GNT 18,1956

IN THE PRIVY COUNCIL No. 46 of 1955

ON APPEAL FROM THE COURT OF CRIMINAL APPEAL FOR TRINIDAD AND TOBAGO

B E T W E E N :

RAMSOOK RAMLOCHAN ... Appellant

- and -

THE QUEEN ... ... Respondent

CASE FOR THE APPELLANT

RECORD

1. This is an appeal in forma pauperis by special leave from the Judgment and Order of the Court of Criminal Appeal of Trinidad and Tobago whereby for reasons delivered on the 29th day of July, 1955, the said Court dismissed the appeal of the appellant from the decision of the Supreme Court of Trinidad and Tobago on the 6th day of June, 1955, whereby the appellant was convicted of murder and sentenced to death. pp.104-107 p.96. p.99

2. The appellant (hereinafter called "the accused") was indicted for the murder of Minwatee Ramlochan, also called Toy, on the 12th day of June, 1954, at Fyzabad. p.1

3. The accused was first tried on this indictment in March of 1955 when the jury disagreed.

4. There were no shorthand notes taken of the evidence given at the first trial the only record thereof being contained in the longhand notes made by the Judge; and in accordance with the decision of the Court of Criminal Appeal for Trinidad and Tobago in the case of R. -v- Boysie Singh and Others No. 118 of 1950, (the relevant portion of the Judgment therein is annexed hereto as Appendix "A"),

RECORD

Counsel for the accused applied for a copy of the Judge's notes and by letter dated the 6th May,1955, (Copy of which is annexed as Appendix "B") was refused.

p.40 p.44

5. At the re-trial Counsel for the accused again applied for a copy of the said notes but, although the original notes were before the trial Judge and the learned Judge informed defence Counsel that if he wished to know what was said by any particular witness the Court would consult the notes and if it was necessary to contradict the witness the Court would call the Registrar to put them in evidence, the said notes were never put in evidence and the defence Counsel was at no stage permitted to see them.

6. The case for the prosecution as presented by the witnesses was that:-

p.14, L.21

(a) The body of the deceased was discovered by one Baboonie at about 7.30 a.m. on Saturday 12th June, 1954, at a distance of 284 feet from her house and that she was fully clothed and had flour on her hands.

p.4, L.22 p.4, L.32 p.4, L.8

(b) The deceased had been decapitated by a single blow of some instrument between the hours of 4 and 7 a.m. at some place other than that at which she was found.

p.7, LL.3-4

(c) The accused, who was the husband of the deceased woman, had on the previous Thursday a conversation with the deceased's father in which he told him to take Toy home, that he was suffering from venereal,that the doctor was taking 20 dollars a fortnight and to keep away from his wife for a few weeks.

p.9, L.18

(d) On Friday the deceased and the accused visited one, Baboonie, and her husband and some conversation took place about the deceased sleeping alone in the house and the accused said he would not go out any more.

pp.13-14

(e) Baboonie who lives very close to the accused got up about 4 o'clock on Saturday morning and saw the accused come down from his house at about 5 a.m. and return and that about 6 a.m. the accused left for work passing her house and she asked him where was

RECORD

Toy and he replied 'She is there home'; that later Toy's father arrived called out for Toy but did not enter Toy's house; that there was no answer. That at about 6.30 a.m. Baboonie started looking for Toy and about 6.50 a.m. she went into Toy's house but Toy was not there. At no stage that morning did she see Toy. In answer to the Court she said "I saw no one go into accused house between 4 a.m. and 6,50 a.m. when I went into it. Apart from when I saw accused brush his teeth and leave for work I saw nobody come out of it. I can see the door from my kitchen".

(f) One Boodram had seen the accused and a girl Sookdayah at about 2 a.m. that morning going up the Sookdayah house track. About 2.30 a.m. he saw the accused and Sookdeo the father of Sookdayah going along a track that leads to the accused's house among other places; Sookdeo had a cutlass in his hand. p.17

(g) One Rahaman saw the accused between 3.30 and 4 a.m. at a spot 229 feet from where the body was found. The accused said he was hunting and had a cutlass in his hand. p.19

(h) The accused when interviewed at about 9 a.m. the same morning was wearing a grey shirt and had in the truck with him a pair of long khaki trousers and on the line in his house were found a pair of damp khaki trousers and on the back of the shirt and on the trousers were spots of blood, group 0; the blood of the accused and of the deceased were both found to be group 0. p.22

(i) The accused made a statement in which he said that Toy was alive when he left home. p.109

7. The accused gave evidence that on the night of the 11th June he went to bed at 7.30 to 8 p.m. and got up around 5.30 a.m.; that Toy was alive and gave him a cup of tea and his food to take with him and that he left home around 5.40 a.m.; that the grey shirt was part of his working clothes and kept in his truck and that the blood must have been caused by eczema and scratching. pp.41-43.

8. During the cross-examination of the accused it was suggested for the first time in either trial that the accused had a partner who had actually

RECORD

struck the vital blow; the Judge's notes include the following passages of this cross-examination:-

p.48, L.25-
p.49, L.29

" My plan was not to leave her in this house alone and go to Ramlals house where there would be several people who could say Ramsook was there and I and my partner would sneak out from the dinner come back and kill my wife in that house and then return to Ramlals house I had no plan at all so Baboonie and Pherangie could not spoil my plan. I did not leave them (Baboonie and Pherangie) and go home at 8. We went to sleep. I never left the house. I did not speak out whilst my wife was sleeping and that is how I was seen with Sookdeo at 2.30 a.m. I was home sleeping. I did not re-arrange any plan because I had no plan. My partner and I did not arrange a point in the bushes where my wife was to be killed. I had no partner. I did not arrange to get her to leave the house, follow me to this track. I did not go home sneak into my house.

Seunarine states there is no evidence to support these suggestions of the Crown.

Court rules there is some evidence from which the jury may or may not find the inferences the only logical conclusions to which they should come. The evidence is circumstantial and it will be for the jury to say whether or not the suggestions are warranted by their findings.

Continuing: I did not wake my wife and tell her I was going to the dinner. I did not induce my wife to follow me. I did not have on two pairs of khaki trousers, I only have one pair.

Question: You walked as if in the direction of Ramlals house and as you come to the point to where 'your partner' was armed with a cutlass?

Answer: I know nothing about that. My wife woke me to go to work.

Question: As you got past that point and before your wife knew what was happening her head was off?

RECORD

Answer: I know nothing about that. I was home sleeping.

Question: You were at that time wearing that grey shirt?

Answer: That grey shirt stops in the truck all the time.

Question: As 'the man' swung the cutlass blood from the cutlass or from the body of your wife spattered on your shirt?

Answer: I knows nothing about that. I was home sleeping.

Question: You and your partner remained there until all the blood drained out of the body?

Answer: I knows nothing about that. I have no partner.

. . . . . .

Question: I suggest Sookdeo was the partner? p.51, L.45-p.52, L.1

Answer: I had no partner at all.

9. The summing up contained the following passages:-

"Express malice is where a person with a sedate and deliberate mind and formed design, say the ancient authorities, kills another; and that such state of mind may be evidenced by external circumstances such as lying in wait, grudges, pre-concerted schemes; but in this case the Crown can give you no evidence whatever of that. There might be inferences and suggestions but there is no direct evidence before you of any scheme or malice which showed that there was premeditation. But the law, where Malice is not so expressed by outward acts, will infer it or imply it from a deliberate cruel act a deliberate act which is intentional and unprovoked, and that is called Implied Malice" p.64, L.47-p.65, L.11

. . . . . .

RECORD

p.67, LL.15-49 "Now gentlemen, if you are satisfied that the evidence given by the prosecution is reliable and trustworthy, having regard to all the other evidence in the case, then and only then may you proceed to the next step in dealing with this circumstantial evidence: namely that you are satisfied beyond reasonable doubt that you have drawn the correct inference from the facts before you, and then that they prove the case of the Crown with the accuracy of mathematics, in other words, that you are irresistibly impelled to one conclusion and one conclusion only and that is that the accused murdered the girl Minwattee. If that is so, then you will convict him - it matters not if there were other persons with him; if each took part in the furtherance of a common principal purpose, in encompassing the death of that woman and one of them struck the fatal blow, even if it was not he the accused, he would nevertheless be guilty of Murder. That is the position.

He need not necessarily have struck the ..... blow himself; if you are satisfied beyond reasonable doubt that he was the person aiding and abetting some other person or persons to do this act, with full knowledge, then he would be equally Guilty as the others - quite independently of the others. If however you feel doubtful or hesitant in your mind that that is the only reasonable conclusion to which you could come, then gentlemen you should acquit. For mere suspicion is not enough to warrant a conviction. That gentlemen, is the law as I understand it, on which I have just tried to make myself clear and by which you should be guided in dealing with this evidence which has come before you."

. . . . . .

p.75, LL.6-29 "Now gentlemen, if you think that the only reasonable conclusion that you can come to is that there was some other person who was concerned in this crime, it does not matter who the other person is, as far as you are concerned. You are not concerned with trying any other person except the man in the dock and you must not strain to find or come to any conclusion adverse to him; you must feel entirely impelled to any conclusion that you may come to - you must feel reasonably safe that that is the only conclusion that reasonable men would come to.

RECORD

Then if you conclude that there were two persons concerned, the theory of the Crown becomes possible: that the blood stains were caused on the back of the shirt of the accused by blood from the same cutlass that was swung with a sweep. The doctor found that it was one wound, one cut; and that the cutting must have started from behind. And the Crown's suggestion is that they were walking in Indian file and she behind him and that another person acting in consort with him gave one wound, one cut and that the sweep of that cutlass threw spots of blood on the back of the accused."

. . . . . .

" That is very important because the Crown is hanging its case upon that shirt. They are saying 'You did not strike the head off your wife but you and someone else in concert with you inveigled this girl under some pretence in some place -- it does not matter what pretence and what place; you have no evidence of it; and one place is as good as another and one pretence is as good as another -- but that is the inference drawn from the fact that the body was removed; and they say that the other person whoever he was, struck the head off; you were leading the way and that blood got on your shirt in that way and you left home that morning with it because you did not know that you had blood on the back of the shirt. p.79, LL.19-44

The accused said: 'I did not know there was blood on the back of my shirt but I did not leave with it; I left with the white shirt'. That is the issue that you have to decide -- whether he left with a white shirt having regard to the admission in his statement that he only left with the pants and come away with the pants and the Police evidence that he only arrived with the grey shirt and the pants in the basket. That is the question you have to decide."

. . . . . .

"If there was more than one person concerned and he killed her with the help of another, you might find then that there is another person who might have a motive; you must remember that the Crown is not saying that he actually p.91. LL.6-16

RECORD

did the act; the whole attitude is that someone else did the act but he was equally guilty because he was present aiding and abetting; it was with his knowledge and sanction; he normally may have been content but this other person concerned might have wished her death".

10. At no point in the summing up did the learned Judge direct the jury that the mere presence of the accused at the place of murder was insufficient to establish his participation in the crime.

p.96, L.41
p.99, L.10

11. The accused was found guilty and sentenced to death.

12. The accused appealed to the Court of Criminal Appeal for Trinidad and Tobago where the following points were argued:-

p.104, L.27 - p.105, L.16

"(a) an inaccurate and prejudicial statement had been made by counsel for the prosecution in opening the case to the jury;

"(b) improper and prejudicial suggestions had been put to the appellant in cross-examination;

"(c) there had been misdirection and non-direction by the trial judge on certain point of evidence; and

"(d) the appellant was gravely prejudiced in the presentation of his defence at the trial and as a result justice did not manifestly appear to be done in that the accused was not afforded the opportunity of having and/or seeing either a copy of or the original Judge's long hand notes of the evidence at the previous trial (when the jury disagreed) so that the witnesses whose testimony was inconsistent with that given by them at the previous trial could not be fully contradicted and as a result the jury were unable truly to assess the credibility of the said witnesses. Moreover, although application was made for a copy of the Judge's long hand notes of the previous trial in order to comply with the ruling contained by the Court of Criminal Appeal in the matter of R. v. Boysie Singh & Ors. No. 118 of 1950 at p.17 of Volume XI 1950 - 1951 of the Judgments

RECORD

delivered in the Supreme Court of Trinidad and Tobago to the effect that the course adopted in the trial No. 118 of 1950 should not in future be taken, the notes were refused."

13. The said Court dismissed the appeal and held with regard to the first point that although the statements could have been more accurately phrased the evidence was sufficiently clear; with regard to the 2nd point that there was evidence on which the suggestion could be made; with regard to the third point that there was no misdirection or non-direction of such a nature as to warrant any interference with the verdict; and with regard to the fourth point that the rule laid down in the said case was per in curiam and that the procedure laid down in it was wrong. pp.104-107

14. Special leave to appeal in forma pauperis to Her Majesty in Council was granted by Order in Council dated the 1st day of December, 1955. p.107

15. The appellant humbly submits that this appeal should be allowed and the said judgment and order of the Court of Criminal Appeal of Trinidad and Tobago should be set aside and his conviction and sentence quashed for following among other

R E A S O N S

(1) BECAUSE the said line of cross-examination was improper and prejudicial in that:-

(a) The whole of the previous trial had been conducted and the case had been opened and the prosecution witnesses had been called in the re-trial on the basis that the accused had struck the vital blow and therefore the accused had had no opportunity to deal with such allegations in cross-examination of the prosecution witnesses or in his examination in chief.

(b) The case for the prosecution had been closed.

(c) There was no or insufficient

RECORD

evidence on which to base the suggestions that were put to the accused.

(d) The detailed story put in a long series of leading questions was bound to affect the minds of the jury.

(2) BECAUSE the learned trial Judge in dealing with the evidence failed to direct the jury that they must be satisfied not only that the accused was present but that there was evidence that he was present aiding and abetting the commission of the crime.

(3) BECAUSE there being no direct evidence of any scheme or malice which showed that there was premeditation and it not being suggested that the appellant struck the vital blow himself, there was no evidence on which he could be convicted.

(4) BECAUSE by reason of the refusal to permit defence Counsel to have a copy of or see the Judge's notes of the previous trial Counsel was prevented from the proper conduct of the Defence.

(5) BECAUSE the learned Judges of the Court of Criminal Appeal were wrong in holding

(a) That there was evidence to support the suggestions put in cross-examination of the accused.

(b) That there had been no misdirection or non-direction of such a nature as to warrant any interference with the verdict.

(c) That the case of R. v. Boysie Singh & Ors. was wrongly decided.

(d) That the Judge's notes of evidence were not admissible at a re-trial.

RECORD

(e) That the Judge's notes of the evidence should not be supplied to the defence Counsel at a retrial even if they were not admissible as evidence.

THOMAS O. KELLOCK.

A P P E N D I X "A"

R. v. BOYSIE SINGH & ORS.

No. 118 of 1950 at p. 17 of Vol. XI - 1950 to 1951, delivered by the Court of Criminal Appeal of this Colony on January 25, 1951, (Furness-Smith, C.J., Duke, J. and Hamilton, Ag.J.)

Held (3)

"Where there is a re-trial and it is desired to prove at the second trial inconsistent testimony of witnesses at the first trial it is undesirable for Counsel of a prisoner at the first trial to give evidence of statements made at that trial. The Judge's long hand note of the evidence is the best evidence of such testimony."

"Before proceeding to consider the merits of this appeal there are two matters of procedure to which reference must be made. The first concerns the evidence of Mr. Procope, a counsel who appeared for one of the appellants at the first trial (when the jury disagreed), who gave particulars of statements made by certain Crown witnesses at that trial inconsistent with their present testimony. In giving this evidence Mr. Procope refreshed his memory from notes taken by him in Court at the time. Although, after comparing Mr.Procope's evidence on these points with the notes of the trial Judge of which we obtained a certified copy, we are satisfied of its substantial accuracy, we wish to say that this is not the most satisfactory way of proving inconsistent testimony of witnesses at a previous trial. In these Courts the trial judge takes full long-hand notes of all the evidence, and no short-hand note is available. Although we do not go so far as to say that such evidence as that of Mr. Procope was inadmissible, we wish it to be clearly understood for the future guidance of counsel in such circumstances, that we regard the Judge's notes as the best evidence of such previous testimony, and that the course adopted by the defence in this respect at the present trial is undesirable and should not in future be taken."

A P P E N D I X "B"

Judges' Chambers,
Supreme Court,
Port-of-Spain,
TRINIDAD, B.W.I.

6th May, 1955.

Sir,

Your letter of 26th April, 1955, applying for a copy of the trial Judge's notes of Evidence in Regina v. Ramsook Ramlochan was referred to the Honourable Mr. Justice Duke on the instructions of His Lordship the Chief Justice and, as already intimated to you, Mr. Justice Duke has refused your application.

I have the honour to be,
Sir,
Your obedient Servant,
(signed)?
Clerk to the Judges.

S. Seunarine, Esq.,
"Chambers",
77-79, Court Street,
San Fernando.

No. 46 of 1955

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B E T W E E N :

RAMSOOK RAMLOCHAN ... Appellant

- and -

THE QUEEN ... ... Respondent

CASE FOR THE APPELLANT

T.L. WILSON & CO.,
6 Westminster Palace Gardens,
London, S.W.1.
Solicitors for the Appellant.