Chief-Rep. Nevis
(7)

SAINT CHRISTOPHER AND NEVIS

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 3 of 1984

BETWEEN:

FIDEL O'FLAHERTY - Appellant

and

THE ATTORNEY GENERAL
THE DIRECTOR OF PUBLIC PROSECUTIONS
THE CHIEF OF POLICE OF
SAINT CHRISTOPHER AND NEVIS - Respondents

Before: The Honourable Mr. Justice Robotham - Chief Justice
The Honourable Mr. Justice Bishop
The Honourable Mr. Justice Moe

Appearances: Mr. L. Moore and with him Mr. F. Bryant and
Dr. H. Browne for the appellant.
Mr. T. Byron for the Attorney General
Mr. N. Butler for the Director of Public Prosecutions
Mr. H. Rawlins for the Chief of Police

1985: Oct. 7, 8,
1986: March 10.

JUDGMENT

BISHOP, J.A.

On the 5th September 1982 Fidel O'Flaherty of Conaree Village held a public meeting in Basseterre at which there was a number of persons assembled. Two days later a warrant of arrest was issued by the Magistrate of District A upon information on oath given by a corporal of police attached to Basseterre Police Station, that the said Fidel O'Flaherty "on the 5th day of September 1982 at Basseterre in the parish of St. George in the Magisterial District A in the State of Saint Christopher-Nevis did unlawfully incite persons assembled at a public meeting to commit bodily injury contrary to common law".

The warrant of arrest commanded each and all of the peace officers of the State to bring Fidel O'Flaherty before the Court at Basseterre forthwith to answer the said information.

/Fidel....

Fidel O'Flaherty learnt that the police were looking for him and on the 9th September he went to the Basseterre Police Station where he was apprehended on the strength of the warrant of arrest. He was taken before the learned Magistrate who granted him bail in the sum of $5,000.00, with two sureties, to appear before the said Court on the 13th September 1982.

On the 13th September 1982 O'Flaherty appeared and was advised by the learned Magistrate that he should not return to Court in respect of that alleged offence unless notified by the police to do so.

It is clear that the Magistrate had information on oath in which O'Flaherty was accused of committing an offence known to law, namely incitement. Additionally, O'Flaherty was made aware of the contents of the warrant of arrest; he admitted on oath that it was read to him and that he was given a copy of it.

In my view it must be clear that Fidel O'Flaherty addressed the gathering at the public meeting. Now, bearing in mind the date of the meeting, the date of the warrant and the date of his apprehension, the meeting and the topic on which he spoke must have been within his knowledge. Fidel O'Flaherty is a graduate of a recognised University and he contemplated post graduate studies leading to a doctorate in sociology from the University of Warwick in England. It must be a reasonable inference, therefore, that he would have appreciated the words he chose to use in his speech and that he would have remembered for some time after the meeting, substantially though perhaps not verbatim, what he said to the assembled persons. If he did not, or if in any event he wished to know what were the specific words that formed the substance of the charge, it was open to him to ask for the particulars he required, when he appeared in Court on the 9th September 1982 or on the 13th September 1982. He did not do so when he was confronted with the charge at Court on these dates.

After Fidel O'Flaherty was released on bail nothing pertinent to the

/alleged.....

alleged offence took place until the 24th December 1983, or more than 15 months after his second appearance in Court to answer the information on oath as given to the learned Magistrate. On that date a Motion was filed (on behalf of Fidel O'Flaherty) in the High Court, alleging a breach of his constitutional right under section 10(1) of the Constitution of St. Christopher/Nevis 1983. It sought a declaration that the applicant's right to be afforded a fair hearing within a reasonable time of the criminal charge alleged against him in the warrant dated 7th September 1984, is being contravened.

On Christmas Day 1983, Fidel O'Flaherty was notified by the police that he should attend the Magistrate's Court at Cayon on the 28th December 1983, when the preliminary inquiry into the charge against him would be conducted. He did so; and he was also represented by counsel who appeared later in the High Court and who also argued his appeal before us. At the preliminary inquiry learned Counsel contended that the inquiry ought to await the outcome of the Motion. The Magistrate disagreed, and he conducted the inquiry in its entirety. O'Flaherty was committed to stand trial at the Assizes scheduled to begin in January 1984. He was allowed bail as before.

The next step of importance was taken on the 4th January 1984. An affidavit sworn to by the Director of Public Prosecutions, was filed. It was a reply to the affidavit filed in support of the Motion No. 48 of 1983. Among other things, the Director of Public Prosecutions deposed as follows -

> "5. that from July 1983 to 1st October 1983, there has been in St. Kitts only one Magistrate and an Additional Magistrate who was the Registrar of the Supreme Court and who did not take any preliminary inquiry.
>
> 6. that there is a backlog of indictable matters for which preliminary inquiries have not been heard.
>
> 7. that the delay complained of was entirely as a result of a backlog of indictable matters and was not directed personally at the applicant."

/On the.....

On the 6th January 1984 Fidel O'Flaherty filed another affidavit which he described as being supplemental to that in support of Motion 48 of 1983. It alleged ~~this~~ that his right to be informed as soon as reasonably practicable in a language that he understood and in detail of the nature of the offence charged had been and was still being contravened. This was the first indication by O'Flaherty that he was complaining about or objecting to the information contained in the charge.

It can be stated without fear of contradiction that the charge was in a language that Fidel O'Flaherty knew, used, and understood; and at the hearing before Williams J. it was made clear that there was no quarrel with the language used in the warrant. The affidavit of O'Flaherty, dated and filed on the 6th January 1984 showed, in paragraph 3, that he was really complaining that

> "at no time have I been given any information as to the words and/or conduct complained of against me."

Clearly therefore up to that date O'Flaherty had no quarrel with the allegations insofar as they related to the date, place or occasion, as disclosed in the charge. His quarrel was with the lack of information concerning what it was that he said and did.

On the 10th January 1984, or 6 days after the supplemental affidavit was filed, another Notice of Motion was filed in which among the declarations sought was one that the charge given and read to the applicant is in contravention of his right to be informed in detail of the nature of the offence with which he was charged.

In this appeal two questions arise for answers; and they are dependent upon the interpretations given to section 10(1) and section 10(2)(b) of the Constitution of St. Christopher-Nevis of 1983. The sections read as follows:-

> "(1) If any person is charged with a criminal offence, then, unless the charge is

/withdrawn.....

> withdrawn the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law."
>
> (2) Every person who is charged with a criminal offence -
>
> .....
> (b) shall be informed as soon as reasonably practicable, in a language that he understands and in detail of the nature of the offence charged."

In DIRECTOR OF PUBLIC PROSECUTIONS FOR JAMAICA v FEURTADO (1979) 30 W.I.R. 206, section 20(1) of the Jamaica Constitution, which corresponds with section 10(1) above, called for consideration; and in the judgment of the Court (delivered by Kerr J.A.) the following proposition enunciated by Fox J. in R. v SHIRLEY CHIN SEE (unreported suit M. 176/67) was accepted and adopted:-

> "..... the reasonable time contemplated by the provision related to the period between the date of arrest (not the date of commission of the offence) and the date of trial."

Thus the computation of "reasonable time" started at the date of arrest which, in the instant case, was 9th September 1982. I agree that that is the proper date; and as I mentioned earlier, more than 15 months elapsed before the preliminary inquiry was begun and completed. The first question to be answered is:

> Was the case against the appellant afforded a fair hearing within a reasonable time of the 9th September 1982?

There was no issue on the independence or impartiality of the Court which, it was undisputed, had been established by law.

The criminal offence with which the appellant is charged is incitement and the second question to be answered is:

> Was the appellant informed as soon as reasonably practicable in detail of the nature of the offence charged?

/Learned.....

Learned Counsel for the appellant analysed a number of cases heard and determined before 1985, including R v DERBY CROWN COURT ex parte BROOKS 1984 Cr. App. R 164, SANDIFORD v D.P.P. (1979) 28 W.I.R. 152, R v WEST LONDON STIPENDIARY MAGISTRATE ex parte ANDERSON 1984 Cr. App. R 143; and he referred to several aspects of the instant appeal, inviting this Court to follow the approaches used in the cases he cited. The case of greatest significance was BELL v DIRECTOR OF PUBLIC PROSECUTIONS OF JAMAICA and ANOTHER (1985) 2 All E.R. 590 on which learned Counsel for the respondents also relied. This was a case decided by the Judicial Committee of the Privy Council in April 1985 on appeal from Jamaica; and among the points considered was the interpretation of section 20(1) of the Constitution of Jamaica which provides, inter alia, that "whenever any person is charged with a criminal offence he shall, unless the charge is withdrawn, be afforded a fair hearing within a reasonable time by an independent and impartial court established by law".

Dr. Browne submitted that in deciding what was a reasonable time this Court ought to look at the case in its entirety taking into account the conduct of the appellant and of the prosecution and bearing in mind that the area of the law dealing with delay, or unconscionable delay, is in a state of rapid growth. Learned Counsel analysed the explanations contained in the affidavit of the Director of Public Prosecutions and he submitted that it was wholly inadequate because (i) it did not state the reason why a magistrate was unable to conduct the preliminary inquiry and (ii) it did not set out the specific steps taken to place the matter before the learned Magistrate particularly since the latter had told the appellant not to return to court until advised to do so by the police. It was Dr. Browne's contention that after finding that this affidavit was unsatisfactory and vague the learned trial Judge sought to supplement it so that it would have merit; but, his attempt to achieve this end, by referring only to periods of delay in five cases that he researched for himself, did not render the affidavit any more valuable to the discharge

/of the.....

of the duty which rested on the prosecutor. Counsel expressed the view that the learned trial Judge was wrong to attempt to provide facts which were absent from the affidavit relied upon by the Director of Public Prosecutions.

When he dealt with the factor of prejudice to the appellant, learned Counsel submitted that (a) the delay between 9th September 1982 and 28th December 1983 was presumptively prejudicial in the absence of explanation (b) far from contributing to the delay the appellant had acted to shorten the period by filing his Motion and so compelling the Crown to start the preliminary inquiry and (c) the appellant had provided uncontradicted and unchallenged evidence on oath of prejudice suffered by him as a result of the delay imposed.

In Dr. Browne's view it could not be gainsaid that the appellant's right under section 10(1) of the Constitution of St. Christopher-Nevis had been violated; and as he saw it there was only one remedy to this situation, namely, an order so declaring, and quashing or striking out the warrant of arrest or the criminal charge; additionally the order should restrain "the respondents and any of them by themselves or any other person authorised by them from instituting and/or undertaking and/or continuing criminal proceedings arising from the alleged criminal charge."

Learned Counsel for the respondents sought to distinguish the cases relied upon by the appellant though he regarded the case of BELL v DIRECTOR OF PUBLIC PROSECUTIONS OF JAMAICA and ANOTHER as the most helpful in the instant appeal.

Mr. Byron submitted, inter alia, that (i) the affidavit of the Director of Public Prosecutions provided explanations for the delay (ii) the said affidavit should be accorded greater weight than that of the appellant insofar as they dealt with reasons for the delay (iii) there was no allegation of bad faith on the part of anyone concerned with the matter

/(iv) the.....

(iv) the learned trial Judge having found that the affidavit was not as satisfactory as it could have been, acted properly and did not enter the arena - as was urged on behalf of the appellant - when he considered five cases with which he had dealt at the Criminal Assizes in May 1984. It was the contention of Counsel for the respondents that the trial Judge had acted within the scope of his judicial discretion, looking at the cases as being part of the background of the explanations in the affidavit of the Director of Public Prosecutions and in an effort to do justice.

There was no dispute, and indeed the learned trial Judge found that it had been established, that at the material time there was a backlog of cases; but whereas learned Counsel for the appellant submitted that this was not a reason for delay known to law, learned Counsel for the respondent submitted that it was, and he cited R v MILLER (No. 2608) 1983 ALBERTA REPORTS page 380 in support of his submission.

Mr. Byron submitted further that if the Motion 48 of 1983 filed on 24th December 1983 was an indication of the assertion of his right by the appellant then (a) it could have been done much earlier if he wanted to, and (b) immediately on the appellant doing so the prosecution took steps to remedy his complaint by fixing the preliminary inquiry ahead of those which were older and awaiting a hearing, and having it heard at a time which was not normally taken up with such types of cases.

As far as the allegation of prejudice was concerned, Counsel for the respondents submitted that there was no proof that in the circumstances of the case, the period of about 15 months should be regarded as presumptively prejudicial. He also analysed each of the assertions in paragraph 7 of the appellant's affidavit filed on 17th January 1984 and contended that none reflected specific proof of prejudice to the appellant due to the delay.

Mr. Byron submitted that in the light of all of the circumstances of this case and those prevailing in this jurisdiction at the material time, the period of delay was not unreasonable and there had been no

/contravention....

contravention of section 10(1) of the Constitution of St. Christopher Nevis, as alleged or at all.

With respect to the relief claimed by the appellant it was Counsel's view that if this Court were minded to find that there had been a denial of a fair hearing within a reasonable time, then in keeping with the decision in SANDIFORD v D.P.P. (1979) 28 W.I.R. 152 this Court should only order that the trial commence on a certain date or within a stated time during the next Assizes.

Now in 1972 the Supreme Court of the United States of America was required to consider the 6th amendment to the Constitution of the United States of America in the case BARKER v WINGO WARDEN (1972) 407 U.S. 514; that amendment deals with the right of an accused person to a speedy and public trial by an impartial jury, in all criminal prosecutions. Before identifying factors which he considered the Court ought to assess in deciding if an applicant had been deprived of his right to a speedy trial, Powell J. observed that such a right was a more vague concept than other procedural rights and he said, at page 521:-

> "It is, for example, impossible to determine with precision when the right had been denied. We cannot definitely say how long is too long in a system where justice is supposed to be swift but deliberate....."

The four factors which Powell J. identified were: (1) length of delay (2) the reasons given by the prosecution to justify the delay (3) the responsibility of the accused for asserting his rights and (4) prejudice to the accused. The guidance provided by Powell J. in respect of each factor deserves quotation from the judgment, even at the risk of being lengthy. On the first mentioned factor he said, inter alia, at page 530:-

> "Until there is some delay which is presumptively prejudicial, there is no necessity for inquiry into the other factors that go into the balance. Nevertheless, because of the imprecision of the right to speedy trial, the length of delay that will provoke such an inquiry is necessarily dependent upon the peculiar circumstances of the case....."

/On the....

On the second factor Powell J. gave this guidance at page 531 :-

> "A deliberate attempt to delay the trial in order to hamper the defence should be weighted heavily against the government. A more neutral reason such as negligence or overcrowded courts should be weighed less heavily but nevertheless should be considered since the ultimate responsibility for such circumstances must rest with the government rather than with the defendant. Finally, a valid reason, such as a missing witness, should serve to justify appropriate delay."

As far as the third factor was concerned Powell J. provided the following guidance at page 531:-

> "Whether and how a defendant asserts his right is closely related to the other factors we have mentioned. The strength of his efforts will be affected by the length of the delay, to some extent by the reason for the delay, and most particularly by the personal prejudice, which is not always readily identifiable, that he experiences. The more serious the deprivation the more likely a defendant is to complain."

With respect to the fourth mentioned factor Powell J. said, at page 532:-

> "Prejudice.....should be assed in the light of the interests of defendants which the speedy trial right was designed to protect. This Court has identified three such interests: (i) to prevent oppressive pre-trial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defence will be impaired. Of these, the most serious is the last..... If Witnesses die or disappear during a delay, the prejudice is obvious....."

In March 1979, the Court of Appeal of the West Indies Associated States, sitting in Antigua, heard appeal No. 5 of 1978, WRIGHT CYRIL & JULIAN EMMANUEL v KEITHLEY SPENCER which concerned an alleged infringement of rights under section 8(1) of The Constitution of Antigua 1967. That section was expressed in similar words to section 20(1) of The Constitution of Jamaica 1962 which was quoted earlier in this judgment. The four factors stated in BARKER'S case were adopted and applied to all the facts and circumstances.

/In November....

In November 1979 the Court of Appeal of Jamaica decided the case DIRECTOR OF PUBLIC PROSECUTIONS FOR JAMAICA v PEURTADO reported at 36 W.I.R. 206. It was an appeal from a majority judgment of the Full Court, which among other things involved consideration of section 20 of The Constitution of Jamaica. Kerr J.A. in the judgment of the Court said at page 212 -

> "What is a reasonable time would depend upon the circumstances of each case, including the nature of the case, the formalities of the pre-trial procedures, the facilities existing, and the efforts that have been made to conclude the proceedings. As Fox J. put it in R v SHIRLEY CHIN SEE:
>
> > 'Secondly, what is a reasonable time is determined not by an objective quest in vacuo of the ideal, but subjectively, by reference to circumstances prevailing in the corporate area at the present time with respect to (1) the number of criminal cases for trial in relation to the existing facilities and the personnel for effecting trial; (2) the inordinately slow pace at which some trials do in fact proceed; and (3) the indifferent standard of efficiency which it has been possible to achieve in making arrangements for bringing on cases for trial."

In R.v CAMERON (1982) 6 W.C.R. 270 the applicant alleged infringement of the right granted by section 11 of the Canadian Charter of Rights and Freedoms in Part I of the Constitution Act 1982, to "any person charged with an offence.....to be tried within a reasonable time.....". Sitting in Alberta Queen's Bench Court, Mc Donald J. adopted the four factors to which Powell J. adverted in BARKER'S case.

This brings me to BELL v D.P.P. of JAMAICA (1985) 2 All E.R. 585 decided about six months before the instant appeal came before us. There, Lord Templeman also referred to Barker's case and to the four factors that Powell J. identified as relevant when determining whether a particular defendant has been deprived of his right to a speedy trial or a fair hearing within a reasonable time. At page 591 letters h and j, he said:-

/"Their.....

> "Their Lordships acknowledge the relevance and importance of the four factors lucidly expanded and comprehensively discussed in Barker v Wingo. Their Lordships also acknowledge the desirability of applying the same or similar criteria to any constitution, written or unwritten, which protects an accused from oppression by delay in criminal proceedings. The weight to be attached to each factor must however vary from jurisdiction to jurisdiction and from case to case.
>
> Their Lordships accept the submission..... that, in giving effect to the rights granted by S.S13 and 20 of the Constitution of Jamaica the courts of Jamaica must balance the fundamental right of the individual to a fair trial within a reasonable time against the public interest in the attainment of justice in the context of the prevailing system of legal administration and the prevailing economic, social and cultural conditions to be found in Jamaica. The administration of justice in Jamaica is faced with a problem not unknown in other countries, of disparity between the demand for legal services and the supply of legal services. Delays are inevitable."

Lord Templeman also indicated that the solution to the problem did not necessarily lie in the appointment of additional judges or the creation of new courts; and, in his words: "expansion of legal services necessarily depends on the financial resources available for that purpose. Moreover, an injudicious attempt to expand an existing system of courts, judges and practitioners could lead to a deterioration in the quality of the justice administered". At page 592 letters b and c, he said this:-

> "The task of considering those problems, falls on the legislature of Jamaica, mindful of the provisions of the Constitution and mindful of the advice tendered from time to time by the judiciary, the prosecuting service and the legal profession of Jamaica. The task of deciding whether and what periods of delay explicable by the burdens imposed on the courts by the weight of criminal causes suffice to contravene the rights of a particular accused to a fair hearing within a reasonable time falls on the courts of Jamaica and in particular on the members of the Court of Appeal who have extensive knowledge and experience of conditions in Jamaica."

It was then pointed out that in Bell's case the Full Court stated that in the Gun Court a delay of two years was a current average period

/of delay....

of delay in those cases where there were no problems for witnesses; and the Court of Appeal did not contradict that statement by the full Court. Lord Templeman then said this:-

> "Their Lordships accept the accuracy of the statement and the conclusion, implicit in the statement, that in present circumstances in Jamaica, such delay does not by itself infringe the rights of an accused to a fair hearing within a reasonable time."

Except where there has been reference to a Gun Court -- which does not exist in this jurisdiction - the passages quoted above are apt and are relevant to the situation in St. Christopher-Nevis; and, as I indicated earlier, learned Counsel for the parties regarded BELL'S case as of the greatest significance to this appeal - a view shared by me.

In the Court below the learned trial Judge carried out an assessment of the four factors mentioned in Barker v Wingo when he determined the issues raised in the instant case; and I accept that in determining whether the appellant had been deprived of a fair hearing by reason of unreasonable delay the relevant factors to be considered were, the length of the delay, the reasons given by the prosecution to justify the delay, the efforts made by the appellant to assert his rights and the prejudice to the appellant. I also hold the view indicated in Bell's case that the assessment of those factors must vary not only from jurisdiction to jurisdiction but from case to case and in particular that the existing system of legal administration and the economic social and cultural conditions in this Federation of St. Christopher-Nevis must be taken into account.

The time which elapsed after the arrest of the appellant and before the trial, of which the preliminary inquiry was a part, was over 15 months but under 16 months. Explanations were offered for the delay but given the prevailing conditions at the time and bearing in mind the offence charged, I do not regard the length of the delay as presumptively

/prejudicial.....

prejudicial. Thus the first question could be answered at this stage in the affirmative.

The reasons given by the prosecution to justify the delay were contained in the affidavit filed on the 4th January 1984, already quoted. Of this affidavit the trial Judge said it was vague and lacked details however such facts as were given were accepted. The trial Judge accepted that there was a shortage of available Magistrates to conduct preliminary inquiries, that there was a backlog of indictable matters for which the preliminary inquiries had not been commenced and that there was nothing directed personally at the appellant. In addition the learned trial Judge checked the records of cases which he had heard some four months or so earlier at the Criminal Assizes. There were five cases from which he pointed out that the offence in each had been committed in 1982, the accused in each arrested in 1982, and that the delays between the dates of arrest and of committal were approximately 22 months, 25 months, 18 months, 15 months and 20 months. In my view the learned trial Judge did nothing wrong or improper to look at the cases in order to ascertain what was the average period of delay at that time. It was for him to take into consideration and use his knowledge and experience of the relevant conditions then prevailing within the jurisdiction, in order to properly assess the reasons given by the prosecution for justifying the delay. In his judgment the trial Judge said:-

> "The delay here is some fifteen months, can this be considered an unusual delay, or an inordinate delay or an unreasonable delay in the context of our jurisdiction and the circumstances of the case?"

He answered the question thus:-

> "..... the Court must look at all the circumstances and in all the circumstances.... I am clearly of the view that the delay complained of by the applicant is not an unreasonable one....."

/I am in....

I am in agreement with the learned trial Judge and find that [illegible] jurisdiction, in a case such as the instant case and in the prevailing circumstances revealed by the affidavit of the Director of Public Prosecutions and the check of the trial Judge, there was not an unreasonable or unconscionable delay between the date of the arrest of the appellant and the date of the preliminary inquiry into the charge.

In dealing with the efforts made by the appellant to assert his right, Dr. Browne readily conceded that the Motion filed in December 1983 was the initial effort of the appellant to do so. The learned trial Judge did not regard this as an assertion of his right as intended by Powell J. in Barker's case. I agree with learned Counsel for the respondent that from the facts before us, as soon as the appellant sought to assert his right there was a response to have the matter heard ahead of other pending preliminary inquiries. There had been no earlier effort to assert his right and the case was only one of many awaiting attention. The appellant had been advised on the 13th September 1982 that he should not return to court to answer the charge until informed to do so. He accepted this and then made his first effort to assert his right after this 15 months later.

I do not regard this factor as having any weight in the circumstances of the instant case.

When the learned trial Judge dealt with the factor of prejudice to the appellant he expressed his displeasure at the manner in which it was raised and saw it as one of "a series of after thoughts" raised at different intervals after the filing of the Motion No. 48 of 1983. He placed "very little probative value if any" on the affidavit of the appellant filed on the 17th January 1984 in which allegations of prejudice were itemised. Indeed he said:-

> "If these were genuine acts of prejudice why did not the applicant plead them at the outset of this action? .....Why did he allow himself

/to endure....

> "to endure them during those fifteen months during which he made no request to the authorities to have the matter dealt with? The moment he acted the authorities immediately took steps the following day to set the wheels in motion for a hearing...."

The trial Judge found that the matters of prejudice alleged were matters that could have arisen from the fact that O'Flaherty was facing a charge and not from the period of delay following his arrest.

I do not think it is necessary to set out from paragraph 7 of the affidavit the instances which the appellant claimed amounted to uncontradicted evidence of prejudice. It will suffice to say that none was shown to be specific prejudice linked to the period of delay. They were vague statements lacking positive support. For example, he claimed that in order to travel beyond the limits of St. Christopher and Nevis he had to seek the leave the Court. This was unsupported by any evidence of any such order of the Court. He claimed that he was refused gainful employment by several employers. This too remained without the support of any of the "several employers". Paragraph 9 of the affidavit claimed that "as a result of the delay several persons whom I would have wished to call as witnesses on my behalf have left St. Christopher and Nevis and it would be extremely difficult if not impossible for me to avail myself at this time of any evidence they would have been able to give if the aforesaid long delay had not taken place and if I had known earlier of the words and/or conduct complained of against me". Although it is a long sentence I find it unhelpful for the purpose for which it was meant. The statement is open to much criticism. The trial Judge was not assisted with the number or names of persons, nor with their destinations or duration abroad, nor with the reasons why it would be extremely difficult or impossible to obtain such evidence as they might have given; nor with the evidence that would have been given by each witness; nor indeed with whether all or any of such persons were willing to give evidence. Put briefly there was really no indication that either

/the presence....

the presence of "the several persons" or the evidence which would have been given was really relevant; and of course if the appellant was complaining that he did not know enough about the charge to be able to answer it then it would be difficult to appreciate how he would know what witnesses he should call. When this last mentioned aspect of the matter was brought to the attention of learned Counsel for the appellant, as I understood his response, he claimed that there would be witnesses who could answer, on his behalf, if any details at all were disclosed.

I have said enough to show that it is my opinion that the first question posed should be answered "Yes, the case against Fidel O'Flaherty was afforded a fair hearing within a reasonable time of the date of his arrest, 9th September 1982.

The second question to be answered was whether the appellant had been informed as soon as reasonably practicable in detail of the nature of the offence charged.

Learned Counsel for the appellant said that the only information conveyed to the appellant was that disclosed in the warrant of arrest which was executed on the 9th September 1982. It was admitted that the appellant was given a copy of the said warrant. Counsel also conceded that as set out the charge contained details but he argued that they did not go far enough. It was Dr. Browne's submission that "the failure of the prosecuting authorities to detail specifically where in Basseterre, the nature of the acts which constitute the alleged incitement, on what and what bodily injury was to be perpetrated, was a violation of the appellant's constitutional right under section 10(2)(b) of the Constitution of St. Christopher and Nevis", for which the sole remedy was the quashing of the charge.

Learned Counsel for the respondents submitted that adequate detail of the nature of the offence charged had been given and that the relief sought by the appellant was inappropriate in the circumstances of this case.

/Mr. Byron.....

Mr. Byron also sought to distinguish AMERALLY & BENTHAM v ATTORNEY [illegible] et al (1978) 25 W.I.R. 273 and MOSES BHAGWAN v BERNAL CHESTER (1977) [illegible] W.I.R. 187, the cases relied upon by Dr. Browne. Counsel contended that Dr. Browne sought to rely upon dicta in Amerally's case which, he said, was not an authority on this section of the Constitution; and in respect of Bhagwan's case, Mr. Byron contended that it dealt with duplicity which was not an issue in this appeal.

The relevant part of the warrant reads thus:

> "that Fidel O'Flaherty of Conaree, hereinafter called the defendant on the 5th day of September 1982, at Basseterre in the Parish of St. George in the Magisterial District A in the State of St. Christopher-Nevis did unlawfully incite persons assembled at a public meeting to commit bodily injury contrary to common law."

This information was known to the appellant on the 9th September 1982 and he made two appearances at Court without any complaint that he was not in a position to answer the charge. He first raised the matter before the High Court by Motion No. 2 of 1984, filed on 10th January 1984. On the hearing of this appeal Dr. Browne conceded that he had the right to apply for particulars when the appellant appeared before the [illegible] and he admitted that no such application was made.

In my view the appellant would have realised, with no difficulty whatever, on the 9th September 1982 (and probably before that, when he learnt that the police were looking for him) that the charge concerned something he said when he addressed persons gathered at a public meeting a few days earlier; and, as I said before, the appellant would have been aware of the topic on which he spoke. He may even have been in a position to recall what he said that would have given rise to the charge. If he was unaware of the words or wished to know specifically what words he was being accused of, then he could have applied to the Magistrate to be provided with such particulars. Indeed his application need not have been confined to the words used; it could have extended to those things of which he

/complained....

complained before this Court. Then the learned Magistrate would have decided whether the application sought facts or evidence and whether or not to order all or any of the particulars sought.

It is my opinion that the appellant was informed as soon as reasonably practicable in detail of the nature of the offence charged, and I would answer the second question in the affirmative.

There was no breach of either of the rights conferred by section 10(1) and (2)(b) of the Constitution of St. Christopher-Nevis. I would therefore dismiss the appeal and award the costs of this appeal to the respondents, to be taxed.

Before I leave this case I wish to recall the words of Lord Diplock in HARRIKISSOON v ATTORNEY GENERAL OF TRINIDAD & TOBAGO (1980) A.C. 265, (1979) 3 W.L.R. 62. At page 64 of the latter report, it reads:-

> "The notion that whenever there is a failure by any organ of government or a public authority or public officer to comply with the law this necessarily entails the contravention of some human right or fundamental freedom guaranteed to individuals.....is fallacious. The right to apply to the High Court..... for redress when any human right or fundamental freedom is or is likely to be contravened, is an important safeguard of those rights and freedoms; but its value will be diminished if it is allowed to be misused as a general substitute for the normal procedures for involving judicial control of administrative action."

E.H.A. BISHOP,
Justice of Appeal

I agree.

L.L. ROBOTHAM,
Chief Justice

I also agree.

G.C.R. MOE,
Justice of Appeal.