

SAINT LUCIA

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE
[CRIMINAL]

CASE NO. 63 of 2002

THE QUEEN

v

LUCIEN MAXIMIN

Appearances:

Ms. Victoria Charles DPP (ag) for the Prosecution. With her is Mr. Leslie Mondesir.
Mr. Shawn Innocent for the Accused. With him is Mrs. Mary Juliana Charles.

2003: June 12, 13
June 16

DECISION

1. **HARIPRASHAD-CHARLES J:** The Accused, Lucien Maximin who is deaf and mute and could neither read nor write was charged on an indictment of murder. On arraignment, he stood mute and a jury of 12 was duly empanelled and sworn to try whether he stood mute of malice or by the visitation of God. The Jury returned a unanimous verdict that the Accused stood mute by the visitation of God. The jury was then sworn a second time to try whether he was capable of pleading to the indictment, and found that he was incapable of pleading to and taking his trial upon the indictment and of understanding and following the proceedings by reason of his inability to communicate and be communicated with by others. The issue that falls to be determined is whether Mr. Maximin should be discharged or be kept in custody until he can be dealt with according to law in accordance with Section 938 (3) of the Criminal Code.
2. Section 938 (3) states that if a jury find that an accused is not capable, the finding shall be recorded and the court may order the accused to be discharged or may order him to be kept in custody in such place and in such manner as the court thinks fit until he can be dealt with according to law.

3. In my opinion, section 938 contemplates situations where accused persons are mentally ill and are found to be incapable of pleading to the indictment. The Code is silent where the accused is physically incapacitated. In English Law, such physically incapacitated persons who could not understand or make their defence were adjudged to be "insane". In *R v Dyson (1831) 7 C & P 305* and *R v Pritchard (1836) 7 C & P 303* the defendants were found to be mute by the visitation of God and unfit to take their trials and thus insane. In the case of *The King v The Governor of His Majesty's Prison at Stafford, ex parte Emery*, a prisoner who was totally deaf and could not read or write was arraigned for a felony. Upon being arraigned he stood mute and a jury, properly empanelled and sworn for that purpose, found that he was mute by the visitation of God. The jury was sworn a second time to try whether he was capable of pleading to the indictment and they found that he was incapable of pleading and taking his trial. Upon that finding, the judge, acting under s. 2 of the Criminal Lunatics Act 1800, ordered him to be kept in custody until her Majesty's pleasure be known.
4. I think that the past practice of physically incapacitated accused being adjudged to be "insane" would not be the correct practice today especially where physically handicapped persons through the provision of interpreters and the use of standard sign language may be capable of making a proper defence to a criminal charge.
5. Against this background, I am called to exercise my discretion to determine whether the Accused, Lucien Maximin should be discharged or remain in custody until he can be dealt with according to law. The facts of this case are unfortunate. Lucien Maximin is indicted for the murder of a close family member. He is 47 years old. He hardly went to school. He cannot read or write. He is deaf mute and cannot understand standard sign language. As Dr. Surage neatly summed it up under cross-examination:

"He may have developed a means of communication which is not standardized meaning that people around him may be able to communicate with him but generally the wider public would not be able to communicate with him. "
6. Dr. Surage, an ENT head and neck surgeon of many years, testified that Mr. Maximin has had a profound hearing loss since childhood. He saw him some 10 years ago. At that time his speech was incomprehensible and he recommended that he attend the School for the Deaf.

This has not occurred and no record of any audiological evaluation was available. Dr. Surage again saw Mr. Maximin in February 2003 when he was brought by the police who requested an evaluation of his hearing and communication skills. Mr. Maximin's communication was incomprehensible. His hearing loss was profound. Clinically, it was impossible to communicate with Mr. Maximin verbally. He had an audiogram done on Mr. Maximin on 20th February 2003 which confirmed profound hearing loss in both ears. He genuinely has profound hearing loss and unable to communicate verbally. Dr. Surage concluded: " I think that the accused may not be in a position to comprehend what is happening today."

7. Ms. Justine Odlum who teaches at the School for the Hearing Impaired was also called as a witness for the Prosecution. She has been a teacher at that institution for 23 years and she saw the Accused in April last year when the police brought him there to assist him to interpret. She said that she was unable to do so because he was unable to understand standard or universal sign language.
8. Two family members testified in respect of his ability to communicate. His elder sister, Cornelia Jules said that since her brother was 3 years, she realized that Mr. Maximin was unable to hear or speak. He cannot read or write but if you write his name he would be able to copy it. He made signs in order to communicate and that it is difficult to understand everything he says. The next family member to testify was John Jules who is the nephew of Lucien Maximin and son of the deceased. He said under oath that he could understand most things that the Accused says but not everything. Mr. Jules himself cannot speak or read or write English well. In this court, he spoke only patois. He acted as the interpreter in the court below. But, besides the conflict of interest in that he is the son of the deceased, I am not convinced that he is a proper person to act as an interpreter in this court. After all, Lucien Maximin is on a charge of murder and the ultimate sentence is death by hanging. There is a duty on the court to act justly and fairly, and this includes the duty to offer Mr. Maximin the opportunity to be heard. It is the opportunity to be heard which is important. In my judgment, he is deaf mute. He does not know that he is charged with murder and is unable to communicate with his lawyers. He is unable to follow legal proceedings. He is however able to communicate using his hands to ask for simple needs.

9. As I earlier stated, the Court has a discretionary power under section 938 (3) of the Criminal Code either to discharge the Accused or to keep him in custody at Her Majesty's Prisons until he can be dealt with according to law. If the court makes an order to keep him, the next question will be for what purpose. The answer is obvious: so that he could be taught to communicate through standard or universal sign language but, even if this is done, it seems unlikely that this would be done in the near future. It means that at 47, he has to undergo a course of study so that he could communicate using standard sign language. This is juxtaposed with the fact that he hardly went to school. He left school when he was about 6 to 7 years old; that is over 40 years ago. I am not sure whether it would be wise to send him to school now.
10. Counsel for the defence, to whose submissions, like those of the Learned Director of Public Prosecutions this court is greatly indebted, urges the court to discharge Mr. Lucien Maximin. He argued that under the Constitution of St. Lucia, a man is presumed innocent until proven guilty and he can only be proven guilty after a trial has taken place. If no trial can or will take place, then the presumption of innocence operates in his favour and he must not be detained unnecessarily.
11. Mr. Innocent referred to the American case of *Jackson v Indiana (1972) 406 US 715*. In that case, the Petitioner was a mentally defective deaf mute with a mental level of a pre-school child. He cannot read, write or otherwise communicate except through limited sign language. He was charged with two criminal offences and committed under the 9-1706 procedure. The doctor's report showed that the Petitioner's condition precluded his understanding the nature of the charges against him or participating in his defense and their testimony showed that the prognosis was "rather dim", that even if the petitioner were not a deaf mute he would be incompetent to stand trial; that the petitioner's intelligence was not sufficient to enable him ever to develop the necessary communication skills. According to the deaf-school's interpreter's testimony, the State had no facilities that could help the petitioner learn minimal communication skills. After finding that the Petitioner lacked comprehension sufficient to make his defence, the court ordered that the petitioner be committed until such time as the health

department could certify the Petitioner's sanity to the court. The Petitioner filed a motion contending that his commitment was tantamount to a "life sentence" without his having been convicted of a crime. The Petitioner also asserts that indefinite commitment deprived of due process and subjected him to cruel and unusual punishment. It was held that the indefinite commitment of a criminal defendant solely on account of his lack of capacity to stand trial violates due process. Such a defendant cannot be held more than the reasonable period of time necessary to determine whether there is a substantial probability that he will attain competency in the foreseeable future. If it is determined that he will not, the State must either institute civil proceedings applicable to indefinite commitment of those not charged with crime, or release the defendant.

12. It seems to me that to keep Mr. Maximin in Her Majesty's Prisons for an indefinite period simply on his incompetency to stand trial constitutes cruel and unusual punishment under the Constitution of St. Lucia.
13. The Court called the Chief Prisons Officer, Mr. Dominic Soudine to see what assistance he could usefully provide. Mr. Soudine feels that no meaningful purpose would be served if Mr. Maximin is detained at Her Majesty's Prisons as the prison authorities will continue to have difficulty in communicating with him.
14. I will therefore order the discharge of Lucien Maximin. Under the present law, Lucien Maximin may be again indicted and tried for the offence (Section 938 (4) of the Criminal Code).

INDRA HARIPRASHAD-CHARLES
High Court Judge