
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 RESPONDENT

- | | | <u>Record</u> |
|----|---|---------------------------------|
| 10 | 1. This is an appeal by special leave from a Judgment of the Fiji Court of Appeal, Criminal Jurisdiction, (Gould, V.P., Marsack and Henry JJ.A.) dated the 22nd July, 1977 which dismissed the Appellant's appeal against his conviction by the Supreme Court of Fiji, Western Division, sitting at Lautoka (Stuart, J. and five Assessors) dated the 1st December, 1976 of murdering his father and sentence to life imprisonment. | pp. 186-208

p. 179 |
| 20 | 2. The trial of the Appellant took place in the Supreme Court of Fiji, Western Division, sitting at Lautoka (Stuart, J. and five Assessors) between the 16th November and 1st December, 1976 upon the charge that on the 27th July, 1976 at Masi Masi, Tavua, in the Western Division he murdered Ram Autar Rao, his father. | pp. 3 & 179
pp. 1-2 |
| 30 | 3. Before the Assessors were sworn Counsel for the Respondent said that he was relying solely on the evidence of police witnesses concerning alleged confessions made by the Appellant. A trial within a trial then took place as to the admissibility of two statements allegedly made by the Appellant and on the 23rd November, 1976 the learned trial Judge ruled that the statements had been made voluntarily and should be admitted in evidence. | p. 3, ll. 19-22
p. 4
p. 4 |
| | 4. On the 23rd November, 1976 the trial proper began | pp. 4-5 |

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p. 5, ll. 13-17	with the Assessors being sworn. Counsel for the Respondent said that he was relying solely on a confession made by the Appellant to the police. The prosecution then called material evidence to the following effect. On the 27th July, 1976 following a report to Tavua Police Station by the Appellant's brother, Latchman Prasad, that his father had been killed, police officers went to the scene, at Masimasi arriving there at 8.50 p.m. On arrival at the compound of the deceased, consisting of a shop building, dwelling house and bure shed, with a pit toilet some 15 to 16 paces to the rear of the shop, police officers found the body of the deceased lying in front of the toilet. There were a number of injuries to the deceased's head, face and back, which appeared to have been caused by a knife. Just after midnight, that is, early on the 28th July, 1976 after making various investigations into the death of the deceased, Senior Inspector Salik Ram spoke to the Appellant who gave an account of how he had spent the evening. The Appellant said that after arriving home at about 7.30 p.m. he went to his father's bure, joining his brothers, father and a few outsiders in drinking beer. His father had left after drinking a glass of beer. Shortly afterwards a truck arrived at the shop and one of his brothers, Hari Prasad, went to check. A little later Hari Prasad raised the alarm and all in the bure ran towards the pit toilet to find his father there, dead. After the Appellant had given that account, Senior Inspector Salik Ram then carried on interviewing other people who had been present in the compound and searching some 5 or 6 houses. In the Appellant's house a knife, Exhibit C, was found.	10
p. 7, ll. 16-26		
p. 7, l. 27		
p. 9, l. 3		
p. 9, ll. 9-23		
p. 11, ll. 11-15		
p. 11, ll. 19-35		20
p. 11, l. 36 - p. 12, l. 2		
p. 12, ll. 3-7		30
p. 58, l. 23 - p. 59, l. 22	5. On the same day, the 28th July, 1976 at about 11.20 a.m. Detective Inspector Krishna Swamy and Detective Sergeant Santa Prasad took the Appellant from his home to the Vatukoula police station telling him that the police would like to interview him in respect of the alleged murder of his father. The Appellant agreed to go and accompanied the police to the Vatukoula police station. At about 11.30 a.m. in the presence of Senior Inspector Salik Ram and Detective Inspector Krishna Swamy, the interview of the Appellant began. Senior Inspector Salik Ram told the Appellant that he was given to understand that the Appellant had had a hand in the murder of his father. He then cautioned the Appellant. The interview proceeded in the form of question and answer which the Senior Inspector recorded at the same time in his notebook. The whole interview appears at p. 14, l. 28 - p. 19, l. 13 and was completed at 12.45 p.m.	
p. 59, ll. 23-26		
p. 59, ll. 37-42		40
p. 12, l. 16 - p. 13, l. 27		
p. 13, ll. 33-35		
p. 13, ll. 36-40		
p. 13, l. 41 - p. 14, l. 26		

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- At first the Appellant repeated the effect of his earlier interview. After confronting the Appellant with one Jairaj who was alleging that after the deceased had left the bure he had seen the Appellant leave the party to check his cattle, and after asking the Appellant if that was true, the interview continued as follows, with the Appellant saying :
- 10 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.
- 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."
- 20 The Appellant initialled the Senior Inspector's notebook in 11 places "R.P." and wrote the letters "R.A.G." at the end of the interview. The Senior Inspector's evidence was corroborated by Detective Inspector Krishna Swamy.
6. Both police officers were cross-examined. They both denied that the Appellant had been assaulted at any time or that the interview had been conducted so as to obtain the confession otherwise than voluntarily.
7. The prosecution called two medical witnesses. The first, Dr. Shankat Ali, said that he was called upon by the police to examine the Appellant at about 3.00 p.m. There was no evidence of any recent injuries to the Appellant's body and the Appellant said that he had no complaint of any tenderness or recent injuries when Dr. Ali asked him. Dr. Ali was cross-examined. The second, Dr. Frederick Satyanand Wilson, pathologist, gave evidence of his post-mortem examination of the deceased. He described some 13 separate wounds which were consistent with being inflicted by a sharp object like a cane knife, death being due to shock caused by multiple injuries. In cross-examination, the witness said that one or two wounds could have been inflicted while a large wound was being inflicted. He could not say what the deceased's position was when the wounds were inflicted.
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- 40
- p.14, l. 28 -
p.19, l.13
p.14, l.33 -
p.17, l. 8
p.17, l.10 -
p.18, l.5
p.18, ll.7-10
- p.18, ll.11-22
- p.18, l.29 -
p.29, l.7
- p.59, l.40 -
p.61, l.19
- pp.25-56 &
pp.61-71
p.37, ll.7-14
p.40, ll.36-40
p.71, ll.25-28
pp.72-81 &
pp.83-94
p.72, ll.24-28
p.73, ll.4-14
- pp.74-81
- p.83, ll.21-26
p.84, l.14 -
p.85, l.53
p.86, ll.8-14
- p.89, ll.39-45
- p.93, ll.40-43

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- p.94, ll.13-15
pp.94-167
pp.94-125 &
pp.147-167
p.116, ll.31-32
p.116, ll.24-27
pp.99-105
p.105, l.39-end
p.108, l.35 -
p.109, l.26
p.151, ll.5-40
pp.125-134
8. After the prosecution had closed its case, the Appellant gave evidence and called two witnesses who gave evidence on his behalf. The Appellant denied that he had murdered the deceased. He also denied that he had confessed to the murder. He gave a detailed account of his movements and whereabouts. He said that he had got blood on his clothing after he had found the deceased lying injured and when he had attended him. He alleged that Senior Inspector Salik Ram and other police officers had assaulted him. 10
- p.126, l.29 -
p.128, l.21
pp.134-147
p.137, l.30 -
p.141, l.12
9. Dr. Jaspal Singh, a General Medical Practitioner gave evidence on behalf of the Appellant that he had examined him on the 29th July, 1976 at Namosau Prison and saw a number of minor injuries upon him. Dr. Balwant Singh Rekha, a medical practitioner, gave similar evidence of a number of minor injuries which he found upon the Appellant on the 29th July, 1976 when he examined him at Namosau Prison.
- pp.169-179
10. On the 1st December, 1976, the learned trial Judge summed up the case to the Assessors in accordance with section 281 of the Criminal Procedure Code (Cap. 14 of the Laws of Fiji, 1967 Revised Edition) which provides as follows :- 20
- "281. (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." 30
- pp.169-170
11. After dealing with introductory matters concerning his directions as to the law and the burden of proof, the learned trial Judge referred to the definition of murder in section 228 (1) of the Penal Code and to the definition of malice aforethought in section 233 thereof. After posing the question whether it was the Appellant who killed his father, the learned trial Judge referred to the fact that counsel for the prosecution had said that the only evidence against the Appellant was his confession to the police during interrogation. The learned trial Judge then summarized the circumstances in which the confession was made and how the deceased came to be killed. He said that the first thing to look for in confessions was supporting 40
- p.171, ll.1-28
p.172, ll.10-13
p.172, ll.13-17
p.172, l.17 -
p.173, l.11
p.173, ll.11-17

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evidence, but that neither the knife nor the blood-stained clothes provided such evidence. There was no evidence that the knife produced in court was used on the deceased or that blood came to be on the Appellant's clothes otherwise than after the alarm had been raised by Hari Prasad when in response the Appellant had lifted the deceased's head and put a sack under it. The learned trial Judge then directed the Assessors that they had to be satisfied that the confession was true and continued :-

p.173, ll.14-22

p.174, ll.3-7

- 10 (A) "It was suggested to you that you have to be satisfied that the confession was 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 has 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
- 20 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."

p.174, ll.7-24

The learned trial Judge then considered the question whether the confession was true and further directed the Assessors :-

- 30 (B) "..... if it appears to you that the police have gone beyond their powers in collecting evidence, you have to consider what effect that has on whether or not you can believe the prosecution case. A suspect can be oppressively treated and questioned to a point where he will say anything to gain relief, or he may become quite confused. Admissions obtained in circumstances such as those are quite worthless

p.174, ll.27-36

- (C) "Should you think that unfair pressure was brought to bear upon the accused person you must consider whether his confession may or may not be true

p.175, ll.26-29

- 40 The learned trial Judge then analysed the Appellant's evidence that his confession had been fabricated and the medical evidence called in support of the Appellant's allegations of assault by the police. He said that what the

p.175, l.29 -
p.178, l.3
p.175 last line -
p.176, l.49

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- p.175, 1.49 - Assessors really had to consider was whether any of the
p.178, 1.3 alleged assaults might have led the Appellant to make an
p.178, 11.4-6 untrue confession.
- p.179 12. After considering their opinions, the five Assessors
p.179, 11.19-36 unanimously found the Appellant guilty of murder as charged.
The learned trial Judge stated that he accepted the Asses-
sor's opinions and agreed with them. After finding the
Appellant guilty as charged, the learned trial Judge certi-
fied that the case was a proper one for not sentencing the
Appellant to death and passed a sentence of imprisonment 10
for life.
- pp.180-182 13. The Appellant appealed to the Fiji Court of Appeal.
pp.183-185 The Notice and Grounds of Appeal are dated the 20th
December, 1977. Additional Grounds of Appeal are dated
the 21st June, 1977.
- p.186, 11.13-14 14. After the appeal had been heard on the 4th July, 1977
pp.186-208 by the Fiji Court of Appeal (Gould, V.P., Marsack and
Henry JJ.A.) Gould V.P. delivered the Judgment of the
Court on the 22nd July, 1977 dismissing the Appellant's
appeal. 20
- p.186, 1.17 15. After summarizing the nature of the prosecution's
p.189, 1.27 case, Gould, V.P. summarized the course of the trial
p.189, 1.39 - within a trial upon which it is apprehended that no point
p.199, 1.26 now arises as those proceedings are not reproduced in the
Record. The learned Vice-President then dealt with
certain detailed criticisms of the summing up. Gould,
V.P. then considered the complaint that the Assessors
p.199, 1.51 - may have been left in doubt on the question of the assess-
p.201, 1.18 ment of the weight to be attached to the Appellant's con-
p.201, 1.19 fession. After citing certain decided cases, the learned
p.205, 1.24 Vice-President analysed the complaint and concluded that
p.201, 11.33-36 the general direction on weight was adequate in the narrow
p.204, 11.50-51 circumstances of the case. He thought that the isolated
p.205, 11.2-4 reference to the question of voluntariness in passage (A)
p.204, 11.8-12 above would not have misled the Assessors. Gould, V.P.
p.202, 11.8-11 then dealt with the complaint that the last two sentences
p.204, 1.13 - in passage (A) above amounted to a misdirection. The
p.205, 1.24 learned Vice-President did not consider that such
p.205, 11.19-24 direction was contrary to law and that it had to be read as
qualified by what immediately preceded it. 40
- p.205, 11.25-28 16. Gould, V.P. did not consider that the absence of
p.205, 11.29-31 corroborative or confirmatory evidence of the confessions
was enough to render the conviction bad. The trial
Judge's direction on that the matter was, in the learned

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Vice-President's view, clear and accurate. The learned Vice-President then rejected the argument that the Assessors should have been directed that if they could not make up their minds how the injuries were come by they should find that the prosecution had failed to prove its case. Gould, V.P. then considered certain detailed criticisms that the summing up was adverse to the Appellant but rejected the argument that such criticisms went beyond permissible limits in the trial Judge permitting his opinions of some facts to be seen by the Assessors.

p. 205, l. 32
p. 206, l. 6

p. 206, l. 7
p. 207, l. 6
p. 208, ll. 13-21

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17. It is respectfully submitted that this appeal should be dismissed. It is respectfully submitted that there was no material misdirection of the Assessors upon the law or upon the facts by the learned trial Judge. The learned trial Judge dealt fully with the relevant evidence given at the trial and with the issues arising therefrom and sufficiently and correctly directed the jury in relation thereto.

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18. It is respectfully submitted that the reasons given by the Court of Appeal for rejecting the Appellant's Appeal are correct and should be upheld.

19. The Respondent respectfully submits that this appeal should be dismissed and the judgment and order of the Fiji Court of Appeal affirmed for the following, among other

R E A S O N S

1. BECAUSE the Assessors were correctly directed both on the facts and the law;
2. BECAUSE the Court of Appeal correctly dealt with such criticisms of the summing up as properly arose in its view;
3. BECAUSE of the other reasons in the judgment of the Court of Appeal;
4. BECAUSE the Appellant has suffered no miscarriage of justice.

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STUART N. McKINNON Q.C.

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 RESPONDENT

Lodged this 28th day of July 1980.

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