

**IN THE SUPREME COURT OF BELIZE, A.D. 2020
CRIMINAL JURISDICTION**

SOUTHERN DISTRICT – STANN CREEK

Indictment No. S10 of 2019

THE QUEEN

V

ARTURO RODRIGUEZ

BEFORE: Honourable Justice Mr. Francis M. Cumberbatch

APPEARANCES: Mr. Javier Chan – Sr. Crown Counsel for the Crown
Mr. Oscar Selgado – Counsel for the Accused

TRIAL DATES: 15th of April, 2019.
8th July, 2019.

JUDGMENT ON SENTENCING

[1] The convicted man was indicted by the Director of Public Prosecutions for the offence of murder for that he on the 20th day of August, 2018, at Independence Village, in the Stann Creek District murdered Mariella Alpuche, (“the Deceased”). At his arraignment, he entered a plea of not guilty. However, on the 15th day of April, 2019, an amended indictment was filed by the Director of Public Prosecutions against the convicted man for the lesser offence of manslaughter to which he entered a plea of guilty.

The Facts

- [2] The Deceased and the convicted man lived and cohabited as husband and wife prior to her unlawful death aforesaid. On the 19th day of August, 2018, the convicted man, along with the Deceased and other family members left Orange Walk and proceeded to Placencia on a family vacation. On their way to Placencia they stopped to spend a night at Independence Village. They booked and occupied rooms at the Panting Hotel in Independence.
- [3] Whilst at the hotel the convicted man and the Deceased got into an argument during which he accused her of flirting with another man which she denied. This argument continued during the wee hours of the morning of the 20th day of August, as a result of which the mother of the Deceased left her room and went to their room and scolded them about their behaviour.
- [4] Sometime after she returned to her room the Deceased's mother was disturbed by the convicted man who told her he had choked his wife and killed her. He asked her to check his wife.
- [5] The mother of the Deceased went to the room along with other family members and saw the Deceased lying motionless on the bed with red marks around her neck and abrasions on the left side of her face. At that time the

convicted man claimed that the Deceased fought with him and scratched him on his neck.

[6] The Deceased was taken to the Polyclinic in Independence where she was pronounced dead on arrival at 3:10 a.m. The post mortem examination disclosed the cause of death to be asphyxiation as a consequence of manual strangulation.

[7] The convicted man accepted the facts stated aforesaid and during the allocutus he admitted choking the Deceased during a misunderstanding.

The Hearing

[8] The Court held a sentencing hearing during which the Court heard testimony from the convicted man who expressed remorse for what he had done. He described himself as a caring and law abiding citizen and that this was his first infraction with the law. Crown Counsel suggested to him in cross-examination that he has a previous conviction in 1992 for a minor offence of indecent words but he stated that he could not recall the incident.

[9] The convicted man also called character witnesses all of whom are his siblings. They spoke of him in glowing terms as someone who is kind, loving, caring, and loved by all of his family members.

[10] The Court heard oral submissions by Counsel for the convicted man and Crown Counsel. They both referred the Court to various authorities on sentencing in cases of manslaughter.

The Law

[11] The classical principles of sentencing, to wit: retribution, deterrence, prevention and rehabilitation as enunciated by Lawson LJ in the decision of *R v Sergeant* will be applied to the facts and circumstances herein.

Retribution

[12] This is a sad case. What was intended to be a family vacation ended in tragedy at the hands of the convicted man. On that fateful night the convicted man and other family members were socializing during which time a number of beers was consumed by them. On their return to their hotel an argument ensued between the convicted man and the Deceased over allegations of the Deceased flirting which she denied.

[13] It is clear that notwithstanding the intervention of the mother of the Deceased who scolded them about their behaviour and the assurances by the convicted man to bring the misunderstanding to an end a life was nevertheless lost.

[14] This is another one of those cases where domestic misunderstandings get completely out of control and adult couples demonstrate a lack of good sense and maturity with devastating consequences.

Deterrence

[15] The Court is aware of the prevalence of the offence of homicide within the jurisdiction. I find that with the appropriate counselling it is unlikely that the convicted man will offend again in like manner. However, whilst the Court must be mindful of the upsurge in cases of homicide which are planned and premeditated and committed by the use of a dangerous weapon such as a firearm or machete it is obvious that this type of case does not fall into that category. Hence, I find that this principle is not applicable to the convicted man.

Prevention

[16] There is no evidence before the court that the convicted man is or may be considered to be a danger to the community. From all appearances he is considered to be generally law abiding and is self employed as a carpenter. Hence, I do not consider this principle to be applicable to this convicted man.

Rehabilitation

[17] The facts herein disclose the convicted man's inability to maintain his self-control.

[18] The rehabilitation of the offender to ensure his smooth re-entry to the society as a law abiding citizen is paramount. In this case, the facts reveal that the convicted man is required to undergo the necessary programs of rehabilitation to address his inability to manage and control his anger and be counseled on dispute resolution before his re-entry to the society.

[19] The aggravating and mitigating factors are as follows:

[20] **Aggravating factors**

1. The senseless loss of a human life;
2. The effect of the loss of the Deceased on the children of the family;
3. The convicted man's refusal and or failure to heed advice not to behave in an inappropriate manner that night.

[21] **Mitigating factors**

1. The early guilty plea by the convicted man;
2. The convicted man is not seized of previous convictions for acts of violence;

3. The positive remarks made of the convicted man by his siblings;
4. The remorse expressed by the convicted man.

Sentence

[22] I have considered the aggravating and mitigating circumstances aforesaid against the background of the seriousness of this offence. I find that the aggravating factors outweigh the mitigating ones. The loss of a human life is no trifling matter and the Court must at all times have regard to this fact. However, the sentence must be proportionate to the seriousness of the offence.

[23] Be it as a result of extreme jealousy or otherwise the convicted man acted in a most heinous manner by manually choking his wife until she lost her life. The intervention by his mother-in-law who played the role of peacemaker had no effect on the convicted man who seemed bent on committing acts of violence on his wife that night.

[24] Defence Counsel in his address to the Court in urging leniency suggested that a non-custodial sentence should be imposed. He asked the Court to take into account the convicted man's medical condition and what he considered to be the strong mitigating factors in his favor.

[25] It is common ground that the convicted man suffers from a medical condition called a colostomy. This was revealed in a report received from the medical officer attached to the Kolbe Foundation, Belize Central Prison which states thus:

[26] **“Ref: Medical Report**

Inmate Arturo Rodriguez, 49 years old, D.O.B. 21/01/1970, was first brought to the Medic Center at Kolbe Foundation for evaluation upon admission to the prison on 21/01/2018. His evaluation on that day revealed a large colostomy opening on his abdomen.

Upon interrogation, he referred that he suffered an accident in 2001 where he had surgical repair of his intestines and the colostomy was placed. He also referred that since then he has done personal home care and has managed to work as a carpenter without difficulty.

Due to the exposure of his surgical site, he has been receiving daily site care and sterile dressing twice a day at the Medic Center.

Inmate Rodriguez was also treated on 17/10/2018 for angina and on 05/11/2018 for an acute gastroenteritis. Since then, he continues to visit the Medic Center daily and has not reported any other medical concerns. ”

[27] There is neither hint nor suggestion from Dr. Novelo that the convicted man's continued presence in prison is either life threatening or otherwise detrimental to his health. Indeed the report states that the convicted man *"has been receiving daily care and sterile dressing twice a day at the medic centre"*.

[28] It should also be noted that the aforesaid medical report is unchallenged either by way of the cross-examination of the doctor or by the contrary opinion of a medical expert.

[29] There is evidence before the Court that the convicted man was employed as a cabinet maker and he became an entrepreneur in furniture making prior to the commission of this offence. There is also evidence that on that fateful night the convicted man and other family members were socializing during which a number of beers was consumed by him.

[30] In the decision of *R v Ian Trevor Bancroft (1981) 3 Cr. App. R. (s) 119* of the English Court of Appeal Shaw LJ stated:

"Theoretically and logically, though in a sense remote from human affairs, if....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

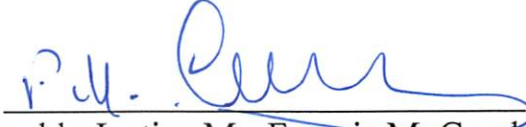
virtually a nominal one. However, it has to be recognized in human affairs, notwithstanding that a man's reason might be unseated on the basis that the reasonable man would have found himself out of control, that there is still in every human being a residual capacity for self-control, which the exigencies 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.....”

[31] This is not one of the cases which can be categorized as the worst of the worst nor is it one of those cases of manslaughter which borders on murder. In *Director of Public Prosecutions v Clifford Hyde* the judgment of Sir Manuel Sosa JA (as he was then known) establishes that the benchmark for the “street fight type of manslaughter” ranges between 15 and 20 years imprisonment.

[32] This case falls within neither of the aforesaid categories. Accordingly, I find that a starting point of 12 years imprisonment is appropriate. I will deduct four years for the guilty plea. I will make a further deduction of two years for his good character and 1 year for the time spent on remand whilst awaiting his trial. Accordingly, the convicted man is sentenced to five years

imprisonment. He shall receive counselling on anger management and dispute resolution before his release from prison.

Dated on this **8th day of July, 2019.**



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