

IN THE PRIVY COUNCIL

ON APPEAL

FROM THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

IN THE MATTER OF THE CONSTITUTION OF TRINIDAD

ACT NO. 4 of 1976

BETWEEN

STANLEY ABBOTT

Appellant

and

THE ATTORNEY GENERAL OF TRINIDAD
AND TOBAGO

THE REGISTRAR OF THE SUPREME COURT
MR. GEORGE BENNY

THE COMMISSIONER OF PRISONS
MR. RANDOLPH CHARLES

Respondents

CASE FOR THE RESPONDENT

1. The Appellant brings this Appeal by virtue of final leave granted by the Court of Appeal, Trinidad and Tobago, dated 20th July, 1978. This Appeal is against a Judgement of the Court of Appeal (Hyatali C.J. Corbin and Kelsick J.J.A.) dismissing an Appeal against an Order of the High Court of Trinidad and Tobago (Bernard J.) dismissing the Appellant's motion for relief under Section 14 of the Constitution of the Republic of Trinidad and Tobago (Act No. 4 of 1976).

2. The events leading to the Appellant's motion may be summarised as follows:

- (a) On the 2nd January, 1972 Gale Anne Benson was murdered at Arima, Trinidad.
- (b) On the 16th July 1973 the Appellant and one Chadee were convicted of that murder and sentenced to death. The Appellant on his own admission had played a leading role in the murder though he claimed to have done so under duress. Chadee had played a relatively minor role. On the 9th July, 1974 the Appellant's Appeal against conviction was dismissed by the Court of Appeal.
- (c) On the 12th March, 1975 in D.P.F. for Northern Ireland v Lynch 1975 A.C. 653 the House of Lords held, by a majority, that duress was available by way of defence to a principal in the second degree of murder.
- (d) On the 12th June, 1976 the Appellant was granted leave to Appeal to Her Majesty in Council against his said conviction.
- (e) On the 20th July, 1976 the Board by a majority dismissed his Appeal, holding that duress was not available by way of defence to a principal in the first degree to murder.
- (f) On the 26th July, 1976 the Appellant submitted a Petition for Mercy to the Governor General for consideration by Advisory Committee on the Prerogative of

Mercy (the "Mercy Committee") established under the Constitution of 1962.

- (g) On the 1st August, 1976 the 1972 Constitution was revoked, the then "Mercy Committee" ceased to function and the 1976 Constitution came into force.
- (h) On the 13th September, 1976, general elections were held and on the 13th December, 1976 the Minister of National Security was designated as the Minister in accordance with whose advice the power of the President with respect to the Prerogative of Mercy may be exercised. The other members of the Advisory Committee on the power of pardon were appointed on or about that time or shortly thereafter. This duly constituted Advisory Committee on the Power of Pardon replaced the "Mercy Committee".
- (i) The Advisory Committee considered the Appellant's petition for mercy and on the 23rd February, 1977 the President rejected that petition and confirmed the sentence of death.
- (j) On the 12th March, 1977 the President issued a warrant directing that the Appellant be executed on 22nd March, 1977.
- (k) On the 15th March, 1977 the originating motion was filed on behalf of the Appellant. The President respite the execution of the Appellant pending the outcome of the fresh proceedings.

3. By his originating motion the Appellant claimed the following relief:

- (a) An order that the sentence of death passed on the Applicant is unconstitutional, null and void, since there was procrastination in carrying out the sentence from 20th July, 1976 after the Privy Council dismissed the Applicant's appeal against conviction for the murder of Gale Anne Benson.

- (b) An Order that the Government of Trinidad and Tobago and/or the Registrar of the Supreme Court and/or Commissioner of Prisons be restrained from executing the said applicant.

- (c) Alternatively, an Order that the sentence of death on the applicant be commuted to life imprisonment.

- (d) Such further or other relief as the Justice of the case may require and which the Court may grant pursuant to the provisions of Section 14 of the (1976) Constitution.....

- (e) Such further or other relief as the Justice of the case may require including such orders, writs and directions as may be necessary or appropriate to enforce the human rights and fundamental freedoms guaranteed by the (1976) Constitution.

4. The grounds for seeking the reliefs claimed were:

- (i) The period of detention from 26th July, 1976 to date and the conditions under which the applicant was kept amount to cruel and unusual treatment and further that it amounts to torture of the applicant.
- (ii) The applicant was denied equality before the Law and the protection of the Law since Edward Chadee was granted a commutation of his death sentence to life imprisonment.
- (iii) The applicant was denied equality of treatment.
- (iv) The threat of executing the applicant at this time amounts to a denial of his life, liberty and security without due process of Law.

5. At the hearing before Bernard J. Counsel for the Appellant, with leave, withdrew the claim for an order that the sentence of death be commuted to a sentence of life imprisonment and substituted therefore a prayer for relief as follows:

- "(i) A declaration that the threat of and/or carrying out of the sentence of death passed on the applicant is unconstitutional, null and void and of no effect;
- (ii) an order that the Government of Trinidad and Tobago and/or the Registrar of the

Supreme Court and/or the Commissioner of Prisons be restrained from executing the applicant."

6. The relevant provisions of the 1976 Constitution are:

4. It is hereby recognised and declared that in Trinidad and Tobago there have existed and shall continue to exist without discrimination by reason of race, origin, colour, religion or sex the following fundamental human rights and freedoms, namely:

- (a) the right of the individual to life, liberty, security of the person and enjoyment of property and the right not to be deprived thereof except by due process of Law;
- (b) the right of the individual to equality before the Law and the protection of the Law;
- (c)

5. (i) except as is otherwise expressly provided in this Chapter.....no Law may abrogate, abridge, or infringe or authorise the abrogation, abridgement or infringement of any of the rights and freedoms hereinbefore recognised and declared.

(2) Without prejudice to subsection (1),
but subject to this Chapter.....

Parliament may not -

(a).....

(b) impose or authorise the imposition
of cruel and unusual treatment or
punishment;

(c).....

6. (1) Nothing in sections 4 and 5 shall
invalidate -

(a) an existing law;

(b).....

(3) in this section -

"existing law means a law that had
effect as part of the law of Trinidad
and Tobago immediately before the
commencement of this Constitution,
and

14. (1) for the removal of doubts it is hereby
declared that if any person alleges that
any of the provisions of this Chapter has
been, is being, or is likely to be con-
travened in relation to him, then without
prejudice to any other action with respect
to the same matter which is lawfully
available, that person may apply to the
High Court for redress by way of originating
motion.

(2) The High Court shall have original
jurisdiction -

(a) to hear and determine any application made by any person in pursuance of subsection (1).....

and may, subject to subsection (3), make orders, issue such Writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of, any of the provisions of this Chapter to the protection of which the person concerned is entitled.

(3) The State Liability and Proceedings Act, 1966 shall have effect for the purpose of any proceedings under this section.

(4)

87. (1) The President may grant to any person a pardon, either free or subject to lawful conditions, respecting any offences that he may have committed. The power of the President under this subsection may be exercised by him either before or after the person is charged with any offence and before he is convicted thereof.

(2) The President may -

(a)

(b)

(c) substitute a less severe form

of punishment for that imposed
by any sentence for such an
offence; or

(d)

(3) The Power of the President under
subsection (2) may be exercised by
him in accordance with the advice of
a Minister designated by him, acting
in accordance with the advice of the
Prime Minister.

88. There shall be an Advisory Committee on
the Power of Pardon.....

89. (1) Where an offender has been sentenced
to death by any Court for an offence against
the Law of Trinidad and Tobago, the Minister
shall cause a written report of the case
from the trial judge, together with such
other information derived from the record
of the case or elsewhere as the Minister
may require, to be taken into consideration
at a meeting of the Advisory Committee.

(2) The Minister may consult with the
Advisory Committee before tendering any
advice to the President under section 87(3)....

7. Other relevant statutory provisions are:

Offences Against the Person Ordinance Chapter 4 No. 9.

4. (1) Every person convicted of murder shall
suffer death as a felon.

(2)

Criminal Procedure Ordinance Chapter 4 No. 3.

59. Every warrant for the execution of any prisoner under sentence of death shall be under the Public Seal of Trinidad and Tobago and the hand of the President, and shall be directed to the Marshal, and shall be carried into execution by such Marshal or his assistant at such time and place as shall be mentioned in such warrant;

State Liability and Proceedings Act 1966

22. (1)

(2) Where in any proceedings against the State any such relief is sought as might in proceedings between subjects be granted by way of injunction or specific performance the Court shall not grant an injunction or make an order for specific performance, but may in lieu thereof make an order declaratory of the rights of the parties.

(3)

8. Bernard J. heard the originating motion on the 15th, 19th, 20th, 21st and 26th April, 1977 and dismissed it on 5th May, 1977. The learned Judge had before him Affidavit evidence and heard oral evidence as to the physical condition in which the Appellant was kept in custody. He made a finding that the Appellant

was well cared for in prison, a finding which Counsel for the Appellant accepted as unassailable in the Court of Appeal.

9. On the 5th May, 1978 the Court of Appeal dismissed the Appellant's appeal from the order of Bernard

J. The three errors of Law argued in the Court of Appeal were that the learned Judge erred in holding:

- (i) That the State was not guilty of
inexcusable procrastination in carrying
out the execution of the Appellant;
- (ii) that his incarceration for a period of
eight months after the presentation of
his petition for mercy was not tantamount
to the imposition of illegal punishment
on the Appellant; and
- (iii) that the said procrastination and illegal
punishment did not constitute an infringe-
ment of the Appellant's right not to be
deprived of his life, except by due process
of law, and not to be subjected to cruel
and unusual treatment or punishment.

Counsel for the Appellant abandoned the other grounds of appeal. He also abandoned the relief originally sought in the notice of motion, leaving only for consideration by the Court of Appeal the claim for a declaration, set out at paragraph 5(i) hereof, which had been added by way of amendment.

10. The Court of Appeal held that the only period during which the Appellant could reasonably have alleged delay or procrastination on the part of the State in

carrying out the sentence was from 1st August, 1976 to 13th December, 1976 (per Hyatali C.J. and Corbin J.A.) or from first week in September, 1976 to March, 1977 (per Kelsick J.A.). The Court of Appeal was unanimous in holding that such delay was not unreasonable, unusual or inordinate. There was no evidence of bad faith on the part of the State, nor was the same alleged.

11. As to (ii), the Court of Appeal unanimously rejected the Appellant's submission that his detention between July, 1976 and March, 1977 was tantamount to the imposition on him of additional and illegal punishment. The Court held that the United States decision in Hartung v The People 22 N.Y. 95 upon which the Appellant relied in support of his proposition that the carrying out of the death sentence would be unconstitutional, was irrelevant to the instant case and afforded no support to the Appellant's submission.

12. The Court of Appeal further held that even if the Appellant had made good his two main complaints the redress sought could not have been granted because to grant a declaration that it would be unconstitutional to carry out a sentence of death lawfully imposed under the authority and in pursuance of a valid law, is to grant a declaration to the effect that both the law and the sentence imposed thereunder are valid. The Court further held the nature of the declaration sought is not one which could be properly embraced under "orders", "writs" or "directions" within the meaning of section 14 (2) of the Constitution of the Republic of Trinidad and Tobago.

13. The Respondents respectfully submit that the Judgement and reasoning of the Court of Appeal was correct and that the appeal herein should be dismissed for the following among other

REASONS

- (i) Because the State was not guilty of inexcusable procrastination in carrying out the execution of the Appellant.
- (ii) Because his incarceration for a period of eight months after the presentation of his petition for mercy was not tantamount to the imposition of illegal punishment on the applicant.
- (iii) Because had there been any such procrastination and/or illegal punishment this would not constitute an infringement of the Appellant's right not to be deprived of his life except by due process of Law, and not to be subjected to cruel and unusual treatment or punishment.
- (iv) Because the judgments of Bernard J. and the Court of Appeal were correct and should be upheld.

CHRISTOPHER FRENCH, Q.C.

GEORGE NEWMAN

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Charles Russell & Co.,
Hale Court,
Lincoln's Inn,
London, W.C.2.