

**Republic v Mothe
(2000) SLR 9**

Wilby Lucas for the Republic
France Bonte for the defendant

Judgment delivered on 31 March 2000 by:

KARUNAKARAN J: The accused above-named stands charged with the offence of Manslaughter contrary to section 192 of the Penal Code. According to the charge the accused on 28 December 1998 at Belonie, Mahe caused an unlawful act on Wilfred Cedras alias Sir Wills that resulted in the death of the said Wilfred Cedras. The accused denied the charge. The case proceeded for trial. He was legally represented by an able and eloquent defence counsel Mr Bonte throughout the trial.

The facts of the case as transpired from the evidence are as follows:

At all material times the deceased, Wilfred Cedras, aged 64 years, a retired schoolteacher, was residing at Belonie, Mahe. He had no family. He was living alone. His sister Yvette Micock-PW7- was also a resident of Belonie. But she was living in another house situated close to that of the deceased's. The accused in this matter, namely Mr. Georges Mothe, is a young man. He is also a resident of Belonie. At one time, the deceased was in fact, the teacher of the accused during his schooldays.

It is not in dispute that on the day in question, around 5.30 p. m the accused was returning home after work in town. On his way he saw the deceased in the public road at Belonie opposite to the shop of one Raju Pillay-PW8. The deceased was coming down walking along the road with a bottle of Guinness in his hand. One Mr. Dave Marimba-PW4-who was passing by met the deceased on the road and told him to be careful, as the police might catch him presumably as he was consuming alcohol on the public road. The deceased got angry and started to swear at Mr. Marimba using filthy language. However, Mr. Marimba did not react as he had already known the deceased and his habit of swearing whilst under the influence of alcohol. The accused who was at that time approaching the deceased witnessed this episode. He went near the deceased and told him not to swear at anyone on the public road. The deceased who was a bit drunk according to PW4, turned against the accused and started to swear at him. The deceased insulted the accused by saying the following words in Creole:

You don't have to say anything, you cunt of your mother. Your mother involved in witchcraft

Thus, the deceased continued to use filthy language, this time against the accused. Hearing those words, the accused got angry. He hit the deceased. According to the eye witness Mr Marimba-PW4-the accused slapped the face of the deceased. The deceased consequently fell backwards hitting the back of his head on the surface of the

road. The bottle of Guinness from his hand also fell down. The accused picked up that bottle and left the scene. One Mrs. Sonia Laramé-PW5-a neighbour-come-friend of the deceased witnessed this incident from a distance. She also noticed the fall of the deceased as a result of the assault by the accused at the material time. The deceased did not get up. He was still lying flat with his face up in the middle of the road blocking the vehicular traffic. That time a pickup was coming on the road. It could not pass through that spot. The driver had to stop his pick up. He got out. With the assistance of his handyman he lifted the deceased from the road, carried and placed him off the road near the steps close to the entrance of a shop belonging to Raju Pillay-PW8. The deceased was lying there in a sleeping position. In the late evening Mr Pillay was about to close his shop. Therefore, he requested one Mr Simon Pierre-PW9- a resident of Belonie to pick up the deceased from that place and take him to his house. Mr. Pierre with the help of another person, namely one Donald, carried the deceased to his house. They opened the door, placed him leaning against a wall inside the house, and then left. There was no one in the house at that time. The deceased was lying alone. At around 6.45 p.m a friend of the deceased, namely Mr Chrisant Morel-PW6, came to know about the incident through Mr Pillay. He rushed to the house of the deceased. Inside the house, he saw the deceased leaning against the wall. He called him. The deceased did not respond. He appeared to be unconscious. Mr. Morel tried to lift him but he could not. He then went to the house of the deceased's sister namely Yvette Micoke-PW7, and informed her of the state of the deceased. She immediately proceeded to the house of the deceased. She testified in this respect as follows:

It was around 7 p.m. I visited my brother. He could not even speak. I was not able to do anything with him. I spoke to him but he did not answer...The same day and the next day too, I took him to the Clinic at English River. The Doctor said that he had high blood pressure. As he was not speaking he did not complain of any pain or discomfort. Then I bought him back home in the same condition. Two or three times he visited the clinic.

The neighbour-come-friend of the deceased, Mrs. Sonia Laramé-PW5, who was indeed, an eye- witness of the above incident used to visit the deceased almost every day at his house. She went to see him on the 29th, 30th, and 31st, of December as well as on the 1st, 2nd, and 3rd, of January 1999. She felt that the knock the deceased received at the back of his head in the incident should have affected his head. Therefore, even on the first day when she saw the deceased in a sleeping state at home, she advised him to go to the doctor. However, she noticed the condition of the deceased gradually worsened. On 4 January 1999, she noticed the deceased was seriously ill. She advised the sister of the deceased to take him to the hospital immediately. The same day the deceased was taken to the emergency/casualty ward at the Central Hospital in Victoria. The duty doctor, Dr Omoloyo-PW2,-examined the deceased. He testified of his observations as follows:

The patient (deceased) was seriously sick. He was comatose, and was breathing very rapidly. He had fever. His blood pressure was low. His

pupils were dilated and were not reacting to light. The condition of the patient was so bad that we could not move him from the casualty to the ward. We had to call the specialist from the ward to come and see him in the casualty unit.

He further testified that the patient possibly had a very severe infection or the patient could have had any injury from which an infection might have developed. It was possible that cerebral, Sudbury hemorrhage, could have caused those conditions. The same day the patient died in the hospital.

The following day, a pathologist, Dr Radha-PW1,-conducted a post-mortem examination on the body of the deceased. Based on the internal examination into the cranial cavity of the deceased, Dr Radha testified that the patient died of cerebral, subdural and subarachnoid haemorrhage due to basal skull fracture in the region of occipital bone. She further stated that any trauma or injury could cause such fracture. She also produced in evidence-ExhPI-the notes of her post-mortem examination in this case.

Following the death of the deceased the police started an investigation. They arrested the accused and interviewed him on the alleged incident. The accused elected to give a free and voluntary statement to the police under caution. In his statement to the police-ExP4-the accused admitted all the material facts as testified by the witnesses above save the fact that he slapped or gave a punch on the face of the deceased at the material time. In fact, the accused in Exh P4 stated as follows:

I asked him why he is swearing at me like this. Sir Wills could not understand anything but still swearing at me. I approached him and pushed him with my left hand in a gesture to shut his mouth. He then lost balance and fell down on the concrete public road.

In view of all the above, now the prosecution contends that the accused has committed the offence first above-mentioned. After the close of the case for the prosecution, the defense counsel submitted on no case to answer. However, the court ruled otherwise. The accused gave his unsworn statement from the dock. He stated that he was not the one who caused the death of the deceased because he met the deceased later. He met, sat and talked. According to him the deceased told him that he was all right and there was no problem. The accused moreover, called a witness-DWI-in support of his defense. This witness in essence testified that on 29 December 1998, the next day after the alleged incident, he saw the accused and the deceased on the public road. They were according to him, talking to each other about the incident that happened the previous day. In the circumstances, the accused claims innocence. The defense counsel further contends that the cause of death was due to the failure or negligence of the doctor at the English River Clinic. According to counsel, the doctor therein did not make proper diagnosis of the disease or injury in time when the patient first went to see

him. Had he detected the head injury in time, it could have saved the life of the deceased. Moreover, the counsel submits that the deceased might have received the head injury/skull fracture subsequent to the alleged incident as he was staying alone for about four days at his home until he was taken to casualty. In any event the defense submits that the Defendant had no mental element- the mens rea- when he pushed the deceased causing his fall. Hence, he invoked the doctrine of the Latin maxim "actus non facit reum nisi mens sit rea". Finally, the defense contends that on the whole of the case, the guilt against the accused is not proved beyond reasonable doubt.

Therefore, the defense counsel prays this court to dismiss the case and so seeks the acquittal of his client.

a I diligently perused the entire evidence adduced by the parties in this matter. I carefully analyzed the submissions made by the counsels in the light of the relevant laws and the authorities cited by them. Firstly, on the question of credibility I believe all the prosecution witnesses to be truthful and reliable in all material aspects of their evidence. I find no reason to disbelieve any of them. Their evidence is cogent, **e** corroborative, reliable and consistent in all necessary details.

i In the aspect of law, the prosecution on a charge under section 192 of the Penal Code must prove an unlawful act or omission by the accused and which caused the death of the victim. Section 192 reads as follows:

m Any person who by an unlawful act or omission causes the death of another person is guilty of the felony termed manslaughter. An unlawful omission is an omission amounting to culpable negligence to discharge a duty tending to the preservation of life or health, whether such omission is or is not accompanied by an intention to cause death or bodily harm.

q **Unlawful Act**

u In fact, the law applicable to cases of this nature is set out in *D.P.P v Newbury* (1976) Vol. 62 Cr. Appeal Reports p291. If a person is engaged in performing an unlawful act which all sober and reasonable people would inevitably recognize, would subject another person to, at least, the risk of some harm resulting therefrom and that act results in his death the person doing the act is guilty of manslaughter.

y In the present case, the prosecution set out to prove that the unlawful act was an assault by the accused. That is a slap which caused the deceased to lose balance on his feet or made him so and that as a result he fell backwards on the hard surface of the road. Indeed, there is no dispute on the fact that the accused pushed the deceased who lost balance and fell down. However, the defense attempts to establish that the **cc** accused did not slap or punch but only pushed and that would not constitute an act of assault, as there was no mens rea. As I see it, whatever be the name of the physical act, which caused the fall whether it was a slap or a punch or even a push as the defense calls it, the fact remains that mere change of terminology does not make any

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difference in the effect, in the eye of law. It only reminds me of William Shakespeare's saying in Romeo and Juliet Act II Scene ii. *"What is in a name? That which we call a rose by any other name would smell as sweet."* But to mutilate Shakespeare a little in this respect, an 'act of assault' by any other name would be just as effective. One may call an 'act of assault' by a name of one's own choice but as long as that act involves the application of force and yields its effect the name does not make any difference. In my view, the act of assault committed by the accused against the deceased in this matter constitutes and completes the element of 'unlawful act' required to be proved by the prosecution under section 192 of the Penal Code

Causing Death

Section 199 of the Penal Code provides that:

A Person is deemed to have caused the death of another person although his act is not immediate or not the sole cause of the death in any of the following cases:

- (a) If he inflicts bodily injury on another person in consequence of which that other person undergoes surgical or medical treatment which causes death. In this case, it is immaterial whether the treatment was proper or mistaken if it was employed in good faith and with common knowledge and skill...

- (b) If he inflicts bodily injury on another which would not have caused death if the injured person has submitted to proper surgical or medical treatment or had observed proper precaution as to his mode of living.

- (c) ...

- (d) If by any act or omission he hastened the death of a person suffering under any disease or injury which apart from such act or omission would have caused death.

- (e) If his act or omission would not have caused death unless it had been accompanied by an act or omission of the person killed or of other persons.

Upon a careful perusal of the above provision of law, it is obvious that nothing in the Code requires the unlawful act of the accused to be a direct cause or a substantial cause or a major cause or any other description of cause, of the death. As long as the unlawful act is a cause and something more than de minimis that is sufficient and the above provision of law operates. The proper way to direct our mind is to consider whether the accused's unlawful act is a cause and it no longer has to be the cause or a substantial cause of death. The case of *R v Smith* (1959) 2 Q. B 35 as cited by His

Lordship Perera, J in his ruling in *Republic v Emmanuel Bibi* (unreported) Cr. Side No 38 of 1999 is relevant to the point. All this Court has to find is whether the accused in the alleged incident committed an unlawful act which caused the death of the deceased. In this respect on evidence, I find the accused did commit an unlawful act, which was in fact, an operating cause of the death of the deceased.

Further, on evidence I find that the accused did assault the deceased at the material time and place causing him to lose his balance. The deceased consequently fell down backwards. Obviously, the skull fracture on the back of his head could have been caused only by this fall. As a result I find the deceased sustained cerebral, subdural and subarachnoid haemorrhage that resulted in his death. This is the only logical inference any reasonable tribunal could draw from the entire circumstances of the case. In the absence of any other evidence to the contrary it is highly farfetched and unreasonable to infer otherwise. The hypothesis put up by the accused's counsel suggesting the other possible causes for the skull fracture over the duration of four days between the fall and the death of the deceased is simply based on guesswork. This hypothesis cannot by any means be supported.

Medical Negligence or Omission

Be that as it may, the defense contends that if the doctor who first saw the patient immediately after the injury had made proper diagnosis, then it could have saved the life of the deceased, as all modern medical facilities including the scanner are available at the hospital to treat such head injuries. Even for the sake of argument, if one assumes this proposition as to the doctor's negligence or omission to be true, I still find the offence is made out by virtue of the statutory definition of causing death provided under section 199(e) of the Penal Code. In fact, the accused is deemed to have caused death although his act would not have caused death unless it had been accompanied by an act or omission of the person killed or of other persons. To my understanding, I believe the term 'other persons' which appears in the said section should by necessary implication, include medical practitioners as well. Therefore, the defense argument in this line does not appeal to me in the least.

Intention to cause death

The intention to cause death is not an ingredient necessary to constitute the offence of manslaughter. The mere culpable negligence or omission or mere unlawful act is sufficient to constitute and complete the offence against the accused under section 199 of the Penal Code provided that act or omission causes the death of another person and so I find. Indeed, the intention to cause death is not expressly declared to be an element necessary to constitute the offence of manslaughter under this particular section. The accused claims that by his act of pushing the deceased at the material time, the result he intended was only to stop the deceased from swearing at him. Even if one accepts that was the real intention of the accused, still such result intended is immaterial for consideration as far as the offence of manslaughter is concerned. This is clear from section 10 of the Penal Code which provides as follows:

Unless the intention to cause a particular result is expressly declared to be

an element of the offence constituted, in whole or in part, by an act or omission, the result intended to be caused by an act or omission is immaterial

Therefore, I find that the result intended by the accused in committing the unlawful act namely assault against the deceased at the material time is neither relevant nor does it constitute any defence in law to the charge.

In the final analysis of evidence, I am satisfied that the prosecution has proved beyond reasonable doubt all the elements necessary to constitute and complete the offence of manslaughter against the accused. Therefore, I find the accused guilty of the offence of manslaughter contrary to section 192 of the Penal Code and so convict him of the offence accordingly.

Record: Criminal Side No 7 of 1999