



THE COURT OF APPEAL

**Ryan P.
Sheehan J.
Mahon J.**

143/12

**The People at the Suit of the Director of Public Prosecutions
V
Karl Donohoe**

Appellant

Judgment of the Court delivered on the 19th day of January 2015, by Mr. Justice Sheehan

1. This is an appeal against severity of sentence. On the 23rd February, 2012, the appellant pleaded guilty to the manslaughter of Ray Bates on the 26th September, 2010, and was sentenced to 12 years imprisonment with the final two years suspended. Sentence was imposed by the Central Criminal Court on the 23rd April, 2012.
2. The manslaughter arose in circumstances where the appellant and the deceased were both driving their respective vehicles in Sandymount, Dublin at about 7.25 pm on the 23rd April, 2012 going in the same direction. The appellant had his two year old child in the back of his vehicle and he was accompanied by a friend in the passenger seat.
3. The initial contact between the parties occurred when the appellant stopped at traffic lights and the deceased man flashed his lights at the appellant.
4. The appellant drove into Tritonville Road where the garda evidence was that the deceased man was tailgating the appellant who was slowing down to indicate by his brake lights that the deceased was too close. The appellant stopped about 400mtrs into Tritonville Road and both men got out of their respective vehicles and proceeded to shout at each other. Both men were described by witnesses as being agitated and the deceased man was overheard to say "don't be breaking like a fucking fanny, just drive your fucking car". The deceased man had spent five and half hours prior to the incident drinking beer in a public house in Sandymount.
5. Following this altercation, both men returned to their cars and the appellant went to drive away the deceased man drove around by the side of the appellant's vehicle mounting a traffic island and forcing the appellant to move slightly to the left of the road.
6. The appellant got out of his vehicle, took a hurley from the boot of his car and started hitting the front passenger door of the deceased's vehicle which was now stopped. In the meantime his passenger had driven his own vehicle further up the road and parked. The deceased man got out and approached the appellant with his hands in the air in front of him in a non confrontational manner.
7. The appellant hit him a number of blows with the hurley as the deceased man tried to ward off the blows but the appellant continued to strike him on the arms and also on the head. The deceased man fell to the ground and was struck a number of times on the head while on the ground. One witness stated that she did not think anyone could be more aggressive and that appellant hit the deceased using the base of the hurley on the left temple.
8. The man on the ground never attempted to strike back. When the attack ended, the deceased man got up, got into his vehicle and drove home. The following day a friend became concerned that he had not been to work and called to see him and arranged for an ambulance to take him to hospital where he subsequently died on the 30th September, 2010. The deceased had been suffering from haemophilia which contributed to his death although not amounting to a matter of defence.
9. On the 28th September, the appellant was interviewed by a member of An Garda Síochána, in the course of which he stated, "I hope he fucking dies. He got what he deserved". At that point the appellant did not realise the seriousness of the situation.
10. During the course of interviews, which followed his arrest and in which the appellant made significant admissions, he also stated, "I definitely didn't hit this man on the ground, I'm a hundred per cent sure of this, the fellow didn't get anything he didn't deserve driving around the place drunk".
11. The deceased man was a 49 year old married man with three sons aged 30, 27 and 24 and was living at home in England with them, but was in Dublin at the time of the incident on foot of a temporary work contract. In the course of their victim impact report the deceased's family spoke of their utter devastation at the loss of a husband and father.
12. The appellant is a 41 year old crane driver who has a two year old daughter. He grew up in Dublin in a situation where his father had left home when he was very young and he was obliged to take responsibility at an early age for his mother and sister. He has four previous convictions for relatively minor offences. He has a good work history having been in his present job for eleven years. His employer stated that he could resume employment following his release from prison.
13. The appellant expressed remorse for what he had done and evidence of this was tendered by his counsel in the course of his plea in mitigation.
14. The learned trial judge asked counsel for the Director of Public Prosecutions if she had any view on sentence and the learned trial judge was told that it was the Director's view that the offence lay at the upper end of the mid range. The learned trial judge adjourned the matter for a week and on the 23rd April, 2012, gave the following judgment:

"This is the second road rage homicide I have had to deal with in a very short space of time. These cases outrage the community in way no others do. I know this from the signed address supplied hate mail which I received after the last case. Because of its menacing nature, I have handed this correspondence over to An Garda Síochána. I was not and I am not dealing with a case of murder as my correspondents called it. The Director of Public Prosecutions has accepted a plea to manslaughter which is a wholly different crime capable of carrying a suspended sentence. I am not as large in how I deal with the case. I am subject to the jurisprudence of the Supreme Court and the Court of Criminal Appeal which is binding on me. In the first instance I am bound by the frequent rulings of Denham J. now Chief Justice, that I am concerned with neither retaliation nor revenge. Secondly, I am bound by the jurisprudence in place for over sixty years that I must structure a sentence that provides a tunnel of hope and rehabilitation for the accused. Thirdly I must have regard to the survey of 50 manslaughter sentences conducted by Hardiman J. in the Kelly case. Finally I must have regard

to the repeated rulings of Denham J. now Chief Justice and I must identify the range of penalty available, placed the particular case having regard to all its circumstances at its appropriate place on that scale and three, identify such factors as may be found in favour of the accused and on the basis of those discount from the figure arrived at in phase 2 above.

The range of penalty available is obviously from suspended sentence to imprisonment for life. I take account of (i) the accused appointing himself sheriff and enforcer in respect of Mr. Bates's bad and drunken driving, (ii) the savagery of the beating administered, (iii) the accused words in the aftermath of the case, which cannot be airbrushed out of it and (iv) the devastating effects on Mr. Bates's Family. I assess the case as meriting a sentence of twelve years imprisonment and sentence him to that term to date from the 20th February last. In favour of the accused is that he has pleaded guilty and that he has such a good employment record that his employer is prepared to take him back on completion of his sentence. To take account of these matters, I will suspend the final two years of his sentence on his entering into a bond in the sum of €1,000 to keep away from the family of Mr. Bates in perpetuity the bond to be entered into before the prison Governor. The only figure that will be on the warrant accompanying Mr. Donohoe out of this Court is one of twelve years imprisonment and to describe the sentence as anything else is a misdescription."

15. Both parties filed written submissions. The appellant submitted that the learned trial judge erred in principle and in law in his determination of sentence and that the sentence failed to take into account significant mitigating factors and was disproportionate in all the circumstances of the case. The appellant further submitted that the learned trial judge had wrongly taken into account extraneous matters. The respondent on the other hand submitted that the sentencing judge approached the determination of sentence correctly and in accordance with established principles that he had regard to the serious nature of the offence which had occurred that he had regard to the appellant's individual and personal circumstances that he appropriately identified aggravating and mitigating circumstances acting within his discretion in doing so. The respondent submitted that no error in principle had been identified and that the sentence was an appropriate one, which should not be interfered with.

16. It was agreed by both parties that the top end of the mid range ended at ten years. The issue for this court is not whether it might have imposed a lighter sentence, but whether in all the circumstances of the case, the sentence imposed by the learned trial judge was excessive and therefore wrong in principle.

17. It is not clear from the learned trial judge's short judgment already set out herein whether or not he disagreed with the submission on sentence that he received from counsel for the Director of Public Prosecutions. Equally since there was no discussion as to where the mid range actually ended, the learned trial judge may well have assumed that the top end of the mid range was twelve years.

18. In considering the appropriate sentence in this case, bearing in mind the need for consistency, this Court has regard not only to the cases presented to it in the course of this appeal, but also to the report on sentencing on manslaughter cases published on the Irish Sentencing Information System website.

19. In all the circumstances, the Court is of the view that although the circumstances of the case put it in a serious class, the trial judge erred in locating the crime at somewhat too high a point that represented a category of gravity above that which was warranted by the facts.

20. This Court in its approach to sentence is guided by the principle of proportionality and the need to reconcile this principle with the penal aim of rehabilitation. Bearing in mind all of these matters, this Court is of the view that the correct starting point in this case was one of ten years imprisonment rather than twelve. Accordingly, this Court will impose a sentence of ten years imprisonment and suspend the final two years of that sentence provided the appellant enters into bond to keep the peace and be of good behaviour for that period of time a bond in the sum of €1,000 to be entered into.