Hilary Term
[2021] UKPC 7
Privy Council Appeal No 0097 of 2017

JUDGMENT

Betaudier (Appellant) *v* Attorney General of Trinidad and Tobago (Respondent) (Trinidad and Tobago)

From the Court of Appeal of the Republic of Trinidad and Tobago

before

Lord Lloyd-Jones
Lord Hamblen
Lord Leggatt

JUDGMENT GIVEN ON

29 March 2021

Heard on 4 February 2021

Appellant	*Respondent*
Anand Beharrylal QC Joshua Hitchens Siân McGibbon Kenneth Thompson	Tom Poole
(Instructed by Alvin Pariagsingh (Trinidad))	(Instructed by Charles Russell Speechlys LLP (London))

LORD LLOYD-JONES:

1. On the morning of 24 December 2005 the appellant, a serving Lance Corporal in the Trinidad and Tobago Defence Force ("TTDF") was driving a TTDF vehicle, registration number 1TTDF4. His passenger was another TTDF officer, Corporal Ricardo Stevenson. Both men were in TTDF uniform.

2. At 11.30 am whilst driving along Concorde Road, San Juan, North Trinidad, the vehicle was intercepted and stopped by police officers attached to the Criminal Intelligence Unit ("CIU"), including PC Anil Maharaj, acting with Major Collin Millington of the TTDF. Major Millington had received information that the vehicle was involved in the transportation of illegal arms and ammunition and had drawn this information to the attention of police officers including PC Maharaj. The vehicle was searched and nothing was found. The appellant was searched and was found to have in his possession his licensed service firearm and TT$7,000 in TT$100 notes in a white envelope, in addition to TT$478 which was found in the appellant's wallet. Corporal Stevenson was found to be in possession of an unlicensed firearm. PC Maharaj arrested Corporal Stevenson for unlawful possession of firearms and ammunition and arrested the appellant on suspicion of kidnapping.

3. The appellant and Corporal Stevenson were conveyed to the CID office of the police in Port of Spain at about 2.10 pm. PC Maharaj interviewed Corporal Stevenson and later charged him with possession of a firearm and ammunition. PC Maharaj later attended the Anti-Kidnapping Unit ("AKU") where he spoke to PC Seepaul. He delivered the money in the envelope he had taken from the appellant and informed PC Seepaul that he believed it was part of the proceeds of a ransom and that he suspected the appellant of being involved in kidnapping. He also passed on the information he had received. PC Maharaj had no further involvement. The appellant remained in police custody. At about 10.30 am on 25 December the appellant was interviewed. He denied any knowledge of a kidnapping. On the evening of 26 December 2005 the Head of the AKU, Acting Assistant Commissioner of Police David Nedd, reviewed the interview notes of the previous day. He concluded that there was no reason for the appellant's further detention. The appellant was brought to his office at about 8.25 pm where Mr Nedd spoke to him in the presence of Major Paul of the TTDF, the appellant's superior. At about 9.10 pm Mr Nedd told the appellant he was free to go.

4. On 22 December 2009 the appellant issued proceedings claiming damages for false imprisonment arising from his arrest, detention and imprisonment from 24 December 2005 to 26 December 2005. He alleged that Major Millington had arrested him and that thereafter police officers had detained him in a cell without giving him any reason for doing so.

5. Following a trial before des Vignes J on 14 February and 14 March 2012, on 28 March 2013 the judge delivered judgment dismissing the claim. The judge found (i) that PC Maharaj and not Major Millington had arrested the appellant; (ii) that PC Maharaj had reasonable and probable cause for arresting the appellant; and (iii) that the period of the appellant's detention was justified in the circumstances.

6. The appellant appealed to the Court of Appeal on two principal grounds: first, that the judge had erred in finding that there were reasonable grounds for suspecting that he had committed an arrestable offence; and secondly, that the judge had erred in failing to hold that his detention beyond 48 hours without charge was unlawful. The Court of Appeal (Mendonca, Smith and Rajkumar JJA) heard the appeal on 10 March 2017. On the same day the Court of Appeal gave judgment dismissing the appeal on both grounds. Mendonca JA dissented on the first ground.

7. On 16 October 2017, the appellant was granted final leave to appeal to the Judicial Committee of the Privy Council against the decision of the Court of Appeal.

8. The following issues arise on this appeal:

(1) Were the judge and the Court of Appeal wrong to find that there was a reasonable and probable cause to arrest the appellant?

(2) If there was reasonable and probable cause to arrest the appellant, were the judge and the Court of Appeal wrong to find that the period of the appellant's detention was justified?

(3) If the Board were to find that the appellant was falsely imprisoned in the period, or any part of the period, between his arrest on 24 December 2005 at 11.30 am and his release on 26 December 2005 at 9.10 pm, is he entitled to damages?

<u>Issue 1</u>

9. Section 3(4) of the Criminal Law Act Chap 10.04 provides:

> "Where a police officer, with reasonable cause, suspects that an arrestable offence has been committed, he may arrest without warrant anyone whom he, with reasonable cause, suspects to be guilty of the offence."

10. It was common ground before us that the relevant principles of law are helpfully stated by Lord Clarke in *Ramsingh v Attorney General of Trinidad & Tobago* [2012] UKPC 16; [2013] 1 LRC 461 at para 8, a passage cited by Mendonca JA in the Court of Appeal in the present case:

> "The relevant principles are not significantly in dispute and may be summarised as follows:
>
> (i) The detention of a person is prima facie tortious and an infringement of section 4(a) of the Constitution of Trinidad and Tobago.
>
> (ii) It is for the arrestor to justify the arrest.
>
> (iii) A police officer may arrest a person if, with reasonable cause, he suspects that the person concerned has committed an arrestable offence.
>
> (iv) Thus the officer must subjectively suspect that that person has committed such an offence.
>
> (v) The officer's belief must have been on reasonable grounds or, as some of the cases put it, there must have been reasonable and probable cause to make the arrest.
>
> (vi) Any continued detention after arrest must also be justified by the detainer."

11. In the present case the trial judge, des Vignes J, and both Mendonca JA and Rajkumar JA in the Court of Appeal all referred to the speech of Lord Hope in *O'Hara v Chief Constable of the Royal Ulster Constabulary* [1997] AC 286, which refers to section 12(1) Prevention of Terrorism (Temporary Provisions) Act 1984. That provision authorises a constable to arrest a person whom he has reasonable grounds for suspecting to be concerned in acts of terrorism. Lord Hope stated (at p 298 A-E):

> "My Lords, the test which section 12(1) of the Act of 1984 has laid down is a simple but practical one. It relates entirely to what is in the mind of the arresting officer when the power is exercised. In part it is a subjective test, because he must have formed a genuine suspicion in his own mind that the person has been concerned in

> acts of terrorism. In part also it is an objective one, because there must also be reasonable grounds for the suspicion which he has formed. But the application of the objective test does not require the court to look beyond what was in the mind of the arresting officer. It is the grounds which were in his mind at the time which must be found to be reasonable grounds for the suspicion which he has formed. All that the objective test requires is that these grounds be examined objectively and that they be judged at the time when the power was exercised.
>
> This means that the point does not depend on whether the arresting officer himself thought at that time that they were reasonable. The question is whether a reasonable man would be of that opinion, having regard to the information which was in the mind of the arresting officer. It is the arresting officer's own account of the information which he had which matters, not what was observed by or known to anyone else. The information acted on by the arresting officer need not be based on his own observations, as he is entitled to form a suspicion based on what he has been told. His reasonable suspicion may be based on information which has been given to him anonymously or it may be based on information, perhaps in the course of an emergency, which turns out later to be wrong. As it is the information which is in his mind alone which is relevant however, it is not necessary to go on to prove what was known to his informant or that any facts on which he based his suspicion were in fact true. The question whether it provided reasonable grounds for the suspicion depends on the source of his information and its context, seen in the light of the whole surrounding circumstances."

12. On this appeal Mr Beharrylal QC on behalf of the appellant initially sought to challenge the conclusion of the trial judge and of the Court of Appeal as to the subjective suspicion of the arresting officer, PC Maharaj. He submitted that PC Maharaj did not hold the requisite suspicion. In particular, he criticised PC Maharaj for not having a specific offence in mind.

13. PC Maharaj's evidence in chief at the trial was that prior to the arrest he had been briefed on at least two occasions by other officers in the CIU who had informed him that army officers were allegedly involved in the operation of a kidnapping ring. He stated that at or around this time there were several high profile kidnapping cases being investigated which allegedly involved army officers and that one of these cases was that involving Balram "Balo" Maharaj. He stated that when he found what he considered to be a large sum of money on the appellant it aroused his suspicion that the appellant might have been one of the army officers alleged to be involved with the kidnapping

ring and that the monies might have been the proceeds thereof. He stated that that opinion was strengthened by the information he had received from Major Millington and by his finding an unlicensed firearm on the person of Corporal Stevenson. He stated that he believed that the appellant ought to be questioned further regarding these matters. He informed the appellant that "he was a suspect relative to reports of kidnapping" and he cautioned him and informed him of his constitutional rights and privileges. This evidence was not challenged in cross examination. Indeed, PC Maharaj repeated in cross examination, "What I found on him raised suspicion in my mind and further investigation was necessary." On the contrary, the case for the appellant as presented at the trial was that the arrest had not been carried out by PC Maharaj but by Major Millington and that it was therefore unlawful because Major Millington had no power of arrest. The trial judge accepted PC Maharaj's evidence that he had arrested the appellant and was satisfied that, in doing so, he had a genuine suspicion that the appellant was involved in a kidnapping ring. He found that the factors which PC Maharaj took into account in making his decision to arrest the appellant were (i) information he had received in briefings on at least two previous occasions from officers of the CIU that soldiers were allegedly involved in the operation of a kidnapping ring, (ii) the fact that around that time several high-profile kidnapping cases were being investigated, (iii) the information he had received from Major Millington and his finding of an unlicensed firearm on the person of Cpl Stevenson, (iv) his finding of what he considered to be a large sum of money on the appellant which aroused his suspicion that he may have been one of the army officers alleged to be involved with the kidnapping ring and that the money might have been the proceeds of kidnapping. When the matter came before the Court of Appeal, that court, having examined the evidence, did not disturb the trial judge's assessment of the credibility of the witnesses and proceeded on the basis of the trial judge's findings of fact. There were, therefore, concurrent findings in both courts below that PC Maharaj arrested the appellant on the basis that he suspected that the appellant was guilty of "involvement in kidnapping".

14. The Board does not normally disturb concurrent findings of fact reached in the courts below (*Devi v Roy* [1946] AC 508, 521; *Central Bank of Ecuador v Conticorp SA* [2015] UKPC 11 at paras 4-8; *Lares v Lares* [2020] UKPC 19 at paras 9-10) and there are no grounds for doing so in the present case. In the light of the failure to challenge at trial the evidence of PC Maharaj as to his subjective suspicion and the concurrent findings of fact on this matter in the courts below, it is not open to the appellant to seek to challenge these findings of fact.

15. It is appropriate, however, to address one particular aspect of the findings below as to the officer's state of mind, not least because it has an important bearing on a later stage of the analysis. PC Maharaj's evidence was that he suspected the appellant of "involvement in kidnapping". On behalf of the appellant it is submitted that in considering the arresting officer's subjective suspicion this is insufficient and that it is necessary to identify a specific offence. Thus, it is submitted that in the present case what is required is some indication as to which section of the Kidnapping Act 2003 Chap 11:26 the appellant was suspected of having breached. In this regard it is pointed

out that an arrestable offence within the meaning of section 3(4) the Criminal Law Act must be punishable by five years' imprisonment. In the Board's view, while it is not sufficient that an officer has suspicion of some general unlawful conduct, neither under section 3(4) nor at common law is it necessary to establish that an arresting officer had in mind specific offences or statutory provisions. The matter was expressed as follows by Bingham LJ in *Chapman v Director of Public Prosecutions* (1988) 89 Cr App R. 190, at p 197:

> "It is not of course to be expected that a police constable in the heat of an emergency, or while in hot pursuit of a suspected criminal, should always have in mind specific statutory provisions, or that he should mentally identify specific offences with technicality or precision. He must, in my judgment, reasonably suspect the existence of facts amounting to an arrestable offence of a kind which he has in mind."

In the Board's view, PC Maharaj's suspicion, which he expressed as "involvement in kidnapping" was sufficiently specific to meet this requirement.

16. The essential question for consideration under this ground is whether PC Maharaj had reasonable cause for his suspicion that the appellant had committed such an arrestable offence. On behalf of the respondent, Mr Poole submitted that as a result of the conclusion of the trial judge and the majority of the Court of Appeal that PC Maharaj did have reasonable cause to suspect that the appellant had been involved in kidnapping, there were concurrent findings of fact below. In his submission the Board should not interfere with the conclusion of the majority in the Court of Appeal in circumstances where it was based on concurrent findings of fact. We are unable to accept this submission. The conclusions of the trial judge and the majority of the Court of Appeal on this point were not mere findings of primary fact but the result of an evaluative exercise. As a result, the concurrent conclusions do not fall within the principle in *Devi v Roy*. This is an appropriate matter for consideration by the Board.

17. In considering whether there is reasonable cause for an officer's suspicion that a person has committed an arrestable offence, it is necessary to focus on the offence which he is suspected of having committed. The officer must have in mind facts which are capable of supporting a reasonable suspicion that the person arrested committed an offence of the particular kind which the officer has in mind. In the context of the present case it is necessary to focus on such matters in the mind of PC Maharaj as may support his suspicion that the appellant had committed an offence of kidnapping. The matters which were found to be in the officer's mind and which are relied on by the respondent in this regard may be considered under the following heads.

18. First, the respondent relied on the information he had received from Major Millington. Information had been provided by confidential informants to the effect that the Defence Force vehicle in which the appellant and Cpl Stevenson were travelling was involved in the transportation of illegal arms and ammunition. As a result, the vehicle was under surveillance and a joint operation involving police officers and army officers had been set up to intercept the vehicle. This may well have provided a basis for reasonable suspicion that the appellant was involved in the transportation of illegal arms and ammunition. This, however, was not capable of supporting a reasonable suspicion that the appellant had committed an offence of kidnapping. In particular, there was no suggestion in the evidence before the court that Major Millington had been provided with any information which might link this suspected activity to kidnapping or that he had disclosed any such information to PC Maharaj.

19. Secondly, PC Maharaj had in mind briefings which he had received on at least two previous occasions from officers of the CIU that army officers were involved in the operation of a kidnapping ring. This and the material considered below under the third head are the only matters relied on by PC Maharaj which unequivocally related to the offence of kidnapping. It is established in the caselaw that reliance on a briefing is, in appropriate circumstances, capable of being the foundation for a reasonable suspicion. (See *O'Hara*, per Lord Hope at p 298, cited above, to which des Vignes J expressly referred in his judgment in the present case; *Alford v Chief Constable of Cambridgeshire Police* [2009] EWCA Civ 100 per Richards LJ at para 38). The appellant correctly points out that there was limited evidence before the courts below in relation to the briefings. This was due in part to the failure of the respondent to produce any documentary evidence at the trial and in part to the failure of the appellant's counsel to cross examine PC Maharaj on this matter. Contrary to the submission on behalf of the appellant the briefings were not anonymous; they were by officers of the CIU. PC Maharaj was entitled to rely on the briefings and was not obliged to check the information supplied (*O'Hara* per Lord Hope at p 298,). If on the basis of apparently reliable information he was given in a briefing, an arresting officer has reasonable grounds for suspicion, the fact that the information may be thin or may subsequently prove to be incorrect will not of itself render the arrest unlawful (*R (Tchenguiz) v Director of the Serious Fraud Office* [2012] EWHC 2254 (Admin) per Sir John Thomas P at para 217; *R (Chatwani) v National Crime Agency* [2015] EWHC 1283 (Admin) per Hickinbottom J at para 81). The difficulty in this case, however, is that, while the information conveyed in the briefings provided a basis for suspicion that offences of kidnapping were being committed by soldiers, it provided no basis for suspicion that the appellant had committed an offence of kidnapping. The fact that the appellant was a soldier, one member of a very large group in Trinidad and Tobago, gave no reason to suspect him of kidnapping committed by soldiers. As the appellant points out, the TTDF is made up of thousands of active personnel including reserve personnel. This serves to distinguish the present case from *O'Hara*, *Chatwani* at paras 61-63 and *Hough v Chief Constable of the Staffordshire Constabulary* [2001] EWCA Civ 39 at paras 2-3, where the briefing, (or in the case of *Hough*, the information provided by an entry on the police national computer) had named the person subsequently arrested as the suspect. (Cf *Chief*

Constable of the Police Service for Northern Ireland v Smith [2019] NIQB 39 at para 21).

20. Thirdly, PC Maharaj was aware that several high-profile kidnapping cases had occurred around this time, allegedly involving army officers. One such incident had involved Balran "Balo" Maharaj. The same considerations apply here as under the second head, save that the source of this information is not stated and its reliability is unclear.

21. Fourthly, PC Maharaj was aware that an unlicensed firearm had been found in the possession of Cpl Stevenson. This clearly provided reasonable grounds for suspicion that Cpl Stevenson had committed a firearms offence, the basis on which he was arrested. Considered in combination with the nature of the interception operation which was being carried out and the information communicated to PC Maharaj by Major Millington, this may well have provided reasonable grounds for suspicion that the appellant had also been involved in a firearms offence. However, that was not the offence for which the appellant was arrested. It is also notable that Cpl Stevenson was not arrested on suspicion of involvement in kidnapping.

22. Fifthly, PC Maharaj discovered on the appellant's person, in addition to the sum of TT$478 in the appellant's wallet, a white envelope containing TT$7,000 in TT$100 notes. His evidence at trial was that this discovery of what he considered to be a large sum of money aroused his suspicion that the appellant might have been one of the army officers involved in a kidnapping ring and that the money might have been the proceeds of kidnapping. He was not cross examined about the discovery of the cash. In his evidence PC Maharaj accepted that he had not asked the appellant about the cash during the arrest. In the Board's view, the discovery of the TT$7,000 on the appellant is crucial to the present issue.

23. It is necessary to consider these matters both individually and cumulatively. Considered cumulatively, these matters may provide reasonable grounds for suspicion that the appellant had been involved in some unlawful activity; for example, it may well have given rise to reasonable ground for suspicion of involvement of transporting unlicensed firearms. But the question here is whether it was sufficient to support a reasonable suspicion that the appellant had committed an offence of a kind which PC Maharaj had in mind which, in this case, was kidnapping. The information obtained as a result of the briefings was relevant in showing that such offences had been committed and that they had been committed by soldiers, but did not link the appellant to such offences. The only matter relied upon which could possibly link the appellant to an offence of kidnapping was the money. In argument before the Court of Appeal it was conceded that it was the critical factor and was described by counsel as "the smoking gun".

24. In the Court of Appeal Rajkumar JA, with whom Smith JA agreed, considered that the mere fact of the finding of the money would not have sufficed to establish a link between the appellant and any alleged kidnapping ring notwithstanding that he was a soldier. In their view, that would simply not have constituted reasonable and probable cause for his arrest. The Board respectfully agrees. However, the majority held that when the possession of the money was considered in combination with the other factors which PC Maharaj stated had been the basis of his suspicion, those matters cumulatively would have amounted to a reasonable cause for suspicion that the appellant could have been involved in such a kidnapping ring. The difficulty with this line of reasoning is that it is accepted that the possession of the money alone is insufficient to give rise to a reasonable suspicion of the appellant's involvement in kidnapping. There was no other information relied upon capable of linking the appellant to the commission of an offence of kidnapping. The possession of the money therefore remains insufficient for this purpose, even when considered in conjunction with the other material.

25. The Board respectfully agrees with the dissenting judgment of Mendonca JA. As he pointed out, PC Maharaj had no information that the appellant had any involvement in any of the alleged kidnappings. He had no information that in any of those kidnappings a ransom was paid, which was a matter critical to the formation of his suspicion, let alone any information that it was paid in TT$100 notes or in circumstances where it might be reasonable to believe that someone involved in the kidnapping would still have the ransom paid in his possession in an envelope. In his view, it was also relevant that Major Millington, a member of the TTDF, did not suspect the appellant of involvement in kidnapping. As he put it, "there must be something more and that something is missing from this case".

26. For these reasons, the Board considers that PC Maharaj's suspicion that the appellant was involved in kidnapping was not based on reasonable grounds and the arrest was therefore unlawful.

Issue 2

27. If the arrest of the appellant was unlawful, it follows that his detention following the arrest was unlawful.

Issue 3

28. The appellant is accordingly entitled to damages for false imprisonment in respect of the period between his arrest on 24 December 2005 at 11.30 am and his release on 26 December 2005 at 9.10 pm.

Conclusion

29. The Board therefore allows the appeal and remits the matter to the High Court of Justice of Trinidad and Tobago for the assessment of damages.