18, 1956

No. 46 of 1955

IN THE PRIVY COUNCIL

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

BETWEEN

RAMSOOK RAMLOCHAN Appellant

and

THE QUEEN ... Respondent

CASE FOR THE RESPONDENT

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1. This is an appeal in forma pauperis by Special Leave granted by Order in Council dated the 1st day of December, 1955, from the Judgment of the Court of Criminal Appeal of Trinidad and Tobago (Perez, C.J., Gomes and Archer, JJ) dated the 29th day of July 1955 dismissing the Appellant's appeal from his conviction at the San Fernando Assizes, Trinidad, (Celestain J. sitting with a jury) on the 3rd June 1955 of the crime of murder, for which crime the Appellant was on the 6th day of June 1955, sentenced to death.

2. The Appellant's trial referred to in paragraph 1 above was his second trial for the said offence, the jury at an earlier trial in March 1955 having disagreed. The Appellant's first point in this appeal is that he was gravely prejudiced at his second trial because his Counsel was refused a copy of the Judge's Notes of the evidence at the first trial, and was not permitted to see the said Notes during the second trial and the said Notes were not put in evidence at the second trial.

3. The Appellant further alleges: that at the second trial :-

(1) Improper suggestions were made by the

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Prosecuting Counsel during his cross-examination of the Appellant.

(2) The Trial Judge misdirected the jury.

(3) There was no evidence on which the Appellant could be convicted.

4. The charge against the Appellant was that on the 12th day of June 1954 he had murdered Minwatee or Toy, a girl aged 13 years, who was then living with him as his wife.

5. The Appellant and Minwatee went through a marriage ceremony on the 15th May 1954, less than a month before her death. After their marriage they lived in a house in a district called Standard Gate. This house was only a few feet from a house inhabited by one Baboonie, a great aunt of the Appellant, but called by him "grandmother" and her husband Deonarine Pherangie. At about 7.30 a.m. on the 12th June 1954, Baboonie found Minwatee's body in a field behind the Appellant's house. She had been decapitated and her head was lying near to the body at the foot of an immortelle tree. There was a cut in the root of the tree and there were bloodstains in the cut as though the girl had been beheaded at that spot but the medical evidence called by the Prosecution was that the girl had not been beheaded at that spot because there was very little blood either in the girl's body or at the place
p.4. l.14 where her body was found. The medical opinion was that the girl had been beheaded elsewhere and her body had then been taken to the place where it was found. The medical evidence also suggested that
p.3. l.46 the girl had been struck from behind by a sharp, heavy cutting instrument, possibly a cutlass.

6. The evidence against the Appellant is summarised in paragraphs 7 to 12 below.

7. First the Prosecution suggested that before the date of the murder the Appellant had already grown tired of the girl and had tried to induce her father, Ramkisson Soodeen, to take her away.
p.7. ll.1-10 Ramkisson said in evidence that on the 10th June 1954, he met the Appellant who told him to take the girl back to his (Ramkisson's) house. The Appellant gave as his reason for this request that he was suffering from veneral disease and had been told by the doctor to keep away from his wife for a

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few weeks. The Prosecution suggested that this reason was completely untrue. The Appellant was medically examined on the 12th June and no trace of any disease was visible. Indeed in his evidence the Appellant admitted that he was not suffering from veneral disease at the material time, but denied the conversation with Ramkisson referred to above.

p.4. l.43
p.42. l.16

8. The Prosecution also suggested that the Appellant tried to leave the girl alone in the house on the night of the murder on the excuse that he was going out to a party. On the evening before her death the girl made a complaint about this to Deonarine Pherangie and Baboonie. As a result Pherangie told the Appellant that the girl could not be left alone in the house and the Appellant said that in that case he would not go out. At about 8 p.m. the Appellant and Minwatee left Pherangie's house and went to their own house. This was the last time that Minwatee was seen alive.

p.9 l.3
p.9 l.15
p.9 l.20

9. The Prosecution's evidence showed that the Appellant did not remain in his home during the night of the 11th to 12th June. He was seen on three occasions during that night by two witnesses. First, one Boodram, who was in the course of his employment on patrol duties during the night, saw the Appellant at about 2 a.m. in company with a girl named Sookdayah going up a track leading to her house. About half an hour later Boodram again saw the Appellant. This time he was with one Sookdeo, the father of the girl Sookdayah, and they both took a short cut leading to the Appellant's house about half a mile away. Sookdeo was according to Boodram carrying a cutlass. Also, one Abdool Rahaman said in evidence that he was out hunting on the night of the 11th-12th June. He had three dogs with him and was carrying a headlight. Between 3.30 and 4 a.m. Rahaman was going through the field behind the Appellant's house when his dogs ran towards somebody who was approaching with a torch. Rahaman turned his headlight onto the man and recognised him as the Appellant whom he knew very well. The Appellant was carrying a torch and a cutlass and said that he was hunting. Rahaman said in his evidence "One cannot hunt with a cutlass alone".

p.17 l.6
p.17 l.21
p.17 l.30
p.17 l.32
p.19 l.8
p.19 l.13
p.19 l.19
p.19 l.3
p.19 l.43

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10. Baboonie said in evidence that she got up at
p.13 l.30 4 a.m. on the 12th June and saw a light in the
p.13 l.40 kitchen of the Appellant's house. She saw the Appellant go into his kitchen at about 5 a.m.
p.13 l.43 She also saw him leave his kitchen to go to wash (by this time it was broad daylight) and after that go back to his kitchen and collect his breakfast bag. At no time did Baboonie see Minwatee or hear her voice. At about 6 a.m. the Appellant left his house to go to work. On the way he came to Baboonie's house and asked her for some figs.
p.14 l.4 She asked him where Minwatee was. He said "She is there home". Baboonie said that every day
p.14 l.8 after the Appellant went off to work Minwatee used to come over to her house but that morning she did not come.

p.7 l.14 11. At about 6.20 a.m. Ramkisson Soodeen, Minwatee's father, came by the Appellant's house on his way to work. He called out for his daughter but got no reply. Baboonie heard him
p.14 l.14 calling and when she heard no reply from Minwatee, she went into the house to look for her but could not find her. Baboonie then went out to search
p.14 l.20 for her and eventually found her body at about 7.30 a.m. in the position described in paragraph 5 above. It should be mentioned here that the Appellant said in evidence at the trial that
p.41 ll.20-30 Minwatee was alive and in the house when he left for work on the morning of the 12th June. He
p.41 l.36 said that the time when he left the house was about twenty minutes to six but he admitted that he had no watch. Further, in a statement to the Police made on the 13th June, the Appellant said
p.111 l.4 he left home at 6 a.m. The jury were therefore being asked by the Defence to consider the possibility that between the time the Appellant left the house and the time Ramkisson arrived at the house, that is a period of between twenty and forty minutes. Minwatee had left or had been enticed from the house and had then gone or been taken to some unknown place where she was beheaded and thereafter her body was carried to the place where it was found, all this being done in broad daylight and without attracting anybody's attention. It is submitted that any reasonable jury must have come to the conclusion on that evidence that Minwatee had been killed during the hours of darkness and was dead when the Appellant left the house and that the Appellant was lying when he said

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that she was alive at that time.

12. The Prosecution further relied on the condition of the Appellant's clothing. The Appellant was seen by Police Corporal Gittens shortly after 8 a.m. on the 12th June. The Appellant was wearing a grey shirt and torn cream flannel trousers. The Appellant was asked to accompany the Policeman and he did so, picking up on his way a pair of khaki trousers from a truck. The policeman noticed that there were bloodstains on the back of the grey shirt. It was also found that there was a bloodstain on the leg of the khaki trousers. The police also found a pair of damp khaki trousers hanging on a line at the Appellant's house. Blood stains were found in one of the pockets of these trousers. When asked by the Police to account for all these stains the Appellant was unable to give any explanation. At his trial the Appellant alleged that the stains on his shirt and the trousers he was carrying were caused by his own blood and due to eczema from which he alleged that he used to suffer. He denied that the trousers hanging on the line were his, although the evidence of the Police Sergeant who found the trousers was that the Appellant had admitted to him that the trousers were his. The clothing was examined by the Government chemist who confirmed that the stains were human blood adding that it was blood of Group O and that blood of this Group was found on two areas on the right leg of the trousers found hanging on the Appellant's line, as well as in the pocket. The Appellant's blood was of Group O and so was Minwatee's. The Appellant's body was examined by Police Sergeant Saunders and Dr. Charles on the 12th June and neither saw any sign of eczema. It is submitted that the jury were entitled to reject the Appellant's explanation for the blood stains on his clothing.

p.22 l.3
p.22 l.5
p.22 l.12
p.22 l.20-l.26
p.25 l.20
p.25 l.45
p.24 l.47
p.25 ll.15,25
p.24 l.37
p.50 l.8
p.34 ll.8,16
p.34 l.10
p.113 ll.2-5
p.25 l.33
p.4 l.40

13. Turning to the complaints made by the Appellant about his trial, the first complaint relates to the Judge's Notes of the earlier trial. It appears that between the first and the second trial, Pandit Seunarine, the Counsel who represented the Appellant at both his trials, wrote to the Clerk to the Judge on the 26th April 1955, applying to be supplied with

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a copy of the Notes of evidence taken by the Trial Judge (Duke J.) during the first trial. This application was refused by the learned Judge and the Appellant's Counsel was informed of this refusal by a letter dated the 6th May 1955, a copy of which was attached to the Petition for Special Leave to Appeal. It is clear by the terms of the letter that the Counsel had already been informed orally of this refusal. Counsel for the Defence took no further action before or at the commencement of the second trial nor did he make any reference to this matter during the second trial until after the close of the Prosecution's case on the 25th May 1955. The following is the Record of what was said while Counsel for the Defence was addressing the Court at the opening of his case.

p.40 l.14

" Counsel states that he will be calling 2 witnesses one of which is the Clerk to the Judges to prove his signature to a letter dated 6th of May 1955 Ref. No. 63/55 purporting to be signed by Mr. Pierre the Clerk to the Judges in which he stated that Counsel's letter of 26th April 1955 applying for a copy of the trial judge's notes of evidence in this matter of a previous trial was referred to the Honourable Mr. Justice Duke and that he refused his application.

" Court states that it is unnecessary to cite the Judge's clerk to prove his own signature and that the letter is not material to the issue and a note has been made of the letter.

" Counsel refers to volume XI 1950-1951 in the Appeal of Boysie Singh and others where it was laid down that where it is desired to prove in the 2nd trial inconsistent testimony of witnesses at the first trial it is inadvisable for Counsel for the prisoner to give evidence of the statements made at that trial and that the Judge's longhand notes are the best evidence of such testimony and wishes Court to order a certified copy.

" Court states it cannot over-rule another Judge's orders. Will consult him."

14. At the sitting of the Court on the 26th May

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1955 the following incident took place.

" . Court states to Seunarine: The learned Judge's notes of the last trial in his own handwriting have been forwarded to me and are now at Court's disposal. If he wishes to know what was said by any particular witness the Court will consult the notes and if it is necessary to contradict the witness would call the Registrar to put them in evidence. p.44 l.20

Seunarine states that he is thankful for that but he cannot be a party to that. He wants a certified copy of the notes so that he can contradict witnesses as they come to the witness box as is done in all fair trials

Court states that it cannot now order a certified copy of the notes of evidence to be supplied at this stage.

Seunarine asks leave to retire as he cannot do justice to his client

Court states: "If you consider it consonant with the ethics of your profession you may do so".

Seunarine retires.

Court: Gentlemen in the circumstances I regret I have to adjourn this case until tomorrow morning at 9.30 a.m." p.45 l.5

15. On the 27th May the hearing was resumed and the following is the record of what was said.

"Seunarine - Regret what happened yesterday. He apologises to Court and jury for inconvenience which resulted his action and the loss of one day. If he erred, he erred on the side of justice and he asks leave to proceed with the trial. p.45 l.7

Court reminds Seunarine that there are only certain circumstances under which a barrister may desert a cause. Court took it he had satisfied himself that the

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circumstances of this case do not come within any of the reasons which would have justified his abandoning his client. It accepted his apology on behalf of the jury and the Court. Court reminded Seunarine that Judge's notes contained over 80 pages and that in insisting that he must have a certified copy of them he was asking
p.45 l.25 something which he must have known was impossible at that stage." 10

p.53 l.28 16. On Thursday 31st May 1955 Counsel for the Appellant told the Court that he wished to contradict four witnesses for the Prosecution on the ground that there were discrepancies on various points between their evidence at the first
p.57 l.19 and second trials. On 1st June these witnesses
p.59 l.6 were recalled. In the case of one witness Counsel for the Appellant withdrew his allegation that there was any discrepancy in his evidence. The other witnesses were asked about their 20 evidence at the earlier trial use being made in three instances of the Judge's Notes. Counsel
p.59 l.18 for the Appellant then applied for the first time to be allowed to have the Judge's Notes to peruse,
p.60 l.3 and this application was rejected.

17. It is submitted that there was no duty imposed by law on the Judge who presided at the first trial to grant the application by the Appellant's Counsel that a copy of the Judge's Notes should be made and provided to the Appellant's 30 Counsel for his use before and at the second trial. If (which is not admitted) the Counsel had a right to make an application to the Judge for such a copy of his Notes it was within the discretion of the Judge to refuse that application. The Respondent is not aware of the grounds on which the application was made or on which it was refused, but submits that decision of the Judge cannot be questioned at this stage. As to the application to the Judge at the second trial, it is not clear from the 40 Record that Counsel for the Appellant intended to apply to the Judge for a copy of the Notes of the previous trial. He made no application to that effect before the end of the Prosecution's case, It appears from the opening of his case that all he intended to do was to call evidence to show that his application to the Judge's Clerk had been refused. When it was indicated to him that this evidence would be irrelevant he applied to the

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Judge for a copy of the Notes but by this time the Prosecution's case was completed. It is submitted that the Judge was not bound to grant that application and, in the circumstances in which it was made, it was a proper exercise of his discretion to refuse it. The application by Counsel for the Appellant that he should be allowed to have and peruse the original Notes was not made until the end of the trial and it is again submitted that the Trial Judge was not bound to grant this application and that, in the circumstances in which the application was made, the Judge properly exercised his discretion in refusing the application. Further, even if the refusal by either of the Judges of the Counsel's applications were wrong, it is submitted that there was no mis-carriage of justice in this case. Counsel for the Appellant could have made very little use at the second trial of the copy of the Judge's Notes. There is no suggestion that Counsel for the Appellant thought that there was in fact a discrepancy between the evidence of the Prosecution given at the trial on any material point which was not brought to the notice of the jury at the second trial. No attempt was made to put the Notes in evidence.

18. The second point raised by the Appellant is that improper suggestions were made by Counsel for the Prosecution during the cross-examination of the Appellant. Counsel for the Prosecution put a series of questions to the Appellant in cross-examination suggesting how the murder had been planned and had taken place. These suggestions included a suggestion that the Appellant had a partner in his crime who had struck the blow from behind the deceased girl while she was walking behind the Appellant and that this was how the Appellant's shirt had become spattered with blood. Counsel for the Prosecution suggested that the Appellant's partner was Sookdeo, the father of the girl Sookdayah, and the man with whom the Appellant had been seen during that night and who was at that time carrying a cutlass. It is submitted that Counsel for the Prosecution was entitled to suggest inferences to the Court which could be drawn from the evidence and that if he was going to suggest such inferences it was proper to put them to the Appellant while he was in the witness box so that he could give evidence of any fact

p.49 l.8
p.49 l.21
p.51 l.45

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which might rebut these inferences.

19. Turning to the allegation that the Trial Judge misdirected the jury, in that he did not tell the jury that the mere presence of the Appellant at the place of murder was insufficient to establish his participation in the crime, it is submitted that the Judge made it abundantly clear in his direction that mere presence would not be sufficient. The Respondent will rely on the following (among other) extracts from the direction.

p.67 l.15

" 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 for 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 Minwatee. 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 criminal 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

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to make myself clear and by which you should be guided in dealing with this evidence which has come before you." p.67 l.49

20. The last point taken by the Appellant is that there was no evidence on which the jury could have convicted the Appellant. The evidence against the Appellant has been summarised above and it is submitted that on that evidence a reasonable jury could be satisfied that the Appellant had murdered the deceased girl.

The Respondent respectfully submits that this appeal should be dismissed for the following (among other)

R E A S O N S

(1) BECAUSE the Appellant's Counsel was not entitled as of right to have a copy of the Judge's Notes of the first trial or to peruse the same.

(2) BECAUSE the Trial Judge at the Appellant's first trial was entitled in his discretion to refuse the application of the Appellant's Counsel to have a copy of the said Notes.

(3) BECAUSE it would not be right now to interfere with the refusal by the said Judge of the said application.

(4) BECAUSE the said refusal by the said Judge caused no or no sufficient miscarriage of justice to the Appellant.

(5) BECAUSE the Trial Judge at the second trial was entitled in his discretion to refuse the application by Counsel for the Appellant to have a copy of the said Notes and/or to peruse the same.

(6) BECAUSE the said refusal by the said Judge caused no or no sufficient miscarriage of justice to the Appellant.

(7) BECAUSE the Counsel for the Prosecution was entitled to put the matters complained of by the Appellant in cross-examination of the Appellant.

(8) BECAUSE in the alternative to (7) above the Appellant has suffered no miscarriage of justice by reason of the matters complained of being put to him in cross-examination.

(9) BECAUSE there was no mis-direction to the jury.

(10) BECAUSE there was evidence on which the Appellant could be convicted of the crime with which he was charged.

(11) BECAUSE the Appellant was Guilty of the said crime.

(12) FOR the reasons given by the Court of Appeal.

D.A. GRANT.

No. 46 of 1955

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CASE FOR THE RESPONDENT

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