



CARIBBEAN COURT OF JUSTICE

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CCJ UPHOLDS GOPAUL'S CONVICTION AND ALLOWS SMALL'S APPEAL

Port of Spain, Trinidad and Tobago. On 19 August 2022, the Caribbean Court of Justice (CCJ) delivered its judgment in the Guyanese case of *Small v The DPP; Gopaul v The DPP* [2022] CCJ 14 (AJ) GY. In relation to Bibi Gopaul, the CCJ dismissed her appeal against conviction but allowed her appeal against the 45-year sentence imposed by the Court of Appeal. In relation to Jarvis Small, the CCJ allowed his appeal.

On 2 October 2010, the body of 16-year-old Neesa Gopaul was found in a suitcase which was submerged in a creek near the Linden-Soesdyke Highway. Her mother, Bibi Gopaul and the mother's lover, Jarvis Small were charged with murder. Small's attorney made an application for a separate trial, but this was refused by the trial judge. At the close of the prosecution's case, Small's attorney submitted there was no case for him to answer but this was also refused by the trial judge. The jury returned guilty verdicts for Gopaul and Small and the trial judge imposed sentences of 106 years and 96 years imprisonment respectively. At the Court of Appeal, their appeals against conviction were refused but their sentences were reduced to 45 years. Small and Gopaul subsequently appealed separately to the CCJ, and this Court heard the appeals together. The judgment of the Court was delivered in two parts by Justice Barrow and Justice Jamadar respectively.

The CCJ considered three principal bits of evidence which the prosecution had relied on to link Small to the murder. In relation to the evidence of reports that he allegedly sexually assaulted Neesa, the CCJ found that it was merely speculative that this could be taken as a motive for him to kill Neesa to avoid prosecution for sexual assault. With specific reference to the pair of dumbbells found with the abovementioned suitcase, presumably to ensure the submersion of that suitcase, the CCJ found that there was no evidence that Small had retained possession of the dumbbells so as to be made responsible for them. As for the evidence that Small had told police officers when being interviewed that he did not murder Neesa but that he knew who did, the CCJ found that this in itself could not lead to the conclusion that he had murdered her.

The CCJ was satisfied that there was insufficient evidence against Small and the trial judge ought to have granted his attorney's application that there was no case for him to answer. Furthermore, the CCJ took the view that this was an exceptional case where the trial judge should have ordered separate trials as Small was prejudiced by the strength of evidence that was led against Gopaul but which was entirely inadmissible against Small. More specifically in this regard, was the evidence of Simone De Nobrega who testified that Gopaul had discussed Neesa's murder with her.

De Nobrega who at the time was awaiting trial, gave evidence that Gopaul met her in the lock-ups and confessed her and Small's role in Neesa's murder. De Nobrega related that Small and Gopaul decided to kill Neesa because Neesa discovered that Gopaul murdered her father on the advice of Small. De Nobrega related the pair's plan to murder Neesa and went into detail on the way the murder happened. She related that Small was the one who dealt the deadly blows to Neesa. She also spoke about the pair's method of disposal of Neesa's body.

The CCJ noted the stern warning which had to be given to the jury when dealing with evidence of a prisoner awaiting trial. In the Court's view, the warning given by the trial judge was adequate. The jury would have gotten a clear sense that the trial judge was telling them to be careful when dealing with the evidence. The CCJ also agreed with the Court of Appeal's finding that even though the trial judge did not warn the jury about the prejudicial nature of the part of the evidence relating to Gopaul allegedly murdering Neesa's father, no substantial miscarriage of justice was caused.

The CCJ in its judgment on sentencing found that the sentence imposed by the Court of Appeal was manifestly excessive and the sentencing court did not indicate the period of ineligibility for parole in accordance with the Criminal Law Act. The CCJ considered local cases focussing on the aggravating and mitigating factors relative to the offence and determined that a suitable starting point was 22 years. The Court then identified factors relative to the commission of the offence as well as special circumstances and found that an increase in the sentence to 30 years was justified. The Court also found that parole eligibility not before 15 years was reasonable. From that sentence, the five-year period Gopaul spent in custody awaiting trial should be deducted.

Justice Wit, in a dissenting judgment stated that both the convictions of Small and Gopaul were unsafe due to the lack of evidence of sufficient quality. In relation to De Nobrega's evidence, which he characterised as unreliable 'snitch evidence', Justice Wit found that the warning given by the trial judge was inadequate and that the jury could not have been effectively educated on the dangers of this evidence. That witness's evidence was also substantially uncorroborated and unnecessarily so as there were serious investigative flaws.

The members on the Bench were the Honourable Mr Justice Adrian Saunders, President of the Court, sitting with the Honourable Justices Wit, Rajnauth-Lee, Barrow and Jamadar. Jarvis Small was represented by Mr C A Nigel Hughes, Mr Ronald Daniels, Ms Narissa Leander. Bibi Gopaul was represented by Mr Arudranauth Gossai. The Respondent was represented by Mrs Shalimar Ali-Hack SC and Mrs Teshana Lake.

The full judgment of the Court is available on the Court's website at www.ccj.org.

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About the Caribbean Court of Justice

The Caribbean Court of Justice (CCJ) was inaugurated in Port of Spain, Republic of Trinidad and Tobago on 16 April 2005 and presently has a Bench of seven judges presided over by CCJ President, the Honourable Mr Justice Adrian Saunders. The CCJ has an Original and an Appellate Jurisdiction and is effectively, therefore, two courts in one. In its Original Jurisdiction, it is an international court with exclusive jurisdiction to interpret and apply the rules set out in the Revised Treaty of Chaguaramas (RTC) and to decide disputes arising under it. The RTC established the Caribbean Community (CARICOM) and the CARICOM Single Market and Economy (CSME). In its Original Jurisdiction, the CCJ is critical to the CSME and all 12 Member States which belong to the CSME (including their citizens, businesses, and governments) can access the Court's Original Jurisdiction to protect their rights under the RTC. In its Appellate Jurisdiction, the CCJ is the final court of appeal for criminal and civil matters for those countries in the Caribbean that alter their national Constitutions to enable the CCJ to perform that role. At present, four states access the Court in its Appellate Jurisdiction, these being Barbados, Belize, Dominica and Guyana. However, by signing and ratifying the Agreement Establishing the Caribbean Court of Justice, Member States of the Community have demonstrated a commitment to making the CCJ their final court of appeal. The Court is the realisation of a vision of our ancestors, an expression of independence and a signal of the region's coming of age.

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