

40/84

IN THE PRIVY COUNCIL

No.19 of 1983

O N A P P E A L

FROM THE COURT OF CRIMINAL APPEAL
MAURITIUS

B E T W E E N :

LOUIS LEOPOLD MYRTILE

Petitioner

- and -

THE QUEEN

Respondent

RECORD OF PROCEEDINGS

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Petitioner

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London, WC2A 3UL

Solicitors for the
Respondent

Certain passages have been translated
and some abbreviations are given in full.
A copy of the Courts alternative translations
of those passages is also available as is
an alternative translation of Exhibit F.

O N A P P E A L

FROM THE COURT OF CRIMINAL APPEAL
MAURITIUS

B E T W E E N :

LOUIS LEOPOLD MYRTILE Petitioner

- and -

THE QUEEN Respondent

RECORD OF PROCEEDINGS

I N D E X

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E X H I B I T S

Exhibit Mark	Description of Document
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I	Plan of Locus in quo
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---	-----------------

K	Set of photographs
---	--------------------

EXHIBITS NOT TRANSMITTED

1	Tin Box
---	---------

2	An Axe
---	--------

3	A sabre
---	---------

4	Khaki shorts
---	--------------

A	Act of Birth of J. Sarah
---	--------------------------

B	Act of Death of J. Sarah
---	--------------------------

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---	-------------------------

O N A P P E A L

FROM THE COURT OF CRIMINAL APPEAL
MAURITIUS

B E T W E E N :

LOUIS LEOPOLD MYRTILE Petitioner

- and -

THE QUEEN Respondent

RECORD OF PROCEEDINGS

10

No.1

In the Flacq
Magistrates
Court

EVIDENCE OF DEODATH
BASSAWAN

Preliminary
Hearing
Prosecution
Case

DEODATH BASSAWAN solemnly affirmed as a Hindu
states:

No.1
Deodath
Bassawan
Examination
28th July 1980

My name is Deodath Bassawan. I produce
Birth Certificate of Juline Sarah - Doc. A.
Death Certificate of Juline Sarah - Doc. B
and birth certificate of Louis Leopold Myrtille
- Doc. C. I also produce P.F.57 and P.F.60
of Juline Sarah - Doc. D and E respectively.

20

Xed. by M.Gujadhur

Cross-
Examination

In the P.F.60, the report refers to the report
of Dr. Sohun P.M.O.

No Re-exam.

No.2

Prosecution
Case

EVIDENCE OF PHILIPPE BASSET

No.2
Philippe Basset
Examination
28th July 1980

PHILIPPE BASSET Police Sergeant of Belle
Village Police Quarters sworn states :

30

On 31.12.1979, at 10.05 hrs I recorded a
statement from accused under warning. The
Statement was read over to him and he signed

In the Flacq
Magistrates
Court

same. Detective Chief Inspector Madoorapen signed as witness. I produce the original. Read out in Court and filed Doc. F.

Preliminary
Hearing
Prosecution
Case

Xed. by Mr. Gujadhur Q.C.

No.2
Philippe
Basset
Examination
28th July 1980

Accused referred to Said Brule Coeur and Frederick Brule Coeur, in his statement. At the identification parade, the person referred to was Dharamdeo Dookhee.

(continued)

Said Brule Coeur gave his statement to the police on 5.12.79 at 23.00 hrs. He gave another one on 6.12.79 at 17.50 hrs, and on 14.1.80 at 11.10 hrs, one more on 13.12.79 at 12.10 hrs.

10

Cross-
Examination

Frederick Brule Coeur gave his statement on 6.12.79 at 17.20 hrs. No statement under warning was taken from F. Brule Coeur.

Hirene Hector is the nickname of Juline Sarah. Hirene Hector's former name was Juline Sarah.

Police recorded statement from Cecile Hector, who is the daughter of deceased (Hirene Hector) on 7.12.79. Only one statement was taken from her.

20

Maude Lacharmante gave a statement on 13.12.79. She is related to the deceased as being the wife of Leoville Hector who is himself a nephew of deceased.

James Hector is the son of deceased. His declaration was taken on 3.12.79 at 09.55 hrs and his further statement was taken on same day at 10.55 hrs. James Hector reported that his mother (deceased) was missing since 2.12.79 at 06.00 hrs. It was a Sunday.

30

No Re-exam. by Mrs. Peeroo

Prosecution
Case

No.3

No.3
Daneshwar
Folessur
Examination
28th July
1980

EVIDENCE OF DANESHWAR
FOOLESSUR

DANESHWAR FOOLESSUR of Camp de Masque Pavé,
solemnly affirmed and states :

On 4.12.79, at about 9 a.m., I was at Camp de Masque Pavé. I met Mr. Luc Sarah. He told

40

me that his mother was missing. He told me to help looking for her. I helped. We searched at Clemencia Mountain, Montagne Clemencia also called ti montagne. We took the direction from Camp de Masque towards Clemencia. There were several persons with us. It was when we continued to search at about 11 a.m. that I reached at a Ravinal tree, where I saw some burnt wood and then I saw some meat meaning meat and bones which were completely burnt. Then at a distance of 2 ft. therefrom, we saw something like a black ball. It looked like the remains of a dead person. I cried for Luc Sarah. He came and he went to the Police Station. The Police subsequently came on the spot.

In the Flacq Magistrates Court

Preliminary Hearing Prosecution Case No.3 Daneshwar Foolessur Examination 28th July 1980

(continued)

No Xd. by Mr. Gujadhur, Q.C.

No.4

EVIDENCE OF AMA RAJ
BHANJEET

Prosecution Case No.4 Ama Raj Bhanjeet Examination 28th July 1980

AMA RAJ BHANJEET, Police Constable, of Poste de Flacq, solemnly affirmed as a Hindu, states:

On 4.12.79, at 11.30 hrs I was placed on sentry over a charred human remain on ti Montagne at Clemencia. It was lying on ashes and charcoal. Certain police officers came to examine the spot. Certain spots were located. After that Dr. Sohun had examined the locus, I removed all the charred remains placed it in two gunny bags and placed them in the Mortuary house and at 17.00 hrs I left Clemencia towards the Princess Margaret Orthopaedic Centre with the remain.

I remained on sentry over the dead remain up to 5th December 79 at 12.50 hrs. Dr.Sohun started the re-examination of the remain at 10 a.m. on 5th Dec.79 and ended at 12.50 after which the remain was handed over to Deceased's parents for burial purposes.

During all the time that I was on sentry over the dead remain, no unauthorised person had access or interfered with it. Only Dr.Sohun interfered with it, for the purpose of examination.

Xed by Mr. Gujadhur Q.C.

Cross-Examination

I am 25 yrs old. I have had occasions to attend Hindu cremation. It takes a considerable amount of wood to cremate a dead body.

In the Flacq
Magistrates
Court

The remain was completely charred. It
had become carbonised.

Preliminary
Hearing
Prosecution
Case

I do not know how long it would take for
a body to be completely burnt.

No Re-exam. by Mrs. Peeroo

No.4
Ama Raj
Bhanjeet
Cross-
Examination
28th July
1980

(continued)

Prosecution
Case

No.5

No.5
Philippe
Atung
Examination
28th July
1980

EVIDENCE OF PHILIPPE ATUNG

PHILIPPE ATUNG, Chief Inspector of R. Bois,
Port-Louis; sworn and states :

On 4.12.1979, at 14.00 hrs. I called on
the spot at ti montagne where a charred remain
of a human being was found. That spot is found
on the left when facing the mountain from
Royal Street. It is on the left of a footpath.
At some 20 ft. from the charred human being,
there was a piece of bone coming from the
charred remain. To my mind this piece of bone
had been brought up by mangoose.

10

Several Police Officers were at the spot.
P.C.Bhanjeet was on sentry there. Dr. Sohun
also came on the spot.

20

After Dr. Sohun, had examined the charred
bone, photographs were taken and notes and
measurements were taken.

Forensic Officer examined the spot. Then
Dr. Sohun started his examination of the other
remain.

After his examination, Dr. Sohun removed
fragment of charred clothes from the remains.
Witness Hector and myself were present. Witness
Hector identified the fragment of clothes as
being pieces of clothes coming from the gown
worn by deceased, on 2.12.79, at 6 hrs, when his
mother left her place. The Dr. removed also
fragments of charred gunny bags, two hair pins,

30

and a small ring coming from the zip fastener, which I believe.

In the Flacq
Magistrates
Court

I collected all these from the charred remain and placed them in an empty tin of Anchor Milk. Later on I sealed the tin and labelled it PA 1. - (Exh.I).

Preliminary
Hearing
Prosecution
Case

10

The examination of Police Medical Officer ended at 16.45 hrs after which the charred remain, two burnt sweet potatoes, four burnt mangoes which were together with the charred remain were removed to Princess Margaret Orthopaedic Centre under the escort of P.C. Bhanjeet.

No.5
Philippe
Atung
Examination
28th July 1980

(continued)

On 5.12.79, I brought Exh. I PA, to the FSL. On 25.2.80 at 11.00 hrs I collected them and brought it to DHQ of Flacq. I kept it in safe custody until I brought it to-day in Court. I produce it. Exh. I.

20

After the post mortem examination which I attended, on 5.12.79 at 13.15 hrs, I took specimen as given to me by Dr. Sohun to Mr. Ah Yu of the Forensic Science Laboratory.

(At this stage Exh. I is unsealed and is identified by witness).

Xed by Mr. Gujadhur, Q.C.

Cross-
Examination

30

James Hector is a young man of about 22 yrs of age. In his declaration made on 3.12.79, James Hector states that the deceased was wearing a white gown with blue flower design and in his further statement, she, (deceased) was wearing ("ene robe blanc avec dessin coulour bleu). [a white gown with blue design]

In my statement I have not mentioned the colour of the recovered cloth but only stated fragments of charred cloth. The colour was a material fact. I did not speak of the colour, because the cloth speaks of itself.

40

Q. Has any statement been taken from James Hector about the nature of the cloth?

A. There should have been. But I cannot personally say so, as I did not continue the enquiry.

I made my statement on 27.12.79 and a later one on 29.12.80. The 2nd statement concerns the recovery of the collection of Exh.I from the Forensic Science Laboratory.

No Re-examination by Mrs. Peeroo

In the Flacq
Magistrates
Court

No.6

EVIDENCE OF JEAN ANDRE
AH YU

Preliminary
Hearing
Prosecution
Case

JEAN ANDRE AH YU, Principal Forensic Science
Officer, sworn and states :

No.6

Jean Andre
Ah Yu
Examination
28th July
1980

On 5.12.79 at 13.15 hrs I received from
C.I. Atung specimen from an autopsy marked
with the name of victim (Juline Sarah). It
was sent by Dr. Sohun with a request for carbon
monoxide determination.

10

I examined my specimen. I made a report
of my findings. I produce same. Doc.G. I
swear to the correctness of the report.

No Xd. by Mr. Gujadhur, Q.C.

Prosecution
Case

No.7

EVIDENCE OF BHAJ MUSTAPHA
JOMEER

No.7
Bhaj Mustapha
Jomeer
Examination
28th July
1980

BHAJ MUSTAPHA JOMEER Police Inspector,
solemnly affirmed as a Hindu

On 5.12.1979, at 15.40 hrs at C.C.I.D.
office, I interviewed accused for a written
statement in connection with present case. After
the caution was administered to him, he declined
to give any. On 13.12.79, at 17.30 at Flacq
C.I.D. office after that an Identification
parade was held I asked him for a statement.
He declined again.

20

On 6.12.79 at 17.30 hrs I searched the
house of accused in virtue of a search warrant
with the assistance of other Pce.Officers I
secured a sabre and an axe from a room in the
house.

30

On 13.12.79, I wrapped and sealed them in
2 different parcels marked them MJ 1, MJ 2
respectively.

On the same day at 14.45 hrs I secured from
accused's place 3 pairs of khaki short which I
sealed in a parcel marked MJ 3.

On 14.12.79, I left the 3 parcels MJ 1,
MJ 2, MJ 3 at FSL. I brought them back on
22.1.80 and they remained in my safe custody until 40

their production to-day in Court. (The parcels MJ 1, MJ 2, MJ 3 are opened and are identified by witness). Respectively marked Exhibit II, Exhibit III and Exhibit IV.

Xed by Mr. Gujadhur Q.C.

Khaki shorts are a common wearing in the rural areas. The axe and the sabre also are the implement of tools for everyone in the rural areas.

10 No Re-exam. by Mrs. Peeroo

In the Flacq Magistrates Court

Preliminary Hearing Prosecution Case

No.7
Bhai Mustapha Jomeer
Examination
28th July
1980

(continued)

Cross-examination

No.8

EVIDENCE OF DEEPSING
BEHARRY

Prosecution Case

No.8
Deepsing Beharry
Examination
28th July 1980

DEEPSING BEHARRY, of Floreal, a scientific Officer, s.a.h. :

On 4.12.79 at 14.10 hrs, at the request of Police, I performed Forensic Examination at Ti montagne, Clemencia.

20 On 7.12.79 at 10.10 hrs I received a sealed tin labelled Anchor Milk from Chief Inspector Atung and on 14.12.79 at 14.05 hrs I received from Insp. Jomeer three parcels marked MJ 1, MJ 2, MJ 3.

On each of these 3 occasions I conducted an examination. I drew up a report of my findings. I solemnly affirmed as to its correctness. I produce same. Read out in Court and filed - Doc. H.

30 (Witness identifies the Exh.I, Exh.II, Exh.III and Exh.IV).

They were the very ones handed over to me.

No X by Mr. Gujadhur Q.C.

In the Flacq
Magistrates
Court

No.9

EVIDENCE OF SEETANAH
APPALSAWMY

Preliminary
Hearing
Prosecution
Case
No.9
Seetanah
Appalsawmy
Examination
28th July
1980

SEETANAH APPALSAWMY, Police Constable of
Pamplemousses, solemnly affirmed as a Hindu

On 4.12.79, at 15.20 hrs. I went to Petit
Montagne at Clemencia in connection with present
case.

Under the instruction of Chief Inspector
of Police, Madoorapen, under the supervision
of Ramsarran and Assistant Commissioner of
Police Lee Vang I located two spots which I
gave A and B. 10

On 6.12.79, from 15.40 hrs to 16.50 hrs I
located spots C to N still at the locus in quo
as being spots shown by witness Francois
Brule Coeur.

On 13.12.79 at 16.00 hrs at locus in quo
I located spots P to T. Spots S and T were
shown by witness Daramdoo Dookee, witness No.8. 20
And spots P, Q, R were located under the
instruction of Chief Inspector of Police
Madoorapen.

On these 3 occasions I took down notes and
measurements in the light of which I drew up a
plan which I now produce together with a
reference table - Doc.I and J and to the correct-
ness of which I solemnly affirm.

Cross-
Examination

Xed by Mr. Gujadhur Q.C. 30

What is written about spots L and M was
shown by witness Francois Brule Coeur.

No Re-exam. by Mrs. Peeroo

Prosecution
Case
No.10
Valaydon
Ayacanou
Examination
28th July
1980

No.10

EVIDENCE OF VALAYDON
AYACANOU

VALAYDON AYACANOU, Police Constable of Port Louis
solemnly affirmed as a Hindu

On 4.12.79, at 15.20 hrs I went to Ti
montagne, Clemencia in connection with present 40
case.

At the request of Chief Inspector of Police Atung under instruction of Chief Inspector of Police Madoorapen and in presence of other police officers, I took 5 photographs.

In the Flacq Magistrates Court

10

On 6.12.79, at 15.30 hrs I again went to the locus in quo, under the instructions of Chief Inspector of Police Madoorapen and in presence of Inspector of Police Jomeer and in presence of witness Francois Brule Coeur, I took 5 photographs.

Preliminary Hearing Prosecution Case

No.10 Valaydon Ayacanou Examination 28th July 1980

20

On 13.12.79 at 16.00 hrs and again under the instructions of C.I.Madoorapen, in presence of Insp. Jomeer and witness D.Dookee, I took 2 more photographs of the locus in quo. I made enlarged prints of those photographs and bound them in a booklet form which I produce and I solemnly affirm as to their correctness. The booklet contains 12 photos. marked K, K 1, K 2, K 3, K 4, K 5, K 6, K 7, K 8, K 9, K 10, K 11, K 12.

(continued)

Xed by Mr. Gujadhur, Q.C.

Cross-Examination

In photo K 6, the person is a man.

No re-exam. by Mrs.Peeroo

Time 3.40 p.m.

The enquiry is postponed to 8.12.80 for continuation. Other witnesses present and warned.

Recording Officer

30

On motion of the prosecutor, accused is remanded in jail until 8.12.80.

Court order to issue.

District Magistrate

No.11

EVIDENCE OF SADASIVEN
MADOORAPEN

Prosecution Case

No.11 Sadasiven Madoorapen Examination 8th December 1980

SADASIVEN MADOORAPEN, Assistant Superintendant of Police, of Port Louis solemnly affirmed as a Hindu:

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On 4.12.79 at 15.05 hrs I went to Ti Montagne at Clemencia for investigations in connection with a charred human remain which

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(continued)

is the subject matter of this case. Dr.Sohun and Mr. Beeharry Scientific Officer came afterwards. Dr. Sohun examined the remain. Photographs and measurements were taken by P.C. Ayacanou. I saw pieces of burnt jute were adhering to the remain and I also found "Aroui", [kind of edible tuberous roots] sweet potatoes and mangoes among the remain. A few bit of pieces of unburnt clothes with red and blue design were found. Dr. Sohun removed them in the presence of James Hector who identified same and said that they came from clothes worn by his mother which were of same design. The charred remain was placed in a gunny bag and transported into a mortuary van to Princess Margaret Orthopaedic Centre.

10

On 6.12.79 at 15.40 hrs. witness Francois Brule Coeur indicated to me various spots which were subsequently located on the map. Photographs were also taken.

20

On 12.12.79 at 14.10 hrs and at 15.00 hrs witnesses Woodwantee Padaruth (wit. no.7) and witness No.8, D. Dookhee indicated certain spots at Pont Sec and Ti montagne respectively. These spots were located by the draughtsman on 13.12.79. Photographs were also taken of the spots shown by D. Dookee.

Photograph No.1 (is Doc.K 1) is a view of Ti Montagne.

Photograph No.2. Doc. K2 shows the site where the charred remains were found.

30

Photos No. 3, 4, 5, Doc. K 3, K 4, K 5 show the charred remains from different positions.

Doc. K6 and K7 show spot the witness Francois Brule Coeur indicating the spot where he was shown by the accused, the dead body of victim. This is point H on the plan.

K 8 shows a partly burnt site where the dead body was found. It is spot K on the plan.

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K 9 shows witness Francois Brule Coeur in the foreground showing spot from where accused carried the dead body (spot L on plan) and took along with him his sabre and axe.

The man standing in the background of the photograph is the spot where accused dropped the dead body for a rest according to the same witness. This is spot M on plan.

K 10 is the spot indicated by witness Woodwantee

Padaruth and which shows a burnt sugar cane line from the direction of which she heard an unusual noise. This is spot P on the plan.

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K 11 shows witness Daramdeo Dookee standing at Pont Sec. from where he saw Popaul (Accused) standing at Ti Montagne which is represented by a person in the background on the photo.

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10 K 12 is the same view but from the reverse, (taken from Ti Montagne). It is spots S and T on the plan.

(At this stage a plan is shown to witness for indication.)

(continued)

Spot B is the spot where a charred limb was found.

Spot C is spot where according to witness Francois Brule Coeur, accused collected a gunny bag.

20 Spot D is spot where according to same witness, the accused left him and they went to meet at spot E on the plan.

Spot F is the spot where the witness Brule Coeur left accused's bicycle in a sugar cane field.

Spot G shows the path leading to Ti Montagne.

Spot J is the spot where I found a pair of slippers which has no bearing with this case.

30 Spot M is spot indicated by the same witness Francois Brule Coeur where he left a vacoas tente containing a woven pullover and fled home.

Spot Q is the spot where witness Woodwantee Padaruth had reached when she heard the unusual noise in the sugar cane field.

Spot R is the spot where witness Woodwantee Padaruth says she reached on her way to petite Montagne when she decided to go back home on account of disturbed soil and broken sugar cane leaves.

40 The relative distances between the different spots are correctly shown on the reference attached to the plan.

When one person walks from Clemenci to Camp de Masque, he can take the main road which leads to Ti Montagne (Part of the main road appears on the plan which colours is blue).

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Xed by Mr. Gujadhur Q.C.

Statement was taken by me after having received the plans etc. It was taken from a notebook kept by Police Sergeant Basset. I went to see Woodwantee Padaruth. She did not come to me.

Q. Acting on whose indication, you went to see that witness?

A. (The information is privilege). I claim privilege. 10

Q. Was the indication of witness Woodwantee Padaruth given by any of the persons given by prosecution witness.

A. I cannot say.

Q. Did any of these witnesses mentioned Woodwantee Padaruth.

A. I cannot say.

One of my investigators received the information. I cannot say who. The victim was a resident of Clemencia as well as the accused. Witness No.7 Woodwantee Padaruth lives at Camp de Masque Pavé. 20

Widow Noelie Corteau (witness) is the sister of the victim. Luc Sarah is the son of the victim. Ceycile Hector is the daughter of the victim. Statements were given to the police as follows :

Witness Corteau: 6.12.79

Witness Luc Sarah: 4.12.79

Witness Maude Lacharmante: 13.12.79 30

Said Brule Coeur is also known as Francois Brule Coeur.

The statements of Daramdeo Dookee were given on 7.12.79, 12.12.79. On the first occasion, he was seen by Inspector of Police Jomeer at Camp de Masque Pavé.

I cannot say for the first time whether police went to see D. Dookee. But for the 2nd time I went to see him. The statement of 12.12.79 shows the indication of various spots. 40

The witnesses concerning accused's movements according to his statement of 31.12.79, were seen by the Police after that date.

Now I wish to correct myself. Statements from

these persons were taken before accused gave his statement on 31.12.79. They are: (1) Pierre Liroy Kiang Chong, shop-keeper on 13.12.79
(2) Rambajee Pandoo, taxi driver on 14.12.79

No Re-exam by Mrs. Peeroo

Calls.

10 At this stage Mr. S.Madoorapen is called again for cross-examination. At the request of Mr. M.Gujadhur Q.C.

No objection from Mrs. Peeroo.

Motion granted.

Xn. continues

20 Though accused gave his statement on 31.12.79, he had given over indications of his movements on 2.12.79 claiming that he was not at Ti Montagne and it is on this basis that the statements of the shopkeeper and the taxi driver were taken.

No re-exam by Mrs. Peeroo

Case is called again at 2.00 p.m. after recess.

No.12

EVIDENCE OF INDRADEOSING
SOHUN

INDRADEOSING SOHUN, Police Medical Officer, of Poudre d'or, solemnly affirmed as a Hindu.

30 On 4.12.79, in the afternoon, I went to Ti Montagne at Clemencia in connection with the present case.

At this stage, witness says that he has not brought his notes concerning this case as he was not warned to depone in the present matter. He received only a phone call.

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No.13

EVIDENCE OF ECOSSE MARCEL

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No.13
Ecosse
Marcel
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ECOSSE MARCEL, Assistant Commissioner of
Police, sworn and states :

On 7.1.80, at 10.35 hrs at Central
Criminal Investigation Department I charged
the accused with the offence of murder of one
Juline Sarah. After the charge was read over
and explained to him in creole and after the
usual warning given to him he stated the
following "MO innocent la dans missie" /I am
innocent of the charge, Sir/. He then signed
the charge sheet. The charge sheet was witnessed.
Assistant Superintendent Mahon. I produce the
charge sheet. Doc. L. 10

No Xn. by Mr. M.Gujadhur, Q.C.

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No.14
Arnasalon
Thopa
Padayachy
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No.14

EVIDENCE OF ARNASALON
THOPA PADAYACHY

ARNASALON THOPA PADAYACHY, Police Inspector
of Rose-Hill, Sworn as a Hindu 20

On 13.12.79, at 17.00 hrs. I held an
identification parade in the back yard of
Flacq Police Station in connection with present
case.

I recorded the proceeding of the identifi-
cation parade in the diary book of Flacq Police
Station. I produce a certified copy of an
extract of that diary book and I solemnly
affirm as to its correctness. Read out in
Court and filed. Doc. M. 30

Cross-
Examination

Xed by Mr. M.Gujadhur, Q.C.

"The following volunteers about the same
age and mode of life".

Above is a formula used by the Police. I
was not in charge of the Identification Parade.
So I did not think fit to take photographs of
the identification parade.

No Re-exam. by Mrs. Peeroo

EVIDENCE OF JAMES HECTOR

JAMES HECTOR, Stone Mason of Clemencia,
sworn and states :

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In December I was living at Clemencia.
I was living with my mother and father.
Juline Sarah (deceased) is my mother.

No.15
James Hector
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10 On last Thursday of the month of
November 79, victim told me that she intended
to go to Camp de Masque Pavé. Mr. Gujadhur
states that whilst he was informing his
objection, (Registrar) I have written the
answer.

Mr. Gujadhur Q.C. objects to it as it
is evidence of hearsay.

The Court rules that the statement is
evidence of the fact that it was made and not
the truth of the statement.

Exn. continues

20 It was on 2.12.79, a Sunday, that deceased
went there. She woke up at 6 a.m. She dressed
herself. She wore a white gown stained with
red spots (a pois), and mauve spots, yellow
spots. She also wore a woollen pull over of
yellow colour.

Now witness says that victim wore a white
gown stained with red spot (a pois), yellow spots
"mauve". There was no other design on the gown.

30 She also wore a woollen pull over. She wore
a brown shoes (sandals). She took a "tente"
[a bag made of vacoas leaves] containing sweet
potatoes, mangoes, "aroui violet".

She took all these and went away.

40 I waited for my mother at 5 p.m. as she was
to return back. But she did not turn up. When
I did not see her coming I took my bicycle and
went to Camp de Masque at my aunt's place, Noelie
Corteau. I went to look for her. They told me
that she did not come there. Then I searched at
other relative's place at my sister's place at
Camp de Masque itself, at Yolande Hector, but
with no success.

Then I went to search at my elder brother's
place, Luc Sarah. There also I did not see her.

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(continued)

I continued to search "partout partout"
[everywhere] at my relatives, but without
success. On Sunday I did not see her. On
Monday I searched again without success. On
the following day I went to give a declaration
to the police that my mother was missing.

On 4.12.79 at about 4 p.m. I accompanied
the police at Ti Montagne at Clemencia. I
saw the body of my mother (deceased). By
"body" I mean I saw "ene cadavre qui ine brule" 10
[a carbonized corpse]. Doctor was present
there. He examined the body there. I
recognised her clothes and the sweet potatoes
and the mangoes and "violet" [an edible tuberous
root]. I also recognised her hair. She had
white, brown and black hair. This she had
before. On that day I did recognise the hair.
I also recognise her hair pins. There were
two of them. By the hair pins on the "crane"
[scull], I said that I have recognised the 20
body to be that of my mother.

Since that day and up to now I have known
and I still know that the body was that of my
mother's.

Q. When you saw the bit of cloth how did you
know that it was your mother's?

A. Because it was her clothes. (Par ca linge la).

There was a piece of cloth which had remained.
By this piece, I came to know that it was my
mother's cloth. 30

(At this stage Exh.I is opened for witness to
identify same).

I saw Exh.I including a piece of white cloth.
Now I see everything black. The piece of white
cloth was on the piece of gunny jute stuck to it.

Q. Can you say why you do not see the white
cloth now.

A. "Mo croire li un peu trop longtemps."
[I think a long time had elapsed] One by one
was shown to me. At this stage Mrs. Peeroo 40
states that she might require the witness after
the scientific officer would have deponed,
regarding the Exh.I.

Cross-
Examination

Xed by Mr. M. Gujadhur Q.C.

On MOnday also up to nightfall I searched
for her. I gave a declaration to the police at
9.00 hrs. I gave a statement on the same day when
I gave the declaration.

In my first statement before going with the police at Ti Montagne I said what colour of cloth my mother was wearing. I had given the clothes' description worn by my mother. I said a yellow woollen coat, with a white gown stained with red spots "tache rouge".

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No.15

James Hector Cross- Examination 8th December 1980

10

Today in Court, during examination, I examined Exh.I thoroughly, I have not been able to see it there (the white cloth). (Exh.I is re-opened again. Witness takes a cloth from a packet of Matinee Cigarettes). Now witness says in the witness box after taking the cloth from a packet of cigarette "mone trouve fond blanc, rouge bleu". [I saw the white, red and blue background]

(continued)

Q. Is there not green in it?

A. There is green in it.

Q. Are there dots on it?

20

A. "Li fine passe dans la flamme". [the cloth had singed]

I maintain there are dots in it. I have not seen "mauve" on it.

In my statement before going to Ti Montagne, I did not say "Mauve", nor did I say green to the Police.

I agree that a white cloth background with red dots is different from a white cloth background with green or "Mauve" colour on it.

30

I did say in my statement before going to Ti Montagne, that there was "aroui" [a kind of edible tuberous root] sweet potatoes and mangoes.

The hair pins worn by my mother are worn by everybody. They are sold in all shops. I did speak about the hair (marron, black and white) before going to Ti Montagne.

Before I went with the Pce. to Ti Montagne, news had already spread over that there has been found a body there. I went there with the idea that my mother was there.

40

If I had found the same things shown to me by the police at R. Noire I would have told the police that it was the body of my mother.

The Police told me that a body had been found there and they told me to come and see it.

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James Hector
Cross-
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(continued)

Re-examination

Friends had told me that a body had been found there. One Luc, one friend living at Camp de Masque Pavé, and several cousins and friends.

There were more indian origins. Now I cannot give the names of my friends. But I know them by their face, although they are living at Camp de Masque itself.

I live at Clemencia.

Those who were with me live at Camp de Masque. I have seen them several times.

10

Q. "What is the name of the "Camrade" [friend] who has seen the body".

A. He has come as a witness. Witness shows the witness as Daneswar Foolessur (wit. No.4) (who was in the Court room).

He told me that he saw the body between 10 and 11 am.

My parents and myself are not on good terms with accused, since 8 or 9 years ago.

20

Re-exam. by Mrs. Peeroo

The cloth I saw in the cigarette's packet is the one I saw at Ti Montagne with the Police. There were the flowery design on it.

I was positive that it was the body of my mother (deceased).

Q. On that day when you saw the piece of cloth, was it because you had found a charred body and since your mother was missing that you decided that it was your mother's body.

30

A. I was sure it was my mother's body because of the cloth. There was that piece of cloth. I recognise it. I recognise it by the various designs on it.

At this stage, because of late hour, 3.45 p.m., the enquiry is postponed to 3.2.81 and 20.2.81 for continuation.

All other witnesses present and warned.

At this stage Inspector of Police Bussawan moves that a summons to a witness be issued on Dr.Sohun, 40 Police Medical Officer.

Motion granted.

Insp. Bussawan further moves that accused be remanded to jail until 3.2.81.

In the Flacq Magistrates Court

D. Magistrate

23.1.81

Letter from Mr. M. Gujadhur Q.C. for the accused filed.

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No.15

James Hector Re-Examination 8th December 1980

10 By order of His Hon. A.Mathoorasing, continuation date of the preliminary enquiry which was, on the previous sitting, fixed to 3.2.81 changed to 13.2.81, date which is agreeable to Mrs. Peeroo, Counsel appearing for the prosecution as well.

(continued)

Notice of postponement is hereby issued so that all parties concerned may be warned accordingly.

13.2.81

D. Clerk

JAMES HECTOR residing at Clemencia sworn and states :

Re-exam. by Mrs. Peeroo continues

20 In the statement I gave to the police before going to Ti Montagne, I did tell the police that there was also blue design. I did say to the Police that there was blue colour. I do not remember what design I said. But I said there was colour blue.

30 I do agree that I did not tell the police that there was "Mauve". I have forgotten a bit. I may have made an error. I do accept that there is no colour "Mauve". I made an error when I said in Court that in my statement before going to Ti Montagne that my mother wore a yellow pull over. In fact she had a "Rose" pullover.

No.16

EVIDENCE OF INDRADEOSING SOHUN (continued)

INDRADEOSING SOHUN, Police Medical Officer of Poudre D'or Sworn as a Hindu

Prosecution Case

No.16

Indradeosing Sohun

Examination

(continued)

13th February 1981

40 On 4.12.79 at about 15.00 hrs I went to Ti Montagne at Clemencia to examine spot in connection with present case. I examined the remains there. Later on the remains were sent to Princess Margaret Orthopaedic Centre for an autopsy of it.

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Sohun
Examination
(continued)
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On 5.12.79 at 12.45 hrs I examined the remains which was sent to me. I drew up a report of my findings. I have stated therein that the remains were those of one Juline Sarah.

During the examination at the spot at Clemencia a person said that these remains were of "his mother". I do not remember him.

Through Court

If I see him, I cannot recognise him.

10

The name Juline Sarah I obtained from the police.

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No.17

PROCEEDINGS

At this stage Mr. Gujadhur states that Mrs. Peeroo has stated that the report mentions the name of Juline Sarah. Mr. Gujadhur says that this is an issue that the Court has to decide and he will object to the production of the report of the charred remains which mentions the name of Juline Sarah.

20

Mr. Gujadhur states that he has not been communicated with the reports and therefore he will have to reserve his right after examining the report. He moves for communication of same.

At this stage the original report is communicated to Mr. Gujadhur who says that he needs time to study the report and he can't take a position now.

30

Mr. Gujadhur states that he cannot have time to study the substance of the report but he adds that the opening of the report is objectionable.

Court resumes at 1.30 p.m.

Mr. M.Gujadhur states that basing himself on the case of Toorabally v/s Salamut No.111 where Mr. Justice Rault said "the judge of law must look at the document physically before...."

Mr. Gujadhur objects to the production of the report and quotes S.181 of Court Ordinance. on the authority of Salamut the Court should

40

physically look at the document before admitting its admissibility. Mr. Gujadhur says that putting before the Court does not make it evidence but decide its admissibility or not.

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Mr. Peeroo has no objection that the report be put in physically before the Court.

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10 Mr. Gujadhur objects to the following words of the report viz "body of one Juline Sarah, a female aged 56 yrs." He objects also to the words "the deceased" in paragraph 3. He also objects to paragraph 11, whole of it. He quotes Sec. 181 of Court Ordinance has been construed in M.R.1973 at page 130 - Residu v.s. The Queen.

(continued)

Mrs. Peeroo submits that the Doctor has been summoned.

20 The spirits of S.181 of Court Ordinance is to make a report admissible as to the facts stated therein when the person making the report is not required in Court but that if the accused wants the Doctor to be in Court to explain, elaborate or be cross-examined on the report the Court may ask for the doctor to be in Court for that purpose.

30 In the present case, the prosecution is not putting in the report as the doctor identifying the remains to be that of Juline Sarah and besides the doctor is present in Court and is called by the Prosecution so that he can explain and qualify his report and be cross examined on it. In the light of what has been submitted, the report should be admissible and if the defence does not agree with anything with the report it will be free to cross examine the doctor. The evidence before Court will not be the report but also the doctor's evidence in Court.

40 Mr. Gujadhur rebuts that the report speaks not only of Juline Sarah but also "aged 56 yrs, Female". Mr. Gujadhur states that inadmissible evidence should not be put in so that it was to be thrown out later. He further states that the objectionable part should be deleted before it should be taken as evidence. Mr. Gujadhur submits that prejudicial evidence should not be put in which will operate against the defence.

50 Mrs. Peeroo states she had made the same submission as regards the other words mentioned and being objected to. Mrs. Peeroo states that the fact the

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(continued)

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No.18
Noelie
Corteau
Examination
13th February
1981

No.18

EVIDENCE OF NOELIE
CORTEAU

doctor will depone is also a point of
evasing the words. The present case is a
"murder" case replies Mr. Gujadhur Q.C. and
is a very serious one.

To 20.2.81 for Ruling.

Calls

Widow NOELIE CORTEAU, of Camp de Masque Pavé, 10
sworn and states :

I live at Camp de Masque Pavé. Deceased,
Juline, nicknamed Hirene was my sister. She
was living at Clemencia. She always came to
my place. When she came to my place, she used
to come on foot. She went away also on foot.
She used to bring something to me like "violet"
[an edible tuberous root], sweet potatoes,
mangoes what she planted.

Towards the end of November 1979, I was hurt 20
in my foot. Deceased's son came to see me. His
name was Toussaint.

On 2.12.79, (Deceased), Juline Sarah did
not come to my house. She did not come at all
on that day. On the same day at about 7.00 p.m.
or 8 p.m. James Hector, Deceased's son came to
my place to enquire whether his mother came to
my place.

He told me that his mother has gone away 30
from the house, how could it be that she has
not come to your place. (qui maniere li pas
encore arriver). I told him that Juline Sarah
did not come. He went away. Since that day,
I have not seen her at all.

No cross-examination by Mr. Gujadhur

EVIDENCE OF LUC SARAH

In the Flacq
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LUC SARAH, a Mechanic of Camp de Masque Pavé, sworn and states :

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No.19

Luc Sarah
Examination
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10 Juline Sarah also called Hirene Sarah, was my mother. She was living at Clemencia. I live at Camp de Masque Pavé. Very often she came to my place on foot. On Sunday 2.12.79 in the afternoon at about 7 p.m. or 7.30 p.m. when I reached home I came to know something. I received certain information that is my mother has not arrived at my aunt's place, Noelie Corteau. I wanted to know where she had gone. I made certain enquiries. I went to look for her at relatives' places at Camp de Masque, Montagne Blanche. But without success. I redoubled my efforts on Monday also. But without success. I searched at 20 Clemencia and Camp de Masque Pavé specially. On Tuesday also it was the same thing.

30 On the same day at about 11.30 a.m., I was among the search party at Ti Montagne, Clemencia. One person discovered something. I also went to see that something. I saw one head, $\frac{1}{2}$ of a body. It was a dead body. I did not recognise it (tellement reconnaitre). Juline Sarah used to bring sweet potatoes, violet to us, mangoes also. I could not identify the body.

On 5.12.79, after that Doctor had examined the body, Police handed over the remains to me. The burial was from my house.

At this stage Mr. Gujadhur reserves his rights to cross examine the witness. Case postponed to 20.2.81 for continuation.

(Sd)

On motion of prosecutor, accused is remanded to jail. Court order to issue.

40

D. Magistrate

In the Flacq
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No.20

RULING

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20.2.81

No.20
Ruling
20th February
1981

Accused present.
Mrs. Peeroo for the Crown.
Mr.M. Gujadhur Q.C. for the Accused.
Ruling delivered and filed.

Ruling:

Mr. M.Gujadhur Q.C. objected to the admissibility of a certificate issued by Dr. Sohun on the ground that the name of the alleged victim was mentioned thereon together with the words "a female aged 56 yrs." Mrs. Peeroo for the crown is agreeable to its objection regarding the name. 10

I have examined the certificate of the deceased and I'm of the opinion that in the lights of S.181 of the Courts Ordinance the objection of Mr. Gujadhur Q.C. is sustained so far as the name is concerned or otherwise to the objectionable part, namely the name of the alleged victim would become advisable. The exam. is at liberty to adduce in evidence an amended report i.e. a certificate without the name of the alleged victim. 20

Prosecution
Case
No.21
Luc Sarah
Cross-
Examination
20th February
1981

No.21

EVIDENCE OF LUC SARAH
(continued)

LUC SARAH, a Mechanic of Camp de Masque Pavé, sworn and states : 30

(continued

Xed by Mr. M. Gujadhur Q.C.

Mother used to come from Clemencia to Camp de Masque Pavé whenever there was a news of an illness. She used to pay us visits. Very often viz. once a month she used to come to our place.

I do not know if other people carry mangoes, "aroui" etc. in "tante". I have heard people carrying mangoes and "aroui" in "tante". [a kind of edible tuberous roots in a bag made of vacaos leaves]. Before 2nd of December, I 40

cannot remember whether it was one month, two months back she came because it is too old.

In the Flacq Magistrates Court

She came but I cannot remember exactly when she came. In fact in November she came at the time of "service de mort". (Saint's day) [All Souls Day]

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No.21

Luc Sarah Cross-Examination 20th February 1981

10

I live by myself with my wife and children. I work as a Mechanic at Boulet Rouge Flacq with Mr. Beeharry since 7 - 8 years ago.

No re-exam. by Mrs. Peeroo

(continued)

Calls

No.22

EVIDENCE OF LUTCHMEENARAIN DORAH

Prosecution Case

No.22

Lutchmeenarain Dorah Examination 20th February 1981

LUTCHMEENARAIN DORAH, Casual Works Overseer, of Clemencia, sworn as a Hindu

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I live at Clemencia near the banyan tree, at junction Clemencia and the Tamil Temple Road.

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On Sunday 2.12.79 in the morning I left my house to come on the road. It was about 6.45 a.m. I noticed accused who was riding a bicycle cycling towards Camp de Masque. He came out from Tamoul Temple Road to go towards Camp de Masque, when facing towards Quartier Militaire. When I came on the Royal Road, I also saw deceased, Mrs. Irene walking. The woman was walking some 3 - 4 minutes after him. She also was heading towards Camp de Masque Pavé. I did not take heed what accused was wearing. "mo pas ti remarquer comment l'accuse ti habillait". [I did not pay attention to the accused's dress]. I did not notice whether he wore long or short trousers. I cannot say exactly how he was dressed with. I gave a statement to the police. Accused was riding a bicycle. On his bicycle there was a "sac" [bag] colour green like tarpaulin. The size of the bag was 18 inches by 12 inches. I knew deceased well. I knew where she was living. She lived near the Co-operative shop in the neighbourhood, at Clemencia. The shop is found opposite to the house of accused.

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In the Flacq
Magistrates
Court

Preliminary
Hearing
Prosecution
Case

No.22
Lutchmeenarain
Dorah
Examination
20th February
1981

Deceased was walking on the Royal Road going towards Camp de Masque. I did not notice what kind of cloth she (deceased) wore. But she had a "tente" [a bag made of vacoas leaves] on her head. Both of them live before my house when coming from Bel Air. When coming from Bel Air, one reaches their house first before reaching mine which is 1/4 mile away from their house. They can take the Royal Road or they can take the Temple Tamoul Road to reach the junction. I gave a statement to the police on 5.12.79. Police read over the statement to me which I signed.

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Xed by Mr. M. Gujadhur Q.C.

(continued)

Cross-
Examination

My house is at the junction. If somebody comes from Bel Air and wishes to come to my place, he would have to take the direction of Camp de Masque Pavé. My house is not found at the junction of Royal Road and Tamil Temple Road. My house is 2 gaulettes [20 feet] away from where the Tamil Temple Road and the Camp de Masque Pavé Road meet the Royal Road. I work as overseer in the Ministry of Local Government. At 6.45 a.m., I came out from my house to come on to the road. I was going on the Royal Road.

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When coming from the direction of Bel Air to come to Tamil Temple Road my house is found on the left. I took the left hand side Road. I must come out 2 gaulettes [a distance of 20 feet] in order to go on to the main Road. My house is on the Tamil Temple Road.

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From the direction of Bel Air the road bifurcates in two. On the left hand side is the Tamil Temple Road which makes a semi circle. The Royal Road where it bifurcates on the Camp de Masque Pavé Road.

At a certain spot the Tamil Temple Road meets the Camp de Masque Road. When I came out of the house I saw the accused at a distance of 2 gaulettes [20 feet]. The distance from my house to the junction is 2 gaulettes [a distance of 20 feet]. Accused was on the Tamil Temple Road. He was turning into Camp de Masque Pavé Road in the direction leading to Camp de Masque Pavé.

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I also saw the lady (deceased) after I had turned into the Camp de Masque Pavé Road. I was going towards Bel Air. The lady was coming in the opposite direction coming from Bel Air. Police was taking statement "Partout Partout" [from everybody]. I did not talk to anybody

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about my having seen accused and the lady (Mrs. Irene). There were 3 or 4 Policemen with the inspector Jomeer. It was on "Mercredi tantot vers 6 heures comme ca". [Wednesday afternoon round about 6 p.m.] I gave my statement there and then.

Mrs. Peeroo reserves the right to re-examine the witness.

The Court takes recess. The Court resumes at 1.30 p.m.

No Re-exam. by Mrs. Peeroo

CALLS

In the Flacq
Magistrates
Court

Preliminary
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Case

No.22

Lutchmeenarain
Dorah
Cross-
Examination
20th February
1981

(continued)

No.23

EVIDENCE OF FRANCOIS BRULE
COEUR

FRANCOIS BRULE COEUR, Stonemason of
Clemencia, sworn and states :

Prosecution
Case

No.23

Francois Brule
Coeur
Examination
20th February
1981

I am also known under the name Seide. I live at Tamil Temple Road at Clemencia. On Sunday 2.12.79 in the morning I was behind my house. It was about 11.30 a.m. my elder brother Frederick called for me and told me that a friend named "Popol" was in need of me. I was resting then. Before he had time to come to tell me so, that "Popol" came to see me with his bicycle and told me to take one bottle of water and to put on my shirt. He came on a bicycle. Popol is the accused, now at the dock.

He told me to take one litre of water. I went inside my house I put on my shirt I took a litre of "seven up" [trade mark of a soft drink] and put water in it and I went by the side of the road. He told me to come along with him to go and to carry some mangoes with him. I sat on the bicycle frame and we both went away. He did not tell me where to leave the mangoes.

We took the Tamoul Temple Road which came out at the house of somebody and he caused me to pass on the Estate Road. We took the Tamil Temple Road to go on to the Royal Road. We

In the Flacq
Magistrates
Court

Preliminary
Hearing
Prosecution
Case

No.23

Francois
Brule Coeur
Examination
20th February
1981

(continued)

crossed the Royal Road. We then continued our way on the Estate Road. At that time, as the Road was rough "un peu rocheux" [a little rocky] we walked. That Estate Road leads to Ti Montagne. Before crossing the Royal Road, he gave me the bicycle and he went inside the sugar cane field. He removed the dead leaves and took a gunny bag therefrom. There was something in the gunny bag.

Through Court

I saw him removing the Gunny bag after having removed the dead leaves.

Examination continues

We continued our way which leads to Camp de Masque. Then he gave me the bicycle and then he took the gunny bag. I continued my way on the main Road and he entered into a 'little' road in the sugar cane field. He told me to meet him at the other way over there, that is at the junction I have taken which meets at the junction there. I took the bicycle and went away. When he (accused) came to meet me at the "Grand chemin" [Main Road] he told me to keep the bicycle in the sugar cane field as there are robbers of bicycle. It was at a place before Pont Sec. I put the bicycle in the sugar cane field and then he told me to follow him. We entered into a sugar cane field road and took the direction towards Ti Montagne. I climbed the Ti Montagne. We covered the sugar cane field road for about 3 - 4 gaulettes [30-40 feet]. That road was near a pineapple plantation. He told me to pluck mangoes in the meantime while he would cut 2 bundles of wood. After he would have already cut down the wood, to help him in taking the wood down at the side of the Road.

He entered into a place where there were "Privette" [Bushy Evergreen Shrub]. I followed him. Then we lifted dead leaves of "Privette". [Bushy Evergreen Shrub]. He showed to me the body of a woman underneath. It was a person who had already passed away. I could identify the body. It was that of Irene. She was my aunt. I know her well. My mother and deceased's husband are cousins. Irene's husband is Regis Hector who is a cousin of my mother. Irene Hector is also called Juline Sarah. When I saw the body, the body was facing the sky. I noticed that blood was oozing from her mouth. Near the body there was nothing (pas ti enan narien). I told him why he had killed her. He (accused) retorted that she had done me "trop boucoup du tort" [much harm]. Then he told me

to help him in putting the body into the gunny bag. I did not give him a helping hand. He forced me and he threatened me with a sabre. I did not want to give him a helping hand. The sabre was found in the gunny bag which was underneath the sugarcane leaves.

In the Flacq
Magistrates
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Preliminary
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Case

No.23
Francois
Brule Coeur
Examination
20th February
1981

(continued)

10 When he threatened me with the sabre he told me "Si to pas donne moi coup de main toi aussi to pou passe pareille" [if you don't help me you will suffer the same fate]. As I was afraid, I helped him. I took the gunny bag and he (accused) took the body and put it into the gunny bag. He hauled the body and I put the gunny bag at the head. Afterwards he caused me to "leve le corp" [lift the corpse] and put it on his shoulders. When he took out the sabre from the gunny bag, there was an axe also in it. Then he did not tell me anything. He took the direction of the mountain and he gave me a "tente" [bag made of vacoas leaves]. There was a "tente" [bag made of vacoas leaves] also near the body. It was a little "vacoas tente" [bag made of vacoas leaves]. I noticed a pull over "Lalaine rose" [pink wollen pullover] on the "tente" [bag made of vacoas leaves]. He took the gunny bag, the axe and the sabre on his shoulders and climbed the mountain. I followed him. He walked for about 2 or 3 gaulettes [20 or 30 feet] and then he put the gunny bag down to take a rest. He told me to carry it but I refused to do so. Then he told me to haul it again and put it on his shoulders. Then he walked away. I took the "tente" and left it near an Eucalyptus tree and returned home. I ran and entered the sugarcane field I took his bicycle which I left there and went away. I left his bicycle at the Tamil Temple Road. After about 3/4 of an hour at about 1.30 or 2 p.m. he came back and he returned me back the litre of Seven up and told me that if I rebuted this to the police he would kill me. I left the litre at the place where I hauled the body. I took the litre and put it behind my house. When he came for the 2nd time, he came with his bicycle. There was a bundle of wood on his bicycle. He was wearing a khaki short and a shirt colour blue geen. On Thursday 6.12.79 at about 3.30 p.m. or 4 p.m. I accompanied police officers with Mr. Madoorapen I went to show all the places I mentioned before. Police took down notes and measurements and took photos also.

50 When Police Officer came to see the litre, my brother while he was chopping the branches, the litre fell down and got broken. Police Officers saw it. I can recognise the sabre and the axe which I saw.

In the Flacq
Magistrates
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Preliminary
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No.23
Francois
Brule Coeur
Examination
20th February
1981

(continued)

Cross-
Examination

The sabre and the axe are shown to the witness.

Witness recognises same and tells the Court that they are the very ones he saw.

He has recognised the sabre by the "3 rayures" [3 marks or grooves]. The axe he says I recognise it by its handle as it has "boutte boutte coupe" [small cuttings on it].

Xed by Mr. M. Gujadhur Q.C.

I gave 2 statements about what had happened, to the police. I do not remember when I gave them. But the first time I gave one was a Wednesday. The 2nd one, months later, I gave. It could not be possible that I gave 3 statements in the space of 8 days. Had I given the 3 statements within 8 days, I would have remember it well. Police did not arrest me. Police came to my house and brought me to the Police Station. Police came to my house only twice.

The 1st time they came was at about 6 - 6.30 p.m. They brought me to Moka Police Station. I left the station the following day at 2 p.m. I was not free. When they came to take me, they took a statement from me at about 9 p.m. I finished giving my statement one hour later. Then they caused me to sit on the bench inside. I asked them if I could go home. They told me that on the following day I would go. They told me that on the following day they would come to take me back.

They told me to remain there itself. I slept on the bed there. I did not sleep on the same bed where Police Officers sleep. I did not sleep in the Police cell. The door was of same type as the one found behind me (Mgte's door). C.I.D. officers came at 8 a.m. They brought me at Port-Louis, Line Barracks.

They returned back. They read over my statement again to me. Then they took me again and returned back. On the 2nd day they did not take a statement from me. They then took me at Flacq Police Station. They told me that in 2 hours' time, they would let me go. I did tell them why they were keeping me here. They told me to remain there as I was in security. No one could do harm to me. I have seen many axes. On that Sunday it was the 1st time that I saw Popol's (accused) axe. But the sabre I have seen it. It was at the time when I was working with Popol that I noticed that the sabre

bears "3 rayures" [3 marks or grooves]. When he threatened me, I noticed the "3 rayures" [3 marks or grooves]. Both the axe and the sabre were in the same hand. But he raised the sabre and left down the axe. I was constructing his house under cement then. I served Popol's axe when I was working there for a period of 3 months. It is the same axe. I noticed the sabre and the axe. On the same day I notice the "sabre" and the axe.

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It was a bottle of Seven up that I placed it. When Police Officers told me where was the litre. I accompanied them behind the house to show them. But when we reached there, the litre was already broken. On the same day in the afternoon I came to know that the litre was broken. It was on the following day, when I returned home, that I came to know about it.

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At this stage, 3 p.m. case is postponed to 23.3.81 as it is late hour and that by 3.30 p.m., the case will not be over.

Continuation 23.3.81

On motion of Police prosecutor, accused is remanded to jail until 23.3.81. Court order to issue.

District Magistrate

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FRANCOIS BRULE COEUR, Stonemason, of Clemencia, sworn and states:

17th April
1981

Cross-examination continues 17.4

Xed by Mr. Madun Gujadhur, Q.C.

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On that day I left the accused at about 1.30 or 2 p.m. I returned home after having left him. Police took statement from me three days afterwards. From my return up to the day of my statement I related the incident to one "Pousari" [South Indian Priest], Mr. Vella. On a Wednesday I spoke to one, Mr. Vella. It was in the afternoon. I went there. Frederick Brule Coeur is my elder brother. He lives in the same house as I. On Wednesday when I returned at about 6.30 or 7 p.m. I spoke, what I related, to my elder brother. It was with my elder brother that the bottle got smashed. He did not tell me anything "Si to pas faire attention to capave tasse" [If you do not take care you would be incriminated].

In the Flacq
Magistrates
Court

Preliminary
Hearing
Prosecution
Case

No.23

Francois
Brule Coeur
Cross-

Examination
20th February
1981

(continued)

In the Flacq
Magistrates
Court

Preliminary
Hearing
Prosecution
Case

No.23

Francois
Brule Coeur
Re-examination
17th April
1981

(continued)

Prosecution
Case

No.24

Maude
Lacharmante
Examination
17th April
1981

No.24

EVIDENCE OF MAUDE LACHARMANTE

MAUDE LACHARMANTE, Labourer, of Clemencia,
sworn and states:

I know Irene Hector (victim). She is related to me. She is the aunt of my husband. I only know that her surname is Sarah. On 2.12.79 on a Sunday, I was on the road at 7 a.m. I was on the Clemencia Road going downwards. She was going down the city. I was coming from the "Chapel". I was heading towards Clemencia's school. I saw victim going towards Camp de Masque. It was in front of the house of an indian that I saw her. It could be at a distance of about 50 gaulettes from my house. I did not remark how she was dressed. In fact she wore a blue dress with designs like beans (haricots). The designs were like "Laliane, Laliane". [Creepers] I could not notice it well. She had an (palletot) overcoat of rose colour on her arm. She had also a head scarp which was also blue, with a "tente" [bag made of vacoas leaves] in her hand. I spoke to her. She continue her way on foot afterwards. On Monday when I came I heard that she was to be found nowhere. On Tuesday I heard that searches were going on. I heard only this.

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Cross-
Examination

Xed by Mr. Gujadhur Q.C.

I was going towards the school at my sister's place, Marie France Lacharmante. She lives near the school. I did not speak about it. On Sunday I was not at home. I went to attend

a Funeral at Roche Terre, Goodlands. I went to see my sister to accompany me. Then I returned home. I did not go to attend the "eve of the Funeral" [Wake]. Neither my husband did attend. At the funeral I met relatives. I did not say to anybody that I saw the victim (Irene Hector) who was wearing such and such kind of dress. In fact I did speak to someone else about Irene's dress. I spoke at the Funeral. For about ½ an hour I spoke to that person. I do not know the person with whom I spoke. I do not remember what dress that person was wearing. I also do not know what shirt that person wore and whether he was wearing "sandals" etc. or not.

In the Flacq Magistrates Court

Preliminary Hearing Prosecution Case

No.24

Maude Lacharmante Cross-Examination 17th April 1981

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(continued)

No re-exam by Mrs. Peeroo

Calls.

At this stage the Court takes recess.

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Court resumes at 1.30 p.m.

No.25

EVIDENCE OF ROODWANTEE PADARUTH

Prosecution Case

No.25

Roodwantee Padaruth Examination 17th April 1981

ROODWANTEE PADARUTH, Planter, of Camp de Masque Pavé, sworn as a Hindu deposes through the interpretation of the Hindi interpreter, Sembhoo:

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On 2.12.79, I was going to fetch fodder. It was about 8 a.m. I reside at Camp de Masque Pavé. I was going to fetch fodder at Petit Montagne. I returned from half way. When I was going I saw sugarcane leaves fallen down by the road. So I did not go further. I got discouraged and returned. When I went two gaulettes [20 feet] away from the main road, I returned back. While going to Ti Montagne, from the main Road, I went 2 gaulettes [20 feet] away, then I returned.

40

I did not hear anything on the main road before taking the little path road leading to Ti Montagne. I did not hear any sort of noise, human or non-human. I do not remember whether on 12.12.79 I gave a statement to the Police.

Now witness says that she has given a statement to the Police but she does not know the date when she gave it. I cannot remember

In the Flacq
Magistrates
Court

Preliminary
Hearing
Prosecution
Case
No.25
Roodwantee
Padaruth
Examination
17th April
1981

(continued)

whether I gave it on 12.12.79 or not. When I gave a statement to the police, it was read over to me. I affixed my thumbprint therein.

Q. Did you say the following "Pendant qui mo lours chemin dans ca l'endroit la, mo fine tende cane chacouille"? [Whilst I was on the road at that place, I heard the rustling of sugar cane leaves]

A. No I did not hear "cane chacouille" [the rustling of sugar cane leaves] I have not said "canne chacouiller" [the rustling of sugar cane leaves] in my statement. I did go with the Police to show them various spots but not at the spot of "canne chacouiller" [the rustling of sugar cane leaves]

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There were sugar can crushed near the side of the road and sugar cane leaves spread away so that the path was slippery. Never before that, I saw such thing there.

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The plan is shown to the deponent and spot Q therein.

Witness says that she did not show any spot where she heard a noise.

I showed the police point marked Q in the plan. At that point, nothing had happened except some sugar canes were crushed, and sugar cane leaves scattered. Sugar cane were crushed on the path leading to Ti Montagne. I am positive that sugar canes were crushed and fallen on the path leading to Ti Montagne. It was slippery there, at that spot.

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The earth there looked "glisser" [slippery].

I cannot say how that part of earth became "glisser" [slippery].

I used to go there. I got frightened because that part had become "glisser" [slippery]. I was alone when I was going to fetch fodder. In fact I was accompanied by my son. "I was accompanied by my two children" says witness now.

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When I returned home, I met someone on the way. Several people I met. I met one Dharamdeo Dookhee. Apart from him, I met no one. I talked to Dookhee. He asked me why I was returning back. I replied that at a certain distance I had seen sugar cane and sugar cane leaves on the road, I thought that there was a thief.

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On 12.12.79, at about 2 p.m. I accompanied police officers there and showed various spots. On that day I did not see any thing particular from my earlier visit.

In the Flacq Magistrates Court

On 12.12.79, when I accompanied Police Officers I saw sugar cane burns but I did not say it in my statement.

Preliminary Hearing Prosecution Case

Xed. by Mr. M.Gujadhur Q.C.

No.25
Roodwantee Padaruth Examination
17th April 1981

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Since then, I have never been to Ti Montagne.

No Re-exam by Mrs. Peeroo

(continued)

Cross-Examination

No.26

EVIDENCE OF DHARAMDEO
DOOKHEE

Prosecution Case

No.26
Dharamdeo Dookhee Examination
17th April 1981

DHARAMDEO DOOKHEE, Labourer, of Camp de Masque Pave, solemnly affirmed as a Hindu

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On 2.12.79, in the morning I was going to fetch grass. I was on the Road, Beau Vallon. Last witness whom I met on Beau Vallon Road at 7 or 7.30 a.m. told me that she was going to fetch fodder, but there was thief there, on the mountain.

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Then I went there at the mountain. It was at Pont Sec that I went to see, I looked in the direction of the mountain. I did not see the thief. I saw one whose name is Popol. He was standing on the mountain. He is the one there, in the dock, the accused. He was standing when I saw him. He lifted his hands with me. I told him that there was a thief there that is why I have come to see. He told me that there was no thief there. He was wearing a white shirt, a short khaki trousers.

On 12.12.79 at about 3 p.m. I showed police the various spots there, that I saw. On 13.12.79, at 5 p.m. Police held an identification parade at the Police Station, Flacq. I showed them the one whom I saw on the mountain.

In the Flacq
Magistrates
Court

Preliminary
Hearing
Prosecution
Case

No.26
Dharamdeo
Dookhee
Cross-
Examination
17th April
1981

Xed by Mr. M.Gujadhur Q.C.

7 days before this, Sunday, I was at home. Sometimes I went out to cut grass. But last Sunday I did not go to fetch grass. I am a labourer working with the planters. I work with various planters.

It was after 4 or 5 days after that I saw him, that I gave the statement to the police. In fact after 5 days that I saw him that I gave a statement to the Police. "By 5 days it is not 10 days". It was after a week. I cannot remember when Police came and when I gave the statement. It was on a Sunday that I saw accused standing on the mountain. It was in the year 1979.

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No Re-exam by Mrs. Peeroo

At this stage, the enquiry is postponed to 27.4.81 due to late hour and the likelihood that it will not be over by 3.30 p.m.

Witnesses Nos. 10, 11, 12, 13, 14, 15 and 18 present and warned in Court.

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On motion Police Inspector Basawan, Accused is remanded to jail until 27.4.81. Court order to issue.

District Magistrate

Prosecution
Case

No.27
Cecile Hector
Examination
27th April
1981

No.27

EVIDENCE OF CECILE HECTOR

CECILE HECTOR, Labourer, of Clemencia,
sworn and states:

Deceased (Irene) was my mother. She was called Irene. Her surname is Juline Sarah. I know accused who "case mo menage" [wrecked my home], broke my "house" after three months of my marriage. I do not know why he did so. I was then living at Nouvelle Lecouverte. Accused came and told me that he has come to fetch her. In 1979, I was living at Clemencia. Accused also was living there. Formerly he was living at the Estate. In 1979, he came to live at Clemencia. Always Accused had had discussion with my mother (deceased). He told my mother that she was a witch. (Faiseur daigue).

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Some two months before the present incident, I do not know what she (deceased) had had with the accused.

In the Flacq Magistrates Court

At this stage Mr. Gujadhur states that the question of Mrs. Peeroo be recorded verbatim.

Preliminary Hearing Prosecution Case

10 The question was according to Mr. Gujadhur Q.C. "Did your mother have a conversation with the accused in your presence some two months before the incident" and the witness has said "No".

No. 27
Cecile Hector
Examination
27th April
1981

Mrs. Peeroo says whether the Registrar is not doing his work properly.

(continued)

Court states that it remembers the question and the answer was "No". Two months before my mother's death, I met the accused. My mother also was present there.

20 Mrs. Peeroo rephrases her question on a remark of Mr. Gujadhur Q.C. One month before the incident, there was an argument between them (accused and deponent's mother). I did not know what was the reason of the argument. Accused was constructing a house. He said that my mother was lighting camphor "faire diable" [dealing in witchcraft]. This is why he was not able to construct the house. When he was passing by he said "pas azordi pas dimain, nous besoin joindre" [sooner or later we will meet]. My mother was a bit "fat" un
30 peu gros ca qui divant toi, mo besoin eclater [I shall burst your tummy]. After having told this, he went away. He stopped, then he went away.

I left my mother and went to work. I told my mother to go to the Police Station to give a declaration. But she did not go.

Xed by Mr. Gujadhur Q.C.

Cross-Examination

40 I married one Michel Philoe. After my marriage, accused "broke" my house (casse mo menage) [wrecked my home]. I have not abandoned my husband. It was accused who came to me. For about eight months I remained with the accused. I did not want to go with him. I have lived in Port Louis with accused. I have also lived with him at Union, Caradec. I have lived at Bois Cheri. After that I lived at the place of his mother at Clemencia. All the time he was working as driver of Caterpillar at F.U.E.L. I did not know why I went with him.

50 My husband was living at Nouvelle Decourverte

In the Flacq
Magistrates
Court

Preliminary
Hearing
Prosecution
Case

No.27

Cecile Hector
Cross-
Examination
27th April
1981

when my "house" was broken.

I did not take all my clothes to go with him. My husband was absent at that time. He was working. I had finished cooking. He told me "Are you coming with me". But I told him off.

He persisted in his demand. Then I saw death in front of me. So I went with him. I was alone. There was nobody there. I was 19 yrs when I married Michel Philoe. I went with accused as I feared that he could "fou moi ene coup" beat me up, 10

(continued)

After leaving the conjugal roof accused and I went to Port Louis. During those 8 months I lived in fear. But he used to leave me at his relatives, aunts.

During those 8 months I was not in love with accused. When I heard that my mother died, this did not please me.

I have lived for 8 months with accused. When I came back home, I did not reinstate the conjugal roof with Michel Philoe. Popol's (accused) mother was living at Clemencia on the Estate. 20

Then I returned to my mother's place. Now I am living alone. I have one child, who is 14 yrs old. The child is for the accused. I am 38 years of age. I go to work at 6 a.m. Accused has no fixed time to go to work. Sometimes he goes at 6 a.m. and sometimes at 11 a.m. He is a driver. My son's name is Christian. I caused his birth to be registered. 30

Accused has not acknowledged the child. I got the child at my mother's place. Accused turned me out of his house. He is not providing anything for the child. I have never been to school. But I know that there are 12 months in one year.

When accused uttered the words previously recorded, I was about 4-5 ft away from him. I also was going to work as well as the accused. 40

Accused has left me since 14 yrs because my mother's tummy was protruding. Michel Philoe has married again. According to me accused is a "selerat" meaning a bad man.

Re-examination Re-exam by Mrs. Peeroo

It was when I was 19 yrs of age, that I went away with accused.

Calls.

No.28

EVIDENCE OF KHEMRAJ MOTI

In the Flacq
Magistrates
Court

KHEMRAJ MOTI, taxi driver, of Clemencia,
solemnly affirmed as a Hindu

Preliminary
Hearing
Prosecution
Case

No.28

Khemraj Moti
Examination
27th April
1981

10

Taxi car AJ 203 is my car. On 2.12.79
I was working in that car. I know Popol
Myrtle. He is the accused at the dock.
My name is Veeraj. On 2.12.79, I did never
meet the accused. I did not meet him at
all. He is not among passengers that I
have carried. At 7-7.30 a.m., I was not
working then.

Xed by Mr. Gujadhur Q.C.

Cross-
Examination

I am a taxi driver. Everyday I start
work at 6.30 a.m. Except on Sunday I start
work at 8 a.m.

Accused has travelled in my car.

20

I worked on Friday last. I cannot
remember the names of passengers who travelled
in my car on that day. I cannot say even by
face who were those who travelled in my car
on Friday last. I do the Clemencia - Flacq
and vice versa itinery. One C.I.D. on a
certain day, Roussety was travelling in my
car. Accused also was in it. He caused me
to stop at the Police Station. I am an
inhabitant of Clemencia.

30

"Pou moi penan narien la dans" [I do not
care] to say who has travelled in my car.
Yesterday I have worked for half day itself.

My cousins have travelled in my car. I
have done 4 trips. During weekdays I do 8 to
10 trips.

I cannot say who travels in car at any
particular time of the day.

No Re-exam by Mrs. Peeroo

No.29

EVIDENCE OF SATYADEO JAWAHEER

Prosecution
Case

No.29

Satyadeo
Jawaheer
Examination
27th April
1981

40

SATYADEO JAWAHEER, Cashier, of Clemencia,
solemnly affirmed as a Hindu

In the Flacq
Magistrates
Court

Private car D 614 is my car. On 2.12.79
the car was with me. I know Popol Myrtle.
He is the accused.

Preliminary
Hearing
Prosecution
Case

On 2.12.79 I did not meet accused. It
would not be possible that he travelled in
my car on that day at any time.

No.29
Satyadeo
Jawaheer
Examination
27th April
1981

Xed by Mr. Gujadhur Q.C.

I work as cashier at the Baroda Bank.
I am an inhabitant of Clemencia. I do not
do trips Clemencia and Flacq and vice versa.

10

(continued)

Cross-
Examination

I have carried vegetables (ours) in my
car as a Planter. I do not carry vegetables
of others. I carry vegetables for my father
and mother. We live together. We bring
vegetables to Bel Air Market. Every Sunday
I bring vegetable there. I do sell vegetables
in the market. I help my father. The sale
starts at 6 a.m. until 9 a.m. Normally the
"foire" [periodical sale of goods vegetables
etc.] ends at 9 a.m. People do not come
after 8.30 a.m. or 9 a.m. I am on good
terms with almost all inhabitants. I am
equally on good terms with accused. I have
started to work at Baroda Bank in 1976. In
1976 I bought the car. It could be that when
I see 1-2 friends who are going to Bel Air,
I take them. The accused may be one of them,
whom I have carried like that.

20

No Re-exam by Mrs. Peeroo

Court takes lunch.
Court resumes at 1.30 p.m.

30

Prosecution
Case

No.30

No.30
Proceedings
27th April
1981

PROCEEDINGS

Mrs. Peeroo produces Police Form 57 [Report
made by Police Medical Officer in cases of
violent death] as Dr. I.Sohun will be called
after that.

Mr. M.Gujadhur Q.C. objects to the production
of the Police Form 57 as he wants to know
the purpose for producing such Police Form 57
and (ii) the Police Form 57 is signed by
Mr. Jameer, District Inspector. Mrs. Peeroo
quotes sec.110 of Intermediate and District
Court Ordinance (Criminal). Mr. Gujadhur
says that if the purpose is to show that the
human remains examined by Dr. Sohun is that
of Juline Sarah he would object to it. Further

40

he submits that the Police Form 57 is only for administrative purposes, and what is the purpose of putting the document in.

In the Flacq Magistrates Court

Mr. M. Gujadhur further submits that the production of the Police Form 57 is premature, at this stage.

Preliminary Hearing Prosecution Case

Ruling

No.30 Proceedings 27th April 1981

The Court finds that the document ought to be produced by its drawer.

10

At this stage Mrs. Peeroo, in view of the Court's ruling, wants to know whether she should call the enquiring officer to produce it or whether the production will not be allowed. Mr. Gujadhur says that the Court should not give a ruling on an hypothetical issue before Mr. Jameer comes. Secondly he states that the ruling should be given at the proper time.

(continued)

20

The Court: Mrs. Peeroo wanting to produce Police Form 57, is in flagrant contradiction with the rules of evidence namely that the drawer of document should produce it here, in Court.

Therefore the admissibility of that form is postponed until its drawer depones.

Mrs. Peeroo at this stage calls. Jocelyn Hector. The witness is not in attendance. Mrs. Peeroo calls.

30

Frederick Brule Coeur

No.31

EVIDENCE OF FREDERICK BRULE COEUR

Prosecution Case

No.31 Frederick Brule Coeur Examination 27th April 1981

FREDERICK BRULE COEUR, Foreman of Clemencia, sworn and states :

40

On 2.12.79 I was at home. There were several persons who came to my place. I know Popol Myrtille. He is the accused. What I remember is that I was in my yard since the morning. At about 11 or 11.30 a.m. I saw Popol (accused) coming to call for my brother, Seide. He met him (Seide). He was behind. When they met, they talked at the edge of the

In the Flacq
Magistrates
Court

Preliminary
Hearing
Prosecution
Case

No.31
Frederick
Brule Coeur
Examination
27th April
1981

(continued)

road. When they had finished talking they went away. By "they" I mean, accused and my brother. They took the Temple Tamoul Road to go away.

No X by Mr. Gujadhur Q.C.

As Police Inspector Jameer is available, Mrs. Peeroo moves to recall him.

At this stage, Inspector Busawan informs the Court that he is working in his office.

At this stage Mr. Jameer puts in an appearance.

10

Mrs. Peeroo moves to recall him.

Prosecution
Case
No.32
Bye Mustapha
Jaumeer
Examination
27th April
1981

No.32

EVIDENCE OF BYE MUSTAPHA
JAUMEER

BYE MUSTAPHA JAUMEER, Detective Inspector,
of Medime, solemnly affirmed as a Mohamedan

(Police Form 57 is shown to the deponent.)

The signature on the Police Form 57 is mine. It was I who drew up the Police Form 57. It was endorsed by the then District Magistrate, P. Lam Shang Leen on 5.12.79.

Q. Do you produce the document Police Form 57?

Mr. Gujadhur objects to the production of the said Police Form 57. Mr. Gujadhur wants to peruse the Police Form 57 before it is produced. After having had a look, Mr. Gujadhur objects to the words "Juline Sarah alias Irene, 56 yrs, no calling" in para.1 thereof unless it is to the personal knowledge of the deponent, in the sense that he has seen the dead body of Juline Sarah and that the bones belong to her.

30

A. I got the name from enquiry made in the case.

Prosecution
Case
No.33
Proceedings
27th April
1981

No.33

PROCEEDINGS

At this stage Mr. Gujadhur Q.C. states that he will cross-examine the witness about the

admissibility of the document as it is a case within a case on the authority of Toorabally vs. Salamut No.L. Copy No.111 of 1976.

In the Flacq Magistrates Court

Quotes:

Preliminary Hearing Prosecution Case

10 Alexander vs. Rason 1936 1.KB 169 Court of Appeal which relies upon Phibson 8th Edition page 10 though a civil case and to same time is quite willing to set questions through the Court. Mrs. Peeroo submits that she has asked for the document to be put in and Mr. Gujadhur Q.C. has objected to its production.

No.33 Proceedings 27th April 1981

(continued)

Mrs. Peeroo is waiting for the direction of the Court relying upon section 110 of Cap.174.

The Court allows Mr. Gujadhur to cross examine the deponent whilst keeping the admissibility of paragraph 1.

In abeyance.

20

No.34

EVIDENCE OF BYE MUSTAPHA
JAUMEER (continued)

Prosecution Case

No.34

Bye Mustapha
Jaumeer

(continued)

Cross-
Examination

27th April
1981

Xed by Mr. Gujadhur Q.C.

30

I did not know Juline Sarah when she was alive. The Police found bones at Clemencia. I did know that they were of human being. I personally cannot say that these are the bone of Juline Sarah. I rely for my conclusions on the enquiry made in the case.

Q. The statements were made.

At this stage Mrs. Peeroo objects to the line of cross-examination because Mr. Gujadhur should know whether he is objecting to its production. Mr. Gujadhur states that he wants to put other questions so that the vague expression "enquiry" be cleared.

Ruling

40

The Court finds that it is justified for Mr. Gujadhur Q.C. to probe into the meaning of the word "enquiry" so that it may be cleared.

In the Fracq
Magistrates
Court

Preliminary
Hearing
Prosecution
Case

No.34

Bye Mustapha
Jaumeer

(continued)

Cross-
Examination

27th April
1981

(continued)

Xn. continues

The enquiry was conducted by other officers apart from me. I do realise that it is for the Court to decide whether the bones or remains belong to Juline Sarah.

At this stage Mrs. Peeroo says whether the witness is deponing as to law.

Q. Look at the list of witnesses from the information, and say whether statements were taken by the Police from persons not mentioned on the list?

10

A. I can't say.

At this stage, Mrs. Peeroo objects to the answer going record.

Ruling

To the question asked by Mr. Gujadhur about the statements recorded from people outside the list of witnesses, Mrs. Peeroo objected, the Court rules that the question is pertinent and therefore admissible.

20

Xn. continues

A. I cannot say because I enquired only partially in the case.

No. Re-exam. by Mrs. Peeroo

Upon this set of answers Mr. Gujadhur submits that the Court should not allow Police Form 57 to be put in.

At this stage, as it is 3.50 p.m. the enquiry is postponed to 12.5.81 for continuation and interlocutory judgment.

30

On motion of Inspector Bussawon, accused is remanded to jail until 12.5.81.

District Magistrate

Prosecution
Case

No.35

Ruling

12th May 1981

No.35

RULING

12.5.
Ruling

Following the argument by both Counsels regarding the admissibility of paragraph 1 of the Police Form 57

there is no doubt about it that the ruling at par.1 would not be admissible evidence to prove the name and age unless they were written by some persons who had actual knowledge or perhaps had witnessed their identity that I hold that the Police Form 57 should be admitted as being physically the report of Inspector Jhaumeer made in the course of his duty.

In the Flacq
Magistrates
Court

Preliminary
Hearing
Prosecution
Case
No.35
Ruling
12th May 1981

(continued)

10

No.36

EVIDENCE OF MUSTAPHA
JAUMEER (continued)

Prosecution
Case
No.36
Mustapha
Jaumeer
(continued)
Examination
(continued)
12th May 1981

MUSTAPHA JAUMEER, Police Inspector of Medine, solemnly affirmed as a Mohamedan.

I produce Police Form 57 dated 4.12.79.

No.3784 - Doc. N

No X by Mr. M. Gujadhur Q.C.

No.37

EVIDENCE OF JEEWAN DWARKA

Prosecution
Case
No.37
Jeewan Dwarka
Examination
12th May 1981

20

JEEWAN DWARKA, Planter of Clemencia, solemnly affirmed as a Hindu.

On 2.12.79, I was sitting under the Banyan tree at Clemencia. It was about noon.

On that day, I saw Popol (accused) passed by with Seide. Seide was with a bicycle whilst accused (Popol) was walking. They were heading towards Estate Road (dans Camp) where there are houses there.

No X by Mr. M.Gujadhur Q.C.

Preliminary
Hearing
Prosecution
Case
No.38
Proceedings
12th May 1981

At this stage Mrs. Peeroo states that the report mentioned by Dr. Sohun, while he was deponing which the Court looked at is at the disposal of the Court if it should be kept together with the Court's document. Mr. M. Gujadhur states that there is a ruling by the Court and the case still stands.

Mrs. Peeroo further states that she is not trying to produce the report. Her motion was based on her learned friend's motion earlier that the Court should physically look at the document. 10

On the remark Court takes recess.

Court resumes at 1.30 p.m.

Ruling

As there is no mention in the record that the document in question was put in physically, the question of any direction does not arise. The Court has already a ruling on the admissibility of the document in question, there is no need to give a further ruling on same point. 20

At this stage Mrs. Peeroo closes the case for the Crown.

At this stage of the proceedings the Accused is addressed as follows by the said Magistrate:

"Having heard the evidence, do you wish to say anything in answer to your charge?" 30

"You are not obliged to say anything unless you desire to do so, but whatever you say will be taken down in writing, and may be given in evidence upon your trial; and you are also clearly to understand that you have nothing to hope from any promise or favour, and nothing to fear from any threat which may have been holden out to you to induce you to make any admission or confession of your guilt; but whatever you shall now say may be given in evidence upon your trial notwithstanding such promise or threat." 40

AND the said warning is interpreted to the accused by.....respectively sworn and solemnly affirmed to interpret as aforesaid.

In the Flacq Magistrates Court

Whereupon, the said Louis Leopold Myrtille voluntarily says as follows in the creole dialect language, through the interpreter, aforesaid:

Preliminary Hearing Prosecution Case No. 38 Proceedings 12th May 1981

"Mo innocent missie". /I am innocent Sir/

(continued)

Later on at 2.20 p.m.

Accused present.

Findings read out in Court and filed.. Accused is committed to prison to stand trial before the Supreme Court.

No.39

Preliminary Hearing No.39 Order of Commitment 12th May 1981

ORDER OF COMMITMENT

20

Whereas Louis Leopold Myrtille has been charged before me, District Magistrate, in and for the district of Flacq in terms of the information hereunto annexed, with having on the 2nd December 1979 committed the offence of Murder, contrary to sections 216 and 222(i) of Cap.195.

30

And whereas from the evidence adduced I am of opinion that such evidence is sufficient to put the said Louis Leopold Myrtille on his trial.

And whereas the said offence is not within my final jurisdiction, now I do hereby commit the said Louis Leopold Myrtille to stand trial before the Supreme Court under Article 57 of Cap.174.

Given under my hand and seal of the court of Flacq, this 12th May 1981.

40

(s) A.Mathoorasing District Magistrate Flacq

In the Supreme
Court

No.40

INFORMATION

No.40
Information
5th March
1982

IN THE SUPREME COURT OF MAURITIUS

BE IT REMEMBERED that on this fifth day of March in the year of Our Lord One thousand nine hundred and eighty-two, CYRILLE DE LABAUVE D'ARIFAT, Q.C., Esquire, Her Majesty's Director of Public Prosecutions in and for Mauritius, informs the Court here in the name and on behalf of Her Majesty the Queen that heretofore, to wit; on or about the second day of December in the year of Our Lord One thousand nine hundred and seventy-nine at Clemencia in the District of Flacq,

10

One LOUIS LEOPOLD MYRTILE also called POPOL, aged 38 years, tractor driver, residing at Clemencia, did criminally, wilfully, feloniously, of his own malice aforethought and with premeditation kill and murder one Juline Sarah also called Irene.

Against the Peace of Our Sovereign Lady the Queen and against the form of the Ordinance in such case made and provided to wit: sections 216 and 222 of the Penal Code Ordinance (Cap.195).

20

(Sd.) C. de L.d'Arifat
Director of Public Prosecutions

No.41
Opening
29th March
1982

No.41

OPENING

Monday the 29th day of March, 1982
Before The Honourable Mr.Justice P.Y.
Espitalier-Noel

30

The Queen

v/s

LOUIS LEOPOLD MYRTILE also
called POPOL

Charge: Murder

Mr.V.Boolell appears for the Crown.
Mr. Gujadhur, Q.C. with Mr.Cuttaree
appears for the accused.
Mr.Shaheed Bhaukaurally is solemnly
affirmed to act as Interpreter.

40

The accused is arraigned.

In the Supreme
Court

The accused pleads not guilty.

No.41
Opening
29th March
1982

(continued)

No.42

CONSTITUTION OF JURY

No.42
Constitution
of Jury
29th March
1982

The jury is empanelled. The jurors are sworn or solemnly affirmed according to their respective faith.

10 The Foreman is: (35) Malberbe
(4) Baluck, Shanti Kumar Subas
Singh
(21) Gerard, Emmanuel Syed
(23) Harmon, Lewis
(25) Jaumally, Said
(34) Malayandee, Jacques Raymond
(36) Nankoo, George Philippe
(38) Pather, Poobalasoondaran
Arnasala
(47) Tennant, Michel

20 No.44 - challenged by Prosecution.
No.26 - challenged by Defence.
No.31 - challenged by Defence.
No.49 - challenged by Defence.

Jury retires to take dispositions.

No.43

ARGUMENTS OF COUNSEL ON
SHORTHAND NOTES AND
STATEMENTS

No.43
Arguments of
Counsel on
shorthand
notes and
Statements
29th March
1982

30 Mr. Gujadhur submits that I should order that shorthand-notes be taken of all the proceedings under Sec.18(1) of the Court of Criminal Appeal Ordinance (No.9).

Defence ready to bear the costs of the transcript notes.

In the Supreme Court

No.43
Arguments of
Counsel on
shorthand
notes and
Statements
29th March
1982

(continued)

Sec.18 peremptory

(2) Had applied to the D.P.P. before the hearing of the preliminary enquiry for a copy of the various statements made to the Police by witnesses whom the Prosecution intended to call. This was refused and the Magistrate upheld the stand of the Prosecution.

Murder Case - even copies of statements made by the accused - felt oppressed by conduct of the case.

10

Has indicated to Mr Boolell for renewed request of all the statements by Prosecution witnesses. (At the costs of the defence)

(2) I apply for entire copy of the statements made to the Police by witnesses whether called by the Prosecution or not.

Archbold 40th Ed. para. 443 -

Before Intermediate Court all statements & documents intended by the Prosecution to rely upon is furnished to the defence at the cost of the defence.

20

Per Denning - Dallison v. Cafery
Lord Diplock

Para.443(a) 2nd para.

Identification - Hall - Xinaris case - Invariable Practice in England - whole brief - good faith of Prosecution not impugned - moving for direction to Prosecution to make available all that Prosecution has in hand -

30

Mr Boolell (1) Shorthand notes -

Point dealt with exhaustively
Reg. v. Polimont 1979 p.277(M.R.)

Reg. v. Ramlochun Judg.No.251
of 1980

Head note Polimont

Ramlochun p.11 of the Judg. (Longhand notes of Judge amply suffices).

No reason for so ordering -

2) Procedure at Assizes v. Procedure at Intermediate Court - Briefs

40

Leaving aside English practice

Our Law Sec.44 to 57 onwards of Cap.174.

In the Supreme Court

If decision after P.E. - case lodged before I.C. (for offence within jurisdiction -

No.43
Arguments of Counsel on shorthand notes and Statements
29th March 1982

- No unfairness.

Before I.C. - waiver 1967 M.R. p.1
(Kistoo v. Com. of Prison) p. 3 -

Police brief to defence - review of powers of D.P.P.?

(continued)

10 English Practice Archbold 443-443(a)
rare cases - qualified - if Prosecution does not intend to call

Duty of Prosecution to make Defence aware of the statement of the witnesses.

List of witnesses - deposition with defence (if Prosecution does not call) -

Appears from present brief - if witnesses said something different to Police, Counsel for the Prosecution -

Privileged documents.

20 Mr. Gujadhur: Not final - not shown to defence - Arbiter of fairness - the judge - Defence entitled to be given the whole statements - Constitutional guarantee of fair hearing.

1.30 p.m. - Accused present.
Counsel in attendance.

No.44

RULING

No.44
Ruling
29th March
1982

30 Ruling: Mr. Gujadhur, Q.C., Counsel appearing for the accused has moved

1) That I should order shorthand notes to be taken of all the proceedings in accordance with the provisions of Sec.18 of the Criminal Appeal Ordinance (Ordinance 13 of 1954) which he submitted were peremptory.

2) That I should order the Prosecution to communicate to the defence not only (a) all previous statements recorded by the Police from witnesses

In the Supreme
Court

No.44
Ruling
29th March
1982

(continued)

whom the Prosecution intends calling, but also (b) any other statements from whosoever recorded in the course of the Police enquiry.

As to the first motion, the Court of Criminal Appeal has expressly held in the recent cases of Regina v. Polimont 1979 M.R. p.277 and Regina v. Ramlochun 1980 Judg.No.251 that the provisions of Sec.18 were directory and not mandatory.

I find no reason in the present case to depart from the practice adopted and always followed by Our Assizes Courts and to order shorthand notes to be taken of all the proceedings.

10

The first motion is refused.

As to the second motion I find that the defence is not entitled to the general orders prayed for by Counsel (Vide Fritjohn v. The Queen, 1982 Judg. No.112) and the second motion is also refused.

20

(Sd.) Y.Estpitalier-Noel

Jury called in - counted -
- put in charge -

Prosecution
Case
No.45
Opening by
Mr.Boolell
29th March
1982

No.45

OPENING BY MR.BOOLELL

Mr. Boolell opens:

Procedure in such case -

Judge: Legal principles - sole judge of law.

Jury sole judges of facts - appreciation of facts - of evidence.

30

Evidence - depositions of witnesses - statements - exhibits.

Only on what evidence adduced in this Court.

Presumption of innocence - Crown to prove guilt - burden rests on Crown.

Reasonable doubt - sure guilt has been established - not fanciful doubt.

Offence charged - murder - elements -
1) Act of violence or brutality, 2) Death following
3) Intention to kill 4) Premeditation - plan beforehand.

40

Facts - Evidence Prosecution will be calling.

In the Supreme Court

- Moves to call evidence.

Prosecution Case

Mr. Gujadhur "As far as formal witnesses are concerned my learned friend may lead."

No.45
Opening by Mr. Boolell
29th March 1982

(continued)

No.46

Prosecution Case

EVIDENCE OF OOKARSING DEONARAIN

No.46
Ookarsing Deonarain Examination
29th March 1982

10 OOKARSING DEONARAIN, Senior Court Officer, solemnly affirmed as a Hindu

20 On 28th July a preliminary enquiry was started before the District Magistrate of Flacq. The hearing went on for several sittings. I was then the District Clerk of the Court and in that capacity I recorded the testimony of all the witnesses who deponed before the Magistrate. I also marked the several documents which were produced as well as certain exhibits. Among the documents produced was the act of death of Juline Sarah, marked B. I now produce the record of the preliminary enquiry (Document marked 'A'). Mr. Boolell puts in the act of death (Doct.B of Preliminary enquiry) Document marked 'B'.

I also produce the exhibits: Exhibit 1 was the tin box containing fragments of charred gunny bags, 2 small hairpins and a small earring - (Exhibit 1).

30 Exhibit 2 an axe (marked 2))
Exhibit 3 a sabre (marked 3)) Exhibits put
Exhibit 4 3 khaki shorts) in and marked
(marked 4))

There was the seal of the Court on each of exhibits 2, 3, 4 - The seals are in the same state as after my affixing them at the Court of Flacq.

There was no seal affixed to the tin box.

At the district court house all the exhibits were kept under lock and key, as is the usual practice.

In the Supreme Court

Cross-examined by Mr. Gujadhur, Q.C.

Prosecution Case

No. 46
Ookarsing
Deonarain
(Continued)
Cross-
Examination
29th March
1982

The record (Doc.A) contains a motion of Counsel for Defence made on the 28/7/80 and the hearing took place on that motion on the 1/10/80 - (Witness is asked about a letter from Counsel to the Police). Witness is asked to see whether such letter is to be found in the record.

Police Inspector Palawan was the Prosecutor at the enquiry. Crown represented by Mrs. Peeroo.

10

(Mr. Gujadhur reserves right to call witness back if he finds the letter).

(Order Sheet)

Prosecution Case

No. 47
Seetana
Appalsawmy
Examination
29th March
1982

No. 47

EVIDENCE OF SEETANAH
APPALSAWMY

Police Constable Seetana Appalsawmy (P.C.954) now stationed at Police Drawing Office Line Barracks solemnly affirmed as a Hindu

20

On the 4.12.79 and 6.12.79 and on 13.12.79 I went to the locus in quo in this case at Clemencia and under the instructions of Police Assistant Superintendent Madoorapen I located several spots, I took down notes and measurements and in the light of all this information I drew up a plan, a copy of which I produced at the Preliminary Enquiry before the District Magistrate of Flacq which was marked Doc.I.

30

On the 6/12/79 witness Francois Brulecoeur was present and on the 13/12/79 witness Dharamdeo Dookhee was present.

The plan is put in marked 'I'.

(Copies to jury) -

The small plan on the left is an enlargement of the square on the large plan.

Scale for enlargement 1" per 100 feet not 50 feet as mentioned by error in Doc.'I'.

The distance from point C to sugar cane track is 30 feet (top left corner of C).

40

The distance from point C to Main Road Clemencia is 280 feet.

In the Supreme Court

	From point D to point E	1200 feet	Prosecution Case No.47 Seetanah Appalsawmy Examination 29th March 1982 (continued)
	From point F to Main Road Clemencia	30 feet	
	From point E to point G	650 feet	
	From point G to point H	280 feet	
	From point H to point K	2 feet	
10	From point H to point L	9 feet	
	From point H to point M	90 feet	
	From point H to point N	170 feet	
	From point P to Main Road Clemencia	17 feet	
	From point Q to point P	34 feet	
	From point G to point R	35 feet	
	From point G to point S	144 feet	
	From point S to point T	250 feet	
	From point H to point A	310 feet	
20	From point P to point A	400 feet	
	From point A to point B	20 feet	

No cross-examination

No.48

Prosecution Case

EVIDENCE OF VALAYDON
AYACANOU

No.48

Valaydon
Ayacanou
Examination
29th March
1982

VALAYDON AYACANOU, Police Constable stationed at Central (C.I.D.), solemnly affirmed as a Hindu

30 On the 4/12/79 I went to the locus in quo at Clemencia and took 5 photographs. On the 6/12/79 I again went there and I again took 5 photographs. On the 13/12/79 I again went there and took 2 more photographs.

All the photographs taken under the instructions of Assistant Police Madoorapen.

On the 6/12/79 witness Francois Brulecoeur was present.

On the 13/12/79 witness Dharamdeo Dookhee was present.

40 I made enlarged prints of those photographs, bound them in a booklet which I produced at the Preliminary Enquiry (Booklet was marked K and photographs K₁ to K₁₂) - Photographs put in - booklet marked K - photographs K₁ to K₁₂).

(Copies to jury).

In the Supreme
Court

Cross-examination

Prosecution
Case
No. 48
Valaydon
Ayacanou
Cross-
Examination
29th March
1982

The part of the mountain (Ti Montagne) is not easy of access - On photographs K₆ & K₉, there appears the usual Mauritian undergrowth.

No re-examination

Prosecution
Case
No. 49
Sadasiven
Madoorapen
Examination
29th March
1982

No. 49

EVIDENCE OF SADASIVEN
MADOORAPEN

SADASIVEN MADOORAPEN, Assistant Superintendent of Police, stationed at Central C.I.D., solemnly affirmed as a Hindu 10

On the 4/12/79, 6/12/79 and 13/12/79 I went to the locus at Clemencia accompanied by the Police Draughtsman P.C. Appalsawmy and Police Photographer P.C. Ayacanou. On each occasion, spots were located, notes and measurements taken under my instructions - also under my instructions twelve photographs in all were taken (5, 5 - 2). On the 6/12/79 witness Francois Brulecoeur was present. 20

Spot A on the plan is place where charred remains were found. On reaching the spot on the 4/12/79 I saw there what I identified as the burnt body of a human being.

Spot B is the spot where I found an upper limb possibly the upper arm of a human being.

Spot C was indicated to me by witness Francois Brulecoeur as the spot where according to him the accused collected a gunny bag which was concealed in straws. 30

Point D on plan is the spot indicated by same witness where accused took a short cut and he (the witness) went with accused's bicycle to meet accused further down on the road at point 'E'.

Point F spot indicated by same witness as being the spot in a cane field where he (the witness) left the bicycle.

Point G is the spot on the road which 40

leads to a path uphill leading to Ti Montagne. In the Supreme Court

Point H spot indicated by same witness (Francois Brule Coeur) as being spot where he saw the dead body of.....(objection by Mr. Gujadhur - hearsay allowed by the baias (sic) of indication).

Prosecution Case No.49 Sadasiven Madoorapen Examination 29th March 1982

(continued)

No.50

ARGUMENTS ON OBJECTIONS

No.50 Arguments on Objections 29th March 1982

Jury asked to retire.

10

Mr. Gujadhur - hearsay -

Mr. Boolell states the enquiring officer may say that the witness indicated a spot as being the spot where he saw the dead body of the deceased.

Point is reserved by me - as to the witness mentioning the name of the person as given to him by witness Francois Brulecoeur.

Jury recalled

No.51

EVIDENCE OF SADASIVEN MADOORAPEN (continued)

Prosecution Case No.51 Sadasiven Madoorapen Examination (continued) 29th March 1982

20

Examination of witness resumed

..... of a female known to him of whose name he gave me -

At point J, there were found a pair of slippers. I asked the draughtsman to locate the spot and took the slippers for the purpose of my enquiry.

30

Spot K spot close to point H was found by me, partly burnt.

Spot L spot indicated by same witness

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Court

Prosecution
Case
No.51
Sadasiven
Madoorapen
Examination
29th March
1982

Francois Brule Coeur from where he said
the accused picked up his axe and his
sabre.

Spot M showed by same witness where
the accused dropped the dead body for a rest.

Spot N shown by same witness as being
spot where he left a vacoas tente containing
a woollen pullover and ran away.

Spot P is a burnt line in the cane
field and which I saw on the 4/12/79.

10

(continued)

Spot Q spot indicated by witness
Roodwantee Padaruth as spot she had reached
when she heard a sort of noise caused by cane
leaves coming from spot 'F'. I made a mistake
just now - according to witness Padaruth came
from direction of spot 'P' not spot 'F'.

Spot 'R' indicated by same witness
(Padaruth) as spot she had reached on her
way to Ti Montagne. When she decided to go
back on account of disturbed soil and broken
sugar cane leaves.

20

Spot S indicated by witness Dharamdeo
Dookhee as being spot at Pont Sec where he
stopped his bicycle and saw one Popol (whom
he later identified as the accused) standing
at spot "T" and from where he talked to the
accused.

Spot "T" is to be found at beginning of
pineapple plantation.

Photographs: Doc.K₁ shows a view of
place called Ti Montagne seen from the road.

30

Doc.K₂ shows a tree - the site where I
found human remains (Spot A on the plan).

Doc. K₃, K₄ & K₅ are the same spot showing
close up view of the human remains viewed from
different angles.

Doc.K₆ shows witness Francois Brulecoeur
indicating the spot where he found the dead
body (spot marked H on the plan).

Doc.K₇ same spot as K₆, taken from
another angle (from path leading to Ti Montagne).

40

Doc.K₈ burnt site close to point H on the
plan (corresponds to spot marked 'K' on plan).

Doc.K₉ shows witness Francois Brule-
coeur in the foreground at the spot where
according to him the accused carried the
body and went uphill and dropped the body at
the spot where he is shown standing in
the background, to have a rest - (Brulecoeur
at 'L' on the plan, and the other man at spot
'N' on the plan - (Witness now states it
is not 'N' but 'M').

In the Supreme
Court

Prosecution
Case

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Sadasiven
Madoorapen
29th March
1982

10 Doc.K₁₀ shows line of burnt sugar cane
in the field (point 'P' on plan).

(continued)

Doc.K₁₁ the man in the foreground is
witness Dookhee standing at spot marked S
on the plan.

The man seen at a distance uphill is
standing at spot T on the plan.

Doc.K₁₂ is taken from the opposite
direction that is from T to S.

20 On the 4/12/79 I went to Ti Montagne,
Clemencia for investigation. I was accompanied
by Police Medical Officer Dr. Sohun and the
Police Scientific Officer Mr. Beeharry. The
Doctor examined the remains in my presence -
after examination the remains were taken to
Princess Margaret Orthopaedic Centre for
autopsy.

On photograph Doc. K₃, what is seen
adhering to the round object witness says
"skull" on the left was burnt jute-gunny.

30 On that 'ball' there were human hair and
we picked out hair pins from the hair.

Adhering to the remains we found bits and
pieces of clothings 'linen' - (cloth).

I found roasted "arouilles" [kind of edible
tuberous roots], roasted sweet potatoes and at
least 2 cooked green mangoes.

40 In the course of my investigation I had
the occasion to go to the place where the accused
lived, in the village of Clemencia - when facing
Ti Montagne, view the Chapel the house is on the
left of the road.

Juline Sarah was living on the other side
of the road - on the right when facing Ti Montagne.
From both places, the road as well as the opposite
places (houses) are clearly visible.

In the Supreme
Court

(Reserves further examination)

Prosecution
Case
No.51
Sadasiven
Madoorapen
Examination
29th March
1982

Usher solemnly affirmed as a Hindu.
3.50 hrs.

Postponed to 30/3/82 10 hrs. a.m.

(continued)

No.52
Ruling
30th March
1982

No.52
RULING

10.05 hrs - 30/3/82

The Accused is present.
Counsel in attendance.
Ruling given in absence of the jury. 10

Ruling: Defence Counsel objected to this witness saying in chief that according to witness Francois Brule Coeur it was the deceased whom he saw, dead, at point H. So long as the fact that Francois Brule Coeur said so to the Police is not made an issue by the Defence I find no necessity for this witness to say who, according to Francois Brule Coeur, that person he saw actually was.

The objection is upheld. 20

(Sd.) Y.Espitalier-Noel

Jury called in and counted.

Prosecution
Case
No.53
Sadavisen
Madoorapen
Cross-
Examination
30th March
1982

No.53

EVIDENCE OF SADASIVEN
MADOORAPEN (continued)

SADASIVEN MADOORAPEN, still under solemnly affirmed as a Hindu.

Cross-examined by Mr. Gujadhur, Q.C.

- Rough drawing on blackboard by Counsel.

Coming from the direction of Bel Air and going towards Clemencia and Camp de Masque the main road has a loop road on the left. In this loop there is the tamil temple on the left - a hundred yards further away there is the house of Francois Brule Coeur next to the football pitch and further on before reaching the junction where the loop meets the junction there is the house of witness Dorah (2 or 3 gaulettes on the left hand side from the junction). At the junction on the right there is a banyen tree (a lafouche) and going towards Clemencia there is further on the right hand side there is the R.C.Chapel. From the loop the road crosses the main road and continues as Chemin Camp. Coming from Bel Air towards the junction the houses of the accused and of the deceased respectively are a few yards before the intersection (beginning of the loop road). Part of the loop road appears where it intersects the main road at spot in between the words 'Riviere' and 'Seche' appearing on the plan (Doc.I). Chemin Camp is the continuation upwards of the loop road. The spot where are the houses I have mentioned does not appear on the plan but would be more to the right.

In the Supreme Court

Prosecution Case No.53 Sadasiven Madoorapen Cross- Examination 30th March 1982 (continued)

10

20

30

I cannot the exact distance between points L and M on the plan nor the distance from 'L' to 'A'.

Seid Brule Coeur (Francois Brule Coeur is also known as Seid Brule Coeur) first gave a statement to the Police on 5/12/79 at 21.00 hrs (recording ending at 23.00 hrs) - Detective Inspector Jaumeer recorded the statement. The statement was not recorded under warning.

40

Seid gave a second statement on 6/12/79 starting at 16.40 hrs and ending at 17.00 hrs - recorded by D.I. Jaumeer at Clemencia. The first statement was recorded at Moka Police Station.

Seid gave a third statement on the 13/12/79 at 12.00 hrs. recorded by Police Sergeant Basset at Flacq C.I.D. - ended at 12.10 hrs.

Seid gave a fourth statement (recorded by D.I.Jaumeer at Flacq C.I.D.) on the 14/1/80 at 11.10 hrs (ten minutes).

Juline Sarah was also known under the name Irene Hector.

50

James Hector was the son of Juline Sarah. He gave a declaration to the Police on 3/12/79 at 09.55 hrs and a further statement recorded by

In the Supreme Court

the Police on the same day at 10.00 hrs (at 10.20 hrs).

Prosecution Case
No.53
Sadasiven Madoorapen
Cross-Examination
30th March
1982

Frederic Brule Coeur, brother of Seid, gave a statement to Police on the 6/12/79 (from 17.08 hrs to 17.20 hrs) - recording Officer being P.C.Renghen - at Frederic's place of residence.

Cecile Hector, daughter of Juline Sarah gave a statement to the Police on 7/12/79 (11.00 hrs to no time mentioned) - seven and a half pages statement - Recording Officer Police Sergeant Basset at my office at Central C.I.D. (Port-Louis).

10

(continued)

Maude Lacharmante gave a statement on the 13/12/79 13.50 to 14.05 - recording officer Police Sergeant Basset at her place of residence.

Luchmeenarain Dorah gave a statement on the 5/12/79 at Clemencia at 18.15 hrs (ending 18.30 hrs) recording officer Police Sergeant Sewgobin.

20

No further statement from Dorah.

Jeewa Dwarka gave statement on 13.12.79 at Clemencia 13.20 hrs ending 13.30 hrs - recording officer Police Sergeant Basset. No further statement from him.

Khemraj Moti gave statement on 11/1/80 to Sergeant Sewgobin at Central Flacq C.I.D. Office at 09.05 hrs to 09.10 hrs.

Satyadev Jawaheer gave one statement to P.I. Jaumeer on 11/1/80 (ending at 08.10 hrs (3/4 page) at Flacq C.I.D.

30

Dharamdeo Dookhee gave statement on 7/12/79 (16.30 hrs to 16.45 hrs) place Camp de Masque Pavé, recording officer P.C.Dossoye. Another statement on 12/12/79 at Ti Montagne Clemencia (15.20 hrs to 15.50 hrs) Officer Police Sergeant Basset. Third statement on 13/12/79 at (17.20 hrs - 17.25 hrs) at Central Flacq - recording officer Police Sergeant Basset.

40

Mrs. Roodwantee Padaruth gave statement on 12/12/79 at her place from 14.25 hrs to 14.40 hrs (recording Officer Police Sergeant Basset).

Noelie Corteau gave statement (also called Noelie Sarah) gave statement on the 6/12/79 (11.20 hrs to 11.40 hrs) recording officer

Police Sergeant Jaumeer at Central C.I.D. Port-Louis.

In the Supreme Court

Luc Sarah gave statement on 4/12/79 at Riviere Seche Police Station recorded by P.I. Jaumeer (12.30 hrs to 13.15 hrs).

Prosecution Case

No.53

Sadasiven
Madoorapen
Cross-
Examination
30th March
1982

The accused gave a written statement on 31/12/79 - recorded by Police Sergeant Basset in the presence of his Counsel Mr. Domah, now H.H. Magistrate Domah.

10 The accused was arrested on the 5/12/79 - on the 13/12/79 he was placed on an identification parade.

(continued)

Previous to his giving his written statement on the 31.12.79, the accused had given certain verbal indications as to his movements on the 2/12/79. He denied having been at Ti Montagne on the 2/12/79. He said he was shopping and he had travelled back and forth by car.

20 Mrs. Padaruth (Roodwantee) did not call at the Station. I went to her place and interviewed her. I had information I think it was from Police Inspector Jaumeer that this lady could help in the enquiry.

30 We had information that Dharamdeo Dookhee could help in the enquiry. I cannot say who gave the information. He did not come on his own. In fact it was as a result of the statement of Mrs. Padaruth that I contacted D. Dookhee.

I personally cannot say how and who interviewed witness Dwarka. Police Sergeant Basset recorded his statement in my presence.

I cannot disclose my sources of information. Dwarka did not come by himself to the Police - we went to interview him.

40 The Police took a statement from the priest of the Tamil Temple Soopaya Colinelay (alias Vela) on the 7/12/79 at 14.15 hrs to 14.40 hrs - recording officer P.I. Jaumeer at Clemencia.

Apart from the persons specifically mentioned above, the Police interviewed a number of other persons.

I have a list of the persons interviewed in the course of the Police Enquiry.

I personally will have no objection to produce that list. It is up to the Prosecution.

In the Supreme
Court

Prosecution
Case

No.53
Sadasiven
Madoorapen
Cross-
Examination
30th March
1982

(continued)

Mr. Boolell states that he objects to
the production of that list of persons.

Point reserved for arguments.

The accused has been detained in connection
with this case since his arrest on 5/12/79.

I took a statement from the shopkeeper
Pierre, mentioned by the accused in his
statement - (Pierre Leow Kion Chong).

I also took a statement from Ambajee Pando,
alias Sajan, a taxi-driver of Clemencia Car No. 10
1989.

I think that the accused said that in
the evening of the 1/12/79 he had drinks and
went to bed late - drinks in company of friends.

I collected the slippers at Ti Montagne -
they were a very old pair - it was shown to
the relatives of the victim (Juline Sarah).

I have attended hindu cremations - a
considerable amount of wood is required - When
a body is burning a huge pole of smoke gets
up. 20

What I have referred to as a human skull
is what appeared to me a human skull and human
remains what appeared to me to be human remains.

When I was informed that a dead body had
been found, the normal procedure is that the
Police Medical Officer should examine it
before it is removed.

Photographs K₁₁ & K₁₂ - the persons are
at spots S & T respectively. 30

Jury asked to withdraw pending arguments on
objection.

Prosecution
Case

No.54
Arguments
on lists of
witnesses
30th March
1982

No.54

ARGUMENTS ON LISTS OF
WITNESSES

Mr. Gujadhur, Q.C., addresses the Court

Original ruling - extracts - in case
of Murder - circumstantial evidence -
circumstances - it is not out of keeping with
the sense of fairness that the prosecution
disclose the list of persons interviewed. 40

On question: States he would like to have the list as a first move - intends as a second move to ask the Prosecution to be furnished with copies of the statements from the persons on the list - Agrees that this latter point is covered by my previous ruling.

In the Supreme Court

Prosecution
Case
No.54
Arguments
on lists of
witnesses
30th March
1982

10 Mr. Boolell: Submits position as follows - Kistoo v. Commissioner of Prisons 1967 M.R. p.1 authority for proposition that Police enquiry is privileged document. If list produced, round about way to get information of privileged document when one cannot get the whole document itself.

(continued)

Quotes: Marks v. Beyfus 1890 - 1890
25 Q.B. p.494 Archbold 1315 B

Rogers v. Home Secretary - 1973
(identity) A.C. 388

20 - Police enquiries - procedure - not all called - some help putting Police on the right course - That is all -

Here if list is given - danger sought to be averted in above decisions -

Reply - interests that fair trial paramount -

Point reserved - Right to have witness recalled later on reserved -

No.55

EVIDENCE OF SADASIVEN
MADOORAPEN (continued)

Prosecution
Case
No.55
Sadasiven
Madoorapen
(continued)
Re-examination
30th March
1982

30

SADASIVEN MADOORAPEN, still under solemnly affirmed as a Hindu

Re-examined by Mr. Boolell

It is standard procedure in the enquiry, for the Police to check what a suspect has said if he volunteered to give a statement.

Photographs K₁₁ & K₁₂ - One can clearly see from S somebody at T.

40 I have been in the Police force for 30 years. I have had the opportunity of investigating many crimes especially as a CID man.

In the Supreme
Court

I have come across human skulls in the course of enquiries.

Prosecution
Case
No.55
Sadasiven
Madoorapen
(continued)
Re-examination
30th March
1982

Accused gave the verbal indications of his movements on the 2/12/79 when he gave his statement on the 31/12/79.

Had he given me such indications I would have recorded them in the form of a statement.

(continued)

As far as I can remember the accused started his statement by telling me what he did on the previous evening (1/12/79), the time he went to bed - the time he woke up in the early morning of the 2/12/79 and all he did in the course of the day. 10

By Mr. Gujadhur - Through Court :

Accused was arrested on the 5/12/79 - statement recorded on the 31/12/79. It is a fact as I stated at the Preliminary Enquiry that even before the 31/12/79 accused had given verbal indications of his movements on the 2/12/79, that would have taken place before the 13/12/79. It could have been immediately after his arrest. 20

By Jury: Plan Doc. 'I' - Point 'L' is the spot from where according to the witness, he carried the body in a gunny bag. From point L accused would have gone to point M. He stopped at point N to rest, and then proceeded uphill in a southerly direction. The last person who saw the accused with the gunny bag was Seid (Francois Brulecoeur). The dead body (the remains) were found at point 'A'. The distance from L to M is less than that of M to A. The uphill trend starts as from point 'G' by the road - it continues uphill after point L up to the right angle by point A - as from that right angle it goes down hill - from L to M the ground is not level but slopy. 30

Recess - 12.25 hrs.

Court will resume at 13.30 hrs. 40

13.40 hrs - Hearing resumed.

The Accused present.

Counsel as before.

Jury in attendance.

No.56

EVIDENCE OF SEETANAH
APPALSAWMY (continued)

In the Supreme
Court

Prosecution
Case

No.56

Seetanah
Appalsawmy
(continued)
Examination

30th March 1982

At request of Counsel P.C.Appalsawmy recalled.

SEETANAH APPALSAWMY, solemnly affirmed as a Hindu

10 The distance from point 'M' to point 'A' on the plan (Doc.I) is 240 feet. The distance between point 'L' and point 'M' is 81 feet.

Cross-examined by Mr. Gujadhur:

Cross-
Examination

I have measured the distance between point 'M' and point 'A' along the path, going from M via N to point A is going always uphill.

No re-examination

No question by Jury.

20 Mr. Boolell calls Police Sergeant Basset (No.2 on list).

No.57

EVIDENCE OF JACQUES PHILIPPE
BASSET

Prosecution
Case

No.57

Jacques Philippe
Basset

Examination

30th March
1982

30 On the 31/12/79 I recorded a statement from the accused at the Central CID Office, Port Louis, after he had been given the usual warning - Assistant Superintendent Madoorapen was in attendance. Mr. Domah, then bar-at-law was also in attendance. I wrote down what the accused said, I read over the statement to the accused who signed it. Mr. Madoorapen signed as witness. I started recording the statement at 10.05 hrs to finish at 11.30 hrs. I produced the statement at the Preliminary Enquiry at the Court of Flacq - it was then marked Doc. 'F' - Mr. Boolell puts in the document (which is marked 'F') - read over by
40 the witness.

- Copies of statement passed to Jury -

In the Supreme Court

Prosecution Case
No.57
Jacques Philippe Basset
(continued)
Cross-Examination
30th March 1982

Cross-examined by Mr. Gujadhur:

The ordinary police procedure which was followed in this case, the accused started telling his story, verbally, then the statement is recorded in a chronological way - Mr. Madoorapen put certain questions to the accused regarding what other witnesses had said - without giving the name of those witnesses.

As far as I remember it was during the course of the investigation at Clemencia by Mr. Madoorapen and myself, that we came across that witness through information received.

10

Question: "Who told you about Dwarka?"

Prosecution Case
No.58
Objection
30th March 1982

No.58

OBJECTION

Mr. Boolell objects to the question if the witness is being asked to divulge his source of information in the course of the investigation in relation to the present case. The Crown objects on the ground that it is privileged and not proper for Police Officers to divulge the source of their information and this in the public interest.

20

Point reserved

Prosecution Case
No.59
Jacques Philippe Basset
(continued)
Cross-Examination
30th March 1982

No.59

EVIDENCE OF JACQUES PHILIPPE BASSET (continued)

Cross-examination: We came across him, Mr. Madoorapen, myself and other officers in the course of the enquiry. He did not come by himself to the Police.

30

(continued)

I cannot say whether between the 2/12/79 and the 13/12/79 the Police were going about in the locality, interviewing people and asking questions - I cannot say positively but as we were investigating in this particular case jointly with certain members of the CID of Flacq. They got some instructions from the officer in charge of the case (Mr.Madoorapen)40

We went around in the village and asked questions. The village was full of rumours as to what had happened - The people whom I interviewed - statements were recorded from them, I believed they would give useful evidence. I did not interview any other.

In the Supreme Court

Prosecution Case No.59 Jacques Philippe Basset (continued) Cross-Examination 30th March 1982

10

Witness is shown document emanating from Flacq United Estate Ltd. (Workmen Compensation for accident having occurred on the 8/11/79).

I have never seen that document before.

Mr. Gujadhur puts in the document marked "AA".

(continued)

(Mr. Gujadhur reserves right to have witness recalled)- in the light of ruling on point reserved.

Mr. Boolell has no re-examination at this stage.

20

No question from the jury

No.60

EVIDENCE OF ARNASALON THOPA PADAYACHY

Prosecution Case No.60 Arnasalon Thopa Padayachy Examination 30th March 1982

Mr. Boolell calls:

ARNASALON THOPA PADAYACHY, Police Inspector, stationed at Rose Hill, solemnly affirmed as a Hindu.

30

On the 13/12/79 at 17.00 hrs at Flacq Police Station I held an identification parade in connection with the present case. I recorded the proceedings of the parade in the diary book of Flacq Police Station. At the Preliminary Enquiry I produced a certified copy of an extract of the diary book relating to the parade and it was marked Doc. 'M'. The document is put in - marked 'M'.

- Witness reads over the document -

Cross-examination by Mr. Guhadhur:

Cross-Examination

40

I would say that the expression "the following volunteers about the same age and mode of life" is of standard use but the

In the Supreme
Court

officer holding a parade takes same in consideration when picking up volunteers for the parade.

Prosecution
Case

No.60
Arnasalon
Thopa
Padayachy
Cross-

I told the accused that he was free to go or not to go on that parade, and he cooperated in accepting to go on the parade. I told him of his rights, if anybody picked him out on the parade to say anything or say nothing.

Examination
30th March
1982

The volunteers in the parade were of about the same age, about the same appearance - (by mode of life I mean creole). I did not receive any instructions to have photographs taken of the parade. I realise that it would have been better if there had been a picture. I got the information as to what the witness would have seen or heard from Mr. Madoorapen.

10

(continued)

Re-examination

Re-examined by Mr. Boolell:

I was satisfied having held the parade according to the standard instructions existing in the Police force in relation to parades. When I held that parade, I did it most seriously - not as a joke - people of the same age or appearance are chosen in fairness to the suspect.

20

Question by Jury: It is not the practice to have photographs of the persons taking part in identification parade to be taken, I have throughout my career never come across a case where pictures were taken of persons taking part in a parade.

30

I cannot remember now without looking at the extract of diary book the name even of 3 of the persons who were on the parade.

I chose volunteers of creole origin because the suspect was of creole origin. Two persons would not look at the same because they would be of creole origin.

Mr. Boolell calls:

40

Prosecution
Case
No.61
Louis Ecosse
Marcel
Examination
30th March
1982

No.61

EVIDENCE OF LOUIS ECOSSE MARCEL

LOUIS ECOSSE MARCEL, Assistant Commissioner of Police, stationed at Line Barracks, Sworn.

On the 7/1/80 at the Central CID Office

at Port Louis I formally charged the accused with the murder of one Juline Sarah. The charge was read over to him and explained in the Creole language, he was given the usual warning after which he made an answer which I recorded. The accused signed the charge sheet. I signed it and it was witnessed by Assistant Superintendent P. Mahon. I produced the charge sheet at the Preliminary Enquiry and it was marked Doc. 'L'. Boolell puts in the document (still marked 'L') which witness reads over.

10

In the Supreme Court

Prosecution Case No.61 Louis Ecosse Marcel Examination 30th March 1982

(continued)

No cross-examination

No question from the Jury

No.62

EVIDENCE OF AMA RAJ
BHANJEET

Prosecution Case

No.62
Ama Raj
Bhanjeet
Examination
30th March
1982

AMA RAJ BHANJEET, Police Constable, stationed at Central Flacq (residing Poste de Flacq) solemnly affirmed as a Hindu.

20

On the 4/12/79 at about 11.30 hrs I was placed on sentry over charred remains at Ti Montagne, Clemencia. I remained on sentry up to the next day 12.50 hrs. over the remains at Mortuary House, Princess Margaret Orthopaedic Hospital.

On the 4/12/79, after the Police Medical Officer examined the remains, on the spot, they were taken to Princess Margaret Orthopaedic Hospital.

30

At Princess Margaret Orthopaedic Hospital the only person who had access to the remains was the Police Medical Officer; after examination the remains were handed over to relatives of Juline Sarah.

Cross-examined by Mr. Gujadhur:

Cross-examination

The charred remains at Ti Montagne were lying on ashes and charcoal. I have had occasion to attend hindu cremation. I only stayed 10 to 15 minutes.

40

No re-examination by Mr. Boolell

No question from Jury

Prosecution
Case

No.63

Philippe
Atung

Examination
30th March
1982

EVIDENCE OF PHILIPPE
ATUNG

Mr. Boolell calls:

PHILIPPE ATUNG, Chief Inspector of Police,
stationed at Port Louis North, Sworn.

On the 4/12/79 at about 14.00 hrs. I went
to the spot called Ti Montagne at Clemencia
where charred remains were found. They were
examined by Dr. Sohun (Police Medical Officer) 10
and a Forensic Scientific Officer Mr. Beeharry.

On the charred remains I collected
fragments of cloth, fragments of charred gunny
bag, 2 hairpins, one small metal ring, 4 burnt
mangoes, 2 burnt sweet potatoes.

I placed the articles (except the mangoes
& sweet potatoes) in an empty Anchor Milk
Tin (Exhibit I). I sealed the tin and labelled
it P.A.I. On the 5/12/79 I took the tin to 20
the Forensic Science Laboratory for examination
purposes. I collected it on the 25/2/80 from
the Forensic Science Laboratory and I produced
the tin at the Preliminary Enquiry. It was
marked Exhibit I.

The small metal ring looked like one from
a zipfastener. After examination at the
Princess Margaret Orthopaedic Hospital of the
remains by Dr. Sohun, Police Medical Officer,
I was given certain specimens to be taken to 30
Forensic Science Laboratory.

- Tin is opened - Witness identifies the
2 hairpins - (shown to Jury) collected from
the spot - I cannot find now from the contents
of the tin the small metal ring.

Cross-
Examination

Cross-examined by Mr. Gujadhur:

In my opinion the charred remains had been
interfered with by animals because I saw at
some 20 feet away a piece of human bone
apparently coming from the charred remains -
There are mango trees on Ti Montagne. 40

In his declaration made on the 3/12/79,
James Hector said that his mother had disappeared
- reported missing. James Hector described the
clothes worn by his mother on the 2/12/79 as
"White gown with blue flower design".

In my statement I had not mentioned the
colour of the fragments of cloth collected from

the remains. I do agree that was a material fact, but the fragments of cloth were and remained in my custody until examination. Even to-day I can see the colour of one of the fragments of cloth.

In the Supreme Court

Prosecution Case

No.63

Philippe Atung Cross-

Examination

30th March

1982

(continued)

On question by Mr. Gujadhur:

10 Witness to check whether in statements he made to the Police witness James Hector referred to the nature of the cloth of the gown of his mother (2/12/79). The hair pins (Exhibits) are of common use in Mauritius. Thousands of women would wear such pins in Mauritius.

Re-examined by Mr. Boolell:

Re-Examination

20 When I collected the coloured fragments of cloth at Ti Montagne on the 4/12/79 - they were not in the same state as they are now in. On some of the fragments we could clearly see the colour of the cloth. Even to-day in Court, on one piece of cloth we can see the colour of the fragments - The colours I could see on the 4/12/79 were blue, beige and red.

Through Court: I did not find any mauve colour.

No question from the Jury.

Mr. Boolell calls:

No.64

Prosecution Case

No.64

Jean Andre

Ah Yu

Examination

30th March

1982

30

EVIDENCE OF JEAN ANDRE
AH YU

JEAN ANDRE AH YU, Principal Forensic Science Officer, Sworn.

On the 5/12/79 I received certain blood specimens for examination. The precise examination required was for carbon monoxide determination in the specimen.

40

I examined the specimens - drew up a report of my findings which I produced at the Preliminary Enquiry and was marked Doc.'G'. Document put in (marked 'G'), read and filed.

Carbon monoxide is gas formed from the incomplete combustion of materials containing carbon. It is highly poisonous and combines

In the Supreme Court

Prosecution Case

No.64

Jean Andre

Ah Yu

Examination

30th March

1982

(continued)

Cross-

Examination

with hemoglobin in the blood, to form carboxy-hemoglobin which is 300 times more stable than the corresponding oxygen complex known as oxy hemoglobin and carbonoxy hemoglobin kills while oxy hemoglobin helps to live (process of breathing).

Cross-examined by Mr. Gujadhur

By 'significant' I mean above 10% of carbon monoxide in the blood. In the present case there was much less - I would say only a trace. In normal persons one would find 1 to 2% in non smokers - in smokers between 5 to 10 - Persons working in garages police traffic officers non smokers would reach 2 to 9%.

10

The Preliminary test used is the paladium chloride test. The next is ultra violet spectro photometric - which is the main one and is specific.

16.05 - Case adjourned to 31/3/82 at 10.00 hrs.

20

Accused remanded to jail.

Sd. (Y.Espitalier-Noel)

Prosecution Case

No.65

Rulings

31st March

1982

No.65

RULINGS

31/3/82 - 10.15 - The accused is present

Counsel in attendance.

Jury not in attendance rulings overleaf delivered.

Rulings

1. Defence Counsel yesterday moved for the production by witness Assistant Superintendent of Police Madoorapen of a list of all the persons interviewed by the Police in the course its enquiry in the present case. Counsel for the Crown objected to the production of such list. Defence Counsel stated that he would like to have the list as a first move, intending as a second move to ask the Prosecution to furnish him with copies of statements recorded from the persons on the list. He readily granted that I had already on Monday

30

40

(29/3/82) ruled against his request that the Prosecution should be ordered to communicate such statements to the Defence.

In the Supreme Court

The objection by the Crown is upheld.

Prosecution Case

No.65

Rulings

31st March 1982

2. Defence Counsel also insisted yesterday that witness Police Sergeant Basset should disclose the sources of information which led the Police to interview and record a statement from Prosecution witness Dwarka, the Crown objecting to such disclosure. I find that the Police should not be compelled to disclose the sources of information gathered in the course of an investigation and I uphold the objection taken by Counsel appearing for the Crown.

(continued)

10

(Sd.) Y.Espitalier-Noel

10.20 hrs - Jury called in and counted.

No.66

Prosecution Case

No.66

EVIDENCE OF JEAN ANDRE AH YU (continued)

Jean Andre Ah Yu

Cross-Examination (continued)

20

JEAN ANDRE AH YU: Still under oath.

31st March 1982

Cross-examination by Mr. Gujadhur, Q.C.
continued -

I applied both tests. If the blood is still fluid the operations of actual test carried out would not be affected by the fact that a body would have been exposed to elements (atmosphere) (intemperies) for a certain lapse of time. But the conclusion - the interpretation of the result of the tests becomes more difficult. The components of the blood would be affected by exposure to the atmosphere - still more so if exposure was to very great heat.

30

I could not say for how long the decomposed blood had been in the body.

Re charred remains in exhibit I - As far as possible the samples examined should be preserved in the same state as it was when examined. - Piece of cloth from remains - It is preferable that after say a piece of red cloth is examined, it should be preserved separately from say carbon or charred remains.

40

I am sure a biologist could have tried to group the blood examined by me. I myself cannot

In the Supreme
Court

Prosecution
Case

No.66
Jean Andre
Ah Yu
Cross-
Examination
(continued)
31st March
1982

(continued)
Re-Examination

say whether it could have been done - but I am satisfied that it would have been more difficult than in the case of fresh blood.

It takes intense heat for fire to consume a dead body. The temperature would be above 700 degrees centigrade when the fire is consumating the body. Mangoes would be charred in such a heat - it would become charcoal.

Re-examined by Mr. Boolell:

10

I was forwarded the specimens for the specific determination of presence or absence of carbon monoxide.

(Last line of report - read by witness).

I mean by this, a dead body does not breathe. You can have carbon monoxide reacting with blood only if there is breathing. If a living person is exposed to carbon monoxide the level of carbon monoxide in blood would be dependant on the time of exposure and the concentration of carbon monoxide in the atmosphere. If a person is killed very quickly by flames in a fire the exposure will be very short and the level of carbondioxide found in his blood could be very low. A person might die in a fire without being burnt at all, but die of breathing the gases - from fire which contain carbon monoxide and other toxic gases, then his blood carbon monoxide would be on the high side. In the present case, the person could either have died quickly in fire or that particular person might have been already dead, before the fire.

20

30

No questions from the Jury.

At this stage, Mr. Gujadhur, Q.C. moves that the Police would produce a list of missing females in Mauritius who would have disappeared within the 3 years preceding the 2/12/79.

Mr. Boolell would have no objection, if the information is available, to communicate it to the Defence and to the Court.

40

EVIDENCE OF DEEPSING
BEEHARRYProsecution
Case

No.67

Deepsing
Beeharry
Examination
31st March
1982

MR. DEEPSING BEEHARRY: Scientific Officer,
of Floreal, solemnly affirmed as a Hindu

On the 4/12/79 at about 14.10 hrs I
went to place called Ti Montagne, at
Clemencia, where charred remains had been
found, for examination purposes.

10 On the 7/12/79 and on the 14/12/79 I
received at the Forensic Science Laboratory
certain items to be examined. I drew up a
report of my examination of the spot at Ti
Montagne and of the items received for
examination.

I produced the report at the Preliminary
Enquiry, it was marked Doc.'H'. Report put
in (marked H).

20 By "of apparently a human body" I meant
what seemed to be charred remains of a "human
body".

By common fire accelerants I mean Kerosene,
petrol, alcohol and the like.

The sabre (Exhibit 3) and the axe (Exhibit 2)
are those I examined.

The kaki shorts (Exhibit 4) are those I
examined. As to exhibit (1) I identify the
two hair pins and the pieces of charred gunny.

Cross-examined by Mr Gujadhur:Cross-
Examination

30 I have been a Scientific Officer for about
6 years. The sabre (Exhibit 3) is of the kind
in common use specially in the rural area.

I did not find any mauve and/or yellow
spots on the cloth I examined.

No upper garments (only kaki shorts) were
brought to me for examination.

40 I have been to hindu cremations. I have
seen tyres and resin being used to accelerate
the process of cremation. I have never seen
fire accelerants like petrol or kerosene being
used.

When I went to the spot for examining the
premises, I forgot about being dogmatic but

In the Supreme
Court

proceeded to do my work scientifically as
best I could.

Prosecution
Case

Re-examined by Mr. Boolell:

No.67
Deepsing
Beeharry
Cross-
Examination
31st March
1982

To put fire and burn a gunny bag according
to me, one needs a fire accelerant. The fibres
(material) of a gunny bag are slow burning and
tend to produce a glowing fire without any
flame.

(continued)

Fire accelerants are very volatile substances
and if they are left exposed normally they
would dry up and the process would be accelerated
in the open - in windy conditions specially. 10

Question by Jury: The three kaki shorts
(Exhibit 4) were brought together to me by
P. Insp. Jaumeer for examination. The shorts
were not new ones - they were old and by
appearance cleanness, lack of foul smelling etc.
led me to think that they had been washed
recently. The 3 shorts are of the same size.

Prosecution
Case

No.68

20

No.68
Bhai
Mustapha
Jaumeer
Examination
31st March
1982

EVIDENCE OF BHAI MUSTAPHA
JAUMEER

Mr. Boolell calls:

P. Inspector Jaumeer -

BHAI MUSTAPHA JAUMEER: Police Inspector
stationed at Flacq CID, solemnly affirmed as a
Mohamedan

On the 6/12/79 at about 17.30 hrs I
searched the house of the accused in virtue of
a search warrant and I was accompanied by other
police officers. In the course of my search 30
I secured a sabre and an axe from his house.
On the 14/12/79 I left the sabre, the axe and
the 3 shorts at the Forensic Science Laboratory.
I collected them back on the 22.1.80. I
produced them at the Preliminary Enquiry, Axe
marked Exhibit 2, sabre Exhibit 3, the 3 kaki
shorts Exhibit 4. The Axe, sabre and shorts
(exhibits in Court) are the very ones I secured
from the house of accused. 40

Cross-
examination

Cross-examined:

I searched the house of the accused on the
6/12/79 in virtue of a search warrant, to look
for a sabre and an axe. It was on instructions

received from Mr. Madoorapen that I secured the shorts on the 13/2/79.

In the Supreme Court

The wife of the accused corroborated on both occasions. Sabre and axe like the ones secured are of common use in rural areas.

Prosecution Case
No.68
Bhai Mustapha Jaumeer
Cross-Examination
31st March 1982

I am posted at Flacq CID. My men went around the village on general interviews of people.

10 No re-examination by Mr. Boolell

(continued)

No question by Jury

Court rises at request of Mr. Boolell who wants to confer shortly with Mr. Gujadhur before his last formal witness Dr. Sohun is called.

12.05 hrs - Hearing resumed.
The Accused present.
Counsel
Jury

20

No.69

Prosecution Case
No.69
Indradeosing Sohun
31st March 1982

EVIDENCE OF INDRADEOSING SOHUN

Mr. Boolell calls:

Doctor Sohun, Police Medical Officer.

Mr. Gujadhur states that Mr. Boolell has just communicated to him a report of a medical examination by Dr. Sohun of the accused on 7/12/79, as well as an amended medico legal report of Dr. Sohun on the examination of the remains. Counsel remarks documents highly important and regrets that such documents were not communicated to the Defence earlier (trial on 3rd day). He will still do his best not to delay further proceedings.

30

INDRADEOSING SOHUN, Police Medical Officer, Examination solemnly affirmed as a Hindu

On 7/12/79 at the Forensic Science Laboratory, Candos I examined the accused. I drew up a report of my findings which I produce (read out and filed) - document marked "BB".

40

In the Supreme
Court

Prosecution
Case

No.69

Ingradeosing
Sohun
Examination
31st March
1982

(continued)

On the 5/12/79 at the Mortuary House Candos I performed a post mortem examination on a body. I drew up a report of my findings which I produce, read out and filed Doc. marked "CC".

On the 4/12/79 at about 15.00 hrs I went to a place called Ti Montagne Clemencia to examine remains which were found there. The remains I examined on the 5/12/79 and which I mentioned in my report were those same.

10

I have no doubt that they were the remains of a human body - female body.

The body (remains) was not 100% carbonized.

The blood for examination was removed from various organs in the body - from the heart - the liver and the kidneys.

By configuration of the brain (report (3)) I mean the shape of the brain with all the lines and the grooves.

Injuries Para.9(a) witness shows middle of forearm 20

(c) witness shows: about half way between the knee and the ankle

9(e) In the spinal column the 11th vertebra would be (shows) lower chest

(d) Whatever instrument was used to effect the cuts was used slantwise (not straight or perpendicular to the bone) but from the front downwards and backwards (shows) 30

Doc."BB" (Ex. of the accused)

Muscular physique - well developed muscles in the arms, the legs, the chest - a very strong person.

Scratches can be made by any thin, fine object.

40

12.45 - Recess.

13.50 - The Accused is present.
Counsel - Jury

Dr. Indradeosing Sohun, Still under
solemnly affirmed as a Hindu

In the Supreme
Court

Cross-ex.
(Examination of the accused)

Prosecution
Case
No.69
Indradeosing
Sohun
Cross-
Examination
31st March
1982

I did not tell the accused before
examining him that he had the right to
refuse to be examined by me. I had orders
from the district Magistrate to examine
the accused.

10

Abdomen - very old scars. I cannot
place an age on those scars. It is not
possible for skilled persons to be dogmatic
about the age of scars.

(continued)

I agree that experience tends to render
a scientific person less sure, less dogmatic.

I would say that the abdominal scars
are not relevant to the present enquiry.

20

In Doc.CC I mentioned (about the remains)
singing(sic). Had I found any singing(sic) marks on
the accused I would have mentioned it in my
report (Doc.BB).

Singing (sic) could involve hair, eyebrows,
moustaches and hair on the limbs, chest.

The accused was cooperative - he did all
which I asked of him.

Before examining the accused I had already
gone to the site at Ti Montagne.

30

When reaching a conclusion after examina-
tion of people involved in some case, a medical
or scientific officer goes not only by what
he sees but also from case history as given by
the Police.

Body hairs can be found on the outer part
of hands and fingers. Had I found any singing (sic)
of the hairs on accused hands and fingers -
Singering means partially burnt.

I agree that in a dead body, rigor mortis
can set in 30 minutes from the moment of death.

40

The person whose remains I examined could
have been about 5 feet tall. A folded body can
be put in an ordinary (common) gunny bag. If rigor
mortis has set in, it is extremely difficult to
bend a body. If it has to be bent it has to be
broken.

In the Supreme
Court

Prosecution
Case
No.69
Indradeosing
Sohun
Cross-
Examination
31st March
1982

All liquid, like urine, sweat, tears will be of the same grouping as the blood of a person.

I could not collect any liquid apart from blood such as urine.

(Ex. of accused, Doc.BB) (Linear abrasions)
- I made a distinction between scratches caused by a sharp object passing across the skin and grazes caused by a rough object coming into contact with the skin.

(continued)

Doc.CC. It is not a travesty of professional duties of Police Medical Officer who is asked to give his opinion upon physical objects for that officer to rely on what the Police says was the course of events. 10

I did not give my answer on what was told to me by the Police but from what I saw. I listened to the Police because I was asked by the Police to go and look at the remains and to perform an autopsy.

I did not tell the Police don't tell me anything because I have to perform a task without bias. During my medical studies I have done a bit of psychology. I have not heard of a phenomenon known as unconscious bias. Conscious bias is dishonesty. I have heard the expression "poisoning a person's mind". I cannot say whether I will be the rare bird who will not be unconsciously or consciously biased. 20

Doc.CC (5) the burning of the deeper tissues of the tongue could have been ante or post mortem. 30

When examining a live body, in relation to injuries I am assisted by being able to see the changes of coloration by the sight of the wound.

This assistance is not there when dealing with an almost completely carbonised body.

Re:(9) after (e) the bones mentioned in para.9 were not carbonized. I could say that the injuries were most probably inflicted after death. 40

I know of ossification tests to find out the age of bones. This test consists of a radiographic atlas of skeleton development. It takes an expert to read those x-rays correctly and to make necessary adjustments for socio economical groups.

As to opinion the test on the blood was

made by Mr. Ah Yu. The last sentence in my report (CC) is based on my own opinion on obtaining the result of the blood test.

In the Supreme Court

I said that the absence of carbon monoxide - Mr. Ah Yu is the expert as to the scientific test - I give my medical opinion on those tests.

Prosecution Case No.69 Indradeosing Sohun Cross-Examination 31st March 1982

10 It would not surprise me that a number of persons in Mauritius have some amount of carbon monoxide in their blood.

No re-examination by Mr. Boolell

(continued)

No.70

PROCEEDINGS

No.70 Proceedings 31st March 1982

By Jury - The multiple scratch linear abrasions were more or less identical - they were like thin lines.

20 Scratches do bleed - Tiny amounts of coagulated blood all along the lines - the scratches were not fresh - they were in the healing process. The blood clots stay on the wound until the healing is complete, then the blood clots and scabs drop off.

Mr. Gujadhur, Q.C. through Court:
I did not have a photograph taken of the scratch marks.

Mr. Boolell through Court: It is not the practice when I examine persons as police medical officer to have pictures taken.

No.71

EVIDENCE OF FRANCOIS BRULECOEUR

Prosecution Case

No.71 Francois Brulecoeur Examination 31st March 1982

30

Mr. Boolell calls:

FRANCOIS BRULECOEUR, of Clemencia, Stonemason, Sworn

I am also known under the name of Seid. I reside in Tamil Temple Road, Clemencia.

In the Supreme
Court

Prosecution
Case

No.71
Francois
Brulecoeur
Examination
31st March
1982

(continued)

On Monday the 2/12/78 at about 11.30 hrs a.m. I was at home. Someone came to look for me. It was Popol Myrtille. He is the person in the dock (the accused). He asked my brother Frederic Brulecoeur to call me, that he needed me. I went to meet him. He asked me to go home, dress myself, get a litre of water, that we would go and pick mangoes to leave at a relative's - I complied - I took a litre of water and accompanied him on bicycle - the bicycle belonged to the accused. After leaving my house we took the Tamil Temple Road we proceeded along the estate road, the estate road leads to Ti Montagne. When we came on to the estate road, as the road is pebbly we dismounted from the bicycle and walked. Before the estate road meets the main road, accused stopped, gave me his bicycle to hold, went inside a sugar cane line and took out a gunny bag from beneath "muraille sale" dried straws. When we reached the main road, the accused held the gunny bag in his hand, he asked me to take the bicycle and go along the main road, whereas he proceeded along a cane track. I continued my way on the main road leading to Camp de Masque Pavé and waited for the accused at the junction where the sugar cane track meets the main road near Ti Montagne. The accused came out straight on me and we went. He told me to hide the bicycle in the canes as there are many bicycle thieves. I did what he asked me. He asked me to follow him on the way to the mountain where we would pluck mangoes. We then took the direction of Ti Montagne. Near the main road there is a sugar cane field after which there is a pineapple plantation. After proceeding 2 or three gaulettes across the pineapple plantation the accused turned right entering the woods. He told me to follow him, which I did. At a certain moment the accused bent down and lifted 'privet' [bushy evergreen shrub] leaves. I saw the corpse of a lady beneath - I identified the corpse as being that of Irene - I knew the lady by the name of Irene Hector. She was my aunt - I knew her very well - the corpse was on its back facing the sky. I asked the accused why he had killed her, he replied that it was because she had done him a lot of harm. He asked me to give him a help to put the body in a gunny bag. I refused and he told me that if I did not do so I would suffer the same fate (to pour passe pareil). When he said I would "passe pareille" [suffer the same fate] I took it to mean that he would kill me too. Then because of fear I accomplished what was asked. The accused caused me to hold the gunny bag and he put the body into it. The accused used 2 gunny bags. He put one gunny bag over the upper part and another from underneath the legs - he cut the lower gunny bag to allow

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the feet to pass. The accused tied both gunny bags at the height of the waist. The accused cut the gunny bag (lower) with the sabre. After tying the gunny bags, accused asked me to help him carry the body up the mountain. I did help him putting the load on his shoulders. He asked me to take the lady's vacoas tente and follow him up the mountain. I took the tente and followed him. While he was climbing after a distance of about 10 gaulettes I put the tente down and escaped. I ran away, entered the cane field took accused bicycle and fled home. I left the bicycle at the Tamil Temple. On the same day at about 2 or 2.30 hrs I saw accused again - he called at my place. He gave me back my litre and threatened to kill me if I let the Police know - The litre was a "7 up" litre bottle.

In the Supreme Court

Prosecution Case

No.71

Francois Brulecoeur Examination 31st March 1982

(continued)

10

20

On the 6/12/79 I went with the Police and indicated the different spots I have just mentioned in examination.

The Police took photographs - I knew Irene as Irene Hector - cannot say if she was known under other names.

30

I did not try to find what was inside the vacoas tente [bag made of vacoas leaves] I have mentioned but there was a pink "tricot la laine rose" [woollen overcoat] on that tente [bag made of vacoas leaves].

The 'tricot' [pullover] was "en travers" [across] the top of the tente [bag made of vacoas leaves] and hanging on both sides.

After I had helped the accused to put the load on his shoulders he himself took his sabre and his axe and went away.

40

On the day I helped the accused to hoist the bag on his shoulder twice - the second time was at the spot where he stopped for a rest. From the place where I first helped the accused to the place where he stopped for a rest, the distance is about 4 to 5 gaulettes.

After accused walked 4 to 5 gaulettes from the place where he took a rest, I ran away.

The axe shown to me (Exhibit 2) is the one which was with Popol on the mountain. I identify the axe by its handle - I can identify it from the cut marks on the handle.

50

The sabre (Exhibit 3) is shown to witness - it is the very one which I saw with accused on the

In the Supreme Court

mountain. I identify the sabre by the groove stripes on the blade.

Prosecution Case

No.71

Francois Brulecoeur Examination 31st March 1982

When I saw the dead body of the lady I noticed a small amount of blood drooping from the corner of her mouth.

(Mr Boolell concludes examination in chief)

15.45 hrs - Hearing adjourned to tomorrow 1/4/82 - 10.00 hrs.

(continued)

The accused is remanded to jail.

(Sd.) Y. Espitalier-Noel

10

1/4/82 (10.05 hrs) The Accused is present

Counsel - Jury in attendance

FRANCOIS BRULECOEUR, still sworn:

Cross-Examination 1/4/82

Cross-examination by Mr. Gujadhur

I became member of the Village Council in 1978. I had to make speeches. The campaign lasted for about five months. I have always known the accused. I am 25 years old. Before the 2/12/79 the accused by his demeanour or by the words he used towards me never offended me. The accused had never come to my place. I had been to his place several times. I was working there. More than 50 or 60 times. Cecile Hector is the daughter of Irene Hector. I have never met Cecile Hector in the house of the accused. I am on good terms with Cecile. I have been to Cecile's place in Clemencia several times. I know that the accused had kept Cecile as his mistress. I know that the accused has given Cecile her freedom about 10 years ago. Cecile has a son of 14 years old. After the accused released Cecile he married Janine L'Ecumoir, the daughter of Guy L'Ecumoir. They have two children. In villages when a fight occurs between the persons the news travels everywhere. When coming from Bel Air and heading towards Camp de Masque, there is first on the left a disused shop in a dilapidated state. Then we have the house of Pierre Leste, then the house of Guy Ecumoir. It is in that house that the accused lives with his in laws. After Guy's house we have that of Joseph Louison. Opposite the house of Louison, on the right we have the house of the Hectors. Some 2 gaulettes [20 feet] afterwards we have the Co-operative shop on the left. Then the road forks into two. On the left it goes by the Tamil Temple on the right it runs to Camp de Masque. The 2 parts of the road merge near a 'Lafouche'

[Banyan] tree. If one continues, there is a chapel on the right. Further away there is Ti Montagne on the left. Then the road bends to the right at spot called Pont Sec. The road continues to Camp de Masque. Photograph 'K 12' the spot between the cane fields is Pont Sec.

In the Supreme Court

Prosecution Case

No.71

Francois Brulecoeur

Cross- Examination

1st April 1982

10 I knew that before Cecile went with the accused she was married to one Philoe. Cecile did not abandon Philoe, it was the accused who went to fetch her from there. After she left her husband, Cecile went to reside with the accused at several places.

(continued)

20 I know Janine (accused's wife). When I go to the place of the accused I am offered something to eat if it is meal time. Sometimes I would take a drink. Sometimes more than a drink - "Pas trop plus" [not too much]. Before the 2/12/79 I knew that accused as a man of good character (ene bon bougre).

I did not keep an axe at my place, to cut wood - No sabre - there is a serpe (billhook). My brother (elder brother, unmarried) does not own either a sabre or a billhook. I am married. We live in the same yard - not in the same house. His house is in front and mine at the back.

30 Many people cut wood in Clemencia for burning. They do not go to cut wood at Ti Montagne. They do not go for fodder at Ti Montagne. I do not know (pas trop conner) Woodwantee Padaruth, well. She lives at Camp de Masque and I live at Clemencia. I do not know Dharamdeo Dookhee well.

40 I have heard of a place called Karadec, it is near St.Julien. I have never been there. I know there is a restaurant there. I do not know whether people from Clemencia are used to going there.

Taxis that come frequently to Clemencia are AJ 203, driver Deoraj, 1989, drive (Sajan) Chadien, 5614 driver Satiadeo (Jawaheer), 8160 driver Gassen. I believe Ambajee Pandoo is Chadien. People of Clemencia travel in all these cars.

I have nothing to add or to rectify as to what I said in examination in chief yesterday.

50 It would not be true to say that in the space of 8 or 9 days the Police took 3 statements from me. Within the month following 2/12/79 the

In the Supreme Court

Prosecution Case

No.71

Francois Brulecoeur

Cross-Examination
1st April
1982

(continued)

Police took only one statement from me. I have read up to Vith Standard. I could not have signed three statements within 8 or 9 days after 2/12/79. If someone were to say this, it would be a lie. Even if I were to say this, I would be lying. If someone were to tell such a lie, one could not take his word into consideration.

Many people at Clemencia keep axes and sabres in Clemencia. On that Sunday it was not the first time I saw the axe of the accused. I had seen it before. I have had the occasion to see several (a number of) axes. 10

If someone were to say that on that Sunday, it was the first time I saw accused's axe, he would lie.

I deponed as a witness before the Flacq Court. A lady appeared for the Crown put me questions, so did you also (Counsel). It would not be true to say that before the Flacq Court I stated that I had seen accused's axe on that Sunday but that I had seen the sabre before. 20

(Notes of the evidence at the Preliminary Enquiry read to the jury)

"On that Sunday it was the first time that I saw Popol's (accused) axe. But the sabre I have seen it".

This is not true - if it was written down in the Preliminary Enquiry record it is possible that they did not hear properly. 30

Before I came to depone in Court yesterday, no one has refreshed my memory or read my statement over to me.

It would not be correct to say that at the Preliminary Enquiry I did not mention 2 gunny bags. I did mention 2 gunny bags. I did say that the accused tied the gunnies at waist level.

The body I saw could be folded as it was not too stiff. The body was not folded but put lengthwise into the 2 gunny bags. 40

On that Sunday, I saw the sabre with the accused for the first time at about a quarter to one.

I was sitting on the frame of the bicycle and the accused was cycling. The only thing that was with us by pied Lafouche [Banyan tree] was the litre which I held in my hand. We stopped for

the first time near the peid Lafouche [Banyan tree] and then we walked. The road past the Lafouche [Banyan tree] (Chemin Camp) had already been tarred. Accused was pushing the bicycle. I was holding the litre. We were proceeding to the 'Chemin Tablissement' [Sugar Estate Road]. We stopped where the road meets the main one, he asked me to hold the bicycle and entered the cane field. I was standing on the road. The accused went 3 to 3½ gaulettes [30-35 feet] inside the cane field. He lifted the straw and pulled out a gunny bag - (leve 'miraille sale' that is what I call dry leaves. The canes had been cut harvested about 2 months ago. I saw that the gunny bag was tied at the top. At the Preliminary Enquiry I stated that the gunny bag was tied.

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(continued)

10

20

When the accused came to see me at my place he spoke to me by the road side. He said 'pour alle casse mangue pou quitte cote ene famille, apres pour coupe dibois nous retourne ensemble' ["we will go plucking mangoes for a relative then we will cut some wood and return back together"].

30

At the Preliminary Enquiry I did say that the accused had told me "casse mangue pour quitte cote ene famille" ["to pluck mangoes for a relative"]

40

After accused had come out of the field we walked together up to the main road. Then I went straight on the main road while accused entered a 'ti chemin' [minor road] on the left. The 'ti chemin' [minor road] is a short cut and as I had the bicycle I took the longer way to the main road.

When we started at our place, I had the 7 Up [trade mark of a soft drink] bottle in my hand. Accused had nothing with him. Nothing on the frame or fork of his bicycle. When accused came out of the field, I still had my bottle in my hand and the accused had the gunny bag.

If I am requested at the Village Council to do something dishonest I would not do so.

50

From the spot where the accused took the gunny bag to the place where we separated the distance is about 10 to 12 gaulettes [100-120 feet]. From the place where we separated to the place where we met again I would have covered 15 to 16 gaulettes [150-160 feet]. We proceeded a further 2 to 3 gaulettes [20-30 feet] when accused told me to put the bicycle in the cane field as there

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were too many thieves. It was I who left the bicycle in the field - did not cover it. I put it in a muraille propre. The canes were 'empe grand' [somewhat tall]. No one could have seen the bicycle from the road. Accused asked me to follow him. From the place we left the bicycle to where we turned distance is about 6 to 7 gaulettes [60-70 feet]. We turned left - climbed in between a line of canes and went uphill up to a pineapple plantation. Accused was walking in front. We were not talking. (li ti dire moir pour casse mangue qui pour causer lors la) [He told me we were to pluck mangoes what's the use to talk about that again].

10

After 2 or 3 gaulettes [20-30 feet] in the pineapple plantation, cut to the right (coupe a droite) - I followed him. He bent down and lifted leaves. Then I saw the dead body of my aunt. I was on visiting terms with my aunt (frequente). My aunt was taller than me by a head. She was 'bien portant' [good health] had a protruding belly - "assez bien batie" [rather tall].

20

Accused alone lifted the leaves - I did not. I asked him why he had killed her (qui faire to fine touille mo tantine). I was upset and angry. Accused told me "li fine faire li trop beaucoup di tort." I was upset and did not ask him what 'di tort' [to offence].

30

I understand as a member of the Village Council I realised (question was "zaffaire lacorde la dans) [case where penalty would be death by hanging] - Witness said yes - I did not run away because at the time he was telling me "trop beaucoup di tort" [too much harm] he had the sabre in his hand.

Before lifting the leaves, the accused had untied the gunny and taken out the axe and sabre. The Accused was wearing Khaki shorts and a long sleeved bluish green shirt - not a white shirt. The dead body was not naked.

40

The accused was holding the sabre in his right hand. The axe was lying down. He asked me to help him put the body in the 'goni' [gunny bag] and if I would not I would "passe pareil" [suffer the same fate]. We were in Ti Montagne Woods - Accused will be the one to know why it was necessary to put the body in the 'goni' [gunny bag]. It will not be correct to say that I was prompted by people to mention gonis - I saw the gunny.

50

I did not go to relate this to the Police. My head was upset (boulverse). That is why I did not relate what had happened to anybody either on Monday or Tuesday. It was on Wednesday that I related the matter to a 'poussari' [South Indian guest].

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(continued)

10 I work as stone mason. I did not work on Monday or Tuesday. I was working at the time at Camp Ithier Mr Mungur. There were no material - so no work. I knew of the shortage of materials on the Saturday and that I should not go to the site for a few days. I did not resume work at Camp Ithier. I went to my mother in law's place at Mon Choisy on the Wednesday. Witness corrects himself - says it was on the Thursday - I took my wife with me. We had no children yet. We went by car of Bagwandass 2478 at night straight to Mon Choisy. Despite the fact that there was no work on the site (Camp Ithier) and I was upset, I hired a car to go to Mon Choisy. It was late and I could not have taken a bus. It was my wish to leave "tard" (at night).

20
30 When I decide upon something I do it. Rs 100. was paid for the trip - by my brother. I did not return from my mother in law. I believe that the Police called on me on the Tuesday or Wednesday. It is difficult for me now to say whether it was a Tuesday or a Wednesday.

40 It was about 18.30 hrs or 7.00 hrs p.m. that the police with Mr. Jaumeer - I do not remember who were the other officers - they were three in all. I recounted to them what had happened. They told me I should accompany them and took me to Moka Police. They finished recording a statement from me round about midnight. Question: "apres ca fine large ou" ["You were released afterwards"]
Answer: "Non mo ti prefere reste la-bas meme". ["No I preferred to stay over there" (meaning the police station)].

50 After they had recorded my statement they asked me to sit on a bench. When the police took the statement from me I was free 'libre'. I asked them if I could go. They told me to stay there because "mo pas pou en securite labas". ["I would not be safe over there" (meaning at Clemencia)].

I did not sleep on a police bed but "assize assize" [now and then sat down] until morning. They told me that I would be 'en securite' [safe]

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(continued)

at the Station because over there accused's relatives might try to beat me. They told me that I could go on the following day. The next day Mr. Jaumeer and 3 C.I.D. officers took me from Moka to Port Louis at Line Barracks. There my statement was read over to me and then they took me to Clemencia. On that day no statement was recorded from me. I was taken by police car, police officers seated on both sides. I did not ask them the reason why they were keeping me. 10

From Clemencia I went to my place. From Port Louis we had stopped at Flacq Police Station. At no place did the police tell me "grand dimoune dans deux heures temps nous largue ou." ["My man in two hours time we will release you"]. They did not tell me that in two hours time they would release me.

I never said that I slept on a bed at Moka Police Station. I never said that after having called at Flacq the Police told me that they will release me in two hours. 20

I did tell the police at Moka "qui faire zotte garde moi la" ["Why are you keeping me here"] - not at Flacq.

It was at Moka that 'securite' ["safe"] was mentioned not at Flacq. The Police did not tell me 'personne pas capave faire ou di tort' ['nobody can do you any harm']

As I was terrified I held the gunny bag and the accused placed the body in the gunny. I was holding the gunny bag alone and the accused pulled the body in the gunny bag. He started with the head part - the lower part of the body - the feet remained out 'en dehors'. Then accused took another gunny bag, cut its bottom part. Then he 'fonce so de li pieds la dans' [introduced her two feet in]. He then tied the 2 gunny bags near the waist of the deceased. 30 40

The accused asked me to help him put it on his shoulder. I did and placed it on his left shoulder. He took his axe and sabre. While holding the bag on his left shoulder he picked his axe and sabre with his right hand, placed them over the bag and held them with both hands. I picked the tente [bag made of vacoas leaves] of Madame la. We went ('commence monte'). The feet of the deceased were hanging in front and her head at the back of the accused. He did not ask me to hold the axe or sabre. The slope was rather steep and accused walked on about 4 or 5 gaulettes [40 or 50 feet] 50

4 not 2 or 3 gaulettes [20 or 30 feet].
If someone were to say that I said that the
accused had walked 2 or 3 gaulettes [20 or
30 feet] that would not be correct. Accused
had asked me to carry the gunny bag. I
said I would not.

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10

After climbing 4 or 5 gaulettes [40 or
50 feet] accused put down the body to take
a rest. The accused took the sabre and
the axe with his right hand and let them
down - then he put down the body. Then he
again asked 'dire' me to help him place the
body on his shoulder again. I again helped
him. After he had climbed another 4 or 5
gaulettes [40 or 50 feet], I put down the
vacoas tente [bag made of vacoas leaves] near
a eucalyptus tree and ran away.

(continued)

I took the bicycle and went away. I had
to do so in case he would run after me.

20

I know one Tata Aristene, Gaby Calee,
Emmanuel Louise. We had before had drinks
together - not on that day. I understood
Counsel to be asking whether I had drinks
with them on that day. The Police did not
ask me whether on that Sunday I had had
drinks with Tata Aristene, Gaby Calee,
Emmanuel Louise, Guy Ecumoir and the accused.

Accused is used to taking drinks. The
police did not cause a doctor to examine me.

30

12.20 - RECESS

At request of Mr. Gujadhur, Q.C. witness
to remain under supervision of an officer of
the Court and have no access to the Police or
other witnesses.

Usher Leelah directed accordingly

13.20 hrs - AFTER RECESS

The accused is present.
Counsel - jury in attendance.

Francois Brulecoeur still under oath

40

On the Saturday evening I was not having drinks.
I was at a ball of the Village Council. I did
not ask him to whose relative's place, he intended
to take mangoes. I thought he would tell me in
due course - (quand arrive labas).

After I ran away and took the bicycle I
left it by the road side near the Tamil Temple -
because the accused had threatened me I left it

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by the Temple without taking heed as to its being lost. The Tamil Temple is about 200 (more or less) gaulettes [2000 (more or less) feet] from the pied Lafouche (banyan tree).

I did speak of 2 gunny bags before the Magistrate. "I put it to you that 11 times you mentioned gunny before the Magistrate?" They did not talk of gunny eleven times. You may say I mention 'gunny' eleven times - you may say I did.

10

(continued)

The 7 Up [trade mark of a soft drink] litre is not an invention of mine. You cannot know better than me. When accused returned me the litre I left it at the foot of a 'jacques' [is a kind of fruit] tree. The litre was smashed to pieces - the pieces were irrecoverable. One cannot say that we broke the litre because there could be no finger prints of the accused on it. I say that it was when my brother cut the branches of the tree that the litre got broken.

20

I am speaking the whole truth - I have sworn to speak the truth. Question: "qui cene la so canette ou a pe saye tire dans jouer" ["Whom are you shielding"] Answer: "mo besoin defendre moi, li meme ti vine cherche moi" ["I am bound to defend myself, he came to look for me"]

The day following the one I gave my statement to the Police, on the Wednesday the police read the statement over to me - The statement had been read over to me after I had given it and I had signed it - I had said I had nothing to add or rectify.

30

I did not tell them 'chef, mo fine cause - qui faire ou relire ca l'enquete la avec moi' ["I have spoken Chief - why do you have to read over that statement to me"]

It is correct to say that at one time the sabre and the axe were both together in accused right hand.

40

When he threatened me, only the sabre was in his hand. I did use the axe and the sabre of the accused before that day, it was when I was working at the accused's place.

I came to know that the litre was broken when the C.I.D. officers were looking for it. It will not be true to say that I said that on the same afternoon I came to know that the litre was broken. I did say at the Preliminary Enquiry that it was on the following day when

50

I returned home that I came to know that the litre was broken.

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On that Sunday accused gave me the tente which was on the mountain. There was only one tente.

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Passage read to Jury:

10 "He took the direction of the mountain and he gave me a tente. [bag made of vacoas leaves] There was a 'tente' [bag made of vacoas leaves] also near the body - it was a little 'vacoas tente' [bag made of vacoas leaves]. I noticed a pull over 'lalaine rose' on the tente. [bag made of vacoas leaves] "

(continued)

The accused climbed the mountain with his load - asked me to go in front and let him go in front. I followed at a distance of 4 or 5 gaulettes behind. I did not flee at the time as the accused was too close to me.

20 I never heard discussions in the village to the effect that Cecile's mother was a witch (faire daigne).

- Jury told that from the record of the Preliminary Enquiry, in his deposition - the witness never mentioned 'gunny bags'.

The jury are read the following passage from the Preliminary Enquiry record:

30 "He told me to come along with him to go and carry some mangoes with him. I sat on the bicycle frame and we both went away. He did not tell me where to leave the mangoes."

On that day he did ask me to accompany him to pluck mangoes.

The jury are read the following passage from the Preliminary Enquiry (Witness deposition)

40 "He took the gunny bag, the axe and sabre on his shoulders and climbed the mountain. I followed him. He walked about 2 or 3 gaulettes and then he put the gunny bag down to take a rest."

Another passage

"The first time they came was about 6-630 p.m. They brought me to Moka Police Station. I left the Station the following day at 2 p.m. I was not free. When they came to take me, they took a statement from me at about 9 p.m. I finished

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giving my statement one hour later. Then they caused me to sit on the bench inside. I asked them if I could go home. They told me on the following day I would go. They told me that on the following day they would come to take me back.

They told me to remain there itself. I slept on the bed there. I did not sleep on the same bed where Police Officers sleep. I did not sleep in the Police cell." 10

Another passage:

(continued)

"They brought me at Port Louis, Line Barracks - They returned back - They read over my statement again to me. Then they took me again and returned back. On the 2nd day they did not take a statement from me. They then took me to Flacq Police Station. They told me that in 2 hour's time they would let me go. I did tell them why they were keeping me here. They told me to remain there as I was in security. No one could do harm to me." 20

Jury told that: "No mention in witness' deposition before the Magistrate of accused cutting or tying gunny bags."

It would not be true to say that I am 'framing' the accused and falsely charging him.

I am not furthering my own end in this matter. It was accused himself who did it. 30

Question: "Mo pe dire ou lors ou propre parole ou pe cachiette beaucoup de chose a la Cour lors ou propre part dans ca zaffaire la." ["I am telling you that you are hiding from the Court many things concerning your own participation in the case"]

Answer: 'Mo pas pe cachiette nanrien moi' ['I have nothing to hide']

No re-examination by Mr. Boolell

By Jury: I readily accepted accused's proposal to accompany him on the 2.12.79 to go and pluck mangoes because he was a good friend of mine. 40

Question: Was it the first time that the witness accompanied the accused on an outing either at Ti Montagne or elsewhere?

Witness answers 'Yes'.

Question is repeated. Witness states:
I have had the occasion to accompany the
accused several times (vacarne ensemble
plusieurs fois)

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Q: On previous occasions when we "go
vacarne coumca nous pas amene de l'eau"
["When we go on an outing we do not carry
water"]

10 There is a small 'canal' flowing on the
other side of Ti Montagne.

It was I who filled the litre with
water at my place. When I helped placing
the body on the shoulders of the accused he
was stooping.

(continued)

The accused is taller than I am.

20 While on the way with accused I did not
suspect there would be anything wrong. I
did not suspect anything wrong when
accused went to fetch the gunny bag in the
cane field.

I went to my mother-in-law's place
because I was afraid being beaten by the
relatives of the accused.

The whole fare of Rs 100/- for the taxi
was paid by my brother. I did not press for
the payment by my brother. He paid it himself.

At request of jury axe and sabre (exhibit
circulated among jury). There can be such cut
marks on the handles of other axes.

30 When accused threatened to kill me I was
terrified - that was normal as I did not know
what was in his mind.

The accused cut the gunny bag "pour enfonce
so li pieds la-dans" ["to introduce her feet
through the aperture"]. The other extremity of
the bag was open.

The accused tied the 2 gunny bags with 'lacorde
ravenal'. One gaulette is equivalent to 10 feet.

Mr. Gujadhur through Court

40 "Is it not a fact that there are people who
like a 'mordant' on their handles of their axe
[who like their axes' handles rough], so that it
should not slip."

Answer: There are people who like (content) the
handle of their axes smooth 'lisse'.

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There are some people who like a mordant
[rough] in their axes' handles.

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(continued)

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Case

No.72

Daneshar
Foolessur
Examination
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No.72.

EVIDENCE OF DANESHAR
FOOLESSUR

Mr. Boolell calls:

DANESHAR FOOLESSUR, a labourer of Camp de
Masque Pavé, solemnly affirmed as a Hindu

On 4.12.79 at about 9 hrs a.m. I met Luc Sarah. He told me that his mother was missing and asked me to help in the search for her. We searched at Clemencia - Ti Montagne - At Ti Montagne at about 11 hrs by a ravenal tree I saw burnt leaves and as I went near the tree I saw "la viande ecque lezo" [flesh and bone] and at a short distance away a black ball (boule noire). I called Luc Sarah. He saw it and he went to the Police. What I saw looked like a burnt body.

10

No cross-examination

20

No question from the jury

Prosecution
Case

No.73

Jeewan Dwarka
Examination
1st April
1982

No.73

EVIDENCE OF JEEWAN DWARKA

Mr. Boolell calls:

JEEWAN DWARKA, labourer of Clemencia, solemnly affirmed as a Hindu

On the 2.12.79 at about noon I was sitting by the banyan tree. I know Seide (Witness Francois Brulecoeur identified in Court). I saw

Seid coming from the direction of the Tamil Church - with him was the accused (Popol) - They were walking - They had a bicycle with them - They were heading for the 'chemin tablisement' [Sugar Estate Road].

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Jeewan Dwarka Examination

1st April 1982

Cross-examination by Mr. Gujadhur:

10 I work as a labourer - with a land owner named Ram Govin (as well as with small planters). In the crop season I cut the canes of Ram Govin and I spray fertili-
sers on one or 2 days inter crop season. He may have 3 or 4 fields. I have been working for him for the last 2 years. My house is the first on the left when coming from the R.C. Chapel. I was relaxing, by myself, under the banyan tree (I am used doing that). On the morning of that day I had been to sell vegetables. I returned at
20 10.00 hrs. I sat there for about ½ hour and apart from Seid and the accused I saw no one else pass by.

(continued)

Cross- Examination

From the main road the estate road is coal tarred over a distance of 1000 gaulettes when going towards the estate camp.

30 I am used relaxing - everyday under the banyan tree. The day before yesterday at about 5 or 6 hrs p.m. I spent as I am used to about ½ hr by the banyan tree. I noticed cars passing by - do not know their numbers. Police took a statement from me three days after the Sunday in question.

No re-examination by Mr. Boolell

By Jury: When I saw Accused coming with Seide - he was dressed in Khaki shorts and a blue shirt.

40 From where I was under the tree I well could recognise the 2 persons (accused and Seide). Seide was pushing the bicycle and the accused was walking close by his side. I did not hear them talking. I only saw them going by. Seid had only the bicycle 'dans so la main' [Seid was holding the bicycle with one hand]. The accused held nothing in his hands.

15.25 hrs - Adjournment to 2.4.82 - 10.00 hrs

Accused remanded to jail

PROCEEDINGS

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2.4.82 10.05 - The Accused is present.
Counsel - jury in attendance.

Foreman of the jury moves on behalf of the jury that witnesses Dr. Sohun and Francois Brulecoeur be recalled so that the jury might put further questions to them.

Mr. Gujadhur, Q.C.: states that the defence is entirely in the hands of the jury and that any motion made by them the defence would join in it.

10

Mr. Boolell: states that the jury have the right to have the witnesses recalled.

I grant the motion

(Dr. Sohun to be contacted to be in attendance)

Prosecution
Case

No.75
Francois
Brulecoeur
Examination
(continued)
2nd April
1982

No.75

EVIDENCE OF FRANCOIS
BRULECOEUR (continued)

20

FRANCOIS BRULECOEUR, sworn:

Question by the jury

The time that elapsed between the moment I met the accused after my brother had called me to the moment I and the accused were on Ti Montagne will be about 1½ hours to 2 hours.

I was not surprised not to see any tente [bag made of vacoas leaves] with the accused near my place when he asked me to accompany him to pluck mangoes for a relative.

30

No questions from Counsel

EVIDENCE OF DHARAMDEO
DOOKHEEProsecution
Case

No.76

Dharamdeo
Dookhee
Examination
2nd April
1982Mr. Boolell calls:DHARAMDEO DOOKHEE, a labourer of Camp de Masque Pavé, solemnly affirmed as a Hindu

10 On 2.12.79 at about 7 or 7.30 hrs I was going to fetch grass. I met my aunt Padaruth on the way - she told me "enan voleur lors montagne" ["there are thieves on the mountain"]. I went to see and found none. I went to look for thieves on Clemencia mountain. I saw Mr. Popol (shows accused in the dock) on the mountain. He lifted his hand (signalle) (beckon) with me. I told him that my aunt had complained of thieves on the mountain and I had come to see. He said "non matelot na pena voleur" ["no mate, there are no thieves"].

20 When I saw the accused I was on the road near the mountain, whereas the accused was on the mountain itself. Sometime after the occurrence I accompanied the police to the spot. At sometime I was asked by the police to pick out the person whom I saw on the mountain from a 'parade'. I showed Missie Popol [Mister Popol] the accused, on the parade.

30 When I saw the accused on the mountain he was dressed - not naked.

I do not remember how he was dressed.

Cross-examination by Mr. GujadhurCross-
examination

This was the first time I had the occasion to give a statement to the police. It was the police who came to see me - it was not I who went to the police.

It is now two years and I cannot remember how many days after that Sunday the police came to see me.

40 I do not remember if there were rumours in the village. I do not remember whether I had heard that somebody had died. I did hear that someone had died. The fact is that I did hear of someone having died - not the truth that I did not remember.

The distance Clemencia and Camp de Masque is one and a half to 2 miles. I was at work and cannot say if police were going around like

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Dookhee
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(continued)

"mouches jaunes" [a swarm of bees]. The police came to see me at about 5.00 hrs p.m. I do not remember exactly, there may have been four or five. They came by a wireless car. They came to take an information. I gave them the information. Police asked me where I was on the 2nd December. They took a statement from me in my house. They asked for a statement and I gave one saying what I had seen. I do not remember I gave statements to the police - cannot remember if it was once or twice - four or five times - 20/25 times. I am not afraid. I say that I do not remember - that is all. 10

I do not remember the clothes worn by the accused on that day. Question: Could it have been a white shirt? Answer: I do not remember. Nor do I remember what 'calecon' [trousers].

I speak normally (asked if fort or doucement) [aloud or in a whisper]. The accused talked loudly. I spoke as I am doing now. When I talked to accused I was standing with a foot on the bridge. Question: Why? I had stopped to speak to the accused. I was on bicycle (mo ti lors bicyclette). 20

On the day I was taken there by the police I did have a bicycle then.

When I talked to Mrs. Padaruth she had 2 or 3 children with her. Their age could have been, I do not know, 10 to 15. 30

I do not remember the last time I read the statement I gave to the police.

Before I deponed at the Preliminary Enquiry at Flacq the police had read my statement to me. I do not know which officer. I do not know a police sergeant has "3 gallons" [3 stripes] - nor can I identify a Police Inspector when he is in civilian clothes - I cannot say what is the grade of a police officer. 40

I do not own a field. My aunt told me that there were thieves, so I went to see who were the thieves - I do not remember if I said that the accused wore a white shirt - I do not remember whether I mentioned my bicycle at the Preliminary Enquiry. I do not remember today whether I said at the Preliminary Enquiry that the accused wore a white shirt.

Page 25 of brief, read to jury: He was wearing a white shirt.

I do not remember how many days after I had seen the accused on the mountain the police called on me for a statement. I do not remember having said at the Preliminary Enquiry that the police had taken my statement 4 or 5 days after I had seen the accused. I do not remember having said after being pressed that it was "after five days". I do not remember having said "quand mo dire 5 jours mo pas le dire 10 jours" ["when I say 5 days I do not mean 10 days"].

In the Supreme Court

Prosecution Case No.76 Dharamdeo Dookhee Cross-Examination 2nd April 1982

(continued)

Page 25: extract read to jury

It was after 4 or 5 days after that I saw him that I gave the statement to the police - In fact after 5 days that I saw him that I gave a statement to the police. "By 5 days it is not 10 days."

Question: Do you make the difference between 5 days' work and 6 days work.

The witness does not answer for sometime.

When pressed - "Mo pas capave faire difference la dans, moi missie." ["I cannot make the difference, sir"]

It would not be true that I was afraid of the police, that I lied a first time and went on lying.

No one has read over my statement since I have been attending Court on Monday.

I was not asked at the Preliminary Enquiry whether Mrs. Padaruth had any children with her.

I can't remember where I was on the 2nd December, 1980 - or 2nd December, 1981.

No re-examination

By jury: (Doc. K 11). In photograph K 11 I am the person standing with one foot on the milestone - On the photograph the man on the hill is not the accused - but he was standing at the spot where the accused was when he spoke to me - When I came on my bicycle, I saw the accused for the first time at the spot indicated on the photograph K 11 (uphill).

I do not remember whether I shouted at the accused (cause fort) or not. The distance between where accused was standing and myself is "en pe plus grand" [greater] than the distance between the jury box and myself (witness box). By civilian clothes - reference to policemen - I mean witness

In the Supreme
Court

shows policemen in the Court - meaning
uniforms.

Prosecution
Case

No.76

Dharamdeo
Dookhee

Cross-
Examination
2nd April
1982

When I saw the accused for the first time
he was standing. I don't remember whether
the accused had anything in his hand when I
saw him - witness then says: he had mangoes
in his hand.

After the accused had uttered "non matelot,
penan volere". ["No mate, there are no thieves"]
I cut grass and returned home. 10

(continued)

Mr. Gujadhur through Court

I can't say exactly how many children
were accompanying my aunt Padaruth. There
could not have been more than three. I cannot
give the names of the children.

At request of jury

Prosecution
Case

No.77

Dr. Sohun
Examination
(continued)
2nd April
1982

No.77

EVIDENCE OF DR. SOHUN
(continued)

DR. SOHUN, recalled, sworn as a Hindu 20

After the post-mortem examination I
have to sign a death certificate.

(Jury asks for certificate to be made
available to them) It is police form '60'
- doc. which was produced and marked E at
the Preliminary Enquiry - put in and shown
to the jury.

Witness states: As far as name and
surname, age, domicile, profession, place of
birth are concerned these were not to my
personal knowledge. 30

From my findings I would say that death
would have occurred five to seven days prior
to the autopsy.

Rigor Mortis would depend on the mode of
dying. The stiffness of the body can occur
immediately at the time of death and also at
varying stages it can take 30 minutes, 3 hours,
6 hours, 9 hours - to become very stiff -
complete stiffness - average of 36 hours. 40
Temperature influences the rate of stiffening.

Mr. Gujadhur further cross-ex.

In the Supreme Court

10 In my comprehensive report (doc.)
the date or time (how many days) of death was
not something significant to be mentioned in
the report. It was relevant. It was of
importance. If I did not mention it in my
report, it was not a deliberate omission. I
had to find an approximate time of death,
after the autopsy - The time of death is not
to be found in my report. I cannot answer
the question whether to-day somebody could
contradict my report. The ossification test
was not performed. The ossification test
would have been of very great importance. I
cannot say whether there are scientific tests
which could reveal for how long a bone had
been exposed to heat - That could be in the
domain of Mr. Ah Yu - Scientific Officer. I
have never heard of carbon test to detect the
age of things.

Prosecution
Case
No.77
Dr. Sohun
Cross-
Examination
(continued)
2nd April
1982

20 I do care to be up-to-date. I do not
have a "Dradewhol" on Forensic Medicine -
such books are in the forensic science laboratory.

Re-ex. by Mr. Boolell:

Re-examination

30 I have been a police Medical Officer for
7 years - been a doctor for 11 years (including
the 7 years). The post-mortem report in the
present case is not the first one I have
prepared - I have prepared such reports during
those seven years in the context of police
investigations in cases. I have had the
occasion to examine in the course of enquiries
(cases of rape) for instance living persons.

I prepare such reports on the opinion I
reach as a scientific man from examinations.

I do consult medical books when in doubt -
also medical colleagues in this field of
medicine.

40 When I prepared the post mortem report my
basic purpose was to give as complete as
possible the findings of the autopsy.

Witness adds: And after receiving the
results of the blood tests I gave an opinion.

No more question from the jury

Prosecution
Case
No.78
Cecile Hector
Examination
2nd April
1982

EVIDENCE OF CECILE
HECTOR

Mr. Boolell calls:

CECILE HECTOR of Clemencia, labourer, sworn:

Irene was my mother - she was called
Juline Sarah - I am civilly married - was
married to Michel Philoe, long ago - I know a
person called 'Popol' (shows the accused in
the dock) - He came to the place where I was
living with my lawful husband and told me
"to pou alle, to pas pouralle?" ["Are you
going to elope with me or not?"] 10

(Witness asked what she understood by that)
I did not want to follow him but at that time
there was no one else present at home - My
husband was out at work and I was alone at home.
Accused said: "to pour alle to pas pour alle,
qui to le trouve, la mort?" ["Are you going
to elope with me or not, What do you want,
death?"] I was compelled to go (oblige aller) - 20
accused took me to his aunt's place at Roche
Bois (en ville) - He left me there and was
visiting me about once a week. I stayed there
for about one month - it was not the only place
where I stayed - After that accused took me
from his aunt's place and took me to his
cousin's place at St.Julien - visiting me
(alle vine).

In all I spent with accused (like that) 30
6 months. Then I became pregnant - accused
said that the child was not his and did not
acknowledge it. After he abandoned me
(rejette moi) I went to my mother's place at
Clemencia. Accused did not visit me at my
mother's place at Clemencia. He never came
(fine quitte - quitte meme) - not concerned
with either me or the child.

Cross-
Examination

Cross-ex. by Mr. Gujadhur

The child is aged 15 now - my legitimate
husband 'fine largue moi' [has abandoned me]. 40
Since the accused abandoned me everything is
finished between us (no talking - correspon-
dence) - The Accused's house is opposite my
mother's on the other site of the road. I
did not meddle in accused's affairs - he
started a menage and between us it was finished.

I lived with accused at Union Caradec -
that is St. Julien - also at Bois Cheri - After

that I lived with him at his mother's place at Clemencia, that is when the trouble started and he threw me out. In the Supreme Court

I know that the accused ten years or 12 ago married the daughter of Guy Ecumoir - named Janine - I do not know who was my neighbour at Roche Bois (stranger there). Prosecution Case No.78 Cecile Hector Cross-

10 At Bois Cheri - in his cousin's house no neighbours there had their yard by themselves - working in tea plantations. Examination 2nd April 1982

I agree that accused acted "as a canaille" [cruelly] towards me - Accused told me personally the child was not his.

(continued)

No re-examination by Mr. Boolell

20 By Jury: When I left my husband's place for Roche Bois, my mother looked for me, it was three months later that she came to know my whereabouts - my mother was not happy about what I had done (ce qui mo fine faire). My mother did not say or do anything - but she did not agree with what had happened - My mother did not reproach accused about his conduct, but it was accused himself who would not look at my mother.

30 Accused 'accused' my mother of being a 'Daine' [witch] one month before her death. By 'Daine' meant my mother 'faire diable' [by witch meant my mother was dealing in witchcraft] - My mother did not visit me at Roche Bois or at Caradec (St.Julien) - I told my mother to make a declaration to the Police about the accusation 'daine' against the accused - she said 'laisse ca dans la main Bondieu' [leave it in the hands of God] and I was going to work and could not give a declaration myself. Such incidents occurred several times between the accused and my mother.

Through Court: There never was a declaration made concerning such incidents.

40 12.45 - RECESS

13.55 - The Accused is present

Counsel - jury in attendance.

Prosecution
Case

EVIDENCE OF SATYADEV
JAWAHEER

No.79
Satyadev
Jawaheer
Examination
2nd April
1982

Mr. Boolell calls:

SATYADEV JAWAHEER, of Clemencia, Bank Cashier
solemnly affirmed as a Hindu

I was working as cashier at Baroda Bank
for the period 1979/80 - In 1979 I owned a
car No.D614 - private car - I know 'Popol' -
he is the accused now in the dock. On the
2/12/79 I did not meet the accused.

10

Cross-Examination

Cross-
Examination

Before working as a cashier I was not
working at all. After I started working as
a cashier I help my parents selling vegetables
on Sundays.

(Now in English) I was bringing my
father's vegetables for sale at a market on
Sundays - I carried vegetables in my car -
I live together with my father and mother.
Whenever necessary I help my father in the
sale and transport of vegetables. I bought
the car in 1976. It is normal for me if
I see one or two friends who are going to the
same place as I am driving to give them a
lift. I am not on bad terms with anybody at
Clemencia. - It may be that I have given
lifts to the accused - I am still working
with Baroda Bank, but as clerk - One evening
coming back home from work I was told that the
Police were trying to contact me. I went to
the Police on the next day. I cannot remember
how many days after the 2/12/79 I went to the
Police - I would say roughly about 2 or 3
weeks after. I do not remember the name of
the officer who took my statement. My father
does not dress the same way everytime he goes
to the market - he varies - I cannot remember
what dress he was wearing on the 2.12.79 -
I do not remember everything I read in the
papers - I work in the Current Account depart-
ment - In some case I can bear in mind the
account of a client - not in all cases.

20

30

40

No Re-examination

No question from jury.

EVIDENCE OF KHEMRAJ MOTI

Prosecution
Case

No.80

Khemraj Moti

Examination

2nd April

1982

Mr. Boolell calls:

KHEMRAJ MOTI also called Deoraj, Taxi
Driver of Clemencia, solemnly affirmed as
a Hindu

10 I am a taxi driver. I own taxicar
No.AJ 203 (Toyota). I know Popol he is
the accused in the dock. On the 2/12/79
I did not meet the accused at all - I work
in my taxicar AJ 203 on that day. On Sundays
I start work at 8.00 hrs in the morning.

Cross-Examined by Mr. GujadhurCross-
Examination

20 I know one Ambajee Pandoo - he is a
driver - he never works for me - I obtain
my living as a taxidriver - All the people
of Clemencia have travelled in my taxi car
- My route is Clemencia - Bel Air - Flacq.
One Wednesday the accused was travelling in
my car and the police asked me to stop my
car - Sometimes I work for half a day,
sometime full day depending on my work.
Depending on the work I may make 8 to 10
trips in a day. The accused has travelled
in my car several times - I cannot say what
dress he wears when he travels by my car -
I can remember the people of my locality
who have travelled in my car on a day. Two
30 weeks ago, on a Thursday, and on that trip
persons who travelled by car were Jay, Jadoo
and Ecumoir. I cannot say who travelled in
my car on the Wednesday 5 weeks before I
sent my car for repairs.

I signed my statement - I do not
remember the day or the month I signed my
statement.

I have never worked in the Development
Works Corporation.

40 I have read up to VI standard - I do not
remember having said at the Preliminary Enquiry
that I could not say who travelled by my car at
a particular time of that day.

There are 4 or 5 taxi cars at Clemencia.

There are private cars who also ply as
taxis.

The car of L.W. (Jawaheer) does not ply as
taxi (No.2614).

In the Supreme
Court

Ambajee works in taxi car No.1989.

Prosecution
Case

No.80
Khemraj Moti
Cross-
Examination
2nd April
1982

Extract of Preliminary Enquiry read
to Jury:

(P.28) I cannot say who travels in my
car at any particular time of the day.

No Re-Examination

No question from Jury

(continued)

Prosecution
Case

No.81
Marie Maud
Lacharmante
Examination
2nd April
1982

No.81

EVIDENCE OF MARIE MAUD
LACHARMANTE

10

Mr. Boolell calls:

MARIE MAUD LACHARMANTE labourer of Clemencia,
sworn:

I know Irene Hector - The last time I
saw Irene Hector was on the 2nd November -
I was coming on to the main road to my house
and I saw her passing by - I was going down
to my sister's place - she was going up in
the opposite direction. I live in a house,
which does not belong to me, near the Chapel -
I was coming from the direction of the chapel
and Irene Hector was going up - it could
have been about 7.00 hrs - she was wearing
clothes white, blue, red and other colours.
I spoke to her - asked her where she was
going - to see her sister who was ill - The
colours I have mentioned were found on the
gown she was wearing - she had a blue scarf on
her head and a pink pullover on her arm -
There was also a tente with her. Since that
day I have not seen Irene Hector again

20

30

No Cross-examination by Mr. Gujadhur

Question by the Jury: The conversation we
had only consisted of my asking her where she
was going and she telling me that she was
going to the place of her sister - and she
went on.

EVIDENCE OF FREDERICK
BRULECOEURProsecution
Case

No.82

Frederick
Brulecoeur

Examination

2nd April 1982

Mr. Boolell calls:FREDERICK BRULECOEUR of Clemencia, Foreman
Development Works Corporation, sworn:

10 On the 2.12.79 at about 11.00 to
11.30 hrs in the morning, I was in my yard
at Clemencia - I know Popol - shows the
accused in the dock - I heard someone
calling I went out and saw the accused -
he told me he wanted to see my brother -
whereupon I asked him to wait, that I would
call for my brother. My brother came - met
accused - they took the Tamil Temple road
and went away - I mean the road where there
is a Tamil Temple.

Cross-examined by Mr. Gujadhur:Cross-
Examination

20 I am on good terms with my brother.
My brother left from Clemencia and took
refuge at Mon Choisy by taxi car No.2478,
belonging to Seeboo of Belle Rose.

Being given that the driver (Seeboo)
was working with me during the day I talked
to him about the trip. In the evening he
made the trip.

30 While my brother was kept by the Police
I did not take food for him - My sister-in-
law was pregnant at the time. Of course, I
was warned that the police took my brother
away and kept him overnight - I was afraid
about the security of my brother. That is
why I arranged with Seeboo on that day to
send him to Mon Choisy "sans trompette, ni
tambour" [without much ado].

40 Before I deponed at Flacq Court my state-
ment was not read over to me - my statement in
writing was given to the police on a Thursday
- on that very day my brother left for Mon
Choisy - I do not know how my brother returned
to Clemencia from the Police - When I came
back, he was there - I usually come back from
work at 3.15 or 3.30 hrs - I did not ask my
brother anything - I am sworn and have spoken
the truth.

No Re-examinationBy Jury: It was on the evening of the day of

In the Supreme
Court

Prosecution
Case

No.82
Cross-
Examination
2nd April
1982

(continued)

the funeral, on coming back that Francois
Brulecoeur (my brother) related what happened
with Popol - I did not hear the conversation
between Francois and the accused on 2.12.79.

They did not leave immediately, may be
2 or 3 minutes later after their conversation.
I saw the two of them going away - The driver
Seeboo is from Belle Rose - The trip cost
Rs. 100. I paid for the fare - My sister-in-
law (Seide's wife) left with him for Mon Choisy. 10
I cannot say how long after the child of
Seide's wife was born - I cannot remember
exactly how long my sister-in-law stayed at
Mon Choisy it could be 2 or 3 months.

I believe (mo croire) the child was born
at the Siv Seewoosagur Ramgoolan National
Hospital.

Mr. Gujadhur through Court: Yesterday
when going home from Court I travelled by car.
My brother by bus. We live in the same yard 20
- I did not talk to him (at Clemencia). Today
we came by the same means of transport - we
did not talk about what happened in Court
yesterday.

Prosecution
Case

No.83
Noelie
Corteau
Examination
2nd April
1982

No.83

EVIDENCE OF NOELIE CORTEAU

Mr. Boolell calls:

NOELIE CORTEAU, sworn, no calling of Camp
de Masque

I know Juline Sarah - I also know her 30
under the name of Irene. On the 2.12.79 she did
not come to my place - did not meet her - she
was my sister and she was used coming to my
place -

No cross by Mr. Cuttaree for defence

No questions from Jury

EVIDENCE OF LUC SARAH

Prosecution Case

No.84

Luc Sarah

Examination

2nd April 1982

Mr. Boolell calls:

LUC SARAH Mechanic of Camp de Masque Pavé,
sworn :

Juline Sarah was my mother. Her nickname was Irene - she was living at Clemencia and I at Camp de Masque Pavé.

10 On 2.12.79 when I came home at about 7 or 7.30 hours p.m. - I obtained certain information concerning my mother - that she was missing and I went out to look for her on that very evening - I went to look her at relatives who lived in the vicinity -
On the next day, not having been able to find her we continued our searches - vainly on the 3rd and we continued on Tuesday the 4th -
20 On the 4th at Ti Montagne Clemencia, several persons looked for my mother. On Ti Montagne we found half of a body burnt (ene la moitie le corps brule). I informed the police. On the 5.12.79 the police returned me the remains after autopsy. Then there was a funeral -

Cross-examined by Mr.Cuttaree:

Cross-Examination

I 'pas tellement reconnaitre li'
[I felt I could not possibly identified it] when I saw the burnt half of the body.

No Re-examination

30 By Jury: Francois Brulecoeur was not of the party searching for Irene Hector.

15.45 - Short Recess

15.55 - Accused present

Counsel (Mr.Cuttaree) and Jury in attendance

No.85

Lutchmeenarain

Dorah

Examination

2nd April 1982

EVIDENCE OF LUTCHMEENARAIN DORAH

40 LUTCHMEENARAIN DORAH, overseer of Clemencia, Flacq, solemnly affirmed as a Hindu

In the Supreme
Court

Prosecution
Case

No.85

Lutchmeenarain
Dorah

Examination
2nd April
1982

(continued)

Cross-
Examination

I live at Clemencia near the banyan tree (pied lafouche). On Sunday 2.12.79, at about 6.45 or 7.00 hrs a.m. I was coming out of my house to go to the market. When I came out of my house I 'fall' into my yard not straight on the road - road is at 2 gaulettes [a distance of 20 feet]. I noticed the accused passing by with his bicycle. As soon as I emerged I saw him, he was cycling towards Camp de Masque. I continued on my way. On the main road I saw lady called Irene also proceeding towards Camp de Masque. The accused was wearing khaki shorts and a bluish green shirt. I did not notice how Irene was dressed.

10

Cross-examined by Mr. Gujadhur:

I deponed at the Preliminary Enquiry before Mr. Magistrate Matoorasing. Mrs. Peeroo appeared for the prosecution - questioned me - I did say "mo pas ti remarquer comment l'accuse ti habille" ["I did not notice the dress accused was wearing"] - I had forgotten at that time but now I remember. The accused had a bag colour green of about 6 inches height and 12 inches long hanging on his bicycle - a cloth bag (la toile) - Irene was wearing a gown - I do not remember the model or colour.

20

The police were recording statements 'partout partout' [from everybody] in the village. I did not speak to anybody about having seen Popol (the accused) and shortly after Irene.

30

I am not making a big mistake about the dress of the accused.

Question: If on this point you are not telling the truth does the witness think his evidence may stand - Answer: I can't say. I have read up to Form V unsuccessfully. I did say at the Preliminary Enquiry that I did not notice whether the accused wore long or short trousers - I also did say "that I could not say exactly how he was dressed". If someone were to say that the bag was 18" by 12" that would not be correct. I did say at the Preliminary Enquiry that the bag was 18" by 12".

40

No Re-examination

No question by the Jury

Adjourned to 3.4.82 - 10 hrs

Accused remanded to jail

50

(s) Y. ESPITALIER NOEL
Judge

3/4/82 - 10.10 hrs - The accused is present
Counsel and Jury in attendance

In the Supreme
Court

No.86

EVIDENCE OF ROODWANTEE
PADARUTH

Prosecution
Case
No.86
Roodwantee
Padaruth
Examination
3rd April 1982

Mr. Boolell calls:

10 ROODWANTEE PADARUTH (depones in hindu through
interpreter Satee Moti Sowamy, solemnly affirmed
as a Hindu) labourer of Camp de Masque solemnly
affirmed as a Hindu

On 2.12.79 in the morning I was going to
fetch wood - I was going towards Ti Montagne -
after going 2 gaulettes I saw things abnormal -
sugarcanes fallen - I returned to my home -
where I was passing the road was slippery - canes
had fallen down - that is why I returned to my
place -

20 Question to witness: Did you see or meet
anybody on your way home. Answer: As it was
a road there are many people who go on it.
There are many types of people walking on that
road. I did not talk to anybody I went straight.

I have already deponed before the Magistrate
of Flacq in connection with this case.

No.87

PROCEEDINGS

No.87
Proceedings
3rd April
1982

Mr. Gujadhur states he will object at this
stage to pieces of evidence of the witness at
the Preliminary Enquiry be put to the witness.

30 Jury sent away

Mr.Boolell states that he wants to put to
witness that she said something before the
Magistrate and if she did say such things whether
they are correct or not.

1904 Ordinance P.G.'s explanation
Salik - Lincoln, Lebreton - 1930 M.R.68

40 (Agreed that Mr.Boolell shall first try by
non-leading questions to bring home to the witness
what is being asked of her before going to what
was said at the Preliminary Enquiry). I did not
talk to anybody informing about my return.

In the Supreme
Court

No.88

EVIDENCE OF ROODWANTEE
PADARUTH (continued)

Prosecution
Case

No.88

Roodmantee
Padaruth

Cross-
Examination
(continued)

3rd April
1982

Cross-examination:

At the Preliminary Enquiry I did not say that I had not shown any spot where I would have heard a noise (tapage).

No question by Jury

Prosecution
Case

No.89

James Hector
Examination

3rd April
1982

No.89

EVIDENCE OF JAMES HECTOR

10

Mr. Boolell calls:

JAMES HECTOR, sworn, stone-mason of Clemencia.

Juline Sarah was my mother - her nickname was Irene Hector - we were staying in the same house - On Sunday morning 2.12.79 my mother was getting dressed (pare) to go to Camp de Masque Pave. I was present when she left the house - she wore a white gown with "taches bleues and taches rouges" [blue and red spots]. She did not return home afterwards - I made (demarches) to search for her - we did not succeed in finding her - several persons were out to look for her - we searched Camp de Masque Pavé, Flacq, Montagne Blanche without success - On the Tuesday 4.12.79 I gave a declaration to the police to the effect that my mother had left and had never returned. On the 4.12.79 I was on Ti Montagne when the police came. 20

Cross-
Examination

Cross-examined by Mr. Gujadhur:

30

At the Preliminary Enquiry I did not say that my mother was wearing a yellow pullover.

At request of Counsel Preliminary Enquiry put

"In my first statement before going with the police at Ti Montagne I said what colour of cloth my mother was wearing - I had given the clothes' description worn by my mother - I said a yellow woollen coat with a white gown etc."

(p.10 - Preliminary Enquiry) "She also wore a woollen pull-over of yellow colour" In the Supreme Court

I did not say at the Preliminary Enquiry that "she wore a white gown stained with red spot (a pois), and mauve spots, yellow spots".

Prosecution
Case
No.89
James Hector
Cross-
Examination
3rd April 1982

Read to Jury:

10 Since about 8 to 9 years, we the Hector family are not on good terms with Popol, the Accused - Cecile, my sister had told me about the accused not acknowledging his child from her.

(continued)

Court calls Counsel's attention to re-ex. at Preliminary Enquiry p.13

Cross-examination continues: I have no knowledge of having mentioned 'mauve', having stated that I spoke of 'mauve' by error.

Read to Jury: "I may have made an error - I do accept that there is no colour 'mauve'."

20 In re-ex I did not say that I made an error mentioning yellow pull-over - that it was 'rose'.

Part read to Jury: "I made an error when I said in Court that in my statement before going to Ti Montagne that my mother wore a yellow pull-over - In fact she had a 'rose' pull-over."

30 I said 'rose' - I did not say yellow - I said at the Preliminary Enquiry that my mother woke up at 6.00 hrs - I was giving an approximate not the exact time.

No Re-examination

By Jury: My mother was going to Camp de Masque to pay a visit to my aunt whose eye was 'malade' and she was due to spend the whole day over there. I became worried about my mother's non-return at about 6.00 hrs p.m.

She was not in the habit of spending the night at other people's place.

40 My mother had relatives living at Montagne Blanche and at Flacq too.

Mr. Gujadhur through Court

It was my aunt Noelie Corteau who was sick -

In the Supreme
Court

Prosecution
Case
No.89
James Hector
Cross-
Examination
3rd April
1982

(continued)

Mr. Boolell states that before closing the case for the prosecution, he would move for a visit of the locus in quo.

Mr. Gujadhur moves that the information about missing persons which he had requested be given.

Prosecution
Case
No.90
Mr.Madoorapen
Cross-
Examination
(continued)
3rd April
1982

No.90

EVIDENCE OF MR. MADOORAPEN
(continued)

Mr. Ass.Supt. Madoorapen recalled,solemnly affirmed as a Hindu

10

Cross-examined by Mr. Gujadhur:

I have made a releve of female persons missing and not traced.

In 1977 several reported missing but according to police records, all were traced.

In 1978, 2 reported missing females have not been traced to this day - They are 1) Mauricia Hyppolite, Aged 65 of Cite Roche Bois. (2) Bibi Jaynul Rayeman (no record of age) - Mere Barthelemy Street, P.Louis.

20

In 1979 the only case of missing female reported was that of Juline Sarah.

No Re-examination

No question by Jury

Prosecution
Case
No.91
Proceedings
3rd April
1982

No.91

PROCEEDINGS

Mr. Gujadhur states he has no objection to a visit of the locus provided it is made clear that (apart from ex-proviso) the prosecution is not calling other evidence.

30

Mr. Boolell confirms that the prosecution

(with above proviso) would not be calling other evidence.

In the Supreme
Court

Jury to have their meal and Court to visit.

Prosecution
Case

Mr. Gujadhur states that he will be at Clemencia at 14.00 hrs.

No.91
Proceedings
3rd April 1982

Counsel are informed that some of the juries would like to attend mass on Sunday (to-morrow).

10

They fully agree.

(They will be accompanied by an Usher)

Hearing after visit - postponed to 5.4.82.

(s) Y. ESTPITALIER NOEL
JUDGE

Saturday 3/4/82

20

2.00 hrs - The Jury, Mr. Boolell, Mr.Cuttaree (replacing Mr. Gujadhur, Q.C. who has sent me a letter to that effect), Assistant Superintendent of Police Madoorapen present at Clemencia by dilapidated shop near the houses of the accused and of the Hector family.

The accused is not present.

On enquiring from Assistant Superintendent of Police Madoorapen, I am told that the accused has been taken back from Port Louis to Beau Bassin Prison.

30

Being satisfied that there is no possibility of securing the attendance of the accused at Clemencia in time for the visit of the locus in quo to take place to-day, I postpone the visit to Monday 5/4/82 at 9.30 hrs. (Counsel agreeing).

The Prison authorities are contacted personally by me, at Beau Bassin, for the needful to be done by them for the accused to be present at Clemencia on Monday 5/4/82 at 9.30 hrs.

VISIT TO LOCUS

Prosecution
Case

No.92
Visit to
Locus
5th April
1982

5/4/82 - 9.35 a.m. to 11.00 hrs a.m.
The Jury visits the locus in quo in presence
of the accused, Messrs. Gujadhur, Cuttaree
and Boolell and Assistant Superintendent of
Police Madoorapen.

The latter points out to the Jury (at
Clemencia) an old dilapidated shop, the houses
of the accused and of Irene Hector (deceased) 10
- the cooperative shop.

At the fork, the party proceeds on the
left by the Tamil Temple road - Temple shown -
the jury see the houses of Frederick
Francois Jolicoeur (sic). (and observe Jacques
[a kind of tropical fruit] Tree in back yard) -
the football pitch.

Near the cross roads by the Lafouche
(Banyan tree) the house of witness Dorah and
that of witness Dwarka. 20

At junction by Lafouche [Banyan tree] see
the main Clemencia road with Chapel on the
right. Party proceeds by estate road - tarred
on first part then field road. See Point C,
D - proceeds by main road from point D to
point E - see point F.

The jury sees points S & T.

Jury then climbs uphill (Ti Montagne) from
point G - sees point H - Sees points M, N,
A & B. 30

Party returns to Pont Sec (by point S).

Leaves Pont Sec for Port Louis at 11.00
hrs.

Sitting to resume at 1.00 hrs.

Court resumes at 1.10 hrs p.m.

Accused present.

Counsel present.

Jury in attendance.

Mr Boolell closes the case for the Crown

Case closed for the Crown. 40

STATEMENT OF DEFENDANT

Defence Case No.93

Statement of Defendant 5th April 1982

Mr. Gujadhur, Q.C., states that the accused will make a statement from the dock.

Accused states "Missie, mo innocent zotte a pe cause menti".

Mr Gujadhur states that the accused is not calling evidence.

10 Mr. Gujadhur closes the case for the defence.

Case closed for defence.

PROCEEDINGS

Mr. Gujadhur requests that just as the statement of accused has been circulated to the jury - the notes of evidence of certain witnesses - specially Francois Jolicoeur be made available.

20 Whether longhand or shorthand notes - (Point of Law)

These are only my notes of evidence

No shorthand notes.

Request cannot be granted - reference when necessary will be made fully to what the witnesses have said in their evidence.

30 2nd submission - as I have not called evidence I should have the last word - in England, even when Attorney General appears, when defence calls no evidence does not insist on the prerogative.

Local Law - any Crown Counsel - granted.

(Shamoogum v/s Queen) decided on Cursus Curie does not expect to be granted the last word by the Crown. Still has to take the point because of Constitution now - fair hearing -

In the Supreme Court

with passage of time what now appears fair - in this case would be down right unfair.

Defence Case
No.94
Proceedings
5th April
1982

Second submission not upheld.

Mr. Gujadhur to address the jury first.

(continued)

Defence Case
No.95
Address of
Counsel to
Jury
5th April
1982

No.95

ADDRESS OF COUNSEL TO JURY

Mr. Gujadhur addresses the jury:

Reason for trial by jury -

Introductory: Jury bulwark of democracy -
Goodsense - no formal technicalities.

10

Your power sovereign in appreciating the facts - why are they lying? What are they hiding? Could find no answer.

Client not to be punished for any attitude (reprehensible) might be found in Counsel's conduct.

Police brief - not communicated -

Privilege - Cliches - Matter of law - shackled - bound - blinded -

Police enquiry - What Magistrate had recorded - only shield of defence - You do not know how enquiry - Several statements mean contradiction - loophole -

20

Unfairness - for Prosecution case solved - sufficient.

Dr. Sohun Expert - name of deceased?
-Were these the remains of Justine Sarah?
Was she killed and by whom - issue for you.

30

In England whole brief handed to defence. Practice? No further progress possible -

Practice of taking pictures -
Dookhee on milestone

None of injuries on accused shoulders & arms?

In the Supreme Court

You will force practice to change - parade?

Defence Case No.95

Whole world out of step except Mauritius?

Address of Counsel to Jury

5th April 1982

Only Sentence open - death

(continued)

Statement of accused before you
Read over and comments -

10 Madoorapen (Moti & Padaruth) - for arrest gave verbal statement -

Affair with Cecile.....(no longer on good terms.....)

Any burden on accused light -

Not calling evidence - alibi - to be disproved by Prosecution.

2 months (discussion) - way statement recorded - case put to suspect - clearly questioning.

20 Comments on statement - like any member of the public.

Deeraj - 11/1/80 statement - taxi-driver month and a half later

Pierre - Statement taken - reason for not calling - must be because does not corroborate Prosecution's case - not against accused -

(Statement not made available to me - Judge to note)

Customers book - (conclusive evidence)

30 D 614 - Jawaheer (Taxi car says Francois Brulecoeur) - Jawaheer not licensed - statement 11/1/80 - Accused memory of drivers.

Drinks - only Seid called - why not the others?

- Saturday evening - Something the Police has to hide?

Reference in statement to Seid - obvious questioning.

40 (Sohun - confer with Counsel?) pushed under the nose of doctor's report -

In the Supreme Court

Defence Case
No.95
Address of
Counsel to
Jury
5th April
1982

(continued)

(Take a giant - to climb Ti Montagne
with body on shoulders (+ axe and sabre)

-Scratches on accused (went to fetch
wood on Saturday).

Dr. Sohun - No singing (amount of wood)

Age of injuries -

(Answer) Aine sac goni - (2 gunny bags
new story)

- Seid unmitigated liar -

- necessity of cutting lower part of
gunny bag - to get legs in -

10

- Seid does not say how "deceased"
was dressed - "Coupe Le corps?" ["mutilate the
body"]

Blue jean - why not secure all clothes
of accused?

Singing (no sign on accused)

Why leave bicycle by Temple? Seid could
have committed with others something he wanted
to hide.

20

Litre - (finger prints)

Had the Police done their duty - innocence
or guilt of accused will have been established.

Why Vela not called? to prove good faith
of Seid -

Broadly is this way case against accused
is built up.

Evidence of Madoorapen: pair of slippers
not relevant - his decision?

AA - (certificate compensation) - could
not climb -

30

Any Way: 1. Seid liar

2. from his whole version - one
of the authors of crime of disposal -

Seid - Accomplice - therefore corroborat-
tion, not concerned who he is shielding.

Ring - ear ring - ring from zip -

2 persons missing since 1978 - Atung - In the Supreme
animals - denture card - in presence case - Court
to show skeleton of that lady.

Sohun no ossification test - accused
not responsible if none made?

Exhibits - cloth - preserve.

Beeharry: Certain no mauve or yellow
v/s James Hector (Variations) Preliminary
Enquiry

Defence Case
No.95
Address of
Counsel to
Jury
5th April
1982

(continued)

10 By cloth certain the skeleton of Juline
Sarah -

Goes through Evidence Francois Brulecoeur
- Frederic - no litre - Dwarka no litre -
Counsel underlines - contradictions - distances
- axe -

2 gunny bags - unmentioned before? changed

Wanted to show kind of person - easily
terrorised? aggressive - succeeded -

What is the mystery of Seid -

20 How does accused recover bicycle -
pre-arrangement - Seid hiding.

Shirt of accused contradictions in colour -

(Dookee - bicycle inveterated liar)

Asks why gunny bags -

Dr. Sohun cheating - result before examination
- asked why gunny bag found on remains -

Francois purpose of his own to serve - must
be taken as accomplice -

Francois B. not examined by doctor -

30 - Keeping bottle under the tree -

(Short break)

3.45 hrs - All present

Why accused bring Francois - to help? Francois
liar - No picture of lady -

Francois Brulecoeur - No of statements - his
lies -

In the Supreme
Court

Defence Case
No. 95

Address of
Counsel to
Jury

5th April
1982

(continued)

Comments on evidence of Dwarka -
seen walking (according to Seid on bicycle)

Date of statement according to him -
3 days, in fact 10 days -

Hands empty - therefore submits
unreliable witness -

Comments on Dooky's evidence - parade
purpose - "Doc. M" (talked about presence
of thieves)

Statement - pas rapelle [do not remember] 10
- No of statements - unreliable

Lying or terrorized - roped in

Statement read over to him by the Police
before deponing. Speaks low voice - mistake
or talking a lie - Mangoes with accused.

Submits - Witness (Trappe en bas pied)
["to complainance"]

Asks: Can you say that remains were Juline
Sarah's - If not satisfied Juline Sarah -
Case must be dismissed. 20

Comments on Cecile Hector trouve la mort?
[want death] axe to grind - motive for false
implication. Daine [Witch]

piece of evidence not safe to rely on.

Comments on Jawaheer: Illegal taxi -

Deeraj: absolutely negative

Frederic Brulecoeur: Knows more than he
dares say - arrangements for Seid to leave -
does not mention bottle.

Padaruth: unconvulsive - 30

James Hector: Colour of gown - yellow
pullover - (Seid "rose" pullover)

- Missing persons - (heights not given)

Luc Sarah

Dhorah Sac vert [Green bag]

(1422, 1423 of Archbold 39th Edition) -
type of corroboration -

Case rests on F. Brulecoeur -

In the Supreme Court

Benefit of doubt -

Defence Case
No. 95

Verdicts - Murder - Manslaughter -
W. & Blows causing death without intention
or not guilty in view of the nature of
the case - Thanks for patience

Address of
Counsel to
Jury
5th April 1982

Mr. Boolell: Mass of facts and
details - Testing
credibility of witnesses

(continued)

10

Submits 3 main aspects, main points

1) Do the facts proved by the Crown -
guilty -

a) remains of Juline Sarah?

b) was accused connected.

2) Analysis of credibility of witnesses -

Should direct much attention - Having seen
and heard can you believe and how much

3) Analysis of what accused said to Police

20

1 (a) Crown relies - left in the morning -
seen by Dorah - never reached place of sister
- "never came back home"

Francois Brulecoeur says he saw dead body

Carried up in gunny bag -
Remains -

Dr. Sohun: report - "female" -

Irresistible inference remains those of
Juline Sarah. Can there be any doubt? Sequence
of events

Proposition of Law: 2 types of evidence

30

Direct evidence - circumstantial evidence -
from set of facts - conclusions -

From the time body found by Brulecoeur,
taken away by accused.

Safe conclusion - remains of Juline Sarah
found on 4/12/79 on Ti Montagne -

- Missing persons -

Very important to direct your mind to connect

In the Supreme
Court

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(continued)

accused and this.

Submits facts to connect -

- 1) Dhorah - accused cycling 7.00 hrs -
Juline Sarah walking
- 2) Dookhee - 8.00 hrs - Ti Montagne
- 3) Brulecoeur - saw body - why killed
her -
- 4) Cecile Hector - witchcraft - believed
by accused

Association established -

10

Bound to come to conclusion - accused
fully associated with killing, disposing with
the body -

Statement of the accused (confirms)

Law - Murder - elements -

Premeditation - Verdict - If you find
no premeditation - If no intention (wounds &
blows without intention)

- 1) Acts of violence on Juline Sarah -

F. Brulecoeur says she was dead (blood)
accused admitted killed -

20

Doctor - absence carbon monoxide

2 elements proved

Intention - Premeditation -

- Subjective element to be gathered from
circumstances and facts - to be gathered from
what accused himself said "mo fine toyé li".
["I killed her"]

Premeditation -

Facts according to Crown -

30

- 1) Accused answer to F. Brulecoeur
- 2) Grudge against Juline Sarah - (witchcraft)
- 3) Seen on same road -

Accused thought when he saw Juline Sarah
made up his mind -

2nd Aspect. Now Credibility

Francois Brulecoeur many questions -

In the Supreme Court

His version of facts -

Defence Case
No.95

All witnesses to give version 3 times -
Police - P.E. - Assizes - you saw them
depone behaviour - demeanour -

Address of
Counsel to
Jury
5th April
1982

Come to lie to deceive - or to tell
the truth to the best of their ability.

Is he lying, if so why -

(continued)

10

Arrogant? misbehaviour? - his intellect
not the same as yours -

Good friend of accused - Accused came
to see him (not the reverse)

Natural to accompany accused -

What reaction when sees the body - What
does he ask - answer of accused -

20

Threatening attitude of accused - compare
with how he acted towards Cecile Hector -
Easier for Brulecoeur to say he ran away straight
away - not risk considered as an accomplice -
easiest way chosen by liars -

Many contradictions between Preliminary
Enquiry & in Court here -

Pattern the same (applies to all the
witnesses) - no substantial departure -

Preliminary Enquiry one year ago -
allowance -

Basically they adhered to version - come
unprepared -

Bound to be omissions -

30

"I never said so before the Magistrate"

Is it desire to lie?

Ignorance?

Scare?

Subject to questioning in Court for....
hours -

No briefing of witnesses by the Crown -

Omissions or are additions - may be natural
to want to establish version -

Comments on character of witness in general -

In the Supreme
Court

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5th April
1982

(continued)

Contradictions to be considered in
objective manner "If none - he has
learned his lesson by heart" -
Justified to reject evidence because of
minor contradictions? - Failings of
human nature - memory - type of witnesses
- Time factor -

3rd Aspect - Statement of the accused -
Been analysed by Counsel for Defence -
Denial presence - in the memory - 10
Taxi-drivers give the lie to the accused-
What interest?
Why would Dhorah lie - what interest?
Why would Dooky - What interest?

If you believe that accused was not there -
then believe conspiracy of all these to frame
the accused -

Why would they try at all costs to get
at the accused - no reason

Procedure relating to enquiries - Comments 20
on remarks by Defence Counsel -

Police file - He had no access to it -
left in the dark -

Interviews, statements - enquiry if
entails a serious offence -

To Director of Public Prosecutions - who
is only person entitled to decide what action
to take -

List of witnesses with information -
depositions of all witnesses called at the 30
enquiry at disposal of defence.

If no Preliminary Enquiry, Intermediate
Court copies of statements of witnesses intended
to be called -

Crown discharges its duty when depositions
are made available -

What Law is - what it should be - either
substantial, or procedural -

Ruling in Law as to availability of police
enquiry to defence - 40

Calling of witnesses - List of Prosecution
witnesses - even if on the list, the Crown
need not call all witnesses on the list -

Crown entitled to conduct its case -

Before I end - context of this trial -
each side its duty to perform.

In the Supreme
Court

In fine - careful attention to the
mass of evidence - approach of evidence -

Defence Case
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Mr. Gujadhur: Quotes Glenville
Williams -

Address of
Counsel to
Jury
5th April 1982

Circumstantial evidence (danger of
reaching)

(continued)

Re: Clark

10

Accused entitled to have pictures

Descriptions of accused -

- Crown has called on its list.

- Case adjourned to 10.00 hrs. -

Accused remanded to jail.

(Sd.) Y.Espitalier-Noel

6/4/82 - 10.05 - Accused present.
Counsel & Jury present.

6th April 1982

Mr. Gujadhur, Q.C., moves to quote case of

Rex v. Pye 1967 - 51 C.A.R. p.17,

20

on question of evidence of accomplice.

No. 96

SUMMING UP

10.10 hrs - summing up starts -
11.50 hrs - end of summing up

No.96
Summing Up
6th April 1982

Gentlemen of the Jury,

30

The law provides that, in a trial like
the present one, with a presiding judge and
a jury, after all the evidence has been heard
and counsel for the accused and counsel for
the Crown have addressed you, the presiding
judge should sum up the case for your benefit
and assist you in reaching a proper verdict.

Now, in a trial of this nature, you,
gentlemen, as members of the jury, and myself,
as presiding judge, have been assigned by law
distinct responsibilities, distinct duties.
My province is to explain the law to you and
your province is to decide the facts. It is
for me and for me alone to direct you as to
what is the law and you must take whatever I

In the Supreme Court

No. 96
Summing Up
6th April
1982

(continued)

say the law to be to be such. On the other hand, as far as the facts are concerned, you are the sole judges of all the facts, whether to believe a witness or not, what weight to attach to any part of the evidence, what conclusions to draw from any part of the evidence, all these are matters entirely and exclusively within your province. I have made these clear, gentlemen, because apart from directing you as to the law, I will also, as is my duty, make reference to the factual aspects of the case. While doing so, I may say something which may give you the impression that I have formed my own view one way or the other as to some factual aspects of the case. You should in no way, if this happens, allow yourselves to be influenced by what you think is my own view on this or that aspect of the case. I repeat, you are the sole judges of fact and it is not my views of the facts that count but yours and yours alone. You should not, therefore, act on what I may lead you to think is my own view on the facts unless, of course, you agree with such a view. So that your duty, gentlemen, is that, after having considered the facts of the case and after having reached a conclusion one way or the other on those facts, after you have decided what facts have been proved or have not been proved, you will apply to the result of your findings what I will have told you is the law on the matter, and then return what you consider is the appropriate verdict. Your duty is to give what you consider the proper verdict according to your conscience. This is in accordance with the oath and affirmation which you have taken at the start of those proceedings. There is, however, one point which was mentioned yesterday by counsel for the defence and on which I would like to make another point clear to you. You should not, and indeed you must not, allow yourselves to be influenced by the question of sentence. You are here to decide on the facts, and the consequences of your verdict are not your concern. If the accused is found guilty of an offence, it is my duty and mine alone to pass the appropriate sentence.

The accused, in this case, is charged with murder, which is one of the most serious offences known to our law. Your duty is a very heavy one indeed, and you will, I feel sure, give it your most serious consideration and use your reasoning, your commonsense and your experience as men of the world, before reaching a conclusion.

Now, gentlemen, a cardinal principle of

10 our law is that, when an accused party is
tried in a criminal case, it is presumed
that he is innocent until he has been proved
guilty. This means, gentlemen, that the
accused has nothing to prove and nothing to
disprove. It is for the Crown to prove
the guilt of the accused by establishing to
your satisfaction every element of the
offence. An accused party is perfectly
entitled to sit in the dock and say nothing. (continued)
It is for the prosecution throughout to
establish all the elements of the offence
charged, to prove each and every single one
of those elements. To take an example,
gentlemen, which was mentioned yesterday
by counsel: in the statement the accused
gave to the police he denied having ever
been present at Ti Montagne or thereabout
20 on the 2nd December 1979, he has said he was
elsewhere. Well, gentlemen, it is not for
him to prove that he was not there, it is
throughout for the prosecution to prove that
he was there. The standard of proof which
you should expect, gentlemen, is one which
should leave you without a reasonable doubt.
This means that you should not feel any doubt
which a reasonable man in matters of such
gravity would feel. What the law requires
30 of you, as reasonable men, is that before
convicting the accused, you, as reasonable
men, should feel sure, on the evidence placed
before you, that the prosecution has established
the guilt of the accused to your satisfaction.
If, after carefully considering all the
evidence, you are left with a doubt, so that
you are not fully satisfied that the prosecu-
tion has succeeded in its task of proving the
guilt of the accused, then the law provides
40 that you should give the benefit of that doubt
to the accused and therefore acquit him.

Another point I would like to make clear,
gentlemen, is that your findings should only
be based on what you have heard or seen in the
course of the present trial. There might have
been comments made elsewhere, in the papers, or
you might have heard people referring to this
case in other forums, but you should discard
anything which you might have heard or been told
and stick only to what has been placed before
50 you in the course of this present trial. The
prosecution has placed before you evidence. This
evidence consists not only of the testimony of
the witnesses who were called, but also the plan,
the photographs, reports from experts, and also
the statement which the accused has given to the
police.

Gentlemen, Counsel for the defence has

In the Supreme Court

No. 96
Summing Up
6th April
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(continued)

expressed strong criticisms at the nature, extent and fairness of the police investigation and also as to the nature and extent of the evidence which has been called before you. He has criticised the practice and procedure followed by the police in the course of investigation. You remember he mentioned the lack of photographs of the identification parade, of the marks of injury borne by the accused, and of lack of ossification test. He submitted, gentlemen, that you have been left to conjecture certain things which, in his mind, could have been conclusively established by scientific means which it would have been open to the police to have recourse to. Counsel also commented on the absence from the witness box of certain people who were mentioned by the police officers in the course of their evidence. He referred more particularly to Vela, the poussari [South Indian Priest] to whom Francois Brule Coeur would have, on the Wednesday afternoon, related the occurrence of the 2nd December and also to Pierre, the shopkeeper, who was mentioned by the accused in his statement. He also referred to those persons who are mentioned by the accused in his statement as having had drinks at his place on the evening of the 2nd December.

Gentlemen, the accused party, in this case, is this person, now in the dock, and he is the one in charge of whom you have been put. You are not here to return a verdict of guilty or not guilty against the police or against the prosecution, but you should stick to finding as to the guilt of this accused party. If you find that there are any, or were any, shortcomings in the investigation of the police, if you think that you are not satisfied on the evidence that has been put before you of the guilt of the accused, then it will mean that the prosecution has not succeeded in proving the guilt of the accused in the way I have just mentioned earlier, and you should acquit the accused.

The prosecution has chosen to rest its case on such evidence as has been placed before you and, therefore, the prosecution stands, to succeed or to fail, on that evidence, that is, how in relation to the criticisms addressed against the investigation and the lack of evidence which counsel thought should have been made available, if you find that this affects your believing, or your being satisfied that the guilt of the accused has been proved, then, as I said, you should reach a verdict of not guilty.

10 I will refer now, gentlemen, to one aspect of the law regarding the evidence of witnesses. If a witness has taken a willing part in the commission of a crime or again, if a witness is found to have had or to have a purpose of his own to serve by giving false evidence, the law holds that it is dangerous to act on the unsupported word of such a witness. Some independent evidence should be looked for of facts which tend to render more probable the truth of the testimony of that witness on any material point both as to the crime having been committed and also as to the connection of the accused with it. Now, I should make it clear that the law, although it gives you that warning, does not prevent a jury from convicting on the uncorroborated evidence of an accomplice. Once it is aware of the danger of doing so, the jury is perfectly entitled, if it is satisfied of the veracity of the testimony of such a witness, to act on it although there is no corroboration from independent quarters. I have mentioned this, gentlemen, because it was suggested by the defence that you should not be ready to accept the evidence of Francois Brule Coeur in the absence of independent corroboration. It will be for you, gentlemen, on the whole of the evidence, to consider whether Francois Brule Coeur was an accomplice in the crime or had some purpose of his own to serve by telling lies. As I said, even if you were to find that Francois Brule Coeur falls within such a category of witness, you would still be perfectly entitled in law to accept his word even if you find that there is nothing, as far as independent evidence is concerned, to support his story. Of course, the question will not arise if, on the whole of the evidence, you do not consider that Francois Brule Coeur was either an accomplice or had some purpose of his own to serve in telling lies, or would expect some reward for telling such lies.

50 I shall now consider with you, gentlemen, the elements of the offence of murder which is the one with which the accused stands charged. The offence of murder implies the following elements: In the first place there should be an unlawful violence used by the accused against the victim, which violence or blows have caused the death of that victim. Next, there must be in the accused the intent to kill which means that, when he inflicts the violence, he is doing so with the intention of killing, not of wounding the victim be it ever so seriously, that it is the death of the victim that he contemplates when he hits the

In the Supreme
Court

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Summing Up
6th April
1982

(continued)

victim, and that this is the result he wants to achieve by his violence which he inflicted. It means that he must know that the blows he is dealing are going to cause the death of the victim. So, gentlemen, we have the homicide, the intent, and then we come to the final element which is premeditation. Now, premeditation, gentlemen, means, as you have been told by Counsel, to meditate before. This implies that some time, however short, must have elapsed between the formation of the intent and the execution of the act. This premeditation should be premeditation to kill. Again, gentlemen, it is not sufficient that somebody would have planned and premeditated to give a serious beating to somebody, but this premeditation, required as an element of the offence of murder, is premeditation to kill. Such meditation on the part of an accused party must have taken place in cold blood which means that if a person is in a state of fury, or strong emotion, or agitation, there cannot be premeditation as envisaged by law. I repeat, the forming of the intent to do the act must have been made in cold blood. An accused must have been in the position to calmly at that time weigh the "pour et le contre" of the act he intends, of having realised the gravity of it and the consequences of his act. To find the accused guilty of the offence of murder with which he is charged, gentlemen, you will, therefore, have to be satisfied that he unlawfully used violence against Juline Sarah also known as Irene Hector, and that the said Irene Hector died as a result of such violence, that when he inflicted such blows on Irene Hector the accused had the intention of killing her not just of injuring her, however seriously, and further that he had premeditated, in the sense I have just explained to you, to kill her. Of course, gentlemen, if you are not satisfied that the accused dealt any blow or did any violence to Irene Hector, then your verdict would be purely and simply one of not guilty. But you may find that, while some of the elements I have just mentioned have been established to your satisfaction, one or more than one have not been so established. Let us suppose that you were satisfied that the accused dealt blows on the victim, that those blows killed the victim, but still that he would not have had the intention to kill. In such circumstances, gentlemen, I will be coming to the different verdicts which are open to you, apart from the two extremes which are not guilty or guilty of the full offence of murder.

The case for the prosecution is that the accused, on the 2nd December, murdered Irene

Hector. The Crown, in the first place, has to satisfy you that the said Irene Hector or Juline Sarah as she was also called, would have well and truly died. According to witness Francois Brule Coeur, he saw her dead body at Ti Montagne some time between noon and two o'clock on the 2nd December. If you accept his evidence on that score, then you will be satisfied of the death of Irene Hector. But, leaving aside for the time being the evidence of Francois Brule Coeur, what do we have? The evidence shows that Irene Hector left her place at Clemencia on that Sunday morning to go to her sister's place at Camp de Masque. She never reached there nor did she ever return home. You will remember that you were told - in fact yesterday we had the opportunity of seeing it - that the road from Clemencia to Camp de Masque passes by Pont Sec which itself is in the vicinity of Ti Montagne. In the course of searches which were made for Irene Hector, burnt remains were found at Point A - which you have seen yesterday on Ti Montagne - they were found on the 4th December. There were fragments of gunny bag and of cloth - you have been given the colour by the expert, that is, fond beige with red and green designs. According to the witnesses there were also burnt sweet potatoes, burnt mangoes and one of them mentioned burnt "aroui" [a kind of edible tuberous root].

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(continued)

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According to Dr. Sohun, who saw the remains at Ti Montagne on the 4th and who examined and carried an autopsy of those remains on the 5th December, these were the remains of a female human being and he placed the death at some 5 to 7 days back. The doctor has been accused by the defence of cheating. It was put to him that he had decided on what report he was going to make even before carrying the proper autopsy. The doctor has maintained that what he had stated in his report and in Court was what he actually found in the course of the postmortem examination of the remains.

50

This is a typical case, gentlemen, where it is for you to assess the doctor's evidence. Has the doctor been speaking the truth, and has he satisfied you that the remains were those of a woman who had died some days before? Or is he lying? Has he never found, for instance, the uterus he has mentioned in his report? Has he not found blood remnants from the remains and sent something else to Mr. Ah Yu? It is for you to decide. But if you are satisfied that the doctor has, as he states, from examination, reached the conclusion that the remains were those of a woman who would have died a few days earlier, and were you to accept those conclusions, then you may well in all the circumstances be satisfied

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(continued)

that those remains were those of none other than Irene Hector. Dr. Sohun and Mr. Ah Yu have given you their opinion based on the result of the examination and test carried out on the blood remnants by Mr. Ah Yu. The results would tend, according to Mr. Ah Yu, to suggest that the deceased either died quickly in fire or that she was already dead before the fire. In the doctor's opinion the results of the test performed by Mr. Ah Yu are suggestive of carbonisation not having taken place while the deceased was still alive. I am quoting from the opinion appearing in his report which he has confirmed here in evidence. I may also refer now to the doctor's report and evidence regarding the injuries he found on the remains. According to him the injury, you remember he mentioned to the tongue and he admitted in cross-examination, could possibly have occurred before or after death. On the other hand, as far as the cut injuries to the bone are concerned, he has mentioned that in his opinion they were most probably inflicted after death. So, it will be for you again, gentlemen, to decide how far you are ready to accept this part of the evidence.

Now, gentlemen, even if you are satisfied that Irene Hector died as a result of violence, you would still have to consider whether the accused was in any way connected with her death. What is the evidence as to this connection? As I have told you, gentlemen, it is the undisputed right of the accused not to give evidence or call any witnesses. In this case he has given a statement to the police which statement has been produced. You remember, counsel yesterday went with you through the whole of that statement. I don't think I need repeat all that's in it. In fact, he denies any connection with the death, he denies having been near Ti Montagne on the day and he denies having had any quarrel with Irene Hector some time prior to the 2nd December. He gives his movements on that day. He says one thing which, I think, I need mention, that he went to fetch wood on the mountain on the day before, that is, on a Saturday, not on a Sunday. You remember yesterday, gentlemen, counsel for the defence referred to some injury which could have been sustained by the accused some time prior to the beginning of December. But from his own statement, it is clear that he had sufficiently recovered from any such injury to allow him, at least, to go up the mountain to fetch wood on that Saturday.

I may come back on the doctor's evidence at this stage, that is his evidence regarding his

examination of the accused on the 7th
December. You remember he mentioned that
he had found on the right shoulder blade,
right arm, right forearm, left arm and
left forearm multiple scratch linear
abrasions of varying age - 3 days to one
week. Questions have been put by your-
selves, gentlemen, to him about the nature
of those injuries which he told you were
in a healing process. On the other hand
he has said that he had found no singeing
of any hair on the hand or fingers of the
accused. This, it was submitted by the
defence, would show that the accused was
not a party to any burning of the body of
Irene Hector. Therefore, gentlemen, it
will be for you to bear in mind those
aspects of the medical findings when you
consider the whole of the evidence.

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(continued)

20 We come now to the evidence of the
witnesses called by the prosecution. You
remember yesterday counsel for the defence
underlined to you quite a number of dis-
crepancies and contradictions between what
those witnesses had said at the preliminary
enquiry and what they said in Court. It
will be for you in each case, gentlemen, to
weigh the credibility of each of those
witnesses. Counsel for the prosecution asked
you to bear in mind that those witnesses
were deponing, when they deponed last week,
two years after the event, and that it was
the third time that they were giving their
versions. The first time being shortly after
the event to the police in statements, then
after a lapse of time before the magistrate
and then here. It was submitted by the
prosecution that you should not, just because
there are some minor contradictions, discard
their evidence. The submission of the prosecu-
tion is that there has been no substantial
reversement or variation between what they said
before the magistrate and what they said in
Court. You have heard what they said. I have
been time and again telling you what such
witness actually is reported to have said before
the magistrate, so that you will have to decide.
On the one hand the defence says they are not
reliable and you should not attach any weight
to their evidence. On the other hand, the
prosecution says you should, in each case, decide
whether they are deliberately trying to mislead
you or their lack of memory. The fact that they
are persons of the description that you have seen
- you have seen them - so, gentlemen, it will be
for you to decide, after considering all their
evidence, who you can believe and who you are not
ready to believe.

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(continued)

It is clear, gentlemen, that much of this case depends on what you make of the evidence of Francois Brule Coeur. You have seen him. He has been here for a whole day. You have been in a position to observe him and to make up your mind as to what type of person he is and how you should receive his testimony. He is a young man of 25. You have been told he is a stone mason and a member of the Village Council. Irene Hector was his aunt and there is no evidence that there would have been any reason for him to join in any action to harm his aunt. As to his helping the accused on Ti Montagne, he says he did so terrified by the threats which the accused would have uttered. He was a good friend of the accused, and this is confirmed by the accused who says that they were on excellent terms. So that, there is no evidence to suggest that he could have borne any grudge to the accused and, for that reason, would have framed him so as to bring a false charge against him. There is also no evidence pointing to anyone in particular whom Francois Brule Coeur would have been out to shield by lying about the accused. It will be for you, gentlemen, on the whole of the evidence, to consider whether you would have gathered the impression that he may well have been shielding somebody, himself, or any other person, or that he would have been telling lies about the accused in expecting to get some reward from somebody for so doing. As I said, this will be for you, gentlemen, to decide. I will not go through the whole of the evidence of Francois Brule Coeur. Counsel on both sides have lengthily commented on it yesterday and yesterday you yourselves, gentlemen, had the opportunity of borrowing the way which the witness said was borrowed on that Sunday morning. But I would still refer to a few matters, gentlemen. In the first place, what about the number of gunny bags which that witness said were used by the accused? In Court, the witness has mentioned two gunny bags. He has demonstrated how the upper part of the body of the deceased was "enfonce" [introduced] in one gunny bag and how the accused would have cut the bottom part of another gunny bag and pulled the gunny bag up the legs of the deceased and finally tied the two gunny bags at the height of the waist of the deceased. You will decide, gentlemen, whether this operation, as described in Court by the witness, appears plausible to you or not. But it is a fact that, at the preliminary enquiry, there was no mention of two gunny bags by the witness. Nor was any mention made by him of any cutting or tying of gunny

bags. He says he did say so before the
magistrate and may have been wrongly under-
stood. Gentlemen, you have heard him for a
whole day. It will be for you to decide
and appreciate and see whether or not this
would be a new addition or a different version
now being given by the witness and, if so,
for what motive. This is as far as the
gunny bags are concerned. Turning to the
10 Seven up bottle, you will remember that
there have been many questions asked about
the bottle, but the witness has throughout
insisted that at the request of the accused,
he had, on that day, taken with him, from
his place when they left, the Seven-up bottle.
Again, gentlemen, it will be for you to
decide whether this is an invention on his
part and, if it is, how necessary it could be
to buttress his lies if he is lying. Mr.
20 Boolell for the Crown, when referring to
witnesses lying, suggested to you that when
somebody lies he would rather not complicate
his life and put in unnecessary lies. Well,
it is for you, gentlemen, to make out what you
think of this bottle which was not found and
which he said had been broken to bits under
the Jacques [a kind of tropical fruit] tree
which you saw yesterday.

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(continued)

30 We come now to the attitude of this witness
on the 2nd December and afterwards. He says
that, when he saw the dead body of his aunt,
Irene Hector, at Ti Montagne, he asked the accused
why he had killed her, to which - as you have
heard - the accused would have answered "parce
qui li fine faire moi trop di tort" ["because
she has offended me too much"]. He says that
subsequently he helped the accused because of
the threats of the latter. You remember he
40 mentioned the sabre in the hand of the accused who
said that if he did not help him he would "passe
pareille" [suffer the same fate]. Now, gentlemen,
is this plausible? You have seen Francois Brule
Coeur. You have seen the accused whom the doctor
described as a very strong man. So, the witness
tells you that, according to him, being terrified
he had to help in putting the body on the shoulder
of the accused, but that he ran away as soon as he
considered the accused to be at a safe distance
50 from him. When he ran away he left the accused
climbing up with the body on his shoulder the hill
where we were yesterday. He says he ran away. He
says he took the bicycle of the accused which you
remember he said he had left at the request of the
accused in the sugar cane field and went back home,
and he also says he left his bicycle by the Tamil
Temple. Counsel for the defence has submitted that
you should be satisfied that there was something
strange or pre-arranged for him to do so. But he says

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(continued)

he just left the bicycle there, he had to run away and he just left it there. He says that when some time later the accused came back to his place with the bottle, the accused would have threatened to kill him if he were to mention anything to the police. The witness says he was upset and he did not mention the occurrence to anybody either on the Monday or on the Tuesday. It was on the Wednesday that he said he mentioned it to Vela, the poussari [South Indian Priest], that is, before the police called for him. So he went with the police and was allowed to go on the Thursday and on that very Thursday he chose to leave Clemencia and go to his mother-in-law's place at Mon Choisy and he did so with the help of his brother Frederic. He said that he left with his wife because he was afraid that relatives of the accused who, you remember, had been arrested on the 5th, might try and beat him. This, gentlemen, is what, according to him, was his attitude. Again, it will be for you, gentlemen, to decide whether this is an attitude which you would reasonably expect on the part of a person like the witness. 10 20

As to the other witnesses, I would refer first to Cecile Hector, the daughter, who had been the mistress of the accused admittedly some time many years ago. This witness has said that some time before the 2nd December there had been quarrel, discussion between the deceased and the accused and that the accused had accused the deceased with being a witch. The prosecution has suggested that you should accept her evidence and that this would establish that there existed an animosity between the deceased on the one hand and the accused on the other. The defence tells you that Cecile Hector has gone on bearing a grudge against the man who had abandoned her with a child and that, therefore, you should not attach any weight to her evidence. Again, gentlemen, this is a matter for you to decide. 30 40

As far as the other witnesses are concerned they are in relation more or less to the movements of the accused on that 2nd December. You remember that in his statement the accused gave the numbers of the cars. First, the one he took from Clemencia to Bel Air and then the car back. The first one was the car of Deraj. Deraj says that he did not see the accused on that day and he adds that he only starts working at 8 o'clock on Sundays, and, I think, that the accused in his statement mentioned that he left earlier than 8 o'clock. The other witness is Mr. Jawaheer, another driver. You have seen him. The defence has 50

suggested that you should not attach any weight to the evidence of those two drivers because they could only be inconclusive because drivers are not being expected to remember for days or weeks who travelled at one time or another in their cars. Again, gentlemen, that will be for your appreciation.

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(continued)

10 Then we come to witness Dorah. You remember, you saw his house yesterday before reaching Clemencia. According to Dorah, in the morning he saw the accused on his bicycle proceeding along Clemencia Road and also saw some time after the deceased.

20 The other witness is Mr. Dwarka whose house is nearer to La Fouche tree. He says that at about 11.30 or 12 o'clock he saw the accused in company of Francois Brule Coeur passing by along the Estate road. He mentioned the accused pushing the bicycle, I think. Anyway, it was submitted to you that that would contradict the version of the accused which you must take as being that he started riding the bicycle before reaching the La Fouche [Banyan] tree and that therefore he would not have been walking specially with nothing in his hand because again the bottle is not mentioned.

30 As far as these four witnesses are concerned, there have been contradictions which were underlined to you yesterday, that is, the question of how the accused was dressed and as to the bicycle, and it will be for you to consider whether you can accept the evidence of any of those four witnesses: the two drivers and Mr Dwarka and Mr Dorah. Counsel for the Crown has suggested that if you were to think that each of those four witnesses would have come here and maintained under oath a lie about their having seen the accused at those times or not having seen the accused, as far as the drivers are concerned, then
40 that would be a sort of conspiracy of Tom, Jack and Harry deciding to frame and to falsely charge the accused. Again, gentlemen, it will be for you to make up your mind.

50 There is another witness who is the brother. The brother says that the accused did come and look for Francois Brule Coeur at their place on that Sunday at about 11.30 or 12 o'clock. It was put to him that he would be there to protect his younger brother, that he had done so, in fact, when he paid for the taxi fare to get the younger brother out of reach of any reprisal. Again, gentlemen, you have heard the witness, you have seen him, and it will be for you to decide.

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(continued)

I now come to the evidence of witness Dookhee which, I am sure, you consider as very important. While the 4 or 5 witnesses we have just mentioned are from Clemencia, Mr Dookhee lives in Camp de Masque. He says that on the morning of that 2nd December, he met Mrs. Padaruth, also a resident of Camp de Masque, that she was coming back and that he enquired of her why she was coming back and she mentioned that there were something abnormal 10 or that there were "volere" [a thief] on the mountain. Whereupon, according to him, he took his bicycle and went to see, and there from Pont Sec he would have seen the accused on Ti Montagne and spoken to him, the accused telling him that there were no thieves around and that he was there collecting some mangoes. You will remember that Mrs. Padaruth was, I call her, a hopeless witness and that she never said that she had spoken to Dookhee as 20 Dookhee has told you. However that may be, you have the evidence of this man. He is from Camp de Masque. He has, according to the police, picked out the accused as being the missie Popol he saw that morning on the mountain. It was submitted, gentlemen, that Mr. Dookhee was not telling the truth and that he was trying to better things in Court by referring to mangoes in the hands of the accused and the submission was that he could not 30 have seen any mangoes from where he was. On that aspect we have the photographs, you remember, K11 and K12, and when considering that argument, I am sure you will bear in mind that the height of the canes in December 1979, as shown in the photograph, was not the same as those which you saw yesterday. So, it will be for you, gentlemen, to decide. As I say, this is an important witness, and if you accept 40 his word, then the accused would have been lying about his denial of ever having been near Ti Montagne on the morning of the 2nd December.

So, apart from Dookhee, therefore, we have those other witnesses and if you are ready to accept the evidence of all of them, or some of them, then you will find that the accused has lied in his statement and you may then well ask yourselves why he would have denied his presence at Clemencia or Ti Montagne as he did 50 in his statement. On that score, Counsel for the defence has said that they had mentioned the shopkeeper and that you could infer from his absence from the witness box that the shopkeeper was not going to help the case for the prosecution. But, anyway, gentlemen, the shopkeeper Pierre was not called and we have no idea what he would have said or not said.

We are coming now, gentlemen, to the point of whether, on the whole of the evidence, you accept the evidence of Francois Brule Coeur, in which case you would be satisfied that he saw the dead body of his aunt near Ti Montagne. He also says that the accused said in answer to a question "Why did you kill her?" the accused said "parce qui li ti faire moi trop di tort"

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10 ["because she has been offending me too much"].(continued)
If you decide to accept his evidence, then you would be justified and you could find that the accused, from his admission, would have been the person who inflicted violence on the victim, which violence clearly resulted in her death. We don't know what has taken place between the accused and the deceased, between the time they were last seen at
20 Clemencia if you believe witness Dorah, and the time when the accused would come and call for Francois Brule Coeur around 11.30 or 12 o'clock. So that we have no direct evidence of what violence could have been used and in what circumstances. It has been submitted on behalf of the Crown that being given the bad blood between the accused and the Hector family and more specially the deceased if Celine Hector is believed, then
30 you should infer that he had time to premeditate, that he had time to form the intention of killing her and would have done so. There are the two elements to which I have referred - the intent to kill and the premeditation to kill. It will be for you, gentlemen, on carefully considering the whole of the evidence, to decide whether you can safely say - on the assumption that you accept the evidence that the accused would have
40 answered to the question "Why did you kill her?" in the way he did - that he killed her with intent to kill her and further that he had time before he would have assaulted her to form cold bloodedly the plan of killing her. Counsel for the prosecution said that the very admission - according to Francois Brule Coeur - by the accused accepting having killed the aunt would be sufficient for you to be satisfied that he intended to kill her, that he did kill her, that he intended to kill her and that he would have
50 deliberately and in cold blood planned the killing. We don't have any other words which were used on that score. All we know from witness Franchoise Brule Coeur is the question from him "Why did you kill her?" and the answer from the accused "Parce qui li ti ape faire moi di tort" ["Because she has been offending me"]. Gentlemen, this is the answer which, according to Francois Brule Coeur, the accused made, and it will be for you to consider whether such acceptance by the

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(continued)

accused amounts, in fact, to a confession that he deliberately killed her and that he intended to assault her, that he had time to meditate over the killing and time to decide cold bloodedly to kill her. This, gentlemen, will be the difficult task you will have to perform, on the assumption that you are ready to accept that there was a killing and a killing by the accused in the sense that he would have inflicted the blows which led to the death of the deceased. 10

I think I should repeat, gentlemen, that any of those elements of the offence must be proved to your satisfaction by the prosecution. If you have any reasonable doubt as to one or any of the elements of the offence, this doubt must benefit the accused. I mentioned earlier on that, apart from a verdict of not guilty and apart from a verdict of guilty as charged, that is, guilty of murder, there were other possible verdicts depending on what you are satisfied has been established to your satisfaction. As I said, if you are not satisfied that the accused had anything to do with the violence that led to the death of Irene Hector, then you can find him not guilty and that is an end of the matter. If you find that the accused would have inflicted blows, or used violence, on the deceased, on Irene Hector, but you are not satisfied that it was the result of such a violence which provoked her death, then you could return a verdict of simple wounds and blows. But, as we know, if you accept that she was found there dead and you have the admission of the accused, it would not be reasonable to infer that she might have died of some other cause than blows upon her. But I still thought I would mention this verdict because it is one normally which in cases of murder is a possible verdict. If you find that the accused did inflict blows and that those blows caused the death of Irene Hector, but you are not satisfied that there was the intention of killing Irene Hector, then the proper verdict would be wounds and blows causing death but without intention to kill. Thirdly, if you go one step further up the full elements of the offence of murder, if you find that the accused did inflict violence on the deceased, that this violence caused her death and that when he hit her he had the intent of killing her - as I have explained at the beginning - but you are not satisfied that he would have had the time, the collection, the cold blood, to make the plan, to premeditate such a killing, then the element of premeditation would not have been proved and your proper verdict then would be manslaughter. Finally, 20 30 40 50

if, apart from finding all those elements proved, you are also satisfied that you can conclude safely from what has been put before you throughout the evidence of the witnesses, that the accused would have also had the time, and that he did pre-meditate in the sense which I have explained to you, then, of course, the verdict would be one of guilty of murder.

In the Supreme Court

No.96
Summing Up
6th April 1982

(continued)

10 Gentlemen, I don't think I will keep
you much longer. I have nearly finished
and I would like before you retire to con-
sider your verdict in this case, before you
reach the decision which you have to reach,
that you should bear in mind what I have been
telling you about your being satisfied of
each and every element of the offence. I
would ask you to consider most seriously the
matter and to use all your commonsense before
20 you reach a verdict. Gentlemen, you have
been following this case with patience and,
I would say, interest and, I think, that you
should be congratulated. I will also tell
you that for a jury to reach a verdict, there
should be 7 at least of the same opinion.
If you are not at least 7 of the same opinion,
then there would be no verdict. I will be
asking you to retire now, gentlemen, and
consider your verdict. You take your time and
30 if you feel that you need any guidance, you
will let me know by the usher and I will be
at your disposal for any enlightenment which
you would need from me.

Jury retires - (Ushers Sworn/S.A.) -

Returns at 1.50 hrs.

No. 97

VERDICT OF JURY AND
SENTENCE

No. 97
Verdict of
Jury and
Sentence
6th April 1982

40 Verdict: Jury finds the accused guilty
as charged by majority of 7 to 2 -

Accused is asked whether he wishes to
say anything why sentence should not be passed.

Accused states: "Mo innocent moi missie"
["I am innocent Sir"].

Mr Boolell moves for sentence in accordance
with Sec.216 and Sec.222(1) of Penal Code Cap.
195 -

In the Supreme
Court

Crier

(The sentence of the Court is that you
should suffer death in the manner prescribed
by Law -)

No. 97
Verdict of
Jury and
Sentence
6th April
1982

1.54 hrs. - Sentence of death passed.

Mr Boolell tenders gaol delivery-

Assize Session closed.

(continued)

Sd. (Y. Espitalier-Noel)
Judge
6/4/82

10

No. 98
Notice
of Appeal
15th April
1982

No. 98

NOTICE OF APPEAL

NOTICE OF APPEAL

QUESTION OF LAW ONLY (FORM 1)

Criminal Appeal Ordinance, 1954

TO THE REGISTRAR OF THE COURT CRIMINAL
APPEAL

I, LOUIS LEOPOLD MYRTILE having been
convicted of the offence of

(a) Murder and being now a prisoner in Her
Majesty's Prison at Beau-Bassin (or* now
living at.....) do hereby
give you notice of appeal against my
conviction (particulars of which hereinafter
appear) to the Court of Criminal Appeal on
question of Law, that is to say :-

20

(b) as set out in the Annexure

Signature or mark of Appellant:
(sd.) L.Myrtile

Signature and address of witness
attesting mark:

30

(sd.) A. Appadoo
c/o Central Prison, Beau-Bassin

Dated this 15th day of April, 1982

(a) Here state the offence.

In the Supreme
Court

*Where appellant for any reason not
in custody

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(b) Here state as clearly as you are able
the question or questions of Law on
which you desire to appeal.

Notice of
Appeal
15th April
1982

PARTICULARS OF TRIAL AND CONVICTION (c)

(continued)

1. Date of trial 29.3.82 - 6.4.82

2. Sentence Death

10 3. Whether above questions of Law were raised
at the trial - Yes

You are required to answer the following
questions :-

1. If you desire to apply to the Court of
Criminal Appeal, to assign your legal aid on
your appeal, state your position in life, and
amount of wages, or salary, etc. and any other
facts which you submit show reasons for legal
aid being assigned to you.

20 2. Do you desire to be present on the hearing
of your appeal by the Court of Criminal Appeal?
If you do so desire, state the reasons upon
which you submit the said Court should give you
leave to be present.

30 3. The Court of Criminal Appeal will, if you
desire it, consider your case and argument if
put into writing by you or on your behalf, instead
of your case and argument being present orally.
If you desire to present your case and argument
in writing, set out here as fully as you think
right your case and argument in support of your
appeal.

(c) Fill in all those particulars.

Received and filed at the Registry on
15.4.1982 at 2.20 p.m.

(sd.) F. Mahomed Khan
Court Officer

GROUNDS OF APPEAL

40 1. Because the learned Presiding Judge was wrong
to overrule Defence Counsel's motion before
the start of the trial for shorthand notes of
the evidence to be taken.

2. Because the learned Presiding Judge was wrong to overrule Defence Counsel's motion for all statements given by witnesses to the Police to be made available to the Defence by the Prosecution before the start of the trial.
3. Because the learned Presiding Judge should have allowed all statements of witnesses to the Police and their depositions at the Preliminary Enquiry to be communicated to the Jury especially in view of the fact that the statement made by the Appellant to the Police had been so communicated to the Jury. 10
4. Because the learned Presiding Judge failed to direct the Jury properly and/or misdirected the Jury as to the conclusions and inferences they were entitled to draw from the Crown's failure to adduce procurable evidence or to provide a plausible explanation for its failure to adduce such evidence. 20
5. Because the learned Presiding Judge failed to direct the Jury adequately as to the warning they should have given themselves before and on the danger of acting on the uncorroborated evidence of witness Francois Brule Coeur, especially in view of the contradictions and discrepancies in the evidence of that witness both before the Assizes and at the Preliminary Enquiry. 30
6. Because the learned Presiding Judge failed to explain to the Jury the nature of the corroborative evidence they should require should they decide to treat the evidence of Francois Brule Coeur as that of an accomplice and require it to be corroborated.
7. Because in commenting on the Appellant's alleged lies, the learned Presiding Judge should also have told the Jury that such lies did not necessary constitute corroboration of the Appellant's guilt. 40
8. Because the learned Presiding Judge was wrong not to have told the Jury that it was open to them to return a verdict of wounds and blows causing death inflicted with premeditation but without intention to kill, such non-direction amounting in the circumstances of the case to miscarriage of justice especially in view of the nature of the evidence on the element of premeditation. 50

No.99

In the Supreme
Court of
Mauritius

JUDGMENT OF COURT
OF CRIMINAL APPEAL

IN THE COURT OF CRIMINAL APPEAL

In the matter of:

R E G I N A

v.

L.L. MYRTILE

Appellant

No.99
Judgment of
Court of
Criminal
Appeal
13th July
1982

JUDGMENT

10 The prisoner (now the appellant) was charged at the Assizes before a Judge and jury with the offence of murder. He pleaded not guilty and was defended by counsel. The jury by a majority of 7 to 2, returned a verdict of guilty and the Presiding Judge sentenced him to death.

20 He has appealed against his conviction on two sets of grounds: three grounds were included in an appeal on mixed law and facts, but none of them was pressed before us. There is clearly no merit in any of them and we discard them. On the other hand, the notice of appeal on matters of law contains nine grounds which read as follows :

1. Because the learned Presiding Judge was wrong to overrule defence Counsel's motion before the start of the trial for shorthand notes of the evidence to be taken.
- 30 2. Because the learned Presiding Judge was wrong to overrule defence Counsel's motion for all statements given by witnesses to the Police to be made available to the Defence by the Prosecution before the start of the trial.
- 40 3. Because the learned Presiding Judge should have allowed all statements of witnesses to the Police and their depositions at the Preliminary Enquiry to be communicated to the Jury especially in view of the fact that the statement made by the appellant to the Police had been so communicated to the Jury.

(continued)

4. Because the learned Presiding Judge failed to direct the Jury properly and/or misdirected the Jury as to the conclusions and inferences they were entitled to draw from the Crown's failure to adduce procurable evidence or to provide a plausible explanation for its failure to adduce such evidence. 10
5. Because the learned Presiding Judge failed to direct the Jury adequately as to the warning they should have given themselves before and on the danger of acting on the uncorroborated evidence of witness Francois Brule Coeur, especially in view of the contradictions and discrepancies in the evidence of that witness both before the Assizes and at the Preliminary Enquiry. 20
6. Because the learned Presiding Judge failed to explain to the Jury the nature of the corroborative evidence they should require should they decide to treat the evidence of Francois Brule Coeur as that of an accomplice and require it to be corroborated.
7. Because in commenting on the appellant's alleged lies, the learned Presiding Judge should also have told the Jury that such lies did not necessary (sic) constitute corroboration of the appellant's guilt. 30
8. Because the learned Presiding Judge was wrong not to have told the jury that it was open to them to return a verdict of wounds and blows causing death inflicted with premeditation but without intention to kill, such non-direction amounting in the circumstances of the case to a miscarriage of justice especially in view of the nature of the evidence on the element of premeditation. 40
9. Because the learned Presiding Judge was wrong not to have told the Jury that if they failed to agree it was open to them to return a No Verdict.

At the start of the trial, counsel for the prisoner asked the Presiding Judge to order that shorthand notes of all proceedings at the trial be taken in accordance with section 18(1) of what is now the Criminal Appeal Act, adding that the defence was prepared to meet the costs involved. 50

Counsel for the Crown observed that there was, in his view, no reason for resorting to this exercise. Indeed the Judge's notes show that, apart from submitting that the provisions of section 18 were mandatory, counsel for the defence did not invoke any reason for his request. We need only refer to the latest decision on the point, namely Regina v. Ramlochun (1980) Judgment No.251, where it was held that, in the relevant provisions of the text, the word "shall" is directory and not mandatory. Counsel for the defence did not offer any valid argument in support of his proposition that we should hold a contrary view. There is no merit at all in his suggestion that the Courts are, when deciding on such an issue, overstepping their powers and attempting to "abrogate" a law passed by Parliament: the short answer to this is that it is not the first occasion, and most likely not the last, on which this Court (and Courts all over the world) hold that Parliament intended a law to be directory. But counsel, rather unfortunately, carried his argument a step further to submit that, if the Judge had a discretion, he exercised it "capriciously"; he even went to the length of suggesting that the Judge's ruling amounted to a "wilful refusal" to exercise his discretion. He based himself on the premise that, according to him, the Judge had refused the motion merely on the ground that the taking of shorthand notes had not been resorted to in the past. And that is in the teeth of the learned Judge's ruling, which Mr Gujadhur had quoted to us a moment earlier and which was to the following effect -

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(continued)

"as to the first motion, the Court of Criminal Appeal has expressly held in the recent cases of Regina v. Polimont 1979 M.R. 277 and Regina v. Ramlochun 1980 Judgment No.251 that the provisions of s.18 were directory and not mandatory.

I find no reason in the present case to depart from the practice adopted and always followed by our Assizes Courts and to order shorthand notes to be taken of all the proceedings.

The first motion is refused. "

The incorrectness of the premise on which counsel sought to rely is so glaring that we feel bound to observe that it is a matter for regret that counsel should have thought fit to use the language he did. We accordingly set aside ground 1. Counsel further attempted

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to seek a fresh decision on the inter-pretation of section 18 on the ground that, whereas in Ramlochun no motion for the taking of shorthand notes had been made, he had in the present case taken the trouble to make a motion at the very start of the proceedings. We have been unable to fathom the process of reasoning which would lead to conclude that the word "shall" becomes mandatory or directory depending on whether a motion is made or not.

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(continued)

When addressing us on ground 2, counsel for the defence embarked on an impassioned plea to show that, right from the word "go", that is from the time the committal proceedings started before the enquiring Magistrate, his client had been denied a fair trial. What happened is that, at the preliminary enquiry, Mr Gujadhur, who appeared there for the prisoner along with Mr Domah, moved for communication of all the statements made to the police by eighteen of the proposed witnesses, that is, in effect all but the very formal ones. Counsel appearing for the prosecution objected, and the enquiring Magistrate upheld the objection. We may at once observe that this is not an issue raised in any of the grounds of appeal. But it is obvious that, in view of the provisions of sections 44, 45 and 46 of what is now the District and Intermediate Courts (Criminal Jurisdiction) Act, which cater for the summary procedure applicable in our committal proceedings, counsel was not entitled to make any such request. We also note that no such right exists in England either (see Archbold, Criminal Pleading, Evidence and Practice, 40th Ed. at para. 445a and 451). Next, on the day on which the enquiry was eventually due to start, Counsel for the prisoner moved for communication of the accused's statements "as he is unable to cross-examine the witnesses in the absence of those statements". Counsel for the prosecution was obviously taken a little unawares and ventured to observe, most probably because she did not have copies of the statements available, that acceding to the request would in effect result in her being unable to start with the enquiry, which had already been delayed by the first motion. Eventually the motion was not granted. Whilst, as Counsel for the Crown before us conceded, there should normally have been no objection to letting Counsel for the prisoner have a copy of his client's statements, or at least be shown the original, a few observations are called for :

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(a) we note that, whilst Mr Gujadhur took

care to ask the police prosecutor
officially for communication of
statements of witnesses well in
advance, he only sought copies of
his client's statements on the day
fixed for the committal proceedings;

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(b) the evidence shows that the prisoner
gave his statements to the police
in presence of Mr Domah, one of
his counsel;

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(c) the enquiry, which started in
November 1980, took several sittings
and ended in May 1981. And counsel,
who was given every opportunity to
cross examine witnesses at length,
was even allowed on occasion to
reserve his cross examination.

(continued)

Again there is no issue in the grounds of
appeal on this matter of the accused's
statements. But, when eventually counsel
was asked what was the reason for taking us
through what happened at the committal
proceedings, he submitted that he was doing
so to show that, in view of the unfairness
with which his client had been visited then,
the Presiding Judge should have all the more
acceded to his request for communication of
statements made at the trial, to which we
shall advert shortly. We, on the other hand,
have set out our opinion on the pattern of
the committal proceedings to show that nothing
sinister obtained there. It follows that we
will proceed to look at ground 2 solely on the
basis of what took place at the Assizes.

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What happened was that, before the trial
started, counsel asked the Judge to order the
Crown to make available copies of all the
statements recorded by the Police from all the
witnesses, including those whom the Crown did
not intend to call. Counsel pointed out that
(a) this was a murder case (b) without being
in possession of those statements, the defence
was hampered (c) such was the invariable
practice in England (d) that practice was also
followed in Mauritius before the Intermediate
Court. Counsel for the Crown objected, and
he referred to our law on the subject, to the
practice before our Courts and to the English
practice as explained in Archbold, supra. The
learned Judge held that the defence was not
entitled to the "general order" prayed for
(the underlining is ours).

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We may here pause to observe that, later
in the trial, counsel sought to compel an

enquiring police officer to give a list of the names of all the persons interviewed by the Police during the enquiry. This request was objected to and, quite rightly, overruled as it is elementary that, in general, information obtained for the detection of crime is privileged (See Kishtoo v. Commissioner of Prisons (1967) M.R.1). We only mention this, however, first to note that, at the time, counsel said that such a request was but a preliminary step towards a subsequent motion whereby he would again seek communication of the statements of witnesses, and, secondly, to record that no such motion was made eventually.

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When arguing the matter before us, Counsel also invoked the provision of our Constitution regarding a fair trial in criminal matters. We need only say that, as this Court has consistently held, those provisions have invented nothing. They merely repeat, as constitutional guarantees for the citizen which cannot be abrogated except in accordance with specific rules, the guidelines by which our Courts have always been governed over the years. In our view, similar considerations apply to the argument that counsel's motion deserved special attention in a murder case. True it is that murder is one of the most serious offences known to our law, but there is no warrant for holding, as it were, that all trials must be fair, but some should be fairer than others.

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Turning now to our statutory provisions, these lay down that, in a trial at the Assizes, the prisoner is entitled to be given copies of all the depositions made by the witnesses before the enquiring Magistrate. In 1960, our legislation was amended to provide that persons charged with certain offences, such as, for example, rape and involuntary homicide, should henceforth normally stand trial before the newly established Intermediate Court, that is, no longer before a Judge and jury but by a bench of senior magistrates. During the debate on the Bill in the then Legislative Council, members of the Bar represented that prisoners would be at a disadvantage: as long as the trial came to the Assizes, they had copies of the depositions at the enquiry given to them whilst, on trial before a lower Court, they would not have any such material available. When the Bill was eventually passed an undertaking was given by the then Attorney General that, as a matter of

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practice, in trials before the Intermediate Court, the defence would be provided with copies of statements made to the police by the witnesses. That has, as we see it, nothing to do with the point at issue here for the following reasons. Whilst it stands to reason that the provisions of our statute referred to above should not operate to mean that counsel for a prisoner is never entitled to look at the statements made to the police by a witness in an Assize case, and we may be guided by English practice in the matter, it seems to us that the following propositions sum up the position -

In the Supreme Court of Mauritius

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13th July 1982

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(a) if the prosecution knows of a witness it does not intend to call who can be of use to the defence, it has a duty to make the witness available, and it is desirable that his statement be communicated;

(b) if at the trial a witness proves to be unreliable, or even if it becomes apparent that his previous statement may be relevant to the defence, it is desirable that the statement should, on request, be made available;

(c) providing the defence with a copy of the witnesses' statements has become the practice at the Central Criminal Court in London;

(d) it is the Judge's privilege and duty to conduct the trial in the manner in which he thinks best in accordance with justice and, although in certain particular circumstances, a few Judges have ordered communication of the statements of individual witnesses, there is no general rule to that effect.

This is what we understand the law to be in England (See generally Archbold, supra at paras. 443, 443a and, in particular Ballison v. Caffery (1965) 1 Q.B. 348). Much of the argument of Counsel for the defence in this appeal was based essentially on cases illustrating the "particular circumstances" to which reference was made in paragraph (d) above. There is no warrant, however, for holding that the following occurrence in the case of Xinaris (1959) 43 Cr.App.R.30, is illustrative of the English law of Criminal procedure, or the English practice generally -

Defence Counsel : Farrace, did you make
a statement to the
police?

Witness : Yes.

Counsel : When was that?

Witness : On a Sunday, Saturday
night.

Counsel : The night after this
happened?

Witness : Yes.

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Counsel : My Lord, I wonder if I
might have this state-
ment for inspection.

Judge : Yes.

Prosecuting
Counsel : Is it Your Lordship's
ruling he may see the
original?

Judge : Yes, I think so.

Prosecuting
Counsel : If your Lordship pleases.

20

Defence counsel : I am very grateful to
your Lordship.

Whereupon (Prosecuting counsel) handed over
to the defence copies of the statements made
to the police by all the witnesses for the
prosecution.

For our part, we hold that, whilst there may be
instances where it would work injustice to refuse
to allow Counsel for the defence to look at the
statement of a particular witness, the trial Judge
was perfectly justified in refusing a motion to
allow Counsel to have access to every statement
made to the police by each of the witnesses, or
what the Judge called a "general order", before
the trial started.

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Counsel for the defence did not press ground 3
as it is worded: he stated that it had been drafted
by mistake; what was meant was that the Judge
should have ordered copies of the evidence of the
main witness, Brule Coeur, to be passed out to the
Jury for perusal. Since copies of the statements
of the prisoner to the police had been handed out,
he said, it was only fair that the Jury should
have the evidence of the witness as well, lest
they might be prejudiced against his client. The

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question of introducing what is in effect a new ground of appeal at such a late stage, that is, well after the expiry of the time limit for filing grounds of appeal, has not, as far as we know, been canvassed since our Court of Criminal Appeal was set up in 1954. The Criminal Appeal Act provides as follows in section 3(7) -

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(continued)

10 " The Court shall be a superior court of record, and shall, for the purposes of and subject to this Act, have full power to determine, any question necessary to be determined, for the purpose of doing justice in the case before the Court. "

20 In our view, that provision enables us to exercise similar powers to those held by the Criminal Division of the Court of Appeal in England, which may, on application made to that effect, allow an appellant to raise additional matters at a late stage if they concern issues of some substance. But, as was said in Reg. v. Haycraft (1974) 58 Cr. App.R. 121, applications made on the day of the hearing will very rarely be granted. Clearly there is no merit in Counsel's submission. The statement of a prisoner is a document, which is put in, just like the plan, the photographs or the medico-legal report and it is the practice to have copies of the documents made so that the jury can read them at leisure, the more so as the witness who puts them in will have read out the contents in a matter of minutes. But the evidence of a witness, given orally over a period of time stretching over several hours, if not days, and including lengthy cross examination, stands on a different footing. For those reasons we set aside ground 3.

40 Counsel argued grounds 4, 5, 6 and 7 together but, in fact, he told us nothing which was relevant to the points of law raised therein. He took us over the evidence of certain witnesses and was content with pointing out the various contradictions and inconsistencies contained therein. We need say no more about those four grounds which should properly have been abandoned.

50 It is a fact that the trial judge, when explaining to the Jury the various possible verdicts in a case of murder, told them that those were: not guilty, simple wounds and blows, wounds and blows causing death without intention to kill, manslaughter and murder. Strictly speaking, the list would have been more complete

In the Supreme
Court of
Mauritius

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Criminal
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(continued)

or accurate, with the inclusion of the possible verdicts of simple wounds and blows with premeditation and wounds and blows causing death inflicted with premeditation but without intention to kill. But the trend of events at the trial shows that, whilst the prosecution sought to prove that the prisoner had killed the deceased with the intention of killing her and premeditating the killing, the defence relied almost entirely on two issues: it was contended that it had not been proved that the carbonised remains discovered at "Ti Montagne" were those of the deceased, and secondly, that in any event the prisoner had never been there at all. True it is that all the elements of the offence of murder are in issue at such a trial. But we must bear in mind that the case for the prosecution was that the deceased had been assaulted and then set fire to in an isolated spot, and that the prisoner had confessed to one of the witnesses that he had killed the deceased; finally when asked by the witness why he had done this, the prisoner is said to have replied: "Parce qui li ti faire moi trop di tort".

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On the other hand, and there is no need to quote any particular authority on the point, we should look at the summing up as a whole and determine whether any omission therein amounts to such a misdirection that the Appellate Court is unable to say whether, on a proper direction, the Jury might not have given a different verdict. We note that the trial Judge analysed the evidence fully, explained to the Jury the various elements of the offence and what they had to find proven, directed them as to the burden of proof and placed before them the case for the defence. In the circumstances and on the facts of the case, we are unable to say that, if the Jury had been told of the other possible verdicts, they would have returned a verdict different from the one they did.

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The ninth ground of appeal has, for some reason which we have been unable to fathom, frequently been raised recently in appeals to this Court. Equally regularly it is brushed aside as being devoid of merit. This time Counsel wisely went a step further, preferring not to say anything about it. Nor will we.

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This disposes of all the grounds of appeal, but we feel that one more comment is needed. We have earlier referred to Counsel for the prisoner's unwarranted criticism of the trial judge who, he said, had exercised his discretion capriciously or refused to exercise his discretion.

Counsel went much further in his address and ended up by saying that the whole proceedings at the trial amounted to a mockery of justice, and blaming the trial Judge and Counsel for the Crown for this. We cannot find words strong enough to refute such an uncalled for and groundless accusation which we regret Counsel felt had to be made at all.

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For the reasons given above, this appeal is dismissed.

A copy of this judgment to be filed in each record.

C.I. MOOLLAN
Chief Justice

V.J.P. GLOVER
Senior Puisne Judge

RAJSOOMER LALLAH
Judge

13th July 1982

In the Supreme
Court of
Mauritius

No.99
Judgment of
Court of
Criminal
Appeal
13th July
1982

(continued)

No.100
Order of
Supreme
Court of
Mauritius
6th August
1982

No.100
ORDER OF SUPREME COURT
OF MAURITIUS

IN THE MATTER OF :

LOUIS LEOPOLD MYRTILLE Applicant

v.

THE QUEEN, represented
by the DIRECTOR OF
PUBLIC PROSECUTIONS Respondent

JUDGMENT

10

We grant the applicant leave to appeal against the judgment delivered by the Court of Criminal Appeal on the 13th July 1982, on the appeal of the applicant against his conviction on the 6th April 1982, at the Assizes for the year 1982, for Murder, at a trial presided over by His Lordship Mr. Justice P.Y. Espitalier-Noel and at which the sentence of death was passed upon him, upon condition -

- (1) that the applicant shall, within 90 days from the date of this order, enter into good and sufficient security to the satisfaction of the Master and Registrar in the sum of Rs.10,000 for the due prosecution of the appeal and the payment of all such costs as may become payable by the applicant in the event of his not obtaining an order granting him final leave to appeal, or of the appeal being dismissed for non-prosecution, or of the Judicial Committee of the Privy Council ordering the applicant to pay the costs of the appeal (as the case may be); 20 30
- (2) that the said applicant shall procure the preparation of the record and despatch thereof to England within 90 days from this day.

C.I. MOOLLAN
Chief Justice

V.J.P. GLOVER
Senior Puisne Judge

6th August, 1982

ORDER OF HER MAJESTY THE QUEEN IN COUNCIL

AT THE COURT AT BUCKINGHAM PALACE
The 24th day of November 1982

PRESENT

THE QUEEN'S MOST EXCELLENT MAJESTY
IN COUNCIL

No.101
Order of
H.M. The
Queen in
Council
24th November
1982

WHEREAS there was this day read at the Board a
Report from the Judicial Committee of the Privy Council
10 dated the 18th day of November 1982 in the words
following viz :-

" WHEREAS by virtue of His late Majesty King Edward
the Seventh's Order in Council of the 18th day of
October 1909 there was referred unto this Committee
a humble Petition of Louis Leopold Myrtille in the
matter of an Appeal from the Court of Criminal Appeal
of Mauritius between the Petitioner and Your Majesty
Respondent setting forth that the Petitioner prays
for special leave to appeal in forma pauperis from a
20 Judgment of the Court of Criminal Appeal of Mauritius
dated 13th July 1982 which dismissed the Appeal of the
Petitioner against his conviction before the Court of
Assizes of murder: And humbly praying Your Majesty in
Council to grant the Petitioner special leave to appeal
in forma pauperis against the Judgment of the Court of
Criminal Appeal of Mauritius dated 13th July 1982 and
for other relief:

" THE LORDS OF THE COMMITTEE in obedience to His late
Majesty's said Order in Council have taken the humble
30 Petition into consideration and having heard Counsel in
support thereof and in opposition thereto Their
Lordships do this day agree humbly to report to Your
Majesty as their opinion that special leave ought to be
granted to the Petitioner to enter and prosecute his
Appeal in forma pauperis against the Judgment of the
Court of Criminal Appeal of Mauritius dated 13th July
1982:

" AND THEIR LORDSHIPS do further report to Your Majesty
40 that the proper officer of the said Court of Criminal
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."

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 Mauritius for the time being and all other persons
50 whom it may concern are to take notice and govern themselves
accordingly.

N.E. LEIGH

EXHIBIT
D

Report of
Violent
Death

EXHIBIT D

REPORT OF VIOLENT DEATH

(Under Sections 110 and 112 Chapter 174
Lane's Edition)

Name, age, sex, occupation and address of deceased (If a married woman, widow or child, state husband or father's name, occupation and address)	Juline Sarah alias Irene, 56 yrs, Female, no calling, Clemencia	10
Place of Birth	Camp de Masque Pave	
State where and when (day and hour) the deceased died, or was found dying or dead, and by whom	On 4.12.79 at 11.00 hrs deceased was found by one Dhaneswar Foolessur of Clemencia	
Date and hour death reported to Police	On 4.12.79 at 11.10 hrs	20
If deceased has been seen by a legally qualified medical man, before or after death, give name and address (If called in before death, the duration of his attendance. If a medical certificate has been refused, state the opinion of the medical man as to cause of death, if he is able to give one)	Dr. Sohun - P.M.O.	30
If any known illness existed before death, state, if possible, the nature of it, and its duration.		40
If negligence or blame is attached to, or alleged against, any party, say to whom		
Where is the body now lying and in what locality	Candos - Mortuary House	

Whether body should be removed to the mortuary for sanitary reasons, or for the purpose of making post-mortem examination or autopsy

Post mortem Examination

EXHIBIT
D

Report of
Violent
Death

To be buried or cremated?

Buried

(continued)

10 Names and Addresses of Witnesses

1. Luc Sarah of Camp de Masque Pave.
2. Dhaneswar Foolessur of Clemencia

State the supposed cause of death if known or suspected, and the circumstances relating to it.

Suspected Murder

20 (The Constable should state whether it was a sudden death or whether it was a violent death, as by poisoning, wounds, burns or scalds, accident, suicide, neglect, ill-usage, or if involved in mystery, etc. and give all other particulars).

30 (When anything poisonous is known or is suspected to have caused the death, the remaining portion should be put under seal by the officer securing it).

Date: 4.12.79 (sd) Jhaumeer
Authority granted for Post Mortem

Date: 5.12.79 District Magistrate

EXHIBIT
E

Report of
Dr. Sohun

EXHIBIT E

REPORT OF DR. SOHUN

Report forwarded to the Officer of the Civil
Status in Conformity with Art.94 of Ord.26 of 1890

Name and Surname	:	Juline Sarah alias Irene	
Sex	:	Female	
Age	:	56 years	
Domicile	:	Clemencia	
Profession	:	No calling	
Place of Birth	:	Camp de Masque Pave	10
Cause of death	:	Unascertainable	
Description of Marks of violence or of any suspi- cious circumstances under which death occurred	:	Amputation of left forearm, both legs, left thigh	
Statement of the condition of the body and of the circumstances related thereto	:	Almost complete carbon- isation of the body see report	20

At Candos 5.12.79 at 12.45 hrs

Dr. Sohun

EXHIBIT F

TRANSLATION OF STATEMENT
OF ACCUSED

EXHIBIT
F

Translation
of Statement
of Accused

Statement of Mr. Louis Leopold Mertul alias Louis
Leopold Myrtille

Occupation : Tractor Driver Age : 39 yrs

Residing at Clementia Religion: R.C.

10 On 31/12/79 at 10.05 hrs, at the Central C.I.D.
Office I saw the abovenamed who stated to me
the following after he has been duly cautioned
in creole in presence of Detective Inspector
Mandoorapen.

(Sd.) Sgt. Basset

I wish to give a statement to the Police. I
wish you Sergeant Basset to take down that
statement. I understand that I am not obliged
to say anything unless I wish to do so but what-
ever I will say will be taken down in writing
and may be used in evidence (sd) Mertul

20 I was arrested by the Police since the 5th of
December 1979, concerning a criminal case. On
that same day, a Police Inspector (Insp. Jaumeer)
asked me for a statement and I refused to give
one. On the 13th of December 1979, the Police
held an identification parade behind Flacq Police
Station and a witness identified me on that
parade. After the parade the same Inspector of
Police asked me again for a statement and I still
refused to give one. Today 31.12.79 I am willing
30 to give a statement. I was born at L'Unite Camp
de Masque and was brought up there. When I was
16 I went to live at Clementia and up to now I am
living there. I am married with 2 children and I
lived in a house in the yard of my father-in-law,
I knew Irene Hector (deceased) very well, she was
living opposite my house at Clementia. Before my
marriage in the year 1969 or 1970 I was living in
concubinage with Cecile, Irene Hector's daughter.
She lived with me for about one or one and a half
40 year after which we separated. Cecile also is
living at Clementia not far away from my house.
Since I abandoned Cecile I am not in good terms
with the Hector's family. I do not speak to them.
I have not had a dispute with Irene Hector one
month ago. I know that Irene is now dead. Monday
3.12.79 whilst coming from the doctor's, sorry I
am making a mistake, whilst cycling from my work

EXHIBIT
F

Translation
of Statement
of Accused

I heard people saying that Mrs Hector was missing since Sunday and on Tuesday 4.12.79 whilst coming from the doctor's in the afternoon I heard two ladies saying that Irene Hector is dead and that her body had been found in a field or on a hill I understand. On Wednesday 4.12.79 at about 7.30 a.m. I took a taxi for Flacq. At Clementia a C.I.D. man named Roussety entered the said taxi and asked the driver to stop at the Police Station at Bel Air where he arrested me. I do not remember when I last saw Irene Hector (deceased). On Sunday 2.12.79 I woke up at 6.30 a.m. I collected snails, I boiled them to feed my ducks. At about 7 or 7.30 a.m. I went to Bel Air in taxi car No. AJ 203 to buy some vegetables. I do not remember who were the other passengers of the taxi car. The driver's name is Deeraj. I alighted at Bel Air Village where I bought vegetables after which I entered the shop of one Pierre where I used to buy my rations. I do not remember the time I entered the shop. The car took about ten to fifteen minutes to travel from Clementia to Bel Air. I took about ½ hour to buy vegetables and soon after I entered Pierre's shop. It may be I entered Pierre's shop at about 8 or 8.30 a.m. It may be I left Pierre's shop at about 9.40 a.m. with the rations I bought. I looked for a transport and returned home around 10 a.m. I returned home by car No. D 614. Jawaheer was the driver. I left my rations home and then went to play rummy near a shop situated near my place. I do not remember the time it was. There were several persons who were playing rummy. I do not remember who were the persons I was playing rummy with. I stopped playing at about noon and went home for some food. At about 12.30 or 1 p.m. I returned near the shop and I continued playing rummy. I do not know with whom I played rummy. I returned home at about 3 p.m. I stayed home and had a drink. Tata Aristine the uncle of my wife, Guy Ecumoire my father in law, one Seid and two friends named Guy Callee and Manuel Louise were having drinks with me in my yard. We drank till late, I do not remember the time, after which I went to sleep till the next morning. I know Seid well he lives in the locality, he is a member of the Village Council, his family's name is Brule Coeur, he is a good friend of mine. The first time I met Seid Brule Coeur on that Sunday the 2nd of December, 1979 was when he came at my place at about 3 p.m. to have a drink. Seid has a brother named Frederick, they lived together. I did not meet Frederick on that day. On that day I did not look for Seid at his place around 11 or 11.30 a.m. and I did not ask Frederick to call for Seid on that day. I know a place called "Ti Montagne" at Clementia. It is near place called "Pond SEC" I used to pass there when going to work. On Sunday the 2nd of December 1979 at about 12.30 p.m. I

did not go with Seid on "Ti Montagne" to pluck mangoes. If somebody were to say that he saw me together with Seid at about noon on that Sunday near a banyan tree where the road biforks one going towards the Estate land and the other towards the Chapel, it is not true. I am on good terms with Seid. I have never had any dispute with him. On that Sunday I did not go to cut wood on the mountain it was on the eve that is on Saturday that I went to cut wood. I did not kill Irene Hector (deceased) on Sunday 2nd of December 1979 near Ti Montagne. I did not put her body in a gunny bag with the help of Seid to carry it on the mountain. I have an axe and a sabre and I did not use my axe and my sabre to cut her body, that is the body of Irene Hector and I did not burn her body on the mountain on Thursday the 13th of December, 1979 in the afternoon. The Police held an identification parade at Flacq and a witness whose name I do not know who resides at Camp de Masque picked me out on that parade as being the man he met on the mountain on Sunday the 2nd of December, 1979 and who told him that he was plucking some mangoes, that is not true. I was not there on the mountain at that time and I never went on the mountain on Sunday the 2nd of December, 1979. On that day I was wearing a pair of jeans colour blue and a white shirt. I have a pair of khaki shorts but I was not wearing them on that Sunday.

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20

30

You have read over my statement. I have spoken the truth. I have nothing to add or to rectify. I have given the statement on my own free will.

(Sd) L.Mertul

(Sd) Detective Sgt.545 Basset
Recording Officer

Place, Date and Time : Central C.I.D. on 31.12.79
at 11.30 hrs.

40

EXHIBIT

F

Translation
of Statement
of Accused

EXHIBIT
G

Certificate
of J.A. Ah-Yu

EXHIBIT G

CERTIFICATE OF J.A. AH-YU

Forensic Science Laboratory
8th December, 1979

Subject: Screening of post-mortem blood
specimens marked 'Juline Sarah'
for carbon monoxide

I hereby certify that :-

On 5th December 1979 at 13.15 hours there were received from Chief Inspector Attungue specimens from autopsy marked as above sent by Dr. Sohun and consisting of blood, blood clots from heart, bile and kidney, with a request for carbon monoxide determination. According to the case history these specimens originated from the charred remains of a mutilated body. 10

2. I examined the small volume of liquid blood and the blood cots for carbon monoxide as appropriate and was not able to detect the presence of any significant level of carbon monoxide. These results therefore tend to indicate that there was no significant exposure of living body to carbon monoxide. 20

Principal Forensic Science Officer
(J.A. Ah-Yu)

To: Police Medical Officer,
Dr. Sohun.

EXHIBIT
H

Certificate
of D. Beeharry

EXHIBIT H

CERTIFICATE OF D.BEEHARRY

Forensic Science Laboratory
24th December, 1979 30

From: Scientific Officer (Forensic Science)
(D. Beeharry)

To: Superintendent of Police, Moka - Flacq
Re. Case Murder - O.B.1923/79
R. Seche

I hereby certify that :-

On 4th December 1979 at 14.10 hours at the request of the Police and in the presence of

Chief Inspector Attungue I performed appropriate forensic examination of one site of fire as shown to me by the Police on the slope of 'Ti Clemencia' Mountain, Bel Air.

EXHIBIT
H
Certificate
of D.Beeharry

The site consisted of the charred remains of apparently a human body. I also found charred pieces of 'gunny' and heavily charred remains of wooden poles.

(continued)

10 In connection with this case, on 7th December 1979 at 10.10 hours, C.I. Attungue brought to the Police Forensic Science Laboratory one sealed tin (Anchor Full Cream Milk Powder) seal M.P.67.

I found the contents of this tin to be the following :-

- 20
- (i) One cigarette box labelled 'Matinee' containing charred matter together with one charred piece of gunny and also one charred piece of cloth material with red and green designs.
 - (ii) One paper bag containing charred remains of cloth material and gunny together with two hair pins, of approximate length 3 inches each.
 - (iii) One plastic bag containing some charred remains of gunny and cloth materials. The piece of cloth had red and green designs a beige background.

30 I examined the charred remains of materials for the presence of common fire accelerants but the result was negative.

In connection with abovementioned case on 14th December 1979 at 12.05 hours Inspector Jaumeer brought to the Police Forensic Science Laboratory, three sealed parcels, seal M.P.66 respectively marked M.J.I, M.J.II and M.J.III - O.B. 1923/79 R. Seche.

40 I examined the contents of these parcels and found them to be the following :-

M.J.I (parcel) contained one sabre with wooden handle approximate length being 26 inches. After examination no evidence of forensic value (eg blood) was obtained from the sabre.

M.J.II (parcel) contained one axe, of height approximately 31 inches. No evidence of forensic value (e.g. blood) was obtained after examination of this exhibit.

EXHIBIT
H
Certificate
of D.Beeharry

(continued)

, M.J.III (parcel) contained three khaki shorts, old and freshly washed. No evidence of forensic value (e.g. blood) was obtained from these three exhibits after examination.

EXHIBIT
L
Charge Sheet

EXHIBIT L
CHARGE SHEET

I, Louis Ecosse Marcel, a Superintendent of Police of Central C.I.D. charge you Louis Leopold Myrtille, alias Popol, aged 39 yrs, a tractor driver residing Clemencia, Bel Air, in the District of Flacq 10

With having on the 2nd of December 1979, at Clemencia, place called Ti Montagne, in the District of Flacq, wilfully, feloniously and with malice aforethought, killed and murdered one Juline Sarah also called Irene, wife of Regis Hector, aged 56 years.

On the above charge being read over and explained in creole and after the usual warning had been given to him - 20

CAUTION: Do you wish to say anything in answer to the charge? You are not obliged to say anything unless you wish to do so, but whatever you say will be taken down in writing and may be given in evidence.

Prisoner replied:- Mo innocent la-dans, missie.
[I am innocent of the charge, Sir]

Recorded by me and read over at Central Criminal Investigation Division at 10.35 hrs on 7.1.80. 30

(sd) E. Marcel

Name and Rank: Superintendent of Police

Witness: R.Mahon, ASP

EXHIBIT M

IDENTIFICATION PARADE
REPORTEXHIBIT
MIdentification
Parade Report

COPY TAKEN OUT FROM THE DIARY BOOK OF CENTRAL
FLACQ POLICE STATION

S No.	X Ref.	Subject	Time	Thursday 13th day of December 1979
65				
10	-	Identifica- tion Parade	17.15	Held by me at 17.00 hours in the backyard of Flacq Police Station in broad day light in connection with case C.B.1923/79, Riv. Seche, Murder. The following volunteers of about the same age, general appearance and mode of life as the suspect one Louis Leopold Mirthilde were formed up in a line in the following order:- (1) Roger Lacharmante, 35 years, a driver residing at Boulet Blanc, (2) Roland Celerine, aged 45 yrs, a gardener, residing at Lagaiete Camp Bramsthan, (3) Louis Wilfrid Delorcy, aged 45 yrs, a driver, residing at Printaniere Road, C. Flacq, (4) Guy Calou, aged 37 years, a stone mason, residing at Mare La Chaux, (5) Regis Pavillon, aged 45 yrs, a sirdar, residing at Cite Argy, (6) Rene Capdor, alias Fanfan, aged 38 yrs, a fisherman residing at Cite Argy, (7) Claudius Armance, aged 35 yrs, a labourer, residing at Victoria S.E., (8) Remy Grosirne, aged 40 yrs, cabinet maker, residing at Riche Mare, (9) Louis Joseph Pavillon, aged 33 yrs, carpenter, residing at La Source, (10) Cyril Calou, aged 40 yrs, a driver resid- ing at Quatre Cocos, and (11) Louis Robert Labelle, aged 35 yrs, fisherman, residing at Trou d'Eau Douce
20				
30				
40				
50				

EXHIBIT

M

Identifica-
tion Parade
Report

(continued)

The suspect Louis Leopold Mirthilde, was brought in by P.c. 2971 Rambeerich, the former was in the cell of the station and out of view of the parade. He was explained the purpose of the parade and his rights. He agreed to form part of the parade and placed himself before No.1 witness Dramdeo Dookee, who was out of view of the parade in the singleman barracks of Flacq, was brought in by P.c. 3123 Radha. He was explained the purpose of the parade and to identify the person whom he knows on the name of Popol, a caterpillar driver of F.U.E.L. and residing at Clemencia and whom he saw on Petite Montagne standing around 08.00 hrs on Sunday 2.12.79 and to whom he talked about the presence of thieves, and who had stated to him "Mo pe casse un peu mangue" ["I am plucking some mangoes"]. The witness unhesitatingly touched the suspect in saying "Ca missie la ca" ["Here is the man I saw"]. The suspect makes no reply. The parade was then dismissed and volunteers thanked. Int. of Insp. Padayachy.

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20

30

COMPARED WITH ORIGINAL AND FOUND TO BE IDENTICAL.

20.12.79

P. Attungue, C.I. Flacq

EXHIBIT AA
FORM D NOTICE OF ACCIDENT

EXHIBIT
AA
Form D
Notice of
Accident

NO. 068

THE WORKMEN'S COMPENSATION ORDINANCE, CAP.220

SECTION 14 A (3)

NOTICE OF ACCIDENT

FLACQ UNITED ESTATES LIMITED

Name and address of employer: F.U.E.L. S.E.

10 Name and address of injured
workman: LEOPOLD MIRTIL,
CLEMENCIA

Sex: Male/Female: MALE - 39 YEARS

Date, Time and place of
accident: 8th day of November 1979
at 8.00 a.m. at F.U.E.L.

Normal occupation of injured
workman: Driver

Kind of work on which
employed at time of accident: Whilst driving his D7

20 Cause and particulars of
accident: "Secousses" on bends.
He was thrown from
his seat.

Particulars of Injury
(as known to employer) ? Confusion Lumbar
Fatal/Non Fatal: spine

Rate of wages (state period): -----

Gross earnings per week/
month at time of accident: -----

Date of engagement of worker: -----

30 Any further particulars: Treated at Union Flacq
Hospital

This 8th day of November, 1979.

Ref. 124-76

(s)

Signature of Employer

EXHIBIT
BB

Medical
Report

EXHIBIT BB

MEDICAL REPORT

MAURITIUS POLICE FORCE

FORENSIC SCIENCE LABORATORY

Address: CANDOS	Date: 2nd February, 1980
MEDICAL and MEDICO-LEGAL	FORENSIC SCIENCE
Principal Police Medical Officer	Principal Forensic Science Officer
Dr. R.Takoor, M.B.B. Ch., B.A.O.	J.A. Ah-Yu BSc CChem, 10 FRIC
Telephone: 4-2133 - 54-3031	Telephone: 4-4917
YOUR REF:	YOUR REF:
OUR REF: Connected with F.435/79	OUR REF:

In connection with the same case. On the 7th of December, 1979, at 1415 hours, at the Forensic Science Laboratory, Candos, Quatre Bornes, I examined one LOUIS LEOPOLD MIRTHIL, a male, aged 39 years, viz :-

20

Examination

Of a muscular physique; height 5 ft. 8½ ins.
Chest 39 ins.

Brown complexion, soft curly hair, short
moustache; Calm, cooperative.

Multiple scratch linear abrasions of varying
age 3 days - one week, right shoulder blade, right
arm, right forearm, left arm and left forearm.

Heart : Normal I & II regular; pulse 76 mins
regular.

30

Lungs : Good air entry, no adventitious
sounds.

Abdomen: 3 inch vertical scar right lower
paramedian region.
Vertical surgical scar lower right
paramedian region 6 inches long.

Limbs and skeleton: Normal

C.W.S. : Normal

of a sound mind.

(s) Dr. I. Sohun
Police Medical Officer

40

POST MORTEM REPORT

Post Mortem
Report

MAURITIUS POLICE FORCE

FORENSIC SCIENCE LABORATORY

Address: CANDOS	FORENSIC SCIENCE
Principal Police Medical Officer	Principal Forensic Science Officer

Dr. R.Takoor, M.B.B. Ch., B.A.O.	J.A. Ah-Yu, BSc., CChem, FRIC
-------------------------------------	----------------------------------

10 Telephone:- 4-2133 - 54-3031	Telephone: 4-4917
------------------------------------	-------------------

YOUR REF: YOUR REF:
 OUR REF: M.L.R. No.F.435/79 OUR REF:
 FROM: Police Medical Officer (Dr.I.Sohun)
 TO: District Magistrate for Flacq thro' S.P.M.F.
 SUBJECT: Medico-Legal Report

I certify that :-

20 On the 5th of December 1979, at 12.45 hours, in the mortuary at Candos, Quatre Bornes, in presence of Mr. Kusrutsing, Superintendent of Police, I performed an autopsy on a body.

External Examination - Approximate height: 5 ft.

Body in state of almost complete carbonisation. Multiple pieces of partially burnt "gunny bag" material were found adherent to the skeleton. The skeleton is not complete:

- 1) The bones of the lower half of left forearm, left wrist and left hand are missing.
- 30 2) The bones of the lower half of both legs, ankles and feet are missing.
- 3) The bones of the lower half of left thigh and left knee are missing.

There were multiple tiny pieces of carbonised unidentifiable bones on the scene where the remains of the deceased were found.

The only soft tissues which were present and could be identified anatomically were the following:

- 40 1) Short grey scalp hair, partially singed, from the transverse midline of the head backwards ending in a small ball at the back of the head in the midline. The ball was tied with a piece of cloth

string which was burnt and was unidentifiable.

EXHIBIT
CC

2) The remaining scalp was intact except for the change due to heat which also caused blood staining underneath.

Post Mortem
Report

3) The configuration of the brain was normal, the different parts being identifiable but there was softening and early liquefaction due to heat. The brain coverings and the brain substance did not show any injury or disease.

(continued)

10

4) The spinal cord and its outgoing nerves were absent.

5) The tongue was slightly affected by heat and showed teeth marks at its anterior third.

Further examination showed that at the site of the teeth marks, there was bruising of the deeper tissues of the tongue, which was most probably antemortem.

20

6) All the muscles of the right upper limb were present, showing minor heat changes.

7) The right lung was intact but greatly reduced in size due to heat effects.

8) The uterus was present in the pelvic cavity, also reduced in size due to heat effects.

The remaining bones which were partially carbonised preserved their shape and contours.

30

9) The other injuries that were present were the following:

- a) Oblique cut of the two bones of the left forearm mid shaft region.
- b) Oblique cut of the left thigh at upper 1/3 level.
- c) Oblique cut of the bones of the left leg mid shaft region.
- d) Oblique cut of both bones of the right leg mid shaft region.

40

The direction of all the above cuts were from in front downwards and backwards.

- e) Oblique cut of the 11th thoracic vertebra, from in front, downwards and backwards.

All the bones in paragraph 9 were well preserved and the injuries were most probably inflicted after death because of the absence of any changes near the sites of the wounds.

EXHIBIT
CC
Post Mortem
Report

10) There were 13 teeth in the upper jaw, (continued) and eight teeth in the lower jaw.

10 11) Identification of the deceased was done through Investigating Officer, preliminary at the scene where the remains were found.

OPINION

In view of the findings, death was most probably homicidal.

The cause of death being unascertainable. The Scientific tests performed on the blood of the deceased show the absence of carbon monoxide, which is suggestive of carbonisation not having taken place while the deceased was still alive.

20

(s) Dr. I. Sohun
Police Medical Officer

O N A P P E A L

FROM THE COURT OF CRIMINAL APPEAL
MAURITIUS

B E T W E E N :

LOUIS LEOPOLD MYRTILE

Petitioner

- and -

THE QUEEN

Respondent

RECORD OF PROCEEDINGS

MESSRS. BERNARD SHERIDAN & CO.,
Solicitors,
14 Red Lion Square,
London, WC1R 4QL

Solicitors for the
Petitioner

MESSRS. CHARLES RUSSELL & CO.,
Hale Court,
Lincoln's Inn,
London, WC2A 3UL

Solicitors for the
Respondent