BARBADOS

IN THE SUPREME COURT OF JUDICATURE

COURT OF APPEAL

Criminal Appeal No 6 of 2013

BETWEEN:

RENALDO ANDERSON ALLEYNE Appellant

AND

THE QUEEN Respondent

Before: The Hon. Sandra P. Mason, The Hon. Kaye C. Goodridge, Justices of Appeal and The Hon. William Chandler, Justice of Appeal (Ag.)

2016: November 9, 16
2017: October 4

Mr. Arthur Holder for the Appellant

Mr. Anthony Blackman in association with Ms. Krystal Delaney for the Respondent

DECISION

MASON JA:

Introduction

[1] The appellant was originally charged with 6 counts of murder which took place on 3 September 2010. However, on arraignment on 1 June 2011, he entered 6 pleas of not guilty of murder but guilty of manslaughter. These

pleas were accepted by the Director of Public Prosecutions, Mr. Charles Leacock QC.

[2] On 15 August 2012, **Kentish J** imposed 6 concurrent sentences of life imprisonment.

[3] The appellant now appeals those sentences.

Facts

[4] On Friday, 3 September 2010, sometime around 7:00 p.m., the appellant and another person entered the Campus Trendz Boutique situate along Tudor Street, St. Michael. Both men were armed. The other person while being armed with a knife, approached the owner and demanded money from the cash till.

[5] There were a number of patrons in the boutique which offered clothing and other material for sale.

[6] The appellant, who stood nearby and wearing a mask, removed a bottle containing flammable liquid from a plastic bag he was carrying, lit it with a lighter he had in his pocket and tossed it into the store. The other person was involved in a struggle with a female with the cash till. The appellant approached and pounded on the cash register. The cash register eventually opened. He then forcibly removed a sum of money from the cash till. The appellant then lit a second bottle that contained flammable liquid, threw it by the door and together with the other person, made his escape.

[7] The missiles or Molotov cocktails eventually led to a conflagration that enveloped the store. Patrons and some staff screamed and ran in different directions. Six of the females (now deceased), concealed themselves in the bathroom and the storeroom. They remained there not knowing that fire had engulfed the store.

[8] An alarm was raised and the Fire Department was alerted. As personnel from the Fire Department and Police took control of the scene, screams were heard coming from the bathroom and the storeroom. It became evident that all except those in the bathroom and the storeroom had escaped. Eventually, access was gained to the bathroom and the storeroom. Six female were found huddled together. They were removed.

[9] Ms. Shana Griffith, was immediately transported to the Queen Elizabeth Hospital where she was pronounced dead. The other five young females died at the scene. This was confirmed by Dr. Andrew Murray the Police Medical Officer. Autopsies revealed that the cause of death was asphyxia as a result of smoke inhalation.

[10] The appellant was interviewed by the Police concerning his involvement in the matter. He readily admitted his participation and on 11 September 2010 provided a self written statement in accordance with the Judges Rules.

[11] The appellant was eventually charged with six counts of murder.

Appellant's Statement

[12] "Two Thursdays ago Jamar came to me and said that he got this little mission to go on he tell me that we going to rob this little clothes store on Reed Street. He didn't say the name of the store. I tell he that I would go with he. He tell me that he going to get back to me. The next day me and Jamar was just sitting down together down Headley Land breezing. Approximately around 6:00 p.m. we leave and went down in the gully in the gully in Headley's land. And collect a black haversack and walk and went through the Garden Land down Passage Road and went in St. Leonard's cemetery. Me and Jamar change off we cloths in the cemetery. I put on a blue long jeans pants and a white long sleeve tee shirt. Jamar put on a black long pants and a greenish dress shirt. We leave our clothes in the cemetery to come back for them. We leave and went through a track that take us back out to Baxters Road and we walk straight down Baxters Road and when we got down Tudor Street Jamar nod his head to signal that that was the store. When we got down by KFC he gave me a plastic bag with two banks beer bottles with something that smell like gasoline. The bottles had cloth stuff at the top. Jamar asked me if I frightened and I said yes we walk and come back down and he tell me that when we get by the store to walk straight in. He get into the store before me. He went in one door and I went through the next. I just heard screaming even before I put on my mask. I just put on my mask and walk in. He was there asking a lady to give us the money, give us the money and she resisted. I still had the plastic bag in my hand. I put down the bag tore it open and pull out one of the bottles. I say you taking so long you ain't get through yet. I use a lighter I had in my pocket and I light one of the cocktails and tossed it in the store. I see Jamar struggling with a girl with the cash register. So I just went back with the other cocktail and she tried to open the cash register. I went and start hitting the cash register telling the girl to open it. She open the cash register and I stuck in my hand and grab the money I could get hold in my hand. I light the other cocktail and just through it there right by the door. We ran out and ran through the first track side of the store we ran through the track that lead to the Dog Pound. I kinda like run pass where Jamar turn and he call me back and tell me I was going the wrong way. The tracks that we went through lead us back out by the

> Post Office. We decided to go and get in a van. The van took us around Harbour Road up the road by Kensington oval and we got off by a bus stop. We went through a gap on the other side of the road and I through my shirt in a blue garbage can. We went back in the cemetery and change off. We come back out through another track from the cemetery which leads to the road by brydens. We went through a housing area and this lead up back to Passage Road. We walk through the Garden Land I went home and bathe and change my cloths. Later the same night I meet Jamar in the yard of Hindsbury Primary School and we count up the money that we got from the store. It was about 12 hundred dollars. I get $600 dollars and he get $600 dollars. About six hours later I hear people saying that Campus Trends burn down and six people trap in it. I feel real sorry about this situation."

Judge's Sentencing Remarks

[13] As is required when a custodial sentence is being contemplated, the judge adverted to the requirements of **sections 35** to **41** of the **Penal System Reform Act Cap 139.** The judge considered that the length of sentence to be imposed had to be commensurate with the gravity of the offences and in so doing, she had regard to the aggravating and mitigating factors.

[14] In listing the aggravating factors, the judge referred to (i) the deliberate intention on the part of the appellant to rob, armed at the time with Molotov cocktails; (ii) the plan to change clothes before and after execution of the robbery; (iii) the lack of concern for possible danger to the large number of shoppers likely to be in the area at the time; (iv) the painful and horrible death which the young women suffered; (v) the appellant's readiness to participate

in the scheme and (vi) the reckless, callous and indifferent manner in which the robbery was executed.

[15] The judge found the mitigating factors to be (i) the appellant's early guilty plea; (ii) his clean record; (iii) his cooperation with the police during the investigation of the matter and (iv) his age - 20 - at the time of the commission of the offence.

[16] The judge also had the benefit of pre-sentence and psychological reports, the latter of which according to the judge, essentially echoed the former in relation to the appellant's traumatic childhood and the negative impact of drug use on many aspects of his life.

[17] At page 70, line 2 to 25 of the trial record, the judge stated:

> "Of significance in the Psychological Report, is a concern expressed by Mr. Pilgrim on your scores on the behavioural coping and personal superstitious thinking scales which suggest that you do not usually consider challenges in a manner which allows you to resolve problems effectively and it relates clearly to the level of thoughtlessness that you exhibited in the planning of this crime, because I do except that not for a moment did it ever cross your mind that those people would die that tragic death, but the problem is why did it not so crossed your mind and therein lies your danger to this society.
>
> The Psychological Report identifies an automatism that has allowed you to speculate on your life following incarceration even though you are aware of the likelihood of a substantial custodial sentence. That optimism opines Mr. Pilgrim reveals that a degree of simple mindedness which was likely to feature heavily in your decision-making process, and it is in that simple mindedness which I have earlier described, has a frightening aspect of your character. And Mr. Pilgrim also opines that

> though it is not immediately obvious you are experiencing significant emotional and psychological problems which have affected your personality development and interpersonal relationships."

[18] Although the judge considered the strong and impassioned plea of mitigation by counsel on behalf of the appellant, she nevertheless resolved:

> "Regrettably, neither your cooperation with the police or your clean record, or your guilty plea, or your expression of remorse which indeed I do accept, is sufficient to detract from or neutralise in any way whatsoever the gravity of the offences to which you have pleaded guilty and the senseless and callous and horrific manner in which those six young women met their tragic and untimely deaths. Nor do the circumstances of the offence or your circumstances as offender counter balance the aggravating factors of this case."

[19] The judge concluded that, in light of the horrendous and chilly circumstances in which the young women met their untimely and wholly unwarranted deaths, and taking into account the major flaws in the appellant's character of being easily led and that it was necessary to protect the public from the appellant, life imprisonment on each count was justified.

Grounds of Appeal

[20] Two grounds were filed:

"1. That the sentence of life imprisonment on each count was wrong in law and principle as

(a) the Learned Trial Judge failed to follow the established guidelines in arriving at a sentence of life imprisonment;

(b) that the said sentences were thus excessive.

2. That the appellant was entitled to a discount for his plea of guilty."

These 2 grounds are intertwined and can conveniently be considered together.

Submissions by Counsel

[21] Mr. Arthur Holder, counsel for the appellant, in his oral and written submissions based his contentions on the guidelines set out by the English Court of Appeal in the case of **Rowland Jack Foster Hodgson (1968) Cr. App. R. 113 (Hodgson)** which that court recommended should be adopted by a trial judge when considering the imposition of a life sentence. The conditions justifying a sentence of life imprisonment are said to be:

> "(1) where the offence or offences are in themselves grave enough to require a very long sentence;
>
> (2) where it appears from the nature of the offences or from the defendant's history that he is of unstable character likely to commit such offences in the future; and
>
> (3) where if the offences are committed the consequences to others may be specially injurious, as in the case of sexual offences or crimes of violence."

[22] Mr. Holder argued that the judge, having indicated that it was her intention to impose a life sentence, ought to have ensured that these 3 conditions had been met, the conditions being cumulative in nature.

[23] Counsel emphasised that in this case, adherence to the second condition was critical. He submitted that there was nothing in the judge's sentencing

remarks which revealed that she had considered whether the appellant would pose a danger to society for an indeterminate time. He noted that in addition, there was in fact no evidence, either medical or psychological, in relation to the nature of the offences or from the appellant's history to show that he was unstable and likely to commit such offences in the future.

[24] In relation to the appellant's entitlement to a discount of his sentence for an early plea of guilty, Mr. Holder referred the Court to the learning to be found in *Archbold's Criminal Pleading, Evidence and Practice 2006* where at p 578 para 5-80 it is stated:

> "As a general principle, an offender who pleads guilty may expect some credit, in the form of a reduction in the sentence, which would have been imposed if he had been convicted by the jury on a plea of not guilty ... such pleas give rise to significant benefits, including a saving of court time and public money and the sparing of witnesses from having to attend trial to give evidence. A plea might also be indicative of some remorse."

[25] Mr. Holder also cited this Court's decisions in **Ricardo Deverne Griffith v R Criminal Appeal No. 6 of 2007** and **DPP's Reference No.2 of 2010, Richard Leon Hurley** in support of this proposition.

[26] In response, Mr. Anthony Blackman, counsel for the respondent, sought to show that while the criteria in **Hodgson** might be important when a court is considering the imposition of a life sentence, this Court like other courts, has on occasion where the seriousness of the offence was very grave, disregarded the necessity for medical evidence of the instability of the offender and

considered offence seriousness and all of the circumstances surrounding the commission of the offence. In support of this position, counsel cited the cases of **Nicholas Leroy Scantlebury v R Criminal Appeal No. 14 of 1996** and **Oral Cummins v R Criminal Appeal No. 56 of 1995 (Cummins).** Counsel also referred to the English Court of Appeal cases of **R v Dempster (1987) 85 Cr. App. R. 176 (Dempster); R v Virgo 1989 Crim L.R. 233 (Virgo)** and **Attorney General's Reference No 76 of 1996 (AG's Reference)** where it was determined that the absence of medical evidence in relation to the risk which the offender may pose to the public was not in itself a reason for refusing to impose a life sentence especially if the circumstances of the case dictated such sentence.

[27] Mr. Blackman in urging the Court to dismiss the appeal, suggested that since the circumstances of this case were so grave as to warrant an indeterminate sentence, no question of a discount in sentence could apply.

Discussion

[28] It continues to be iterated by this Court that the Court of Appeal will only interfere with a sentence where that sentence can be judged to be wrong in principle, manifestly excessive or disproportionate.

[29] The offence of manslaughter carries a sentence of imprisonment for life as provided by **section 6** of the **Offences Against the Person Act, Cap. 141.**

This Court has consistently stated that the imposition of a life sentence is to be reserved for only the most execrable of cases. In the peculiar circumstances of this case, there were 6 deaths which ostensibly resulted in the imposition of 6 terms of life imprisonment. It is therefore clear that at first blush, the judge was legally entitled to impose the sentences which she did.

[30] Mr. Holder in his oral and written submissions, sought to impugn this decision as being wrong in principle and thus excessive chiefly because the judge did not appear to pay due regard to the second condition in **Hodgson.**

[31] It has been established that in determining whether a sentence is wrong in principle, regard must be had to the four classical principles of sentencing, namely, retribution, deterrence, prevention and rehabilitation. When regard is had to the judge's remarks at page 72 to 73 of the trial record, it becomes patently evident that it was with those principles in mind that the judge imposed the sentences.

[32] In considering the principle of retribution, attention was paid to the proportionality between the seriousness of the offence and the penalty to be imposed. The judge took into account the appellant's recklessness in the incident and his ready and willing agreement to participate in the plan and the execution of it. The judge also reflected that it was necessary to deter the appellant and any other like minded individuals from engaging in similar dangerous activities. She recognised that there was a major flaw in the

appellant's character, namely that he was easily influenced and needed to be prevented from being led into further or similar action. For his rehabilitation, the judge recommended that during his incarceration, the appellant be included in any treatment programmes which could address his deficiencies.

[33] From this vantage point it cannot therefore be said that the sentences were wrong in principle when the record discloses that the judge paid attention to the relevant and required principles of sentencing and to the concept of likely further offending by the appellant.

[34] It was this latter concept which caused Mr. Holder to complain that there was no evidence from the nature of the appellant or from the appellant's history that he was of unstable character and likely to commit such offences in the future.

[35] The deficiencies to which the judge referred in her remarks were culled from the psychologist's report which evidenced that, although the appellant was able to construct a coherent narrative of his experiences and that he demonstrated some insight into his internal challenges, he had little awareness of the deeper causes of his actions. The appellant was found to be a person with prominent hostility and suspiciousness that is acutely tense, fearful and hypersensitive. His personality style involves a degree of adventurousness, risk taking and a tendency to be rather impulsive. The report continued that while he can generally adapt his thinking pattern and habits to most situations,

the appellant engages in superstitious and credulous thinking styles which would not allow him to accurately assess situations in which he may find himself which would then negatively affect his decision making abilities.

[36] Although we have set out some of the reported deficiencies in the appellant's character and have taken note of those emphasised by the judge in her sentencing remarks, it must be emphasised that from the authorities cited in this case, it is seen that the courts have determined that the gravity of the offence remains an indispensable condition for the imposition of a life sentence. So that while medical evidence should normally be considered when an assessment of dangerousness to the public is being made, the authorities have indicated that it is not always necessary to show that an offender is suffering from a specific mental or medical disorder. In an exceptional case, which the case at bar most decidedly is, the judge may impose a life sentence without having any medical evidence.

[37] These observations were made in the cases of **Dempster, AG's Reference** and emphasised in **Virgo** where Lord Lane, LCJ remarked at p. 234:

> "... the more savage the violence perpetrated by the accused person, the more likely it was that a judge would conclude without the assistance of medical evidence that a life sentence was necessary. If the very nature of the violence was such as to demonstrate the unstable character of the accused person, the judge might be driven to the conclusion that the risk to the public was too great for him to feel justified in passing a determinate sentence."

[38] In **Cummins**, this Court at para 27 made an observation reflective of the case at bar. The Court determined that the fact that the appellant allowed himself to be induced by another to participate in such a reprehensible venture suggested that he may be persuaded by someone else to behave similarly in the future if returned to the open society.

[39] Consequently the possibility of our appellant being a danger to the public in the future cannot be ruled out given his personal history, his propensity to be a follower, his evident lack of mental acuity and his proven ability to participate in the conceptualisation, planning and execution of a heinous crime such as this.

[40] The facts in this case, although ultimately regretted by the appellant are especially harrowing. They are made even more so in that the case involves not one but the snuffing out of the lives of six young women by the greedy, callous and uncaring actions of the appellant.

[41] We are in consonance with the belief that the culpable causing of another's death can be regarded as the most serious in the criminal calendar and that the harm caused by manslaughter, being so absolutely irremediable by its finality, deserves the harshest of punishment.

[42] We are also in agreement with the judge that the imposition of the sentences was justified given the ghastly facts of the case and taking into account the

relevant legal principles, said imposition was necessary for the safety of the public and in furtherance of the administration of justice.

[43] While the general principle is that a discount can be given on a determinate sentence in the face of an early guilty plea, a discount is incompatible with an indeterminate sentence. The question of a discount in this case does not therefore arise.

Disposal

[44] Having been satisfied that the sentences imposed are neither wrong in principle, manifestly excessive nor disproportionate, the appeal is dismissed and the sentences affirmed.

Justices of Appeal

Justices of Appeal **Justices of Appeal (ag)**