



THE SUPREME COURT

[Appeal Nos: 22/2013 and 24/2013]

**Denham C.J.
O'Donnell J.
Clarke J.
Dunne J.
Charleton J.**

BETWEEN

MARK NASH

APPLICANT/APELLANT

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

Statement by the Court delivered by the Chief Justice on 19th October, 2016.

1. When this case came back before the Court for the purposes of considering the question of damages and costs, counsel on behalf of the Director of Public Prosecutions indicated that there was a concern that some of the facts set out in the unapproved judgment of the late Mr. Justice Hardiman, given on the earlier issue of prohibition of Mr. Nash's criminal trial, were not fully accurate. Counsel suggested that it might be appropriate for the Court to amend the judgment in question. Subsequently, at the Court's request, a letter was received from the Chief Prosecution Solicitor specifying the precise amendments which were sought.
2. Having considered the matter the Court is not satisfied that it is open to it to amend the judgment of Hardiman J. in the unfortunate circumstances now prevailing. It is, of course, the case that a judge remains free to correct any typographical or similar errors identified in an unapproved judgment handed out to the parties on the day when judgment is given. In that context judges have always been willing to consider correcting any errors of fact which are brought to their attention. However, it does not seem to this Court that it has any power to alter the text of a judgment delivered by a now deceased former colleague.
3. It follows that the last version of the judgment of Hardiman J. on the prohibition aspect of this case must remain unapproved but must represent his final judgment for future purposes. However, the Court is satisfied that Hardiman J. would have been most likely to have been more than willing to make the changes suggested on behalf of the Director of Public Prosecutions as set out in the schedule to this statement. The Court will ensure that a reference to and link with this statement will appear beside the judgment in question on the Courts Service website so as to draw attention to the matters of fact raised. The Court does not feel that it has any jurisdiction to go further.
4. The Court has also annexed a copy of the original judgment of Hardiman J. with the relevant changes marked appropriately.

Schedule

- (i) Paragraph 5 - delete the third sentence which reads "subsequently, directions were given to charge him with the murder of Sylvia Sheils as well".

- (ii) Paragraph 12 – delete all wording in the first sentence after the phrase “further report”.
- (iii) Paragraph 14 – delete the first named “Robert” before Cox.
- (iv) Paragraph 15 – in the third sentence delete the phrase “of the review team under the Assistant Commissioner”.
- (v) Paragraph 27(a) – delete “a view confirmed again after a review by an Assistant Commissioner”.
- (vi) Paragraph 29 – in the first sentence delete “why it continued to be regarded as reliable by the Assistant Commissioner’s review”; and
- (vii) Paragraph 33 – in the first sentence delete the words “and stood up to precisely focused and critical scrutiny on a review conducted by the Assistant Commissioner who knew that Nash had already confessed”.