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No. 15 of 1958

UNIVERSITY OF LONDON
L.S.C. 1.

IN THE PRIVY COUNCIL

28 JAN 1959

THE UNIVERSITY OF LONDON
L.S.C. 1.
LEGAL STUDIES

O N A P P E A L

FROM THE COURT OF CRIMINAL APPEAL OF
BRITISH GUIANA

52129

B E T W E E N :

SURUJPAUL called DICK Appellant

- and -

THE QUEEN Respondent

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CASE FOR THE RESPONDENT

RECORD

1. This is an appeal from a judgment, dated the 8th January, 1958, of the Court of Criminal Appeal of British Guiana (Stoby, C.J. (Ag.), Luckhoo and Date, JJ.), dismissing an appeal from a judgment, dated the 29th July, 1957, of the Supreme Court of British Guiana (Phillips, J. and a jury), whereby the Appellant was convicted of being an accessory before the fact to the murder of a police constable named Claude Allen and was sentenced to death.

pp.205-214.

p.200.

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2. The indictment charged the Appellant jointly with four other men (Nickram also called Chandie, Kissoon also called Baljit, Samaroo Karmaia also called Battle Boy and Ivan Jagolall) with the murder of Claude Allen. The four other accused men were acquitted.

p.1.

p.140 1.12.
p.200.

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3. The common law of England relating to criminal matters prevails in British Guiana. The following provisions of the Criminal Law (Offences) Ordinance (Laws of British Guiana 1953, Chapter 10) are relevant to this appeal:-

RECORD

"24. Everyone 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.

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

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4. The trial took place before Phillips, J. and a jury between the 8th and 29th July, 1957. The evidence for the Crown against the Appellant included the following :-

P.100.

(i) Walter Cameron, field assistant at the Rose Hall Estate, gave evidence that on Saturday, the 9th March, 1957 he was travelling to a place called New Dam in a Land Rover containing the wages of the Rose Hall Estate workers. With him in the Land Rover were the driver, and the deceased, Claude Allen, as police escort. When the vehicle stopped to cross a bridge, two men wearing masks and dark clothing, one armed with a stick and the other with a single barrelled shot gun, came out of a nearby cane field, and shouted "Hold up". Cameron then threw the said wages, amounting to about \$3600, to the man with a stick, whilst the man with a gun went to the rear of the vehicle. He (Cameron) then heard a shot, and saw the deceased lying down with his face bleeding. Cameron then saw four masked men running away. Seizing the deceased's pistol, he fired four shots after them. The deceased died later in the day from his wounds.

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(ii) Desmond Dhajoo testified that on Thursday, the 7th March, 1957, he went to the house of the accused Jagolall, where at that time he was boarding. In the room adjacent to that occupied by Jagolall he saw the Appellant with four short pants, four shirts and four masks. The Appellant told him that he must keep his mouth shut and that "they" were going to rob New Dam Pay Roll money. Later than evening the accused Baljit and Battle Boy came up to the room, and the Appellant told them that he (Dhajoo) was alright and that they need not be afraid. Baljit was carrying a large bag from which he took three guns, including a single barrelled gun. Baljit showed the guns to the Appellant, who examined them. The Appellant, Baljit and Battle Boy started drinking together, and the Appellant showed Baljit and Battle Boy the clothes which Dhajoo had earlier seen in his possession. The Appellant placed the clothing in a shoulder bag which Battle Boy had brought with him, and Baljit then placed the guns in that bag. The three of them then took the shoulder bag away with them. On the following day, Friday, the 8th March, 1957, Dhajoo went to Jagolall's house, where he saw the Appellant and asked him what had happened. The Appellant told him that "they" had only gone and hidden the guns, but that that night "they" would travel on New Dam. The Appellant further told him that "they" had to leave early that night as "they" could not carry the guns in daylight. Dhajoo and the Appellant had had dinner together that evening at Jagolall's house at 7.30 p.m., and after dinner the Appellant had said that he had to leave as he, Battle Boy and Baljit had arranged to meet where the guns and clothes were hidden at 8 p.m. sharp. Saturday afternoon, the 9th March, 1957, Jagolall had asked Dhajoo to accompany him to backdam to go fishing. Jagolall had then told him that it looked as if "them boys" had got through; they (Dhajoo and Jagolall) would meet them, and were only carrying the fishing net for 'just-so'. They had waited on the Rose Hall backdam until about 6.30 p.m., when Jagolall had suggested that they go away, adding 'that them boys must be shoot that's why them don't come'. On Sunday, 10th March, 1957 Dhajoo had gone with others, including a man named Cecil, to Albion Police Station to see Jagolall. At the Police Station Jagolall had made signs to Cecil. Cecil and Dhajoo had then returned to Jagolall's house, and found in Jagolall's mattress seven bundles of

RECORD

money, which they had proceeded to bury. Cecil had also brought from Jagolall's bedroom a shirt and pants belonging to the Appellant, which he (Cecil) and Dhajoo had then thrown into the latrine.

p.128.

(iii) A woman called Lillian said that at 7 p.m. on Sunday, the 10th March, 1957 she saw the Appellant at the London Hotel, Georgetown. They had been talking when the news of the murder had been announced on the radio. The Appellant had said, "No man, not three shots is two shots, am in his face and one cross his stomach." When she had asked him how he knew, he had replied that the shooting had happened five miles from Rose Hall.

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p.86.

(iv) Edgar Charles, Sub-Inspector of Police, testified that on the 11th March, 1957 he had been carrying out investigations into the murder of P.C. Allen when the Appellant had been brought to him by other police officers, at Albion Police Station. He had questioned the Appellant, and then had confronted him with the accused Jagolall. He had asked Jagolall in the Appellant's presence whether the Appellant was the person named Surujpaul whom he (Jagolall) had mentioned. Jagolall had replied "Yes", and had been taken away. Charles then told the Appellant that on the 9th March, at 1.15 p.m., a policeman had been killed on New Dam and the payroll had been robbed at No. 50 Reliance. He had added that he suspected that the Appellant and others had committed the crime. The Appellant had 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 gave me to go to Georgetown". He had then cautioned the Appellant, who had made a statement which had been taken down in writing. (Both the oral and the written statement were admitted after objection by counsel for the Appellant.) The written statement was as follows :-

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p.227.

Week before the last Friday 1st March, 1957, at about half past seven (7.30 p.m.) I was taking dinner at Ivan Jagolall house at Rose Hall village, and Chandee, Baljit and Battle Boy come home at Jagolall house. Jagolall tell he wife to gi am money to buy flour, aloo, and salt fish. Jagolall wife go foh the goods, and she mek roti and currie. Jagolall rap up the roti and currie in a parcel

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and hand one of them outside. About half past nine to ten in the night, Jagolall go under he bed and tek out two long gun. Battle Boy receive the guns from Jagolall and had all two to Chandee. Them been tie up in a piece of bag. Jagolall change he clothes and he, Battle Boy, Baljit and Chandie went out pon the dam together. I ain't see Jagolall them back till Saturday night 2.3.57 about half past eight (8.30 p.m.). When Jagolall came home back he tell he wife the thing nah wok out, is Albion money them been for but goo much people deh round the place. On Friday 8th March, 1957 around ten o'clock (10 p.m.) Chandee, Baljit, Battle Boy and Jagolall went back to rob Albion money at the pay office. Them return about 2 o'clock Saturday morning, 9th March, 1957. When they come back Jagolall say he mine nah give he to go back fo rob no way. Chandee say he will get a boy in he place. Chandee left soon after and come back with Arokium, Baljit, Battle Boy, Chandee, Arokium and Jagolall and me went to the public road. We had roti and currie, four pepsi and a big bottle rum. We arrange to go to New Dam, Canje to rob the pay roll money. The gun them been hide a bush. When Chandee came back Sunday morning 10.3.57 about five o'clock, he and Jagolall begin to gaff, and Jagolall ask Chandee why he shoot the man, and Chandee say when I say stick it up the man put he hand pon the revolver foh draw am out, and then Chandee and Battle Boy shoot am. Chandee tell Jagolall that them part up the money at the backdam. Sunday 10.3.57 at about quarter to six in the morning I ask Jagolall to lend me he shirt and pants that I want to go and walk ah Georgetown, and he lend me this shirt and pants me got on. Me tell he that me go come back either Monday or Tuesday. I join a car at Rose Hall gasolene station and I cross with the first steamer. I lef house with seventeen dollars and I bring back two dollar and some cents change. I buy a yachting boots, ah armless singlet and a pocket kerchief nothing more.

(v) Constable Edgar Vanvieldt said that he had seen the Appellant on the 11th March, 1957 at Rose Hall, when the Appellant had arrived by car with the woman Lillian. He had told the Appellant that

p.122.

RECORD

he was taking him to the Police Station for enquiries, in connection with the murder of Constable Claude Allen. The Appellant had replied, "Me na know about that me been a Georgetown all the time and a now me a come".

- p.132. 5. The Appellant elected to make a statement from the dock. In it he said he had never planned to go and rob the Rose Hall Pay Roll, had never been present at No. 50 Reliance on the 9th March, when the Pay Roll was said to have been robbed, and knew nothing about the robbery and the shooting of the policeman. He said he had left for Georgetown at 5.45 a.m. on Saturday, 9th March, 1957, and had remained there until 3.15 p.m. on the 11th March. He denied that he had visited the London Hotel on the 10th March. He denied that Dhajoo had seen him at Jagolall's house with a gun. The rest of his statement consisted of allegations that he had been ill treated by the police while in custody. 10
- p.138. 6. The evidence on behalf of the Appellant included that of Rafiq Khan, Programme Director of Radio Demerara, who said that in the news broadcast at 9 p.m. on Sunday, the 10th March, 1957, referring to the policeman being shot, no mention had been made of shots fired. He admitted that there could have been another announcement between 7 p.m. and 9 p.m. 20
- p.232;
p.237;
pp.222,228,
234. 7. The evidence for the Crown had included a statement made to the police by the second accused, Chandie, one made by the third accused, Baljit, and three made by the fifth accused, Jagolall. Chandie was acquitted at the close of the case for the Crown. Baljit and the fourth accused, Battle Boy, each made a statement from the dock and called witnesses. Jagolall gave evidence himself and called a witness. 30
- pp.139-199. 8. Phillips, J. began his charge by telling the jury what their duty was. The Crown's allegation was that during the course of a crime of robbery with violence the accused had caused the death of Claude Allen. The accused had set up separate defences of an alibi. If the jury did not believe the defence of one or more of the accused, they had still to consider the case for the Crown and decide whether the Crown had proved to their complete satisfaction "that the offence has been. 40

committed and that he or they have committed it". The learned Judge told the jury that statements made by the accused to the police were only to be considered if they found such statements to have been made freely and voluntarily. Each accused's statement was, in addition, only to be considered against the man who had himself made it, not against others whose names he mentioned. He described the elements of the offences of murder, robbery, robbery with violence and robbery under arms. He further instructed the jury to consider the evidence in regard to each individual accused as to what part he took, if any, in the concerted plan to commit the offence. He then distinguished between principals in the first and second degree and between accessories before and after the fact. Although on the indictment the jury could not convict any accused whom they might find to have been only an accessory after the fact, they could convict any whom they found to have been an accessory before the fact. If the accused had combined to commit robbery with violence or under arms, and in furtherance of that crime death resulted, all who were combining in the robbery were guilty of murder. Since, upon his own admission, Dhajoo was an accomplice, it was extremely dangerous to convict upon his evidence, unless it were corroborated in some material particular by additional evidence affecting the prisoner by tending to connect him with the crime. Having set out the evidence as to the circumstances of the crime, Phillips, J. said :

"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 some one 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. So, you have to enquire what is the evidence against each and every one of them."

p.151 l.26.

RECORD

p.151 1.39.

The learned Judge then dealt with the evidence of Dhajoo and various other witnesses, and the oral and written statements of the Appellant. If the Appellant's written statement was regarded as free and voluntary, he was saying that he had been among those who had arranged to go to the New Dam and hold up the payroll. This would be some corroboration of Dhajoo's evidence. Phillips, J. then summarised the evidence affecting the other accused, and that given for the Appellant in the attempt to shew that his written statement had not been made voluntarily. He told the jury that if, while not feeling sure that the evidence proved that the Appellant had been there on the dam, they did feel sure that it shewed that the Appellant had conspired with others to rob the payroll and commit robbery with violence, they might convict the Appellant of having been an accessory before the fact to murder. If the jury accepted the Appellant's statement, there was corroboration of the evidence of Dhajoo, the accomplice. As against the third and fourth accused there was no corroboration, and they could be convicted only if the jury were prepared to accept the evidence of Dhajoo alone. As against the fifth accused there was some corroboration of Dhajoo's evidence, but the jury would have to consider whether the fifth accused had not been only an accessory after the fact, in which case they should acquit him. Finally the learned Judge read to the jury the statement made by the Appellant from the dock.

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9. The jury found the Appellant guilty as an accessory before the fact to murder. They acquitted the third, fourth and fifth accused.

p.203.

10. The Appellant appealed to the Court of Criminal Appeal. The Notice of Application for leave to Appeal, dated the 6th August, 1957, contained, amongst others, the following grounds:-

(1) The verdict of the jury was unreasonable and could not be supported having regard to the evidence inasmuch as, inter alia, the evidence of the prosecution did not establish beyond reasonable doubt the commission of the offence alleged.

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(2) The learned Trial Judge failed to direct the jury fully and adequately on the law applicable

to the facts of the case on the indictment and otherwise misdirected the jury.

10 11. The appeal was argued on the 8th and 9th
November, 1957, and the judgment of the Court of
Criminal Appeal (Stoby, C.J. (Ag.), Luckhoo and
Date, JJ.) was delivered on the 8th January,
1958. The learned Judges first summarised the
evidence and dealt with certain points which are
not now in issue. They then said it had been
contended that the learned Judge should have
directed the jury that the Appellant could not be
found guilty as an accessory before the fact if
the other persons charged with the commission of
the crime were acquitted. It was clear from
sections 24 and 25 of the Criminal Law (Offences)
Ordinance that on an indictment for murder a
person who was an accessory before the fact to
that murder might be tried and convicted in all
20 respects as if he were a principal felon, whether
or not the principal felon had already been
convicted or was amenable to justice. It had
been submitted for the Crown that the jury had
been properly directed to consider the case
against each accused separately. They must have
concluded that the evidence against the Appellant
(including Dhajoo's evidence and the oral and
written statements of the Appellant) shewed him
to have been an accessory before the fact to
murder committed by the other accused in pursuance
30 of an agreement to commit robbery with violence,
while the evidence legally admissible against
the other accused had not been sufficient to
discharge the Crown's burden of proof. The
learned Judges agreed with this submission. The
position would have been different, if the
evidence had shewn that no crime had been
committed, but in the circumstances the jury's
verdict had been quite competent. The Appellant's
appeal was accordingly dismissed.

40 12. The Respondent respectfully submits that the
Court of Criminal Appeal was right in affirming
the conviction of the Appellant. The case against
each accused, as the jury were rightly directed,
had to be considered separately. There was no
doubt that the murder had been committed, and
Dhajoo's evidence, if accepted, shewed the
Appellant to have been an accessory before the
fact. As against the Appellant, this evidence

RECORD

was corroborated by the Appellant's own statements. It was therefore open to the jury to convict the Appellant as they did, whatever the strength or weakness of the evidence admissible against the other accused. The Appellant, in the Respondent's respectful submission, was rightly convicted, and the acquittal of the other accused does not create any estoppel between the Appellant and the Respondent.

13. The Respondent respectfully submits that the judgment of the Court of Criminal Appeal of British Guiana was right and this appeal ought to be dismissed, for the following (amongst other) 10

R E A S O N S

1. BECAUSE there was undisputed evidence that Claude Allen had been murdered:
2. BECAUSE there was evidence against the Appellant which the jury were entitled to accept, shewing that the Appellant had been an accessory before the fact to that murder: 20
3. BECAUSE Phillips, J. directed the jury rightly and adequately as to the law relating to an accessory before the fact:
4. BECAUSE of the other reasons set out in the judgment of the Court of Criminal Appeal of British Guiana.

J. G. LE QUESNE.

No. 15 of 1958

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O N A P P E A L
FROM THE COURT OF CRIMINAL APPEAL
OF BRITISH GUIANA

BETWEEN :

SURUJPAUL called DICK
Appellant

- and -

THE QUEEN
Respondent

CASE FOR THE RESPONDENT

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