



16 May 2022

PRESS SUMMARY

Naresh Boodram (Respondent/Cross-Appellant) v Attorney General of Trinidad and Tobago (Appellant/Cross-Respondent) (Trinidad and Tobago) **[2022] UKPC 20**

On appeal from the Court of Appeal of the Republic of Trinidad and Tobago

JUSTICES: Lord Lloyd-Jones, Lord Sales, Lord Hamblen, Lord Stephens, Sir Tim Holroyde

BACKGROUND TO THE APPEAL

On 27 November 1996, Mr Naresh Boodram was convicted of two offences of murder at the Chaguaramas assizes. Section 4 of the Trinidad and Tobago Offences against the Person Act provides that every person convicted of murder shall receive a mandatory sentence of death. Mr Boodram was sentenced to death in accordance with that provision. The Privy Council has confirmed in *Chandler v The State (No 2)* [2022] JCPC 19 that the mandatory sentence of death is lawful under the Constitution of the Republic of Trinidad and Tobago (the “**Constitution**”). Although the imposition of the death sentence is lawful, it may be unlawful to carry out that sentence where there has been long delay in doing so. In particular, where a prisoner is held on death row for longer than five years there will be strong grounds for believing that the delay in execution was such as to constitute inhuman or degrading punishment or other treatment contrary to the Constitution (as the Privy Council held in *Pratt and Morgan v Attorney General of Jamaica* [1994] 2 AC 1).

Mr Boodram’s death sentence was not carried out. On 3 December 2007, some 11 years after Mr Boodram’s sentence had been pronounced, he commenced proceedings in the High Court seeking an order that his death sentence be vacated. Section 14(1) of the Constitution provides that, where the Constitution has been breached, a person may apply to the High Court for redress. Section 14(2) of the Constitution grants “original jurisdiction” to the High Court “to hear and determine any application” for constitutional redress and to “make such orders” as the High Court “may consider appropriate” upon such an application. Mr Boodram sought an order pursuant to section 14 of the Constitution that he be brought before the High Court for resentencing to any lawful penalty other than the death sentence.

On 23 July 2010, the High Court dismissed Mr Boodram’s claim. Mr Boodram appealed. On 8 March 2018, the Court of Appeal unanimously allowed his appeal. The Court of Appeal held that, when the High Court is asked to vacate a death sentence under section 14 of the Constitution, it exercises its original jurisdiction and thus enjoys the discretion to take into account normal sentencing factors. In such circumstances, the High Court may substitute whichever sentence is appropriate. The High Court is accordingly not compelled to hand down a life sentence in every case. The Court of Appeal held that it had insufficient information to resentence Mr Boodram

itself. It therefore remitted Mr Boodram's case to the High Court for it to consider the appropriate sentence. As to the question of costs, the Court of Appeal held that it could not yet be said that Mr Boodram had been successful in his appeal as it remained to be seen what sentence would be imposed. The Court of Appeal therefore made no order as to costs (so each party bore their own costs).

The Attorney General of Trinidad and Tobago (the "**Attorney General**") appealed and Mr Boodram cross-appealed on the matter of the costs. There are thus two issues for the Board to decide on this appeal: (1) whether the High Court, when commuting a sentence of death, can lawfully impose a sentence other than life imprisonment; and (2) whether the Court of Appeal erred in making no order as to costs.

JUDGMENT

The Board dismisses the Attorney General's appeal and allows Mr Boodram's cross-appeal. Lord Lloyd-Jones and Sir Tim Holroyde deliver the Board's unanimous judgment.

REASONS FOR THE JUDGMENT

Issue (1): The Principal Issue

The Attorney General submitted that, when granting relief under Section 14 of the Constitution in circumstances such as these, the High Court was engaged in granting a constitutional remedy not resentencing [20]. The constitutional remedy is to remove the threat of execution. The only appropriate order is to commute the death sentence to one of life imprisonment as the next most serious penalty [21]. Even if the High Court does have the power in law to impose a sentence other than life imprisonment, the Attorney General submitted that life imprisonment was the only appropriate sentence in this case [23].

On behalf of Mr Boodram, it was submitted that section 14 of the Constitution gives the court a broad discretionary power to make such order as it considers appropriate. The Court of Appeal was therefore right to remit this matter to the High Court for it to determine the appropriate substitute sentence in all the circumstances of the case [24]. Moreover, Mr Boodram submitted that the Attorney General's distinction between granting a constitutional remedy and resentencing was a false dichotomy: in cases such as these, the court is doing both because the constitutional remedy entails the crafting of an appropriate substitute sentence [25].

The Board dismisses the Attorney General's appeal [50]. The law of Trinidad and Tobago provides that every murderer shall be sentenced to death. However, where that sentence must be vacated because of the delay in carrying it out, section 14 of the Constitution gives the High Court the power to impose such substitute sentence as may be appropriate in all the circumstances of the case. The Attorney General's argument that the High Court has the power to grant constitutional redress but no power to undertake a resentencing exercise is semantic quibbling. The remedy for the constitutional wrong in cases such as these is that the High Court vacates the death penalty and substitutes an appropriate sentence. The crime of murder is always very serious; but some murders are even more serious than others. Often the appropriate substitute sentence will therefore be life imprisonment. However, the High Court is not restricted to imposing such a sentence [30]. That conclusion follows from the wording of section 14(2) of the Constitution, which gives the High Court the power to "make such orders ... as it considers appropriate". The Board sees no justification for overriding the clear words of that provision [31]. Indeed, to require the High Court to impose a life sentence in every case is impossible to reconcile with the wording of section 14(2) [46]. On analysis, none of the cases relied on by the Attorney General supports

the submission that only a life sentence can be appropriate in circumstances such as these [32-42]. The Court of Appeal was plainly correct to rule that it lacked the necessary information to resentence Mr Boodram itself. The Court of Appeal was thus right to remit the matter to the High Court [49].

Issue (2): Costs

In Trinidad and Tobago, the general rule is that the unsuccessful party will be ordered to pay the successful party's costs [51]. Mr Boodram submitted that his appeal was successful and that there was no ground on which the Court of Appeal could depart from the general rule [27]. At the hearing of the appeal before the Board, counsel for the Attorney General indicated that there was no opposition to an order that Mr Boodram be awarded his costs in the proceedings below. However, the Attorney General submitted that, in those circumstances, the costs of the appeal and cross-appeal to the Board should be awarded on a pro bono basis [28].

The Board allows Mr Boodram's cross-appeal [54]. Before the Court of Appeal, Mr Boodram was wholly successful [52]. There was no good or sufficient reason for the Court of Appeal to depart from the normal practice of ordering the unsuccessful party to pay the costs of the successful party. Any rule precluding individuals from recovering their costs despite having succeeded on an important point of principle would tend to have a chilling effect on public law challenges to unlawful action by the state [53-4]. Mr Boodram should therefore have been awarded his costs in the High Court and the Court of Appeal [54]. The Attorney General must also pay Mr Boodram's costs before the Board [55].

References in square brackets are to paragraphs in the judgment

NOTE: This summary is provided to assist in understanding the Committee's decision. It does not form part of the reasons for that decision. The full opinion of the Committee is the only authoritative document. Judgments are public documents and are available at:

<https://www.jcpc.uk/decided-cases/index.html>