[2010] UKPC 19
Privy Council Appeal No 0108 of 2009

JUDGMENT

Seeromani Maraj-Naraynsingh *v* The Attorney General of Trinidad and Tobago and The Director of Public Prosecutions

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

before

Lord Rodger
Lord Brown
Lord Mance

JUDGMENT DELIVERED BY
Lord Mance
ON

21 July 2010

Heard on 14 June 2010

Appellant	*Respondent*
Sir Fenton Ramsahoye SC	Howard Stevens
Alan Newman QC	
(Instructed by Bankside Law Limited)	(Instructed by Charles Russell LLP)

LORD MANCE:

1. This appeal turns on a single issue: whether the guarantee provided by s.5(2)(c) of the Constitution, to "a person who has been arrested or detained …. (iii) of the right to be brought promptly before an appropriate judicial authority" applies at the point when a magistrate, after a committal hearing, decides to commit a defendant to stand trial. Sir Fenton Ramsahoye QC and Mr Alan Newman QC, appearing for the appellant, Mrs Maraj-Naraynsingh, submit that it does, and that it involves an obligation on the Director of Public Prosecutions to file an indictment "promptly" after committal, in order that the defendant may then also be tried before a judge and jury "promptly" or at least without delay. Pemberton J and the Court of Appeal (Archie CJ, Kangaloo JA and Jamadar JA) have held that it does not, and that s.(5)(2)(c)(iii) applies at the point of initial arrest or detention, and not at any subsequent time.

2. In the present case, the appellant was arrested and detained on 30 November 2004 and was charged, together with her husband Professor Vijay Naraynsingh and Mr Elton Ramasir, with the murder on 29 June 1994 of Dr Chandra Naraynsingh, Professor Naraynsingh's first wife. All three accused were brought promptly before the Acting Deputy Chief Magistrate of Trinidad and Tobago, His Worship M P Wellington, who held a preliminary inquiry on various days between 3 December 2004 and 14 March 2005.

3. On 4 March 2005 the learned Magistrate acceded to a submission of no case to answer made on behalf of Professor Naraynsingh and discharged him. On 14 March 2005 the learned Magistrate committed the appellant and Mr Ramasir to stand trial for murder at the next sitting of the assizes. He took the view that a prima facie case had been made out against them even though, he said, "the evidence is of a somewhat tenuous nature. It is a borderline case. It is not for me to assess this evidence". The appellant was remanded in custody. Under the Bail Act (Law 18 of 1994) no court has in law power to grant bail to any person charged with murder. That Act was passed by a vote of not less than three-fifths of all members in each House of Parliament as an Act which was under s.13(1) of the Constitution to have effect even though inconsistent with the fundamental human rights and freedoms otherwise enshrined in ss.4 and 5 of the Constitution.

4. Under the Indictable Offences (Preliminary Enquiry) Act (No 12 of 1917 as amended) it was the Chief Magistrate's duty to send the complaint, depositions, exhibits, other evidence and warrant of committal to the Director of Public Prosecution "without delay". The Director's South Office received this material, comprising some 358 pages, on or about 25 May, and forwarded it to the Director at

his North Office on or about 6 June 2005. On 15 June the Director instructed an independent attorney to advise whether an application should be made to a Judge in Chambers for a warrant for the arrest and committal for trial of Professor Naraynsingh. Such an application was made on 22 August, but was refused by Volney J on 26 August. The Director was on vacation from 25 August, returning on 20 September. In an affidavit, he has explained that he was, in particular in the light of the magistrate's decision and comments, anxious to review the evidence with the greatest of care, and so took a longer time than usual to make up his mind.

5. On 21 and 22 November two different attorneys instructed by the appellant wrote to the Director, taking issue with the alleged delay in filing an indictment and threatening proceedings. On 24 November the Director replied to both attorneys indicating that the indictment would be filed during the week 28 November to 2 December 2005. An indictment against the appellant and Mr Ramasir was in fact signed on 25 November and was filed on 1 December 2005.

6. On 30 November 2005 the Appellant applied *ex parte* for leave to apply for judicial review, seeking an order of mandamus directing the Director to prepare and file the indictment as well as various declarations, including a declaration that her constitutional rights had been infringed by reason of delay on the part of the Director. Leave to apply for judicial review was granted on the same day, and on 2 December 2005 the Appellant filed a claim form.

7. The Appellant was tried for the murder of Dr Chandra Naraynsingh in January 2006. She was acquitted and released from custody on 26 January 2006.

8. By order of Pemberton J dated 14 June 2006 the appellant's claim form was amended to add the Attorney General as a defendant and to include a claim for a declaration that the Appellant's rights under s.5(2)(c)(iii) of the Constitution (as well as ss. 4(a), (b) and 5(2)(a)) had been infringed and a claim for damages, including aggravated and/or exemplary damages.

9. S.4(a) of the Constitution recognises the right of the individual to inter alia "liberty, security … and the right not to be deprived thereof except by due process of law", and s.4(b) the right of the individual to "the protection of the law". S.5(2) reads:

> "….. Parliament may not-
>
> > (a) authorise or effect the arbitrary detention, imprisonment or exile of any person";

(b) …

(c) deprive a person who has been arrested or detained-

(i) of the right to be informed promptly and with sufficient particularity of the reason for his arrest or detention;

(ii) of the right to retain and instruct without delay a legal adviser of his own choice and to hold communication with him;

(iii) of the right to be brought promptly before an appropriate judicial authority;

(iv) of the remedy by way of *habeas corpus* for the determination of the validity of his detention and for his release if the detention is not lawful".

10. In a clear and comprehensive judgment dismissing the claim on 14 February 2007 Pemberton J observed (a) that there was no evidence whatever to substantiate any suggestion of mala fides on the part of the Director or anyone, (b) that the appellant had been properly committed for trial for a non-bailable offence, and (c) that the appellant's detention was in accordance with the law and could not be arbitrary. Furthermore, (d) even if delay could be capable of contravening ss.4(a) or 5(2)(a), it was necessary to look at the whole period of detention (from 30 November 2004 to 26 January 2006), which could not on the facts support any such complaint.

11. As to s.5(2)(c)(iii), Pemberton J held, as already stated, that this applied only at the stage of initial arrest and detention. No delay had been suggested in bringing the appellant before the magistrate. She noted that Sir Fenton had confined himself to the complaint based on the express language of s.5(2)(c)(iii). He had expressly refrained from the pursuit of any suggestion that the appellant had a constitutionally protected right to a trial within a reasonable time. She observed that this was consistent with the decision of the Board in *DPP v Tokai* [1996] AC 856 that the Constitution contained no such right.

12. She concluded (paras 51 and 52, read with para 44) by expressing some sympathy with Lord Steyn's dicta in the later case of *Boodram v The State* ([2001] UKPC 20), which suggested that it would be appropriate on some future occasion to consider an argument that the Constitution contained by necessary implication a right

to trial within a reasonable time, as well as with counsel for the Director's submission that, if any such right were found to exist, it would involve looking at the entire period between arrest and trial. Having regard to the basis on which the present case has been pursued and argued, it is unnecessary to consider any such argument in this case. The judge's decision was that s.5(2)(c)(iii), on which alone the appellant had relied, did not itself contain any such implication or assist the appellant.

13. For reasons set out in a further clear and comprehensive judgment dated 27 February 2007 delivered by Jamadar JA, the Court of Appeal dismissed the appeal. The Court took the same view as the judge on the points (a) to (d) identified in para 10 above. It added that the Director had, under s.90 of the Constitution and s.11 of the Criminal Procedure Act (No 22 of 1925 as amended), duties to consider whether criminal proceedings should properly be instituted or discontinued, including duties to consider the sufficiency of the evidence and whether there was any need to refer a matter back to the magistrate to re-open the enquiry by taking further evidence. These duties were, it concluded, inconsistent with the appellant's primary case that s.5(2)(c)(iii) required the Director immediately and without any delay to sign and file any indictment. On the basis of the Director's affidavit evidence about local conditions and practice, the Court also considered that the period which had elapsed before the filing of the indictment was not unreasonable in a sense or to an extent that could render her detention during this period arbitrary contrary to s.5(2)(a).

14. Before the Board, counsel for the appellant confined the appeal to the alleged breach of s.5(2)(c)(iii), adding only that "such breach also rendered her detention arbitrary" (written case, para 18). They pointed out that, although chapter 1 of the Constitution enshrining fundamental human rights and freedoms was derived from the Canadian Bill of Rights of 1960, that Bill of Rights contained no equivalent of s.5(2)(c)(iii). S.5(2)(c)(iii) was, on the contrary, inspired by article 5(3) of the European Convention on Human Rights, providing that

> "Everyone arrested or detained in accordance with the provisions of paragraph (1)(c) of this article shall be brought promptly before a judge or other officer authorised to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. …."

Article 5(1)(c) reads:

> "Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: …… (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed

an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so; ….”

15. Two points are notable. First, the drafters of the Constitution did not incorporate in s.5(2)(c)(iii) the whole of the language used in article 5(3) of the Convention. On the contrary, they omitted the words conferring an express entitlement “to trial within a reasonable time or to release pending trial”. The omission can only have been deliberate. Second, the first part of article 5(3), which does find a homologue in s.5(2)(c)(iii) of the Constitution, is tied to article 5(1)(c) and so to the time of initial arrest or detention on reasonable suspicion. It is only the second part of article 5(3), which is omitted from s.5(2)(c)(iii) of the Constitution, that deals with the later period up to trial.

16. The interpretation adopted by Pemberton J and the Court of Appeal also coincides with the terms in which article 5(3) was explained in the European Court of Human Rights in *Brogan v United Kingdom* (1988) 11 EHRR 117, paras 55 to 62, and in *Grauzinis v Lithuania* (2000) 35 EHRR 7, para 25, where that Court said that complaint by an applicant, who had been brought before a judge two days after his arrest, that he was not brought repeatedly before a judge in the course of several following months did not fall to be examined under article 5(3). (Rather, it fell to be considered under article 5(4), which entitles “everyone who is deprived of his liberty by arrest or detention … to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful”). There is also nothing in *Ramsarran v Attorney General of Trinidad and Tobago* [2005] UKPC 8, [2005] 2 AC 614 to support any contrary interpretation.

17. All these points confirm what the Boards considers is in any event the clear meaning of para (iii) of s.5(2)(c). Para (iii) relates on its face to a single time. The force of the word “promptly” was explained in *Brogan*, para 59. With “its constraining connotation of immediacy”, it is “clearly distinguishable from the less strict requirement in the second part” of article 5(3). It would make no sense to regard it as applying continuously during any period when a person is under arrest or in detention. In its natural sense para (iii) applies upon initial arrest or detention. Promptness makes sense at that point of time. There would be no reason to introduce an obligation of “promptness”, as distinct from reasonableness, at any other time. In fact however, the drafters decided not even to include any express right to a trial within a reasonable time.

18. Para (iii) is not the only provision in s.5(2)(c) to focus on the time of initial arrest or detention. In para (i), the right to be informed promptly and with sufficient particularity of the reason for arrest or detention, does so exclusively. In para (ii), the right “to retain and instruct without delay” a legal adviser of his own choice arises upon and from the moment of initial arrest or detention, although the right “to hold

communication with him" refers to a period thereafter. In para (iv), the right to the remedy of *habeas corpus* for the determination of the validity of his detention and for his release if the detention is not lawful arises upon and from the initial arrest or detention, although it too no doubt continues thereafter.

19. In these circumstances, the Board concludes that s.5(2)(c)(iii) contains an obligation which arises upon initial arrest or detention and does not continue or arise anew so as to apply upon a magistrate's subsequent committal of a defendant for trial. This appeal falls to be dismissed accordingly.