

IN THE HIGH COURT OF JUSTICE
FEDERATION OF SAINT CHRISTOPHER AND NEVIS
SAINT CHRISTOPHER CIRCUIT

A. D. 1992

Miscellaneous Suit No. 13 of 1992

In the Matter of an Application
under Section 7 of the Constitution
of Saint Christopher and Nevis
1983 under and by virtue of
Section 18(1) of the Constitution
of Saint Christopher and Nevis
1983

and

In the Matter of BERNARD RICHARDS

Appearances: Mr. Lee Moore, Dr. Henry Browne and Miss Angella Inniss
with him for the applicant
Mr. Hugh Rawlins, Solicitor General for the Crown

[February 4, 6, 1992]

J U D G M E N T

SATROHAN SINGH J.

On April 10, 1873, the Offences Against the Person Act was made law
in this Country and it is to be found at Cap. 56 of the Revised Laws of
St. Christopher and Nevis.

S.2 of this law reads as follows:

"Whoever is convicted of murder shall suffer death as a
felon".

S3(1) states:

"Upon every conviction for Murder, the Court shall
pronounce sentence of death, and the same may be
carried into execution".

/and....

and S3(2) provides thus:-

"The Governor General shall direct the time and place for the execution of the sentence of death on persons convicted of Murder, and the Provost Marshall shall cause the body of such murderer to be buried in such place as the Governor General may approve".

On May 22, 1991, before this Court, sitting in its Criminal Jurisdiction, the applicant Bernard Richards was convicted of Murder and sentenced to Death as a felon by hanging. He did not appeal from this conviction.

By letter dated November 11, 1991, the applicant's legal advisor Miss Angella Inniss, petitioned the Committee on the Prerogative of Mercy for a commutation of the sentence of death.

On January 13, 1992, the Advisory Committee on the Prerogative of Mercy met and having considered the case of the applicant, informed Miss Inniss that the "Committee has advised that the Judgment of the Court should stand".

The applicant's execution by hanging was fixed to take place on Friday, 7th February, 1992.

This is a motion filed by applicant on February 1, 1992 for a declaration under S.7 of the Constitution of Saint Christopher and Nevis, (the Constitution) that the sentence of death proposed to be carried out upon him by hanging is in contravention of his fundamental right under S.7 of the Constitution in that the said punishment is inhuman and degrading and for an order restraining the Superintendent of Her Majesty's Prison by himself, his servant or agent or in anywise whatsoever from carrying out the punishment.

The application is supported by an affidavit from the applicant in which he states inter alia that the months he has been waiting have been very burdensome and the delay has caused him much pain and anguish. He submits in his affidavit that the carrying out of the sentence in the circumstances of the delay and bearing in mind that there has been no such execution in the country since 1985 and that there are four (4) other persons in the prison who have been sentenced to death and whose sentences have been commuted, would be an inhuman and degrading punishment, degrading not only to his life but the life and humanity of the person who carries out the execution and also to members of the applicant's family.

The Court gleans from this affidavit of the applicant that in the circumstances of this case he is not saying that death by hanging per se is degrading or inhuman thereby offending the provisions of S.7 of the

Constitution but when done in the circumstances as stated in his affidavit mentioned above then it is degrading and inhuman not only to himself but also to his family and the executioner.

However, at the hearing of the matter, Mr. Moore did not pursue the application on this ground.

As I understand Mr. Moore's arguments he has no complaint against the constitutionality of the sentence of death. Indeed, he concedes such constitutionality especially when the Constitution itself by implication sanctions such a penalty at S.4(1) which states as follows:-

"A person shall not be deprived of his life intentionally save in execution of the sentence of the Court in respect of a criminal offence of treason or murder under any law of which he has been convicted".

What learned Counsel submits as inhuman and degrading, is the method of execution adopted in this Federation i.e. by hanging. Counsel submits that hanging a murderer is not mercy killing, that it is debasing of humanity and the value of life, and that it devalues life not only for the murderer but also for the executioner and also that it brings unwarranted disgrace to those left behind. He says that spine breaking for the condemned is spine chilling for those who watch it or think about it and therefore it is inhuman and degrading. Counsel however says that there is no method of death which is preferable to hanging.

It having been accepted by both sides that the Constitution sanctions the death penalty, I propose to go directly to the real issue of the matter and deal with the question whether the Constitution permits the execution of that penalty by hanging.

It is accepted that it is the Common Law which prescribes this method of execution and that it is the Judge who in passing the sentence orders that the sentence be carried out by hanging and that all the Governor General does is decide time and place of execution.

S.7 of the Saint Christopher and Nevis Constitution Order 1983 reads as follows:-

"A person shall not be subjected to torture or to inhuman or degrading punishment or other like treatment".

and Paragraph 9 of the Transitional Provisions to be found in Schedule 2 of

/the....

the Order provides thus:

"Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of Section 7 of the Constitution to the extent that the law in question authorises the infliction of any description of punishment that was lawful immediately before 27th February, 1967 (being the date on which Saint Christopher, Nevis and Anguilla became an associated State)".

The law prescribing the sentence of death aforementioned was a law passed before February 27, 1967 or before the coming into being of the Constitution and so was the Common Law which prescribed the hanging method of execution.

Both Dr. Browne and Mr. Moore for the applicant argued that the above paragraph 9 of the Constitution only referred to written laws and not the unwritten Common Law and they referred to paragraph 2(7) of the Constitution which provides as follows:-

"For the purposes of this paragraph the expression "existing law" means any Act, Ordinance, rule, regulation, order or other instrument made in pursuance of or continued in force by or under the former Constitution and having effect as law immediately before 19th September 1983 and includes any Act of the Parliament of the United Kingdom or Order in Council or other instrument made under any such Act (except this Order and the Supreme Court Order) and any order made under section 4(2) of this Order to the extent that it so had effect on that date".

Paragraph 2(1) of the Constitution states:

"The existing laws shall, as from 19th September 1983, be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the Constitution and the Supreme Court Order."

Mr. Hugh Rawlins, Solicitor General for the Crown, responds by referring the Court to S119 of the Constitution which reads thus:

"In this Constitution, unless the context otherwise requires -

"law" means any law in force in Saint Christopher and Nevis or any part thereof, including any instrument having the force of law and any unwritten rule of law and "lawful" and "lawfully" shall be construed accordingly;"

I do not agree with this interpretation of paragraph 9 of the Constitution as given by both Counsel for the applicant.

If Dr. Browne's argument is correct that "existing law" in paragraph 2(7) of the Constitution refers only to written law and does not include the unwritten Common Law then by paragraph 2(1) of the said Constitution one of two things would have happened to the Common Law of this Country. Either paragraph 2, specifically paragraph 2(1), would have no application to the Common Law in which case the Common Law provision of death by hanging would remain untrammelled by the provision of S.7 of the Constitution, or that paragraph 2 by implication, in not recognising the Common Law as an existing law as argued by Dr. Browne, would have totally abolished the operation of Common Law in this Federation of St. Christopher and Nevis.

I do not intend to make any ruling on this submission as I find it irrelevant to my consideration of the issue raised in this application and as such any such ruling would be merely per incuriam.

The wording of paragraph 2(7) clearly shows that the meaning of "existing law" mentioned therein refers only to what is stated at paragraph 2 of the Constitution and bears no reference to what is contained at paragraph 9. Paragraph 9 does not use the words "existing law" but refers to any law and S119(1) defines "law" to include any unwritten rule of law i.e. the Common Law.

Having made these observations, I hold as a matter of law, that both the sentence of death and the method of execution of that sentence by hanging, have been preserved by paragraph 9 of the Constitution and are not inconsistent with the provisions of S7 of the Constitution. Support for this finding of mine is had from Her Majesty's Privy Council in De Freitas v. Benny (1975) 27 WTR 318. I do not find the circumstances of that case to be dissimilar to those in the instant matter as argued by Mr. Moore and, whilst I agree that the provisions of the Constitution of Trinidad and Tobago in so far as they relate to the question in issue in that case may have been differently worded to the provisions in the Constitution referred to in this matter, I would say the end result is the same.

Whilst I do not intend to define as Mr. Moore sought to do what can be described as inhuman or degrading treatment, I would venture to say that consequent upon my ruling as to non-inconsistency of death by hanging with the provisions of S7 of the Constitution, that the Constitution is impliedly recognising that death by hanging per se is not inhuman or

/degrading....

degrading treatment in the context of the law of this country.

The applicant accordingly fails in this application and I would order that the Motion stand dismissed. I make no order as to costs.

Satohan Singh

Satohan Singh
Supreme Court Judge