NZLR

NOT RECOMMENDED

IN THE HIGH COURT OF NEW ZEALAND
INVERCARGILL REGISTRY 12/9 AP 40/90

1778

BETWEEN DAVID STANLEY HEENAN
Appellant

A N D NEW ZEALAND POLICE
Respondent

Hearing: 30 August 1990

Counsel: Appellant in Person
Mr J Young for Respondent

Judgment: 30 August 1990

ORAL JUDGMENT OF ROBERTSON J

David Stanley Heenan was convicted in the District Court at Invercargill on 15 June 1990 on a charge of assault under the Summary Offences Act 1981. He is alleged to have assaulted Mrs Morrison who is an Officer of the Housing Corporation at Invercargill on 6 November 1989.

He was at the same time charged with three offences under the Crimes Act. Those matters were before the Court for parts of nine days in May and June of 1990. Mr Heenan chose to represent himself.

At the conclusion of the prosecution case, the learned

District Court Judge of his own volition dismissed the three charges under the Crimes Act. Evidence was then called by Mr Heenan himself and evidence was given by Mr Murphy.

The Judge found the assault charge proved and he proposed a fine of $300 directing that half of it be paid to Mrs Morrison. He reserved for further ruling applications which were before him for costs and disbursements. They were costs souch each way.

Mr Heenan filed an appeal on 12 July 1990 (AP 40/90) against conviction.

On 24 July he filed an appeal (AP 41/90) which is in the following terms :

"(a) This application is to follow after the appeal dated 12 July 1990.

(b) To appeal application for costs of the defendant dated 21 June 1990.

(c) To appeal application for recovery of witnesses expenses dated 21 June 1990.

(d) To apply for damages against Police witnesses."

There were apparently some discussions between the appellant and the Registrar of this Court about what record was to be obtained for the purposes of hearing these appeals.

There has been some difference of opinion today as to what Mr Heenan really requested, but in fact there is available to the Court 496 pages of typed testimony arising from the hearing.

Mr Heenan is aged 51. He is described on the information as a builder, and having heard and seen him today, he is clearly a man of above average intelligence and ability. There can be no doubt in my mind that the discussions between himself and the Registrar would have led him to be in no doubt at all that central to the hearing of an appeal is the question of the evidence given at the first hearing.

Earlier this week, Mr Heenan having been advised that the appeals would be heard today wrote to the Court indicating that he intended to apply for an adjournment in respect of AP 40/90. That is what I describe as the substantive matter. In that letter he talks in a vein which is consistent with what he said in his notice of general appeal, namely, he alleges collaboration, bad faith, malicious intent on the part of Police witnesses, and indicated a belief that new evidence would prove that the Police witnesses had given fabricated evidence, committed perjury and generally mislead the Judge to the point that he was mistaken when he found them to be honest and reliable.

In support of his appeal he says he needs more time to obtain entry to the Housing Corporation and complains that he has been denied access by various people. He says that he is in a position to proceed with the hearing of the AP 41/90 appeal, but says that he has not had time to go through the record.

I have no doubt that Mr Heenan has been busy this week. So has the Court. But I have found time to go through the record and to compare it with the findings of fact made by the learned District Court Judge. Mr Heenan says that he accepts that there was evidence upon which the Judge could have reached his decision but it was false evidence and the Judge was mislead into believing it was honest and true.

For a bit over half-an-hour this morning, I patiently endeavoured to explain to Mr Heenan the nature of an appeal within this Court. I have grave doubts that he really heard what I was saying. It seems to me that the ground that he advances for adjourning the proceeding is that there ought to be other or different evidence which could had led the finder of fact in the District Court to reach a different conclusion. Whether that is a well founded view, I make no comment. But it is not any part of an appeal in this Court. As I have explained to Mr Heenan, my function on an appeal against conviction is to

determine first, whether there was any evidence upon which the Judge was entitled to rely to find the facts that he did. I have had no difficulty in reading in the evidence, overwhelming evidence which supports and confirms those findings made by the Judge. The learned District Court Judge who heard and saw the witnesses, in a careful and objective way made assessments of credibility. I am not persuaded that any delay in hearing this appeal will alter that situation as far as the appellant is concerned.

Courts are naturally cautious and probably grant considerable latitude to litigants in person, but no matter what approach I take and how many allowances I make for the fact that Mr Heenan insists on representing himself, he is only one participant in this saga, and I use that word advisedly. There are others who have been affected by it and there is always a public interest in ensuring that litigation is disposed of with proper and reasonable despatch.

Nothing contained in the letter or in what Mr Heenan has said to me today, leads me to believe that there is any reason why this appeal which relates to a conviction entered some ten weeks' ago cannot now proceed to be disposed of today. Accordingly I refuse the application for an adjournment in respect of appeal AP 40/90.

I will deal with that appeal and then I will deal with

the other, AP 41/90.

AP 41/90 involves a question of an order against Mr Heenan for I think $472. Rather more important to him I suspect, is his claim for in excess of $8000 against the Crown which was unsuccessful. But each of those matters can be dealt with in their proper order. As I have said to Mr Heenan more than once, if he were successful on the appeal 40/90 then the $472 order would cease to have effect in any event.

Having indicated that I was unwilling to adjourn the matter, I then asked Mr Heenan if he had any submissions to make on his appeal and he replied, "I have no option but to withdraw." That is a matter of his choice. I however, have spent a substantial period of time reading the learned District Court Judge's decision and finding evidence which supports it.

The Judge on page 2 and following of his judgment finds a factual scenario. In essence, it is that in the course of a conference at the Housing Corporation office at a time when there was a handing over of papers, the appellant lunged towards Mrs Morrison; that he gripped her by the arm and that in a deliberate action, he dug his fingernails into the inner aspect of her forearm above the wrist. That is in essence what the charge is about.

There has been some substantial discussions this afternoon about the evidence of Mr Murphy. The question of whether somebody could or could not see through 5 inch fibrous walls has been much ventilated. The findings of the learned District Court Judge do not depend on the evidence of Mr Murphy. The Judge noted that in cross-examination a position initially taken by Mr Murphy in the course of what was very "well led" evidence, altered and Mr Murphy accepted that it in fact could easily be the case that she was bending down and telephoning. However, it is important to note that it was not any evidence from Mr Murphy which was crucial.

In essence the case boils down to the fact that the Judge found Mrs Morrison herself a reliable and creditable witness. He rejected in unequivocal terms, what I describe as Mr Heenan's theory that this woman in some conspiratorial way, self-inflicted injuries and then complained they had been caused by Mr Heenan. The Judge simply did not believe that. He said that he found Mr Heenan an unconvincing and at times evasive witness. He was unable to accept the defendant's denials. I note that although at the initial hearing there were other matters raised and some of them are referred to again on the appeal notice, I am unable, as the learned District Court Judge was unable, to see them having application to the facts as he found them.

In an appeal this Court is naturally bound by credibility findings of a Judge who hears and sees the witnesses. I have taken much more time than I would have if an appellant had been represented to check for myself that the necessary legal ingredients are present. I have no doubt that each of the findings made was totally justified on the evidence in light of the credibility findings. Coupled with that Mr Heenan now seeks to withdraw this appeal.

The appeal under AP 40/90 is accordingly dismissed.

J.

Solicitors

Crown Solicitor, Invercargill for Respondent