

CRIMINAL LAW - Sentence - Comments by Judge
wounding with intent to cause grievous
bodily harm - Sentence 20 years imprisonment at hard
labour - whether sentence manifestly excessive
JAMAICA
whether observation of judge that appellants were "barbarians"
must be treated as barbarians - should be caged - are
wild animals "overshadowed the mark for a judicial officer."

IN THE COURT OF APPEAL

Appellants dismissed - remarks of judge absolute - conduct barbarous

SUPREME COURT CRIMINAL APPEAL NOS. 9 & 11/88

and called for lenient punishment.

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STATUS

*James
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SENTENCE

Not referred to

BEFORE: THE HON: MR. JUSTICE CAREY, P. (Ag.)
THE HON: MR. JUSTICE WRIGHT, J.A.
THE HON. MISS JUSTICE MORGAN, J.A.

R. vs. PHILLIP MOORE & TAMAR BLAKE

Frank Phipps, Q.C., for appellant Tamar Blake
Kent Pantry & Miss Carol Malcolm for the Crown

OK

December 1, 1988

CAREY, P. (Ag.) :

In the St. Catherine Circuit Court, on the 12th of January, these appellants, Phillip Moore and Tamar Blake, were convicted on an indictment which charged them for the offence of wounding with intent to cause grievous bodily harm to one Kensil Hughes. A sentence of 20 years imprisonment at hard labour was imposed by the learned trial judge. The matter comes before this Court by leave of the single judge as respects sentence only.

Mr. Phipps who has appeared before us this morning for Blake has candidly conceded that in so far as conviction is concerned that would not be challenged and no arguments, therefore, were put forward. We are in entire agreement that the evidence against these appellants on this charge, was overwhelming, and disclose a case of great brutality, callousness and pre-

meditation.

Shortly stated, on the 21st of June, 1987, these appellants went to the home of their victim and lured him into a spot in the vicinity of the Port Henderson area of the parish of St. Catherine, and there they attempted to murder him. Another man who was never arrested, accompanied them. He was armed with a chopper with which he endeavoured to cut Mr. Hughes' neck. The appellant Phillip Moore covered his mouth and his eyes while the female accused held on to his legs. She also gave some encouragement, because she used words - "Uno do weh uno a do quick." The persons whom she had in her company did not do what they were doing quickly, because the victim reacted promptly, stoutly and courageously and fought off his attackers who made haste to escape and to this day, one of the culprits has not been apprehended. The defence was a denial. The jury rejected that, as we think correctly, the evidence was overwhelming.

Mr. Phipps has said that the sentence of 20 years imprisonment was manifestly excessive. He also called attention to certain observations of the learned trial judge which he thought over step the mark for a judicial officer. The learned trial judge made these observations to which Mr. Phipps referred us:

"..... It is unbelievable that in a civilized society in this day and age that three people could hold another one and use an instrument like this to cut his throat. I just can't believe that it happened. Now, you people are barbarians and you must be treated like barbarians; because how could you as human beings, if you are human beings, hold a man down and use an instrument like this to cut his throat. How could you? as humans, well I sort of hesitate to say human beings, but as persons in trouble I sympathize with you to a certain extent, but I don't know about the leniency. This type of barbarism has to be annihilated from the society totally. We cannot continue to suffer this type of behaviour. Whatever you and this man had, why you think you had the right to execute him? I could have understood if you had gone down there with the two men and gave him some fists, but you just think you have the right. You go to the extreme. You Miss Blake, are the mastermind behind it. You lured the man away from his home".

After the learned judge had imposed the sentence to which we have already adverted, he ended his observations with these words:

"You people should be caged man, put in cage. That's where we should keep wild animals. You are wild animals."

In our view, the facts which we have set out, demonstrate that the words of the trial judge were apposite. When he said that "you people are barbarians," their conduct was barbarous, and called for condign punishment. It did not call for leniency. We think he was right in doing so. It called for a long period of incarceration to deter other like minded people in a society where violence appears endemic.

The circumstances, in the experience of this court, were most grave. The intention here was not to cause grievous bodily harm; it was to murder. What can be said on behalf of this appellant, Tamar Blake? What was said is that she was 38 years old. She had a stable family relationship and she had no previous conviction. There was no suggestion here of any contrition. There was no motive suggested as to what would have prompted anyone to act in the way the appellant acted.

This court does not share the view that the learned trial judge was treating them like beasts. He was imposing nothing more and nothing less than their criminal conduct warranted in the circumstances. What we have thus far said applies equally to the other appellant. Accordingly so far as the applications for leave to appeal conviction are concerned, those are refused; so far as the appeals against sentence are concerned those appeals are dismissed. The Court orders that the sentences begin from the date of their conviction.