

ROSE v REPUBLIC

(2011) SLR 419

B Hoareau for the appellant
D Esparon for the respondent

Judgment delivered on 9 December 2011

Before MacGregor P, Domah, Twomey JJ

DOMAH J: The appellant, a trainee police officer, along with a constable, stood trial on two counts of an information: on count 1, for having with common intention on 25 July 2009 at Beau Vallon Police Station unlawfully killed one Mervin Pierre, in breach of section 195 of the Penal Code as read with section 23; and on count 2, for having with common intention unlawfully omitted to take precaution against any probable danger that could have been caused to Mervin Pierre as a result of their throwing him in a detention cell. They had both pleaded not guilty and were represented by counsel.

Following a contested trial which involved the testimony of police officers, forensic officers, other detainees and appellant, the Judge found the case on Count 1 proved against the appellant only and he dismissed Count 2 against both.

THE GROUNDS OF APPEAL

The appellant has put up the following grounds of appeal:

1. The Judge erred in law in holding that the prosecution had proven its case beyond reasonable doubt as there was evidence that Mervin Pierre had fallen into the enquiry office, which could have caused injury to Mervin Pierre which subsequently led to his death.
2. The sentence of 12 years imposed on the appellant is manifestly harsh and excessive in all the circumstances of the case.

On the eve of the fatal day, the police received a request from one Elvis Robert, Pascal Village. He complained that "Mervin Pierre was threatening him with a knife and he asked us (the Police) to remove him before he assaults him with a machete".

Marcus Jean along with PC Rose, went to Damoo's shop, the place indicated by the caller. They arrived at the place, Pascal Village, and did find Mervin Pierre. A knife was seized from him by PC Rose. When the police asked him to move away from there, Mervin Pierre stated he was awaiting some friends and refused. They then arrested him, handcuffed him, placed him at the rear of the van and took him to the station. The place was not far. It took them about 3 to 4 minutes. He was drunk, unsteady and aggressive. The personal belongings of Mervin Pierre lay scattered on the floor at the back of the pickup police van when he was being disembarked.

On arrival, PC Marcus Jen was reporting the matter to PC Juliette when he heard the noise of a fall. When he turned to look, he found Mervin Pierre on the floor, at the

enquiry desk. They went to get some water to splash on the face of Mervin Pierre which they did with a pan.

To a question by the Court, this witness answered that Mervin at that time had lost consciousness. That explains the use of the water to revive him. His version is that Mervin Pierre was put in a cell but kept knocking at the door to ask that he be allowed to go home.

There is evidence also that "Mervin Pierre hit his head the second time" when PC Isaacs was removing his shoes when Mervin Pierre just tilted and hit his head on the floor. That was around 8.15pm on 25 July 2009.

There were other detainees at the station. The decision was taken to place Mervin Pierre in a separate cell on account of his unruly and disruptive attitude. Appellant Rose was handling Mervin Pierre but he needed help. PC Dubois was then requested to assist appellant and they both helped to put Mervin a separate cell. Mervin was unco-operative and protesting that they should let him go home. Placed in his separate cell, he was found to be seated against the wall that night and in the same position. It is when his relations brought him some food and Police came to discover that they realized that Mervin Pierre had passed away in that position. Dr Vital arrived on the scene after being called by the police. He found rigor mortis. Dr Gungadin carried out an autopsy and found various minor scratch injuries at his back and his neck and haematoma at his head. The cause of death was a skull fracture.

The crucial question in this matter is whether Mervin Pierre was pushed into the cell in such a way that he hit a hard flat surface and sustained the skull fracture which was the cause of his demise. That was the prosecution case. On the other hand, the defence case was that Mervin Pierre was himself responsible for his injuries in his state of inebriety and had fallen a couple of times on the way before being placed into the cell.

GROUND 1

It is the case of appellant Rose that the Judge erred in coming to the conclusion that the death was the result of the accused, "pushing with considerable force the victim within the limited confines of a cell." The respondent, resisting the appeal, submits that the conclusion of the Judge who had the advantage of hearing the viva voce evidence was warranted and the appellant had shown no good ground for upsetting that finding of fact of the trial court.

Counsel for the prosecution points to two aspects of the case for the prosecution: the uncontroverted evidence that Mervin hit his head twice on the floor whilst he was in the enquiry office, at Beau Vallon Police Station at the time he was brought in on 25 July 2009. The first one was when he fell down and hit his head on the floor, near the wooden door leading to the cell. He referred to parts of the evidence of Police Constable Marcus as well as the dock statement of the appellant. The second was the one which occurred when the victim was seated on the floor and his shoes were being removed. The evidence is that he tilted backward and hit his head. This is again borne out by the evidence of Police Constable Marcus as well as the dock statement of the appellant.

The Judge, we find, relied heavily on medical evidence of Dr Gungadin surrounding the manner in which the skull fracture occurred. His comment which was critical to this case was "the fracture was caused as a result of sudden deceleration of a moving head against a hard surface."

We have no difficulty about accepting that such would have been the case. However, what the judge did not rule out is that "the sudden deceleration of a moving head against a hard surface" could also have been caused by a fall on the floor, a clear likelihood in the light of the fact that appellant was in a drunken state and he may have fallen with a limp force against the floor.

Counsel for the appellant referred us to the following part of the evidence of Dr Gungadin:

- A: The fracture of the skull and the haemorrhage are the result of a fall.
Q: What sort of fall?
A: For the matter any type of fall I cannot say for which type of fall.
Q: Would it be down on the ground?
A: Like I said in the beginning, my Lord, the head had been stopped by a flat hard surface, it can be a wall, it can be a floor, it can be any hard flat surface.

On the other hand, counsel for the respondent referred us to the following part of the evidence of the doctor whose evidence was that it was a fracture of some sort. What he found was that it was an extensive fracture which started from one end of the skull to the other with intracranial haemorrhage. On the question of the manner in which it could have occurred, his evidence was:

- A: In your opinion, Doctor, was Mr Pierre close to or far away from the hard flat surface you described that would have caused the injury?
B: In my opinion far away.
A: You mentioned that there was a certain amount of force used against the victim?
B: Yes

In light of the above, the appellate court is ill-placed to choose between the two versions. That falls within the sovereign appreciation of the trial court. We note that the trial court did not stop at the evidence of Dr Gungadin only. He went into the evidence of the two prisoners who had seen the hustling of the deceased into the cell. It may well be that the state of the victim who was drunk, unruly and protesting contributed with a limp fall when he was pushed without any intention by the appellant to cause him any injury but only to get him safely in. As witness Brioche stated, his fall in the cell, if anything, was an accident.

With respect to the previous falls that had occurred, the law on causation applies. In a case where there might be one or more acts that causes the death of a person, all that must be proved by the prosecution is that the act of the accused was a substantial cause of the injury that resulted in the death although it need not be the

sole or main cause of death. The act of the accused must have been "more than minimally negligible or trivially contributed to the death:" see *R v HM Coroner for Inner London Ex p Douglas-Williams* [1998] 1 All ER 344, *R v Curley* 2 Cr App R. 96 109. Hence, in the final analysis, it is immaterial which fall actually caused the death of the deceased. Once the trial judge had satisfied himself beyond reasonable doubt that the appellant's act of forcibly pushing the deceased, who was inebriated and unsteady on his feet, had resulted in a fall, which fall had directly caused or contributed to the fracture of the skull of the deceased, he was entitled to convict the appellant for manslaughter.

The appellant has not succeeded in showing to us that the conclusion of the Judge was unsafe in the circumstances. We are unable to accept the arguments and the submission of counsel for appellant under Count 1. We dismiss Ground 1.

GROUND 2

We have stated above that the likelihood that the fall of the deceased occurred by a single push with an unruly victim and by accident is quite real. That has to be taken for the purposes of sentencing. The appellant was a first offender, of previous good character, not a fully trained officer but still under training entrusted to handle a difficult situation at the station, was around 18 years old at the time, shall, accordingly, go along with the submission of counsel for the appellant that in this case the prosecution had failed to negative all other probabilities which existed for the manner in which the victim received his skull fracture.

Counsel for the appellant submitted that the sentence of 12 years imposed by the Judge was manifestly harsh and excessive in the circumstances and, referred to the sentencing pattern in such type of cases having ranged between 2½ years to 5 years: *Republic v Marc Expedie Quatre* CN 11/92 (4 years); *Republic v Michel Gonthier* CN 36/2000 (5 years); *Republic v Maureen Crispin* CN 25/07 (5 years); and *Republic v Marie-Michelle Freminot* CN 20/11 (2½ years). Counsel for the respondent submitted that it was not harsh and excessive but submitted no authorities.

In the absence of authorities to justify the 12 year sentence, we have no alternative than to conclude that the sentence of 12 years imposed has been harsh and excessive. The submission of the respondent that the 12 year sentence was justified would have carried weight if the appellant had been a fully fledged police officer and had committed the act willfully. But he was not. As a recent trainee, he was doing his best, if his incompetent best. Such a difficult situation should not have been left on the tender shoulders of a trainee to be handled. It may be a platitude to state that trainees need training which includes adequate supervision and directions and control of superiors not only skills in the open and on the ground but also dexterity in handling difficult situations at the station. That has been manifestly lacking on the facts.

We, accordingly, consider that a sentence of 3 years' imprisonment is the proper sentence which should have been imposed on the facts of this case and the circumstances of the offender and in line with parity of sentencing with other cases.

We, accordingly, quash the sentence of 12 years imposed and substitute thereof a term of 3 years imprisonment. The appeal is otherwise dismissed with costs.