

17,1958

UNIVERSITY OF GUYANA
W.G.I.

28 JAN 1959

IN THE PRIVY COUNCIL

ON APPEAL FROM THE COURT OF CRIMINAL APPEAL

BRITISH GUIANA

ADVANCE
LEGAL STUDIES

52120

B E T W E E N :-

SURUJPAUL called DICK Appellant

- and -

THE QUEEN Respondent

CASE FOR THE APPELLANT

Record

1. This is an appeal in forma pauperis by special leave against the order of the Court of Criminal Appeal of British Guiana, dated the 8th day of January, 1958, dismissing the Appellant's appeal from his conviction on the 29th day of July, 1957, at the Criminal Assizes for the County of Berbice in British Guiana of being an accessory before the fact to the murder, on the 9th day of March, 1957, of Claude Allen.
- 10 2. The trial of the Appellant had lasted since the 8th day of July, 1957, on which day the Appellant together with four others namely Nickram called Chandie, Kissoon called Baljit, Samaroo Karmaia called Battle Boy and Ivan Jagolall had appeared before the said Criminal Assizes charged (contrary to Section 100 of the Criminal Law Offences Ordinance of British Guiana, Chapter 10) with the murder on the 9th day of March, 1957, of the said Claude Allen. p.1.
- 20 3. The case for the Prosecution was that the Appellant and his said co-accused had jointly planned to rob the overseer of the Rose Hall Estate of the wages of the Rose Hall Estate

Record

workers and that, on the 9th day of March, 1957, when one Walter Cameron, the said overseer was proceeding to a place called New Dam in a Land Rover with the driver thereof, one Ashroof, and the deceased Claude Allen, as police escort, and had temporarily stopped on a bridge, two of the accused, wearing masks and armed respectively with a stick and a double barrelled shot gun held them up. The said Cameron threw the said wages (\$4,400 in all) to the man with the stick but then heard a shot from the rear of the vehicle and saw that the deceased was wounded. He then saw four masked men running away. Later in the day the deceased died from the wounds he had received.

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4. The Prosecution at no time suggested during the course of the trial that the said murder had been committed by any other persons than the five accused then before the Court or some of them.

5. The case for the Prosecution against all the accused rested to a large extent on the evidence of one Desmond Dhajoo, whom the jury were directed (rightly, in the submission of the Appellant) to regard as an accomplice. The said Dhajoo implicated the Appellant in the crime in that he said :-

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pp.13-30

p.13,11.13-28
p.14,11. 1-6

(i) that in the week preceding the 7th day of March, 1957, he had seen the Appellant with Kissoon called Baljit and Samaroo Karmaia called Battle Boy at Jagolall's house;

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p.14,11.7-19

(ii) that on Thursday the 7th day of March,

1957, in a room at Jagolall's house, Record
he saw the Appellant with some
clothing and four masks and the
Appellant said that "they were going
to rob the New Dam pay roll and that
he, Dhajoo, must keep his mouth
shut;

10 (iii) that on the night of the 7th day of March, 1957, he again saw the Appellant with Kissoon called Baljit and Samaroo Karmaia called Battle Boy, both of whom had bags, and Kissoon called Baljit produced 3 guns from his bag which he showed to the Appellant and the said three accused then packed the said clothes in the other bag and went away with the guns and
20 the clothes;

(iv) that on the following day, Friday, the 8th day of March, 1957, the Appellant told him that they had hidden the guns and that they would be going to New Dam that night. p.15,11.14-19

30 6. In the course of the said trial the Prosecution sought to put in evidence the following written statements, which it was alleged had been made voluntarily by the accused to the witness, Edgar Charles, a sub-inspector of police :-

(i) A statement alleged to have been made by the Appellant at 10.30 pm. Appendix pp.227-8

Appendix		
p.227, ll.36-37		on the 11th day of March, 1957, in which the Appellant was alleged to have said inter alia "we arranged to go to New Dam, Canje, to rob the pay roll money"; and
p.232, ll.19-30 p.232, ll. 1-22	(ii)	A statement alleged to have been made by Nickram called Chandie at 12.15 p.m. on the 12th day of March, 1957, in which he was alleged to have said, inter alia, that the Appellant, Kissoon called Baljit and Samaroo Karmaia called Battle Boy were the four who had actually held up the pay roll and that Samaroo Karmaia called Battle Boy had shot the deceased; and
p.233, ll. 6-7 p.233, ll. 9-10		
pp.220-222	(iii)	A statement alleged to have been made by Kissoon called Baljit on the 11th day of March, 1957, which does not appear to implicate him directly in the crime; and
pp.218-219	(iv)	A statement alleged to have been made by Samaroo Karmaia called Battle Boy on the 10th day of March, 1957, which likewise does not implicate him in the crime; and
p.22, ll.35-38 p.228, ll.28-37 p.229 p.234.	(v)	Three statements alleged to have been made by Ivan Jagolall, the first on the 11th day of March, 1957, the second and third on the 12th day of March, 1957, which indicated that he had some knowledge of the crime and received some of the proceeds thereof.

7. Objection was taken on behalf of each of the accused to their respective statements (save for the third such statement of Ivan Jagolall and the statement of Kissoon called Baljit) on the ground that they were not free and voluntary statements but were obtained by duress and ill-treatment; and the Appellant further objected that the words "we arranged to go to New Dam Canje to rob the pay roll money" were falsely inserted in his said alleged statement by the said Carles. Record p.38,1.17
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8. In support of his said objection the Appellant gave evidence himself on oath and called Dr. Robert Hanoman who testified to findings which he made on an examination of the Appellant in may, 1957, which were consistent with ill-treatment. pp.45-48
pp.48-50
9. On the objections taken by the Appellant and his said co-accused :-
- 20 (i) The alleged statement of the Appellant was admitted in evidence. p.54,1.31
- (ii) The alleged statement of Samaroo Karmaia called Battle Boy was not admitted in evidence. p.62,1.32
- (iii) The alleged statement of Nickram called Chandie was not admitted in evidence.
- 30 (iv) The statements of Ivan Jagolall were admitted in evidence. p.93,1.27

There is on the record a second statement by

Appendix
p.217

Kissoon called Baljit dated the 12th day of March, 1957, which would appear to amount to a confession of complicity in the crime, which the Prosecution does not, however, appear to have tendered in evidence.

10. The only other evidence against the Appellant consisted in :-

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p.37,11. 3-18

(i) The allegation of the said Charles that on Monday the 11th day of March, 1957, he confronted the Appellant with the said Jagolall at the Police Station at Berbice and, having already taken a statement from Jagolall, he asked Jagolall if this was the Surujpaul whom he had told him about and, when Jagolall had said yes, he had spoken to the Appellant and told him that on the 9th day of March a policeman had been killed at New Dam and the pay roll robbed at No.50 Reliance and he suspected that the Appellant and others had committed the crime and the Appellant then said "Ah so them say. All a we neck rass go broke. Bring pen and paper and write. I will tell you the whole story. This shirt and pants a Jagolall give me to go to Georgetown". 10
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p.37,11. 3-18

p.128,1.20

(ii) The evidence of a woman called Lillian who said that she saw the Appellant at the London Hotel, Georgetown, at 7 p.m. on Sunday night the 10th day of March, 1957, when she said that the news of the said murder 30

was announced on the radio and that the Appellant said "No man, not 3 shots is 2 shots, am in his face and one cross his stomach" and when she asked him how he knew he said that the shooting happened 5 miles from Rose Hall.

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- 10 11. The Appellant did not (other than on the issue of the admissibility of his statement) give evidence on oath but made a statement from the dock in which he affirmed his innocence of the charge, and said that he was not at the scene of the crime on the 9th day of March, 1957, but that he had gone that morning to Georgetown, that he was not at the London Hotel in Georgetown on the 9th day of March, 1957, and that Dhajoo had not known him at Jagolall's house. He further reiterated his account of the ill-treatment to which he had been subjected by the Police. pp.132-134
- 20 12. In support of his case the Appellant again called Dr. Robert Hanoman who, in the presence of the jury, gave evidence similar to that which he had given with regard to the admissibility of the Appellant's statement. He also called one Rafiq Kahn, a Programme Director of Radio Demerera, who testified that on Sunday the 10th day of March, 1957, there was no News Bulletin relayed in British Guiana between that given at 12.25 p.m. and that given at 9 p.m. and that, further, 30 although in the 9 p.m. Bulletin the murder of Claude Allen had been announced, the announcement, which the witness produced, contained no mention of the shots fired. pp.135-137
pp.138-139
p.138

Record

pp.139-199

13. The said trial lasted until the 29th day of July, 1957, when the learned Trial Judge, the Honourable Mr. Justice Phillips, summed up the case to the Jury. It appears from his summing up that at an unknown stage of the trial, for reasons which do not appear, the accused Nickram called Chandie had been discharged by the Jury, leaving only the Appellant, Kissoon called Baljit, Samaroo Karmaia called Battle Boy and Ivan Jagolall in charge of the Jury.

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14. In the course of his summing up to the Jury the learned Judge gave the following among other directions :-

- (1) Having explained what is necessary to constitute a person a principal, whether in the first or second degree, to the crime of murder, he went on to say "Now, with those principals, the chief actors in a crime, you have the accessory before the fact and the accessory after the fact. An accessory before the fact is one who being absent at the time when the felony is committed yet procures, counsels, commands or abets another to commit the felony. In other words, he is not present at the time when the crime was committed, but he instigates, procures, commands other persons to commit it. He is an accessory before the fact and he is equally guilty with those who commit it. In other words, you cannot stay at

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p.144, 11.32-50

home and send a man to go and commit a crime and think it is a defence to say you were not there. An accessory before the fact can be tried and convicted of the same offence and sentenced as a principal. An accessory to murder, as in this case, you will have to consider is as guilty and as liable to be punished equally with the person who actually commits the murder."

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- (ii) And later "Members of the jury, on that evidence, you will be justified in coming to the conclusion that the person or persons, whoever they were, responsible for that fatal shot or shots would be guilty of murder. Your task therefore, is to find out and to come to your conclusion whether these four men were the persons who were on that dam, one or any of them; or whether they counselled, procured, or commissioned any other man or men or someone of them with others to commit that offence; in which case, they will be equally guilty of murder or an accessory before the fact to murder."

p.151,11.26-37
p.151,11.35-37

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- (iii) And later, "Now, members of the jury, the No.1 accused: If you find that the Crown has proved to your complete satisfaction, and you feel sure of it, that he was one of those on the New Dam who

p.194,11.17-32

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fired the shot, or was aiding and abetting others, it does not matter which others, that he was on that afternoon aiding and abeting them to commit this robbery with violence with loaded guns, then it is your duty to convict him. If you have a reasonable doubt in the matter you would acquit him. If you feel sure that the evidence does not prove that he was there on the dam, but that he conspired with others to rob this pay-roll money and to commit this crime of robbery with violence with loaded guns, then you may convict him of the offence of an accessory before the fact to murder."

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18-20, 21
p.200, 11. 1-26 15. Immediately after the learned Judge's summing up, the Jury retired and after an absence of some 5 hours they found the Appellant not guilty of murder but guilty as an accessory before the fact to murder. They found the other accused not guilty either as principals or accessories. The Appellant was sentenced to death.

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pp.201-214 16. The Appellant appealed against his said conviction to the Court of Criminal Appeal of British Guiana but on the 8th day of January, 1958, his said appeal was dismissed.

17. Among the grounds of the Appellant's appeal to the said Court of Criminal Appeal it was submitted that where several persons are charged with murder, and it is not alleged that any other than those persons committed the said

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murder, it is not open to a Jury to convict one of them as an accessory before the fact to the murder alleged to have been committed by the others if those others are acquitted and that, in failing so to direct the Jury, the learned Judge was guilty of a misdirection or non-direction.

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10 18. The Court of Criminal Appeal for British Guiana, in their judgment dismissing the appeal, cited Sections 24 and 25 of the Criminal Law (Offences) Ordinance Chapter 10 for the Colony of British Guiana which provide as follows :-

pp.205-214

p.211, ll. 6-25

20 "24. Every one who becomes an accessory before the fact to any felony whether it is a felony at common law or by virtue of any statute for the time being in force, may be indicted, tried, convicted, and punished in all respects as if he were a principal felon".

30 "25. Every one who counsels, procures, or commands any other person to commit any felony, whether it is a felony at Common Law or by virtue of any statute for the time being in force, shall be guilty of felony, and may be indicted and convicted, either as an accessory before the fact to the principal felony together with the principal felon, or after the conviction of the principal felon, or may be indicted and convicted of a substantive felony, whether the principal felon has or has not been previously convicted, or is or is not

p.211, ll.26-32

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amenable to justice, and may thereupon be punished in the same manner as any accessory before the fact for the same felony, if convicted as an accessory, may be punished".

19. The said Sections of the British Guiana Ordinance repeat in substance Sections 1 and 2 of the Accessories and Abettors Act, 1861 :-

Section 1 provides "Whosoever shall become an accessory before the fact to any felony, whether the same be a felony at common law or by virtue of any Act passed or to be passed, may be indicted, tried, convicted and punished in all respects as if he were a principal felon". 10

Section 2 provides "Whosoever shall counsel, procure, or command any other person to commit any felony whether the same be a felony at common law or by virtue of any Act passed or to be passed, shall be guilty of felony, and may be indicted and convicted either as an accessory before the fact to the principal felony, together with the principal felon, or after the conviction of the principal felon, or may be indicted and convicted of a substantive felony whether the principal felon shall or shall not have been previously convicted, or shall or shall not be amenable to justice, and may thereupon be punished in the same manner as any accessory before the fact for the same felony, if convicted as an accessory, may be punished". 20 30

20. The Court of Appeal upheld the submissions of the Prosecution that the acquittal of the other accused constituted "no bar to the conviction of the Appellant as accessory before the fact to murder by those other accused" and that the learned Trial Judge's direction in the matter had been full and adequate and the case of the Appellant had to be considered wholly separately from that of his co-accused in the same way as the cases are considered separately in divorce proceedings of a Respondent and Co-Respondent who are charged with adultery.

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p.211, ll.44-46
p.212, ll. 1-40

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21. The Appellant submits that the said judgment of the Court of Criminal Appeal of British Guiana dated the 8th day of January, 1958, is wrong and should be reversed and that the conviction of the Appellant as an accessory before the fact to the murder of Claude Allen should be set aside and the Appellant's appeal against his said conviction allowed for the following, among other

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R E A S O N S :-

1. Because the verdict of the Jury in finding the Appellant guilty as an accessory before the fact to the murder of Claude Allen by some or all of his co-accused, all of whom were themselves found not guilty of such murder, was inconsistent and unreasonable and ought not to be sustained.

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2. Because, the Appellant having been indicted on a charge of murder only, on which charge it was open to the Jury to find him guilty

Record

even if they took the view that he was not a principal but an accessory before the fact to the crime of his co-accused, the Court should not, in taking the verdict of the Jury, have invited the Jury to return a separate verdict as to whether he was an accessory before the fact.

3. Because the learned Trial Judge failed to direct the Jury that they could not find the Appellant guilty as an accessory before the fact to the murder of Claude Allen by his co-accused or any of them, if they found all his said co-accused not guilty. 10

4. Because the effect of Sections 24 and 25 of the Criminal Law (Offences) Ordinance, Chapter 10 of British Guiana is procedural only, in that those Sections permit, inter alia, an accessory before the fact (i) to be indicted, tried, convicted and punished as if he were a principal felon and (ii) permit him so to be indicted, tried, convicted and punished without the necessity of first bringing the principal to justice; but they have in no way abrogated the common law rule that if the alleged principal is acquitted the alleged accessory cannot be convicted as an accessory to his crime. 20

5. Because the learned Trial Judge was himself inconsistent, in all the circumstances of the case, in admitting in evidence the statement alleged to have been made by the Appellant when he rejected the statements of Nickram called Chandie and Samaroo Karmaia called Battle Boy. 30

W. PERCY GRIEVE

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ON APPEAL FROM THE COURT OF

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SURUJPAUL called DICK

- v -

THE QUEEN

CASE FOR THE APPELLANT

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