[2021] JMCA Crim 33

JAMAICA

IN THE COURT OF APPEAL

BEFORE: THE HON MR JUSTICE BROOKS JA
THE HON MRS JUSTICE MCDONALD-BISHOP JA
THE HON MR JUSTICE F WILLIAMS JA

PARISH COURT CRIMINAL APPEAL NO 5/2018

DWAIN BROWN v R

Lawrence Haynes and Miss Rochelle Haynes for the appellant

Miss Paula Llewellyn QC, Director of Public Prosecutions and Miss Syleen O'Gilvie for the Crown

12 February 2020 and 4 October 2021

F WILLIAMS JA

Background

[1] By this appeal, the appellant challenged his conviction and sentence in the then Resident Magistrates Court (now 'Parish Court') for the parish of Saint Thomas. He was, on 20 November 2009, convicted for the offence of indecent assault, contrary to common law (the penalty for which is prescribed in section 53 of the Offences against the Person Act). On the same date, he was sentenced by the Resident Magistrate (now referred to as 'judge of the Parish Court') to a term of six months' imprisonment at hard labour suspended for 12 months. His attorney-at-law gave an oral notice of appeal and later filed grounds of appeal on 17 September 2010, after leave was granted for them to have been filed out of time.

[2] When the matter came on for hearing before us on 12 February 2020, with a promise that brief reasons were to follow, we made the following orders:

> "(i) The appeal is allowed;
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> (ii) The conviction is quashed and the sentence is set aside.
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> (iii) A judgment and verdict of acquittal are entered herein."

[3] With apologies for the delay, these are the promised reasons.

Summary of the case against the appellant at trial

[4] Briefly stated, the case against the appellant was that, on the night of 11 December 2008, to the surprise of the virtual complainant ('AC'), he somehow managed to enter a dwelling house occupied by her, which she had locked after reaching home earlier. When she was in the process of opening the grill to go to the police station to report his intrusion, he indecently touched her on her right breast.

Summary of the defence

[5] The appellant denied indecently assaulting AC. He contended that they were involved in a secret intimate relationship. He said that AC falsely accused him of indecent assault and gave untruthful evidence against him as a consequence of his not taking for her on the night in question the amount of money that she had requested that he give her. One of his co-workers testified that he had lent the appellant $5,000.00 on one occasion and that he had seen the appellant give the money to AC, whom he had also seen sit in the appellant's lap at the fire station where he and the appellant worked. The appellant also called in his defence a taxi driver who testified that the appellant had on one occasion paid him to take AC home.

The appeal

[6] After filing the original grounds of appeal, the appellant presented to the court amended grounds of appeal on 12 February 2020. That document contained four

grounds: grounds 1a; 1b; 2 and 3. It also, at the end, carried a notation that: "The Appellant will seek to add additional grounds upon reviewing the Notes of Evidence".

[7] However, as it turned out, that notation was not acted on. In fact, although the notes of evidence were not produced until around June of 2019, no findings of fact or reasons were ever provided, which was the prime factor impelling us to the outcome indicated at paragraph [2] hereof.

[8] The grounds contained in the amended grounds of appeal were as follows:

> "1a. That the failure of the Learned Magistrate to provide reasons for her decision offends against a fundamental principle of justice and further prevents this Court from being able to properly consider the Appellant's Appeal. The conviction could not therefore be safe or satisfactory.
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> 1b. The decision of the Learned Resident Magistrate was against the weight of the evidence.
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> 2. The Learned Resident Magistrate failed to take into account the numerous inconsistencies and discrepancies in the prosecution's case especially in the evidence of the virtual complainant.
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> 3. The Learned Magistrate was openly hostile to and impatient with both myself and my then Attorney Mr. Bertram Anderson and this hostility and impatience impacted negatively on her consideration of the many favourable aspects of my defence."

[9] At the hearing of the appeal, only ground 1a was argued, the other grounds being abandoned.

Summary of submissions for the appellant

[10] On the appellant's behalf, Mr Haynes referred the court to section 291 of the Judicature (Parish Courts) Act, the relevant part of which reads as follows:

> "…Where any person charged before a Court with any offence specified by the Minister, by order, to be an offence to which this paragraph shall apply, is found guilty of such an offence,

> the Magistrate shall record or cause to be recorded in the notes of evidence a statement in summary form of his findings of fact on which the verdict of guilty is founded."

[11] On the basis of the requirements of this section, Mr Haynes submitted that the failure of the learned judge of the Parish Court to provide reasons offends against this section, which mandates a judge to provide reasons for a guilty verdict. He further submitted that, even before that section was introduced in the Act, the requirement for judges of the Parish Courts to give their reasons or findings of fact was underscored in several cases. Among such cases was the case of **R v Parker** (1966) 9 JLR 498 at page 499, paragraph H where Lewis P (Ag) observed as follows:

> "The applicant, in the instant case, is entitled to have his application considered by the court on the basis of the full transcript of the evidence, if the court requires it, and of the full summing up by the trial judge. Since this is not available, the court has no alternative but to allow the appeal and set aside the conviction and quash the sentence."

[12] Also cited were other cases, such as, for example, that of **R v Samuel Thompson** (1967) JLR 275, which followed the decision in **R v Parker**. The cases of: (i) **The Attorney General and another v Worldwide Purchasing Co Ltd** (1977) 16 JLR 38; (ii) **Forbes v Chandrabhan Maharaj** [1998] UKPC 13; and (iii) **Hermina Griffith v Gerald Niewenkirk**, Criminal Appeal No 1/2004 (Court of Appeal, Guyana) were referred to as well. The dicta in these cases were all in keeping with the dictum in **R v Parker**.

Summary of submissions for the Crown

[13] To its credit, the Crown directly recognised that the non-provision of the findings of fact or reasons by the learned judge of the Parish Court posed a significant challenge to its attempt to support the conviction; and to the court reviewing the case in its totality. This is reflected, for example, at paragraph [10] of the Crown's skeleton arguments, which reads as follows:

> "[10] The law makes it mandatory for the Learned Judge in the lower courts to provide his/her findings of fact on which a guilty verdict is established, as in the present case. Failing which, the appellate Court and Respondent are hampered in assessing the findings of the learned Judge and responding accordingly without being in possession of same."

[14] The Crown's initial request was for enquiries to have been made of the learned judge as to whether the findings of fact had been prepared; and, if so, as to their whereabouts. However, when we decided to proceed with the hearing of the appeal without the findings of fact, which, it was clear, were not forthcoming, Miss Llewellyn QC, for the Crown, conceded that, in those circumstances, the conviction could not be supported.

The reasons for the orders made

[15] The court perused the court's file and observed, as Mr Haynes had pointed out, that there were letters from the Registrar of this court requesting the production of the findings of fact. Some of these were copied to the learned judge of the Parish Court. However, that correspondence did not produce the desired effect. Regrettably, therefore, although the circumstances were not ideal, the court had to proceed with the hearing of the appeal in the absence of the summary of the findings of fact.

Discussion

The statutory provisions

[16] It is no doubt correct, as Mr Haynes submitted, that the duties imposed on Parish Courts generally for the preparation of the record on the filing of an appeal; and, on judges of the Parish Courts, specifically, for the production of the findings of fact grounding a decision of guilty, are largely contained in section 291 of the Act. The specific requirement relating to a judge of the Parish Court's duty to provide a notation of the basis of the finding of guilt, is therein expressed as follows:

> "…the Magistrate shall record or cause to be recorded in the notes of evidence a statement in summary form of his findings of fact…" (Emphasis added).

[17] Also of significance is what is stated nearer to the end of section 291. The parts that are relevant to the circumstances of this case read as follows:

> "If the notes taken in any of the circumstances aforesaid are taken in a book, such book shall be preserved in the office of the Clerk, and a reference to the same shall be noted in the fold of the information or indictment; if the same are taken on loose sheets, such sheets shall be attached to the information or indictment.
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> In either case the information or indictment with the record made thereon as aforesaid, and with the notes aforesaid, shall constitute the record of the case, and each such record shall be carefully preserved in the office of the Clerk of the Courts, and an alphabetical index shall be kept of such records."

[18] In the instant case, it is to be remembered that the notes of evidence were eventually produced, albeit not until some 10 years after the trial. This is a clear indication that the learned judge of the Parish Court's notebook or loose sheets containing the notes had been found and used in their preparation. What is concerning, however, is the fact that, from all indications, that notebook or those loose sheets did not contain the findings of fact. This is not in keeping with the statutory requirement, which, it should be remembered, is for a recording of the summary of the findings of fact as a part of the notes of evidence. The importance to the dispensation of justice of the notes of evidence together with the summary of findings of fact, can be seen in the other parts of section 291 of the Act.

[19] Those provisions contemplate the situation in which the notes might be taken in a notebook as well as the circumstance of the notes being taken and the findings being made on loose-leaf sheets. The section makes it clear that, in either case, steps should be taken to preserve the notes of evidence and the summary of findings of fact. It may be useful to use this opportunity to remind judges of the Parish Court of what is required of them when a trial is concluded, with a verdict of "guilty". Those requirements are: (1)

To set out a summary of their findings of fact either in the notebook in which the evidence at trial is recorded; or, if written on loose sheets, attach that written summary to the information or indictment (or even the notes of evidence). (2) The summary of facts ought to be only that: a summary, and need not be in the nature of a treatise or dissertation – just enough so that litigants might be able to discern the reasons for the court arriving at a decision of guilt. (3) The notebook or loose leaves with the summary should also be preserved in the court's office, so that when, as often happens, a judge of the Parish Court is transferred to another parish or is promoted, or leaves the service, there is no challenge in finding the documents concerning the trial.

[20] The importance of the provision of reasons for decisions is such that, even where reasons have been given, questions may still be validly raised as to their adequacy. There are cases in which not providing adequate reasons has led to convictions being overturned. One such case is **R v Sheppard** [2002] 1 SCR 869, a decision of the Supreme Court of Canada, on appeal from the Court of Appeal of Newfoundland and Labrador. In that case, the respondent in the Supreme Court had been convicted at first instance of the offence of possession of stolen property. The report indicates that the trial judge, in the reasons given, did not indicate how he resolved any of the several issues in the case. What was given as the reason for the decision was that:

> "Having considered all the testimony in this case and reminding myself of the burden on the Crown and the credibility of witnesses, and how this is to be assessed, I find the defendant guilty as charged."

[21] Mr Sheppard appealed his conviction and the Court of Appeal set his conviction aside and ordered a new trial. On the Crown's appeal to the Supreme Court, it was held (as indicated in the head note) dismissing the appeal, that: "The trial judge erred in law in failing to provide reasons that were sufficiently intelligible to permit appellate review of the correctness of his decision".

[22] At paragraphs 15 and 24, the court opined as follows:

> "15 Reasons for judgment are the primary mechanism by which judges account to the parties and to the public for the decisions they render. The courts frequently say that justice must not only be done but must be seen to be done, but critics respond that it is difficult to see how justice can be *seen* to be done if judges fail to articulate the reasons for their actions. Trial courts, where the essential findings of facts and drawing of inferences are done, can only be held properly to account if the reasons for their adjudication are transparent and accessible to the public and to the appellate courts.
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> ….
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> 24 In my opinion, the requirement of reasons is tied to their purpose and the purpose varies with the context. At the trial level, the reasons justify and explain the result. The losing party knows why he or she has lost. Informed consideration can be given to grounds for appeal. Interested members of the public can satisfy themselves that justice has been done, or not, as the case may be." (Emphasis as in original).

[23] In the court's experience, it would be most unusual for a judge to have only pronounced a defendant guilty without any reasons, however brief, being given. So, although we had no information on the matter either way, we recognised that it was not beyond the realm of possibility that the learned judge of the Parish Court might have given an oral judgment, explaining the bases for the findings of fact made in this case; and it was just that the note of that judgment had not been located.

[24] Even if that was done, however, we also recognised that it would not have been in keeping with what is expected or required by the Act.

[25] It was for these brief reasons that we made the orders referred to in paragraph [2] hereof.