

**IN THE SUPREME COURT OF BELIZE, A.D. 2021
CRIMINAL JURISDICTION**

CENTRAL DISTRICT

Indictment No. C41 of 2017

THE QUEEN

v.

MR. ANDY BUSTILLOS

- **Murder**

BEFORE

Honourable Justice Mr. Francis Cumberbatch

APPEARANCES

Ms. Natasha Mohamed – Counsel for the Crown
Mr. Anthony Sylvester – Counsel for the Accused

DATES

23rd, 24th, 26th, and 29th of November 2021; 2nd and 8th of December 2021; 14th and 28th of January 2022; 10th, 16th and 22 of February 2022; 3rd of March 2022; 16th and 31st of May 2022; 16th of June 2022.

JUDGMENT ON SENTENCE

- [1] The convicted man was indicted by the Director of Public Prosecutions for the offense of murder for that he on the 30th day of April 2016, at Santa Elena Town in the Cayo District murdered Miriam Mai and Daisy Miralda contrary to sections 106 (1) and 117 of the *Criminal Code* CAP 101 of the Substantive laws of Belize.
- [2] At his arraignment the convicted man pleaded not guilty, hence, a fully contested bench trial was held pursuant to the provisions of section 65A of the

Indictable Procedure Act. However, at the close of the case for the Crown and whilst making his unsworn statement the convicted man changed his plea to one of guilty to the offense of manslaughter by provocation to both counts on the indictment.

The facts

- [3] The convicted man and the Deceased Miriam Mai lived and cohabited in a common law union. She was the proprietor of a hairdressing salon at Santa Elena Town in the Cayo District and the Deceased Daisy Miralda was her employee.
- [4] Sometime during the afternoon of the 30th of April 2016, the convicted man who was at that time employed by SMART as a security guard went to Miriam Mai's hairdressing salon and gave her a bag bearing the SMART logo and which ostensibly contained a mobile phone which she declined to accept. The Deceased Daisy Miralda examined the contents of the bag and made a comment about its quality and laughed. The convicted man thereupon drew his 9mm service pistol and fired some six shots which resulted in the death of Miriam Mai and Daisy Miralda. Their causes of death were opined as traumatic asphyxiation due to gunshot wounds to the head and neck, and massive brain hemorrhage due to head injuries due to gunshot wounds

respectively by Dr. Mario Estrada Bran. The Court held a sentencing hearing to determine what would be an appropriate sentence in the circumstances.

The Hearing

- [5] The Court ordered a social inquiry report and a report on the convicted man's conduct whilst he was a remand prisoner at the Belize Central Prison.

The Social Inquiry Report

- [6] This report disclosed the work history of the convicted man and it is clear that he commenced working as a young teenager after he was unable to obtain a secondary school education. He worked at various jobs until he relocated to the San Ignacio area where he was employed as a security guard with SMART and lived there with his partner the Deceased, Miriam Mai.
- [7] The convicted man's mother described him as hard-working and considered him to be her right-hand man. She had met the Deceased Miriam Mai, and, in her view, they had a loving relationship. She was shocked when she heard about the incident as the convicted man was not known to be a violent person.
- [8] One of his siblings made mention, however, of problems in the relationship between the convicted man and his Deceased common-law-wife. On occasions when he left the home, the Deceased would beg him to return which he did. Another sibling stated that the convicted man informed her that he was tired of the relationship.

- [9] However, the general view of the convicted man was that he was a kind, friendly and hardworking person.
- [10] The victim impact statements revealed the effect of the loss of the Deceased persons on their family members, especially their offspring. Ms. Cindy Mai, the daughter of Miriam Mai stated that at the time of her death her mother had ended the relationship with the convicted man as it had become toxic and abusive. She described her late mother as being an independent happy and hard-working person who ran her own business as a cosmetologist. As a result of her mother's death, she has been saddled with the burden of the maintenance and upkeep of her younger sibling who is yet to come to terms with the shocking death of his mother.
- [11] Mr. Eliandro Rodriguez was the common-law-husband of Daisy Miralda and the brother of Miriam Mai testified at the hearing. He stated that the loss of his former common-law-wife has had a devastating effect on the children all of whom are minors who are now bereft of the love and guidance of their mother.
- [12] The Correction Rehabilitation Officer opined that the convicted man appears to have been in a toxic relationship '*where abuse may have been present on both ends*'. She stated that the convicted man has expressed and shown great penance.

Submissions

- [13] Defense Counsel addressed the Court on the classical principles of sentencing as propounded in the decision of *R v James Sergeant*. He submitted that the principles of deterrence and prevention should not be applied to his client. Counsel also addressed the issue of the convicted man's blindness and how this disability would impact his stay in prison. Mr. Sylvester suggested that a sentence at the lower end of the scale would be appropriate.
- [14] Crown Counsel Ms. Mohammed reminded the Court that the convicted man did not enter his guilty plea until at a very late stage when the trial was almost completed. Counsel submits that in the premises the convicted man is not entitled to the usual one-thirds discount in sentence for his guilty plea.
- [15] Crown Counsel also relied on the contents of the victim impact statements and the testimony of Eliandro Rodrigues on the traumatic effect of the deaths of the Deceased persons on their children and other family members.

Aggravating and Mitigating Factors

- [16] I consider the following to be the aggravating and mitigating factors herein.

[17] Aggravating Factors

1. The seriousness of these offenses.
2. The offenses were committed by the use of a firearm.

3. The Deceased persons were engaged in their profession of cosmetologists when they were killed.
4. The effect of the deaths of the Deceased persons as disclosed in the victim impact statements.
5. The prevalence of the offense of homicide within this jurisdiction.

[18] **Mitigating Factors**

1. The convicted man and the Deceased Miriam Mai were involved in a toxic relationship.
2. The remorse expressed.
3. The hitherto clean criminal record of the convicted man.
4. The guilty plea *albeit* late.

[19] I will now apply the classical principles of sentencing to the case at *bar*. The Principles of sentencing namely: retribution, deterrence, prevention and rehabilitation was laid down by Lawson LJ in the celebrated case of ***R v James Henry Sargeant*** 1974 60 Cr. App. R. 74. In that decision Lawson LJ stated that:

‘any judge who comes to sentence ought always to have those four classical principles in mind and to apply them to the facts of the case to see which of them has the greatest importance in the case with which he is dealing’.

Retribution

[20] The facts of this case and the findings of the Community Rehabilitation Officer in the social inquiry report reveal that this horrific event arose from an unhappy common law union between the convicted man and Miriam Mai. What adds to the gravity of these offenses is that the deceased Daisy Miralda who was no more than an innocent bystander to this event became a victim thereof. It is common ground that another occupant of the salon was targeted by the convicted man. He pointed the gun at her and fired it but thankfully the bullet missed her and she was able to make good her escape from the scene.

[21] Couples who live and cohabit must find a more mature manner of resolving their differences rather than resorting to acts of extreme violence with devastating consequences as has occurred here. The Court must by the sentence it imposes show its abhorrence for this kind of conduct.

Deterrence

[22] This principle is intended to deter the convicted man from reoffending in like manner. It is also intended to deter those persons who are similarly involved in toxic relationships arising from incompatibility or domestic abuse from resorting to extreme violence as a means of resolving their disputes.

[23] I accept the submissions of the Defence Counsel that his client is unlikely to re-offend in a similar manner or at all. However, the Court must impose a suitable sentence to deter those persons who are in or may experience similar relationships from resorting to acts of homicide as a means of resolving their differences.

Prevention

[24] This principle is generally reserved for those chronic repeat offenders who are considered to be a danger to society and those persons to whom the sound of the shutting of the iron cell door has no effect by way of deterrence.

[25] It is common ground that the convicted man does not fall into either of the two categories aforesaid. Hence this principle is not applicable to him.

Rehabilitation

[26] The process of rehabilitation is intended to transform the convicted man to facilitate his re-entry into society upon his release from prison. The report from the prison reveals that the convicted man has completed several rehabilitative programs. He is currently employed as a Language Interpreter of the Bible for missionaries and persons who speak Spanish. The convicted man states his regret for what occurred on the day of these offenses and has sought the Good Lord's forgiveness. He is also seeking the forgiveness of the relatives of the Deceased persons.

Sentence

[27] In Blackstone's Criminal Practice 2009 at Appendix 8 Sentencing Guidelines Council Guidelines under the heading **Manslaughter By Reason Of Provocation** it is suggested that the following factors are to be taken into consideration by the sentencing court:

1. That sentences for public protection must be considered in all cases of manslaughter;
2. The presence of any of the generally aggravating factors identified in the Council's *Guideline Overarching Principles; seriousness* or any of the additional factors identified in this guideline will indicate a sentence above the normal starting point;
3. This offense will not be an initial charge but will arise following an initial charge of murder. The council Guideline *Reduction in sentence for a guilty plea* will need to be applied with this in mind. In particular, consideration will need to be given to the time at which it was indicated that the defendant will plead guilty by reason of provocation;
4. An assessment of the degree of provocation as shown by its nature and duration is the critical factor in the sentencing decision;
5. The intensity, extent, and nature of the loss of control must be assessed in the context of the provocation that preceded it;

6. Although there will usually be less culpability when the retaliation to provocation is sudden, it is not always the case that greater culpability will be found where there has been a significant lapse in time between the provocation and killing;
7. It is for the sentencer to consider the impact on an offender of provocative behaviour that has built up over a period of time;
8. The use of a weapon should not necessarily move a case into another sentencing bracket;
9. The use of a weapon may reflect the imbalance in strength between the offender and the victim and how that weapon came to hand is likely to be far more important than the use of the weapon itself;
10. It will be an aggravating factor where the weapon is brought to the scene in contemplation of use before the loss of self-control (which may occur sometime before the fatal incident);
11. Post-offense behaviour is relevant to the sentence. It may be an aggravating or mitigating factor. When sentencing the judge should consider the motivation behind the offender's actions.

[28] These guidelines are equally applicable in cases of the guilty plea herein as well as in findings of guilt by a jury. In Attorney General's reference Nos. 74, 95, and 118 of 2002 in the English C/A decision of *Regina v Suratana et*

al. the Court set out assumptions that a sentencer must make in favour of an offender found guilty of manslaughter by virtue of provocation. These are:

18. First, he must assume that the offender had, at the time of the killing, lost his self-control. A mere loss of temper or jealous rage is not sufficient.

19. Second, he must assume that the offender was caused to lose his self-control by things said or done, normally and as in the cases with which we are concerned, by the person whom he has killed.

20. Third, he must assume that the defendant's loss of control was reasonable in all the circumstances, even bearing in mind that people are expected to exercise reasonable control over their emotions and that as society advances it ought to call for a higher measure of self-control.

21. Fourth, he must assume that the circumstances were such as to make the loss of self-control sufficiently excusable to reduce the gravity of the defendant's offense from murder to manslaughter.

22. Moreover, the sentencing judge must make these assumptions about whether the offender has been found not guilty of murder but guilty of manslaughter by reason of provocation by a jury after a contested trial,

or the Crown has accepted a plea of not guilty of murder but guilty of manslaughter by reason of provocation.

[29] The Court however went on to refer to the *dictum* of Shaw LJ in the decision of *R v Bancroft* (1981) 3 CAR (S) 119,120:

“Theoretically and logically, though in a sense remote from human affairs, if there is a successful defense of provocation, and it is recognized by the jury that the accused whom they are trying was not in possession of his self-control because of conduct of his victim, one could argue that the sentence should be virtually a nominal one. However, it has to be recognized in human affairs, notwithstanding that a man’s reason might be unseated on the basis that the reasonable man would have found himself out of control, that there is still in every human being a residual capacity for self-control, which the exigencies of a given situation may call for. That must be the justification for passing a sentence of imprisonment, to recognize that there is still some degree of culpability, notwithstanding that the jury have found provocation.”

[30] The Court will apply the aforesaid guidelines and principles to the case at *bar*.

It is common ground that the convicted man was at the time when these offenses were committed employed as a security guard and in that capacity

was issued a firearm by his employers. There is also evidence that earlier that afternoon he was on duty at his place of employment which required him to be armed with his firearm.

[31] There is, however, no evidence that he came to the salon intending to commit acts of violence with the use of his firearm. He clearly became annoyed at the comments made on the rejection of the contents of the bag which he offered to his common-law-wife. The laughter which ensued after the rejection was another source of provocation. At that stage, he appears to have formed the intent to kill Miriam Mai and Daisy Miranda and discharged a hail of bullets at the two Deceased persons and other occupants of the salon. This is against the background of the toxic relationship between the convicted man and Miriam Mai.

[32] I have taken into consideration the view expressed by the Community Rehabilitation Officer that the relationship between the convicted man and Miriam Mai was somewhat toxic. However, there is no evidence pointing to the nature degree and extent of the toxicity mentioned or whether it was no more than disagreements or differences of opinion which would occur in the best of relationships.

[33] I will consider the principles in the *dictum* of Shaw LJ aforesaid in light of the opinions of the Community Rehabilitation Officer in the social inquiry report.

I find that notwithstanding the strong mitigating factors in the convicted man's favour he is still deemed to be seised of that residual capacity for self-control which had it been applied herein would have obviated the loss of life.

[34] In *Yong Sheng Zhang v The Queen* Criminal Appeal No. 13 of 2009, Barrow JA opined thus in paragraph 14, to wit:

“The judgment of Sosa JA in Criminal Appeal No. 2 of 2006 Director of Public Prosecutions v Clifford Hyde at paragraph 12....establishes that for the standard street fight type of manslaughter case the usual range of sentence is between 15 to 20 years imprisonment. The fact that there is a usual range of sentences underscores the fundamental truth that the starting point in imposing a sentence is not usually the maximum penalty. As a matter of reasoning, the maximum penalty must be considered as appropriate for only the worst cases. The features of this case make clear that it does not fall into the category of murder”, in which this Court has upheld sentences of 25 years imprisonment...”

worst cases. A significant difference exists between this case of unintentional homicide and homicide cases “on the borderline.”

[35] After having considered all of the circumstances herein including but not limited to the convicted man's use of a firearm and the fact that two lives were lost at the hands of the convicted man, I will apply the benchmark of 17 years

imprisonment here. Crown Counsel Ms. Mohammed has urged the Court to desist from giving the convicted man the benefit of a full one-third reduction in sentence as the guilty plea was not entered at the arraignment but some years thereafter. Indeed this was done whilst the convicted man was making his unsworn statement from the dock after a fully defended trial was conducted. Thus, the court finds that in all the circumstances that the convicted man is not entitled to receive the full one-third reduction in sentence for his guilty plea. The UK sentencing guidelines however provide at 4.3(iii):

‘Where the admission of guilt comes very late, it is still appropriate to give some reduction.’

[36] Defense Counsel in addressing the Court made mention of the disability suffered by his client who is now blind. In an unchallenged report from the prison, the court was informed that adequate facilities have been put in place for the convicted man from the time when he was admitted to that institution in May 2016. The Court is further informed that the convicted man’s blindness arose from a self-inflicted gunshot injury in a failed attempt to take his life. The Court is satisfied after having perused that aforesaid report that the convicted man’s stay at the prison has been facilitated by special measures put in place for his accommodation.

[37] I find that after balancing and considering the aggravating and mitigating factors in light of the facts and circumstances herein I find that the aggravating factors outweigh the mitigating ones.

[38] The convicted man has committed two most heinous offenses the gravity whereof demands that he must be suitably punished. The court finds that in the circumstances the convicted man is entitled to a one-sixth reduction in sentence for his guilty pleas. The Court will make a further reduction of two years for the delay in bringing this matter to a stage of finality. Accordingly, the convicted man is sentenced to a period of imprisonment of twelve years on each count. The sentences shall run concurrently and will take effect from May 2016. He shall receive counseling for anger management and dispute resolution whilst serving his sentences.

Dated this **16th day of June 2022.**

Honourable Justice Mr. F M Cumberbatch
Justice of the Supreme Court
Central Jurisdiction