REPUBLIC OF TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

Civil Appeal P294/2013

Claim No. CV 2012-01211

BETWEEN

SGT. TERRENCE ROY

AG. CPL DAMANY BENTICK

PC KENE BALDWIN

Appellants

AND

HER WORSHIP NALINI SINGH

CORONER

ST. GEORGE WEST COUNTY

Respondent

PANEL: **P. Jamadar JA**
A. Yorke-Soo Hon JA
G. Smith JA

APPEARANCES:

Mr. I. Khan SC instructed by
Mr. U. Skeritt appeared on behalf of the Appellants

Mr. J. Singh, Ms. D. Prowell instructed by
Ms. B. James appeared on behalf of the Respondent

DATE DELIVERED: 12th May, 2016

I have read the judgment of Smith JA and agree with it.

P. Jamadar
Justice of Appeal

I too, agree.

A.Yorke-Soo Hon
Justice of Appeal

JUDGMENT

1. The Appellant Police Officers, were stationed at the police post in Belgrade Street area Port of Spain. On the 4th of May 2005, they responded to gunshots emanating from the Belgrade Street area. The end result of this was that PC Baldwin, the third Appellant was shot, as well as one Nazim Christian. Mr. Christian later died from these injuries. The conflicting evidence as to the sequence of events that led to the death of Mr. Christian made it necessary for an inquest to be held in this case.

2. The coroner holding the inquest is the Respondent in this matter. The Respondent found that there was evidence upon which a properly instructed jury could rationally conclude that the Appellants were guilty of murder beyond reasonable doubt. However the coroner also found that such a case had not been made out against PC Steele, another officer who was present during the incident alongside the Appellants. The Appellants sought judicial review of the findings of the Respondent. This application was refused and the Appellants now appeal the refusal of their application for judicial review.

3. On the hearing of this appeal, we required further submissions to be filed upon a ground which was of particular concern to us, namely, on the issue of apparent/unconscious bias. The issue of apparent bias arose because of the concluding remarks in the written decision of the Respondent coroner. The coroner adopted the judge's comments that were made in a civil case on the following matters:
    a. The alarming frequency of the use of excessive force by the Police;
    b. That the perpetrators of this excessive force faced no consequences ;
    c. That if such unlawful acts were continued with impunity and without consequences, they would be repeated.
    d. That accountability for such actions is necessary. (see pages 85 and 86 of the Coroner's decision).

    These comments allegedly raise a case of apparent/unconscious bias against the coroner. It is important to note that no actual bias is alleged against the coroner.

    I note as well that even in the Respondent's well-crafted submissions, specifically those filed on the 30th of June 2014, at paragraph 51, the Respondent cited with approval from **Jervis on the Office and Duties of Coroners, 10th Edition:**

    > **"** ***In theory at least, the coroner's inquest being an inquisitorial proceeding designed for the Coroner…to start with no preconceptions and elicit the true facts regarding the incident in question…The aim was to find out that objective truth in the public interest and not the limited truth.",***

    and I commend Counsel for this.

4. The test for unconscious bias as stated in **Porter v Magill [2002] 2 AC 397,** is whether the fair minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased. We entertain no doubt that the coroner in this case had preconceived notions about the widespread use of excessive force by the police which went unpunished and that there was a real possibility that in dealing with this inquest, these preconceived notions affected her views of the actions and evidence of the police.

5. Even though this is merely an inquest and not a full trial, it is accepted that an inquest is still a full judicial inquiry. (see page 13 of **Herbert Ferguson v The Attorney General of Trinidad & Tobago CA No 170 of 1995**, per de la Bastide CJ). Therefore, the existence of a real possibility of bias against the coroner in this case is enough to successfully review her decision.

6. We also appreciate that this is merely an inquest, and that there is no finding of guilt or innocence being made at this stage. However, pursuant to the case of **R v Galbraith [1981] 1WLR 1039** even at an inquest, "***The court is empowered…to consider whether the prosecution's evidence is too inherently weak or vague for any sensible person to rely on it."***

   This was not a case where the evidence at the inquest was clearly one way. The coroner recognized that there were conflicts between:

   1. The case of the police and the case of some of the civilian witnesses;
   2. The case of the some of the civilian witnesses and their witness statements to the police.

   Further, we also note the following:

   A) That there is a conflict between the civilian witness statements and the pathologist's report. Whereas the civilian witnesses report seeing Mr. Christian with one gunshot wound in the leg and later receiving one more gunshot wound to the area of the abdomen, the pathologist's report indicate 5 gunshot wounds, 2 of which were in the area of Mr. Christian's torso.

   B) That while the civilian witnesses put PC Steele at the site of the shooting with the Appellants, no charge was recommended against him because of difficulties in the identification evidence; the coroner found that this made the case against him such that a properly instructed jury could not rationally conclude that he was guilty of murder beyond reasonable doubt.

7. This was a case where the coroner was bound to apply her mind free from preconceived notions, or unconscious bias to ascertain whether the prosecution's evidence against the Appellants was too inherently weak or vague for any sensible person to rely on it, and based on our earlier findings of unconscious/apparent bias, it does not seem likely that this was done.

8. In all the circumstances we feel safe in finding that a fair minded and informed observer could conclude that there was a real possibility that the deliberations and decisions of the coroner were biased, and that this bias did have a material bearing on this inquest. We therefore set aside the orders of the trial judge and exercise our power under **Section 21 of the Judicial Review Act Ch. 7:08** to remit this inquest for hearing before another coroner who would properly consider the case without any apparent or unconscious bias. We also make no pronouncements on the propriety or otherwise on any of the other findings of the trial judge. This is to ensure that the coroner who hears the matter, is free to come to whatever proper conclusions that the evidence before him/her reveals. There will be no orders as to costs at the Court of Appeal and at the High Court.

G. Smith
Justice of Appeal