Privy Council Appeal No. 22 of 1990

Bissoon Mungroo *Appellant*

v.

The Queen *Respondent*

FROM

THE SUPREME COURT OF MAURITIUS

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 11TH NOVEMBER 1991

Present at the hearing:-

LORD BRIDGE OF HARWICH
LORD TEMPLEMAN
LORD GOFF OF CHIEVELEY
LORD BROWNE-WILKINSON
SIR MAURICE CASEY

*[Delivered by **Lord Templeman**]*

Section 10 of the Constitution of Mauritius provides that:-

> "(1) Where any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law."

The right to a trial "within a reasonable time" secures, first, that the accused is not prejudiced in his defence by delay and, secondly, that the period during which an innocent person is under suspicion and any accused suffers from uncertainty and anxiety is kept to a minimum.

In the present case the appellant, B. Mungroo, complained that he was deprived of his right to a trial "within a reasonable time". In 1981 the Mauritius Meat Authority ("the MMA") reported to the police some twenty cases of suspected false claims, payments and forgeries. On 17th July 1981 the appellant who was an executive officer employed by the MMA was arrested and served with a provisional charge of forgery of a cheque for Rs.4,890. The appellant was given bail. The information relating to the charge was not laid until 4th May 1983; the delay was attributed by the prosecution to the complexity of the investigation into the affairs

of the MMA reported to the police and made necessary by the number of incidents reported and by the complexities of each allegation. On 15th September 1983 the Director of Public Prosecutions filed a nolle prosequi and indicated that a new charge would be laid. The appellant and the magistrate were so informed. In 1984 the investigation of the affairs of the MMA was taken over by an Inspector Basset who made further inquiries and *inter alia* decided that the original charge of forgery against the appellant was inappropriate and that he should be charged with employing a fraudulent pretence by presenting a forged document and thereby swindling the MMA out of a sum of Rs.4,890.

A new charge was laid on 15th February 1985. The delay between 15th September 1983 and 15th February 1985 was attributed to the complexity of the charge which involved a number of witnesses and the examination and production of a number of documents and records.

On 15th March 1985 the appellant pleaded not guilty to the second charge. Counsel on behalf of the appellant moved to stay the second charge of the proceedings on the grounds that the delay between 17th July 1981 and 15th March 1985 infringed the right of the appellant to trial within a reasonable time. The motion was argued on 13th December 1985 and Inspector Basset endeavoured to give evidence of the complexities of the investigation into the affairs of the MMA but counsel on behalf of the accused objected. The inspector said that when he came to take over the inquiry he "came to know of different documents and new witnesses and was inquiring mainly on a case involving an offence of swindling". The magistrate dismissed the motion and the trial of the new charge proceeded. The grounds on which the motion was dismissed are not now supported, but in the course of his ruling the magistrate said this:-

> "I cannot agree with counsel there has been an 'unconscionable' delay in the institution of the present proceedings against the accused. The D.P.P. was obviously right in filing a 'nolle prosequi' in relation to the forgery case ... Inspector Basset only stepped in the Enquiry in 1984, and the D.P.P. decided to prosecute the accused on the present information now before this Court.
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> Any delay which has resulted in the presentation of the present information stems from the complex nature of the Enquiry conducted by the police. One officer took a 'forgery' line and another took one of 'swindling'. The accused cannot complain that this delay (i) will jeopardise him in any way in the conduct of his defence or (ii) has caused a mis-use of the process of this Court. It is not even

> suggested that the police have manipulated the rules for bringing the present prosecution, albeit with some delay."

The appellant had been "charged with a criminal offence" within section 10 of the Constitution when he was arrested on 17th July 1981. The change in the charge from forgery to swindling related to the same sum of Rs.4,890 alleged to have been unlawfully extracted from the MMA and in these circumstances the appellant was entitled to a trial within a reasonable time after 17th July 1981. The magistrate reserved judgment and convicted the appellant on 29th July 1987 and sentenced him to nine months' imprisonment with hard labour. The appellant appealed against conviction on various hopeless grounds and also contended that his right to a trial within a reasonable time had been infringed by the delay which occurred between 17th July 1981 and 15th March 1985. The appeal was dismissed by the Supreme Court (Ahnee and Proag JJ.) on 14th December 1988 and the appellant now appeals to Her Majesty in Council.

In dealing with the question of delay the court said this:-

> "The police no doubt took time to investigate. They cannot be expected to investigate the most difficult cases within a fixed period of time. If it were so, police work would suffer, law and order would go out of hand and crimes would increase to an alarming degree. It is indeed not the aim of section 10(1) of the Constitution to clog the police machinery.
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> It is therefore not correct to submit that the prosecution of the appellant was unconscionable, oppressive and against the Constitution of Mauritius just because police took a lot of time to complete their enquiries."

The magistrate and the Supreme Court were referred to the decision of the Supreme Court in *Police v. Labat* (1970) MR 214 in which it was held that in section 10 a person is "charged" when he is "arraigned" and must be tried within a reasonable time after the preferment of the information. No reference was made to the advice of the Board in *Bell v. D.P.P.* [1985] A.C. 937, dealing with the provision in the Constitution of Jamaica which is indistinguishable from section 10 of the Constitution of Mauritius. In that case it was made clear that a trial must take place within a reasonable time after the arrest. Indeed it may be that in some cases, in considering whether a reasonable time has elapsed before the conclusion of the hearing of criminal proceedings, it would be proper to take into account the period before the accused was arrested. For present purposes it is sufficient to say that the decision in *Police v. Labat (supra)* can no longer be relied upon in any respect.

In *Bell's* case, at page 951, the Board adopted the approach of the Supreme Court in the United States in *Barker v. Wingo* (1972) 407 U.S. 514, both with regard to the difficulty of applying the concept of a "reasonable time" to any particular case and with regard to the factors relevant to any decision. In the present case the appellant cannot pray in aid any of the relevant factors except one. He complains, truly, that he had a serious criminal charge hanging over his head for four years. Therefore, it is submitted, his constitutional right to a hearing within a reasonable time must have been infringed. Their Lordships reject this submission as being too simplistic. When delay amounting to an infringement of a constitutional right is alleged, the courts must have regard to the reasons for the delay and to the consequences of the delay. In *Bell's* case, at page 953, the Board expressed the view that the delay must also be considered in the context of the prevailing system of legal administration and in the prevailing economic, social and cultural conditions to be found in the country concerned.

In some cases, lack of resources, shortage of skilled staff and pressure of work cause delays which are not avoidable in practice and could only be avoided in theory by vast expenditure on sophisticated facilities and equipment and by an instant improvement in the number and quality of skilled professionals and administrators. In one country investigations may be made and decisions taken at a level, in a manner, and within a time scale which could not be achieved elsewhere. Problems which are considered to be complex in one administration may be dealt with more expeditiously and with greater certainty and understanding in another. At the same time the constitutional rights of the individual must not be placed at the mercy of inefficiency. The expressed constitutional right contained in section 10 to a hearing of a criminal case within a reasonable time injects the need for urgency and efficiency into the prosecution of offenders and demands the provision of adequate resources for the administration of justice but, in determining whether the constitutional rights of an individual have been infringed, the courts must have regard to the constraints imposed by harsh economic reality and local conditions.

In the present case the local courts have concluded that the delay resulted from the complexity of the affairs of the MMA which required all their allegations to be investigated, the complexity of the facts of the present case, the complexity of the law as applied to those facts and the complexity of the manner of proof. To prove their case, the prosecution were obliged to call thirteen witnesses. The trial spanned nine sittings and involved the production and analysis of commercial documents. There is no material before the Board to contradict the view of the local courts that the

complexity of the problems with which the prosecution authorities were faced accounts for the substantial delays which occurred.

Their Lordships consider that, in any future case in which excessive delay is alleged, the prosecution should place before the court an affidavit which sets out the history of the case and the reasons (if any) for the relevant periods of delay. In the present case Inspector Basset was prevented by the defence from giving relevant evidence on this point and his evidence of complexity was not challenged in detail or at all. Ironically enough, the appellant who now complains of delay before the trial began was himself responsible for considerable delay in the time taken by the trial itself. The prosecution witnesses were subjected to lengthy, hostile and unsuccessful cross-examination although the defence then called no relevant witnesses and the appellant himself did not give evidence. Owing to the clear and thorough manner in which the prosecution case was presented it became abundantly plain that the appellant was guilty of a serious, deliberate and ingenious fraud.

Their Lordships have reached the conclusion, with some hesitation, that in the circumstances of the present case the lapse of four years is not sufficient in itself to justify the Board in rejecting the views of the Supreme Court and the magistrate. The appellant suffered no specific prejudice from the delay and it is right that he should serve a sentence which he richly deserved. Their Lordships will accordingly humbly advise Her Majesty that this appeal should be dismissed.