THE COURT OF APPEAL

[104/14]

The President
Edwards J.
McCarthy J.

BETWEEN

THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS

(DPP)

RESPONDENT

AND

CIPRIAN GROZAVU

APPELLANT

JUDGMENT of the Court (*ex tempore*) delivered on the 20th day of December 2022 by Birmingham P.

Introduction

1. On 27th March 2014 following a ten-day trial in the Central Criminal Court sitting in Cork, the appellant was convicted of murder. He had stood trial charged with the murder of Mr. John Forrester on 12th November 2011 at Bridge House, Bandon, County Cork.

Background

2. The background to the trial was a somewhat unusual one. The appellant had been charged alongside a co-accused, Ms. Catherine O'Connor. Both accused were charged with two murders, occurring on consecutive nights at the same location; the victim in the other murder was Mr. Jonathan Duke. Following return for trial, the judge, having charged the Central Criminal Court list, directed separate trials for each murder and separate trials for each accused, in effect providing for four trials.

3. The co-accused, Ms. O'Connor, was convicted of the murder of Mr. Duke and then pleaded guilty to the murder of Mr. Forrester. For completeness, even though not strictly relevant, we would observe that the appellant was initially convicted of the murder of Mr. Duke, appealed successfully, the conviction was quashed, and a retrial was ordered. At the retrial the appellant was acquitted on 30th June 2021 of the murder charge by direction of the trial judge, but was convicted of two offences contrary to s.7(2) of the Criminal Law Act 1997. Following his conviction on 27th March 2014, the appellant lodged grounds of appeal dated 14th April 2014.

4. The grounds were that he had not received a fair trial, in that recordings of telephone conversations from Bandon Garda Station, County Cork and Roxboro Road Garda Station, County Limerick, which related to the murder of Mr. Forrester, had not been disclosed. At that stage, no

issue was raised about the adequacy of the judge's charge, and more particularly, no issue was raised as to the treatment or non-treatment of the issue of circumstantial evidence. The original grounds of appeal relating to the telephone recordings are being abandoned and do not need to be further considered.

5. By notice of motion dated 23rd June 2022, the appellant for the first time raised an issue in relation to the judge's treatment of circumstantial evidence. This occurred in circumstances where a new legal team had come on record on 30th July 2021. The appellant has indicated that he is not proceeding with the grounds originally lodged but that he does wish to advance a new ground:

i) the learned trial judge's charge to the jury rendered the trial unsatisfactory and the appellant's conviction unsafe in that he failed to charge the jury and/or offer any or any adequate instruction to the jury on how to deal with and approach circumstantial evidence in circumstances where the prosecution case depended substantially on same.

6. In the course of the grounding affidavit the appellant asserts that the above ground concern "fundamental errors of law and substantial defects in the proceedings sufficient to render the trial unsatisfactory and [the] consequential conviction unsafe." The appellant adds that he says and has been advised that the inclusion of "these additional grounds is not only essential to the success of [his] appeal but also to the justice of [his] case." He contends that the judge's failure to properly charge the jury on how to deal with circumstantial evidence constitutes such a "fundamental flaw in the conduct of the trial that [his] conviction should not be permitted to stand."

7. A replying affidavit was sworn in reply by Ms. Anne Collins, solicitor on behalf of the Director of Public Prosecutions, and she points out that the transcripts of the trial have been in the possession and procurement of the appellant and his advisors for an excess of eight years. At no point was a complaint made until recent times in relation to how the judge dealt with circumstantial evidence. She says that the failure to requisition was unlikely to be due to inadvertence or oversight; she goes on to refer to the public interest in expedition in criminal proceedings and the public interest in finality. The written submissions that have been lodged on behalf of the Director refer to what is sometimes called the *Cronin* line of jurisprudence, deriving from the case of *DPP v. Cronin (No. 2)* [2006] IESC 9.

Discussion

8. We begin our consideration by saying in clear and unequivocal terms that we regard this motion as singularly lacking in merit. The trial in Cork was presided over by one of the most experienced, if not the most experienced, judge in the country conducting criminal business. Both sides were represented by very experienced legal teams, a measure of that is that the junior counsel who appeared at trial on both sides are now members of the Inner Bar. It is inconceivable that if this was an appropriate case for detailed directions on how to approach circumstantial evidence that this would have been overlooked by the judge who presided and by the legal teams, all of those being figures of such vast experience. We are quite satisfied that is not what occurred and satisfied that this is not in reality a circumstantial evidence case.

9. At the heart of the prosecution case were two witnesses to say that the accused, now appellant, had on separate occasions admitted to each of them that he had murdered Mr. Forrester. We do not ignore the fact that the appellant, through his counsel today, has raised issues in relation to the reliability of the witnesses, and this is particularly so in the case of one of the witnesses, but nonetheless, this was a case where the prosecution was relying on admissions. To consider the scope for circumstantial evidence to play a very significant part at trial, one has to have regard to the real live issues at the trial and to the run of the trial. The appellant admitted during interview that he was present for the murder, he admitted he was at the crime scene – which was a very bloody one – and that he then played a role in the disposal of the body, putting it in the river from which it was retrieved some days later. Therefore, the evidence putting the appellant at the crime scene or evidence suggestive of physical contact between the appellant and the deceased, which in another case could have been of enormous evidential significance, in this case did not advance the central issue of whether the appellant's role was as an active participant or as a callous bystander.

10. The written submissions lodged on behalf of the appellant, in 13 numbered subparagraphs, identify what the appellant says was the circumstantial evidence. Para. 13 refers to the evidence of Mr. Shane O'Driscoll and Mr. Aaron Nolan, the witnesses to whom, on their account, admissions were made. In truth we do not think that their evidence is properly classed as circumstantial but rather, it is direct evidence.

11. In relation to the other references to circumstantial evidence, and we have looked at them individually, it seems that they go a distance towards advancing an association with the co-accused and the deceased and the presence of the appellant at the crime scene, but as we have indicated, his presence at the crime scene was not in dispute. At para. 1, there is a reference to the relationship between the deceased, the appellant and the co-accused, but that says nothing about what the appellant's role was. The situation is identical in relation to para. 2, which is the fact that they were all observed drinking in each other's company on the day in question. Para. 3 refers to their demeanour on the day in question, and we would make the same observation in that regard, though we note that counsel on behalf of the appellant says that the fact that there was hostility, as indicated in the shouting and yelling, perhaps puts this into a different category. In para. 4, the appellant was observed fully clothed and then topless outside Bridge House a short time later. The appellant's change in clothing status is capable of being explained by either role, whether as a participant or as somebody who was involved in removing a dead body from a bloody crime scene. The blood on the walkway along the riverbank and on the surrounding areas of Bridge House is para. 5, and again it says nothing about what the appellant's role. Para. 6 also deals with blood, but blood located in Flat 1 of Bridge House, and says nothing about the role of the deceased. Para. 7 deals with the manner in which the body of the deceased was found and the tying up of same, once more, this says nothing about the appellant's role prior to the killing of the deceased. The appellant accepts he had an involvement in the disposal of the body. Para. 8, which is linked to para. 12, is a reference to piece of torn fabric with attached cord, consisting of double stitching from part of a garment, which, in the opinion, of Dr. Margot Bolster was consistent with having caused the ligature mark noted around the neck of the deceased. Para 9. refers to the lack of any 999 call, but again the issue was whether the deceased role was that of the callous

bystander or as an active participant. Para 10 dealt with the presence of the appellant's fingerprints on alcohol containers located in Flat 1 of Bridge House, and again this goes to the appellant's presence and not to his role. Para. 11 relates to the blood of the deceased located on the sole of a black shoe located inside Flat 3 Bridge House, but once again nothing about the role of the appellant emerges from that. Para. 12 notes the presence of both the deceased's and the appellant's DNA on black fabric (exhibit BB41). This item comprised of a narrow piece of fabric that was looped around on itself and tied in a knot and it is the item that was referred to earlier at para. 8. From the defence perspective, this is the paragraph of greatest significance, but is has to be recalled that there was also evidence at trial that the deceased and the appellant were long time companions, and that it was their practice to share and swap clothing and garments.

12. For our part, we are quite satisfied that these paragraphs, whether considered individually or considered cumulatively, do not establish in any real sense that this was a circumstantial evidence case. That is not to say that there may not have been aspects of circumstantial evidence, as there will be in many cases, perhaps most cases. We note that our attention has been drawn to the fact that the jury had some questions for the trial judge relating to issues referred to in the numbered paragraphs, but the fact that an attentive, conscientious and assiduous jury would have had deep questions to ask on the details of the evidence and would wish to have had some of that evidence repeated to them does not seem to us in the context of the case to be of significance.

Decision

13. Overall, we find ourselves in agreement with the trial judge and in agreement with both of the legal teams at trial that this was not a case for a classic circumstantial evidence direction. We will just observe that the classic circumstantial evidence direction has the potential to offer comfort to both sides in a trial. From the defence perspective, they will hear the jury being told that if the jury is to act on the circumstantial evidence and return a verdict of guilty, they must be satisfied that the circumstantial evidence is consistent only with guilt, and inconsistent with any rational hypothesis consistent with innocence; from the prosecution perspective, the classic direction will often involve reviewing the details of the circumstantial evidence and the very fact of the multiplicity of separate, apparently independent, pieces of evidence being identified, which can be very powerful from their perspective.

14. Overall, we have no hesitation whatever in refusing the motion and we understand that the refusal of this motion disposes of this appeal.