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In the Privy Council.

No. 21 of 1948

44424

ON APPEAL FROM THE SUPREME COURT OF BRITISH GUIANA

BETWEEN

NOOR MOHAMED APPELLANT

AND

THE KING RESPONDENT.

CASE FOR THE RESPONDENT

RECORD

1.—This is an Appeal by Special Leave against the conviction of the Appellant on the 3rd June, 1947, at a trial by jury in the Supreme Court of British Guiana before Jackson J. (Acting) for the murder on the 17th September, 1946, of a woman called Mohabubhan or Ayesha who had been living with the Appellant as his wife. p. 68, l. 16

2.—The Appellant was alleged to have murdered Ayesha by potassium cyanide poisoning, and the chief matter for consideration is whether evidence was properly admitted that on the 17th May, 1944, the Appellant's wife Gooriah died of potassium cyanide poisoning in similar circumstances although Gooriah's death has not been the subject of any criminal charge. 10

3.—Before any evidence concerning Gooriah's death was tendered the prosecution called evidence to prove the following facts : p. 26, l. 33

(1) The Appellant and Ayesha had lived happily for a few weeks, but thereafter unhappily. p. 19, ll. 23-26 ;
p. 16, l. 36

(2) The Appellant had frequently beaten Ayesha, and had done so on the night before her death. p. 16, l. 36 ; p. 17,
ll. 11-14 ; p. 19,
l. 23, ll. 35-43 ;
p. 21, ll. 3-10

(3) The Appellant sometimes put Ayesha out of the house, and on one such occasion she had been elsewhere for two weeks. p. 19, l. 26 ; p. 23,
l. 32, p. 24, l. 7

(4) During that time the Appellant accused her of living with another man, and on another occasion had accused her of keeping a man. p. 24, ll. 9-19
20

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p. 23, l. 15-p. 24,
l. 20
p. 23, ll. 31-36

(5) That on more than one occasion Ayesha had sought the aid of the police, and on one occasion in March, 1946, when he had driven her from home, the Appellant told a rural constable that he did not want her any more. On the next day, however, the Appellant and Ayesha were living together again.

p. 16, l. 42 ; p. 17,
l. 11 ; p. 24, l. 19
p. 17, ll. 7-20

(6) Ayesha was often seen weeping.

(7) In August, 1946, the Appellant in Ayesha's presence told one Mildred James that through Ayesha people were saying that he killed his first wife, and she must go away. Ayesha said she was not going. The Appellant then said to Ayesha, "If you can't go alive you got to go dead." 10

p. 19, ll. 27-43 ;
p. 20, l. 44-p. 21,
l. 11

(8) Late on the night of the 16th September, 1946, the Appellant and Ayesha had quarrelled apparently over some statement which the Appellant alleged that Ayesha had made to one Dalgetty. Ayesha used expressions suggesting that the appellant was going to kill her. The Appellant said "Yes you bitch ah go kill you tonight you na got no right foh carry ma private business and tell people outside," or words to that effect.

p. 19, l. 43-p. 20,
l. 6 ; p. 20, ll. 31-37

(9) Early on the morning of the 17th September at 6 or 6.30 o'clock Ayesha's husband, a neighbour of the Appellant, saw Ayesha sweeping the yard, and Hamida, the Appellant's sister, in the doorway of the kitchen, and Naimoon, the Appellant's eldest child by his deceased wife, in the kitchen. He heard the Appellant's voice telling Naimoon to tell Ayesha to come upstairs. 20

p. 21, ll. 12-20 ;
p. 21, ll. 47-50 ;
p. 22, ll. 15-17

(10) Another neighbour on the same morning saw Ayesha come out of the kitchen at 9 o'clock or after, with a cup and plate. She sat drinking, then left the cup and plate on the steps, and went to the latrine. In about five minutes she returned to the yard. The Appellant was then on the front steps. He spoke to Ayesha but the neighbour did not hear what he said. Ayesha went to him. They went upstairs together and into the house. Ayesha had nothing in her hand, and the cup and the plate were still on the steps. 30

p. 22, ll. 20-27 ;
ll. 37-45

(11) At 9.30 on the morning of the 17th September, 1946, the Appellant came to the chemist shop of Mr. King, who was then living at the back of the shop, and asked for Mr. King. The assistant told him Mr. King was at the back. The Appellant thereupon left the shop.

p. 22, ll. 27-31 ;
p. 23, ll. 1-9

(12) At 9.45 a.m. the Appellant returned and told Mr. King that he was just awakened by his daughter who told him that his wife was frothing, and that he had gone to the doctor but that the doctor was not at home. Mr. King advised the Appellant to take his wife to the hospital.

p. 26, ll. 1-23

(13) Between 9 and 10 o'clock on the morning of the 17th September, 1946, the Appellant brought Ayesha to the assistant dispenser at Skeldon 40 hospital, saying he did not know what was wrong with her. She had no pulse, was breathing deeply, sweating, foaming at the mouth and

unconscious. Her face was bluish. The assistant dispenser gave a stimulant and reported to the dispenser who told the Appellant to take Ayesha to the doctor.

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- (14) The assistant dispenser had asked the Appellant for the thing on which Ayesha had vomitted and the Appellant sent for a sheet, upon which the assistant dispenser found a triangular patch of vomit, which he smelt but could not smell anything. The Appellant said "This smells like gold solution." The sheet when examined by the analyst between the 4th and 7th October had no trace of potassium cyanide. p. 26, ll. 11-20
p. 6, l. 35
- 10 (15) The Appellant was a goldsmith who in the ordinary course of his trade used a solution of cyanide of potash. p. 14, ll. 22-24
- (16) Dr. Besson was at his surgery from about 9 o'clock until 12 o'clock on the morning of the 17th September. At 11 o'clock the Appellant brought Ayesha in a car. She was dead. Dr. Besson summoned the police. Sergeant Thomas came, and the Appellant told him that about 9 o'clock Naimoon woke him and said "Pa look wha Pawah ah do" and he got up and saw Ayesha lying on her bed frothing. p. 7, l. 32-p. 8, l. 13
p. 11, ll. 35-42
- (17) The post mortem examination showed no external sign of violence, but there was bruise blood near the right kidney. The stomach, kidneys and part of the liver were sent for analysis which showed that death was caused by cyanide poisoning. p. 8, ll. 14-31
p. 6, ll. 1-14
- 20 (18) Potassium cyanide is a quick acting poison, liberating prussic acid in the stomach. Consciousness is lost in a matter of seconds and the power of voluntary act is lost. Vomiting usually takes place almost immediately after the poison is taken. The poison has a characteristic smell. p. 8, ll. 31-49
p. 9, l. 17
- (19) After the post mortem examination the Appellant made a statement to Sergeant Thomas in which he stated that on the 16th September he had been drinking heavily, but when Dalgetty took him home he "felt 30 "sweet but was not drunk." He said he slept on a sofa, and that in the morning about 7.30 to 8 a.m. Naimoon woke him up and said "Pa come "and see what happen to Powa." He said he went to the bedroom and saw Ayesha frothing from the mouth. The Appellant said that he ran over to King but did not see him; borrowed a bicycle from his brother-in-law; rode to the doctor's house but the doctor was not in; returned to King and told King his daughter woke him and he found his wife frothing; and took Ayesha to the hospital and then to the doctor, who found her dead and sent for the police. The Appellant said that the doctor asked him how long Ayesha was sick, and he had replied this morning, whereupon 40 the doctor said he was lying. The Appellant denied that he and Ayesha quarrelled. p. 12, ll. 1-5
p. 87, l. 20-p. 88, l. 25
p. 88, ll. 25-37
p. 88, ll. 37-39
p. 88, l. 43
- (20) The Appellant locked up his house and workshop, which was on the ground floor of the house, on the 17th September. On the 29th September he returned to it with Sergeant Thomas. In the workshop p. 13, ll. 16-20
p. 12, ll. 8-31

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- p. 6, ll. 19-23 in a cupboard secured by a small padlock which the Appellant pulled open Sergeant Thomas found bottles of which he removed three, which the Appellant said contained nitric acid, muriatic acid, and cyanide of potassium. The analyst found that they contained respectively $2\frac{1}{2}$ fluid ounces of a solution of potassium cyanide, 5 fluid ounces of potassium cyanide and 8 fluid ounces of potassium cyanide.
- p. 12, l. 46-p. 14, l. 17
p. 13, ll. 22-29
p. 13, ll. 31-36
p. 14, ll. 12-15
p. 15, ll. 20-28
p. 14, ll. 22-28
p. 15, l. 19
p. 15, ll. 1-7 ;
ll. 42-45
p. 6, l. 34
p. 16, ll. 1-13
p. 16, ll. 14-25
pp. 90-92
p. 14, ll. 41-43
- (21) On the 1st October Superintendent Billyeald examined the house and workshop and the Appellant showed him the couch on which he said he had slept, and the bed where he said Ayesha had slept on the night of the 17th September. The Appellant said he did not know what Ayesha had died of, and had not heard she died of poisoning or of cyanide of potassium poisoning. The superintendent found in the bedroom no drinking vessels, cups or glasses, bottles or phials. There were no vomit stains on the floor of any part of the house. The superintendent found that from the workshop to Ayesha's bed by the front steps was 40 paces taking 30 seconds to traverse, and by the kitchen stairs 30 paces taking 23 seconds. The Appellant told the superintendent that he kept his acids and solution of cyanide of potash locked up, and kept the keys himself on account of his children being about. The Appellant purported to unlock the padlock of the cupboard or wooden press, although (on a later visit) the superintendent found that the padlock pulled open quite easily. In the cupboard was a teacup without a handle in which there was moist sediment, and in it the analyst found traces of potassium cyanide.
- (22) On the 1st October the Appellant made a statement. The last two sentences related to Gooriah's death and were excluded from evidence until a later stage when evidence of Gooriah's death was held to be admissible. The statement gave an account of his movements on the morning of the 17th September. He also gave his account of the night of the 16th September denying that he and Ayesha had quarrelled or that he had beaten her or that Dalgetty had told him anything that Ayesha had told Dalgetty about the Appellant.
- (23) The Appellant was charged on the 2nd October with Ayesha's murder and said nothing in answer to the charge.
- 4.—The Respondent submits that in this state of the evidence, the prosecution properly sought to lead evidence concerning Gooriah's death, and that such evidence was admissible on the principle of *Makin v. Attorney-General of New South Wales* (1894), A.C. 57, and other cases.
- p. 26, l. 33-p. 28, l. 45
p. 29, ll. 1-7
p. 92, l. 37
- 5.—In the absence of the jury the learned trial Judge heard full argument on the admissibility of such evidence and finally permitted the evidence to be led.
- 6.—The Appellant's statement of the 1st October was then read in full. In the last two sentences the Appellant said that he did not know

if Gooriah died of cyanide of potassium. She died at his brother-in-law's house, suddenly, like Ayesha. RECORD

7.—The prosecution then called a great deal of evidence relating to Gooriah's death, including evidence of the following facts : pp. 29-46

(1) The Appellant believed Gooriah to be unfaithful and used to beat her. p. 76, ll. 9-12 ;
p. 32, ll. 24-35

(2) The Appellant had said of Gooriah to Ayesha's husband " Buddy " ah got a mind to poison this bitch." p. 31, l. 31

(3) Gooriah on the day of her death, the 17th May, 1944, went to the nearby house of the Appellant's brother-in-law, carrying a piece of folded white paper wrapped in her hand. She had had toothache and the Appellant was overheard to say to her " You must drink this it will do you good." p. 32, l. 42-p. 33, l. 1;
p. 33, ll. 45-48

(4) Shortly after a boy ran for the Appellant shouting " Pawah Gooriah dead." The Appellant went to the house and summoned Dr. Besson, who was passing. p. 33, ll. 1-5

(5) The accused went to the window and called a boy to bring him a paper, similar to that which Gooriah had had in her hand, from the yard. The boy brought the paper which the Appellant handed to Dr. Besson saying it smelt of cyanide. The doctor found that the paper had no substance on it and had no smell. A little later the Appellant brought the doctor an enamel cup saying " This cup smells of cyanide." The cup was empty and had no smell. p. 33, ll. 9-16 ;
p. 42, ll. 11-16
p. 38, ll. 3-11

(6) Gooriah died, and Dr. Besson's examination showed her death to be consistent with potassium cyanide poisoning. On analysis 2 grains of potassium cyanide were found in Gooriah's stomach. Dr. Besson stated that her death was caused by cyanide poisoning. p. 38, ll. 18-20
p. 40, l. 11
p. 41, l. 7

7.—The Appellant did not give evidence, but made an unsworn statement from the dock in which he spoke of a quarrel on the night of the 16th September, and suggested that Ayesha was minded to commit suicide. A number of witnesses were called by the Defence. p. 46, l. 28-p. 47,
l. 33
pp. 47-65

8.—After a full summing up the jury retired, and in about two hours returned to ask for an explanation about negligence, and for bottles and a list. After a short further retirement the jury returned a unanimous verdict of guilty of murder, and the Appellant was sentenced to death. pp. 68-73
p. 68, ll. 8-14
p. 68, ll. 15, 16, 31

9.—Counsel for the Defence asked the Judge to reserve for the consideration of the Court of Appeal the question whether evidence concerning the death of Gooriah was admissible ; but the Judge refused to reserve the question. p. 68, ll. 17-30

10.—The Respondent submits that the Appellant was rightly convicted of the murder of Ayesha, and that his appeal should be dismissed for the the following amongst other

REASONS

1. BECAUSE the evidence relating to the death of Gooriah was properly admitted on the charge that the Appellant murdered Ayesha.
2. BECAUSE in all other respects also the Appellant's trial was proper and regular.
3. BECAUSE the evidence established the guilt of the 10 Appellant.

FRANK GAHAN.

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CASE FOR THE RESPONDENT

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