

37/80

IN THE PRIVY COUNCIL

No. 32 of 1979

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

RECORD OF PROCEEDINGS

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O N A P P E A L
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E X H I B I T S

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| 1 | Charge Statement of Ragho Prasad in Hindi and translation | 28th July 1976 | Reproduced separately |
| 1A | Specimen signature of Ragho Prasad | | " |
| 1B | Certificate of Marriage of Ragho Prasad | 31st May 1969 | " |
| 3 | Tested fingerprint of Ragho Prasad | | " |
| 4 | Signature of Ragho Prasad | | " |
| 7 | Statement of Ami Chand | 29th July 1976 | " |
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PRIVY COUNCIL BUT NOT REPRODUCED

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E X H I B I T S

| Exhibit Mark | Description of Document | Date |
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| 2 | Carbon copy of Charge Statement of Ragho Prasad | 28th July 1978 |

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

RECORD OF PROCEEDINGS

No.1

In the
Supreme Court

10

INFORMATION

No.1
Information

| | |
|---|----------------|
| THE QUEEN v. RAGHO PRASAD) S/O RAM AUTAR RAO IN THE) SUPREME COURT TO BE) HOLDEN AT LAUTOKA ON THE) 6TH DAY OF SEPTEMBER,) 1976) | No. 15 of 1976 |
|---|----------------|

2nd
September
1970

INFORMATION BY THE DIRECTOR OF PUBLIC PROSECUTIONS

20

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

In the
Supreme Court

No.1
Information
2nd September
1976
(continued)

Western Division murdered RAM AUTAR RAO
s/o NAKCHEDI.

DATED at Suva this 2nd day of September, 1976

Sd. K. Ratneser
(K.Ratneser)
Director of Public Prosecutions

No.2
Plea
6th September
1976

No. 2
PLEA

IN THE SUPREME COURT OF FIJI
(WESTERN DIVISION)

Criminal Jurisdiction
Criminal Case No.15 of 1976

LAUTOKA CRIMINAL SESSIONS - SEPTEMBER, 1976

Before the Hon. Mr. Justice Williams, Judge
Monday 6th day of September, 1976 10.00 a.m.

Between:

REGINA

vs.

RAGHO PRASAD
s/o Autar Rao

}
} MURDER: Contrary to
} S.228(1) of
} P.C.Cap.11

10

20

Accused present in custody.

Mr. D. Williams, Counsel for the Prosecution

Mr. S.R. Shankar & G.P. Shankar, Counsel
for the Accused.

Messrs. Rup Nand & E.B. Vuetibau
Court/Interpreters.

Information read and interpreted
Plea: Not Guilty

(Sgd) J.T.Williams
JUDGE

30

No. 3
PROCEEDINGS

In the
Supreme Court

No.3
Proceedings

16th November
1976

IN THE SUPREME COURT OF FIJI
(WESTERN DIVISION) AT LAUTOKA

Criminal Jurisdiction

Criminal Case No.15 of 1976

LAUTOKA CRIMINAL SESSIONS - NOVEMBER, 1976

Between:

10 REGINA)
 vs.) MURDER: Contrary to
 RAGHO PRASAD s/o) Section 228(1) of the
 Ram Autar Rao) Penal Code, Cap.11

Accused person present in custody.

Mr. Dyfed Williams, Counsel for the Prosecution.

Mr. G.P.Shankar & S.R.Shankar, Counsel for
the Accused.

Messrs. E.Vuetibau & R.Nand, Court Interpreters.

Williams:

20 I am not calling P.W.3,4,5,6,7,8,9 in
depositions. 4-9 became hostile. Case turns
solely on evidence of police witnesses. Ask
that trial within a trial be held forthwith.

G.P.Shankar:

The defence are in agreement with this
course.

Court:

Very well.

In the
Supreme Court

No.4
Ruling of
voire dire

23rd November
1976

No. 4

RULING OF VOIRE DIRE

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.

10

20

(Sgd) K.A. Stuart

JUDGE

12.35 p.m. - Adjourned to 2.15 p.m.

No.5
Proceedings
23rd November
1976

No. 5
PROCEEDINGS

2.15 p.m. on Tuesday 23rd November, 1976

Mr. Dyfed Williams, Counsel for the Prosecution
Mr. S.R. Shankar, Counsel for the Accused.

30

TRIAL PROPER

Assessors:

1. Keith Thomas Willmetts (Sworn Bible Namosau Street, Lautoka, Motor Division Manager, B.P. (SS) Co.Ltd.
2. Mohammed Jamir Khan (Sworn) Koran,

13 Ravouvou Street, Lautoka,
Asst. Town Clerk, L.T.C.

In the
Supreme Court

3. Sada Sivam f/n Nagappa Das
Indus Place, Votogo & Drasa Subdivision
Transport Operator (Sworn) Ramayan

No.5
Proceedings
23rd November
1976

4. Josua Dave (Sworn) Bible
41 Natokowaqa,
Clerk, F.S.C. Ltd.

(continued)

10 5. Isikeli Kasami (Sworn) Bible
331 Natabua Road,
Lautoka, Clerk, District Administration.

Williams:

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.

ASSESSORS EMPANELLED

No. 6

RAMA MUDALIAR

Prosecution
evidence
No.6
Rama Mudaliar
Examination

20

P.W.1. RAMA MUDALIAR s/o Ram Swamy

23rd November
1976

Police Photographer - Lautoka Police Station
Sworn on Ramayan in English

EXAMINATION-IN-CHIEF BY MR. WILLIAMS

Q: On 27th July 1976 did you go to Masimasi
in your capacity as official Police
photographer?

A: Yes sir.

Q: What time did you arrive there?

30

A: Just before 11.00 p.m.

Q: Was there a police party already there?

A: Yes sir.

Q: Did you take certain photographs?

A: Yes I did.

Q: Under whose directions?

In the
Supreme Court
Prosecution
evidence

No.6
Rama Mudaliar
Examination

23rd November
1976

(continued)

- A: Senior Insp. Salik Ram.
- Q: And what did you photograph there?
- A: I photographed an old dead Indian man and also inside a bure.
- Q: On 28th July did you go to Lautoka Hospital Mortuary and take further photographs of the same dead body?
- A: Yes sir.
- Q: Were some taken before and other during the post-mortem? 10
- A: Yes sir.
- Q: On 29th July did you go back to the same scene at Masimasi?
- A: Yes I did.
- Q: What photographs did you take on that occasion?
- A: I took a general view of the area where the dead body was found.
- Q: Did you develop the photographs that you took? 20
- A: Yes I developed the film and made enlargements from the untouched negatives.
- Q: Did you make an album of these photographs?
- A: Yes sir.
- Q: Is that the album you prepared?
- A: Yes sir.
- Q: How many photographs are there altogether?
- A: 18 photographs altogether.
- Ct: Exhibit A1-18. 30
- Q: Would you indicate to his Lordship and gentlemen Assessors which photographs were taken on which date starting from the 27th July.
- A: The first 4 photographs (A1-4) were taken on the 27th July.
A5-11 were taken on the 28th July.
A12-18 were taken on the 29th July.
- Q: On photographs A12-18 can you indicate which ones were taken before the post-mortem commenced and which ones during the post-mortem? 40

A: Photographs A5-11 were taken before the post-mortem commenced. Photograph A10 has highlighted the injury my lord.
Q: You prepared some other identical albums did you not?
A: Yes I did.
Q: And these may be available tomorrow?
A: Yes sir.
(Witness stood down until Wednesday 24th November, 1976 for cross-examination)

In the
Supreme Court
Prosecution
evidence
No.6
Ram Mudaliar
Examination
23rd November
1976
(continued)

10

No. 7

SALIK RAM

P.W.2 SALIK RAM f/n Ram Garib
Sen. Inspector - Ba Police Station

EXAMINATION-IN-CHIEF BY MR. WILLIAMS

Prosecution
evidence
No.7
Salik Ram
Examination
23rd November
1976

20

Q: On 27th July, 1976 at Tavua Police Station did you receive a death report?
A: Yes sir.
Q: Did Latchman Prasad report to you that his father had been killed?
A: Yes sir.
Q: As a result did you proceed to Masimasi with a police party?
A: I did sir.
Q: What time did you arrive there?
A: 8.50 p.m. sir.
Q: Did you go to the compound of the former Ramautar Rao?
A: I did sir.
Q: Was there a crowd of people there?
A: There was a crowd of people at the back of the shop.
Q: What does the compound consist of?
A: The shop building, dwelling house corrugated iron, and the bure shed.
Q: Both the shop and the dwelling houses are made of corrugated iron?
A: They are in one. There are some other buildings in the compound. There is one

30

In the
Supreme Court

Prosecution
evidence

No.7

Salik Ram
Examination

23rd November
1976

(continued)

corrugated iron building next to the shop, a bure almost in the centre of the compound, pit toilet about 15 to 16 paces away from the shop at the rear and next to the pit toilet is the compound of one Sohan Lal sir.

- Q: Is Sohan Lal related to the deceased's family in any way?
- A: Yes sir Sohan Lal is the son of deceased's brother. 10
- Q: Who is the owner and who kept the shop on the compound.
- A: The deceased was the owner of the shop and he was running the shop.
- Q: How many children or other relatives lived in the deceased's compound or in the vicinity?
- A: Deceased's 4 sons lived in this compound but a bit far away about 3 chains from the shop. 20
- Q: Is the accused related to the deceased?
- A: Yes he is the son of the deceased.
- Q: Where did he live?
- A: He lived about 3 chains away with his brother in the one house.
- Q: Who is the name of his brother?
- A: Latchman Prasad.
- Q: They live about 3 chains from the house?
- A: No from the shop.
- Q: How did the sons gain their livelihood? 30
- A: They work in the father's cane and during cane farm harvesting season they used to harvest cane.
- Q: When you went there on the night of 27th were you taken to the toilet?
- A: Yes sir.
- Q: Just look at photograph 16. Was it set up anything like that on the night in question?
- A: This is the way the toilet was when I visited it. 40
- Q: That is the sack acting as the door?
- A: Yes sir.
- Q: What was lying in the vicinity of the toilet?

10 A: Right in front of the toilet deceased was lying on his chest slightly to his right side. Deceased's legs were pointing slightly in the direction of the rear of the shop and his head was pointing in the direction of the river side sir. Deceased was clothed in a white sulu and white check shirt. I noticed several injuries on his head and face and on the back. There was a shirt placed on his face and a folded sack was placed under deceased's head. I also found a 2 cell torch light in the toilet which had a knife mark on it.

Shankar: That is an opinion.

Q: That was your opinion?

A: Yes sir it was a sharp mark.

Q: Have you investigated many murders?

A: Yes sir.

20 Q: The injuries that you observed were they caused by a blunt or sharp object?

A: In my opinion they were caused by a sharp object such as a knife.

Ct: Did you recognise the deceased?

A: I could not recognise him at first. There was an empty gallon tin lying by the deceased's hand.

Q: How many paces away from the back of the shop was the body lying?

30 A: About 15 to 16 paces. I measured afterwards sir.

Q: There was the toilet, the shop and Masimasi road?

A: Yes sir.

Q: How far away was Masimasi Road?

A: A chain away from the toilet.

Q: Did you search the area that night?

A: I did sir.

40 Q: Did you find anything that would have assisted you?

A: I didn't find anything else sir.

Q: Did the police photographer Rama Mudaliar arrive that night?

A: Yes sir.

In the
Supreme Court

Prosecution
evidence

No.7
Salik Ram
Examination
23rd November
1976

(continued)

- Q: Did he take certain photographs under your direction?
- A: He did sir.
- Q: I take it that the body was not moved before the photographs were taken?
- A: It was not.
- Q: So photographs A1, A2 and A3 show the body exactly as it was found by you?
- A: Yes sir.
- Q: And A3 refers to the empty can that you found? 10
- A: Yes sir.
- Q: Look at photograph A4. Was that taken on the same night?
- A: Yes sir this was inside the bure.
- Q: And whose bure was that?
- A: It belongs to the deceased my Lord.
- Q: And was there evidence of drinking?
- A: Yes sir there were beer bottles and tumblers filled with beer. 20
- Ct: How many bottles?
- A: One dozen.
- Q: And how many tumblers filled with beer?
- A: There were 2 filled with beer and some empty ones
- Ct: How many empty tumblers?
- A: About four, sir.
- Ct: And the carton of beer was partly used?
- A: Yes, my lord.
- Ct: And how many tumblers were used? 30
- A: I cannot recall now, sir.
- Q: Did you take possession of the torch that was found?
- A: Yes, sir.
- Q: Is that the torch? (Witness handed torch)
- A: Yes, sir.
- Q: Where did you find it?
- A: It was found near the toilet. It was picked up by someone and handed over to me.
- Q: Do you recall who found it?

A: The deceased's son Hari Prasad.
Williams: I tender the torch my lord - Ex.B.
Ct: Was it fingerprinted?
A: Yes, it was.
Q: And on that night, did you make arrangements for the body to be removed to the Lautoka hospital mortuary?
A: Yes, sir.
Q: Did you go to bed that night?
10 A: I did not.
Q: How did you spend the night?
A: Investigating into this death.
Q: At 10 past midnight i.e. early 28th July 1976, did you speak to the accused?
A: I did, sir.
Q: This was at the compound?
A: Yes, sir.
Q: What account did he give of his evening?
20 A: He told me that after harvesting cane he came home. He went for his bath in the river. On his return home at about 7.30 p.m. he went to the bure of his father and joined his brothers, father and a few outsiders in drinking beer. The accused told me that his father left the bure after drinking a glass of beer. Shortly afterwards a truck came to the shop. Accused's brother Hari Prasad went to check. Shortly afterwards his
30 brother Hari Prasad raised alarm and all who were in the bure ran towards the toilet. The accused said that he found his father dead and he said that he had no knowledge about the death of his father.
Q: Then you carried on interviewing other people who have been present in the compound that evening?
A: Yes, sir.
40 Q: Towards day break did you search the house of the accused?
A: Yes, sir.
Q: Were you searching all the houses at that stage.
A: Yes, we were searching all the houses.

In the
Supreme Court
Prosecution
evidence
No.7
Salik Ram
Examination
23rd November
1976
(continued)

In the
Supreme Court

Prosecution
evidence

No.7
Salik Ram
Examination
23rd November
1976

(continued)

- Ct: How many houses did you search Inspector?
- A: About 5 or 6 houses.
- Q: And in the house of the accused, did you find that knife?
- A: The accused handed this knife to me. He was using this knife at that particular time. Knife tendered and marked as Ex.C.
- Q: Where were you stationed at the time?
- A: I was then at Tavua.
- Q: What was the nearest police post to Masimasi? 10
- A: Vatukoula Police Post.
- Q: And did you make that your headquarters for the purpose of this investigation?
- A: Yes, sir.
- Q: Later that same morning at 11.30 a.m. were you at the recreation bure attached to the Vatukoula Police Post?
- A: Yes, sir.
- Q: That is, it is in the grounds of the post? 20
- A: Yes, sir.
- Q: Who was with you at the bure?
- A: Inspector Krishna Swamy was with me.
- Q: Where was the accused?
- A: He was brought in the bure by Insp. Krishna.
- Q: Was he the first person you interviewed at the bure that day or was he one of the many? 30
- A: I had interviewed four others before the accused.
- Q: Who were the others?
- A: Basant Kumar, Jairaj, Ami Chand and Chandrika Prasad.
- Q: Were these people in the deceased's compound on the previous night?
- A: Yes, sir.
- Q: How was the accused brought to the police post? On whose instructions and under what circumstances was he questioned? 40
- A: He was brought on suspicion. He was picked by Insp. Krishna Swamy by the

police landrover and brought to the police post.

In the
Supreme Court

Q: You mean he was brought as a possible suspect for murder?

Prosecution
evidence

A: Yes.

No.7

Q: Under what circumstances were the others you have named brought to the station?

Salik Ram
Examination

A: They were brought for questioning since they were present on the night in question.

23rd November
1976

10

(continued)

Q: Were they there as suspect, witnesses or both?

A: They were not suspects.

Q: The interview itself took place in the bure?

A: Yes, sir.

Q: In Hindustani?

A: Yes, sir.

Q: Was this in question and answer form?

20

A: Yes, sir.

Q: Do you recall everything said in your notebook?

A: Yes, sir.

Q: How many members of the police were present throughout the interview?

A: Myself, Inspector Krishna Swamy and sometimes DSP. Muniappa Swamy.

Q: Were you seated?

A: Yes, all three of us.

30

Q: And the recreation bure - does it have open sides or closed?

A: It is usually open on the sides.

Q: How did you commence the interview?

A: I informed the accused in Hindustani and I was given to understand that he had had a hand in the murder of his father. I cautioned him under Judges Rule II, that he was not obliged to say anything unless he wished to do so and whatever he said was going to be taken in writing and given as evidence.

40

Q: Did you then proceed to the question and answer?

A: Yes, sir.

In the
Supreme Court

Prosecution
evidence

No.7
Salik Ram
Examination

23rd November
1976

(continued)

- Q: Did you put any pressure on the accused?
A: No, sir. 10
- 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?
A: No, sir. 10
- Q: You said that you recorded this interview? simultaneously. Can you refresh your memory without looking at your notebook?
A: I wish to look at my notebook.
(Leave granted)
- Q: Is that the notebook that you used to record the interview?
A: Yes, sir.
- Q: At which page does it begin?
A: Page 36. 20
- Q: And continuing on to what page?
A: Page 47.
- Q: And for how long did the interview last?
A: It started from 11.30 a.m. and ended at 12.45 p.m..
- Q: What was the first question you asked the accused?
A: "q. Do you understand what I told you?"
- Q: That was in reference to the caution that you told him? 30
A: Yes, sir.
- Q: What was his reply?
A: "a. I understand.
q. What were you doing in the day time yesterday?
a. I was harvesting cane.
q. Whose cane were you harvesting?
a. My elder brother's, Hirday Prasad.
q. Who all were harvesting cane with you? 40
a. Yadram, Ram Harakh, Amad Prasad and myself.

- q. Where did you go after harvesting cane? In the
Supreme Court
 a. After loading the truck, I returned Prosecution
 home at 3 o'clock. evidence
 q. What did you do after that? No.7
 a. I then went to load the truck. Salik Ram
 q. What time did you go back after Examination
 loading the truck? 23rd November
 a. About 4 o'clock. 1976
 q. What did you do after that? (continued)
- 10 a. I went to the river for a bath.
 q. Did anyone else go with you?
 a. No one.
 q. When did you return from the river?
 (sic) a. 5 o'clock, I brought the cattle and
 tethered them and I went to brother
 Sohan Lal's house.
 q. Where did you tether the cattle?
 a. Just below my house.
 q. Why did you go to Sohan Lal's house?
 20 a. To deliver a marriage invitation
 card.
 q. Whose wedding?
 a. My brother in law, Ram Sundar's
 marriage.
 q. What did you do after that?
 a. I was sitting there and drinking
 yaqona.
 q. Who were you drinking with?
 a. With Sohan Lal.
 30 q. Until what time did you finish
 drinking yaqona there?
 a. It was sometimes after 7 o'clock.
 I did not have a watch at the time.
 q. Where did you go then?
 a. I went to the party in our shed.
 q. Whose party was it?
 a. My brother Hirday Prasad gave the party.
 q. Who all were present at the party?
 40 a. Jairaj, Amichand, Surend Prasad, Hari
 Prasad, Chandrika, Basant Kumar, Latchman
 Prasad, Hirday Prasad, Ram Autar and
 myself.

In the
Supreme Court

Prosecution
evidence

No.7

Salik Ram
Examination

23rd November
1976

(continued)

- q. Did anyone else come any later?
a. Nobody else came.
- q. What time did you arrive at the party?
a. It was sometime after 7.
- q. What was happening when you arrived there?
a. They were drinking yaqona.
- q. Did you drink yaqona?
a. I had two or three bowls.
- q. What happened then? 10
a. We drank beer after drinking yaqona.
- q. How much beer did you drink?
a. Five to six glasses.
- q. Were you drunk?
a. No.
- q. When you were drinking beer, did anyone go away from there?
a. No one.
- q. Is it true that only your father left? Where did your father go? 20
a. He said he wanted to sleep.
- q. Did anyone else from there go anywhere?
a. No one else.
- q. Did you go anywhere?
a. No.
- q. Is it not true that you went to check your cattle when the dogs were barking?
a. No, I did not go.
- q. If anyone says in front of you that you did go, what would you say to that? 30
a. I do not know.
- q. Was there any jealousy between you and your father?
a. There was none.
- q. Was there any trouble about land between you and your people?
a. No, sir.
- q. Did you know Jairaj, Basant, Chandrika and Ami Chand well?
a. Yes, very well. 40

- q. Did you have any enmity with anyone of them?
a. None.
q. If they say that you went out for some-time, then what would you say?
a. Who said this?
q. Jairaj and others?
a. Very well, bring them in front of me."

- 10 Q: Did you decide at this stage to have the confrontation?
A: Yes, sir.
Q: At this stage had you already interviewed Jairaj?
A: Yes, sir.
Q: Where was he while you were interviewing the accused?
A: He was at the police post.
Q: How far away from the bure would that be?
A: They are both in the same compound.
20 Q: Was the accused able to see if anyone was at the police post?
A: He would not have been able to see anyone.
Q: Did Jairaj hear what was going on between you and the accused?
A: No, sir.
Q: Was Jairaj related to the accused in any way?
A: No relationship - just neighbours.
Q: Who brought Jairaj?
30 A: Inspector Isoa brought him.
Q: Did he collect him on your instructions?
A: Yes, sir.
Q: Where was Isoa when you gave instructions?
A: He was in the bure near the quarters.
Q: When Jairaj was called in, did you say anything to him?
A: Yes, sir.
Q: What did you say?
40 A: I did not record that. I asked him "What do you have to say about the accused going out and returning?"

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Supreme Court

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evidence

No.7

Salik Ram
Examination

23rd November
1976

(continued)

- Q: And what did he have to say?
- A: He said "A. When grandfather went to sleep, after sometime when the dogs started barking, you (accused) went and came back after 10-15 minutes."
I then sent him away.
- "q. Did you hear what Jai said in front of you now?
- a. Yes.
- q. Whatever he said is true? 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? 20
- a. I kept the knife at home after washing it and the police took it from me."
- Q: And did that bring to an end of the interview?
- A: Yes, sir.
- Q: After recording the last sentence of the accused's statement, what steps did you take?
- A: I read back the portion from where the confrontation took place in Hindi to the accused. I then invited him to sign it. He then put his signature and he said he could not sign and he said he could only put R.P. I then asked him to initial my notebook. 30
- Q: How many places did he initial?
- A: At 11 places he initialled R.P.
- Q: For what purpose?
- A: He initialled in all the pages and at places where I had any crossing out. 40
- Q: In what place is written something other than R.P.?
- A: It is page 47. He had got RAG. Towards the end of the interview.

Q: Who wrote that?

A: The accused, sir.

Q: Can you recall how come he came to write that?

A: He was writing on my book and he said he could not write his full signature and said that he could only write that much.

Q: After the accused had put his mark in the various places, did anyone else sign the notebook?

10 A: Yes, sir. I did and then Inspector Krishna signed. Notebook marked and tendered as Exhibit D.

Q: I think that took you up to 12.45 p.m.?

A: Yes, sir.

Q: Did you immediately after that, arrest the accused for murdering Ram Autar Rao?

A: Yes, sir.

20 Q: Did you again warn him that he need not say anything?

A: Yes, sir.

Q: And what did he say at that stage?

A: He made no reply.

Q: Did you hand the accused over to Sgt. Subramani for formal charging with this offence?

A: Yes, sir.

Q: As far as you are concerned, how did the accused make that statement?

30 A: He made quite voluntarily.

Q: From what you observed, what was his general behaviour like?

A: He was a bit quiet and looked sort of worried.

Q: And after his formal arrest and charging, was he later on that day, taken before the Magistrate's Court?

A: Yes, sir.

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(continued)

4.00 p.m. - Adjourned to 9.30 tomorrow morning.

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Supreme Court

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Salik Ram
Examination

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1976

(continued)

9.30 a.m. on Wednesday 24th November, 1976

Mr. Dyfed Williams, Counsel for the Prosecution
Mr. S.R. Shankar, Counsel for the Accused.

Williams:

Ask that evidence of Rama Mudaliar be
completed, so that photographs may be in
Court while Insp. Salikram cross-examined.

Shankar:

I agree to this course.

Court:

Very well.

10

No.8
Rama Mudaliar
Examination
(Recalled)

No. 8

RAMA MUDALIAR (Recalled)

P.W.1 - RAMA MUDALIAR
Resworn on Ramayan in English

EXAMINATION-IN-CHIEF BY MR. WILLIAMS

Q: Did you notice that the photographs
in 4 albums are identical to the
ones you produced in evidence yesterday?

A: I do sir.

20

Cross-
Examination

CROSS-EXAMINATION BY MR. SHANKAR:

Q: You said you arrived at 11.00 p.m.?

A: Yes sir.

Q: And did you immediately begin to take
photographs?

A: I began to take photographs 5 or 10
minutes after I arrived.

Q: When did you take the first photograph?

A: On the 27th July.

Q: Within a short time after arrival?

A: Yes sir.

30

Q: And you took no other photographs?

A: I took several other photographs but
they are not included in the album.

Q: By what time did you finish taking these photographs?

A: I must have taken about half an hour to complete these photographs.

Q: And you were taking them under the direction of Senior Insp. Salik Ram?

A: That is correct.

Q: He was directing you?

A: He directed me to take photographs.

10 Q: And you came to Lautoka to take photographs of the dead body at the Mortuary?

A: That is correct.

Q: And that is from 5 to 11 i.e. 10.55 p.m.?

A: May I have a look at the photographs?

Q: Did you take photographs at the Lautoka Mortuary?

A: Yes sir.

Q: What time?

20 A: In the morning about 10 o'clock.

Q: Under whose directions did you take these photographs?

A: Senior Insp. Salik Ram.

Q: On what date?

A: 28th.

Q: Was there any other policeman present?

A: I cannot remember.

Q: Sgt. Subramani?

A: Yes sir.

30 Q: You don't allow many people to be present during the post-mortem?

A: No sir.

Q: So there were two police officers and the doctor?

A: Yes sir.

Q: Was it Doctor Wilson?

A: Dr. Wilson.

Q: Did you go back to Tavua after this?

A: On the 29th.

40 Q: Did you take the other photographs on the 29th?

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Supreme Court

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evidence

No.8
Rama Mudaliar
Cross-
Examination
(Recalled)

23rd November
1976

(continued)

In the
Supreme Court
Prosecution
evidence

No.8
Rama Mudaliar
Cross-
Examination
(recalled)

23rd November
1976

(continued)

- A: Yes sir.
- Q: The track that is shown in photograph 12 is in the compound of the deceased and his sons isn't it?
- A: The track leads to this particular compound.
- Q: Can you say whether it is in their compound?
- A: It leads into this particular compound.
- Q: Were you there in the day time?
- A: Yes on the 29th July. 10
- Q: Look at photograph No.18 and you see where the two Fijian ladies are with the child walking behind in an umbrella, is that a road?
- A: That is the Feeder Road.
- Q: That road runs adjacent to the compound?
- A: Yes sir.
- Q: From where these ladies are the road leads to the compound, the shop and the houses of other members of the deceased's family? 20
- A: There is a track.
- Q: And it comes out again into a track further down which is not shown in the photograph?
- A: Yes sir.
- Q: It goes from the left across to the house on the right hand side?
- A: Yes sir.
- Q: And the pit toilet falls in the middle of this road at the side? 30
- A: Very close to the track.
- Ct: Is the pit toilet shown on photograph A-17?
- A: Yes my lord.
- Q: Whereabouts?
- A: It is about here (points to the centre of the photo) It is clearly shown on photograph 18.
- Q: It appears at the corner of the little corrugated iron house? 40
- A: Yes sir.
- Q: Is that on photograph 18?

A: Yes sir.
Q: In A-17 the toilet appears to be part of the corrugated iron house.
A: It is between the bure and the shop.
Q: In A-18 it does not appear to be part of the flat topped house.
A: Yes sir.
Q: The same toilet is shown a little distance away from the flat roof corrugated iron house in photograph 18?
A: That is correct.
Q: And this post-mortem was carried out in Lautoka?
A: Yes sir.
Shankar: I have no further questions.
Williams: No re-examination
Witness released.

In the
Supreme Court
Prosecution
evidence

No.8
Rama Mudaliar
(Recalled)
Cross-
Examination

23rd November
1976

(continued)

10

No. 9

SALIK RAM (Recalled)

Prosecution
evidence

No.9
Salik Ram
(Recalled)
Examination

23rd November
1976

(continued)

20

P.W.2 - D/INSP. SALIK RAM s/o Ram Garib
Resworn on Ramayan in English

EXAMINATION-IN-CHIEF BY MR. WILLIAMS

Q: Will you explain to his Lordship and gentlemen assessors the contents of photographs 12 to 18?
A: In photograph 12 the big building belongs to Latchman Prasad.
Ct: Is that the building in the centre?
A: Yes sir. In the same building the accused also lives in one of the rooms. The corrugated iron building behind the building in the centre belongs to Hirday Prasad.
Q: Can you say the approximate distance between these two buildings?
A: About half a chain. The centre is a bure and the top is where the drinking party was held. Behind the bure is the shop of the deceased. In the

30

In the
Supreme Court

Prosecution
evidence

No.9
Salik Ram
(Recalled)
Examination
23rd November
1976
(continued)

background the toilet is seen slightly
across the pine tree sir.

Q: By the shop?

A: Yes sir.

Q: Is Latchman Prasad related to the accused?

A: He is the elder brother of the accused.
Photograph 13 shows the lower portion
of the bure belonging to the deceased
where the party was held. Right in
front of the shop of the deceased and
on the left side of the shop is the
dwelling house of Hari Prasad the
accused's brother.

10

Ct: Can the toilet be seen in that photo-
graph?

A: Yes the top part is right in the rear
portion of the shop building. Photograph
14 shows the shop building of the
deceased with the toilet in the
background.

20

10.00 a.m. - Miss Kunaqoro takes over.

24th November
1976

Q: Referring to the book of photographs,
the toilet is in the centre of the
gap between the two buildings?

A: Photograph 15 shows the toilet from
the front and shop building of the
deceased. Photograph 16 shows the
side of the toilet on the right hand
portion of the house of Hari Prasad.
Further ahead, the house of Hirday
Prasad and in the background the
house of Latchman Prasad just passing
Hirday Prasad.

30

Photograph 17 - in the centre left is
the shop building of the deceased.
The toilet appears white on the
photograph just behind the shop building.
There is another toilet belonging to
Amichand which is black in colour.

Ct: Where?

40

A: Just behind the first toilet.

Ct: Is this in the same compound or an
adjoining compound?

A: Adjoining compound. On the right side
of the second toilet is the house of
Hari Prasad. Next is the bure to the

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evidence

No.9

Salik Ram
(Recalled)
Examination

24th November
1976

(continued)

10 right belonging to Amichand and the
next building also belongs to Amichand.
Photograph 18 - to the left is the shop
of the deceased. Behind the shop in
white is the toilet of the deceased. There
is another toilet behind the first one
which belongs to Amichand: on the right
is the dwelling house of Hari Prasad.
The next building is the bure belonging
to Amichand. The next building is
Amichand's house. The next in the centre
belongs to the mother of Amichand and the
last building belongs to Sohan Lal; the
Accused's cousin. That is all.

Cross-Examination:

Cross-
Examination

Q: In the first two photographs you will
see an embankment on the left hand side
of the pit toilet?

A: Yes, it is higher ground.

20 Q: And just next to that is the road that
leads to the feeder road leading to
Sohan Lal's house?

A: It is not right beside the toilet.

Q: Is it just beyond the high ground?

A: It is not on the high ground. It is
about 15 paces from there - it is the
vehicle road.

Q: Isn't there a track there?

A: Yes, sir.

30 Q: Close to the toilet?

A: Yes, sir.

Q: And it leads to Sohan Lal's house?

A: Yes, sir.

Q: And the toilet itself is surrounded by
bush?

A: Only small bushes.

Q: Look at photographs 1 and 2 and look at
the body of the deceased. That is
what you mean by 'small bush'?

40 A: Yes, sir.

Q: Are these similar bushes at the back
of the toilet?

A: Yes, sir.

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Supreme Court

Prosecution
evidence

No.9

Salik Ram
(Recalled)

Cross-
Examination

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1976

(continued)

Q: Where the deceased's lower leg is, that is a portion of the path that leads from the toilet?

A: That is a portion of the path that leads to the toilet.

Q: From the doorway of the toilet, you would be facing away from the rest of the houses belonging to the deceased's family?

A: Yes, sir.

10

Q: And you would be facing Sohan Lal's house?

A: Almost in that direction, sir.

Q: Did you notice at the back of the toilet, whether the grass was disturbed?

A: There was no disturbance at the back.

Q: You were not shown the bushes at the back of the toilet?

A: No, I was not.

Q: Did you see it?

20

A: I checked around the place, but I did not see any disturbance at the back.

Q: The back of the toilet would be just alongside the track - the one that I talked about?

A: At the back of the toilet is a track that leads to Sohan Lal's house.

Q: From the compound of the deceased, the track leads to Sohan Lal's house as well or joins the track behind the toilet?

30

A: It adjoins the compound.

Q: And the same path continues and meets the track ...

Ct: There is a track from the deceased's shop to his toilet through the compound and from the toilet there is another track which goes through his compound and along to Sohan Lal's house?

A: Yes, sir.

40

Q: If you look at photograph 15, witness, in the foreground is the shop building?

A: Yes, sir.

Q: And on the left is the toilet?

A: That is right, sir.

Q: On the extreme left in the corner is the embankment next to the toilet?

A: Yes, sir.

Q: And there is a path beside the embankment leading to the feeder road which is further up?

A: Yes sir. It meets the Masimasi feeder road.

10 Q: And from the same place the track continues to Sohan Lal's house?

A: It is further up.

Q: In photograph 15, there is a dark track visible near the embankment on the left - is that the same track?

A: That is correct, sir.

Q: In photograph 15, to go to the toilet from the shop building, where the deceased stayed, he would have to come out where the big tree is?

20 A: Yes, sir.

Q: And make a more or less semi circular track to the toilet?

A: It is that way and the track follows to the back of the shop building.

Q: Look at photograph 14. The shop building has only two doors?

A: That is correct sir. One in the front and other on the side.

30 Q: And the living section where the deceased stays is where the door of the centre is?

A: That is correct, sir.

Q: If you look at photograph 12 witness, is this not the house on the left hand side where the accused stays?

A: The accused lives in a room of Latchman Prasad's house.

Q: And in the foreground where the big tree is, there is a little shed there?

40 A: Yes, sir.

Q: It is normally used by people?

A: It belongs to Latchman Prasad and his family.

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 (continued)

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No.9
Salik Ram
(Recalled)
Cross-
Examination

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1976

(continued)

- Q: The track that is shown in the fore-ground - a motorable road, this is the track that goes out of Masimasi feeder road?
- A: It does come from Masimasi feeder road and goes through the compound of Hari Prasad.
- Q: Alongside this track is the Masimasi feeder road on the right hand side?
- To go from the accused's house to the shed, one has to go through on this track? 10
- A: Yes, sir.
- Q: And before you reach this bure, is there a bridge there?
- A: There is a drain with some drums and wood over the drain.
- Q: And one vehicle can go across it at a time?
- A: Yes, sir. 20
- Q: And that is the drain that takes the water towards the lower side of the river?
- A: Yes, sir.
- Q: And it is very close to this track that goes to the shop and then to the feeder road?
- A: Yes, just on the side.
- Q: In the bure shed, there is a tin wall just about 2' in height? and it does not cover the whole wall? 30
- A: It is only on one side, and it is as shown in photograph 13, the shed is half covered in smashed drums.
- Q: When one sits in that shed, he can have a view of the shop as well as the houses in the compound?
- A: Yes, sir.
- Q: There is a well below the house of the accused and that of Hirday Prasad? 40
- A: Yes, it is right below the house of Hirday Prasad.
- Q: Would it be a chain away?
- A: Yes, sir.

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Salik Ram
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(continued)

Q: Did you know that well supplies water to the whole family or not?

A: I had only seen one well there.

Q: There is no pipe there?

A: No, sir.

Q: Do they have a bathroom?

A: Yes, sir.

Q: Whose?

10 A: There was only one bathroom belonging to Latchman Prasad and there was no other.

Q: If you look at photograph 12, is there any other track that can take one to the toilet from the accused's house apart from the one shown in the photograph?

A: There is no definite track from where the accused lives, sir.

Q: No other track?

A: No, sir.

20 Q: Did you see some cattle tethered there that night?

A: Yes, sir I did.

Q: All the cattle tethered there belonged to the accused?

A: Yes, sir.

Q: And that is the only place where cattle are tethered?

A: That is so, sir.

Q: How much would be the distance from accused's house to the toilet?

30 A: About 4 chains.

Q: Have you measure it?

A: No, sir.

Q: Can you tell the court why not?

A: It had been measured by the surveyor.

Q: He would probably have needed a ruler so you must have assisted the surveyor in drawing the plan?

A: I did not. I only showed him the area and he did the survey on his own.

40 Q: What would the distance be from the bure shed to the toilet?

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1976

(continued)

- A: It would be about three chains.
- Q: And the distance from the bure shed to the accused's house is greater than that?
- A: It is almost the same
- Q: Would I be correct if I say close to 4 chains?
- A: It can be.
- Q: Would you then agree with me that the total distance from the accused's house to the toilet is $6\frac{1}{2}$ ch. and not less? 10
- A: It can be.
- Q: That is, if it is taken in a straight line, but if taken by a track, it can be longer than $6\frac{1}{2}$ chains?
- A: It can be slightly longer.
- Q: Is there any track from the compound of the deceased that goes to the river or would you agree with me that the only track that leads to the river is close to the toilet? 20
- A: Yes, sir.
- Q: And which continues from the feeder road and goes to the river?
- A: Yes, sir.
- Q: If a person were sitting in the accused's house, he would never see anyone going to the toilet?
- A: They would not, because the accused's house faces a different direction.
- Q: Similarly, people from Hirday Prasad's house, would not be able to observe people going to the toilet? 30
- A: That is correct.
- Q: Because the shed and the shop would cause obstruction?
- A: No, there is a clear view of the bure.
- Q: You see photograph 12, witness. Hirday Prasad's house is where this track runs in the front of the house, is that right? 40
- A: That is correct.
- Q: And alongside it is the bure?
- A: That is correct.

Q: And then the shop?
A: Yes, sir.
Q: If one sits in the shed, would you have a clear view of the toilet?
A: Yes, one can have a clear view of the toilet.
Q: That is, in the day time?
A: Yes, sir.
Q: And in the night time?
10 A: It would be difficult.
Q: If you look at photograph 12: from the shed towards the shop, the ground is elevated?
A: Yes, slightly elevated just near the bure.
Q: And there is little bush?
A: There is no bush there but only grass.
Q: But one would not be able to see the door of the toilet?
20 A: No, sir.
Q: People sitting in the bure would clearly see if anyone is walking past whichever way either towards the shop or towards the accused's house?
A: Yes, sir.
Q: How far is the compound of the deceased from the river?
A: I have not checked but it would be about 30 chains.
30 Q: Apart from that there is no other creek or river nearby?
A: That is the only one sir.
Q: When did you decide that the interior of the bure should be photographed?
A: It was on the night of the 27th July.
Q: Was it before midnight or after midnight?
A: It was before midnight sir.
Q: Had you interviewed anybody at that stage?
A: I didn't sir.
40 Q: What was the purpose of taking photographs of the interior of this bure?

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(continued)

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(continued)

A: It was found that the drinking party was going in there plus tumblers of beer and beer bottles left.

Q: Did you consider it to be unusual or did you suspect something?

A: It was found by the police party that there was a drinking party there and people were gathered in the bure that is why I instructed that photographs be taken.

10

Q: Did you suspect that somebody sitting in that shed was involved?

A: No sir.

Q: But immediately after taking photographs you began to find out who left the shed and why and for what period?

A: I started finding out who were present in the compound that night.

Q: I have asked you witness if you were trying to find out who, if any, had left the shed during that drinking session?

20

A: I started to find out.

Q: Was that the sole purpose of your investigation that night?

A: We were trying to find out who came there and any other information about this death.

Q: And did you not tell all the people there that they were not to leave the compound until you had seen them?

30

A: I told them that they are to remain there until they were seen by the police and not by myself only.

Q: Now what time actually did you see the accused in the compound?

A: I spoke to the accused at 1210 hours.

Q: How long did you speak to him?

A: About 10 minutes.

Q: Now did you make a note of what the accused said to you?

40

A: Yes sir.

Q: Where did you make notes?

A: I made notes at the time on a writing pad.

| | | |
|----|--|--------------------------------|
| | Q: Why did you make notes on a writing pad? | In the <u>Supreme Court</u> |
| | A: My notebook was left in the station when I left for Masimasi. | Prosecution evidence |
| | Q: Did you leave the compound at any time? | No.9 |
| | A: Yes sir I left the compound about midnight. | Salik Ram (Recalled) |
| | Q: How long were you away from the compound? | Cross- Examination |
| 10 | A: About half an hour sir. | 24th November 1976 |
| | Q: When did you get back to the compound? | (continued) |
| | A: It was soon after midnight. | |
| | Q: And the interview that you had with the accused was written on this rough paper. What sort of pad did you have? | |
| | A: It was a writing pad. | |
| | Q: Ordinary writing pad like this? (Shows writing pad to witness) | |
| | A: Something like that. | |
| 20 | Q: Was it loose foolscap sheets? | |
| | A: Writing pad. | |
| | Q: Did you take that from the Police Station? | |
| | A: It was in my file. | |
| | Q: Did you have your notebook with you when you interviewed the accused that night? | |
| | A: It was brought and I had it at that time. | |
| 30 | Q: What have you done with the notes that you made on the pad? | |
| | A: It was destroyed after I took notes on notebook. | |
| | Ct: When you transcribed the notes in your notebook you destroyed the writing pad paper? | |
| | A: Yes sir. | |
| | Q: And this includes all the details that you had in it at the scene about the deceased, is that right? | |
| 40 | A: I noted the same details. | |
| | Q: Including your inspection of the deceased and other surrounding area? | |

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(continued)

- A: I had noted it and it was fresh in my mind. It is in my police notebook.
- Q: Did you copy exactly what you wrote in the pad into the notebook or did you add or take something out from your pad into your notebook?
- A: Whatever was written in the writing pad was copied in the notebook.
- Q: You said you had everything fresh in your mind. Did you add anything further when you wrote in your notebook what was in the writing pad? 10
- A: No sir. It was fresh in my mind.
- Q: Since you had your notebook with you why did you not write it straightaway in your notebook?
- A: Before that I made other entries including my arrival, inspection of the scene, search that I carried out.
- Q: Do you agree as a Senior Police Officer that what you have noted down in your notebook is a second hand document? The original was in the writing pad you had used. 20
- A: Yes sir it is a second hand document.
- Q: You also know that you cannot use second hand evidence in Court.
- A: That is true sir.
- Q: Did you decide to see the accused again?
- A: Yes sir. 30
- Q: When?
- A: About 11.00 a.m. at Vatukoula Police Post.
- Q: What did you do when you decided to interview the accused?
- A: I sent Insp. Krishna Swamy to go and pick up the accused from his home sir.
- Q: Did you instruct him to bring the accused under arrest?
- A: My superior officer Supt. Muniappa Swamy was present and he instructed Insp. Krishna Swamy to bring him under arrest. 40
- Ct: It is hearsay evidence is it not? It is inadmissible and a waste of time.

Q: Was the accused brought under arrest or not?

A: Supt. Muniappa Swamy told him that if the Accused does not come arrest him.

Q: Was the accused brought under arrest?

A: To my knowledge, no sir.

Q: But the accused was under arrest when you interviewed him wasn't he?

10 A: Nobody informed me that he was under arrest.

Q: When you interviewed him was he under arrest or not?

A: He was in my custody.

Q: And in custody you mean under arrest?

A: Not under arrest.

Q: If he ran away you would have tried to bring him back wouldn't you?

A: Yes sir.

20 Q: And he was in custody on suspicion for murder?

A: Yes sir.

Q: Did you charge him for murder?

A: After the interview I arrested him.

Q: Before the interview did you charge him for murder?

A: No sir.

Q: Did you inform him that he would be prosecuted for murder?

30 A: No sir.

Q: You only wished to interview him?

A: Yes sir, with his permission.

Q: And this was in addition to the interview you had with him in his house?

A: This was the second interview on the information I received.

Q: That is in relation to the interview you had at his house?

A: Yes sir.

40 Q: And this is the second interview?

A: Yes sir.

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- Q: Why did you wish to interview the accused at the police station in Vatukoula?
- A: In the morning the police moved to Vatukoula police post where we interviewed witnesses about a murder. We used this place as headquarters.
- Q: Could you not interview the accused at his house or near his house as you had done previously? 10
- A: We were at the police post and since there were mourners at the house of the deceased we used the police post to interview him.
- Q: Now what time did the accused arrive at the station?
- A: 11.28 a.m.
- Q: Where did you take him?
- A: He was brought to the recreation bure at Vatukoula police post. 20
- Q: Before getting to the recreation bure one has to go past the police post?
- A: Yes sir.
- Q: He came through the police post?
- A: Past the police post.
- Q: Of course a record would have to be made about his arrival at the police post?
- A: Yes sir but I do not know whether that was made or not. 30
- Q: Is that the practice?
- A: If a person is taken to the police station a record is made.
- Q: And the station is the whole of the compound isn't it?
- A: It is sir but the police station is the building.
- Q: Was the station orderly on duty that day?
- A: Yes sir. 40
- Q: Was the accused taken to the police post building or not?
- A: I didn't see that.
- Q: Why is that? Is it not visible from the bure?

A: The front of the police station is not visible from the bure sir.

Q: Were you not at the police post yourself when the accused was brought in?

A: No sir I was in the recreation bure.

Q: Is it not true that when the accused arrived you and other police officers began to assault the accused at the police post?

10 A: That is completely false.

Q: Did you see anyone assaulting the accused at the police post?

A: No sir.

Q: Did anyone give the accused a bowl of grog in the recreation building?

A: There was grog but I do not know whether he was given grog or not.

20 Q: Was he given grog at any time during the interview or after the interview?

A: I cannot recall that.

Q: Did you have grog?

A: I had a bowl of grog.

Q: So did Insp. Krishna?

A: Yes sir.

Q: So did Muniappa Swamy?

A: He did.

Q: Can you recall if anyone gave the accused any bowl of grog?

30 A: I cannot recall that.

Q: You make a note of any refreshment given to the accused did you not?

A: Yes sir.

Q: Did you make any note of it?

A: No sir.

Q: Now you started off your interview by telling the accused "I understand you had a hand in the murder of your father". Is that right?

40 A: Yes sir.

Q: In other words you were accusing the accused of the murder of his father?

A: I received certain information sir.

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- Q: Were you accusing him or not?
- A: It was an allegation sir.
- Q: And it was on that suspicion that the accused was in custody?
- A: Yes sir.
- Q: That suspicion was that the accused's hand was in the murder of his father so far as you were concerned?
- A: Yes sir on information I received.
- Q: It is a serious allegation is it not? 10
- A: It is sir.
- Q: What actual information did you receive that the accused had a hand in the murder of his father?
- A: I had information about the accused missing from the party for sometime sir.
- Q: Was that the only information?
- A: Also that the accused changed his clothes when he returned to join the party. 20
- Q: What clothes did he change to?
- A: When he first joined the party he was wearing short pants and a short sleeved T-shirt but when he rejoined the party he was wearing trousers and a long sleeved shirt.
- Q: Absence of the accused for a while and his change of clothes were the only information you received. 30
- A: Apart from that only the accused and no one else from the family members had red stains on his clothes.
- Q: And that was on the long sleeved shirt and the long trousers?
- A: Yes sir.
- Q: In other words these are the clothes he had changed into?
- A: Yes sir.
- Q: And that was the suspicion against him? 40
- A: It was.
- Q: In what way inspector?

A: In fact no one from the party left the
bure except the accused.

Q: I am talking about the blood on his
changed clothes. In what way did that
make you suspect the accused?

A: In fact none of the accused's brothers
had any blood on their clothes, only
the accused.

10 Q: Was that the only reason you suspected
the accused?

A: I also received information in the
village on that night.

Q: On the same night?

A: Yes on the night of the 27th that only
the accused was having trouble with the
deceased.

Q: What trouble?

A: Over land matters.

20 Q: Did you know that the deceased had given
all his sons pieces of land from his
property?

A: He has given to some but I do not know
whether all received or not.

Q: Did you know that he had also given
to the accused?

A: No sir.

Q: You investigated this matter and you
didn't know?

30 A: The land in fact was not transferred
to the accused but they have been
cultivating in sections.

Q: Each of the brothers had land allocated
to him and he cultivates just that?

A: Yes sir.

Q: And the accused had a very fertile
piece near the river?

A: I do not know.

Q: And you have told the Court that the
accused was employed as a labourer and
worked for his father?

40 A: In my investigation I found out that
the land had been transferred to the
sons including the accused and not
Latchman Prasad who bought his own land.

Q: Is it not true that the deceased is only

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concerned with the running of the shop
and he had nothing to do with the land
except that he owned it?

A: As far as I know in my investigation
the deceased was still collecting the
proceeds of the cane.

Q: And it was distributed to the sons?

A: No sir during my investigation I had
not found that it was distributed to
the sons. 10

Q: Did you know that the deceased was
the only one running the shop?

A: Yes sir.

Q: His sole occupation was running the shop?

A: He was.

Q: And that he was not working on the
land?

A: He was not working on the land.

Q: Do you know whether he was working on
the land or not. 20

A: I don't know whether he was working
on the land.

Q: And you also knew that the accused was
the only one found near his father
after the body was found near the
toilet?

A: He was the one who first got hold of
the head of the deceased sir.

Q: When you saw the accused did he have
red stains on his clothes? 30

A: Yes sir.

Q: At 10 minutes past 12?

A: Yes sir.

Q: He had the same long sleeved shirt and
the trousers?

A: Yes sir.

Q: Did he not ask your permission to allow
him to change his clothes?

A: He didn't ask sir.

Q: Did he change his clothes? 40

A: Yes later he changed his clothes.

Q: So your information was that the accused
got blood stains on his clothes when he
lifted his father is that right?

A: I saw that.

Q: But that was your information was it not?

A: I had seen that.

Q: You had seen him do that or you learned that he lifted his father?

A: Yes sir.

Q: And this is how he got red stains on his shirt?

10 A: I saw red stains on his shirt.

Q: Did you have information before that?

A: I had information from one of the accused's brothers.

Q: You were informed that there were red stains on this shirt?

A: Yes sir.

Q: And you also saw the deceased's body being placed on a folded sack?

A: Yes, sir.

20 Q: Did you take possession of this long sleeved shirt and the long trousers from the accused?

A: Yes, sir.

Q: And you took possession of no other things from the house of the accused?

A: No, sir.

Q: Either before the interview of the accused or after you arrested the accused?

30 A: Yes, sir.

Q: Do you know what colour the tee-shirt the accused was wearing that night before he changed into the long sleeved shirt?

A: It was a yellow tee-shirt.

Q: And do you know the colour of the shorts?

A: It was khaki shorts.

Q: And you arrested the accused on the 28th before 1 o'clock?

40 A: Yes, sir.

Q: Was it before 1 o'clock?

A: It was 12.46 p.m. sir.

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- Q: Why didn't you search the house of the accused for other clothing?
- A: The accused was wearing those particular khaki shorts and yellow tee-shirt.
- Q: When?
- A: On the morning of 28th.
- Q: How did you know that?
- A: I saw that myself.
- Ct.: Was that on the morning of the 28th?
- A: Yes, sir. 10
- Q: At what time?
- A: It was about 7 a.m.
- Q: At his house?
- A: Yes, in his compound.
- Q: If you had wished to take possession of the clothing, you could have asked the accused to change?
- A: Yes, I would have, but I did not.
- Q: In other words, you attach no significance to the tee shirt and the khaki shorts, is that right? 20
- A: I did not.
- Q: You were not interested in the shirt and the shorts?
- A: I was interested, that is why we seized the clothes.
- Q: You have just said now that it had no significance?
- A: I was not quite sure of that.
- Q: I am asking this question - are you quite sure that it skipped your mind completely about the significance of the shorts and shirt? 30
- A: In fact, I overlooked the collection of clothes.
- Q: Were you interested in the clothing?
- A: Yes, I was.
- Q: What clothing were you interested in?
- A: Any clothing with red stains that may have been found in any house in the compound. 40
- Q: And you found nothing apart from the long sleeved shirt and the long trousers?

A: Yes, sir.

Q: Were you interested in the clothing that people might have been wearing - the ones that were in the compound that night?

A: I checked that while I was interviewing them.

Q: And you were interested in the clothes that each of them was wearing after the deceased had left the shed, is that right?

A: We were looking for any clothes that had any red stains.

Q: Were you particularly interested in the clothes that they had at the party?

A: No, sir.

Q: Why not?

A: While interviewing them, we were checking their clothes, but at the time, we did not know who was involved in this case.

Q: But in particular, you overlooked the clothes the accused was wearing?

A: I did not check that.

Q: It is very unusual that you overlooked this?

A: It is not unusual.

Q: Didn't you find it strange to overlook collecting the accused's clothings in the circumstances?

A: I did take note of the accused's clothings, but overlooked to collect them.

Q: Can you say if he had any red stains or not?

A: I cannot say.

Q: Very strange isn't it. Are you the Investigating Officer in this case?

A: Yes, sir. I was.

Q: You checked others that you saw, but you missed out the accused, wasn't that rather unfortunate?

A: It was not unfortunate. I had slipped to check.

Q: When the accused was in the station, he was wearing the same clothes, was he not?

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A: No sir, he was wearing different clothes as far as I know.

Q: What clothes was he wearing? Wasn't he wearing a khaki shorts and yellow tee-shirt?

A: As far as I recall he was wearing blue shorts and yellow tee-shirt.

Q: And you did not take them?

A: No, I did not.

Q: Any reason why?

10

A: I did not realise to collect that clothing.

Ct: You did not think it necessary to collect it?

A: Yes, sir.

Q: Now, when you were questioning the accused, you said you cautioned him?

A: I did, sir.

Q: In other words, you were telling the accused that he did not have to make any statement if he did not wish to?

20

A: That is correct, sir.

Q: But in spite of that warning you still wished to question him?

A: Yes.

Q: But the information you said you had Inspector, does not really suggest the accused had a hand in the matter?

A: He was under suspicion, sir.

Q: But it does not really suggest the accused, does it?

30

A: We had suspicion of him.

Q: Have a good look at the suggestion in the caution that he was one of the men who had had a hand in the matter which implied there were more that had a hand?

A: It was an allegation of suspicion. It was alleged that he had some knowledge of the death of his father.

40

Q: In other words, he was one of the people who were involved?

A: I had put it in that sense from the information I had.

Q: What I am asking you Inspector is: when you suggested this to the accused, you implied that there was more than one person? You said that he was one of the hand in the matter?

A: It was on information that he had some knowledge of the death of his father.

10 Q: In other words, you did not say to him 'I suspect you killed your father'?

A: I did not say that.

Q: That is what you did not suspect?

A: I did not.

Q: You suspected that there was more than one person and the accused was only one of them?

A: I did not suggest that.

20 Q: Then why did you say "We have been given to understand that you had a hand in the matter" and not "You did it"?

A: I worded the allegation from the information I had that he had some knowledge of the death of his father.

Q: Are you suggesting that your information was that more than one person was involved?

A: At the time I had not intended in my mind.

30 Q: But if you had that intention in your mind why did you caution this accused in this way?

A: I mean to say for any other person, but I had known about the allegation of the accused's hand.

Q: Now, you must have discounted the blood stains you found on the accused that night because your information was it happened after the death of the deceased?

40 A: That is so, but the only information I had was that the accused held the head of the deceased and I found blood at the top of his shirt and trousers.

Q: So you were going on the information that he was absent for sometime?

A: Yes, sir.

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- Q: And the fact that he had changed his clothes?
- A: Yes, sir.
- Q: And it was on these two pieces of information you had arrested the accused for the murder of his father?
- A: Yes.
- Q: And you also knew that the accused had gone to the house of Sohan Lal to deliver a wedding invitation card? 10
- A: Yes, sir I had that information.
- Q: And you had also collected the invitation card to satisfy yourself?
- A: Yes, sir.
- Q: And you also knew that the accused drank yaqona with his brother Sohan Lal?
- A: Yes, his cousin.
- Q: And at the accused's house, his father and other members of the party after visiting Sohan Lal? 20
- A: Yes, sir.
- Q: And it is these two pieces of information you wished to check from the accused? That he was absent from the shed for sometime and he had changed his clothes?
- A: I also had other information which I gathered from the interview.
- Q: But particularly these two? 30
- A: Those two plus his involvement with the deceased.
- Q: Can you tell the court whether in your interview did you ask the accused why he had changed his clothes?
- A: I believe that is not in my interview.
- Q: You did not ask the accused why he had changed his clothes?
- A: No, sir.
- Q: You did not ask him because you did not wish to question him about it? 40
- A: I wished to question him but I overlooked it.
- Q: Is it not true Inspector that you had no

such information that he had changed his clothes? In the Supreme Court

A: I had information that same day. Prosecution evidence

Q: Because he did not even change his clothes. How can you miss this very important issue. Can you explain?

A: During the course of my interview I did not ask him about his changing of clothes. No.9 Salik Ram (Recalled) Cross-Examination

10 Q: And you missed collecting his clothes as well? 24th November 1976

A: No, I did not collect them. (continued)

Q: So you missed on both factors?

A: Yes, sir.

Q: I suggest to you witness, that it is not true and that is why you did not ask him?

20 A: That is true sir. I even have it in the statement during the interview of the witnesses.

Q: And your information was that he went out to check his cattle when the dogs were barking?

A: Yes, he went out for a period of time.

Court requests the witness to retire. (Witness leaves court).

30 Q: Now you asked the accused didn't you- "Is it not true that you went to check your cattle when the dogs were barking"?

A: Yes, sir.

Q: And that was one thing you were checking?

A: I was.

Q: And your information was that the accused had gone to check the cattle?

A: I had one information of that.

Q: And that was the only incident of his absence you were talking about with the accused?

40 A: Yes, sir.

Q: And it was after that Jairaj was brought?

A: Yes, sir.

Q: Why did you bring Jairaj?

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- A: Because the accused denied. Jairaj was brought for confrontation with the accused.
- Q: Did you want the accused to agree with the statement he had gone out for sometime?
- A: I wanted to know whether he was telling the truth.
- Q: In other words you wanted to find out who did it whether it was Jairaj or the accused, is that right? 10
- A: Jairaj had already made a statement to me. I just wanted to find out what the accused had to say.
- Q: So you wanted to find out who was telling the truth Jairaj or the accused?
- A: Yes, sir.
- Q: And you wanted to get others for confrontation? 20
- A: I had information sir. I did want to get the truth.
- Q: Why did you have the confrontation?
- A: To find out the truth.
- Q: So you wanted to find out whether the accused did go or not?
- A: Yes, sir.
- Q: When Jairaj came who spoke first?
- A: I did.
- Q: Did you make a note of that?
- A: I did not. 30
- Q: Up to that point of time you were writing everything that you were asking the accused?
- A: That is so, sir.
- Q: You missed nothing?
- A: No, sir.
- Q: And you wrote down everything the accused told you?
- A: I did, sir.
- Q: Can you give any reason why you did not write what you asked Jairaj in the presence of the accused? 40

A: That conversation was just between me and Jairaj.

Q: That is why you did not write it?

A: Yes, sir.

Q: In other words you were conversing with Jairaj?

A: Yes, sir.

Q: And it did not form part of the interview?

10 A: No, sir.

Q: Did you make a note of what Jairaj say?

A: I did.

Q: Why did you think that was important to be written down?

A: Whatever Jairaj said in the presence of the accused.

Q: And what you say to Jairaj was not in the presence of the accused?

A: That's right.

20 Q: Then why didn't you write it?

A: I was interviewing the accused and the conversation was written down in my notebook.

Q: And did Jairaj wait for the accused's reply?

A: He did not.

Q: What happened?

A: Soon after that Jairaj was taken away.

30 Q: So you were not really concerned whether Jairaj was telling the truth?

A: From the other witnesses . . .

Q: I am asking if you were not concerned whether Jairaj was telling the truth were you?

A: I was concerned, that is why I called him for confrontation.

Q: Then why did you say you wanted to know who was telling truth?

40 A: Since the accused denied the fact Jairaj's version was confirmed by other witnesses.

Q: Is it not true that the accused admitted he had gone to check his cattle throughout

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the interview?

A: He did not.

Q: It was after that, according to you,
that the accused made an admission to
you?

A: That is true.

Q: And after the accused said that to you
you continued questioning the accused?

A: I did, sir.

Q: And you also said you read back the
interview to the accused? 10

A: I did, sir.

Q: Did you read all of it or just partly?

A: I read back just the admission portion.

Q: What about the other part?

A: And I only read back the question and
answers.

Q: Each question and each answer?

A: Yes, sir.

Q: Until the confrontation? 20

A: Yes, sir.

Q: You recall giving evidence in the
Magistrate's Court in this case?

A: I do, sir.

Q: Did you say in the lower court "After
the interview I read it back to the
accused"?

A: Yes, I did.

Q: And you said that twice in court when
you gave evidence there, is that right? 30

A: Yes, I did.

Q: There, you did not say that you read
the question and answers until the
confrontation in the manner you have
just now described?

A: I meant that I had read the questions
and answers.

Q: When you say you read the interview
back to the accused you mean what you
are saying now? 40

A: Yes, sir.

Q: You suggested there that at the end of

the interview you read the whole of the interview back?

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A: No, sir.

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Q: Now, do you also say on oath in this court that you read back the interview to the accused or not?

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A: I did say that.

Q: What time did you bring Jairaj for confrontation?

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10 A: (Asks for leave to refresh memory).
At 12.28 p.m.

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Q: How long did he stay with you?

A: Approximately 2 minutes or so.

Q: And at 12.45 the interview finished?

A: Yes, sir.

Q: And after Jairaj left, within 15 minutes the remaining portion of the interview was completed?

A: Yes, sir.

20 Q: And the accused was asked to sign each of the 11 or 12 pages?

A: He initialled them.

Q: And you also signed?

A: Yes, sir.

Q: And would you also agree with me that it would be impossible to read the whole of the interview back to the accused and get your signature together with his in 15 minutes?

30 A: I think it would be possible.

Q: All the 12 pages?

A: Yes.

Q: To make him initial and sign?

A: Yes, that can be done in 15 minutes.

Q: For the whole of the interview?

A: Yes, sir.

Q: So in that way, the remaining portion after the confrontation, it would take a shorter time to read back?

40 A: That is so. Only the reading of the whole interview would take 15 minutes.

Ct: Answer the question witness. The defence

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counsel asked you if you read the whole of the interview, get the signatures, it would take 15 minutes?

A: Yes, it would.

Q: Then why did you take 15 minutes in just reading a very small portion? When Jairaj left you, you would have started from 12.30 to continue to interview the accused?

A: Yes, sir. 10

Q: From that time it took 15 minutes to take the interview and get it signed?

A: Yes, sir.

Q: Would it be possible for you to write the entire confrontation right to its conclusion, read it back to the accused and get his signature and your signature in 15 minutes?

A: I can do it.

Q: But in this case you took only 15 minutes to read back the interview only from the confrontation and get the accused's initials? 20

A: Yes, sir.

Q: In this case after the confrontation, you read it back to the accused and got his signature?

A: That is correct.

Q: Therefore, you could not have read the whole of the interview after completing this portion? 30

A: I read from the confrontation only.

Q: Would it take you more than 15 minutes to read the interview from the confrontation, read it back, get the accused to initial the paper including your signature?

A: I have not done that in this case, but it could have taken more than that.

Q: Is it not true that the first time you ever said about the whole process taking only 15 minutes was in the court here, is that right? 40

A: I have already said that after confrontation, I recorded the questions and answers and then I read them back to the accused and he signed it in only 15 minutes.

Q: Would you agree with me that you implied in the court below that the whole interview was read in 15 minutes?

A: No.

Q: Is it true that there was no admission by the accused to you?

A: He made the admission.

10 Q: And did you know that the accused could sign his name at the time?

A: I did not know. When I asked him to sign his name he went on to write R.A.G. and he said he could not write his full name?

Q: That is what he told you?

A: Yes, sir.

Q: Did you know at that time that he could sign his name?

20 A: I only came to know he could not sign his full name.

Q: Up to that time was the accused quite cooperative?

A: He was.

Q: And he was right through very cool, calm and cooperative?

A: Yes, he was quiet, but looked worried.

Q: But otherwise, okay?

A: Yes, sir.

30 Q: And did you tell him where he had to initial?

A: Yes, I had the portions pointed out to him.

Q: On each page there is only one initial?

A: Yes, sir.

Q: But in court, you have said that the accused initialled each page and initialled the corrections?

A: I did but I have corrected that statement.

40 Q: There is no signature of the accused on your notebook?

A: No full signature.

Q: Can you see his Marriage Certificate - MFI 1?

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(Recalled)

Cross-
Examination

24th November
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(continued)

- A: Yes, sir.
- Q: Can you see the signature of Ragho Prasad?
- A: Yes, sir.
- Q: And that certificate is dated May 1969?
- A: Yes, sir.
- Q: And the Ragho Prasad there is the son of Ram Autar Rao?
- A: Yes, sir.
- Q: Do you have any reason to doubt that that signature belongs to the accused? 10
- A: According to the certificate, that is so.
- Q: You did not know prior to 28th that the accused could sign his name?
- A: I did not know.
- Q: Can you see this signature? (MFI 2)?
- A: I can see two signature.
- Q: Would it surprise you that on the 29th the accused was able to sign his full signature? 20
- A: I am not surprised.
- Q: Did the accused appear reluctant to sign his name?
- A: When I gave him the notebook, he easily initialled the book.
- Q: Was the accused's hand trembling when he was signing your notebook?
- A: He quite readily signed sir.
- Q: He was quite normal? 30
- A: Yes, he was.
- Q: Surely, it would be odd for an accused knowing how to sign his name quite readily sign?
- A: I wouldn't know that sir. All I know he readily signed it.
- Q: And he agreed with everything written in the notebook?
- A: Yes, he did.
- 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 40

him and that he was assaulted?

In the
Supreme Court

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

Prosecution
evidence

Q: According to you the last answer the accused gave was when you asked him "What did you do with the knife" and he said "I washed and kept the knife and the police took it away", is that right?

No.9
Salik Ram
(Recalled)
Cross-
Examination

10

A: Yes, sir.

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Q: And you decided not question him any more?

(continued)

A: Yes, sir.

Q: What did you understand when the accused said "I kept the knife at home after washing"?

A: It would be that he washed away the red stains or blood.

20

Q: It did not occur to you to ask him where he washed the knife?

(Witness is silent)

Q: Did it occur to you or not?

A: It did come out of the last question I asked him.

Q: Did it not occur to you that there would have been some blood stains where he had washed the knife?

A: Soon after that answer he was arrested.

30

Q: You are not answering the question. Did it ever occur to you that there would have been some blood stains where he washed the knife?

A: It would have been.

Q: And you said you tested the torch light for fingerprints?

A: Yes, sir.

Q: With black or white powder?

A: White powder.

40

Q: Why didn't you use black powder?

A: We preferred to use the white powder.

Q: Can I have the torch light. There is no evidence of finger prints on it, inspector?

In the
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evidence

No.9

Salik Ram
(Recalled)

Cross-
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(continued)

A: It would not be there now but there would have been before.

Q: Can you give any reason why on the 29th of July injuries should be found on the accused's body?

A: I can give no reason, sir.

Q: Did the accused say at anytime to you that he had been in a fight?

A: He did not, sir.

Q: Was the accused taken to court and then to Namosau Jail on the 28th? 10

A: Yes, sir.

Q: From the time he was picked up by the police, all that time he was in police custody?

A: Yes, sir.

Q: Is it not normal that if a man cannot sign, you take his thumbprint?

A: That is right, sir.

Q: And you did not do that in this case? 20

A: No, sir.

Q: Is it not normal practice to take an accused person charged with a serious crime to a J.P.?

A: We used to do that in previous cases, but in this case, I was not directed to do so.

Q: And the purpose for which Inspect. Krishna sat there was to rebut any allegation against the police later on? 30

A: Yes, but I rebut some.

Q: He was a witness when he was sitting there?

A: Yes, sir.

Q: I put to you that the accused was brought to the station and was forced to agree with the police version?

A: That is not so, sir. 40

Shankar: No further questions.

Re-Examination

Re-examination by Williams:

Q: How far from the road is this recreation bure?

A: It is at the back of the station about 3 chains from the main road.

Q: If someone was brought by the police would it be within hearing distance from the main road?

Shankar: That is a hypothetical question.

Q: Well, if you shouted in the bure, would you be heard in the road?

A: Definitely, sir.

10 Q: Anyone going by the main road?

A: Yes, sir.

Q: What time did you arrest the accused?

A: 12.46 p.m.

Q: What time did the accused appear before the Magistrate in the afternoon?

A: Roughly after 2 p.m.

Q: Is the Magistrate a J.P.?

A: Yes, sir.

20 Q: It was suggested to you in cross-examination that before you interviewed the accused and recorded his statement that you had no information from any witness regarding the changing of clothes by the accused and in reply you told the learned defence counsel that you in fact recorded the note of the interviewing witnesses who had alleged a change of clothes?

A: Yes, sir.

30 Q: What are the police regulations covering the use of notebooks? Do you just pick some papers at random or must they be made in sequence?

A: They must be made in sequence.

Q: On what page did you record the interview with the accused?

A: Page 48 my Lord.

Q: The incriminatory records?

A: Page 36 my Lord.

40 Q: You stated in cross-examination that you received prior information regarding the accused's change of clothes on the night of his father's death.

A: Yes, sir.

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 Prosecution
 evidence
 No.9
 Salik Ram
 (Recalled)
 Re-examination
 24th November
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 (continued)

In the
Supreme Court

Prosecution
evidence

No.9
Salik Ram
(Recalled)
Re-examination

24th November
1976

(continued)

Q: On what pages of your diary and at what times did you record that information and from whom?

A: At pages 26, 27, 28, 29 on the 28th July at 8.30 a.m. interviewed Jairaj and received information sir.

Q: That interview was held at the police recreation bure?

A: Yes, sir. And from page 29, 30, 31, 32 on 28th at 9.15 a.m. interviewed Basant Kumar. On page 34 and 35 on 28th July, 1976 at 10.36 a.m. interviewed Chandrika Prasad and he gave me this information sir.

10

Ct: Any questions from the assessors?

A: No sir.

Witness released.

Prosecution
evidence

No.10
Krishna Swamy
Examination

24th November
1976

No. 10

KRISHNA SWAMY

P.W.3 KRISHNA SWAMY f/n Manikam Gouder
Det. Insp. of Police - Ba Police Station
Sworn on Ramayan in English

20

EXAMINATION-IN-CHIEF BY MR. WILLIAMS

Q: On the 28th July 1976 did you go to the home of the accused Ragho Prasad?

A: Yes sir.

Q: On whose instructions did you go there?

A: I went there on the instructions of Deputy Supt. Muniappa Swamy.

Q: How did you travel to the accused's home?

30

A: I went by the police landrover my lord.

Q: Was there anyone with you apart from the police driver?

A: Yes Det. Sgt. Santa Prasad.

Q: Roughly what time of day was this?

A: It was on the 28th July about quarter to one in the morning.

Q: Was the accused at home?

A: I don't remember seeing him.
Q: You went to the accused's house on the instructions of Muniappa Swamy to bring the accused in?
A: Yes and he was at home.
Q: What time was that?
A: That was about 20 past 11 in the morning my lord.
Q: You went again about 20 past 11 did you?
10 A: Yes my lord.
Q: What was the purpose of your earlier visit?
A: To assist Senior Insp. Salikram in this murder case my lord.
Q: At that time was the body still there or had it been removed?
A: It had just been removed my lord.
Q: What did you say to him?
20 A: I told him that the police would like to interview him in respect of this alleged murder case. I asked him to accompany me to the Vatukoula police post.
Q: What attitude did the accused take?
A: He agreed to come and when he got in the landrover we all drove into Vatukoula police post.
Q: What would you have done if the accused had refused?
A: I would have arrested him my lord.
30 Q: Where did you take the accused at the Vatukoula police post?
A: I accompanied him to the recreation bure in the police compound.
Q: Was there anyone waiting for him there?
A: Yes my lord.
Q: Who was there?
A: Senior Insp. Salikram and Deputy Supt. Muniappa Swamy.
Q: What took place at the bure?
40 A: The accused was given a chair and from thereon Senior Insp. Salikram began to interview the accused.
Q: Can you remember how he commenced the interview?

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(continued)

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Krishna Swamy
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1976

(continued)

- A: Yes my lord.
- Q: How?
- A: He informed the accused that he had received some information that he had some hand in this case and cautioned him under Judge's Rule 2 in Hindustani. Thereafter he interviewed the accused in question and answer form that was also in Hindustani.
- Q: Did the Insp. write down what was said? 10
- A: Yes my lord.
- Q: Did you keep any notes?
- A: No my lord.
- Q: Do you recall the confrontation taking place?
- A: Yes my lord.
- Q: Who was brought into the bure?
- A: A boy by the name of Jairaj.
- Q: After this did the accused make any admission? 20
- A: Yes my lord.
- Q: I don't want to know from you the actual words. I want to know the general purport of what the accused said.
- A: In fact I cannot remember the actual words. To my recollection the accused said he had some trouble and he had killed his father.
- Q: Do you remember how?
- A: I cannot remember that. 30
- Q: What happened at the end of the interview? What procedure did Senior Insp. Salikram follow?
- A: At the end of the interview he read the interview from the place the confrontation took place and then he invited him to sign the notebook sir.
- Q: What happened after he invited the accused to sign?
- A: The accused tried to sign his name my lord, and I think he wrote his name Ragh but from there he said he could not sign his name so he was then invited to initial the notes and the accused did so. After the accused initialled the 40

interview notes I think I signed them and Insp. Salikram signed also.

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Supreme Court

Q: Can you identify your signature there and tell us what page it is.

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evidence

A: (Ex. 'D' handed to witness) Here is my signature on page 47.

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Krishna Swamy
Examination

Q: Did you yourself and something in your own handwriting the certificate?

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A: Yes my lord.

(continued)

10 Q: To what effect?

A: "I hereby certify that the interview took place between 11.30 a.m. to 12.50 p.m. in my presence and the questions and answers recorded are correct".

Q: At any time in your presence was the accused assaulted or treated in any way which would cause him to make an involuntary statement?

A: No my lord.

20 Q: How was his demeanour that day in Court?

A: On that day he was a bit worried.

4.00 p.m. - Adjourned until 9.00 a.m. tomorrow morning.

On Resumption

Thursday the 25th of November, 1976 at 9 a.m.

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1976

P.W.3 - INSP. KRISHNA - Resworn

XXN BY SHANKAR CONTINUED:

30 Q: When you took the accused from his house, did you see what his condition was like?

A: He appeared sad.

Q: What clothes was he wearing?

A: I do not remember what clothes he was wearing.

Q: While you were there, people were waiting for the arrival of the dead body?

A: Yes, people were there.

40 Q: Would you agree that the accused was dressed in his working clothes?

A: He might have been but I did not take note of his clothing.

Q: You brought him as you found him?

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Cross-
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(continued)

- A: Yes, sir.
- Q: And from there when you reached the Vatakoula Police Post you took him straight to the recreation bure?
- A: Yes, sir.
- Q: That was where you had to take him?
- A: Yes, sir.
- Q: Did you go through the police post?
- A: In fact, we got off right in front of the police post and from there I went to the recreation bure. 10
- Q: Would you not require him for record purposes to note the time of his arrival?
- A: No sir.
- Q: You do not keep records?
- A: We do.
- Q: You do not keep records for bringing suspects in?
- A: We do. 20
- Q: Did you do it in this case?
- A: I do not remember. I think a message was brought to the post sergeant that we had brought a suspect.
- Q: Is it not true that the accused was slapped at the post?
- A: No sir. I did not go inside the police post on my arrival.
- Q: Was he slapped upon arrival?
- A: No, sir. 30
- Q: Was Inspector Salik Ram at the police post?
- A: He was with me at the recreation bure.
- Q: On our arrival, Insp. Salik Ram was in the post?
- A: He was with me at the recreation bure.
- Q: On your arrival, Insp. Salik Ram was in the post?
- A: No, he was in the bure.
- Q: And so was Supt. Muniappa Swamy? 40
- A: That is true.
- Q: And you say immediately on arrival

| | | |
|----|---|---|
| | Salik Ram began questioning the accused? | In the <u>Supreme Court</u> |
| | A: That is true. | Prosecution evidence |
| | Q: From the time you picked up the accused from his house until the accused was interviewed, he was not free to leave? | No.10 Krishna Swamy Cross- Examination |
| | A: That is true. | 25th November 1976 |
| 10 | A: Not at the time of the interview. | (continued) |
| | Q: When the interview began it was not intended at that stage that the accused be asked to sign the notes of the interview? | |
| | A: We followed a procedure of inviting the accused to sign at the end of the interview. As far as I am concerned I always do that. It depends on each interviewing officer. | |
| 20 | Q: Did you ask him to sign the allegation and the caution that was put to him? | |
| | A: I did not in fact interview the accused. Salik Ram did. | |
| | Q: Was he invited in your presence? | |
| | A: I do not remember. | |
| | Q: If it was intended to be a written statement of the accused, would you= ask him to sign the caution and statement as the usual practice? | |
| 30 | A: I do not remember. | |
| | Q: And did you keep a record of what the accused said? | |
| | A: Yes, sir. | |
| | Q: And a record was kept of what was said to the accused? | |
| | A: Yes, sir. | |
| | Q: If it is not his statement, why was he asked to sign? | |
| | A: It was his oral statement. | |
| 40 | Q: And would you then normally have the accused sign the allegation and the caution before the actual interview begins? | |
| | A: We do not follow that procedure. When we have an oral interview, we do not invite the accused to sign. I only | |

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(continued)

invite the accused to sign the interview at the conclusion and also invite him to initial corrections if there are any.

Q: Now, when you charge a man, you invite him to sign the caution?

A: Very true.

Q: Now, at the end of the interview what did Inspector Salik Ram actually do?

A: At the end of the interview he read the interview notes from the place the accused was confronted. And after reading it he invited the accused to sign. 10

Q: And did you hear the accused say he could not sign his name?

A: He did not say that. He tried to sign his name but he could not sign his full name.

Q: What else did he say about his signature? 20

A: He did not say anything.

Q: When he said he could not sign his name, what was he asked to do?

A: He was asked if he could initial.

Q: By whom?

A: By Insp. Salik Ram, so the accused initialled the notes.

Q: All the pages?

A: I think so. 30

Q: Did you yourself initial all the pages?

A: No, sir.

Q: What about Inspector Salik Ram?

A: I think he did initial the pages as well.

Q: You put your signature or initial at the end of the interview?

A: I signed my name.

Q: Had you read the interview at that stage? 40

A: No, I did not.

Q: Did Insp. Salik Ram show to the accused where his initials were to be put?

A: Like I said the interview notes were read from the part the confrontation took place.
Q: When did you read the notes yourself?
A: I read them after the arrest was made.
Q: How long after?
A: I would say 10-15 minutes after.
Q: What time did you make the certificate?
A: I do not remember the time.

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(continued)

10 (Leave granted to refresh memory - Ex.D)

I did not put what time when I made the certificate, but it must have been 10 minutes after one.

Q: Why do you say that?

A: Because at about 8 minutes past one the accused was handed to Subramani. After the accused was taken, I then read the notes.

20 Q: Didn't you make the certificate at 12.50?

A: No, I did not.

Q: How many times did you read this interview?

A: Only once.

30 Q: Now, did you say this in the lower court when you gave evidence in this case. At p.22 "I read it after it was read to accused. I signed after the accused signed. I agree the contents were correct. I read it again as my certificate said this". So you read it twice?

A: As I said I did not make notes. I might have made a mistake that day but in fact, I read only once.

Q: You would expect your memory to be fresh when you gave evidence in the Magistrate's Court?

A: That is true my Lord, but I did not have any time to refresh my mind.

40 Q: Are you saying that you did not have a look at the notebook when you gave evidence in the lower court?

A: No, I did not.

Q: You also said this in the Magistrate's Court in chief: "When the interview notes were read back to the accused, he agreed

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(continued)

and signed them. I was present.
I read the contents of the interview
and I initialled also." So to initial
the notes, you had to look at the
notebook?

- A: Yes, I may have done so in the court.
- Q: So you did have a look at the notebook
in the court?
- A: That is so.
- Q: You, just a while ago, said that you 10
did not see the notebook. And to
identify your signature you looked at
p.47 and p.50. Page 47 is your
signature and page 50 is your certificate?
- A: P.47 is the last page of the interview
and where my signature is. P.50 is
where my certificate is.
- Q: So you must have looked at that once
as well as before giving evidence?
- A: Yes, I must have seen my signature. 20
- Q: Did not that tell you in the lower
court that you had read the notes of
the interview twice?
- A: I must have made a mistake.
- Q: You are not able to recall at the time?
- A: No, sir.
- Q: What makes you say that you only read
it once?
- A: Because I had not have a look at the
notebook since. 30
- Q: Did you regard, when you gave evidence
in the lower court, that your evidence
was of some importance regarding the
reading back of the notebook?
- A: Yes, sir.
- Q: In the lower court you also said "After
the interview, Insp. Salik Ram read
the interview back to the accused"?
- A: Yes, I did say that.
- Q: But in court you never said that you 40
only read the portion after the
confrontation?
- A: That is true.
- Q: And you agreed in the court below you
meant the whole of the interview was
read back?

10 A: I forgot to tell at the Preliminary Inquiry that only the portion from the confrontation onwards was read back.

Q: When did you remember that you had forgotten that?

A: After the Preliminary Inquiry.

Q: And before giving evidence in the Supreme Court?

10 A: I recalled it after the Preliminary Inquiry.

Q: Before giving evidence here?

A: That is true.

Q: You did not have the notebook with you how did you remember that?

A: After giving my evidence in the lower court, when I came back I realized that I had forgotten to tell the magistrate that only the notes after the confrontation were read out, not the whole interview.

20 Q: Would anyone have suspected you forgot that the interview was read only from the confrontation?

A: It did not click in my mind that I made a mistake.

Q: In this court you said you made no notes of the interview?

A: That is true.

30 Q: But in the lower court you said "I made notes of the interview but not full details".

A: No, sir. I did not make notes from the beginning to the completion of the interview.

Q: I will read it back to you witness. "I made a note of the interview but not full details"?

A: I meant the time that started and the time it finished.

40 Q: So would you say it was a mistake?

A: I did not make notes of the interview.

Q: Then what did you say in the lower court on oath?

A: I meant that I took the time when the interview commenced and the time it ended. We do not take notes of the interview,

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(continued)

- only the Investigating Officer.
- Q: You said you made notes of the time?
- A: I did.
- Q: But in here you say you made no notes?
- A: Yes, sir.
- Q: So that is how you interpret it? There is a difference between the two. Making note of the time and making notes of the interview?
- A: That is right. 10
- Q: When you read the interview, that would be about half an hour after or so?
- A: I have said earlier it would have been 10 to 15 minutes later.
- Q: And you read the whole of the interview?
- A: Yes, sir.
- Q: Then you put the certificate?
- A: Yes.
- Q: Not before that?
- A: No, sir. 20
- Q: What was the purpose of putting your signature at p.47 at the end of the interview?
- A: This is one of our standing orders. Witnessing Officer when he is present is to witness the end of an interview.
- Q: What is the purpose, do you know?
- A: The purpose is to see that the accused signs.
- Q: You were witnessing the signature of the accused? 30
- A: Yes, sir.
- Q: And not the contents of the interview as being correct?
- A: Yes, sir.
- Ct: You put your signature to witness the signature or to certify that the contents of the interview are correct?
- A: The whole purpose is to witness the accused's signature and also to see that the interview notes are correct. 40
- Q: Just now, you agree that you only witness the signature of the accused,

but at no stage did you say your signature is to certify the contents of the interview are correct?

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(continued)

10

A: I did say that, but I have corrected myself. I made a mistake.

Q: You are now saying that you sign at the end of the interview as a witness for the accused's signature and that the contents of the interview are correct?

A: Yes, sir.

Q: Then why make an additional certificate yourself?

A: That is an order to us.

Q: In other words, you make yourself doubly sure?

A: Yes.

Q: So far as you are concerned the certificate serves no purpose?

20

A: It surely does carry weight. It shows that I have read the interview notes.

Q: But your first signature does not?

A: As I have said the first signature is to witness the signature of the accused and the ending certificate is saying that the interview notes are correct.

Q: If you had your signature at p.47, how did you know that the contents are correct?

30

A: Because the contents were read back to the accused when Salik Ram wrote the questions he used to read back the questions to the accused and the answer given by the accused was recorded and was read back to the accused.

Q: And that is how you knew at the end of p.47 that the contents was correct?

A: Yes, because I was present.

40

Q: I put it to you that the interview was never read back to the accused?

A: No sir, it was read back.

Q: Did you know that the accused could sign at that time?

A: I did not know until he told us that he could not sign.

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(continued)

- Q: And when a person is unable to sign and you wish him to sign, you get his thumbprint?
- A: Whoever tells us is illiterate, we always get him to affix a thumbprint.
- Q: Would you be surprised if you know now that the accused could sign his name?
- A: I wouldn't be.
- Q: Was the accused reluctant to sign the interview? 10
- A: No, he was quite happy to sign.
- Q: The interview, from the beginning to the end was carried out normally?
- A: Yes, sir.
- Q: And this pattern remained throughout the interview?
- A: As I have said the interview took place in a normal way right through.
- Q: And the accused spoke normally right through? 20
- A: That is so, sir.
- Q: Did Salik Ram speak to the accused normally right through?
- A: Yes, my Lord.
- Q: And the accused just casually made the admission?
- A: He made the admission after he was confronted.
- Q: Yes, just casually?
- A: I think he shook his head and then he made the admission. 30
- Q: Just like that in the same normal tone?
- A: That is correct, sir.
- Q: Although, there was no direct evidence that the accused had taken any part in the killing of the deceased?
- A: There was no direct evidence.
- Q: And all Jairaj could say was that he only went out to check his cattle? 40
- A: I do not remember that because I did not make a note of it.
- Q: In other words you cannot remember what the accused said or what one said to the accused? What can you

remember about Jairaj?

A: When he was brought Inspector Salik Ram asked him to say in the presence of the accused what he had earlier told us. So he said "When grandfather had left, after about 5 minutes the accused went and returned 10 to 15 minutes later". That is all I can recollect at the moment.

10 Q: So you do remember some of what Jairaj said?

A: Yes, sir.

Q: I put it to you witness that the allegation and the caution was never read or explained to the accused?

A: It was read.

Q: No portion of the interview was ever read to the accused?

20 A: The caution was read and explained to the accused.

Q: And the accused made no admission to you or to Insp. Salik Ram?

A: He made the admission to Salik Ram in my presence.

Q: And that the accused was assaulted by the police at Vatukoula Police Post?

A: No police officer assaulted him.

Shankar: No further questions.

30 Williams: No re-examination

Assessors: Nil.

Witness released.

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No.11
Shaukat Ali
Examination

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No. 11

SHAUKAT ALI

P.W.4 - DR. SHAUKAT ALI s/o Shakur Ali
Sworn on the Koran

EXAMINATION-IN-CHIEF BY WILLIAMS:

- Q: What are your qualifications, doctor?
- A: Diploma in Surgery and Medicine from the Fiji School of Medicine.
- Q: When did you qualify?
- A: In 1968. 10
- Q: And have you been practising since 1968?
- A: I did one year internship at Lautoka hospital and two years at Wainikoro Health Centre which is 30 miles away from Labasa town then until June 1974 I was at C.W.M. Hospital. Since June 1975, I had been at Tavua Health Centre.
- Q: At Tavua, have you been previously called upon by the police to examine accused persons? 20
- A: Yes, sir.
- Q: On 28th July 1976, were you called upon to examine the accused in this case?
- A: I was.
- Q: What time did you make your examination?
- A: At 3 p.m.
- Q: Referring to your notes doctor, those notes were made by you at the time? 30
- A: That is right sir.
- Q: Can you give your evidence from memory or would you ask His Lordship for leave to refresh your memory?
- A: I would try to remember from memory, but I would like to refer to my notes to clear my memory. (Leave granted).
- Q: What was the purpose of this examination. What were you looking for?
- A: I was told by the police that the person was accused of murder. I was looking for injuries. 40

Q: Was that your purpose of the examination?
A: That is right, sir.
Q: What did you find?
A: There was no evidence of any recent injuries on his body.
Q: To what extent was the examination visual?
A: The entire body was all exposed and all exposed areas I saw with my eyes and whole body I felt with my hands and including the part covered by his shorts.
Q: Did the accused complain of any tenderness or of any recent injuries?
A: He said no, although I asked him for it.
Q: Did you ask the accused if he had any complaints to make against the police?
A: I asked him and he said that the police were accusing him for nothing.
Q: Did he have any complaints to make regarding the way the police handled him?
A: He made no such complaints.
Q: How would you describe his general behaviour?
A: He was very cooperative and answered questions very intelligently. He behaved normally and did not smell of liquor.
Q: And did you question him regarding the mental history of his family?
A: I asked him whether he had ever suffered from mental illness whether he suffered from other diseases like diabetes and high blood pressure: or whether there was a history of such illness in his family. To all these, he replied no.
Q: And did you then take his blood samples?
A: I did, sir. (sic)
Q: How long did your examination take?
A: I did not time myself but I would say 10 minutes.
Q: And would that be sufficient time to examine any external injury?

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Shaukat Ali
Examination
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Shaukat Ali
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1976

(continued)

Cross-
Examination

A: I think that is plenty of time.

Q: Do you think it is possible in a ten-minute examination for you to have overlooked bruising of the back, bruising of the arm, bruising of the left wrist, abrasions on the left thumb and discolouration of the right mandible. Do you think it is possible that you would have overlooked all those injuries?

10

A: It is not possible.

Cross-examination:

Q: Can you tell the court in respect of this person what actual record you have in your book. Can you read it out?

A: "No recent injury externally. Co-operative. Answers questions intelligently and behaves normally. No history of mental illness and no family history of mental illness. Blood pressure 120/80. Blood samples taken and handed to Sgt. Santa."

20

Q: Did you make any note of liquor?

A: Not in this register, but only in the police report. It was written soon afterwards.

Q: You have expanded on those notes in your evidence in court today?

A: Some of them.

30

Q: You base your entire evidence on those notes?

A: Yes, sir.

Q: And in the course of your duty as a doctor you have a fairly heavy routine?

A: That's right.

Q: Do you examine a lot of patients and a lot of police cases?

A: Yes, I do.

40

Q: Since 28th July you must have seen hundreds of patients?

A: Yes.

Q: And this examination you carried out about 4 months ago?

A: Yes, sir.

Q: You have no form in which you make a detailed record of what you actually do?

A: Apart from the notes from the out-patients register plus the police record, I did not make any other notes.

Q: And four months is a long time isn't it doctor for you to recall the account of one patient?

10 A: It all depends on how much I remember.

Q: How long after infliction of blunt force would you expect bruises to appear?

A: It all depends on the force applied and from the moment of infliction and it can take up to 24 hours.

Q: Bruises do not involve any external skin damage?

A: They do not.

20 Q: What it actually means is that blood vessels under the skin clot with blood?

A: That's right.

Q: And you said depending on the force used, it will take time to appear on the skin?

A: That's right.

Q: And quite often it won't necessarily be visible 3 or 4 hours after infliction?

A: That's right.

30 Q: A bruise in a period of time would change its colour?

A: That's right.

Q: What would be the first discolouration that one would notice after the bruise?

A: It would be reddish.

Q: Crimson?

A: Later on it will become crimson. It would become more bluish.

Q: How soon would you expect it to be reddish?

40 A: As soon as it appears.

Q: Would that be approximately 6-7 hours?

A: It depends on the force applied.

Q: As well as the colour of the skin of the person?

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(continued)

- A: Yes, sir.
- Q: It goes in that order?
- A: That's right.
- Q: How long after would you expect it to be crimson?
- A: When it appears, after 2 or 3 hours I would expect it to be crimson if at all, it appears.
- Q: When do you expect it to be bluish?
- A: Towards the end to 24 hours but more blackish to 36 hours. 10
- Q: How do you determine the age of a bruise?
- A: From the colouration.
- Q: And they are bluish in two hours and blackish afterwards?
- A: That is right.
- Q: Would you be able to give it in terms of days?
- A: If it appears at 20 hours that would last for another 2 days. 20
- Q: You are quite sure of that?
- A: I am sure of that.
- Q: Would you expect it to fade away completely?
- A: That would depend on the nature of the injury. If was a large one, it would take as long as one week.
- Q: Bruises caused by a punch can take a week to fade away? 30
- A: That is right sir.
- Q: For bruises of this kind there may be no treatment?
- A: Anart from the general pain-killing tablets, we give that fermentation and nothing else.
- Q: When you asked the accused for complaints, you were asking for complaints as a doctor?
- A: Yes, sir. 40
- Q: You are not carrying out an investigation as to the assault on the accused?
- A: No.

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(continued)

Q: How would you detect tenderness?

A: On touching any part of the body with your hands, one would be making physical signs of pain - probably with a twitch on the face.

Q: For a doctor, finding out an accused person's mental history is important?

A: That's right.

10

Q: Immediately after infliction, quite often the area affected may appear to be numb for sometime and the pain start to collect?

A: This numbness is a very subjective thing. It is a personal opinion.

Q: It may remain like that depending on the patient for sometime?

A: That's right.

Q: And also will depend on his mental condition?

20

A: It could.

Q: He may not show any external fear but internally he may have fear in them. It can happen to people?

A: It is possible. But we would not accept any fear to be too great if shown externally.

30

Q: If a person is frightened of a person's presence at a distance away, he may lose his consciousness. His concentration could be lost to some extent?

A: It could be.

Q: And would a patient lose it in seeing a doctor?

A: It would depend on how much confidence a patient has in his doctor.

Q: Doctor, you know that no doctor has full confidence in his patients, would that be correct?

40

A: It would depend. Say if my wife was my patient, I would have confidence

Q: Unless of course a patient knows you well?

A: That's right.

Q: And you don't remember seeing this accused any time before?

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(continued)

- A: I don't remember.
- Q: Not afterwards?
- A: No, sir.
- Q: For abrasions which may not appear in a short space of time after infliction, wouldn't it be helpful to carry out a second examination?
- A: For abrasions, it will show straight away.
- Q: In bruising, it might be a helpful thing to carry out another examination within 24 hours? 10
- A: It may be helpful.
- Q: If the bruises were received for example on the 27th of July, and you examined him on the 28th of July, you would expect it to appear at your examination: you most certainly could not have missed it?
- A: I would not have missed it. 20
- Q: How long after infliction of injury would you expect scab formation?
- A: It will vary, but it would certainly be after 24 and probably 48 hours.
- Q: What is this scab formation?
- A: This is a form of healing basis - drying up.
- Q: On a lip?
- A: I would expect that within 24 hours to 48 hours. 30
- Q: It has quite often happened that on an examination by one doctor, he is unable to find certain signs of injury, but another does?
- A: I have not come across that in my case.
- Q: But you know of cases that happen?
- A: I have heard about them in medical cases.
- Q: Apart from the naked eye and feeling with your hands, there was no other way of examining bruises? 40
- A: No, sir.
- Q: Would you expect a man to self inflict bruises on his lumbar region?

A: It is possible.
Q: How?
A: By doing it with his own hands.
Q: It would be very unusual?
A: I wouldn't say that.
Q: In your own career as a medical officer, have you come across this?
A: I have.
10 Q: Where did you take the blood out from his body?
A: From the cubital fossa (upper arm).
Q: And you would have to apply some sort of disinfectant before taking this?
A: That's right.
Q: And with a sterilized container?
A: That's right.
Q: And this would take time?
A: Yes, sir.
Q: How long?
20 A: About two minutes.
Q: If they are not readily available, it might take longer?
A: It can be.
Q: And all your examination took you about 10 minutes?
A: That's right.
Q: Were you very busy that day?
A: It was an average day.
Q: You were in the out-patient ward?
30 A: That's right.
Q: And approximately how many people did you see that day?
A: From the morning till the time I saw the accused, I saw 65 patients. From then until I closed down at 4 o'clock, I saw 19.
Q: It was quite a busy day?
A: It was average.
Q: You were the only doctor?
40 A: On that day, I was.

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(continued)

Q: And all the 65 patients would require examination and treatment and prescription?

A: That's right.

Q: In this period you had your lunch break and other breaks for tea as well?

A: Yes, sir.

Q: And if you had to do any surgery it was only you who had to do it?

A: Only the nurses would attend to boils 10
and minor stitching.

Q: Say, 24 to 25 hours after your examination, it is possible for another doctor to find bruises on the accused if you did not find it?

A: It is possible.

Q: It is nothing unusual?

A: No, it is not unusual.

Shankar: No further questions.

Re-examination

Re-examination:

20

Q: Regarding mental health, what questions did you ask the accused?

A: Whether he was in St.Giles before; whether he was treated as an out-patient before; or whether he had any family member with mental illness. That was all.

Q: And the time to ask all that is 20 seconds?

A: Well, I would expect answers from him, 30
but all he said was No.

Q: How long did it take you to ask him about his mental health?

A: About a minute or even less.

Q: What did you record in respect of that?

A: No history of mental illness, no history of family mental illness. The time of writing, I did not include in the 10 minute examination. It was afterwards. 40

Q: Have you ever been asked to inquire on any examination whether injury on the lumbar region has been self-inflicted or not?

A: No, I have not.

Q: Apart from using hands, would wounds be inflicted by a patient leaning against a wall?

A: It is possible.

Q: In that way, would bruises be accompanied by abrasions?

A: It can be, but not necessarily.

Q: You also said that bruising can be missed when you first examined. In what circumstances can they be missed?

A: If the force applied was not great, it would not appear immediately, it might take a little bit of time before the bruising actually appears.

Q: How long would it take for a bruise to become apparent?

A: Immediately.

Assessors: Nil.

To Court:

Q: If this man had been punched, when would you expect the bruises to show?

A: It would depend on the force applied. If it was a heavy punch, it would appear very quickly.

Q: How long would a bruise take to appear from an ordinary punch?

A: It would range from any time till 24 hours. A light punch, it might not appear for 24 hours.

Q: And there would be some punches where bruises do not appear at all?

A: That is right, sir.

Q: Doctor, if this man had a cut lip, would you have seen it?

A: I would have.

Q: Even inside the lip?

A: Yes.

Q: Would it be possible for a person to get himself a cut lip by biting it?

A: It is possible.

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Shaukat Ali
Re-examination

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(continued)

In the
Supreme Court

No. 12

Prosecution
evidence

SUBRAMANI

No.12
Subramani
Examination

P.W.5 D/SGT. SUBRAMANI s/o Muni Ram
Stationed at Lautoka Police Station
Sworn on the Ramayan in English

25th November
1976

EXAMINATION-IN-CHIEF:

Q: Did you know Ram Autar Rao of
Masimasi?

A: Yes, sir.

Q: How long have you known him?

10

A: For about 5 or 6 years.

Q: On 28th July did you accompany his
body to the Lautoka Hospital mortuary?

A: Yes, sir.

Q: And his wounded body was found in his
compound at Masimasi?

A: Yes, sir.

Q: Were you present when the post mortem
examination was carried out on his
body?

20

A: Yes, sir.

Q: Who carried out that examination?

A: Dr. Frederick Wilson.

Cross-
Examination

CROSS-EXAMINATION:

Q: But of course, you did not identify
his body to the doctor?

A: No, it was his son.

Q: In the course of your duty, would you
require an accused to sign or affix
his thumbprint?

30

A: Yes, sir.

Q: And in this case, the accused said
he could not sign?

A: Yes, he said he was unable to sign.

Re-examination

RE-EXAMINATION:

Q: Was he suffering from any injury
that might have prevented him from
signing his name?

A: No, sir.

Q: And at the post mortem, who was the son who identified the body?
A: Lakshman.
Q: And were you present when he identified the body?
A: Yes, sir.
Assessors: Nil.
Witness released.
10 Court adjourns for Prosecution to get Dr. Wilson.

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Supreme Court
Prosecution
evidence
No.12
Subramani
Re-examination
25th November
1976
(continued)

No.13

FREDERICK SATYANAND WILSON

P.W.6 - DR. FREDERICK SATYANAND WILSON
279 Waya Street, Lautoka - Sworn on
Ramayan in English - Acting Consultant
Govt. Pathologist, Lautoka Hospital

Prosecution
evidence
No.13
Frederick
Satyanand Wilson
25th November
1976
Examination

EXAMINATION-IN-CHIEF BY MR. WILLIAMS

20 Q: How long have you specialised in pathology?
A: Since July 1963.
Q: On 28th July 1976 at 9.30 a.m. at Lautoka Hospital Mortuary did you carry out a post-mortem examination on a body identified to you as that of Ramautar Rao?
A: Yes I did.
Q: Was Sgt. Subramani present?
A: Yes sir.
30 Q: Who identified the body to you?
A: The body was identified by Latchman Prasad as that of his father.
Q: What was the apparent age of the deceased?
A: Mid 70's.
Q: Was he well built?
A: He was well built.
Q: (Ex. 'A' handed to witness) Look at the photograph numbered on the back 5 to

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Satyanand Wilson
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(continued)

11. Is that the body you examined
and was that its condition before you
did any internal examination?

A: Yes sir.

Q: You removed the clothing did you not
which had multiple incisions and
blood stains?

A: Yes sir.

Q: Can you give us the external signs of
injury that you found and on this
issue perhaps you can refer his
Lordship and gentlemen assessors to
the photographs. 10

A: The following were the injuries noted
on the deceased's body, firstly the
head, face and neck area. There was
an incised clean wound 3" x 2" over
the right frontal area in the hair-
line. Piece of skull bone measured
1" x $\frac{1}{4}$ " and exposed the brain tissue. 20

On photograph 8 you could see the
wound on the right hand side and that
was the description of the wound which
I have just mentioned. The second
sliced wound over left parietal area
exposing skull bone and these
measured $3\frac{1}{2}$ " x 2" x 6. Again for the
benefit of assessors it is on A-8
and the wound is on the left ear. A
large clean incised wound running 30

across the left earlobe, across the
tip of the nose slicing the tip through
the upper lip and ending close to angle
of mouth on the right side. This
measured $8\frac{1}{2}$ " x 3". This exposed the
incised fracture of maxilla nasal bone
and upper jaw. The maxilla is the
upper jaw in fact. The maxillary entrum,
nasal cavity and the mouth exposed. For
the benefit of assessors in photograph 40

A-10 you could see that I have opened
the wound which exposes different
areas I have mentioned. It runs through
earlobe, through the nose tip and angle
of the mouth. This made a large gap
wound which exposes the mouth. Antrum
or maxillary side is opened up. There
were 4 more fair sized wounds below the
wound which I have just mentioned on
left side of face and jaw. Fractured 50
lower jaw and incised $\frac{1}{3}$ of tongue
front. None of these photographs
actually show it clearly. The first

large wound runs across the earlobe, across the entrum and the other one is just below that. There were 4 wounds below this wound. Those were the wounds which were found on the face and head.

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(continued)

10 You can see the left shoulder in photograph 7 and 8. Photograph 7 shows where the wound was and photograph 8 shows the wound when I held the flap over. There was a large sliced wound measuring 4" x 2½" over left shoulder joint which exposes sliced head of left humerus bone of left upper arm bone and exposed the left shoulder joint. This is visible on photograph 8. That white thing appearing there is actually the head of the left arm bone which had a small flap on the surface. Photograph 7

20 shows another small wound in front of the wound I have just mentioned and this measured ½" x ½". On the left hand there was a minor cut or wound on the tip of the left middle finger and that is here (indicated on photo). Going back to the body on photograph 5 and 6 there was a large gaping incised wound 8" x 3" running across the upper half of the right shoulder blade cutting surface of the scapula bone. This scapula bone is the shoulder blade. You can see in this

30 wound here that if you moved your arm the wound was a large gaping wound and it only made small superficial cut on this bone. In photograph 6 was a large gaping wound running across the 3rd lumber spine vertebra or back bone cutting the vertebra and the spinal cord. This measured 8" x 2". On photograph 6 it

40 only shows the gaping wound but you are not able to see the cutting of the spine or back bone which is the 3rd lumber. This is the rectum area and it is just a few inches above that. The wound went through the tissues and bone and it also cut spinal bone. The small superficial incised wound 2" long was present above the wound. I have just mentioned. It is

50 not shown clearly on the photograph because it was just a superficial graze and if you see it clearly it just made a small mark there. Those were the wounds which were present on the deceased.

Q: Did examination of the internal organs

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(continued)

- show any abnormalities?
- A: It didn't show any abnormalities my Lord. There were some blood clots as (sic) I have mentioned in my notes on the right side and below the one on the left frontal area, just a trace of blood was present.
- Q: What were these injuries consistent with?
- A: They were consistent with being inflicted 10 by a sharp object like a cane knife.
- Q: What was the cause of death?
- A: It was due to shock which was due to multiple injuries.
- Q: If these injuries were inflicted within seconds of each other how long would you expect the victim to remain conscious?
- A: It is very difficult to say because cases differ. There have been a number of cases which have been alive for some hours and some have died earlier. In this particular case death was due to shock and the shock may be due to two things. Firstly the wound on the back of the head is quite a severe one and it cuts through the spinal cord. A person can die instantly with what we call spinal cord shock. Secondly this man could have died from haemorrhage due to excessive bleeding from these multiple wounds. The bleeding in this particular case appears to be quite severe and death could occur within 15 minutes to one hour. 20 30
- Q: How would you expect the head injuries to affect the consciousness of the victim?
- A: In some cases the victim may not be affected at all, in other cases they can be concussed and concussion means shaking up of the brain and there is a mild phase of unconsciousness and in such cases you need not find any abnormalities in the brain that was damaged. 40
- Q: Would the victim be able to move after the injury to the back was inflicted?
- A: No sir.
- Q: How many of these injuries on their own could have been fatal? 50

10 A: As I have said the first one that is the injury on the lumbar spine on its own could have been fatal. Other injuries on their own could have been fatal if the victim bleeds for some period. The other injury which is of importance is the large wound running across the antrun, nose and mother. A person could have died from this from respiratory failure.

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CROSS-EXAMINATION BY MR. SHANKAR:

(continued)

Q: The injuries on the skull apart from the first one that you have mentioned were on the left hand side of the deceased?

Cross-
Examination

A: On the right hand side and one on the left hand side on the left ear.

Q: Forgetting about the one on photograph 5 the left is on the left hand side?

20 A: Yes sir.

Q: Including the shoulder?

A: Including the shoulder.

Q: On the left side the injury runs from the ear towards the nose isn't it?

A: That is right, the one that runs across the ear to the nose to the angle of the mouth.

Q: Could these injuries be caused by someone standing on the left hand side?

30 A: Dealing with the same injury the extent of the injury was heavier towards the ear rather than the nose. The brunt of the force was taken towards the ear rather than the nose.

Q: And for a person standing on the left hand side of the deceased he would have to use his left hand?

40 A: Are you trying to insinuate that this is done by a left handed person? A left handed person could do it and a right handed person could do it.

Q: Which would be more probable?

A: I am not able to say. Both were the same type of wound. The large wound I have mentioned could be struck with the right hand or left hand and it depends on the position of the body and from what

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(continued)

angle the person was struck. Now if this particular person was struck from the back or the side turning from the back the injuries will be no different from a person striking it standing in front on the same area. To say this there are a few important points. Firstly the tip of the nose are of soft tissues, the antrum area is of harder surface and it would require a bit more force. Whether this person was struck from the front right hand side or left hand side standing at the side would make no difference because the soft tissues would cut easily without much force.

10

Q: A right handed man would have to inflict these injuries from the front?

A: Could be from the front, from the side, depending on the position of the person. If someone is lying down this person could inflict the injury turning on the back.

20

Q: And you cannot say whether these injuries were inflicted while he was standing or lying down?

A: No sir.

Q: This applies to the other 4 injuries?

A: Yes sir.

Q: Or sitting or squatting?

30

A: Yes sir.

Q: And you cannot say which injury was inflicted first and which ones after?

A: No my lord.

Q: The wound that runs from the ear across the nose and cutting across the tongue, the victim would not be able to make any noise?

A: No sir.

Q: Assuming you were the victim if a right handed person inflicting the injuries on the left hand side he would have to do it from the back?

40

A: As I have already said it depends on the position of the person.

Q: A left handed man can hit this way can't he? (Making a backhand swing)

A: Yes sir.

Q: A right handed person would not be able to exert as much force if he were giving a back handed strike but a left handed person would be able to strike with more force wouldn't he?

A: The left handed person will have much more force but on the other hand I cannot say about a right handed person, some can. It depends on the person.

10 Q: Judging from the angle of the injury it seems to be running alongside and not slanting?

A: It was slanting and the other wounds follow the same direction.

Q: What was the height of the deceased?

A: 5'4".

Q: The injury would indicate that a person hitting the deceased while he was standing would have to be taller than the deceased?

20 A: He need not be taller. The position of the arm is of importance because a smaller person can hold the handle of the blade and strike in this way.

Q: And you will admit there were 13 separate injuries?

A: I have counted 13 with the smaller wounds too but I must make it very clear that a large wound was on the face. He could have been struck with more than one blow.

30 Q: At the same place?

A: Yes sir.

Q: Taking them separately there were 13?

A: Yes sir.

Q: In other words there are 13 knife wounds?

A: Yes there are one or two wounds which are only grazed and they could have been inflicted while the large wound was inflicted and the knife was being drawn and they need not have been struck. It is possible, with the one I have mentioned below the lumbar spine.

40 Q: So the one on the shoulder would need just as much force except the one on the spine?

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(continued)

- A: This one here the small graze, he need not have been struck. It could be that he was struck there and the knife was taken out.
- Q: Photograph 6. Look at the lower portion on the left hand side.
- A: This graze is on the right hand side actually.
- Q: The body was on its left hand side?
- A: The body was placed on the right hand side in that direction. 10
- Q: When you say the deceased did he have his clothes on?
- A: Yes he had blood stained check short sleeved nylon shirt which had multiple incised tears. These incised tears corresponded with the wounds inflicted on the deceased. Apart from this he had white sulu or dhoti.
- Q: Look at photos 1 and 2 doctor - for the injury to be inflicted as you see in photo 6 if the deceased was standing one would have to go like that? 20
- A: Yes sir.
- Q: It depends on what position he was standing and where was the assailant?
- A: Yes Sir.
- Q: You see the timber post on the righthand side and for that injury to be inflicted you would need very great force? 30
- A: I do not know how this post will interfere with his striking unless he had his back to the post.
- Q: Unless his back is pretty close to the post you would not expect that?
- A: If he is standing in front of the post this is quite possible but if he has his back on the post when the injury was done it is impossible.
- Q: Assuming that he was going out of the narrow doorway photo 1 he had to be quite a distance away from the door before one could inflict an injury like that? 40
- A: This will depend on the position of the deceased, and the position of the assailant. If the deceased was facing the post the injury is possible or if the person was coming out from the entrance there and someone was standing

at the back the injury is still possible. Unless someone is standing next to the post and someone is close it might not be possible.

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Q: And it would be difficult to inflict that injury if the deceased were lying in this position in photo 1 and 2 because the injuries were on the right hand side?

10 A: The injury goes through the lumbar spine. It is not only on the right hand side but it is also on the left hand side. The only injury on the right hand side is a graze. This injury to the rectum, if you follow that line there is the spine and you see that one half is on this side and half on the other side. The injury which goes across the vertebra is split into two sections.

20 Q: The smaller injury is caused by inflicting the knife and drawing it away?

A: Looking at photo 1 and 2 it could not be inflicted while he was lying down.

Q: So it could have been inflicted while he was standing?

A: It could have been inflicted by someone standing at his back on the right hand side.

Q: Not on his side?

30 A: No not on the side.

Q: Is it possible for more than one person to inflict the injury?

A: It is possible.

Q: The injury that is on the right hand shoulder blade on photo 5 is it likely that it was inflicted on the left hand side?

40 A: It could have been done by a right handed person or while he was lying on his back.

Q: If you were lying could it be from the left or the right hand side.

A: If he was lying on his left side the injury is possible. The injury is there on the surface but it is not possible if the injury were on the other side.

Q: In photo 1 and 2 the body is on the right hand side isn't it? This injury was on

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the right hand side and it would be awkward to inflict that injury while the deceased was lying down in that position isn't it?

A: It could still occur. It depends on the position of the assailant.

Q: If the body is lying as it is then the injury below would almost be touching the ground?

A: That would be difficult. 10

Q: You would say that that could have been inflicted before he touched the ground?

A: It could have happened.

Q: The first injury doctor it extends upwards to the right isn't it?

A: On photo 7 and 8 it starts from forehead and it goes across and it is a slicing type of injury. The knife must have struck in that direction from the top and went off. 20

Q: And would you say that that was inflicted while he was standing?

A: Whilst standing or sitting down.

Q: But not whilst lying down in that position?

A: If he was struck that way it would be possible with a right handed person.

Q: You will agree with me that the injury which was on the left hand side of the skull and on the left hand side as the body is lying on photo 1 and 2 could not be caused from one side because the right hand side is covered and this happens to be more on the left hand side? 30

A: Both of them were slicing injuries which sliced the scalp tissue and exposed the bone and in one case exposed the brain. 40

Q: If someone is standing in front while deceased is lying down is it possible that some injury could be inflicted?

A: I am not disputing that this injury could be made from different positions and on different sides.

Q: You know the Indian pit toilet system, when one goes he bows down?

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A: It depends on the height.

Q: Normally this is how it is done?

A: Yes sir.

Q: He could have been attacked while coming out in that stooping position?

A: Yes sir.

Q: That is the only injury that is at an angle, the others run almost in a straight line?

10 A: I think if the injuries are at different sides, the first and second ones are at an angle and if you take all that they are all at an angle and the back one is a straight one. Also this one on the scapula is at an angle.

Q: But not at such an angle as the first one?

A: Yes sir.

20 Q: The only injury you found on the hand of the deceased was on the left hand finger?

A: Yes middle finger just a small superficial wound but none on the right hand side.

Q: In other words the deceased hardly appeared to have tried to prevent the blows?

30 A: It could have been sliced while the deceased was lying down or a person pulling the knife through. I would not agree that this wound alone was in the form of a person trying to protect himself.

Q: There is no injury on the hand consistent with the deceased trying to protect himself?

A: No sir.

Ct: Any questions from the assessors?

A: No sir.

40 Ct: Am I to understand that you could not say what the deceased's position was when he suffered those wounds?

A: I could not.

Ct: Am I to infer that it could have been one or more blows?

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A: Yes sir. The wounds could have been inflicted by the same person while the body was in different positions.

Q: Is it possible that the injuries were inflicted with great force?

A: The injury inflicted in the front was inflicted with great force. One must also bear in mind the sharpness of the instrument used. The sharper the instrument the easier it will cut through and would not need much force.

10

Witness released.

Williams: May I indicate at this stage that that is the case of the prosecution.

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No. 14

RAGHO PRASAD

DEFENCE CASE

D.W.1 Accused - RAGHO PRASAD
s/o Ram Autar Rao of Masimasi
Tavua, Farmer - Sworn on the Ramayan:

20

EXAMINATION-IN-CHIEF BY SHANKAR:

Q: How old are you?

A: 27 years.

Q: And since the first of September you have been in custody in respect of this offence?

A: Yes, sir.

Q: And you were taken into custody by the police on the 28th of July?

30

A: Yes, sir.

Q: Prior to your being taken into custody by the police, you were living at Masimasi?

A: That is correct.

Q: Are you married?

A: Yes, sir.

Q: When were you married?

A: In 1969.

Q: Have you got children?
A: Yes, sir.
Q: How many?
A: Three children.
Q: And were you living in one compound with your father, mother and other brothers?
A: Yes, in my brother's compound. It has a large dwelling house which was built by my father and is occupied by myself and my brother.
Q: Were you living separately?
A: Yes.
Q: What about all the other brothers?
A: All separately.
Q: Your parents were living in the rear of the shop building?
A: Yes, sir.
Q: And your father ran the shop?
A: Yes sir.
Q: And all the income derived from the shop was his?
A: Yes, sir.
Q: How were you earning your living?
A: I was working on my farm and I was cutting cane.
Q: How many acres of land do you have?
A: 7 acres.
Q: What sort of land is it?
A: It is good fertile land. It is on the river bank.
Q: What about the other brothers?
A: The other brothers also have their separate land.
Q: They were pieces of land given by your father?
A: Yes, sir.
Q: Had you planted any cane in your land?
A: Yes, sir.
Q: Has it been harvested?

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(continued)

- A: Yes, sir.
- Q: How many tons this year?
- A: Approximately 120-125 tons.
- Q: In addition to that, would you have additional cane?
- A: Yes.
- Q: Roughly, how many tons of cane would you have next year ready for next season?
- A: Approximately 6 acres.
- Q: To your knowledge, had your father done anything towards telling anyone that the land should be divided to his sons? 10
- A: Yes, he had got all these ideas noted with the Land Commission.
- Ct: What ideas?
- A: That he had to distribute the land between his sons.
- Q: Did he retain anything for himself?
- A: Only the store premises.
- Q: When the cane is harvested, what was his duty to his sons? 20
- A: He did the distribution of the money.
- Q: Was there any dispute over the land in the farm?
- A: No, sir.
- Q: Was there any dispute in the family about any property?
- A: No, sir.
- Q: Were all of you, your father, mother, brothers, sisters-in-law on friendly and talking terms? 30
- A: Yes, sir.
- Q: Beside this farm work and cutting cane, did you have any other occupation?
- A: No, sir.
- Q: Has your father given land free to any other person beside the family members?

Williams:

The witness has not said his father has given any free land to anyone. 40

Ct: You cannot ask that question.

Q: Has your father given any land to any one else other than his sons?

A: Yes.

Q: Can you name them?

A: Ram Kissun.

Q: How many acres?

A: Five acres.

Q: Anybody else?

A: Deo Narayan.

10 Q: How many acres?

A: 5 acres.

Q: Anybody else?

A: Yes, for the cemetery.

Q: How many acres?

A: Five acres.

Q: To your knowledge, did your father give this land free or sold it?

A: Free of cost.

20 Q: Ram Kissun and Deo Narayan, are they in any way related to your father?

A: Not blood relations, but by way of village relations.

Q: Are they still living there?

A: Yes, sir.

Q: What type of relationship did you have with them?

A: Our relationship was good.

30 Q: What is your educational background like, witness?

A: I went up to class 5.

Q: Can you sign your name in English?

A: Yes, sir.

Q: Can you sign on this paper?

A: Witness signs - Exhibit 1A.

Q: When you were married in 1969, did you sign where you had to enter your signature on the Marriage certificate?

A: Yes, sir.

40 Q: Did you sign it in English?

A: Yes, sir.

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- Q: Can the witness be shown MFI 1?
Do you recognise your signature?
- A: Yes, (witness identifies his signature
on his Marriage Certificate).
- Q: Could you also have a look at your
passbook?
- A: Yes.
- Q: It is a bank pass book?
- A: Yes.
- Q: What bank do you operate your account
at? 10
- A: Bank of New Zealand, Tavua.
- Q: And did you have to put your signature
on the withdrawal slip in English?
- A: Yes, sir.
- Q: And the bank holds a similar signature
specimen?
- A: Yes, sir.
- Q: And you were operating your bank
account with your usual signature
that you have just showed us? 20
- A: Yes, sir.
- Q: Can you look at that little piece of
paper - MRI 2?
- A: Yes, it appears to have my signature.
- Q: Can you show us where?
- A: The two signatures on this piece of
paper are mine.
- Q: Do you put that signature on that on
29th July of this year? 30
- A: Yes.
- Q: At Namosau Gaol?
- A: Yes.
- Q: Does it bear anybody else's signature?
- A: Yes, Major Tiko and you (defence
counsel) - Exhibit 1D.
- Q: That was the day after you were taken
by the police in custody that you put
your signature there?
- A: Yes, sir. 40
- Q: The day you were taken by police in
custody, could you sign your name?

A: Yes, sir.

Q: Which hand did you use for writing?

A: Right hand.

Q: On the 28th of July when the police took you, was there anything wrong with your hand?

A: No, sir.

Q: On the 27th day of July can you recall what you did in the day time?

10 A: Yes, sir.

Q: Can you tell the court, please?

A: I was cutting cane.

Q: Where at?

A: At Masimasi at my brother Hirday Prasad's place.

Q: What time did you start and what time did you finish?

20 A: I started at 6 o'clock in the morning and finished at 3 o'clock in the afternoon.

Q: Did you load the truck on that day?

A: Yes, sir. The trucks were loaded.

Q: What time did you return home?

A: After finishing the day's work I arrived home at 3 o'clock.

Q: What did you do after that?

A: I returned to the field to help loading the cane truck on to the trailer.

Q: When did you finish that?

30 A: I again returned home at 4 o'clock.

Q: Did you finish cutting the cane of Hirday Prasad or some of it was still left to be harvested?

A: No, that was the end of his cane cutting.

Q: You said you came home at 4 o'clock, what did you do?

A: I went to the river for my bath.

Q: How far is the river from your house?

40 A: It would be approximately 30 to 40 chains away.

Q: Is that the place where you normally have your bath?

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- A: Yes, sir.
- Q: What time did you return home after having your bath?
- A: 5 o'clock.
- Q: What did you do next?
- A: From there, I went to Sohan Lal's place to deliver an invitation card for the wedding of my brother-in-law Ram Sundar.
- Q: Can you remember what clothes were you wearing at the time? 10
- A: Yes.
- Q: What was it?
- A: Yellow shirt and long trousers.
- Q: What kind of yellow shirt?
- A: With long sleeves.
- Q: And did you stay at Sohan Lal's house for sometime?
- A: Yes, sir.
- Q: For how long? 20
- A: I sat there for a while and it was a little after 7 then I came back home.
- Q: When you returned from Sohan Lal's house where did you go?
- A: I joined the party.
- Q: Whose party?
- A: My brother Hirday Prasad had given a party at the end of his cane harvesting.
- Q: How many people were in the gang in which you were harvesting cane? 30
- A: About 17 or 18 people.
- Q: Was it accepted or customary for all farmers to offer a party to all cane cutters?
- A: All the members of the gang volunteered to have a party after the harvest.
- Q: You said you came shortly after 7 and joined the party. Where was this party held?
- A: Just close to my brother Hirday Prasad's house on the upper ground. 40
- Q: Any particular place?

A: Between the store and my brother's house.
 Q: Where was it held?
 A: Inside the bure shed.
 Q: Can you remember when you arrived, who all were there?
 A: Yes.
 Q: Who?
 10 A: Hirday Prasad, my father, Latchman Prasad, Surend Prasad, Hari Prasad, Ami Chand, Jairaj, Basant Kumar, Chandrika Prasad and myself.
 Q: Apart from these lot, were they any small children?
 A: Yes, there were children about.
 Q: About how many?
 A: About 2 or 3.
 Q: When you arrived in the shed what was going on? Can you tell the court?
 20 A: People were sitting down drinking yaqona.
 Q: Did you join them?
 A: Yes.
 Q: Did you drink yaqona?
 A: Only a few.
 Q: What happened next?
 A: Then beer was brought.
 Q: Who brought the beer?
 30 A: My brother Surendra Prasad went and got beer from my brother Hirday Prasad's place.
 Q: Was beer served?
 A: Yes, sir.
 Q: How much beer was brought?
 A: One carton.
 Q: Can you tell the court who was serving the beer?
 A: Basant Kumar was opening the bottles and I was serving.
 40 Q: To everyone?
 A: Yes, sir.

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Q: Can you remember who you served first?

A: My father.

Q: Can you give us any special reason why your father had drink first?

A: First he was my father and secondly, he was the eldest person present there.

Q: Did he take it?

A: Yes.

Q: And to your knowledge did he drink the beer?

10

A: Yes, he did.

Q: Whilst you were there, did anyone go out anywhere?

A: No one went out.

Q: Did you go out anywhere to do anything?

A: When I heard the dogs barking in the direction of my house, I went to check the cattles.

Q: Was your father still in the shed or had gone away?

20

A: He was still sitting down in the shed.

Q: Did you have anything in your hand?

A: No, sir.

Q: Did you have any torch light?

A: Yes, I had it in my hand.

Q: Did you check your cattle?

A: Yes, after checking I returned.

Q: Why did you go and check the cattle at that time?

A: When I heard the dogs barked, I suspected there might be thieves around.

30

Q: Had you or any of your family ever missed any animal?

A: Yes, a pair of bullocks was stolen.

Q: Where the shed is, is it directly in the direction of the toilet?

A: Opposite the toilet.

Q: And you said the bure shed is in the centre?

A: Yes, sir.

40

Q: Did you go back to the shed after

checking your cattle?
A: Yes, sir.
Q: How long did it take you?
A: About five or six minutes.
Q: Was your father still in the shed or had he gone?
A: He was still there sitting down.
Q: Did he do anything?
A: He remained seated for about ten
10 minutes and then he said he was going away.
Q: Did he say what he was going to do when he left?
A: He said he was going to sleep.
Q: And when he left the shed to go to his store, did he pass the toilet?
A: The store comes first.
Q: Can you remember what sort of clothes he was wearing when he left the shed?
20 A: I do not remember. I did not notice what he was wearing.
Q: In the shed, did you have any lights?
A: Yes, sir.
Q: What sort of light?
A: Benzine light.
Q: Was it reflecting outside or not?
A: It was.
Q: Can you see the track that was in front of the shed and the place where your
30 house is?
A: Yes, sir.
Q: When you went to Sohan Lal's house, did you have any knife with you?
A: No, sir.
Q: When you were sitting in the shed did you have any knife with you?
A: No, sir.
Q: When you went to check the cattle, did you have a knife with you?
40 A: No, sir.
Q: When you came back from checking the cattle,

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- Q: did you have a knife?
- A: No, sir.
- Q: Did you notice anything come into the compound?
- A: Yes, a lorry came.
- Q: Did you see the lorry?
- A: Yes.
- Q: From which side did it come?
- A: It came from the direction of the house and went towards the store. 10
- Q: Whose store?
- A: My father's store.
- Q: Was it on the track on the side of the shed or near the Masimasi road?
- A: The road in front of the store - Masimasi road.
- Q: Did it come near the shop?
- A: Yes, it went and stopped outside the store.
- Q: Had your father already gone from the shed when this truck came? 20
- A: Yes, sir.
- Q: Approximately how long before that?
- A: About 10 minutes before the truck came.
- Q: After the truck came can you tell us what happened?
- A: The driver blew his horn. Hari Prasad was asked to go and see why the truck was tooting its horn.
- Q: Did he go? 30
- A: Yes, he did.
- Q: And what happened next?
- A: After Hari Prasad left, he called out "Run, father is finished".
- Q: And where did this noise come from?
- A: From the store.
- Q: Did anyone go?
- A: We all ran.
- Q: Where did you go?
- A: To the place where my father was. 40

10 Q: Where at?
 A: Near the toilet and I lifted my father up by the head.
 Q: Did you do anything?
 A: I lifted his head up and called out "Brother, bring some water".
 Q: Was the water brought?
 A: Yes, it was poured into his mouth.
 Q: When the water was put into his mouth, how did he appear to you?
 A: He was still alive, because I could still heard his heart-beat and that is why I yelled out to get some water.
 Q: At this time when you picked your father, what clothes were you wearing?
 A: It was a dotted shirt of brownish bluish colour.
 Q: Had you changed your clothes when you returned from Sohan Lal's place?
 20 A: No I had the same clothes on. It was a yellow shirt and black long trousers.
 Q: When the water was poured into his mouth did he drink it?
 A: No he did not. The water flowed out.
 Q: What happened next?
 A: A sack was brought and it was placed underneath his neck.
 Q: How were you feeling?
 A: I was crying.
 30 Q: What about the other members of the family?
 A: All were crying.
 Q: Did anyone to your knowledge go to report the matter?
 A: My brothers went.
 Q: Which ones?
 A: My elder brother Latchman Prasad and Hirday Prasad.
 40 Q: Whilst you were attending to your father did you notice anything happen to your clothes that you were wearing?
 A: Yes, my clothes were soaked in blood. My shirt and trousers.

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- Q: When you saw your father, was there any light there?
- A: Yes, sir.
- Q: What sort of light?
- A: When we ran there to that place, a lighted torch was lighting there and then we took the benzine light.
- Q: How far was he away from the door of the toilet?
- A: Just a short distance. 10
- Q: Did the police come later that night?
- A: Yes, sir.
- Q: Did you notice if your father had any injuries when you lifted him?
- A: Yes, sir.
- Q: What happened when the police came?
- A: When the police arrived they said everyone present there was to stay and not to leave.
- Q: Was it a warm or a cold night? 20
- A: It was a cold night.
- Q: Where did you remain after the police came?
- A: I was there together with all the brothers.
- Q: Outside?
- A: Yes, within a short distance from where my father was lying.
- Q: Did you remain wearing those clothes?
- A: Yes, sir. 30
- Q: Did you later change those clothes?
- A: No, sir.
- Q: Later on during the night time?
- A: No, only in the morning I had the same= clothes on.
- Q: Did you change your clothes in the morning?
- A: Yes, in the morning police got me to change my clothes and they took my clothes away. 40
- Q: What time would that be?
- A: About 8 to 9 o'clock.

Q: In the day time, were you doing anything?

A: Yes, there were a lot of people there.

Q: Did the police take anything from you?

A: The police came and they took two or three knives and took them away.

Q: Amongst them, was there any of your knives?

A: Yes, sir.

10 Q: What was this knife doing there?

A: We were cutting wood.

Q: For what purpose?

A: For building the shed.

Q: Did you use that knife on the 27th?

A: I used it for cutting cane.

Q: Where did you keep it after the day's work?

A: At home.

Q: Where at inside your home?

20 A: Inside the house.

Q: Apart from the clothes that you were wearing and the knife they took from the shed as yours, did they take anything else from you?

A: No, sir.

Q: Now, that day did the police come to see you on the 28th of July?

A: Yes, sir.

Q: Can you remember what time it was?

30 A: It was about 12 o'clock or a little before.

Q: Can you tell the court what happened when the police came?

A: Police came at the time I was sitting with my brother in law Ram Sundar, and my other brothers including some other family members.

Q: Where were you sitting?

40 A: Beside my brother in law in the newly built shed.

Q: What happened next?

A: A policeman said to me "Come along Salik Ram wants to see you".

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- Q: Was the dead body of your father at home at the time?
- A: The body was shortly to arrive.
- Q: What happened then?
- A: I said I will not go, as my father's funeral was on that very day. I told the policeman after my father's funeral I can go.
- Q: And when was the funeral to take place?
- A: At 3 o'clock on the same day. 10
- Q: What happened then between you and the police?
- A: When I said I will not go now I will come after my father's funeral, he forced me and asked me to get in the van.
- Q: Where did you go?
- A: He took me to Vatukoula Police Post.
- Q: Had you been to Vatukoula Police Station before? 20
- A: No sir.
- Q: As far as you are concerned have you been to police station before?
- A: No sir.
- Q: The police officer who took you to the police station has he given evidence in Court?
- A: Yes sir.
- Q: Did you know his name or not?
- A: I now know his name. 30
- Q: What is his name?
- A: Krishna Swamy.
- Q: Where were you taken to at the Police Station?
- A: After he 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. 40

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 Salikram.

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.

Q: What happened next?

A: From there I was taken to the bure where I sat there. I was offered a bowl of yaqona.

Q: Did you drink it?

A: Yes I was asked to drink it and I drank it. I was terribly frightened as I was sitting down and weeping.

Q: Where?

A: In the shade. I was then asked 'Where were you during the day' and I said I was cutting cane. He asked me 'Where did you go from there' and I said I came home. He asked me 'What time did you come back home after cutting cane' and I said 'three o'clock'.. He then asked me after that where did I go to and I said I went to help load the cane truck.

Q: Were you at any time at this stage of questioning cautioned that you were not obliged to say anything?

A: No not that I recall. He asked me where I went to from the field and I said I arrived home at 4 o'clock. I was asked where I went to after that and I said I went to the river for my bath.

Q: What happened next?

A: q. What did you do after your bath?

In the
Supreme Court

Defence
evidence

No.14
Ragho Prasad
Examination

25th November
1976

(continued)

In the
Supreme Court

Defence
evidence

No.14

Ragho Prasad
Examination

25th November
1976

(continued)

- a. I arrived home about 5 o'clock.
q. Where did you go?
a. To Sohan Lal's house.
q. Why did you go there?
a. My brother in law's son was to get married and I took the invitation letter.
q. When did you return from there?
a. I returned a little after 7 o'clock.
q. Where did you go from there? 10
a. I came to my brother's party in the shed.
q. What did you do there?
a. I was drinking beer.
q. How many of you were there?
a. My father
- Q: You gave the names of all the people present?
A: Yes sir.
- q. Did you go anywhere from there? 20
a. I went out to check my cattle.
q. What time did you come back?
a. Within 5 or 6 minutes.
q. When you came back where was your father?
a. My father was sitting down.
q. When he came to the shed for how long was your father sitting there?
a. He was sitting there for about 10 minutes. After that he left in the direction of his store. 30
q. What happened after your father left?
a. After a little while a cargo lorry came. The truck tooted its horn at the store.
- 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? 40
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.
 Q: Any other?
 A: The three letters RAG on page 47. That is all I was asked to write. That is my writing.
 10 Q: Did any police officer read back to you what was written by them?
 A: No sir.
 Q: Why did you put RAG and RP 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.
 Q: Were you asked to sign it?
 20 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.
 Q: Did you say anything about being able to sign or not?
 30 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 al I wrote I do not know what it is.
 40 Q: What were you trying to do?
 A: I was trying to write but I couldn't.
 Q: What were you trying to write?

In the
Supreme Court

Defence
 evidence

No.14
 Ragho Prasad
 Examination
 25th November
 1976

(continued)

In the
Supreme Court

Defence
evidence

No.14
Ragho Prasad
Examination
25th November
1976
(continued)

- 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.

10

29th November
1976

9.30 a.m. - Monday the 29th day of
November, 1976

7th day of Trial

Accused Resworn on Ramayan in Hindustani

Examination-in-chief by Shankar continued:

- Q: As far as you can recall did you sign your full signature on anything at Vatukoula?
- A: No, sir.
- Q: From Vatukoula where were you taken?
- A: To Tavua hospital.
- Q: Did you go straight to Tavua hospital or did you go elsewhere before?
- A: As far as I can recall I was directed to the hospital.
- Q: On the way did you say anything to anyone?
- A: On the way I told the police "Take me to my father's funeral which was on the same day".
- Q: And were you taken?
- A: No.
- Q: Do you recall being seen by a doctor at the Tavua Health Centre?
- A: Yes, he pulled my shirt up and examined by back.
- Q: How did he do it?
- A: By raising my shirt like that (demonstrates)
- Q: Didn't you take off your shirt?

20

30

40

- A: No, sir.
- Q: Did he take off your shirt?
- A: No, sir.
- Q: Did he take samples of your blood?
- A: Yes, sir.
- Q: How did you go to the hospital?
- A: I was taken by the police.
- Q: When you were seen by the doctor where was the policeman?
- 10 A: He was standing at the door.
- Q: Could you see him?
- A: Yes.
- Q: Do you know this policeman?
- A: I do not know his name.
- Q: Was he the only policeman that took you?
- A: They were two who went with me to the hospital but the other one was away and the only one was at the door.
- 20 Q: Who was the other one, do you remember?
- A: Subramani.
- Q: Has he given evidence in court?
- A: Yes.
- Q: Did you make any complaint to the doctor for treatment?
- A: I did not make any complaint to the doctor because of the fear that the policeman was present there and I thought if I made any complaints to the doctor, I will probably be beaten up again.
- 30 Q: Later on that day were you taken before a Magistrate in court?
- A: Yes, sir.
- Q: Who took you there?
- A: Those policemen.
- Q: Did you make any complaint to the Magistrate?
- 40 A: No, sir.
- Q: Were you from there later on taken to Namosau Gaol?

In the
Supreme Court

Defence
evidence

No.14

Ragho Prasad
Examination

29th November
1976

(continued)

- A: Yes, sir.
- Q: And did you see Sgt/Major Tiko there?
- A: Yes, sir.
- Q: Did you talk to him?
- A: Yes, sir.
- Q: In what language?
- A: In Hindustani.
- Q: And did he speak to you?
- A: Yes.
- Q: In what language? 10
- A: In Hindustani.
- Q: Up to this time, did you speak to any member of your family or any other outsider since you left your house?
- A: No, sir.
- Q: Who took you to the prison?
- A: I was taken by the police.
- Q: When you spoke to the Sgt/Major, were the police present?
- A: No, sir. 20
- Q: Can you remember at all what you said to the Sgt/Major?
- A: Yes.
- Q: Could you tell us, please?
- A: I told the Sgt/Major that police have assaulted me and they had obtained my thumb impression forcilby. I said that my brothers did not know I was there and I requested him to inform my brothers at the Bajpai store and also 30
give a message to my solicitor.
- (sic) Q: Do you throw the solicitor?
- A: Yes, Rishi Shankar.
- Q: And did you remain in the prison until 29th?
- A: Yes.
- Q: And in the afternoon, were you seen by your solicitor?
- A: Yes, sir.
- Q: And were you later seen by a doctor the 40
same day?

A: Yes.

Q: One doctor or more than one?

A: Two doctors.

Q: Did they see you both at the same time
or separately?

A: They examined me separately.

Q: And tell the court whether they examined
you with your clothes on or otherwise?

A: They removed all my clothes.

10 Q: Both doctors or just one?

A: Both.

Q: Could you tell the court if they
carried out any examination in the
presence of the Sgt/Major?

A: Yes, sir.

Q: And did they carry out any examination
privately?

A: Yes, sir.

20 Q: And when they examined you in the private
room, did they remove your clothes?

A: My shirt and my shorts.

Q: When they examined you, did you have
any pain anywhere on your body?

A: Yes, sir.

Q: Roughly where at?

A: In my chest and in my private parts and
the back of my shoulder.

Q: Can you see Ex. C (knife). Is this
your knife?

30 A: Yes, sir.

Q: What were you using this knife for?

A: For cutting cane.

Q: Did you use it on the 27th?

A: Yes, I was cutting cane with this knife.

Q: And after using it what would you do
with the knife?

A: I always used to wash it and keep it in
the house.

Q: Is this the only knife in that house?

40 A: Yes, that is the only one.

Q: And in the house where was it kept?

In the
Supreme Court
Defence
evidence

No.14
Ragho Prasad
Examination
29th November
1976
(continued)

A: On the side of my bed.
Q: On the 28th, did the police take this knife from you?
A: Yes, police took this knife from the place where we were building the shed. Two knives plus this one.
Q: And this was the shed you were building for the funeral?
A: Yes, sir.
Q: And the other two knives which the police took, whose knives were they? 10
A: I do not know who they belong to.
Q: When the police took this knife from your house, can you remember approximately what time was it?
A: It was about nine o'clock or thereabouts.
Q: In the morning?
A: Yes, sir.
Q: Was it before you were taken to Vatukoula Police Post or after? 20
A: They took the knife before they took me to the police post.
Q: The police say witness, that you told them you were angry and you killed your father with a knife?
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. 30
Q: Did you kill your father?
A: No, I didn't.
Q: Did anyone ever mention to you that you must get rid of your father?
A: No, sir.
Q: To your knowledge do you know if anyone in the family had reason to be angry with your father?
A: No, sir.

Cross-
Examination

CROSS-EXAMINATION BY MR. WILLIAMS 40
Q: I would like to continue from where your counsel left off. You were saying that no one in the family had

reason to be angry with your father?

A: Yes, sir.

Q: Your father was loved by everyone was he?

A: Yes, sir.

Q: He was a kind old man giving his money away to people not even related to him?

A: Yes, sir.

10 Q: Even though his sons had worked for him all his life he gave his land to people who were not even related to him.

A: Yes, sir.

Q: So really no one in that area would have any reason for killing your father?

A: Yes, sir.

Q: By that I take it you mean no one would have any reason?

20 A: It might be that no one had any reason to attack my father in any way.

Q: That implies that you cannot think of anyone who would wish him dead?

A: No as far as I know no one had any wish of that kind.

Q: Can you think of anyone who would profit by your father's death except you, your brothers, and your mother?

A: No I cannot think of anyone.

30 Q: But since his death has his property not been sold to be distributed amongst his widow and his sons?

A: All his property was for all of us.

Q: Hasn't he willed his property to your mother, you and your brothers?

A: He had during his life time distributed everything to us.

Q: Are you suggesting that when he died he owned not a thing in this world?

40 A: The whole thing was still in his name but he had allocated certain shares to all of us.

Q: While it was in his name he would have to make a will or sign a transfer to give each of you the property in your own name?

In the
Supreme Court

Defence
evidence

No.14

Ragho Prasad

Cross-
Examination

29th November
1976

(continued)

In the
Supreme Court

Defence
evidence

No.14
Ragho Prasad
Cross-
Examination

29th November
1976

(continued)

- A: The will was in favour of all the sons and my mother.
- Q: He made that?
- A: Yes, sir.
- Q: How long had you worked for your father?
- A: For sometime I was living with him.
- Q: I suppose you have worked for him all your life?
- A: Yes, sir. 10
- Q: You said that you were harvesting 7 acres.
- A: Long before his death he had given this piece of land to me.
- Q: When did he give you that?
- A: It was long before his death. I cannot recall exactly when he gave me this land.
- Q: Before you were married?
- A: Yes before my marriage. 20
- Q: Your father never signed a transfer of that land to you did he?
- A: No, sir he didn't.
- Q: And did he sign a transfer for any of your brothers?
- A: Yes in respect of one of my brothers he had transferred another land to him.
- Q: Another land?
- A: Yes it was another land.
- Q: Where was that land? 30
- A: It was some distance away from our home.
- Q: It was not part of the land that you all farmed together at Masimasi?
- A: It was a separate piece of land.
- Q: Was the cane contract ever transferred to you?
- A: No, sir.
- Q: So your father received the cane cheque for the whole undivided piece of land did he not? 40
- A: Yes, sir.

Q: How much did he give you this year?

A: This year before my cane was harvested my father died.

Q: Well how much was the last amount that you received from your father?

A: He paid me about \$200 to \$300 towards my share.

Q: That was your share in respect of 7 acres?

10 A: Yes sir during that year I didn't have much cane from the 7 acres but I have much more cane for this season.

Q: Well, you had 100 to 125 tons this year. Roughly how many tons last year?

A: About 70 to 80 tons.

Q: The price of cane was very good last year wasn't it?

A: I do not recall.

20 Q: Your father never told you the price that he was getting?

A: I cannot remember.

Q: How much are you getting this year?

A: \$20 a ton.

Q: Or possibly a bit less say \$15?

A: Maybe I do not know.

Q: How much did you receive altogether for your cane last year?

A: \$800 to \$900.

30 Q: What did you do with that?

A: I am depositing all this money. I am also using it.

Q: What are you using it for?

A: I use it for my family and I would like to build my house.

Q: And you have also been making money cutting cane for other people have you not?

40 A: Yes I cut on my own behalf and I cut for others as well.

Q: Have you been receiving about \$800 to \$900 since you were married?

A: No there was a debt before. We all paid

In the
Supreme Court
 Defence
 evidence

No.14
 Ragho Prasad
 Cross-
 Examination
 29th November
 1976

(continued)

In the
Supreme Court

Defence
evidence

No.14
Ragho Prasad
Cross-
Examination

29th November
1976

(continued)

- off the debt first and we built a big house, store building and expenses towards the marriage of all the brothers.
- Q: Despite this, you, your wife and 3 children have occupied one room?
- A: Yes, sir.
- Q: Because you are paying off what were your father's debts for the store and the development of the land? 10
- A: Yes, sir.
- Q: How many bank accounts do you have?
- A: One bank account in my name, my children have a bank account and I keep some money for my use.
- Q: You said when I asked you what you were doing with your \$800 to \$900 and you said depositing all this money and using for upkeep of the family. From 1973 to 1976 the largest sum ever appearing in your bank account is \$60. 20
- A: Prior to that I used to make use of all the money and didn't bank any money.
- Q: So when you said that you were depositing all this money that was quite untrue was it not?
- A: I said I didn't deposit all the money. I used to spend for various expenses.
- Q: You said that the last payment you received from your father was about \$200 to \$300. When did you receive that? 30
- A: I received the last payment last year towards the end and I used that money for buying a pair of bullocks.
- Q: Towards the end of what?
- A: This was some time this year that I received the last payment for last year's proceeds from which I bought a pair of bullocks. 40
- Q: During this year you only deposited \$10, \$20 in the bank. Does that, apart from the bullocks, represent your total wealth in this world?
- A: No, I did not make any deposit from that \$200-\$300 that I received from my father.

Q: My question was - This year you deposited \$10, \$20, bringing your total account to \$31.60. Now that amount together with the pair of bullocks, represents your total wealth in this world?

A: In respect of last year?

Q: You can understand my question - I am asking whether this total in your bank with the pair of bullocks represent your total wealth in this world?

A: No, part of the money was at home which was not banked.

Q: How much was at home?

A: I have used some of the money and while I was away, something might have been used from that. I would still have about \$50-\$60.

Q: But you have anything else?

A: No.

Q: So out of this cane payment of \$800-\$900 received just last year all you have in your own name is \$31 at the bank, \$50 may be at home, and a pair of bullocks?

A: I bought this pair of bullocks at the price of \$700 and I got a cow and a calf and I spend that money for buying these as well.

Q: Did your father do any work on the cane fields?

A: No.

Q: He just confined himself to the shop did he not?

A: Yes.

Q: And when he left the shop did he use to lock it up and not allow you or even your mother inside?

A: No, I did not go there any time.

Q: And your mother did not go there either whilst your father was away from the shop?

A: No one use to stay there during the time he used to run the shop and when he was away, no one would go there.

Q: He used to lock the shop when he used to go away?

In the
Supreme Court
 Defence
 evidence

No.14
 Ragho Prasad
 Cross-
 Examination
 29th November
 1976
 (continued)

In the
Supreme Court

Defence
evidence

No.14
Ragho Prasad
Cross-
Examination

29th November
1976

(continued)

- A: Yes.
- Q: So all the profits from the shop went to father?
- A: Yes.
- Q: Did Mata Prasad used to supply things for the shop?
- A: Not that I can recall.
- Q: Do you know if Mata Prasad had a crop lien over all the crop to secure debts of the shop? 10
- A: I do not know about that.
- Q: How many cattle are there in the compound. You mentioned a pair of bullocks, a cow and a calf.
- A: I do not remember, my brothers have their own but I have four of mine.
- Q: Roughly who else would have cattle in the vicinity of the compound?
- A: My brothers and no one else.
- Q: That night, the night of your father's death, you were drinking with your brothers were you not? 20
- A: Yes.
- Q: Could you see anything which prevented your brothers from checking their cattle that night?
- A: The other brothers were elder to me and I could not ask them to check the cattle since I was the youngest I went to check myself. 30
- Q: So you had checked not only your cattle but the cattle of the whole family as well?
- A: Yes, all the cattle that were outside.
- Q: You only went to one place did you not?
- A: Yes.
- Q: Do you feel yourself under the orders of your brothers being the youngest?
- A: There were no such orders from my brothers, I myself volunteered and went out because a pair of bullocks had earlier been stolen. 40
- Q: But as the youngest, you have said on Friday you had to serve your father with

beer as the youngest today you said you had to go and check the cattle?

10 A: Yes, after seeing the beer I went out to check the cattle.

Q" And because you are the youngest you were also expected to see the cattle alright that night?

A: Yes.

Q: And as the youngest wouldn't you do anything that your elder brothers told you to do?

10 A: No

Q: Where would you draw the line? (No answer).

Q: How many beers did your father have that night?

A: Just a glass.

Q: So he was not drunk?

A: No.

Q: Despite his age he was still capable of walking normally?

20 A: Yes.

Q: And despite his age he was still a well built man?

A: Yes.

Q: He was not what you describe a weakling?

A: No, he was not all that weak.

Q: Would you look at the photograph A.13 please? (Shown to witness).

30 Q: In the foreground of that photograph is the bure where you were sitting with your brothers, is that correct, the inside of the bure?

A: Yes.

Q: Is it shown where you were sitting?

A: I cannot see any bure in here.

Q: What I am suggesting to you is that photograph is taken from inside the bure?

A: No, I cannot make it out.

40 Q: From which side of the bure is that photograph taken?

A: No, I cannot make it out.

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Supreme Court
 Defence
 evidence
 No. 14
 Ragho Prasad
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 Examination
 29th November
 1976
 (continued)

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Supreme Court

Defence
evidence

No.14
Ragho Prasad
Cross-
Examination
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1976

(continued)

- Q: How many bures are there on the compound with open sides?
- A: One.
- Q: And is that not your father's shop in the background?
- A: Yes.
- Q: Can you see the toilet of the shop at the back of the shop?
- A: Is that the one (points).
- Q: Yes. If there is only one bure on the compound, what do you think is that building that you have your finger on? Would you look at photograph 4? 10
- (Shown to witness)
- Q: Is not that another view of the inside of the same building that you have your finger on?
- A: Yes, it is.
- Q: Let us go back now to photograph No.13 shall we? 20
- (A.13 shown again to witness).
- Q: Were you sitting somewhere in that building on the night your father died?
- A: Yes.
- Q: The toilet, would you agree, is about a stone's throw away?
- A: Yes, it is a very short distance from the shop. 30
- Ct: Not the shop, the bure he is asking about.
- A: It is far away from the bure, about 3-4 chains away.
- Q: And yet that night you heard no cry for help?
- A: When Atma Prasad yelled out, it was then we rushed out and picked my father.
- Q: You heard no cry for help from your father? 40
- A: We heard no cry from my father.
- Q: You heard no sound of struggling from that direction?
- A: No, it is away from there.

- Q: You heard no sound of someone fighting for his life?
- A: No, I heard no sound at all that night.
- Q: And no sound of over 13 blows being delivered to a man who was being butchered?
- A: No, I heard no noise at all that night.

In the
Supreme Court

Defence
evidence

No.14
Ragho Prasad
Cross-
Examination

29th November
1976

(continued)

No.15

JASPAL SINGH

Defence
evidence

No.15
Jaspal Singh
Examination

29th November
1976

10

D.W.2 JASPAL SINGH - General medical practitioner of Varadoli, Ba, Sworn on Ramayan in English.

EXAMINATION-IN-CHIEF BY SHANKAR:

Q: Have you ever taken an oath on the Ramayan before?

A: Yes, sir.

20 Q: Can you tell the court what your qualifications are, doctor?

A: I have MBBS from Punjab University.

Q: When did you qualify, doctor?

A: In December, 1968.

Q: And for how long did this course take you?

A: 5 years.

Q: How long did it take you?

30 A: Two years since matric. I did internship for six months at Amritsar hospital and then I came to Fiji in 1969, and I did one year's house man at CWM hospital. I was promoted to Medical Officer Class I at Fiji School of Medicine and looked after the clinic part time and part time looking after various health centres.

In the
Supreme Court

Defence
evidence

No.15

Jaspal Singh
Examination

29th November
1976

(continued)

- Q: Were you at the Fiji School of Medicine teaching graduates of Diploma in Surgery and Medicine?
- A: No, I used to get cases for them for their experiments.
- Q: Your qualification is a degree?
- A: Yes, sir.
- Q: Whereas from the Fiji School of Medicine one gets a diploma?
- A: That's right. 10
- Q: When did you leave government service?
- A: I left in November, 1971.
- Q: And what have you done since then?
- A: I am a general practitioner and look after Tavua and Ba and part-time I used to be with the F.S.C., Ba.
- Q: I see; did you look after the personnel staff of the mill?
- A: I used to do it, but not now.
- Q: When did you leave that? 20
- A: In December, 1974.
- Q: Whilst being employed by the government did you examine cases brought to you by the police?
- A: Yes, sir.
- Q: And did you give evidence in court for the Crown?
- A: Yes, sir.
- Q: On the 29th of July this year, were you called to Namosau Prison? 30
- A: Yes, sir.
- Q: And did you examine anybody there?
- A: I examined a man called Ragho Prasad.
- Q: Did you make notes at the time?
- A: Yes, sir.
- Q: Do you wish to refresh your memory from your notes?
- A: I wrote rough notes when I was at the prison, then I was asked by the solicitor to get him a copy too, but here, I have a rough copy of the notes I made at the time in prison. 40

(Leave granted).

In the
Supreme Court

Q: What time did you see the accused on the 29th?

Defence
evidence

A: About 4.45 p.m.

Q: Can you tell the court of your findings?

No.15
Jaspal Singh
Examination

A: I saw one swelling and tenderness $\frac{1}{2}$ " x $\frac{1}{4}$ " at the left occipital region (back of the head).

29th November
1976

Q: Did you notice anything else?

(continued)

10 A: It was tender and it was slightly swelled and the size was $\frac{1}{2}$ " by $1\frac{1}{4}$ ".

Q: Anything else?

A: And then I saw a swelling and bruises on the right side of the scapular region $1\frac{1}{4}$ " x $1\frac{1}{2}$ ". Blackish and blue discolouration.

Q: How long after a bruise has been inflicted do you expect discolouration?

A: It would be about 48 to 54 hours.

20 Q: Would it appear before that as well?

A: The discolouration starts with pinkish and it changes from blackish to bluish and it can remain there for 15 days.

Q: How long would you expect it to remain there?

A: To my mind it would be 48 hours.

Q: If this bruise was inflicted say about 27th July before 9 p.m. would you expect it to appear on the 28th by 3 p.m.?

30 A: Yes, I would.

Q: Did you see any more injuries?

A: I saw a bruise on the right arm in the middle aspect and one was 2" by 1": one was $4\frac{1}{4}$ " from the middle joint and the other one was 1" x 4".

Q: Did you measure them yourself?

A: Yes, sir.

Q: What else did you notice, doctor?

40 A: I noticed four puncture marks on the right arm. And the other was a superficial cut on the lower lip.

Q: What was the size of it?

A: Well, it was just in the middle of the lower lip.

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Q: Could you tell the age of the cut?

A: It was pinkish-blue in colour.

Q: Could you say anything about the healing process?

A: I cannot say because some people do have a habit of biting their lips.

Q: Can you tell any other injury?

A: There was a swelling area with no colour on the right mandible and I think it was an old healed scar.

10

Q: What was the size, doctor?

A: It was 1" by 1".

Q: Could you tell us about discolouration?

A: It appears normal after 15 days. My general examination was Pulse was 112 in one minute, a feeble pulse, regular, chest was clear clinically. There was slight epigastric tenderness. The last one was his right testis - it was a bit swollen than the left and it was tender on palpitation.

20

Shankar: No further questions.

Cross-
Examination

CROSS-EXAMINATION BY WILLIAMS:

Q: With the testis, did you examine this by eye or manipulation?

A: It was by eye and manipulation as well.

Q: Was there any discolouration in the bruising of the testicles?

A: No, sir.

30

Q: When you have considered the swelling of such a degree, does it require any treatment?

A: It can be very dangerous. It can incapacitate him for about 20 days or for the whole of his life, if someone presses it.

Q: You said that it was a bit swollen. Would that indicate to you that it was in a very grave condition?

40

A: I suspected that there was accumulation of fluid or blood inside it.

Q: Did you learn of the allegation before

you made the examination?

A: I was just supposed to see one person.
in the prison and I came from Tavua about
4.30 p.m.

Q: Yes, but during the course of the
examination did you learn from the prisoner
of the allegation?

A: No, I just asked him his name, his
address etc.

10 Q: Now, the tenderness in the epigastrium
and testis, how did you detect these?

A: Well, when I asked him, he said it was
painful. When I pressed it, it was
tender and he complained of pain.

Q: When you applied pressure, he went
through a motion of showing pain?

A: That's right.

Q: So really that again, is just another
impression of him acting?

20 A: He may have been acting.

Q: His pulse and general demeanour, indicated
to you general normality?

A: Generally, he appeared nervous - a slight
degree of tachycardia - heart beat rate
increased.

Q: Was he worried when you said that you
could see a swelling on the left occipital
area?

30 A: Yes, when I pressed it, he complained of
pain and when I felt it it was tender
and swollen too.

Q: I am suggesting to you that you relied
on your touch when you pressed? How did
you detect the swelling?

A: Just by feeling through the area. His
hair now is longer than what it was before.

Q: You saw the bruises in the medial aspect
of the right arm. What colour was it?

A: It was pinkish and bluish in colour.

40 Q: Was it more recent than any other injury
that you had seen?

A: Well, age would have been 40-48 hours.

Q: Would you agree with me that depending
on the degree of force used, a bruise
might not be apparent for 24 hours after

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its infliction?

A: It depends on the severity of the force.

Q: What time would elapse between the time of infliction and the time of swelling?

A: Possibly 2 hours for it to swell and it can last for 15 days and the blood vessels or small capillaries, if they are hit, the bruise swells at the same time.

10

Q: So it can be apparent in 24 hours, but if little force is used, it probably take much longer?

A: Probably up to 24 hours depending on the severity of the force.

Q: Dealing with that particular scapular injury which you have described as blackish blue colouration. You said the age would be 48-54 hours. So, it would be very unlikely to be less than that?

20

A: Yes, sir.

Q: Now, you examined him on the 29th of July. Could the injuries have been caused not later than the 27th?

A: When I examined him it was there. I could only guess the age of the injury by colouration.

Q: Well, if 48 hours is the minimum, does that mean that that force was applied on the last two days before your examination?

30

A: Yes, sir.

Q: A proposition was put to you that if the injury was inflicted on the 27th before 9 p.m. would you expect it on the 28th by 3 p.m.?

A: Yes, sir.

Q: You agree with me that it would become visible after a lapse of 24 hours?

40

A: It can be 2 hours to 24 hours, depending on the size of it and the force applied.

Q: So isn't it possible that if it was inflicted on the 27th at 9 p.m. it could be not visible to a doctor examination him at 3 p.m on the 28th?

10 A: It is possible from the tenderness, he could have guessed.

Q: If this injury was inflicted on the night of the 28th, couldn't the doctor have seen it?

A: Might be the doctor did not examine the patient properly.

Q: Now, is it not true that a bruise can become visible after a lapse of 24 hours?

A: It is possible.

Q: But it is not apparent 24 hours after that depending on the force?

A: It is apparent from 2 to 24 hours.

Q: Simply answer my question, doctor. I am not interested in the 2 hours. I am more interested in the 24 hours. Now, isn't it correct that the first sign of the bruising can become visible after 24 hours after the force was applied?

20 A: It depends upon the part of the body where it was inflicted and the force as well.

Q: It could take about 24 hours to become visible?

A: It can in some cases.

Q: Depends on the force does it not?

A: If you know the force is coming you make yourself in a position to bear that and contract your muscles and skin. If somebody knows that the blow is coming by reflex he tries to tense his muscles and the colour changes would be different too.

30 Q: It could take after 24 hours to become visible?

A: It could.

Q: If the injury was inflicted or force applied at 9.00 p.m. on the 27th is it not possible that at 3.00 p.m. on the 28th there could be no outward sign of the bruise?

40 A: There could be signs.

Q: Is it possible that there could be no sign of the bruise?

A: As I said before you are taking a time

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- factor in your hands. I am saying that the time factor comes after the blow.
- Q: You said it might be possible if a blow were inflicted at 9.00 p.m. that the bruise would not appear at 3.00 p.m. the following day. What would that depend on?
- A: It would depend on the area where it is inflicted, the severity of the blow and the blood of the person. 10
- Q: And these were what you would professionally call very minor injuries?
- A: They were very minor injuries except the swelling of the testis and that appeared as a grave injury.
- Q: Did you recommend immediate treatment for the graze?
- A: I never recommended treatment.
- Q: Did you warn the prison authorities the situation this man was in? 20
- A: I told one Basant there that except for one, the others were minor injuries.
- Q: Did you recommend the prison authorities any remedial action?
- A: I left it to them because it was their duty to get him treated.
- Q: The swelling of the testis I suppose you could not give any opinion as to the time that was inflicted?
- A: From the tenderness I guessed that it was 48 hours. 30
- Q: You described a swelling of the right mandible and you described it as an old healed swelling?
- A: That is right.
- Q: What do you mean by old?
- A: The skin had normal texture and I guessed that the injury was not inflicted recently. It might have been one month, two months or even a year. 40
- Q: Out of all the swellings, and any signs of injury that you observed was there anyone of them that you could say occurred on the 28th and not on the 27th?

A: From the colour changes it appeared to be 48 to 54 hours.
Q: So the injuries to you appeared more probable on the 27th than the 28th?
A: Yes, sir.

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Re-examination

RE-EXAMINATION BY MR. SHANKAR

Q: Is it possible that these bruises could have been inflicted between 12 mid-day to 2.00 p.m. on the 28th?
10 A: Yes, sir.
Q: Could the swelling on the head have been caused about that time?
A: Yes, sir.
Q: And the bruises on the shoulder blade?
A: Yes, sir.
Q: And the bruises on the right arm?
A: Yes, sir.
Q: You said the testis could have been squeezed. Is there any other way which could have caused the swelling on the testis?
20 A: He was complaining of pain in the testis and said that somebody pressed it.
Q: Could it have been caused by blunt force?
A: Yes, sir.
Q: If the bruises were caused between 12 mid-day and 2.00 p.m. on the 28th would you expect them to be visible to the naked eye at 3.00 p.m. on the same day?
30 A: It is possible that it could be visible on the same day depending on the texture of skin, severity of blow and area affected. It could remain until 14 to 15 days.
Q: Could it remain dormant and invisible until 3.00 p.m.?
A: They could remain dormant depending on what I have said earlier.
40 Q: Is there any other way of finding out tenderness which has no apparent bruises apart from the reactions of the patient?
A: We can also find out by touching the body

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where it was swollen.

Q: Which would be the most helpful guide?

A: The patient should be the most helpful= guide.

Q: And when you examined him did you palpate for tenderness?

A: Yes, sir.

Q: Was it tender?

A: It was tender.

Q: The bruises and the swelling could only be caused by blunt force? 10

A: Yes sir there were some nail marks.

Williams: This didn't arise in cross-examination.

Shankar: I have no further questions.

Court: When did you first saw this man?

A: On 29th July at 4.45 p.m.

Q: How did you ascertain his injuries?

A: From his complaints as well as from my own examination following his complaints. 20

Q: Did the complaints include the right mandible?

A: No that was just my inspection.

Court: Were there any other injuries that you ascertained from your examination?

A: That was the only swelling which I could see clearly.

Court: When you examined him did you see any injuries of your own accord? 30

A: I saw punctured marks and nail marks but the others were complained of by him.

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No.16

BALWANT SINGH REKHA

3rd W/DEFENCE DR. BALWANT SINGH REKHA
AFFIRMED

EXAMINATION-IN-CHIEF - MR. SHANKAR

Court: Doctor, by being affirmed, do you know

that if you do not tell the truth you may be liable to the penalties for perjury?

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A: Yes.

Q: Can you tell the Court about your qualifications?

A: I am a M.B.B.s of Mysore.

Q: What does MBBS mean?

A: Bachelor of Medicine and Bachelor of Surgery.

10

Q: When did you qualify?

A: In 1973.

Q: How long did it take you to obtain that?

A: One year pre-professional, 4½ years practical and one year internship. All together 6½ years.

Q: And during the course of your study, did you undertake practical training?

A: Yes, I did.

20

Court: That is after your degree?

A: After degree, one year internship.

Q: When was practical training done?

A: After the pre-professional.

Q: That is during the degree course?

A: Yes.

Q: And when did you return to Fiji?

A: 1974.

Q: Can you tell the Court where were you employed?

30

A: I was first employed in the C.W.M. Hospital for about a year.

Q: Any other place?

A: Then I was transferred to Lautoka hospital.

Q: How long did you stay there?

A: For 2 months, and then I was transferred to Ba Health Centre.

Q: During this period when you were employed in the Government hospitals, were you called upon to examine patients who received injuries?

40

A: Yes.

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Court: When did you leave the Government
service?

A: 1975.

Court: You are from Ba are you not?

A: Yes, my Lord.

Court: What is your father's name?

A: Battan Singh.

Q: Were you at any time called upon to
relate your examination of patients
that you saw brought by Police in courts 10
in Fiji?

A: Yes.

Q: And when you gave evidence did you give
affirmation the way you have given us
today?

A: Yes.

Q: What is your religious book that you
follow?

A: I believe in Sikhism.

Q: And the duty Book is the Granth? 20

A: Yes.

Q: And does the Granth always remain in
the Sikh temple?

A: Yes.

Q: Can it be removed?

A: With the permission of the priest it
may perhaps be.

Q: Have you seen the Granth yourself?

A: Yes.

Q: How big is it? 30

A: Quite big.

Q: Is there any smaller version?

A: Yes, there is synopsis of it.

Q: Is it readily available?

A: It is not available in Fiji.

Q: How are you employed at the moment?

A: At present I am a medical practitioner
working for the Fiji Sugar Corporation.

Q: Do you see their staff and employees?

A: Yes, and I am also the medical 40

practitioner for the Fiji Crippled Children Society, Ba Branch and medical practitioner for Ba Tikina Council.

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Q: Are these two services provided free by you?

A: Yes, free.

Court: Where are you employed at the moment doctor?

A: Rarawai and Penang.

10 Q: On the 29th of July this year did you go to Namosau Prison at Ba?

A: Yes, I did.

Q: And did you examine a person there?

A: Yes, I did.

Q: What time did you examine him?

A: It was 5 minutes past 4.

Q: And who was the person?

A: Ragho Prasad, age 27 years of Masimasi, Tavua.

20 Q: Did you make notes of your examination at the time?

A: Yes, I did.

Q: Can you remember your findings without looking at your notes or do you wish to seek His Lordship's permission to refresh your memory from it?

A: Yes, I wish to refresh my memory.

Shankar: May he be granted permission Sir?

Court: Yes, very well.

30 Q: Can you tell the court of your findings?

A: There was a swelling and bruised area 1½" in width on the right scapula.

Q: Whereabout is that?

A: About here (touches his shoulder).

Q: That is commonly known as the shoulder blade?

A: Yes, the shoulder blade.

Q: Can you say how old the injury was?

A: It was about 24-36 hours.

40 Q: Can you tell us the state of the bruise?

A: It was blackish in colour.

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- Q: How was it blackish in colour, can you say?
- A: It was due to break-down in the movement of the blood.
- Q: Was it internal?
- A: Yes, there would be excavation of the blood, exclusion of the blood into the tissues.
- Q: And how long after infliction of force would you expect this discolouration? 10
- A: Depends on the site, nature of the tissue, age.
- Court: Age of the patient you mean?
- A: Yes.
- Q: What would the first appearance?
- A: Crimson or reddish.
- Q: How long after the infliction would you expect this to appear?
- A: It could be in an hour or so.
- Q: What would be the next change in colour? 20
- A: It would be bluish black.
- Q: And would it remain so for some time?
- A: Yes.
- Q: Approximately how long?
- A: About 2-3 days and then it will change to yellowish grey.
- Q: How long after would you expect any evidence of such an injury remaining on the body?
- A: All depends, it could be 10-15 minutes or it could be less. 30
- Q: A bruise, does it involve the fracture of the skin, does the skin break at all?
- A: No.
- Q: What sort of force would you require to inflict such an injury?
- A: Blunt force.
- Q: Could it be caused by a fist?
- A: Possible.
- Q: How did you measure this injury? 40
- A: By a foot ruler.

Q: From where?

A: From the Prison at Namosau.

Q: When you examined the patient how was he dressed?

A: He was only in shorts.

Q: Did you examine the bruise having taken his clothes off?

A: His shirt was removed.

Q: Did you see any other injury?

10 A: Yes, there was a swelling at the back of his head on the left hand side $\frac{1}{2}$ " x 1".

Q: Did you see the injury yourself?

A: Yes, I did.

Q: How did you see it?

A: I felt it here. (Touches back of his head)

Q: Did you part his hair to see it?

A: I just felt it like that. (patted back of his head)

Court: How did you know that the injury existed?

20 A: I just patted the head and I found there was a lump there.

Q: Did you notice any other injury?

A: There was a bruised area in the mid-fossa aspect of the right arm 2" x 1", on this area of the bone (indicates).

Q: Any other injury on the arm?

A: There was a bruised area at the end of the wrist 1" x $1\frac{1}{2}$ ".

30 Q: And can you tell if you noticed any discolouration there?

A: Yes, there was discolouration.

Q: What sort of discolouration?

A: It was black in colour.

Q: In comparison to the age of the injury on the scapula, how old would this injury be?

A: It would be of the same age?

Q: Did you notice any other injury?

40 A: There was a needle mark on the vein on the right middle fossa and other similar marks on the forearm.

Court: How many marks altogether doctor?

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- A: Altogether five marks. There was a tenderness on the lumbar region, in the low back.
- Q: How did you detect that tenderness?
- A: By pressing on the part and see the reaction of the patient. If he winces, that means he is experiencing pain.
- Q: Did you notice anything else?
- A: There was a swelling and tenderness in lower limb, on the shin, $\frac{3}{4}$ " x 1". 10
- Q: Can you tell the age of that?
- A: Same age, 24-36 hours. There was a superficial cut on the lower lip $\frac{1}{2}$ " long.
- Q: Can you tell us the condition of that cut on the lip?
- A: There was a scar formation, it was sort of hard covering due to stoppage of blood.
- Q: How long after infliction would you expect that to appear? 20
- A: About 24-36 hours depends on the vascularity of the area.
- Q: Did you notice any other injury?
- A: There was a swelling and discolouration of the right lip 1" x 1".
- Q: How was the accused at that time, beardwise?
- A: He had a grown-up beard.
- Q: Was he bearded on the area where you saw this swelling? 30
- A: He had a little beard on that area here (indicates).
- Q: Did you notice any other injury?
- A: There was swelling and serious tenderness of the right testes. There was a marked tenderness of the spermatic cord and epididymus.
- Q: And what is that?
- A: That is from the testes, there is a cord going up like that (indicates). 40
- Q: Did you see any discolouration there or not?
- A: No discolouration, only marked tenderness.

Q: How could that be caused?
A: By blunt force or by squeezing.
Q: You say there is no discolouration, is it because there is no internal injury?
A: There can be internal injury as there is covering of the testes, this can prevent the discolouration.
Q: How can the testes be swollen?
10 A: There could be accumulation of blood in the testes or if there is an infection of the testes, the testicle will then be distended.
Q: Did you notice anything else?
A: There was tenderness in the epigastrium region here (indicates).
Q: The injury that you say was a tenderness in the lumbar region, what sort of force would you expect to cause that?
20 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.
Q: If you were assaulted in the abdomen here (indicates), would you expect a
30 bruise?
A: It depends, if the muscles are hit yes, otherwise, no.
Q: When you examined the accused's testes, had you taken his clothes off?
A: Yes, I removed his underpants.
Q: Have you seen the accused's right testes today?
A: Yes, I did.
Q: Has he got any swelling?
40 A: No.
Court: When did you see him?
A: Just outside in the porch.

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Cross-
Examination

Shankar: That is all I wish to ask, my Lord.

CROSS-EXAMINATION BY MR. WILLIAMS

Q: You know that he was already examined by Mr. Jaspal Singh did you not?

A: Yes, I did.

Q: You examined him on the 29th?

A: Yes, I did.

Q: You did not even see Dr. Singh at the prison whilst you were there?

A: No, I did not see him.

10

Q: No one mentioned to you that some one else had examined him?

A: No, I was not informed.

Q: Then you said that there was discolouration of the right testicle?

A: No, I did not see it.

Q: But the only abnormality that you saw was the swelling?

A: Yes, swelling and pain.

Q: Well, the testicles are a very sensitive part of the accused's body?

20

A: Definitely.

Q: And a man has to be a very good actor to show how painful it is?

A: No one would like it.

Q: And the epigastrium, was there discolouration there?

A: No.

Q: Again, just another complaint of the accused for tenderness?

30

A: There was pain. He showed by his expression that he had pain.

Court: How did you know to examine that part, doctor?

A: He told me there was pain there.

Q: The note that you are referring to to refresh your memory as to the right testicle, I wonder if I can see it?

A: Yes. (Shown the medical officer's note).

Q: Didn't you on a previous occasion say that it looked like a collection of blood in the right testicle.

40

A: Yes, inside the testes not in the scrotum.

Q: And yet, when I asked you today, you only said about the swelling.

A: Yes, the swelling of the testes - spermatic cord.

Q: But you told us that the swelling was due to a collection of fluid?

A: Yes, it is.

10 Q: The right mandible, couldn't that be an old injury?

A: It could have been.

Q: By old, I mean weeks old?

A: I cannot say the duration of the injury.

Q: No one can say the precise length of the discolouration?

A: It is possible.

Q: What about the mandible?

A: I do not think it would be that old.

20 Q: Not a week or two?

A: I do not think so.

Q: Can you say that accurately?

A: I think the maximum would be 2 or 3 days.

Q: Would you agree that the age of a bruise should always be given with some caution?

A: Yes, that is true (Taylor's Medical Jurisprudence).

30 Q: Do you still want to restrict it to 2 days maximum?

A: You cannot say exactly what time it could be sustained.

Q: You see, as an expert witness, you are entitled to sit in court and listen to other evidence?

A: Opinions differ.

Q: Opinions could differ from 2 days to 2 weeks?

40 A: I do not think that it would be that long.

Q: You would say that 2 weeks was utterly out of the question?

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- A: Yes, that would be my opinion.
- Q: Your examination was at 4.05 p.m.?
- A: Yes, sir.
- Q: There would be no difference in the accused by 4.45 p.m.?
- A: I do not think so.
- Q: This cut on the lip doctor, man can get his lips cut by biting it?
- A: Yes, if a man wants to bite his lips he can. 10
- Q: There was no injury to the lip?
- A: No, just a superficial cut?
- Q: In view of the bruise, did you think it not unlikely that the cut was caused by applying an external force?
- A: I would expect to find some injury there, but I did not find it.
- Q: Now, again this question of bruising. I am not trying to pin you down, but in specific number of hours, wouldn't you agree that before the bruises reach the blackish stage, as much as 48 to 54 hours could have elapsed since the time the force was applied depending upon the force applied, the age of the bruising? 20
- A: Just after infliction....
- Court: What are you reading now doctor?
- A: I am reading from the text.
- Q: Giving an opinion, would you agree that depending on the force applied a bruise would not necessarily become apparent? 30
- A: It depends on the tissues of the area and the force.
- Q: And I think it is almost common knowledge that some people become easily injured than others?
- A: Yes, that is true.
- Q: And even people who are not diseased can easily be bruised than others?
- A: Yes, it depends on the colour of the skin of a patient. 40
- Q: Wouldn't women bruise easier than men?
- A: Yes, sir.
- Q: And again depending upon the individual,

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the amount of force applied, the place of the injury, can it take 12 to 24 hours to appear?

A: Yes, sir, it is possible. Suppose a person is hit with a blunt force at the calf muscle, there is injury later in the day and suppose you have injury here on the forehead, the injury takes a bit longer for it to appear.

10 Q: And once it does appear, would you agree that it can last from 24 to 54 hours?

A: More than that.

Q: Could it be in its blackish discolouration 48 hours after it was inflicted?

A: Yes, it can be more.

Q: Of all the injuries you observed, there was no one that you could fix a time as having occurred on the previous day?

A: Even the scapular.

20 Q: Could you say from the injuries that you saw that they were inflicted on the 28th and not the 27th?

A: It can be possible: 27th or 28th.

Q: It was suggested to you that these injuries could have been caused by application of blunt force?

A: Yes, sir.

30 Q: Aren't they equally consistent with the accused struggling with another man for his life?

A: It is possible.

Q: So if the struggle took place in an enclosed place like the toilet in the photograph, don't you think that a man will get injuries of the nature that you see on the back?

A: It is possible.

RE-EXAMINATION:

Re-examination

40 Q: Doctor, if the injuries were inflicted on the 27th before 9 p.m. would you expect them to be visible on the 28th at about 3 p.m.?

A: It can be.

Q: Would you expect the bruises to be there?

A: Yes.

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Supreme Court

Defence
evidence

No.16
Balwant Singh
Rekha
Re-examination

29th November
1976

(continued)

Q: May the witness be shown photographs
A1 and 2? Can you make out what this
toilet is made of?

A: Yes, corrugated iron.

Q: If a man was struggling inside this
toilet what sort of injuries would
you expect?

A: If you slide on the tin, you would
get out.

Q: Have a look at photographs 8 & 9,
doctor. And also, 6, 7. Would you
please look at the big knife Ex.C. Would
you think it is possible in that small
room for a man to receive the injuries
with a knife when he is struggling for
his life?

10

A: I do not think it is possible.

Q: Would you expect any bleeding from the
injured man to go on the man struggling
with him?

20

Williams: That did not arise in cross-
examination.

Q: One wouldn't require considerable
force to inflict a cut on the lip?

A: If considerable force is used, I would
have expected more injuries.

Q: Can you expect a cut lip without
causing bruising internally?

A: If one bites, with both sets of teeth.

Q: How long did you take to examine the
accused?

30

A: About half an hour.

Q: The swelling on the mandible doctor,
did the beard in any way cause any
problem?

A: Yes, in diluting the colour.

Shankar: No further questions.

Assessors: Nil.

To Court:

Q: Doctor when you went to examine this
person, did you know what you were
going to examine for him?

40

A: Yes, I was informed by phone that one
prisoner was assaulted.

Q: Did you ask him where that happened?

A: No, I did not.
Q: You just went ahead and examined him without saying a word?
A: No, I only asked him his name etc. and I asked him whether he had complaints and he said he had pains in the navel and in the lumber region.
Q: And you said the testes were swollen?
A: Yes.
10 Q: If one runs his hand down his body without removing his shorts, would you have detected the swelling?
A: Yes, it is possible.
Witness released.

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Supreme Court
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evidence
No.16
Balwant Singh
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Re-examination
29th November
1976
(continued)

No.17

RAGHO PRASAD (RECALLED)

D.W.1 - Ragho Prasad
CROSS-EXAMINATION BY MR. WILLIAMS

Defence
evidence
No.17
Ragho Prasad
(Recalled)
Cross-
Examination
29th November
1976
(continued)

20 Q: At the time that your father left the bure to the time the alarm went up that someone had found him did anyone leave your bure?
A: No, no one went out.
Q: Did you see any signs of anybody else being alarmed or hear anything?
A: While we were sitting down I didn't hear any noise of any kind.
30 Q: Did anybody else show any signs of surprise or draw anybody else's attention to anything?
A: I don't know about that.
Q: Are you sure you were there?
A: Yes I was there.
Q: Did you see anybody else show any signs of alarm?
A: After the truck came Hari Prasad made the alarm and we all rushed and picked my father up.
Q: When you were in the bure did anyone

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evidence

No.17
Ragho Prasad
(Recalled)
Cross-
Examination

29th November
1976

(continued)

- show any signs of alarm?
- A: It didn't appear to me as if someone was trying to hear something outside.
- Q: Did anyone appear to have heard something?
- A: That was the time when we all ran.
- Q: This question is causing you considerable difficulty isn't it?
- A: No, sir.
- Q: I am talking about the time when you were all sitting in the bure. 10
- A: Yes, sir.
- Q: If you were there at that time wouldn't you have seen if the others showed signs of hearing anything?
- A: Yes, sir.
- Q: Who?
- A: They were trying to hear some sort of noise.
- Q: Who? 20
- A: All the people present there.
- Q: What were they trying to hear?
- A: When we were sitting down and the dogs barked I went out to check the cattle. This is the type of noise they tried to hear.
- Q: I thought I made it perfectly clear to you that I am talking about the time when your father was out of the bure?
- A: No after my father left he left for his bed. 30
- Q: Why do you say no then?
- A: After my father left the bure we remained seated there.
- Q: What question did you answer when you said no?
- A: I mean that after my father left the bure I remained seated in the bure.
- Q: Then why did you say no if you remained seated there? 40
- A: I have forgotten.
- Q: I will repeat the question. Whilst your father was away presumably at the toilet

and anyone at the bure show any signs of hearing anything?

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Supreme Court

A: No, sir.

Defence
evidence

Q: You earlier said they were trying to hear some sort of noise. What sort of noise were they listening for?

No.17
Ragho Prasad
(Recalled)

A: The dog barking.

Cross-
Examination

Q: I want you to give the names of everyone in the bure when your father was absent presumably at the toilet.

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1976

10

A: Chandrika Prasad.

(continued)

Q: Perhaps as you give their names you could tell us any relation if at all to you?

A: Chandrika Prasad by way of village relation he is like a son to me.

Q: Next one?

A: Basant Kumar also is by way of village relation is a son to me. Jai Raj is related in the same way as a son.

20

Q: Village relationship?

A: Yes, sir. Ami Chand is also a son to me by way of village relationship. Also my brother Hirday Prasad.

Q: Is that you real brother?

A: Yes, sir. Latchman Prasad is my brother, Surend Prasad another brother and Hari Prasad is another brother of mine.

30

Q: And these persons that you just named are you still on good terms with them even though you are charged with your father's murder?

A: Yes, sir.

Q: So these 8 people can say that you were not with your father when he was killed?

A: I was sitting down with them, that is including myself 8.

Q: Excluding yourself 8?

40

A: Including myself 9.

Q: What I am suggesting is if they are prepared to come to this Court that they can say that you were not with your father when your father was killed?

A: They can.

In the
Supreme Court

Defence
evidence

No.17
Ragho Prasad
(Recalled)
Cross-
Examination

29th November
1976

(continued)

- Q: They can support your evidence and give you an alibi?
- A: Yes, sir.
- Q: Do you know if they are coming to Court?
- A: I do not know about that.
- Q: So if they don't come it will be a complete surprise for you in the same way if they don't come?
- A: I do not know about that because I am in custody in prison. 10
- Q: When did you last see them?
- A: After I was taken into custody.
- Q: In prison?
- A: I saw them in prison.
- Q: They came to visit you?
- A: Yes, sir.
- Q: They came to see you just before this trial commenced?
- A: They used to visit me when I was in custody. After the Preliminary Inquiry at Tavua they came to visit me. 20
- Q: But they have seen you more recently than that?
- A: Yes, sir.
- Q: They saw you in Natabua on the 8th of November?
- A: Yes, sir.
- Q: You still don't know whether they are going to give evidence?
- A: No one says anything to me therefore I don't know whether they are coming forward to give evidence or not. 30
- Q: When they saw you in Natabua they never talked about the case, you never discussed that?
- A: On their visit they said 'how are you' and I said 'Not well at all. I am in custody.'
- Q: Did you discuss the case at all?
- A: My brothers informed me that my case will be on a certain date. 40
- Q: Is that all you discussed?
- A: Yes, sir.

Q: I will come now to the last matter I want to deal with and that is your interview with the police.

A: Yes, sir.

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?

A: No, sir never at any time.

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

A: No, sir not at any time.

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?

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

Q: And even if they had not arrested you you would still assist them to find the murderer of your father wouldn't you?

A: Yes I would have tried to help them to find the actual murderer.

Q: And although you were terribly frightened and suffered these appalling injuries you didn't say anything to the police that you didn't intend to say did you?

30 A: No I didn't make any mistake or say anything to the police that I didn't think was right.

Q: So if the police said that you confessed and said that is quite true they are making that up?

A: Yes, sir.

Q: So if the police say that you confessed is this an invention on their part?

40 A: Yes this is made up by the police.

Q: Before this incident did you know Salik Ram or Krishna Swamy before?

A: I knew only Salik Ram.

Q: Well do you know why Salik Ram would want to fabricate this against you?

In the
Supreme Court

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evidence.

No.17
Ragho Prasad
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29th November
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(continued)

In the
Supreme Court

Defence
evidence

No.17
Ragho Prasad
(Recalled)
Cross-
Examination

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1976

(continued)

- A: I cannot understand why he said it.
- Q: Can you think of any reason why anybody in this world would try to pin the blame on you if you didn't do it?
- A: I do not know of any reason.
- Q: Do you know of anyone who would invent a reason?
- A: I do not know.
- Q: What about Jai Raj? Do you recall him being brought into your presence during your interview with Salik Ram? 10
- A: No, sir.
- Q: Do you think Jai Raj might have come into your presence and gone again without your noticing it?
- A: Not that I can recall because my injuries were painful and I was pretty worried over the death of my father.
- Q: Are you saying that you cannot remember clearly what happened that day? 20
- A: The place where the police beat me up I didn't see Jai Raj and I don't remember.
- Q: Because you were upset you cannot remember clearly what happened that day?
- A: I cannot remember all that took place that day.
- Q: Don't you think that you might have confessed to the police and then forgotten afterwards? 30
- A: No, sir.
- Q: You heard Insp. Salikram give evidence that Jai Raj came into your presence and said: "When grandfather went to sleep after the dog barked you went out and came back after 10 minutes."
- A: No I didn't go out at that time at all.
- Q: Can you remember whether Jai Raj said that or not? 40
- A: Neither Jai Raj came in my presence nor did he say this.
- Q: I thought you said in answer to my previous question that you cannot remember whether Jai Raj came into your presence or not?

A: I said I was pretty worried and cannot remember whether someone came in my presence or not. I don't remember whether or not Jai Rah came in my presence.

Q: You just said now in answer to my question that Jai Raj didn't come into your presence.

A: I said he didn't come.

10 Q: Do you remember whether he came or not?

A: I remember that he didn't come.

Q: So you cannot remember whether he came or not?

A: No, sir.

Q: Would you remember if you heard Jai Raj say that when grandfather went to sleep you went out and came back after 10 or 15 minutes?

A: No, sir.

20 Q: Do you mean Jai Raj did not say that or you could no remember?

A: I do not remember anything of that sort and I cannot say.

Q: So if Jai Raj didn't make this statement in your presence the only person who could tell us about it is Jai Raj isn't it?

A: I don't know whether Jai Raj came there and said this or not.

30 Q: The two police officers say he did come and say that. You say that you cannot remember if Jai Raj came and said that then the only person who could tell us is Jai Raj himself isn't it? Is Jai Raj coming to tell us anything?

A: Yes he can come.

Q: Tomorrow?

A: I do not know which day.

40 Q: He is still at Masimasi isn't he?

A: Yes, sir.

Q: He was one of those who came to see you at Natabua?

A: I didn't see Jai Raj there.

Q: Who came to Natabua on the 8th?

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 Defence
 Evidence
 No.17
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No.17
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(continued)

- A: Not Jai Raj, my other brother came.
- Q: Who are they?
- A: My brothers, my wife, my mother and them.
- Q: Hirday Latchman came?
- A: Yes, sir.
- Q: Rup Narayan and Sohanlal Chandrika?
- A: I do not remember all of them because they only visited me for a short while.
- Q: Also two ladies with Jai Raj? 10
- A: I don't remember seeing Jai Raj.
- Q: You had these injuries after the interview?
- A: Yes, sir.
- Q: Yet you didn't complain about them to Dr. Ali?
- A: The policeman was present there and I was frightened so I didn't say anything to the doctor.
- Q: Couldn't you point these injuries to the doctor without saying anything? 20
- A: The doctor merely got me to lie down and he raised my shirt and just touched my injuries at the back.
- Q: You had nothing covering your ankles or your arms?
- A: No, sir.
- Q: The doctor could have seen any injuries if you were lying down?
- A: He only examined my back. 30
- Q: You knew what Dr. Ali was looking for didn't you?
- A: I don't know what he was looking for. He merely asked me to lie down.
- Q: What do you think was the purpose of the exercise?
- A: I thought he was looking for the injuries that I had received by the police.
- Q: And you did nothing to point anything to him? 40
- A: No because the policeman was present there and I thought if I pointed out my injuries they would have me beaten up.

Q: You didn't feel any tenderness when the doctor touched you because you were frightened of the police?

A: I could feel the pain but with the fear I had I didn't tell him.

Q: You didn't show it?

A: I didn't tell him that I had various injuries on my body.

10 Q: When he touched your body did you show that you were in pain or did you try and hide it?

A: Yes when he touched on my painful parts I made some indication that I was feeling pain.

Q: As far as possible you tried to hide it didn't you?

A: Because I was frightened of further assault by the police I didn't tell him anything.

20 Q: And you managed to control your feelings so much that the doctor could not see that you were in pain?

A: If the doctor knew he would have told me.

Q: You managed to stop the pain from showing?

A: I didn't point out to the doctor that I didn't feel pain at certain parts of my body.

30 Q: And you stopped showing to the doctor that you were in pain?

A: No I didn't.

Q: Why didn't you?

A: I didn't tell him where I was feeling the pain.

Q: Even when he touched you you managed not to show the pain?

A: I was making certain signs when he touched painful part on my body.

40 Court: Adjourned until 9.30 a.m. tomorrow.

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Supreme Court

Defence
evidence

No.17
Ragho Prasad
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(continued)

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Ragho Prasad
(Recalled)
Cross-
Examination
30th November
1976
(continued)

Tuesday, 30.11.76 - 9.30 a.m.

1ST W/D RAGHO PRASAD s/o Ram Autar -
Sworn on Ramayan in Hindustani
Cross-examination - Mr. Williams

- Q: Which places did you feel tender?
- A: My private parts, over my chester, my right shoulder blade, the back of my head and my left forearm.
- Q: Did you feel sore anywhere else?
- A: My lower left leg just below my knee. 10
- Q: Anywhere else?
- A: My lower lip, right side of my cheek, my hip at the back - nowhere else.
- Q: Did you tell the doctors about your hip or not?
- A: **Except** the pain on my hip, I explained the rest to the doctor.
- Q: Why didn't you tell the doctors about the hip?
- A: I can't recall whether I told the doctors about the hip pain or not. 20
- Q: Was it so trivial it did not really worry you?
- A: Compared to other injuries, the hip injury was giving me less pain.
- Q: You heard Dr. Jaspal Singh yesterday saying that the swelling on the jaw was an old injury, can you tell us how did you receive that?
- A: This was a cut while I was shaving in the early stages of my married life. 30
- Q: So the injury to your jaw was a few years old?
- A: Yes, and on the same place I was hit by the police.
- Q: Yes, but Dr. Jaspal Singh said that the swelling was an old injury, what was the old injury that caused the swelling?
- A: This was a cut by a razor blade while shaving and the swelling was due to that. 40
- Q: You still had a swelling from a razor cut a few years before?

A: There was a very minute swelling.

Q: Did you tell the doctors that the swelling was the result of an old injury?

A: No.

Q: Is it visible now?

A: No.

Q: Why weren't you shaving at that time, was it because of that old injury?

10 A: Yes.

Q: All the injuries that you describe, have you ever received any treatment from any hospital or from any doctor for them?

A: After I was assaulted by police and when I was taken into custody, I caused the doctors to be called and when they visited me in the Prison, they saw these injuries.

20 Q: My question was - Have you ever been treated in any hospital or by any doctor for these injuries?

A: Which injury, the one on the jaw?

Q: Any of them?

A: No.

Q: Did everything go back to normal of its own accord?

A: Yes, gradually it is all well now.

30 Q: When the two doctors saw you at the Prison you had no worry about showing them even the smallest injury you had?

A: Yes.

Q: Had you at that time seen your lawyer?

A: When my lawyer came and as I saw him I began crying. I told him I was assaulted by Police.

Q: I am not interested in what went on between you and your lawyer. I am just asking you, had you spoken to your lawyer before you were examined by the doctors?

40 A: Yes, I had.

Q: You said that you made a complaint of assault by police to Sgt. Major Tiko of Namosau Prison?

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No.17

Ragho Prasad
(Recalled)
Cross-
Examination

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1976

(continued)

- A: Yes.
- Q: I suggest to you that you know full well that Sgt. Major Tiko denies receiving such a complaint from you?
- A: I told him of this.
- Q: But you also know that he denies receiving such a complaint don't you?
- A: But I did tell him.
- Q: But I am suggesting to you that you know fully well that Sgt. Major Tiko denies that you ever said such a thing to him? 10
- A: But I told him about this if he did not hear I cannot say about that, but I told him about this.
- Q: But you know that Sgt. Major Tiko denies receiving the complaint don't you?
- A: Yes, he had said this in Court but I told him.
- Q: After you were examined by Dr. Ali you were taken straight to Ba Magistrate's Court? 20
- A: Yes, from there I was taken to Court.
- Q: Did you make any complaint to the Magistrate when you appeared before him on that occasion?
- A: No.
- Q: You had not seen your lawyer at that stage had you?
- A: No. 30
- Q: When you appeared before the same Magistrate at the P.I. you did have something to say to him didn't you?
- A: At that time I told the Magistrate that I was beaten up by the police and that I was forced to place my fingerprints.
- Q: At that stage you had seen your lawyer?
- A: Yes, when I went to Court I had seen my lawyer.
- Q: He was present in Court that day? 40
- A: Yes.
- Q: On that occasion why did you say to the Magistrates - "By force they took my statement"?

A: I informed the Magistrate that they were forcing me and I said this in Court.

Q: You just volunteered because you think it was a good thing to say at that time?

A: Yes, I was beaten up by police and they have forced me.

10 Q: Why was it at that time you did not say to the Magistrate the police had fabricated a statement, they put words in my mouth which I did not utter?

A: That is all I was asked and that is all I said.

Q: Previously in these proceedings you have heard Inspector Salik Ram gave evidence of a confession he said you made?

A: Yes, I heard Salik Ram saying this in his evidence.

20 Q: Why did you not tell the Magistrate - this man is lying, I never said such a thing?

A: Because prior to my statement in Court they had given his evidence first and when my turn came I made my statement.

Q: You see, your statement was - by force they took my statement and not, they have fabricated my statement?

A: That I did not say in Court.

30 Q: You were saying it yesterday why didn't you say it on the 1st of September to Mr. Shaw-Yates?

A: I did not say that to the Magistrate.

Q: When you say by force they took my statement, what statement were you saying that they took from you - what statement that you made?

A: I said they had forced me and I do not know what they have taken down in writing as I could not read or write.

40 Q: That is not what you said to the Magistrate. You said "by force they took my statement". What was the statement that you made that they took by force?

A: They have forced and I told them that I did not kill my father.

In the
Supreme Court

Defence
evidence

No.17
Ragho Prasad
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(continued)

In the
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evidence

No.17
Ragho Prasad
(Recalled)
Cross-
Examination

30th November
1976

(continued)

Re-examination

Q: They had to force you to say that
you did not kill your father?

A: To all of it, they were forcing me
and I was denying.

Williams: That is all I wish to ask, My Lord.

RE-EXAMINATION - MR. SHANKAR

Q: Now witness, was there any dispute over
land with your father in the family?

A: No.

Q: Either with you or with your brother?

A: No, with no one.

10

Q: Did your father at any time say he was
not going to give you the land?

A: No, never.

Q: Did he say this to any of your brother?

A: No.

Q: How many brothers altogether have you?

A: Six brothers.

Q: Surend Prasad, Hari Prasad, Ambika
Prasad, Lakshman Prasad, Nirbhay and
yourself?

20

A: Yes.

Q: **At** the time of your father's death was
Ambika Prasad staying with you at your
father's compound or not?

A: No, at that time he used to live in Ba.
He was employed as a carpenter and he
lives in Ba.

Q: To your knowledge, does he have a share
in the land also?

A: Yes, he has.

30

Q: For how long had Ambika stayed away from
you people, approximately?

A: He had been away for about 6 or 7 years.

Court: Was he at the party that night?

A: No, he was not.

Q: When did you first learn that your
father had made a will?

A: We had a family meeting one day called
by my father and he informed all of us.

Q: Did you know precisely what pieces of
land you were going to own eventually?

40

A: Yes, he had told all of us and showed us various pieces of land that each was supposed to get, he told us verbally.

Q: Did he also show you pieces of land that each is going to get?

A: Yes, he did.

Court: When did he show this to you?

A: It was prior to my wedding.

10 Q: When the cane is harvested, how can it be ascertained that so much amount of cane was harvested from your land and so much from the other farms, who keeps the record, if any?

A: The tonnages are supplied by the company as the cane is cut.

Court: You mean the contracts?

20 A: When the tonnage comes to this gang's sirdar, then it is made known to the grower that so much is from a certain farm.

Q: And that is how you know precisely how much can be cut from your farm?

A: When the slip comes from the mill then we know how much cane has been cut from the farm.

Q: How many farms are there in your father's block?

A: All brothers have been allocated farms.

Court: How many CSR numbers?

30 A: There is only one contract number in the name of my father.

Q: Do you cut cane on your own farm?

A: Yes, sir.

Q: What about the other brothers?

A: They used to cut cane on their own behalf and also for other people.

Q: Do you expect more than 7 acres of land or is this all that is entitled to you?

A: That is all - 7 acres.

40 Q: This party that was held at the shed, for whom was it for?

A: For the cane cutters and it was given by my brother.

Q: And those who were present in the party

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No.17

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(Recalled)

Re-examination

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(continued)

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No.17
Ragho Prasad
(Recalled)
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(continued)

they were cane cutters?

A: Yes, sir.

Q: I think you said Ami Chand, and Chandrika Prasad and Jai Raj were also in the party?

A: Yes, sir.

Q: Did they live in the same compound?

A: They live far away.

Court: They are cane cutters, aren't they?

A: Yes, sir.

10

Q: You said that they are distantly related to you tell the court how?

A: They are sons of some of my village brothers.

Q: Do you know Jai Raj's father?

A: Yes, sir.

Q: What is his name?

A: Babu Ram.

Q: And what is the name of Amichand's father?

20

A: I do not know his father's name. He has just recently moved into that settlement.

Q: To your knowledge when did he come to Masimasi?

A: Sometime this year.

Q: Was he cutting cane too?

A: Yes, sir.

Q: Amichand or his father?

A: Ami Chand.

30

Q: What about Chandrika Prasad. What is his father's name?

A: Deo Narayan.

Q: Is this Deo Narayan the same person to whom your father gave 5 acres of land?

A: Yes, sir.

Q: There is no blood relationship between these people and your family?

A: No, they are not real blood relations of mine.

40

Q: Where do you and your brothers get your

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groceries and other necessities of life?
A: From my father's store and also I used to get them from town.
Q: From your father's shop were you purchasing in cash or on credit basis?
A: In cash.
Q: Were you purchasing from anywhere on credit basis?
A: No, sir.
10 Q: The deposit that was put to you, did you deposit in your account or you did not?
A: Not the cane monies, but prior to that I had made certain deposits when I was working. The wages I got from cane cutting.
Q: You said all of you were paying debts and it was suggested to you that you were paying debts to Mata Prasad?
20 A: We all paid the debts off.
Q: Did you have anything to do with the shop?
A: No, sir.
Q: And did you father ever say "You should not come to the shop"?
A: No, sir.
Q: Where did your father and mother stay?
A: At the back of the store (dwelling premises).
30 Q: And am I right in saying that the front section is the store part of the building and the rear is the dwelling part?
A: Yes, sir.
Q: And one can get in the living section of the building through the internal communicator?
A: Yes, sir.
Q: Is there a door there?
A: Yes, sir.
40 Q: To your knowledge, your parents always live together in the same living section of the store?
A: Yes, sir.
Q: Do you know how your father was purchasing goods for the running of his store?

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(continued)

A: I do not know.

Q: Do you know how he was paying for them?

A: I do not know how he was making purchased
or making payments.

Q: That evening when the truck came to
the shop, you said "Hari Prasad went to
check".

A: Yes, sir.

Q: Prior to that, after your father had
left, did anyone else go out towards the
shop? 10

A: No, sir.

Q: What were you doing in the shed?

A: I was serving beer.

Q: To those who were sitting in the shed?

A: Yes, sir.

Q: Did you know what time the Hindustani
Programme starts in the evening?

A: Silent.

Q: Do you have a radio? 20

A: Yes, sir.

Q: And do your other brothers have radios?

A: Yes, sir.

Q: Do you know what time the evening
session starts?

A: 8 o'clock.

Q: Apart from the dogs barking did you
hear any other sounds?

A: No, sir.

Q: The injury that you said was caused by
the police to your right jaw, was it
painful or not? 30

A: Yes, it was.

Shankar: No further questions.

Assessor 1 asks through Court:

Q: I'd like to know when the accused was
advised of his father's donation of 5
acres for the cemetery, 5 acres to
Ram Kissun, and 5 acres for Deo Narayan?

A: When we were all allocated the respective
portions of land, it was at the same time
that this news was given to us. 40

Court: What about the 5 acres of land
that Ram Kissun has?

A: All at the same time.

Q: As well as the 5 acres for Deo Narayan?

A: Yes, sir.

To Court:

Q: You said that you paid all the debts to
Mata Prasad?

A: Yes, sir.

10 Q: When was that paid off?

A: It was paid last year.

Q: That is 1975?

A: Yes, sir.

Q: And Mata Prasad had crop lien?

A: Yes, sir.

Q: Is that crop lien discharged yet?

A: Yes sir, as far as I recall it has
been discharged.

Q: When was it discharged?

20 A: After the debts was paid off.

Q: How large is your father's farm?

A: It is a large piece of land?

Q: How many acres?

A: I do not know about the whole acreage.
I only know the number of acres that
I have been allocated.

Q: How many acres did each of your brothers
get?

A: Some of them have 5 and some 6.

30 Q: How many has Hirday Prasad got?

A: 5 or 6 acres.

Q: Do you know whether it is 5 or 6?

A: It is not wholly flat land and I cannot
guess what would be the exact acreage?

Q: And how many acres has Hari Prasad?

A: The same as Hirday Prasad's.

Q: And Ambika Prasad?

A: About 5 acres.

Q: And Surend Prasad?

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(continued)

- A: Same as that - 6 acres.
- Q: How many has Latchman Prasad?
- A: He has got a separate block of land away from the house site.
- Q: Has he got part of your father's land as well?
- A: Yes.
- Q: How many acres of your father's land has he got?
- A: That is a new contract. 10
- Q: Has he any of your father's land at all?
- A: That was also my father's land originally and it was transferred to my brother but from this big parcel he was not given any share in it.
- Q: He has a 15 acre block and a separate contract?
- A: Yes, sir.
- Q: And is your father's land freehold or leased land? 20
- A: It is leasehold crown land.
- Q: That is, the large piece?
- A: All of it is crown land.
- Q: When your cane is cut the whole of the cane goes to your father's contract, doesn't it?
- A: Yes, sir.
- Q: And how do you know which is your share of the cane?
- A: The gang sirdar keeps records of the tonnage and the number of trucks each of us sends in. 30
- Q: Does he know how many trucks you send in?
- A: Yes, sir.
- Q: How?
- A: Because the cane is cut separately.
- Q: How does it happen that you have 7 acres of land and your brothers have six?
- A: Because I was working most of the time in the farm. And I was doing more work than the others put in. 40
- Q: When was that?

A: The time when we were living as a joint family unit. My other brothers used to work outside and I was always confined in farm work for the family.

Q: When did that stop?

A: After all the brothers were married.

Q: How many years ago?

A: A couple of years. This is the second year that all the brothers are living separately.

10

Court: Very well.

Shankar: I wish to consult my client more closely about further evidence and I may not call further evidence. I would ask that case be stood down until 2.15 p.m.

Court: Very well - adjourn until 2.15 p.m.

2.15 p.m.

On resumption.

20

Shankar: That is the case for the defence.

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ADDRESSES OF COUNSEL

Shankar addresses:

Woolmington (1935) A.C.

Knife not concealed and given by accused.
No power to arrest man.

See Constitution.

Williams addresses:

Chan Wei Kewng
Burgess

Court: Adjourn until 9.30 a.m. tomorrow
(Wednesday) 1st December, 1976

(Sgd) K.A.Stuart
Judge.

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Addresses of
Counsel

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Defence
evidence

SUMMING UP

No.19
Summing Up

1st December
1976

IN THE SUPREME COURT OF FIJI
(WESTERN DIVISION) AT LAUTOKA

Criminal Jurisdiction
Criminal Case No.15 of 1976

9th day of Trial

LAUTOKA CRIMINAL SESSIONS - NOVEMBER, 1976

Before the Hon. Mr. Justice Stuart, Judge
Wednesday the 1st day of December, 1976
at 9.30 a.m.

10

| | | |
|-----------------------------------|---|--|
| R E G I N A | } | <u>MURDER:</u> Contrary to Section 228(1) of P.C.Cap.11. |
| vs. | | |
| RAGHO PRASAD s/o Ram Autar Rao | | |

Accused person present in custody

Mr. Dyfed Williams, Counsel for the Prosecution
Mr. S.R.Shankar & G.P.Shankar, Counsel for
the Accused.

20

All five gentlemen Assessors present
Messrs. Vuetibau & Rup Nand, Court/Interpreters

SUMMING UP

(Sgd) K.A.Stuart
Judge

1/12/76

SUMMING UP

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(continued)

10 Gentlemen, it is now my duty to sum up
for you in this case that is to say to summarise
the evidence and to tell you about the law.
In the course of this summing up, I will direct
you on matters of law and you are bound to take
those directions from me. On matters of fact
however, it is for you to reach your own
conclusions. You form an independent and
impartial opinion as to what you consider to be
the truth of the matters that you have heard.
In reaching your conclusions, you must consider
all the evidence including the evidence given
by the accused and on his behalf. You must
put out of your mind entirely anything you
might have heard outside and consider only the
evidence that you have heard in this court.
You make up your minds by considering whether
you believe the various witnesses whose evidence
20 you have heard including of course, the accused.
If I express any opinion on the facts of this
case you are not obliged to accept that opinion.
You must arrive at your own conclusions. After
the summing up I will adjourn the case in order
to give you an opportunity to consider your
opinions and arrive at your conclusions. When
you are ready, you will tell the Registrar and
you will each be asked in open court to give
your opinion as to the guilt or otherwise of the
30 accused. You will not be asked to give reasons
for your opinions, just the opinion itself and
your opinions need not be the same. You may all
give different opinions - one from the other.
Your opinions are not binding on me but when I
come to write the judgment of the court I shall
of course pay great attention to the opinions
that you have given me.

40 Now before I come to discuss the case itself
I want to say a few words to you about the=
burden of proof. In a criminal case the onus or
the burden of proof is always on the prosecution.
That is to say the accused person never has to
prove anything. The prosecution has to prove
everything and you can only express an opinion
that an accused person is guilty when you are
satisfied that the case has been prove to you
beyond reasonable doubt. It is never a question
of the prosecution adducing evidence which merely
raises a cloud of suspicion against an accused.
50 They may bring forward evidence which leads you
to think that the accused might have done it, but
that is not sufficient. They have to prove the

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(continued)

offence charged beyond reasonable doubt. But the doubt must be a reasonable one. Perhaps, the best way I can put it to you is to say to you that at the end and after you have considered all the evidence and thought about it, if you can say "Well, I am sure it was the accused who killed his father or had a hand in the killing. I am quite sure it was he" that would probably be the degree of proof that you require.

10

Now, you have heard all the witnesses and you have seen them and you have probably make up your minds as to whether or not you believe them. It is possible for you to accept or reject the whole of a witness' evidence. If you think a witness has been deliberately untruthful in some part of his evidence, then you would probably be wise to disregard the whole of it. But you must distinguish between faulty recollection and the making of mistakes and deliberate untruthfulness. Witnesses are often asked to remember incidents which they had no reason at the time to think were important. Then, when they are closely cross-examined in court, perhaps they cannot give the details or perhaps they make a guess because they cannot remember the details. For example a witness will sometimes tell you what he had seen of an incident and it may be clear that he is telling the truth, but then when he is asked about details e.g. as to what clothes he was wearing, or something of that kind, he cannot remember and he makes a guess. That is the kind of case in which you should just reject that evidence, but accept the witness' evidence generally. It is open to you to accept that portion of the witness' evidence which you regard as reliable and reject the portion in which you may feel that the witness' recollection is mistaken. You can accept all his evidence or just those portions of it which you feel are reliable or you can reject the whole of it or those portions which are unreliable. Then you must give as much weight to the evidence of the accused and his witnesses as you give to the evidence of the prosecution witnesses - treat them in exactly the same way. You look at their evidence to say whether you believe it or whether you don't. Just the same as you look at the prosecution witnesses.

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40

50

Now the accused is charged with murder. I will read to you the definition of murder as in

Section 228(1) of the Penal Code :

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

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(continued)

10 Now, in this case, quite obviously the striking
of Ram Autar Rao with a cane knife in the way
he was struck was an unlawful act. So you have
got to consider what is meant by 'malice
aforethought'. Section 233 of the Penal Code
defines that :

"Malice aforethought shall be deemed to
be established by evidence proving any
one or more of the following circum-
stances :-

- 20 (a) an intention to cause the death of or
to do grievous harm to any person,
whether such person is the person
actually killed or not;
- (b) knowledge that the act or omission
causing death will probably cause
the death of or grievous harm to some
person, whether such person is the
person actually killed or not, although
such knowledge is accompanied by
indifference whether death or grievous
bodily harm is caused or not, or by a
wish that it may not be caused."

30 Well, now, whoever struck Ram Autar Rao with a
cane knife and caused 13 wounds was obviously
a person who intended either to kill him or to
do him grievous harm. Then I will remind you of
another section of the Penal Code. Section
21(1). That section is :

40 "When an offence is committed, each of the
following persons is deemed to have taken
part in committing the offence and to be
guilty of the offence and may be charged
with actually committing it, that is to
say -

- (a) every person who actually does the
act or makes the omission which
constitutes the offence;
- (b) every person who does or omits to do
any act for the purpose of enabling
or aiding another person to commit the
offence;

- (c) every person who aids or abets another person in committing the offence;
- (d) any person who counsels or procures any other person to commit the offence."

The prosecution say here, that the accused person either did or took part in the killing of Ram Autar Rao and was thus a principal in the offence. The important question of course which you have to consider is "Was it the accused. Was it this man who killed his father by cutting him with a cane knife?" Counsel for the prosecution in his address said that the only evidence against this accused person is his confession to the police during interrogation. You remember what happened. The accused person was brought by the police to Vatukoula Police Post on the 28th of July at 11.30 a.m. and interrogation began. At 12.30 p.m. an hour later, a man called Jai Raj was brought in by the police to confront the accused and thereafter the prosecution say the accused made a confession. I will read to you the passage surrounding that confession. Inspector Salik Ram said to the accused "Did you hear what Jai Raj said in front of you?" and he answered "Yes". And Inspector asked "Is what he said true?" and the accused said "Yes, sir, now this is the truth. My brother Sohan Lal said 'Get rid of this problem'. My father went towards the house; after sometime I went and I was annoyed and struck him with a knife". Then the Inspector asked "How many times did you strike him with the knife?" and his answer was "3 or 4". Inspector further asked him "What did you do with the knife?" and he answered "I kept the knife and washed it. Today the police took it."

Now, the prosecution say that that arose in this way: There was a party on the night of the death of this man Ram Autar Rao in his compound and the accused and his father and his brothers were celebrating the completion of his brother, Hirday Prasad's can harvest. 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 that the accused left the party after his father had gone out and remained away after 10 to 15 minutes 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. You heard Dr. Wilson's evidence that the deceased man had 13 cuts with a cane knife, four of which were very severe cuts indeed. And you probably feel that whoever did this to Ram Autar Rao attacked him fiercely and savagely. Dr. Wilson was not prepared to exclude the possibility that the deceased had been attacked by more than one person. Now the first thing you look for in confessions is supporting evidence, but here, although a knife had been produced in court, there is no evidence that that was the knife that was used on the deceased, nor did the prosecution put in evidence any blood stained clothes - the only blood stained clothes they were able to find were clothes worn by the accused which became stained when he lifted up his father's head and put a sack under it. A very proper thing for him to do. 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. In considering that confession you may perhaps think it rather curious that none of the accused's brothers who were at the party on the night the deceased met his death and all of them older than the accused have come forward to tell you what happened on that evening. The accused told you in his evidence that he is 27 years of age and the youngest of the brothers, and he was at pains to insist that he and his brothers and his father were on good terms. You recollect that the father had a large leasehold farm which you were told was divided in such a way that the father ran the shop and farmed no land and the sons farmed the land. All the cane moneys up to this year had been collected by the mortgagee and lienee until the mortgage was paid off last year or this year, and this year the deceased, the father, would be collecting the cane moneys. You must consider whether you believe the accused when he says there was no tension between the father on the one hand and his brothers on the other. In this connection you should bear in mind that although the accused was 27 years of age, he and his family of three after seven years of marriage still lived in one room in someone else's house, that is, of his brother, and he depends for his livelihood upon his father fairly dividing the cane moneys his father received. You must bear in mind too, that he said that he has only been living separately from his father for a couple of years, and that he buys his goods

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from his father's shop and he has to pay cash for them.

As I have said, 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 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 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.

10

20

Now, in making up your minds whether that statement is true, you have got to consider the actions of the police, 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. However, you must bear in mind that it is often necessary to question suspects at length and obtain explanations from them or at least given them an opportunity to explain. An explanation may clear him of suspicion; on the other hand it may increase suspicion. People are often charged as a result of what they say to the police and on reflection they may deny it and refer to oppressive circumstances under which the statement was allegedly made. You have got to bear that in mind.

30

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You will remember that Inspector Salik Ram said that at the start of the interrogation he cautioned the accused. Now a caution is a warning to a suspected person that what he says may be taken down and may be given in evidence if he is charged, and that suspect

50

10 may refuse to say anything more if he wants
to do so. The accused said no caution was
given to him, and this is something that you
have to consider in the context of the whole
evidence. You might think, however, that it
is much easier for a man to say now that he
was not cautioned than it would be to refuse
to answer questions when he was with the police.
After a caution is given a policeman making
enquiries can go on asking questions up to a
point when he makes up his mind to arrest and
charge a suspect. At that stage the suspect is
given a further caution and told that he need
not say anything but if he does, it will be
taken down and may be given as evidence against
him. And after that position is reached a
police officer is not allowed to ask the
accused person any further questions and if he
did they would probably be disallowed..

20 Now, here, when the Inspector reached the
stage where he was told the accused washed
the knife after he killed his father, he made
up his mind to arrest him for murder. So
that it would have been improper for him after
that to ask him any more questions.

30 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. In this case, the
questioning took 1½ hours and you may not
consider that to be very long. On the other
hand, it is true as Inspector Salik Ram told
you that the accused could not have left the
station and you have also to bear in mind that
the accused told you that before he made this
statement that he was punched and kicked by
the police. Your attention was quite properly
directed to a man's constitutional right not
to be hindered in the enjoyment of freedom -
40 freedom of movement or any other kind of
freedom without his consent. But you have to
remember that although he may be deprived of
that freedom by being brought under unlawful
arrest to a police station that does not mean
that anything he says is to be regarded as not
true by virtue of that very fact. You have to
weigh the matter and you make up your minds about
whether it is true or not. Perhaps you have
got to weigh his statement a little bit more
50 carefully if he is held unlawfully in custody.
But the essential thing about it is to consider
whether it is true.

Now, here, the accused says he made no

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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. I think I must point out to you here that although the Inspector in this court told you that he only read back the part of his notebook from the confrontation onwards, that is to say that part during the last quarter of an hour, he did admit that he said on a previous occasion that he read back the whole of the statement to the accused. Well, you have to think what you believe about that, but perhaps I should tell you at this stage that whether he read it back to the accused or not does not matter and whether the accused signed it does not matter. This is the Inspector's recollection of the interview that he had with the accused and he only wrote it down in his notebook so that there would be no doubt as to what had been said when he came to give it in evidence. So it does not really make the slightest difference. This is not of course to underestimate the importance of what the Inspector has said upon oath, and if you cannot believe the Inspector you have to consider whether he is deliberately misleading you or whether it really did mean the same thing as he told the defence counsel. Counsel for the prosecution has suggested to you that if the Inspector really fabricated this statement, it was a most inefficient fabrication for he could have done much better than that, by putting in the whole family. The Sohan Lal mentioned in this statement of course is not a brother of the accused at all, but there is a Sohan Lal whom you have heard lives nearby. You may wonder why if this statement were fabricated the Inspector should include Sohan Lal at all? Again, when that statement was made the Inspector knew that the deceased had 13 cuts. Why should he fabricate a statement in which the accused says he cut 3 or 4 times. You have to make up your minds whether the Inspector made up that statement and got the accused to initial it or whether the accused made it himself and told the Inspector what is written down there. If you think the accused really made it then as I said, you have to consider whether it is true or not and here you 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.
If you believe that he was assaulted at that
time then it might be said that the police were
behaving oppressively and you have to consider
whether the accused might not have involuntarily
said something in order to stop the police
questioning. Well, in that connection it is
worth remembering that when the accused went to
see Dr. Shaukat Ali at 3 o'clock that afternoon,
10 although he was sufficiently composed to tell
him that the police were accusing him for
nothing yet he did not say anything about this
assault or about his injuries and he let the
doctor examine him and find nothing, although
the doctor asked him if he had injuries. In
this court the accused told you that he was
frightened of further assault, if he told the
doctor and you may wonder whether the police
would not also have assaulted him for telling
20 the doctor that the police were accusing him for
nothing. Well, you have to consider what you
think of the accused's evidence here and whether
you think he is telling the truth when he gives
his reasons for not telling Dr. Shaukat Ali
about the assault. Again, if the other two
doctors are right, the swollen testes must have
been giving him some pain, for one of them said (sic)
that it was quite grave. I think that perhaps
you should remember that this allegation of
30 assault does not really come to a head until
the accused had been in prison for a day until
the 29th of July, and then he sees not only one,
but two doctors, and makes this allegation and
then makes a similar allegation at the Magistrate's
Court during the Preliminary Inquiry on 1st
September, although he had said nothing at all
to the magistrate when he was committed to prison
on 28th July. He said that he has told the
40 Prison Official, but admits that the prison
official denies it, although you have got to
remember that the prison official has not given
evidence. You have to consider what you think
about the medical evidence bearing in mind
first of all, that it does take a bruising
sometime to be apparent and that therefore the
fact that Dr. Ali saw no bruises may mean
nothing, and secondly that Dr. Jaspal Singh told
you that the bruises that he saw were consistent
with blows having been administered on the 27th
50 just as much as they could have been administered
on the 28th and Dr. Rakka admitted they could
have been caused on the 27th and in a struggle.
You may think, although this is entirely up to
you to make up your minds about, that you cannot
really reach a conclusion at all about those

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injuries and when they were sustained. You may feel too, that they are all very minor except to the injury to his testicles. But of course what you really have to consider is whether any of them might have led the accused to making an untrue confession. In considering that, you might wonder why the accused saw two doctors, and you may wonder why Dr. Jaspal Singh was not told that Dr. Rakka was going to examine him. You might wonder, on the whole, whether the accused's story is not too good to be true, whether it is not really too elaborate and well-fashioned altogether. Why, for example, if the police were going to fabricate the statement also assault him? Why did he need two doctors for medical examination? Why has he taken such pains to tell you that he and his father were on good terms? Why didn't he tell Dr. Ali or the Magistrate the first time he saw them about the assault. Why did he want to tell the jailer about it. It is, as I have said, entirely up to you whether you believe him or not. You have to make up your minds about it. But if you think he made up the story, then you probably think that the prosecution has proved its case beyond reasonable doubt. If you think that the defence story has put to your minds any doubt that the accused might have killed his father then of course you say that he is not guilty. 10 20 30

Now, there is perhaps one further thing that I should say. Counsel for the prosecution in his address told you that this was murder or nothing, and of course if you accept the accused's statement as being true he says "My Father went towards the house. A little after I went. I was annoyed and struck him with a knife." 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. 40

Now will you go and consider your opinions and I remind you again that the burden of proof is on the prosecution throughout and you have to be satisfied beyond all reasonable doubt that the prosecution has proved its 50

case. When you have considered your opinions will you kindly let the Registrar know and you will come back into court and give me your opinions. You may now retire.

(Sgd) K.A.Stuart,
Judge

Lautoka,
1st December, 1976.

In the
Supreme Court

No.19
Summing Up
1st December
1976

(continued)

No. 20

10

OPINIONS OF ASSESSORS,
JUDGMENT, ALLOCUTOR AND
SENTENCE

No.20
Opinions of
Assessors,
Judgment,
Allocutor and
Sentence

1st December
1976

Opinions of Assessors:

1. Guilty as charged of murder
2. -do-
3. -do-
4. -do-
5. -do-

20

Court: I have directed myself in accordance with my summing up. The assessors have given their unanimous opinion that the accused is guilty of murder as charged. I accept their opinions and agree with them. I find the accused Ragho Prasad guilty of the murder of his father Ramautar Rao as charged, and he is convicted accordingly.

Allocutus:

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I wish to tell the Court that I have not done wrong. I did not kill my father, and I know nothing about it.

Court: I certify that this is a proper case for not sentencing the accused person to death and he is sentenced to imprisonment for life.

(Sgd) K.A.Stuart,
Judge

Assessors thanked.

1/12/76

In the Fiji
Court of Appeal

No. 21

No.21
Notice and
Grounds of
Appeal

20th December
1976

NOTICE AND GROUNDS OF
APPEAL

COURT OF APPEAL RULES

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

To: The Registrar of the Court of Appeal

F.C.A.No.66 of 1976

RAGHO PRASAD son of Ram Autar Rao
convicted before the Supreme Court of Fiji at 10
Lautoka of the offence of Murder, Contrary
to Section 228 of the Penal Code, Cap.11 and
sentenced to life imprisonment on the 1st
day of December 1976, and detained her
Majesty's Prison at Suva.

I, the abovenamed appellant, hereby
give you notice that I desire to appeal to
the Court of Appeal against :-

(a) my conviction

on the following grounds :- 20

1. THAT the learned trial Judge misdirected himself in law on the question of burden of proof when he said that, "in considering that confession you may perhaps think it rather curious that none of the accused's brothers who was at the party on the night the deceased met his death and all of them elder than the accused have come forward to tell you what happened on that evening". 30
2. THAT the learned trial Judge erred both in law and in fact in directing himself and the assessors on the question, of the weight to be attached to the confession when he said that, "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".
3. THAT the learned trial Judge erred in law and in fact in directing the assessors and himself inter alia that people charged on reflection often deny 40

or refer to oppressive circumstances.

In the Fiji
Court of Appeal

4. THAT the learned trial Judge erred both in law and in fact in directing himself and the assessors that the only question to be decided, concerning the appellant's statement was whether it was or it was not, true and that the voluntariness of this statement was not in issue.
- 10 5. THAT the learned trial Judge erred in fact in holding that it made no difference whether the statement of the appellant was read back to him or not or whether he had signed it or not.
6. THAT there was no evidence to show that the Inspector knew when he took the accused's statement that the deceased had thirteen cuts on his body.
- 20 7. THAT the learned trial Judge failed to properly evaluate the evidence of the appellant and those of his two independent witnesses. And generally the direction was unduly favourable to the prosecution.
- 30 8. THAT during the voire doire the learned trial Judge commented on the evidence of Senior Inspector Salik Ram, the principal witness for the prosecution, that if he told one lie he would have to tell more lies to hide one and that the lies would mount. That from the beginning, the said officer said he did not expect the appellant would be asked to sign the statement and the learned trial Judge remarked that he was pleasantly surprised that the appellant did sign the note book.
- 40 9. THAT the appellant's evidence that he could sign his name was unassailable as he produced evidence and also demonstrated that he did know how to sign both before and after the making of the alleged statement.
10. THAT there was no corroboration alleged or confirmatory evidence of the confession to show that it was true.
11. THAT the learned trial Judge entertained a doubt as to how the appellant received the injuries can be said, "that you cannot

No.21
Notice and
Grounds of
Appeal
20th December
1976
(continued)

In the Fiji
Court of Appeal

No.21
Notice and
Grounds of
Appeal
20th December
1976
(continued)

really reach a conclusion at all
about those injuries and when they
were sustained.

12. THAT the learned trial Judge failed to give proper direction on the question of the appellant making up the story, namely, that the story was too elaborate and well-fashioned altogether and too good to be true.
13. THAT the verdict is unsafe and cannot be supported having regard to the whole of the evidence. 10
14. THAT the appellant reserves the right to add further grounds of appeal on the receipt of the Court record.
15. THAT the appellant was unlawfully arrested and detained in custody and oppressively questioned contrary to the provisions of the Criminal Procedure Code and the Constitution. 20

DATED at Suva this 20th day of December, 1976

G.P. SHANKAR & CO.

Per: (Sgd) S.R.Shankar
(Sgd) Shankar

Solicitors for the
Appellant

ADDITIONAL GROUNDS OF
APPEAL

No.22
Additional
Grounds of
Appeal

FIJI COURT OF APPEAL

21st June 1977

Criminal Appeal No.66 of 1976

Between: RAGHO PRASAD son of Ram Autar Rao
APPELLANT

And: REGINAM RESPONDENT

10 TAKE NOTICE that on the hearing of this
appeal the appellant will seek leave to rely=
on and argue the following additional grounds
of appeal.

20 1. THAT during the voire doire the learned
trial Judge commented on the evidence of
Senior Inspector Salik Ram, the principal
witness for the prosecution, that if
he told one lie he would have to tell
more lies to hide one and that the lies
would mount. That from the beginning,
the said officer said he did not expect
the appellant would be asked to sign
the statement and the learned trial Judge
remarked that he was pleasantly surprised
that the appellant did sign the note book.
That the appellant's evidence that he
could sign his name was unassailable as
he produced evidence and also demonstrated
that he did know how to sign both before
and after the making of the alleged
30 statement.

2. THAT the appellant was unlawfully arrested
and detained in custody and oppressively
questioned contrary to the provisions of
the Criminal Procedure Code and the
Constitution.

3. THAT in considering the admissibility of
the alleged confession the learned trial
Judge has -

40 (a) failed to consider and evaluate all
facts and circumstances;

(b) did not apply the standard of proof
required in criminal trials;

In the Fiji
Court of Appeal

No.22
Additional
Grounds of
Appeal

21st June 1977

(continued)

4. THAT the learned trial Judge misdirected himself in law on the question of burden of proof when he said that, "in considering that confession you may perhaps think it rather curious that none of the accused's brothers who was at the party on the night the deceased met his death and all of them elder than the accused have come forward to tell you what happened on that evening". 10
5. THAT the learned trial Judge erred both in law and in fact in directing himself and the assessors on the question, of the weight to be attached to the confession when he said that, "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". 20
6. THAT the learned trial Judge erred in law and in fact in directing the assessors and himself inter alia that people charged on reflection often deny or refer to oppressive circumstances.
7. THAT the learned trial Judge erred both in law and in fact in directing himself and the assessors that the only question to be decided, concerning the appellant's statement was whether it was or it was not, true and that the voluntariness of this statement was not in issue. 30
8. THAT the learned trial Judge erred in fact in holding that it made no difference whether the statement of the appellant was read back to him or not or whether he had signed it or not. 40
9. THAT there was no evidence to show that the Inspector knew when he took the accused's statement that the deceased had thirteen cuts on his body.
10. THAT the learned trial Judge failed to properly evaluate the evidence of the appellant and those of his two independent witnesses And generally the direction was unduly favourable to 50

the prosecution.

In the Fiji
Court of Appeal

No.22
Additional
Grounds of
Appeal

21st June 1977

(continued)

11. THAT the appellant's evidence that he could sign his name was unassailable as he produced evidence and also demonstrated that he did know how to sign both before and after the making of the alleged statement.
- 10 12. THAT there was no corroboration alleged or confirmatory evidence of the confession to show that it was true.
13. THAT the learned trial Judge entertained a doubt as to how the appellant received the injuries can be said, "that you cannot really reach a conclusion at all about those injuries and when they were sustained.
14. THAT the learned trial Judge failed to give proper direction on the question of the appellant making up the story, namely, that the story was too elaborate and well-fashioned altogether and too good to be true.
- 20 15. THAT the verdict is unsafe and unsatisfactory, and also it cannot be supported having regard to the whole of the evidence.
16. THAT the learned trial Judge's summing up to the Gentlemen Assessors :-
- (a) is inadequate and does not contain proper direction to as alternative verdict;
- 30 (b) is generally inadequate contains irrelevant matters, some of which have not been supported by evidence.

DATED this 21st day of June 1977

G.P. SHANKAR & CO.

Per: (Sgd) G.P.Shankar
(Sgd)

Solicitors for the
Appellant

In the Fiji
Court of Appeal

No. 23

JUDGMENT

No.23
Judgment
22nd July 1977

IN THE FIJI COURT OF APPEAL

Criminal Jurisdiction

Criminal Appeal No.66 of 1976

Between:

RAGHO PRASAD
s/o Ram Autar Rao Appellant

- and -

R E G I N A M Respondent 10

G.P. & S.R.Shankar for the Appellant
Dyfed Williams for the Respondent

Date of Hearing: 4th July, 1977

Delivery of Judgment: 22nd July, 1977

JUDGMENT OF THE COURT

Gould V.P.

This is an appeal from a conviction of murder by the Supreme Court of Fiji at Lautoka whereby the appellant, a man of 27 years, was convicted of murdering his father 20
Ram Autar Rao, who was described as being in his mid-seventies, on the 27th July 1976, at Masi Masi, Tavua. There were five assessors who unanimously gave the opinion that the appellant was guilty.

It was an unusual aspect of the trial in the Supreme Court that the prosecution case was put forward exclusively by police and medical witnesses, counsel for the prosecution stating that he did not propose 30
to call several witnesses who had testified at the Preliminary Investigation, whom he considered were hostile. In the result there was little evidence in the prosecution case concerning the relationship and activities of a number of people who were not far from the events of the evening in question but at least some of the gaps were filled by the evidence of the appellant himself, and nothing now turns on this. 40

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The evidence disclosed that the deceased had several sons and was the owner of a shop and a considerable area of land. He had allocated to each of his sons, and also to Ram Kissun and Deo Narayan, who were not blood relations but were described by the appellant as "village" relations, a portion of cane land. The deceased had, up to the material time received the moneys derived from the cane, paying off moneys owing on a mortgage and crop lien on the land. These repayments had recently been completed. The deceased retained sole control of the shop or store.

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What the prosecution sought to establish was that on the night the deceased met his death near a latrine in his own compound there was a party nearby to celebrate the completion of the cane cutting by Hirday Prasad, one of the appellant's brothers. There is no question about this. The appellant in his evidence in chief said that there was a party inside a bure shed at Hirday Prasad's house: the bure was between "the store" and that house. At the party was his father the deceased, Latchman Prasad, Surend Prasad, Hari Prasad, Ami Chand, Jairaj, Basant Kumar, Chandrika Prasad and the appellant himself. Yaqona, and then beer, was drunk.

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What is also not in dispute is that later that night the body of the deceased was lying in the vicinity of the latrine which is not far from the store of the deceased, nor from a number of other houses and buildings, including the bure abovementioned. Thirteen wounds had been inflicted upon his face, head and body with a sharp implement such as a cane knife. The wounds were severe and he had died from shock due to multiple injuries.

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The Prosecution sought further to establish that the appellant had left the party abovementioned, after his father, and killed him by inflicting those wounds. This was strongly denied by the appellant who gave evidence that he did leave the party, having heard dogs barking, in order to check the cattle, but the deceased was still at the party when he left, and that he returned, five or six minutes later. Some ten minutes later the deceased left the bure saying that he was going to sleep. On his route he would come

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Court of Appeal

No.23
Judgment

22nd July 1977

(continued)

to the store before the toilet. About ten minutes after that, a truck drew up: Hari Prasad went to inquire about it and raised the alarm - "Run, father is finished." The appellant said he responded, lifted his father's head and put a sack under it. This cause his shirt and trousers to become soaked in blood.

To establish the guilt of the appellant the prosecution put forward a confession allegedly made by him to the police. The episode is conveniently summarized in the following passage from the summing up - 10

"You remember what happened. The accused person was brought by the police to Vatukoula Police Post on the 28th of July at 11.30 a.m. and interrogation began. At 12.30 p.m. an hour later, a man called Jai Raj was brought in by the police to confront the accused and thereafter the prosecution say the accused made a confession. I will read to you the passage surrounding that confession. Inspector Salik Ram said to the accused "Did you hear what Jai Raj said in front of you?" and he answered "Yes". And Inspector asked "Is what he said true?" and the accused said "Yes, sir, now this is the truth. My brother Sohan Lal said 'Get rid of this problem'. My father went towards the house; after sometime I went and I was annoyed and struck him with a knife". Then the Inspector asked "How many times did you strike him with the knife?" and his answer was "3 or 4". Inspector further asked him "What did you do with the knife?" and he answered "I kept the knife and washed it. Today the police took it." 20 30 40

This was the entirety of the evidence tending to establish the guilt of the appellant, and the learned judge made this clear to the assessors. He reminded them that counsel for the prosecution had said that the only evidence was the confession and he said further -

"Now the first thing you look for in confessions is supporting evidence, but here, although a knife had been 50

10 produced in Court, there is no evidence that that was the knife that was used on the deceased, nor did the prosecution put in evidence any blood stained clothes - the only blood stained clothes they were able to find were clothes worn by the accused which became stained when he lifted up his father's head and put a sack under it. A very proper thing for him to do. 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."

20 This requires only short comment. When, on the night of the 27th July, 1976, the death report was received, Senior Inspector Salik Ram went to the premises, saw the body of the deceased and spent the night making investigations. They searched a number of houses, including that of the appellant, and the appellant handed the inspector a cane knife which he had been using at the time. No incriminating admission was then made. As to the blood stained clothing the appellant's evidence concerning this has been referred to above.

30 We come now to the appeal. Counsel originally filed a notice of appeal setting out 15 grounds. Shortly before the hearing a further notice was tendered containing 16 so-called additional grounds which are in fact largely repetitive and co-incident. This practice adds greatly to the difficulties of both court and counsel in formulating an ordered approach and is to be condemned. We will not be able to deal with the grounds by number.

40 There are first a number directed to the trial within a trial which took place to determine the question of admissibility and which was embarked upon as soon as the trial commenced. For the prosecution four police officers and one doctor were called. Senior Inspector Salik Ram deposed to the making of what we may allude to as the confession. His interview took place at about 11.30 a.m. on the 28th July, 1976 at Vatukoula Police Station. The appellant had been brought from his home by Det. Ins. Krishna Swamy, who was present at the interview and whose instructions had been that the appellant was to be arrested if

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Judgment
22nd July 1977
(continued)

he did not want to come. The appellant was cautioned under Judge's Rule No.2. During the interview the appellant was confronted with Jai Raj who was brought into the police bure and said to the appellant -

"after grandfather went away to sleep, after a little while the dog barked. You went out and came back in 10 or 15 minutes."

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The appellant then made the confession as set out above. The interview ended at 12.50 and, after the "confessional" part had been read back to him the appellant initialled and signed the pages. It transpired later that while he had initialled the pages the appellant had only actually written "Rag" on one of them and in cross-examination Inspector Salik Ram said that the appellant said that he could not sign his name. There was a great deal of cross-examination directed to the Inspector on this point and there are grounds of appeal based on evidence, that the appellant could undoubtedly sign his name. We have considered these grounds but are unable to agree that they have any appreciable weight and therefore do not propose to detail or deal with them further.

20

An important part of the cross-examination of Inspector Salik Ram was that it was put to him that he had had the appellant brought to the police station so that he could be assaulted with ease that the witness had actually kicked the appellant in the back; and that he had been present when other police officers had kicked the accused in the scrotum and punched his back. These allegations were denied. Further suggestions were made that one Sohan Lal had also been assaulted while in police custody in connection with the same matter; while the Inspector agreed that Sohan Lal had twice been in custody for interviews, assault was denied.

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The next police witness, Inspector Krishna Swamy, gave confirmatory evidence and maintained that when asked to come to Vatukoula for an interview the appellant came willingly. In cross-examination he said he did not notice any cut lip or

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'swelling on the appellant's face or any other injury. He denied that anybody kicked him and specifically that he, the witness had kicked the appellant's scrotum.

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1977

(continued)

10 The third and fifth police witnesses were respectively Detective Corporal Govind Raju and Detective Sergeant Subramani, the former was present when the latter charged the appellant with murder at the Vatukoula Police Post and recorded a statement by him. This occupied from 1.10 p.m. to 2.00 p.m. on the 28th July that is, very shortly after the completion of the interview with Inspector Salik Ram. First the charge and caution were written down - the appellant signed this by (at his election) affixing his left thumb print. The two officers signed. He then elected to make a statement. This and his acknowledgment of the caution was written down and similarly signed by all three. The appellant made a short but most incriminating statement which was recorded and attested in the same way. Finally the usual acknowledgment that the statement had been read over to the appellant, he had been told he could correct it, that it was true and made of his own free will, was written down and again the thumb mark and the signatures of the two officers were affixed.

30 This "charge" statement was put in evidence in the trial within a trial and was therefore before the learned judge for his then purposes. It reads -

"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."

40 We think it is appropriate to comment at this stage that this charge statement, though ruled to be admissible by the learned judge, was not later put in evidence by the prosecution at the trial proper. We should have thought that it provided confirmation of the prosecution's case that the earlier confession, contrary to the appellant's assertion, had in fact been made by, read over to and understood by him. However counsel for both parties to the appeal appeared also in the Supreme Court and counsel for the appellant did not seek to

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(continued)

draw any inference adverse to the prosecution, from this apparent change of policy.

The two witnesses, Corporal Govind Raju and Sergeant Subramani, whose evidence we have been discussing were cross-examined strongly and it was put to them that the appellant had been forced to put his thumb prints on the charge statement, all at the same time. The witnesses were challenged to explain different thicknesses of the ink on the thumb marks. It was suggested, and denied, that they had assaulted the appellant when he would not sign. The witnesses also denied having seen a cut lip on the appellant. 10

The final prosecution witness in this part of the case was Dr. Shaukat Ali, Medical Officer, who examined the appellant at the request of the Police on the 28th July, 1976, at about 3.00 p.m. The accused was co-operative though a little worried. He was examined stripped of all clothing except his shorts, and as to those, the doctor felt underneath for tenderness; the appellant complained of no tenderness and there was no sign of injury on him. In cross-examination the doctor said that on being asked whether he had any complaints, the appellant said only that the police were accusing him for nothing. The doctor also said that there was no injury to the lip, no swelling of the scapula or the skin no finger nail impressions on the left thumb or in that vicinity, or bruise on the right arm. As to the testicles he had examined them by palpation and they were not tender; nor was there tenderness in the spermatic cord, epididymis or the epigastrium. 20 30

Turning now to the defence evidence at the trial within a trial, Principal Prisons Officer Leisa Tiko deposed that the appellant was brought to Namosau Prison after 3 p.m. on the 28th July, 1976, and in process of being admitted said that the police had forced him to sign a statement, the contents of which he did not understand. He requested that Mr. Shankar be engaged as his solicitor. The next day the appellant was seen by his solicitor and then by Dr. Balwant Singh Rakka and Dr. Jaswant separately. 40 50

In his own evidence the appellant first

complained that on the morning of the 28th July, he had been taken against his will to Vatukoula Police Station, when he wanted to attend his father's funeral. This, we think, is not really in dispute; there was some confirmatory evidence about the funeral and the learned judge accepted that he was in custody at Vatukoula. In the circumstances of the case, it does not impress us as a material aspect of the alleged police pressure. There followed in the appellant's evidence the allegation of assault, elicited with no great clarity. At that time, the police had not asked him any questions. Corporal Govind Raju was one who assaulted him on the back with his fists and the right front. Inspector Salik Ram kicked his buttocks from the back. Another unidentified person was also concerned. After these assaults had taken place in the office he was taken to a bure where he was questioned and related his account of the happenings of the night of the 27th July, very much on the lines of the evidence he subsequently gave and which we have outlined above. Inspector Salik Ram never asked him to sign anything; neither the initials nor the apparently abbreviated signature written in the note book were put there by him.

As to the charge statement his thumb prints were put there forcibly and after that was done Corporal Raju slapped him on the mouth. He was again hit on his right cheek and back of his shoulder on leaving the bure. At a later stage, after referring to an examination by another doctor on the following day (to which further reference will be made) he said that his right testicle was swollen and tender - an injury which he attributed to a kick from Corporal Raju. He denied that he was ever confronted with Jai Raj. He said that he did not complain to Dr. Shaukat Ali, because he was afraid of further beating but all that that doctor did was raise his shirt and look at his back.

The appellant called Sohan Lal as a witness: he was admittedly interviewed by the police in connection with this matter at Vatukoula on the 28th July, and at Tavua Police Station on the 13th August. He said that on the first occasion he was "scolded" by Inspector Salik Ram; on the second, assaulted by Sergeant Subramani and another

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(continued)

on the stomach and back. After seeing his solicitor he was examined by Dr. Balwant Singh Rakka - it transpired from what Dr. Rakka said earlier that there were no visible signs of injury. Another who had been in the party on the 27th July, Amichand, was also called as a witness and said he had been threatened and punched by Inspector Salik Ram while making a statement on the 28th July, and had also heard Basant Kumar groaning under assault. Similarly Chandrika Prasad, a boy of 15= years, but the evidence of these two last mentioned witnesses was shaken to some extent under cross-examination.

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We come now to the evidence of Dr. Balwant Singh Rakka, who examined the appellant in prison on the 29th July 1976 at 4.05 p.m. He detailed the following injuries :

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- (1) a bruised area on the upper angle right shoulder blade - round and $1\frac{1}{2}$ " by $1\frac{1}{2}$ ";
- (2) a swelling on the left side of the head $\frac{1}{2}$ " x 1";
- (3) a bruised area on the lower left arm joint 2" by 1", and another bruise 1" by $1\frac{1}{2}$ " towards the lower arm;
- (4) prick marks on the right arm;
- (5) two curved abrasions facing one another on the left thumb possibly caused by nail impression;
- (6) there was tenderness in the lumbar region $3\frac{1}{4}$ " by 1" and on the lower limb $3\frac{1}{4}$ " by 1", a superficial cut on the lower lip, swelling and discolouration at the angle of the right cheek 1" by 1", swelling and severe tenderness of the right testicle with collection of blood, swelling and tenderness of the epididymis and spermatic cord and the epigastrium.

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There is a portion of the cross-examination of this witness which we will set out :-

"Q: Now the age of the injuries is of importance. If the day previously the accused had been examined by Dr. Shaukat Ali who found no evidence of injury, does that mean that the injuries could have been inflicted not on the 28th of July but on the 27th of July?

A: It could be possible.

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Q: So, is it possible that all those injuries that you saw were inflicted on the 27th of July?

A: It can be 27th and it can be the 28th.

Q: And all the injuries that you have described, would they be consistent with the patient that you examined been involved in a fight?

A: It could be possible.

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Q: Consistent with the accused struggling with a man who was fighting for his life?

A: It is possible if two people were fighting.

Q: For these injuries that you have described?

A: Yes they can.

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Q: And equally acting on the assumption that no injury were visible at 3 p.m. on the 28th of July apart from the slight laceration of the lip, is it not possible that those injuries could have been caused after 3 p.m. on the 28th?

A: It can be.

Q: I think you said that it would be older than 24 hours?

A: Yes, 24 hours or more.

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Q: And would you agree with me doctor that everyone of the injuries you ascertained could have been self-inflicted if the patient was so minded?

A: Yes, it is possible that all the injuries could have been self-inflicted."

On the evidence which we have summarized, the learned judge decided that the confession and charge statement were admissible in evidence. His ruling was as follows :-

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(continued)

"The defence challenges two statements allegedly made by the accused - one an interrogation statement to Insp. Salik Ram, 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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A relevant ground of appeal alleges that the learned judge failed to consider and evaluate all the relevant facts and circumstances. In this respect we were reminded of the case of Sparks v. Reginam [1964] 1 All E.R. 727 decided by the Privy Council. There had been sharp conflict of evidence in the trial within a trial and their Lordships said, at p.736 -

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"It became the responsibility of the learned judge to reach a conclusion what evidence he accepted and to base his ruling on his conclusion."
and -

"It was for him to reach such conclusions of fact as were needed as the basis of his decision as to the admissibility of the statements....".

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Counsel's argument was that the appellant was entitled to a ruling on particular aspects of the evidence with emphasis on the conflict in the medical evidence. With respect the authority quoted does not indicate that. The trial judge is required to reach his conclusions as to the evidence he accepted but his method of expressing his finding is not controlled. It is true that if his ruling is unduly brief it may

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be more difficult for an appellate court to be assured that the judge has followed the correct principles. But as was said in Director of Public Prosecution v. Ping Lin [1975] 3 All E.R. 175, by Lord Hailsham at p.183, the ruling is "a finding of fact", and by Lord Salmon at p.187, "a decision on the facts". The ruling in Ping Lin's case itself was apparently most brief, as appears from p.179 of the report -

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10

"At the end of the trial within the trial the learned judge having considered the evidence and the authorities gave a short ruling that the appellant's statements 'were made voluntarily' and were admissible. It was common ground that his ruling involved an acceptance of the truth of the evidence given by the police in regard to what was said in an interview which took place at 2.15 p.m. on 29th August 1973 at Vine Street Police Station."

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In the present case there is no difficulty. The learned judge said positively that he did not believe the appellant's evidence; that he was satisfied that accused was not assaulted by the police officers, a clear finding that he believed the police, that the statements were voluntary statements, which, from an experienced judge, means voluntary in the full legal sense. That shows, not only rejection of the alleged violence, but a negation of the materiality of minor forms of alleged pressure, such as keeping the appellant from the funeral, intensive questioning, and the like. Then there is the comment that the learned judge had borne in mind that the accused was in police custody, an obvious reference to his willingness to exercise in favour of admissibility any discretion which that factor might have called for in the circumstances as he found them.

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To the extent that the grounds of appeal have been formulated to cover any of the matters we have mentioned they must be rejected. The function of this court sitting on appeal from a ruling of a judge after a trial within a trial such as the one now under discussion, has been considered by high authority. In Ping Lin's case (supra) Lord Salmon said, at p.188 -

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"The Court of Appeal should not disturb the judge's findings merely because of difficulties in reconciling them with different findings of fact, on apparently similar evidence, in other reported cases, but only if it is completely satisfied that the judge made a wrong assessment of the evidence before him or failed to apply the correct principle - always remembering that usually the trial judge has better opportunities of assessing the evidence than those enjoyed by an appellate tribunal." 10

Having read the relevant evidence and considered counsel's submission, we are not satisfied in any degree that the learned judge fell into any error in admitting the statements in evidence. From the written record, particularly that of the evidence of the police witnesses and of the appellant, we have no reason to think that the learned judge misdirected himself in his assessment of their comparative veracity. To this, however, we must add a comment on the medical evidence, to which counsel for the appellant attached much importance in argument. 20

It must be accepted that the situation disclosed by it attracts immediate attention. The examination by Dr. Ali disclosed no injury: that of Dr. Rakka took place hardly more than 24 hours later and he described a number of bruises, swelling and marks, of which severe tenderness of the right testicle was the most serious. Prima facie this appears as a strong conflict. The two doctors concerned have not been qualified very long (Dr. Ali since 1968 and Dr. Rakka since 1974) but that should not be a factor in their observation of injuries. Counsel for the appellant contended that the learned judge ought to have stated his finding upon how the appellant received the injuries. What he has done, as we see it, is to state his finding as to how the appellant did not receive the injuries - that is at the hands of the police. Unless the medical evidence excludes that as a proper finding it is not a case for interference by this court. Plainly that is not the case, when Dr. Rakka conceded that the injuries could have been 30 40 50

caused on the 27th July, or could have been self-inflicted. In such circumstances the learned judge was not precluded from finding, as he apparently has done, on his assessment of credibility alone, that the appellant had been lying and the police were to be believed. In the case of the most serious alleged injury, to the right testicle, we have observed that it was put to Inspector Krishna Swamy in cross-examination that he had kicked the appellant's scrotum, whereas in evidence the appellant attributed this particular painful injury to Corporal Raju. This is only a small incident compared to the major advantage the learned judge enjoyed of being able to observe the demeanour of the various witnesses and the way in which their evidence was given.

In the result on this aspect of the case, we find that though the learned judge might with advantage have dealt more fully with the evidential issues in his ruling he was not bound to do so, and that it clearly conveyed his essential findings with which we find no reason to disagree in our appellate capacity.

The evidence at the trial proper in the presence of the assessors was largely a repetition of that given earlier at the trial within a trial. As we have observed, the charge statement was not tendered in evidence. On the defence side, there was continued emphasis of the medical evidence and in addition to Dr. Rakka they called Dr. Jaspal Singh, who qualified in 1968, and who also examined the appellant in prison on the afternoon of the 29th July. He described similar injuries to those mentioned by Dr. Rakka, and agreed with counsel that all were minor injuries except that to the right testicle, which appeared as a grave injury. However, he arrived at that diagnosis in this way. First, the appellant complained of pain there. He pressed it and it was tender; the appellant again complained of pain. He agreed that the appellant could have been acting. This witness also agreed, from the appearance of the swellings, that the injuries were more likely to have been inflicted on the 27th rather than the 28th.

We come now to a number of criticisms of the summing up. The following passage

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follows a direction that the assessors duty was to consider whether the confession was true :-

"In considering that confession you may perhaps think it rather curious that none of the accused's brothers who were at the party on the night the deceased met his death and all of them older than the accused have come forward to tell you what happened on that evening. The 10
accused told you in his evidence that he is 27 years of age and the youngest of the brothers, and he was at pains to insist that he and his brothers and his father were on good terms. You recollect that the father had a large leasehold farm which you were told was divided in such a way that the father ran the shop and farmed no land and the sons farmed 20
the land. All the cane moneys up to this year had been collected by the mortgagee and lienee until the mortgage was paid off last year or this year, and this year the deceased, the father, would be collecting the cane moneys. You must consider whether you believe the accused when he says there was no tension between the father on the one hand and his brothers on the other. In 30
this connection you should bear in mind that although the accused was 27 years of age, he and his family of three after seven years of marriage still lived in one room in someone else's house, that is, of his brother, and he depends for his livelihood upon his father fairly dividing the cane moneys his father received. You must bear in mind too, that he said that he has only 40
been living separately from his father for a couple of years, and that he buys his goods from his father's shop and he has to pay cash for them."

The first sentence of that passage is objected to on the ground that it might lead the assessors to think there was some onus on the appellant to prove his innocence; the assessors should have been told not to speculate why such witnesses had not been called. The second part of this proposition 50
receives some support from R. v. Wheeler [1967] 3 All E.R. 829 but each case depends upon its own circumstances. The learned

judge could be forgiven if he thought that such a direction here would have resulted in the assessors doing that very thing, and to the detriment of the defence. We do not think that what was said would militate against the general directions on onus at the beginning and end of the summing up.

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10 We think, however, that when in that passage the learned judge said that the appellant was "at pains to insist" that he was on good terms with his father, and "whether you believe the accused when he says there was no tension", the learned judge might have pointed out in appellant's favour that there was no evidence to the contrary. There were circumstances which might have created tension but no evidence that they did.

20 The next broad ground of appeal is that the assessors may have been left in doubt on the question of the assessment of the weight to be attached to the confession. Specific objection was taken to the words - "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." Counsel has submitted that the assessors were being
30 told that whether the statement was made voluntarily or not, is irrelevant. If so, that would be wrong. The learned judge may have had in mind what was said in Basto v. Reginam (1954) 91 C.L.R. 628, quoted in the Privy Council judgment in Chan Wai Keung v. Reginam [1967] 1 All E.R. 948 at p.953. The following passage occurs there -

40 "Moreover the question what probative value should be allowed to the statements made by the prisoner is not the same as the question whether they are voluntary statements nor at all dependent upon the answers to the latter question. A confessional statement may be voluntary and yet to act upon it might be quite unsafe; it may have no probative value. Or such a statement may be involuntary and yet carry with it the greatest assurance
50 of its reliability or truth."

Voluntariness as a test of admissibility has

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a specialised meaning and is not the concern of the assessors; but as a factor in the assessment of weight and in its ordinary meaning, it is very much a question which the assessors may, and no doubt ordinarily would, include in their consideration of all the surrounding circumstances. We do not think that this isolated use of the word voluntary would have misled the assessors, but the likelihood of that can only be judged by consideration of the summing up as a whole on the question of weight. We proceed to look at it with that in mind. 10

The learned Judge did not choose to use the word "weight" but he instead impressed upon the assessors that their task was to decide whether or not the assessors accepted the confession as being the truth. 20

As was said in Chan Wai Keung's case - "The truth of the confession is.....a crucial question for the jury...." The passage which we have just discussed is only a passing reference in the following -

" As I have said, 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 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 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." 30 40 50

10 The point was not taken by counsel but we are inclined to deprecate in that passage the over-use of the word "think", which is an elastic word. In a number of places the substitution of "are satisfied", which is used in the first sentence, would have been preferable. Apart from that criticism, the passage contains a direction to disregard the confession if they considered it had been fabricated: the general direction onus could have been strengthened there by the addition of such words as "or are left in doubt whether it was fabricated or not". However, the passage quoted was a proper direction on weight. Another is the suggestion that if he was forced, that was a very good reason why it was not true. The last two sentences in the quotation have been made the subject of a ground of appeal as a misdirection on weight, but we will return to this after summarising the remaining directions on this question.

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30 The assessors were next directed that in making up their minds on whether the statement was true they had to consider whether the police had gone beyond their powers in collecting evidence, and what effect that had on their belief in the prosecution case. The learned judge referred to oppressive treatment and questioning to a point of desperation or confusion, and said - "admissions contained in circumstances such as these are quite worthless". Having dealt with the system of cautioning, the learned judge told the assessors that they must consider the question of the truth of the statement if they thought unfair pressure had been brought to bear. He referred to the allegation of punching and kicking, the time spent in questioning, and the fact that the appellant could not have left the station, and then said -

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50 " But you have to remember that although he may be deprived of that freedom by being brought under unlawful arrest to a police station that does not mean that anything he says is to be regarded as not true by virtue of that very fact. You have to weigh the matter and you make up your minds about whether it is true or not. Perhaps you have got to weigh his statement a little bit more carefully if he is held unlawfully

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in custody. But the essential thing about it is to consider whether it is true."

The learned judge went on to deal with the evidence, virtually all of which was directed to the question of the making of the confession and its possible fabrication. The general direction on weight is we think adequate in the rather narrow circumstances of the case, and the isolated reference to the question of voluntariness would not have misled the assessors.

10

We return to the misdirection claimed in respect of the last two sentences in the last but one of the passage from the summing up quoted above. The assessors were told that even if they thought the appellant was forced to make the confession, if they thought it was true, he was guilty. This implies, it was submitted, that even if a statement is obtained by violence, assessors are still entitled to give it full weight. This direction was given of course, by way of contrast to the direction that if they thought it was forced they might think that a very good reason why it was not true. The question is whether, in a case such as this, where blows and kicks are alleged, it is right to direct the assessors that if, in spite of their acceptance of such evidence they are still satisfied that a confession so obtained is true, they may act upon it.

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The modern decisions having clearly laid it down that all matters of weight are for the assessors to be decided in all the circumstances of the case, it would appear that the direction is not per se contrary to principle. If the assessors are to consider inducements, threats and oppressive treatment among the relevant circumstances and may act upon a confession so obtained, it would appear that the introduction of violence is only a matter of degree. The violence itself may also be a matter of degree. Cases such as Chan Wai Keung, however, do not deal directly with confessions elicited by violence and there is some support for the proposition that in the realm of admissibility violence was in a category of its own: the case of Rex v. Wong Chin Kwai (1908) 3 Hong Kong Law

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10 Reports 89, which was mentioned in
Ibrahim v. Rex [1914] A.C. 599, is
apparently to that effect; see R. v.
Gardner [1932] N.Z.L.R. 1648. However,
when it comes to the assessment of weight
or probative value it must be regarded as
settled that the assessors must be allowed
to be completely unfettered in making their
assessment. We think it would be a rare
case in which assessors would attach any
weight to a confession which they considered
had been beaten out of an accused person:
an accused has the additional protection
that there is a prior consideration of
admissibility by the judge and in the present
case of course the learned judge's view
had already been expressed, in the absence
of the assessors, that there had been no
assaults. We are able to say that the
20 direction complained of was contrary to law
and it must be read as qualified by what
immediately preceded it. We do not therefore
consider that the appeal should be allowed
on this ground.

30 A further ground of appeal is that
there was no corroborative or confirmatory
evidence of the confession. That of itself
is not enough to render a conviction bad.
In narrating the facts we have already set
out the learned judge's direction on this
matter and find it clear and accurate.

The learned judge's summing up of the
medical evidence was full and fair. It is
complained that he did not tell the assessors
that they had to come to a decision on the
question how the injuries were come by. In
fact he said -

40 " You may think, although this is
entirely up to you to make up your
minds about, that you cannot really
reach a conclusion at all about those
injuries and when they were sustained."

50 It was argued for the appellant that the
direction should have been that if they could
not make up their minds on this matter the
prosecution had failed to discharge the onus
of proof. We do not agree that this is so.
It was not a case of two simple alternatives
one pointing to guilt and the other the
reverse, and it is the overall onus which is
on the prosecution. It would, in our opinion,

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have been suitable opportunity to remind the assessors that if they accepted any material part of the appellant's version of how he came by the injuries the weight they might attach to the statement would surely be materially lessened.

We now come to a criticism of the summing up to the effect that it is adverse to the appellant. We agree that in the passage we are about to quote there is a good deal which could be taken as reflecting the learned judge's own view and can be construed as adverse to the appellant. This is permissible within the boundaries of reason and fairness. The passage comes towards the end of the summing up and reads :-

" But of course what you really have to consider is whether any of them (the injuries) might have led the accused to making an untrue confession. In considering that, you might wonder why the accused saw two doctors, and you may wonder why Dr. Jaspal Singh was not told that Dr. Rakka was going to examine him. You might wonder, on the whole, whether the accused's story is not too good to be true, whether it is not really too elaborate and well-fashioned altogether. Why, for example, if the police were going to fabricate the statement also assault him? Why did he need two doctors for medical examination? Why has he taken such pains to tell you that he and his father were on good terms? Why didn't he tell Dr. Ali or the Magistrate the first time he saw them about the assault. Why did he want to tell the jailer about it. It is, as I have said, entirely up to you whether you believe him or not. You have to make up your minds about it. But if you think he made up the story, then you probably think that the prosecution had proved its case beyond reasonable doubt. If you think that the defence story has put to your minds any doubt that the accused might have filled his father then of course you say that he is not guilty."

10 As to the comment on the appellant's seeing two doctors, that took place after he had seen his solicitor who presumably advised him to do so. That the assessors might wonder why Dr. Jaspal Singh was not told that Dr. Rakka was going to examine him we find obscure as, according to their evidence Dr. Rakka's examination took place first, at 4.05 p.m.: Dr. Jaspal Singh at 4.45 p.m. We do not understand why these two matters were put forward as something vaguely prejudicial. The next sentence, about whether the appellant's story was too good to be true is undoubtedly an adverse comment. As to the reason why the police should assault him if they were going to fabricate a statement, we consider this to be an obvious and fair comment and not over emphasized.

20 Next, the repeated query why he needed two doctors. Why not, if he was so advised? and, for the second time, being "at pains to tell you" about good relations with his father. We have already pointed that there was no evidence to the contrary; why should the appellant not tell the court about such good relations if that was his case. The query contrasting the failure to tell Dr. Ali and the magistrate about the assault with his anxiety to tell the jailer, might have been accompanied by appellant's explanation in the case of Dr. Ali that police were present and he was afraid.

30 We think that the summing up may be open to some criticism and could have been improved in relation to some of these matters 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.

40 There is one final matter. The summing up concludes with a direction concerning manslaughter on the grounds of "a sudden fit of anger", or of provocation, which is ill advised and entirely inadequate for such

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a direction. It was obviously an after thought and the assessors probably so treated it. There was no material anywhere in the evidence which could possibly have justified such a verdict and the question should not have been left to the assessors.. However no miscarriage of justice was occasioned by the direction.

We have given the whole case serious consideration. We find no reason to interfere with what was obviously the major decision i.e. the admission in evidence of the confession. 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 criticisms urged by counsel are justified to such an extent as would induce us to allow the appeal. 10 20

It is therefore dismissed.

(Sgd) T. Gould
VICE PRESIDENT

(Sgd) C.C.Marsack
JUDGE OF APPEAL

(Sgd) T. Henry
JUDGE OF APPEAL

No. 24

ORDER GRANTING SPECIAL
LEAVE TO APPEAL TO HER
MAJESTY IN COUNCIL

In the Fiji
Court of Appeal

No.24
Order granting
Special Leave
to Appeal to
Her Majesty in
Council

30th March 1979

AT THE COURT AT BUCKINGHAM PALACE

The 30th day of March 1979

PRESENT

THE QUEEN'S MOST EXCELLENT MAJESTY
IN COUNCIL

10 WHEREAS there was this day at the Board
a Report from the Judicial Committee of
the Privy Council dated the 15th day of March
1979 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 and
Supplementary Petition of Ragho Prasad
(s/o Ram Autar Rao) in the matter of
an Appeal from the Fiji Court of
Appeal between the Petitioner and Your
Majesty Respondent setting forth that
the Petitioner prays for special leave
to appeal from a Judgment of the Fiji
Court of Appeal dated the 22nd July
1977 dismissing the Petitioner's
Appeal against his conviction by the
Supreme Court of Fiji of murder: And
30 humbly praying Your Majesty in Council
to grant the Petitioner special leave
to appeal against the Judgment of the
Fiji Court of Appeal dated the 22nd July
1977 or for further or other relief:

40 "THE LORDS OF THE COMMITTEE in
obedience to His late Majesty's said
Order in Council have taken the humble
Petitions into consideration and having
heard Counsel in the matter thereof
Their Lordships do this day agree humbly
to report to Your Majesty as their
opinion that special leave ought to be
granted to the Petitioner to enter and
prosecute his Appeal against the
Judgment of the Fiji Court of Appeal
dated the 22nd July 1977:

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Order granting
Special Leave
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" And Their Lordships do further report to Your Majesty that the proper officer of the said Court of Appeal ought to be directed to transmit to the Registrar of the Privy Council without delay an authenticated copy of the Record proper to be laid before Your Majesty on the hearing of the Appeal upon payment by the Petitioner of the usual fees for the same."

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-General or Officer administering the Government of Fiji for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

20

N. E. LEIGH

IN THE PRIVY COUNCIL

No. 32 of 1979

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

RECORD OF PROCEEDINGS

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