

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

SOUTHERN DISTRICT – STANN CREEK

CASE No. RE20190019C

THE QUEEN

v

MIGUEL HERRERA SR.

BEFORE: Hon. Justice Mr. Francis M. Cumberbatch

APPEARANCES: Ms. Jacqueline Willoughby, Counsel for the
Crown
Mr. Hubert Elrington, Counsel for the Respondent

RESENTENCING DATE: 3rd October, 2019

JUDGEMENT ON SENTENCING

[1] On the 18th day of February, 2009, after a fully contested jury trial the convicted man was convicted of the murder of Mirna Figueroa (“the Deceased”). He was sentenced to life imprisonment by the learned trial Judge. His conviction and sentence were later affirmed by the Court of Appeal.

[2] On 29th day of March, 2018, the Caribbean Court of Justice (“CCJ”) held in *Gregory August & Alwin Gibb v R CCJ APPEAL NOS BZCR 2015/001 and BZCR2015/002* that the mandatory sentence of life imprisonment for

persons convicted of the offence of murder was unconstitutional. Accordingly, the Court directed as follows:

“1. In order to comply with the CCJ ruling in Gregory August & Alwin Gabb v R CCJ APPEAL NOS. BZCR2015/001 and BZCR2015/002, all persons sentenced to life imprisonment must have their sentences reviewed so as to address the issue of a “judicially determined sentence” and the possibility of parole. It is stated at paragraph 126:

“[126] Since the sentences of these persons have been vacated by this judgment, as a practical interim measure, we order that all such persons must remain incarcerated until, in relation to his or her case, respectively, a sentencing hearing is completed. In the event, that the sentencing judge should decide that a fit sentence is one of life imprisonment, then the judge shall stipulate a minimum period which the offender shall serve before becoming eligible for parole, or for a consideration of whether the prisoner has become eligible for parole. We would not expect that exercise to be rushed, but the entire exercise should be completed within a reasonable time. Fort the avoidance of doubt, a similar reasoning is to be applied to any person sentenced under the new regime to a mandatory life sentence for murder.”

[3] By virtue of the foregoing the Court held a resentencing hearing.

The facts

[4] The facts are extracted from the decision of the Court of Appeal, more particularly the decision of Sosa JA (as he then was) with which the other members of the Court concurred.

[5] The convicted man and one Delmy Figueroa, ('Delmy') the sister of the Deceased, had prior to the commission of this offence lived and cohabited in a common-law union. After an incident which occurred on the 24th day of August, 2007, at a bar in the Silk Grass area the convicted man beat and threatened her that he would kill one of her sisters if she left him. One week later on the 31st day of August, 2007, the convicted man repeated the threat to Delmy but she nevertheless left him on the 2nd day of September, 2007, and never went back to live with him.

[6] On or around the 11th day of September the Deceased and her son were reported missing. The evidence reveals that the Deceased and her three year old son were kidnapped by the convicted man and another person. The convicted man having collected the Deceased and her son placed them in his truck and drove to a secluded spot. Whilst at the spot the convicted man questioned the Deceased about the whereabouts of her sister who was his

common-law wife. The other person then observed the Deceased lying nude on the tailgate of the convicted man's truck and observed the convicted man having sex with her there. He was then forced by the convicted man to have sex with the Deceased, which he did.

[7] At some point in time, it was discovered that the convicted man's truck had run out of fuel and the other person was sent by him to fetch some fuel. That person testified that when he left to do so it was the convicted man, the Deceased, and her three year old son who were left in the convicted man's truck. On his return with the fuel, it was observed that the Deceased was no longer in the convicted man's truck but her clothes were in the back of the truck. At some point of time, the convicted man told the other person that the Deceased had gone to Honduras. He later ordered the person to throw the Deceased's son over the side of the Kendall Bridge but he refused to do so and instead lay him on a bench in a bus shelter.

[8] On the 16th day of September, 2007, some five days after the Deceased and her three year old son were reported missing the police discovered her decomposing body in a wooded area in the Stan Creek District. Her clothes were found some 60 to 70 feet away from the body.

[9] In his statement under caution, the convicted man admitted placing the clothes where they were found by the police. There is evidence that he directed the police to the place where there was a pile of soil behind which was the clothing of the Deceased. The body of the Deceased was found about 60 to 70 feet nearby.

[10] Dr. Estrada Bran who conducted a post mortem examination on the body of the Deceased found the cause of death to be as a result of ligature strangulation.

The Hearing

[11] The Court ordered the production of a social inquiry report, a report from the Kolbe Foundation on the convicted man's conduct whilst an inmate at that institution and a psychiatric evaluation of the convicted man. The Court also received written submissions from Crown Counsel and Counsel for the convicted man. Crown Counsel provided victim impact statements from relatives of the Deceased whilst Defence Counsel submitted character references on behalf of the convicted man.

The Law

[12] I will consider and apply the classical principles of sentencing, namely: retribution, deterrence, prevention, and rehabilitation to the facts and circumstances of the case at Bar.

Retribution

[13] The facts disclose that the convicted man having threatened to kill one of Delmy's family members if she left him proceeded to make good on his threat when she did so. What is much more egregious was the manner in which, he together with another, at his direction, proceeded to humiliate and abuse the Deceased before finally strangling her to death.

[14] The Court must demonstrate its abhorrence for such viciousness by the sentence it imposes.

Deterrence

[15] The offence of homicide has increased to alarming levels within this jurisdiction over the years. Moreover, the convicted man is not a first offender as he is seized of a previous conviction for grievous harm in 1984. Though it may be considered spent, the Court views it as another act of violence committed by the convicted man.

[16] Deterrence is general as well as specific in nature. The former is intended to be a restraint against potential criminal activity by others whereas the latter

is a restraint against the particular criminal relapsing into recidivist behaviour. The Court is concerned about that part of the victim impact statement produced by way of affidavit by Delmy, in which she alleges that the convicted man used to call her from prison threatening her life when he comes out of prison and blaming her for her sister's death. She has since changed her mobile telephone number.

[17] Thus, the Court will for the reasons aforesaid consider and apply this principle in the determination of an appropriate sentence.

Prevention

[18] The convicted man has demonstrated a capacity for taking an innocent human life in most bizarre circumstances. That fact taken together with the threats allegedly made by him to Delmy, since his incarceration, are in my view sufficient to cause the Court to seriously consider the convicted man to be a danger to the society.

Rehabilitation

[19] It is trite that the rehabilitation of the offender is of paramount importance. The punishment of the offender must go hand in hand with his or her rehabilitation to ensure a smooth reintegration to the society.

[20] The social inquiry report discloses that the convicted man has not expressed any remorse for this offence. Indeed, he continues to maintain his innocence in light of the substantial evidence against him and merely offered his condolences to the family of the Deceased. This remains in stark contrast to the attestations of his character witnesses who assert that he is remorseful for the commission of this offence. Suffice it to say, however, that this anomaly has not been addressed by Defence Counsel nor has the convicted man addressed the Court in any form or fashion to express his remorse. I consider this stance taken by him will undoubtedly hinder his rehabilitation.

[21] The report from the Kolbe Foundation discloses that there is no evidence that the convicted man has completed any rehabilitative programs whilst an inmate at that institution. Defence Counsel has, however, submitted that his client has since his incarceration been respectful, helpful, and has served as a librarian and gardener at that institution. Whilst that is commendable the underlying cause of the commission of this offence and the manner in which it was done have not been addressed by way of any programs of rehabilitation.

[22] I find the following to be the aggravating and mitigating factors herein:

[23] **Aggravating factors**

- i. The gravity of this offence;
- ii. The offence was planned and premeditated;
- iii. The convicted man had threatened to kill the Deceased prior to the homicide;
- iv. The ordeal suffered by the Deceased who was raped and otherwise abused prior to her death;
- v. The convicted man is not a first offender has a previous conviction for grievous harm;
- vi. The convicted man is unremorseful and continues to maintain his innocence.

[24] **Mitigating factors**

- i. The constitutional violations experienced by the convicted man;
- ii. The favourable remarks made of him in the character affidavits.

[25] I find the *dictum* of Rawlings JA in *Mervyn Moise v The Queen* to be most instructive to the sentence in a case of homicide to wit:

“[18] It is a mandatory requirement in murder cases for a Judge to take into account the personal and individual circumstances of the convicted person. The Judge must also take into account the nature and gravity of the offence; the character and record of

the convicted person; the factors that might have influenced the conduct that caused the murder; the design and execution of the offence, and the possibility of reform and social re-adaptation of the convicted person..... the sentencing Judge is fixed with a very onerous duty to pay due regard to all of these factors.

[19] In summary, the sentencing Judge is required to consider, fully, two fundamental factors. On the one hand, the Judge must consider the facts and circumstances that surround the commission of the offence. On the other hand, the Judge must consider the character and record of the convicted person. The Judge may accord greater importance to the circumstances, which relate to the commission of the offence. However, the relative importance of these two factors may vary according to the overall circumstances of each case.”

Sentence

[26] I have analysed and balanced the aggravating and mitigating factors in light of the facts and circumstances of this case. Having done so, I find that the aggravating factors outweigh the mitigating ones. However, I will take into consideration the breach of the convicted man’s constitutional rights aforesaid.

[27] I have taken into consideration the fact that the convicted man has not participated in any rehabilitative programs to prepare him for reintegration to society. This is a matter which the Court views with concern.

[28] I have considered the reports made of the convicted man in the character statements. I shall take them into consideration in deciding on an appropriate sentence commensurate with the gravity of the offence.

[29] The convicted man appears to be seized of a misguided sense of entitlement. Coupled with that, he has shown that he has little if any regard for the rights of a woman to assert her own independence. The unchallenged reports in the victim impact statements that he was making threats to Delmy aforesaid is indicative of his sense of entitlement aforesaid which seems to be unchanged.

[30] The convicted man's conduct whilst an inmate at the Kolbe Institution as submitted by Counsel though commendable should be considered in light of the fact of him being within the confines of the controlled environment of a penal institution rather than a case of a genuine change of heart. Indeed, as he has recently disclosed to the social worker in his social inquiry report he still considers himself to be innocent.

[31] I find that the convicted man needs to successfully undergo appropriate programs of rehabilitation to address his misguided sense of entitlement and his failure to appreciate and accept the rights of women in modern society before he should be considered for release to the society. That may be a long and arduous process especially in light of the convicted man's alleged threats to Delmy and the absence of remorse. I find that that process must be conducted within the confines of a correctional institution.

[32] I consider this to be a fitting case to apply the principle stated by Rawlings LJ aforesaid to wit: "*The Judge may accord greater importance to the circumstances, which relate to the commission of the offence. However, the relative importance of these two factors may vary according to the overall circumstances of each case.*"

[33] The circumstances surrounding the commission of this offence together with the manner in which it was committed is indicative of its gravity. I find that this case is serious enough to be considered as one of the worst cases of homicide. This factor ought not to be trivialised, hence, I will attach more importance to the gravity of this offence than to the personal circumstances of the convicted man.

[34] In *R v Howells (1999) 1 ALL ER 50- 54* Lord Bingham CJ as he then was opined thus:

“Courts should always bear in mind that criminal sentences are in almost every case intended to protect the public, whether by punishing the offender, or reforming him, or deterring him and others, or all of these things. Courts cannot and should not be unmindful of the important public dimension of criminal sentencing and the importance of maintaining public confidence in the sentencing system.”

[35] Thus the convicted man is sentenced to life imprisonment. He shall undergo appropriate rehabilitative programs to address his misguided sense of entitlement and his failure to accept the rights of women in modern day societies. He shall be considered for parole after having served a period of 35 years imprisonment. The sentence takes effect from the 28th day of December, 2007.

Dated this **Thursday 3rd day of October, 2019.**

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