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Appeal No. 21 of 1948.

**In the Privy Council.**

**44423**

**ON APPEAL**

*FROM THE SUPREME COURT OF BRITISH GUIANA.*

BETWEEN

NOOR MOHAMED - - - *Appellant,*

AND

THE KING - - - *Respondent.*

**CASE FOR THE APPELLANT.**

RECORD.

- 10 1. This is an appeal from the Supreme Court of British Guiana (Criminal Jurisdiction) against the verdict of guilty of murder and the sentence of death passed on the Appellant, Noor Mohamed, on the 3rd June, 1947. p. 68.
2. By an Order in Council, dated the 19th December, 1947, special leave to appeal to His Majesty in Council was granted. p. 73.
3. The Appellant was charged under Section 100 of the Criminal Law (Offences) Ordinance, Chapter 17, British Guiana, with the murder of one Mohabubhan, also called Ayesha, on the 17th September, 1946. p. 1.
- 20 4. Oral evidence (with the production of exhibits) was adduced before Jackson, J. (acting), and a jury, and proceedings were on different dates, from the 12th May to the 3rd June, 1947. pp. 1-68.
5. The case for the prosecution was as follows:—There were no eye-witnesses and the evidence was circumstantial. The evidence pointed to the accused as the man who gave, or caused the deceased to take, a dose of potassium cyanide at or about 9.30 a.m. on the 17th September, 1946. The accused took the deceased lady to the doctor at 11 a.m. on that date, when she was already dead. The accused had lived with the deceased, since 1944, and with four children of a former marriage. p. 2, l. 33. p. 2, l. 39.
- 30 6. The accused, being a goldsmith, had used potassium cyanide in his business and kept it in the workshop (under the living apartments) in a locked cupboard. The parties lived well at first but badly afterwards when the accused suspected unfaithfulness. The accused is alleged to have said that before she went to live with another man it would be better if she were dead. p. 3, l. 1. p. 3, l. 3. p. 3, l. 5.

RECORD.

p. 3, l. 6.  
p. 3, l. 9.

On the evening prior to her death, the deceased was subjected to beating and violence by the accused. At 6 o'clock on the morning of her death the deceased was in the yard sweeping and about 9 a.m. she was drinking tea at a back step when the accused called her and they both entered the house.

p. 3, l. 14.

Soon after the accused ran to the road saying he had just seen his wife foaming. Accused knew the rapidity of the work of potassium cyanide and ran to the house of his brother-in-law, Saffeullah, then to the chemist's shop of one King, at 9.30 a.m., then back to Saffeullah's house with the intention of going to the doctor. At 9.45 a.m. he returned to the shop of the chemist who advised the accused to take the lady to the hospital. He got to hospital with the lady in a car at 10 a.m. 10

p. 3, l. 22.

The analyst found 2.8 grains of potassium cyanide in the stomach, and this is a fatal dose. The accused told the police that he was asleep on the couch when his daughter woke him up and told him to go and see what the lady was doing. The accused took Sergeant Thomas to the cupboard in his workshop where there were three bottles with potassium cyanide in solution. Two weeks later the accused took the County Superintendent to the premises and said everything in the workshop was the same as on the day of the death. Accused said he kept the cupboard locked because of his children. The Superintendent found the padlock to be defective. The police took more bottles from the cupboard and still more from the house of Saffeullah. In the accused's house all the glasses and cups were nicely washed, and the hearth was freshly daubed. 20

p. 3, l. 26.

p. 3, l. 28.

p. 3, l. 30.

p. 3, l. 32.

Accused told the Superintendent he had not heard his wife died of potassium cyanide poisoning.

p 6.

6. Neville Newsam, Government Analyst, in his evidence, said he had examined the stomach and contents and detected 2.8 grains of potassium cyanide there. The liver and kidneys also had potassium cyanide. A little over 2 grains is the accepted fatal dose. Potassium cyanide is a volatile and very rapid poison. It poisons by the liberation of prussic acid. He dealt with fifteen exhibits which the police had put before him on the 4th October, 1946. Among them was an ordinary tea-cup which he said contained traces of cyanide of potassium. He was not prepared to say whether the poison was present in the cup on the 17th September, 1946. It might have been and it might not. 30

The potassium cyanide and the other acids, which he found among the exhibits, are all used in the goldsmith's trade. There was a sheet with stains but no trace of potassium cyanide. The same evidence applied to a mattress which he had examined. He did not know what caused the stains to the latter. 40

In solution, the evaporation in potassium cyanide takes place quickly; when inhaled it causes constriction of the throat; the taste would be bitter; it has a stinging sensation if taken alone in strong solution. At the end of his re-examination by Counsel for the Crown he

produced a tube, saying: "This is a tube; it comes from my custody; it contains 5 grains potassium cyanide." It was admitted and marked "F." RECORD.  
p. 7, l. 23.

7. Dr. William W. Besson, a Government Medical Officer, said that when he examined the lady who had been brought to the hospital by the accused, he found that she was dead. He performed the post mortem examination. p. 7.

*Externally* there were no signs of violence. p. 8, l. 17.

*Internally* a part of the right lung showed some congestion and there was a little fluid in the right side of the chest. Around the right kidney the tissues showed some "bruise blood." The bleeding in the tissues around the kidney was probably caused by some injury; any blow on the loin might produce it. He removed the stomach and contents and put this in a sealed jar. He did the same with the kidneys and a piece of liver.

Having heard the evidence given by the Government Analyst, Mr. Newsam, he said that death was caused by cyanide poisoning.

Potassium cyanide is quick acting and poisons by the liberation of prussic acid in the stomach. A normal stomach is of acid reaction.

20 The taking of food, liquid or otherwise, would cause outpouring of gastric juice which is acid and therefore would be more acid than a resting stomach; in other words, there would be increased acidity. The smallest fatal dose is between 2 and 3 grains. The symptoms come on with great rapidity and the patient becomes insensible. With that insensibility is lost the power of voluntary act. The person taking the poison assumes a characteristic appearance; there is rigidity of the body, the eyes are staring, the pupils are dilated and a froth appears at the mouth; the breathing is often heavy and the heart gradually fails resulting in death. It is possible to get vomiting. There is vomiting in the majority of cases.

30 Where vomiting takes place, it should take place almost immediately after the poison is taken; some of the poison would be in the vomit. Consciousness would be lost in a matter of seconds. In answer to the Court, he said that the eyes of the woman were slightly dilated; and that internally he saw no signs of gross abnormality.

In cross-examination he said that there have been on record a few cases where a statement is made that a minute or so may elapse before the symptoms show themselves; if that is admitted then a person in that time may do a voluntary act. p. 9, l. 14.

Potassium cyanide has a characteristic smell. He was of opinion that the "bruise blood" about the kidneys would not result merely because one is suffering from Bright's disease. p. 9, l. 17.  
p. 9, l. 11.

8. Sergeant Thomas said that as a result of a message on the 17th September, 1946, he went to Dr. Besson's Surgery where he saw Dr. Besson, the accused and the body of the deceased. He asked the p. 11, l. 37.

RECORD. accused if Ayesha was ill or had been complaining about being ill and accused said "No."

p. 11, l. 40.

The accused said "about 9 o'clock Naimoon (his daughter) woke me up and said 'Pa look what Pawah ah do'." Accused said he got up and saw Ayesha lying on her bed frothing. Later that afternoon accused came to the police station and made a statement which was put into writing, read over and signed as correct. When the statement was

p. 12, l. 1.

p. 87.

p. 12, l. 8.

made no charge was at that time contemplated. On Sunday the 29th September, 1946, he went to the house of Hamida (sister of the accused) where he saw the accused and told him that he had a warrant to search his house. The accused went with him and opened the house. He searched the house upstairs first and then the workshop under it. In the latter part there was a cupboard secured by a small padlock. The accused opened the padlock. He found three bottles containing liquid. He asked what the contents were and the accused said nitric acid, muriatic acid and cyanide of potassium. These three bottles were exhibits. At 7 p.m. on the same day he went to the house of Saffeullah. He took three bottles from the house of Saffeullah; two contained liquid and one contained white solid stuff. These bottles were put in as exhibits. The six bottles he later gave to Constable McKinnon.

p. 12, l. 22.

p. 12, l. 27.

He said that he had left other bottles in the workshop cupboard of the accused. Naimoon is about fourteen-years old. He did not take a statement from her and did not know if any other policeman did so.

Accused told him that he was lying on the sofa when Naimoon used the words mentioned and it was after that he went into the bedroom and found Ayesha lying on the bed frothing.

p. 12, l. 46.

9. Superintendent Billyeald, in his evidence, said that on the 1st October, 1946, he went to the house of Hamida where he saw the accused, who is also called Cuffie, and told him that he wanted to see his house; that the accused produced a bunch of keys from his pocket and unlocked the door of the house which he said he had not occupied since the deceased died; that the accused showed him the couch where he said he had been sleeping when called by his daughter; that the accused showed him the east bedroom where there were two double-beds side by side and pointed out the one which his wife had occupied; that the mattress on that bed had a large stain; that the accused did not know if the deceased had vomited on that part and that it might be urine; that when told that the police had a certificate saying the deceased had died from cyanide of potassium the accused said he had not heard anything like that; that the kitchen hearth had been freshly daubed and cleaned; that at the back of the kitchen six enamel drinking cups were found to be clean, dry, without fluid, sediment, watering stains or any odour; that all drinking vessels about the kitchen were in the same cleanly condition; that in the middle room and gallery cleanliness prevailed; that in the bedroom he found no drinking vessels, cups or glasses, bottles or phials; that in the workshop he found benches, tools,

a hammock and a wooden press secured to the wall; that the accused said he used in the course of his trade sulphuric acid, nitric acid, muriatic acid and a solution called cyanide of potassium; that the accused said he kept these things in the locked press on account of his children being about; that the accused opened the press padlock with a key and showed several bottles inside; that the accused locked up the cupboard with the bottles and a teacup which were inside; that the accused that day was taken to New Amsterdam and detained in police custody; that on the 2nd October, 1946, the accused was taken to Reliance police station, 10 formally charged and cautioned; and that he said nothing in answer to the charge.

RECORD.  
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p. 14, l. 41.

He went on to say that on the 2nd October, 1946, he went back to the house of the accused with Hamida, Constables McKinnon, Britton and others. He opened the wooden press and took the bottles and teacup which were marked exhibits C.M.7 to C.M.14. Hamida took to the police station a sheet which had stains on it (Ex. C.M.15).

p. 14, l. 45.

p. 15, l. 1.

p. 6.

p. 6.

When he removed exhibits from the press or cupboard on the 22nd October, 1946, he found that the small padlock opened quite easily.

p. 15, l. 18.

20 In cross-examination he said that when he went there first the accused produced the keys and used them himself. The accused put the key in the padlock, appeared to be turning it and did not pull the padlock. He seized the keys from the accused in prison. When he tried the key he found it not to be working and considered that the lock was defective. The cup, when he saw it, had what looked like moist sediment, but had no liquid which could be thrown out. He was aware that potassium cyanide is used for cleaning jewellery. That was general knowledge.

30 10. Constable McKinnon, in his evidence, said that he accompanied Superintendent Billyeald to the house on the 1st October, 1946, when the accused was present. On the following day he again accompanied the Superintendent when the latter took some bottles and a teacup from the cupboard. On the 3rd October, he took exhibits C.M.1 to C.M.15 to Mr. Newsam, government analyst. Four days later he took a mattress to him.

p. 11.

p. 11, l. 14.

p. 6.

40 In cross-examination he said that the Exhibits C.M.1 to C.M.15 were from the workshop of the accused; that most of these bottles were in the press; and that some of the other bottles were on the press and others at the side of the press. He could not remember if any was taken from upstairs; it might be possible that a bottle or two might have been taken from upstairs.

11. Sergeant Ramchandarsingh, New Amsterdam, said that Superintendent Billyeald informed him that the accused had elected to make a statement when he was brought to the police station there on the 1st October, 1946. He cautioned the accused who made a statement which was read over and signed as correct.

p. 16.

p. 90.

## RECORD.

p. 14.

p. 92, l. 37.

One of the counsel for the accused objected to a portion of the statement at the end on the ground that it was not relevant to the issue; that it was highly prejudicial; and that it appeared that the last two sentences were given in answer to questions put to the accused.

Crown Counsel submitted that everything said or done by the accused was relevant.

p. 16, l. 23.

The Court admitted the Statement, leaving over a ruling on the admissibility of the last two sentences until the bigger question on the admissibility of other evidence was argued and authorities submitted.

p. 16.

12. Mildred James, in her evidence, said that accused always used to beat Ayesha and that they lived very badly; that in August, 1946, she was sitting on the step of Lady Ruth (Ruth Oldfield) about 6 o'clock in the afternoon when she heard Ayesha crying and that when she returned from the pictures at 11 p.m. Ayesha was still crying; that when she called out asking the accused if he was not weary of beating Ayesha the accused told her to get down his steps before he kicked her down; that Abraham Massiah, Ayesha's husband, called out to Ayesha that if she did not leave, the accused would kill her; that the accused in the house could have heard; that three weeks before her death Ayesha was crying and showed her a black and blue mark on her leg; that accused came in, dragged Ayesha by the hair, and knocked her down; that the accused said to her: "Neighbour Mildred you don't know this woman, through this woman people got to say I kill my first wife, she must go away"; and that when Ayesha said she was not going, the accused said: "If you can't go alive, you got to go dead." 10

p. 17, l. 33.

She said that in answer to a query as to what was wrong with Ayesha the accused replied: "Neighbour Mildred if there is anything you know don't talk." She said to him: "All I know you does beat she bad."

p. 19.

13. Abraham Massiah, said that Ayesha was his wife having been married at the Church of Scotland at Auchlyne in 1930; that accused lived with Gooriah also called Bakridan, until she died in 1944; that Ayesha lived with the accused for about two years; that after living well for a short time accused continually beat her and on a few occasions put her out of the house; that on the night prior to the death of Ayesha he heard the voices of the accused, Ayesha, Hamida and Dalgetty; that accused said: "Come man Dalgetty come tell me what Ayesha tell you"; that Dalgetty said something which was followed by a blow; that Ayesha said: "Dalgetty me tell you so?"; that another blow followed; that Ayesha said "God Dalgetty look you go mek Noor Mohamed kill me now"; that another blow followed; that Ayesha said: "God Noor Mohamed ah kill you go kill me foh true"; that accused then said: "Yes you bitch ah go kill you tonight, you na got no right foh carry ma private business and tell people outside"; that he then heard a lash now and then until about 4 o'clock in the morning; that about 6 o'clock he saw Ayesha sweeping the yard; that when he was passing the house he heard the accused saying: "Naimoon, who you Poowah deh?"; that Naimoon replied: "She dey downstairs"; that 30

p. 20, l. 1.

accused said: "tell she foh come up yah"; and that later in the day he heard that Ayesha was dead.

RECORD.

In cross-examination the witness said that when Ayesha left him he took another wife who was still with him; that he had tried to get Ayesha back; that he heard the lashes from his own door-step; that Ayesha was crying loud but not too hard; that the crying could be heard at his house; that he could not say how many lashes he heard or that it was a large number; and that when he was passing at 6.30 a.m. Ayesha was still in the yard.

- 10 14. Augustus Bender said that the accused and Ayesha had a fight partly every other day; that he heard accused come home singing about 11 to 12 o'clock on the evening before Ayesha died; that he heard accused discoursing with Dalgetty who was speaking very low; that accused told Ayesha: "I going to beat you tonight until you dead. You take my house business and carry it out"; that a lash and a heavy crash on the floor followed immediately after; that he lit a lamp and went outside where he saw Massiah standing at his portico with a lantern; that on returning to his house he heard accused beating Ayesha and that this lasted off and on for about an hour when he went to bed; that on the morning of the fatal day about 9 o'clock or later he saw Ayesha come out from the kitchen door with a cup and a plate and sit on the first treader of the steps drinking tea; that she left the cup and the plate and went to the latrine where she stayed about five minutes; that she then went into the yard when accused was on the front steps; that after the accused spoke to her they went upstairs together into the house; that Ruth Oldfield and he were discoursing together when he saw the accused rushing towards them in the direction of the public road; that when Ruth asked what was wrong accused said that he went into the house and found Ayesha on the bed frothing. In cross-examination he admitted that he had a fight in 1945 with the accused who "burst his own head"; that the lashes were hard; and that he could not say how many lashes he heard.

15. Osborne Richards said that he was assistant to Mr. G. G. King whose drug store was situated next to the house of Saffeullah; that about 9.30 a.m. on the 17th September, 1946, the accused came and asked for Mr. King; that on being told that Mr. King was at the back of the store where he was then living, the accused went away but returned fifteen minutes later; that accused told Mr. King that he was asleep when his daughter awoke him saying his wife was frothing; and that Mr. King advised the accused to take his wife to the hospital.

In cross-examination witness said he looked at the time as Mr. King had instructed him to do so if anyone came and he was not in the shop.

16. Gurney Gustavus King said that he saw the accused on the 17th September, 1946, when he came to his store at about 9.45 a.m.; that accused said he was just awakened by his daughter who told him

RECORD. that his wife was frothing; that he further told him that he had gone to the doctor but that the doctor was not at home; that he advised the accused to take his wife to the hospital; and that he had been living at the back of his store for about six months or so.

p. 23. 17. Insanally said that he told the accused that Ayesha brought him to the house to make peace; that Ayesha had told him that accused was cursing her, saying she was keeping a man; that accused said he never told her so; that he told the accused he had better leave the woman before he got into trouble; and that the accused said he would make peace with her early. 10

p. 23. 18. Alfred Charles said that in March, 1946, he spoke to the accused about his wife having reported that she had been driven away and that after this talk the two lived together again; and that three months later when Ayesha was away again he spoke to her with the result that she returned to the accused on the following day.

p. 24. 19. Julian Jules said that in March, 1946, Ayesha was living near him in the house of one Zohora Ghannie as accused had put her out; that one night, after midnight, he heard a cry and peeped through his Jalousie; that the accused called on her and said she was late in answering him as she had a man inside; that when she said: "No papa go in and see," accused chuckled her; that he chuckled her after she had said: "Ow papa carry me home," and "Ow papa don't mind you kill me. Carry me home. I can't do without you"; that accused said: "What am I going to do with a whore like you?"; that Ayesha cried all night after accused left; and that after a time they lived together again. 20

In cross-examination the witness said that he was in bed, got up when he heard the cry and went to the Jalousie but did not go out; that Ghannie did not come out; and that he did not see the other two persons who lived in the house come out either.

p. 24. 20. Seerattan said that in August, 1946, he took an "ornie" or Indian veil for Ayesha to work; that he did not go into the house; that Ayesha who was eating by the kitchen door seemed as though she was crying; that Ayesha said she was sorry she had left Abraham's house as she was suffering; that she said the accused was treating her badly and stating that she was friendly with another man; and that accused came up to Ayesha at the door and told her that she was squandering his money and that a woman like her was not fit to live with another man. 30

In cross-examination he said it was not true that the accused did not know him; and that Ayesha did not receive the job as she said she was not working any more. 40

p. 26. 21. Fogarty Chunoo, assistant dispenser at the Skeldon hospital, said that between 9 a.m. and 10 a.m. on the 17th September, 1946, accused brought a sick woman in a car and told him he did not know what was wrong with her; that she had no pulse; that her face was bluish and she was sweating; that she was foaming at the mouth; that she was



breathing deeply; that she was unconscious; that accused said she had vomited at home; that when he asked for the thing which she had vomited on, accused sent for a sheet which arrived in about fifteen minutes; that the vomit on the sheet formed a triangular patch at one end of it; that he smelt it, but could not smell anything; that when asked if Ayesha had taken anything like fire-water, *i.e.*, sulphuric acid, accused replied: "Firewater would burn the mouth"; that when asked to smell the sheet, accused said: "This smell like gold solution"; that when asked how gold solution was made up, accused said it was made up of potassium cyanide and other things; and that when he reported to Mr. Mohabir, chief dispenser, he told them to take Ayesha to the doctor.

RECORD.

22. The jury were made to retire when Counsel for the Crown applied to lead evidence of the death of the former wife of the accused from potassium cyanide poisoning on the 17th May, 1944. p. 26, l. 37.

One of the defence Counsel objected to the admissibility of the evidence on the following grounds:— p. 27, l. 1.

"(1) It does not establish system or course of conduct.

"(2) It does not rebut any suggestion on the part of the accused of accident or mistake.

"(3) The evidence is not relevant to the issue before the Court.

"(4) In proximity of time and in circumstances there is no nexus between the two sets of facts.

"(5) The evidence does not implicate or connect the accused as being the person responsible for the death of his first wife, Gooriah; the evidence is to the contrary.

"(6) Even if the evidence is legally admissible, it should be rejected as legal evidence on the ground of policy and fairness since it would tend to prejudice the accused."

30 Defence Counsel argued that accused could not be implicated; that Gooriah did not die at home; that she died in the house of Saffeullah; that accused could not have administered the poison in view of the distance between the two houses and the lapse of time before her death; that neither system nor cause of conduct were established; that accused had not suggested accident or otherwise; and that he had not suggested that he knew anything about the death of either party.

After Crown Counsel had replied the Court permitted the evidence to be led and the jury returned. p. 28, l. 1.

23. Ramchandarsingh was recalled and the whole of the statement of the accused made on the 1st October, 1946, was now admitted and read. p. 29. p. 90.

24. Constable Hipplewaithe said that accused reported the loss of 300 dollars. The Statement is dated the 20th January, 1944. p. 31. p. 75

## RECORD.

- p. 29. Constable Heyliger gave similar evidence on this subject. The  
p. 76. Statement made is dated the 21st January, 1944.
- p. 30. John Sadool admitted attacking the accused and leaving his hat  
behind, but he said nothing about the loss of 300 dollars which the wife  
of the accused had informed the accused had been stolen.
- p. 29. Constable Heyliger also put in evidence a statement of the accused  
p. 78. dated the 17th May, 1944.
- p. 30, p. 82. Warrant Officer Phoenix put in a statement of the accused dated  
the 9th June, 1944.
- In cross-examination he said that no inquest had been held relative 10  
to the death of Gooriah up to October, 1944, when he left.
- In re-examination he said he did not know if any inquest was held,  
although application was made for one.
- p. 31. 25. Abraham Massiah, on being recalled, said that in September, 1943,  
accused told him: "Buddy tonight me catch wife with John Sadool";  
that after that he beat Gooriah very badly and that on another occasion  
when alone accused told him: "Buddy ah got a mind to poison this  
bitch"; referring to Gooriah.
- p. 80. The witness had made a statement on the 7th June, 1944, in which  
he said nothing about the accused having a mind to poison the bitch 20  
and said: "I have never heard him beating her at any time up to her  
death."
- p. 32. 26. Augustus Bender, on being recalled, said that the accused had  
told him about the conduct of John Sadool with his wife Gooriah.
- p. 32, l. 43. On the day of her death, he saw Gooriah go towards the house of  
Saffeullah when "she had a child in her hand and she had a piece of  
white paper wrapped up in her hand; the paper was no bigger than a  
2 shilling piece". He heard a boy shouting: "Pawah Gooriah dead."  
The boy brought the accused from his house to the house of the tragedy.  
He concluded his evidence by telling what the accused said and did at 30  
the house of Saffeullah, with reference to a piece of paper and a cup.
- p. 34. 27. Jane Fraser said about Gooriah on her way to Saffeullah's  
house where she died: "She passed me and I spoke to her. She stood  
up and spoke to me. She had two children with her; she had a small  
one in her hand and the other one was holding on to her dress behind  
her". She thought the accused was at home. Perhaps about half an  
hour after she had spoken to Gooriah she heard of her death. The  
neighbours ran with her and she thought the accused also ran behind them.
28. Joseph Fraser, husband of Jane, said that on the day on which  
Gooriah died, he passed the accused's house and heard him conversing 40  
with his wife in the drawing room. Accused said to her: "You must  
drink this; think it would do you good." That would be between 1 p.m.  
and 2 p.m. He went home, and afterwards went out selling fish. At  
Saffeullah's house where he sold fish he saw Gooriah sitting on a bench  
in Saffeullah's gallery and she spoke to him.

Some time later when he was at home he heard something and went to Saffeullah's house where he saw Gooriah lying on the kitchen floor. RECORD.

When cross-examined he said: "It was about 20 minutes between the time I got home and the time I saw Gooriah at Saffeullah's house. She spoke; she was quite well."

29. Seerattan, on being recalled, told about the John Sadool episode of September, 1943, and said that he spoke to Gooriah when she was on her way to the house of Saffeullah. He said it was not true that the accused did not know him. p. 36.

30. One Mahadai said that at the beginning of 1946 when going in the yard she heard Ayesha say: "Ow daddy you want to kill me," and that on going into the bedroom of the house she saw Ayesha's hands tied with a piece of cord and the accused beating her with a buckle. She held accused and Ayesha got away. p. 37.

31. Dr. W. W. Besson, on being recalled, gave evidence about being called in when Gooriah died and about the examination of the body. p. 37.

In cross-examination he said: "Potassium cyanide is a quick acting poison; it causes collapse and it affects locomotion. In the case of a person taking potassium cyanide where at post mortem 2 grains are found in the stomach I do not think it is possible for that person to walk 458 feet carrying in one arm a child. I do not think it is possible for that person having taken that dose to be alive and able to speak some 15 minutes after." p. 37.

The analyst, Mr. C. L. C. Bourne, had found 2 grains of potassium cyanide in the stomach and contents and stated that the analysis of the liver could not be proceeded with on account of advanced decomposition. p. 40.

32. Elizabeth Douglas said that on the day of her death Gooriah passed her range carrying her last baby in her arms; that some time after on hearing something she went to the house of Saffeullah and saw Gooriah lying on the kitchen floor; that accused was not there then but arrived later; that when the accused came he asked what was the matter with her and they told him; that he sent a boy to pick up a piece of paper which he saw through the window; and that he wrapped up the paper and gave it to the doctor. p. 42.

33. Azeez said that, on the day Ayesha died, he passed the house between 8 and 9 o'clock in the morning and saw Ayesha sweeping the yard and that the accused was on the fronts steps of his house. p. 44.

34. When Counsel for the Crown asked that the Statement of the accused be read as he intended to close the case thereafter, one of the Counsel for the accused objected to that procedure. He submitted that Counsel for the Crown had not complied with the Criminal Law Procedure Ordinance, Chapter 18, as amended by the Criminal Justice Ordinance, 1932, Section 19, and referred to Section 70A of the principal Ordinance. p. 46, l. 1.

RECORD.

In reply Counsel for the Crown said that the witnesses were available, were in attendance and may be called by the defence. The witnesses not called were on the depositions and on the premises.

The Court ruled that the Crown's procedure was quite correct and that as the witnesses were available Counsel for the defence could not complain.

p. 47.  
pp. 75, 76, 78,  
82, 87, 90.

35. The accused made a statement from the dock. He said that he relied on all statements made to the police; that he had nothing to do with the deaths of Gooriah and Ayesha; that he was not legally married to either of them; that sometimes he had a row with Ayesha when he slapt her; that he twice put her out; that he took her back when she begged him to do so; that she always said that if he put her out again or didn't want her she preferred to kill herself as she didn't want Massiah and her parents were against her; that on the 16th September, 1946, he came home sweet, that Ayesha had a row with him because he was drunk; that he told her to clear out if his ways did not suit her; that she began to cry, called Naimoon, gave her her ear-rings, and took off her bangle; that he fell asleep; that next morning Naimoon woke him up saying: "Pa look what happen to Poowah"; that he went into the bedroom and saw his wife Ayesha frothing on the bed; that he ran over to dispenser King who was not in; that he took a bicycle from his brother-in-law, Saffeullah, and went to see the doctor with Benni Persaud whom he met on the way; that a lot of people were under the doctor's house; that one of them told him that the doctor was not in; that he then called on dispenser King who told him to take Ayesha to the hospital; that he got a car and took Ayesha to the hospital; that Mildred James was not there; that there was no sheet in the car; that he sent for the sheet afterwards; that he did not want to call on dispenser Mohabir; that he was not on speaking terms with Bender who in 1945 in a fight had burst his head so that he had to get eight stitches on it; that Bender did not come to his house; that he had never seen Seerattan until he gave evidence in Court and he did not know him; that Massiah was hostile to him from the time he started to live with Ayesha and they ceased to be on speaking terms; that Massiah was always instigating Bender to fight with him; and that God knows he was entirely innocent.

p. 47.

36. Zohora Ghanie said that he gave evidence in the Magistrate's Court when he was called for the prosecution. He said that Jules was his neighbour; that Ayesha stayed at his house six to seven months before she died; that she never stayed there again; and that she returned home on the third day.

p. 48.

37. Cannies Phatma supported what Ghanie had said about Ayesha's visit of two to three days at his house. She said that Ayesha told her she would kill herself if her husband did not take her back. They made it up and he took her back. She made a statement to Constable Harry about a fortnight after Ayesha died and she touched the pen. She denied that she ever told the police that Ayesha had said to her that accused had seen another woman and wanted to marry her. She denied that she ever told the police: "She did not tell

me the name of the woman." She told Constable Harry that Ayesha had said she would commit suicide, but Constable Harry said he did not want to hear that. She told other Constables that she did not know anything about the story as she thought that Ayesha was joking. She said she gave evidence for the prosecution in the lower Court. RECORD.

38. Islim Lakhan said that she saw Gooriah on the road on the day of her death about 11 a.m. and then go into the house of Saffeullah; that Gooriah came out and bought fish about half an hour before she died; that she heard Saffeullah's daughter shouting: "Come quick I don't know what's wrong with Gooriah"; that on answering the call, with two neighbours, she found Gooriah lying on the kitchen floor; that accused was not there; that accused arrived later; that a son of Saffeullah, Zareoullah, about 11 years old, brought in a piece of paper from outside, showed it to the accused and told the accused that it was poison; that the accused did not send the boy for the paper; and that the accused told the boy to show it to the doctor. She did not see Bender there. p. 49.

39. Shubra said that Gooriah was her cousin, that Saffeullah's daughter called her about 2 p.m. and when she went to the house she saw Gooriah lying in the kitchen; that accused arrived after her; that she did not see the person who handed the paper to the accused; that she saw the cup come in when the door was half closed; and that she remembered the accused showing the paper and the cup and his remarks about potash. p. 49.

40. Hamida, sister of the accused, said that on the night prior to the death of Ayesha she went to the house of the accused with her son, Ramjanally, to discuss with him about the latter's pending wedding; that she arrived about 8 o'clock when she found Ayesha and Naimoon at home but not the accused; that she and Ayesha went to one of the beds in the bedroom and the four children to the other bed in the same bedroom about 10 o'clock; that her son slept in the Morris chair in the gallery; that she remained in bed, but Ayesha got up when accused returned about 11 o'clock; that when accused spoke she knew that he was drunk; that she got up about 6 o'clock in the morning, when Ayesha was still sleeping, and told Naimoon, who had got up to attend to the fire, that she was going home; that her son had returned home before her; that her daughter later in the day said she had seen her uncle in a car going to the hospital; that she went to the hospital and asked the accused what was wrong; that accused said he was asleep when Naimoon woke him up; that at the hospital she saw Ayesha frothing up; that Jamaladeen who worked with the accused went away and brought back a sheet which he gave to Fogarty Chunoo; that she did not see Mildred James at the hospital; that on the night of Ayesha's death they kept "wake"; that after three days accused went with Naimoon and Nisa a daughter of Saffeullah's brother to get his clothes, as he had lived and slept in the same clothes; that Naimoon and Nisa told her that they had cleaned up the place, washed up the things and redaubed the fireside; and that it was these two who brought back the accused's clothes to her house, where he remained. p. 50.

RECORD.

p. 52.

41. Jamaladeen said he had worked as an apprentice to the accused for eighteen months; that when he arrived at the workshop on the day of Ayesha's death about 7.30 to 8 a.m. he found Ayesha inside lying in a hammock; that a few minutes later he went to Saffeullah's shop to refine or mill a ring as there was no mill in the accused's shop; that after spending about half an hour there he was returning when he saw the accused who had come from Mr. King's drug store; that both of them went to Ayesha's bedroom where Ayesha was lying on the bed; that he brought a cart from one Karamat; that he did not use the cart as Jim Kamrudin came in with a car; that Ayesha was put in the car 10 by the accused, Beni Persaud, a woman and himself; that he went for a sheet which he gave to Fogarty Chunoo, the acting dispenser at the hospital; that he used to bring cyanide from Saffeullah in a teacup which was an exhibit; that the cup was kept in the press; that one afternoon after using solution to clean a chain he took his handkerchief and wiped the chain; that accused told him the thing was poisonous and that he should throw away the handkerchief which he put into the latrine; that accused then put a padlock on the cupboard; that he never saw accused pull Ayesha by the hair and say: "You whore you make me first wife die and made people say me kill her"; that he had never 20 seen Mildred James in the workshop; that he gave two statements to the police; that it was not possible that he said in his second statement that accused said Ayesha was an enemy and threw her clothes out; that what he did say was that Ayesha took her clothes and that he helped her to carry the machine to the house of Zohora; that one Latchman, a goldsmith, had told him how to make a solution and that he had copied his directions in a book; and that he knew the smell of potassium cyanide, but when weak one cannot smell it. He gave evidence at the Magistrate's Court.

pp. 89, 93.

p. 56.

42. Ruth Oldfield, christened Lady Ruth, said that when Ayesha 30 died Mildred James was not living in the range as she had moved from there between July and August; that Mildred James never sat on her steps; that it was Sumintra who was sitting on her steps, with a baby in her hand, on the day Ayesha died; that she told the policeman when she gave him a statement that although she lived so near she did not know if they lived good or bad or if they had any misunderstanding; that she never went with Mildred James at any time to the pictures; and that when she occasionally went to the pictures it was always alone.

p. 95.

p. 95, l. 19.

In re-examination she said she was quite sure that Mildred James never went to the pictures with her at any time. 40

p. 58.

43. Mildred Elcock said that she knew Gooriah and saw her lying in the kitchen of Saffeullah between 2 and 3 p.m.; that many persons were in the house; that accused came after she arrived; that a woman called the accused and said a piece of paper was through the window; that accused sent a boy to pick it up; that the boy returned and gave it to the accused; that the accused went to the bedroom and

gave it to the doctor; that the same woman again called the accused and gave him a cup which he took to the doctor. RECORD.

Crown Counsel, through the Court, asked questions about what witness had said in a statement made to the police. p. 81.

44. Benni Persaud confirmed what the accused had said about taking Ayesha to the hospital and stated that Mildred James was not at the hospital. p. 59.

He said that the police took two statements from him. These are not on the record.

10 45. Naimoon, the fourteen year old daughter of the accused, confirmed what had been said by Hamida about the four children of the accused being in one bed, Hamida and Ayesha being in the other bed and Ramjanally being in a Morris chair by 10 o'clock on the night before Ayesha died. p. 60.

She said that when her father came in later Ayesha began to quarrel with him for drinking too much rum; that the accused said if she did not like his ways she must go out; that Ayesha then began to cry and called her from the bedroom; that Ayesha gave her a pair of ear-rings and said: "Naimoon take this. Sometimes me na may see she back again"; that Ayesha then pulled off her bracelet and put it on the couch by the side of the accused; that next morning she woke up at 6 o'clock; that Ramjanally was not there; that when she was lighting the fire Hamida said she was going; that Ayesha was then sleeping; that her father was still sleeping on the couch in the hall; that Ayesha woke up between 7 and 8 o'clock and went to the latrine; that Ayesha then came upstairs, took the workshop key, opened the workshop and went inside; that when passing for a bucket of water at the pond she saw Ayesha lying in a hammock in the workshop; that after she took the water to the kitchen and went for a comb she passed through the hall where her father was still sleeping; that when she called her small brother from a mango tree she saw Ayesha coming up from the workshop smiling and go into the bedroom; that on hearing a groaning in the bedroom she ran in and found Ayesha frothing on the bed; that she shook her and said: "Powa what happen"; that getting no reply she ran and woke her father who was still sleeping on the couch and said: "Look what happen to Powa"; that her father ran into the bedroom, shook Ayesha and said: "Mother what happen?"; and that her father then put on his trousers, went out and took Ayesha away in a car.

40 Crown Counsel put in a statement which had been taken from her by the police on the afternoon of Ayesha's death. p. 86.

46. Counsel for the prosecution and for the defence addressed the jury.

The Judge summed up and the jury retired.

47. After the jury had retired for about two hours, they asked to be brought back. The foreman asked the Judge for an explanation in respect of manslaughter involving negligence and the cupboard and the

**RECORD.**  
 p. 11, l. 25. bottles of potassium. The Judge explained to the jury what culpable negligence meant but informed them that the Court of itself did not see how it formed part of the case. The jury asked for bottles and a list was given to them. It was improper for the Judge to practically withdraw the manslaughter consideration from the jury in view of the evidence of Constable McKinnon who said that he and Superintendent Billyeald, had "removed the bottles in Exhibits B.1 to B.15 from the workshop of the accused; most of those bottles were in the press, some of the other bottles were on the press and others at the side of the press. I cannot remember if any was taken from upstairs; it might be possible that a bottle or two might have been taken from upstairs." 10

In his summing up the Trial Judge, in referring to the death of Ayesha, said the defence said it was suicide.

The accused never said so. He simply said he was innocent.

It was the defence Counsel in his address to the jury who in analysing the evidence said that this was a possibility and he cited the prosecution evidence of Julian Jules who said she couldn't do without him.

Other possibilities were administration by Naimoon, by Jamaladeen the apprentice who met the deceased in the workshop or some other person including the legal husband, Massiah, who gave evidence about seeing Ayesha that morning early. The way the Trial Judge put it was to the effect that if the jury found it was not a case of suicide, then the accused killed her. That is wrong. 20

The Jury returned a unanimous verdict of guilty of murder and the accused was sentenced to death on the 3rd June, 1947.

48. There is no Court of Criminal Appeal in British Guiana, and an application to the Judge under Section 174 of Chapter 18 of the Laws of British Guiana to reserve a question of law which had arisen at the trial for the consideration of the Court of Appeal was made before sentence of death was passed. 30

This question of law relates to the admissibility of evidence concerning the death of Gooriah.

The Trial Judge refused to state a case.

It is an amazing contrast that for a money debt or any civil matter one may appeal as of right to the West Indian Court of Appeal, yet for his life a prisoner can be denied the opportunity to appeal.

49. On the 31st August, 1946, the Governor of British Guiana made rules regarding the procedure to be observed for dealing with applications from, or on behalf of, persons under sentence of death for special leave to appeal to the Judicial Committee of the Privy Council. 40

On the 19th December, 1947, as already mentioned, by an Order in Council special leave to appeal to His Majesty in Council was granted.

50. This appeal has been preferred against the aforesaid verdict of guilty of murder and the sentence of death passed on the appellant by Mr. Justice Jackson (acting) of the Supreme Court of British Guiana on



the 3rd June, 1947, and the Appellant respectfully submits that the appeal should be allowed, and the conviction and sentence set aside for the following, among other,

RECORD.  
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REASONS:—

1. Because there was a needless array of exhibits under the gaze of the jury helping to give an impression of guilt.
2. Because the three bottles of cyanide of potassium taken, and produced, from the house of Saffeullah, and the tube containing 5 grains of cyanide of potassium produced as coming from the custody of Neville Newsam, analyst, were clearly inadmissible.
3. Because much of the evidence given for the prosecution was false.
4. Because the evidence about the beatings prior to the death of Ayesha was manifestly false in view of the medical evidence that externally there were no signs of violence.
5. Because it was improper for the Judge to practically withdraw from the jury the consideration of manslaughter in view of the evidence of Constable MacKinnon.
6. Because at the time when evidence was led about Gooriah, the accused and his witnesses had given no evidence, while the accused had merely said he was innocent.
7. Because even when evidence was led for the defence, neither the accused nor his witnesses made any direct reference to suicide as being a cause of the death of either Ayesha or Gooriah.
8. Because there was, however, ample evidence from which suicide might have been inferred as a possible cause of death on the part of both ladies.
9. Because it was wrong for the Judge to put the alternatives of suicide by the deceased, and guilt of the accused, as the only possible alternatives.
10. Because evidence dealing with Gooriah was wrongfully admitted and the said admission vitiated the whole proceedings and caused a grave miscarriage of justice, inasmuch as—
  - (a) It does not establish system or course of conduct.
  - (b) It does not rebut any suggestion on the part of the accused of accident or mistake.
  - (c) The evidence is not relevant to the issue before the Court.

(d) In proximity of time, and in circumstances, there is no nexus between the two sets of facts.

(e) The evidence does not implicate or connect the accused as being the person responsible for the death of his first wife Gooriah; the evidence is to the contrary.

(f) Even if the evidence is legally admissible, it should be rejected as legal evidence on the grounds of policy and fairness since it would tend to prejudice the accused.

T. B. W. RAMSAY. 10

HY. S. L. POLAK & Co.,  
Danes Inn House,  
265, Strand, W.C.2,  
*Solicitors for the Appellant.*

In the Privy Council.

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**ON APPEAL**  
*FROM THE SUPREME COURT OF  
BRITISH GUIANA.*

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BETWEEN

NOOR MOHAMED *Appellant,*

AND

THE KING - - - *Respondent.*

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**CASE FOR THE APPELLANT.**

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HY. S. L. POLAK & Co.,  
*Danes Inn House,*  
*265, Strand, W.C.2,*  
*Solicitors for the Appellant.*