

UNIVERSITY OF LONDON  
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LEG  
- 9 MAR 1960  
5 RUSSELL SQUARE  
LONDON, W.C.1.

16, 1959

No. 18 of 1959

~~PC~~  
~~G.A. 6.2.~~

ON APPEAL  
FROM THE FIJI COURT OF APPEAL

B E T W E E N :

BHARAT son of DORSAMY ... Appellant

- and -

THE QUEEN ... .. Respondent

RECORD OF PROCEEDINGS

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INS

- 9 MAR 1960

25 RUSSELL SQUARE  
LONDON, W.C.1.

55513

IN THE PRIVY COUNCILNo. 18 of 1959

ON APPEAL  
FROM THE FIJI COURT OF APPEAL

---

B E T W E E N

BHARAT son of DORSAMY ... Appellant

- and -

THE QUEEN ... .. Respondent

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RECORD OF PROCEEDINGS

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IN THE PRIVY COUNCIL

No. 18 of 1959

ON APPEAL  
FROM THE FIJI COURT OF APPEAL

B E T W E E N

BHARAT son of DORSAMY ... Appellant

- and -

THE QUEEN ... Respondent

RECORD OF PROCEEDINGS

No. 1

CHARGE

CHARGE

(Complaint by Public Officer).

In the Magistrate's Court at Ba  
Western District.

ACCUSED: BHARAT F/N DORSAMY of TAVUA.

The accused is charged as follows :-

FIRST COUNT

Statement of offence (with Ordinance and section)

MURDER: Contrary to Section 224 of the Penal Code,  
Cap. 8.

Particulars of Offence.

BHARAT F/N DORSAMY, on the 29th day of May, 1958, at  
Tavua in the Western Division murdered Chanan Singh  
f/n Dalel Singh.

SECOND COUNT

Statement of Offence

MURDER: Contrary to Section 224 of the Penal Code,  
Cap. 8.

In the  
Magistrate's  
Court, Ba

No. 1

Charge,  
30th May, 1958.

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20

In the  
Magistrate's  
Court, Ba

No. 1

Charge,  
30th May, 1958  
- continued.

Particulars of Offence

BHARAT F/N DORSAMY, on the 19th day of May, 1958, at Tavua in the Western Division murdered Govindappa f/n Kaniappa.

(sgd.) O.J.S. ADAMS I.P.  
Station Officer Ba Police Station.

Taken before me this 30th day of May, 1958.

(sgd.) G.D. LINDLEY  
Magistrate.

No. 2

Proceedings,  
30th May to  
8th July, 1958

No. 2

PROCEEDINGS

10

Before G.D. Lindley, Esq.  
Magistrate, Ba-Tavua.  
30.5.58.

Accused before Court on arrest.  
A.J. Adams for Prosecution.  
for Defence.

Accused remanded in custody to 13th June, 1958,  
pending investigation.

Order that accused be medically examined both  
as to his injuries and to his mental state.

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(Sgd.) G.D. Lindley  
30.5.58.

13th June, 1958.

Cpl. Sahai.  
Accused in custody.

Accused remanded to appear for Preliminary  
Inquiry at Tavua on 24.6.58.

(Sgd.) G.D. Lindley  
13.6.58.

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Gaol Warder Natabua phoned to have accused at  
Tavua Court on 24.6.58 at 8.30 a.m.

(Sgd.) A.S. Sahukhan  
Court Clerk, Ba.  
16.6.58.

24th June, 1958  
S.I. Ram Narayan.  
Accused in custody.

Adjourned 8.7.58. Accused remanded in custody to that date for Preliminary Inquiry.

(sgd.) G.D. Lindley  
24.6.58.

In the  
Magistrate's  
Court, Ba

No. 2

Proceedings,  
30th May to  
8th July, 1958  
- continued.

8th July, 1958  
Saint for Police.  
A.D. Patel for accused.  
Accused in custody.

10

Section 214 complied with.

(Charge read and explained; accused informed of his right; purpose of proceedings explained.)

No. 3

EVIDENCE OF RAMA MUDALIAR

Sworn on Ramayan:  
RAMA MUDALIAR, Police Photographer, Lautoka.

Prosecution  
Evidence

No. 3

Rama Mudaliar,  
Examination.

20

On 30.5.58 I was stationed in Lautoka. Early that morning I came to Tavua. I went up the road towards the Tavua Hotel. There were two dead bodies on the ground at either side of the road, both Indians. I recognised one as Chanan and the second body was that of Govindappa. Chanan was a bus driver, Govindappa was a schoolteacher. I arrived at the scene about 12.30 a.m. I took photographs of the bodies. From the negatives I exposed I made prints from the unretouched negatives. I see prints I made. (Exhibit "A1-3"). Ex. "A" is of the body of Chanan; Ex. "A2" is of the body of Chanan taken from a different angle; Ex. "A3" is the body of Govindappa. Body of Chanan is lying on the road just at the edge. Govindappa's body is lying in a grassy area about 1 yard from the edge of the road. After the bodies were removed and daylight came I took further photographs of the scene. I exposed the negatives from which I made photographs 4 and 5 in the album of photographs. (Ex. "A4-5").

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Ex. "A4" was taken from the bottom end of the

In the  
Magistrate's  
Court, Ba

Prosecution  
Evidence

No. 3

Rama Mudaliar,  
Examination  
- continued.

road looking towards Tavua Hotel. Uniformed P.C. is standing where body of Govindappa was lying. Man standing on the left hand side of road is standing where body of Chanan was lying.

Ex. "A5" was taken from Tavua Hotel looking down road to the town. P.C. in uniform standing on same spot as in previous photograph and other man standing where body of Chanan was lying. I exposed the negatives of the three remaining prints in the album (Photos tendered Ex. "A6-8").

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Ex. "A6" shows the rear side of the Tavua Hotel. Ex. "A7" also shows the rear side of the Tavua Hotel; a passage can be seen leading through to the lounge. Ex. "A8" is taken of the rear of the hotel. Two water tanks can be seen in this photograph. I was present when one nylon shirt and one pair woollen trousers were removed from the rear of the hotel, from under the building between the right-hand corrugated iron tank and the building. Sub Inspector Raj Deo took them out from there. Accused was present when the shirt and the trousers were removed. Sub Insp. Raj Deo was instructed to go to that spot by accused. This was on 30.5 after 1 a.m. but I cannot give the exact time - it was still dark. I returned to Lautoka on 30.5 in a police landrover. I was sitting in the rear seat - in the tray at the back of the landrover. Accused was also travelling in the landrover. P.C. Suresh Singh was also in the back and Sgt. Narayan Nair was driving the landrover and Sub Insp. Raj Deo was sitting beside him. I heard accused say at Tavua before climbing the hill to the overseer's house, "I did it and I have told the truth and I don't want a lawyer to defend myself." He said that in English. He did not say it to anyone in particular. I don't know why he said it - he just said it. I did not pay any attention to whether Suresh Singh was asleep or awake at that time. I do not know if he heard the remark or not. I see the nylon shirt I have referred to (Ex. "B"). Five buttons are missing from the front of the shirt. There is one button left at the collar of the shirt - a white button with 2 holes in it. There are no buttons missing from the cuffs. There is a pocket missing from the shirt - it appears there had been one on the left hand side. I recognised the woollen trousers shown to me as those S/I Raj Deo took out from the hotel. (Trousers - Ex. "C"). There is nothing else I can say that might

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help the Court in connection with this case.

Cross-examination reserved.

Court:

Accused was sitting beside me in the rear seat of the land rover.

In the  
Magistrate's  
Court, Ba

Prosecution  
Evidence

No. 3

Rama Mudaliar,  
Examination  
- continued.

No. 4

EVIDENCE OF THOMAS GUY HAWLEY

No. 4

Thomas Guy  
Hawley,  
Examination.

Sworn on Bible:

10 THOMAS GUY HAWLEY, Lautoka. Duly Registered Qual-  
ified Medical Practitioner.

On 30th May, 1958, at Lautoka Hospital I had the bodies of 2 Indian Males identified to me. One body was identified to me as being that of Govindappa f/n Kaliappa by Chinna Gounder f/n Kaliappa in the presence of S.I. Raj Deo. I have notes upon the body of Govindappa which were made at the time. I was only called to give evidence on Bharat committing an offence against Govindappa and therefore I do not have notes with me on examination of Chanan Singh.

20 I commenced an examination on the body of Govindappa at 11.30 a.m. on 30.5. The body was that of an Indian adult male with greying hair and the following external injuries. There was a swelling underlying a superficial abrasion over the left side of the lower jaw just in front of the left angle of the jaw - the jawbone was not broken. There was a second injury consisting of a  $\frac{1}{2}$ " split in the left ear, just above the lobe. A third injury consisted of a 1" stab wound on the left side of the neck 2" lateral

30 to the thyroid cartilage, severing the left common carotid artery. The fourth injury about  $2\frac{1}{2}$ " incised wound extending into the trachea. The fifth injury was a 3" incised wound  $\frac{1}{2}$ " below the previous wound cutting through the trachea and oesophagus.

No other injuries were found nor evidence of disease. I handed samples of the deceased's blood head hair and nail scrapings and the stomach and its contents to S.I. Raj Deo - these specimens were sealed in their containers by myself. In my opinion



In the  
Magistrate's  
Court, Ba

Prosecution  
Evidence

No. 4

Thomas Guy  
Hawley,  
Examination  
- continued.

the death had occurred not less than 10 no more than 18 hours before my examination. My opinion is based on rigor mortis being completely established and not having commenced to pass off. Death was due to a combination of asphyxia and blood loss, most probably asphyxia. The trachea was completely severed and was filled with blood clot. On the other hand the common carotid artery was completely severed, both occurrences being sufficient to cause death. The second injury, the one to the ear, I consider to have been caused post-mortem, the other 4 injuries I consider to have been caused anti-mortem. As for the other 4 injuries there was no evidence of healing. They were therefore inflicted less than 24 hours before death. Re the swelling underlying the superficial abrasion that could have been caused by a blunt instrument. Moderate force would have to have been used.  $\frac{1}{2}$ " split in left ear was caused I think by moderate force - I could not say how applied. 1" stab wound of left side of the neck was caused, being a stab wound, by a pointed instrument. The instrument must have been flattened and about 1" in width - it could have been a little more than 1" as the skin can stretch - it is unlikely to have been much less than 1" in width but not impossible. From the depth of the wound I estimate the instrument used to have an absolute minimum length of 1" and to have a more probable minimum length of 2". I can only say that the 2 incised wounds were caused by a sharp cutting instrument with a smooth edge. I see a knife - I think the large blade quite capable of causing the injuries. I carried out an examination on the body of one Indian male in the afternoon of the same day in the presence of S.I. Raj Deo. I do not have a typed and signed copy of the notes of my examination of the 2nd case. I see my signature on a report submitted to me of post mortem examination I made on Chanan Singh f/n Delai Singh on 30.5. (Report tendered under S.216(1) as Ex. D; report read). The  $\frac{3}{4}$ " stab wound on the right side of the neck was caused in my opinion by a sharp pointed instrument flattened about  $\frac{3}{4}$ " in width. Not less than 1" in length as minimum, more probably 2". A sharp instrument with a smooth edge and a sharp point was used in my opinion to sever the trachea and oesophagus and penetrate 5th cervical vertebrae. The minimum length of that weapon would have to be 2". For the wound under the mandible in my opinion a sharp instrument with a smooth edge was used, a flattened instrument. I see a knife the blade end is compatible with having caused the injuries described.

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I cannot say whether these injuries were inflicted from the front or the rear or by a right or left handed person. With reference to the body of Govindappa in my opinion the injury to the chin took place before the stab wound or the incised wound but I cannot come to any conclusion about the position of the person administering the last 3 injuries. The jaw injury had been caused by a blunt instrument approaching at right angles to the left side of the face of the deceased. The injury to Govindappa's jaw could have been caused by either extremity of the stick shown to me. I think the injury to Govindappa's left ear was caused by a dragging movement, and was definitely post-mortem. I removed the clothing from both bodies and handed it to S.I. Raj Deo. I identified the bottle shown to me as the one I handed to S.I. Raj Deo containing the stomach contents of Chanan Singh f/n Delai Singh. My signature is on the label (Bottle Ex. E). I see second bottle which I handed to S.I. Raj Deo containing stomach and contents from Govindappa - I identify the signature on the label as being my own. (Bottle Ex. F). I see 2 small bottles labelled respectively Chanan Singh's blood and Govindappa's blood in which I placed specimens of blood from both deceased. (Ex. G. - Chanan's blood. Ex. H. - Govindappa's blood). On Chanan Singh there were 4 injuries ante-mortem - the last injury, i.e., the ulcer on the leg was sustained more than 48 hours prior to death. The 3 injuries to the neck were sustained not more than 24 hours prior to death. Chanan Singh had died not less than 10 nor more than 18 hours prior to my examination. Chanan Singh and Govindappa died within the same period of time - I cannot be any more definite as to the time of their deaths. I examined Bharat f/n Dorsamy at 11.05 a.m. on 30.5. He is the person opposite me in this room. At that time I found no injury although subsequent re-examination on 3.6 suggested I may have overlooked a superficial injury. On subsequent re-examination on 3.6. I found a healing superficial scratch on the back of the ring finger of the right hand  $1\frac{1}{2}$ " long. I also found a healing superficial scratch on the flexo-surface of the right forearm deeper above than below about 3" in length. The result of my examination on 30.5 was that mentally accused was intelligent, alert and fully orientated for time, place and person. He seemed sound but elated. I took specimens of accused blood, hair of his head and fingernail scrapings at the time of the original examination placed them in a sealed containers and handed

In the  
Magistrate's  
Court, Ba

Prosecution  
Evidence

No. 4

Thomas Guy  
Hawley,  
Examination  
- continued.

In the  
Magistrate's  
Court, Ba

Prosecution  
Evidence

No. 4

Thomas Guy  
Hawley,  
Examination  
- continued.

Cross-  
examination.

them to S.I. Raj Deo. I see labelled bottle containing blood which I handed to S.I. Raj Deo (Bottle Ex. I). I identify the signature on it as being my own.

Cross-examination:

By accused being elated I mean exhilarated in high spirits - I don't mean excited. I base my opinion on his being in high spirits or that of a man in his predicament he seemed to be enjoying himself more than was to be expected and to be almost over co-operative.

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No re-examination.

Court:

The two deceased would not have taken more than 5 minutes to die after receiving the wound which severed the carotid artery in each case. During that 5 minutes they would be virtually helpless due to immediate loss of blood. Supposing they were standing up when they received this injury they would fall to the ground within about 30 seconds unless they had the presence of mind to constrict their own carotid artery. The absence of blood on the hands of the deceased supports they did not try to constrict the carotid artery. I have nothing further to add. I estimate Govindappa to have been about 40, Chanan Singh to have been about 30 - plus or minus 5 years in each case. I cannot make an estimate of how long a man would take to die through a blood clot completely filling the cut and of his trachea supposing he had had no arterial injury.

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Court:

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The deceased were well developed. They were both about 58" tall at an estimate. I could not say anything as to their facial expressions - relaxed if anything. There was no vomit anywhere.

No. 5

Orrock John  
Suffon Adams,  
Examination.

No. 5

EVIDENCE OF ORROCK JOHN SUFFON ADAMS

Sworn on Bible:

ORROCK JOHN SUFFON ADAMS, Inspector of Police, Ba.

On 30.5.58 I was the senior officer present in

Tavua Division. I saw accused Bharat at Ba Police Station at 8.30 a.m. on 30.5. I spoke to him in English, I said, "Bharat, have you any complaints about your treatment whilst you have been in Tavua police station?" In reply, "No, it was very fine." He was then about to be taken down to Ba Magistrate's Court. I asked him that question to comply with standing instructions in the Force.

In the  
Magistrate's  
Court, Ba

Prosecution  
Evidence

No. 5

Orrock John  
Suffon Adams,  
Examination  
- continued.

Cross-examination reserved.

10

No. 6

EVIDENCE OF PENIANA NAI

No. 6

Peniana Nai,  
Examination.

Sworn on Bible  
PENIANA NAI, House girl, Tavua Hotel.

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I recall night of 29.5.58, a Thursday. I came to the theatre that night - the Paramount Theatre. I did not see the show. There was a picture show at the theatre that night. The picture show sometimes finishes at 10 p.m., sometimes at 11 p.m. I was returning to the hotel along the track along the fence at right angles to the front of the theatre running past the front of the dispensary. I eventually got on to the road leading to the hotel, I came on the road just at its forking to the road and left going up to the hotel. I took the right fork. Joanna was with me at this stage.

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It was a moonlight night. We had no torch. We noticed 2 men were lying one on the left side of the road - the other a bit further on the grass. We did not know what race they were. They were not moving. We did not hear any noise from either of them. We were few yards away from them. They were not far from where the road forked. We did not hear any noise. We did not see any other person in the vicinity. We did not see any cars or trucks going past at about this time. We then ran to the police station. Joanna and I. We looked at the bodies for about 3 minutes then ran down to the police station. We made a report at the police station to P.C. Malakai. Malakai went to call 2 constables. I did not go up to show the bodies to the policemen. I was not close enough up to the bodies to identify either of them.

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In the  
Magistrate's  
Court, Ba

Prosecution  
Evidence

No. 6

Peniana Nai,  
Examination  
- continued.

Cross-examination reserved.

Court:

The second man was lying on the right side of the road. We were returning to the hotel after the interval of the show. I did not see part of the show. I don't know the time.

No. 7

Vincent Henry  
Vaughan,  
Examination.

No. 7

EVIDENCE OF VINCENT HENRY VAUGHAN

Sworn on Bible:

VINCENT HENRY VAUGHAN, Hotel Manager, Tavua.

10

I know accused. I remember night of 29.5.58. I was at the hotel that evening. I knew deceased Chanan Singh and deceased Govindappa. On 29.5.58 accused was employed at the hotel - he would be relieving in the bar from about 7 p.m. until about 9 p.m. On this particular night he was doing these duties. I could not be sure that he was alone that night between those times. The other barman, Michael Govind, may have possibly been in there part of that time. I can truthfully say I spoke to the accused in the bar between 8.15 and 8.20 p.m. and that was to request him to ring for a taxi for Govindappa. Govindappa had spoken to me - he came to the office and asked me to ring for a taxi. I did not actually see where he went to after speaking to me. I asked accused to ring for a taxi for him which he did. I went into the bar at 9 p.m. or just after 9, it might have been 9.10 p.m. and the other barman was on duty. I did not actually ask Sowan Prasad the barman to ring for a taxi but the deceased did. A taxi arrived at the hotel and after waiting 10 minutes went away without the deceased. This was at 9.10 p.m. Govindappa was then in the public bar with Chanan Singh. The latest time I saw Govindappa or Chanan Singh inside my hotel would be about 9.30 p.m. They were both there together then. Chanan Singh could carry his liquor very well but not so Govindappa. That night they were quite orderly. When I saw them at 9.30 I could not say whether or not they were in full possession of all

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their faculties as they were standing at the bar -  
 I did not serve them. They were in the public bar -  
 the front bar. I don't remember seeing accused in  
 the hotel after I spoke to him about 8.10 or 8.15.  
 I don't know at what time he knocked off duty that  
 night. I do not keep a time sheet in the hotel -  
 it is entirely left to the discretion of the barmen  
 themselves as one man usually goes at 7 p.m. and  
 returns about 9 p.m. On this night Sowan Prasad  
 10 was in the bar when I came in there about 9.10. The  
 2 deceased were at frequently in each other's com-  
 pany to my knowledge - I could not say I had seen  
 them together before. There was no argument between  
 them at the bar that night - I did not particularly  
 notice them except that Govindappa did not take ad-  
 vantage of the taxis that we procured for him on  
 several occasions. I was there at closing time,  
 that night. Closing time is 10 p.m. possible a few  
 minutes before, certainly not after, as there was  
 20 nobody in the bar at that time. Just after 10 p.m.,  
 possibly 10.5 p.m. I noticed 2 figures and heard  
 these people talking and I assumed they were sitting  
 on the grass just outside the hotel on the northern  
 end of the verandah leading into the front bar. I  
 did not see any strangers around after that. I did  
 not notice anyone walking round the hotel after that.  
 Accused had been working at the hotel ever since I  
 came there as licensee in June, 1953, but he had  
 been working there before. He has quarters at the  
 30 hotel in which he lives and sleeps, a room in the  
 main building. He has been employed as a barman  
 for quite 3 years. He would be in the bar daily -  
 on ordinary days he would relieve from 2 p.m. till  
 4 p.m. and then again from 7 p.m. to 9 p.m. but on  
 busy days, e.g., cane or mines pay day he would be  
 on duty all day. On the morning after I went down  
 to Tavua police station and saw accused I spoke to  
 him with permission of the constable on duty - I  
 suggested he should get legal advice. He said he  
 40 did not want any legal advice as he had already made  
 statement. He did not make any complaint to me  
 about anything. I did not see accused between 9.45  
 p.m. and midnight on the night in question.

Cross-examination reserved.

Court:

The talking I heard about 10 to 10.5 p.m. was in  
 Hindustani - I cannot say anything more as to its  
 nature. I cannot say anything as to the 2 figures  
 that I noticed.

In the  
Magistrate's  
Court, Ba

Prosecution  
Evidence

No. 7

Vincent Henry  
Vaughan,  
Examination  
- continued.

In the  
Magistrate's  
Court, Ba

No. 8

EVIDENCE OF MALAKAI TAGICAKE

Prosecution  
Evidence

Sworn on Bible:  
P.C. 517 MALAKAI TAGICAKE, Tavua.

No. 8  
Malakai  
Tagicake,  
Examination.

I recall the night of Thursday 29.5.58. About 10 p.m. that night I was on duty in the police station at Tavua. I know witness Peniana Nai. She made a report to me that night. She came into station at 22.15 hours accompanied by Joanna. After receiving a report from her I told Cpl. Fero. Cpl. Fero and P.C. Timoci left the station to attend to this report. 10

Cross-examination reserved.

No. 9

No. 9

Kiniviliame  
Volavola,  
Examination.

EVIDENCE OF KINIVILIAME VOLAVOLA

Sworn on Bible:  
P.C. 52 KINIVILIAME VOLAVOLA, Tavua.

I was on duty on the night of Thursday 29.5.58. That night I went on duty at 8.30. I visited the bar of the Tavua Hotel about 8.30. I saw Govindappa and Chanan Singh when I got there. I saw accused behind the bar. I have seen him behind the bar on previous occasions. While I was up there I heard an argument between accused and Govindappa. There was a man in the bar who when he left said, "Sat Shri Akal" to the accused - that was the cause of the argument. I did not hear this person say "Sat Shri Akal" to accused. When I asked them what was the issue of the trouble, accused told me that. He did not say anything else. I saw accused and Govindappa arguing for about 10 minutes. They were not happy when they were arguing; both of them were angry. I warned them both not to quarrel. They stopped quarrelling. After that I heard Govindappa tell accused to ring a taxi for him. Accused did not reply to that except to say, "I am not going to do it." Then Govindappa came out of the bar and went to see the Manager, Mr. Vaughan. Mr. Vaughan called out to the accused to ring for the taxi - I knew he was calling to the accused, he called from 20 30 40

the other room, "Bharat ring for a taxi." I saw accused then ring for taxi. I did not hear what he said. I did not hear what he said when he picked the phone up. He then said there was no taxi. Accused was still angry. After he said there was no taxi the argument started again between accused and Govindappa. I warned them again not to quarrel. No one was in the bar at this time. I saw what accused was wearing - a cream nylon shirt. I noticed there was a white envelope in the pocket of the shirt. The shirt had a pocket. It appeared a thin envelope. I noticed accused was wearing long brown woollen trousers. I see the shirt the accused was wearing that night. The pocket is not there any more. I left the hotel before it closed. I left at 9.15 p.m. Later the same night I went to a point on the road leading to the hotel where there were 2 bodies. They were the bodies of Govindappa and Chanan Singh. Govindappa was dead. It was the same man as I had seen quarrelling with accused. Chanan Singh was also dead. I saw injuries on both men. There were no injuries on them when I noticed them in the hotel. When I left the hotel about 9.5 p.m. accused was still in the bar. Govindappa and Chanan Singh were still in the bar. Govindappa and Chanan Singh were drinking peacefully when I left them and there was no argument. When I went to where the bodies were I saw a shirt pocket and an envelope. The shirt pocket was similar to shirt accused was wearing - the yellow shirt. Envelope was addressed to accused. The pocket was between the 2 bodies, about 2 yards from Govindappa and 3 yards from Chanan Singh and the envelope also, close to the pocket, I did not look at the envelope. I see the same envelope, found between the bodies. (Envelope - Ex. J). Envelope addressed to accused "Mr. Bharat Singh, Tavua Hotel, Northern Tavua." No postage stamp on envelope but postmark on envelope marked, "Suva 10 a.m., 17th May, 1958, Fiji." There is a stamp on the rearside of the envelope saying, "Tavua 20th May, 10. Fiji". I see the same pocket as was found between the bodies (Pocket Ex. K). On 30.5. I escorted both bodies to Lautoka Mortuary. I have nothing to add.

Cross-examination reserved.

Court:

Both deceased are known to me. I know Govindappa very well, he is a schoolteacher. Chanan Singh is

In the  
Magistrate's  
Court, Ba

Prosecution  
Evidence

No. 9

Kiniviliame  
Volavola,  
Examination  
- continued.



In the  
Magistrate's  
Court, Ba

Prosecution  
Evidence

No. 9

Kiniviliame  
Volavola,  
Examination  
- continued.

the Fiji Transport bus driver. "Sat Shri Akal" is a Punjabi word (Mr. A.D. Patel on court's request: Akal is the absolute in which the Sikh believe the expression used is a Sikh greeting when meeting or parting.) I heard Govindappa in the argument say "We are paying for our drinks and that man has no right to say "Sat Shri Akal" to you" - that was all I understood of the argument. Argument was in Hindustani and also in English, but Govindappa's remark is all I remember of it. The parties did not abuse one another or threaten one another. They were very angry with one another. I could tell they were very angry as Govindappa banged the bar with his fists. Accused did not make any such gesture. The second argument started by Govindappa saying the accused did not ring for the taxi. Accused then said, "You can go down to the telephone operator and ask him whether I rang for the taxi or not." After that I told them not to quarrel. The 2 deceased appeared to have been drinking. The accused did not appear to have been drinking. I don't know what Govindappa and Chanan Singh were drinking except they were drinking liquor, when they had finished their glasses Govindappa ordered another 2 rums. He got the 2 rums.

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No.10

Fero Namira,  
Examination.

No.10

EVIDENCE OF FERRO NAMIRA

Sworn on Bible:  
CPL. 295 FERRO NAMIRA, Tavua.

On night of Thursday 29.5.58 I was in the police barracks shortly after 10 p.m. P.C. Malakai reported something to me. I went out on to the road and up towards the Tavua Hotel. I followed the left hand track at the fork of the track. I went right round the road to the hotel and started coming down to the town as it is a one-way. On my way down I saw a man lying down on the right hand side of the road. I got out and had a look at him. He was dead. He was an Indian. I saw another man on the left side of the road, an Indian - he was dead. Near the man lying down on the left side of the road I saw a black stick. I see it - it was broken when I saw it. (Stick - Ex. L): I noticed a piece of cloth lying near the bodies. I left the piece of cloth there

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until the C.I.D. arrived. I saw an envelope lying down there. I did not look closely at the envelope. I stayed and guarded the scene until some C.I.D. men arrived under S. Inspector Raj Deo. Everything was in the same place as I found it when Sub. Insp. Raj Deo arrived. On 1st June I received a number of sealed exhibits from S.I. Raj Deo. I took them to Suva and handed some of them to Dr. Gosden and some to the Government Analyst. I brought these parcels back at a later date and returned them all to S.I. Raj Deo.

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Cross-examination reserved.

Court:

The night was calm. I was in a land rover.

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No.11

EVIDENCE OF SOHAN PRASAD

Sworn on Ramayan:

SOHAN PRASAD F/N DURGA PRASAD, Barman, Tavua Hotel, Tavua.

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I have been barman at the hotel for some years. I remember night of 29.5.58. I was on duty in the bar that night till 8 p.m. when I went to have my meal. After 8 p.m. Bharat took over - the accused. A number of people were in the bar when I went to have my meal. Govindappa and Chanan Singh were there - they were apart from each other about 4' apart - there were others between them at the counter. After having dinner I returned to the bar about 9 p.m. Accused was still there when I came back then he went away. I don't know where he went to. Govindappa and Chanan Singh were still in the bar when he went away. About 9.15 p.m. I rang for a taxi for Govindappa. The taxi came. I did not get into it. It waited for a while and then went away. Govindappa and Chanan Singh left the bar at 9.25 p.m. Accused had left the bar at 9 p.m. Later another taxi arrived, Govindappa and Chanan Singh went away to this taxi that was parked outside - I did not see what they did. I only saw them go outside. I heard the taxi go away. I did not hear any conversation after I heard the taxi go away. After Govindappa

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In the  
Magistrate's  
Court, Ba

Prosecution  
Evidence

No.10

Fero Namira,  
Examination  
- continued.

No.11

Sohan Prasad,  
Examination.

In the  
Magistrate's  
Court, Ba

Prosecution  
Evidence

No.11

Sohan Prasad,  
Examination  
- continued.

and Chanan Singh had gone away there was nobody left in the bar. I closed up the Bar at 10 p.m. No one came into the Bar after Govindappa and Chanan Singh left. Accused was wearing a cream nylon shirt and ash coloured trousers.

The shirt had a pocket in the front. There was something like an envelope in the pocket. I see the colour of the shirt - it was about the same colour as the one Bharat was wearing. Accused was wearing trousers of the type shown to me. Accused had a camera, a folding camera. He used to take photographs with it. He showed me photographs on a number of occasions before. I have not seen any of the photographs shown to me before. I don't know if accused had any sort of knife. I did not see accused after he left the bar at 9 p.m. that night. Govindappa and Chanan Singh were under the influence of liquor when they left the hotel. They were inarticulate in their speech but they did not walk in such a fashion as if they were about to fall. They left the hotel of their own account; they were not asked to leave the hotel. They left in a friendly manner. Accused knew both of them prior to that night. Ever since Bharat came to work in the bar they would come and drink there. That was about 6 years ago.

Cross-examination reserved.

No.12

No.12

Manhar Lal,  
Examination.

EVIDENCE OF MANHAR LAL

Sworn on Ramayan:  
MANHAR LAL F/N CHINNA LAL, Tailor, Tavua.

I have made shirts for this accused. I see a shirt (Ex. B) - I tailored that for Bharat - Bharat gave me the order for the shirt. My shop is in the town. I sewed 6 buttons on the front of the shirt - I see one only now. The buttons which were missing had 2 holes in them - they were exactly the same type of button as is on that shirt now. I made this shirt with one pocket on the left side. I do not see the pocket on the shirt now. I see the pocket - the material is the same as the shirt. The piece of material belongs to the shirt as a pocket. Shirt

taken to accused by a boy whose name I don't know but who went to work in the Tavua Hotel before. Boy paid me for the shirt about 9/-. I made this shirt over 3 or 4 months ago. I also had buttons on the cuffs - 2 on each cuff. They are still there.

Cross-examination reserved.

In the  
Magistrate's  
Court, Ba

Prosecution  
Evidence

No.12

Manhar Lal,  
Examination  
- continued.

No.13

EVIDENCE OF AMI CHAND

No.13

Ami Chand,  
Examination.

Sworn on Ramayan:

10 AMI CHAND F/N JANG BAHADUR SINGH, Cultivator, Bolata,  
Tavua.

I was formerly employed in Tavua Hotel as second cook. I see Ex. B. I have seen a shirt of this colour before. Bharat had a shirt of this colour. Bharat is the accused. I know Manhar Lal. He handed me a shirt belonging to Bharat but I do not know if it was this shirt or some other shirt. I have once only collected shirt for Bharat from Manhar Lal. I think I took delivery of the shirt that year - I  
20 handed it to Bharat. Bharat told me to go - he told me to "Go and fetch the shirt I have had tailored there." I don't remember paying any money in payment of this shirt. The shirt I took was of the same colour but I cannot say if this is the shirt I took or some other one. The shirt I took to Bharat I saw him wearing it. He used to change his shirts. Accused had a camera. I saw him with a camera - it was a black camera - a folding camera. I saw him  
30 taking photographs - near the hotel. He took a photograph of myself - I was sitting down. He has shown me photos similar to the ones I see. I see a photograph of the hotel. There is a man in one of the photographs - accused said when he took the photograph it was one James. Accused showed me photographs of this type - these are the photographs he showed me. I see 2 photos of the hotel; the third is that of a room - Bharat's room. (Photos Id. M1 - 3). I know only of a penknife - he showed it me. Accused showed me the penknife after he  
40 bought it before 29.5. - I don't remember how long

In the  
Magistrate's  
Court, Ba

Prosecution  
Evidence

No.13

Ami Chand,  
Examination  
- continued.

before. We were all in the kitchen accused came and said he had bought the knife from Man Lee. Govinda, Kanta and I don't remember who else was in the kitchen at the time. It was of the type shown to me but I cannot say if this is the knife or not.

Cross-examination reserved.

No.14

Michael  
Govind,  
Examination.

No.14

EVIDENCE OF MICHAEL GOVIND

Sworn on Bible:

MICHAEL GOVIND F/N GANGA DHURRAM MUDALIAR, Cook,  
Tavua Hotel.

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I knew accused had a camera - a folding camera - Agfa. I would recognise it if I saw it. It was a similar one to the one I see but I cannot say if this is the one. Accused showed me some photographs. He showed me them before the bodies were found about a week or two before. The pictures were of Tavua Hotel. I remember M2 and M3. They were shown to me. Accused had a pocket knife. I saw it - before these men were found dead, about a week or so before. It was the same kind as the knife I see. (Knife Id.N).

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Cross-examination reserved.

No.15

Bal Kumar,  
Examination.

No.15

EVIDENCE OF BAL KUMAR

Sworn on Ramayan:

BAL KUMAR F/N LATCHMAN, Suva. Works at Tavua Hotel as Bedroom boy. Lodges at Hotel.

I know accused. I visited his room on occasions at the Tavua Hotel. I see a photograph of Bharat's room, (M.1.) Accused is Bharat. Accused showed me one photograph which he took at the hotel and I appeared in the photograph. He showed me the photograph about 1 or 2 days before the 29.5. I see M2

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and M3 - he showed me both of them. Accused had a folding camera - similar to the one I am shown (Camera Id. O). I did not see any knife in accused's possession prior to 29th May.

Cross-examination reserved.

In the  
Magistrate's  
Court, Ba

Prosecution  
Evidence

No.15

Bal Kumar,  
Examination  
- continued.

No.16

EVIDENCE OF PRATAP SINGH

No.16

Pratap Singh,  
Examination.

Sworn on Ramayan:

PRATAP SINGH F/N CHANAN SINGH, Schoolboy, Suva.

10 Aged 14.

Understands nature of oath.

I know accused. He is my Uncle. I am schooling at Deen Bandhu High School, Suva. I have written to accused in the past - 4 or 5 times, this year. I see the envelope Ex. J - it is addressed to my uncle. My writing appears on the envelope. The date of the envelope is 17th May, Suva. I wrote a letter to my uncle and put it in that envelope. I did not enclose anything in the envelope apart from the letter. I don't know if my uncle saves stamps.

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Cross-examination reserved.

Court:

Accused is my father's brother.

No.17

EVIDENCE OF MULLUK SINGH

No.17

Mulluk Singh,  
Examination.

Sworn on Ramayan.

MULLUK SINGH F/N DHALEL SINGH, Cultivator, Vunitivi.  
Rakiraki.

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I am brother of deceased Chanan Singh. On 30th May I identified my brother's body to a doctor at Lautoka Hospital. My brother was about 33 years old.

Cross-examination reserved.

In the  
Magistrate's  
Court, Ba

No.18

EVIDENCE OF CHINNA KOLANDA GOUNDEN

Prosecution  
Evidence

Sworn on Ramayan:

CHINNA KOLANDA GOUNDEN F/N KALIAPPA GOUNDEN, Cultivator, Nabuna, Tavua.

No.18

Chinna Kolanda  
Gounden,  
Examination.

I am the real brother of deceased Govindappa. On 30th May I identified my brother's body to Dr. Hawley at Lautoka Hospital - my brother was about 35 years of age.

Cross-examination reserved.

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No.19

No.19

Yok Bow Fong,  
Examination.

EVIDENCE OF YOK BOW FONG

Sworn on Bible:

YOK BOW FONG, Tavua, Storekeeper.

I am the Manager of Man Lee's corner shop. I have lived in Tavua 5 years and been in Man Lee's corner shop all the time. I know accused. I don't know his name - he was working at Tavua Hotel. I don't know if accused ever had a knife. I have had knives similar to Id. N in my shop. I sold a knife to accused - same as Id. N - at the price of 14/-. I remember hearing that 2 bodies had been found. I sold the knife to the accused before then - the same week. Accused left a camera with me to sell. I see the camera (Ex. O). He left the camera the same week - before the bodies were found. The next morning the police took it away.

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Cross-examination reserved.

No.20

No.20

Kamta Prasad,  
Examination.

EVIDENCE OF KAMTA PRASAD

Sworn on Ramayan:

KAMTA PRASAD F/N KISSUN.

I live at Rakiraki but work at Tavua Hotel. I

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normally live in a barrack at the Tavua Hotel. I am learning how to print photographs I have a studio. I see Id. M1 - 3 - I cannot say if I printed them - I may have done so. Accused did hand me one roll of film to be developed - this year - I can't remember what was on the film. I remember Cpl. Prem Krishna printing a photo in the studio this year - I cannot say if the photo shown to me is the one or not. It is possible that it is not printed from the same negative as M2 as one is a bit duller than the other. It looks like the Tavua Hotel taken from the same side. There is a man looking out of the window in each photograph - it appears he is in the same place in each photograph. The tree appears to be in the same area in each photograph. It appears that one area is bigger than the other. It is possible that that could be accounted for by marking. I don't know how the one picture can become darker than another as it is only a few months since I started this work.

In the  
Magistrate's  
Court, Ba

Prosecution  
Evidence

No.20

Kamta Prasad,  
Examination  
- continued.

Cross-examination reserved.

Court:

I don't remember if I had a conversation with accused after the 29th May. I recently had a word with Bharat in the Tavua Police Station after permission had been obtained to talk to him - it was a long time ago - I don't remember how long. I just went to look at him. I asked him "How are you?" "Are you all right?" I had gone there to ask him about his condition. He said, "I'm all right". I cannot remember what else was said. The conversation lasted quite a short time - a police officer was with us - after that I went outside. I don't remember which police officer.

No.21

EVIDENCE OF RAJ DEO

Sworn on Ramayan:  
RAJ DEO, Inspector of Police, Suva.

No.21

Raj Deo,  
Examination.

I remember night of 29.5.58. I was stationed at Lautoka. I received a report from Tavua. I came to Tavua with Det. Sgt. Narayan Nair and arrived at Tavua 12.30 and met S.Insp. Akuila on the road going



In the  
Magistrate's  
Court, Ba

Prosecution  
Evidence

No.21

Raj Deo,  
Examination  
- continued.

up to the hotel. Cpl. Fero was guarding the scene were there were 2 bodies. I made a close examination of the scene. Notes were made by Sgt. Nair on my dictation in his notebook. I read the notes through afterwards and signed them. They agreed with what I noticed. I later learnt one of the bodies was Chanan Singh and the other Govindappa. I touched the bodies - they were cold but rigor mortis was not present. I saw both had their throats cut. I saw blood directly underneath the wounds and no blood scattered about anywhere. Blood looked reasonably fresh. Looking round I saw an envelope addressed to Bharat at the Tavua Hotel, and a piece of nylon material appearing to be shirt pocket, a shirt button and a black stick. The envelope contained 3 photographs - 2 of Tavua Hotel and one of an interior of a room which I later learned was Bharat's room. I see Ex. J. - it is the envelope I found and took possession of. I see the 3 photographs (Ex. MI - 3) - I found and took possession of. The envelope was torn on one side and the photos in it were clean and fresh. - It appeared someone had handled it roughly, it was twisted. I see the piece of nylon material I found (Ex. K). I see a button I found at the scene (Button Ex.P). The button was found 6 feet from the edge of the road and the shirt pocket found on the grass at the verge of the road - about 4'4" away from the body of Govindappa. The white envelope containing the photographs was 18-20" away from the pocket - I found a stick - a black stick - the brass piece was found a few minutes later. It was found roughly 3' from Govindappa's body. I examined the shirt fronts of Govindappa and Chanan Singh - none of their buttons were missing. There was nothing to suggest a struggle on the road - very little grass was damaged where Govindappa was lying. When examining the scene closely in daylight I did not find blood spots close to either body. I supervised the taking of photographs. I sent the bodies through to Lautoka Hospital under the escort of P.C. Kiniviliame in a landrover. The bodies were found just a few yards above track leading to house of Deputy Supt. Tavua. The house was vacant that night - the owner was away on leave.

S.I: Ram Narayan, the next senior man in the district, was in Suva. About 2 a.m. I saw accused at Tavua Police Station. I had a talk with him - Sgt. Narayan Nair was taking the notes of my conversation with accused - he was writing - I checked it and I signed. The notes were written in the Sgt.'s

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notebook. I asked accused if he knew anything about this murder - I asked him what he was doing in the station. He said, "Police brought me". I asked him a number of questions.

In reply to one of my questions he said, "I heard 2 men were murdered". I asked him what he was doing there - he said, S.I. Akuila brought him. I asked him where he lived - he said at the hotel he had a room there. I asked him why S.I. Akuila brought him to the station - he replied, "Because I'm suspected." He said, "I was on duty at the hotel as a barman. Govindappa and Chanan Singh were drinking in the bar." He volunteered to say, "I had an argument with Govindappa and Chanan Singh." I asked him what the argument was about - he said, "I had some customers besides them, one more Punjabi was there." I asked him the name of the Punjabi - he said he did not know the name, he knew the Punjabi by sight and that the Punjabi lived at Malele. Accused said that this Punjabi walked out of the hotel and said, "Sat Shri Akal" to him and that Govindappa then said in English, "You should not say like this we are paying for the drinks." Accused said, "I replied to Govindappa, 'You should not say this, you must be teaching the same thing to your school pupils.'" Accused said Govindappa was going in and out repeating the same things, he came to the counter and asked for a few more drinks. Accused said, "I served, Chanan Singh paid for the drinks." I asked accused what happened then and in reply he said, "I told Govindappa 'You should have better sense being a schoolteacher.'" Accused said, "During this time a Fijian Constable came - I think his name is Kinivilame and he advised us both not to quarrel." Accused again said "He stayed there for a while and went away." I asked accused what happened next and he said, "It was about 9 o'clock and I was going off duty and the other barman, Sohan Prasad, came and took over." I asked what happened to Govindappa and Chanan Singh and in reply he said, "These two men were still there." I asked accused where did he go, in reply he said, "I went to my room. I had been listening to the radio for a while and went to bed. It was about half past nine." I asked him what was the next thing he knew, he said, "At about midnight I heard a knock at the door and I answered the call - I saw Sgt. Akuila and another P.C. Poasa and Vuniwai Waqabaca. They asked for my clothes I was wearing in the daytime. I showed them my clothes which I am wearing now. They asked me

In the  
Magistrate's  
Court, Ba

Prosecution  
Evidence

No.21

Raj Deo,  
Examination  
- continued.

In the  
Magistrate's  
Court, Ba

Prosecution  
Evidence

No.21

Raj Deo,  
Examination  
- continued.

to come down to the police station and I came and I am in the station since." I asked him if he knew who killed Govindappa and Chanan Singh and in reply he said, "I don't know who killed these two fellows." I asked him if he had a nylon shirt and in reply he said, "I have a white nylon shirt home - it is in my room." I asked him if he had received any letter or photograph from Suva lately and in reply he said, "I did not receive any letter or photograph from Suva -" and then he changed his sentence and said, "I received one letter from my brother's son in Suva - he is schooling at Deen Bandhu High School." I asked the name of his brother's son and he said "Pratap Singh f/n Chanan Singh." I asked him if he had come down to town that day and in reply he said, "I did not come down to town at all - not even in the daytime. I remained in the hotel the whole day." I asked him again if he came out and he said, "I did not come out of the hotel." I asked him when police brought him to the station which road they followed and he said, "When police brought me to station we came by road nearer to Sub Accountant's house." I asked him if he had gone to the scene of the murder and in reply he said, "I did not go to the scene of the murder - I did not leave the hotel compound at all." I asked him if he could tell me the names of the people who were drinking in the hotel besides the 2 deceased and he said there was a man named Prithipal Singh of Malele. He said, "There was another 2 Indians. I don't know their names but know them by sight." I asked him what he had done with the letter his brother's son wrote to him - he said, "The letter has been burnt by me to-day together with other letters." I asked him where he burnt the letters, he said "Burnt in kitchen the Cook was there when I took the parcel." I asked him why he burnt the letters, he said "I don't keep unnecessary letters." I asked him, where was the envelope which his brother's son had sent to him and he said, "The envelope has also been burnt" and he himself said, "I have taken out the stamp from the envelope." I asked him if he remembered the date when he received this letter and in reply he said, "I don't remember the date I received this letter, it was last week sometime." I asked him the condition of the nylon shirt, he replied, "The nylon shirt I have at home is about 5 months old, not torn, quite good and in the same condition I have now." He had a nylon shirt on at the time. I asked him if the shirt had been damaged and he

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said no damage had been done to the shirt up to now. I asked him if any of the buttons were missing from his shirt and in reply he said, "No buttons missing from the shirt - I can show you the shirt now." I asked him if anybody had visited him in his room and he replied, "Since I knocked off nobody came to my room." I asked him if he had replied to the letters he had burnt and he answered me, "I burnt all the letters after replying to them - it was after 4 p.m. on Thursday." I asked him where he came from - he said he came from Rakiraki. I asked him how long he had been working in the hotel and he said, "Six years." I asked him if he had any black stick in his room and he replied, "I have no black stick in my room nor I had any." I then showed him the exhibit stick and asked him if he had seen it before and he replied, "I have not seen this before." I went back to the argument he had in the hotel and asked him who had the argument with him, Govindappa or Chanan Singh and he said, "When Govindappa was arguing with me only, Chanan Singh was present; the rest of them left the hotel and the manager did not say anything." I asked him what time he went on duty and he said "I went on duty at 7.45 p.m." I asked him if Govindappa and Chanan Singh were already there and he said, "They were already there drinking." I asked him if that was the first time he started duty for the day and in reply he said, "I was also on duty from half past one to four o'clock during the day." I asked him if he had any relatives in Tavua; in reply he said, "One of my brothers works in mine, name Latchman Singh." I asked him if he was in the hotel that night and he said "He was not in the hotel." I asked him if he had any dagger at all and in reply he said, "I have no dagger at all nor have any." I asked him if he had a penknife and in reply he said, "I have 2 penknives." I asked him again what he did when relieved from duty he said, "I went straight to my room." I asked him if he spoke to anyone before he went on duty, in reply he said, "I did not speak to anyone." I then instructed Sgt. Narayan Nair to read back all the notes he had made - this was done in the presence of the accused who then signed. I then asked accused if he would permit to search his room which he willingly allowed me to do and about 3 a.m. I went to his room with Det. Sgt. Nair, Photographer Rama and some other constables and searched his room.

In his room I took possession of some negatives

In the  
Magistrate's  
Court, Ba

Prosecution  
Evidence

No.21

Raj Deo,  
Examination  
- continued.

In the  
Magistrate's  
Court, Ba.

Prosecution  
Evidence

No.21

Raj Deo,  
Examination  
- continued.

with his consent and returned to the station at 3.25 a.m. and after comparing the negatives with the photographs found at the scene I showed the 3 photographs and the envelope found at the scene and he identified the envelopes and the photographs as his. After seeing the photographs he said, "Yes they are mine and taken by my own camera." I then inspected accused body and on his right forearm I found some scratches - 2 on the front of his arm and one on his right ring finger. I asked him how he received these injuries and he did not answer me. I asked him if he could tell me how these photographs were found at the scene of the murder and he did not reply. I asked him a number of questions to which he did not reply and of which no records were made. He sat quiet in a chair. After sitting down for about 15-20 minutes quietly on the chair he suddenly stood up and said, "I did it." I cautioned him at once and he said, "That photo probably had been in my pocket. That's all the quarrel I had" and he started to cry. He said, "That is all I have to say - the knife is in my bathroom - I will get the knife - I have done it and am quite prepared for it. I did it in mistake." I asked him "All right give me the knife" so he took us to his room again - it was 4.30 in the morning - he took out his knife from the bathroom and handed it to me. I see the knife he handed it to me. (Ex. N). I examined the knife and found the blade was very clean - I examined the point and found some bloodstains - I arrested accused. He pointed out a spot under the floor of the hotel building where I searched and picked up a cream coloured nylon shirt and I think, grey coloured woollen trousers. I noticed stains on the shirt - they appeared to be bloodstains. A pocket was missing from the shirt and 5 buttons from the front. I see the shirt I picked up (Ex.B). from the place indicated by accused and the trousers (Ex.C). Accused stood in the corner near the tank on Ex. A8 and I searched under the floor and found this pair of trousers and this shirt. After the trousers were pulled out he said, "You will find my key is there." I had difficulty in finding the trousers and he said, "Look in there, you'll find it." We then returned to the station. Before he left his room, accused said, "I believe you're taking me," and asked me to post 3 letters for him which I did. We returned to the station and I instructed Sgt. Narayan Nair to charge accused. Narayan charged him in my presence. I escorted accused to Ba about

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8.30 a.m. - I left him in the police station - I went to relieve myself. I left him in charge of Mr. Adams. I returned, prepared a charge, took him to Court and took him to Lautoka Hospital for a medical examination. At 11 a.m. he was seen by Dr. Hawley who obtained some blood samples and nail scrapings and handed them to me. At 11.30 a.m. I attended the post mortem examination on Govindappa conducted by Dr. Hawley and he also handed me samples of blood, nail scrapings and hair also the stomach contents of the deceased. At 3 p.m. I attended post mortem on Chanan Singh conducted by Dr. Hawley and took some samples of blood, nail scrapings, stomach contents. I collected the clothing of both deceased from the mortuary and brought all the exhibits to Tavua. I brought the shirts of both deceased from Lautoka mortuary. I see the clothing the doctor took off the body of Chanan Singh in my presence - I see the shirt, sandals, singlet, drawers and trousers of Chanan Singh. (Shirt - Ex. Q1; Left Sandal Q2; right sandal Q3, Singlet Q4, drawers Q5, trousers Q6.) I also took possession of Govindappa's clothing removed by the doctor. I see a shirt with all the buttons on (Ex. R1); a singlet (Ex. R2); drawers (Ex. R3); trousers (Ex. R4); left shoes (Ex. R5); right shoes (Ex. R6). The contents of the pockets of either deceased were removed before they went to Lautoka. I have kept a record of money and papers taken from the bodies of the 2 deceased. It is kept in the station. I sealed certain exhibits on a list I see - the penknife, the nylon shirt, the trousers, the pair of shoes belonging to accused and all the exhibits received from Dr. Hawley, also the stick found at the scene and the 3 negatives I found in the accused's own room. I handed all these to Cpl. Fero to take to Suva. I see the 3 negatives I found in accused's room (Ex. S1 - 3). On 6th June I handed Cpl. Fero one Agfa folding camera with instructions to take it to Suva and hand it over to the police photographers. I see Ex. O. It is the camera I sent into Suva with Cpl. Fero. When I cautioned accused at the police station all the conversation between me and accused took place in English - the only Hindustani statement was recorded after he was charged by Sgt. Narayan Nair. When he jumped up and said "I did it" I cautioned him "You are not obliged to tell me anything unless you want to but anything you say will be given in evidence." I received the camera Ex. O from Cpl. Prem Krishna - I don't remember on what date.

In the  
Magistrate's  
Court, Ba

Prosecution  
Evidence

No.21

Raj Deo,  
Examination  
- continued.

In the  
Magistrate's  
Court, Ba

Prosecution  
Evidence

No.21

Raj Deo,  
Examination  
- continued.

Cross-examination reserved.

Court:

When accused jumped up and said, "I did it" he was in the station sitting on a chair; I was at a table opposite him. I mean he stood up quickly by "jumped". He was present when I was searching his room. The first time I searched the room and found the negatives there and returned to the station and when I went a second time he handed me the penknife. After the first search; he was present at both searches, we returned to the station and he was shown the photographs and the negatives and he kept silent for some time and said "That photograph was probably in my pocket." The button was found 6" from the edge of the road on the right hand side going towards the hotel. I cautioned him in English. While we were travelling from Ba to Lautoka in the landrover, the accused said, "I have done it and I told the truth. I will not take a lawyer to defend myself" - this he said without being asked any questions.

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Adjourned 11 a.m. 9.7.58. Accused remanded in custody till then.

9th July 1958

Saint  
A.D. Patel  
Accused in custody.

No.22

Hari Prasad,  
Examination.

No.22

EVIDENCE OF HARI PRASAD

Sworn on Ramayan:  
HARI PRASAD F/N RAM JATTAN, Police Photographer, Suva. 30

I am the senior police photographer in Police Force. Shortly after 1.6.58 I received a camera from Cpl. Fero and also the 3 negatives I see (Ex. S1-3). I made some experiments with the camera. I found out as a result that the negatives had been taken with the camera (Ex.0). I made a print from each of the 3 negatives I received (Prints tendered Ex. T1-3). I see Ex. M1-3 they are exactly the same prints as Ex. T1-3.

Cross-examination reserved.

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No.23

EVIDENCE OF AKUILA MATANIBUKACA

Sworn on Bible:

S. Inspector AKUILA MATANIBUKACA, Vatukoula.In the  
Magistrate's  
Court, BaProsecution  
Evidence

No.23

Akuila  
Matanibukaca,  
Examination.

10 I remember 29.5.58 when 2 bodies were found on  
the road leading to the hotel. I saw accused that  
night in his room inside the hotel. I obtained  
permission from the manager of the hotel, Mr. Vaug-  
han, to speak to him. I came into his room and  
knocked. Bharat answered from inside his room. I  
asked him if I could come inside his room - he said  
"All right" - he then opened the door. Inside his  
room I saw him with a singlet and a pair of shorts  
on. He gave me a stool to sit on. Then I asked  
him "Were you on duty at the hotel this evening?"  
He said "Yes." I then asked him, "Did you see in-  
side the hotel 2 Indians - one Chanan Singh and the  
other a teacher from Toko whose name I do not know?"  
I then questioned him as to the colour of his dress  
20 when he was at the bar - he answered a nylon shirt  
with shorts. The colour resembling white. Then  
I asked him, "Can you show it to me?" He then  
showed me a nylon shirt of the same colour as he is  
wearing in Court now (powder blue). I then asked  
him "Have you got a pair of long trousers, grey in  
colour?" He said, "Yes". He then showed me a  
pair of khaki trousers - I then told him that this  
was not the type I wanted to see - I wanted to see  
30 the type he sometimes wore at the bar. Accused then  
answered, "This is the only colour." I then asked  
him if he could accompany me to the station - he  
replied saying "Yes". ("Sa vinaka"). Then we came  
to the station. When we reached the scene of the  
crime, opposite the O.C. Division's house - I told  
P.C. Poasa to accompany accused to station. I left  
the hotel to come to the station after 11. I fol-  
lowed the road coming around the Sub Accountant's  
40 house to the station. The closest accused was to  
the bodies was about 10 yards. He did not set foot  
on the road going straight to the hotel. He was  
wearing a shirt of the same colour as he is now  
wearing in Court when he came to the station and a  
pair of shorts. I think he came barefooted. I  
instructed P.C. Poasa to take him down to the police  
station and see that no one spoke to him until C.I.D.  
arrived.

Cross-examination:

By "after 11" I mean nearing 12.

Cross-  
examination.



In the  
Magistrate's  
Court, Ba

Prosecution  
Evidence

No.23

Akuila  
Matanibukaca,  
Examination  
- continued.

No Re-examination.

Court:

In answer to my question as to whether he saw the 2 deceased he said "Yes they were drinking in the hotel."

No.24

Narayan Nair,  
Examination.

No.24

EVIDENCE OF NARAYAN NAIR

Sworn on Ramayan:

NARAYAN NAIR, 298 Det. Sgt., Lautoka.

I remember 29.5.58 - I left Lautoka late that night and came to Tavua. When I got to Tavua I went to a road leading to the hotel - I saw 2 dead bodies lying there. I made notes of what was seen and found at the scene. I have the notes with me. These notes were taken as dictated by Det. Inspector Raj Deo. My notes reflect conditions at the scene accurately. At 12.30 a.m. on 30th May this note was taken. Det. S/Insp. Raj Deo and party arrived at the scene of the murder at Tavua, found an envelope at the edge of road on right to hotel addressed to Bharat Singh, Tavua, Northern Hotel, and a shirt button, about 6' from the edge of road found a nylon shirt pocket in grass verge, found a broken piece of stick, black painted, about 3' from Govindappa, a match beside his body. About 4'4" body of Govindappa lying from road, legs towards the road. Govindappa had stab on the throat. Wound could not be seen as covered with blood, both hands sideways, face up, wearing khaki long trousers, white shirt, a blue T shirt, brown shoes, a large stone at the feet of victim, body cold, rigor mortis not present, left leg on top of right leg crossed; Chanan Has 2 stab wounds on throat, on right side of face, face to left side, left hand on chest, right hand bent outward, is wearing blue shirt, khaki trousers, brown sandals. Chanan lying head towards stone and legs towards hotel, about 4' on side of road, on left side of hotel side of road. Another piece of timber of one found before with brass top was found a few inches

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away from the last one. Rigor mortis not present yet of Chanan. Collected from Chanan's pocket of the shirt 2 10/- notes, 4 5/- notes; 1 P.S.V. badge No.1138, drinking licence No. 1312A, two envelopes, one key and from the watch pocket one £1 note, one 5/- note, one 1/- piece, 2 6d. pieces, one 3d. and one penny. Right side trousers pocket, 2 £1 notes, 3 5/- notes, one 3d. piece and one penny. Left pocket 2 keys in leather pocket, and from back pocket a statement of account of A. & N.Z. Bank, one envelope containing a 5/- note and one 2/- piece, addressed to Flora Evans and a certificate of fitness. No shirt buttons missing, one single hair found on shirt. Govindappa. All buttons in shirt were present. From his shirt pocket one Central Transport Ltd. 6d. cash ticket, M.H. cash docket No.06394 - 31, another cash docket No. 06394 - 28, Fiji Transport ticket No. 95239, a memorandum form No. 113C re birth certificate, a packet Star Cigarettes containing 4 cigarettes only. Left hand trousers pocket one hanky, a bit of rag, cotton wool and a piece of white chalk, right pocket one 2/- piece, one 1/- piece, 2 sixpences, one 3d. M.H.'s cash docket No. 86392 - 46, back pocket, a permit to use arms No. 501 and a bit of string. At 1.30 a.m. both bodies removed into landrover and taken to Lautoka Hospital driven by P.C. 451 Maika and P.C. 52 Kiniviliame. I then saw accused in Police Station. Det. Insp. Raj Deo had conversation with him and I kept a written record of what was said. This was at 0200 hours. Accused said, "I heard 2 men were murdered - heard in police station." S/Insp. put questions to accused, I merely wrote down the answers. Most of what I have here at the moment are short answers. "I was brought by S/A Akuila. I live in hotel. I have a room in hotel. I was brought because I am suspected, because I was on duty as barman. Govindappa and Chanan were drinking in bar, I had an argument with Govindappa and Chanan. I had some customers besides them. One more Punjabi was there. I can't recollect his name. He lives in Malele. I know him by sight. That Punjabi walked out, said "Sat Shri Akal" to me. Then Govindappa said in English, "You should not say like this - we are paying for the drinks." I replied Govindappa "You should not say this and you must be teaching the same thing to your school pupils." Govindappa was going in and out, repeating the same thing, came to the counter and asked for a few more drinks. I served, Chanan paid for the drinks. I told Govindappa that you should have a better sense being a

In the  
Magistrate's  
Court, Ba

Prosecution  
Evidence

No.24

Narayan Nair,  
Examination  
- continued.

In the  
Magistrate's  
Court, Ba

Prosecution  
Evidence

No.24

Narayan Nair,  
Examination  
- continued.

school teacher. During the time a Fijian constable came and I think his name is Kiniviliame and he advised us both not to quarrel. He stayed there for a while and went away. By then it was about 9 o'clock and I was going off duty and another barman, Sohan Prasad, came and took over and these 2 were still there. I went to my room, been listening to radio for a while and went to bed. Was about half past nine. About midnight I heard a knock at the door and I answered the call, was Sgt. Akuila and another constable Poasa and Vuniwai Waqabaca. They asked for my clothes, I was wearing at the day-time. I showed them my clothes which I am wearing now and they asked me to come down to the station and I came and I am in the station since. I don't know who killed these 2 fellows. I have a white nylon shirt at home. It is in my room, I did not receive any letter or photograph from Suva. Of course I received one letter from my brother's son in Suva schooling in Deen Bandhu High School, name Pratap Singh, father's name Chandar Singh. I did not come down to town at all not even in the daytime. I remained in hotel whole day. Did not come out of hotel, when police brought me to station, came by the road, bearer to Sub Accountant's house. I did not go to the scene of the murder, I did not leave the hotel compound at all. Among the people who were drinking in the hotel, there also was a man named Prithipal Singh of Malele, there were other 2 Indians, I don't know their names but know them by sight. The letter stated above has been burnt by me to-day, together with other letters, burnt in kitchen; the cook was there when I took the parcel - I don't keep unnecessary letters. Envelopes also have been burnt. I have taken out the stamp from this envelope. I don't remember the date when I received this letter - it was in last week some time. The nylon shirt I have at home is about 5 months old, not torn, quite good and as same condition as I have now. No damage done to shirt until now. No buttons missing from the shirt. I can show the shirt to you now. Since I knocked off nobody came into my room - I burnt all the letters after replying to them - it was after 4 p.m. on Thursday. I come from Rakiraki - I have been working for hotel since 6 years. I have no black stick in my room nor I had any. The stick was shown to me. I have not seen this before. I have not seen one in the hotel. When Govindappa was arguing with me only Chanan Singh was present, and the rest left the hotel, manager did

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not hear anything. When I went on duty at 7.45 p.m. they were already there drinking. I was also on duty from half past one to 4 o'clock during the day. One of my brother works in mines, Latchman Singh. He was not in hotel. I have no dagger at home nor had any but I have 2 penknives. After Sohan took over - I went straight to my room - I did not speak to anyone".

In the  
Magistrate's  
Court, Ba

Prosecution  
Evidence

No.24

Narayan Nair,  
Examination  
- continued.

10 I read over all these entries to him in English, he said it was correct and he signed it. I then accompanied S/I Raj Deo to the hotel with Bharat, with his consent, Bharat's room was searched. Det. S/Insp. Raj Deo took possession of 9 negatives. At 3.25 a.m. Bharat identified the envelope shown to him by Det. S/Insp. Raj Deo and the 3 photographs are also his taken by him with his own camera. I see the envelope I found at the scene (Ex. J). I did not at the scene have a look inside the envelope to see if anything was inside. Ex. J was the envelope

20 S/Insp. Raj Deo showed to the accused and which accused said was his. Ex. M1-3 were the photographs shown by S/Insp. Raj Deo to the accused and which accused said were taken with his own camera. I see the stick found in Court - it is Ex. I. I see a shirt pocket found at the scene (Ex. K). I see a shirt button found at the scene (Ex. U). We examined the accused and saw an injury on the right ring finger - a very small scratch. I saw other injuries and made a note of them. The injury on right ring

30 finger on top measuring  $\frac{1}{2}$ " for which accused stated don't know how he got it and another on same hand forearm front part  $3\frac{1}{2}$ ", fresh injury, another  $\frac{1}{2}$ " cross below the latter bruises above wrist, another cut injury 2" about  $\frac{1}{2}$ " apart from one  $3\frac{1}{2}$ "; for this no explanation given. It was obvious to accused that I had seen these injuries. Shortly after 4 a.m. accused was shivering, excited, he was not talking at all. About 4.15 a.m. accused stood up, where he was sitting, on a chair and said, "I did

40 it". He was at once cautioned by S/Insp. Raj Deo. "That photo probably been in my pocket - that is all the quarrel I had it" and he was crying. "That is all I have to say - the knife is in my bathroom - I will give the knife. I have done it and am quite prepared for it. I did it in mistake." Accused then handed a knife to the police about 4.25 a.m. I was in his room in the hotel at the time. He handed the knife to S/Insp. Raj Deo. I saw the knife he handed to S/Inspector. It had bloodstains

In the  
Magistrate's  
Court, Ba

Prosecution  
Evidence

No.24

Narayan Nair,  
Examination  
- continued.

on it. This is the knife (Ex. N). Accused asked S/Insp. Raj Deo to have 3 letters posted. S/Insp. Raj Deo arrested accused. Accused did not say anything when he was arrested. Accused then took police and showed them the place where he said his clothes were - to the rear of the hotel where there are 2 tanks, very close to the wall of the hotel building - there he pointed out where he put the clothes. S/I Raj Deo searched where accused indicated. I was watching him when he searched. He found a shirt and a pair of long trousers. I looked closely at the shirt - it appeared the pocket had been torn off - I noticed some bloodstains on the shirt. Some buttons were missing from the front part of the shirt. I see the shirt (Ex. B) found by S/Insp. Raj Deo. I see the trousers (Ex. C) found together with the shirt. When daylight came I made a further search of the scene of the crime and found 2 buttons. I see them - they have 2 holes and are round and white - there is thread going through the 2 holes in both - the buttons are similar to the one found the previous night. (Buttons Ex. U1-2). Later on the accused escorted to Ba. Before leaving for Ba I charged accused with Murder of Govindappa and Chanan Singh. I spoke to him in Hindustani. He appeared to understand the charge. I also cautioned him that he was not obliged to say anything unless he wished to do so but whatever he would say will be taken down in writing and may be given in evidence. Accused signed that part of the statement referring to being charged and cautioned. I then wrote out a further certificate addressed to the accused. Accused read it and signed it. He made a brief statement to me. I read through to him what he told me. He appeared to understand the contents of his statement he signed his name to the statement. I see the statement (Ex. V). (Statement read). I made a translation of the statement (Ex. V1). I went to Ba police station - I heard conversation there between an officer and accused. Officer was Mr. Adams, Inspector of Police, Ba; he asked accused if he had anything to complain and how was he treated at Tavua Police station, in reply accused said "Very fine". Accused then appeared at Magistrate's Court at Ba. I don't know if Court made any order concerning a medical examination of accused. Accused was escorted to Lautoka in a police landrover. In the back seat with accused was seated Police photographer Rama, in the middle accused, Bharat Singh; and on his left was P.C.177, Suresh Singh. I was driving the landrover and

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Sub. Inspector Raj Deo was seated next to me in the front seat. I did not hear accused say anything at any stage of the journey. I see negatives (Ex. Sl-3) they were among the 9 negatives found in accused's room. (Diary tendered Ex. W). (Witness requests that notebook be made available in Court at Lautoka as necessary in similar case Police v. Ram Bharos and burglary case in Lautoka; but agrees pp. 67 - 84, evidence in present case - witness to give Court at least a week's notice that exhibit is required.)

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In the  
Magistrate's  
Court, Ba

Prosecution  
Evidence

No.24

Narayan Nair,  
Examination  
- continued.

Cross-examination reserved.

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No.25

EVIDENCE OF POASA RAREBA

No.25

Poasa Rareba,  
Examination.

Sworn on Bible:  
P.C. 373 POASA RAREBA, Tavua.

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I remember the night of 29.5.58. I went to a spot on the road towards the hotel where 2 bodies were lying. I helped preserve the scene with Cpl. Fero. S.I. Akuila asked me to take accused to station, it was after 11 - I don't know how long after 11. When the bodies had been taken away and when daylight came I searched round the scene with others. I found 2 buttons there. I see one of them (Ex. X-buttons). I went to accused's room with S.I. Akuila. I took possession of black shoes, one pair. There was one pair of socks in the shoes at the time. (Shoes left shoe - Ex. Y1; right shoe Ex. Y2). I noticed bloodstains on the toe of the left shoe. I see the socks I found in the shoes. (Left sock Ex. Z1; right sock Ex. Z2). Blood on outside of toe of shoe. The other button I found was picked up by Sgt. Nair. Accused was in the room when I removed shoes from his room. I asked him what shoes he was wearing that evening and he said these. The shoes were just beside his bed when I first saw them.

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Cross-examination reserved.

In the  
Magistrate's  
Court, Ba

No.26

PROCEEDINGS

Prosecution  
Evidence

No.26

Proceedings,  
9th July 1958.

(D/Supt. Saint desires to tender pathologist's reports under S.216(1) C.P.C. (Tendered Ex.AA. 1-2) also 4 reports from Govt. Analyst - (Ex. BB. 1-4)).

Close of Prosecution case.

Section 219(1) complied with.

Accused:

"I have no statement to make here".

Accused does not desire to call any witnesses.

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Neither accused nor Mr. A.D. Patel desire to address Court.

Section 220(6) complied with. Accused does not desire to call witnesses at the trial.

Accused committed for trial to Supreme Court under section 223(1) of Criminal Procedure Code and remanded in custody therefor.

Order under Section 225 Criminal Procedure Code, that all prosecution witnesses be bound over to give evidence at the Supreme Court and also at any further examination concerning the charge which may be held by direction of the Attorney General in the sum of £15.0.0. 20

Accused informed of his rights under Section 227.

(Sgd.) G.D. Lindley

9.7.58

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No.27

INFORMATION BY ATTORNEY GENERAL

In the  
Supreme Court  
of Fiji

No.27

THE QUEEN v. BHARAT F/N DORSAMY IN }  
THE SUPREME COURT OF FIJI AT THE }  
SESSIONS TO BE HOLDEN AT LAUTOKA }  
ON THE 7TH DAY OF OCTOBER, 1958. }

A  
No.19 of 1958

Information by  
Attorney  
General,

26th August  
1958.

INFORMATION BY THE ATTORNEY-GENERAL

Bharat f/n Dorsamy is charged with the following  
offence:-

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STATEMENT OF OFFENCE

MURDER: Contrary to section 224 of the Penal Code,  
Cap. 8.

PARTICULARS OF OFFENCE

Bharat f/n Dorsamy, on the 29th day of May, 1958 at  
Tavua, in the Western Division, murdered Govindappa  
f/n Kaniappa.

DATED the 26th day of August, 1958.

(sgd.) J.F.W. Judge  
Crown Counsel.

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(In exercise of powers vested  
under section 72 of the  
Criminal Procedure Code.)

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In the  
Supreme Court  
of Fiji

No.28

INFORMATION BY ATTORNEY GENERAL

No.28

Information by  
Attorney  
General,  
26th August,  
1958.

THE QUEEN v. BHARAT F/N DORSAMY IN }  
THE SUPREME COURT OF FIJI AT THE }  
SESSIONS TO BE HOLDEN AT LAUTOKA } No.19 of 1958  
ON THE 7TH DAY OF OCTOBER, 1958. }

INFORMATION BY THE ATTORNEY-GENERAL

Bharat f/n Dorsamy is charged with the following  
offence:-

STATEMENT OF OFFENCE

10

MURDER: Contrary to section 224 of the Penal Code,  
Cap. 8.

PARTICULARS OF OFFENCE

Bharat f/n Dorsamy, on the 29th day of May, 1958,  
at Tavua, in the Western Division, murdered Chanan  
Singh f/n Dalel Singh.

DATED the 26th day of August, 1958.

(sgd.) J.F.W. Judge  
Crown Counsel.

(In exercise of powers vested  
under section 72 of the  
Criminal Procedure Code.)

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No.29

INFORMATION BY ATTORNEY GENERAL

In the  
Supreme Court  
of Fiji

No.29

THE QUEEN v. BHARAT F/N DORSAMY IN  
THE SUPREME COURT OF FIJI AT THE  
SESSIONS TO BE HOLDEN AT LAUTOKA  
ON THE 7TH DAY OF OCTOBER, 1958. }

No.19 of 1958

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Attorney  
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26th August,  
1958.

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Cap. 8.

PARTICULARS OF OFFENCE

Bharat f/n Dorsamy, on the 29th day of May, 1958, at  
Tavua, in the Western Division, murdered Chanan Singh  
f/n Dalel Singh.

DATED the 26th day of August, 1958.

J. JUDGE

Crown Counsel

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(In exercise of powers  
vested under section  
72 of the Criminal  
Procedure Code.)

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In the  
Supreme Court  
of Fiji

No.30

PROCEEDINGS

No.30  
Proceedings,  
7th October,  
1958.

IN THE SUPREME COURT OF FIJI  
Criminal Jurisdiction  
No. 19 of 1958.

THE QUEEN } MURDER, contrary to  
v. } section 224 of the  
BHARAT } Penal Code.

LAUTOKA CIRCUIT SESSIONS  
Before the Hon. Mr. Justice Lowe, C.J.  
Tuesday, 7th October, 1958, at 10 a.m.

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Accused present in custody.  
Mr. J.F.W. Judge, Crown Counsel, for the Crown.  
Mr. S.B. Patel for the accused person.

Information read:

Interpreter:  
Mr. Nur Ali.

Plea: Not Guilty

Accused R.I.C.

(SGD) A.G. LOWE, C.J.

10.10.58 - Accused in custody and for trial. Counsel  
as before. Assessors called, sworn and told their  
duties. 20

- Assessors: 1. K. Bedner  
2. J.B. Poulton  
3. M. Norrie  
4. D.R. Singh  
5. A. Gopi.

Prosecution  
Evidence

No.31

EVIDENCE OF KINIVILIAME VOLAVOLA

Kiniviliame  
Volavola,  
Examination.

CROWN COUNSEL OPENS -

KINIVILIAME VOLAVOLA. Fijian adult. Sworn on Bible: 30

I am a Police Constable stationed at Tavua. I  
remember the 29th of May last. In the evening of  
that day I was on duty. I went on duty at 8.30 p.m.  
and later I went to the Tavua Hotel arriving there at

8.30 p.m. approximately. I went in to the bar and Bharat was on duty. (Identifies the accused as Bharat). I heard an argument going on between Govindappa, Chanan Singh and Bharat. There had been one man drinking at the bar. The accused told me he had left and that he had said goodnight in Hindi. Chanan Singh did not speak and did not take any active part in the argument. I left the bar at 9.15 p.m. Bharat was then wearing a cream coloured nylon shirt and a pair of long brown trousers. The shirt had a pocket of the same material. When I left the Hotel Bharat was still on duty. Later that night I saw Chanan Singh lying on the road leading to the Hotel. That was at 10.30 p.m. When I left the hotel the argument had finished. The argument was with Chanan Singh's companion and was in English and Hindi. It was a quiet argument. I could recognise the shirt Bharat was wearing that night. I recognise this shirt shown to me as being the one because of the thin material and its colour. (Produced for identification Ex.A). It had no pocket now. When I saw Chanan Singh at 10.30 p.m. he was lying dead. Near his body I saw an envelope which was addressed on the back to Bharat. I picked it up. This is the envelope. (Ex. B for identification). It is addressed on the front not the back. I am certain this is the one. When I had read the envelope's address I dropped it on the ground again. Near Chanan Singh's body I saw a white shirt button. I recognise the button (Ex. C for ident.). I also found a shirt pocket at the place where Chanan Singh's body was. This is the pocket - (Ex. D for ident.). It is in the same condition as when I found it. (Exhibits all being shown to assessors after counsel and witnesses have seen them). I put the pocket and button back on the ground as near as possible where I had found them. The envelope was about 3 paces from Chanan Singh's body. The pocket was about 3 paces from the body and within 4" of the envelope. The button was also very close to the pocket and the envelope. I remained on the scene 2½ hours guarding it. I brought the body to the mortuary then, in the early hours of the next morning. Inspector Raj Deo came with a party of C.I.D. men before I left. Someone in that party collected the exhibits I have identified.

When Chanan Singh was in the bar he was drinking but seem to me to be quite sober. He was drinking rum.

In the  
Supreme Court  
of Fiji

Prosecution  
Evidence

No.31

Kiniviliame  
Volavola,  
Examination  
- continued.

In the  
Supreme Court  
of Fiji

Prosecution  
Evidence

No. 31

Kiniviliame  
Volavola,  
Cross-  
examination.

Cross-examination:

I was in the Hotel, in the bar for 45 minutes. I was in the public bar where Chanan Singh was all the time. While I was there, there were not many people in the bar. There were Chanan Singh, Govindappa and Bharat. While I was there I saw Chanan Singh drinking from one glass which was re-filled once only while I was there. I know Sohan Prasad the other barman. He came into the bar while I was there. After he came in I remained there about 15 minutes. During that time the accused was also there. I am quite sure Chanan Singh appeared to be quite sober. When I picked up the envelope I saw the name on it. I had a good look at it. I never said that I did not look at it. That would not be true if I said that. When I picked up the envelope it was in the same state as it is now. Open and not folded. Not crushed or crumpled. I had a close look at the body of Chanan Singh. I found blood at his neck and on the ground. All the blood was near his head, on the ground. Apart from that I did not find blood anywhere else. I was not the first to arrive on the scene. Cpl. Fero arrived before I did, so did Const. Poasa and Timoci; Cpl. Fero was taking notes in a book of what he saw, when I arrived. Const. Poasa was doing likewise. Const. Timoci I did not see doing any writing. I did not see Fero pick up anything nor did I see Poasa or Timoci pick up anything. After picking up the envelope the pocket and the button I put them down exactly where I had picked them up from. I knew Chanan Singh well and had known him for 6 months. I had seen him very often. He was a heavily built and strong man. He was about 6 feet tall. Chanan Singh's body was on the side of the road which goes up the Tavua Hotel. It is a metalled road. At the bar the accused wore brown trousers. (Shown exhibit A). That is the shirt accused was wearing at the bar. I recognise its colour and its thickness. I also recognised it as being nylon when I saw it.

There are many such shirts. All I can say is that I saw a shirt like this one on the accused that night. I can't say it is the same one but I still think it is but I can't be positive.

Court:

In the bar the sleeves were rolled up. (Shirt has creases as though it had been folded at some time or other).

## Cross-examination (cont'd):

When I left the bar that night the accused was still there.

Re-examination - Nil.

In the  
Supreme Court  
of Fiji

Prosecution  
Evidence

No.31

Kiniviliame  
Volavola,  
Cross-  
examination  
- continued.

No.32

EVIDENCE OF PENIANA NAI

PENIANA NAI, Fijian adult. Sworn on Bible:

10 I am a housegirl at the Tavua Hotel. I remember  
the night of 29th May last. I live in the hotel.  
That night I was out and got home to the hotel after  
the interval at the pictures. That would be about  
9.30 p.m. On my way home as I was going along the  
road to the hotel I saw something white and as I got  
close I saw it was a person, and there was another  
also. I ran away to the Police Station and told  
Const. Malakai what I had seen. (Const. Malakai  
identified). From where I saw the persons on the  
road it is about 100 yards. I had run to the police  
20 station because I thought the persons were drunk.  
They were both lying down. I don't know if they  
were moving.

Cross-examination:

It was a bright moonlight night.

Re-examination - Nil.

No.32

Peniana Nai,  
Examination.

Cross-  
examination.

No.33

EVIDENCE OF MALAKAI TAGICAKE

MALAKAI TAGICAKE, Fijian adult. Sworn on Bible:

I am a police constable stationed at Tavua  
Police Station. I remember the night of Thursday,

No.33

Malakai  
Tagicake,  
Examination.

In the  
Supreme Court  
of Fiji

Prosecution  
Evidence

No.33

Malakai  
Tagicake,  
Examination  
- continued.

29th May, last. That night I was on duty at the Tavua Police Station. Peniana Nai, the last witness, came in and reported to me. That was at 10.15 p.m. As a result of the report I took a statement from her and recorded it. I then told Cpl. Fero something. He then left the station with Const. Timoci.

Cross-examination - Nil.

Adjourned to 2.30 p.m.

2.30 p.m.

Accused in custody.

Counsel and assessors as before.

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No.34

Sohan Prasad,  
Examination.

No.34

EVIDENCE OF SOHAN PRASAD

SOHAN PRASAD s/o Durga Prasad. Indian adult. Sworn on Ramayan:

I am a barman at the Tavua Hotel. I know the accused who was also a barman at the Tavua Hotel until 29th May last. I remember that day. I was on duty in the bar that night. I was on from 10 a.m. to 2 p.m. and then from 4 p.m. to 8 p.m. Between these two last times Chanan Singh came into the bar. He came in between 6 and 6.30 p.m. He was drinking beer. I went off at 8 p.m. and the accused took over from me. When I went off Chanan Singh was still in the bar. I came on duty again at 9 p.m. and the accused went off a few minutes after that. At 9 p.m. Chanan Singh was still there and was still drinking beer. About 9.15 p.m. I made a telephone call at the request of Govindappa, Chanan's companion. I rang for a taxi which came. They did not get into the taxi and it went away. Chanan Singh and his companion left the bar about 9.25 and there was a taxi outside. I don't know if they got in it but I heard it go away. When the two left no-one else was in the bar and I closed up at 10 p.m. When Chanan Singh left the bar he was walking alright but now by his speech I could tell he was a bit drunk. When accused was in the bar that night he was wearing a cream nylon shirt and grey woollen trousers. The shirt had a pocket. When he left the bar he had an envelope in his shirt

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pocket. I could recognise the shirt again. I see Ex. A Accused's shirt was one of the same and the same material. The sleeves were folded (not rolled) up when he was in the bar. The trousers I see are similar as those he was wearing that night. (E. for ident.). The accused had a camera which I have seen. (Shown a camera). This is similar to his camera. (Exhibit F for ident.).

In the  
Supreme Court  
of Fiji  
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Prosecution  
Evidence  
-----  
No.34

Sohan Prasad,  
Examination  
- continued.

Cross-examination:

Cross-  
examination.

10           When I returned to the bar at 9 p.m. there were  
only 3 persons there. Accused, Chanan Singh and his  
companion, and Const. Kini. (1st P.W. identified).  
Const. Kini went about five minutes after I did.  
Accused went away after about 5 or 6 minutes after I  
had arrived. After he left there were only Chanan  
Singh and Govindappa. I rang number 25 for a taxi  
that connects with the stand and Munsami's house. A  
taxi came and later another one from Munsami's house.  
20 Chanan Singh and Govindappa did not join the first  
taxi which waited about 5 minutes. The second taxi  
came about 9.25 p.m. I did not go outside when it  
came. The driver came in and asked who was to go  
in the taxi. That is how I know where it was. I  
told Chanan Singh and Govindappa their taxi had ar-  
rived and to go. They went out. They went out  
after the driver had gone. After I arrived about  
9 p.m. I sold no drinks to the two who were there.  
Before I went at 8 p.m. I served them with drinks.  
I gave them some bottles of beer. I knew Chanan  
30 Singh for about 15 years. I have worked in that  
Hotel for about 15 years and barman for the last six  
years. During these 6 years Chanan Singh was in  
the habit of visiting the bar. He used to drink  
fairly heavily but I have not seen him absolutely  
drunk. He had a companion Govindappa. I knew him  
for a long time - about 15 years. He used to visit  
the bar during my six years there. He drank fairly  
heavily at times but I have never seen him absolutely  
drunk.

40 Court:  
He is dead now.

Cross-examination (cont'd):

I know the accused. Have known him for six years  
while we worked together in the hotel. The accused  
was not in the habit of drinking. I have not seen  
him drink.



In the  
Supreme Court  
of Fiji

Prosecution  
Evidence

No.34

Sohan Prasad,  
Re-examination.

Re-examination:

The driver who came in at 9.25 p.m. that night is a schoolteacher by the name of Rustam.

No.35

Michael Govind,  
Examination.

No.35

EVIDENCE OF MICHAEL GOVIND

MICHAEL GOVIND s/o Ganja Durram Mudaliar. Indian adult. Sworn on Bible:

I am a cook at Tavua Hotel. I know accused who was a barman at that hotel. The accused had a camera. Exhibit F is similar to the camera he had but I can't say that is it. Accused once showed me some photographs. (Shown two photos). I saw these when accused showed them to me at the Tavua Hotel. (Ex. G1 and 2 for ident.). Accused showed me these photos prior to the night Chanan Singh died. It was about a week or two or a little more before that. He told me he had taken those photos. Accused had a pocket knife. I have seen him with it. I saw him with it a week or two before Chanan Singh died. I would recognise it again. (Shown knife). It was similar to this one. It was the same type and appeared to be same size but I did not take particular notice of it. (Ex. H for ident.).

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Cross-examination.

Cross-examination:

I have known accused for about 4 years, since I worked in Tavua Hotel. Accused I have never seen him drinking.

Re-examination - Nil.

Crown Counsel offers Chinnu K. Gounder to Defence as he has nothing to do with this case and want him released. Patel does not want him. Witness released.

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No.36

EVIDENCE OF MANKAR LAL

MANKAR LAL s/o Chimman Lal. Indian adult. Sworn on Ramayan:

10 I am a tailor. I gave evidence in this case before the Magistrate at Tavua. I know the accused. I have made shirts for him. If shown I could recognise them. Ex. A is one of the shirts I made for accused. The buttons on the shirt are similar to the ones I used. Ex. "C" appears to be the same. When I made the shirt all the same kind of buttons were used. When I made Ex. A I put a pocket on it. I see the pocket Ex. "D". This material is the same as that in the shirt. This pocket belongs to the shirt. It is the pocket I made for the shirt. I gave this shirt to someone sent by accused. I would recognise the person. (Ami Chand enters and is identified by the witness as the person). I made Ex. "A" for the accused over 5 or 6 months ago.

20 Cross-examination:

I sewed this shirt Ex. "A" for accused. I can tell by the sewing. I have never made another shirt out of the same material. Never sewed another nylon shirt. This was the first. I have been sewing about 2 to 2½ years. I have a shop. I sell ready made nylon shirts. I am quite sure this is the shirt of the material I sewed about 5 or 6 months ago.

Re-examination - Nil.

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No.37

EVIDENCE OF AMI CHAND

AMI CHAND s/o Jangbahadur Singh. Indian adult. Sworn on Ramayan:

I am a cultivator at Tubulu but used to be employed at the Tavua Hotel. I finished work there on 30th of a month but it was over four months ago. While I was there I went to the shop of the last witness and collected a shirt from him for the accused. I only did that once. I gave the shirt to

In the  
Supreme Court  
of Fiji

Prosecution  
Evidence

No.36

Mankar Lal,  
Examination.

Cross-  
examination.

No.37

Ami Chand,  
Examination.

In the  
Supreme Court  
of Fiji

Prosecution  
Evidence

No.37

Ami Chand,  
Examination  
- continued.

the accused. Accused had a camera. He showed me some photographs. G1 and 2 are two of them. I see this other photo. I saw them all at the hotel. Accused showed me those photos. (One photo Ex. I for ident.). He told me he had taken the photos. He showed me the photos just before I left which was at the end of the month in which Chanan Singh died. Accused showed me the photos. A week or so before Chanan Singh died. I have seen a knife - pocket knife with accused. Ex. H is a knife similar to the one he had. He showed it to me about a week or so before I left work.

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Cross-examination - Nil.

No.38

Bal Kumar,  
Examination.

No.38

EVIDENCE OF BAL KUMAR

BAL KUMAR s/o Latchman. Indian adult. Sworn on Ramayan:

I am now with C.S.R. but was formerly at Tavua Hotel. I know the accused. He used to take photos. I see G1 and 2 and "I". I have seen these before when I was working at the Tavua Hotel. Accused showed me these photos. He said he had taken them. I remember the night Chanan Singh died near the Hotel - I found out next morning. It was a day or two before that that he showed me the photos. Ex. I is of part of the interior of accused's room at the Hotel.

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Cross-examination - Nil.

No.39

Yak Bor Fong,  
Examination.

No.39

EVIDENCE OF YAK BOR FONG

YAK BOR FONG, Chinese adult, sworn on Bible:

I am a storekeeper at Tavua. I know Man Lee's shop there. I work there. I am the manager. I have managed it for 5 years. I know the accused who used to work at the Tavua Hotel. I see Ex. "H". I sold this to the accused and about 3 or 4 days later

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Chanan Singh died. I charged him 14/6. Accused left his camera in my shop for sale. Ex. "F" is the camera and it still has on it the price ticket which I put on. The morning after Chanan Singh died a policeman took the camera away. (Cpl. Pram Krishna identified as the policeman).

In the  
Supreme Court  
of Fiji

Prosecution  
Evidence

No.39

Tak Bor Fong,  
Examination  
- continued.

Cross-examination:

Cross-  
examination.

10 I sold the accused a knife similar to Ex. H. I had about 6 knives of the same type. I forget all the people I sold them to.

Re-examination - Nil.

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Adjourned to 9 a.m. 11.10.58.  
Accused remanded in custody.

(Sgd) A.G. Lowe  
C.J.

11.10.58  
Accused in custody.  
Counsel and assessors as before.

No.40

No.40

20

EVIDENCE OF PRATAP SINGH

Pratap Singh,  
Examination.

PRATAP SINGH, s/o Chanan Singh (14 years old understands the nature of an oath). Sworn on Ramayan:

I am a pupil at the Indian High School. I know the accused. He is my uncle. I wrote a letter to him this year. The envelope Exhibit "B" is addressed in my writing. I sent that to the accused. I put a letter in the envelope when I sent it. I posted it in April or May last. (Produced as Exhibit "B").

30 Cross-examination - Nil.

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In the  
Supreme Court  
of Fiji

No.41

EVIDENCE OF MULLUK SINGH

Prosecution  
Evidence

MULLUK SINGH, s/o Bhalel Singh. Indian adult. Sworn  
on Ramayan:

No.41  
Mulluk Singh,  
Examination.

I live at Rakiraki and am a cultivator. Chanan Singh who died in May last was my brother. I attended a P.M. on his body in the Lautoka Hospital in May this year. On the 30th May. I identified the body to the Doctor who gave evidence in the lower court, as being that of Chanan Singh s/o Dhalel Singh.

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Cross-examination - Nil.

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No.42

No.42

Kamta Prasad,  
Examination.

EVIDENCE OF KAMTA PRASAD

KAMTA PRASAD, s/o Ram Kissun, Indian adult. Sworn  
on Ramayan:

I am a waiter at the Tavua Hotel. I know the accused. I remember that he was arrested. I learnt the following morning and I went to the Police Station to see him. I had got a telephone message from the station that Bharat wanted to see me. I spoke to accused at the station and he told me he was being taken to Lautoka. I don't remember if I asked him how he was. He might have said he was alright.

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Cross-examination - Nil.

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No.43

No.43

Poasa Rareba,  
Examination.

EVIDENCE OF POASA RAREBA

POASA RAREBA, Fijian adult. Sworn on Bible:

I am a Police Constable stationed at Tavua. I remember the night of 29th May. That night I went to the road leading to the Hotel where there were dead bodies. I went there soon after 11 p.m. and helped guard the scene. S/Insp. Akuila and Cpl. Fero were with me. That night I took the accused to

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the Police Station. While I was at the scene with the bodies I found one shirt button and picked it up. Then found another one and handed both to S/Insp. Raj Deo. It was the morning of the 30th when I found the buttons. I identify the buttons. (Ex. J. for ident.) On night of 29th May I went with S/I Akuila to accused's room. Accused was there. I took possession of one pair of black shoes. The accused said they were his. There was a sock in each shoe and a blood-stain on the toe of the left shoe. I took possession of the socks also. I identify the shoes. (Ex. K for ident.). I also identify the socks (Ex. L for ident.). I gave the shoes and socks to S/Insp. Raj Deo. I asked the accused what shoes he was wearing on the night of the 29th and he pointed to Ex. K.

I remember now I gave one of the buttons to S/I Raj Deo and the other one to Sgt. Nair. I know Mr. Vincent Henry Vaughan who was Manager of the Tavua Hotel. He gave evidence in the lower court in this case.

I remember the night of 23rd, September, this year. I went that night to the Tavua Hotel with Mr. Saint and I saw Mr. Vaughan. He was lying dead on the verandah of the Tavua Hotel. His body was sent to the Lautoka Hospital.

Cross-examination:

I was not one of the first police officers to arrive on 29th at the scene where Chanan Singh's body was. Cpl. Fero was there before me. S/I Akuila went with me to the scene. That would be a little after 11 p.m. When I arrived Cpl. Fero was there, and he was guarding the body. I went and stood there. I searched at the scene. I saw two dead bodies. It was the next morning I found the button. S/I Akuila was searching for something. It was a moonlight night and I had a torch. Cpl. Fero was writing notes in the light of a landrover. The lights were shining on the scene. S/I Akuila and I went to the Hotel. We were on the scene with the body about half an hour. I got the shoes when I went to the Hotel. I saw accused who was in his room. Apart from the conversation with him about the shoes I asked him what clothes he was wearing that night. He said "I was wearing a blue nylon shirt and short white trousers". He pointed them out to me in his room. After that I left. The buttons I found next morning.

Re-examination - Nil.

In the  
Supreme Court  
of Fiji

Prosecution  
Evidence

No.43

Poasa Rareba,  
Examination  
- continued.

Cross-  
examination.

In the  
Supreme Court  
of Fiji

No.44

EVIDENCE OF HARI PRASAD

Prosecution  
Evidence

HARI PRASAD, s/o Ram Jattan. Indian adult. Sworn  
on Ramayan:

No.44

Hari Prasad,  
Examination.

I am a Police photographer at Police headquarters in Suva. I am the senior photographer in the force. In June last I received a camera. It was a 120 size Agfa folding camera. I got it from Cpl. Fero. I identify Ex. F as the camera. I received some negatives from Cpl. Fero - two lots. In the first lot was one negative. There were many in the second lot but only one of the same material as those in the first lot. I identify the first three negatives I got from Cpl. Fero. I performed certain experiments with Ex. F. As a result of my examination I satisfied myself that the negatives were taken with Ex. F. (Negatives produced as Ex. "M" for ident.).

10

I made these prints from the three negatives. (Ex. N produced). They are exactly the same as the prints "G1 and 2" and "I" now shown to me.

20

Cross-  
examination.

Cross-examination:

The negatives Ex. "N" - another camera could have taken similar ones but these were identifiable because of frame marks on the negatives from the frame of the camera itself.

Re-examination - Nil.

No.45

Fero Namira,  
Examination.

No.45

EVIDENCE OF FERRO NAMIRA

FERRO NAMIRA, Fijian adult. Sworn on Bible:

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I am a Corporal of Police stationed at Sigatoka. In May last I was stationed at Tavua. I remember the night of 29th May last. I went as a result of a report on to a road which leads to the Tavua Hotel and there I saw a dead body. Const. Malakai reported to me. I went in a Police Landrover. The body I mention was of an Indian man middle aged. While at

the scene I saw that the body had two cuts on his neck. It was the body of Chanan Singh whom I know. The cuts were on his throat. Near another body I found a black stick. This was about 5 feet from Chanan Singh's body. I identify the stick. I handed it to S/I Akuila. (Ex. "O" for ident.).

In the  
Supreme Court  
of Fiji

Prosecution  
Evidence

No.45

Fero Namira,  
Examination  
- continued.

10 I saw an envelope and a piece of cloth there at the scene. I left them where they were. The cloth was creamish in colour. The scene had not been disturbed in any way by the time the C.I.D. party arrived in charge of Insp. Raj Deo. They came about 11.30 p.m., I think.

20 I remember 1st June last. That day I got certain sealed packages from Insp. Raj Deo and I took them to Suva. I gave some to Dr. Gosden and some to Dr. Simionyi. I got the same packets back again from them later and brought them back to the police station where I looked them up. I kept possession of them until 8th July when they were put in Evidence in the lower court. On 6th June I received a camera and some negatives from Insp. Raj Deo. I took the camera and negatives to Suva and handed them over to Hari Prasad who gave evidence before me. I remember 25th June last. That day I took one sealed package to Suva and a letter. I handed the package to Supt. Colclough at Suva. He later gave it back to me and I handed it to Dr. Simionyi who gave it back to me the next day and I brought it to the Tavua police station and looked it up with the others until its contents were put into the lower court at the P.I. 30 The camera and negatives - I don't know what happened to them.

Cross-examination:

Cross-  
examination.

40 I went to the scene as soon as I got the report from Malakai. Const. Timoci went with me. I found a stick near the other body. It was beside the other body. I handed it to S/I Akuila. He kept the stick. He left the scene after a while. I did not actually see him taking the stick with him. Where I found the body of Chanan Singh would be between 4 & 5 chains away. It would be about 8 chains from the Police station. A police Supt's house is near the scene where the body of Chanan Singh was - about 1½ chains away. The town of Tavua is not far away from the scene. I did not pick up the shirt-pocket found there. S/I Akuila did not pick up either the pocket or the envelope.



In the  
Supreme Court  
of Fiji

Prosecution  
Evidence

No.45

Fero Namira,  
Re-examination.

Re-examination:

The Supt. in charge of Tavua Police station is Deputy Supt. Singh. On the night of 29th May he was away on leave. The township of Tavua would be about 11 chains away but some houses were quite close.

No.46

Hari Prasad  
(Recalled),  
Examination.

No.46

HARI PRASAD (RECALLED)

(Recalled with permission - no objection)

HARI PRASAD on former oath:

10

I also received from Cpl. Fero the 3 photos G1 and 2 and I when I got the negatives. I kept the camera, negatives and prints and also the prints I had taken off. I produced them in the lower court and now produce all of them formally. (Produced under original lettering).

Cross-examination - Nil.

No.47

Akuila  
Matanibukaca,  
Examination.

No.47

EVIDENCE OF AKUILA MATANIBUKACA

AKUILA MATANIBUKACA, Fijian adult. Sworn on Bible:

20

I am Police Inspector. I gave evidence in the court below immediately after P.W. 14. On 29th May last I was at Tavua Police Station. The night of 29th May I went up the road that leads to the Hotel. There I saw two bodies of male Indians. One was lying on the road and one on the side of the road. I know Chanan Singh well. He was one of the bodies. I examined the scene. Apart from the bodies I saw an envelope and the pocket of a shirt and a stick. I examined the envelope, picked it up and looked at it. I identify Ex. "B" as the envelope. When I picked up the envelope I put it back where I had found it. The shirt pocket was on the grass at the scene. Const. Kini found it and pointed it out to

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me. It is like nylon - the colour of fresh milk. I examined it. I would recognise it. Ex. "D" is the pocket. I put it back where it was. I also found a stick. Cpl. Fero had shown it to me. He handed it to me. I took it, inspected it and put it back. Ex. "C" is the stick. As a result of examining the envelope I went to the Manager of the Hotel and then interviewed Bharat the accused. I went to accused's room at the Hotel and asked if I could come in. He opened the door and said "Yes." He was then wearing a singlet and a pair of shorts which looked like khaki. I asked him if he was on duty at the hotel that evening. I spoke in English. He appeared to understand and know English well. He said he was on duty that evening. I asked if he had had an argument with an Indian in the bar. He said "Yes I only had an argument with one Chanan and another Indian." I asked if he could tell me what clothes he had on while at duty at the Hotel. He said he could and showed me a nylon shirt like the one he has on now (pale blue) and a pair of whitish shorts. I asked if he could show me the trousers he sometimes wore at the bar when I used to see him - a greyish colour. He showed me a pair of khaki trousers. I said they were not what I meant as there was another pair. He said he did not have any trousers other than those. I asked him what shoes he had had on that evening. He indicated a pair of shoes. At this time Const. Poasa was present. We took possession of the shoes. Const. Poasa took possession of them, showed them to me but he took them to the police station. Ex. "K" are the shoes. I asked the accused if he could accompany me to the Police station. He said "Very well I will come with you." I sent him there with Const. Poasa. It would have been getting on for midnight then.

Cross-examination:

When I was in the accused's room I was talking to the accused. Both Poasa and I spoke to accused.

40 Re-examination - Nil.

In the  
Supreme Court  
of Fiji

Prosecution  
Evidence

No.47

Akuila  
Matanibukaca,  
Examination  
- continued.

Cross-  
examination.

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Adjourned to Tuesday 14th October at 9.30 a.m.

(Sgd) A.G. Lowe  
C.J.

In the  
Supreme Court  
of Fiji

14.10.58.  
Accused in custody.  
Counsel and assessors as before.

Prosecution  
Evidence

Crown Counsel - calling Cpl. Krishna. Notice of  
additional evidence served - no objection.

No.48

No.48

Pram Krishna,  
Examination.

EVIDENCE OF PRAM KRISHNA

PRAM KRISHNA, Indian adult. Sworn on Ramayan:

I am a Police Corporal station at Ba. I remember 1st June last. I went that day to Man Lee's store at Tavua and there I took possession of an Agfa folding camera B01354 from a salesman Youk Bor Fong at the shop - he gave evidence in this case. Ex. "F" is the camera. (Points out number). When I seized the camera I handed it to Insp. Raj Deo at Tavua Police station.

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Cross-examination - Nil.

No.49

No.49

Joseph Stephen  
Simonyi,  
Examination.

EVIDENCE OF JOSEPH STEPHEN SIMONYI

JOSEPH STEPHEN SIMONYI, British adult. Sworn on Bible:

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I am Master of Pharmaceutical Arts at a Hungarian University and Doctor's degree in Analytical Chemistry. I have been qualified since 1938. I received on 4th June a sample of blood from Dr. Gosden. I got 3 blood samples in all. The bottle shown me contains one of the samples I analysed. I got it from Dr. Gosden. It is labelled "blood from Chanan Singh". I analysed it for alcoholic content. I found .17 blood alcohol present in the sample. Having regard to that percentage of alcohol I can say between .2 and .4 causes drunkenness. This is below that and I can say that the person from whom the sample was taken was under the influence of alcohol. A person with 1.5% blood alcohol would not generally be capable of driving a car. His reactions would be retarded - (Blood sample put in as Ex. P for ident.)

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On the same day I analysed a sample of stomach content. It was in a jar "Chanan Singh ... stomach content". I got this from the Police Cpl. Fero. I analysed the contents for alcohol and found decomposed food and liquid. I found 1.035 grammes of alcohol and a large amount of acetaldehyde indicating that the person had consumed much more than that found in the stomach contents. From those facts I would consider that the person would know what he was doing but would have become irresponsible. (Jar put in as "Q" for ident.).

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When I had finished with "P" and "Q" I kept them in the refrigerator locked and later gave them to Cpl. Fero. On 25th June I received a nylon shirt and a piece of nylon material from Cpl. Fero. Ex. A and D are they. I made certain microscopic and chemical tests on both. They are each of the same material and Ex. D was once connected with the shirt as a pocket.

20 Cross-examination - Nil.

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No.50

EVIDENCE OF MINNIE GOSDEN

MINNIE GOSDEN, British adult. Sworn on Bible:

I am Government Pathologist at the Central Laboratory Suva. I am M.B.B.S., D.T.M. & H. I have been qualified since 1924 and have been Govt. Pathologist since 1929.

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On 2nd June I got some exhibits from Cpl. 295 Fero. The first was a penknife in a packet. Ex. "H" is the penknife. On testing the knife I found reddish brown material at base of bottle opener on the knife, at the base of hinge and along the spring at the back of the knife. This gave positive tests for blood of human origin. (Shown assessors where blood found). Another exhibit was a nylon shirt. Ex. "A" is the one. On examination I found small reddish brown stains on both sides of front and top of right sleeve and front of left sleeve and a smudge stain on inner side of right front of the shirt, just below lower edge. Samples of the stains gave positive tests for blood of human origin. The next exhibit

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In the  
Supreme Court  
of Fiji

Prosecution  
Evidence

No.49

Joseph Stephen  
Simonyi,  
Examination  
- continued.

No.50

Minnie Gosden,  
Examination.

In the  
Supreme Court  
of Fiji

Prosecution  
Evidence

No.50

Minnie Gosden,  
Examination  
- continued.

was a pair of grey trousers. Ex. E are the trousers. There were small reddish brown stains on lower half of front of left leg. The inner side of the right leg towards the back crease and the outer side of the right leg at the lower end also a smear on the outer side of the back of the left leg at the lower end. All these gave positive tests for blood of human origin. There was a faint brown stain on left side just behind the pocket but this was not blood. The next was a pair of black leather shoes. Ex. "K" are the shoes. There were no visible stains but on scraping the left tow cap and the welt around the toe of the left shoe I obtained material which gave positive tests for human blood. The shoes were clean and polished. When I got them very clean. Not in condition I would expect had person walked on metal road. R. shoe gave very weak presumptive test for blood but I could not confirm human blood. It came from toecap and welt. I also got sealed bottle stating "taken from deceased Chanan Singh etc." When I completed analysis I handed sample personally to the last witness. I got also sealed envelope "scraping of nails of the accused Bharat" signed T.G. Hawley. Contents were piece of white lint with tiny dark brown fragments. I examined them for blood. The test was completely negative for blood of any kind. The small stains on front of shirt look like splashes definitely on the outer side. I think they were splashed on. The ones on the inside on the right hand side are smeared on. I would say from the sleeves on the sleeve on the front, the person wearing the shirt must have been close to the wound on the person who was bleeding. It must have been close but not touching. It is possible the splashes could have been caused by something being applied, if it was the only cause of the splashing, with some force. I also examined Ex. "O". There was a very faint presumptive test but not enough to prove anything.

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Cross-examination - Nil.

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No.51

Raj Deo,  
Examination.

No.51

EVIDENCE OF RAJ DEO

RAJ DEO, Indian adult. Sworn on Ramayan:

I am an Inspector of Police stationed at Sigatoka. In May last I was stationed at Lautoka. On

29th May I got a report and went to Tavua that night with Det. Sgt. Narain Nair and Police photographer Rama Mudaliar. We arrived at 12.30 a.m. on 30th May. I went to the road in front of Supt. Saint's house. It leads to Tavua Hotel. I found S/Insp. Akuila, Mr. Adam S/Inspr., and a number of constables. There were two bodies on the road. I learned that one was that of Chanan Singh. I touched his body. He was dead, the body was cold but rigor mortis had not set in as the body was still soft. I saw a stab wound in the front of the throat covered with blood which was on the body also and on the back of the neck and on to the ground directly under the neck. There was a lot of blood there but none scattered around the place. The blood was still fresh. I inspected the scene there and picked up an envelope addressed to Bharat Singh at Tavua Hotel. Ex. "B" is the envelope. There were three photographs in the envelope. Exs. "G1 and 2" and "I" are the ones. I found a piece of cream coloured nylon material which appeared to be a shirt pocket. Ex. "D" is it. I found a white shirt button with two holes in it and cotton still in it. Ex. "C" is the one. I kept it at the station and I produce it (Ex. C). The envelope and nylon and the button were on the left hand side of the road coming from the town. Chanan Singh's body was on the right of the road. About 7 or 8 yards between body and articles. I also found a broken black stick near the scene. (It is tied together now). I kept custody of the envelope and now produce it. (Ex. B). I gave Ex. D with other things to Cpl. Fero who later gave them back to me. I kept it and produced it in the lower court and now produce it formally - Ex. "D". I gave the photos to Cpl. Fero but he did not bring them back to me. I examined the shirts on the bodies but there were no buttons or pockets missing from them. I found nothing at the scene to suggest a struggle. I went back again at daylight after I left it previously. I found no spots of blood scattered about. The blood was all under Chanan Singh. I sent the bodies to Lautoka Hospital with Const. Kiniviliame who is a witness. At 2 a.m. on 30th May I interviewed the accused at Tavua Police station. Det. Sgt. Narain Nair was with me and he wrote down answers from the accused who had not then been cautioned or charged. When I first saw accused I asked him his name and what he was doing at Police Station. I spoke in English and he answered in English which he seemed to understand. His English was fluent. He said Sgt. Akuila and a constable had brought him. There is only one Akuila in Tavua

In the  
Supreme Court  
of Fiji

Prosecution  
Evidence

No.51

Raj Deo,  
Examination  
- continued.

In the  
Supreme Court  
of Fiji

Prosecution  
Evidence

No.51

Raj Deo,  
Examination  
- continued.

division who is S/Insp. Akuila. Accused said he was suspected of a murder. I asked him why he was suspected and he said he had some argument with Govindappa, one of the deceased, in the hotel earlier that evening. Although I had found the envelope I had no suspicion of him then. I had the envelope the button and the pocket but did not know where they came from. Accused said something about a customer who was leaving the hotel who said "Satshri Akhal" or Akal. It is just a greeting used by Punjabis or Sikhs. Accused told me when that was said Govindappa said, "You should not say that we are paying for the drinks". Accused said, "I told Govindappa you being a schoolteacher - should not say things like that" and that he must be teaching the same thing to his school pupils. He said Govindappa was going in and out and ordered more drink. He said he served a drink and Chanan Singh paid for it. 10

Court:

I had searched the bodies and found money on them. Chanan Singh had more than Govindappa. 20

Examination (cont'd):

I asked if anything happened after that. He said Const. Kinivilame warned them not to cause trouble. He said Sohan relieved them. I asked him if Govindappa and Chanan Singh were there when he left and he said they were. He said he went to his room listened to the radio for a while and went to sleep. He said, about 12 at night someone knocked and he opened and found S/I Akuila and a Const. I think he said Const. Poasa. He said an A.M.O. Waqabaca was with them. He said the police had asked for his clothing and he had produced it to them and then asked him to come to the station which he did. He did mention what time he went to sleep and I saw Sgt. Narayan Nair note it down as accused told me. I did ask him if he knew who murdered Govindappa and Chanan Singh or if he went to the scene at any time and he said "No" to each question. He said he did not leave the compound of the hotel or go to town at any time that evening or night. I also asked him which road he had come to the station by and he mentioned one further away from the scene. I asked if anyone visited his room that evening and he said "No". I asked him what clothing he was wearing on that evening on duty and he said a pale blue nylon shirt and white shorts which he then had on. He said he had another nylon shirt in his room. He said it was 30 40

5 months old in the same condition as the one he had on and not torn or damaged anywhere. He did not say what colour it was. At this time I had the envelope. I asked him if he had received any letter from Suva lately. He said he had got a letter from his brother's son Pratap Singh. He said he had burnt some letters earlier that day. I asked him where the envelope was and he said he had burnt that also. I asked when he got the letter contained in the envelope and he said, I think it was the 10th. I asked why he had burnt the letter and he said he did not keep unnecessary letters. I asked if he had replied to all the letters he had burnt and he said "Yes". I asked accused where he came from and he said from Rakiraki. He said he had been at Tavua Hotel 6 years or 6 months; I am not sure what period he said. I asked him who was present when the letters were burnt and he said the cook at the Tavua Hotel. I showed him the black stick Ex. "O" but before that I asked him if he had any black stick in the Hotel. He said he had not. When I showed the stick he said he had not seen it before. I don't remember if I asked him any more about the argument in the bar. I asked when he came on duty and he said 8 p.m. when he came on for the second time. I asked about the Manager and he said Manager not there when he was in the bar. He said Govindappa and Chanan Singh had come together while he was on duty and started to drink. I enquired and he said he had a brother at Vatukoula. He told me the name which I have forgotten. I asked if he had any penknife or dagger. He said he had two penknives in his room. I again asked him to account for his movements after duty and he said he went to his room and nowhere else. He said he spoke to no-one. That was the end of that particular interview. When I had finished questioning I told Sgt. Nair to read out what he had written. He read them in English and accused agreed with the contents read out and he signed the notes and so did I. Sgt. also signed. About 3 a.m. I went to accused's room with him. I went to search and he agreed to me doing so. Besides accused, Sgt. Nair and police photographer Rama and two or three constables also came to accused's room with me. In accused's room I took possession of 9 negatives from an envelope which contained a number of negatives. Three of them seemed to be the negatives of the photos I had from the envelope in my possession. The negatives Ex. "M" are the ones. I took possession of them, gave them to Cpl. Fero. I did not get them back. I then went to the Police station and

In the  
Supreme Court  
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Prosecution  
Evidence

No.51

Raj Deo,  
Examination  
- continued.



In the  
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of Fiji

Prosecution  
Evidence

No.51

Raj Deo,  
Examination  
- continued.

took accused after asking him to come back. He agreed and accompanied me. At the station I showed the accused the envelope "B" the three negatives "M" and the photos I found - Exs. G1 & 2 and I. He kept quiet for a while. (Patel objects to evidence of any answers given - assessors retire). Patel objects that accused was in custody at the time. Conversation should have been in his mother language. No caution had been administered - breach of Judge's Rules.

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Crown Counsel - uncontradicted evidence of this witness that accused not charged or arrested - accused agreed to come quite voluntarily. Night and must have been suspect but no more could have attacked them and no evidence that justified arrest. Envelope and photos which compared with negatives.

Patel Judges Rule No. 3 quoted from Archbold 414 para. 682, 283.  
Accused in custody.

Examination (cont'd):

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Accused was with me voluntarily at that stage. He was free to go had he wanted to. He would have known that. I had no evidence then on which I would have felt justified in arresting accused.

Cross-  
examination.

Cross-examination:

When I arrived at station at 2 a.m. accused was there. I had met Akuila before then - at the scene, also Const. Poasa who was at the scene. Akuila had not told me of the black shoes he had got. He might have told me afterwards. I had no conversation with Poasa but I did with Akuila when I arrived about 12.30 a.m. I had gone straight to the scene when I arrived at the station. The first thing I did was to talk to Mr. Adam and then S/I Akuila. Mr. Adam told me S/I Akuila had a man he wanted me to question. I asked Akuila who and where he was. Akuila said "The barman at the hotel and he is waiting at the station." That was on my arrival. I had looked around first and saw the bodies. I talked with them before I saw exhibits. Before I went back to the station, I knew the barman of Tavua Hotel was there but it might have been anyone. The name Bharat was not mentioned to me but I had seen the envelope with that name on it before I went to the station. When I arrived at the station I went to the station

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orderly's desk. I had the exhibits and told the orderly to enter them. Then I went out and washed my hands and then into Sgt's., Office where accused was sitting in a chair. There was no-one in front of Sgt's. office but a constable was in front of general office. The accused could have gone out through the window without passing a constable otherwise he would have had to pass a constable to get through the general office and so outside if the constable had been there all the time. When I got there accused was in the Sgt's. office but no-one else. The constable and others who came with me went to general office. On my arrival no-one left the Sgt's office and no-one went in until I did. I could have seen had anyone done so. It was 10 to 15 minutes from the time of my arrival at the station until I went into the Sgt's office. I am quite sure accused was on his own in his office all that time. From the general office a passage leads to the Sgt's office and the sink where I washed my hands. The sink is opposite Sgt's office. (Draws sketch of the layout at Mr. Patel's request). (Put in Ex. "R"). One cannot see from the sink to Sgt's office but I was not there long. Accused was free to go from the station that night. Had he gone nothing would have happened. Something might have happened. Something might have happened later after more evidence was obtained. At that time I had seen the envelope at the scene. It had accused's name on it. Akuila told me he had a barman at the station. I did not then know a Bharat Singh. I am quite sure I did not know accused as barman at the Tavua Hotel. I had last been there in 1952. I did not know a young man by name Bharat was at Tavua Hotel. If he had gone I would not necessarily have sent a constable for him I would have made further enquiries. I might or might not have sent a constable. I don't know. I might have gone to see Sohan or the Manager first. Accused was free to go. There was no-one guarding him when I got there except a constable in the passage by the general office door where I have marked an X. I had seen the photos which were of Tavua Hotel. The envelopes were addressed to Tavua Hotel. I must have known they were connected with Tavua Hotel and I was asked to interview the barman of Tavua Hotel. I still had no suspicion of the man I was going to interview.

Court:

This was the beginning of the investigation.

In the  
Supreme Court  
of Fiji

Prosecution  
Evidence

No.51

Raj Deo,  
Cross-  
examination  
- continued.

In the  
Supreme Court  
of Fiji

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Evidence

No.51

Raj Deo,  
Cross-  
examination  
- continued.

Cross-examination (Cont'd):

I asked accused his name at first. Notes were made by Sgt. Narain Nair in my presence. It is correct I asked accused if he knew anything about this murder. That was one of the questions but not the first. I asked Nair to make notes. I did ask his name and it must be in the notes taken. I don't know at what stage I asked if he knew about the murder. When I gave evidence before the Magistrate I read out from the notes. I answered after refreshing my memory from the notes. It was not the first question when I asked if he knew about the murder. It was one of the questions. It may have been one of the first few questions. I don't know without looking at the notes. I don't know whether I refreshed my memory from the notes at the beginning of my evidence at the P.I. One of the first few questions was what he was doing at the station. I may then have had the notebook. I may have asked for the notebook later. I can't remember when I got the notebook. When I was questioning accused. Only Sgt. Narain Nair was there though the police photographer came in with the stick at one stage and then went out. Duty Const. might have come in also but I don't remember who was duty Const. that time. The photographer merely discussed there being no fingerprint on the stick. Did not stay long. Fero and Akuila were not there. I did all the questioning. The Inspector, Akuila, told me "The barman is waiting at the station; you will see him when you go there". He did not tell me what time accused was taken there. I don't know if anyone else interviewed accused before I went to the station. While I was questioning him he could have left at any time had he wanted to.

Court:

I could not have stopped him. Had he wished to go I would not have tried to stop him.

Cross-examination (Cont'd):

I went to search his room. After I had searched his room if the accused had wanted to stay there I would have let him. I am serious about that. I first came to suspect the accused when he said "I did it" when he was being questioned at the station. Up to then I had not suspected him. I asked him about receiving a letter from Suva. He said he had got a letter from his brother's son but I did not suspect him then.

I asked him what he had done with the letter. He said he had burnt it. I did not suspect him then. When he said his other nylon shirt was about 5 months old and in good condition I did not suspect him then. I asked him after I had seen the pocket. He said his other shirt was another colour. He said it was nylon. He said the shirt at home was similar to the one he was wearing. It was because I had discovered a nylon shirt that I asked him if he had another shirt.

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of Fiji

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Evidence

No.51

Raj Deo,  
Cross-  
examination  
- continued.

10 Court:

Exhibit "A" had not then been discovered.

Cross-examination (cont'd):

I had found the envelope and photos before interviewing him. Even after getting the negatives and comparing them with the photos I still did not suspect him. He said he had taken the stamp from the envelope. The envelope I found at the scene had no stamp out even then I did not suspect him. I know Hindustani, so does Sgt. Nair. The accused does also. The interview was not in Hindustani as he answered questions in English and it was easier to record straight away in the language being used. No particular reason for speaking in English. I would have found out if he had not answered properly and then I would have switched to Hindustani.

Court:

All his answers were given voluntarily. He had no difficulty with English at all.

Cross-examination (cont'd):

30 It is quite common to start speaking English to Indians in Fiji. I know nothing about Sir Owen Corrie's dictum but we are instructed by our Department to use the language best understood by the person making the Statement. He answered in English. I did not stop to think which language would be best understood.

Court:

40 I am quite sure he could not have understood better than he did in English. It would depend. If I met an old Indian I would start in Hindustani but not with an educated man. The accused was in custody from when he said "I did it" and when he produced the knife I arrested him. That was all after the questioning I have spoken off. That might have been about

In the  
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of Fiji

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Evidence

No.51

Raj Deo,  
Cross-  
examination  
- continued.

4.25 a.m. when he said "I did it". It was about 2 p.m. when I first saw the accused at the station. I do not know what time he had been brought to the station. Some time before I arrived. When I arrived at the station I saw the accused in the Sergeant's room. The interview all took place there. I went to his room to search as I was investigating. Our common practice is to check on every bit of information given to us. To verify it or show that it is not true. Before going to his room I could not say with certainty that what he had told me was not true.

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Cross-examination (cont'd):

I know he said he had burnt the envelope but the one I had could have been a different one. It had the stamp taken off and he said he had taken the stamp off. I was not then certain whether that was true or not. I did not know the handwriting of his brother's son. I had got the photos and had looked at them. They were of the Tavua Hotel. I searched and found negatives which I compared with the photos and formed the opinion that the photos were from those negatives. I did not then suspect the accused. The photos might have been carried by anyone. The negatives might be in one place and the photos in another. S/I Akuila had not told me of the conversation he had had with the accused in his room. He did not tell me accused's name - he said "the barman".

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Re-examination. Re-examination:

When a person is brought to a police station in custody and is to be interviewed he is guarded all the time whether locked up or under escort. The constable I mentioned was not standing near the general office. He was in motion but that was where I saw him at one stage.

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Const. Poasa - Patel objects as he has been in Court and has heard the evidence. Crown Counsel says in that event he will not call Poasa.

Adjourned to 9 a.m. 15.10.58.

(Sgd) A.G. Lowe,  
C.J.

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15.10.58.

Accused in custody.

Counsel as before.

Assessors absent.

Crown Counsel calls -

EVIDENCE OF AKUILA MATANIBUKACA (RECALLED)

AKUILA MATANIBUKACA, Sworn on the Bible:

Sub Inspector of Police station at Vatukoula. I gave evidence previously and said that 11 p.m. on 29th May I went to accused's room at the hotel and asked him to come to Police Station. I did not arrest him. He was agreeable to going to station. Had he said he did not want to go I would have left him. I gave evidence in the court below and said I instructed Const. Poasa to take him to the Police Station and to see no-one spoke to him until C.I.D. arrived. It is the duty of C.I.D. to investigate capital offences of this nature. By saying no-one was to speak to him I meant not to allow any police officer to question accused at the Police Station.

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Cross-examination:

When I went to accused's room I had already seen an envelope at the scene addressed to Bharat Singh. As a result of that I wanted to see accused. I did suspect he might have had something to do with the killing. I asked him what clothes he had been wearing at the bar. When he told me blue nylon shirt and white shorts I did not believe him. I asked where his grey trousers were and he showed me a pair of khaki trousers. I did not believe that and thought he was telling lies. I told him that was not the trousers. Then I asked him to go to the Police station. At that time I suspected him because of the envelope, the torn shirt pocket and the argument at the bar earlier in the afternoon. I sent him to the police station with Poasa. I returned to the scene where the body was. Poasa was not to look after accused at the Police Station. Const. Malakai, the station diary keeper was to look after the accused. I told Poasa to tell Malakai to look after accused. Malakai was to see that no-one spoke to him. He would have to be there until C.I.D. arrived. The accused was there for inquiry only. Malakai was in charge of accused. I remember when Inspector Raj Deo arrived. I met him outside near the Courthouse. We then walked up to the scene where the dead bodies were. Until Raj Deo arrived I was the senior officer in charge of the investigation as I was the first there and then Mr. Adams had arrived and he took over. I am a Sub-

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In the Supreme Court of Fiji

Prosecution Evidence

No.52

Akuila Matanibukaca (Recalled), Examination.

Cross-examination.

In the  
Supreme Court  
of Fiji

Prosecution  
Evidence

No.52

Akuila  
Matanibukaca  
(Recalled),  
Cross-  
examination,  
- continued.

Inspector and he is an Inspector. When I met Raj Deo I told him what I had found. I told him of the envelope addressed to Bharat Singh at Tavua Hotel, near the body. I told him I had seen accused at his room and that Bharat was waiting at the station to be interviewed. Before Raj Deo went to interview him I had told him of the envelope and that I had seen Bharat and sent him to the Police station. I told Raj Deo I had taken the barman called Bharat Singh to the police station. I don't think I mentioned about my conversation with accused about the clothes. I cannot be certain.

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Re-examination. Re-examination:

Const. Malakai was to look after accused by seeing that no policeman spoke to accused before C.I.D. came. I said Malakai was in charge of the accused because Malakai was in the charge room and that is why I left accused in his charge. He was not in custody then. By "in his charge" I mean that Malakai was to see that no-one spoke to the accused until C.I.D. arrived.

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Court:

There was no question of Malakai or Poasa preventing the accused from leaving the Police station had he wished.

Cross-  
examination.

Cross-examination:

When I asked Poasa to take him to Police Station my idea was that he was to be available for interview by C.I.D. If accused had left the C.I.D. would not have been able to interview him. I wanted him to be available.

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- Q. If he was free to leave why take him to Police station and not leave him in his room?
- A. I asked him if he would go to the police station and he agreed. He was free to leave. I thought it would be easier at the station than in his room. Secondly the accused had agreed. Had he not done so I would have told the C.I.D. that he had refused and was still in his room.

Q. Why easier at the station?

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A. It was midnight; the people in the Hotel and Mr. Vaughan had gone off to sleep. Mr. Vaughan had allowed me to interview the accused and I did not want any further disturbance at the hotel.

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Akuila  
Matanibukaca  
(Recalled),  
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10 Malakai was not instructed to see that accused did not leave, merely that no-one was to speak to accused. I agree my instructions could not have been carried out if accused had not been kept at Police station. I wanted Malakai to keep him there. If accused had gone away he could have met another police officer and talked to him. I did not want accused to leave the station but I had to take the risk that he would.

Re-examination - Nil.

20 RULING: I am satisfied that the accused was not in police custody at the time he was interviewed at the police station by Inspector Raj Deo and the answers to any questions put to him are admissible, subject to my considering the nature of the questions and answers, evidence of which will no doubt follow.

(Sgd) A.G. Lowe,  
C.J.

Assessors return to Court.

No.53

EVIDENCE OF RAJ DEO (RECALLED)

INSPECTOR RAJ DEO on former oath:

No.53

Raj Deo  
(Recalled),  
Examination.

30 When I returned to the Police Station about 3.25 a.m. I compared the photos and negatives. I showed accused the envelope and the three photos. After keeping quiet for a while he said "That photo is mine taken by me on my own camera". I asked him if he could explain why the photos and envelope were found at the scene. He did not answer. I asked him a number of questions on that subject but he did not reply. After a short while I asked if I could see his hands and he agreed. On the ring finger of the right hand I found a small scratch about one inch long. It was fresh. There were two fresh scratches about 3½" long inside his right forearm and some

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Raj Deo  
(Recalled),  
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- continued.

bruises on his right wrist. I asked how he had received those injuries but he did not reply. He kept quiet for a short while then stood up from his chair and said "I did it". I then cautioned him and he said "that photo has probably been in my pocket. I did in mistake". He might have spoken a few more words which were noted down. He said "The knife is in my bathroom. I will give that up." I asked him to give me the knife and we went to his room and he got a penknife from the lintel above the bathroom door and gave it to me. I examined the knife and in the joint I saw some blood. The blade was very clean. Exhibit H is the knife or a similar one. The blade was open when he gave it to me. I took possession of it and on 1st June gave it to Cpl. Fero and later he brought it back. I kept custody of it produced it in the lower court and now produce it formally - Ex. "H". I then arrested the accused in his room and charged him with murder and he said "I know that". When I had cautioned him I gave the full caution. He led me outside his room and he pointed out a corner of the hotel building and I recovered a shirt from under the building there. I also got trousers from there. The shirt was cream nylon with 4 buttons and the pocket missing. It had spots in red, appearing to be blood, on it. Exhibit "A" is the shirt. I took possession of the shirt and trousers. Exhibit "E" is the trousers. I dealt with them as I had the knife and after getting them back I kept them in my custody, produced them to the lower court. I now produce them formally. Exhibits "A" and "E" respectively. The shirt and trousers were hidden under the building and I had to sit and crawl under to get them. After I got the trousers accused said "You will find my key in the pocket." I searched but there was no key. I then went to the police station with the accused. There I instructed Sgt. Narain Nair formally to charge and then caution accused and to take any statement he wished to give after that. He made a short statement in my presence. Before I left his room accused had asked me to post three letters which were already addressed and on his table. I did that. That same morning at 8.30 a.m. I took accused to Ba police station and left him in charge of Inspector Adams and I left for a short while. I went to Lautoka Hospital with accused after that and he was examined by Dr. Hawley who also took some nail scrapings from accused and I gave them to Cpl. Fero with other exhibits. At 3 p.m. that afternoon I attended a post mortem by Dr. Hawley on Chanan's Singh's body. After that

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Dr. gave me some stomach contents and a sample of blood from the body. I identify Exhibit "Q" as being the jar containing the stomach contents. Exhibit "P" is the bottle which contained the blood. I gave both of these to Cpl. Fero who took them away and brought them back to me. I kept them and tendered them at the lower court. I now formally produce them. "P" and "Q". I found one shirt button at the scene - Exhibit "C". Constable Poasa gave me one shirt button. Sgt. Nair gave me one shirt button. Each had cotton still in them like Exhibit "J". I kept them, handed them in at the lower court and now produce them formally. S/I Akuila gave me a pair of shoes. Exhibit "K" are the shoes. I gave them to Cpl. Fero who later returned them and I kept them until I produced them in the lower court and now formally produce them. Exhibit "K". I also picked up a black stick at the scene the night I went there. Exhibit "O" is the stick. It was pointed out by Akuila. I kept that stick, gave it to Fero, got it back, gave it in in the lower court and now produce it. Exhibit "O". I gave the camera to Cpl. Fero.

Cross-examination:

I arrived at Tavua about 12.30 a.m. I talked with S/I Akuila and then went to where the body was. There were some police there, a number of them. Poasa; Kiniviliame, and some from Vatukoula were there, also Inspector Adams. I examined the scene. I found an envelope and a pocket. The envelope was without a stamp one end was folded. The Post Office frank was on it. It was not dirty or old but appeared to have been roughly handled - crushed. It was about 7 or 8 yards from the body of Chanan Singh at a guess. If Kiniviliame said three paces from Chanan Singh he is wrong. It was three paces from Govindappa's body. Chanan Singh's body was on the other side of the road and some distance ahead. The envelope was not between the two bodies. I don't know if Kiniviliame was one of the first to see the envelope and the pocket. If he says the envelope and pocket were 4" apart - I would say not very far apart. He was on the scene before me. I found a shirt button that night. It was near the end of the road on the same side as where the photos and pocket were found and within two feet of them. It was in the grass. Chanan Singh's body was lying on the road, head towards Police Station, left arm on his chest, the right arm extended slightly outwards lying on his back with his face, I think, slightly to

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the left side. It is a metalled road. It was near Supt. Saint's house. It was about 7 or 8 yards towards the hotel from the road which branches off to Saint's house. It would be about 1½ chains from the body to the house. The hotel would be about 40 or 50 yards from where the body was and the police station about 100 yards away from the body. The town was 10 or 11 chains away. I found nothing to suggest a struggle at the scene. On a metalled road I would have expected to find footprints in any dust and if a man was injured, blood spattered about. Also marks of disturbance by tramping on the road. Footprints could have been in the dust from anyone walking up the road. If traffic went over the spot after a struggle I would not expect to find evidence of a struggle on a metalled road. When I inspected the scene at night a benzine light was used. I carried it sometimes and at other times constables did. After searching the place I went to the police station arriving there about 2 a.m. I was at the scene until then. I interviewed the accused at the hotel as I have said. After sitting quietly for a while the accused suddenly stood up and said "I did it". During the 15 or 20 minutes I had been asking him questions and he was sitting. I spoke in English. He kept quiet during that time. I was asking him about the photos at the scene, and injuries on his hand and arm. He was thinking but was not answering but he seemed to make up his mind and then stood up and said, "I did it". He did not answer when I asked if he could say how it was the photos were at the scene. He was sitting quietly after that and I was asking him questions. I asked him a number of questions but he gave no reply so no record was taken. I can't remember all the questions. During the 15 or 20 minutes I asked also if anyone had visited his room and could have taken the photos away. He did not answer. I asked if he had given the envelope to anyone. He kept silent. I asked if he had been to the scene and he did not answer. I also asked that if he remembered he had told me he had burnt the envelope but I said it was found at the scene. He did not answer that or the many other questions I put to him. It took about 15 or 20 minutes. He said "I did it" while I was not questioning him. My last question had been a minute or two before that. I don't remember what in particular the last question was. He was not answering me when he said, "I did it". He had thought for a while and then said it. That was my impression. I had asked him if he had had any hand in the killing

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but whether or not that was the last question before he spoke I cannot remember. He was sitting on the chair while I questioned him. I was on a chair at the side of the table. He was on my right at the end of the table. Sgt. Narain Nair was on another chair between us but slightly behind me. Accused suddenly stood up from the chair. I can't say what made him stand up. Accused appeared then to be very nervous. Tears were coming from his eyes and he was shivering. I had asked a question a minute or so before he said "I did it" but I cannot say what the question was. All the questions I asked were important questions. He made no reply to them. When he said "I did it" that was not necessarily in reply to my question as to whether or not he had had a hand in the killing. When he said "I did it" I had no particular feelings but I cautioned him as I thought it was proper for me to do so at that stage. I did not have to caution him unnecessarily. I had intended cautioning him as soon as I was satisfied he might incriminate himself and when he said "I did it" I cautioned him before he said anything more which might incriminate himself further. When accused said "I did it" I was not surprised. My reaction was that I thought the time had come when I should caution him. Sgt. Nair was noting down accused's answers. That was finished about 5 or 10 minutes to 4 a.m. when we left the station. The written notes of answers to my questions were read over to accused and explained where necessary. He signed the notes. The reading over was only done once and then he signed. That was before I went just prior to 4 a.m. to his room. The accused only signed once. When we returned to the station he made a very small statement but I don't remember if he signed that. The accused signed the notes before my first visit to his room. If I said he signed just before 4 a.m. I was wrong because it was before we went to his room the first time about 3 a.m. He did not sign after he said "I did it" and that had been recorded. A note was taken of what he said after he had said "I did it". It was read back to him, I think, but that was not signed. I did not ask him to sign it. He had said it without being asked. There is no particular reason why I did not ask him to sign. We went away to get the knife. What he said was important but to me it was more important to get the knife. He volunteered to give me the knife and I thought I should get it first. I was not afraid I would not get it. I was in a hurry to get the knife. I think Narain Nair read

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over what was recorded after he has signed. I'm not quite sure. I think they were read over before leaving for his room to get the knife. There was a rush to get the knife and the clothing he mentioned. I think Narain Nair read the notes. It was a very small note. After I searched his room for negatives I questioned him and notes were made of his answers. There was time to ask him to sign but I did not think it necessary. It was important to get the knife. I did not give instructions to read the last notes but I think they were read. They may or may not have been read. I'm not sure. I spoke in English right to the end. I went to accused's room to get the knife and I examined it. The blade was clean. I saw blood in the joint. I did not find blood anywhere else on the knife. I found no evidence on the point of the blade. In the lower court I said "joint" but I know that has been typed as "point". When I got the knife Det. Sgt. Nair was with me, also photographer Rama and some constables. After I got the knife I had no conversation with accused except that he asked me to post the letters for him after I had arrested him and he said "Yes, I know". Immediately after getting the knife I did not have any conversation with him. Immediately after I arrested the accused he said "I know" and then he asked me to post the letters. I took them and he said "Come. I'll show you the clothing". I don't remember any other conversation. I did not ask him any other questions. He was inside his room when he said he would show me the clothing. In his main room, not the bathroom. He walked out of the room, I followed and he went behind the hotel near two tanks at the corner and he said "Look in there. You will find the shirt and trousers". All the police party followed him also. We all were immediately behind accused. It was to a corner of the back of the hotel. I think it was near the kitchen. The door of his room leads outside. We all went near the tank, the accused leading. He stopped near the tank and said to me "Look in there. You will find the shirt and trousers" or words to that effect. They are not the exact words. He indicated where to search. I was then about 10 paces from the corner of the building. I told a constable to watch him and I took a benzine lamp with photographer Rama and I got down on the ground and searched under the corner. Rama held the light but he was outside the building. I only had to crawl 2 or 3 yards under the building in 2 or 3 different places at the same corner. I found the clothing on the ground about

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3 or 4 feet in from the corner. There was about 18" or 2 feet to get under - a little more or less as the ground is uneven. Where I found the clothes there was a gap of 18" or more. I could just crawl under comfortably. The shirt and trousers were rolled up together. I crawled out and brought them with me. I walked to the Police party where accused was. I showed him the shirt and trousers. He said "Yes these are the clothing. You will find the key in the pocket". I looked but the key was not there. I examined the shirt there and found the pocket missing. Rama, Nair and accused were there. I then went back to the station. Accused was taken with us. I had no conversation with accused at the station. I instructed Sgt. Nair to formally charge and caution accused and taken down any statement if accused wanted to say anything. I was present when he was charged and cautioned in Hindustani. I know that accused understands Hindustani. I arrested accused in his room and charged him in English. Sgt. Nair charged him at the station. He knows English well. He was present when I charged accused in his room. He must have heard me charge him. It was necessary to charge him again at the station. It gave him an opportunity to make a statement if he wanted to. I did not give him an opportunity at the room as we were still searching for exhibits. He made no attempt to make a statement there. As soon as I got the knife I arrested and charged accused. I had cautioned him before that. There was an opportunity for him to make a statement but he made no attempt so I did not ask him. It is true that I had him charged again to give him a chance to make a statement. In the room there was no paper and no opportunity of getting a statement down. He had said something about the clothing previously at the station. He said "I'll give you the knife" and then something about the clothing, but I do not remember what he said. It might have been in his room he mentioned the clothing. I don't remember. At one stage he did say something about having a nylon shirt at home similar to the one he had on. It may be that he did not say anything about where the clothing was while he was at the Police Station. If it is not in the notes then he did not tell me at the police station. I don't remember what I said in the lower court but I might not have said anything about him saying at the police station about the clothing. If he did mention the clothes there it would have been about the same time as he told me about the knife. (His deposition in P.I. read to him - reference made

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Re-examination. Re-examination:

to page 10). That is correct. I agree now he did not say anything at the station as to where the clothes were. There was opportunity to make a statement in his room but he made none. I cautioned him in his room. In the station the charge, caution and statement were all written down but the caution and charge in his room was oral.

The marks would be different from footprints on a road if people had struggled than if people had merely walked there.

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No.54

Narayan Nair,  
Examination.

No.54

EVIDENCE OF NARAYAN NAIR

NARAYAN NAIR (referred to at time in this record as Narain Nair), Indian adult. Sworn on the Ramayan:

I am a detective sergeant stationed at Lautoka. I remember 29th May last. That night I went to Tavua and went to a road leading past the police station to the Tavua hotel and there saw one dead body on the road and one on the grass verge. I was with a party in charge of Inspector Raj Deo. I was with him most of that night. I reached the scene at 12.30 a.m. on 30th May. I was instructed to take notes by Raj Deo and did that. I saw an envelope there, two pieces of black stick which fitted together, a matchbox beside one body, a nylon shirt pocket and a shirt button. I indicated the shirt button and he picked up the things. I examined the body of one man which was that of Chanan Singh. The body was on the road on its back with the legs towards the Tavua Hotel and head towards the town. There was a cut in the front of the throat. I think there were two cuts. I examined the clothes and shirt of Chanan Singh and no buttons were missing. After some time I went to Tavua Police station with Inspector Raj Deo. There I saw some police and a civilian at the station. The accused was the civilian. Inspector Raj Deo and I

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interviewed the accused. Certain questions were asked. The accused had not been cautioned at that stage. A note was taken by me of the answers given by accused. I took the notes in my notebook. I identify my notebook. I noted the conversation in this book. I entered the answers in the book as the conversation proceeded. I produced the book in the lower court and now produce it. Exhibit "S".

10 The interview commenced at 2 a.m. The interview was in English and accused was very fluent to that language to my knowledge. The answers were: "I heard two men were murdered - heard in police station. I was brought by Sub Inspector Akuila. I live in Hotel. I have a room in hotel. I was brought because I am suspected, because I was on duty as barman. Govindappa and Chanan were drinking in bar. I had an argument with Govindappa and Chanan. I had some customers beside them. One more Punjabi was there. I can't recollect his name. Lives in Malele. I know

20 him by sight. That Punjabi walked out, said "Satsjrikal" to me. Then Govindappa said in English "You shouldn't say it like this. We are paying for the drinks". I replied, Govindappa said that "You shouldn't say this and you must be teaching the same thing to your school pupils". Govindappa was going in and out repeating the same thing. Came to the counter and asked for a few more drinks. I served. Chanan paid for the drinks. I told Govindappa that

30 "You should have a better sense being a school teacher". During the time a Fijian constable came. I think his name is Kiniviliame, and he advised us both not to quarrel. He stayed there for a while and went away. By then it was about 9 o'clock and I was going off duty, and other barman, Sohan Prasad, came and took over and these two were still there. I went to my room. Been listening to radio for a while and went to bed. Was about half past nine. About midnight I heard a knock at the door and I

40 answered the call and saw was Sgt. Akuila and another constable Poasa and Vuniwai Waqavaca. They asked for my clothes I was wearing at the daytime. I showed them my clothes which I am wearing now and they asked me to come down to the station and I came, and I am in the station since. I don't know who killed these two fellows. I have a white nylon shirt at home. It is in my room. I did not receive any letter or photograph from Suva. Of course, I received one letter from my brother's son in Suva, schooling in Deenbandhu High School, named Pratap

50 Singh f/n Chanan Singh. I didn't come down to town at all not even in the daytime. I remained in hotel

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whole day. Didn't come out of the hotel. When police brought me to station came by the road nearer to Sub-Accountant's house. I did not go to the scene of the murder. I did not leave the hotel compound at all. Among the people who were drinking in the pub there also was a man named Pritipal Singh of Malele. There were other two Indians. I don't know their names but know them by sight. The letter stated above has been burnt by me".

Adjourned to 2.30 p.m.

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(Sgd) A.G. Lowe,  
C.J.

2.30 p.m.

Accused in custody.

Counsel and Assessors as before.

NARAYAN NAIR on former oath:

He went on to say "together with other letters. burnt in kitchen. The cook was there when I took the parcel. I don't keep unnecessary letters. Envelopes also have been burnt. I have taken out the stamp from the envelope. I don't remember the date when I received this letter. It was in last week sometime. The nylon shirt I have at home is about five months old. Not torn, quite good and same condition as I have now. No damage done to shirt until now. No buttons missing from the shirt. I can show the shirt to you now. Since I knocked off nobody came into my room. I burnt all the letters after 4 p.m. on Thursday. I come from Rakiraki. I have been working for hotel since six years. I have no black stick in my room nor I had any. The stick was shown to me. I have not seen this before. I have not seen one in the hotel. When Govindappa was arguing with me only Chanan Singh was present and the rest left the hotel. The Manager did not hear anything. When I went on duty at quarter to eight p.m. they were already there drinking. I was also on duty from 1.30 to 4 o'clock during the day. One of my brother works in mines, Lachman Singh. He was not in hotel. I have no dagger at home nor had any but I have two penknives. After Sohan took over I went straight to my room. I did not speak to anyone." When I had recorded that I read it over to accused in English. He appeared to understand and approved and signed it at the end to show approval. After that interview I, S/I Raj Deo and accused went to accused's room. Raj Deo

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took possession there of 9 photo negatives. I returned to police station about 3.25 a.m. with accused and Raj Deo. There Raj Deo showed accused the envelope which was found at the scene. Accused said it was his envelope. Raj Deo showed him the three photos from the envelope and accused said they were his and taken by him. After that accused sat very quiet. He was not speaking at all. At about 4 a.m. I noticed accused was shivering and seemed excited. All of a sudden he stood up from his chair where he had been sitting and said "I have done it". He was at once cautioned by Raj Deo and accused said, "I am quite prepared for it". Then he said "I will give you the knife". I don't remember what he said after that. I then went with Raj Deo and accused to his room at hotel where he handed Raj Deo a penknife which he got from above the bathroom door. That was about 4.15 a.m. The accused handed Raj Deo three letters which he asked him to have posted for him. Then accused said "I will show the place where the clothes are". I went with Raj Deo and accused outside and at the rear of the hotel where there are two water tanks the accused pointed under the floor where his clothes were. Inspector Raj Deo searched under the floor for the clothes and found a white nylon shirt and a pair of long trousers. We returned to the station. I was instructed to charge the accused with murder and I formally charged him with murder in Hindustani and I cautioned him in Hindustani. I understand Hindustani and the accused appeared to understand it. Accused then made a very brief statement which I recorded in Hindustani. He made the statement fluently in Hindustani. I read the statement back to him in Hindustani. He appeared to understand it and approved of its contents and then signed it. I also signed it. I identify the statement which I produce. Exhibit "T". (Statement read in Hindustani and interpreted). I produce on the same sheet the formal charge and caution I gave - also Exhibit "T". I went to Lautoka and a Police party with accused at daylight on morning of 30th May. When I got to Ba I drove to Police Station. I went in and so did accused. Inspector Adams there spoke to accused. He asked him how he was treated at Tavua Police station in English. I heard accused say "very fine". I was driving the landrover and Inspector Raj Deo was in front next to me and accused was on seat immediately behind me with police photographer Rama and Constable Suresh Singh.

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Cross-  
examination.

Cross-examination:

I went with Raj Deo to scene and saw the body. I noted things down but did not search then. I noted that money was found on the body of Chanan Singh - two 10/-, four 5/- notes from shirt pocket. £1 from his watch pocket in his trousers and in that pocket I also found a 5/- note and one 1/- and two 6d. and one 3d. and one penny. From the right trouser pocket I got two £1 and three 5/- notes, one 3d. and one penny. From the left pocket I found an envelope containing a 5/- note and one 2/- piece. On the other body I found one 2/- piece in left trousers pocket, one 1/- piece, two 6d. and one 3d. That was all that was found on that body. Chanan Singh's head was towards the town and legs towards the hotel. He was on the side of the road. I went with Raj Deo to station and there he interviewed the accused. Raj Deo was asking questions and I was taking down the answer. The notes were read out and accused approved and signed. No other questions were asked after that to my knowledge. Accused was sitting quietly. After signing the notes accused, Raj Deo and I went to his room and returned after finding the negatives. I cannot say whether any questions were put to him then. I cannot remember. Raj Deo did question him about the envelope, the photos and the negatives. No other questions were asked. From then on accused sat quietly. I did not ask any questions and Raj Deo did not in my presence. I went into the general office several times. After the questions about the envelope etc. I did go away for about one or two minutes. Raj Deo and accused were just sitting down. No questions were being asked when I got back. I had visited the toilet and got back and about 10 or 12 minutes later the accused said "I have done it". During those 10 or 12 minutes there were no questions asked. We then went to accused's room and he handed pen knife to Raj Deo. After that he gave three letters to Raj Deo to be posted. Then Inspector Raj Deo arrested him. There we searched for the clothing where he had pointed out to us. After the arrest nothing was done to accused. When accused was showing where the clothes were I was very close to Raj Deo and was holding the lamp. There were other constables round about. From when accused gave the pen knife until we got the clothes I was with Raj Deo. After obtaining the clothes we returned to the Police station and there I charged the accused in Hindustani. The conversation recorded in my note book was all in English. That was because he spoke to us in English. When we saw accused about 2 a.m., Inspector Raj Deo spoke first and accused answered. Raj Deo spoke in English.

Re-examination - Nil.

No.55

EVIDENCE OF RAMA MUDLIARRAMA MUDLIAR, Indian adult. Sworn on Ramayan:

10 I am Police photographer at Lautoka. I remember 30th May last. The morning of that day I went in a police landrover from Tavua to Lautoka. Inspector Raj Deo, Const. Singh and the accused were passengers. Sgt. Narayan Nair was driving on the right side. Raj Deo was sitting in the front passenger seat. I was sitting behind Raj Deo, and then accused on the seat and then Const. Singh. I heard the accused on the way to Lautoka when we arrived at Taverau before reaching the overseer's house - C.S.R. overseer - the accused said "I did it and I have told the truth and I do not want a lawyer to defend myself". He said that in English. He said it to no-one in particular. No-one had been speaking to accused immediately before he said that.

Cross-examination:

20 He said that quite loudly - there was no difficulty in my hearing it. It was loud enough for me to hear and possibly loud enough for others in the landrover to hear. He was sitting when he spoke. I do not remember anyone talking at that time. We were all sitting quietly when he said it. No-one said anything after he said that. This landrover was more or less like a taxi. It did not make much noise. All landrovers make more noise than cars. It was a rough road at the place where he spoke. It would be making quite a bit of noise at that place.

30 After we left Ba there was some conversation between me and Raj Deo and Raj Deo and Nair. No-one spoke to accused after Ba. There was no conversation with accused after he spoke until we reached Lautoka. I was at the Tavua Police station in the early part of that morning. I did not know he was questioned there. I knew he was there. I did not know he was questioned and gave answers but I was told later that he was charged. I knew he was questioned. I meant I was not present when he was questioned. It was later I knew that. I said I did not know when you asked me.

40 There was conversation in the landrover.

Re-examination - Nil.

In the  
Supreme Court  
of FijiProsecution  
Evidence

No.55

Rama Mudliar,  
Examination.Cross-  
examination.

In the  
Supreme Court  
of Fiji

No.56

EVIDENCE OF ORROCK JOHN SUFFERN ADAMS

Prosecution  
Evidence

ORROCK JOHN SUFFERN ADAMS, British adult. Sworn on  
Bible:

No.56

Orrock John  
Suffern Adams,  
Examination.

I am now a hotel manager. I live in Lautoka. In May last I was an Inspector of Police at Ba. I remember 30th May last. The morning of that day I was at Ba and accused came with Inspector Raj Deo, Sgt. Narayan Nair and Police photographer Rama. It was about 8.30 a.m. when they came in. I spoke to the accused and asked him if he had any complaints about his treatment in Tavua police station. He said "No. It was very fine". We both spoke in English. He appeared to understand me and he spoke fluently though his grammar was not quite correct. I asked him that as it is a requirement of standing orders that the senior officer present at the time in the district, as I was at that time, then, an accused shall be asked that.

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Cross-examination - Nil.

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No.57

Thomas Guy  
Hawley,  
Examination.

No.57

EVIDENCE OF THOMAS GUY HAWLEY

THOMAS GUY HAWLEY, British adult. Sworn on the  
Bible:

I am a qualified and registered medical practitioner at Lautoka. I gave evidence in this case in the court below. There is no Dr. Hendley in the district. I remember the 30th May last. Shortly after 3 p.m. that day I performed a post mortem on the body of Chanan Singh. Raj Deo was present. The body was identified to me by Muluk Singh s/o Delai Singh, as being that of his brother Chanan Singh (Muluk Singh enters but witness cannot swear to him being the same man).

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On examination of the body I found one stab wound and two incised wounds in the neck. The stab was about  $\frac{1}{2}$ " long on right side of the neck and had cut the right common carotid artery. It was under the angle of the right jaw. The incised wounds were

2½" and 3½" long respectively. The first was across the midline and at the bottom of the wound the body of the 5th cervical vertebra was exposed. The wound was about 2½ inches. It was straight across the front and just below the Adam's apple cutting both the windpipe and gullet. The second incised wound was on the left side of the wound below the jawbone. That was deeper at each end than it was centrally. It ran down under the chin to the midline from a little behind the corner of the jaw. A stab wound is caused by a pointed instrument thrust into someone or something. The weapon is thrust in at right angles to the object stabbed. An incised wound is a cut as with a cut into bread. There was an abrasion on the right side of the forehead which I considered to have been caused post mortem because of a lack of bleeding. Just the outer surface of skin was off.

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Court:

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It could be that the cutting of the carotid artery released a free supply of blood and so prevented the blood from being forced into the inner blood vessels and getting to the surface of the skin. It would then be inconclusive as to whether the abrasion was caused ante or post mortem. I think in this case the possibilities are very high in favour of the abrasion being caused post mortem.

Examination (cont'd):

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The cause of death was haemorrhage from the carotid artery. Either the stab wound, which was almost certainly the fatal wound or the first of the incised wounds would have been fatal on their own. The third wound might have been fatal. Immediately on receiving either of the first two wounds the deceased would have become unconscious very rapidly, exceedingly rapidly with the first one. He would not virtually have been capable of more than a small movement after receiving the wound. I see the knife, Exhibit "H".

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This could have caused the wounds. I extracted a sample of blood from the deceased, sealed in the presence of Raj Deo in a small glass bottle and given to Raj Deo. I signed it. It was Ex. "P". I see my signature on it. I also took a sample of the stomach contents of Chanan Singh and treated it in the same way and handed it to Raj Deo. "Q" is the jar and I identify my signature which I put on it at the time. If an analyst found that the blood alcohol content of that sample was 0.17% in the blood and 1.035

In the  
Supreme Court  
of Fiji

Prosecution  
Evidence

No.57

Thomas Guy  
Hawley,  
Examination  
- continued.

In the  
Supreme Court  
of Fiji

Prosecution  
Evidence

No. 57

Thomas Guy  
Hawley,  
Examination  
- continued.

grammes of alcohol and a large amount of acetaldehyde in the stomach I don't think it would be safe to draw a conclusion unless I knew how long since the alcohol was taken. If he had been drinking for about three hours and finished about an hour before his death the amount of alcohol present is consistent with him having drunk a large amount of alcohol. The blood level in this case is less helpful as I am not aware of any statistics as to the fall of blood level post mortem. In a living person it would indicate reasonable sobriety and is well below the level of a person found drunk in charge of a car - above the level I mean, but below the level at which drunkenness is usually diagnosed by a person's behaviour. Having regard to the quantity of alcohol discovered the reaction and alertness of deceased would almost certainly have been impaired but not grossly so. Much of this is theoretical. There are no known statistics as to the fall in blood alcohol in the 15 hours from death to when the sample was taken. I do not know what correction to apply as related to a specimen from a live person. The same day I examined the accused. I found that day no injuries on accused. At the request of the police I re-examined him on 3rd June and I found a healing superficial scratch at the back of the ring finger of the right hand  $1\frac{1}{4}$ " long exactly and a healing superficial scratch on the front of the right forearm, deeper above than below and 3" in length. They would have been more than two days old and less than one week. The accused has suffered anterior poliomyelitis as a child and has a deformed left leg. On 30th May I found the accused physically with no abnormality other than a limp. I am not prepared to say that he did not have scratches on 30th May. He was most co-operative and seemed to be elated. I spoke to him in English. I have met him on three occasions and he appeared to have an excellent knowledge of English. I examined the hands and forearms of Chanan Singh. I can't remember if I found any blood stains on them. I did a post mortem on Vincent Henry Vaughan, who was identified by Sir Hugh Ragg. I did that about three weeks ago. He died of a heart attack.

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Cross-  
examination.

Cross-examination:

Accused probably had polio as a child and has a withered left leg consistent with that. He said it resulted from an illness at the age of three which would confirm my diagnosis. With the wounds Chanan Singh had, loss of consciousness would occur within

a few seconds and death within a minute. If he had been standing he would fall on the ground in about 30 seconds or earlier. 30 seconds would be a complete outside limit. A shorter time more likely. Within those seconds he could stagger a few feet; such is not unknown. The stab and incised wounds - I cannot imagine three such wounds to have been received in a struggle. Two of them were far too disabling for that. If they were struggling it would, I feel, and after wounds 1 or 2 and any subsequent wound would have been after. The third wound was deeper at each end than in the middle, and one cut could not have done that. It was done with a sawing movement with a sharp instrument. One single slash could not have produced such a wound. A slash might have had one deep end but there must have been two movements of the instrument. The abrasion could have been caused by the person falling on a piece of metal but it could have been caused while the body was being moved.

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20 Re-examination:

If deceased was found lying on his back with his head in a pool of blood, and blood on and under the neck and no other blood around about I think there can be no doubt he was in that position particularly when he got the stab wound and there would have been a spurt of blood immediately. The accused's left leg was withered but his movement would be very little affected but his stamina would be. His occupation was entirely suitable to his physical limitations.

30 Crown Counsel puts in deposition of VINCENT HENRY VAUGHAN, deceased.

Deposition put in as Exhibit "U" and is read, there being no objection to its production.

CLOSE OF CROWN CASE.

Accused told of his rights. Will give evidence.

Adjourned to 9 a.m. 16.10.58.

(Sgd) A.G. Lowe,  
C.J.In the  
Supreme Court  
of FijiProsecution  
Evidence

No.57

Thomas Guy  
Hawley,  
Cross-  
examination  
- continued.

Re-examination.



In the  
Supreme Court  
of Fiji

16.10.58  
Accused in custody. Counsel and Assessors as before.

No.58

Defence  
Evidence

EVIDENCE OF BHARAT, SON OF DORSAMY

No,58

BHARAT s/o Dorsamy (Accused). Indian adult. Sworn  
on Ramayan:

Bharat, son of  
Dorsamy,  
Examination.

Last May I was working at the Tavua Hotel as a barman. I worked there as a barman for about three years and before that I was there for another three years. I remember 29th May last. I was on duty that day and in the evening. During the day I was on from 1.30 to 4 p.m. and then again from 8 p.m. When I got there about 8 p.m. there were people in the bar - the public bar. Govindappa and Chanan Singh were there and Prithipal Singh and others I do not know were also there. Prithipal Singh left about 8.30 p.m. The others except Govindappa and Chanan Singh left about the same time. After they had gone a Punjabi on leaving said "Satshrikal" to me. Govindappa said to him "You should not say Satshrikal. We are paying for anything we drink here". I told him he should not say a thing like that. If he did say it there was nothing bad in it. I also said to Govindappa "You must be teaching your pupils this". He was a school teacher. He repeated what he had said, came to the counter and ordered a bottle of beer which I served. Chanan Singh paid for it. I was behind the bar counter when the conversation took place. After serving the beer I noticed a constable had come on the scene. It was Kiniviliame who gave evidence. I told the constable that Govindappa was saying a lot of useless things to me all arising out of Satshrikal and I asked would he please speak to him. He did speak to him. He stayed a short time and then went away. Govindappa asked me to ring for a car. It was a taxi he wanted. I told him I would not ring for a taxi until he was ready to go. I said that because when people have some liquor left unconsumed the taxi arrives and they do not go in it. This had happened before and a taxi driver complained to me. When I said that to Govindappa he went outside. My boss came and said "get a taxi". Mr. Vaughan was the boss. I rang for a taxi. When I rang Govindappa was in the public bar near the counter. I rang from a telephone behind the counter in the bar. There were no taxis there and I told Govindappa. He said I was telling lies

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and that I had not rung for a taxi. I told him that if he did not believe me he could check with the operator as to whether or not I had put a call through. He did not do that. By then it was 9 p.m. and the relieving barman arrived and I went off duty. When Govindappa was talking to me he appeared to be angry. I don't remember very well whether he moved around. I went off and went for a stroll towards town. I went nowhere in particular but went along the road some distance and then walked back towards the hotel. On my way about 3 or 4 chains from the hotel I met Chanan Singh and Govindappa. They both stood and Govindappa said "You were showing a lot of cunning in the hotel. I will fix you up now." Then he attacked me with a stick. He raised the stick. As he tried to deliver the first blow I got hold of the stick. A struggle for possession of the stick ensued and the stick fell to the ground. To save myself I wanted to run away. Just then Chanan came and got hold of me. Govindappa came and got hold of my throat. I struggled to free myself. My state of mind was upset. I was helpless and could not do anything so I took out my pocket knife and attacked. While Govindappa had me by the throat Chanan Singh was holding me. I was very excited, so much so that I did not know what I was doing. I can't even say on whom and how many times I struck with the knife. After a while I found myself free of the others. I got up and ran towards the hotel. Later on S/Insp. Akuila came and sent me to the police station. I knew Chanan Singh for about three years before that night. I had no trouble with him at any time during that period. He was an acquaintance of me. There was never any trouble with him at any time nor was there any trouble with him at the bar that evening.

Cross-examination:

I come from Rakiraki. My family lives there. Certain members of Chanan Singh's family also live there. The name of the area is Udaitoka. I have a brother, Bal Krishna, who lives there. My family and Chanan Singh's family have had trouble at Udaitoka. On 15th May this year my brother was sent to gaol for six months for assaulting Muluk Singh, the brother of Chanan Singh. I was not upset and annoyed about my brother being sent to gaol but I was concerned. I was not upset. I was not furious with Chanan Singh's family for sending my brother to gaol. When the Punjabi went out and said Satshrikal Govindappa said he shouldn't say that. I can't say why

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No, 58

Bharat, son of  
Dorsamy,  
Examination  
- continued.

Cross-  
examination.

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of Fiji

Defence  
Evidence

No, 58

Bharat, son of  
Dorsamy,  
Cross-  
examination  
- continued.

he should re-act like that. The little argument at the bar did not make me annoyed. I can't say about anyone else. I did not attach any importance to it as the Satshrikal talk was just useless talk. I asked the Constable to tell Govindappa to stop in order to prevent him from going on with his useless talk. I did ask the constable to tell him to stop. I don't remember if I told my counsel that. If I had not mentioned that to the Police how would he know about the satshrikal incident as he was not there. When Govindappa asked me to get a taxi he and Chanan Singh were drinking beer. There was just a little more than half a bottle left and some in their glasses then. Sometimes it takes a man an hour to drink a bottle of beer if he sits and sips it slowly. When I got on duty at 8 p.m. they were there drinking. I don't know how much they had had. To me they did not appear very drunk. They were quite alright. Other taxi drivers had complained to me about being kept waiting. The proprietor of Tavua Cabs complained. He is Babu Ram. I don't remember any others. Babu Ram complained but I can't recall the day or the date. It was long before 29th May. He may have complained more than once. There are five or six taxis besides Babu Ram's in Tavua. I could not have rung, one of these as there is always someone at Babu Ram's taxi stand and we can get on to them. When Mr. Vaughan told me to get a taxi I did not say Govindappa had not finished his drink and would keep it waiting because I could have referred the driver to Mr. Vaughan. When I did ring I rang Babu Ram's taxi. I was told there was no taxi there and that the stand was empty. It was a public taxi stand. I did not think of getting anyone else because when you ring Babu Ram he would see that a car was sent. After duty I went for a stroll towards town. I went right to the town to the main road intersection, took a left turn, along the main road for some distance as far as R.D. Chaudari's store, turned left again towards Garvey Park, turned left again and that road joins the road to the hotel. I started out after 9 p.m. when I went off duty. It would have been 9.05 p.m. I got back to the hotel road but was not checking on the time. It would be between 9.30 p.m. and 10 p.m. I met Govindappa and Chanan Singh. They were both walking away from the hotel, one in front of the other. Govindappa said he was going to fix me up. Apart from the conversation in the hotel I had had no trouble with him. When he said he would fix me up I said nothing. I

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wanted to run away. I did not think of anything else, only running away. I had my penknife in my pocket, where I always carry it. I take pleasure in keeping a knife with me. - one might require it for something. Govindappa had no stick in the bar that I saw. I can't say if this black stick is the one he attacked me with.

Court:

10 When he said he would fix me up he raised the stick and grabbed me by the shirt.

Cross-examination (cont'd):

He tried to hit me but did not succeed. I did not think of hitting him. The thought in my mind was to run away. It would be about 9.30 or 10 p.m. It was two or three chains from the hotel. I did not call out for help. I only wanted to run away. During the struggle I was so excited I can't say if I called out or not. If I had called out I can't say if I could be heard as there might have been  
20 noise in the bar. I was not far from Police Station.

Court:

I knew I was outside Supt. Saint's house.

Cross-examination (cont'd):

I can't say if I could have been heard in the Police station. Perhaps I could have been heard in Saint's house. It was not far to Chanan Singh's house and other houses. Chanan Singh caught me after Govindappa did. Chanan Singh held me from the side but I don't remember very well. He had his right arm almost around my back I think, but his left hand was on my stomach. I can't say exactly as I don't remember well. He tried to pull me on to the ground. I did not fall down. I don't remember. I may have fallen down. If I told my Counsel "I got up and ran towards the hotel" it may have been misinterpretation as I did not say "get up". I heard the interpreter and understood him. I did not correct him as I did not think it necessary. I was very excited. I can't  
30 remember which pocket I got it out of - the knife -  
40 it might have been in my right pocket but I can't remember how I got it out. When I took it out Govindappa was pressing my throat with his hands. Chanan Singh had hold of me but I can't say whether tightly. Govindappa was squeezing my throat tightly.

In the  
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of Fiji

Defence  
Evidence

No.58

Bharat, son of  
Dorsamy,  
Cross-  
examination  
- continued.

In the  
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Defence  
Evidence

No, 58

Bharat, son of  
Dorsamy,  
Cross-  
examination  
- continued.

I don't remember very well if he was nearly throttling me. I did try to pull his hands away and to free myself. I can't tell very well what I did; I was very excited. I might have tried to free myself by catching his wrists but cannot remember. When I pulled out my knife - all this happened quickly.

Court:

I must have opened the knife.

Cross-examination (cont'd):

I don't remember how I struck out with the knife. I did not strike out at any particular bodies. About that I don't remember anything. When I found myself free I ran away. When I went into my room I put on the light and saw that I had blood on my shirt and trousers. I was not bleeding. I knew I must have wounded one of them. I was disturbed to think that I had wounded one or both of them. I did not go back to the scene to see if either was badly injured. I was very excited and could not think what to do. I had been set on by these people but I cannot say why. So far as I know there was no reason. I did not go and complain to the police station as I was very excited and did not know what to do. I cleaned my penknife. It is my personal property. I was very upset and excited and in that excitement I did what I thought. After that I hid my blood stained shirt and trousers. I don't remember polishing my blood stained shoes. When S/I Akuila came it is possible I was still excited and did not know what I was doing. I can't tell why I told Akuila what I did. When I was interviewed at 2 a.m. I must have been still excited. I don't remember very clearly what I told the C.I.D. or the Police. After the Police interview I went to my room and gave the Police my clothes and knife. I must have given them when they asked. I was brought back to the Police Station. I can't say what time I was charged with murder but I remember Narayan Nair charging me. I can't say. I don't know if I was still excited. If he had asked me what I have told about today I would have told them. I did tell them all they wanted to know. I don't remember if Nair said "Do you wish to say anything in answer to the charge", when I was charged. I did not tell my story there and then but I can't say why I did not. I don't know if I said "I did it". Mr. Vaughan had a very high regard for me as a worker. Vaughan came to see me between 7 and 8 a.m. on the

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morning and I was arrested and he wanted to get a lawyer for me - something like that. I don't know what I said. I did not want a lawyer as I had already made a statement. I cannot say anything about saying that. The story I have told here I think is the truth. A greater part of the story I can't relate because I don't remember.

Re-examination - Nil.

No witnesses being called.

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Supreme Court  
of Fiji

Defence  
Evidence

No.58

Bharat, son of  
Dorsamy,  
Cross-  
examination  
- continued.

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No.59

No.59

ADDRESS OF CROWN COUNSEL

Address of  
Crown Counsel,  
16th October,  
1958.

CROWN COUNSEL addresses -

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Burden on Crown - murder or killing in self-defence. Envelope found on scene - photos also; cleaned and hid penknife and clothes. Accused said set upon. Govindappa armed with stick. Meeting on accused's story fortuitous. Why have such unusual stick. No evidence of him having stick in hotel. No evidence lying in wait for him. Accused said Govindappa said "Going to fix you up now". Nonsense in bar - not sufficient - struggle with Govindappa. Chanan not yet taken part. Disarmed Govindappa but says Chanan Singh held him. Says excited and upset. Does not know what happened. Time to take knife out of pocket but also open it. Says struck out - assume blindly. Injuries on Chanan Singh. If blindly expect cut marks on various parts - wounds all in same area - all on neck - not consistent with blind striking. Consistent with deliberate infliction - took time and deliberately cut. Second wound - sawing movement. Blood on clothing. Spurting of blood from carotid artery - would get spurts on clothes. Blood only under neck of Chanan Singh - consistent with cutting of throat while lying on ground. Says ran away - confused. Did what expected of person who has murdered - wash blade - hides it - clothes hidden. Shoes very clean. About 1½ hours later deliberately lies - makes no reasonable explanation. No XXN to

In the  
Supreme Court  
of Fiji

No.59

Address of  
Crown Counsel,  
16th October,  
1958 -  
continued.

show was excited or upset. If story true - finds bloodstains. Must have come from one or other. Does not go to see or to Police and complain. Persists in untruths until faces with envelope and prints. Suddenly when saw evidence says "I did it". Would expect his story to be told at interview with Akuila, Raj Deo or when charged. Vaughan wanted to get lawyer - said did not want one as had made statement. Story cannot be true. If reasonable doubt open to assessors guilty of manslaughter only. Such doubt explained correctly. Method of retaliation must bear reasonable relation to method of attack. Expect blows by him or cut on assailant's hands, if story true. Blade of pocket knife used. Consider must say guilty of murder. Give benefit of doubt.

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No.60

Address of  
Defence  
Counsel,  
16th October,  
1958.

No.60

ADDRESS OF DEFENCE COUNSEL

PATEL ADDRESSES -

Charge - murder of Chanan Singh. Accused gave account of what happened. Said had argument which was certainly mild. Remember Govindappa had consumed liquor in a fair amount. A remark by another person resented. Only a greeting between Sikhs or Punjabis. Govindappa resented and this showed had consumed lot of liquor and excited. Govindappa must have been annoyed - later said had not rung for taxi. Told of going for walk and met Govindappa and Chanan Singh and what happened. Was this planned by accused? Wearing same clothes as when in bar, envelope and photos in pocket. Would he, if planned such a crime, go out in clothes seen by many and carry envelope? Merely met on road. Govindappa was still feeling resentment. Said "Have been very cunning in hotel and will fix you up". All happened suddenly and accused said took out knife and stabbed blindly. Not all stab wounds. Could have happened. As to blood under neck evidence given as to this evidence by Inspector Raj Deo. No evidence that guarded until inspected in daylight. Lot of traffic on road. Strong possibility. XXD as to struggle. Accused very excited and upset when found blood - must have realised what has done - natural he was frightened - hid clothes. Did lie when seen. Also lied to Raj Deo. Frightened and not extraordinary. Knew blood

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on clothes. Not to hold lies against accused. Relation going to gaol on 15th May - Crown suggests that is motive. Accused said not upset. Such motive would mean he had planned to do something to Chanan Singh. Accused on oath gave story - not untrue. Opinion of doctor and evidence of no struggle. Only opinion - strange how things happen. Another man's hands at throat - struck out wildly. If not accepted but in reasonable doubt on whole of evidence - benefit to accused. Even if don't accept his story and doubt as to provocation.

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Summing up.

Reasonable doubt - murder and manslaughter explained. Self defence explained. Facts outlined.

Assessors asked for opinion:

- |                      |                      |
|----------------------|----------------------|
| 1. Guilty of murder. | 4. Guilty of murder. |
| 2. Guilty of murder. | 5. Guilty of murder. |
| 3. Guilty of murder. |                      |

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Adjourned to 11 a.m. on Saturday, 18th October for judgment.

(Sgd) A.G. Lowe,  
C.J.

No.61

SUMMING UP

Well, gentlemen, the facts are very simple in this case. It has been long and tiring for you, but the facts will remain and in the majority they are quite undisputed. For instance, there is no doubt whatsoever that on the night of the 29th May last, Chanan Singh was stabbed to death. There is no doubt that at the scene there was found an envelope addressed to the accused, and in it some photos which he frankly admits he himself had taken. The envelope is one which had come from his nephew in Suva, from which he had taken the stamp. There is no doubt that Chanan Singh and his companion were in the bar of the Tavua Hotel from before 8 o'clock until the accused went off duty, and they remained thereafter. There is no doubt whatsoever that they had consumed quite a considerable quantity of liquor. There can be no doubt that as a consequence of that their

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In the  
Supreme Court  
of Fiji

No.60

Address of  
Defence  
Counsel,  
16th October,  
1958 -  
continued.

No.61

Summing Up,  
16th October,  
1958.



In the  
Supreme Court  
of Fiji

No.61

Summing Up,  
16th October,  
1958 -  
continued.

faculties would have been impaired by the time they left the hotel. Their reactions would have been slowed down. That evidence is undisputed, but we have no positive proof at all as to the degree of impairment. That is all we are left in doubt of.

From the blood sample, .17 of blood alcohol content was shown to exist and there was evidence in the stomach of Chanan Singh to prove the other very clear evidence that there was quite a lot of alcohol consumed that evening.

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The accused was interviewed first by Akuila, the sub Inspector, and he lied. There is no other way of putting it. He lied deliberately. He says from panic, excitement, worry, but the fact remains that he told untruths which on the face of them appear to have been deliberate.

Now, if I might just refer to his story at this stage, and I shall possibly come back to it later, he says he met these two quite by chance, a fairly considerable time after he had knocked off work, and Govindappa immediately commenced to attack him. Well, it seems to me - and here I must warn you that you are not bound to accept any facts as I state them: if you differ from me, do so by all means, but I shall state certain facts as beliefs of my own and you need not necessarily accept them from me - I would have thought that if a sober and a comparatively youthful man is met by two men in a state of at least partial inebriation, it would have been very possible for the sober man to escape from any threat that was offered. Had Govindappa seized him, and as accused says, raised the stick, there you still have one man who is partly drunk and a youth who is completely sober. It seems to me that there might have been, should have been and, I would have thought would have been, a certain possibility of escape from the men in the state in which Govindappa must have been that night.

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Accused says he was attacked, but when Akuila spoke to him he did not mention anything about it, not a word. He lied, and it might seem to you that in the circumstances of the story as he told it, many of those lies were quite unnecessary. If he was in a panic, as he suggests he was, one would have expected some incoherence in his story. It seems reasonable to suppose that he might have been so

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excited and worried; as he says he was, that he gave conflicting stories, or that he was not very lucid in telling his story, but the evidence, as I remember it, and you must remember it, is clear and lucid and the story he told would, I think, be very consistent with the story - I am now referring to the story told to Akuila - very consistent with the story of a man who was trying to hide some facts which he did not want to be known.

In the  
Supreme Court  
of Fiji

No.61

Summing Up,  
16th October,  
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continued.

10 Then he was taken to the Police station and interviewed by Inspector Raj Deo and Detective Dergeant Narayan Nair. Some time had elapsed. It seems reasonable to suppose that the accused did not know that Inspector Raj Deo had in his possession the envelope and the photographs. Well, again the accused's story at that stage was of the same pattern, almost exactly as the story he had given to Akuila. Now one would expect that of a man in a panic. One would have expected, reasonably I think, that the stories might still have been incoherent and varying. But no, they were lies; frankly admitted to have been lies. They hang together in a pattern. The denial of having had a white or cream nylon shirt, the denial as to the clothes being worn in the bar at the time of the argument, which I agree does not seem to have been a very serious one; the story of having burned all his envelopes and letters - it would appear, on the face of it, subject to any other evidence which you might remember which might tend to contradict the fact that they were tales told by a man with a guilty mind and not the story of an innocent man who had been suddenly attacked and provoked into retaliation.

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Now let us go back to the story of the accused, and I want you here to get the pen knife. I have not tried it, but I want you to. I want you to see how easy it is to open - a small thing which might be of some importance.

Exhibit ..... shown to Assessors.

40 The accused says that he met these people quite by chance. He was seized first by Govindappa who caught him by the throat. Now I will jump from his story to the evidence to try and link them in your mind. Do you remember the next morning he was seen by Dr. Hawley who, the accused must have known, was looking for injuries. There was no cross-examination

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whatsoever about the accused complaining of a sore throat. There is no suggestion that he told the doctor that he had been injured on the throat. Evidence has been given to the effect that he was held very tightly by Govindappa - a little thing, but again I think consistent.

While he was being held by Govindappa, Chanan Singh, according to the accused, came and seized him round the body. At that stage he said he felt that he was cornered and could not get away. Here I will interrupt the story to give you a little bit of law - that suggests retaliation in self-defence. If a man can be shown to have killed another in self-defence in justified circumstances, then he can be acquitted. But before he can be, and before self-defence can be established it must be shown, and I emphasise that, it must be shown that the accused retreated as far as was humanly possible before he has justification in saving his life by killing another. There is no such evidence in this case, gentlemen, and you will probably think it wise to discard any question of that.

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Do not forget at this stage, gentlemen, that he says that he had to get his knife from his pocket and apparently had time to open it. He was being throttled all the time. We have no evidence as to how long it takes to throttle a man, so that is quite inconclusive, but according to him he was held by the throat and round the body to some extent by Chanan Singh. Yet he was free to get his knife, open it, and attack.

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Now this is where the importance of the evidence regarding the blood must be stressed. It was stated by Raj Deo, and not contradicted in cross-examination or by anything else, so we can reasonably accept it as a fact, that the blood so far as Chanan Singh was concerned was round his neck at the top of his body and under his neck only - nowhere else. This I think shows the fallacy of the story of the accused because although that fact is established regarding the blood the accused said he and Chanan Singh were standing up in very very close proximity at the time of the stabbing. Dr. Hawley said that there would be an immediate free flow of blood from the carotid artery. Now had that happened it is plain commonsense that the blood from the carotid artery must have got right down to the clothes of Chanan Singh. It did not. It

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10 was not there, and it is reasonable to suppose that the blood of Chanan Singh would have got in large quantities on to the body or the clothing of the accused: no such evidence was given. The evidence suggests to you that Chanan Singh was on the ground in a prone position when he was stabbed - there the blood was. All very well to say that there had been a lot of traffic over the spot but there was no asking of any witness at all in cross-examination if there might have been blood from Chanan Singh's body elsewhere - none whatsoever.

20 So I think we can reasonably say that the blood was where the witness had said. The carotid artery being severed would release blood immediately: it would, as the witness said, spurt out. Well, the accused had splashes on his shirt. You have seen those and in one place inside the bottom right half on the shirt there was a smear. That part must have been wiped against something which had blood on it. If there was a spurting - remember those tiny splatterings on the shirt - do you think they would be more consistent with the accused being above the spurt and getting the splashes, or being right alongside the deceased? There are two possible answers. Common sense will dictate to you the answers. I would suggest to you that the story of him being held by Chanan Singh when Chanan Singh was stabbed is not reasonable and there is no evidence whatsoever to support it.

30 It is suggested by the Crown that the brother of the accused had been sent to gaol by a brother of Chanan Singh. That might or might not be so. The accused admits it was, so we can accept it as such. It is not conclusive that that is a suggestion of a motive, but the Crown do not, however, need to prove a motive. All they have to prove is that the accused killed Chanan Singh - and we know he did - and that he did so deliberately and with malice aforethought. Once those facts are established we are not concerned with motive. There is a possible motive but I mention it merely not to let it sway you too far. It is a possibility - that is all. The accused said he was not concerned about it. That I find hard to believe, but whether he was or not does not matter.

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He did kill Chanan Singh. That is a fact we know. That he did so with malice aforethought, if you disbelieve his story, can be accepted because of

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the nature of the weapon used. We cannot get into a man's mind. Nobody can. There is nothing to show what he was thinking at the time except the weapon he used and the method he employed. Those two things show malice aforethought if the story is not true.

He went to the hotel as I have told you, after this event on his own showing and deliberately did the very first thing one would expect of a man who knew he was in real trouble, and that was wash his knife and put it on top of the door, on the lintel above the door. There has been no evidence as to why he put it there. As far as I remember he himself said, "I always carry it in my pocket", but it was not in his pocket that night, so his customary habit went by the board. If he had no guilty mind, if he had been in a panic and was worried and confused, why wash his knife? You might think that reasonable. Having washed it, why hide it above the door? If he knew that his shirt pocket was torn off, and we do not know whether he knew or not, and he did know that there was blood on his shirt and pants, why hide them underneath the hotel at the back corner. Why not go as Crown Counsel suggests and say, "Look here. A terrible thing happened. I have just been attacked by Chanan Singh and Govindappa. I lost my head and pulled out a knife. When I got home I found blood on my clothes and on the knife. I do not know what injuries they have but I have come to tell you what happened". Make what story he will - and explain the circumstances to somebody.

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He was living in the hotel. Mr. Vaughan was the manager of the hotel. It is not in evidence whether he lived in the hotel or not but we can assume he did. There was the boss who thought a lot of this employee. From that we can assume mutual trust and confidence. When he found himself in trouble what would have been more natural than to have gone to his room in the same building and spoken to Mr. Vaughan? He did not do that. He went on with his deliberate lies. When I say deliberate, I am expressing my own opinion.

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He went on with these untruths right until he was faced with the envelope and the photos. In his story, if the evidence is true, he then said, "I did it". That would be very consistent indeed, because there were the two damning factors put to him. After, you remember, he himself had said that the envelope had been burned. It would come as a shock

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10 to him that it was not only there in existence with-  
out the stamp which he said he had taken off, but it  
had been found near the body of the deceased. At  
that moment, the Crown alleged, he said "Yes, I did  
it", or "I have done it". But we must be careful  
there because that might be construed as a complete  
confession. You must not do so and I do not think  
you need to. I believe the other facts are suffici-  
ent on which to form an opinion. He could possibly  
have said "Yes, I did it" even after a long pause in  
answer to a question, and as we do not know the na-  
ture of the question we must give the benefit of the  
doubt to the accused and it is possible he might  
have said "I did it" referring to something quite  
different.

20 Then the police photographer gave evidence as  
the accused saying the same words in the landrover  
going to Lautoka. I would be inclined to ignore the  
words "I did it", but accept the words "I don't want  
a lawyer to defend me". I think it is perfectly safe  
to accept the fact that he did say those words be-  
cause his mind on that subject is corroborated by  
what Mr. Vaughan said and Mr. Vaughan, if anything,  
would have been inclined to favour the accused. He  
said the same thing to Mr. Vaughan - "I do not want  
a lawyer to defend me".

30 Link up all these things - his lies, the lack  
of any quantity of blood on his shirt, the finding  
of the torn pocket which indicates some sort of  
struggle, and his saying "I don't want anyone to de-  
fend me". Why "defend me"? Why say that if he did  
not think he had committed some offence. If he felt  
in his own mind that he was free of any guilt there  
would not be any talk of defence. He would have been  
ready to go and explain things. He would have felt  
he had nothing to defend. On two occasions he seems  
to have said "I don't want a lawyer to defend me".  
In other words he had given in. The facts, as I say,  
40 speak volumes and you may agree they speak for them-  
selves, and even if you ignore the words "I did it",  
as you are entitled to do, and it might be wise to  
ignore them, there is plenty left on which you can  
make up your minds.

It has been suggested that you might think the  
accused guilty of manslaughter. Before you could be  
justified in thinking that you would have to come to  
the conclusion that the accused's story in that par-  
ticular respect is true. You would have to be

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satisfied beyond reasonable doubt that it might be that the Crown were wrong as to that aspect, and you would have to believe that the accused received such provocation that he was justified in resisting force by using force. I think you might find it difficult to believe that such was the case. The only suggestion of a defence of self-defence came when Counsel for the Defence was cross-examining as to the marks of the struggle. That is the only time. That there was a struggle of some sort is certain because the pocket was torn right off, and the buttons were ripped off the shirt, so to that extent the accused's story of a struggle could be true. Who ripped the pocket off we do not know and when the pocket was ripped off the envelope apparently was crumpled and left on the ground.

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Well, now, if the story had been true would you not expect that you would find the bodies of Chanan Singh and his companion in close proximity and not one on one side of the road and one on the other side of the road? If one's throat was being held by a person would you not expect that he would be the first to be stabbed, and Chanan Singh who was holding the body would be the second. This is pure speculation. There is nothing conclusive about this, but there you find Govindappa on one side of the road, the envelope and the pocket close together and not far from Govindappa's body. Further up on the other side of the road was Chanan Singh. Is it possible, is it at all likely that Chanan Singh might have been attacked and that Govindappa came to his assistance with a stick and then got himself stabbed? We are not the least but concerned about the stabbing of Govindappa. But there is another theory. I mention it merely because I want to bring home to you the possibility of, and the danger of, taking notice of speculation. People speculate for a considerable time on a case like this, but I want to bring you back to the facts. He says that two attacked him at once; more or less, and that he stabbed blindly. Well, we know that the stab wounds were in the throat of Chanan Singh. It does not seem to be blind stabbing. But he could not get away so he had to lash out with his knife. He lost the pocket of his shirt and the envelope, but he went back to the hotel. He lied first to Akuila and then to Raj Deo, but the lies were consistent with a story being told by a guilty man and not by an innocent man.

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Briefly I think those are the facts which will

influence you in making up your minds, but it is true that you must always be careful to give the benefit of every reasonable doubt to the accused. Reasonable doubt has been properly explained by Counsel.

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10 There is no question of responsibility on you. You merely tell the truth. You have seen the witnesses and heard the evidence. I just mention that as I have had witnesses who say that religion dictates this and dictates that. I warned you at the outset and I do not need to warn you again, I know, that so far as the accused is concerned he is just a human being. Religion, race and colour have nothing to do with us. Religion does not enter into it, or if it enters into it at all it is that each religion exhorts us to tell the truth. That is what I would ask you to do. You represent the people of this Colony. You are chosen for that purpose to assist in upholding law and order. It is important that I should mention that to you because without assessors  
20 who have been as attentive as you have been, law and order could be reduced to chaos. Just think of the evidence you have heard. Weigh it up in your minds. Talk it over between yourselves and then give me your opinions fearlessly - you have nothing to fear - honestly and promptly, remembering that the accused is charged with having killed Chanan Singh intentionally, deliberately, with malice aforethought. That is all you have to do.

30 Now, if you gentlemen will retire and let me know when you have your opinions ready I will return to Court. After you have given your opinions the responsibility is mine, not yours.

The assessors retired at 12.20 p.m.

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IN THE SUPREME COURT OF FIJI  
Criminal Jurisdiction  
No. 19 of 1958

REGINA v. BHARATJ U D G M E N T

The main facts in this case are undisputed and show that the deceased met his death on the night of the 29th May last, the immediate cause of his death being a stab wound and two cut wounds on his neck. At the place where his body was found there was also found an envelope addressed to the accused, three photographs belonging to and taken by the accused, the pocket of a cream coloured nylon shirt which undoubtedly had been torn from a shirt belonging to the accused and some shirt buttons from the same shirt. There was also a black stick found in two parts at the scene but as there is no evidence which leads to any conclusion as to the possessor of the stick on the night in question I do not give it further consideration. 10

The accused was the barman in the Tavua Hotel and was on duty up to 9 p.m. on the 29th of May and the deceased and a companion and some others were also there drinking. After the others left, the accused and his companion stayed on and there was some argument between the companion and the accused firstly as to a remark which had been made to the accused by a Punjabi as the latter left the bar and secondly as to a taxi which the companion had requested the accused to summon by telephone. I place no serious importance on the arguments in relation to the subsequent events as they do not appear from evidence to have been at all violent or such as to raise passions to any great height. 20 30

The accused went off duty from the hotel bar soon after 9 p.m. He had been wearing, on duty, a cream nylon shirt and a pair of long trousers. One witness who entered the bar at 8.30 p.m. said that the trousers were brown but he was not in the bar long, although he said 45 minutes, and, apparently, 40

10 was not really sure of the colour although he gave his evidence with a show of conviction. This witness also said that while he was in the bar Chanan Singh was drinking rum but that is contradicted by all other evidence which made it certain that the deceased had been drinking beer. The rest of the evidence of this witness, Kiniviliame, I found to be generally satisfactory and acceptable but I think he was merely guessing rather than let it be known that he had not properly observed the colour of the trousers and the nature or the drink being taken by the deceased while the witness was present. It was established by later evidence that the long trousers being worn by the accused on duty were grey.

20 Between 9.30 and 10.15 p.m. the witness Peniana Nai saw what proved later to be the dead body of Chanan Singh on a road, which leads from the Tavua Hotel, and not very far from the Hotel. The second barman had said that the deceased had arrived at the bar and had started drinking between 6 and 6.30 p.m. and he confirmed that it was beer which was consumed. The deceased was still in the bar drinking when the second barman came back on duty at 9 p.m. and eventually left at about 9.25 p.m. As Peniana Nai saw the body before 10.15 p.m. when she reported to the Police it is clear that the deceased was stabbed to death within a fairly short time of him having left the bar after having consumed intoxicant, in the form of beer, for about three hours. During the time the accused was on duty there appears to have been no conversation at all between Chanan Singh and the accused. There is no evidence to suggest that there was.

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When the body of Chanan Singh was inspected at the scene where it was found there was blood on the neck and on the ground near his head. The evidence shows that none was found elsewhere.

40 After seeing the body Sub. Inspector Akuila and Constable Poasa went to the room at the hotel occupied by the accused and there interviewed him. They took possession of a pair of black shoes belonging to the accused and on one shoe human blood was later found to be present on the toe cap and around the welt. Human blood was also found on the cream nylon shirt and the long grey trousers which had been worn by the accused at the material time and which were pointed out by him at Inspector Raj Deo. The accused also gave the Inspector an open

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pen knife which appeared to be then very clean but which later proved to have human blood on certain parts.

When interviewed by the police on the night of the 29th of May and, in the following early morning the accused told a consistent and coherent story of having left the bar after 9 p.m. and gone straight to his room where he remained until the Police called on him. I am satisfied that he understood all questions put to him in English and that he acknowledged the account of his movements to be correct when the record of his answers to questions had been read out to him, which reading he also understood. He had not been in police custody while the questioning was going on but when, after some time, he said "I did it" or words to that effect, he was cautioned and later arrested. I do not consider that the words used by the accused should be accepted as an admission of guilt as there is no certainty that he was not speaking in answer to a question relating to some subject matter unrelated to the killing of Chanan Singh. He is alleged to have said the same thing in a Landrover at a later stage but I am not satisfied that such were the actual words used and I ignore evidence regarding anything in the nature of an alleged confession.

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At the end of the interview by Inspector Raj Deo and Sgt. Narayan Nair at the Police Station the accused offered voluntarily to show them where were the trousers and shirt he had worn that night and to give them the knife which was exhibited in this Court and was shown to have been capable of inflicting the fatal wounds on Chanan Singh.

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The trousers and shirt were hidden under a back corner of the Hotel building and the knife was on the lintel above the bathroom door leading from the room of the accused. When asked about the envelope he had said at first that he had burnt it but it was when it was shown to him that he offered to show where the clothing was. The accused had some fresh scratches on his right forearm, a scratch on the ring finger of his right hand and some bruises on his right wrist which he did not attempt to account for when he gave evidence in direct contradiction to what he had previously told the police. He told the Court that after going off duty after 9 p.m. he had gone for a stroll and on his way back to the hotel he had come across Chanan Singh and his com-

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panion. He claimed that the latter had said to him "You were showing a lot of cunning in the Hotel. I will fix you up now" and at once attacked him with a stick. There had been no evidence of the companion or Chanan Singh having had a stick at the hotel and the exhibited stick was not of a type likely to have been picked up at random from a road. That of course is mere speculation. However the accused said that he got hold of the stick and after a struggle it fell to the ground. Just then, he said, Chanan Singh got hold of him and the companion seized him by the throat. He said also that he was then helpless and his mind was upset so he took out his pocket knife and struck out blindly. He did not explain how he was able to get the knife from his pocket or have time to open the blade. However, he said that he was very excited and did not know what he was doing. Even considering the strain under which an accused in such a position is bound to find himself I found the manner in which the accused gave evidence to be such that I was satisfied that he was not telling the truth. Whenever he was faced with an awkward question he said either that he could not remember or that he was confused or excited and this in itself was so consistent that it confirmed to me that he was telling a story which was clearly manufactured as a claim that he had acted in self defence. He did not try to explain how it was that he could remember so clearly the events which would tell in his favour but none which might not. However it is the Crown case I must consider. That proved, and the accused in fact admitted, that Chanan Singh was killed by the accused himself. He lied when first asked what clothing he had been wearing in the bar. He cleaned his pen-knife and put it, still open, on the lintel above the bathroom door, he hid the blood-stained clothing, and the freshly cleaned shoes he pointed out in his room as having been worn by him on the night of the 29th of May had human blood on them which was not visible on first inspection. It might of course, have been habit or coincidence that caused the shoes to have been clean and they might have been deliberately cleaned. The fact of them being clean seems to me to show that the cleaning must have been done after the accused had returned to his room for he admitted to a long walk on a dusty or at least a metalled road that night. The nature of the wounds suffered by Chanan Singh does not suggest a blind slashing or even stabbing for a wound was just below the "Adams apple" and went right in to the vertebra and the other two wounds

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were under the angles of the jaw. The stab wound was on the right side of the neck and had severed the carotid artery and that on the left side had been the result of more than one motion of the knife. The wound below the "Adams apple" had severed the wind-pipe and gullet. Dr. Hawley said that if the deceased was found lying on his back with his head in a pool of blood and blood on and under the neck and no other blood around about he thought there could be no doubt that Chanan Singh was in that position particularly when he got the stab wound and that there would have been a spurt of blood immediately. The accused, however, had said that he was being held by Chanan Singh when the latter was struck with the knife. There was certainly no spurt of blood on to the shirt of the accused and no evidence of blood having run down the body or clothing of Chanan Singh so it seems reasonable to accept the Doctor's assumption particularly as there was no cross-examination of him aimed at showing the possibility of Chanan Singh having been standing when the blood flowed or that blood might not necessarily have got on to his clothing while he was upright. There are minor discrepancies in the Crown case as can be expected but there were no such discrepancies as might lead me to believe that the prosecution evidence might not be true and factual throughout. I think that the Crown case is conclusive and as the actions and statements of the accused on the fatal night were so indicative of guilt the whole trial points in one direction quite clearly. The Assessors showed a very close attention to the evidence and they were plainly men of intelligence. They had been warned as to reasonable doubt and I have no doubt that they applied their minds to the necessity for allowing all possible benefits to the accused. Their opinions, which showed entire unanimity, showed that they had no doubt as to the guilt of the accused. I find his defence to be completely untenable and unbelievable and I have no doubt that Chanan Singh and his companion were, to say the least, half drunk on the night of the 29th of May and that their reactions must have been sufficiently affected by the liquor consumed to make it a comparatively easy matter for the accused to have escaped had they tried to attack him. He was outside the house of a Police Superintendent when Chanan Singh was attacked but there is the evidence which can lead only to the conclusion that the attack was carried out silently or at least there was no cry from the accused for help. I am satisfied without

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any doubt whatsoever that the opinions of the assessors were correct. I find the accused guilty of murder as charged.

(Sgd) A.G. Lowe,  
C.J.

Accused asked if he has anything to say why sentence should not be passed according to law, says "No."

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SENTENCE - Death by hanging.

(Sgd) A.G. Lowe,  
C.J.

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Assessors released from further duty as jurymen or  
Assessors for a period of three years from this date.

(Sgd) A.G. Lowe,  
C.J.

18.10.58.

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No.64

GROUNDS OF APPEAL

COURT OF APPEAL RULES, 1949 (Form 4)

NOTICE OF APPEAL OR APPLICATION FOR LEAVE TO APPEAL  
AGAINST CONVICTION AND SENTENCE

TO: THE REGISTRAR OF THE COURT OF APPEAL.

BHARAT (s/o Dorsamy) convicted before the Supreme Court of Fiji at Lautoka of the offence of murder and sentenced to death on the 18th day of October, 1958, and detained in Her Majesty's Gaol at Suva.

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I, the abovenamed appellant, hereby give you notice that I desire to appeal to the Court of Appeal against my conviction on the following grounds:-

(1) The verdict is unreasonable and cannot be supported having regard to the evidence.

(2) The learned Chief Justice either failed to direct himself and/or misdirected himself in law and in fact in that

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(a) he ought to have directed himself that there was no proof of any malice aforethought on the part of the accused and such malice aforethought could not be presumed from the mere fact of killing with an ordinary pen knife but had to be proved beyond reasonable doubt by the prosecution;

(b) he misdirected himself in that even if the accused did kill Chanan Singh (and Govindappa) there was no onus on the accused to explain or justify the act of killing Chanan Singh as being the result of provocation or self defence;

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(c) he misdirected himself in stating in the summing-up "We are not in the least bit concerned about the stabbing of Govindappa" when the presence, the nature of the killing and the wounds on Govindappa were most material for the purposes of considering any possible defence of self-defence or provocation on the part of the accused;

(d) he correctly stated in his summing up "That there was a struggle of some sort is certain because

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the pocket was torn right off, and the buttons were ripped off the shirt, so that extent the accused's story of a struggle could be true. Who ripped the pocket off we do not know but when the pocket was ripped off the envelope apparently was crumpled and left on the ground." but at the same time misdirected himself in stating in his judgment -- "He was outside the house of a Police Superintendent when Chanan Singh was attacked but there is evidence which can lead only to the conclusion that the attack was carried out silently or at least there was no cry from the accused for help".

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(e) he misdirected himself in stating in his summing-up "It was stated by Raj Deo, and not contradicted in cross-examination or by anything else, so we can reasonably accept it as a fact, that the blood so far as Chanan Singh was concerned was round his neck at the top of his body and under his neck only - nowhere else" and in his judgment "When the body of Chanan Singh was inspected at the scene where it was found there was blood on his neck and on the ground near his head. The evidence shows that none was found elsewhere" and Raj Deo's evidence stated as follows:- "I saw a stab wound in the front of the throat covered with blood which was on the body also and on the back of the neck and on the ground directly under his neck. There was a lot of blood there but none scattered around the place. The blood was still fresh".

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(f) he ought to have directed himself that the fact of the accused deliberately lying after the incident and attempting to cover up the traces of his killing were equivocal and referable to fear resulting from a mere killing, manslaughter or murder.

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(g) he failed to direct himself that even if any retaliation on the part of the accused for the purposes of alleged self-defence was out of all proportion to the danger threatened, the killing was mere manslaughter and not murder in the whole circumstances of the case.

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DATED at Suva this 17th day of November, 1958.

(Sgd) D. Bharat,  
Appellant.

Witness after interpretation:

(Sgd) K.C. Ramrakha  
Solicitor, Suva.



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accused did kill Chanan Singh (and Govindappa) there was no onus on the accused to explain or justify the act of killing Chanan Singh as being the result of provocation or self defence.

(c) he misdirected himself in stating in the summing-up "We are not in the least bit concerned about the stabbing of Govindappa" when the presence, the nature of the killing and the wounds on Govindappa were most material for the purposes of considering any possible defence of self-defence or provocation on the part of the accused.

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(d) he correctly stated in his summing-up "That there was a struggle of some sort is certain because the pocket was torn right off, and the buttons were ripped off the shirt, to the extent the accused's story of a struggle could be true. Who ripped the pocket off we do not know but when the pocket was ripped off the envelope apparently was crumpled and left on the ground." but at the same time misdirecting himself in stating in his judgment --- "He was outside the house of a Police Superintendent when Chanan Singh was attacked but there is evidence which can lead only to the conclusion that the attack was carried out silently or at least there was no cry from the accused for help".

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(e) he misdirected himself in stating in his summing-up "It was stated by Raj Deo, and not contradicted in cross-examination or by anything else, so we can reasonably accept it as a fact, that the blood so far as Chanan Singh was concerned was round his neck at the top of his body and under his neck only - nowhere else" and in his judgment "When the body of Chanan Singh was inspected at the scene where it was found there was blood on his neck and on the ground near his head. The evidence shows that none was found elsewhere" when Raj Deo's evidence stated as follows:- "I saw a stab wound in the front of the throat covered with blood which was on the body also and on the back of the neck and on the ground directly under the neck. There was a lot of blood there but none scattered around the place. The blood was still fresh."

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(f) he ought to have directed himself that the fact of the accused deliberately lying after the

incident and attempting to cover up the traces of his killings were equivocal and referable to fear resulting from a mere killing, manslaughter or murder

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10 (g) he failed to direct himself that even if any retaliation on the part of the accused for the purposes of alleged self-defence was out of all proportion to the danger threatened, the killing was mere manslaughter and not murder in the whole circumstances of the case.

20 The facts established were briefly as follows: The Appellant was a barman at the Tavua Hotel where he had been employed for some years. On 29th May 1958 he was on duty in this hotel from 8 p.m. to 9 p.m. and during that time the deceased Chanan Singh and a friend of his named Govindappa were drinking in the hotel bar. Appellant went off duty and left the bar at or shortly after 9 p.m. while Singh and Govindappa were still in the bar which they left at about 9.25 p.m. At about 10 p.m. the bodies of Singh and Govindappa were found lying on the road some short distance from the hotel. On examination it was found that Singh had been stabbed in the neck where he had 1 stab wound and 2 incised wounds. No evidence was given as to what had caused the death of Govindappa.

30 An envelope belonging to the appellant was found near Singh's body and a white nylon pocket evidently torn from a shirt and some shirt buttons were also found in that vicinity.

40 Appellant was interviewed by the Police in his room at about midnight and asked to account for his movements after leaving the bar. He said he had come straight from the bar to his room and remained there until the arrival of the Police. He was also asked about the clothes he was wearing in the bar and he said he was wearing a blue nylon shirt and white shorts. Appellant was taken to the Police Station and later stated that he had been for a walk after leaving the bar, and on his way back had been set on by Govindappa and Singh and threatened with injury, whereupon he took a knife from his pocket and stabbed wildly not knowing which of the two he struck. He admitted that he had been wearing a white nylon shirt and long grey trousers, that the envelope found near the bodies was his and that the pocket and buttons had been torn from his

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shirt. He produced his pen-knife which had been washed but still bore traces of human blood. He also showed where he had hidden his shirt and trousers under a corner of the hotel building and these bore traces and smears of human blood. His shoes which were in his room and apparently recently cleaned also bore traces of human blood. Appellant was arrested and is said to have made some remarks such as "I did it" or "I am quite prepared for it" but the learned Chief Justice who presided at the trial did not think any importance could be attached to these remarks.

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Appellant elected to give evidence at the trial and the relevant part of his evidence in chief was as follows:

"I went off and went for a stroll towards town. I went nowhere in particular but went along the road some distance and then walked back towards the hotel. On my way about 3 or 4 chains from the hotel I met Chanan Singh and Govindappa. They both stood and Govindappa said "You were showing a lot of cunning in the hotel. I will fix you up now". Then he attacked me with a stick. He raised the stick. As he tried to deliver the first blow I got hold of the stick. A struggle for possession of the stick ensued and the stick fell to the ground. To save myself I wanted to run away. Just then Chanan came and got hold of me. Govindappa came and got hold of my throat. I struggled to free myself. My state of mind was upset. I was helpless and could not do anything so I took out my pocket knife and attacked. While Govindappa had me by the throat Chanan Singh was holding me. I was very excited, so much so that I did not know what I was doing. I can't even say on whom and how many times I struck with the knife. After a while I found myself free of the others. I got up and ran towards the hotel. Later on S/Inspr. Akuila came and sent me to the Police Station. I knew Chanan Singh for about three years before that night. I had no trouble with him at any time during that period. He was an acquaintance of me. There was never any trouble with him at any time nor was there any trouble with him at the bar that evening."

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The trial was held before the Chief Justice and 5 Assessors and lasted from the 10th to the 18th of October, 1958. The Chief Justice summed up to the Assessors who subsequently all expressed the opinion that the appellant was guilty, the Chief Justice delivered a judgment in which he declared himself satisfied that the guilt of the appellant was established and convicted him of murder.

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10 In substance the Appellant admitted that he had caused the death of Singh but claimed that this was done either in self-defence, in which case he was entitled to an acquittal, or alternatively that there was an absence of malice aforethought so that he could only be convicted of manslaughter.

20 I have no hesitation in rejecting the contention in the first ground of appeal that the verdict was unreasonable and cannot be supported having regard to the evidence. I am satisfied that there was evidence on which the Chief Justice could properly come to the conclusion that the appellant was guilty of murder.

Grounds 2 (a) and (b) are based on a mis-apprehension of the law which is stated in Glanville Williams on Criminal Law (1953 Edn.) at p. 227 as follows :

30 "although the fact of killing does not raise a persuasive presumption that the killing was intentional and unprovoked, it does (at least in many cases) raise an evidential presumption to this effect, so that the onus of introducing some reasonable evidence in rebuttal (the evidential onus) is on the accused".

I think this was clearly a case in which the circumstances did raise such an evidential presumption as is mentioned in this extract.

40 As to ground 2 (c). It was apparent from the evidence that Govindappa had been killed at the same time or at any rate in the same incident as Singh but the Crown did not call any evidence as to the nature of Govindappa's injuries or even as to the actual cause of his death nor did the Defence ask any questions directed to these matters. I understood that the reason for the Crown's restraint was a suggestion from the Chief Justice that evidence relating to Govindappa's death was likely to

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be prejudicial to the accused on the charge relating to Singh. The accused was apparently not under any direction or disability in relation to this evidence and the witnesses who could have given the information were all called for other purposes. The complaint now made is that this evidence should have been produced by the Crown and its failure to do so has resulted in a miscarriage of justice because all the matters affecting the question of the guilt or innocence of the accused were not brought to the knowledge of the Judge and the assessors by the prosecution. Rex v. Guerin 23 Cr. App. R. 39.

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I think that evidence as to Govindappa's injuries and death was clearly admissible but even admissible evidence particularly as to the commission of other offences may be excluded on the ground of its prejudicial effect. See Noor Mohammed v. Regina (1949) 1 All E.R. 365, where it was said (at p. 370) "the decision must then be left to the discretion and sense of fairness of the Judge". In this case it is in my view undoubted that on a charge of murdering Singh evidence that the accused had also murdered Govindappa must be prejudicial and this is confirmed by the fact that Counsel for the accused made no attempt to obtain any such evidence from the witnesses called. However, there does not appear to have been any actual order by the Judge excluding the evidence but merely restraint on the part of the Crown at the suggestion of the Judge in not bringing forward evidence which from its nature must have been prejudicial. I think the rules established in Abdel Muhammed El Dabbah (1944) A.C. 156 and Bryant & Dickson 31 Cr. App. R. 146 as to the discretion of the Crown in deciding what witnesses it will call apply with even greater force to the selection of the questions it will ask. I do not think it can properly be said that the omission of this evidence has in the circumstances resulted in a miscarriage of justice.

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I am satisfied that there was no misdirection as alleged in ground 2 (d). In ground 2 (e) reliance is placed on a variation between the phrase used by the Chief Justice that the blood was "at the top of his body" and that used by Raj Deo that the blood "was on the body also". I think this is not material particularly in view of the further

evidence of Raj Deo that the blood was "on the ground directly under the neck. There was a lot of blood there but none scattered around the place".

As to ground 2 (f) it was essentially a matter for the Judge to determine what inference was to be drawn from appellant's conduct and if he drew the inference, after hearing and seeing the appellant in the witness box that such conduct was indicative of guilt rather than of fear I cannot say that he was wrong in doing so.

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Ground 2 (g) is substantially answered by what has been said in reply to grounds 2 (a) and (b).

There was another matter to which our attention was called but which was not expressly raised by appellant. In the Chief Justice's summing up to the Assessors he said:

"It has been suggested that you might think the accused guilty of manslaughter. Before you could be justified in thinking that you would have to come to the conclusion that the accused's story in that particular respect is true. You would have to be satisfied beyond reasonable doubt that it might be that the Crown were wrong as to that aspect, and you would have to believe that the accused received such provocation that he was justified in resisting force by using force."

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It was admitted by Counsel for the Crown that this was a misdirection (or rather that in a charge to the jury it would be so). A jury in such a case as this should be told that they must find in favour of the accused unless satisfied beyond reasonable doubt that the defence is untrue. The Chief Justice had previously correctly stated the onus that was on the Crown namely that it had to prove that the appellant "killed Chanan Singh ..... and that he did so deliberately and with malice aforethought." That the Chief Justice did not misdirect himself on the question of appellant's defence is shown by his judgment wherein he said that he found appellant's defence to be "completely untenable and unbelievable." He has therefore shown that he was satisfied beyond reasonable doubt that the defence was untrue.

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There is a material difference between a

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"summing up" to assessors and a direction to a jury on matters of law. Section 306 of the Criminal Procedure Code provides that in a trial with assessors "the Judge may sum up the evidence for the prosecution and the defence and shall then require each of the assessors to state his opinion orally." The judge must then give judgment but is not bound to conform to the opinions of the assessors.

Under section 295 when the trial is before a jury it is provided that the judge "shall if necessary sum up the law and evidence in the case." under section 297 it is the duty of the jury "to decide which view of the facts is true and then to return the verdict which, under such view, ought, according to the direction of the judge, to be returned." It will be seen that the judge is not bound to direct the assessors at all on matters of law although if he does so it is obviously important that he should do so correctly.

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The opinions of the assessors are rightly regarded as being most valuable and every precaution should be taken to ensure that they are properly instructed. In criminal appeals the Court of Appeal is to allow the appeal if they think that on any ground there was a miscarriage of justice. It may well be that the terms in which a trial Judge frames his address to the assessors could cause a miscarriage of justice but to treat it as if it were a summing up to a jury is to ignore the provisions of the legislation which places the final responsibility for decision on the Judge and not on the assessors. This does not imply any diminution of the value and responsibility of the assessors but only that the Judge's address to them must be read with his own Judgment.

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The Chief Justice has held, as he was entitled to do, that the account of the incident given by appellant was untrue beyond all reasonable doubt, and as there was no other evidence which could reasonably be held to support a defence of provocation, self defence or "chance medley", those defences were properly rejected and in my view there was no miscarriage of justice.

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I would dismiss the appeal.

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whom she reported gave the hour at 10.15 p.m. As a result of her report, a corporal of Police went to where the bodies were lying. His evidence in chief was directed solely to the finding of particular articles and the finding of the body of Chanan Singh although in cross-examination he made reference to a second body, but merely to define the point at which he found a stick.

The throat of Chanan Singh had been cut - the Corporal said - in two places. A Fijian Police Inspector gave evidence of finding the bodies of two male Indians on the same night and in the same place. One, he said, was lying on the road and one at the side of the road. He too, gave evidence of finding certain articles but, beyond making the one reference to his discovery of the two bodies, he gave no details concerning them or either of them. The same abstention from any detailed reference to the second body is apparent in the evidence of a third Fijian Police Constable and of an Indian Detective Sergeant who were on the scene the night the bodies were found.

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At no other point in the evidence given at the trial is there any reference to the second body nor is there any evidence as to the injuries it exhibited or to anything else concerning or relating to it. This is a striking feature of the evidence which, in the light of a claim by the appellant that he was prejudiced, invites consideration with a view to an evaluation of its consequences.

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The injuries suffered by the deceased Chanan Singh were serious. There were what was described as a stab wound and two incised wounds. The stab wound was about three-quarters of an inch long. It was on the right side of the neck and had cut the right common carotid artery. This was, in the opinion of the doctor who gave evidence, the fatal wound. The incised wounds - they would be made by a cutting action - were  $2\frac{1}{2}$  inches and  $3\frac{1}{2}$  inches long respectively. The first of these was straight across the front of the throat and just below the Adam's apple. That wound involved the cutting of the wind pipe and the gullet and could alone have caused death. The second incised wound was on the left side below the jawbone. It was deeper at each end than it was centrally. This wound the medical witness thought might alone have caused

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death. Significantly, the Doctor testified that he could not imagine three such wounds having been received in a struggle because two of them were far too disabling for that.

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10 There was evidence inculpatory of the appellant as the person who inflicted the wounds. His clothes, which he had concealed, exhibited human blood. His knife which would have inflicted the wounds, he had washed and concealed. It, too, exhibited human blood, as did his boots which he had also cleaned. The pocket of his shirt and a button from it and also an envelope addressed to him were found upon the scene. There were photographs in the envelope which were proved to have been taken by his camera. In addition, he lied when interviewed by the Police as to the clothes he was wearing that evening. Finally, however, he admitted the killing and disclosed where he had concealed his clothes and the knife.

20 To avoid any accusation of omission, I mention that there was some evidence of a mild degree of disharmony in the Bar of the Tavua Hotel on the day the two men died between the appellant who was the barman on duty there, and the deceased other than Chanan Singh. There was no evidence of any disharmony in the hotel between the latter and the appellant.

30 The only direct evidence of what happened when the two men were killed was given by the appellant. In effect, he alleged an assault with a stick was made upon him by the second man. He said that he struggled with this man for possession of the stick which fell to the ground. At that stage, he said, he wanted to run away to save himself but Chanan Singh came up and caught hold of him. He continued his account by saying:-

40 "Govindappa" (i.e. the second deceased) "came and got hold of my throat. I struggled to free myself. My state of mind was upset. I was helpless and could not do anything so I took out my pocket knife and attacked. While Govindappa had me by the throat Chanan Singh was holding me. I was very excited so much so that I did not know what I was doing. I can't even say on whom or how many times I struck with the knife. After a while I found myself free of the others. I got up and ran towards the Hotel."

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This explanation of the occurrence was somewhat expanded in cross-examination but, as given in examination-in-chief, the extract quoted portrays the essential character of the defence. In short, the defence was "self-defence" associated with concurrent reliance on "provocation".

That there was a misdirection as to the onus of proof in the summing-up to the Assessors in respect of both these defences was conceded by the Crown. The learned Chief Justice said in respect of that:-

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"It has been suggested that you might think the accused guilty of manslaughter. Before you could be justified in thinking that you would have to come to the conclusion that the accused's story in that particular respect is true. You would have to be satisfied beyond reasonable doubt that it might be that the Crown was wrong as to that aspect and you would have to believe that the accused received such provocation that he was justified in resisting force by using force. I think you might find it difficult to believe that such was the case. The only suggestion of a defence of self-defence came when Counsel for the Defence was cross-examining as to the marks of the struggle."

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This direction might conform to Smith (1837) 8 C. & P. 160 but modern compulsive authorities clearly establish that the direction was erroneous. Reference need only be made to Woolmington (1935) A.C. 462, Mancini (1942) A.C. 1, Chan Kau v R. (1955) A.C. 206 and to the still more recent case of Lobell (1957) Cr. App. R. 100. In the latter case the Lord Chief Justice in his Judgment, after referring to precedent authority, summarised the opinion of the Court by saying:-

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"It is perhaps a fine distinction to say that before a jury can find a particular issue in favour of an accused person he must give some evidence on which it can be found but, none the less, the onus remains on the prosecution: what it really amounts to is that if in the result the jury are left in doubt where the truth lies the verdict should be 'Not Guilty' and this is as true of an issue as to self-defence, as it is to one of provocation, though

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of course the latter plea goes onto a mitigation of the offence."

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10 The erroneous direction as to the onus of proof would normally result in a verdict of 'guilty' by a jury being set aside, for it would be a mere matter of supposition in most cases what a jury, properly directed, would find. Those cases must necessarily be excepted in which a reasonable jury could, on the evidence, find only one verdict. That the assessors here, if properly directed, might have been left in doubt by the evidence of the appellant upon the crucial issues of either self-defence or provocation seems unquestionable. There was evidence from which they could reasonably have been left in that state of mind and for this Court to say they would not be to act upon pure supposition.

20 That the learned Judge expressed complete disbelief in the appellant's story shows no question of doubt existed in his mind and that no erroneous conception as to the burden of proof affected him. But I am now concerned solely with the minds of the Assessors.

30 The effect of impugning the unanimous verdict of the Assessors raises a point of some nicety. It apparently - I speak tentatively - is not obligatory upon the Judge to sum up to them, although how they could act competently in the absence of a summing-up is difficult to see; and their findings are not binding upon the Judge, indeed, this is so much so that he may validly convict despite unanimous findings of acquittal by the Assessors. The Assessors have not, therefore, the full character of a jury and their findings lack the authority of a jury's findings. But to deny any weight to the findings of Assessors is tantamount to treating them as a merely supererogatory feature in a trial, which the Legislature did not intend, for it provided for their presence and for findings by them.

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It is not necessary here to determine what the precise function of Assessors is nor what precise authority attaches to their findings. For present purposes it is sufficient to say that, whatever their function and whatever authority attaches to their findings, be it great or small, to the extent of that function and that authority

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the findings of the Assessors in this case must be treated as unpugned and invalidated. It would be to put the invalidation of the findings of the Assessors on a minimum basis to say that the invalidation is an unsatisfactory feature in the case. It need be carried no further for the moment.

I now advert to another important feature of the case. There was no evidence given as to anything touching the second deceased - an adult Indian by name Govindappa - beyond there mere fact that his body was on the scene. Why this was so it is not necessary for the purposes of this case to determine. At the hearing of the Appeal Counsel for the Crown said that evidence relating to Govindappa was excluded by judicial direction. If that were so, then the cross-examination of the Crown witnesses must have been influenced by the ruling into avoidance of reference to Govindappa, for even cross-examination - despite the freedom of range it enjoys - should not extend to the irrelevant, and Counsel must be taken to have conformed to that principle. If, therefore, references to Govindappa were ruled irrelevant, as this Court - in view of the Crown Counsel's assurance and the Defence Counsel's concurrence - is bound to assume, then no point can be made of the failure of Counsel for the Defence to call evidence concerning Govindappa or to cross-examine as to anything touching or pertaining to him. Further, if Counsel were under a misapprehension (it was a misapprehension they shared) as to the nature or effect of the ruling, then there is a reasonable explanation for the failure of the defence to call evidence and to cross-examine as to Govindappa, and the same position obtains.

As it is, Counsel for the appellant submits that evidence concerning Govindappa, his condition and circumstances, was relevant and admissible and that, in that evidence, there might have been found material helpful to the Defence. It was never suggested that the killing of the two deceased was other than one incident: "substantially one transaction" as it has been put in a Judgment to which reference will be made. Evidence concerning Govindappa, his state, condition and circumstances was, in the circumstances, relevant and admissible on the trial of the appellant for the murder of

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Chanan Singh. The principle was enunciated by the Lord Chief Justice when delivering the judgment of the Court of Criminal Appeal in R. v Davis (1937) 3 All E.R. 537 at p. 538. That too, was a case of dual killing. The Lord Chief Justice there said:-

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"Of course, if there had been two separate indictments it would have been easy and proper for the prosecution to tender evidence relating to the whole of the matter with reference to one indictment only."

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The conclusion is inescapable that a body of relevant and admissible evidence was not here presented to the trial Court. Neither that Court nor this knows what the nature of that evidence was and so neither Court can say whether or not evidence favourable to the appellant was excluded. This distinguishes this case from R. v. Cook (1918) V.L.R. 618 where knowledge of the evidence excluded was necessary to the application of the test adopted by the Court - that is, whether there was reasonable ground for believing a jury might have come to a different conclusion had the evidence been admitted.

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Upon that position and its consequences, no disbelief by the Judge of the appellant's evidence has any bearing. If there was in the excluded evidence material helpful to the appellant, and the possibility cannot be excluded, then that material might have influenced the opinion of the Judge as to the credibility of the appellant's testimony. The conclusion is inescapable that the exclusion of that evidence - relevant and admissible as it was - was a matter of substantial importance and may have resulted in the miscarriage of justice: no one can say whether it did or not.

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Nor, assuming there was no exclusion by judicial direction, does any different result accrue. With, so far as I recall at the moment, only one limited exception which has no application here, it is the recognised duty of the Crown to call evidence on all material facts. This, for one reason or another, it has not in this case done. The Defence was entitled to have all the relevant and material evidence brought before the Court by the Crown and it seems to me wrong to say that



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the Crown having failed to do so, this Court can say the Defence should have filled the gap by calling the evidence or cross-examining to it. That is putting a burden on the Defence that the Law does not impose.

It seems to me, therefore, that the same unsatisfactory result accrues - I take it no further than that at the moment - whether or not the evidence concerning Govindappa was excluded by judicial direction. Such cases as Adel Mohammed El Dabbah (1944) A.C. 156 and Bryant & Dickson 31 Cr. App. R. 146 are not, it seems to me, in point. They deal with no more than the right of the Crown to choose by what witnesses it is to establish or attempt to establish its case. They in no way qualify the obligation of the Crown to bring to the knowledge of the Court all material and relevant facts.

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Disregarding the question of whether any direction was given as to the admissibility of the evidence relating to Govindappa - a direction which would, if given, be a wrong decision of law which, with its potentiality for miscarriage could not be said to be other than material - it seems to me that the trial was, in the respects to which I have adverted unsatisfactory. In respect of the absence of possible material evidence it much resembles Guerin (1931) Cr. App. R. 39. Here, as there, it can be said "It is clear that something less than the whole of the story as it was known to the Police was placed before the jury" (i.e. here, the Court).

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There is some analogy in this case to R. v. Lock (1926) 26 S.R. (N.S.W.) 272 in which a new trial was granted because the Crown case had not been left in a satisfactory position. As this case involved the omission of evidence which might have been of assistance to the appellant, it is a stronger case than R. v. Lock. It is also the converse of the case postulated by Burnside A.C.J. in Armanasco v The King (1914) 16 W.A.L.R. 174 where he said:-

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"Where the evidence has been plainly placed before the jury, when they have been properly directed as to the value of the evidence, when there has been nothing withheld from them which would assist them in placing a value on the evidence .... I should find it hard to say the verdict was unsatisfactory."

Here admissible evidence was, in fact, not before the Judge nor before the Assessors and that must surely - having regard to its unknown potential value - make the finding of guilt unsatisfactory. On that ground alone I think there should be a new trial. But to that must be added the invalidation of the verdicts of the Assessors by reason of the erroneous direction as to onus.

10 As to that, I merely add this comment - that if this Court were to apply the proviso and sustain the verdict, the appellant would not have had the only form of trial known to the law, that is, a trial before Assessors not misled as to the law, and this Court would be finding inferences of fact which were the province of the Assessors and the Judge. Very largely these inferences are sought to be drawn from the medical evidence of the disabling effect of the individual wounds. But it would be going too far to say that the  
20 compulsive effect of that feature is such that no reasonable judge of fact could do other than find that the nature of the wounds so completely negated self-defence or provocation that no finding on either favourable to the appellant would be reasonable, and so sustainable.

30 I forbear any lengthy reference (as confirmatory of my view) to two cardinal principles of criminal law, namely, that it is no function of this Court to find facts competent to be found by the tribunal of first instance, and that a Court of Criminal Appeal will only reluctantly apply the proviso in a capital case and will never do so unless all the questions of fact permit only of resolution beyond all peradventure of question against the appellant. They are not so here. It may be that there should be a new trial in any event by reason of the wrong decision of law implicit in the exclusion of the evidence by the  
40 learned Judge, if he did in fact exclude it, but it is unnecessary to pursue that topic further.

For the reasons given, I would quash the conviction and order a new trial. In expressing that opinion, I am not unconscious of the conditions which in some Australian State cases it is suggested should influence a Court in directing a new trial as opposed to quashing a conviction. In view, however, of the failure of my brother Judge

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and I to agree, no discussion of that topic is pertinent. For myself, I would allow the appeal and direct a new trial.

The difference of opinion between myself and my fellow member of the Court produces a result which, holding the opinion I do, I cannot but view with revulsion. Sub-section (3) of s. 6 of the Criminal Appeal Ordinance (1949) requires that when the Court is equally divided an appeal must be dismissed. The Legislature surely had in mind that the issue or issues in question had been the subject of a decision by the Court of first instance, with which decision the majority of the Court of Appeal was not prepared to disagree. That is far from this case which, in essence, turns on the consequence of mistake admitted by the parties. No state of initial correctness therefore pertains and the Court of first instance has never expressed - it could not in the circumstances do so - any view on the questions this Court has to decide.

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However, the legislative mandate is at once clear, unequivocal and peremptory and it must, in consequence, be obeyed. The appeal is dismissed, but the reason for the dismissal and the unsatisfactory and unconvincing nature of the result expressed by it will doubtless not escape notice.

(Sgd.) G.I. FINLAY,  
President

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ORDER IN COUNCIL GRANTING SPECIAL  
LEAVE TO APPEAL IN FORMA PAUPERIS

(L. S.)

Order in  
Council  
granting  
Special Leave  
to Appeal in  
forma pauperis,  
13th May, 1959

AT THE COURT AT BUCKINGHAM PALACE

The 13th day of May, 1959

PRESENT

THE QUEEN'S MOST EXCELLENT MAJESTY

LORD PRESIDENT

MR. WALKER-SMITH

EARL OF PERTH

SIR CHARLES HARMAN

10

SIR HARRY HYLTON-FOSTER

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 5th day of May 1959 in the words following, viz.:-

20

"WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of Bharat son of Dorsamy in the matter of an Appeal from the Court of Appeal of Fiji between the Petitioner and Your Majesty Respondent setting forth that the Petitioner was convicted by the Supreme Court of Fiji on the 18th October 1958 of the murder of a man named Chanan Singh and sentenced to death: that the Petitioner appealed to the Court of Appeal which on the 16th February 1959 dismissed the Appeal: And humbly praying Your Majesty in Council to grant the Petitioner special leave to appeal in forma pauperis from the Order of the Court of Appeal of Fiji dated the 16th February 1959 or for further or other relief:

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"THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and in opposition thereto Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioner to enter and prosecute his Appeal against the Order of the

In the Privy  
Council

No.67

Order in  
Council  
granting  
Special Leave  
to Appeal in  
forma pauperis,  
13th May, 1959  
- continued.

Court of Appeal of Fiji dated the 16th day  
of February 1959 in forma pauperis:

"And Their Lordships do further report to  
Your Majesty that the authenticated copy  
under seal of the Record produced by the  
Petitioner upon the hearing of the Petition  
ought to be accepted (subject to any objec-  
tion that may be taken thereto by the Res-  
pondent) as the Record proper to be laid  
before Your Majesty on the hearing of the  
Appeal."

10

HER MAJESTY having taken the said Report  
into consideration was pleased by and with the  
advice of Her Privy Council to approve thereof  
and to order as it is hereby ordered that the  
same be punctually observed obeyed and carried  
into execution.

Whereof the Governor or Officer adminis-  
tering the Government of the Colony of Fiji for  
the time being and all other persons whom it  
may concern are to take notice and govern them-  
selves accordingly.

20

W.G. AGNEW.

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E X H I B I T S

V(1)

STATEMENT BY BHARAT

FIJI POLICE  
S T A T E M E N T

Exhibits

V(1)

Statement by  
Bharat,

30th May,  
1959.

R.C.R. NO. 176/58

R.C.R. NO. 176/58

TRANSLATION :

Commenced 0508 hrs.  
Completed 0515 hrs.

Tavua Police Station  
Ba Province  
30th day of May, 1958.

10

Name: Bharat f.n Dorsamy, age 25 years  
Address: c/- Tavua Hotel, Tavua.  
Occupation: Barman.

You are being charged with murdering Govin-  
dappa and Chanan Singh. Do you wish to say any-  
thing in answer to the charge? You are cautioned  
by Sgt. 298 Narayan Nair that you are not obliged  
to say anything unless you wish to do so but what-  
ever you will say will be taken down in writing  
and may be given in evidence.

20

(sgd.) S.N. Nair Sgt. 298 (Sgd.) D. Bharat.

I have been asked if I wish to say anything  
in answer to the charge and have been told that  
I am not obliged to say anything unless I wish to  
do so, but that whatever I say will be taken down  
in writing and may be given in evidence.

(sgd.) N. Nair Sgt. 298. (Sgd.) D. Bharat.

I have said everything.

(Sgd.) D. Bharat.

30

Completed 0514 hrs.

I hereby certify that I have translated this  
statement from Hindi to English to the best of my  
knowledge and ability.

(Sgd.) N. Nair.  
Sgt. 298.  
30.5.58.  
0515 hrs.

Exhibits

D.

Post Mortem  
Report,31st May,  
1958.

D.

POST MORTEM REPORTCHANAN SINGH F/N DELAI SINGH32/13 TGH/SS  
MAY 31ST 1958.

On the instructions of Mr. H.G. McAlpine, Magistrate, I carried out a post mortem examination on CHANAN SINGH f/n DELAI SINGH at 3.20 p.m. on 30.5.58 at Lautoka Hospital.

The deceased was identified to me by Muluk Singh f/n Delai Singh in the presence of Sub-Inspector Raj Deo.

10

EXTERNAL EXAMINATION

The body was that of an adult male Indian with the following injuries:-

1. A three-quarter inch stab wound on the Right side of the neck severing the Right common carotid artery.
2. A two and a half inch incised wound severing the trachea and oesophagus. The body of the fifth cervical vertebra had been penetrated.
3. A three and a half inch incised wound on the left side of neck underneath the body of the mandible. This wound was deeper anteriorly and posteriorly than centrally.
4. An abrasion on the Right side of the forehead acquired post mortem.
5. An ulcer half an inch in diameter on the outer side of the Left leg just above the ankle. There was Gentian Violet on the surrounding skin and an overlying bandage.

20

30

INTERNAL EXAMINATION

No other injuries. All organs normal.

Samples of blood, head hair, nail scrapings and the stomach contents were handed to Sub-Inspector Raj Deo.

OPINION

Death was due to haemorrhage.

(Sgd.) T. Guy Hawley M.B.,  
Ch.B., D.P.H.  
Medical Officer, Lautoka  
Hospital.

40

AA(2).

PATHOLOGIST'S REPORTPOLICE vs. BHARAT F/N DORSAMYExhibits

AA(2)

Pathologist's  
Report.

I certify that I received the following exhibits from Cpl. 295 Fero Namira on June 2nd 1958 at the Pathological Laboratory which I have examined and report as follows :-

Lab.No.2760

10 Sealed envelope labelled "This sealed envelope containing a pen knife. Marked I".

Contents: A pen knife, metal with one blade, bottle opener, screwdriver and spike.

It was a new looking knife with a very sharp blade. There was reddish brown dry material at the base of the bottle opener, the base of the blade round the hinge and along the spring at the back of the knife.

20 This material gave positive chemical and serological tests for blood of human origin. There was insufficient for accurate grouping.

Opinion: There was blood of human origin at the base of the bottle opener, the base of the blade near the hinge and on the spring at the back.

(No hairs were found on this knife on opening the packet in the presence of the Corporal).

Lab.No.2761

30 Sealed envelope labelled "This sealed envelope containing a nylon coloured shirt marked No.2"

Contents: Clean cream coloured nylon shirt with scattered discrete small reddish brown stains on both sides of the front, top and back of right sleeve and front of left sleeve with a larger smudged stain on the inner side of the right front just above the lower edge.

Samples gave positive tests for blood of human origin.

Opinion: The stains on this garment were blood of human origin.

40 The individual stains were too small for satisfactory grouping.



Exhibits

AA(2)  
Pathologist's  
Report -  
continued.

Lab.No.2762

Sealed packet labelled "This sealed envelope containing a grey coloured trousers, Marked 3."

Contents: Pair of new looking grey woollen trousers with scattered small reddish brown stains on:-

- (a) The lower half of the front of the left leg.
- (b) The inside of the right leg, towards the back crease.
- (c) On the outer side of the right leg at the lower end. 10
- (d) A smear on the outer side of the back of the left leg, at the lower end.

Samples from all these areas gave positive tests for blood of human origin.

A faint defuse pale brown stain on the left side of the body just behind the pocket was not blood.

Opinion: The scattered brown stains on this garment were blood of human origin.

The individual stains were too small for satisfactory grouping. 20

Lab.No.2763

Sealed parcel labelled "This parcel containing a pair of shoes, Marked 4".

Contents: A pair of black leather shoes with rubber soles and a pair of brown socks inside the shoes.

There were no visible stains on these shoes, but material scraped off the left toe cap and welt round the left toe gave material which gave positive tests for blood of human origin. Scrapings and rubbings all over the rest of the shoe was negative for blood of any kind. 30

Right Shoe: A very weak presumptive test for blood was obtained from the toe cap and welt, but not elsewhere on the right shoe, but further tests for the human origin of the blood were negative.

Opinion: There were traces of blood of human origin on the toe cap and welt round the toe of the left shoe. 40

Lab.No.G.1190

One sealed envelope labelled "This sealed envelope containing sample of blood taken from Accused Bharat, Marked 5".

Contents: Sealed bottle containing blood, labelled on sticky tape "Blood. Bharat, f/n Dorsamy. 30.5.58. Sgd. T.R. Hawley."

Blood Group "B".

Exhibits

AA(2)

Pathologist's  
Report -  
continued.

Lab.No.G.1191

- 10 Sealed envelope labelled "This sealed envelope containing sample of blood taken from deceased Govindappa, Marked 6".

Contents: Bottle of blood labelled Govindappa on sticky tape.

Blood Group "O".

Lab.No.G.1192

Sealed envelope labelled "This sealed envelope containing sample of blood taken from deceased Chanan Singh, Marked 7."

- 20 Contents: Sealed bottle labelled "Blood. Chanan Singh, F.N. Delai Singh. 30.5.58. Signed T.G. Hawley". Blood Group "B".

Lab.No.2764

Sealed envelope No. 10 labelled "This sealed envelope contains 1 hair, No. 10".

Contents: Short complete hair with bulb root attached varies in colour from almost colourless round root to complete black and pale brown at pointed end.

- 30 Microscopically short human hair which appears to have fallen out naturally.

Lab.No.2765

Sealed envelope labelled "Hair from head of Bharat 30/5/58. Sgd. G.T. Hawley, No. 11".

Contents: 6 hairs. Black with slight wave.

Microscopically longest hair 6 cms shortest 4 cms 3 hairs mounted. Microscopically typical dark pigmented human hair, ends cut and tapering slightly to broken point.

Exhibits  
AA(2)  
Pathologist's  
Report -  
continued.

Lab.No.2766

Sealed envelope labelled "Specimen hair taken from Govindappa f/n Kaliappa by Dr. Hawley on 30/5/58 and handed over to D/S Inspector Raj Deo. Marked 12".

Contents: Mass of hair matted together with blood. Dark brown in colour. Longest mass 8 cms.

Microscopic some hairs are very black, other show dark brown pigment and others are non pigmented. Human hair, black and brown and some grey hairs.

10

Lab.No.2767

Sealed envelope labelled "Specimen hair taken from Sohan Prasad for analysis 31/5/58 0900 hrs. Marked 13."

Contents: 8 hairs curly. Longest 13 cms. 3 Mounted, one hair had brown pigment with root and surrounding tissue attached, the others were much darker in colour.

Lab.No.2768

Envelope labelled "Specimen hair taken from Chanan Singh f/n Delai Singh by Dr. Hawley and handed over to D/S. Inspector Raj Deo on 30.5.58."

20

Contents: Clump of black hair matted with blood. Clump 7 cms. long.

Hairs mounted, brownish black pigment, cut ends sharp.

Opinion: All the specimens of hair are pigmented blackish brown human hair.

No.10 which appears to have been a naturally shed blackish brown hair could not be differentiated from the others except No. 2766 hair from Govindappa which had many grey hairs.

30

Lab.No.2769

Sealed envelope labelled "This sealed envelope containing a sealed bottle scrap of nails of accused Bharat. Marked No. 15".

Contents: Sealed bottle labelled "Nail scrapings Bharat f/n Dorsey, 30.5.58. Sgd. T.G. Hawley."

Contents piece of white lint with tiny dark fragments on it.

40

Test for blood of any kind completely negative.

Opinion: No blood in this material.

Lab.No.2770

Sealed envelope labelled "This sealed envelope containing a sealed bottle scrap of nails from deceased Govindappa. Marked 16".

Contents: Sealed bottle fixed with adhesive tape Govindappa on tape (Label obliterated by tape.)

Contents piece of lint with fragments of brown material on it.

Tests for blood negative.

10 Opinion: No blood in this material.

Lab.No.2771

Sealed envelope labelled "This sealed envelope containing a sealed bottle scrap of nails from Chanan Singh, Marked 17".

Contents: Sealed bottle label partly covered with adhesive tape.

Contents piece of lint with dry brown material on it.

Test for blood negative.

20 Opinion: No blood in this material.

Lab.No.2772

Sealed packet labelled "This sealed Roll containing a black stick with brass head, marked 18".

Contents: Polished black stick with brass band at top. It was recently broken under the brass band and split down the shaft.

Tests for blood on the brass top gave a very weak presumptive test on one side, but confirmatory tests were negative.

30 The material on the top of the brass and in the screw hold gave negative tests for blood.

A small fragment of white cotton thread was stuck on the tip of the brass head.

Opinion: No human blood stains found.

(Sgd.) MINNIE GOSDEN  
Pathologist.

Exhibits

AA(2)

Pathologist's  
Report -  
continued.

Exhibits

BB(2).

BB(2)

GOVERNMENT ANALYST'S REPORT

Government  
Analyst's  
Report,  
7th June,  
1958.

GENERAL SAMPLES - Advice Letter to Analyst.

Tavua Police Station

To the Government Chemist  
Government Analyst

The following sample in connection with the case of Police v Bharat f/n Dorsamy is forwarded for analysis in charge of P.C. No.....

for Commissioner of Police

10

DESCRIPTION OF SAMPLE	NATURE OF ANALYSIS REQUIRED
<u>No.7</u> - One envelope containing sample of blood taken from deceased Chanan Singh f/n Dalel Singh.	Is there any evidence of alcohol?
<u>No.9</u> - One sealed bottle containing stomach contents taken from deceased Chanan Singh f/n Dalel Singh.	What strength?

20

CERTIFICATE OF ANALYSIS - (No)

To the Commissioner of Police.

I, the undersigned, Government Analyst, do hereby certify that I received on the 2nd day of June, 1958, from P.C. No..... a sample of blood and a sample of stomach contents for analysis, which was then in a sealed container, and have analysed the same and I am of the opinion:-

Sample No.7 contains 0.17% blood alcohol.  
Sample No.9 contains 1.035g. alcohol and a large amount of acetaldehyde indicating that more alcoholic liquid was consumed by the deceased.

30

"The National Safety Counsel (in U.S.A.) has

acted by recommending that the limit 0.15% blood alcohol be considered as that above which prima facie evidence of drunkenness exists. Many courts have accepted this limit in the determination of guilt in matters of drunkenness. - It is not implied that an individual with a little less alcohol than this is necessarily sober, and that one with a little more is definely drunk."

Exhibits

BB(2)

Government  
Analyst's  
Report,

7th June,  
1958 -  
continued.

As witness my hand this 7th day of June, 1958.

10

(Sgd.) Dr. J.S. Simionji  
Government Analyst

Government Laboratory,  
Suva, 7.6.58.

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BB(3).

GOVERNMENT ANALYST'S REPORT

GENERAL SAMPLES - Advice Letter to Analyst.

Tavua Police Station

To the Government Chemist.  
Government Analyst.

The following sample in connection with the case of Police v. Bharat f.n. Dorsamy is forwarded for analysis in charge of P.C. NO.....

for Commissioner of Police

10

DESCRIPTION OF SAMPLE	NATURE OF ANALYSIS REQUIRED
No. 5 - One sealed envelope containing sample of blood taken from accused Bharat f/n Dorsamy.	Is there any evidence of alcohol?  What strength?

CERTIFICATE OF ANALYSIS - (No.)

To the Commissioner of Police.

I, the undersigned, Government Analyst, do hereby certify that I received on the 2nd day of June, 1958, from P.C. No..... a sample of blood for analysis, which was then in a sealed container, and have analysed the same, and I am of the opinion:-

20

Sample No. 5 - contains no blood alcohol.

As witness my hand this 7th day of June, 1958.

(Sgd.) J.S. Simionji

Government Analyst.

Government Laboratory,  
Suva. 7.6.1958.

30

141.

BB(4).

GOVERNMENT ANALYST'S REPORT

Exhibits

BB(4)

Government  
Analyst's  
Report, .

7th June,  
1958.

GENERAL SAMPLES - Advice Letter to Analyst.

Tavua Police Police.

To the Government Chemist.  
Government Analyst.

The following sample in connection with the case of Police v. Bharat f.n Dorsamy is forwarded for analysis in charge of P.C. No.....

10

for Commissioner of Police.

DESCRIPTION OF SAMPLE	NATURE OF ANALYSIS REQUIRED
No. 6 - One sealed envelope containing sample of blood taken from deceased Govindappa f.n Kaliappa	Is there any evidence of alcohol?
No. 8 - One sealed bottle containing stomach taken from deceased Govindappa f/n Kaliappa.	What strength?

20

CERTIFICATE OF ANALYSIS - (No.)

To the Commissioner of Police.

I, the undersigned, Government Analyst, do hereby certify that I received on the 2nd day of



Exhibits

BB(4)

Government  
Analyst's  
Report,

7th June,  
1958 -  
continued.

June, 1958, from P.C. No. .... a sample of blood and a sample of stomach for analysis, which was then in a sealed container, and have analysed the same, and I am of opinion:-

Sample No. 6 - contains 0.18% blood alcohol.

Sample No. 8 - contains 0.072g. alcohol and a large amount of acetaldehyde indicating that more alcoholic liquid was consumed by the deceased.

"The National Safety Council (in U.S.A.) has acted by recommending that the limit 0.15% blood alcohol be considered as that above which prima facie evidence of drunkenness exists. Many courts have accepted this limit in the determination of guilt in matters of drunkenness. - It is not implied that an individual with a little less alcohol than this is necessarily sober, and that one with little more is definitely drunk."

10

As witness my hand this 7th day of June, 1958.

(Sgd.) Dr. J.S. Simionji  
Government Analyst.

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Government Laboratory  
Suva, 7.6.58.

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143.

AA(1).

PATHOLOGIST'S REPORT

Exhibits

AA(1)

Pathologist's  
Report.

On June 10th 1958, I received the following at the  
Pathological Laboratory from the same Corporation.

Lab.No.2850

Sealed packet.

Contents: Pair white canvas shoes, old and  
worn but with clean uppers, rubber soles.

10

2 short stiff fibres were caught in a small  
split in the rubber sole on the outer side  
of the right instep.

On mounting one of these was a vegetable  
fibre and the other a human hair, with root  
bulb attached, it was light brown and with  
crushed end, no medulla. Appears to be a  
dead shed hair of human origin.

It is impossible to say if it was from any  
particular person, but it did not closely  
resemble any of the other hairs.

20

The soles of the shoes had brown material in  
the rubber pattern.

Tests for blood were completely negative.

Opinion: There was a dead human hair and  
vegetable fibre in a small slit in the sole  
of the right shoe and no blood of any kind  
on the shoes.

30

After examination I resealed the exhibits  
remaining in their original covering, and, with  
the exception of G.1190; G.1191 and G.1192, which  
I handed to Dr. Simionji, the Government Analyst  
on 3/6/58, handed them to Cpl. No. 295 Fero Namira  
on June 11th 1958.

(Sgd.) MINNIE GOSDEN

PATHOLOGIST

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144.

BB(1).

Exhibits

BB(1)

Government  
Analyst's  
Report,  
26th June,  
1958.

GOVERNMENT ANALYST'S REPORT

GENERAL SAMPLES - Advice letter to Analyst.

C.I.D. office Suva Station  
25th June, 1958.

To the Government Chemist.

The following sample in connection with the case of Police v Bharat f/n Dorsamy is forwarded for analysis in charge of Cpl. No. 295 Fero.

(Sgd.) J. Colclough  
for Commissioner of Police.

10

DESCRIPTION OF SAMPLE	NATURE OF ANALYSIS REQUIRED
A cream coloured Nylon Shirt	(a) To try to establish whether the material in the shirt and the pocket are identical.
1 cream coloured Nylon Pocket	(b) Whether the thread attaching to the pocket is the same type of thread as that attaching to the shirt where the pocket would normally be.

20

CERTIFICATE OF ANALYSIS - (No.)

To the Commissioner of Police.

I, the undersigned, Government Analyst, do hereby certify that I received on the 25th day of June, 1958, from P.C. No. Cpl. No. 295 Fero samples of a shirt and a pocket for analysis, which was then in a sealed container, and have analysed the same, and I am of opinion:-

30

(Microscopic comparisons and chemical tests)

Exhibits

- (a) The alteration of weave arrangement in both materials (pocket and shirt) is the same.

BB(1)

The fibres (taken from pocket and shirt) are nylon fibres. They are made as long continuous fibres with the same appearance in thickness, length and strength.

Government Analyst's Report,

26th June, 1958 - continued.

Nylon has been identified in both materials (pocket and shirt).

- 10 (b) The thread attaching to the pocket and the thread attaching to the shirt where the pocket would normally be are identical in appearance. They are artificial silk threads.

Artificial silk has been identified in both threads (pocket and shirt).

As witness my hand this 26th day of June, 1958.

(Sgd.) Dr. J.S. Simionji  
Government Analyst.

Government Laboratory  
26.6.58.

IN THE PRIVY COUNCIL      No. 18 of 1959

ON APPEAL  
FROM THE FIJI COURT OF APPEAL

B E T W E E N

BHARAT son of DORSAMY ... Appellant

- and -

THE QUEEN ... .. Respondent

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RECORD OF PROCEEDINGS

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

CHARLES RUSSELL & CO.,  
37 Norfolk Street,  
Strand,  
London, W.C.2.  
Solicitors for the Respondent.