[2012] UKPC 16
Privy Council Appeal No 0111 of 2010

JUDGMENT

Ms Chandrawtee Ramsingh (Appellant) *v* The Attorney General of Trinidad & Tobago (Respondent)

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

before

Lord Phillips
Lord Clarke
Lord Dyson
Lord Sumption
Lord Reed

JUDGMENT DELIVERED BY
LORD CLARKE
ON

23 May 2012

Heard on 7 March 2012

Appellant	*Respondent*
Richard Lissack QC	Peter Carter QC
Michael Uberoi	Anand Beharrylal
Shawn Roopnarine	
(Instructed by Lawrence Graham LLP)	(Instructed by Charles Russell LLP)

LORD CLARKE:

Introduction

1. On 25 February 2002 the appellant was detained in a police station in Trinidad and Tobago on suspicion of assault. She remained in detention for over five hours while the police waited for a medical report on the condition of the victim. In the event the report showed no serious injury to the victim and the appellant was released without being questioned or charged. The appellant brought civil proceedings against the Attorney General in which she claimed damages for false imprisonment. Her claim was dismissed by Shah J ("the judge") on 12 July 2007 after a trial which lasted three hours. He gave his reasons in an *extempore* judgment, although they were subsequently encapsulated in a written document dated 5 December 2007. The appellant appealed to the Court of Appeal (Bereaux, Stollmeyer and Smith JJA) but her appeal was dismissed on 18 December 2009. The Court of Appeal gave short reasons in an *extempore* judgment, although they said that, if the matter were to go further, they would amplify their reasons. They said, *inter alia*, that there was reasonable and probable cause to arrest and detain the appellant. The appellant subsequently sought leave to appeal to the Privy Council, final leave was obtained on 12 August 2010 and the Court of Appeal gave further detailed reasons in a written judgment delivered on 12 October 2010.

The facts

2. The essential facts can be taken from the Statement of Facts and Issues and from the findings of fact made by the judge. On 25 February 2002 police officers received a call that there had been an attack on Mrs Heeralal, who is also known as Dolly Kissoon. Ironically, they received the call at a time when her husband Khalawan Kissoon was making a report to the police about an ongoing land dispute between his family and the appellant's family. However that may be, in response to the call they went to an address at John Jules, Trace, Fyzabad. On their arrival they found Mrs Heeralal in her house lying on the floor. The judge held that they found her lying on the floor apparently seriously beaten and going in and out of consciousness. Mrs Heeralal and her mother in law told the officers that the appellant, who was their neighbour, had hit Mrs Heeralal over the head with a piece of wood. Mrs Heeralal was taken to hospital by ambulance.

3. The police officers went to the appellant's house, which was only about 50 feet away, where they found the appellant. Police Sergeant de Gannes introduced WPC Collins and told the appellant that they were investigating a report she had hit Mrs Heeralal over the head with a piece of wood. He told her that she was suspected of committing the crime and cautioned her. She denied the allegation, saying "I never put this hand on she". She said that her neighbour had seen her in the roadway and had "throw down sheself and began to bawl". She added that there was an ongoing dispute between them over a land boundary.

4. The police carried out no investigations to find the piece of wood. They arrested the appellant on suspicion of assault and took her to the police station. The judge held that she was informed of her constitutional rights and privileges, including the right to remain silent. She was told that the offence of which she was accused was a serious one, that she was suspected of having committed it and that she was being kept until they received word of Mrs Heeralal's condition. She was put in a chair and was allowed to communicate with her husband, who brought food to her. She was detained at the police station for over five hours while the police waited for a medical report from the hospital on the condition of Mrs Heeralal. While they waited, they neither asked the appellant any questions nor carried out any further investigations. As stated above, when the medical report arrived, it showed no serious injury to Mrs Heeralal. The appellant was thereupon released without being charged. She was not interviewed before being released because, when she was asked to give a statement, she declined and the process was deferred until the next day, when she made a statement. Thereafter, in May 2002 the police obtained a statement from Mrs Heeralal and the appellant was summonsed to appear in the Magistrates' Court on a charge of assault by beating. However, after a number of ineffective hearings, the case was dismissed when Mrs Heeralal withdrew the allegation on 19 October 2006.

5. The judge made those findings of fact after hearing evidence on both sides. Some of the findings involved rejecting the evidence of the appellant and accepting evidence given by the officers. In the Court of Appeal it was sought to challenge some of the judge's findings but the appeal on the facts was dismissed. The appellant could not sensibly challenge those findings of fact before the Board and does not do so.

The issue

6. The issue before the Board is whether the appellant's detention was lawful or whether it was unlawful and amounted to the tort of false imprisonment. At the trial, the appellant's case was put on the footing that both the arrest and subsequent detention were unlawful, whereas before the Board it is accepted (in the Board's view correctly) that the arrest was lawful. The issue in this appeal is whether the subsequent detention was unlawful.

The legal principles

7. The legal principles are clear. Section 3(4) of the Criminal Law Act 1936, Chapter 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."

8. 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.

9. These principles are established by a series of cases, both in England and in the Caribbean. See in particular *Dallison v Caffery* [1964] 2 All ER 610, per Lord Denning MR at 617 and per Diplock LJ, in a well-known passage at 619; and *Holgate-Mohammed v Duke* [1984] 1 All ER 1054 per Lord Diplock at 1059. See also two decisions in Trinidad and Tobago which make it clear that the lawfulness of continued detention raises different questions from those relevant to the arrest: *Mauge v The Attorney General of Trinidad and Tobago* HCA No 2524 of 1997 and

Mungaroo v The Attorney General of Trinidad and Tobago HCA Nos S-1130 and 1131 of 1998.

10. The position after arrest in England is now to be found in Part IV of the Police and Criminal Evidence Act 1984 ("PACE"): see section 34. Section 37(2) provides that, where a person is arrested without a warrant and the custody officer does not have sufficient evidence to charge him, the person arrested must be released either with or without bail

> "unless the custody officer has reasonable grounds for believing that his detention without being charged is necessary to secure or preserve evidence relating to an offence for which he is under arrest or to obtain such evidence by questioning him."

As Clayton and Tomlinson put it in their *Law of Human Rights*, 2nd edition (2009), at para 10.56, the police must justify detention on a minute by minute basis.

11. Although PACE does not directly apply in Trinidad and Tobago, section 37(2) reflects the correct approach at common law. Thus in the instant case the person who decided to continue the appellant's detention pending the obtaining of a report upon the medical state of the victim must have had reasonable grounds for believing that the appellant's detention without being charged was necessary pending the securing of that evidence.

12. The Board was referred in the course of the argument to provisions of both the European Convention on Human Rights and the Canadian Charter of Rights. In the opinion of the Board it is not necessary to consider those provisions in any detail in order to resolve the issues in this appeal.

Police policy

13. It is submitted on behalf of the appellant that the reason for the continued detention was, not the reasonableness or necessity of obtaining a medical report on the particular facts of this case, but the blanket application of a policy under which it was, as WPC Collins put it in evidence, "standard police procedure" to obtain a medical report before a suspect is charged. The Board accepts the submission that it would be wrong in principle for the police to adopt a blanket policy that suspects will always be detained until a medical report has been obtained. All must depend upon the circumstances.

14. Police Sergeant de Gannes, who was the arresting officer, put the matter somewhat differently from WPC Collins. It is true that in his written statement he said that it was standard police procedure when the medical condition of the victim was unknown to obtain evidence of her condition before the suspect was charged. However, he expanded the position in his oral evidence. He said that it was not standard police practice to detain a person on a report (which the Board takes to be a report about an assault) being made. He added that it is standard practice to detain a suspect "because of the nature of the report, as well as until the condition of the victim is known". However, he said that it was not because of these two conditions that the appellant was detained, but because he observed Mrs Heeralal on the ground in a semi-conscious state and because he took the view that the provisions of section 3(4) of the Criminal Law Act were met.

15. Thus the reason for the arrest and the continued detention was not the application of a blanket policy but because of the circumstances of the particular case.

Was the continued detention justified?

16. The answer to this question depends upon all the circumstances of the case. As explained above, the respondent must show that the whole period of detention was justified. However, while it would be wrong in principle to hold that, because the initial arrest was justified, it follows that the subsequent detention was also justified, it is important to consider the subsequent detention in the light of the arrest.

17. Both at the trial and in the Court of Appeal much of the focus was on the arrest, which was at that time said to be unlawful. It follows from the fact that the arrest is now accepted as lawful that it is accepted that the police had shown reasonable and probable cause to arrest the appellant. This must be on the basis that the arresting officer, Police Sergeant de Gannes, had reasonable grounds for suspicion that she had committed an arrestable offence. Assault by beating is not an arrestable offence. It follows that it is accepted on behalf of the appellant that PS de Gannes reasonably suspected the appellant of having committed a serious assault on Mrs Heeralal. Although he did not see blood he formed the view that she was in a semi-conscious state as a result of an assault which the evidence suggested had been carried out by the appellant.

18. It was in these circumstances that it was decided, not only to arrest the appellant, which it is accepted was lawful, but to detain her until it was ascertained what, if any, injuries Mrs Heeralal had suffered. It is submitted that that was an unreasonable decision because the ascertainment of her injuries was not a relevant consideration in resolving the question whether or not to detain the appellant. The Board is, however, unable to accept that submission. The appellant was reasonably

suspected of having carried out a serious, perhaps very serious assault. She could not sensibly be interrogated until the police knew what the nature of the assault was. Equally, in practical terms she could not have been charged until they knew what the nature of any injuries was. Had the assault caused actual bodily harm or grievous bodily harm? Would a charge of attempted murder be justified?

19. It is submitted on behalf of the respondent that, given the reasonable suspicion that the assault was serious, perhaps very serious, it was prudent for the police to detain the appellant until the position was clear. If it had been a serious assault, the appellant would have known that and it is far from clear what she might have done if released. Equally, if it had been a serious assault, it would no doubt have been appropriate to charge her accordingly and perhaps to oppose an application for bail. The police did not of course know how long it would take to obtain information from the hospital. In the event it took over five hours. It might have taken less. The Board accepts those submissions.

20. In summary, although the Board does not accept all the reasoning of the judge or the Court of Appeal, it concludes that the police acted reasonably (and proportionately) in detaining the appellant until medical information was available. Once it was available, the appellant was immediately informed of the position and released. The police reasonably accepted the appellant's request not to give a statement that evening but to defer doing so until the next day.

Conclusion

21. For these reasons the Board concludes that the detention of the appellant at the police station pending the arrival of medical information as to the condition of the alleged victim was not unlawful and that the judge and the Court of Appeal were correct to hold that the respondent is not liable to the appellant for false imprisonment. Nor was there any infringement of her constitutional rights. It follows that the appeal is dismissed. Unless the appellant makes submissions on costs within 28 days, the appellant must pay the respondent's costs before the Board.