

**IN THE SUPREME COURT OF BELIZE, A.D. 2002**

**THE QUEEN**

**v.**

**PATRICK REYES**

—

**BEFORE** the Honourable Abdulai Conteh, Chief Justice.

Mr. Edward Fitzgerald Q.C., Mr. Keir Starmer Q.C. with Ms. Kadian Lewis for the Defence.

Mr. Rohan Phillip for the Crown.

—

**JUDGMENT on SENTENCING**

The case of the prisoner in the dock, Patrick Reyes, has come before this Court as a result of the decision of the Privy Council delivered on 11<sup>th</sup> March 2002. The prisoner had been tried and convicted by a jury on 14<sup>th</sup> April 1999 for the double murders of Wayne Garbutt and Evelyn Garbutt on 16<sup>th</sup> April 1997. He was sentenced to death in respect of each murder. He unsuccessfully appealed his conviction and sentence to the Court of Appeal, and his petition for special leave to appeal against his conviction to the Board of the Privy Council was also refused by the Board. He was however, granted special leave by the Board to raise two constitutional issues not advanced before the Courts in Belize regarding his sentence. The first related to the constitutionality of the mandatory death penalty passed on him on his conviction; and the second challenged the constitutionality of hanging as the means of carrying out the death sentence passed on him. The Board however stated that it did not need to rule on the constitutionality of hanging as a means of implementing a sentence of death as it was most reluctant to do so in the absence of any ruling or finding on this issue by the Courts in Belize.

2. On the first issue, the Board found and held that the mandatory death penalty imposed on the prisoner as provided for and authorized by **section 102(3)(b)** of the Criminal Code was, in virtue of the constitutional supremacy of the Constitution of Belize (section 2) impermissible as being inconsistent with **section 7** of the **Constitution**, which guarantees that no

person shall be subjected to torture or to inhuman or degrading punishment or other treatment. Therefore, the Board held that any murder by shooting (the murders for which the prisoner stands convicted) is to be regarded as falling within Class B as defined in section 102 (3) of the Criminal Code.

3. In the result, the Board remitted the prisoner's case to this Court in order "that a judge . . . may pass appropriate sentence on (him) having heard or received such evidence and submissions as may be presented and made." The remit of my function therefore is to pass appropriate sentence on the prisoner in the light of the evidence and submissions made before me. In this connection, let me at the outset acknowledge the industry and commendable way Mr. Edward Fitzgerald Q.C., the lead counsel for the prisoner, presented his case. I also acknowledge the candour and integrity of Mr. Rohan Phillip, who represented the Crown at the hearing before me, he did not argue, I must state, for the imposition of the death penalty. I found however, the arguments and submissions of both Messrs. Fitzgerald and Phillip of considerable assistance in arriving at the sentence I have to pass in this case; especially in the face of the difficulties presented by the classification as Class B murders for which the prisoner was found by the Board, to have been convicted, and the range of sentences available for this type of murder. But more on this later.
4. However, I do not have the advantage of the judge who tried and sentenced the prisoner. I therefore rely for the facts of this case from the judgment of the Privy Council; and I respectfully excerpt these from the judgment of the Board at paragraphs 2 and 3:

**"The facts**

2. *The main facts leading to the convictions were not in dispute. The appellant and the deceased occupied houses which were close to each other but divided by a strip of public land that had been reserved as part of a roadway. The deceased Wayne Garbutt obtained a lease of the public land from the government and decided to enclose it as part of his property. The appellant evidently heard of this intention, and understood that a fence was to be built some 2 feet away from the back of his house. On 16 April 1997 the appellant left for work in the morning, but before doing so told his son to inform him if work on building the new fence began. His place of work was some two miles away. Wayne Garbutt did begin building the fence and the appellant's son reported this to him. The appellant left work and returned home by bicycle. The building of the fence was under way. The appellant arrived on the scene and asked Wayne Garbutt to show him "the papers that he got for the lands". Garbutt said that he had "a paper" but refused to show it to the appellant. The*

*appellant went into his own house and soon afterwards emerged with a gun which he pointed at those who were erecting the fence. There was a gunshot which injured one of the workmen and a further shot which killed Wayne Garbutt. He was shot in the back. Evelyn Garbutt then came on to the porch of their house, and the appellant shot her also. The appellant walked over to where Wayne Garbutt's inert body lay, looked at it, and then turned the gun on himself and pulled the trigger. His injuries were serious and he was kept in hospital for three months before being discharged and charged with the two murders.*

3. *It is understood that the appellant is a man of good character, with no previous record of violence. At the trial he called a priest who spoke highly of him. He was examined by two psychiatrists, one in hospital, the other in prison. The first found him to be hallucinating, and subject to a psychotic episode for which she treated him, but she was unable to express an opinion on his state of mind at the time of the killings. The second concluded that the appellant may on 16 April 1997 have been suffering from a brief psychotic disorder which could have impaired his mental responsibility, but he was unable to make a definitive diagnosis of the appellant's state of mind on the day of the incidents."*

5. The remission of the prisoner's case for sentencing as falling within Class B as held by the Board, of section 102 of the Criminal Code (which is now section 106 of Chapter 101 of the Laws of Belize, Revised Edition 2000) is not, as I have mentioned, without difficulties nor is it as plain sailing as would appear at first blush. The difficulties, I think, stem from the rather Delphic, if not somewhat elliptical, provisions of the Criminal Code of what is a Class B murder and how its commission is to be punished. Somewhat enigmatically, the Criminal Code in subsection (3) of section 106, defines Class B murder as ". . . any murder which is not a Class A murder." This is preceded by enumeration from paragraphs (a) to (f), of what Class A murders are. Paragraph (b) of subsection (3) is what was material in the prisoner's case, that is murder shooting.
6. The punishment for the generic, if one might use that word, offence of murder was stated up until 1994 in section 102 of the Criminal Code as follows:

*"102. Every person who commits murder shall suffer death."*

This, it may be noticed, is the same as the common law punishment for murder. But in 1994, by Criminal Justice Act (Act No. 6 of 1994) a new Part III was inserted in the Criminal Code providing for sentence for murder, and among other things, amended the original section 102 by adding a proviso to subsection (1), which is what is in issue here at this

sentencing phase of the prisoner. Importantly also, Act No. 6 of 1994 introduced for the first time in Belize, the classification of murders into Class A and Class B.

7. Thus section 102(1) (now section 106(1)) states:

*“Every person who commits murder shall suffer death:*

*Provided that in the case of a Class B murder (but not in the case of Class A murder), the court may, where there are special extenuating circumstances which shall be recorded in writing, and after taking into consideration any recommendation or plea for mercy which the jury hearing the case may wish to make in that behalf, refrain from imposing a death sentence and in lieu thereof shall sentence the convicted person to imprisonment for life.”*

(emphasis in the original)

8. Therefore, I think, as a matter of interpretation, the statutory punishment for the offence of murder is, like the punishment at common law, death. But in the case of a Class B murder, the sentencing court is given a discretion and may refrain from imposing the death sentence, and in its stead, impose a sentence of imprisonment for life. However, I think that in order to properly exercise this discretion, there must be present special extenuating circumstances which should be recorded in writing as the proviso to subsection(1) of section 102 requires. I however, do not think that the existence of special extenuating circumstances which shall be recorded in writing is necessarily tied to, conjoined with or predicated on any recommendations or plea for mercy which a jury might make for the non-imposition of the death penalty as a literal reading of the proviso might suggest. It is, I think, still open to the judge after conviction, to record in writing, if he finds there are special extenuating circumstances, and not to impose the death penalty and instead sentence the prisoner to imprisonment for life. This, I believe, the judge is entitled to do even in the absence of or without any recommendation or plea for mercy from the jury.
9. I am fortified in this conclusion by the very circumstances of the present proceedings, directed as they are to determining the appropriate sentence to be passed on the prisoner. As I said earlier, I was not the trial judge and the jury that tried the prisoner is now functus and has, of course, been

since 1999 when they returned verdicts of his guilt. There is no evidence that they made any recommendation or plea for mercy in his case. They probably could not have done, as the sentence then before the Board's decision on the constitutional challenge of the prisoner, was regarded as a mandatory death penalty and this was passed on the prisoner. But this, that is, the mandatory death penalty passed on him, has now changed, with the Board's decision and its remission to this Court for the passing of the appropriate sentence on him.

10. The jury, of course, could of its own, make a recommendation or plea for mercy, in order that the death penalty might not be imposed on the prisoner.
11. However, the difficulties with the proviso to section 102(1) (now section 106(1)) of the Criminal Code, are that it does not specify or state what special extenuating circumstances are, nor does it say how they are to be determined. It only requires the sentencing judge to record them in writing if he refrains from imposing the death sentence.
12. How then is the discretion given to the Court to refrain from imposing the death sentence to be exercised in the face of the requirements of special extenuating circumstances? Mr. Phillip for the Crown contended that "special extenuating circumstances" must be beyond the ordinary. However, with his characteristic candour, he conceded that on the evidence in this case, the mental state of the prisoner was such, that the death penalty should not have been imposed, as it constituted special extenuating circumstances.
13. Mr. Fitzgerald Q.C. for the prisoner deployed a number of arguments, reasons and submissions why the death penalty should not be imposed on him. He also called witnesses to testify in support of the prisoner. Mr. Fitzgerald Q.C. however, questioned the constitutionality of the proviso to section 102(1) (section 106(1) of the 2000 Ed. of the Laws of Belize) in so far as it appears to require something "special" to justify the choice of a life sentence rather than the death penalty. This, he argued, is a presumption in favour of the death penalty, contrary to general principles applied in other jurisdictions and in international human rights law, to the effect that the death penalty should only be applied in exceptional or rare cases of murder; therefore, he submitted, it is the imposition rather than the non-imposition of the death penalty that should require special

justification. Mr. Fitzgerald Q.C. however, stopped short of asking this Court to rule on the constitutionality of the proviso on this point.

14. In my view, in order to exercise the discretion whether to sentence the prisoner to death or to life imprisonment, the Court must have regard to all the circumstances attendant on the commission of the crime and to the personal circumstances and factors that might have influenced the prisoner's conduct. The rationale for this consideration stems from the nature of the offence of murder itself and what has been called "the problem of differential culpability", that is always involved in its commission. The issue was eloquently but pithily put in a report of an inquiry into the mandatory life sentence for murder sponsored by the Prison Reform Trust in England and chaired by Lord Lane, a former Chief Justice of England. This is stated at paragraph 12 of the judgment of the Privy Council in the prisoner's constitutional challenge earlier this year as follows:

*"There is probably no offence in the criminal calendar that varies so widely both in character and degree of moral guilt as that which falls within the legal definition of murder."*

15. It is this necessity to consider the circumstances of the commission of the offence and the circumstances of the offender, and the need to afford the offender the opportunity to seek to dissuade the Court from imposing the death penalty, that led the Privy Council to hold, in the case of the prisoner, that the mandatory death penalty was incompatible with the guarantee of the Constitution against inhuman and degrading punishment. There are extensive judicial authorities in support of this position, and I am grateful to Mr. Fitzgerald for so helpfully summarizing them in both his written and oral arguments on behalf of the prisoner. These authorities range from India – Bachan Singh v The State of Punjab (1980) 2 SCC 478; Mithu v The State of Punjab (1983) 2 SCR; the United States of America – Woodson v North Carolina (1976) 428 US 280; Lockett v Ohio (1978) 438 US 586; South Africa – The State v Makwanyane (1995), Case No. CCT/3/94 of the Constitutional Court of South Africa and to the sub region in the decision of the Eastern Caribbean Court of Appeal in Hughes v The Queen, Criminal Appeal No. 14 of 1997, judgment delivered on 2<sup>nd</sup> April 2001 (unreported); and the decision of the Inter-American Commission on Human Rights in Downer & Tracey v Jamaica (2000) Report No. 41/00 of 14<sup>th</sup> April 2000.

16. In the South African case of Makwanyane supra, for example Chaskalson, the president of that country's Constitutional Court, stated as follows at paragraph 46:

*“Mitigating and aggravating circumstances must be identified by the Court, bearing in mind that the onus is on the State to prove beyond reasonable doubt the existence of aggravating factors, and to negative beyond reasonable doubt the presence of any mitigating factors relied on by the accused. Due regard must be paid to the personal circumstances and subjective factors that might have influenced the accused person's conduct, and these factors must then be weighed with the main objectives of punishment, which have been held to be: deterrence, prevention, reformation and retribution. In this process any relevant considerations should receive the most scrupulous care and reasoned attention, and the death sentence should only be imposed in the most exceptional cases, where there is no reasonable prospect of reformation and the objects of punishment would not be properly achieved by any other sentence.”*

In almost a similar vein, Sir Dennis Byron, Chief Justice in the Eastern Caribbean Court of Appeal stated at paragraphs 43 and 44 of his judgment in Hughes v The Queen supra:

*“43. The experience in other domestic jurisdictions, and the international obligations of our states therefore suggest that a court must have the discretion to take into account the individual circumstances of an individual offender and offence in determining whether the death penalty can and should be imposed, if the sentencing is to be considered rational, humane and rendered in accordance with the requirements of due process.*

*44. In order to be exercised in a rational and non-arbitrary manner, the sentencing discretion should be guided by legislative or judicial principles and standards, and should be subject to effective judicial review, all with a view to ensuring that the death penalty is imposed in only the most exceptional and appropriate circumstances. There should be a requirement for individualized sentencing in implementing the death penalty.”*

This was a restatement of the conclusion of the Inter-American Commission in *Downer and Tracey v Jamaica supra* where that body stated at paragraph 212 of its report:

*“Based upon a study of various international and domestic jurisdictions, it is the Commission’s view that a common precept has developed whereby the exercise of guided discretion by sentencing authorities to consider potentially mitigating circumstances of individual offenders and offenses is considered a sine qua non to the rational, humane and fair imposition of capital punishment. Mitigating circumstances requiring consideration have been determined to include the character and record of the offender, the subjective factors that might have influenced the offender’s conduct, the design and manner of execution of the particular offense, and the possibility of reform and social readaptation of the offender.”*

17. In the light of all this, I am of the considered view that the discretion granted to the Court under the proviso to section 102(1) (now section 106(1)) of the Criminal Code, in sentencing a person convicted for murder, does not and cannot be reasonably or rationally be taken to import a discretion in favour of the death penalty. I hold that, in order to be rationally and judicially exercised, the discretion should be informed and guided by, for example, the gravity of the offence, the character and record of the offender, the subjective factors that might have influenced the offender’s conduct, the design and manner of execution of the offence and the possibility of reform of the offender.
18. Moreover, any presumption in favour of the death sentence is displaced, in my view, by considerations flowing from subsection (2) of section 102. This expressly provides that the jury may make a recommendation or plea of mercy, notwithstanding any rule of practice which might prohibit the jury from making recommendations as to sentence to be awarded to a convicted person. This surely must mean that the death penalty, though available, as well for a Class B murder, is not necessarily an exclusive, or mandatory penalty, much less any presumption in favour of its imposition. The subsection is, in my view, a clear grant of discretion to the sentencer, which discretion may be influenced by recommendation or plea of mercy from the jury. Ordinarily, the jury has no direct role to play in sentencing. Their task is to return a verdict of guilty or not guilty, or where appropriate, guilty of a lesser offence. The traditional view was that the jury should be discouraged, in cases where they have convicted, from trying to influence

the judge's decision on sentence. See Sahota (1980) Crim. L.R. 678. However, subsection (2) of section 102 of the Criminal Code represents an explicit statutory departure from this traditional position in Belize. Indeed, in Attorney General's Reference (No. 8 of 1992), (1993) 14 Cr. App. R. (S) 130, the Court of Appeal in England confirmed the departure from the traditional view, when it held that where the jury after conviction, had asked that the trial judge be made aware that they had "great sympathy" for the offender; held that "the judge was right to give effect to the recommendation of mercy, or at least of sympathy, expressed by the jury." Lord Taylor C.J. said that the sentencer had been "absolutely correct" in his view that he "had to have regard to the jury's recommendation." Therefore, in my view, the proviso far from importing any discretion in favour of the imposition of the death penalty, expressly on the contrary, grants the discretion, in favorem vitae, for not imposing the death penalty.

19. The need to have regard in the exercise of the discretion whether to sentence an offender to death or life imprisonment would therefore, I think, preclude a list of a predetermined special extenuating circumstances. And the proviso has, rightly in my view, stopped short of spelling out any such list. Each case should be considered and determined within the overarching constitutional requirement of humanity stipulated in section 7 of the Constitution of Belize, which would include the consideration of the culpability of the offender and of any potentially mitigating circumstances of the offence and the individual offender.
20. This interpretative approach to the proviso would therefore, mean that it is the imposition of the death penalty rather than its non-imposition for murder, that requires special justification. This approach also, I think, underscores the presumption in favour of life posited in sections 3(a) and 4(1) of the Constitution. I am further fortified in this conclusion by the consideration of the principle against doubtful penalization. It is a principle of legal policy that a person should not be penalized except under clear law, or in other words, should not be put in peril upon an ambiguity. It is therefore an aspect of this principle that the life of a person should not be ended except under clear authority of law. Therefore when considering which of the opposing constructions of an enactment would give effect to the legislative intention, courts should presume that the legislator intended to observe this principle against doubtful penalization. I would therefore hold that it is the imposition of the death penalty instead of a sentence of life imprisonment that ought, in line with the legal policy against doubtful

penalization to be justified by the facts of the case – see Vol. 44(1) Halsburys Laws of England 4<sup>th</sup> Ed. Revised, paras. 1456 and 1457. The enormity of the murder itself and or the absence of any redeeming feature in its commission and of the murderer may be such as to nullify or outweigh any possible mitigating or extenuating circumstances.

21. In the case before me, the prisoner's constitutional challenge to the mandatory death sentence passed on him for the murders by shooting of Mr. & Mrs. Garbutt, was as already mentioned, upheld by the Privy Council as it found that that sentence constituted inhuman or degrading punishment or other treatment and as such infringed section 7 of the Constitution of Belize. This finding has resulted in the remission to this Court to pass appropriate sentence. The reasoning advanced by the Board for its conclusion is stated in its judgment at paragraph 45 as follows:

*“The use of firearms by dangerous and aggressive criminals is an undoubted social evil and, so long as the death penalty is retained, there may well be murders by shooting which justify the ultimate penalty. But there will also be murders of quite a different character (for instance, murders arising from sudden quarrels within a family, or between neighbours, involving the use of a firearm legitimately owned for no criminal or aggressive purpose) in which the death penalty would be plainly excessive and disproportionate. In a crime of this kind there may well be matters relating both to the offence and the offender which ought properly to be considered before sentence is passed. To deny the offender the opportunity, before sentence is passed, to seek to persuade the Court that in all the circumstances to condemn him to death would be disproportionate and inappropriate is to treat them as no human being should be treated and thus to deny his basic humanity, the core of right of right which section 7 exists to protect. Section 102(3)(b) of the Criminal Code is, accordingly, to the extent that it refers to ‘any murder by shooting’ inconsistent with section 7 of the Constitution. The category is indiscriminate. By virtue of section 2 of the Constitution subsection 3(b) is to the extent void. It follows that any murder by shooting is to be treated as falling within Class B as defined in section 102(3) of the Criminal Code.”*

22. Although their Lordships were at pains to point out that they were only concerned with the prisoner's case, which was murder by shooting and that they did not need to consider the constitutionality of any mandatory penalty other than death, nor the constitutionality of a mandatory death

penalty imposed for any murder other than by shooting, I venture, respectfully, to think, however, that if the logic of the ratio of their Lordships' decision were to be pressed home, the result would be this: The imposition of a mandatory death penalty for any class of murder, whether Class A or Class B, without regard for the circumstances of the commission of the offence of murder or the circumstances of the offender, and not to allow or afford him the opportunity, before the sentence is passed, to seek to persuade the Court that in all the circumstances he should not be condemned to death; the end result may be regarded as disproportionate and inappropriate as falling foul of the Constitution. Therefore, absent the opportunity to mitigate and persuade the sentencer not to impose the ultimate penalty, having regard to the particular circumstances of the offence and offender, and simply to impose the sentence because it is 'mandatory', would be irreconcilable with the Constitution.

23. The ineluctable conclusion from this is that the automatic, inflexible and undifferentiating imposition of the mandatory death penalty, without regard to the factors and circumstances of the commission of the offence of murder and the offender, and without the opportunity of the offender to seek to dissuade the sentencer from imposing such a sentence, would be unsustainable, in the light of the provisions of the Constitution against inhuman or degrading punishment or other treatment.
24. In fact, on the same day as the prisoner's constitutional challenge was decided, the Privy Council handed down two other decisions, from the Eastern Caribbean States in The Queen v Hughes (2020) 2 WLR 1058; and Fox v The Queen (2002) 2 WLR 1077, which now together form a trilogy of judicial authority, the highest for our jurisdictions, that seriously renders flawed the mandatory imposition of the death penalty.
25. Although the word "mandatory" is not used in any of the legislation pursuant to which the death penalty has been meted out, in the case of the prisoner it was section 102 (3) (b) of the Criminal Code, it has come to signify and mean the absence or lack of judicial discretion in imposing sentence.

The crime of murder is, without question, a grave one and its effects and consequences should not be underestimated. But as an offence, its commission nearly always presents a dilemma; as the Royal Commission on Capital Punishment 1949 – 1953 in England, after an examination of some 50 sample of cases, stated in its report (Cmd. 8932) at p. 6,

paragraph 21, (mentioned in the Board's decision in its judgment in the prisoner's case at paragraph 11):

*“The crime may be human and understandable, calling more for pity than for censure, or brutal and callous to an unbelievable degree. It may have occurred so much in the heat of passion as to rule out the possibility of premeditation, or it may have been well prepared and carried out in cold blood. The crime may be committed in order to carry out another crime or in the course of committing it or to secure escape after its commission. Murderous intent may be unmistakable, or it may be absent, and death itself may depend on an accident. The motives, springing from weakness as often from wickedness, show some of the basest and some of the better emotions of mankind, cupidity, revenge, lust, jealousy, anger, fear, pity, despair, duty, self-righteousness, political fanaticism; or there may be no intelligible motive at all.”*

26. It is, of course, the province of the Legislature to say what constitutes a crime and to prescribe the penalty for its commission; the proper function of the courts is to interpret and apply the law so declared by the Legislature consistently with the primary and highest law of the land, namely, the national Constitution. Therefore, in order to introduce some measure of consistency and rationality and in keeping with the provisions of the Constitution of Belize, it is proposed that the following **guidelines** be followed in the prosecution, trial and sentencing of accused persons charged with the offence of murder:

- “(i) As from the time of committal, the prosecution should give notice as to whether they propose to submit that the death penalty is appropriate.*
- “(ii) The prosecution's notice should contain the grounds on which they submit the death penalty is appropriate.*
- “(iii) In the event of the prosecution so indicating, and the trial judge considering that the death penalty may be appropriate, the judge should, at the time of the allocutus, specify the date of the sentence hearing which provides reasonable time for the defence to prepare.*
- “(iv) Trial judge should give directions in relation to the conduct of the sentence hearing, as well as indicating the materials that should be made available, so that the accused may have reasonable materials for the preparation and presentation of his case on sentence.*

(v) *At the same time the judge should specify a time for the defence to provide notice of any points or evidence it proposes to rely on in relation to the sentence.*

(vi) *The judge should give reasons for his decision including the statement as to the grounds on which he finds that the death penalty must be imposed in the event that he so conclude. He should also specify the reasons for rejecting any mitigating circumstances.”*

27. Turning to the exercise I am called upon to perform in this case, Mr. Fitzgerald Q.C. forcefully urged that on the totality of the evidence before this Court, the case of the prisoner was one of unmitigated tragedy for everyone, for the prisoner and his family and for the deceased husband and wife, Mr. and Mrs. Garbutt, the victims of the prisoner's homicide. He submitted that this was a case more deserving of mercy rather than retribution. The sentiments regarding the prisoner's victims meet with the unqualified approbation of this Court: it is a deep tragedy that both husband and wife were shot dead in the same incident on the same day by the prisoner. The Court accordingly, even with the passage of time, expresses its condolences to the Garbutt family.

28. I cannot however be unmindful of the earnest pleas by Mr. Fitzgerald on behalf of the prisoner, especially in the light of the evidence he adduced before this Court. This, I find, demonstrably show that there are special extenuating circumstances in the case of the prisoner that should stay the hand of this Court from imposing the death sentence within the meaning and provision of the proviso to section 102(1) (section 106(1)) of the Criminal Code.

29. There is, in my view, an appreciable body of evidence in this case attesting to special extenuating circumstances why the prisoner should not be sentenced to death. I am assisted greatly also by the Crown who did not argue for the death penalty.

30. In his presentation on behalf of the prisoner, Mr. Fitzgerald Q.C. his learned counsel, as I have stated, deployed several arguments, reasons and submissions why the death penalty should not be imposed by this Court on the prisoner. He also called a number of witnesses in support:

**Mr. Bernard Adolphus**, a former superintendent of the prison where the prisoner is incarcerated, gave evidence of his quiet disposition as a model prisoner and testified also of his expression of remorse. Mr. Adolphus further testified that given the opportunity, the prisoner has the capacity for reform and he does not, in his opinion, represent further threat nor likely to commit further offence and that he could even be considered for parole.

Mr. Charles Shaw the pastor of the church the prisoner attended testified to his good character and that as a family man he was an example to others. Mr. Shaw also testified that the prisoner has repented and expressed remorse about the crime, and was of the view that he was not likely to commit a similar offence.

Mr. John Lopez, himself a victim of the shooting by the prisoner on that fateful 16 April 1997, also testified for him. Mr. Lopez in fact had testified for the prosecution at the prisoner's trial. In this Court, Mr. Lopez testified that though he was injured in the incident, he was grateful to be able to give evidence for the prisoner.

Mr. Henry Neal a former co-worker of the prisoner at the Ministry of Works also testified for him. He said that the prisoner is a hard-working family man who was always smiling and was not a violent person.

Ms. Zoe Robinson, a niece of the prisoner also testified on his behalf and told the court that they called him "Uncle Naddy". She described him as having a very helpful and caring nature. She said that the prisoner was so kind as to take into his own home an invalid, one John Requena, whose own family did not want him. This invalid was removed from the prisoner's home soon after his arrest and he died shortly thereafter. The prisoner, she testified, was a member of Teakettle Village Council and people always went to him for help. She further said that the prisoner was not a violent person and the incident was a shock to her. She has visited him in prison and he was remorseful and expressed sorrow for the family of his victims.

Mr. Andre Rivero, a probation officer also testified for the prisoner in addition to putting in evidence a Social Inquiry Report dated 7<sup>th</sup> June 2002. This was marked as Exhibit AR 1. A remarkable picture of a hard-working, religious and family-centered and non-violent person without any previous brush with the law emerges of the prisoner from this report, by all account what he did that fateful day was quite out of character.

A crucial witness for the prisoner was Dr. Claudine Cayetano a practicing psychiatrist who put in a psychiatric report she had prepared on the prisoner. This was put in evidence as Exhibit CC 1. She also testified before me that at the time of the commission of the offence, the prisoner's mental state was consistent with mood disorder with psychotic features, stemming from the boundary dispute he had with the deceased.

31. From the totality of the evidence in this case, I find that the following considerations lead me to conclude that there are special extenuating circumstances in this case that would not warrant the imposition of the death sentence on the prisoner. Let me say this: this conclusion does not in anyway diminish the fact that two lives, a husband and wife, were cut short within minutes of each other, by the hand of the prisoner on that fateful day of 16 April 1997. The fact that in view of my findings the prisoner will not be sentenced to death would however have the consequence that he would have to live with this horrible fact for the rest of his own life.
32. The first consideration is the fact that since his conviction and sentence to death in April 1999, he had been on death row for more than three years. This in itself, on the principle of Pratt v Morgan (1993) 43 WIR 340; and as elaborated in Guerra v Baptiste and others (1995) 47 WIR 439 and Henfield v A.G. (1996) 49 WIR, should attenuate any possible death sentence. This passage of time would itself, now be an extenuating consideration not to pass the death sentence.
33. The second consideration is the questionable state of the prisoner's mental state at the time of the commission of the offence. I am satisfied with the testimony of Dr. Cayetano that the prisoner was suffering at that time from a major depressive disorder, probably brought on by the stress from the running boundary dispute with the deceased, Wayne Garbutt, over their adjoining land. This must have cause him to be unhinged, at least temporarily, to the extent that after shooting the deceased he turned the gun on himself in an attempted suicide, but only succeeded in inflicting serious wounds on himself, from which he still suffers today.
34. Thirdly, from the testimony of the various witnesses I have summarized earlier, there would appear to be present in the prisoner's favour, additional extenuating circumstances to justify this Court not to impose the death penalty. There is evidence of the prisoner's good character; his good standing in his community and reputation for help and kindness and an exemplary family man; his profound remorse and absence of future dangerousness. All these impel me to believe that the shooting by the prisoner was quite out of character.
35. Therefore, having heard the evidence and the arguments and submissions by both Mr. Fitzgerald Q.C. for the prisoner and Mr. Phillip for the Crown, the sentence of the Court is:

“Patrick Reyes, you are sentenced to life imprisonment for the murder of Wayne Garbutt

And you Patrick Reyes are sentenced to life imprisonment for the murder of Evelyn Garbutt

Both sentences to run concurrently.”

A. O. CONTEH  
Chief Justice

**DATED: 25<sup>th</sup> October, 2002.**