

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO: 61/93

**COR: THE HON MR JUSTICE DOWNER J. A.
THE HON MR JUSTICE PATTERSON J.A.
THE HON MR JUSTICE BINGHAM, J.A. (AG.)**

R. V. SANDRA EDWARDS

Lord Gifford, Q.C. for the Applicant

Mrs. Vinette Graham-Allen for the Crown

April 15 & May 6 1996

BINGHAM, J.A. (AG.)

On May 28, 1993 in the Saint Ann Circuit Court before Courtenay Orr J., the applicant and one Vincent Haynes were tried and convicted on an indictment for non-capital murder after a hearing lasting from 20th to 28th May, 1993. They were sentenced to imprisonment for life, and the Court specified that, they should serve a period of twenty years and twenty-five years respectively before becoming eligible for parole.

The applicant applied for leave to appeal against sentence. This application was refused by a single judge on the ground that no appeal lay against a sentence fixed by law.

Before us the following grounds of appeal were filed:

" The learned Trial Judge ought not to have imposed a maximum term, alternatively the term of 20 years was unduly harsh and excessive by reason of the following:

1. The dominating partner on the joint enterprise proved at the trial may have been the male accused, who was described as very aggressive and feared by residents, and served a previous term of imprisonment for assault occasioning bodily harm. (p. 279)

2. According to the prosecution evidence this Appellant maintained that the male accused was the principal actor in killing the Deceased (p. 240). Her role as it emerged in evidence was to assist in concealing the death and cleaning up the traces of the crime.

3. The evidence of the Appellant, as confirmed by her son Garfield who was a prosecution witness, was that she had been constantly beaten by the deceased (p. 244,269).

The question as to whether the applicant had a right of appeal to this Court against the sentence of life imprisonment does not arise for determination having been settled by several authorities inter alia being SCCA 8/93 **Ivan Kelly vs. Regina** (unreported) delivered on 5th December, 1995. There the Court in the judgment of Patterson, J.A. following the dictum of Carey, J.A. in **R. vs. Cleveland Downie** (unreported) SCCA 79/94 delivered on 25th September 1995 referred to section 3A(1) of the Offences against the Person Act as amended by the Offences against the Person (Amendment) Act 1992 which reads:

" 3A(1) Subject to the provisions of this Act, every person who is convicted of non-capital murder, shall be sentenced to imprisonment for life."

In construing the subsection the learned judge of appeal said:

" There can be no doubt that the sentence on conviction of non-capital murder is fixed by law, and it follows that a person so

sentenced has no right of appeal. We concluded that the applicant had no right of appeal against the sentence of imprisonment for life."

The application to this Court against the sentence passed, therefore, has to be considered only in so far as it relates to the period specified by the learned trial judge to be served by the applicant before becoming eligible for parole.

In so far as section 2 of the Judicature (Appellate Jurisdiction) Act provides that:

"judgment" or "sentence" includes any order of a court made on conviction with reference to the person convicted...
[Emphasis added]

the underlined words would extend to the period specified by the learned trial judge to be served by the applicant before being eligible for parole. It is on that basis, therefore, that this application is being considered by this Court.

The facts of this case may now be summarised: The deceased a construction worker residing at Thicketts District in Saint Ann retired to bed on the night of Tuesday, 5th August, 1992. He was last seen alive around 7.00 p.m. by his stepson Garfield Simmonds in the home watching television. Garfield went out returning home around 10.00 p.m. by which time he observed that the remainder of the members of the household had retired for the night.

During the course of that night the deceased was brutally slain and his body removed from his bedroom along a passage way to outside the house, then hauled across a nearby common by his assailant the male accused and dumped over a pasture eight chains away from the house.

This credible narrative of the events relating to the circumstances and the manner in which the deceased met his death can be ascertained from the testimony of Garfield Simmonds, the fifteen year old son of the applicant, at the trial of the applicant

and the male accused Vincent Haynes; someone with whom she had formed an intimate relationship some months prior to the deceased's death. He testified that during the night in question he was awakened from his slumber by sounds coming from inside his bedroom and noticed the applicant going outside by way of the back door. The electric light in his room which he had turned off before retiring to bed was now on.

Upon the applicant returning from outside Garfield spoke to her and was told to "go back to bed". The light in the room prevented him from sleeping. Later on he saw the back door open and the male accused entered the house. He then heard the applicant enquiring from him as to whether "everything was all right" and he replied "yes".

Shortly after this conversation by the applicant the witness was ordered to get up and he was given cleaning material and the task of wiping up blood from the passage way and the floor of the bedroom shared by the deceased. When he refused at first to do so he was threatened by the applicant that if he refused to carry out her orders "she would mek Vincent (the other accused) do you the same as him do your step-father".

On entering the bedroom Garfield observed blood on the floor, on the mattress and in the passage way. The amount of blood clearly indicated that the deceased had been killed in a most violent manner. Having attended to this task under the watchful eyes of the applicant he was then ordered to accompany the male accused over to the pasture to dispose of the bloody mattress.

Later that morning both his younger sister Cher and himself were threatened by the male accused that "if they told the police what happened that night he would return and blow them up."

Subsequently enquiries made by Gladstone Johnson, with whom the deceased had been working as well as by his sister from the applicant as to the whereabouts of the deceased were met with response that he had been seen seated on the steps of the house talking with a man earlier that night and not been seen since and also that he had gone out and had not returned. This latter account was persisted in over a period of several days until the presence of john crows hovering over the nearby pasture eventually led to the discovery of the remains of the deceased, his body partially eaten by the john crows. His body was identified by the clothing and the shoes he was wearing when last seen by Gladstone Johnson.

Given the conduct of the applicant and the male accused on the night in question it is clear that both were active participants in the slaying of the deceased. The applicant for her part being the person who no doubt instigated the killing having regard to where the act took place in the very bedroom shared by her with the deceased. She was possibly motivated by a desire for revenge for the illtreatment meted out to her in the past by the deceased and as she told her son Garfield Simmonds when she confessed to him that " Vincent (the male accused) had killed his step-father" and on enquiring " why this had been done?" the applicant had said that "she wanted peace and freedom in her life."

The male accused for his part by his role seemed to have acted out of a desire to have the applicant all for himself as well as to obtain some of the deceased's property as the learned judge said in his summation " and may be a cow or two.' This can be seen from the fact that within a few days of his death and even before his remains were discovered both the applicant and the other accused were taking steps to dispose of his property.

Given the above summary learned counsel for the applicant has submitted that in approaching the minimum period which she ought to serve before being eligible for parole, her situation ought to be equated with the manner in which female offenders were treated before the coming into force of the Offences against the Person (Amendment) Act, 1992, at which time such an offender if sentenced to death, that sentence would have been commuted to life imprisonment and because of her sex she would become eligible for parole after a period ranging from ten to twelve years.

On that basis therefore the recommendation of twenty years would not be a proper exercise of the learned judge's discretion.

He further submitted that her role ought to be viewed as more in the nature of an accessory after the fact whose participation in the incident was influenced more out of the manner in which she had been treated by the deceased and whose action was to be seen as brought about by what counsel referred to as "the battered wife's syndrome." This when considered overall ought to have led the Court to further mitigate the period to be served by the applicant before parole could be considered. Counsel relied in support on the judgment of this Court in SCCA 67 and 72/91 R. v Easton McEckron et al (unreported) delivered on February 26, 1993 where the Court (per dictum of Rowe P.) in setting out certain guidelines governing the length of the period to be served by a prisoner before parole said (page 1):

"In our judgment the Legislature intended that in cases of non-capital murder, the Parole Act should only control where there can be seen some mitigating factor, whether relating to the offence or to the offender; for example, an offender in relation to whom there is some indication that he was not fully responsible for his act mentally; or, again for example, a crime of passion in which provocation is rejected by

the jury, but, in which there is some substratum of inflamed passion.

Where, however, there is evidence of a deliberate murder in the house of the deceased at night, not surreptitiously, but practically in view of other persons, such an offence borders on a deliberate execution and should not fall within the ordinary provisions of the Parole Act."

When considered the above case clearly does not support counsel's contention. Learned Counsel for the Crown submitted that the learned trial judge's discretion ought not to be disturbed for the reason that he took into consideration all the factors alluded to by learned counsel for the applicant. He had been invited by counsel for the applicant below to adopt a more lenient approach in dealing with the applicant and the transcript when examined indicates that he did take such factors into consideration.

The learned judge's remarks are to be found at pages 285 to 287 of the transcript where he said inter alia:

"... you are both brutal and callous Murderers. How can a mother of her fifteen year old son command him to wipe up the blood of his step-father at three o'clock in the morning? I don't know. And when he is reluctant to threaten him with the same fate as his step-father. That is the type of character we are dealing with. And the poor gentleman is hardly colder than she is asking for his money. Amazing.

The thing is of course, the son admitted that you got beating from time to time and one cannot condone that, but all you had to do, Sandra Edwards was leave the home or take him to Court.

Mr. Henry has urged me to remember the rehabilitative aspect of sentencing. My studies and my experience do not in anyway suggest that there is any conflict or dichotomy between a long prison sentence

and rehabilitation ... we must impose the sort of sentence that reflects the principle that life is important and extremely precious."

These observations of the learned trial judge, while taking into consideration the treatment meted out to the applicant by the deceased, in passing sentence he sought to focus on the brutal and callous nature of the killing in imposing a recommendation based on retribution and deterrence instead of one based on leniency. Given the conduct of the applicant on the night in question and thereafter his approach cannot be faulted.

In this regard one needs to be reminded of what this court said in **R. v. Donald Cousley** (unreported) SCCA 77/91 dated 15th March, 1993:

"... that murder remains an abhorrent crime and anyone convicted of non-capital murder must expect to serve a period of retribution and deterrence which must necessarily be long."

This case was not the result of inflamed passion in which the emotions of the applicant held sway and was the dormant factor which influenced the manner in which the deceased met his fate. It was rather a brutal and callous killing carefully planned and hatched in the minds of the applicant and her lover the co-accused and equally savage and violent in its execution.

Given the facts of this case, therefore, one cannot for the reasons set out say that the period recommended by the learned trial judge to be served by the applicant before parole ought to be disturbed and accordingly the application for leave to appeal against sentence is treated as the hearing of the appeal and is dismissed.

The sentence is ordered to commence as from the date of the conviction, being 28th May, 1993.