



THE COURT OF APPEAL

**Birmingham J.
Sheehan J.
Mahon J.
Record No.: 59/2014**

Between/

The Director of Public Prosecutions

Respondent

- and -

John Hannigan

Appellant

JUDGMENT of the Court delivered on 22nd day of November 2016 by Mr. Justice Mahon

1. The appellant was convicted by a jury on 28th February 2014 at the Central Criminal Court of one count of murder contrary to Common Law, and as provided for by s. 4 of the Criminal Justice Act 1964. On the same day, the appellant was sentenced to life imprisonment to date from 11th January 2013.

2. This is the appellant's appeal against his conviction.

3. On the evening of 17th January 2012, the appellant attended at the home of the deceased, Mr. Anthony Fallon, in Clonmel. Both men were later joined by Mr. Joey O'Riordan in the early hours of 18th January 2012. An altercation took place in the premises when Mr. Fallon was seriously assaulted by Mr. O'Riordan and the appellant. The three men then left the apartment at around 6 a.m., and purchased alcohol from a local convenience store. The three men then walked back towards Mr. Fallon's apartment. En route, in Friary car park, the appellant again assaulted Mr. Fallon by punching him a number of times. Initially, the appellant and Mr. O'Riordan brought Mr. Fallon back to the appellant's apartment leaving him in a collapsed state at the entrance to the apartment building. The appellant sometime later phoned for assistance and Mr. Fallon was pronounced dead at the scene by a local doctor at 7.35 a.m.. A toxicology report indicated that Mr. Fallon had consumed a significant level of alcohol.

4. When later interviewed by the gardaí, the appellant admitted that he had very violently and forcefully punched the deceased in the car park, describing how one of his punches lifted him off the ground. When the appellant belatedly rang for the ambulance seeking assistance for the deceased, he lied as to the circumstances in which the deceased had apparently collapsed at the entrance to the apartments and did not disclose the fact that he had dragged the deceased some distance to the apartment block. He had also lied to one of the investigating gardaí to the effect that the deceased had taken drugs.

5. Following his arrest, the appellant was formally interviewed at the garda station on six separate occasions, for a total of approximately fifteen hours on 23rd and 24th January 2012. The appellant made admissions in the fourth, fifth and sixth interviews. The appellant explained in considerable detail as to why he struck the deceased, and the force of the punches with which he struck him, describing how one of them had lifted him off the ground and how the deceased had then fallen down.

6. Mr. O'Riordan was convicted of assaulting Mr. Fallon at Clonmel Circuit Criminal Court on 20th December 2012 and received a sentence of three years for a s. 3 assault, and a six year sentence for an unrelated offence.

Grounds of appeal

7. The appellant's grounds of appeal are:-

(i) That the learned trial judge erred in law and in fact by refusing to permit expert psychological evidence relating to the appellant from being placed before the jury.

(ii) That the learned trial judge erred in law and in fact by permitting the memorandum of interview to be given to the jury, given the nature of the psychological evidence available to the Court during the course of the trial.

8. While the foregoing grounds of appeal are the only grounds stipulated in the Notice of Appeal, a separate issue is referred to in the appellant's written submissions, and it was again raised at the hearing of this appeal by counsel for the appellant, in relation to the evidence as to cause of death. No such issue was raised in the course of the trial. By way of explanation to the Court as to the belated raising of an issue relating to causation, counsel for the appellant explained that a concern on the part of the appellant's legal team (and which was not the legal term that represented him at the trial) arose following their perusal of the transcripts post the trial. It was, however, acknowledged by counsel for the appellant that the causation point had not been put forward as a ground of appeal. To the extent to which the causation issue was in fact raised at the hearing of the appeal, it related to the evidence of the State Pathologist, Prof. Cassidy, concerning the injuries sustained by the deceased. In her evidence she described the injuries sustained as *"this pattern of trauma to the rib cage, that being the multiple fractures of the ribs, would be consistent with a crushing type injury such as a heavy weight on the chest and the fracture of the clavicle confirms that there had been significant force applied. Such an injury would be caused by stamping or blows from a very or broad object to being dumped upon. However, there was no patterning on the skin surface to suggest how the injury was caused."*

9. While Prof. Cassidy was subjected to cross examination by counsel for the appellant in the course of the trial, no contrary evidence was called on behalf of the appellant. The Court is satisfied that there was sufficient evidence as to causation at the trial as enabled the jury conclude that the deceased had died from a very violent assault.

10. Towards the end of the evidence on day 3 of the trial, Mr. McGuinness S.C. on behalf of the appellant objected to the admissibility of certain statements made by the appellant in the course of being interviewed by the gardaí. A *voir dire* followed in the course of which six members of the gardaí gave evidence. Two medical witnesses also gave evidence, namely Dr. Chandranth, a Consultant Psychiatrist with the HSE (called by the prosecution), and Dr. Siobhan Nic Coitir, a Counselling Psychologist with 20 years

experience and a Forensic Psychologist since 2008 (called by the defence). Dr. Chandrakanth was the treating consultant to the appellant following his voluntary admission to hospital in the immediate aftermath of the killing of Mr. Fallon.

11. Dr. Nic Coitir gave an account of what she had perceived and found in the course of her assessment of the appellant. It was her opinion that the appellant was *"within the extremely low range of intellectual ability and this would lie within a kind of . . . within the mild learning disability range of intellectual capacity. So basically, he is limited across the IQ severe in all aspects"*. She measured the appellant's IQ at 62. She confirmed her view that the appellant knew right from wrong. She stated that the appellant would be "vulnerable" in terms of *"being asked questions from authority"*. At the conclusion of her evidence, she summarised her view of her assessment of the appellant in the following terms:-

" . . . Mr. Hannigan is a psychologically vulnerable man with mild intellectual disability, . . . he grew up in an insecure environment and was exposed to adverse experience both at home and school."

12. While Ms. Nic Coitir did not know whether the statements provided to the gardaí were reliable or consistent, it was Dr. Chandrakanth's evidence that the appellant was fit to make statements to the gardaí.

13. In his submissions to the learned trial judge, Mr. McGuinness quoted from the Report of the Morris Tribunal in relation to the reliability of confessions made to the gardaí. He concluded in the following terms:-

"The court now has such evidence as was contemplated by Mr. Justice Morris relating to Mr. Hannigan and in my submission it must raise a doubt as to whether, having regard to the evidence of Ms. Nic Coitir that the vulnerabilities which she has given evidence of must place a doubt in the mind of the court whether what is being proffered to the jury is or can be a reliable confession in those circumstances."

14. The learned trial judge ruled as follows:-

"I am satisfied to the standard of beyond reasonable doubt that the statements in issue are admissible. Now, there was full compliance with the Criminal Justice Act of 1984 and the treatment of persons in custody regulations. There was no oppression of the accused in any fashion whatsoever and the statements were voluntary. I accept the evidence given by the psychiatrist from the Mental Hospital this morning that he indicated to the guards that the accused man was fit for interview and he was interviewed pursuant to that.."

He went on to state that he would permit the issue of the reliability of the appellant's evidence be canvassed before the jury, and that he would advise the jury of their freedom to reject or accept, all or some of the appellant's evidence as they saw fit.

15. Dr. Chandrakanth again gave evidence, this time in the presence of the jury. He outlined the circumstances in which the appellant came under his care in St. Michael's Unit at Clonmel Hospital between the 18th January, 2012 and the 23rd January, 2012. He expressed the view that the appellant did not subscribe to the definition of serious mental illness in that he was not clinically depressed. He did not have any psychotic symptoms. Dr. Chandrakanth was cross examined in some detail by Mr. McGuinness. He was questioned extensively as to the appellant's mental state at the time of assessments in January 2012, and on other occasions. He was not specifically questioned as to his opinion of the capacity of the appellant to make reliable statements to the gardaí in the course of their interviewing of him.

16. No further medical evidence was called, and specifically, Ms. Nic Coitir did not give evidence in the presence of the jury, but the appellant himself did give evidence in their presence.

17. The first ground of appeal suggests that the learned trial judge refused to permit expert psychological evidence to be given in the presence of the jury or otherwise being placed before the jury. Two important observations are appropriate in relation to this ground of appeal. Firstly, the learned trial judge did not disallow such evidence being called in the presence of the jury. Indeed, he specifically stated, following his ruling on the matter at the conclusion of the *voir dire*, that he would permit the issue of the reliability of the appellant's evidence to be canvassed before the jury. Secondly, no expert evidence was called on behalf of the appellant, nor was any application made for leave to do so.

18. The scope for calling expert evidence before a jury in relation to the mental state of an accused person is however limited. In *DPP v. Campion* [2015] IECA 190, Birmingham J. in delivering the judgment of the court stated:-

"However, under our system of justice which involved a trial by judge and jury where it is for the jury to decide the facts, it is for a jury properly and carefully directed to assess the evidence of such a witness and to decide whether to place reliance on such a witness. The scope of expert professional evidence on whether a witness is reliable or indeed capable of telling the truth will be very limited. The decision making process will normally not be enhanced by the prospect of professional witnesses intervening and offering conflicting and competing opinions on a matter that is so quintessentially one for a jury. The situation may well be different in cases involving disputed confessions where an appropriate professional may be able to offer assistance on issues such as whether an individual is particularly prone to surmount psychological pressure, is unusually compliant or particularly suggestible, or more dramatically still, on issues such as whether an individual suffers from a syndrome involving a compulsion to make false confessions".

19. The decision to call or not to call witnesses on behalf of an accused is a matter for an accused person and his legal team. A decision to call or not to call one or more witnesses on behalf of an accused is usually taken for tactical reasons, as indeed is a decision whether or not to call an accused himself or herself.

20. The second and related ground of appeal concerns the decision of the learned trial judge to allow the appellant's statements given at interview to be provided to the jury having regard to the psychological evidence given to the court in the course of the trial. In this respect, the learned trial judge had heard expert evidence on the appellant's capacity to make reliable statements, and had also viewed the videotaped interviews, and was therefore in a strong position to assess that capacity at first hand, having also heard detailed submissions in relation thereto.

21. The learned trial judge was, in these circumstances, entitled to rule as he did. In particular, the evidence of Dr. Chandrakanth carried considerable weight as to the appellant's mental state at or close to the time he was interviewed by the gardaí as he, in his capacity as the appellant's medical attendant, had the opportunity to assess him over a prolonged period close to that time. His evidence did not disclose any apprehension as to the capacity of the appellant to make a reliable statement.

22. Both grounds of appeal are rejected, and the appeal is therefore dismissed.