

IN THE SENIOUR COURTS OF BELIZE

CENTRAL SESSION – CITY OF BELMOPAN, CAYO DISTRICT

IN THE HIGH COURT OF BELIZE

INDICTMENT No. C8 of 2022

BETWEEN:

THE QUEEN

and

[1] MR. MAXIMINIO CHIAC

Defendant

Appearances:

Ms. Natasha Mohamed, counsel for the Queen

Mr. Arthur Saldivar, counsel for the Defendant

Dates:

Judgment Date: 2023: February 16

Hearing dates: June 28

July 6

Sentencing date: 2023: July 26

JUDGMENT ON SENTENCE

[1] **CUMBERBATCH. HON. MR. FRANCIS M.; J:** On the 26 July 2023, found Mr. Maximinio Chiac whom was indicted by the Director of Public Prosecutions for the offence of murder, guilty, for that he on the 31 March 2019, at Armenia Village, in the Cayo District, murdered Hermelindo Ical (the “Deceased”) contrary to the

provisions of section 106(1)¹ read along with section 117² of the **Criminal Code** Chapter 101 of the Substantive Laws of Belize Revised Edition 2020.

- [2] After a period of toing and froing between the Crown and the Defence the convicted man entered a plea of guilty to the lesser offence of manslaughter by virtue of extreme provocation.

The Facts

- [3] On the night of 31 March 2019, the police discovered the body of the Deceased bearing what appeared to be chop wounds on Main Street, Armenia Village, Cayo District. The Deceased's body was taken to the Western Regional Hospital where he was pronounced dead.
- [4] Dr. Mario Estrada Bran conducted a postmortem Examination on the 3 April 2019, at the Western Regional Hospital mortuary and found that the cause of death of the Deceased was traumatic shock due to multiple chop wounds to the head. The police conducted investigations, and, on the 16 July 2019, the convicted man was detained and arrested.
- [5] The convicted man agreed to give a statement under caution to the police. In that statement, he admitted to being in a confrontation with the Deceased earlier on the evening of the 31 March 2019, at or around the Maya Secret bar after which he

¹ CAP 101 of the Substantive Laws of Belize Revised Edition 2020 section 106.- **(1)** Subject to sub-section **(2)**, a person who commits murder shall be liable, having regard to the circumstances of the case, to– (a) suffer death; or (b) imprisonment for life.

² CAP 101 of the Substantive Laws of Belize Revised Edition 2020 section 117. Every person who intentionally causes the death of another person by any unlawful harm is guilty of murder, unless his crime is reduced to manslaughter by reason of such extreme provocation, or other matter of partial excuse as in the next following sections mentioned.

went home. He later returned to the Maya Secret bar where he had another confrontation with the Deceased during which he inflicted chop wounds to the Deceased with a machete.

- [6] The Court ordered that a psychiatric evaluation be conducted on the convicted man and a report thereof be provided to the Court. A Social Inquiry report was also ordered along with a report from the Belize Central prison on the conduct of the convicted man whilst a remand prisoner at that institution.

The Sentencing Hearing

- [7] The Court on the 16 February 2016, ordered the Social Inquiry Report but this never materialised notwithstanding several enquiries to the relevant officers. Eventually with the Court's leave Crown Counsel and Defence Counsel agreed to forego the Social Inquiry Report and proceed with the hearing. The Court, however, ordered that Victim Impact Reports from the relatives of the Deceased be provided to the Court. Those reports were acquired by Crown Counsel.

- [8] The psychiatric report stated that no signs of psychosis were found. Dr. Torres further opined that; the convicted man is fit for the proceeding of his sentencing hearing. The report from the prison reveals that the convicted man has only committed 2 violations whilst an inmate on remand. He has however completed 3 rehabilitative programs at the prison.

The Law

- [9] In my determination of what constitutes an appropriate sentence I will first consider and apply the classical principles of sentencing as outlined by Lawson LJ in the

celebrated decision of ***Sergeant v. The Queen***³. These are retribution, deterrence, prevention, and rehabilitation.

Retribution

[10] The sad outcome of this case revolves around the resultant excesses from the excessive consumption of alcohol. The facts disclose that there were two confrontations between the convicted man and the Deceased on that fateful night. Both incidents arose whilst both parties were at the bar. That confrontation was not confined to vulgar abuse or the use of fists as is usual in those circumstances but developed into a homicide with the introduction of a machete. The convicted man states in his statement under caution that it was the Deceased who first attacked him with a cutlass; and after he disarmed him, he inflicted injuries to the Deceased with the cutlass which he threw away.

[11] The Court must show its abhorrence for this kind of behaviour with its devastating consequences to the family of the Deceased by the sentence it imposes.

Deterrence

[12] This principle's purpose is two-fold. It is primarily intended to deter the convicted man from re-offending in a similar manner by the sentence it imposes. Secondly, this principle is also intended to dissuade other members of the community from acting in like manner by the imposition of a suitable sentence to deter them from so acting.

[13] The convicted man is a first offender and prior to this fateful event was meaningfully employed as a farmer. Thus, whilst it is unlikely that he will reoffend in a

³ *Sergeant v. The Queen*

similar manner upon his release from custody the Court is well aware of the increase in homicide offences within this jurisdiction and as such this principle becomes applicable for the deterrence of others from committing offences of homicide.

Prevention

[14] This principle is intended to be used to confine repeat offenders to whom the sound of the shutting of the iron cell door has no effect and/or to those persons who are generally considered to be a danger to the community, hence, an indeterminate sentence or a lengthy determinate sentence would be appropriate. It is common ground that the convicted man who is self-employed as a farmer is a first offender, hence, without more I find that this principle would not be applicable to this convicted man.

Rehabilitation

[15] The convicted man has shown an interest in his rehabilitation by enrolling in and participating in three rehabilitation programs offered at the prison. Whilst this bodes well for his future on his re-entry to the society his participation in the relevant programs designed to address his excessive consumption of alcohol is an absolute necessity.

[16] I will now proceed to identify the aggravating and mitigating factors herein.

Aggravating Factors

1. The seriousness of the offence of manslaughter.
2. The use of a weapon to inflict fatal injuries to the Deceased.
3. The effect of the loss of the Deceased to his family as stated in the victim impact statement.

4. The convicted man was under the influence of alcohol at the time of the commission of this offence.

Mitigating Factors

1. The convicted man's guilty plea.
2. The convicted man's hitherto clean criminal record.
3. The convicted man has taken full responsibility for his actions at the time of his detention and arrest.
4. The remorse expressed to the family of the Deceased.

[17] I have considered and conducted a balancing exercise with the aggravating and mitigating factors and find that the aggravating factors outweigh the mitigating ones.

Sentence

[18] In Blackstone's Criminal Practice 2009 at Appendix 8 Sentencing Guidelines Council Guidelines under the heading **Manslaughter by Reason Of Provocation** a number of factors are suggested to be considered by the Sentencing Court in its determination of an appropriate sentence for the offence of manslaughter. I will consider and apply the following principles therefrom:

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 offence 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. *The use of a weapon should not necessarily move a case into another sentencing bracket.*
8. *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.*

9. *Post offence behavior 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*".⁴

[19] In Attorney General's reference Nos. 74, 95 and 118 of 2002 in the English C/A decision of **Suratan et al. v The Queen** the court set out assumptions which 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. 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 offence from murder to manslaughter*".⁵

⁴ Blackstone's Criminal Practice 2009 Appendix 8 Sentencing Guidelines Council Guidelines

⁵ Attorney General's Reference [Nos. 74, 95 and 118 of 2002] Suratan et al. v The Queen

[20] There can be no doubt that the convicted man had indeed suffered from a loss of control by virtue of extreme provocation. This can be deduced from the accepted facts herein that it was during the second confrontation between the convicted man and the Deceased that a machete was introduced by the Deceased. The convicted man disarmed the Deceased and inflicted the fatal injuries to him.

[21] It is common ground that when the convicted man was detained by the police he agreed to give a statement under caution in which he admitted injuring the Deceased with a machete.

[22] In the decision of ***Bancroft v The Queen*** ([1981] 3 CAR (S) 119,120) Shaw LJ opined thus:

“it has to be recognised 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 recognise that there is still some degree of culpability, notwithstanding that the jury have found provocation”.⁶

[23] I must consider the degree of culpability of the convicted man in light of the facts and circumstances aforesaid. The loss of self-control whilst attributed to the actions of the Deceased should also be considered in light of the convicted man’s intoxication. I have also determined that though the convicted man was armed with

⁶ Bancroft v. The Queen ([1981] 3 CAR (S) 119,120)

a machete at the time of the physical confrontation this weapon was introduced by the Deceased, hence, the convicted man did not arm himself prior to the confrontation with the intention of inflicting harm to the Deceased.

[24] However, he had the choice of dispossessing himself of the weapon rather than using it to inflict multiple chop wounds to the head of the Deceased. Therein lies the evidence of brutality for which the convicted man must be suitably punished.

[25] The convicted man has taken steps to rehabilitate himself whilst an inmate on remand and these augers well for his re-entry to the society as a law-abiding citizen. I must consider this mitigating factor together with his hitherto clean criminal record. He also took responsibility for his actions.

[26] In ***Yong Sheng Zhang v. The Queen***⁷ 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

⁷ Yong Sheng Zhang v. The Queen Criminal Appeal No. 13 of 2009

unintentional homicide and homicide cases “on the borderline of murder”, in which this Court has upheld sentences of 25 years’ imprisonment...”

[27] This homicide was indeed a street fight type of manslaughter for which I find a benchmark of 20-years’ imprisonment to be appropriate. I will deduct 5-years for the guilty plea. I will also deduct another 2-years for the delay in bringing this matter to a stage of finality and 1 year for his hitherto clean criminal record.

[28] Accordingly, the convicted man is sentenced to 12-years’ imprisonment. This sentence takes effect from April 2019. He shall receive the relevant counselling on alcohol addiction and dispute resolution by means other than excessive violence.

Hon. Mr. F M Cumberbatch

Justice of the High Courts