

MUHAMMAD ZULKIFLI BIN ABDUL JALIL

AND

PUBLIC PROSECUTOR

**(Court of Appeal of Brunei Darussalam)
(Criminal Appeal No. 6 of 2019)**

Before: Burrell P, Seagroatt and Lunn JJ A.

18th November 2019

Headnote: Culpable homicide/manslaughter (s.304(1) Penal Code); plea accepted as alternative to murder; life sentence imposed; medical condition considered; case within broad band of worst type of culpable homicide warranting maximum sentence.

Mr. Ahmad Basuni bin Haji Abas (Messrs. Abrahams Davidson & Co) and Mr. Hj Mohamad Rozaiman bin Dato Hj Abd Rahman (Messrs. ZICO R.A.R) for Appellant
DPP Shamshuddin bin Haji Kamaluddin and DPP Siti Nurjauinah @ Karmila binti Haji Kula for Public Prosecutor

Cases cited in the judgment

R v Ambler [1976] Criminal Law R. p.266

R v Bright [2008] Criminal Appeal R. (s) 102 at page 580 per Judge (Pres. Q.B.D

Seagroatt, JA.:

On the 4th April 2019 this appellant pleaded guilty to an offence of homicide in the course of theft – manslaughter – contrary to section 304 (1) of the Penal Code, and was sentenced to life imprisonment by Chief Justice Steven Chong. He had originally been charged with murder in the course of robbery, having been arrested with a co-accused who had subsequently committed suicide whilst in police custody. He had denied this alleged offence and subsequently entered a plea of guilty to manslaughter which was accepted by the prosecution. He now appeals against that sentence of life imprisonment.

This was a particularly brutal and callous killing. He and his now deceased co-accused had devised a plan to extract a sum of money, perhaps euphemistically described as a “loan”, by creating a contact with a person who would respond to an advertisement created in an account with Asia Free Chat. That advertisement offered sexual services with a fictitious woman named as “Meeza”. A photograph of a woman – the alleged “Meeza”- was uploaded onto his mobile phone as part of the bait to attract a potential victim to the plot to obtain money.

On the 19th May 2015 this “lure” attracted the hapless victim, a 43 years old man, and between the individuals concerned, an arrangement was made whereby the victim would meet “Meeza” and have sexual relations with “her” for money at the house of the co-accused with whom the appellant was living.

The next day the victim arrived for the fraudulent assignation, the appellant and his accomplice having in the meantime prepared some sleeping pills, a syringe filled with weed poison and a metal rod and machete.

The pretence of a sexual encounter for money was maintained with excuses for the late appearance of “Meeza”, whilst the appellant prepared a glass of water in which he put crushed sleeping pills. The victim declined to drink it and appeared to become impatient whereupon the appellant alerted his co-accused. Soon after, as the victim was talking to the appellant, with his back to the co-accused who was coming downstairs armed with a metal rod, he was attacked by the co-accused with the rod until he lost consciousness. This appellant then struck the victim with a bottle, then the same metal rod, when he realized the victim was still breathing.

Then the co-accused injected him with the weed poison and hacked at his neck with the machete. It was the serious slashes with the machete which were the injuries causing loss of blood and his death.

The accused took the victim’s bank card, mobile phone and car key and putting his body in his own car, drove it to a place behind a café and abandoned it.

When they tried to use the stolen bank card they found that there was no money in the account. After about three days the body was discovered. In the course of police investigation CCTV footage identified the accused attempting to withdraw money from the victim’s bank account. Both were arrested shortly afterwards. They cooperated with the police and were kept in custody. The co-accused committed suicide whilst in police custody approximately one week after arrest.

This court has endeavoured to ascertain from both counsel for the appellant and from the Deputy Public Prosecutor what considerations led to the prosecution accepting the plea to the lesser count of culpable homicide. We sought therefore to obtain some assistance to enable us to know the basis of the plea particularly since from the outset the prosecution were proceeding with a trial on the count of murder.

Apparently the Attorney General made the decision to accept the plea to the alternative lesser charge. We are really none the wiser as to the real reason for this change and the Chief Justice was not given any explanation either, nor was he asked to approve the decision after the plea was taken.

It was suggested by the prosecution that because the co-accused had committed suicide his statement to the police to the effect, as we were told-the statement was not shown to us-that this appellant was equally culpable for the events which led up to the killing and for the killing itself could not be adduced at trial as the co-accused was dead, the part played by the appellant could come only from him. In his statement he had made allegations which might have afforded him the defence of duress

It may be said that the prosecution have adopted a pragmatic approach in accepting this appellant's plea to culpable homicide/manslaughter.

In his submission before us Mr. Ahmad Basuni sought to distinguish the circumstances of this killing from those of other cases where a term of imprisonment of 30 years had been imposed as an alternative to imprisonment for life.

It is not necessary in our view to review the details of those cases which turn upon their own facts. His junior Mr. Rozaiman argued the matter of the appellants medical condition and the consequent depressive state, to encourage this court to substitute a finite sentence. It goes without saying that a depressive state is likely to be the consequence of any substantial period of confinement, perhaps aggravated by a serious medical condition, but the latter state had been commented on by the treating consultant indicating positive progress and reaction to the treatment.

Although as the Chief Justice rightly pointed out that such cases can vary significantly, this case was a cold-blooded killing for money.

He took into account a number of factors, which he set out, these having been urged upon him by the appellant's counsel. He also identified the features which constituted this killing as a "merciless...cold blooded act" by a "dangerous man... prepared to kill for money."

The grounds set out in the Notice of Appeal for this Court in effect repeat those argued at first instance, none of which constitutes a realistic ground for seeking to reduce the sentence imposed. The Chief Justice took the view that this case fell "within the broadband of the worst type of cases of culpable homicide not amounting to murder which warrants the maximum sentence "[See R v Ambler [1976] Criminal Law R. p.266]. for the principle which was approved by the Court of Appeal in R v Bright [2008] Criminal Appeal R. (s) 102 at page 580 per Judge (Pres. Q.B.D).

We agree with this and the appeal is accordingly dismissed.

Burrell, P.

Seagroatt, J.A.

Lunn, J.A