GRENADA

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 1 OF 2002

BETWEEN:

[1] COSMOS RICHARDSON
[2] ANDY MITCHELL
[3] VINCENT JOSEPH

Appellants

and

THE ATTORNEY GENERAL

Respondent

Before:

The Hon. Mr. Albert Redhead	Justice of Appeal
The Hon. Mr. Ephraim Georges	Justice of Appeal [Ag.]
The Hon. Mr. Denys Barrow, SC	Justice of Appeal [Ag.]

Appearances:

Mr. Dennis Scotland and Mr. Cajeton. Hood for the Appellants
Ms. Lisa Taylor and Mr. Neil Noel for the Respondent

2003: March 12;
2004: January 26.

JUDGMENT

[1] REDHEAD J.A.: On 4th December, 1986 all three appellants were convicted of manslaughter in respect of the deaths of many persons, including that of the then Prime Minister of Grenada, Mr. Maurice Bishop.

[2] The appellants were all sentenced to successive terms of fifteen years imprisonment. Mr. Cosmos Richardson and Mr. Andy Mitchell were each sentenced to three consecutive terms of fifteen years and Mr. Vincent Joseph to two consecutive terms of fifteen.

[3] On the 28th June 2001 the appellants filed a motion in the Grenada High Court seeking the following reliefs:

[i] A declaration that the continued imprisonment and/or continued detention of the Applicants beyond the period of the first sentence of fifteen years imprisonment is unconstitutional and illegal.

[ii] A declaration that the decision of the trial Judge to punish the applicants by imposing two or three periods of fifteen years where the second or third period of imprisonment was to be served consecutively was in the circumstances of this case unconstitutional and illegal.

[iii] An order that the applicants be released from prison forthwith.

[4] On 14th February 2002 the motion was heard by Alleyne J (as he then was) who declared on the same day that the continued imprisonment and/or continued detention of the applicants beyond the first sentence of fifteen years was unconstitutional and illegal.

[5] The learned trial Judge also declared that the decision of the trial Judge to punish the applicants by imposing further periods of imprisonment where these periods were to be served consecutively were in the circumstances of this case unconstitutional and illegal. The learned Judge then ordered that the respondents be released from prison forthwith.

[6] The Attorney General appealed the decision of Alleyne J. On 11th November, 2002 the Court of Appeal (Civil Appeal No. 1 of 2002) delivered its judgment which reversed the decision of Alleyne J and ordered that Messrs Richardson, Joseph and Mitchell the respondents in that appeal continue to serve the remainder of their sentence.

[7] This present appeal by these three appellants constitutes an application to appeal to the Judicial Committee of the Privy Council.

[8] Before I consider the issues in this appeal it is, in my view, prudent to refer to the background facts which led to the appellants' conviction, their subsequent appeal to the Grenada Court of Appeal and finally the filing of their motion which came before Alleyne J on 14th February, 2002.

[9] On 4th December 1986 the appellants were convicted of manslaughter in respect of the deaths of a number of persons, arising out of a detachment of military personnel. The appellants formed part of that military detachment.

[10] The attack consisted of a series of acts which resulted in the deaths of several persons. There was evidence before the trial court by virtue of an affidavit of Keith Friday, Crown Counsel, in the Director of Public Prosecutions Chambers whereby he swore that Fabian Gabriel testified that there was an armed assault on Fort Rupert which was directed at a building in which Maurice Bishop's friends and supporters were. During the assault on the building one Ms. Avis Ferguson was shot and killed and one Gemma Belmar received injuries from which she shortly died.

[11] One Vincent Noel was shot and injured and lay on the ground and was later taken to the back of one of the buildings on the Fort where his dead body was subsequently discovered.

[12] Gabriel stated that the military assault consisted of two distinct phases and a series of acts. After the bombardment of the building in which Prime Minister Bishop was at siege, he was later seen to emerge from the same building alive. He was stopped by members of the military, including the appellants. Prime Minister Bishop and others were marched to a higher level of Fort Rupert and lined up in the open courtyard and soon after they were executed by a firing squad consisting of the appellants and others.

[13] The appellants, Cosmos Richardson and Andy Mitchell were each sentenced to three fifteen consecutive years imprisonment while the appellant, Vincent Joseph, was sentenced to two fifteen years imprisonment.

[14] Section 239 of the Criminal Act Cap 76 stipulates that the maximum sentence for manslaughter is 15 years.

[15] Up to the time of the appellants' conviction and sentence on 4th December, 1986 the Peoples Revolutionary Government (PRG) which took control of Grenada by force in 1983 abolished the West Indies Associated States Supreme Court and set up a High Court. The PRG also abolished appeals to the Judicial Committee of the Privy Council.

[16] This state of affairs continued until 16th August 1991. The Governor General of Grenada assented to both the constitutional Judicature (Restoration) Act which provided for the restoration of the judicature established under the Constitution and certain orders in Council, and to the West Indies Associated States Supreme Court (Grenada) Act Re-enactment Act 1991.

[17] The express objects of these two Acts were to abolish the Court set up under the PRG and reactivated the West Indies Associated States Supreme Court Order 1967. On 19th July, 1991 the Governor General issued constitutional Judicature (Restoration Act (Appointed Day) Proclamation (SRO14/1991) ("the first proclamation") under S 10 of the Restoration Act, appointing, August 1991 as the date when the Restoration Act was to commence.

[18] The appellants were therefore tried and convicted by the High Court set up by the PRG. In determining the issue in this appeal, that is whether or not the appellants are entitled to be granted leave to appeal to the Judicial Committee of the Privy Council, first of all I address the jurisdictional point, that is, whether this court has jurisdiction to grant leave. Secondly I undertake an analysis of all the issues in order to determine whether any constitutional issues are involved in this case.

[19] In Mitchell v Attorney General of Grenada[1], Sir Vincent Floissac, Chief Justice after undertaking a historical journey of the establishment of the Court by the PRG, the learned Chief Justice said that the appellants were convicted of manslaughter. The appeals against conviction were dismissed by the Court of Appeal established by the PRG.

[1] 1993 3LRC

[20] The appellants then filed motions No. 1 which was for the hearing and determination or redetermination by this court of Criminal Appeals Nos. 4 to 20 of 1986, Civil appeals no. 7 and 11 of 1988. He said all of the matters to which this motion relates were heard and determined by the former Court of Appeal before its abolition on 16th August, 1991. Continuing, Sir Vincent said:

> "The crucial question in this Motion is whether this Court of Appeal has jurisdiction to hear, rehear, determine or redetermine matters which were heard and determined by the Former Court of Appeal before its abolition. In order to answer that question or to ascertain the extent of the jurisdiction of this Court of Appeal, it is necessary to refer to the source of that jurisdiction. That source is section 9 (2) of the West Indies Associated States Supreme Court Order 1967 (imperial Order 1967 No. 223) which provides that:
>
> > "The Court of Appeal shall have, in relation to a State such jurisdiction to hear and determine appeals and to exercise such powers as may be conferred upon it by the Constitution or any other law of the State."
>
> According to section 9(2), this Court of Appeal does not have the jurisdiction in issue unless that jurisdiction has been conferred upon this Court of Appeal by the Constitution or some other law (evidently some statutory law) of Grenada. The Constitution predictably confers no such jurisdiction. Nor does any pre-revolutionary law enacted by the Constitutional Parliament of Grenada. No post-revolutionary Act confers any such jurisdiction. On the contrary, section 7 (3) of the Restoration Act (which is a post-revolutionary Act) impliedly denies any such jurisdiction. Section 7 (3) of the Restoration Act provides that:
>
> > "All matters and proceedings pending in and not determined by the Former Court of Appeal shall be determined and concluded as if pending in the Court of Appeal."
>
> Section 7 (3) of the Restoration Act expressly confers jurisdiction on this Court of Appeal to determine and conclude only matters not determined by the Former Court of Appeal before its abolition on the appointed day (16th August 1991). The clear implication of section 7 (3) is that this Court of Appeal should have no jurisdiction to determine any matter which was determined by the Former Court of Appeal before 16th August 1991.
>
> Since all of the appeals and other matters to which this Motion relates were heard and determined by the Former Court of Appeal before 16th August 1991, this Court of Appeal has no jurisdiction to determine or redetermine those appeals and matters."

[21] This in my judgment is a clear and authorative pronouncement of the law by the Court of Appeal, the highest Court in this jurisdiction and can only be overruled by a decision of the Privy Council. It has not been overruled. It therefore remains the law.

[22] The appellants filed a motion in 1986 which was dismissed by the High Court and Court of Appeal, the appellants also brought a motion in 1987 which was dismissed as an abuse of the process of the Court.

[23] For the avoidance of doubt, Motion No. 1 filed in 1986 sought the following orders and relief:

[a] An Order that Criminal Appeals Nos. 4 – 20 of 1986 filed in the Former Court of Appeal on the 12th day of December 1986 be heard and determined by the Court of Appeal.

[b] An Order that Civil Appeal No. 11 of 1988 filed in the Former Court of Appeal on the 19th day of August 1988 be heard and determined by the Court of Appeal.

[c] An Order that Civil Appeal No. 7 of 1988 filed in the Former Court of Appeal on the 26th day of April 1988 be heard and determined by the Court of Appeal.

[d] An Order that Motion No. 1 of 1991 filed in Criminal Appeals Nos. 4 – 20 before the Former Court of Appeal on the 29th day of July 1991 be heard and determined by the Court of Appeal.

[e] Alternatively that the Court of Appeal re-hear the said Criminal Appeals Nos. 4 – 20 of 1986, Civil Appeal No. 11 of 1988 and Civil Appeal No. 7 of 1988.

[f] Such further or other order as the Court of Appeal may seem just.

[24] The learned trial Judge by his declarations as referred to in paragraphs 4 and 5 of this Judgment, purported, in my view, to overrule the decision of the Court of Appeal. This he could not do because his jurisdiction was concomitant with that of the Judge whose decision he sought to overrule. Moreover the pronouncements and the declarations of the learned trial Judge bear the hallmark of pronouncements of a Court of Appeal on a decision of a High Court Judge. For example, he said: -

> "the decision of the trial Judge to punish the applicants by imposing further periods of imprisonment above periods of fifteen years where the second and third period

> of imprisonment was to be served in the circumstances of this case unconstitutional and illegal"

[25] There is no doubt that the former Court of Appeal established by the PRG considered the appeals relating to the sentences imposed on them and dismissed the appeal. The appellants themselves had sworn affidavits that they appealed against their conviction and sentence and the former Court of Appeal dismissed their appeals and affirmed the conviction and sentences handed down by the Court of Trial.

[26] That point is also emphasized, in my view, by the very motion filed on 29th July 1991. The applicants in that motion included these appellants. Although the motion was filed in the former Court of Appeal, when the motion came up for hearing on 7th August 1991 before that court, the applicants filed a preliminary objection to the hearing by the former court on the ground that court had no jurisdiction because that court had been abolished from the 1st August 1991 by virtue of the provisions of the Constitutional Judicature (Restoration) Act 1991. This preliminary objection was overruled by the former Court of Appeal. That court went on to hear the substantive motion filed by the applicants and dismissed it.

[27] In my opinion what is of great significance in relation to this appeal is paragraph (c) of the motion filed by the applicants. The paragraph reads as follows: -

> "An order granting a stay of execution of the orders of this Honourable Court made on the 12th day of July 1991 in which the Court of Appeal affirmed the various convictions of the Applicants (Appellants) until the final hearing and determination of a PETITION FOR PROVISIONAL AND PERMANENT RELIEF AGAINST DEATH PENALTIES AND PENALTIES OF SENTENCES OF IMPRISONMENTS…"

[28] To my mind it is beyond doubt that the former Court of Appeal, that is the Court set up by the PRG heard and determined the sentences of the appellants. Was that court competent to do so? I have no doubt it was. However the former Court of Appeal did not deal with the question of an appeal to the Privy Council. That matter was not before the Court and could not have been before the Court because appeals to the Privy Council had been abolished by the PRG.

[29] As I have said above, there is absolutely no doubt that the former Court of Appeal determined the question of the appellants' appeal in respect of the conviction and sentence.

[30] The right of appeal to the Privy Council never arose and could not have arisen because there was no Appeal to the Privy Council then.

[31] The question therefore arises whether the former Court of Appeal having jurisdiction to determine all matters of appeal brought before it and an appeal to the Privy Council being not a matter which the former Court of Appeal was capable of adjudicating upon because there was no appeal to the Privy Council and consequently the appellants having no such right, could they now claim a right which they were not then entitled to and one which the former Court of Appeal could not have adjudicated upon having regard to the State of the law at the time? I think not.

[32] This view of thinking is addition to what I have said above that this Court of Appeal has no jurisdiction to determine application for leave to appeal to the Privy Council because that was not a matter pending before the former Court of Appeal and was not determined and could not be determined by the former Court of Appeal before the abolition on the appointed day (16th August 1991). (see section 7 (3) of the Restoration Act). This is sufficient in my opinion to dispose of the appeal.

[33] I now address the constitutional point. The appellants argue strenuously that they are entitled to appeal to the Privy Council as of right. They rely on section 104 (1) of the Grenada Constitution which states:

> "104.(1) Subject to the provisions of section 37(7) of this Constitution, an appeal shall lie from decisions of the Court of Appeal to Her Majesty in Council as of right in the following cases –
>
> (c) final decisions in any civil or criminal proceedings which involve a question as to the interpretation of this Constitution; and …..

[34] The appellants contend that once the application falls within Section 104 (1) of the Constitution of Grenada then no discretion is involved, the court must grant leave as of right. There cannot be any argument against that. I agree entirely that if the application comes within section 104(1)(c) then the application must be granted as of right.

[35] But the question is does this application fall within section 104(1)(c) of the Constitution? Does that matter really involve a constitutional issue? To answer this simple question, in my opinion, this calls for an examination of section 80 in particular section 80(2) of the Criminal Code of Grenada.

[36] I set out hereunder the provisions of section 80 of the Criminal Code of Grenada:

> "With respect to cases where one act constitutes several crimes, or where several acts are done in execution of one criminal purpose, the following provisions shall have effect, that is to say: -
>
> (1) Where a person does several acts against or in respect of one person or thing, each of which acts are done in execution of the same design in the opinion of the Court before which the person is tried form one continuous transaction, the person may be punished for the whole of such acts as one crime, and the act may be taken into consideration in awarding punishment but he shall not be liable to separate punishment as for several crimes.
>
> (2) If a person by one act assaults, harms or kills several persons or in any manner, causes injury to several persons or things, he shall be punishable only in respect of one of the persons so harmed, assaulted or killed, or of the persons or things to which injury is so caused but in awarding punishment the court may take into consideration the intended or probable consequences of the crime."

[37] The arguments in respect of whether the learned trial Judge was right in imposing consecutive sentences on the appellants range far and wide.

[38] The Court of Appeal in this appeal (Civil Appeal No. 1 of 2003) held that in a case like the present when several persons by several acts kill several persons section 80(2) is not applicable.

[39] In order to determine therefore whether the learned trial Judge in passing sentence was correct or erred when he imposed consecutive sentences on the appellants involves an interpretation of section 80 of the Criminal Code of Grenada.

[40] The present Appeal Court was involved in such an exercise and no doubt the former Court of Appeal had to be involved in such an exercise because their sentences were considered by the former Court of Appeal.

[41] I go further and venture to say that at the time the former Court of Appeal turned down the appellants' conviction and sentences, I have no doubt that they would have appealed to the Privy Council which would have been the proper course no doubt. But unfortunately, that right of appeal was not at that time available to them. I find great difficulty in lending support to the view that, a matter of interpretation of a criminal statute involves the fundamental right of the citizen. It might be argued with some force that if the sentencer misinterprets the section the convicted person may receive a sentence greater than that he should receive and every day he spends in custody over and above that which he ought or could have legitimately spent, his rights and freedom are there by violated triggering the provisions of the Constitution. The short answer to this argument is that the Court of Appeal deals with such situations on a weekly basis. There are many appeal cases, for instance, from the Magistrates Court where the Magistrate has exceeded his jurisdiction and imposes a sentence which he had no authority in law to impose. This is always corrected on appeal.

[42] In Joseph v The State of Dominica[2] at page 219 Lord Keith of Kinkel said:

> "various mistakes may arise in the course of a criminal trial. Evidence may be wrongfully admitted or rejected, or there may be a misdirection in law on a matter of some importance."

[43] I may add the wrong sentence may have been imposed.

[2] 1988 36 W.I.R. 216

[44] Continuing His Lordship said:

> "The Court of Appeal exists to correct such mistakes and to do justice accordingly. In the extreme cases the Board may grant special leave to appeal. The fact that some such mistake has occurred does not however mean that the case has not received a fair hearing. Section 8 (1) does not have the effect that any mistake by the trial Judge in the course of a trial gives an automatic appeal to the Judicial Committee.
>
> This Board dismissed an appeal purporting to be made as of right under section 110(1) of the Constitution of Jamaica. Lord Diplock at page 1470 expressed the opinion that while the application of the particular constitutional provision might have been an issue no question of its interpretation properly arose …."

[45] In Kemrajh Harriksoon v Attorney General[3] Lord Diplock at page 349 said:

> "The notion that whenever there is a failure by an organ of government or a public authority or a public officer to comply with the law this necessarily entails the contravention of some human rights or fundamental freedom guaranteed to individuals by Chapter 1 of the Constitution is fallacious…"

[46] In conclusion therefore, in my judgment, this court does not have the jurisdiction to grant the appellants' application for leave to appeal to the Judicial Committee of the Privy Council. The interpretation of the Criminal Code of Grenada does not involve an interpretation of Constitution.

[47] The appeal is therefore dismissed.

[48] There will be no order as to costs.

Albert Redhead
Justice of Appeal

I concur.

Ephraim Georges
Justice of Appeal [Ag.]

[49] BARROW, J.A. [AG.]: I am also of the opinion that no question of the interpretation of the Constitution arises on the intended appeal. Notwithstanding the great popular interest in

[3] 1981 1 W.I.R. 1468

the fate of the applicants I do not agree that the question involved in the appeal is of great general or public importance. Accordingly, I agree that the application for leave to appeal to Her Majesty in Council should be dismissed.

Denys Barrow, SC
Justice of Appeal [Ag.]