

**IN THE SUPREME COURT OF BELIZE, A.D. 2022
CRIMINAL JURISDICTION**

CENTRAL DISTRICT

Indictment No. C53 of 2020

THE QUEEN

v.

ANGEL RUBEN CASSASOLA

- **Murder**

BEFORE

Honourable Justice Mr. Francis M Cumberbatch

APPEARANCES

Mr. Cecil Ramirez – S.C.C, along with Ms. Natasha Mohamed – Counsel for the Crown
Mr. Arthur Saldivar – Counsel for the Accused

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 1 January 2019, in San Ignacio Town, in the Cayo District, murdered Anita Pineda. To that indictment, he entered a plea of not guilty. However, on the 22 March 2022, with the acceptance and approval of the Crown he entered a plea of guilty to the lesser count of manslaughter by virtue of extreme provocation.

{2} The Court ordered that a sentencing hearing be held and also ordered the provision of a social inquiry report, and a report on the convicted man's conduct as a remand prisoner at the Belize Central Prison.

The Facts

{3} The Crown's case is that on the 1st of January 2019, at about 6:40 p.m., Anita Pineda, and her mother, Marla Pineda, arrived at the home of, Dania Larissa Cassasola, in the Kontiki Area, San Ignacio, Cayo District.

At about 7:20 p.m., Anita Pineda, was standing at the entrance to Dania's yard, speaking to her ex-common-law-husband and father of her three children, Angel Ruben Cassasola, who was on the street about three feet away from her. During their conversation, Angel Ruben Cassasola, questioned Anita as to her whereabouts the night before. He also accused Anita of sending text messages to his sweetheart, Linnette. This led to an argument during which Angel Ruben Cassasola removed a knife from his pants pocket which he used to stab Anita Pineda multiple times, in the neck area.

Anita Pineda, was transported to the San Ignacio Community Hospital where she was pronounced dead.

On the 3rd of January 2019, Dr. Loyden Ken conducted a post mortem examination on the body of Anita Pineda. He formed the opinion that the cause of death was due to hypovolemic shock due to multiple stab wounds.

He observed two stab wounds to the lower occipital region and two stab wounds to the posterior midline, lower neck region.

The Social Inquiry Report

- {4} This report discloses that the convicted man portrayed himself as a friendly and hard working person. He attended the St. Joseph Primary School and at the age of sixteen he commenced working with a Costa Rican Company involved in road construction. Whilst on that job he learnt to operate heavy machinery, such as, back hoes and tractors. He enjoyed his job and became passionate about it. However, he started to drink moderately and eventually became a frequent drinker. Indeed, when he committed this offence he was under the influence of alcohol.
- {5} The convicted man is the father of six children whose ages range from 22 to 8 years old. The Community Rehabilitation Officer states in the report, that the convicted man has openly shown remorse for his actions. Though he has not engaged in any rehabilitative programs whilst in prison he has made strides working on self-regulating and finding the Christian faith. He is described as a humble person and has tremendous family support. He has accepted his past mistakes and the negative influence of addiction to alcohol on his life.

{6} The victim impact statement made by the mother of the Deceased describes the hurt and pain suffered by the family especially the three children borne by the Deceased and fathered by the convicted man. At the time of this incident, the children were aged 8, 6, and 5 years old and they regularly visit their mother's tomb to lay fresh flowers. Their grandparents were left with the burden and responsibility of the maintenance and upkeep of those children.

{7} The prison report reveals that whilst the convicted man has not completed any rehabilitative programs he has not violated any prison rules. The Social Inquiry Report went on to state that the convicted man is employed at the prison's mechanic shop.

Aggravating and Mitigating Factors

{8} I consider the following to be the aggravating and mitigating factors herein.

Aggravating Factors

1. The seriousness of the offence;
2. The offences were committed by the use of a knife with which several stab wounds were inflicted on the body of the Deceased;
3. The Deceased person was the mother of three children fathered by the convicted man at the time of her death;
4. The effect of the death of the Deceased on her children and parents as disclosed in the victim impact statement;

5. The prevalence of the offence of homicide within this jurisdiction.

Mitigating Factors

1. The remorse expressed;
2. The hitherto clean criminal record of the convicted man;
3. The guilty plea *albeit* late;
4. The guilty plea has spared the witnesses the ordeal of reliving the horrific events of that fateful day this homicide occurred.

{9} 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 Sergeant*** 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

{10} New Year’s day of 2019, was a sad day for the family of the convicted man as this was the day when the convicted man brutally killed the Deceased. The facts disclosed that the convicted man and the Deceased who at some time

lived and cohabited in a common-law union were engaged in an argument at the instance of the convicted man. At that time, the convicted man was under the influence of alcohol and had in his possession a knife which he used to inflict several stab wounds to the neck and other parts of the body of the Deceased. She was taken to the San Ignacio Community Hospital where she was pronounced dead on arrival.

{11} Undoubtedly, the convicted man whilst under the influence of alcohol completely lost his self-control and as a result, the horrific events aforesaid occurred. As a consequence, thereof the children of the union between the convicted man and Deceased were left without the benefit of the care, love, and protection of both parents and have endured hardship as set out in the victim impact statements aforesaid.

{12} The Court must, by the sentence it imposes demonstrate its abhorrence for this kind of extreme violence with its resultant consequences.

Deterrence

{13} This principle involves the consideration of two limbs, first of all, to deter the convicted man from reoffending in like manner on his release from prison; and, secondly to dissuade other persons who find themselves in conflict with others from reacting in such a horrific manner with similarly devastating consequences.

{14} Whilst the convicted man has taken responsibility for his actions and is not known to be a person with criminally violent tendencies it is, therefore, unlikely that he would reoffend in like manner.

{15} However, the Court must be cognisant of the fact that in recent times there has been an increase in cases of homicide within this jurisdiction. Thus, this principle must be applied to deter others from offending in like manner.

Prevention

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

{17} 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

{18} The importance of this principle could not be overstated. The benefits of rehabilitation is recognised by the courts as essential for the convicted man's re-entry into society as a law abiding citizen on his release from incarceration. It is regrettable, that this convicted man has so far eschewed the opportunity to join any of the rehabilitation programs offered at the prison.

{19} The facts of this case disclose that the convicted man at the time of the commission of this offence was addicted to alcohol and whilst under its influence brutally killed the mother of three of his children. Thus in the circumstances, the Court will order as a part of his sentence that he undergoes a suitable period of rehabilitation and participate in the relevant programs to facilitate his re-integration into society.

Sentence

{20} In Blackstone's Criminal Practice 2009 at Appendix 8 Sentencing Guidelines Council, the 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. 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”.*

{21} These guidelines are equally applicable in cases of the guilty plea herein, as well as, in findings of guilt by a jury. In A. G's reference Nos. 74, 95, and 118 of 2002 in the English C/A decision of *Regina v. Suratan* et al. 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.

22. Moreover, the sentencing judge must make these assumptions 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”.

{22} 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 defence 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 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”.

{23} The convicted man was examined at his own behest by Dr. Michael Medina who holds a Masters in Psychology who opined thus:

{24} ***“Mental Status Exam***

He was very cooperative and empathetic, appeared his stated age, good eye contact, speech was coherent and well-articulated with a normal tone. His thinking was linear which reflects that his thought process was normal. His thoughts were logical and congruent. Excellent attention and focus.

Insight was good. His judgment is very good, can differentiate between right and wrong. There were no hallucinations or delusions during the assessment.

His mood most of the time was mildly sad, tearful when describing the events that led him to discover between Ms. Pineda and her brother. Also, tearful showing remorse what he had taken Ms. Pineda’s life. His memory was good.

No signs of Psychopathy. No signs of Narcissism.

Observations and Conclusions

According to my observations, he was honest and direct in answering my questions. I believe that he is remorseful about taking Ms. Pineda’s life and understands and agrees he must serve his sentence.

He fully understands between right or wrong.

There is no signs of psychopathy or narcissism.

I believe he has alcohol problem.

I firmly believe that Mr. Cassasola is not a threat to anyone. He has enough empathy to be caring and kind individual.

Recommendations

I, recommend that he completes the addiction recovery program at Kolbe at least twice”.

{25} The report by Dr. Medina discloses that the convicted man stated that the common-law marriage between him and the Deceased failed because the Deceased was at that time also involved in a relationship with her biological brother. This apparently occurred sometime in the year 2017. However, it appears that by the time this incident occurred the parties though co-parenting their children had not ended the animosity usually associated with the dissolution of a marriage. Additionally, on that fateful night a quarrel ensued between the convicted man and the mother of the Deceased in which the Deceased intervened and met her death at the hands of the convicted man. It is also common ground that at that time the convicted man was under the influence of alcohol to which he had become addicted.

{26} It is a well-known fact that quarrels are by their very nature an exchange of vulgar and indecent language. Words said during that event are usually

sufficient to cause a reasonable person to lose their self-control and act in a violent manner.

{27} However, the convicted man in this case used a weapon, to wit a knife during the quarrel with fateful consequences.

{28} I have considered the factors under the Sentencing Guidelines in Blackstone aforesaid and find that factors number five to nine to be applicable. The agreed facts do not disclose that the convicted man went to the home of the Deceased visibly armed with a knife but that during the argument he took it from his pocket and stabbed the Deceased aforesaid causing her death.

{29} In assessing the degree of culpability of the convicted man, I have taken into account the fact that he was armed whilst there is no evidence that the Deceased was also armed.

{30} Moreover, there is no evidence that the convicted man was injured by the Deceased or any of her family members that night. I find that in the circumstances, there was an imbalance in strength between the Deceased and the convicted man. I cannot, however, ignore the fact that the convicted man was not visibly armed when he arrived at the residence of the Deceased and had a quarrel with her mother but took the knife from his pocket during the quarrel with the Deceased.

{31} I must now go on to consider the post offence behaviour of the convicted man. In both the Social Inquiry Report and the medical report from Dr. Medina it is disclosed that the convicted man appeared to be unaware that he had committed the offence for which he has pleaded guilty. He was subsequently informed of what had taken place on that fateful night. This was attributed to his state of intoxication at the time of the commission of this offence. He has expressed his remorse and has taken full responsibility for his actions. After the usual toing and froing, the convicted man offered a plea of guilty to the lesser count of manslaughter which was eventually accepted by the Crown. It is regrettable that a sentence indication application was not made by Defence Counsel in a timely manner or at all.

{32} I have previously addressed the importance of the rehabilitation of the convicted man particularly in light of the fact of his admitted alcohol addiction and his neglect or refusal to voluntarily participate in any of the rehabilitative programs offered at the Belize Central Prison.

{33} I concur with the views expressed by Dr. Medina aforesaid on the nature and extent of the rehabilitative programs in which the convicted man must participate at least twice.

{34} 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 makes it 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... ..”

{35} The facts and circumstances of this case reveal that this falls within the definition of a “standard street type kind of manslaughter”. It commenced with an oral altercation between the convicted man and the mother of the Deceased then morphed into the stabbing of the Deceased by the convicted man who inflicted four stab wounds to her body in the region of her neck. It

is common ground that at that time the convicted man was drunk to the extent that he had no memory of the horrific incident and what he had done.

{36} Though brutally fatal this does not fall into the category of worst cases of manslaughter nor is it on the borderline of murder.

{37} I have considered and balanced the aggravating and mitigating factors and clearly the aggravating factors outweigh the mitigating ones. Accordingly, I will apply a benchmark of 20 years' imprisonment from which I will deduct 5 years for the guilty plea which was not an early guilty plea entered at the first available opportunity. However, I accept that it avoided the relatives of the Deceased from reliving the horrible events of that fateful day by giving testimony thereof at a trial.

{38} The convicted man has committed a brutal and horrific act with indelible consequences aforesaid to the children and family members of the Deceased. For that, he must be suitably punished. There seems to be no doubt of the remorse expressed by the convicted man, however, I am not impressed by the fact that he did not of his own volition seek to rehabilitate himself by enrolling in one of the several programs offered at the prison which would be relevant to his peculiar circumstances. The rehabilitative procedures recommended by Dr. Medina appear to be appropriate.

{39} The convicted man has been in custody for a period of approximately four years whilst awaiting the hearing and determination of his trial. I will, therefore, make a further deduction of two years for the delay. Therefore, the Accused shall serve a period of imprisonment of 13 years commencing from the 1 January 2019. He shall participate in the addiction recovery program offered at the prison at least twice as recommended by Dr. Medina before his release.

Delivered on **20 March 2023**.

Honourable Justice Mr. F M Cumberbatch
Justice of the High Courts of Belize
Central Jurisdiction
Belize C.A.