C4/04/1332

Neutral Citation Number: [2004] EWCA Civ 1854
IN THE SUPREME COURT OF JUDICATURE
IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE IMMIGRATION APPEAL TRIBUNAL

Royal Courts of Justice
Strand
London, WC2

Thursday, 16th December 2004

B E F O R E:

LORD JUSTICE PILL

LORD JUSTICE SEDLEY

LORD JUSTICE THOMAS

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HASSAN GHEISARI

Appellant

-v-

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

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(Computer-Aided Transcript of the Stenograph Notes of
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MR M. O'DONNELL (instructed by Messrs Knight & Co., Eastleigh, Hants) appeared on behalf of the Appellant.
MR. S. GRODZINSKI (instructed by the Treasury Solicitor) appeared on behalf of the Respondent.

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J U D G M E N T

1. LORD JUSTICE SEDLEY: The appellant claimed asylum on 28th May 2002 shortly after clandestinely entering the United Kingdom from Iran. His ground was that, having been born into a Muslim family and having converted to Zoroastrianism, the country's pre-Islamic religion, he had been arrested by the secret police and brutally treated before escaping. He feared a repetition or worse if he were to be returned.

2. His account of what happened a month after his alleged conversion in April 2002 was this:

> "9. At about 10 a.m. on the 10th may 2002 I received a telephone call from my friend, Kayvan, warning me that the authorities had found out about my conversion and that Arash Ahorahi had been arrested and detained on account of his attempting to proselytise Muslims. Unfortunately, I had no chance of escaping because the authorities raided my home within minutes of the phone call. I was handcuffed and blindfolded and taken by the Secret Services to a detention centre nearby.
>
> 10. Whilst detained, I was interrogated by the authorities who wanted to know about the people who had converted me. I totally denied having changed my religion. Initially I was verbally abused and threatened with my life. I was then beaten with an electrified baton, causing electric shocks to my body. I was also placed inside a large rubber tyre and rolled down a staircase. When I did not confess, two of the officers bundled me blindfolded into a car and said that they were taking me back to my house so that they could shoot my family. The officers seemed to be very agitated and on coming to a halt I heard the sound of gun fire. Fortunately, this sound emanated from my friends' guns. They had been hanging around near my home, trying to find out what was happening to me. When they noticed the car returning me, they managed to set me free. All of these events occurred on the 10th May."

3. There is one other matter of possible importance, although it was given little if any prominence in the appellant's case. According to his witness statement:

> "3. My father has been missing for about 11 years and my family has been led to believe that he was executed by the Iranian authorities. He was a university lecturer possessing anti-government beliefs and he disappeared after making an anti-government speech during a huge demonstration in 1992 that had been organised by and concerned the plight of disabled people. Many of these people were war victims who were complaining about the welfare provided them by the Government. Also, other sections of society used this demonstration as an opportunity for expressing their dissatisfaction with the Iranian Government. The demonstration took place over 3 days and it was on the second day that my father made a speech at the university where he worked. He did not return home after the demonstration.
>
> 4. Immediately after his disappearance my family went to the police and looked in the hospitals to try to find my father. He was reported as a missing person along with many other people who went missing on that occasion. We were not sure

what had happened to him, but we thought that he may have been taken away by the authorities.

5. About a year after his disappearance, my mother was called to a detention centre in Shiraz, 'Adel Abad', where she was told that my father had been executed for committing crimes ..."

4. The Secretary of State refused the appellant's application principally because he found the appellant's account of his escape incredible. He wrote at paragraph 6 of the refusal letter:

> "You claim you were arrested on 10/5/02 and held for a few hours before you managed to escape. You claim the authorities returned you to your home blindfolded and handcuffed. When asked why the authorities would return within a few hours of your arrest, you replied to intimidate your relatives. The Secretary of State takes the view that the authorities would not concern themselves with your relatives. Furthermore, the Secretary of State does not believe your friends and neighbours, armed with weapons and 'special scissors' attacked officials, placing themselves in potential danger of arrest in order to help you escape from custody. He does not believe that your friends and neighbours were gathered outside your home, armed with weapons and 'special scissors' on the off chance you would return with the authorities to intimidate your relatives."

At several points in that passage parenthetical reference is made to questions and answers recorded at interview.

5. The adjudicator shared with the Secretary of State serious doubts about the profundity of the appellant's conversion, but neither in that brief part of his decision headed "the evidence", nor in the paragraph headed "the facts", did he make any reference to the arrest and escape upon which the appellant's asylum claim hinged. In the former paragraph he wrote:

> "I was, like the respondent, unable to accept his account of what happened when he claimed to have been arrested and do not find that part of his story credible."

Having then referred to what happened to the appellant's father the adjudicator wrote:

> "He became a Zoroastrian and then decided to leave Iran",

hardly, one might say, a complete account. Finally, having considered the in-country evidence that Zoroastrianism was constitutionally protected in Iran, he wrote:

> "I have been unable to accept the appellant's evidence as to what he claims was the persecution he was subjected to in Iran prior to his departure. His evidence lacks the ring of truth."

6. The adjudicator dismissed the appeal, both on asylum and on human rights grounds.

7. The single member who gave leave to appeal did so on the basis of the first sentence which I have quoted, commenting at page 27 of the bundle:

> "There is no record in the determination of the evidence before the adjudicator relating to what the claimant claims happened to him in Iran before his departure. Arguably, the adjudicator's findings may not be sufficiently reasoned."

8. The Immigration Appeal Tribunal, however, dismissed the appeal. They noted the account given by the appellant of his arrest and escape, that the Secretary of State had not found it credible and that the adjudicator had not accepted it. As to the appellant's counsel's submission that the adjudicator had given no reasons for so deciding, the Immigration Appeal Tribunal said:

> "It is clear to us that the adjudicator had rejected the appellant's account for the same reasons that the respondent had rejected the account."

They considered that counsel, in asking for more than this, was demanding reasons for reasons and that, taken as a whole, the adjudicator's findings of fact "were sufficiently considered and set out." Having gone on to find that there was no general risk to Zoroastrians in Iran the Immigration Appeal Tribunal dismissed the appeal.

9. For the appellant Mr O'Donnell has sought to re-open this issue, but it forms no part of the grounds on which permission to appeal was granted. As Mr. Grodzinski for the Home Secretary accepts, however, it cannot be dispositive of the case, if the material concerning risk to the appellant personally was inadequately appraised. It is to this that the grant of permission to appeal by Gage LJ and myself was directed. Mr O'Donnell has argued his case accordingly.

10. Mr Grodzinski submits that, although it would have been preferable for the adjudicator to have set out his reasons for disbelieving the appellant's account, it is clear enough that he was adopting the Home Secretary's reasons. The IAT so found and that is an end of the matter. I do not agree. Fact finding is a sensitive exercise and never more so than in asylum cases, where the judge of fact is not choosing between two sides but trying to evaluate the truthfulness of what is usually one person's account. We know that in real life the improbable, even the incredible, sometimes happens. The question for a tribunal of fact is not whether an event which has been described to it was likely to occur but is whether the event, however improbable (or for that matter however probable), did in fact occur.

11. I have no difficulty in accepting that where the Home Office refusal letter sets out coherent reasons for rejecting an account and the adjudicator having independently considered the question agrees with them, it is permissible for him or her, having set them out, simply to say so. The Home Secretary's reasons then become the adjudicator's by express adoption. But if they turn out to be inadequate, so will the adjudicator's decision be.

12. Mr. O'Donnell submits that that is what has happened here. The Home Secretary decided that the appellant' story was inherently unlikely. So it may be, but it does not follow that

it is untrue. The adjudicator is there to make his or her own evaluation of the possibility it does not have to be a probability that the account given by the appellant, odd or farfetched though it may appear, is essentially truthful. Exactly the same is the case where the applicant tells a story of linear likelihood. Its anterior probability is not a guarantee of its veracity. In both classes of case the adjudicator, like a jury, has in my judgment a two stage inquiry to conduct. First, how inherently probable or improbable is the account? Secondly, may it, though inherently improbable, be true or, though inherently probable, be untrue? Among other things, the adjudicator needed for this purpose to appraise the fact, if it was or may have been a fact, that, unlike other converts, the applicant was the son of an opponent of the regime who seems to have been regarded as sufficiently dangerous to have been killed in custody. This might in turn have afforded a reason for the police to arrest and ill-treat him with the threatened arrest of the family.

13. As to the odd circumstances in which the appellant claimed then to have escaped, it was the adjudicator's task to appraise what evidence there was, to appraise the individual who was giving it and to say whether it might be true. Its inherent improbability was no doubt enough to explain the Secretary of State's initial decision, but it was not exhaustive of what the adjudicator had to determine. The Immigration Appeal Tribunal took the view that this gap was closed by the adjudicator's adoption of the Secretary of State's reasons. But if the Secretary of State's reasons are no more than an expression of natural incredulity, this is insufficient.

14. What in the end in my view and it is a view I have come to after much hesitation saves the adjudicator's decision from a deficiency of reasons, which is Mr O'Donnell's ground of attack upon it, is the single passage that I have quoted, ending: "His evidence lacks the ring of truth." This, I am prepared on consideration to accept, goes beyond simply echoing the Secretary of State's incredulity. It expresses, however laconically, the adjudicator's own evaluation of the veracity of the account that he has been given. That was his task. Although for much of this appeal I was of the view that he had failed to perform it, I am prepared in the end to accept, slender though it is, that it represents his independent judgment on the critical matter upon which the issue of risk to the appellant hinged, namely whether he had indeed been arrested, ill-treated and liberated as he claimed. The adjudicator had recorded the father's tragic history but in the absence of any weight placed on it by the appellant's own advocate, he was not obliged to bring it explicitly back into account when explaining his rejection of the appellant's story.

15. I wish only to add that such jejune decision-making is not to be regarded as a model of any kind. As Mr. Grodzinski accepts, more needed to be said by reasoning if this decision was to be visibly sound. But, for the reasons that I have given, the appeal must fail.

16. LORD JUSTICE THOMAS: I agree. When deciding whether a person is giving a truthful account, a fact finder must obviously proceed logically and carefully and set out that process in his reasons. It is important that this is not seen as a mechanistic process; it is one that requires careful thought on each occasion and careful formulation of reasons. In a case of this kind, the issue of whether someone is telling the truth or not is at the heart of the decision. It is regrettable that the process of reasoning of this adjudicator was not properly addressed. I agree with my Lord, Sedley LJ, that if the principal ground on

which it is contended that an account is untrue is the inherent improbability of that account, it is necessary for the fact finder to address two separate questions and make his reasoning clear in respect of each. The question of whether an account which the fact finder finds is inherently improbable is untrue is a separate question to the question as to the inherent improbability, as accounts that are inherently improbable can none the less in certain cases be true. It is therefore important that that the separate question as to the truth of a account found to be inherently improbable is addressed and dealt with in the reasons.

17. In this case I agree with my Lord, Sedley LJ, that the reasoning set out by this adjudicator performs sufficiently that task. I also agree with him that it would have been far, far better if the adjudicator had addressed his mind to giving proper more detailed reasons in relation to the issue that lay at the heart of this case, but in my judgment the reasons are in this case just sufficient.

18. LORD JUSTICE PILL: I also agree. I agree with the Immigration Appeal Tribunal that the adjudicator was entitled to disbelieve the appellant on the central question. As the tribunal put it at paragraph 5:

> "The reasons given for rejecting other aspects of his claim (the arrest and escape) were not unreasonable or unsustainable."

Reference has been made to the adjudicator's findings. He plainly had regard to the Secretary of State's reasons when refusing permission. He referred at paragraph 4 of his decision to the Secretary of State's letter. At paragraph 6 of that letter:

> "You claim you were arrested on 10/5/02 and held for a few hours before you managed to escape. You claim the authorities returned you to your home blindfolded and handcuffed. When asked why the authorities would return within a few hours of your arrest, you replied to intimidate your relatives. The Secretary of States takes the view that the authorities would not concern themselves with your relatives. Furthermore, the Secretary of State does not believe your friends and neighbours, armed with weapons and 'special scissors' attacked officials, placing themselves in potential danger of arrest in order to help you escape from custody. He does not believe that your friends and neighbours were gathered outside your home, armed with weapons and 'special scissors' on the off chance you would return with the authorities to intimidate your relatives."

At paragraph 4 of his decision the adjudicator said:

> "I was, like the respondent, unable to accept his account of what happened when he claimed to have been arrested and do not find that part of his story credible."

At paragraph 11:

> "I have been unable to accept the appellant's evidence as to what he claims was the persecution he was subjected to in Iran prior to his departure. His evidence lacks the ring of truth. I therefore do not consider that he is likely to be of any adverse interest to the Iranian authorities on his return and is therefore not at risk of

persecution within the terms of the Convention."

The adjudicator reached those conclusions having heard oral evidence from the appellant and having had a good opportunity to assess its credibility and reliability. The adjudicator was referred by counsel, and can be assumed to have had in mind, the in-country information and the circumstances of the applicant. There was a finding of fact by the adjudicator which cannot be challenged in this court.

19. In deciding that, I am not encouraging too much brevity in adjudicators' decisions. A summary of the relevant evidence should normally be present in a decision of this kind. That was not done here, though there was the reference to the respondent's decision to which I have referred, where the facts which the adjudicator found crucial to the decision, and which he was entitled to find crucial to the decision, were set out. On those important questions of arrest and escape the adjudicator was entitled to reach the conclusion he did and to express himself as he did. He did not fall into the trap which Sedley LJ has indicated may exist.

20. It is because of Sedley LJ's references to a two stage process that I add a few more words of my own. Fact finding is a skilled task, conducted by those holding judicial office at many levels and in many jurisdictions within the legal system. In the asylum jurisdiction, evidence as to specific events must be considered by adjudicators against the background of the in-country material available to them. They often hear oral evidence, as did this adjudicator, and must assess the truthfulness and reliability of that evidence against that background and having regard to their experience and wisdom. As juries, entrusted with the fact finding role in our criminal courts, are customarily instructed: "You will do that by having regard to the whole of the evidence and forming your own judgment about the witnesses and which evidence is reliable and which is not."

21. There will be cases where the events upon which a judgment has to be made are, in the experience of the decision-maker, inherently likely or inherently unlikely. That must be kept in mind when the assessment of credibility is made. That may be an important factor when making the decision. There will be cases where, on the particular evidence, a two stage process of reasoning is appropriate, an assessment of the background material and then a subsequent assessment of the credibility of the witness. Fact finding is, however, essentially a single process. Judgments are not to be made by rote. I would deplore a situation in which the fact finder must first decide whether the situation is inherently likely or unlikely and only then to address himself to the witness's credibility. The task of fact finding should not be compartmentalised in that way. Parts of the story may be inherently likely and parts inherently unlikely. The degree of likelihood may itself depend on witness assessment. What would be wrong would be to say, -- and I agree with Sedley LJ, -- that because evidence is inherently unlikely it inevitably follows that it is wrong. An unlikely description may, upon a consideration of the circumstances as a whole, including the judge's assessment of the witness and any explanations he gives, be a true one.

22. However, as I have indicated, I see nothing wrong in the adjudicator's approach in this case or that he fell into the trap which Sedley LJ has in mind, namely take the step of saying that because something is inherently unlikely, then it must be untrue, I find no

sign, either in the Secretary of State's letter or in the adjudicator's decision, that he fell into any such trap. The words "inherently improbable", which have formed the subject of much of the discussion in this case, do not appear, either in the letter or in the adjudicator's decision. I see no reason to suspect that what has been identified by my Lords as a potential fault arose in the fact finding process in this case.

23. Accordingly, this appeal will be dismissed.

ORDER: Appeal dismissed; public funding assessment.