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Columns

Fight for justice continues in the Janice Allen case

Ken Chaplin
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Ken Chaplin

Janice Allen, a 13-year old schoolgirl, was shot in the back and killed by a policeman in the poor neighbourhood of Trench Town in 2000. About one year later, the director of public prosecutions (DDP) ruled that the policeman should be charged with murder, but he was eventually freed by the jury in the Port Antonio Circuit Court because of "lack of evidence".

There were two vital factors that led to this verdict. One was the missing pages in the Firearm Register at the Trench Town Police Station containing information on the service revolver issued to the policeman. The other and more critical factor was the absence of a key witness, a sub-officer of the Bureau of Special Investigation (BSI) who had taken the statement in which the policeman had admitted firing the fatal shot and who had left the country. Clearly, the administration of justice was eroded when no attempt was made by the Office of the DPP to request the court to enter a nolle prosequi to clear the way for the matter to be heard at a future date. In that event, the government would be obliged to bring back the key witness to the country to give evidence. It is well known that police personnel going overseas on leave have to give a forwarding address where they may be contacted in case of emergency.

Apparently, both the trial judge and the prosecutor were misled, as in an interview with this column sometime later, the head of the BSI Assistant Commissioner of Police Granville Gause revealed that the police witness who took the statement was on short leave and would return to the country in a few days (which happened). Not satisfied with the not-guilty verdict handed down by the jury on the instruction of the presiding judge, Jamaicans For Justice (JFJ), the human rights advocate

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group, and some attorneys-at-law felt that the process of the court had been abused which had led to the wrong verdict, the perversion and miscarriage of justice and a dangerous situation. JFJ became an active participant in the matter and two eminent attorneys-at-law, David Wong Ken and Richard Small, representing Millicent Forbes, mother of Janice, made an application for leave to apply for a Judicial Review of the matter by the full court of the Supreme Court with three judges sitting. Chief Justice Lensley Wolfe, who heard the matter, in denying the application said that the verdict of the jury was not amenable to judicial review. The court, he said, had to be guided by the principles of the law, rather than by emotion. Merely to grant leave so that a full hearing could be had in the circumstances where the claim was hopeless, would be an exercise in futility, he said. However, JFJ is not prepared to allow the killing of Janice to go "just like that" and has filed for the case to be heard by the full court on the grounds that the judge who presided over the matter in the Port Antonio Court as well as the Office of the DPP had been misled and the court process abused. The JFJ is seeking that ultimately the trial will be declared a nullity and a new trial ordered. But there is a legal principle that a person should not be tried twice for the same offence. However, attorneys-at-law not involved in the case allege that what happened in the Port Antonio Court was an extraordinary perversion of justice. They have drawn attention to a similar case in India, a member of the Commonwealth, where the Supreme Court in the matter of the National Human Rights Commission (NHRC) vs the State of Gujarat and others, granted special leave for the NHRC to petition the full court of the Supreme Court of India Criminal Appellate Jurisdiction (SCICAJ).

The judgement of the SCICAJ on April 12 this year attracted international attention and is considered of such fundamental importance to the due process of justice that the International Environmental Law Research Centre, based in Geneva, Switzerland, has posted it on its website. In ordering a retrial the full court said in part, "that a criminal trial is a judicial examination of the issues in the case and its purpose is to arrive at a judgement on an issue as a fact or relevant facts which may lead to the discovery of the fact issue and obtain proof of such facts at which the prosecution and the accused have arrived by their pleadings; the controlling question being the guilt or innocence of the accused. Since the object is to mete out justice and to convict the guilty or protect the innocent, the trial should be a search for the truth and not over technicalities, and must be conducted under such rules as will protect the innocent and punish the guilty. The proof of charge which has to be beyond reasonable doubt must depend upon judicial evaluation of the reality of the evidence, oral and not by an isolated scrutiny. Failure to accord a fair hearing either to the accused or the prosecution violates even minimum standards of due process of law. It is inherent in the concept of due process of law, that condemnation should be rendered only after the trial in which the hearing is a real one, not sham or a mere farce and pretence. Since the fair hearing requires the opportunity to preserve the process, it may be vitiated and violated by an over-hasty, stage-managed, tailored and partisan trial. The fair trial for a criminal offence consists not



only of technical observance of the frame or forms of law, but also in recognition and just application of its principles and substance, to find the truth and prevent miscarriage of justice."

The judgment continues: "Witnesses", as Bentham said, "are the eyes and ears of justice. Hence, the importance and primacy of the quality of the trial process. If a witness himself is incapacitated from acting as eyes and ears of justice, the trial gets putrefied and paralysed, and it no longer can constitute a fair trial. The incapacitation may be due to several factors like the witness being not in a position for reason beyond control to speak the truth in the court or due to negligence or ignorance or some corrupt collusion."

It seems to me that due process was bungled in the Port Antonio Court when a nolle prosequi was not sought, but judgement is a matter for the full court.

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