

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

Civil Appeal No. P294/2016

Claim No. CV2014-02841

Claim No. CV2014-02842

BETWEEN

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Appellant/Defendant

AND

RICARDO JACK

Respondent/Claimant

BETWEEN

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Appellant/Defendant

AND

PETER GRIFFITH

Respondent/Claimant

Panel: P. Rajkumar JA

M. Holdip JA

V. Kokaram JA

Appearances:

Ms. Keisha Prosper, Ms. Ronnelle Hinds, Ms Sasha Sukhran instructed by Mr. Brent James, Attorneys at Law for the Appellant.

Mr. Cedric T. Neptune instructed by Mr. Aldric Neptune, Attorneys at Law for the Respondents.

Date of Delivery: Wednesday 13 January 2021

I have read the judgment of Kokaram JA and I agree.

.....

Peter Rajkumar
Justice of Appeal

I too agree.

.....

Malcolm Holdip
Justice of Appeal

JUDGMENT

1. On Sunday morning 26th August 2012, the Respondents, Ricardo Jack (“Ricardo”) and Peter Griffith (“Peter”) were detained as suspects in relation to the murder of Tevin Alexander (“the deceased”). The police were quickly on the scene, began conducting investigations and by the afternoon of that day detained several men including these two Respondents as being among the last seen with the deceased in a Saturday night into Sunday early morning “lime”. Both men were eventually released without charge two days later and successfully brought a claim against the Attorney General¹ for damages for wrongful arrest and false imprisonment.
2. This appeal by the Attorney General challenges the trial judge’s finding that while the arrest of Ricardo and Peter were lawful, their period of detention beyond the night of Monday 27th August 2012 was unreasonable and unlawful. The trial judge found for the Respondents on their claim and awarded general damages in the sum of \$50,000.00 for each of them and special damages in the sum of \$2,500.00 each with interest at the rate of 3% per annum for both general and special damages. This appeal challenges for the most part certain findings of fact made by the trial judge in arriving at this decision. It raises the main issue whether the entire period of detention of these two men was justified² and if so, whether the sums awarded for general damages were excessive or unreasonable.
3. The findings made by the trial judge of the justification of a detention are fact specific and contextual. The trial judge has a considerable advantage over this Appellate Court in making findings of fact after the judge’s observation of the witnesses in these proceedings. An Appeal Court must therefore be extremely

¹ The Appellant, The Attorney General of Trinidad and Tobago

² See pages 8-9 of the Appellant’s submissions

cautious about upsetting a conclusion of primary fact.

4. The Court of Appeal will, however, overturn a trial judge's finding of fact when the trial judge has gone "plainly wrong". That does not mean that the Court of Appeal sitting with the benefit of hindsight should feel confident to make another decision. It simply means that the decision under appeal must be shown not to be one open to any reasonable trial judge to find.
5. In **Beacon Insurance Co. Ltd v Maharaj Bookstore Ltd** [2014] UKPC Lord Hodge commented on the role of an Appeal Court:

"It has often been said that the appeal court must be satisfied that the judge at first instance has gone "plainly wrong". ... it directs the appellate court to consider whether it was permissible for the judge at first instance to make the findings of fact which he did in the face of the evidence as a whole. That is a judgment that the appellate court has to make in the knowledge that it has only the printed record of the evidence. The court is required to identify a mistake in the judge's evaluation of the evidence that is sufficiently material to undermine his conclusions. Occasions meriting appellate intervention would include when a trial judge failed to analyse properly the entirety of the evidence: *Choo Kok Beng v Choo Kok Hoe* [1984] 2 MLJ 165, PC, Lord Roskill at pp 168-169.."

See also **The Attorney General v Anino Garcia** Civil Appeal No.86 of 2011.³

³ **The Attorney General v Anino Garcia** Civil Appeal No.86 of 2011, paragraphs 18 and 19

"[18] I am therefore entirely mindful that in reversing the judge's findings of fact, I must bear in mind the trial judge's advantage. I have also considered that the fact that I may have come to a contrary conclusion on the evidence is not a sufficient basis to reverse the judge's findings, if, there is a proper evidential basis upon which the trial judge could have concluded as he did.

[19] Bearing those matters in mind, I entertain no doubt whatsoever that the judge was plainly wrong in his conclusions of fact in this case. A Court of Appeal cannot shirk its responsibility to reverse wrongful findings of fact (whether primary or inferential) in an appropriate case. Sir Andrew Leggatt in **Harracksingh v. Attorney General of Trinidad and Tobago & Anor.** [2004] UKPC 3 at paragraph 11 noted that a trial judge's decision may be reversed if it is so "*affected by material inconsistencies and inaccuracies, or he may be shown to have failed to appreciate the weight or bearing of circumstances admitted or proved or otherwise to have gone plainly wrong.*"

6. The following questions become pertinent in this exercise: Is the finding of fact made by the trial judge reasonably explained or justified or one which no reasonable judge could have reached? Is there some identifiable error, such as a material error of law? Is there a critical finding of fact without any basis in the evidence? Is there a demonstrable misunderstanding of relevant evidence, or a demonstrable failure to consider relevant evidence? Has the trial judge failed to take full advantage of having observed the witnesses or properly tested the evidence against a proper appreciation of the issues? Was the judgment affected by material inconsistencies and inaccuracies? Is there some demonstrable flaw in the process by which the trial judge reached the finding of fact? Did the trial judge fail to take account of some relevant piece of evidence or to appreciate its proper significance, or conversely that he took into account something which he ought not to have taken into account or attributed to it a significance which it did not rightly have?⁴
7. In our view, for the reasons set out in this judgment, the trial judge failed to properly assess the evidence of the actions of the police in their investigation with respect to Ricardo. The weight of the evidence in relation to Ricardo was sufficient to have warranted his continued detention until it was sufficiently clear that he was not complicit in any crime against the deceased. However, the trial judge was correct in his conclusion that the police failed to release Peter at an earlier period of time and that he was entitled to damages for unlawful detention. The sum of \$50,000.00 for unlawful detention for one day is however, in these circumstances, in our view excessive, if not overly generous, and a reasonable award of general damages would have been in the sum of \$17,000.00.

⁴ See **Robert Gormandy and Shaun Sammy v Trinidad and Tobago Housing Development Corporation** Civil Appeal No S-375 of 2018, Civil Appeal No. P-379 of 2018 paragraph 44

The Main Facts

8. The essential facts in relation to the detention of both Respondents are not really in dispute. The deceased was found lying on the roadway on Cedar Hill Road, Claxton Bay in the early hours of Sunday 26th August 2012 by EHS personnel and the officers of the Freeport Police station were the first responders. A report was made to the South Homicide Bureau and Acting Sergeant Mongroo, PC Hosein and other officers were dispatched to the scene. Information was gathered that the deceased was allegedly thrown from a white AD station wagon. The vehicle was found at Diamond Road and it was observed that there were blood stains on the hood of the vehicle and the interior. Linton Barclay, the person who rented the vehicle, was arrested.
9. Other persons were also identified as being last seen with the deceased. A total of 5 other persons were detained namely Rayan Tobey, Dwayne Wright, Waldron Joel Alexis, Antonio Alexander and Linton Barclay. Ricardo and Peter were also in the company of the deceased on the night of 25th August 2012. They both alleged they were not present when the deceased lost his life.
10. Ricardo claimed that he heard of the incident and went to the site where the deceased was found. He stayed there for a bit and then returned to his aunt's home at Ramsaran Street, Broadway, San Fernando. Later that morning a party of officers came to his home and left a message that they were looking for him. Ricardo alleges that they came to arrest him and that in response he went to the Homicide Bureau of Investigations at Coffee Street, San Fernando around 11:30am. He was interviewed and later accompanied the police to his home where a pair of boxer shorts which appeared to have blood stains was seized. He was taken to the Couva Police Station and placed in a cell. After his attorney visited the station on Monday night, 27th August, he was released around 11:30pm the following day, Tuesday 28th August 2012.
11. Peter was also with the deceased that night but the party of officers came to

his home on Sunday morning and arrested him there. He was taken to the Mon Repos Police Station where he was later interviewed on Monday 27th August between 3:00pm to 6:00pm by PC Hosein. Again, only after his attorney visited the police station on Tuesday 28th August around 8:05pm, he was released around 11:30pm.

12. The Appellant contended that Ricardo voluntarily came to the police station and assisted the police with their enquiries; that they had reasonable suspicion to arrest both men; and that investigations with respect to other persons suspected to have been connected with the murder were ongoing. The autopsy report was received on Tuesday 28th August at around 6:30pm. On the said day Antonio Alexander confessed to killing the deceased. Around 10:40pm that night, a message was sent by the Superintendent of the Homicide Bureau of Investigations to release the Respondents.

The Trial Judge's Findings

13. The trial judge found that the initial arrest of both men was lawful but that the detention of the Respondents beyond the night of Monday 27th August was unreasonable and unlawful. The trial judge held that Ricardo was arrested when he went to the police station voluntarily while Peter was arrested at his home. It would have been reasonable to have arrested the Respondents as suspects from which arrest they could then be questioned under caution. It is clear the police officers considered both Respondents to be suspects having received credible information about who were among the last with the deceased. The burning of Ricardo's clothes by his grandmother must have created in the minds of the arrestors cause for suspicion. His clothing which also had blood on it suggested that he was in contact with the deceased. This would have merited further investigation by way of analysing and testing his version by whatever facts the investigation revealed.
14. The trial judge also found that the arresting officer must have honestly

believed that the Respondents had been involved in the commission of an arrestable offence. If Peter was interviewed on Sunday and the police had taken reasonable time to verify his explanation, there would likely have been no need to keep him until 11:30pm on Tuesday 28th August. Questions posed to the Respondents about Antonio Alexander suggested that the police had a clear lead but they may have wanted to verify if others were involved and if there had been participation by others as a joint enterprise or as accessories to an arrestable offence.

15. According to the trial judge it would have been reasonable to expect that by the end of Sunday, statements should have been taken from the detained men and the better part of the next day could then be spent comparing their versions and verifying their stories. By the end of Monday, the police ought to have been in a position to make whatever determination they had regarding the Respondents.
16. The trial judge was of the view that the police had not advanced any evidence that they were actively involved in verifying the versions given by the Claimants/Respondents. There was no evidence from the police that the continued detention of the Claimants/Respondents was necessary to preserve evidence since swabs and clothing had already been taken. There was also nothing to suggest that it was necessary to prevent concealment of evidence or to prevent witness intimidation.
17. The police had the option of releasing the Claimants/Respondents and re-arresting them later if it became necessary. In this case the Respondents did not evince any intention to evade the police.
18. The Appellant contended that the judge erred in finding (a) that Ricardo was arrested when he went to the police station voluntarily on 26th August 2012 (b) that it was reasonable to expect that at the end of Sunday 26th August 2012 statements should have been taken from the Respondents (c) that at the end

of Monday the police should have been in a position to make whatever determination they had regarding the Respondents and that any detention beyond Monday night was unreasonable (d) that the Respondents could have been found if they were released (e) that the police are not entitled to detain persons for questioning or to assist with investigations without considering Rule 1 of the Judges' Rules⁵ and that the police failed to understand the need to caution Respondents.

19. With respect to damages the Appellant contends that the awards were wholly excessive and that the award of interest of 3% per annum for both special and general damages was wrong in law.

20. The Respondents in their cross appeal contended that their arrest was illegal ab initio. However, they viewed the award of general damages as reasonable even though they had submitted that a higher award could have been made in general damages.

21. The following main issues arise for determination on this appeal:

- Whether the arrests of Ricardo and Peter were illegal ab initio from Sunday 26th August 2012.
- Whether the entire period of detention of the Respondents was justified.
- Whether the Respondents had to be administered a caution where there is reasonable suspicion to arrest but no evidence to lay a charge.
- If the entire period of detention was not justified, was the award of general damages and interest excessive.

22. With respect to the law on wrongful arrest and false imprisonment the trial judge properly directed himself on the relevant law. See **Ramsingh v the Attorney General of Trinidad and Tobago** [2012] UKPC 16 and **Trevor**

⁵ Judges' Rules and Administrative Directions to the Police, Ministry of Home Affairs Circular No. 1/1965

Williamson v The Attorney General [2014] UKPC 29. Both parties accepted the relevant applicable legal principles as stated in **Ramsingh** which are repeated for completeness:

“8. The relevant principles are not significantly in dispute and may be summarised as follows:

- i) The detention of a person is prima facie tortious and an infringement of section 4(a) of the Constitution of Trinidad and Tobago.
- ii) It is for the arrestor to justify the arrest.
- iii) A police officer may arrest a person if, with reasonable cause, he suspects that the person concerned has committed an arrestable offence.
- iv) Thus the officer must subjectively suspect that that person has committed such an offence.
- v) v) The officer’s belief must have been on reasonable grounds or, as some of the cases put it, there must have been reasonable and probable cause to make the arrest.
- vi) Any continued detention after arrest must also be justified by the detainer.”

23. As a rider to these salutary principles, the Board also made the following observations relevant to this appeal. The lawfulness of continued detention raises different questions from those relevant to the arrest. The police must justify a detention on a minute by minute basis. Where a person is arrested without a warrant and there is no sufficient evidence to charge him, the person arrested must be released either with or without bail.⁶ The question of

⁶ See **Ramsingh v the Attorney General of Trinidad and Tobago** [2012] UKPC 16 paragraphs 10 and 11:

whether a detention is justified depends on the particular facts and circumstances of the case and an examination of the reasons which are being contended made the continued detention necessary and proportionate. Interestingly, in **Ramsingh** the Board took into account the serious nature of the offence which made it prudent for the police to detain the appellant “until the position was clear”. Further with respect to the option of releasing the suspect the Board observed “it is far from clear what she might have done if released”.⁷

24. In **Williamson** with respect to the issue of justifying the detention, the Board observed that it was open to the police to demonstrate that inquiries were continuing between the time of the detention and charging the accused. However critically, the Board made it clear that there can be no power to arrest simply for the purpose of conducting inquiries. There must be reasonable and probable cause for the arrest.
25. In this case the police was acting reasonably quickly from the time the offence was committed in the early hours of Sunday morning. The police would have been aware that this may amount to a serious non-bailable offence of murder. As their investigations unfolded it included not only one suspect but several persons who may have been involved. The police had taken statements, one

¹⁰ The position after arrest in England is now to be found in Part IV of the Police and Criminal Evidence Act 1984 (“PACE”): see section 34. Section 37(2) provides that, where a person is arrested without a warrant and the custody officer does not have sufficient evidence to charge him, the person arrested must be released either with or without bail “unless the custody officer has reasonable grounds for believing that his detention without being charged is necessary to secure or preserve evidence relating to an offence for which he is under arrest or to obtain such evidence by questioning him.” As Clayton and Tomlinson put it in their *Law of Human Rights*, 2nd edition (2009), at para 10.56, the police must justify detention on a minute by minute basis.

¹¹ Although PACE does not directly apply in Trinidad and Tobago, section 37(2) reflects the correct approach at common law. Thus in the instant case the person who decided to continue the appellant’s detention pending the obtaining of a report upon the medical state of the victim must have had reasonable grounds for believing that the appellant’s detention without being charged was necessary pending the securing of that evidence.”

⁷ **Ramsingh v the Attorney General of Trinidad and Tobago** [2012] UKPC 16, paragraph 19

exculpatory from Peter. The other in reference to Ricardo, justifiably raising suspicions with respect to blood found on his clothes and subsequently destroyed. While the trial judge was correct to have determined the initial period of detention up to Monday night was lawful, he erred with respect to Ricardo in assuming that no further inquiries were required beyond that night to bring the investigation to an end.

The Arrest

26. The burden lies on the Appellant to justify the arrest of the Respondents. The police would have lawfully arrested the Respondents if with reasonable cause they suspected that they had committed an arrestable offence. On the evidence it was open to the trial judge to find, as he did, that the arrests of both Respondents were lawful in that the police had reasonable and probable cause to suspect that they had committed an arrestable offence of murder. We say so for the following reasons.

27. First, both Respondents, as the trial judge pointed out, were with the deceased immediately before his demise. Second, even though Ricardo voluntarily attended the police station, it was reasonable to conclude that with such a serious offence being investigated he would not be allowed to leave the police station. Third, there is no evidence by the Appellant to refute Ricardo's claim that he was detained at the police station. His liberty therefore being restrained, the trial judge was correct to draw the conclusion that he was under arrest. See **Ramsingh v the Attorney General of Trinidad and Tobago** [2012] UKPC 16.

28. We do not agree with the Respondents' submissions that these arrests were void ab initio. It was open to the trial judge to have found that the police acted on their investigations and inquiries. The evidence of Assistant Superintendent Sharon Cooper, Sergeant Ashley Mongroo and PC Nishad Hosein all clearly set out methodically how they approached the question of unravelling who was

with the deceased immediately before he died and they arrested persons who would have had the opportunity to commit the crime. It would have been fairly obvious to Ricardo that his detention was in relation to the death of the deceased.

29. In light of the information received by unnamed informants on the scene of the crime, the task of the police was to investigate the possibility of a serious crime having been committed by one assailant or more than one person. While we agree with the trial judge's assessment that the initial arrests of these two men are lawful, the real issue in this claim was whether the police could have justified the detention of the Respondents: for Ricardo from Sunday 26th August 2012 at 11:30 am to Tuesday 28th August 2012 at 11:30pm and for Peter from Sunday 26th August 2012 at 10:30 am to Tuesday 28th August 2012 at 11:30pm.

The Continued Detention

30. The Appellant criticizes the trial judge's findings on the basis that the judge ignored the totality of the evidence. The Appellant relies on all the attempts of the police to investigate the murder beginning on the morning of Sunday and ending with the Respondents' release. The trial judge found that in this case it would have been reasonable to expect that by the end of Sunday statements would have been taken from the detained men and after the better half of the next day their versions would have been verified:

“48.Thus nothing arose from their statements that required anything further to be put to them.”

31. This is not a fair criticism of the police officers' activity after they took the statements from Ricardo. Furthermore, the question as to what specifically they were investigating in relation to these two men must be asked disjunctively and the trial judge fell into error in examining this question with one lens, as it were, with respect to the circumstances surrounding the

detention of these two men.

32. While Assistant Superintendent Sharon Cooper was not involved in the investigation after 26th August 2012, she corroborates the steps taken by the officers to have identified a number of men in association with this offence.⁸

33. Sergeant Mungroo and PC Hosein's statements establish that three things were done:

- i. Detailing an officer to witness the post mortem and obtaining the findings of the post mortem.
- ii. Continued enquiries to verify and corroborate information given by detainees.
- iii. They canvassed the area, spoke to several persons and one person accompanied them to the Homicide Bureau to give a statement. While the defence stated that the decision to release the men was made after consultation with the DPP's office on the 28th August 2012, this does not appear in the evidence of the Appellant. There is however a telephone extract of a conversation with the DPP's office in relation to laying the charge of manslaughter, possession of firearms and possession of ammunition with respect to Antonio Alexander. The Respondents were released soon thereafter.

34. The trial judge failed to appreciate the importance of this evidence in relation to Ricardo. In our view, the efforts of the police were sufficient and validly justified the detention of Ricardo. We say so for the following reasons.

35. First, the statement given by Ricardo would have evoked in the reasonable officer a very strong suspicion of his involvement in this offence:

“After about ah hour to two hours liming ah scuffle take place inside the Bar and people start to run outside. Ah tell the fellas ah come with leh we

⁸ See paragraph 9 of the Witness Statement of Sharon Cooper.

go from here. Myself, Joel, Peter, Rayon and Dwayne came out the bar and start to walk inside Claxton Bay. Ah remember reaching Abdool Trace and everybody ah mention here was together walking into Claxton Bay including Tevin. Ah vehicle pick me up, ah can't remember the number, ah can't remember who went into the vehicle with me. Ah can't remember who else was in the vehicle, the make or colour. The vehicle drop me on Joe Flemming Hill. Ah come out the vehicle and was walking into the street where ah live. Ah then hear somebody say Tevin dead. Tevin dead. Tevin get shot! Ah can't remember who was with me at that point. Ah start to cry and ah take off meh jersey and start to run up the road. ...

Ah see Tevin Alexander lying on the ground. Ah started to cry. It had no police there. Ah see ah ambulance. Ah touch Tevin and was saying.....

Ah was there until Police came. Ah lady name Reesa give me ah drop to St Margarets to pick up my mother at St Margarets. It was still dark. From my mom house I returned to the spot where Teven died....

Question: You said the vehicle drop you on Flemming Hill. You alone drop out or anyone else?

Answer: I can't say if anyone drop out but Dwyane and Joel and Peter was around. Ah now remember. Ah guy with ah black van drop we up the hill. ...

Question: What type of car is this.

Answer: Ah CRV.

Question: Who is the owner.

Answer: Ah do(sic) know the guy. Probably he know me from around and give me ah drop.

.....

Question: What type of clothes you was wearing when you see Tevin lying

on his back?

Answer: Ah blue ¾ ah white vest underneath and ah long sleeve grey and black jersey.

Question: Did you touch Tevin?

Answer: Yes.

Question: What happened to the clothes you was wearing?

Answer: It get blood on it when ah touch Tevin.

Question: Where is the clothes now?

Answer: It home at Gibbs trace.”⁹

36. Second, upon conducting a search of his home, blood was found on his clothes with his other clothes containing traces of blood being destroyed by his grandmother. While no questions were asked of her, this does raise a red flag in the investigation and certainly the trial judge should have viewed the circumstances surrounding Ricardo’s detention as distinct from Peter in this respect.

37. Third, notwithstanding Ricardo’s relationship with the deceased and the ability of the police to have released Ricardo, the trial judge failed to take into account at all or to properly weigh in his assessment six critical factual matters which provide a strong justification for the continued detention of Ricardo. These facts are as follows: (a) that as distinct from Peter, Ricardo appeared to be more closely associated with the crime; (b) the overall length of the detention being fairly short; (c) the fact that statements were collated from different suspects in different police stations and only later on Monday night were they brought together in one file; (d) that it would have been at least reasonable for the police to have kept him until Tuesday afternoon to

⁹ See exhibit “NH3” in the witness statement of Nishard Hosein.

accomplish the following: compiling a complete file, seeking the DPP's advice if needed, following certain leads and taking further statements; (e) that he was released after Antonio's confession "Antonio confessed to having firearm and shot deceased. As a result of the confession Jack was no longer a person of interest."¹⁰; (f) the obtaining of the post mortem report which was in hand in the afternoon of 28th August 2012. It was not unreasonable to await at least the receipt of the post mortem report which would establish the cause of death and which could have explained the presence of blood on Ricardo's clothes contrary to his statement.

38. With respect to Peter, we are of the view that unlike Ricardo, who had blood on his clothes, there was no relationship nor proximity to the crime to have justified his continued detention after a reasonable time after giving his statement.

39. In lumping both cases together without properly differentiating between both cases the trial judge's findings were therefore not fairly open to him to be made on the evidence when he stated:

"49. During the course of the Sunday and Monday also, the police ought reasonably have been attempting to speak to other persons who may have had information. By the end of the following day then, which was Monday 27, the police ought to have been in a position to make whatever determination that they had to regarding the claimants."

40. As Sergeant Mungroo stated in his cross examination, Ricardo had excited their suspicion. This was not the same with Peter. The police could not have made a determination with respect to Ricardo until Tuesday 28th August 2012. This they could not have done as statements from different stations were only collated late Monday night and it was not reasonable, having regard to the gravity of the offence, to have reviewed the entire file that night. To hold

¹⁰ Sergeant Mungroo's cross examination.

otherwise would be making unreasonable demands of the police to have studied late into the night inconsistencies in vital pieces of evidence. This may work either for or against the detainees. A swift decision could have been made to release them but equally a swift decision, though wrong one, could have been made to set the machinery into motion. The trial judge was unduly critical of this period of activity.

41. The trial judge noted in his decision:

“50. The police have not advanced any evidence that they were actively involved in verifying the versions given by the claimants. There was nothing further being done regarding them. I have already indicated that in the case of Griffith they ought reasonably to have interviewed him well before the time he was. There is no evidence that during this time the police were engaged in gathering evidence or information on Griffith.”

42. While this is true of Peter, the main focus of their investigation was reasonably connected to Ricardo who had the blood of the deceased on his clothes.

43. The trial judge went on to state:

“51. There is also no evidence from the police that the continued detention of the claimants was necessary to preserve evidence since swabs and clothing had already been taken. There is also nothing to suggest that it was necessary to prevent concealment of evidence or to prevent witness intimidation or the like as contemplated by the Cummings case above.”

44. While this may hold true for Peter, for Ricardo, who had excited the police’s suspicion, if it turned out to be true that he needed to be charged for a non-bailable offence, it was not unreasonable to await receipt of the post mortem report or a clear pathway on what charges and on whom they should be laid.

45. While the trial judge viewed that there was an option of releasing the Respondents and re-arresting them later on if it became necessary; that

Ricardo came in to the police station voluntarily, the trial judge should have been aware that circumstances may radically change once a charge for murder was laid. See **Ramsingh**.

46. For these reasons, the trial judge was wrong to have found that there was no justification of Ricardo's detention. He was, however, correct for the reasons outlined above to find that Peter's detention was unlawful.

The Caution

47. The Appellant contends as follows: that the police upon arresting Peter had reliable information that he was one of the persons ('liming') with the deceased prior to his death. The officers took into consideration that Ricardo's clothes were burnt by his grandmother and formed part of the officers' suspicion that the Respondents may have been involved or may have had information surrounding the death of the deceased. However, they had no reasonable grounds for suspecting that the Respondents had committed the offence. For this reason no caution needed to be administered.

48. Rule I of the Judges' Rules provides:

"When a police officer is trying to discover whether or by whom an offence has been committed, he is entitled to question any person, whether suspected or not, from who he thinks that useful information may be obtained. Subject to Rule II hereunder he is entitled whether or not the person has been taken into custody so long as he has not been charged with the offence or informed that he may be prosecuted for it."

49. Rule II of the Judges' Rules provides:

"As soon as a police officer has evidence which would afford reasonable grounds for suspecting that a person has committed an offence, he shall caution that person or cause him to be cautioned before putting to him any questions, or further questions, relating to that offence. The caution

shall be in the following terms:

“You are not obliged to say anything unless you wish to do so but what you say may be put into writing and given in evidence.”

When after being cautioned, a person is being questioned, or elects to make a statement, a record shall be kept of the time and place at which any such questioning or statement began and ended and of the persons present.”

50. At the hearing, the Appellant relied heavily on the case of **R v Colin Osbourne** [1973] 2 WLR 209 in support of the contention that no caution needed to be administered. In that case, on the morning of 16th November 1970, approximately 4 men entered a shop in Penge High Street South London. They went into the general office and robbed the store of £858.00. The gang then ran from the office.

51. At 6:30am on 20th November 1970, two police officers went to the house of the Appellant, Mr. Osbourne. They questioned him and then took him into custody. Another person, Virtue was arrested. The two men were taken to the police station and the Chief Inspector started to interrogate them. One of the issues which arose was whether the Chief Inspector should have cautioned them before he started to ask questions. The Chief Inspector’s position was that they had reasonable grounds for suspecting the men had been members of the gang but did not have the evidence to justify his reasonable suspicion.

52. However, **Osbourne** cannot be interpreted as an authority for the proposition that you can in this jurisdiction **arrest** a person without reasonable and probable cause. This would be contrary to section 3(4) of the Criminal Law Act as explained in **Williamson** at paragraph 19:

[19] Mr Beharrylal conceded that Mr Williamson had been arrested at his home on 28 July 2004. The Board considers that this concession was correctly made. In the first place in his witness statement, Mr Williamson

himself said that he had been arrested. Secondly, Constable Caldeira gave evidence that he went with other officers to Mr Williamson's home to "make the arrest", although a short time later he said that Mr Williamson was not in fact arrested but was "detained for questioning". It is, of course, the position that there is no power to "detain for questioning". The power to arrest is contained in s 3(4) of the Criminal Law Act, Ch 10:04 which provides that where "a police officer, with reasonable cause, suspects that an arrestable offence has been committed, he may arrest without warrant anyone whom he, with reasonable cause suspects to be guilty of the offence." There is no statutory power to detain solely for the purpose of questioning.

53. Further to the extent that the officers in their cross examination seemed to be under the impression that they possessed the power to arrest persons of interest for the purpose of questioning, **Williamson** and **Ramsingh** put it beyond doubt that there is no such power to arrest and detain without warrant solely for the purpose of questioning¹¹.

54. There are certain principles which bear repeating and re-emphasis:

- I. The Judges' rules are stated to be administrative guides and not legal rules.
- II. They were established to protect an accused against self-incrimination.
- III. They provide no justification for arresting a person merely for questioning and as the Privy Council has emphasised in **Williamson**,

¹¹ See also **Civil Actions Against the Police** 3rd Edition, Richard Clayton QC and Hugh Tomlinson QC with Edwin Buckett and Andrew Davis, paragraph 5-004:

"The police have no legal right to detain a suspect for questioning or "to help with their inquiries. A police officer is entitled to ask any citizen a question but the citizen is entitled to refuse to answer and to walk away. If the police officer tries to stop the person from leaving he will be guilty of false imprisonment."

there is no statutory basis for doing so.

- IV. Officers cannot compel any person against that person's will to attend and remain in a police station otherwise than by arrest.
- V. While an officer can conduct inquiries and question persons, **an officer can only arrest** a person without a warrant if the officer suspects that an arrestable offence has been committed and that officer has **reasonable cause to suspect** that the person is guilty of the offence.
- VI. Persons who have been arrested or detained have a constitutional right to be informed of their right to communicate with a legal adviser.

55. The recent decision of the Privy Council in **Peart v R** [2006] UKPC 5 sets out in more comprehensive terms the current law on administering cautions¹². The exercise of the arrest and detention in this case was clearly based on the reasonable suspicion of the commission of an offence and the reasonable

¹² See **Peart v R** [2006] UKPC 5 at paragraph 24:

[24] From the foregoing discussion it is possible to distil four brief propositions:

(i) The Judges' Rules are administrative directions, **not rules of law**, but possess considerable importance as embodying the standard of **fairness** which ought to be observed.

(ii) The judicial power is not limited or circumscribed by the Judges' Rules. **A court may allow a prisoner's statement to be admitted, notwithstanding a breach of the Judges' Rules; conversely, the court may refuse to admit it even if the terms of the Judges' Rules have been followed.**

(iii) If a prisoner has been **charged**, the Judges' Rules require that he should not be questioned in the absence of exceptional circumstances. **The court may nevertheless admit a statement made in response to such questioning, even if there are no exceptional circumstances, if it regards it as right to do so, but would need to be satisfied that it was fair to admit it.** The increased vulnerability of the prisoner's position after being charged and the pressure to speak, with the risk of self-incrimination or causing prejudice to his case, militate against admitting such a statement.

(iii) **The criterion for admission of a statement is fairness. The voluntary nature of the statement is the major factor in determining fairness.** If it is not voluntary, it will not be admitted. **If it is voluntary, that constitutes a strong reason in favour of admitting it, notwithstanding a breach of the Judges' Rules; but the court may rule that it would be unfair to do so even if the statement was voluntary. (All emphasis added).**

suspicion, at the stage of their arrests, that both arrested men were guilty of that offence. Fortunately in this case nothing turns on the issue of whether Ricardo and Peter were properly cautioned. There was no prejudice to these two men as in their statements they denied their involvement in the commission of any crime. Any threat to their right against self-incrimination was averted and they were both eventually released without charge , at least in part based on those exculpatory statements.

Damages

56. Having found that the trial judge was wrong to have determined that Ricardo's detention was illegal, the question of damages now becomes relevant only for the detention of Peter. The Appellant contends that the award of damages was excessive. The trial judge awarded the Respondents \$50,000.00 as general damages without any uplift with respect to aggravated damages for 24 hours detention. This is even on the facts out of step with the general awards in comparable cases.

57. The trial judge considered the following factors in arriving at this award: in relation to Peter he was in a dirty cell that smelled of urine and faeces; he was allowed to bathe; he slept on the floor; there were no previous convictions; his feeling would have been injured; he was arrested for the murder of their friend; he was suspected of the most serious offence of murder; he was not cautioned nor allowed duty counsel. The trial judge referred to the failure to have duty counsel available as an aggravating feature however, there is no award for aggravating damages. While the trial judge referred to the awards in **Kenny Mitchell v The Attorney General** CV 2007 – 3220; **Stephen Lewis v The Attorney General** CV 2007 – 01952; **Bisham Seegobin v The Attorney General** CV 2009 – 03089; **Lennon Richardson v The Attorney General** CV 2007 – 2686, there is no explanation as to the justification for such a high award for approximately 24 hours detention.

58. There is a duty on the trial judge to properly explain the rationale for the awards of damages, the factors taken into account, what range of awards are being considered, what factors of the detention would necessitate compensation in the award as determined by the judge. If the Court considered those awards as being dated, his judgment being in 2016 and those awards given in 2008-2013, the recent case of the Court of Appeal in **The Attorney General of Trinidad and Tobago v Joel Roop** Civil Appeal No. P182/2015 would provide a more accurate assessment of the current level of awards.
59. In **Stephen Lewis** the Court awarded the sum of \$50,000.00 inclusive of aggravated damages for the unlawful detention of a Special Reserve Police officer who was detained for a period of 18 hours before being put on an ID parade. This for the very least was an award which would have been on the higher end of the scale for Peter as there was no award for any aggravating damages in this case.
60. In **Bisham Seegobin**, the Claimant brought a claim for malicious prosecution and false imprisonment. There were humiliating circumstances surrounding his arrest whereby he was dragged out of house by the police officer and downstairs to the road where his family and neighbours were present. He was detained for thirty six hours, stripped and placed in a cell in only his underwear, had to use a hole in the ground as a toilet, was not allowed to bathe and had to sleep on the floor. He was awarded the sum of \$60,000.00 in damages. Almost similar in the award with these Respondents, the significant distinguishing features were the manner of the arrest, being stripped, and 36 hours detention. In **Seegobin**, the award of damages was also granted for malicious prosecution and the arrest took place in the view of neighbours causing injury to dignity and reputation. In the present case, Peter was not treated in a like manner.
61. In **Lennon Richardson** the Claimants were detained for approximately 2 days

in unsanitary conditions. They were awarded \$40,000.00 in general damages inclusive of aggravating damages. While it is not appropriate to break these awards down as a guide for one day, even if that approach is used it would suggest an award of \$20,000.00 per day. If the trial judge had considered these cases as comparable guides his assessment of the features of this case was far off the mark for an appropriate award or at the very least the trial judge failed to properly explain the rationale for such a large sum.¹³

62. It is well settled that the Court of Appeal will only interfere with an award of damages if it can be persuasively demonstrated that the trial judge doing the assessment erred in law/principle (which includes not only an error of law but also giving undue or insufficient weight to the evidence) or made an award that amounted to an entirely erroneous estimate of the damages, that is, an award that was “inordinately low or unwarrantably high”.

63. De la Bastide CJ in **Bernard v Quashie** Civil Appeal 159 of 1992 noted at page 4:

“The principles on which an appellate court should interfere with the award of damages by a trial judge are limited and well known. Essentially, in order to justify its interfering it ought to find either that the judge had misdirected himself on the law or on the facts, or that the award was a wholly erroneous estimate of the damage suffered. It is not proper for a court of appeal to substitute its own award merely because it considers that the judge’s award was too high or too low. The gap between what the court of appeal considers to be within the range of a proper award, and the award actually made by the judge, must be so great as to render the latter a wholly erroneous estimate of the loss suffered.”

64. Some relevant principles in awarding damages for false imprisonment were

¹³ Further guidance can be obtained from the JEI handbook on Awards on False Imprisonment and Malicious Prosecution.

established by Mendonça JA in **Joel Roop**:

“9. The principal heads of damage for false imprisonment arise from the deprivation of liberty, that is, the loss of time considered primarily from a non-pecuniary viewpoint, and the injury to feelings, that is, the indignity, mental suffering, disgrace and humiliation, with any attendant loss of social status and injury to reputation. The award of general damages will contain no breakdown in relation to the various heads of damage. The claimant may also recover any pecuniary loss, damages for any physical injury and any injury to his reputation. (See McGregor on Damages, 20th edition (2018) paragraphs 42-013, 42-020, 42-022 and 42-023 and **Calix v Attorney General of Trinidad and Tobago** [2013] UKPC 15).

10. With respect to what the Court should consider in assessing damages for injury to reputation, the authors of Clayton and Tomlinson on Civil Actions against the Police, 3rd ed (2004), state at para 14-059:

“...damages for loss of reputation should be considered. The quantum of this award should take into account the claimant’s character and reputation, the amount of publicity his arrest and detention received and so on.

11. The award of damages may include an uplift for aggravated damages. Such damages can be awarded where there are aggravating features about the case which would result in the claimant not receiving sufficient compensation for the injury suffered if the award were restricted to a basic award. Aggravating features include humiliating circumstances at the time of arrest which show that those responsible for the arrest behaved in a high handed, insulting, malicious or oppressive manner either in relation to the arrest or imprisonment (see **Thompson v. Commissioner of Police of the Metropolis and Hsu v Commissioner of Police of the Metropolis**[1998] QB 498 CA).

12. The normal practice is that one figure is awarded as general damages which will include, if applicable, any award of aggravated damages.....

79. It is clear from that statement that the Court must consider all relevant factors including the length of the imprisonment, the element of initial shock when a person is arrested and imprisoned, the way in which the arrest and imprisonment are effected, the publicity which attended them and the affront to the dignity of the person in assessing the damages. While consideration may be given to the possibility that a claimant may make some adjustment to the circumstances of his detention, it is also true that the longer the detention the more burdensome his detention may become. The Court should therefore approach its assessment in the round taking all factors into account.....”

65. In this case, we are concerned with damages for false imprisonment only. Our assessment does not include damages for malicious prosecution. While there is the initial shock of the arrest, the unlawful detention was approximately 24 hours. The authorities referred to the trial judge in our view justified a range of \$15,000.00 to \$20,000.00. While the circumstances of Peter’s detention were unpleasant, there were no circumstances which warranted an award of aggravated damages.

66. The award of \$50,000.00 is therefore excessive and disproportionate. An award of \$17,000.00 would have been more appropriate in the circumstances. There was no warrant for an uplift for aggravated damaged. Interest on this sum would be on general damages in the sum of 2.5% and special damages at 1.5% per annum.¹⁴

Conclusion

67. The trial judge was plainly wrong in his assessment of the evidence with

¹⁴ **The Attorney General of Trinidad and Tobago v Fitzroy Brown** et al CA No. 251 of 2012

respect to Ricardo's detention. Peter, however, is entitled to damages for wrongful detention. Accordingly, the appeal will be allowed with respect to Ricardo and the claim in **CV2014-02841** will be dismissed. With respect to Peter, the appeal is allowed in part where general damages is assessed in the sum \$17,000.00 and special damages in the sum of \$2,500.00. Interest will be awarded on general damages at the rate of 2.5% per annum from the date of filing of the claim to the date of this judgment and on special damages at the rate of 1.5% per annum from 28th August 2012 to the date of this judgment.

Vasheist Kokaram
Justice of Appeal