

20.9.83

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Criminal
IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN GRAND CAYMAN
BEFORE THE HON. SIR JOHN SUMMERFIELD C.B.E. Q.C. J.P.
CHIEF JUSTICE

INDICTMENT NO.

REGINA V. MIKE BURKE BUSH

MANSLAUGHTER

Mr. Ground for prosecution
Mr. M. Alberga for defence

SENTENCE

There are several sordid features about this case which shock. No doubt the public is horrified by some of the facts revealed. It is important, therefore, to put these unpleasant factors into proper perspective.

The probability is that the choking by the accused at the time the deceased was performing a homosexual act was the cause of death. There is no certainty about this but any reasonable doubt must be resolved in the accused's favour. It follows that the subsequent cutting of the deceased's throat, when he was already dead, is not an aggravating factor. Nor does the stuffing of the soap dish and soap into the deceased's mouth aggravate the crime of manslaughter. The deceased was then already dead.

Grotesque as these features were they point up the psychiatrist's assessment of the state of accused's mind at the time but add nothing to the gravity of the offence. They caused no additional hurt to the deceased.

It was the spontaneous reaction to the revulsion of what

the deceased was doing to him which ended the deceased's life.

That said, the mitigating factors can be examined.

One of the most important is the deceased's plea of guilty and the contrition shown. Due weight must be given to that.

Another is the accused's age. He is barely 18. The Courts usually treat young offenders more leniently when the circumstances allow.

The plea of guilty has been accepted on the basis of diminished responsibility as reported by Dr. Knight, an eminent psychiatrist. That means that the accused was not as fully responsible for his acts at the time as a normal rational person would have been. His sense of responsibility was substantially impaired. However, there is no history of mental imbalance. I cannot overlook the fact that some of the factors which gave rise to the temporary diminished responsibility were self induced, namely, the fatigue and intoxication. The accused himself was responsible for bringing about those conditions. Furthermore, it was well known to the accused that the deceased was a homosexual; he had made advances to the accused and his brother before. He was, therefore, courting trouble and the ensuing revulsion when in an inebriated state he exposed himself to the deceased's advances and allowed himself to be led to the deceased's bedroom at 4.30 a.m. in the morning.

One must not lose sight of the fact that a man has lost his life at the hands of the accused in gruesome circumstances. The fact that the deceased was a homosexual in no way diminishes his right to life however great the accused's spontaneous revulsion may have been. The accused is strongly built. Although the deceased was 10 years older he was slightly built and was also inebriated. There can be no doubt that the accused could have defended himself from the unpleasant assault without killing the deceased.

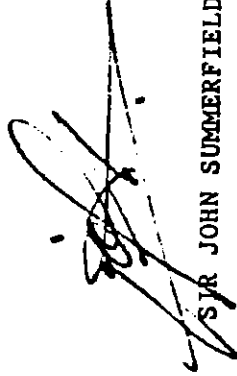
The law does not provide for diminished penalties for cases

which would otherwise be murder but become manslaughter by reason of diminished responsibility. That diminished responsibility must weigh in the accused's favour in assessing sentence, but a court must take all the circumstances into account. It would appear that the extent to which his mental processes were affected at the time of the offence was not so great as to exclude some responsibility for his action. This is clear from his subsequent conduct.

I bear in mind that the psychiatrist has stated that the accused does not need treatment and is not a danger to the public. I bear in mind that it is now a case of assessing sentence for the offence of manslaughter where the offender was suffering from diminished responsibility at the time of committing it. I disregard the previous convictions for minor offences.

Taking account of all the mitigating factors and the able address in mitigation I cannot impose a sentence of less than five years imprisonment.

It is so ordered. Due account is to be taken of the time spent in custody on remand for this offence.



SIR JOHN SUMMERFIELD

20th September 1983.