

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

H.C.A. 2476 of 2003  
Cr. No. 30 of 1980

THE STATE

V

FAZAL MOHAMMED

IN THE MATTER OF A REVIEW OF SENTENCE

**BEFORE THE HONOURABLE MR. JUSTICE RAMPERSAD**

***APPEARANCES:***

Ms. J. Martin and Ms. A. Gill for the State  
Mr. G. Ramdeen and Mr. M. Seepersad for the Applicant

**THE HISTORY**

The applicant, Fazal Mohammed, was charged with the murder of his common law wife, Glenda Marshall between the 14<sup>th</sup> and 15<sup>th</sup> of January 1979. He was committed to stand trial in the San Fernando Assize before a judge and jury and on 19<sup>th</sup> February 1982 the applicant was convicted of murder and sentenced to death by hanging. On the 31<sup>st</sup> of July 1985 his appeal against conviction in the local Appellate Court was dismissed. Thereafter, with special leave in forma pauperis by the applicant from the judgment of the Court of Appeal in Trinidad and Tobago the Judicial Committee of the Privy Council on the 5<sup>th</sup> of February 1990 dismissed his appeal. He was placed on death row awaiting execution. Then on the 31<sup>st</sup> December 1993, His Excellency, the President of the Republic of Trinidad and Tobago commuted the death sentence to one of imprisonment for the rest of his natural life. In a constitutional motion before the High Court it was held

that the sentence of imprisonment for the rest of one's natural life was unlawful and on the 29<sup>th</sup> May 2008 it was ordered the sentence of the applicant be reviewed.

### **THE FACTS**

The facts of the matter are fully set out in the judgment of the Privy Council, in **Fazal Mohammed v The State [1990] 2 AC 320**, where Lord Griffiths delivered the opinion of the board.

The prosecution case against the applicant was that he murdered Glenda Marshall on the night of 14/15<sup>th</sup> January 1979 by cutting her throat with a razor. The evidence in support of that case may be summarised as follows. Mackie Baptiste deposed that, on the morning of 14<sup>th</sup> January, he sharpened a razor for the applicant which had a blade of 4 ½ inches with a black handle. George Fredericks, a neighbour who lived opposite to Glenda Marshall, heard knocking outside his house at about 1:30 am on 15<sup>th</sup> January and, on going to investigate, he saw Glenda Marshall lying in the road bleeding from her throat. She was able to do no more that point to her cut throat. He and his brother took her immediately to hospital.

Glenda Marshall died in the early hours of the morning and a post-mortem was performed at 1:30 pm 15<sup>th</sup> January by Dr. Vivian Dominique. The principal wound was a "sharp gaping wound about 4 inches, front of the neck at the level of the larynx cutting the larynx into two, cutting the carotid cartilage, cutting the carotid vessels on both sides of the neck as far back as the level of the cervical vertebra."

In addition, there were other cuts to the head, face and chest and the hands, which the doctor regarded as defensive wounds. He said the principal wound could not have been caused accidentally and would have been caused by a thin sharp-cutting instrument.

George Fredericks reported the incident to the police at about 2:00 am and they went to the house of the applicant's mother, but he was not there. They also visited the house of Glenda Marshall but he was not there either. Shortly before 9:00 am the applicant, together with his mother and stepfather came to the police station and according to the police he dictated the following voluntary statement:

"Well sir, I sorry what happen, I really went by my wife Glenda about 9 o'clock last night, as we separated for about three weeks now, and I am living by my mother at

Alamby Street in St Clement Village, I left my mother home with a razor which I buy in Port of Spain on Friday 12 January 1979 from a man on the pavement on George Street for 18 dollars and I keep it at my mother home over the week-end and when I leave by my mother about 8 o'clock last night, I took out the razor from the case and left the case at home. I put the razor in my pants pocket and I walked to the house of my wife with the razor in my pocket. It is a black handle razor. When I reached by my wife house, I knock on the window and called my wife. I asked she for my passport and insurance policy and as she opened the window and I jumped and sat on the window asking she for the passport and insurance policy, she began to look for it and she tell me to come inside. I went in and sit on the bed and I was talking to she to make back up. She say she don't know. I then left and gone in the next room to get some water to drink and when I went back into the room, I see she jumping through the window. I jump behind she through the same window and she started to run to the road. I run behind she and I hold she on the road. We started struggling until we reached under the mango tree. I take out the razor from my pocket and she held my hand with the razor. I had my hand raised and this was my right hand while trying to get away my hand, she get cut on the neck, but during the time of the struggle she was bawling. I leave she there when she get cut, and I went through the bush in the back with the razor and in the bush the razor fell out from my hand. I then walked through a trace in the back by the cane and I hide in the cane until daylight, then I gone home by my mother and she and my stepfather tell me the police was looking for me and me, my mother and my stepfather left and went to the San Fernando Detective Office, where I gave this statement to the police in the presence of my mother and stepfather."

Cyril Smith, a justice of the peace, gave evidence that he had seen the applicant at 12:40 pm on the 15<sup>th</sup> January 1979 at the police station. He had read the police statement to the applicant and confirmed with him that it was voluntary and made without threats, violence or promises, and the applicant had signed a certificate to this effect.

There was further police evidence that a razor case had been found in the mother's house which the applicant agreed was his and that the applicant had pointed out a mango tree outside Glenda Marshall's house where there were stains resembling blood and said, "It's here it happened, she was lying down here."

Despite a search in places indicated by the applicant the razor was not found and the applicant's offer to find it if he was allowed to go alone was refused.

The police gave evidence that the applicant was wearing a blood stained shirt on arrival at the police station and forensic evidence confirmed the presence of blood on the shirt.

There was one further prosecution witness, Sharon Marshall, the daughter of the deceased, who was 11 at the date of her mother's death and 13, almost 14, when she gave evidence at the trial. Her evidence was that the applicant had come round to her mother's house on the evening of 14<sup>th</sup> January asking for his passport. Her mother did not want to let him in but he had climbed in through the window. Her mother and the applicant then sat on the bed as she said "talking easy" and she, Sharon, then went to bed and to sleep. She awoke later to see the applicant holding her mother with a shining blade with a black handle by her neck. He pushed her mother on to the bed and went through into the kitchen. Her mother then climbed out through the window, the applicant heard her and returned from the kitchen and followed her through the window carrying the shining blade in his hand. She heard her mother shout, "O God." She looked out of the window but saw nothing. She never saw her mother alive again.

The applicant gave evidence in which he denied the whole of the prosecution case. He denied that he gave Baptiste a razor to sharpen, he denied that he made a statement to the police and said that he was shown a document and told to sign it. He denied that he told the magistrate he had given a voluntary statement. He said that he had visited his wife's house on the evening of 14<sup>th</sup> January, but had never threatened her with a razor. His wife had climbed out of the window and some twenty minutes later he had climbed out of the window to look for her. However, he had been unable to find her and, after searching for about fifteen minutes, he went to a friend at about 10:15 pm where he spent the night. He heard from his mother next morning that his wife had been killed, and so he went to the police station to make inquiries.

The applicant's mother gave evidence in support of her son's version of what occurred in the police station when the statement was taken.

## **THE LAW**

First, general consideration ought to be given to the five principal objects of sentencing as enunciated by Chief Justice Wooding in the case of **Benjamin v The Queen (1964) 7 WIR 459**; and they are the retributive or denunciatory, the deterrent vis-à-vis potential offenders, the deterrent vis-à-vis the particular offender, the preventive which aims at preventing the particular offender from again offending by incarcerating him for a long period and the rehabilitative object of sentencing, which contemplates the rehabilitation of the particular offender so that he might resume his place as a law-abiding member of society.

### **The Practice Statement (Life Sentences)**

Further and more specifically, in respect of adult offenders convicted of murder, the principles set out in **Practice Statement dated 31<sup>st</sup> May 2002 and reported at [2002] 2 Cr. App. R. 18** are instructive. This Statement introduces the concept of a minimum term of imprisonment and goes on to state at paragraph 3: “an offender is most unlikely to be released on the expiry of the minimum term and for the purpose of calculating the earliest date of normal release on licence the minimum term is approximately the equivalent of a determinate sentence of twice its length. So a minimum term of 14 years is equivalent to a determinate sentence of approximately 28 years.”

Where an adult offender is convicted of murder, the Statement sets a higher and a normal starting point of respectively 16 years (comparable to 32 years) and 12 years (comparable to 24 years). The Statement identifies at paragraph 10, the types of cases falling within the normal starting point of 12 years which involve “the killing of an adult victim, arising from a quarrel or loss of temper between two people known to each other.” This normal starting point can be reduced to take account of various mitigating circumstances identified in paragraph 11. Such circumstances include cases that come close to the borderline between murder and manslaughter, where the offender suffered from a mental disorder which lowered the degree of his criminal responsibility for the killing or the case involved an overreaction in self-defence.

Paragraph 12 of the Statement provides for the higher starting point of 15-16 years (comparable to 30-34 years). These apply to cases where the offender's culpability was exceptionally high, or the victim was in a particularly vulnerable position. Such cases would be characterized by a feature which makes the crime especially serious such as;

- (a) that the killing was "professional" or a contract killing;
- (b) the killing was politically motivated;
- (c) the killing was done for gain in the course of a burglary or robbery;
- (d) the killing was intended to defeat the ends of justice (as in the killing of a witness or a potential witness);
- (e) the victim was providing a public service;
- (f) the victim was a child or was otherwise vulnerable;
- (g) the killing was racially aggravated;
- (h) the victim was deliberately targeted because of his or her religion or sexual orientation;
- (i) there was evidence of sadism, gratuitous violence and sexual maltreatment, humiliation or degradation of the victim before the killing;
- (j) extensive and/or multiple injuries were inflicted on the victim before death and;
- (k) the offender committed multiple murders.

The starting point may be varied upwards or downwards to take account of aggravating or mitigating factors relating either to the offence or to the offender in the case.

Aggravating factors relating to the offence can include:

- (a) the fact that the killing was planned;
- (b) the use of a firearm;
- (c) arming with a weapon in advance,
- (d) concealment of the body, destruction of the crime scene and/or dismemberment of the body;

- (e) particularly in domestic violence cases the fact that the murder was a culmination of cruel and violent behaviour by the offender over a period of time.

Mitigating factors relating to the offence will include:

- (a) an intention to cause grievous bodily harm rather than to kill;
- (b) spontaneity and lack of pre-meditation.

Mitigating factors relating to the offender may include:

- (a) the offender's age;
- (b) clear evidence of remorse or contrition;
- (c) a timely plea of guilty.

It should also be noted that the Statement provides that among the categories of case referred to in paragraph 12; some cases may be especially grave. These would include those cases where several factors attracting the highest starting point are present. In appropriate cases this may result in a minimum term of 30 years (with a determinate sentence of 60 years) imprisonment. In cases of exceptional gravity, the court, instead of imposing a minimum term can state that there is no minimum period which can be set in the particular case.

In the instant matter the court is of the view that the higher starting point of 15 years (with a determinate sentence of 30 years) is applicable. The applicant's culpability was exceptionally high, he had initially threatened the victim, and when she attempted to escape he chased after her, caught her, and then the applicant cut the victim's face, head, chest and hands with the razor causing the victim to sustain pain and injuries to those areas of her body, before succumbing to the terrible injury suffered to her throat which had been cut down to the level of the her back bone with the sharpened razor causing her death. The victim was also in a particularly vulnerable position, insofar as she was a

defenceless woman in her own home who had attempted to run away from the applicant in order to save her own life.

Now, according to paragraph 13 of the Statement, “whichever starting point is selected in a particular case, it may be appropriate for the trial judge to vary the starting point upwards or downwards, to take account of aggravating or mitigating factors, which relate either to the offence or the offender”. The applicant had purchased and armed himself with a weapon before hand, and which he had also taken the trouble to have sharpened in advance, this suggests an element of pre-meditation and in these circumstances the court is of the view that this is an aggravating factor and the sentence should be adjusted upwards.

Nevertheless, notwithstanding the Probation Officer’s Report filed on the 22<sup>nd</sup> April 2009, in which it is stated that the applicant did not express remorse for the offence committed; in mitigation some credit may be given to the applicant particularly the positive changes that he has made in recent years as evidenced in the Chaplain’s Report, dated the 12<sup>th</sup> March 2009, where significant improvements have been noted in the applicant’s attitude, personal appearance, discipline and his religious obligations over the past three years. Furthermore, the court is also mindful of the period of time spent on death row which amounts to almost 12 calendar years.

### **CONCLUSION AND SENTENCE**

The court has a duty to protect all persons in society, especially those women who may be particularly vulnerable to domestic violence. The sentence imposed on the applicant must send a clear signal that the courts shall treat heinous crimes committed against vulnerable women with such severity as the circumstances warrant.

Having regard to all the circumstances of this case and applying the principles and relevant factors as stated above, the court finds the appropriate determinate sentence to be imposed is 32 years to commence from the date of conviction.

The Court is very grateful for the assistance given by counsel in this matter.

Dated this 11<sup>th</sup> day of November 2009

Devan Rampersad  
Judge