (according to you) you then took up a cutlass which had been kept by the back door and had chopped the deceased about her body with it;
- vii.) Finally, I have accepted that, upon realizing that your throat had been cut by the deceased, you retaliated by chopping her in her neck with the cutlass, almost severing her neck from her body.

[34] Applying the **Suratan** guidelines, the Court has next assumed that your loss of self control in the circumstances just outlined was reasonable in all the circumstances, even bearing in mind that persons are expected to exercise reasonable self control over their emotions and that as society advances it ought to expect higher measures of self control.

[35] Finally, in keeping with **Suratan**, the Court has assumed that the circumstances surrounding the killing of the deceased were such as to make your loss of self control sufficiently excusable to reduce the gravity of your actions from murder to manslaughter.

[36] While the Court is satisfied that the offence was mitigated by the fact that your actions were spontaneous and were neither planned nor premeditated, the Court nevertheless found that the offence was aggravated by the following factors:

- i.) The fact that an intrinsically dangerous weapon, namely, a cutlass, was used in the commission of the offence;
- ii.) The fact that although (according to you) the deceased was initially the aggressor and had inflicted a serious wound upon you, you had successfully disarmed her and she was completely unarmed at the time you used the cutlass and started chopping her about the body;
- iii.) Finally, in one final act of retaliation you delivered the fatal chop to her neck, almost decapitating her;
- iv.) Notwithstanding that your neck was cut, the force you ultimately used against the deceased, being a chop which very nearly severed her head from her body in the circumstances outlined above, was excessive and in the Court's view could, by no stretch of the imagination, be considered necessary or lawful self defence.

[37] In evaluating the seriousness of the offence, the Court also took into account the following mitigating factors of the *offence*, namely:

a) The fact that the killing was not premeditated or planned and arose during a domestic dispute, in spontaneous circumstances;

b) The fact that you were provoked and lost your self control.

[38] In summary, the Court is satisfied that was a grave case of manslaughter where a woman, your former romantic partner, lost her life in tragic circumstances of domestic violence in a most brutal and violent manner.

[39] Undoubtedly, on the morning in question, emotions between you and your girlfriend, Callista Alleyne were running high. As a party to a domestic union (described by your mother as a “happy” one) you had redialed your cell-phone only to discover that your partner had just made a phone call to an unidentified man using your phone.

[40] The deceased woman who had effectively been “caught out” then became the aggressor. She broke up valuable property belonging to both of you and then attacked you from behind and cut you in your throat with a knife. Following a struggle, you grabbed the knife and both of you fell into the backyard where the knife fell from your hand and the deceased woman was effectively disarmed.

[41] However, evidently provoked by Callista Alleyne’s having cut your neck, you then took matters into your own hands and launched a vicious and, in this Court’s view, a completely unnecessary cutlass attack on a defenseless woman.

[42] In one final act of revenge and retaliation, you chopped her throat with a force of such ferocity that you almost severed her head from her body!!!

[43] The Court approached its examination of offence seriousness in this case by adverting firstly 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.

[44] The Court also kept firmly in mind the manslaughter guidelines established by the Barbados Court

of Appeal in ***Pierre Lorde (2006) 73 WIR 28***, in which that Court attempted (some may argue with a limited degree of success) to identify and establish for this jurisdiction the vast disparity in the range of sentences which may be imposed when a court is sentencing an offender for the offence of manslaughter.

[45] Against the foregoing background, I am satisfied that the task which lies before me in my role as sentencer in this matter, is to seek as far as 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*.

[46] In his mitigation on your behalf your Attorney, Mr. Pilgrim, Q.C. urged the Court to take into account in considering your sentence, that this case involved an element of provocation since the deceased was the initial aggressor and had used a knife and inflicted, what must have appeared to have been a life-threatening injury on you. In this regard, he also argued that your violent actions were a response to the attack on you by the deceased, in which your throat was cut. He also urged the Court *“to acknowledge all the circumstances of self-defence.”*

[47] He urged the Court to consider that your Pre-Sentence Report evidenced that, notwithstanding your previous conviction for assault occasioning actual bodily harm, you have not had a record of violence for much of your 49 years and that you do not have a *“propensity for violence or aggression”*.

[48] Mr. Pilgrim, Q.C. further argued that, as shown in the Pre-Sentence Report, you have shown remorse for your actions.

[49] He also reminded the Court that you entered an early guilty plea.

[50] Given the manner in which Guidelines 3 and 4 of the ***Pierre Lorde*** Guidelines are framed, Mr. Pilgrim highlighted what he said were perceived difficulties in fitting this case squarely within Guidelines 3 or 4 since, in his view, this is a case where an intrinsically dangerous weapon was used and there were, in his view, clear mitigating factors.

[51] He nonetheless urged the Court to have regard to the spontaneity of your actions, the provocation and self-defence arguments which he raised, your early guilty plea and your contrition and remorse and to place your matter within Guideline 4 and boldly suggested that an appropriate sentence in your circumstances would be one of 8 years or less.

[52] As an alternative, Mr. Pilgrim suggested that the Court could resort to para [36] of ***Pierre Lorde*** and treat the case as a “special or exceptional case” falling outside of the Guidelines and give its reasoned judgment as to why a sentence of more than 8 years would be more appropriate.

[53] In response, the learned Director for Public Prosecutions submitted that even accepting that your throat was cut, the circumstances of this case were horrendous in nature. He stated that the ferocity of your attack on the victim, Callista Alleyne “...*really goes beyond the pale of any violence or sense of humanity.*”

[54] The Director of Public Prosecutions urged the Court to impose a sentence of upwards of 20 years. He referred the Court to ***Oliver St. Clair Archer v The Queen, Criminal Appeal No. 26 of 2005 (date of decision 8 July 2011)*** and ***Anderson Beckles v The Queen, Criminal Appeal No. 3 of 2006 (date of decision 14 May 2007)***, which both involved an element of domestic violence, and where both appellants had been sentenced to 25 years imprisonment.

[55] He submitted that the 2 cases he cited should be followed in domestic violence situations to ensure consistency of approach. He pointed out that domestic violence has become a very serious scourge on this society.

[56] He submitted that this was no minor case of domestic violence and reminded the Court that this was a case where a woman’s neck was almost severed from her trunk.

[57] Mr. Leacock, Q.C. suggested that in his view the starting point should be 20 years because you have already received a discount for what he said were the very horrendous circumstances which were close to murder. The offence, he said had already been discounted by his having accepted a guilty plea and he urged the court to impose a sentence which would:

“...truly reflect the revulsion of society, the proportionality of the criminality and the wanton injuries that were inflicted on this woman, notwithstanding the fact that [your] throat was cut.”

[58] Having considered the respective submissions of both Counsel and having also weighed the aggravating and mitigating factors of the offence which I earlier identified, the Court, was satisfied that the “special and exceptional” facts of the present case disclose that while death may not have

been caused by a firearm and that fatal blow to the deceased's neck had been inflicted by a cutlass unlawfully wielded by you, this was nonetheless a particularly brutal and horrendous killing of an unarmed woman which occurred during the course of a domestic dispute and where the only mitigating factor which reduced the seriousness of the offence was the fact that you were provoked and lost your self control.

[59] Notwithstanding Mr. Pilgrim's submissions in relation to self defence, the Court was unable to find that the offence had been further mitigated by your having acted in self defence, since according to your written statement, the knife had fallen to the ground and the deceased was therefore effectively disarmed *prior to* your having picked up the cutlass.

[60] As the facts clearly disclose, after Callista Alleyne had attacked and cut you, you had grabbed the knife from her hand, after which you had both fallen into the backyard at which point the knife you had taken from her fell out of your hand.

[61] It was then that acting (as the Court found) out of provocation, you took up the cutlass which (according to you) had been kept at the backdoor of the house and launched your unwarranted and vicious attack on the defenseless woman, causing those 7 serious injuries about her body which the Pathologist, Dr. Gaskin described in his report.

[62] As your statement clearly shows, the fatal blow to the deceased's neck was inflicted, not in self defence, but rather in an act of retaliation and in sheer revenge *after* you had realized that your neck had been cut.

[63] The Court considered that such a violent and terrifying death, intentionally brought about by the ferocious attack which you launched upon the deceased at a time when the attack was over and she was disarmed, placed this offence firmly on the borderline of murder and at the top of the manslaughter scale.

[64] 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.

[65] The Court is convinced that the Guidelines, with their obvious bias towards deaths caused by a firearm, could not have anticipated such a gruesome, violent and horrendous death as has been disclosed by the special and exceptional facts of this case falling within the top end of the manslaughter scale.

[66] In the circumstances, employing 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 25 years as the appropriate starting point for determining the length of your sentence.

[67] Length of the Custodial Sentence - Section 36: Having considered the gravity of the offence and established the appropriate starting point for determining your sentence, the Court was 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.

[68] 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.

[69] Focusing next on you as the offender, the Court considered the following mitigating factors which in the view of the Court, have further reduced the seriousness of the offence and suggest a level of personal mitigation of you as the offender. These were:

- i.) Your early guilty plea which obviated the need for a lengthy trial. I have accordingly applied a discount of 3 years from the starting point.
- ii.) Your Pre-Sentence Report, and in particular, the evidence of your mother and unnamed community members that you are not a violent character;
- iii.) The regret which you have expressed to the Probation officer, Ms. Robinson, for your actions as disclosed in the Pre-Sentence Report;
- iv.) The strong plea in mitigation made on your behalf by Defence Counsel, Mr. Pilgrim, Q.C.

[70] **Time spent on Remand**: According to Prison Officer, Mr. Junior Parris, you were admitted to prison on June 19th, 2010 and as at March 7th, 2014 you have spent a total of 1,348 days [i.e. 3 yrs 253 days] on remand awaiting the trial and final disposition of this matter.

[71] To this period the Court has added the additional 49 days that have elapsed between March 7th, 2014 up until to today.

[72] In keeping with the decision of the Caribbean Court of Justice in **Romeo Hall**, you will be given full credit for the now 1,397 days [i.e. 3 years 302 days] that you have to date spent on remand awaiting your trial and the final disposition of this matter.

[73] **Order of the Court: Carson Ismael**, you are hereby sentenced to a term of imprisonment of **20 years** for this offence to commence with immediate effect.

[74] In keeping with the decision of the Caribbean Court of Justice in **Romeo Hall**, there will be deducted, the full period of 1,397 days [i.e. 3 years 302 days] which you have to date spent on

remand while awaiting the trial and final disposition of this matter. In the result, you will be required to serve the remaining period of **16 years 63 days** in custody for this offence.

[75] This is the order of the Court.

Maureen Crane-Scott
Judge of the High Court

2014-04-25