THE COURT OF APPEAL

[218/17]

The President

Edwards J.

McGovern J.

BETWEEN

THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSCUTIONS

RESPONDENT

AND

DARIUS ALCHIMIONEK

APPELLANT

JUDGMENT of the Court delivered on the 19th day of February 2019 by Birmingham P.

1. On 28th April 2017 at Tullamore Circuit Court, following a trial, a jury returned verdicts convicting the appellant of the manslaughter of John Gorman and of assault causing harm to his brother, Adam Gorman, on 29th December 2015. Subsequently, on 17th July 2017, the appellant was sentenced to a term of nine years imprisonment with three years suspended on the manslaughter charge and he was disqualified from holding a Driving Licence for a period of forty years.

2. The background to the case is to be found in a road traffic collision which occurred at Geashill, County Offaly, when a vehicle driven by the appellant was driven into collision with a vehicle being driven in the opposite direction by John Gorman and in which his brother, Adam, was travelling as a passenger in the front seat. John Gorman lost his life in this collision and his brother, Adam, sustained significant injuries including a head injury, a fractured vertebrae and a fractured wrist.

3. The trial was a brief one which concluded within one day and there was no dispute about the circumstances of the road traffic collision. The evidence established that at around lunchtime on the day in question, the appellant was driving his vehicle on a relatively straight stretch of road when suddenly and without warning, he steered his vehicle onto the opposite side of the road into the path of an oncoming vehicle. The driver of that vehicle was given no opportunity to avoid a head-on collision.

4. At trial, the defence contended that the appropriate verdict was one of not guilty by reason of insanity. Indeed, this proposition was not in dispute at any stage during the trial. The defence called Dr. Stephen Monks, consultant forensic psychiatrist at the Central Mental Hospital. His evidence was that the appellant was suffering from a mental disorder to the extent that the appropriate verdict was a special verdict of not guilty by reason of insanity. Dr. Monks reviewed interviews conducted by Gardaí with the appellant in the aftermath of the accident and also himself interviewed him on a number of occasions. He concluded that the appellant had a history of severe depression and that the fatal collision may itself have been a suicide attempt. His view was that in the six months prior to the incident, the appellant had developed an evolving psychosis related to a perceived threat of terrorism, this, he categorised as Schizophrenia.

5. In the interviews with Gardaí, the appellant described how, in the days leading up to the accident, he had become increasingly obsessed with the idea that Syrian refugees in Ireland were about to engage in terrorist acts against Christians and that he would become a target. He described how, at the time of the road traffic collision, he believed that he was being pursued on the road by a car containing Muslim terrorists, that they were intent on capturing and killing him and that in order to escape them, he steered his car onto the opposite side of the road.

6. The evidence of Dr. Monks was not challenged by the prosecution. Indeed, the prosecution had obtained a report from another consultant psychiatrist, Dr. Mullaney, also of the Central Mental Hospital. They were in broad agreement, save only that Dr. Mullaney's diagnosis was one of psychotic depression. The prognosis following such a diagnosis would generally be better than it would be for a prognosis of Schizophrenia. When asked to comment on his colleague's diagnosis, Dr. Monks indicated that he did not regard this as a major clash.

7. In the course of his charge, the Judge reviewed the evidence of Dr. Monks and reminded the jury that the State had acknowledged that they did not take issue with the evidence of Dr. Monks, and indeed, that they had had the accused examined by Dr. Ronan Mullaney who came to the same conclusion as Dr. Monks. The Judge then told the jury "in the light of the medical evidence, it would seem to me that you have no option but to accept that on the balance of probabilities, the defence of not guilty by reason of insanity is available to the accused, and in such circumstances, you are obliged to acquit". The Judge added that he was not going to trespass upon their function as jurors and that it was for them to assess the evidence.

8. After the jury deliberated for two hours and fifty minutes and almost immediately after being told by the Judge that he was in a position to accept a majority verdict, the jury returned majority guilty verdicts, the majority being one of 11:1.

9. The appellant has now appealed his conviction, contending that the verdict of the jury was perverse and against the weight of the evidence. In written and oral submissions, the appellant has been quite clear that no issue is taken with the conduct of the case or with the Trial Judge's charge. That there would be no criticism of the charge is scarcely surprising as the Judge was at pains to make

clear to the jury that the medical evidence and the expert opinion was all one way, for example, commenting:

> "[i]n the light of the medical evidence, it would seem to me that you have no option but to accept that on the balance of probabilities, the defence of not guilty by reason of insanity is available to the accused, and in such circumstances, you are obliged to acquit.
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> "Again, having considered the defence of not guilty by reason of insanity, if, on the balance of probabilities, you are satisfied that that defence is available to the accused, you must return a verdict of not guilty by reason of insanity and, as I said, it would seem to me that the evidence on that is extremely persuasive, strong and something that you have to take account of in your deliberations."

Then, as the Judge sent the jury out to commence their deliberations, he commented:

> "[t]here are three verdicts you can return in respect of each of the charges. You can return a verdict of guilty, a verdict of not guilty or a verdict of not guilty by reason of insanity. It would seem to me, on the basis of the evidence produced in this Court, that the only logical verdict open to you is a verdict of not guilty by reason of insanity."

10. In contending that the verdict was perverse and against the weight of the evidence, the appellant points out that the evidence went one way and one way only, but is also critical of the approach of the jury to their deliberations. The jury wanted to know the reason why interviews were not signed and also wished to see a laptop on which the appellant had watched films. It said that this was indicative of a jury that was speculating and exploring issues which had not been canvassed in the evidence.

11. The DPP says that the course of action urged on behalf of the appellant would have the effect of reducing the jury to a form of rubberstamp. The Director draws attention to observations by Hardiman J. in *DPP v. Ali Abdi* [2004] IECCA 47:

> "[w]e wish to emphasise . . . the central role of the jury on the issue of insanity. Many cases where insanity is pleaded do not in fact give rise to a great deal of controversy, but due to the difficulties and uncertainties attendant on this particular area of medical science, there will always be those that do, but whether controversial or not, it is essential that every such decision be taken by a properly informed jury in a public forum. Equally, it is important that where a person does not suffer a criminal conviction on the grounds of insanity, such insanity should be clearly and publicly established to the satisfaction of the general public as represented by the jury. The role of the expert witness is not to supplant the Tribunal of fact, be it judge or jury, but to inform that Tribunal so that it may come to its own decision."

As has been made clear in cases such as *DPP v. Tomkins* [2012] IECCA 82 and *DPP v. Nadwodny* [2015] IECA 307, a decision to quash a verdict because it is perverse is a very exceptional one. This reflects the primacy of the jury in our system of criminal justice. Ordinarily, it is not for appellate courts to substitute their own view of the evidence for that of the jury. A further practical reason why such situations are rare and exceptional is that in any given case where the state of the evidence is such that a conviction would be perverse or would give rise to a miscarriage of justice, one would expect to see an application to the trial Judge to withdraw the case from the jury. If, in such a case, the issue is in fact considered by the jury, then usually, it will be because a Judge, having heard the matter argued, has come to the view that it is a case where a properly charged jury could properly return a verdict of guilty.

12. What occurred in this case was certainly unusual. At trial, there was no dispute about the facts. The evidence in relation to the circumstances of the collision was read to the Court by prosecution counsel at the end of her opening address. Only one prosecution witness was called, Sergeant Barry Collins, one of the lead investigators. Much of his evidence consisted of reading the contents of memoranda of interviews conducted with the appellant. The defence called only one witness, Dr. Monks. Prosecution counsel had no questions for Dr. Monks. The trial Judge sought to assist the jury by putting questions to Dr. Monks designed to summarise his evidence, asking him "and would you say that as a result of your examination of the accused, you are satisfied he was suffering from a mental illness to such an extent that his ability to reason was severely impaired and that it was severely impaired on the date of the crash which is the 29th December, is that correct?" Dr. Monks responded "that's correct, yes" and the Judge followed up "and would you say it was severely impaired to the extent that he didn't know what he was doing, that he didn't know it was wrong and that he couldn't refrain from doing it?". Dr Monks again responded "that's correct, yes". At that stage, prosecution counsel intervened to clarify that she did not intend to call her psychiatrist, she did not have any issues with the evidence that had been given on behalf of the defence. If the Court had any questions that it wished to put to her psychiatrist, he was available, but in reality, what would be said by her psychiatrist was in fact what had already been given in evidence in the course of the defence case. The Judge sought to clarify matters further by asking counsel "you're saying that Dr. Mullaney has come to the same conclusions as Dr. Monks?" Counsel responded "and that evidence in fact is before the jury because Dr. Monks has referred to that, so it is in fact before the jury".

13. Unusual as it is to set aside a verdict of a jury as perverse and against the weight of the evidence, in this case, the Court feels compelled to do that. The rejection of the verdict of not guilty by reason of insanity and the return of a verdict of guilty was not supported by any evidence in the case, was against all of the evidence in the case, and in those circumstances, has to be regarded as perverse.

14. In those circumstances, the Court must quash the verdict of guilty.