

Knowles v R
(2013) SLR 569

Domah, Twomey, Msoffe JJA

6 December 2013

SCA 11/2012

Counsel J Camille for the appellant
 D Esparon for the respondent

The judgment of the Court was delivered by

DOMAH JA

[1] The appellant stood charged under ss 192 and 193 of the Penal Code for the manslaughter of 64 year old Jemmy Simeon on 5 September 2009 at Lovenut Discothèque. He had pleaded not guilty and was assisted by counsel. The Court, after a long drawn-out trial which comprised depositions from 11 prosecution witnesses and 14 defence witnesses, found him guilty as charged and sentenced him to a term of imprisonment of 11 years. The appellant has appealed and put up the following grounds to challenge the decision of the trial Judge:

- 1) The trial Judge erred in law in not addressing himself, sufficiently on the inconsistencies between the evidence of the prosecution witnesses, namely PW5, Byron Reid and PW6, Aubrey Monthy, which inconsistencies were raised by the defense and which goes to the root of the case

- 2) The trial Judge erred in law in having concluded that the defense counsel have cast a lot of doubt on the evidence of PW6, Aubrey Monthy and yet concluded in his findings that the same Aubrey Monthy was a credible witness before the Court.
- 3) The trial Judge erred in law and on the facts to hold that the evidence of both PW5 and PW6 were free of any major inconsistencies so as to reject their evidence and moreover to hold that both prosecution witnesses were truthful and credible in all circumstances of the case.
- 4) The trial Judge erred in law and on the facts to hold that the inconsistencies raised by the defense in the case were minor inconsistencies and inconsequential as not to the root of the case.
- 5) The trial Judge erred in law and on the facts to hold that the defense witnesses were not credible and their evidence not cogent and reliable.
- 6) The trial Judge erred in law and on the facts in holding that the appellant had in his testimony not disputed most of the facts relating to his presence in the discotheque at the material time.
- 7) The trial Judge erred on the facts to hold that DW2, Kenny Knowles and DW3, Chris Knowles both testified that as they saw the appellant receive a kick in the face and a man had punched appellant and had fallen on the ground, both DW2 and DW3

had then got involved in the fight and assisted appellant to escape.

- 8) The trial Judge erred in law and on the facts to hold that there was ample evidence to show that the appellant wanted to go onto the stage despite being warned off and stopped by security personnel and that the same act of the appellant was a pointer to his guilt.
- 9) The trial Judge erred in law and on the facts to disregard the evidence of both DW4 Conray Payet and DW5 Linda Denise which clearly cast a doubt on the credibility of the prosecution witness Aubrey Monthy and to have concluded that, in not adhering to the demand made by Monthy, same act have left the evidence of Monthy intact before the Court.
- 10) The trial Judge erred in law in rejecting the evidence of DW6, Freddy Savy and or in not attaching sufficient weight to his evidence, or at all.
- 11) The Judge erred on the facts in holding that it was surprising for the appellant and witness DW2, DW3 and DW6, not to have seen the body of the late Jemmy Simeon on the floor inside the discotheque.
- 12) The trial Judge erred in law in rejecting the testimony of DW7, Nesta Marie as hearsay.
- 13) The trial Judge erred in law in not attaching any or sufficient weight to the evidence of DW7 Franscina

Rose and the exhibit of the police diary records admitted as part of the defence case.

- 14) The trial Judge erred in law in not addressing himself on the police diary records admitted as defense evidence in the case and which cast a major doubt on the prosecution's case.
- 15) The trial Judge erred in law and on the facts in not attaching any or any sufficient weight to the evidence of DW10, Clive Roucou, which further cast a major doubt on the case of the prosecution.
- 16) The trial Judge erred in law in not addressing himself on the evidence of DW10, Clive Roucou sufficiently and dispels any doubt that same testimony throws on the case.
- 17) The appellant will contend that he has been denied a fair trial as it transpired and came to this knowledge after the conclusion of the case before His Lordship Judge Ducan Gaswaga, by way of new evidence and judicial notice, that Judge Gaswaga was a friend and has been seen in the company of prosecution witness PW 6, Aubrey Monthy, on numerous occasions and that His Lordship Gaswaga is residing in a house being rented out by the Seychelles Judiciary on his behalf on the same property which hold the family house of Aubrey Monthy, the father of Aubrey Monthy, at la Misère, Mahe, Seychelles.

[2] Even if variously expressed, 16 of the above grounds challenge the Judge's findings of fact. The seventeenth ground raises an issue of fair trial on the ground of an alleged post-trial discovery of fact tending to show bias of the trial Judge. The appellant argues that it came to his knowledge that the Judge who heard this case was a friend, and had been seen in the company, of prosecution witness Aubrey Monthy so that his right to a trial before an independent and impartial court was compromised.

[3] Counsel for the appellant subsumed arguments on grounds 1 to 4 under the heading inconsistencies in the evidence of the prosecution witness; on grounds 5 to 16 under the heading material evidence overlooked by the trial Judge of defence witnesses; and on ground 17 under the heading lack of fair hearing.

[4] We are happy to deal with this appeal under these headings.

Grounds 1 to 4

[5] Counsel concedes that the appellate court, relying as it does on a transcript, would be ill-placed to come to a conclusion different from that of the trial court which has the advantage of seeing and assessing *de visu* the witnesses in real life as opposed to reading what has been recorded in black and white of the actual proceedings. However, he also argues that the appellate court is in as good a position as the trial court when, on a specific issue, it is a question of drawing an inference from specific facts: see *Benmax v Austin Motors* [1955] 1 All ER 326 and *Quatre v R*, SCA 2/2006, [2006] SCAA 13.

[6] Counsel has raised three points under the rubric inconsistencies: the fact that PW5 Brian Reed and PW6 Aubrey Monthy differed on their evidence that the appellant had pulled the

leg of the deceased Jemmy Simeon which led to the fall of the latter on his back leading to a fracture of the base of his skull.

[7] It is the case of counsel that the prosecution evidence resting as it does principally on the evidence of those two witnesses contains basic, material and significant inconsistencies for it to be accepted as reliable by a court of law for the purposes of proving the guilt of the appellant.

[8] The alleged inconsistency lies in the different positions they showed as to where the deceased fell. It is the argument of counsel that one showed a position closer to the main door and the other closer to the steps going onto the stage yet both of them were adamant of the places where they maintained they saw the appellant pull the leg of the victim.

[9] We have had a look at the relevant photographs in the album and read the transcript. It does not seem to us that the positions shown by the two witnesses are so far apart that they would be regarded as material contradictions. Times and spots shown by witnesses invariably differ but the differences do not necessarily amount to inconsistencies. They need to be subjected to judicial scrutiny to test, in the light of other factors, their acceptability in the context in which they occur. It is axiomatic that what a witness will see from one place and from one angle will differ from what another will see from another place and from another angle. The Judge in this case effected a locus visit to make this assessment in the light of the depositions of the witnesses. We are unable to see in what way the spots shown are so distant, even on the photographs produced, that they may be adjudged material contradictions.

[10] The second point raised by counsel for the appellant relates to the actual person who assaulted the deceased. It has been his submission that Brian Reed confirmed in cross-examination that in his statement to the police he had stated that it was the appellant only who had dealt blows to the victim. On oath, his deposition was that it was the appellant and his brother who had done so. The same version is given by Aubrey Monthy.

[11] We have gone through the deposition of these two witnesses. To us, the apparent contradiction is no contradiction at all. Too much is being made of too little. The witnesses, when questioned, duly explained the incident. The incident comprised the pulling of the leg followed by the assault by the others. Indeed, at first, the enquiry started as an assault before the scientific evidence came to show which part of the assault happened to be the fatal blow. The evidence has to be understood in the context of the integral whole.

[12] Both prosecution witnesses were categorical that, from where the appellant was at a lower level, he pulled the left leg of the deceased which caused the latter's fall. The nature of the injury received by the victim is consistent with a limp fall backwards. The suggestion of the defence that the front head injury of the victim was caused by a bottle and that the victim may have fallen by that blow is not consistent with the type of injury that caused the fall. When we take into account the layout of the locus, the level of the dance floor to the VIP platform, the stairs, the admission by the appellant of a confrontation and an altercation between the protagonists and a couple of members of the private party, there was ample evidence to support the fact that the manner in which the deceased fell – by the appellant pulling the leg – could not have stemmed from imagination but from actual occurrence. We would add to these considerations the

fact that Brian Reed's evidence reads well in the transcript. That cannot be said of the defence witnesses. The same thing can be said of Aubrey Monthy's evidence. Both depositions are straightforward and plausible, aside from the fact that their account of the incident is coherent.

[13] It is also the case of the appellant that the two witnesses differ on the fact that one says he saw the victim fall on his leg and the other fall on his head. He submitted that this defies the law of physics. Having considered the evidence, we take the view that since there was only one leg of the victim which was pulled, it makes sense that the victim fell on the other leg first before falling on his head. What one witness saw was the first movement of the leg fall. What the other saw was the next movement of the head fall. Who catches which part of a scene depends upon what catches the eye of the observer at what point in time.

[14] The third inconsistency pointed out to us is that Brian Reed saw the appellant pushing and toppling the table of drinks first – a scene which was missed out completely by Aubrey Monthy. We gave this matter the consideration it requires. But we are unable to accept this argument of the defence. It should not be overlooked that we are in the atmosphere of a packed discothèque at around 2 in the morning, with not only lots of noise but also lots of drinks. No witness will catch every sequence of every event unless he was directly involved in it. It makes sense that Daniel Simeon did not see much, Brian Reed saw everything because he was directly involved with the appellant and Aubrey Monthy saw only part of it. If all of them would have seen everything in such an environment, their credibility would then have been subject to doubt.

[15] All in all, we have given due consideration to the submission of counsel on the matter of inconsistencies. We have not been persuaded by the nature of the arguments advanced that the Judge erred in his appreciation of the evidence. It is incorrect to conclude therefore that there have been inconsistencies in the prosecution case which go to the root of its case.

[16] The oral evidence of the prosecution finds support in the scientific evidence that the death of Jemmy Simeon was due to the fracture which he sustained at the base of his skull and that this would not have occurred by the facial injury. The fatal act was the act of the appellant pulling the left leg of Jemmy Simeon in circumstances he knew could cause him to fall backward in such a way as to cause him serious bodily harm inasmuch as a limp backward fall of an aged man who has also partaken of drinks necessarily is mischievous as it is grievous.

[17] We find no merit on grounds 1 to 4. We dismiss them.

Grounds 5 to 16

[18] It is the contention of the appellant, under grounds 5 to 16, that the Judge erred when he regarded that the evidence adduced by the defence was not cogent and reliable. The evidence of the defence comprised the content of the police diary on the day of the incident and the depositions of defence witnesses. Alongside the appellant, the defence had ushered in evidence from DW2 Kenny Knowles, DW3 Chris Knowles, DW4 Conray Payet, DW5 Linda Denise, DW6 Freddy Savy, DW7 Nesta Marie, DW8 Francina Rose, PC Donald Victor, DW10 Dr Daniel Bernard Lai Lam, DW 10 Clive Roucou and DW 11 Winsley Leon.

[19] We have gone through their depositions. The defence of the appellant could be summed up as follows: that appellant was not the sinner but he was sinned against; that he was himself kicked in the face by someone unknown; that he did not pull the leg of Jemmy Simeon which caused his fatal fall; that Jemmy Simeon was injured by a bottle flung at him by someone; that the allegation that he pulled the leg of Jemmy Simeon came only later in the day in the investigation; that the prosecution witnesses tried to contact the appellant to strike a deal with him etc.

[20] The appellant gave his version of the events of the day. After work, he proceeded to Barrel Discothèque only to find it empty. He was with his brother Chris. They then decided to go to Lovenut which they reached between 11.00 pm and 11.30 pm. They were not allowed in as it was packed and there was a private party going on. They then “bribed” their way in by giving the Security Guard R 100 who admitted them discreetly and one by one. He went onto the dance floor. He danced with a girl who was drunk. Then he went to the toilet. Here a guy complained to him that he had spilled water on him. He apologized. When he went back, he saw his other companions: Chris and Kenny and two others. That guy who had complained in the toilet against him pushed him from the back at a time when he was next to the stairs.

[21] He had to go to the toilet again. This time he went with Chris and Kenny. On the way out, they saw the same guy with a girl blocking his way. He then went to the private section, took off his shirt and challenged him. One of two black men held his hand and he freed himself. Then he felt a kick on the right side of his face. The two started fighting with him. They barged on him and he fought back. They threw punches and he threw punches too. At one stage he

fell down. His brother Kenny took over against the man. There were bottles being smashed everywhere. His brother then pulled him away and on his way out he threw up. He later came to know that the person who had hit him was Brian Reed, the same Reed who had testified for the prosecution. He stated that he had fallen on the bottles. He found later that the one who had invited him to fight was Daniel Simeon, the same who had complained of water spilling in the toilet and who had testified for the prosecution. The time was around 2.00 am to 2.30 am. He denied he was drunk and sick. He says he had consumed only two beers and no alcohol. The police had arrived by that time and he went to the police station. The police simply took his name and address and allowed him home. After 10 days, the police came looking for him at his place of work and he was charged for the present offence.

[22] His story simply does not hold. He admitted he had crashed the gate by bribing the security officers; that he had an altercation with three of the prosecution witnesses: Daniel Simeon, Brian Reed and Aubrey Monthy who comprised the private party on the VIP section; that he had kept to the stage at the lower level; that the incidents had turned him mad; that he was prepared, when challenged, to give as good as he got etc. It does not stand to reason that for a mere splash of some water, people who had come to a private party would so pick on him, challenge him to fight and, in the struggle that would ensue, he would end up on the floor littered with broken bottles. All he can show for it, some 10 days later, is an internal injury at his mouth and a minor cut to one of his fingers. The witnesses whom the prosecution had ushered in were witnesses who had direct dealing with the appellant. They could show in course of cross-examination the authentic details they could give of the conduct and behaviour of the appellant. On the other hand, the appellant and

his witnesses are selective of detail, giving the impression they are deposing from a written script.

[23] The very picture he gave of himself is contradictory. The image of a well-behaved visitor to the discothèque which he gave in examination-in-chief became the opposite in cross-examination when he stated he turned mad in the course of the challenge that the two main prosecution witnesses had invited him to. His behaviour is incompatible with a person who had partaken of only a couple of beers. His own evidence of his visits to the toilet, his taking off his shirt to challenge people to fight, his throwing up and the other displays of his Dutch courage show that drinks had overtaken his senses.

[24] The other serious weakness in the defence evidence is that they were the result of leading questions in examination-in-chief. These were on disputed issues: for example, with regard to the appellant: the position where he was at the material time, the incident of the toppling of the table, the dispute with the old man etc; who provoked whom to fight. The appellant made much of the fact that he was hit in the face by a leg blow. To us, it is inconceivable that in such a crowded place where people had barely the space to freely move around, someone would have the luxury of some space to administer a leg blow to his face; and, if anyone was able to do that at all, he would pass unnoticed by everyone else, including the appellant's own witnesses. Not one of the witnesses who were present could identify who that artful assailant was, where he came from and where he disappeared to. In short, the appellant's version, when looked at critically, is characterized, even on transcript, by phantasm.

[25] Counsel also submitted that the Judge did not give due regard to the defence version. In our assessment, that is incorrect. The record

shows that he took a serious interest in their evidence down to asking relevant questions on their depositions when the pertinent doubts on their depositions arose. This provoked so many other questions from both counsel.

[26] The Judge further in his judgment dedicated, inter alia, a paragraph or nearly so for every single defence witness: the defendant in paragraphs 19 and 20; Kenny Knowles and Chris Knowles in paragraph 22; Conray Payet in paragraphs 23 and 25; Linda Denise in paragraphs 24 and 25; Freddy Savy in paragraph 27 and 28; Nesta Marie in paragraph 27; Francina Rose in paragraph 29; PC Donald Victor in paragraph 29; Dr Daniel Bernard Lai Lam in paragraph 31; Clive Roucou in paragraph 31 and 32; and Winsley Leon in paragraph 29.

[27] We read the transcript. He duly weighed each and every aspect of their evidence and related it to the material facts insofar as it was relevant, making a comment or two on it before he accepted or rejected it. The comments he made are borne out by the evidence. When looked at as a whole, the pieces which the defence tried to put together to make up their story simply do not fit.

[28] The appellant relies a lot on the evidence of Freddy Savy to argue that it casts a lot of doubt on the version of the prosecution. That is hardly the case. If Freddy Savy's story is to be believed, he came to the discothèque with his girlfriend simply to stand by the wayside. All he did through the night is to lean against the wall, watch the crowd and watch the time pass by. He did not dance. He did not drink. He just smoked and observed. And after he had completed this self-imposed task, he left with his girlfriend. That is how he saw one leg hit the appellant. For all his watching, he could not tell who flung the leg kick. It is clear that the kick on the face of

the appellant is a ghost story and deserves just the probative weight of a ghost story. The appellant's injury inside his mouth could be explained otherwise than by a leg kick. The appellant had fought with prosecution witnesses, on his own admission and been assisted to escape by his companions.

[29] Another unsatisfactory feature in the depositions of the defence witnesses is the nature of the evidence adduced. The evidence tends to show that it is the appellant who had been trying to interfere with witnesses rather than the other way around. There is evidence that the appellant had looked for Daniel Simeon and Nesta Marie. Nesta Marie, the hospital porter, had been visited by the appellant. There were so many unsatisfactory features in the evidence of Freddy Savy that it required questions from the Court followed by questions by his own lawyer and questions by the prosecution counsel as to the time and the circumstances of his meeting with the appellant.

[30] As for Nesta's evidence, it was clearly unreliable as to its truth. It could not have been admitted. *As res gestae*, it took place long after the events between persons who were not involved in the incident at all and the source of the comment was from persons unknown. As hearsay, it was a gossip of the classical type. That Jemmy Simeon was hit in the head, as a result of which he received a laceration was never a disputed fact throughout. The disputed fact was whether the victim could have died with such a blow. Counsel for the appellant should have known better than raising such an issue on such tenuous evidence.

[31] It is true that the original talk of the town was that the deceased had been hit by a bottle. But that was an assumption reasonable to make in the circumstances before the actual truth was going to emerge. Every enquiry starts with an assumption which is

affirmed or infirmed as the enquiry progresses and materials are gathered. What emerged a couple of days later is that Jemmy Simeon had sustained an internal skull injury when everyone, including the doctors, had been assuming that he had only the visible laceration on the forehead. Even defence evidence showed that the deceased was confused and not able to respond. The signs of the internal injuries were not readily apparent, concealed behind the fact that he had visible physical injury at the front part of the head, he had partaken of drinks and was bleeding. They took him home and put him to bed and he slipped into the inevitable coma. The cause of his death was discovered only later.

[32] The laceration at the forehead could not have caused a fracture at the base of the skull and a brain hemorrhage. The medical evidence was that the injury was the result of a limp fall backwards, consistent with the victim's one leg having been swept off the floor by someone and his inability in his state of inebriety to balance himself on his other leg. Dr Zladkivich's evidence pointed to that fact. It should be noted that the appellant stated that he was all the time at the lower level.

[33] The Judge had before him two clear prosecution witnesses with whom the appellant admitted he had had an altercation. It is true that Daniel Simeon testified to his being in Lovenut discotheque on that night and his not having seen this part of the incident. He had seen only part of it: namely, when the appellant was at the middle of the stage trying to gain access to the stage via the stairs. That is explicable.

[34] But witness Brian Reed stated that after the appellant had been told off, he pulled the table spilling the drinks on it. He then pulled the left leg of the deceased. Witness Aubrey Monthy testified

to that fact equally. There is no other explanation for the backward limp fall of the deceased.

[35] The Judge had the benefit of visiting the locus to assess the positions described by both Brian Reed and Aubrey Monthy. We do not have that advantage. We are not in a better position to contradict him on a matter which on the record does not show any major difference.

[36] It is our view that the Judge reached the right conclusion after properly considering and weighing the evidence of the appellant and the depositions of other defence witnesses. While the evidence of Kenny Knowles and Chris Knowles related to the events of the night, the evidence of the other witnesses dealt with collateral issues. Conway Payet could not say whether it was Aubrey Monthy himself who had contacted him to say that the latter was proposing a deal. Linda Denise could only say that someone rang twice giving the name of Monthy. Freddy Savy's evidence is out of this world in that he entered the discotheque to just smoke and watch and left after the incident. In other words, he just saw what he chose to see and no more. The evidence of Nesta Marie, Franscina Rose, Police Constable Victor, Dr Daniel Bernard also were on collateral issues, each of whom was given a separate consideration in his judgment.

[37] A number of allegations were made against the prosecution witnesses and the police, the apex of which was reached when he questioned the impartiality of the Judge himself. When the evidence is looked for in support, we find it lacking in substance. His lawyer requested he give credence to his version by, for example, taping an exchange he would have with any prosecution witness who would contact him. His answer was that he would not do so. All his allegations are gratuitous and in the nature of manipulations.

[38] It is also our view that the defence depositions carry a lot of half truths and suspect evidence, all meant to cover for the aggressive nature of the appellant who, in his inebriety, committed a number of senseless acts: crashing the gate of a private party, taking off his shirt, challenging a couple of the guests trying to get him to behave; overturning the table of drinks and pulling the leg of Jemmy Simeon until - of his own admission - his brothers and companions came to “assist him to escape.” He admits challenging some of the persons in the private party. He admits he threw up at a certain time. The nature and the circumstances of his injury in his mouth are not consistent with a leg kick to his face. The defence ended up by raising a couple of ghosts – the ghost of the leg kick and the ghost of a couple of phone calls to supposedly blackmail him – but was unable to conjure the doubts necessary to cause a dent on the prosecution case.

[39] We find no merit on grounds 5 to 16. We dismiss them.

Ground 17

[40] It is the case of the appellant that he did not have a fair trial on account of what the defence stated were post-trial discoveries: that the trial Judge was a tenant of the father of prosecution witness Aubrey Monthy; that he resides in the same premises as he; and that they have on occasions been seen to be playing tennis together. It came out in evidence that the tenant was not the Judge but the Judiciary and that the incident which showed that the Judge had played tennis was in 2007. This trial started on 11 October 2011 on which date the list of witnesses was communicated to the defence. There is no indication that the Judge entertained at the material time such a familiarity with the witness that his mind was clouded in favour of the witness. A Judge takes an oath to do justice to all manner of people without fear or favour, with friend or foe. In his

judicial responsibility, his paths cross so many people in society. That does not prevent him from deciding cases impartially and independently.

[41] Counsel referred to the case of *R v Putnam* (1991) 3 Cr App R 281 and *R v Gough* [1993] AC 646 (HL) arguing that there has been a real danger that the Judge was biased in favour of the prosecution witness.

[42] Our answer to the submission is that a court should be slow to accept such an argument without the “most cogent grounds for doing so” because it would place a premium on post-trial intimidation of the judges.

[43] Besides, the law with respect to bias has been reviewed and the present test is whether a hypothetical observer fully informed of all the facts would come to the conclusion that the judge was biased.

[44] We are happy to endorse and adopt the latest test with respect to challenges for judicial bias that has been laid down in the English case of *Porter v Magill*[2001] UKHL 67, at para 103:

whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased.

[45] Applying this test to the facts of this case where the bias alleged is not against the appellant as such but in favour of one of the prosecution witnesses; where that witness happens not to be the key witness but only a corroborative witness; and where there are other pieces of evidence showing the guilt of the appellant, we find the ground of bias frivolously raised.

[46] It is our view that counsel for the appellant should have exercised a degree of professional discernment in giving wind to the sail of the appellant in making such allegations so generously not only against the Judge but against the prosecution witnesses and the police. The principle laid down by Lord Hewart CJ in *R v Sussex Justices, ex parte McCarthy*[1924] 1 KB 256 at 259 that it is “of fundamental importance that justice should not only be done but should manifestly and undoubtedly be seen to be done” is to be applied realistically. It is subject to the doctrine of necessity. Otherwise, we would need men from Mars and women from Venus to sit in our cases in Seychelles.

[47] The impartiality of the Judge is evident when he exercised his discretion in favour of the defence not to admit the statement of the appellant. He relied on mere technical lapses on the part of the enquiring officers not to admit evidence when the ground for the non-admission of evidence of a compromising statement so to speak is involuntariness. That shows to what extent the Judge placed defence rights above everything else in his idea of how justice should be properly administered. Even the evidence of Aubrey Monthy, the record shows, was subject to judicial questioning before it was assessed.

[48] In the light of what we have stated, we conclude that ground 17 is unwarranted and frivolously made.

Sentence

[49] Counsel for the appellant has also submitted that the sentence imposed is against the current trend in our case law.

[50] We have had the opportunity of looking at the sentence imposed in cases of manslaughter by our courts. We commend the analysis paper submitted by counsel for the respondent entitled

“Sentencing Snapshots – Manslaughter.” The statistics show that the trend in the Supreme Court of Victoria, Australia, is not very different from our own. Age, gender and degree of culpability influence the length of the sentence.

[51] The law prescribes life imprisonment for the offence of manslaughter. But it is clear that this was not a case which fell in the category of cases of extreme culpability. The victim died with a head injury from a fall in a *démêlée* in a discothèque following a party where the act of the appellant can be characterized as one of sheer regrettable recklessness on the part of an offender of youthful character.

[52] From the types of sentences which have been inflicted for such offences, the duration has ranged from two and a half years imprisonment to eight years imprisonment, as rightly indicated by the Judge in his judgment, citing *R v Pierre* No 10/1991; *R v Quatre* (1993) SLR 152; *R v Ernesta* No 33/1998; *R v Gonthier* CN 36/2000; *R v Crispin* (2008) SLR 300; *R v Raguin* Cr No 18/2011; *R v Freminot* No 20/2011; *R v Rose* SCA 06/2011. The Judge imposed 11 years, motivated by the fact that the rashness of the appellant continued through the proceedings generally as seen by his unethical behaviour which should have been duly checked by his counsel. Counsel are retained to counsel clients and take control of the cases brought before them.

[53] We cannot overlook the concerns of the Judge. The appellant had no right to go crashing the gate of a private party and become a *trouble fête* at the place. His rashness and his aggressive and egocentricity have a lot to do with the consequences that ensued. His conduct in that discothèque and his conduct thereafter were not of the standard acceptable in a law abiding society. His rash behaviour led

to the early demise of an old man who had come to celebrate his birthday in Seychelles.

[54] Without in any way intending to condone the seriousness in the conduct and behaviour of the appellant, we take the view that the sentence of 11 years imposed is excessive. Admittedly, the case dragged on for an unnecessarily long period and the appellant's conduct on the scene and behind the scene has not been of the norm required. However, the sentence should reflect, and be proportionate to, the degree of culpability of the offender. In this case, in his drunken state, it seems he did not appreciate the gravity of his act which he should have done. He needed a lot of guidance in life and for his case by his counsel who, we get the impression, gave too ready an ear to what he stated.

[55] For the reasons above, the appeal against conviction is dismissed. We believe that the term of six years imprisonment is what appellant deserves in the circumstances. We quash the sentence of 11 years and substitute therefor a sentence of six years.