

# **JAMAICA**

## **IN THE COURT OF APPEAL**

**SUPREME COURT CRIMINAL APPEAL NO: 166/05**

**BEFORE: THE HON. MR. JUSTICE PANTON, P  
THE HON. MRS. JUSTICE HARRIS, J.A.  
THE HON. MR. JUSTICE DUKHARAN, J.A.**

**DONALD THOMPSON V REGINA**

**Lord Anthony Gifford, Q.C. for the applicant**

**Ms. Natalie Brooks, Crown Counsel for the Crown**

**19<sup>th</sup> & 20<sup>th</sup> January 2009**

**PANTON, P.**

1. This is an application for leave to appeal against sentence. On May 7, 2008, a single judge of this Court refused leave to appeal, and ordered that the sentence should commence as of March 17, 2004. The applicant has renewed his application before us. We heard submissions yesterday from Lord Gifford, Q.C., and reserved our decision to today.

2. On January 29, 2004, the applicant was convicted by a jury of the offence of murder and was sentenced on February 10, 2004, by Jones, J. to life imprisonment at hard labour with a specification that he should serve a period of fifteen years before becoming eligible for parole.

3. The circumstances surrounding the murder of the deceased Peter Roy Thomas are shocking and disgusting. The case presented by the prosecution indicated that he was set upon by a mob at about 1:00 p.m. on August 20, 2001, and beaten, stoned and chopped to death. He had sought refuge in his neighbour's house, but was entreated to come outside by some of the persons who had pursued him; he was told that he would not have been harmed. Alas, that was not to be as no sooner than he had abandoned the relative safety of the house, he was pounced on and chopped to death.

4. The police officer who visited the scene and the Spanish Town Hospital to which the deceased was taken, described the sight of the victim as "most gruesome", in that the latter's left forearm was almost severed, and there were wounds to the back, and the back of the head. The killing took place in full view of the twelve year-old son of the deceased who was the only eyewitness who made himself available to testify on behalf of the prosecution.

5. Warrants were issued for the arrest of two other men, one of whom was actually arrested and charged. Unfortunately, a magistrate saw it fit to grant that other bail. Not unusually, in situations such as this, the bail conditions were not honoured as he absconded. It seems, in any event, that these two men, for whom warrants were issued, had died by the time of the trial of the applicant.

6. At his trial, the applicant gave evidence that he had heard that the deceased had robbed a taxi-man. Consequently, on learning that the deceased

was being pursued by a mob, he took up two stones with a view to joining in an assault on the deceased, "as he is a thief and a robber". However, when he arrived at the premises, he realized that the deceased had already fallen victim to the mob, so there was no need for him to join in the action with his stones. The applicant claimed to have been in a group of about thirty persons at the gate looking in on the deceased who had a further twenty-two or twenty-three persons standing over him while he lay on the ground in a state near to lifelessness.

7. In his submissions, Lord Gifford, Q.C., has urged on us consideration of the good antecedents of the applicant, saying that the court may take the view that on occasions such as the scene that was played out on August 20, 2001, men who are normally law-abiding succumb to mass hysteria and commit crimes which they would never contemplate on their own. Lord Gifford has pointed to the fact that the applicant is the only individual who has been punished for the offence which was committed by several persons. He further submitted that this case was "pre-eminently a case where the discretion should have been exercised in favour of no order for a minimum period, alternatively for a period substantially less than fifteen years".

8. We have reviewed the record carefully, and have given serious consideration to the submissions and plea of Lord Gifford, Q.C. However, we are not in a position to agree that the sentence imposed by Jones, J. was

manifestly excessive. There is no basis for a lenient sentence in a situation such as this.

9. The Constitution of Jamaica provides for the trial of a criminal offence by an independent and impartial court. There can be no doubt that Jamaica has such a court. It is therefore an undermining of the constitution for citizens to take on themselves the role of accuser, investigator, adjudicator and executioner combined. In the instant case, there was no one who came forward to even confirm that the deceased had committed any theft, not that it would have been an excuse for the behaviour of the mob. It is noted that only one person was tried, and that had the son of the deceased not shown courage there would have been no witness to testify at the trial. This state of affairs is unacceptable.

10. The courts cannot countenance the type of behaviour demonstrated by the mob in this case. It must be appreciated by all that the successful prosecution of such criminal and murderous behaviour will result in the imposition of condign sentences. The signing of petitions by hundreds of persons will not prevent the full force of the law being brought to bear on the transgressors. The aim is to ensure that we maintain a civilized society in which the rule of law prevails.

11. In all the circumstances, we are of the view, that the sentence is appropriate and ought not to be disturbed. The application for leave to appeal is refused. The sentence is to commence from May 10, 2004.