

ON APPEAL
FROM THE FIJI COURT OF APPEAL

B E T W E E N :

RAGHO PRASAD
(S/o Ram Autar Rao) Appellant

- and -

THE QUEEN Respondent

CASE FOR THE APPELLANT

Record

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1. This is an Appeal from the Judgment and Order of the Fiji Court of Appeal (Gould V.P., Marsack and Henry JJ.A.) dated the 22nd day of July 1977, whereby the Appellant's Appeal against his conviction by the Supreme Court of Fiji (Western Division) (Criminal Jurisdiction) sitting at Lautoka (Stuart J. and five Assessors) dated the 1st day of December, 1976 upon a charge of murder, was dismissed.

Pp.186-208

P.179

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2. The principal questions arising in this appeal are:

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- (i) What directions a Judge should give to Assessors, when having ruled on a voir dire that alleged confessions were made voluntarily, voluntariness becomes relevant as to the issue of the truthfulness of the alleged confessions.
- (ii) What directions a Judge should give to Assessors when questions as to whether alleged confessions were made and if made were truthful both arise for determination by the Assessors.
- (iii) Whether, and in what circumstances (if any), it is incumbent upon a Judge to warn Assessors against accepting an alleged confession when no other evidence is adduced implicating the accused.

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- (iv) Whether a trial Judge should specifically warn Assessors to disregard hearsay evidence given at the trial which prima facie established evidence of opportunity.
- (v) Whether a Court of Appeal should consider the cumulative effect of errors and misdirections at a criminal trial as well as considering the same individually.
3. The information charged the Appellant as follows:-

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P.1,1.19-
p.2,1.2

"RAGHO PRASAD S/O RAM AUTAR RAO is charged with the following offence:

COUNT ONE

STATEMENT OF OFFENCE

MURDER: Contrary to Section 228(1) of the Penal Code, Cap. 11

PARTICULARS OF OFFENCE

RAGHO PRASAD S/O RAM AUTAR RAO, on the 27th day of July, 1976 at Masi Masi, Tavua in the Western Division murdered RAM AUTAR RAO s/o NAKCHEDI."

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4. The statutory definition of murder contained in Section 228(i) of the Fiji Penal Code (Cap. 11) reads as follows:-

"Any person who of malice aforethought causes the death of another person by an unlawful act or omission is guilty of murder."

- P.2 5. On 6th September, 1976 the Appellant pleaded not guilty when arraigned before the Hon. Mr. Justice Williams. 30

- P.3 Prior to the empanelling of the Assessors in the trial which commenced before the Hon Mr. Justice Stuart on 16th November, 1976 Crown Counsel indicated to the learned Trial Judge that he did not intend to call some seven witnesses who had given evidence at the preliminary inquiry. It was then directed, by consent, that the voire dire be held forthwith. Accordingly the learned Trial Judge proceeded to hold a voire dire upon the issue of the admissibility of two statements allegedly made by the Appellant. On the 23rd day of November, 1976 the learned Trial Judge made a ruling in the following terms: 40

Not reproduced

10 "The Defence challenges two statements
allegedly made by the accused - one an
interrogation statement to Insp. Salikram,
and the other a charge statement made to
Sgt. Subramani on the ground that they were
not voluntary statements. The police
officers gave evidence that both statements
were voluntary. The accused said that he
was assaulted by the police, but he finally
said that he made neither statement and did
not sign or initial the Inspector's notebook
or make a thumbmark on the charge statement.
I do not believe the accused's evidence. I
think that he did make those statements. I
have borne in mind that accused was in
police custody. Nevertheless I am satisfied
that accused was not assaulted by the police
officers and that those statements are
voluntary statements. They will accordingly
be admitted in evidence."

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6. It is at this stage convenient to notice
that the alleged statements were alleged to be to
the following effect by the witnesses called by
the prosecution. The first statement (called by
the learned Trial Judge "the interrogation
statement") according to Senior Inspector Salik
Ram consisted of questions between himself and
the answers of the appellant consequent upon one
Jai Raj, stating

30 "When grandfather went to sleep, after
sometime when the dogs started barking,
you (accused) went and came back after
10-15 minutes." P.18,11.2-5

The questions and answers were alleged to be

"Q. Did you hear that Jai said in front of you
now? P.18,11.7-22

A. Yes.

Q. Whatever he said is true?

40 A. Yes, sir, now, this is true. My brother Sohan
Lal said to get rid of this problem. My
father went towards the house. A little after,
I went and I was annoyed and struck him with
a knife.

Q. How many times did you strike with a knife?

A. 3 or 4 times.

Record

Q. What did you do with the knife?

A. I kept the knife at home after washing it and the police took it from me."

The second statement (called by the learned Trial Judge "the charge statement") was alleged by Sgt. Subramani to have been

P.191,11.
34-39

"Since long time we had trouble about the land and property of father I tolerated too much last night I was very angry I killed father I washed the knife and kept in my house. I told everything to the Inspector."

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This alleged "charge statement", for reasons that do not appear in the record, was not put into evidence by the prosecution in the trial itself, notwithstanding the ruling of the learned Trial Judge.

P.5,1.18

7. When the Assessors had been empanelled the substantive trial commenced in the afternoon of 23rd November, 1976.

The case against the Appellant was opened by Counsel for the prosecution, according to the Note of the learned Trial Judge, in the following way:

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P.5,11.13-
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"Prosecution relies solely on confession. Nothing less than death intended by assailant. Accused indicated where he had concealed weapon and it was recovered in place indicated by accused."

P.18,11.7-
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8. The evidence of this alleged confession was lead from Senior Inspector Salik Ram, who explained that a neighbour of the Appellant, the said Jai Raj, had been called into the presence of himself and the Appellant during the course of the latter's interview at Vatukoula Police Post on 28th July, 1976. The evidence as to the "interrogation statement" set out in paragraph 6 above was then adduced. The said

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P.17,11.29-
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reply of Jai Raj being stated to be in response to an unrecorded question from the said Inspector asking Jai Raj what he had to say about the Appellant leaving and returning to a party, during the course of which it seems clear that the deceased met his death.

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P.17,11.39-
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Senior Inspector Salik Ram had said in his evidence-in-chief that no pressure had been applied to the accused. He said

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"Q. Did you put any pressure on the accused?

P.14,11.1-10

A. No, sir.

Q. You had many things that you wanted to ask him. What would you have done if he did not answer any question?

A. I would have proceeded on asking questions.

Q. Did the accused at any time indicate to you that he was refusing to answer any question?

10 A. No, sir."

(The evidence for the defence was to a completely different effect; this will be found summarised in paragraph 10 hereafter.) Senior Inspector Salik Ram gave further evidence that he had read over his notes of the interview to the accused, and that the accused had initialled the notebook in some 10 or 11 places, and had written the letters "R.A.G." at one point, claiming that he was incapable of writing his name. The marriage certificate of the Appellant was produced, bearing the signature of the Appellant, and the officer admitted that he would not be surprised that the Appellant could write. As already mentioned Senior Inspector Salik Ram had denied in examination-in-chief that he had put any pressure on the Appellant. In cross-examination it was put to the witness that the Appellant had been assaulted on two occasions. The relevant passages of his evidence read as follows:

P.18,11.29-40

P.53,1.13

20 P.53,1.43
P.54,1.22

P.14,11.1-2

30 "Q. Is it not true that when the accused arrived you and other police officers began to assault the accused at the police post? P.37,11.7-11

A. That is completely false."

And

"Q. I put it to you that the only reason why the accused did not sign was that, this interview was never read back to him and that he was assaulted? P.54,1.40-
P.55,1.4

40 A. I was the one who read the interview to the accused in the presence of another police officer."

Record

P.56,11.3-6

Salik Ram went on to say that he could not explain why injuries had been found on the body of the Appellant on 29th July.

Pp.94-125,
147-167
Pp.125-134

9. The witnesses for the defence consisted of the Appellant himself and two doctors who had examined him, Dr. Jaspal Singh and Dr. Balwant Singh Rekha.

10. The passages of the Appellant's evidence relevant to the present Appeal are those concerning the alleged assault upon him by the police, the confession statement which he is alleged to have made, and his ability to write. The Appellant dealt with the assault in the following terms:

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P.108,1.35-
P.109,1.18

"A. After he [Krishna Swamy] took me inside the police station he assaulted me.

Q. Who assaulted you?

A. The police.

Q. Which one?

A. Salik Ram, Govind Raju and there was another policeman whom I don't know.

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Q. Did they say anything to you before they assaulted you?

A. No sir.

Q. Do you know why they assaulted you?

A. No sir.

Q. How did they assault you?

A. They punched my chest and back of my shoulder. Salik Ram kicked my buttocks and my private parts. The assault on the front of my body was carried out by Govind Raju and the kick on my buttocks was given by Salik Ram.

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Q. When these happened how were you feeling?

A. I was very frightened and was weeping. I asked them why they were beating me up."

The Appellant went on to deny that he had ever made the alleged confession to the police:-

Record

"Q. The police say witness, that you told them you were angry and you killed your father with a knife?

P.116,11.24-32

A. I did not say that to the police.

Q. Is this true?

A. This is the truth. I did not say this to the police.

Q. Did you kill your father?

A. No, I didn't."

10 And

"Q. First of all did you make any confession at any time to the police that you had anything to do with your father's death, that you were in any way responsible?

P.151,11.5-21

A. No, sir never at any time.

Q. No confession was beaten out of you by the police?

A. No sir, not at any time.

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Q. And what you told the police on the 28th you would have told no matter how they treated you would you not?

A. I had been assaulted by the police.

Q. Even if you had not been assaulted you would still answer their questions wouldn't you?

A. Yes I would still tell them the truth that I had not done anything like that."

The Appellant further denied that Jai Raj had ever, during the course of the interview, come into his presence.

P.153,11.6-16

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The Appellant stated in evidence that he was able to write his name in full. He denied that the record of the alleged interview had been read back to him in the way the Senior Inspector Salik Ram claimed, and said as follows concerning his initials in the police notebook:-

P.98,1.41-
P.99,1.1
P.111,11.9-11
Pp.51-53

Record

P.110,1.37-
P.112,1.10

"Q. I want you to carefully look at this notebook. (Exhibit 'D' handed to witness). Is there anything that you can recognise on that paper?

A. You mean my writing?

Q. Yes.

A. Initial R.P. on page 41.

Ct. That is your writing is it?

A. Yes sir. Again initials R.P. on page 42, 43, 44 and 45.

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Q. Any other?

A. The three letters R.A.G. on page 47. That is all I was asked to write. That is my writing.

Q. Did any police officer read back to you what was written by them?

A. No sir.

Q. Why did you put R.A.G. and R.P. on various pages you have shown?

A. He didn't read it over to me that is why I didn't sign. I didn't know what was written in it.

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Q. Were you asked to sign it?

A. Yes I was asked to sign. I said: You read this over to me and I will sign. He forced me to write what I pointed out in this book.

Q. When they asked you to sign did you say anything?

A. Yes sir.

Q. What did you say?

A. I said: You read this over to me and I will sign.

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Q. Did you say anything about being able to sign or not?

A. I said you read this over to me I said I cannot sign.

Q. Did you know what that contained?

A. No sir.

Q. Look at Exhibit 'D'. Can you see anything written there in Hindi?

A. Yes a little Hindi is written on the top left hand corner.

Q. Whose writing is that?

A. That is all I wrote I do not know what it is.

Q. What were you trying to do?

10 A. I was trying to write but I couldn't.

Q. What were you trying to write?

A. I was trying to write my name but I couldn't.

Q. You are saying that you cannot sign your name in Hindi?

A. No sir.

Q. Later on were you required to do anything else?

A. I was merely taken from there. They got me to put my thumb prints on a piece of paper."

20 11. Dr. Jaspal Singh gave evidence of having examined the Appellant at Namosau Prison on 29th July, 1976 and finding that he was suffering from bruises, cuts and puncture marks to the arm, as well as injury to the right testicle. P.126,11.29-33
P.127
P.128,11.19-21

30 12. Dr. Balwant Singh Rekha who also examined the Appellant at Namosau Prison on 29th July, 1976 gave similar evidence of the Appellant's injuries. He found that the Appellant had bruises on his shoulder blade, the back of his head, his right arm, lumbar region and shin. The doctor also found that the Appellant had a cut lip and injury to the right testicle, which, he said, could have been caused "By blunt force or by squeezing". When asked to attribute a cause to the other injuries, the doctor said: P.137,11.31-37

"Q. The injury that you say was a tenderness in the lumbar region, what sort of force would you expect to cause that? P.141,11.17-27

Record

- A. Any blunt force.
- Q. Would kicking a man have caused it?
- A. If he is not aware of it.
- Q. And what sort of force would you expect to cause the injury on the lower limb?
- A. Blunt force.
- Q. Could a slap do that?
- A. I do not think so."

Pp.169-179

13. On the 1st day of December 1976 the learned Trial Judge summed up the case to the Assessors. The function of assessors in Fiji is provided for in the Criminal Procedure Code (Cap. 14 of the Laws of Fiji, 1967 Revised Edition). Section 226(1) thereof provides

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"In each trial the Court shall select two or more, and in capital cases not less than four, persons from the list of those summoned to serve as assessors at the Sessions."

And Section 281 provides inter alia

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"(1) When the case on both sides is closed, 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, and shall record such opinion.

(2) The Judge shall then give judgment, but in doing so shall not be bound to conform to the opinions of the assessors."

P.170,11.11-51

14. The learned Trial Judge in the course of his summing up gave directions to the Assessors as to the appropriate approach to take towards conflicts in testimony. It is respectfully submitted that the learned Trial Judge erred in omitting to direct the Assessors as to the effect upon a witness' credit if his evidence was rejected upon a particular point. In particular he failed to give any directions as to how they should approach the police evidence if they believed the Appellant might have been assaulted by the police as he alleged such direction being

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of crucial importance with respect to the first issue referred to in paragraph 2 above.

15. The learned Trial Judge went on to consider the way that the prosecution had put its case; he recalled that Crown Counsel had said that the only evidence against the Appellant was his alleged confession to the police during interrogation. It is respectfully submitted that this was a correct analysis of the evidence. The learned Judge then reminded the Assessors of the evidence of the alleged confession in the "interrogation statement". The prosecution's case as to how the deceased had met his death (which was on the evidence a matter of speculation) was summarized to the Assessors. In the course of this summary the Trial Judge fell into error by failing to direct the Assessors that what Jai Raj had said was not direct evidence against the Appellant in itself and that it could only become evidence insofar as the Assessors might be satisfied that the Appellant had himself adopted what Jai Raj had said.

P.172,11.13-17

P.172,11.20-40

P.172,1.41-
P.173,1.22

P.172,1.49-
P.173,1.1

In particular the learned Trial Judge misdirected the Assessors as follows:-

"The accused told the police that he left the party while his father was still there, whereas Inspector Salik Ram told you that Jai Raj said the accused left the party after his father had gone out and remained away after 10 to 15 minues and returned to the party having in the meantime, changed his clothes. The prosecution case is then that the accused went out of the party and killed his father."

P.172,1.47-
P.173,1.3

16. The learned Trial Judge then gave the Assessors a direction which it is submitted was inadequate and which was in the following terms:

"So that in fact the only evidence you have is the evidence of his confession and your duty is to consider whether this confession is true."

P.173,11.22-26

17. The learned Trial Judge then commented, it is respectfully submitted wrongly, upon the absence of the Appellant's brothers from those that had given evidence. It is respectfully submitted that whereas the learned Trial Judge might have been entitled to comment upon the absence of witnesses it was incumbent upon him to explain to

P.173,11.16-31

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the Assessors that no probative burden was placed upon the Appellant and that the absence of the brothers was of limited relevance because they were bound to decide the case upon evidence actually called.

P.173,11.31-
P.174,1.2

18. After summarizing the Appellant's own account of his family circumstances the learned Trial Judge referred again to the issue of the confession:

P.174,11.3-25

"... there is nothing in the prosecution case except this confession and you have got to be satisfied that it is true before you can give the court your opinion that the accused is guilty. It was suggested to you that you have to be satisfied that the confession is voluntary, but that is not so. All you have to consider is whether the accused made that statement and whether it is true. *If you think he did not make it and that it had been fabricated by the police, then of course that is the end of the whole matter. The accused cannot be guilty of anything. But if you think he made that statement the only question for you is whether you think it is true. But of course, if you think that he was forced to make it, you might think that was a very good reason why it was not true. But even if you think he was forced to make it, if you think it is true that also is the end of the matter. He is guilty if that statement is true."

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P.202,1.30
P.203,1.22
and P.204,
1.13
P.205,1.25

That part of the above passage beginning with the asterisk was subsequently held on Appeal, (it is submitted correctly) in so far as the last two sentences are concerned to be contrary to law and only saved by the preceding passage. It is submitted hereafter (paragraph 27) that this conclusion was erroneous. Further it was not a proper direction to say that it was not for the Assessors to decide whether or not the confession was voluntary and the Assessors were only concerned as to whether the statement was made and as to whether it was true. The issue as to whether or not it had been made voluntarily was germane to both issues.

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P.175,11.20-
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19. The learned Trial Judge continued the summing up by dealing with the issues pertaining to pressure being applied upon the Appellant by the police to make the alleged statement. It is submitted that the learned Trial Judge misinformed

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the Assessors in telling them that it would have been improper for Inspector Salik Ram to have asked the Appellant any more questions once he had made up his mind to arrest the Appellant.

20. The learned Trial Judge then went on to deal with the evidence of the Appellant himself. This he summarized in the following passages:

10 "Now, here, the accused says he made no confession at all and that although he initialled the Inspector's Notebook, he did not know what he was initialling because the Inspector did not read the contents to him as he said he did."

P.175,1.53-
P.176,1.6

And

"... look at the accused's evidence that he was assaulted and the medical evidence that was called in support of those allegations of assault. He told you that the assault took place before the interrogation took place."

P.176,1.52-
P.177,1.1

20 It is respectfully submitted that this direction does not deal adequately with the Appellant's own evidence in that, when read in the context of the whole summing up, it gives insufficient prominence to his evidence that no confession such as that alleged was ever made. It is respectfully submitted that the direction was also inadequate for the following reasons:

- 30 (a) it takes no account of the passage in the Appellant's own evidence referred to in paragraph 10 above, where he denied that the contents of the notebook had been read over to him and said that he had been forced to sign it, and
- (b) it makes no mention of the undisputed evidence that the Appellant could write his name in full.

P.111,11.9-33

40 21. After summarizing the evidence that was given by medical witnesses (in the respectful submission of the Appellant in a manner to him which was erroneous because it was unbalanced) the learned Trial Judge asked the Assessors the following questions:

P.177,1.2-
P.178,1.1

"(1) Why, for example, if the police were going to fabricate the statement also assault him?"

P.178,11.15-
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(2) Why did he need two doctors for medical examination?

(3) Why has he taken such pains to tell you that he and his father were on good terms?

(4) Why didn't he tell Dr. Ali or the Magistrate the first time he saw them about the assault?

(5) Why did he want to tell the jailer about it?"

Pp.206-207

It is respectfully submitted that in putting these questions the learned Trial Judge fell into error and gave an unbalanced picture to the Assessors. It is convenient to notice that they were the subject of some criticism in the Judgement of the Court of Appeal hereinafter referred to.

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22. The learned Trial Judge then proceeded to direct the Assessors on the issue of manslaughter. The direction was given in the following terms:

P.179,11.40-48

"If you think that there was some intention formed to do him grievous harm and the 13 cuts certainly showed that, that is murder. If you think this was something done on the spur of the moment or in a sudden fit of anger, or may have been provoked by the old man, then you will say that he is not guilty of murder but guilty of manslaughter."

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P.207

The Appellant respectfully submits that, as held by the Court of Appeal, that the said direction is entirely inadequate. It is respectfully submitted that if, as is submitted to be correct, the Court of Appeal were right in holding that the learned Trial Judge erred in leaving the issue of manslaughter to the Assessors, the question of substituting a conviction for manslaughter if the instant Appeal should be allowed does not arise.

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P.179,11.10-35

23. After the conclusion of the summing up the Assessors all gave their opinions that the Appellant was guilty as charged. The learned Trial Judge accepted their opinions and found the Appellant guilty but certified that the instant case was a proper case for not sentencing the Appellant to death and sentenced him to imprisonment for life.

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24. By Notice of Appeal dated 20th December, 1976

		<u>Record</u>
		Pp.180-182
		Pp.183-185
10	<p>the Appellant gave Notice of Appeal against his said conviction. In the said Notice of Appeal fifteen Grounds of Appeal were set out. On 21st June, 1977 the Appellant gave notice of intention to rely on some sixteen Supplementary Grounds of Appeal. It is convenient to notice that in the original Grounds of Appeal 1-5, 7 and 10 together with Supplementary Grounds 4-7 the substantive issues raised in the instant Appeal were put before the Court of Appeal in Fiji.</p>	
20	<p>25. The Appellant's Appeal came on for hearing before the Fiji Court of Appeal comprised of Gould, V.P. Marsack and Henry JJ.A. on the 4th July, 1977 when Judgment was reserved until 22nd July, 1977. The unanimous Judgment of the Court was delivered by Gould V.P. The learned Vice President first commented on the fact that the case rested solely on the police and medical evidence, he then went on to summarize the prosecution evidence and turned to the Grounds of Appeal. The Vice President then dealt in detail with the Grounds relating to the learned Trial Judge's conduct of the <i>voire dire</i>; it is submitted that this part of the Judgment does not, in general, fall for consideration in the instant Appeal.</p>	<p>P.186,11.13-14 Pp.186-208 P.186,11.26-40 Pp.187-189 P.189,1.40 -P.199,26</p>
30	<p>26. The learned Vice President then went on to deal with the trial proper in the course of the Judgment. After observing that the evidence at the trial proper in the presence of the Assessors was largely a repetition of that given at the <i>voire dire</i> and summarizing the medical evidence, the learned Vice President went on to deal with the Judge's direction concerning the confession. The learned Vice President went on to consider certain criticisms made of the directions of the learned Trial Judge. The Vice President made some criticisms, it is respectfully submitted correctly, of the handling of the matter by the learned Trial Judge. It is now however submitted that any of these errors is sufficient, in itself, to justify the Board in allowing the instant Appeal; the Appellant relies on the cumulative effect.</p>	<p>P.199,11.32-50 P.199,1.51- P.201,1.19</p>
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50	<p>27. The learned Vice President then turned to the weight to be attached to the alleged confession. After considering, <i>inter alia</i>, <u>Chan Wai Keung v. The Queen</u> 1967, 2A.C. 160 the learned Vice President held, it is submitted incorrectly, that the general direction given by the learned Trial Judge as to the effect of consideration of</p>	<p>P.201,1.19- P.205,1.32</p>

Record

the question of voluntariness of such statement by the Assessors was, in the circumstances, adequate. The learned Vice President then considered, and rejected, criticisms based upon the lack of corroborative or confirmatory evidence of the confession. No submissions are proposed to be made before the Board in relation to this.

28. Whilst the Appellant accepts that a voluntary confession of guilt may be sufficient to warrant a conviction without corroborative evidence nevertheless it is respectfully submitted that every case has to be decided upon its own facts and the direction given by the Trial Judge judged accordingly. In the present case in view of the issues relating to the alleged confessions, the allegations against the police made by the Appellant, the medical evidence and the lack of any other evidence against the Appellant it was necessary for the learned Trial Judge to give clear, accurate and adequate direction as to the alleged confession evidence and directing the Assessors specifically to the evidence relevant to the issues which arose and also to counsel the Assessors to adopt a cautious approach to the evaluation and acceptance of the statements alleged to be confessions (see e.g. R. v. Thompson [1893] 2 Q.B. 12, R. v. Pattinson and Laws [1974] 58 Cr. App.R. 417, and Chan Wei Keung v. R. [1967] 2 A.C. 160).

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P.205,1.32-
P.207,1.34

29. The learned Vice President continued his Judgment by dealing with submissions that had been made in relation to the facts of the instant case upon the injuries suffered by the Appellant and the directions that were given pertaining thereto. In this regard the learned Vice President held, correctly, it is submitted:

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P.207,11.34-
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"We think that the summing up may be open to some criticism and could have been improved in relation to some of these matters ..."

It is however submitted that the learned Vice President fell into error in holding that the effective of these errors was nullified in the following words:

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P.207,11.37-
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"... but towards the end of the passage quoted the learned judge repeated a phrase he had used earlier - 'it is...entirely up to you whether you believe him or not' and told the assessors that they had to

make up their own minds about it. He had also at the outset given the usual direction that matters of fact were for them, that they must arrive at their own conclusions and were not obliged to accept any opinion he might express."

10 30. The learned Vice President continued his Judgment by dealing with the direction in summing up concerning manslaughter. He held, it is submitted correctly, that the same was entirely inadequate. As submitted hereinbefore the Appellant does not now wish to submit that manslaughter ought to have been left as an issue for the consideration of the Assessors on the evidence in the instant case.

P.207,1.47
-P.208,1.9

31. The learned Vice President concluded his consideration of the instant Appeal by stating

20 "We have expressed some criticism of the summing up but do not consider, in the light of the whole, that the learned judge went beyond permissible limits in permitting his opinions of some facts to be seen, and do not find any of the other criticism urged by counsel are justified to such an extent as would induce us to allow the appeal."

P.208,11.13-
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The Court therefore dismissed the Appeal.

32. On 30th March, 1979 the Appellant was granted Special Leave to Appeal to Her Majesty in Council.

Pp.209-210

30 33. The Appellant respectfully submits that he has suffered grave injustice not only through the failure of the learned Trial Judge to correctly direct the Assessors as to how to approach the evidence of his alleged confessions but also in respects in which the summing up of the learned Trial Judge was found to be inadequate by the Court of Appeal.

40 34. The Appellant respectfully submits that this Appeal should be allowed with costs, that the Judgment of the Court of Appeal should be reversed, and that the conviction and sentence imposed on the Appellant should be quashed for the following, among other

R E A S O N S

(1) BECAUSE the learned Trial Judge misdirected the Assessors and himself as to certain

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hearsay evidence which if properly proved would have established some evidence of opportunity which was otherwise lacking.

- (2) BECAUSE the learned Trial Judge gave directions to the Assessors and himself as to the evidence of the alleged confessions which were wrong in law and inadequate in the circumstances.
- (3) BECAUSE the Appellant's conviction was a substantial and grave injustice having regard to the cumulative defects in the summing up set out above.

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ANTHONY SCRIVENER

NIGEL MURRAY

No. 32 of 1979

IN THE PRIVY COUNCIL

O N A P P E A L
FROM THE FIJI COURT OF APPEAL

B E T W E E N :

RAGHO PRASAD
(S/o Ram Autar Rao) Appellant

- and -

THE QUEEN Respondent

CASE FOR THE APPELLANT

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