



The Court of Appeal for Bermuda

CRIMINAL APPEAL No. 12 of 2009

Between:

ZE MENEFESKIDUSE SELASSIE

Appellant

-V-

THE QUEEN

Respondent

Before: Zacca, President
Evans, JA
Auld, JA

Appearances: Mr. John Perry Q.C. and Ms. Elizabeth Christopher
 for the Appellant
 Ms. Cindy Clarke and Ms. L. Burgess for the Crown

JUDGMENT

Date of Hearing: Monday, 15th November 2010
Date of Judgment: Tuesday, 23rd November 2010

ZACCA, PRESIDENT

1. On 20th August 2009, the appellant, Zee Menefeskiduse Selassie was convicted before the Chief Justice and a jury of the premeditated murder of Rhiana Ashley Marie Moore on about the 30th May 2008 contrary to section 286 A(1) of the Criminal Code. On that date he was sentenced to life imprisonment. On 4th September 2009 the Chief Justice ruled that Mr. Selassie was to serve thirty-five (35) years imprisonment before he could apply for parole.
2. The deceased was fourteen years old at the time of her death and was between twenty-seven (27) and thirty (30) weeks pregnant. Mr. Selassie was the biological father of the Moore fetus and only Mr. Selassie was aware of the pregnancy. Mr. Selassie admitted that he was responsible for the pregnancy.
3. Mr. Selassie had a sexual relationship with the deceased over several months. This was kept secret from her friends and family.
4. On Friday, 30th May 2008, the deceased was taken to the Radnor Road Christian Fellowship Church at about 8:40 p.m. She remained there until about 9:20 p.m. Whilst at the church, the deceased appeared to be sending text messages on her mobile phone. The deceased was to have been taken home by the youth group leader. However she informed the group youth leader that she was being picked up early by a relative. In fact she was being picked up by Mr. Selassie.
5. The deceased had made arrangements to meet Mr., Selassie at 9:30 p.m. At about 9:15 p.m. a car was seen parked at the top of the hill. The deceased left the church at about 9:20 p.m. and was seen walking up the driveway towards the church gate. Witnesses and mobile phone records indicated that the deceased was using her mobile phone.

6. Apart from Mr. Selassie, this was the last time the deceased was seen alive. It was accepted by Mr. Selassie that he picked up the deceased at about 9:45 p.m.
7. At around midnight, the deceased not having returned home, her mother made several calls including a call to Mr. Selassie's mobile and home phone. Calls were also made by his family. Attempts were made to call and text the deceased but without success.
8. Mr. Selassie was seen driving his car at about 10:30 p.m. heading into St. Georges. The front passenger seat of the car was down. He returned home at about 6:00 a.m. and at about 7:15 a.m. he drove his car to the City Hall car park where he had it washed. The evidence is that the car was dirty with red coloured mud on the wheels and also in the interior.
9. On 31st May 2008 at about 8:30 a.m. Mr. Selassie's car was seen on a CCTV footage while he was at Tynes Bay waste disposal, disposing of a black bag.
10. The deceased's mother made contact with Mr. Selassie on the morning of 31st May 2008, when he told her that the last occasion he had any contact with the deceased was the previous week when she had sent him a text message. Mr. Selassie also told the mother that the deceased would only text him when she had a problem. This was of course false.
11. The text record message records received from Digicel Ltd. showed thousands of text messages between the deceased and Mr. Selassie during the years 2007 to 2008. On the 17th February 2008 the deceased informed Mr. Selassie by text of her suspected pregnancy which was later confirmed by text. The texts also described the consequences Mr. Selassie would face if the deceased told her mother. This included a term of imprisonment because of her age. Later there were text messages

where Mr. Selassie was trying to persuade the deceased to have an abortion.

12. The text message records indicate that between the 28th May and the 30th May 2008, they were exchanging texts of a personal nature. Mr. Selassie insisting on seeing her on the 30th May and indicating that he was waiting to pick her up. There were no text messages after 9:20 p.m. on the 30th May 2008.
13. The prosecution presented a witness, Mr. Shawn Bremer, who stated that at about 10:15 to 10:20 he went to check his boat at the St. David's boatyard, the Bermuda Pleasure Crafts Yard. He heard in the distance someone arguing. He was able to see a car in the distance with a man standing outside the car. There was no lighting there but he thought the car was a small Daihatsu Charade. He could see that there was someone in the car but he could not say who it was. The arguing continued for some time and he heard the man say, "What are you doing to me, Rhi." Mr. Selassie denied that it was he. The Crown had another witness who stated that he saw Mr. Selassie driving his car speedily at about 10:30 p.m. coming out of Ferry Reach. This evidence is in conflict with the evidence of Mr. Bremer in that this witness saw Mr. Selassie in a different location at the same time that Mr. Bremer stated he saw a car with a man standing outside the car.
14. On Saturday, 31st May 2008, the deceased was found, partially clothed in the waters' edge at the Blue Hole Hill Park in Hamilton Parish. The body had multiple stab wounds. Mr. Selassie was arrested later that day. He was interviewed under caution but maintained his right to silence. His car was seized and examined. Blood was seen in the car. D.N.A. for both the deceased and Mr. Selassie were confirmed as being present.
15. The text messages record discloses

- (1) The sexual relationship between the deceased and Mr. Selassie
 - (2) The acceptance by him that he was responsible for the pregnancy
 - (3) The persistent suggestions by Mr. Selassie that the deceased should consider an abortion
 - (4) His concern that if the mother knew about the pregnancy, there was a likelihood that he would go to prison
 - (5) Even if the mother was not told, the birth of a child would see him going to prison
 - (6) His insistence on 30th May 2008 that he sees her that night.
16. Mr. Selassie gave evidence. The case for the defence was a denial that he was involved in the murder of the deceased. He conceded that there was a sexual relationship with her and acknowledged the pregnancy and that he suggested an abortion. He stated that on the 30th May 2008 he picked her up at about 9:45 p.m., but he had dropped her off outside her home at about 10:15 p.m. returning to his home at 3:30 a.m. Between the time he dropped her off and his return to his home, he was driving around. He had a sexual relationship with the deceased and knew her age. He accepted that he was the father of her unborn child. He agreed that he wanted to get rid of the baby initially because he did not want to go to prison; he was not in a position to take care of it and that it was unfair for Rhiana to raise a child at her age.
17. Mr. Selassie accepted the text messages suggested that he was going to meet the deceased on Friday, the 30th May. He last saw Rhiana when he dropped her off in her neighborhood at 10:15 p.m. or 10:20 p.m.
18. They first went to Elbow Beach and then went to the Botanical Gardens where they parked for about half an hour. He took her there for sexual purposes.

19. In order to explain the blood in his car, he stated that he asked her to get a CD from a compartment below the passenger seat. She was having difficulty getting it open so he reached over and pulled out a Chris Brown recording which Rhiana liked. He came up hastily and excited, because he was excited about the prospect of sex, and the back of his head hit her in the face which was now bleeding.
20. He had a trash bag in the back of his car which had clothes no longer suitable for his son. He got a few tee shirts from the bag and handed them to her and she wiped her face. He denied that he had a knife with him that night and that he had stabbed her. He did not have sexual intercourse with her that evening.
21. He never went to the area of the Boat yard in St. David's. Instead he went to St. Georges. He denied that he had gone to Blue Hole Hill.
22. He admitted that he had lied to the deceased's mother because he did not wish her to know that he was communicating with her daughter for sexual purposes. He had a small injury on his ankle which was observed by Dr. Davidson. He could not say how he received it, but he assumed it was construction related.
23. He never texted the deceased after dropping her home. He never texted her the following morning to enquire about her injury. However, at 11:15 a.m. the next morning, he sent her a text saying:

"Be the princess you have always been. Go home to your mother."
24. Mr. Selassie stated that the soil on the outside of the car was from the Botanical Garden. He never got out of the car as it was just a turn around. The whole area was muddy as it had been raining that day. He

denied that the trash bag contained the deceased's clothes. He accepted that he knew Rhiana as "Rhi."

25. He denied that he had stabbed the deceased in order to get rid of the unborn child because he had been having unlawful carnal knowledge with her.
26. There was evidence before the Court that the deceased had been calling and texting another male person. Thousands of text messages were recorded from a Bermuda number. The last text message sent by this other person was on the 28th May 2008. However, on the 29th May 2008, the deceased texted the word "Hey" to this other person a number of times, commencing at 3:40 p.m. and finally at 9:26 p.m. The male person did not reply to any of these texted messages. This person was interviewed by the police but he was not regarded as a suspect. Counsel for Mr. Selassie suggested to the Jury that the other male person may have been responsible for the stabbing of the deceased. It is to be observed that from the text messages, it was the other male person who seemed to be ending whatever relationship there was between the deceased and that male person. There is no suggestion that there was a sexual relationship.
27. Mr. Selassie has appealed against his conviction and sentence.

CONVICTION

28. The grounds of appeal against conviction were as follows:
 - (1) The learned trial judge erred in rejecting a submission of no case to answer in respect of the offence of premeditated murder (as opposed to simple murder as to which there was no submission) there being no proper evidential foundation from which any reasonable jury properly directed could convict.

- (2) The learned judge erred in that he failed to give a proper direction to the jury which properly identified the concept of premeditation as is required under section 286B of the Criminal Code Act 1907.
- (3) The verdict of guilty of premeditated murder is unreasonable and it cannot be supported having regard to the evidence.

GROUND 1

29. Mr. John Perry Q.C. submitted that there was no evidence before the jury of premeditated murder and his ‘no case’ submission should have been accepted. Section 826B of the Code states:

“Premeditation is established by evidence proving, whether expressly or by implication, an intention to cause death of any person, whether such person is the person actually killed or not, deliberately formed before the act causing the death is committed or the omission causing the death is made, and existing at the time of the commission of that act or the making of that omission.”

30. He submitted that premeditation must mean an intention formed prior to the killing and some time before the killing. There must be evidence to show that Mr. Selassie must have formed the intention to kill the deceased prior to meeting her on the night of 30th May 2008, and the fact of taking along a knife with him was not sufficient evidence to establish premeditation. Mr. Selassie had denied that he had a knife with him but said that he had a box cutter in his car. The medical evidence established that the injuries sustained by the deceased were caused by a single edge knife. Mr. Perry did not make a ‘no case’ submission on the charge of simple murder. On that basis, if Mr. Selassie was the killer, there was evidence that he had possession of the knife when he picked up the deceased.

At the close of the Crown’s case, the learned Chief Justice having considered the case of Shorter et al [1987] Bermuda Criminal Appeals Nos. 10, 12, 13, 11, ruled that there was a case to answer. Having

considered the evidence which was presented by the prosecution at the close of the Crown's case, we are satisfied that there was sufficient evidence before the jury for the ruling that there was a case to answer on this charge also. This ground of appeal therefore fails.

GROUND 2

31. Mr. Perry submitted that the learned Chief Justice failed to identify to the jury the facts which the Crown alleged were evidence of premeditation. He was not challenging the directions of the Chief Justice in relation to premeditation.

32. In his summing up the learned Chief Justice at page 1085, stated:

“For premeditated murder, they also have to show, as I have explained, that he intended to kill her, and that intention was deliberately formed before the act causing the death was committed, and existed at the time of the commission of the act. In order to show that, the prosecution rely upon what they say is his motive for killing her, in other words to conceal his illegal intercourse with her, and they also rely upon the fact that death was caused by a single-bladed knife.”

There were other facts which the prosecution relied on to establish premeditation and the jury must have been aware of these facts. The non inclusion of these other facts in the direction above was not prejudicial to the case of the appellant. Highlighting those facts, if anything at all, would be more harmful to the appellant's case. The omission in our view was not such that it would have affected the verdict of the jury.

Ground 3

33. Mr. Perry submitted that the evidence presented by the prosecution was such that the verdict of guilty of premeditated murder was unreasonable and/or cannot be supported. It is submitted that the question the Court has to ask itself is whether, having regard to the evidence and the burden

on the prosecution to prove the element of premeditation, this Court could be satisfied that the verdict could be supported.

34. What therefore was the evidence which the prosecution presented and which it is said was sufficient to establish the element of premeditation.

- (1) The deceased and Mr. Selassie had a sexual relationship.
- (2) The deceased became pregnant as a result of this sexual relationship.
- (3) Mr. Selassie persisted in asking the deceased to abort the baby. She refused to have an abortion.
- (4) The text message records and in particular:

- (a) The many text messages persuading her to have the abortion.

- (b) The text message on the 24th May 2008 in which the following exchange takes place:

Deceased: "Nuffin happen yet."

Mr. Selassie: "Oh, OK."

Deceased: "MMM"

Mr. Selassie: "I got one other option TTYL"

- (c) The text message from Mr. Selassie insisting that she meet him on Friday 30th May, 2008 after the deceased told him that she could not meet him that night.

Deceased: "Um really starting to feel the pain now."

Mr. Selassie: "That's why I have to see you Friday."

Deceased: "What are we supposed to do on Friday anyway?"

Mr. Selassie: "Whatever I have a plan."

Mr. Selassie: "Oh, OK. So tomorrow is a definite, right?"

Deceased: "Ya for the last time."

Mr. Selassie: "So why you gonna let me go to jail?"

Deceased: "I don't want you to"

Mr. Selassie: "So why you won't let me do it?"

- (5) At about 9:45 p.m. on Friday, 30th May, the deceased was picked up by Mr. Selassie.

- (6) At about 10:30 p.m. Mr. Selassie was seen driving his car travelling at a high rate of speed. It appeared that he was alone in the car.
- (7) Mr. Selassie was captured on CCTV while present at Tynes Bay waste disposal on Palmetto Road, disposing of a black bag at about 8:30 a.m. on 31 May 2008.
- (8) At about 11:38 a.m. on Saturday, 31 May 2008, the deceased was found, partially clothed in the waters' edge at Blue Hole Hill Park in Hamilton Parish. The body had multiple stab wounds.
- (9) Samples of blood found on the front driver's seat and front passengers seat on Mr. Selassie's car. D.N.A. for both the deceased and Mr. Selassie present.
- (10) On the morning of 31st May 2008 at about 7:15 a.m. Mr. Selassie had his car washed. There was mud on his car.
- (11) At about 10:15 – 10:20 p.m. Mr. Shawn Bremer was at the St. David's boat yard. He heard in the distance someone arguing. He observed a car with a man standing outside the car. He heard the man say, "What are you doing to me, Rhi."
- (12) Mr. Selassie had in his possession a knife when he picked up the deceased. Dr. Christa Ross, the forensic pathologist, confirmed that many of the injuries sustained by the deceased were caused by a single edged knife.
- (13) Mr. Selassie's concern that if the deceased's mother knew about the pregnancy or if the deceased gave birth, he would go to prison. The deceased was 14 years old at the time of her death. She was thirteen when the sexual relationship commenced.
- (14) The deceased's mother made contact with Mr. Selassie on the 31st May 2008, when he told her that the last occasion he had any contact with the deceased was the previous week when she had sent him a text message. She would only text him when she had a problem.
- (15) Mr. Selassie states that he had never texted the deceased after dropping her home. However, the text records show that at 11:15 a.m. on 31st May 2008 he sent the deceased a text saying "Be the

princess you have always been. Go home to your mother.” At this time she was already dead.

35. Mr. Selassie denied and/or explained all the above.
36. We have examined the totality of the evidence presented by the prosecution and Mr. Selassie in his defence.
37. We are satisfied that the evidence presented by the prosecution was sufficient to enable the jury to return a verdict of premeditated murder.
38. For the above reasons the appeal against conviction is dismissed.

Signed

Zacca, President

Signed

Evans, JA

Signed

Auld, JA