

# LEGAL STUDIES: *CRIME*

## Legal Studies Assessment Task

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*Legal Citation: Regina V Gonzales [2004] NSWSC 822*

### Elements Of The Offence

Mens Rea: Sef Gonzales' premeditated the murders of Clodine Gonzales, Mary Gonzales and Teddy Gonzales through devising an intricate plan that involved a false alibi and trail prior to the murders. The intention of murdering his family with poison failed as his mother survived. To account for this failure, he intended to murder his family in a calculated attack on 10 July 2001. Thus, exhibiting a guilty mind.

Actus Reus: Repeatedly stabbed Clodine, Mary and Teddy Gonzales with a knife and hit Clodine with a bat several times, attempting to strangle her.

### Factors That Might Have Led To The Criminal Behaviour

- Social Factors:
  - Might have suffered post traumatic stress after earthquake in the Philippines.
  - 6 months prior to murders; suicidal and depressed.
  - University student who performed poorly.
  - Highly ambitious parents –wanted children to succeed
  - Extremely competitive with sister.
  - Failure of relationship with girlfriend that caused friction with mother.
  - Lived under control of parents.
- Economic Factors:
  - Monetary gain; sole beneficiary to parent's will
  - Parents owned \$1.5 million estate in Australia and the Philippines
- Political Factors: (none)

### Outline of Reporting and Investigation of the Crime

On 10 July 2001, the defendant reported the crime to the Ambulance Service upon 'finding' his murdered family. Neighbour Shane Hanley then called the police. Moreover, he appeared to be distraught on telephone call and behaved erratically when inside the house, as witnessed by Hanley.

The initial investigation of the case didn't involve Gonzales as the suspect. At the crime scene, the words "F--- off Asians KKK" was spray painted in blue near the lounge room. The police believed it was a hate crime, Gonzales stated that prior to the family murder, the family had an altercation with people who were tailgating their car. Gonzales claimed that upon finding the bodies he chased the intruders down a nearby street to no avail. However, this account of events showed inconsistencies as it was not possible for Gonzales to chase the 'perpetrators' through the garage door and down a street as he would be incapable of running at such a speed. It was reported that days after the murders, Gonzales had an appointment with his father's accountant, enquiring how much money they had.

Another concern had come to light, shortly after murdering Clodine and Mary, his aunt Emily Luna visited the house and waited for someone to answer the door. This unexpected arrival meant that Luna saw the defendant's car. To explain the sighting of Gonzales' car, he concocted an alibi that involved him waiting in his car at 6 PM then travelling to Blacktown to meet Raf DeLeon. Failing to locate his house, he travelled back home and sat in his car and made plans with Sam Dacillo for 8PM. Gonzales believed he explained the sightings of his car in the carport, witnessed by Mariella Pavone. However, police found that his version of events did not coincide with Pavone's timing.

In the second alibi, the defendant left his father's office before 4PM, arriving home and once again he didn't enter the house. Then, he caught a taxi at a service station and travelled to Chatswood. Once there, he went to a brothel and had sexual intercourse with a prostitute. He caught a taxi home – again not entering the house and drove his car to Sam Dacillo's house. This alibi accounted for the sightings of his car and his reason for not revealing this alibi in the first place was because he was too embarrassed to say that he was with a prostitute.

The second alibi was later dismissed as the evidence contradicted it. The evidence of records shows that the prostitute wasn't working on that day and the taxi driver admitted that Sef Gonzales had paid the driver to lie. Other evidence included blue spray paint found on Gonzales sleeves and the discovery of the poisonous plant used prior to murders. However, evidence of murder weapons and blood stained clothing were never found. The false alibis and trails falsified by Sef Gonzales unraveled as Strike Force Tawas investigated the crime for a pain-staking eleven months.

For more than a year Gonzales had fabricated lies and was arrested on 13 June 2002 for three counts of murder and one count of threatening product contamination. With the sole intention of misleading the police, Gonzales' aim was to not be caught and be found guilty. Such an act caused considerable hardships for Strike Force Tawas as they were faced with adversities that were later overcome.

### **Explanation of the Role of Courts**

The courts' role is applying the law made by Parliament. This is done through the interpretation of such laws. When a person breaks a law they are then taken to court. However, a person can go to court to enforce their rights upheld to them through law. Furthermore, the court makes a decision on what rights are to be upheld or whether a law has been broken.

The NSW Supreme Court was involved during the hearing of this case. The role of the Supreme Court is to hear matters that are of serious indictable offences. Hence, why Sef Gonzales was sentenced in this court as he murdered three people. Criminal matters of the Supreme Court are heard by a judge and a jury.

Prior to the hearing in the Supreme Court, a committal hearing is conducted in a Local Court. The magistrate decides whether there is or is not a prima facie case. When the magistrate decides that there is a prima facie case, the case can go to trial. In the case, there was enough evidence for Sef Gonzales to be trialed in the Supreme Court.

### **Outline of the Role of Legal Representation**

Roles vary;

Prosecution:

- Ensures defendant will receive the highest penalty (appropriate to crime)
- Ensures all evidence is taken to court
- To reinforce rights of victims.
- Convince judge that the sentence will deter criminals.

Defence:

- Overall the defence counsel attempts to reduce severity of the upcoming sentence
- Calls upon people for character witnesses
- Shows reasoning behind criminal behavior

Two types defence lawyers, the solicitor and barrister. Solicitor has closer legal contact with the defendant and works with the barrister to prepare the case. Barrister works in the courtroom and is admitted to the bar and aims to discredit the evidence of prosecution while introducing own evidence. Both are responsible for representing the accused to the best of his or her ability while maintaining the 'lawyer-client privilege' of confidentiality.

## **Plea**

Not guilty

## **Factors Affecting the Sentencing Decision**

Factors affecting the sentencing decision are summarised into two categories. Justice James took into account the following objective facts. Defendant committed three murders by stabbing (striking Clodine), had intention to kill, gave poison to mother days prior, victims killed in one criminal episode, motive – criminal gain, didn't suffer mental illness, maintains innocence three years after offence. Also, he didn't grasp enormity and responsibility of the murders committed and the extent of deception through false alibis, trails. Justice James also considered the subjective circumstances. Defendant was a 20-year-old, who didn't plead guilty, didn't assist authorities and misled them whilst showing no remorse.

## **Explanation of the Penalty Given**

Gonzales penalty involved imprisonment at Silverwater Jail. The prisoner was sentenced to three concurrent life sentences for the crime he committed. Justice James stated it 'fell into the worst category of murder'. This penalty was given to serve as punishment for his indictable crime and to serve as deterrence.

## **Analysis of the Extent to Which Law Balances Rights of Victims and Offenders**

In this case, the defendant committed the indictable act of murdering three of his closest relatives. Through the penalty of three concurrent life sentences as stated in Crimes (Sentencing Procedure) Act and imprisonment in Silverwater Jail, the victims' family somewhat received justice. However they may deem this as unfair as they have lost three of their loved ones. The fact that the relatives of the deceased had to sit in the hearing within the vicinity of the offender will obviously lessen the notion of law balancing the rights of the victims and offenders. It is undeniable that that act alone would've been a difficult task for the relatives. Thus, the rights of victims and offenders in this case are to a minor extent unbalanced due to the adversities experienced by relatives.

In a more generalised perspective, the extent to whether the law balances the rights of victims and offenders equally normally depends on the factors and circumstances. Victims and offenders both have rights in presenting their account of events as they've the right to legal representation. Moreover, the offender is innocent until proven guilty and has a fair trial in front of a 12 member jury that remains impartial before the hearing. Also, the offender has a 'lawyer-client privilege' with his or her lawyer. Depending on the case, the offender may also have the right to have bail and appeal to a higher court. Victims are given the opportunity to present a victim impact statement that encapsulates how the crime has affected him or her. However, this depends on the circumstances as in a homicide case this wouldn't be possible, and the relatives would give an impact statement that may detract from the severity of the case. At times, victims do receive justice depending on the punishment given to the offender.

Ultimately, the extent to whether the rights of a victims and offenders are balanced by law depends on the circumstances of the offence. In particular, the severity of the crime and the aftermath and consequences caused by the offender. Thus, it is fair to say victims and offenders' rights in summary offences are more likely to be balanced than the victims and offenders' rights in indictable offences.

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