



THE COURT OF APPEAL

[265/18]

**The President
Kennedy J.
Donnelly J.**

BETWEEN

THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

AND

PATRICK MCMORROW

APPELLANT

**JUDGMENT (Ex tempore) of the Court delivered on the 19th day of July 2019 by
Birmingham P.**

1. This is an appeal against severity of sentence. The sentence under appeal is one of ten years imprisonment with the final two years suspended for a period of five years that was imposed at Sligo Circuit Criminal Court on 25th June 2018 in respect of a s. 4 Non-Fatal Offence against the Person Act offence.

Background Facts

2. On 23rd October 2016, the appellant attended a post-funeral gathering held at the Crozon Inn, Sligo, along with his partner, Kathleen McMorrow. The gathering was also attended by Kathleen McMorrow's daughter, Patrice McMorrow, also known as Patrice Harte, and by her partner, Michael Harte. Around midnight, an argument took place between Kathleen McMorrow and her sister concerning Kathleen McMorrow's and the appellant's son, Gregory McMorrow. The appellant then became involved in the argument. Patrice McMorrow then intervened, followed by an intervention from her partner, Michael Harte, who pushed the appellant to the ground. Patrice McMorrow and Michael Harte went to leave the reception. The appellant followed them to the entrance of the premises where he stabbed Mr. Harte five times and Ms. McMorrow, once. The appellant remained at the scene for a time, then left and was apprehended later that evening at the home of his brother by Gardaí.
3. At the commencement of today's appeal, the Court has viewed the CCTV footage of the incident. We feel obliged to say that it makes for very disturbing viewing. It shows a violent, frenzied attack on two people leaving the premises and going about their business.

The Judge's Approach to Sentence

4. The Judge identified a headline sentence of 12 years imprisonment and reduced that by two years in light of mitigating factors present and then suspended the final two years in order to foster and encourage rehabilitation. In the course of his sentencing remarks, the Judge referred to the prevalence of assaults involving the use of knives where the victim sustained serious injury. He referred to the fact that over the previous two weeks, he had dealt with three such assaults at three different locations on the circuit. He observed that, in view of that, the Court was obliged to impose significant custodial sentences in cases involving the use of knives. He said that that was necessary in order to send out a clear message to those who arm themselves with knives that they can expect a jail sentence should they perpetrate an assault using a knife. That was necessary in order to deter the use of knives in assaults. Those remarks by the sentencing Judge have been the subject of criticism in this Court. It is said they were indicative of an emphasis on general deterrence and that the emphasis on general deterrence has the capacity to strike out at consistency and proportionality in sentencing. It is the case that in the course of his sentencing remarks, the Judge referred to the use of a hunting knife. The point is made in the written submissions that there was no specific evidence that the knife was in fact a hunting knife, but it is the case that the CCTV footage was viewed and the general nature of the knife was apparent.
5. The Judge identified a number of aggravating factors which included the level of violence involved, the injuries sustained by the victims, the unprovoked nature of the attack perpetrated on unarmed victims, the failure to answer questions at the Garda station and the view of the Probation Service that the appellant was at medium risk of reoffending.
6. The Judge's identification of a failure to answer questions at Garda interview as an aggravating factor does not appear to have been correct, rather, at most what could have been in issue was that what might otherwise have been available by way of mitigation was not, in fact, available. Again, it does not appear to have been correct to identify the Probation Service's risk assessment as an aggravating factor.
7. Turning to the position of the injured parties, Patrice McMorrow (Harte) was in her late 20s at the time of the offence and her husband or partner, slightly older, in his mid-30s.

Further Details in Relation to the Incident

8. The accused appellant and his wife had one child together, Gregory, aged 21 years at the time of the incident. For a large part of his childhood, he was reared by Marie McManus, otherwise Maisie McManus. The incident in the public house that has led to today's appeal has its genesis in a row between Maisie McManus and Kathleen, the partner of the accused appellant, about the rearing of Gregory. The appellant, Patrick McMorrow is described as having become particularly riled during the course of the argument. Patrice, one of the victims, was not involved at this stage, but in her statement of evidence, has said that she could see him clenching his fists and she perceived that he was going to hit Maisie McManus, a lady in her 60s. Patrice pulled him back, and in so doing, he turned his anger on her i.e. Patrice. Her husband, Michael, noticing that, struck or pushed out at Mr. McMorrow, and, in pushing Mr. McMorrow, caused him to fall back and end up on the steps. Those who would come to be victims of the assault, Michael and Patrice, made a

decision that they would leave the public house at this stage, and they went about leaving. They made their way to the exit and were followed to the exit and, indeed, outside. CCTV footage shows Mr. McMorrow reaching inside his jacket, taking the knife from it, and then stabbing both of them with the knife. At one point, Patrice tried to grab the knife out of the accused's hand, resulting in a hand injury, and he then stabbed her under her left armpit.

9. In the aftermath of the incident, Michael Harte was bleeding heavily, an ambulance was called. Initially, Patrice at first did not realise how badly injured she was, but it turned out that she too had been badly injured and assistance was rendered to her. Again, just to put the relationship between the various parties involved in context, the accused, Patrick McMorrow, had been going out with Kathleen McMorrow, the mother of Patrice, for over 20 years.
10. So far as the injuries were concerned, Patrice Harte was stabbed in the left side of her chest. That involved a laceration and a left-sided pneumothorax. She also suffered a laceration to the palm of her left hand. The medical reports available to the Court indicated that the left-sided chest stab would have involved substantial risk to life because of the serious injury caused to the lung and because to the proximity of major vessels in the heart. As it happens, the injury has not caused any long-term serious disfigurement or any substantial loss of mobility. However, it was the risk in the immediate aftermath of the incident to life that gave rise to the serious harm charge.
11. So far as Mr. Harte is concerned, he was stabbed a number of times. Again, in the case of Mr. Harte, he was stabbed in the chest, in his case, that required a blood transfusion, and a right-sided chest drain was inserted. In hospital, he was treated in the Intensive Care Unit. He was discharged from hospital on 9th November 2016, and again, the s. 4 charge, the charge of serious harm, is explained by the substantial risk of death which the incident involved. Indeed, in the case of Mr. Harte, it is the situation that he came within minutes of losing his fight for life at Sligo General Hospital. The trial Judge summarised the injuries in these terms. Speaking of Patrice he said:

"She was stabbed under the left armpit by the accused which resulted in her lung being punctured. Michael Harte also sustained very serious injuries in the assault. He suffered a punctured lung, laceration to his liver, wounds to his ear, leg and body. The injuries sustained by Michael Harte were life-threatening, and as was pointed out in the victim impact statement, were it not for the herculean efforts of the medical staff in Sligo General, he would not have survived his injuries."

He points out that, very fortunately, one of the first Gardaí on the scene had medical and First Aid training and was able to provide assistance to the victims.

12. In terms of the accused's background and personal circumstances, the sentencing Court was told that he was a 51-year old man with five recorded convictions, one for assault, and apparently it was a minor assault, and four for offences under the Road Traffic Act. In the course of interview, following his arrest and detention on the occasion in question, he

indicated that he had consumed some 12 pints that day. In cross-examination of the investigating Garda during the sentence hearing, it was established that the appellant was a person who has experienced alcohol problems all his life.

13. The sentencing Court was told that the Director put the offending at the upper end of range of offences by reference to the Fitzgibbon scale. That was not, in fact, a matter of controversy in that defence counsel stated specifically that he fully accepted that the offence was at the upper end of the scale, that it had to be, that it was a matter of law and that that was accepted.
14. In the course of the sentence hearing, the appellant's wife gave evidence and explained how he had looked after her for over 20 years, including during a period when she had a mental illness as a result of which she had lost weight down to some six stone. He made sure that she took her food and medication when she would have had trouble looking after herself.
15. The appellant before this Court is critical of the approach of the sentencing Judge. It is said that there was an inappropriate emphasis on general deterrence. Indeed, it is said that there has to be a concern that there was what was described as "crescendo sentencing", building to the delivery of an ever louder and clearer message about the incidences of stabbing and knife crime and how such offences were likely to be dealt with. The Court does not see anything untoward in the remarks about the frequency of serious knife crime and stabbings and the remark that those involved in such offences can expect to be dealt with severely. The Court feels that its focus must be on addressing the appropriateness of the sentence imposed and determining whether that sentence was a proportionate one as far as the two very serious offences committed this offender were concerned. As part of that exercise, the Court asks itself whether it is a cause for concern that the remarks about the prevalence of knife crime might have led to the imposition of an excessively severe sentence.
16. On the basis of the offence described in the transcript, the Court is in no doubt that the Circuit Court was correct in viewing this as a high end offence. That assessment is confirmed by viewing the CCTV footage. For such offences, the Court of Criminal Appeal in Fitzgibbon suggested that pre-mitigation sentences would likely fall in the range of 7 and a half years to 12 and a half years, that would be the appropriate range, though that there would be exceptional cases where longer sentences would be required. In a situation where there were two victims, each of whom suffered life-threatening injuries, a case could certainly be made for saying that this was a case that fell into the exceptional category. Whatever about that, the Court cannot see how it can realistically be contended that the headline or pre-mitigation sentence was excessive. That being said, there were factors present by way of mitigation including the plea and the fact that the previous record was quite a limited one, albeit that it did involve an assault described as a minor assault. Having identified the headline sentence as we have seen, the Judge then reduced that sentence to one of ten years to take account of the mitigating factors present, and then, in order to foster and encourage rehabilitation, suspended the last two years.

17. This Court has on many occasions made the point that it is necessary for an error in principle to be identified before it will intervene. It is necessary that the sentence imposed falls outside the available range. The fact that the Court, had it been called on to sentence at first instance, might have been minded to impose a somewhat different sentence would not justify, still less, require intervention.
18. It is the situation that in this case, the sentence imposed was a significant one, indeed, it could be described as a severe one, but in the Court's view, it was a sentence that fell within the available range, and so, in these circumstances, the Court must dismiss the appeal.