IN THE HIGH COURT OF THE SUPREME COURT OF GUYANA

CRIMINAL JURISDICTION

Indictment No. 40/ 2015

THE STATE

V

DEOSARRAN BISNAUTH

The Honourable Justice Navindra A. Singh, Puisne Judge

Ms. Tuanna Hardy and Mr. Siand Dhurjon representing the State

Mr. Bernard De Santos S.C. representing the Accused, Deosarran Bisnauth

Delivered April 10th 2017

DECISION

The Accused, Deosarran Bisnauth, was indicted to stand trial in the High Court of the Supreme Court of Guyana in its Criminal Jurisdiction for the offence of murder, contrary to Common Law for that he murdered Robert Mangal on July 27th 2013 in the County of Demerara, Guyana.

Ms. Tuanna Hardy, representing the State, presented the indictment for murder against the Accused on Friday, April 7th 2017, however before a jury could be selected for the trial, Mr. Bernard De Santos S.C. intimated to the Court that he desired to move a Motion to the Court to quash the indictment.

As a result arguments were heard from both Mr. De Santos S.C. and Ms. Hardy in the absence of the panel of jurors.

BACKGROUND

The Accused was charged with the offence of Murder and Magistrate Zamilla Ally-Seepaul thereupon proceeded to conduct a preliminary inquiry into the charge.

The State concluded leading evidence and after the Magistrate complied with the statutory requirements of the Criminal Law (Procedure) Act; CAP 10:01 she committed the Accused to stand trial for the offence of Murder on April 16th, 2015.

On November 25th, 2015, the Director of Public Prosecutions remitted the matter to the Magistrate with certain directions to take further evidence in the matter as per her powers to so do under section 77 of the Criminal Law (Procedure) Act; CAP 10:01.

The Magistrate complied with the directions of the Director of Public Prosecutions, complied with the statutory requirements of the Criminal Law (Procedure) Act; CAP 10:01 and again committed the Accused to stand trial for the offence of Murder on October 28th, 2016.

The Director of Public Prosecutions in due course indicted the Accused to stand trial at the Demerara Assizes.

ISSUE ONE

Mr. De Santos S.C. submitted that the Magistrate failed to comply with section 71 of the Criminal Law (Procedure) Act; CAP 10:01 when she committed the Accused to stand trial for murder on April 16th, 2015, and therefore that committal was bad in law.

Mr. De Santos S.C. argued that the letter to the Magistrate dated November 25th, 2015, from the Director of Public Prosecutions admits that all of the evidence was not taken in the preliminary inquiry and section 71 of the Criminal Law (Procedure) Act states that the Magistrate can only commit on the **whole** of the evidence.

RULING

Section 71 of the Criminal Law (Procedure) Act; CAP 10:01 provides;

"If, upon the whole of the evidence, the magistrate is of the opinion that a sufficient case is made out to put the accused person upon his trial for any indictable offence he shall, subject to section 9, commit him for trial to the next practicable sitting of the court for the county in which the inquiry is held."

To state the obvious, the "***whole of the evidence***", can only be referable to the evidence that the State would have led at the preliminary inquiry. It is not in any way contemplated that the Magistrate would know what evidence the State has or intends to lead apart from that actually led in court.

It is indeed preposterous in these circumstances to suggest that the Magistrate erred because the State had chosen to conclude its evidence in the preliminary inquiry, when in fact the State was in possession of additional evidence.

This submission is overruled.

ISSUE TWO

Mr. De Santos S.C. submitted that the letter from the Director of Public Prosecutions to the Magistrate remitting the matter was dated November 25th, 2015

which was 7 months, 9 days after the Accused was committed to stand trial for murder on April 16th, 2015, and notwithstanding the fact that the Director of Public Prosecutions states in that letter that the depositions were received by her office on September 11th, 2015 the Magistrate ought to have required the Director of Public Prosecutions to prove that she received the depositions on September 11th, 2015 and therefore in compliance with section 77 of the Criminal Law (Procedure) Act; CAP 10:01.

RULING

Section 77 (1) of the Criminal Law (Procedure) Act; CAP 10:01 provides;

"At any time within six months after the receipt of any documents mentioned in this Title, the Director of Public Prosecutions may, if he thinks fit, remit the cause to the magistrate with directions to re-open the inquiry for the purpose of taking evidence or further evidence on a certain point or points to be specified, and with any other directions he thinks proper."

It is firstly noted that the Magistrate recorded that upon the reopening of the preliminary inquiry Mr. De Santos S.C. conceded that the Director of Public Prosecutions had acted within the time provided for by statute, that is, within 6 months **after receipt** of the documents.

In any event the maxim "***omnia praesumuntur rite et solemniter esse acta donec probetur in contrarium***" applies and Mr. De Santos S.C. conceded propriety in the lower Court and has not in any way or form attempted to prove non-compliance before this Court.

The record clearly shows that the letter prepared by the Clerk of Court forwarding the documents to the Registrar of the Supreme Court is dated August 31st, 2015; after receiving the documents, the Registrar of the Supreme Court would have then

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This submission is overruled.

ISSUE THREE

Mr. De Santos S.C. submitted that the letter from the Director of Public Prosecutions to the Magistrate, dated November 25th, 2015 remitting the matter did not comply with section 77 of the Criminal Law (Procedure) Act; CAP 10:01 in that it did not specify the points on which evidence was to be taken.

RULING

Section 77 (1) of the Criminal Law (Procedure) Act; CAP 10:01 in no way requires the Director of Public Prosecutions to specify in all cases on what points evidence should be taken, in fact, such specificity would only make sense when directing that further evidence be taken from a particular witness. Where, for instance, a witness was found within the 6 months of the committal and the Director of Public Prosecutions remits to have the evidence of that witness taken, it would be absurd to believe that the witness would be directed to testify within set parameters.

This is further demonstrated by the provisions of Section 77 (2) of the Criminal Law (Procedure) Act; CAP 10:01 which provides;

"Subject to any express directions given by the Director of Public Prosecutions, the effect of remission to the magistrate shall be that the inquiry shall be re-opened and dealt with in all respects as if the accused person had not been committed for trial."

This submission is overruled.

ISSUE FOUR

Mr De Santos S.C. submitted that the charge is bad in law since the accused has been charged with murder contrary to common law and since the introduction of section 100 of the Criminal Law (Offences) Act; CAP 8:01, murder "contrary to common law" was abrogated.

RULING

Firstly, murder "contrary to common law" was never abrogated in Guyana, it was codified in section 100 of the Criminal Law (Offences) Act; CAP 8:01, however with the passing of Act No. 21 of 2010 it seems that murder *simpliciter* (murder contrary to common law) was de-codified and hence in such circumstances, (not provided for in section 100 of the Criminal Law (Offences) Act; CAP 8:01), the offence would be murder contrary to common law.

This submission is overruled.

In the circumstances the Court will proceed with the arraignment of the Accused.

Justice N. A. Singh