

**IN THE SUPREME COURT OF BELIZE, A.D. 2019
CRIMINAL JURISDICTION**

SOUTHERN DISTRICT

Indictment No. S17/2018

THE QUEEN

V

MARCO SUAZO

BEFORE: Honourable Justice Mr. Francis M. Cumberbatch

APPEARANCES: Mr. Cecil Ramirez - Sr. Crown Counsel for the Crown
Mr. Oscar Selgado - Counsel for the Accused

TRIAL DATES: 18th, 20th, 21st, 26th, and 27th March, 2019.
1st, 2nd, and 8th April, 2019.
6th May, 2019.

SENTENCING

[1] The Accused herein was indicted by the Director of Public Prosecutions for the offence of murder for that he on the 3rd day of June, 2016, at Dangriga Town, murdered John Rodriguez. At his trial for murder, this Court found him guilty of the lesser offence of manslaughter.

The Facts

[2] The convicted man and another planned to rob the Havana Night Club in Dangriga Town on the night of 3rd day of June, 2016. They went to the club to affect their unlawful plan and at that time the convicted man was armed

with a handgun. As they entered the building the convicted man shouted nobody moves. However, a number of persons in the establishment ran towards the rear of the building at which time the convicted man discharged a round from the firearm which caused the death of the Deceased.

The Hearing

[3] The Court ordered a sentencing hearing be held and also ordered a Social Inquiry Report be provided. Crown Counsel who appeared at the trial submitted written submissions which were relied on by Mr. Ramirez who relied on same and made no address nor filed further submissions.

[4] Defense Counsel, Mr. Selgado, made oral submissions to the Court. He addressed the Court on the contents of the Social Inquiry Report and stressed the need for the convicted man's rehabilitation. He reminded the Court of the youthful age of the convicted man at the time of the commission of this offence and asked that this be taken into account in the Court's determination of an appropriate sentence.

The Law

[5] I will consider and apply the four classical principles of sentencing, namely: Retribution, Deterrence, Prevention, and Rehabilitation to the facts and circumstances herein.

Retribution

[6] The convicted man acquired and was prepared to use an illegal firearm during the course of a robbery at the Havana Night Club, a place for those persons who wish to socialize and enjoy the consumption of alcohol and

meals. The jovial atmosphere of that venue was rudely and violently disturbed by the convicted man who attempted to rob the persons therein and in furtherance of that unlawful activity discharged a round from a loaded firearm which caused the death of the Deceased.

- [7] The Court must show its abhorrence for this kind of offence which resulted in the unnecessary loss of a human life, notwithstanding the fact, that he was convicted for manslaughter and not murder.

Deterrence

- [8] This principle is applicable to deter the convicted man from reoffending in like manner on his release from custody and also to deter others from committing the offence of homicide. It is a well-known fact within the jurisdiction that there has been an upsurge of offences of homicide especially those committed by the use of a firearm.

- [9] Notwithstanding his youthful age at the time of the commission of this offence he is seized of a previous conviction for the offence of possession of a controlled drug, to wit 27.8 grams cannabis. The Court is also aware of the finding of the Community Rehabilitation Officer that there is a great chance of the convicted man reoffending. Hence, this principle will be considered and applied herein.

Prevention

- [10] This principle is applicable in respect of those offenders who are considered a danger to society and as such they should be recipients of an indeterminate or lengthy determinate sentence.

[11] Though the Social Inquiry Report paints a bleak picture of the future for the convicted man, I find that the prognosis does not reach the threshold required for the imposition of a lengthy or indeterminate custodial sentence. Thus, I will not apply this principle herein.

Rehabilitation

[12] The rehabilitation of the convicted man to ensure his smooth reintegration into the community is an essential element in sentencing. The Court must ensure that the convicted man is fully equipped to re-enter society upon his release from custody to conduct himself as a law-abiding citizen.

[13] The Social Inquiry Report discloses that the convicted man has from childhood displayed an aversion to regular attendance at school and the propensity to engage himself in physical altercations as a means of obtaining respect.

[14] Defense Counsel has stressed aforesaid that this convicted man must be fully rehabilitated before he is released into society, a view with which the Court concurs.

The Social Inquiry Report

[15] This report discloses that at age 11 the convicted man informed his parents that he did not want to go to school. Instead of attending high school he enrolled in the ITVET, but dropped out before the end of the school year ostensibly because he was constantly involved in fights and arguments. He thereafter commenced hanging out with friends. He would also do odd jobs and run errands to make some cash.

[16] The Community Rehabilitation Officer's assessment of the convicted man reads thus:

“SECTION V: Findings

Assessment:

Mr. Marco Tulio Suazo has been incarcerated for three years. He was arrested and charged at the age of 16 and was remanded to Wagner's Youth Facility. He transferred over to the adult section one day after he turned 18. During the interview, officer observed that Mr. Marco Suazo was very nonchalant about the whole interview he gave vague answers to the questions that were being asked and seemed uninterested. Mr. Suazo did not seem remorseful about what had happened and he did not offer condolences to the family. When the Community Rehabilitation Officer mentioned that he was transferred to the audit section because he was probably giving trouble, Mr. Suazo said he had to fight to gain respect, and if he has to continue to fight, he will.

Marco has been incarcerated from the age of 16, from a young age Marco is known for fighting, and the years he spent at Wagner's Facility, and the adult section at the Kolbe foundation it seems that he was still getting into fights. Marco still believes that he must fight to survive or to gain respect. Should he be let back into the society, there is a great chance of him reoffending again.”

[17] Defense Counsel did not seek to have the Community Rehabilitation Officer called to challenge the contents of her report and instead relies on same to

ground his submission that the convicted man is in dire need of rehabilitation.

Aggravating and Mitigating Factors

[18] I find the following to be the aggravating and mitigating factors herein.

Aggravating Factors

- i. The needless loss of an innocent life;
- ii. The seriousness of the offence;
- iii. The use of a dangerous weapon in the commission of the offence;
- iv. The lack of remorse and failure to offer condolences to the family of the Deceased;
- v. The convicted man is not a first offender;
- vi. The effect of the death of the Deceased on his wife and children as disclosed in the Social Inquiry Report;
- vii. The prevalence of the offence of homicide.

Mitigating Factors

- I. The youthful age of the convicted man at the time of the commission of this offence.

Sentence

[19] The offence for which the Accused is convicted carries a maximum sentence of life imprisonment. In *Yong Sheng Zhang v The Queen Criminal Appeal No. 13 of 2009*, Barrow JA opined thus at paragraph 14, to wit:

“The judgment of Sosa JA in Criminal Appeal No. 2 of 2006 D.P.P. 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 sentence 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 worst cases. A significant difference exists between this case of unintentional homicide and homicide cases “on the borderline of murder”, in which this Court has upheld sentences of 25 years imprisonment;...”

[20] I find that this case cannot be categorized as one of the worst cases within the jurisdiction. However, the gravity of this offence must be recognized and the Accused must be appropriately punished for taking an innocent life in the circumstances in which it was done.

[21] What make the circumstances in this case more egregious are the convicted man’s failure and/or refusal to take responsibility for his actions. This is so, particularly when considered against the background of the convicted man’s penchant for fighting and his misguided belief that physical violence is the pathway to survival and respect.

[22] This convicted man’s need for rehabilitation cannot be overstated. The youthful exuberance displayed by him in discharging a loaded firearm inside a Night Club where socializing was taking place and his predilection for violence must be aggressively addressed by the use of appropriate programs of rehabilitation. In light of the findings of the Community Rehabilitation Officer, this will be a long and arduous project and must be conducted within the confines of a controlled institution. He must also be taught a skill to enable him to pursue a legitimate occupation on his release from prison.

[23] I have carried out a balancing exercise with the aggravating and mitigating factors and find that the aggravating factors significantly outweigh the mitigating ones.

[24] I will take into consideration the personal circumstances of the convicted man, such as his age and troubled background. I have also considered the gravity of this offence. The indiscriminate use of a firearm by the convicted man in the manner and circumstances in which it was done whilst not the worst of the worst cases of manslaughter removes it from the lower end of the sentencing scale as enunciated by Barrow JA aforesaid.

[25] Accordingly, the convicted man is sentenced to 17 years imprisonment from which I shall deduct three years for the time spent on remand whilst awaiting his trial. Thus the convicted man shall serve a period of imprisonment of 14 years commencing today.

Dated this Tuesday 29th day of October, 2019.

Honourable Justice Mr. Francis M. Cumberbatch
Justice of the Supreme Court