



16 July 2015

PRESS SUMMARY

**Hunte and Khan (Appellants) v The State (Respondent) (Trinidad and Tobago) [2015]
UKPC 33**

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

JUSTICES: Lord Neuberger, Lady Hale, Lord Mance, Lord Clarke, Lord Sumption, Lord Reed and Lord Toulson

BACKGROUND TO THE APPEAL

On 21 August 2003, Ramkhelawan Ray Charran was shot and killed at his home. Timothy Hunte and Shazard Khan were arrested, interviewed and charged with his murder; Mr Hunte was the suspected killer and Mr Khan the suspected getaway driver. In relation to Mr Hunte, the prosecution relied on: identification evidence of witnesses in the vicinity of the shooting; his fingerprint found in the alleged getaway car parked approximately one mile from the shooting; and an oral and signed confession made at the police station following his arrest. In relation to Mr Khan, the prosecution relied on identification evidence alone. At trial, Mr Hunte objected to the admission of the confession evidence, denying that he had made the oral confession, and stated that, in addition to other serious police misconduct, he was induced into signing the written confession in the absence of his lawyer by physical mistreatment, threats and inducements.

The trial judge ruled that the confession evidence was admissible: Mr Hunte was cautioned before he gave the oral and written statements; he did dictate the written statement; he had an opportunity to consult his lawyer and did so; he was advised to remain silent and not sign any document; and, the statement was given voluntarily.

Mr Hunte and Mr Khan were found guilty of murder and sentenced to the mandatory death penalty. Their appeals to the Court of Appeal of Trinidad and Tobago against conviction were dismissed. They appealed to the Board against the dismissal of their appeals against conviction: Mr Hunte argued that the trial judge should not have admitted the confession evidence; Mr Khan argued that the trial judge failed to direct the jury properly as she failed to leave to the jury the possibility that he was party to a conspiracy to rob rather than a conspiracy to murder. They also applied for permission to appeal against their sentences, arguing that their death sentences should be commuted as the passage of time since their imposition rendered them unconstitutional. This second ground was argued for the first time before the Board.

JUDGMENT

The Board dismisses the appeals by a majority of 6-1 (Lady Hale dissenting on the issue of sentence). Lord Toulson (with whom Lord Neuberger, Lord Mance, Lord Clarke, Lord Reed and Lord Sumption agree) gives the lead judgment. Lord Neuberger, agreeing with Lord Toulson, gives a concurring judgment.

REASONS FOR THE JUDGMENT

Conviction

In relation to Mr Hunte, the Board finds that preventing him from having private access to his lawyer when he was at the police station was a serious breach of an important constitutional right [23]. That

does not mean, however, that the confession evidence should have been inadmissible [24]. Having heard the witnesses, the judge determined that Mr Hunte's confessional statements were voluntary and the Board has no proper basis for holding that she was wrong [25]. Moreover, even though the police officers acted in a seriously unsatisfactory manner in several ways, this was not so unfair as to deprive Mr Hunte of a fair trial; although the failure to allow Mr Hunte to speak to his lawyer in private was inexcusable, he was still advised not to make any statement to the police and he knew that he had a choice. The judge was properly entitled to leave to the jury to decide whether they were sure that the alleged oral and written confessions were of Mr Hunte's own making [28].

In relation to Mr Khan, the question of whether a trial judge is required to leave an alternative verdict to the jury, even where neither the prosecution nor defence has asked the jury to consider it, only arises where the evidence before the jury provides an obvious basis for conviction of an alternative offence [38]. In this case, the evidence did not obviously support a realistic finding that this was a conspiracy to rob in which Mr Hunte carried out an unplanned murder [42].

Sentence

The majority hold that the Board's previous decisions in *Ramdeen v The State of Trinidad and Tobago* [2014] UKPC 7 and *Matthew v The State of Trinidad and Tobago* [2005] 1 AC 433 are wrong and should not be followed; it has no jurisdiction to order the commutation of sentences in such cases [50].

The Board's jurisdiction is statutory, deriving from section 109 of the Constitution of the Republic of Trinidad and Tobago (the "Constitution"), and is based on the powers and jurisdiction possessed by the Court of Appeal in any specific case [51]. It is agreed that the sentences of death were lawful and mandatory at the time of imposition. Accordingly, the Court of Appeal had no jurisdiction under the Supreme Court of Judicature Act to entertain appeals against their sentences and was not asked to do so. Rather, the complaint is that the execution of the sentences of death would be unconstitutional through passage of time. Sections 14(1)-(2) of the Constitution grant original jurisdiction to hear and determine applications as to constitutional violations to the High Court of Trinidad and Tobago [45-46]. Such an application to the High Court not been made. Therefore, if the Board allowed these appeals against sentences, it would be making an order which the Court of Appeal would have had no jurisdiction to make and would be exercising an original jurisdiction which it does not have [55-56]. That the Board cannot do so is supported by *Walker v The Queen* [1994] 2 AC 36 [57-58].

Having heard full argument on the issue, there is no satisfactory logical way of reconciling *Ramdeen* (which was based on *Matthew*) with *Walker* [62]. There are several reasons to depart from the strong presumption in favour of respecting precedent: the point in *Matthew* relied upon by the Board in *Ramdeen* – and which the Board was not directly asked to overrule in *Ramdeen* – was not fully reasoned in the *Matthew* judgment and was made without the benefit of argument [61, 67]; it would damage respect for the rule of law to continue to exercise a purported judicial power which the Board considers it does not have [68]; and it would lead to uncertainty as to when *Ramdeen* should apply and when *Walker* should apply [69]. The Board is satisfied that this ruling will not affect the validity of orders, made on the authority of *Ramdeen*, commuting death penalties [73].

Lady Hale (dissenting) states that *Ramdeen* was correctly decided [106]. Even if *Walker* was rightly decided, it is authority only for the proposition that leave to appeal against sentence cannot be given for the sole purpose of arguing that a sentence which was lawful when imposed became unlawful to carry out. Where, however, an appeal is properly before the Board for some other reason, the Board should not close its ears to the argument that it would be unconstitutional to carry out the sentence. The Board is not taking jurisdiction for that purpose but is using the jurisdiction it undoubtedly does have to prevent a very serious violation of constitutional rights [102].

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: www.jcpc.uk/decided-cases/index.html.