

40/84

IN THE PRIVY COUNCIL

O N A P P E A L

FROM THE COURT OF APPEAL OF MAURITIUS

B E T W E E N :

LOUIS LEOPOLD MYRTILE

Appellant

- and -

THE QUEEN

Respondent

CASE FOR THE RESPONDENT

Record

1. This is an appeal in forma pauperis by leave of the Privy Council (Lords Diplock, Keith and Roskill) given on 18th November 1982, from the judgment of the Court of Criminal Appeal, Mauritius (C.I. Moollan C.J., V.J.P Glover J. and R. Lallak J.) dated 13th July 1982 dismissing the Appellant's appeal against his conviction for murder at the Court of Assizes (Espitalier - Noel J. and a jury) on 6th April 1982.

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2. The only substantive issued pursued by the Appellant on the hearing of the Petition for special leave to appeal concerned the nature and extent of the duty on the prosecution to reveal to the Defence all witness statements in the possession of the Prosecution.

3. There is annexed to the Respondent's case a bundle containing translations of all statements of witnesses called at the trial in the possession of the Prosecution at the time of the trial other than appear in the Record of Proceedings.

Annexure
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4. The guidelines for the disclosure of "unused material" to the Defence in cases to be tried on indictment were issued between the time of the Preliminary Hearing in Mauritius (where the Defence took the opportunity fully to cross examine a number of prosecution witnesses) at the time of the trial. Those guidelines did not alter the existing rules of practice which may be summarised as follows:-

Record

- (i) Where the prosecution have taken a statement from a person whom they know can give material evidence but decide not to call him as a witness, they are under a duty to make that person available as a witness for the defence and should supply the defence with the witnesses name and address;
- (ii) Where a witness whom the prosecution call or tender gives evidence in the box on a material issue, and the prosecution have in their possession an earlier statement from that witness which is materially inconsistent with such evidence, the prosecution should, at any rate, inform the defence of that fact if the defence have not already been provided with a copy of the statement.

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5. As appears from the Record of Proceedings the Prosecution called at the trial a considerable number of witnesses whose evidence was relevant but circumstantial. The critical questions of fact for the jury to decide arose from the evidence of one Francois Brulecoeur. If the jury accepted Francois Brulecoeur's evidence, they had ample grounds for convicting the Appellant. The Appellant had made a statement to the Police denying any involvement with the murder but he did not give evidence at the trial to contradict the evidence of Francois Brulecoeur.

6. It is respectfully submitted on behalf of the Respondent:

- (i) that the statements of Francois Brulecoeur in the possession of the prosecution at the time of the trial were not materially inconsistent with the evidence which he gave at the trial, and
- (ii) that such other statements as were in the possession of the Prosecution at the time of the trial were not materially inconsistent with the evidence which the makers of those statements gave at the trial, and
- (iii) that the Prosecution were not in breach of their duty in failing to make available those statements to the Defence, and
- (iv) that, in any event, there was on the whole of the evidence no miscarriage of justice

7. The issue in this appeal was raised before the Court of Appeal in Mauritius which in dismissing the appeal correctly set out the relevant rules of practice. It is respectfully submitted that this appeal should be dismissed for the following,

amongst other,

REASONS

1. BECAUSE the learned trial judge was entitled to refuse to order the Prosecution to produce all copies of statements made by witnesses in their possession.
2. BECAUSE there is no material inconsistency between the statements made by the prosecution witnesses and the evidence given by them at the trial.
3. BECAUSE the judgment of the Court of Appeal was correct.
4. BECAUSE on the whole of the evidence adduced there was no miscarriage of justice.

JONATHAN HARVIE

IN THE PRIVY COUNCIL

ON APPEAL
FROM THE COURT OF APPEAL OF MAURITIUS

BETWEEN :

LOUIS LEOPOLD MYRTILE Appellant

- and -

THE QUEEN Respondent

CASE FOR THE RESPONDENT

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