

ANATOMY OF A FRENCH MURDER CASE by Bron McKillop, The Institute of Criminology Monograph Series. Hawkins Press, 1997, 107pp, ISBN 1 876067 06 3

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One evening in June, in a village near Le Mans, a man died when someone shot the lock off the front door, and then shot him. Suspicion fell on the estranged husband of the dead man's mistress – not least because, just after the killing, this suspect had taken a pot-shot at her as she fled from the house, as a prelude to engaging her in conversation and trying (in vain, unsurprisingly) to persuade her to come back to him. The suspect was rapidly arrested and 22 months later was tried before the Cour d'assises for the Sarthe, which ... No, I won't spoil it for you by telling you how the story ends – you should buy the book and find out for yourself.

Bron McKillop watched the trial. He was later given access to the dossier, and was also able to interview the public prosecutor, the defence lawyer, the lawyer for the civil parties and the *juge d'instruction* – the judge who, in a serious case in France, is officially in charge of the investigation. Later on, he was also able to interview the husband in prison, and obtain first-hand his views on *la justice pénale française* as well. He then wrote the whole story up as a little book of 100 pages.

The book starts with an account of what happened, in the course of which the reader is guided through the French legal system and so enabled to understand each stage. This is followed by an account of the author's interviews with the persons concerned. And the book concludes with a commentary on the case written from the common lawyer's viewpoint.

Bron McKillop writes as someone with a good understanding of French criminal procedure, and (unlike many common lawyers) a balanced sense of its merits as well as of its weaker points.

The result is a fascinating study, and a very useful book for anyone who wants to teach or learn about comparative criminal procedure.

From McKillop's study of this case, we get a clear sense of how the centre of gravity differs as between a French criminal prosecution and a common law one. The backbone of a French prosecution is a rigorous and structured enquiry, in the course of which every possible source of information is examined and the results recorded in the dossier. In a serious case, where a *juge d'instruction* is involved, it will be he (or she) who brings in the experts. At each stage in the enquiry, the *juge d'instruction* will officially confront the suspect with the evidence against him, and ask for his reaction.

Another standard technique is *la reconstruction*. The suspect, plus witnesses and actors standing in for persons dead or missing, will be asked to return to the crime and re-enact what allegedly happened according to each of the conflicting versions of events, in order to test which one is more likely to be true. In the course of all this patient effort, weak cases tend to get thrown out.

This lengthy pre-trial phase means that, in French criminal procedure, cases that are inherently weak tend to get weeded out of the system ahead of trial. The trial then often takes the form of a public audit of an investigation that has already been completed, rather than (as in the common law world) the completion of the investigation itself.

In principle, all this pre-trial investigating takes place whether the defendant admits the offence or not, and therefore in the French system there is (in theory) no such thing as pleading guilty.

Another feature of the French system that Bron McKillop brings out is the much stronger position of the victim. The victim is entitled to a lawyer, through whom he is able to give the court his (or her) views on the defendant and his conduct, and make a formal claim for damages. Whilst this undoubtedly makes victims more satisfied with the criminal justice system, the disadvantage is that it sometimes raises the temperature of the proceedings without proportionately increasing the amount of light.

In this excellent study there is one point which I feel the author ought to have developed further, and one point where I think that what he says about the French system is questionable.

The questionable point is where the author explains that in a jury trial in France the jurors (unlike the professional judges) are not allowed to see the dossier. He says this is 'explicable in terms of the reluctance of the legal professionalism of the system to allow too great an intrusion by lay people.' I believe that what really lay behind this rule was a desire to reduce the weight of the written dossier in jury trials, and to increase the impact of the oral evidence.

The point that I feel could have been further developed concerns the time that the type of procedure he describes takes up. The case described in this book was a fairly simple one, both factually and legally, and between the arrival of the police at the house and the verdict of the court of trial there elapsed a period of 22 months. This is three months longer than it took the English criminal justice system to process the case of Rosemary West – a particularly horrible series of ten murders, bristling with legal complications, all made worse because of the suicide in prison of one of the suspects.

In justice, as in other areas of life, time costs money. And where the defendant is languishing in prison pending trial, pre-trial delay has serious implications for civil liberties. Thus, unsurprisingly, the type of investigation and trial that Bron McKillop describes is being increasingly replaced in France by procedures that are quicker and cheaper. Interestingly, a number of French lawyers deplore this trend because they feel the cut-price replacements offer fewer guarantees to the possibly innocent defendant than does the traditional version. These criticisms are something of which common lawyers need to be aware, because they run counter to their traditional belief that French criminal procedure before a *juge d'instruction* is heavy, prosecution-driven and oppressive.

But these are minor criticisms. This little book it is an important addition to the literature on comparative criminal procedure, because it is the only book at present

available that does what it does – that is, provides a clear account in English of what actually took place in a real French criminal trial. Some forty years ago, Sybille Bedford did something similar in her study *Faces of Justice*, which describes the public part of a criminal trial in various European countries, including France. But lively as her book is, it only covers the final phase of the case, and it is now distinctly out of date. McKillop's book is up to date. It has the great merit of covering the private pre-trial phase as well as the public final one. And it is clear, and particularly well written.

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