

8th January, 1987

Her Majesty's Attorney General

- v -

José Nélio Izilio de Azevedo

THE BAILIFF: As this is the first case in our jurisdiction of the plea of diminished responsibility being tendered and accepted by the prosecution, we have obviously had to examine comparable cases in the United Kingdom to determine what kind of level of sentences are imposed there. That is not to say that that level is necessarily the one which we will adopt here, but we have looked at them for guidance.

There are one or two other matters I want to say before I come to the circumstances of this case. Firstly, we are satisfied that the accused will not offend again in this way, provided that the recommendations in the doctors' reports as regards alcohol dependence or alcohol use are followed. Secondly, in spite of what I am going to say as regards the actual sentence, there is no doubt that the attack on Sapeta on the beach, which was the fatal attack, was a savage and brutal one.

Now, the Court has had to look at all the circumstances, carefully outlined by the Solicitor General and by Counsel for the defence, and has had to remember that this accused has pleaded guilty to manslaughter by reason of diminished responsibility. Therefore, we have also had to look, as both Counsel have rightly told us, at the degree of premeditation, but although the defence of manslaughter by reason of diminished responsibility succeeded, it was in our view almost a marginal case of diminished responsibility. We think that the real reason for the second assault, if indeed the first, happening in the hotel was an assault at all, about which we express no opinion, but the fatal assault was due to the limited intelligence and possible small brain damage of the accused, together with a high degree of panic and fear. We think that what happened was that he decided to leave Sapeta on the beach and, had his car not stuck in the sand, that is what would have happened. We accept therefore that he did not take a weapon with him down to the beach, but found himself with one to hand in the form of part of the notice board and uprights which he had used to get the wheels of his car out of the sand. We think that he was frightened of Sapeta, but whether the latter had made homosexual advances to de Azevedo or not we cannot be sure, but we think

that there is insufficient evidence for us to be satisfied that Sapeta was in fact a homosexual, and the medical evidence does not support that suggestion, but of course the accused may have thought that he had those tendencies. We wish to make it clear that that does not mean that in fact the victim was of that sort.

Now, turning to the cases in Jersey of manslaughter, and of course there are none in respect of manslaughter by reason of diminished responsibility because, as I have said this is the first one of its sort. We find that in the case of Ricard, that is to say the french fight, or the fight between french labourers, no weapon was used and three years was the sentence. In the case of Carrel and O'Brien, knives were carried with premeditation, and as regards Carrel he had a bad record and of course each of those received a substantially higher sentence than three years. We do not think that the case of Grogan and Lewis is quite comparable. We think that the emotions involved in that case, which concerned a small child of the couple, were quite different ones. We have considered whether, in imposing a term of imprisonment which has to be a determinate term, we should properly have regard as to whether it should be served in the United Kingdom or in Jersey. We think that such considerations, unless there are very very strong factors, are not matters which should affect what would otherwise be a proper sentence. Therefore, having considered the circumstances, the level of premeditation, the nature of the attack, the condition of the accused and his mental state, together with some evidence that he had been affected to a limited degree by alcohol, and having accepted his version of what took place on the beach which he repeated to one of the doctors who examined him after his plea had been accepted, we have come to the conclusion that the proper sentence, which we herewith impose, is one of five years. You will therefore go to prison for five years. Where you serve it and in what conditions is a matter for administrative arrangements and not for us to decide, and we make no recommendation as regards deportation. That matter should be dealt with administratively.

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