THE COURT OF APPEAL

Record Number 154/15

McCarthy J.
Kennedy J.
Ní Raifertaigh J.

BETWEEN/

DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

- AND –

DANIEL HAYDEN

APPELLANT

Judgment (*ex tempore*) of the Court delivered on the 28th day of February 2020 by Mr. Justice McCarthy

1. This is an appeal against Mr Hayden's conviction of the offence of assault causing harm contrary to section 3 of the Non-Fatal Offences Against the Person Act, 1997. The victim, Mr Adio, was a taxi driver and the offence was committed on the 11th of November, 2012. The appellant was a passenger in Mr. Adio's taxi on the night in question and poured a drink over him and then assaulted him by way of a blow or blows to the face while both men were standing outside the taxi. The appellant denied all of the allegations and maintained that Mr Adio had himself caused the drinks to spill and had hit the appellant first to which the appellant had responded with a single punch in self-defence.

2. The appellant having being convicted of the offence on the 24th March, 2015 in what was a lengthy trial which had commenced on the 18th of March given the small number of witnesses and the facts at issue.

3. Only two of the grounds of appeal originally pleaded were ultimately relied upon, namely-

   (1) The learned trial judge erred in law and in fact in her summing up to the jury by summarising the defence and prosecution cases in a manner which was unbalanced and which favoured the prosecution case;

   (2) The learned trial judge erred in law by directing the jury on the issue of self-defence and in particular by refusing to redirect the jury in accordance with requisitions from defence counsel.

4. In relation to the first ground, which, putting it shortly, pertained to factual matters, counsel on behalf of the appellant sought to identify a number of aspects of the evidence which were either in his contention not directly referenced or were so referenced in insufficient detail.

5. It was suggested in the course of the evidence that the appellant had threatened to kill the injured party in addition to abusing him in a vulgar manner prior to the time when the injured party had apparently driven his taxi past a Garda Station. The defence's contention was to the effect that it was an important factor going to the credibility of that witness on the basis that if a threat to kill had been made he would have stopped at the Garda Station. It appears that the judge did not mention the issue of the threat to kill. The requisition on her charge was on the following terms: -

> *"In the first instance judge the summary given to the jury will lead them to believe that on Mr. Adio's case [it was of course not his case] the only thing said to him before he came round to the Garda Station was "you are…." [There is a word of vulgar abuse there which I will not repeat] judge, but in fact he accepted that he had gone on to say "I'll beat and kill you" at the same time and the beating and the killing was important from the defence perspective because he then went by a Garda Station, so the summary given to them would lead them to the view that he was called a name and he nevertheless drove past a Garda Station but on the defence case, and he accepted this, in his evidence, in fact there was a threat to kill and a threat to beat and he still drove by the Garda Station so I think that's important."*

This requisition was in our view rightly rejected by the trial judge.

6. It was further submitted that the judge failed to mention medical evidence to the effect that on medical examination there was found one single injury upon the injured party, and it was submitted this was alleged to be consistent with the proposition that the appellant had delivered a single punch, in circumstances where the victim, and an independent witness, in circumstances where the victim accepted that he had never claimed that there had been anything beyond such a punch, notwithstanding the fact that another witness had given evidence to the effect that there was repeated punching. This also gave rise to a requisition and that was in the following terms: -

> *"In relation to the second matter and it leads into what Ms. Murphy was saying, I think there should be a reference to the fact that the taxi driver accepted that at no point did he ever say that there was a second beating, that in fact it was only the one punch that he had claimed and he accepted that. He accepted it wasn't in his statements opened openly to the jury and if the court is then of the view that it should go back and it should also mention Gerry Downey's* [a third party witness] *evidence."*
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> *"Then as a corollary of that the court would have to mention that the medical the jury have been told, they are not entitled to speculate and the medical evidence in this case is only the injury to the eye. So whatever Ms. Murphy says about continuing blows there is only an injury to the eye and the prosecution accept that he was fully examined in terms of his attendance at the various hospitals. The only injury in the case and I think it is important to emphasise that judge is to his eye."*

Again, the judge in our view rightly rejected that requisition.

7. We think that it must be emphasised in this case yet again that a charge must be considered as a whole that it is a summary only of the relevant evidence as seen by the trial judge, and it does not consist of what might be termed the fulfilment of a wish list in terms of its contents from the point of view of either side. It is clear to us that what is happening on this appeal so far as a charge either in realisation to factual or other matters, in relation to factual matters is the fruit of the mistaken impression that the charge falls into the category of what we might term, such a wish list.

8. We turn now to the second ground of appeal which pertains to what we might shortly term legal errors. The judge dealt very comprehensively with the provisions of the 1997 Act with special emphasis in the nature of the case on the issue of self-defence. We do not propose to set out here *in extenso* what she so said. However, taking her elaboration of the law as to the nature of an assault and on the issue of self-defence in context it is inconceivable that the jury would not have had the clearest understanding of the relevant legal principles. The jury asked a sensible question towards the end of the sixth day, they were answered on the morning of the seventh, and had extensive reiteration of the law at that stage which was also comprehensive and without fault. What we might describe as particular emphasis has been placed by counsel on her use of the term "provocation".

9. It was submitted that the use of this term might give rise to speculation by the jury that the issue of provocation was relevant in the context of any defence of self-defence or in accordance with some concept that if there had been an assault by Mr. Adio, it would have been a legitimate thing in the light of some supposed form of provocation by the appellant. We do not think that the use of the term provocation in the context in which it appears could have any significance attached to it. It is quite plain that it was not used as a term of art. The jury would certainly not have been conversant with its use in that context and it was a very minor reference in circumstances where the charge in relation to self-defence was highly comprehensive.

10. A further criticism was made in relation to references which were made to s.18 (7) of the 1997 Act, which is in the following terms, namely-

> *"The defence provided by this section does not apply to a person who causes conduct or a state of affairs with a view to using force to resist or terminate it:*
>
> *But the defence may apply although the occasion for the use of force arises only because the person does something he or she may lawfully do, knowing that such an occasion may arise."*

11. The question arose as to whether or not that provision was relevant in the present case on the evidence to the effect that there would be some impairment of the proposition that self-defence was open to the appellant. It is undoubtedly the case that a judge should confine his or her elaboration of the law to matters which are relevant and a charge is not

a place for an extensive disquisition on the law on a particular topic: a charge is an exercise in communication and the simpler the better. It can in principle or in theory be a misdirection to elaborate on the law in a way which is superfluous having regard to the nature of the case. We do not think however that that was the position here. We do not think, again, that the jury, could have had any confusion in their minds as to the core issues which they were required to address, and in the circumstances, if the judge went a little further than might have been necessary in addressing the provisions of s.18 (7) we cannot see how the jury could have speculated that this issue might in some sense undermine the defence which was being advanced.

12. We therefore think that the judge's rulings in relation to the matter were correct.

13. Accordingly, it is appropriate to dismiss this appeal on all grounds.