

43,1936

15

IN THE PRIVY COUNCILNo. 79 of 1935ON APPEAL FROM THE SUPREME COURT OF FIJI,  
LAUTOKA CIRCUIT COURT.

BETWEEN

MAHADEO ... Appellant

- and -

THE KING ... RespondentRECORD OF PROCEEDINGSINDEX OF REFERENCE

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1.

IN THE PRIVY COUNCIL

No. 79 of 1935

ON APPEAL FROM THE SUPREME COURT OF  
FIJI, LAUTOKA CIRCUIT COURT.

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BETWEEN

MAHADEO ... Appellant

- and -

THE KING ... Respondent

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RECORD OF PROCEEDINGS

10

No. 1

STATEMENT OF SUKRAJ (F/N CHET SINGH)  
OF TAGI TAGI.

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In the Supreme  
Court of Fiji

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No. 1  
Statement of  
Sukraj, 14th  
February, 1934.

Four Thursdays ago in the early morning about six o'clock I left my home and went to Mathura's house and from there Mahadeo, Sarandas and Ramautar went to the cane-field whilst I went in a different direction to get my hoe.

2. Basdeo and Badalu went at the same time with the cattle to graze them.

20

3. Later on I met Mahadeo, Sarandas and Ramautar in the field and the four of us started work.

4. About nine o'clock Sarandas told Ramautar that he had seen him when a man was having connection with him.

In the Supreme  
Court of Fiji.

No. 1

Statement of  
Sukraj, 14th  
February, 1934 -  
continued.

5. Then Ramautar told him that he had done the same thing.

6. They were both joking.

7. Sarandas later became angry and walking over to Ramautar caught hold of him and threw him on the ground and fell on top of him. He had hold of his legs.

8. Sarandas then tried to get up and Ramautar caught hold of his legs and tried to pull him over.

10

9. After about five minutes Mahadeo asked me to go and separate them and I asked him to do it as they were both working for his father.

10. Mahadeo then went and separated them and struck Ramautar a few blows with a cane-top. They were not heavy blows.

11. Ramautar then asked Mahadeo's permission to go home as he did not want to work. He did not say that he was ill. That was about half past eleven o'clock.

20

12. Ramautar then left and went towards the road.

13. We knocked off work soon after twelve o'clock and went towards Mathura's house.

14. When we reached the track near Dhuki's house I met Basdeo and Badalu coming from the direction of Mathura's house and Mahadeo asked Basdeo if Ramautar was at home.

15. Basdeo said that he was not and Sarandas and Mahadeo returned along the track towards where they had been working and told me that they were going to look for Ramautar.

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16. I went to Mathura's house and had my food and about half an hour later Sarandas and Mahadeo came and Mahadeo told me that they had found Ramautar and that he was hanging from a Sahjan tree.

17. Mahadeo told me that when they first saw

him they thought that he was standing on the track but that when they went nearer they saw that there was a sulu around his neck. They then tried to lift him up and the sulu became loose and the body fell to the ground.

In the Supreme Court of Fiji.

No. 1  
Statement of  
Sukraj, 14th  
February, 1934 -  
continued.

18. Mahadeo then asked his mother where Mathura was and she told him that she thought at Daya Singh's house and Mahadeo then left to go for Mathura.

10 19. At that time Munnessar and his wife (Ramautar's parents) began to cry.

20. Mahadeo and Mathura returned soon afterwards and Mathura told us to work about the house and that he was going to the police to report.

21. Mathura told us to say nothing if we were asked except that Ramautar had gone out with his horses and had not returned.

22. I went to my home about five o'clock and I did not see Mathura again that day.

20 23. Jimidar Singh came about fifteen minutes after Mathura and Mahadeo came home.

24. Next morning I was told by Mahadeo that Ramautar's body had been thrown away during the night but he would not tell me who had done it.

25. On the same day Mahadeo pointed out to me where Ramautar's body had been thrown. He pointed towards the hill behind Badal's house.

That is all. X Signature in Hindi.

30 Taken by me at Tagi Tagi this 14th day of February, 1934.

J. PROBERT.

Certified true copy. E.A. BARNETT.

P. Inspector General. 7 Dec. 1934.

In the Supreme  
Court of Fiji.

No. 2

FURTHER STATEMENT OF SUKRAJ (F/N CHET  
SINGH) OF TAGI TAGI.

No. 2

Further State-  
ment of Sukraj,  
15th February,  
1934.

1. I want to tell you something.

2. On the Thursday when we were working together Sarandas and Ramautar were joking with each other although they were using bad language to each other.

3. Sarandas became angry and caught hold of Ramautar who then fell on the ground.

10

4. Sarandas caught hold of him when he was on the ground and then tried to get up and leave him but Ramautar caught him by the legs.

5. Mahadeo told me to go and separate them and I told him that it was his work to stop them.

6. Mahadeo then went and tried to separate them and then Sarandas went away and did some weeding.

7. Ramautar was still on the ground and Mahadeo caught hold of him by the neck and did not let him go for some time.

20

8. Whilst Mahadeo had hold of Ramautar's neck Ramautar was struggling the whole time but he became quiet later on and then Mahadeo stood up.

9. Mahadeo then called me and when I went over I saw that Ramautar was dead.

10. Mahadeo then said to me "What can we do now." I told him to please himself.

11. Mahadeo then said to me and Sarandas "Let us take the body away and hang it to a tree".

30

12. Mahadeo then took a turban from Ramautar's head and tied it around his neck and the three of us then took the body to where there is a Saijhan tree and we put it on the ground and left it.

13. The three of us then went to Mathura's house and when we reached there I heard Mahadeo tell the people that Ramautar had hanged himself.

14. I heard Mahadeo ask his mother where Mathura was and she told him at Daya Singh's house. Mahadeo then ran from his house and later returned with his father.

15. Mathura asked me what had happened and I told him exactly what had occurred.

10 16. He told us to stay near the house that afternoon and to tell anyone that may make enquiries that Mahadeo Sarandas and me had been weeding and that Ramautar had taken the horses out on the hills.

17. Mathura told us that he was going to report to the police that Ramautar was missing.

18. For the next few days I helped to search for Ramautar.

20 19. I left Mathura's house about five o'clock and whilst I was walking home I met him on the road. He stopped and spoke to me asking me to come near his cane field about seven o'clock that night. He told me that he would meet me there and then we would take Ramautar's body and throw it in the bush.

20. I went home, had my food and about seven o'clock I went to Mathura's cane field. Mathura was there before me and Mahadeo was with him.

30 21. Mahadeo and me held a manure bag open and Mathura put the body into it. The bag was then tied to a stick with Ramautar's turban and we then took turns to carry it away. We carried it to the hill and took it out of the bag and left it there.

22. Mathura fastened the turban around Ramautar's head and took the stick away with him. The bag was left near the body.

23. Mathura and Mahadeo then left to go home and I went to my house.

In the Supreme  
Court of Fiji.

—  
No. 2

Further State-  
ment of Sukraj,  
15th February,  
1934 - continued.



In the Supreme  
Court of Fiji.

No. 2

Further State-  
ment of Sukraj,  
12th February,  
1934 - continued.

24. I went to Ra about twelve days later to a wedding and remained there five days.

25. I went to Mathura's and he told me that he had put Ramautar's head and some bones in a swamp and he asked me to try and get the rest of the bones and throw them away also. I told Mathura that I could not do that for him.

That is all I want to say.

Signature in Hindi.

Taken by me at Namosau this 15th day of February, 1934.

Sgd. J. PROBERT. Sub Inspector.  
" ZAMIN HUSSAIN.

Certified true copy. E.A. BARNETT.

P. Inspector General. 7 Dec. 1934.

No. 3

Charge, 16th  
February,  
1934.

No. 3

C H A R G E

FIJI )  
To Wit)

District of Ba.

The charge of Jack Probert, Sub-Inspector of Fiji Constabulary in the District of Ba in the Colony of Fiji taken this sixteenth day of February in the year of our Lord 1934 before me who saith that Mahadeo on or about the 18th day of January in the year of our Lord one thousand nine hundred and thirty-four at Tagi Tagi in the Colony of Fiji feloniously wilfully and of his malice aforethought did kill and murder one Ramautar and that Mathura, Sarandas and Sukraj well knowing the said Mahadeo to have done and committed the said felony in form aforesaid, afterwards, to wit, on or about the

day and year aforesaid him the said Mahadeo did feloniously receive harbour and maintain; Against the form of the Statute in such case made and provided and against the peace of our Lord the King his Crown and dignity.

(Sgd.) JACK PROBERT.

Sworn before me the day and year first above mentioned at Narovurovu in the said District in the said Colony.

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(Sgd.) WILLIAM BURROWS,  
District Commissioner.

Ord.III of 1876. A.

In the Supreme Court of Fiji.

No. 3

Charge, 16th February, 1934 - continued.

No. 4

INFORMATION BY THE ATTORNEY GENERAL

THE KING v. MAHADEO MATHURA AND SARANDAS)  
In the Supreme Court of Fiji ) No.14  
Lautoka Circuit Court ) of  
1934

No. 4  
Information by the Attorney General, 8th May, 1934.

MAHADEO, MATHURA, and SARANDAS are charged with the following offences respectively:-

20

FIRST COUNT  
Statement of Offence.

MURDER

Particulars of Offence.

MAHADEO, on the 18th day of January, 1934, in the district of Ba, murdered Ramautar.

SECOND COUNT  
Statement of Offence.

MURDER

Particulars of Offence.

30

SARANDAS on the same date was present, aiding, abetting and assisting the said Mahadeo to commit the said crime.

THIRD COUNT  
Statement of Offence.

Accessory after the fact to murder.

Particulars of Offence.

40

MATHURA, well knowing that Mahadeo had murdered Ramartar, did on the 18th day of January, 1934, and on other days thereafter, in the district of Ba, receive, comfort, harbour, assist, and maintain the said Mahadeo.

DATED this 8th day of May, 1934.

(Sgd.) R.S. THACKER,  
Attorney-General.

7a.

No. 4a  
LETTER, APPELLANT'S ATTORNEYS TO THE  
ATTORNEY-GENERAL WITH ENCLOSURE.

In the Supreme  
Court of Fiji.

LAUTOKA.  
14th May, 1934.

No.4a  
Letter, Appellant's  
Attorneys to the  
Attorney-General,  
14th May, 1934.

The Honourable the Attorney-General,  
Lautoka.

Dear Sir,

We enclose copy of a letter which we have just  
despatched to the District Inspector of Constabulary  
which speaks for itself.

Yours faithfully,

(Sgd) CHALMERS & RICE.

10

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LAUTOKA.

14th May, 1934.

The District Inspector of Constabulary,  
Lautoka.

Dear Sir,

re Rex v. Mahadeo and Mathura.

20 In connection with the trial of these cases we  
are asked by counsel for the accused that you  
arrange for production of all statements by the  
three accused and by Sukraj, other than those  
which have already been produced as exhibits in  
Court.

We should be glad if you would kindly make  
arrangements accordingly.

Yours faithfully,

In the Supreme  
Court of Fiji.

Prosecution  
Evidence.

No. 5.

No. 5  
EVIDENCE OF PHILIP HARPER

CIRCUIT COURT, LAUTOKA  
CRIMINAL SESSIONS.

15th May, 1934.

Before His Honour Captain Maxwell Hendry Maxwell-  
Anderson C.B.E., K.C., R.N. (Rtd.)  
CHIEF JUSTICE.

R E X	v.	MAHADEO	MURDER	
		MATHURA & SARANDAS	ACCESSORY AFTER FACT	10
PLEAS:		MAHADEO NOT GUILTY	to murder	
		MATHURA NOT GUILTY		
		SARANDAS NOT GUILTY		
ASSESSORS:		Claude Samuel Israel )		
		Sydney Burdkin Bossley )		
		Reginald Arlington Gale )	SWORN	
		Harold Warne Nicholls )		
INTERPRETER:		B. R. RAGHVANAND.	SWORN	
R.S.THACKER, Esq:		ATTORNEY-GENERAL FOR THE CROWN		20
MESSRS. N. CHALMERS & P. RICE:		FOR THE ACCUSED		
		MR. RICE FOR MAHADEO		
		MR. CHALMERS FOR MATHURA		
		SARANDAS - UNDEFENDED.		

THE ATTORNEY-GENERAL OPENS.

Philip Harper  
examination.

PHILIP HARPER: Sworn

I am the District Medical Officer at Lautoka. On the 2nd March I received 68 bones (EXHIBIT "A") I had them in my possession until the 22nd March. I received them back again at the Lower Court at Ba. It was two days after the 22nd March. I am not quite sure. I think these bones were on the ground between two weeks and three months. It must have been more than two weeks but not more than three months. It was very hot weather at the time. Ligaments were there on some of the bones. Several

on the collar bones. The bones generally felt greasy and smelt slightly; they were much wetter than they are now. This exhibit is grouped into 18 groups and numbered 1 to 18. No. 1 is vertebrae. No.2 is two scapulas right and left. No.3 two collar bones right and left. They are slightly different, absent on the left but on the right there is a depression. No. 4 is the left upper arm bone. No. 5 fore arm bones and No.6. Nos. 7 and 8 are ribs from the left side. No.7 contains 10 bones. No.8 there are seven. No.9 is the bone at the bottom of the vertical column. No. 10 two iliac bones the hip bone Nos.11 and 13 two bones forming the lower part of the hip bone. No.10 is called ilium. No. 13 two thighbones. Just below No.13 on the right side is the head of the bone, like a cap in young persons, this is distinct in the main bone.No.14 the left tibia and the shin bone. No. 15 fibulas. They are on the outer side of the leg, bit of the shin bone. Nos.17 and 18 and 16 are small bones or fragments. No.16 is fragments. I have not the slightest doubt that these are bones of a human being. I feel sure that the bones might all have come from the same body. The age of the person whose bones they are, I took three special points to determine the age, one was the corocoid process. That process joins up firmly with the main bone at the age of 15; the process is there on the right side ready to join up it is absent on the left, in fact is exceedingly near the stage of joining up on the right side. That would place the subject's age somewhere near but under 15. The second point that I took the small trochanters of the thigh bone. Here is the left process where it joins on. There is a memulating surface there. That puts the age at under 18 and probably over 13. The junction of the three main portions of the hip bone where they join to form the hip joint junction takes place at puberty at or about puberty. These are barely joined.

TO THE COURT: This amounts to the age I think in my own mind. I feel sure that the child was certainly between 12 and 15. It would be difficult to give actual definite ages.

TO THE ATTORNEY-GENERAL: The age would be round about puberty. I cannot tell the sex there is no indication there. No. 8 one of the bones is broken. The break might have occurred before death or after

In the Supreme  
Court of Fiji.

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Prosecution  
Evidence.

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No. 5  
Philip Harper  
examination -  
continued.

In the Supreme  
Court of Fiji.

Philip Harper  
examination -  
continued.

Cross-examination  
by Mr. Rice.

death. If it occurred before death I did not mean to say that the break took place just before death. It might have taken place before or any time after death while the bones were still moist enough to break and bend. The bone is partly fractured.

XD. MR. RICE:

The break occurred either just before death or some time after death while the bones were still moist enough to bend. This is a greenstick fracture. Old people do not have greenstick fractures. Taylor's Medical Jurisprudence. Extract from page 520 Vol.1. 6th edition (This read by Mr. Rice). I agree with what is written there. This particular fracture is essentially one of bending. I do not think it would have been caused by a stone. It is unlikely that it is caused by a stone. I should think it unlikely that it would be caused by a blow from a heavy instrument. It would take about the same amount of force as to break this whole one (breaks one). This fracture may have been caused just before death at death or after death. If it was caused before death it would take considerable force to break it. A kick in the ribs would cause the fracture. A blow from an instrument would cause the break. It appears to me that the bone was broken after death. There is quite a distinct possibility of it being broken before death.

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Cross-examination  
by Mr. Chalmers.

XD. MR. CHALMERS:

If he had been knocked down on the ground the boy might have got that fractured rib. If the fracture occurred while the boys were having a fight the boy would have suffered considerable pain. Internal hemorrhage coming from a break like this would cause death but it is not likely in this case the way the break is. There is no evidence of hemorrhage taking place. This is the only one that I could definitely say was broken. Many of them are gnawed by animals. The bones appear to have been chewed or gnawed by animals. This is the last bone on the vertebrae. There are no knife marks on these bones. They are perfectly clean.

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Re-examination.

RE-XD. ATTORNEY-GENERAL:

If he was dying from a hemorrhage it would

take much longer than three minutes for the boy to die. If he was dead in three minutes he would not die from the hemorrhage. It is quite possible for a dog or someone to have trodden on it to have caused this fracture.

In the Supreme Court of Fiji.

Prosecution Evidence

No. 5

Re-examination - continued.

No. 6

EVIDENCE OF HOWARD BIRKENHEAD RILEY.

No. 6

Howard Birkenhead Riley.  
Examination.

10

HOWARD BIRKENHEAD RILEY. SWORN: I am a qualified dentist practising in Lautoka. On the 4th March I received 13 teeth from Inspector Probert. They were loose teeth. I mounted them on a model to show how they are articulated (EXHIBIT "B"). I examined them carefully and they are in the position they would be in the mouth. They are human teeth. I should say they belong to a male about 40 to 45. I definitely state that they are the teeth of a male. The size and length of the teeth, the diseased patches on several of the teeth would not be present in a young person. 7 teeth are not diseased, six are diseased. I am quite definite in my opinion that they are the teeth of an adult person not under the age of 40. People may be able to get the teeth from a skull but they would not make a collection. The teeth do not show any signs of being used by forceps. It is quite in keeping that they have been removed from a skull. The teeth have never been extracted by a dentist.

20

TO THE COURT:

30

I had an odd tooth over that I could not fit in. It does not appear to belong to this set. It has been attacked by a disease and it does not fit in the upper row. All the top ones came from the same head the bottom ones perhaps not.

No. 7

EVIDENCE OF JACK PROBERT.

No. 7.

Jack Probert Examination.

JACK PROBERT. SWORN:

I remember the 22nd January of this year. About 10 a.m. I saw Mathura in my office with

In the Supreme  
Court of Fiji.

Prosecution  
Evidence.

No. 7

Jack Probert  
Examination -  
continued.

Lance Corporals Ranjan Singh and Zamin Hussain. The accused made a report on the 18th January a young boy who had been working for him about 13 or 14 years had taken Mathura's horses out on the 18th January and had not since been seen. He then said that he became worried when Ramautar had failed to turn up for lunch. That he had searched all that afternoon on the 18th and he made a report to the Police at Tavua Sub Station. He said that the search had been continued on Friday, Saturday and Sunday the 19th, 20th and 21st. I instructed Lance Corporal Narsin to search. I had no idea that any murder had been committed. I was making enquiries about a boy that had got lost. I sent on the 24th January Sergeant Zamin Hussain to Tagi Tagi. On the 13th February I saw one of the accused Sarandas. He made a statement taken down in writing read back to him, and signed as being correct. I was still making enquiries about a lost boy. Sarandas was brought to me by Mr. Powell a European. (EXHIBIT "C"). This is the statement signed by Sarandas. (Statement read by Clerk of the Court). On the 14th I went with Sergeant Zamin Hussain to Tagi Tagi and continued enquiries there. About a week later I made a plan of the locality. (EXHIBIT "D"). This is the plan I made. The distance between the Saijhan tree and where the body was laid is 28 chains. On the 14th February I went to Budal's house. I saw Mahadeo there. Sukraj, Sarandas and about 20 to 25 other people were there. I called Mahadeo away and asked him if he had any knowledge where the body of Ramautar was. He then pointed between two houses of Budal's towards a stony hill. The hill is 24 chains away from Budal's house. About one third of a mile. Budal's houses on the plan are a group of three. Mahadeo was at the house, he did not point to any other spot. He led the way and followed by Zamin Hussain and myself we went to the stony Hill. He first of all stopped near a balawa tree then he looked round and finally went a little further on until he reached another balawa tree. I searched amongst the stones around the balawa tree and recovered 36 bones most of them smelt of decay and one of the ribs was fractured. I showed that rib to Sergeant Zamin Hussain. This was on the 14th February. Some 26 days after the event. I then went back to Ba with Mahadeo and Mathura. I had not arrested them at this time. I had no suspicions. I took them to Namosau. That is my

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headquarters. I saw Mahadeo again that night about 9 p.m. They had food at the police station. I asked Mahadeo questions. They were interpreted by Sergeant Zamin. (EXHIBIT "E"). This is the statement made by him. Still making enquiries about the lost boy. (Statement read by Clerk of the Court). I saw Mathura. I took a statement. He gave the statement without interrogation. (EXHIBIT "F"). This is the statement. (Statement read by the Clerk of the Court). The statement was interpreted by Zamin Hussain.

In the Supreme Court of Fiji.

Prosecution Evidence.

No.7

Jack Probert Examination - continued.

10

COURT ADJOURNED AT 12.42 p.m.

COURT RESUMED AT 2.10 p.m.

On the evening of the day I took the statements Exhibit E and F they slept at the Namosau Police Station in Constable Ram Singh's house. I asked them if they wished to leave the station and they said they wished to stay at the station.

TO THE COURT:

20

The Government would pay for their keep.

TO THE ATTORNEY-GENERAL:

This statement was made through the interpretation of Sergeant Zamin Hussain. I knew enough Hindustani and what my wishes were was explained fairly to them. On the 15th February I came to Tagi Tagi with Sergeant Zamin and Mahadeo and Mathura. Sarandas was there. I went to the house of Budal and there I asked Mahadeo how was it that he knew that Ramautar was up on the hill. He said my father Sukraj and myself took it up there. I asked him which way the body was taken. I asked him if he went up by Budal's houses, and then he pointed to the cane field of Mathura which are behind the houses of Budal and from there he went back to the Saijhan tree and from there returned to the houses of Budal. Before reaching Budal's house he turned to the left and went towards the gully. He went out and I followed him. He got through a wire fence, went through some guava scrub skirted some heavy timber leaving it on our right and then straight up the hill to where the body was. Search was continued by everybody and 17 more bones were found. Sergeant Zamin, Mahadeo, Sarandas, Mathura and quite a number of other people. 17 bones found that day and that night

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In the Supreme  
Court of Fiji.

Prosecution  
Evidence.

No. 7  
Jack Probert  
Examination -  
continued.

about 7.15 p.m. I sent Mahadeo, Mathura and Sarandas to the Police Station. The spot where the bones were found was about 50 by 50 feet. I left Tagi Tagi that night and sent Mahadeo, Mathura and Sarandas and Sukraj. They arrived at the Police Station before me. A few minutes after I got home Mr. Chalmers saw me and said "Is Mathura here". I said "Yes" and we then walked through the compound where I met Mr. Rice and his Clerk. Mr. Chalmers sent for Mathura and on his arrival conversations were carried out with the aid of Mr. Chalmers's Clerk. They had not at this time been arrested and formally charged. Mr. Chalmers asked me if he had been arrested and I said "No." He then asked me had he made a statement and I said "Yes he had." Mr. Chalmers turned to him and said, "Mathura whether you have been arrested or whether you have not do not make any statements without first being cautioned." Later on that evening about 9 p.m. I saw Sarandas. Mr. Chalmers went away. Mr. Chalmers had no conversation with me that night. Later that night I sent for Sarandas and on his arrival he was charged with being an accessory after the fact to murder and then cautioned. Later he made a statement to me which was purely voluntary and on its completion it was read back by me interpreted by Sergeant Zamin. Sarandas accepted it as correct and signed it. I asked him if he wished to make a statement and he said yes. After he was charged I said Sarandas do you wish to say anything against this charge. You need not say anything unless you wish to do so. Anything that you do say will be taken down in writing and may be used as evidence against you. (EXHIBIT "G") That is the statement. (Statement read by the Clerk of the Court). Sukraj was then charged. He was charged being accessory after the fact to murder and cautioned and he also made a statement. It was a written statement. This is the statement (EXHIBIT "H"). (Statement not admitted protem) Mathura was then arrested on the charge of being an accessory after the fact and cautioned in the same way as the others. In reply to the caution he said I do not wish to say anything. This was not written down. Subsequently Mahadeo was then arrested on the charge of murder he was cautioned and later he made a voluntary statement which was taken down in writing read back to him and interpreted to him and he signed it as being correct. This is the statement (EXHIBIT "H"). Statement

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read to the Court by the Clerk). By this time four of them had been charged and cautioned. On the 19th February I got some buttons from Constable Sitiveni. These are the buttons. (EXHIBIT "I") I also took possession of some teeth and one long bone. On the 21st February I found one vertebrae and some other bones. These bones were found while I was there. They were found in the same spot as the other bones had been previously found. The hill where these bones were found has many ironstone outcrops on it and covered with bush. The place was hard to find anything, the small bones were not found until some time later. The guava was 9 feet or 10 feet high. Some of it was small and the surface is practically covered with ironstone outcrops. It was not a spot that anybody would pass. It is purely a stock paddock and no buildings on it at all. Some people might pass along Chetwa's fence. It was a very favourable place to hide anything. There is very little grass there. Guava bush is never cut there. On the 21st February I took the 68 bones to Dr. Ramsay and also the 13 teeth. On the 2nd March about 9 a.m. I got the same bones back from Dr. Ramsay together with the teeth. On the same day I came to Lautoka and handed the same bones over to Dr. Harper. 13 teeth to Inspector Lucchinelli. On the 6th March in my office I was approached by Mahadeo and Sarandas. Each of them said they wished to see the District Commissioner and I reported to Inspector Lucchinelli. Inspector Lucchinelli took them to the Court house and I know nothing further about them.

XD. MR. RICE :

Mathura is the step-father of Mahadeo. I know there is no blood relation. I found out Mahadeo's age from his mother. She gave it as between 17 and 18. From Badal's house to the spot where the bones were found is 24 chains. I put the chain over it. I did not make it known to the three on the 14th February that they could go to Varoko and that the Government would pay for them. The inference was that they could go if they liked. On the 15th February when I went to Tagi Tagi Sukraj did not go with us. He was in charge of the horses and went round another way. Sukraj was present when the search was continued on the 15th. On the evening of the 15th February Mr. Chalmers

In the Supreme Court of Fiji.

Prosecution Evidence.

No. 7

Jack Probert Examination - continued.

Cross-examination by Mr. Rice.

In the Supreme  
Court of Fiji.

Prosecution  
Evidence.

No. 7

Cross-examina-  
tion by Mr. Rice -  
continued.

asked me why are the men here. That was after I had told him that they were not under arrest. He was referring to Mathura only that he had no right there. I did not object to this. I asked Mr. Chalmers if he was serious. I do not remember his reply. On the night of the 15th I decided to arrest him. At 8.20 p.m. that night I had suspicion that a crime had been committed. During the afternoon of the 15th I had no suspicion. It was just before dusk. I did not suspect any crime whatever up to this time. Mahadeo was not present when Mr Chalmers had this conversation with me. He was having his tea at the Station. The last statement taken was Mahadeo's and it was not completed until 11.30 p.m. or 11.45 p.m. that night. The taking occupied about half an hour. It consisted of one sheet of foolscap. Just prior to that the statement of Sukraj was taken. He said he did not wish to say anything. That occupied about five minutes. Just prior to that I took the statement of Sukraj. This would be completed just before 11 p.m. It took about an hour to take it. Sarandas was charged at 9 p.m. and his statement occupied something over an hour. They came in to the Station in a public vehicle in charge of Constable Gadru and Lance Corporal Paula. That boy was in police company all that day and all that night and his statement was not taken until 11.50 p.m. I thought it fair for him to have his tea and a rest, before charging him. Sukraj had made a statement the day before. Sukraj made two statements, one on the 14th and one on the 15th. The other statement was taken at Tagi Tagi on the 14th. In his statement of the 14th he attributed Ramautar's death to suicide. From Badal's house to the spot where the bones were found was 24 chains and from there to Sajhan tree is 3 chains 24 feet. Badal's house is a considerable lower level. The place where I found the bones could not be seen owing to the presence of guava. Cattle graze at this spot. They belong to Chetwa. The stock is not herded in the term that we know it. They are visited about once a week. I know this from enquiries made by me from Chetwa. I am not certain that Chetwa's stock is the only stock there. It is quite conceivable that the owners of other stock might visit this spot. On the 6th March I was approached by Sarandas and Mahadeo who said that they wanted to visit the District Commissioner. I

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was also approached by Sukraj. On the evening of the 15th Sukraj was arrested along with the other three men and the charge was being an accessory after the fact to murder. He was out on bail when I was on sick leave. I do not know how long he was in custody. It was after the 6th March. Sarandas and Mathura were also out on bail. The order of bailing Mathura first, Sukraj next and Sarandas after that. Sukraj was released from custody by the Magistrate on the 16th April. He was brought to Court and then released. When he was arrested I considered that I had sufficient evidence against him to charge him with being an accessory. Sukraj gave evidence in the Lower Court on the second or third day. On the night of the day he was released I cannot tell where he slept. I have no knowledge as to whether he was at the Station or not that day. Between 18th 19th 20th and 21st of January searches were made. They were under the control of Lance Corporal Narainjan Singh. Later he continued the search. He had pretty well every one assisting him. I had a statement from Sarandas on the 13th, one from Mahadeo on the 14th one from Mathura and from Sukraj on the 14th. I put leading questions to them. I would not call it severe investigation. We enquired into it pretty thoroughly. From these statements there was not sufficient evidence to take action against any one of them. About a week after the tragedy I saw Sarandas. He was with Mahadeo and Sukraj. This was the 24th January. I was in my office when I saw them. They were brought there by Sergeant Zamin by my instructions. I subsequently found out that two other men came with them. Mathura was one of the other men. On the 6th March Sukraj expressed a wish to see the District Commissioner. I do not know whether they saw the District Commissioner.

XD. MR. CHALMERS.

Mathura came with Narainjan Singh. I questioned Mathura fairly closely as to what had become of the boy. I did not treat his disappearance as of very great importance at this time. Mr. Powell gave me the information. He arrived at Namosau early that morning. I then went into the matter very thoroughly with Sarandas. As a result I obtained a clue from the statement taken on the 13th February. This threw

In the Supreme Court of Fiji.

Prosecution Evidence.

No. 7

Cross-examination by Mr. Rice - continued.

Cross-examination by Mr. Chalmers.

In the Supreme  
Court of Fiji.

Prosecution  
Evidence.

No. 7

Cross-examination  
by Mr. Chalmers -  
continued.

some light on the boy's disappearance. He gave a fairly lengthy report of what he told Mr. Powell. He said that there had been a fight between Sukraj and the deceased. That they had been squabbling for some time. I did not then suspect that there might have been foul play. The statement referred to this boy having been pushed down. I have heard the expression "press them". I looked upon it as a childish squabble. I formed the opinion that the boy might have gone away and committed suicide. I do know that the mother and father are living on the wages of the little boy. They might have been sick at the time of the Lower Court. The parents were living on this boy's wages. They are living in Mathura's stable. After getting the statement from Sarandas I then got in touch with Mathura, Mahadeo and Sukraj. I gave them a very close examination. During the course of this investigation I did not call their attention to what Sarandas had said. I asked questions throwing light on what Sarandas had said. I only saw Sarandas at Tagi Tagi. I went out and conducted the enquiry all day on the 14th. I only saw Sukraj. I questioned him at Tagi Tagi. What Sukraj told me confirmed the theory of suicide. Mathura and Mahadeo I saw at the Station. They accompanied me from Tagi Tagi to the Station. All the statements before the Court are the result of my investigations. Right up to the time of the arrest nobody had implicated Mahadeo. Sarandas, Mathura or Sukraj did not implicate Mahadeo at any time or in any way. I cannot remember whether Sukraj implicated Sarandas in his statements. It was not after these boys had been arrested that I got information about the Throtling. I got this information at Tagi Tagi. There are a number of statements in this case. Sergeant Zamin Hussain acted as interpreter. The statements are answers asked by me and interpreted. A man named Dawa is mentioned in the depositions. I saw this man. The statement of Sarandas made on the 15th February paragraph 13. This statement refers to a time prior to Mahadeo going to get his father. This statement conveyed nothing to me. I knew about it on the 13th.

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COURT ADJOURNED AT 3.56 p.m. UNTIL 10.0 a.m.  
on the 16th May, 1934.

No. 8  
EVIDENCE OF SITIVENI WAQA.

In the Supreme  
 Court of Fiji.

COURT RE-OPENED AT 10.0 a.m. on 16th MAY 1934.

Prosecution  
 Evidence.

SECOND DAY

No. 8

SITIVENI WAQA. SWORN:

Sitiveni Waqa  
 Examination.

10 I am Sitiveni Waqa and I am Constable No.37.  
 On the 19th February I remember what I did. On  
 Monday 13th February went with Sub - Inspector  
 Probert to Tagi Tagi to search for a lost boy.  
 20 Went to Tagi Tagi and searched in a fence where  
 cattle were on the hills with other Indians. While  
 we were searching in the hills Latchmann Singh  
 called me. He found some teeth. I went to him  
 and he shewed me where he had found the teeth. I  
 took possession of them. Continued search on the  
 spot where teeth were found. Found again 12 teeth  
 and two khaki buttons. After that we searched  
 again. I found a bone near the place where  
 teeth were found, about two yards away from where  
 20 teeth were found. I then sent to the Inspector,  
 and on his arrival handed the teeth and the bones  
 to him. I was also present when other bones were  
 found. These were found on the same spot. The  
 bones were found four or five days previous to  
 the finding of the teeth.

No. 9  
EVIDENCE OF LATCHMAN SINGH.

No. 9  
 Latchman Singh  
 Examination.

LATCHMAN SINGH. SWORN.

30 I remember a day in January last. I was in  
 the Tagi Tagi district. I was with the police  
 for the purpose of searching for the body of a  
 boy. Some teeth were found. I found some teeth  
 12 or 13. Some other people were there with me  
 apart from the Police. A Fijian constable was  
 with me. His name was Sitiveni and another  
 constable further away. I found 12 or 13 teeth.  
 I found also two buttons. I handed them to Con-  
 stable Sitiveni.

XD. MR. CHALMERS.

Cross-examina-  
 tion.

40 The teeth were found under guava leaves.

In the Supreme Court of Fiji.

Prosecution Evidence.

Some of the leaves were fresh and some old. The leaves appeared to have fallen from the trees, also balawa leaves. The teeth were found under some earth. They must have been there some short time. I cannot say how long.

No. 9

Cross-examination by Mr.Chalmers - continued.

No. 10

EVIDENCE OF IVO LUCCHINELLI.

No.10

Ivo Lucchinelli Examination.

IVO LUCCHINELLI. SWORN.

I am District Inspector at Lautoka. I received 68 bones from Dr. Harper on the 22nd March. These are the bones. He handed them back to me on the 16th April. I received 13 loose teeth from Sub Inspector Probert and handed them to Mr. Riley on the 4th March and received them back on the 7th March and handed them to him on the 11th April. I handed them back to have an alteration in the mounting of the teeth. There was one spare tooth which was duplicated and he mounted it on the right hand side. It was at his request that they were handed back. I can identify them. On the 6th March I saw Sarandas and he made an application to me to see the District Commissioner for the purpose of making a statement. At the same time he asked to be admitted to bail and he was told that he would not. I then asked him if he had been influenced in any way by the Police or other persons to make a statement and he said he had not. I next saw Mahadeo who made a similar application and also asked if he could be admitted to bail if he made a statement. I said he could not have bail at all. I also asked him if he had been influenced by anyone to make a statement and he said not. I told him that I had arranged for him to see the District Commissioner and in the meantime to reconsider the matter of making a statement. If he changed his mind to let me know. I then saw Sarandas and Mahadeo and that they were taken into the Court House and left in charge of the Court Clerk by whom they were taken before the District Commissioner. I later received two statements from Mr.Burrows one said to be that of Sarandas and one from Mahadeo, said to be. I identify Exhibit "J" as being statement of Sarandas and Exhibit "K" statement of Mahadeo. (Statements read by the Clerk of the Court).

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XD. MR. RICE.

10 Only from what I have heard there is no blood relationship between Mahadeo and Mathura. Sukraj also said that he wished to go before the District Commissioner. Sukraj did go before the District Commissioner, with the other two. He made a statement before him. That would be his third statement. Bail was out of the question for Mahadeo on account of his charge of murder against him. I cannot say that I would have opposed an application for bail. I would have asked for instructions on this point. Mathura had already been released on bail at that time. There is no reason that Sarandas could not have had bail. I did not want to influence him in any way. Sarandas would know at that time that Mathura had been bailed. Bail was the dominant motive for his application to make a statement. Up to that date there had been no previous application from Sarandas. I cannot speak for Sarandas I can only be guided by his answers. He was not at that time represented by Counsel and he still is not. As far as I know this idea of bail never came from any legal adviser.

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RE-XD. ATTORNEY-GENERAL.

Being unrepresented by counsel and being entirely on his own it is possible that he wished to make a statement as he desired to tell the truth.

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No. 11

EVIDENCE OF KIRSHMANSAMY MANIKAM SUBRAMANIAM.

KIRSHMANSAMY MANIKAM SUBRAMANIAM. SWORN.

40 I am the Clerk in the District Commissioner's office at Ba. On the 6th March Mr. Burrows was the District Commissioner at Ba. I saw Mr. Burrows on that day. I went with three accused one after another. I went with Sarandas Sukraj and Mahadeo. They made statement. Sukraj Sarandas and Mahadeo. I interpreted those statements and Mr. Burrows took them down in writing. They were read back and signed by the persons and witnessed. I witnessed the statements. Exhibit "J" is the statement made by Sarandas. Exhibit "K" is the statement of Mahadeo.

In the Supreme Court of Fiji.

Prosecution Evidence.

No.10 Cross-examination.

Re-examination.

No.11

Kirshmansamy Manikam Subramaniam Examination.

In the Supreme  
Court of Fiji.

Prosecution  
Evidence.

No.12  
Narainjan Singh  
Examination.

No. 12

EVIDENCE OF NARAINJAN SINGH.

NARAINJAN SINGH. SWORN.

Lance Corporal No. 78 stationed at Tavua sub-  
station. On the 18th January someone came to  
see me. It was Mathura came to me. It was 5 in  
the afternoon. He made a remark to me. He said  
a boy grazing horses and he had not returned we  
do not know whether he was lost or not. He said  
the boy named Ramautar. I asked him to go and  
look for the boy and let me know later. I saw him  
later. He came to me at 2 p.m. on the 19th and  
said that he could not find the boy. He had  
looked for him but could not find him. I sent  
constable Teniela to go and search for the boy.  
I saw Mathura again on Saturday about 11 a.m.  
This was the 20th. He came on the 18th 19th and  
20th. He came on the 20th at 11 a.m. He said  
the boy had not been found and that they had  
looked for him. I then went and searched. This  
was on the Saturday the 20th. I searched on the  
21st Sunday. On the 22nd I went to Ba. Mathura  
also went with me.

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TO THE COURT :

Tavua is 18 miles from Ba. Tavua police  
station is about 6 miles from Tagi Tagi. I went  
on the first occasion by car.

No. 13

EVIDENCE OF SUKRAJ.

SUKRAJ. SWORN.

I live at Tagi Tagi. I have been there 3  
years. I have been working during those 3 years  
for Mathura. I recognise the three people in  
the dock. Mahadeo is the first, in the middle  
Mathura and the other one Sarandas. I knew a  
boy called Ramautar. Sarandas also worked for  
Mathura and also Ramautar. I remember a certain  
day in January. It was a Thursday. I got out  
of bed before 5 a.m. I went to work for Mathura  
at 5 a.m. I went alone. The work was weeding  
cane. This work was for Mathura. The work had  
to be done below Badal's house in Mathura's field.

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There were four of us working. Mahadeo Sarandas Ramautar and myself were the four. First of all I went to Mathura's house and then to the field. I went alone to Mathura's and from there four of us. We reached the cane field at 6.30 a.m. We were working together but in different rows. We were cutting grass. About 10 a.m. these people began to talk amongst themselves in reverse language. These people I mean Sarandas and Ramautar. By talking in a reverse way. I mean they were talking in a way I cannot understand. I do not know this particular way of talking. This reverse conversation lasted from 10 to 11.30 a.m. Then Sarandas abused Ramautar. The words used were accusing him of improper relations with other persons. Sarandas accused Ramautar. Ramautar retorted back in the same manner using bad language. Sarandas went up and got hold of Ramautar after the abuse. Sarandas put Ramautar down. Ramautar became angry and got hold of Saranda's legs. Sarandas wanted to get away from Ramautar and finish his grass cutting. Ramautar hung on to him and would not let him go. Mahadeo said to me go and separate them. I refused to go and said to Mahadeo I am working for you exactly the same way as Ramautar and Sarandas. Mahadeo then went to separate Sarandas and Ramautar. Mahadeo took Sarandas away. Mahadeo got hold of Ramautar's throat. Before Mahadeo went to get Sarandas away Sarandas was attempting to get away. Ramautar had held him by his legs. Mahadeo came up and tried to get Sarandas away from Ramautar. He separated Sarandas from Ramautar and took him away. Mahadeo got hold of Ramautar's throat, we were cutting grass at the time. Ramautar was on the ground. Mahadeo called out in a short time and said come and see what has happened to Ramautar. Mahadeo caught Ramautar by the throat while Ramautar was on the ground. Mahadeo's hands were at Ramautar's throat until such time that we came up to him. I cannot say in minutes but we were about a chain away. We walked up to Mahadeo and Ramautar. By we I mean myself and Sarandas. When we arrived saw Ramautar quivering, or fluttering. By fluttering I mean that his hands and feet were shaking. That fluttering went on for three minutes and then life became extinct. Mahadeo said what is to be done with him. I said please yourself, do what you

In the Supreme  
Court of Fiji.

Prosecution  
Evidence.

No.13

Sukraj  
Examination.

In the Supreme  
Court of Fiji.

Prosecution  
Evidence.

No.13  
Sukraj  
Examination -  
continued.

like. Mahadeo said let us tie a sulu to his neck and place him under the tree. Mahadeo then took the turban which Ramautar had on his head and tied it round his neck. From there Ramautar was taken to a Saijhan tree. Mahadeo suggested that Ramautar be taken to the Saijhan tree. We took him to the Saijhan. By we I mean myself Sarandas and Mahadeo. The Saijhan tree is in Mathura's land. There are no other Saijhan trees there. There is only one tree. The body was placed under the tree. We then went home to Mathura's house. The three of us went to Mathura's house. When we arrived there we saw Munessa, his wife. Munessa lived in Mathura's house. He is no relation to any of the accused. He is no blood relation. Ramautar's step father is Munessar. Mathura's wife was also there. Mahadeo said that Ramautar had hanged himself. Munessar and his wife then began to cry. Mahadeo asked his mother where his father had gone to. His mother said he must have gone towards Daya Singh's house. Mahadeo went and brought Mathura. He was away about half an hour. Mahadeo called us. By us myself Sarandas and Mahadeo. On being questioned by Mathura we told everything. Mathura then said do not tell this to anyone and I am going to make a report. This was in Mathura's house. We remained at Mathura's house till 5 p.m. I then went home. I met Mathura on the way. Mathura told me that he had made a report that the boy had been lost. Mathura said come let us hide the body somewhere. I refused, saying that I was frightened. Mathura said you are alone here and if you don't come we will assault you and implicate you. Being frightened I agreed to go. I went home and Mathura went to his home. We went and had food and I went through Mathura's field and we three Mahadeo, Mathura and myself met. When we met we took the body which was under the Saijhan tree put the body in a sack and tied it by a sulu and took it into the bush. I don't know how many chains, but it was some distance from the Saijhan tree to the bush. We carried a sack with the body in it to the bush. Just above the track there is Badal's house. The bush is above Badal's house. From the Saijhan tree there is a track leading up to Badal's house. From Saijhan tree we came to the track leading up to Badal's house. Went on further and there is a boundary between them. We followed that cane boundary and crossed some wire

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fence then towards the hills. When we got to the hill the body was placed under a balawa tree. The body was taken out of the sack. Mathura took the pole to his home and I went home also. Mathura Mahadeo and I went home. We did not bring the sack back with us it was left there. All this happened on the Thursday. I went to work for Mathura the next morning. When I went to work next morning Mathura said the boy has been lost  
 10 you people look for him. I looked for him. Sarandas, Mahadeo and myself and also Mathura looked for him. We looked for the body although we knew where the body was. Mathura said do not tell this to anyone as I have made a report to the Police that the boy went out grazing horses and was lost. Naranjan Singh came on the Saturday. A Fijian Constable came on Friday. Later Zamin Hussain and Constable Yadram came. I did  
 20 not then tell the true story because Mahadeo would intimidate me and also assault me if I told the true story. I remained in the District for two weeks and then went to Ra. I stayed there five days. I then went to Tagi Tagi to my home. When I came to Tagi Tagi I went to my home. I went to Mathura's home the next day. I went there and bought some goods and was going home and Mathura came about a chain away from my house and spoke to me. He said I have thrown the bones that were  
 30 there away and if there is any remaining will you go and put them away. He said you can throw away any bones that may be there. I have thrown the head and other parts away. Mathura said that he had buried the head in a swamp and that it could not be found. He did not say where the swamp was. I refused to go saying that I was afraid. I stayed in Tagi Tagi after that. I do not remember how long I stayed there. I am still at Tagi Tagi. I am on my oath now. I swear on my oath that Mahadeo strangled and killed Ramautar. I  
 40 swear also on my oath that Sarandas had some sort of a fight with Ramautar. This was just before Mahadeo killed Ramautar, but Sarandas endeavoured to get away and he got away with the assistance of Mahadeo and that then Mahadeo strangled Ramautar.

XXD. MR. RICE.

I was in Mathura's employ for three years. I was not under a Masters and Servants contract with him. I just worked there. Sarandas accused

In the Supreme Court of Fiji.

Prosecution Evidence.

No.13

Sukraj Examination - continued.

Cross-examination by Mr. Rice.

In the Supreme  
Court of Fiji.

Prosecution  
Evidence.

No.13

Cross-examination  
by Mr. Rice -  
continued.

Ramautar with improper relations and Ramautar accused Sarandas. I met Munessar and his wife in the stable of Mathura. Ghisiawani was there. Ghisiawani is Ramautar's step mother. I am not sure. Munessar and Ghisiawani are the only parents of the dead boy. Mathura said to me, you are alone and if you don't come I will implicate you. He meant to accuse me of the death of this boy. Being frightened I agreed to go and later I met Mathura and Mahadeo. This 7 or 7.30 at night. When Sarandas, Mahadeo and Mathura were arrested I was also arrested. I was charged with being an accessory after the fact along with Sarandas and Mathura. I was in custody on that charge for some weeks and then released on bail. The charge against me was not dropped until the 16th April the morning of the lower court case. Sarandas and Ramautar had a quarrel. They were pretty angry with each other. I did not take part in that quarrel. What happened was an open fight between Sarandas and Ramautar. They quarrelled. They fought and quarrelled. They fought by word of mouth. They afterwards began to fight when the abusing was finished. When I was released on the 16th April I was at the Namosau Police Station again. It was the same evening that I had been released. After I was discharged from the Court I remained at the Police Station. I was there with Constable Ram Singh. A proof of my evidence was taken of the evidence that was to be given the next morning in the lower court. It was not written by Sergeant Zamin in hindu. I did not write it. I was not given to take away a statement of the evidence I was to give. I had already made a statement. I was at the police station the whole night. I slept there. I saw Inspector Probert that evening. The Inspector told me that I was to say whatever was the truth. I did not then go through with the Sergeant and Inspector as to what I was to say the next morning. Constable took me and told me to sleep there that night. I cannot say I am not sure whether I saw Inspector Probert that night. I thought that you meant the court. He did speak to me at the court but I am not sure that he spoke to me at the station. I went with Sergeant Zamin and then to Constable Ram Singh's room. Sergeant Zamin said to Ram Singh keep this man in your room. On the 24th January I was interviewed by Sergeant Zamin along with Sarandas

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Mahadeo and Mathura. This was six days after Ramautar had died. I then said that I had no knowledge of the whereabouts of Ramautar. I am not in the habit of telling lies about serious matters. I am not in the habit of telling lies. The reason I did not tell the truth was because I worked for Mathura for three years and I was frightened of him. If Mathura had not frightened me I would have told the truth. I did not tell the truth because Mahadeo said that we were not to tell them the truth. "Them" are Munessar and Ghisiawani. I was frightened of Mahadeo. I am 25 years of age. Mahadeo is about 17. I was not afraid that he would kill me or anything like that but I thought he would make a false accusation against me. He did not tell me that he would accuse me but he did say that we all should say that the boy had hanged himself. I was the first to see Munessar and Ghisiawani. I was there for about 15 minutes before the others arrived. I am not sure if it was longer. I had 15 minutes to tell the dead boy's parents the truth even before Mahadeo and Mathura arrived there. Mahadeo and others had told me not to say anything previous to this. I did stop Ghisiawani and Munessar from going to see the body and the reason for this was that I thought they might get hurt themselves. Mahadeo did not make any attempt to stop them from seeing the body he had gone to get his father. When I left Mathura at 5 I did not see him until 7 or 7.30 p.m. I remember making a written signed statement to Inspector Probert on the 14th February. I made it at Tagi Tagi. In that statement I gave suicide as the cause of Ramautar's death.

XXD. MR. CHALMERS:

Ramautar was 13 years of age and not very weak. He looked smaller than Sarandas. When Sarandas and Ramautar were having their fight they were struggling for a short time. They began to wrestle. There were no fisticuffs. Ramautar was a small boy Sarandas put him down, wrestling him down. Ramautar was a small weak boy. He was no match as regards strength with Sarandas. If Sarandas forcibly wanted to get away he could have but he was afraid that the boy might get hurt. I was cutting grass and Mahadeo said go and separate them. I was about a chain

In the Supreme Court of Fiji.

Prosecution Evidence.

No.13.

Cross-examination by Mr. Rice - continued.

Cross-examination by Mr. Chalmers.

In the Supreme  
Court of Fiji.

Prosecution  
Evidence.

No.13

Cross-examination  
by Mr. Chalmers -  
continued.

away from the two boys who were on the ground. Mahadeo then went in and caught the boy Ramautar by the throat. When Mahadeo called me and I came to the spot I saw Mahadeo at the throat of Ramautar. The cane we were working in was about 2 feet. I could see all that was going on. When Mahadeo was holding Ramautar by the throat he was throttling him. I cannot say for how long. He called out and he was holding him all the time. It was for some time. Ramautar was down and he was struggling for existence. During the time Mahadeo was holding Ramautar by the throat Sarandas was cutting grass with me. Sarandas did not know that Mahadeo was going to kill him, he just thought he was going to separate them. I heard what Sarandas said to the Magistrate. I heard Sarandas say the extract that has been read to me. Before I was arrested I saw the Police on some occasions. Inspector Probert interrogated me on several occasions. Inspector Probert did not tell me what others had said, for instance Sarandas. He said to me when we went out to search for Ramautar what Mr. Powell had heard from Sarandas. The Inspector did not tell me what Sarandas had said Sarandas's statement was not given to me. The Inspector did not tell me that Sarandas had said that he had made a statement to Mr. Powell that implicated me. I remember saying the extract read to me that I said in the Lower Court. Up to the time of my arrest I had made false statements to the Police and my reason for so doing was that I was afraid of Mathura. I was afraid of him incriminating me. After this I went to Penang on my private business. I would pass the Tavua Police Station on my way. I went straight by lorry on the Government Road. There was no necessity for me to go to the Police Station. I was at Ra. I did not live on Mathura's property. He has given me 4 acres of land. My house is on somebody's land but I work the four acres myself. In return for the four acres of land I pay rent for it. I work all the time for Mathura. When I was free from his work then I work my own land.

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COURT ADJOURNED AT 12.55 p.m. UNTIL

2.15 p.m.



TO THE COURT :

When Mahadeo first came to the stable he said that Ramautar had hanged himself and then he asked where his father was. On being questioned by Mathura we told him everything. Mathura questioned me when Mahadeo brought him. That was the first time I saw Mathura.

In the Supreme  
Court of Fiji.

Prosecution  
Evidence.

No.13

Cross-examination  
by Mr. Chalmers -  
continued.

No. 14

EVIDENCE OF MUNESSAR.

No.14

Munessar  
Examination.

10 MUNESSAR. SWORN.

Also known as Nagessar. My real name is Nagessar. I am the step-father of Ramautar. Ramautar's own father's name was Algu. My wife's name is Ghisiawani. My wife's step son and I were living in Mathura's compound last January. We did not all live together. Ramautar worked for Mathura and lived with him. My wife and I lived in Mathura's stables. I did not work for Mathura. Ramautar did work for Mathura. I  
20 remember my step son going to work one day in January. My step son was 12 or 13 years of age. This day he went to work in the morning. It was early in the morning. I was not up at the time he went to work. He did not return to my house that day from work. He has not returned home since that day. Mahavia came to my house that day. No one else came to my house that day. I was hurt and was lying in my house and my stepson was working for Mathura.

30 TO THE COURT :

I remember the dinner time that day.

TO THE ATTORNEY-GENERAL :

Sukraj came to my house that dinner time. He came alone. Mahadeo and Sarandas came afterwards. Mahadeo told the mother something. I was there I heard what was said.

TO THE COURT :

Mahadeo told his mother something.

In the Supreme Court of Fiji.

Prosecution Evidence.

No.14  
Munessar Examination - continued.

TO THE ATTORNEY-GENERAL.

Mahadeo said mother Ramautar has hanged himself. Ghisiawani was there at the time. My wife said that my son would not hang himself. Mahadeo said whatever you say Ramautar has hanged himself. When I heard that Ramautar had hanged himself I felt hot and fell down. My wife began to cry. I got up and Sukraj got hold of me and Sarandas got hold of my wife. I was going to see the boy. (WITNESS COLLAPSED).

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(This Witness was recalled see p. 34 )

No.15  
Dudhai Examination.

No. 15  
EVIDENCE OF DUDHAI.

DUDHAI. SWORN. XD. ATTORNEY-GENERAL.

I live at Tagi Tagi. I know Mathura, Mahadeo and Sarandas. Sarandas is my step-son. I know Jimidah Singh. I live about one mile from his house. I know Ramautar. I do not remember a day in January last. Mahdo Jimidah Singh's son came to me. I did not go anywhere as a result of his coming to me. On that same day I saw Mathura, Jimidah Singh and Sukraj. I met them. I met them at Jimidah Singh's house. It was outside the house. Jimidah Singh said to me give some assistance to Mathura, Munessar's son has died. He wanted me to help to throw Munessar's son away. Jimidah Singh said Munessar's son has died you come with us and we will throw him away. I did not agree to help in that work. Nothing was then said to me. I went home.

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Cross-examination.

XXD. MR. RICE :

It was a Thursday. It was in the evening. I don't know the time.

Cross-examination by Mr.Chalmers.

XXD. MR. CHALMERS :

When I met Jimidah Singh and Mathura Mathura did not have any conversation with me. He did not ask me anything. It was Jimidah Singh who spoke to me.

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No. 16  
EVIDENCE OF BATTAN SINGH.

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In the Supreme  
Court of Fiji.

Prosecution  
Evidence.

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No.16  
Battan Singh  
Examination.

BATTAN SINGH. SWORN.

I live at Tagi Tagi. I know Mathura. I see him now in the dock. I work as a stable man for Tulsiram. His place is about a mile or a mile and a half from Mathura's place. I knew Ramautar. I remember a day in January when I was grazing horses. I saw Mathura that day. He spoke to me. 10 Mahadeo came up while I was talking to Mathura. He spoke to Mathura he did not speak to me. I did not hear what he said. I was some distance away. Mathura and Mahadeo went away in the direction of their homes. Mahadeo was walking quickly when he came up to Mathura. His condition was as if crying. It was about 12 noon. The time of the passenger train.

No. 17  
EVIDENCE OF KALPI.

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No.17  
Kalpi  
Examination.

20 KALPI. SWORN.

I live at Tagi Tagi. I know the three accused in the dock. My house is two chains from Mathura's house. I knew Ramautar. I remember a day in January when he disappeared. I got up that day at 5. When I got out of bed, I saw six boys Ramautar, Mahadeo, Sarandas, Sukraj, Badalu and Basdeo. The six of them took cattle out of the paddock. Badalu took the cattle away to the hills and the other four went to cut grass. I 30 saw them going in the direction of Mathura's field. This was about 6 in the morning. I saw them working in the cane field about 9.

XXD. MR. CHALMERS :

Cross-examination.

The six took the cattle for about three chains and then the track by which the cattle went turned off.

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In the Supreme Court of Fiji.

No. 18  
EVIDENCE OF MAHABIR.

Prosecution Evidence.

MAHABIR. SWORN.

No.18  
Mahabir Examination.

I live at Navia near Tagi Tagi. I knew Ramautar. The last time I saw him was lying under the Saijhan tree after death. The Saijhan tree is near Badal's house. I do not know months. I do not know what month it was. I had paid my tax at Ba. This was the same day that I saw Ramautar lying dead. This is the receipt I got (EXHIBIT "L"). On my return from paying my tax Munessar and his wife got hold of my feet and began to cry. They said something to me. As a result of what they said I went to see the body. I went within 6 or 7 paces to the body. I recognised who it was, to be that of Ramautar. The body with feet towards the Saijhan tree and head towards a heap of stones. The face was on one side. I could see the face. I then went to Kalpi's house. It was 6 in the evening when I saw the body. It was dressed in Khaki shorts and striped shirt. I saw Mahadeo on that day. I saw him near Kalpi's house he was bringing some cattle. It was 6 in the evening.

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TO THE COURT :

When I saw the dead body I came to Kalpi's house and remained there. My house was about 3 miles from that spot and I thought I would take part in the burial of the body next day. There was no burial. I remained there and no Constable came so how could I be suspicious. I did not go to make a report because I asked Mahadeo where his father was and he told me that his father had gone to make a report.

30

No.19  
Parag Examination.

No. 19  
EVIDENCE OF PARAG.

PARAG. SWORN.

I live at Tagi Tagi. I knew a boy called Ramautar. The last time I saw him on a Thursday I do not know months. The last time I saw him he was dead. I saw the body under a Saijhan tree which is below my house. I saw the body about 5 or 6 in the evening. I went within 7 or 8 paces of the body. I am quite sure that it was Ramautar's body. It was dressed in Khaki shorts and striped shirt. The face was upwards.

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No. 20  
EVIDENCE OF DUKHI.

In the Supreme  
 Court of Fiji.

DUKHI. SWORN.

Prosecution  
 Evidence.

10. I live at Tagi Tagi. I knew Ramautar. I remember the day he disappeared. I saw him on that day he was not then alive he was dead. The body was lying near a Saijhan tree. This tree is on Mathura's land. I knew Ramautar for 5 or 6 months. I am quite sure that the body was that of Ramautar.

No.20

Dukhi  
 Examination.

No. 21  
EVIDENCE OF GHISIAWANI.

No.21

Ghisiawani  
 Examination.

GHISIAWANI. SWORN.

20 I am the wife of Munessar. I had a son named Ramautar. In January I was living at Mathura's house with my husband. Ramautar was living with Mathura. He worked for Mathura. He was about 12 or 13. He went away one day in January and did not return. He went with Sukraj Sarandas and Mahadeo. I saw Sukraj Mahadeo and Sarandas again that day. Sukraj came first. I asked Sukraj where are the boys. Sukraj said that they would come later. Mahadeo's mother was there. Mahadeo told his mother that Ramautar had hanged himself. Mahadeo asked his mother where his father was. His mother told him where his father had gone that he had gone to Dasi's house. Mahadeo then went to fetch his father. We were upset and then Mahadeo came back with his father. When I heard that my son had hanged himself we wanted to go and see him. Sarandas caught hold of me. Sarandas alone caught hold of me. When Mahadeo came back with his father Mathura spoke to Sukraj but I do not know what was said. I was some distance away. My husband was there. My husband when he heard this wanted to go and make a report to the Government but Mathura stopped him and said you are injured and I will go. My husband was injured. He could have gone slowly. Mathura said you need not go I will go and report to the Government. Your son was working for me and I will go you are in difficulties. Mathura went to the police. Mathura said don't you cry your son was grazing horses and he has gone somewhere. I came to the conclusion that if my son was there he was good to us.

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In the Supreme  
Court of Fiji.

Prosecution  
Evidence.

No.21  
Cross-examination  
by Mr. Rice.

Cross-examination  
by Mr. Chalmers.

XXD. MR. RICE.

Sarandas caught hold of me and stopped me from going to see the body. Sukraj caught hold of my husband. Mahadeo was gone to get his father. I am not the natural mother of Ramautar. He is an adopted child. When Sarandas stopped me from going he caught hold of me and Sukraj did the same to my husband.

XXD. MR. CHALMERS.

I live on Mathura's land. I have been there two months prior to the occurrence of this event. My husband was not working for Mathura during the two months there. We were not working at that time. We were dependent at that time on the earnings of the son.

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No.22  
Munessar  
(recalled)  
Cross-examina-  
tion.

No. 22  
EVIDENCE OF MUNESSAR (Recalled)

MUNESSAR RECALLED.

XXD. MR. RICE.

On that Thursday at noon Sukraj first came. About 15 minutes later Mahadeo and Sarandas came. After I had been told that Ramautar had hanged himself Sukraj stopped me from going to see the body and Sarandas stopped my wife. They caught hold of us. Mahadeo was not there at the time. Mahadeo was there for a while and then went to get his father.

20

CASE FOR CROWN.

C.J. suggested to Attorney-General that there was no case against Sarandas. Attorney-General agrees. Sarandas discharged.

30

COURT ADJOURNED AT 3.30 p.m. UNTIL 10 p.m.  
ON THURSDAY 17th MAY 1934.



In the Supreme  
Court of Fiji

No.23

Judge's Notes,  
15th May, 1934 -  
continued.

		Xd. Chalmers. Fight suggested - might be broken by fall being knocked down - considerable pain if so caused.	
	11.44	XXD. Attorney General.	
	11.45	Riley sworn. Attorney General - no examination.	
	11.53	Probert sworn. First enquiries for a lost boy - no suspicions. Taken to Ba for questioning. Interrogation of Mahadeo. Quaere as to inadmissa- bility, too late admitted.	10
		LUNCH 12.42 - 2.10	
	2.13	Probert. Visit to Chalmers to Namosau Police Station. "Whether you have made a statement or not don't make any statement without being cautioned".  Quaere who is Babujee.	
	2.50	Xd Rice. Mathura is stepfather of Mahadeo. Mahadeo is 17 or 18.  (Court. No Harper confirms 16 at most).	20
	3.21	XD Chalmers.  3.56 adjourned to 10.0 a.m. to-morrow.	
16th May 1934.	16th May	10.0 a.m. Zamin Hussain excused - medical grounds - can be sent for if required.	
	10.03	Police Constable 37 sworn. Attorney- General.  No cross Examination.	30
	10.08	Latchman Singh sworn. Attorney General.  Xd Rice No Sarandas No - Chalmers.	
	10.33	Luchinelli sworn. Attorney General. Xd Rice Chalmers and Sarandas no.	



- 10.33 Subramanian sworn. Attorney General.  
No cross examination.
- 10.37 Lance Corporal 78. No cross examination.
- 10.48 Sukraj - warned by me re incriminating questions. A quarrel re unnatural offences.

In the Supreme  
Court of Fiji

No.23

Judge's Notes,  
15th May, 1934 -  
continued.

Adjourned 11.26 to 11.35 a.m.

- 11.50 XD. Rice not shaken.
- 12.24 XD Chalmers. Adjourned 12.55 to 2.10.

10

To Court Question: Are you quite sure Mahadeo said Ramautar has hanged himself before he asked where his father was?

Answer - Yes - he is.

On being questioned by Mathura we told him everything (seems truthful witness).

- 2.13 Munessar. XD Attorney General.
- 2.23 Witness fainted - examination adjourned.
- 2.25 Dudhai. Attorney General.
- 2.33 XD Rice - Chalmers - Sarandas No.
- 20 2.34 Battan Singh - no cross examination.
- 2.40 Kalpi - XD Chalmers.
- 2.43 Mahabir - not Xd. (truthful).
- 2.51 Parag ditto.
- 2.55 Dukki ditto.
- 3.00 Chisiawani - truthful - corroborates Sukraj as to conduct.
- Xd Rice - Chalmers.
- Munessar - recalled Xd Rice.

In the Supreme  
Court of Fiji

No.23  
Judge's Notes,  
15th May, 1934 -  
continued.

3.21 Case for Crown.  
Sarandas. I suggest Attorney General  
no case - Sukraj - he agrees.  
Sarandas discharged.  
Chalmers and Rice will call no evidence.  
Only address.  
At their request 3.30 p.m. adjourned  
tomorrow.

17th May 1934,

17th May. 10.0 a.m. Rice - no malice - no motive  
re Mahadeo. Whole case rests on accom-  
plice evidence - his at first Sukraj 15  
minutes alone with Mahadeo and Sarandas.  
Even unconnected witnesses do nothing.

10

10.15 Chalmers. Criticism of statements to  
police.

10.28 Attorney General. Corroboration suffi-  
cient.

Mathura alters story see p. 15 evidence.

Throttling. Teeth a plant.

completed.

20

TO ASSESSORS:

Corroboration. Not merely words and  
acts interpretation of conduct - example.  
Dudhai at Tagi Tagi.

Wife of Mathura could have been called  
for defence. Four persons know -  
Mahadeo knows - does not deny evidence.  
Won't speak even now. You need not be  
unanimous - each his own true opinion -  
consult if you wish. Mercy.

30

11.25 Assessors after 12 minutes. Both guilty.  
Mahadeo mercy on account age. I agree.

Mahadeo ordered to be detained during  
pleasure, sent first to Makaluva

(juvenile offender) until Governor decides.

Mathura - 3 years penal servitude.

Inform Inspector Police did well in investigation.

In the Supreme Court of Fiji

No.23

Judge's Notes, 15th May, 1934 - continued.

No. 24

AFFIDAVIT OF PHILLIP RICE

In the Privy Council

No.24

Affidavit of Phillip Rice, 9th April, 1935.

IN THE PRIVY COUNCIL

ON APPEAL FROM THE SUPREME COURT OF FIJI  
LAUTOKA CIRCUIT COURT

10

BETWEEN MAHADEO of Tagi Tagi in the District of Ba but now in custody at Mukuluva Island in the Colony of Fiji Appellant

AND HIS MAJESTY THE KING Respondent

I PHILLIP RICE of Ba in the Colony of Fiji Barrister and Solicitor make oath and say as follows :-

20

1. THAT I acted as counsel for the above-named Appellant Mahadeo who was arraigned in the Supreme Court of Fiji (Lautoka Circuit Court) jointly with one Mathura and one Sarandas on the 15th day of May 1934 upon the following alleged offences respectively that is to say :-

First Count.

Statement of Offence

Murder.

30

Particulars of Offence.

Mahadeo on the 18th day of January 1934 in the District of Ba murdered Ramautar.

In the Privy  
Council

No.24  
Affidavit of  
Phillip Rice, 9th  
April, 1935 -  
continued.

Second Count.

Accessories after the fact to murder.

Particulars of Offence.

Mathura and Sarandas well knowing that Mahadeo had committed murder did on the 18th day of January 1934 and on other days thereafter in the District of Ba receive comfort harbour assist and maintain the said Mahadeo.

2. THAT upon the said joint arraignment of the said Mathura the said Sarandas and the Petitioner (Appellant herein) an alleged amendment of the informations against the Petitioner and the said Mathura and the said Sarandas was applied for by The Honourable The Attorney General of Fiji Counsel appearing for the Crown the desired so called amendment being in the following form :-

10

First Count

Statement of Offence.

Murder.

20

Particulars of Offence.

Mahadeo on the 18th day of January 1934 in the District of Ba murdered Ramautar. Sarandas on the same date was present aiding abetting and assisting Mahadeo.

Second Count.

Statement of Offence.

Accessory after the fact to murder.

Particulars of Offence.

Mathura well knowing that Mahadeo had murdered Ramautar did on the 18th day of January 1934 and on other days thereafter in the District of Ba receive comfort harbour assist and maintain the said Mahadeo.

30

DATED this 15th day of May 1934.

(Sgd) R.S. THACKER  
Attorney General.

3. THAT thereupon Mr. N.S. Chalmers counsel appearing for the said Mathura and I this deponent for the Petitioner respectively objected to the said application which despite such objection was allowed by the Trial Judge His Lordship The Chief Justice of Fiji.

In the Privy  
Council

No.24

Affidavit of  
Phillip Rice, 9th  
April, 1935 -  
continued.

10 4. THAT upon being called upon to plead to the information set forth in paragraph 2 hereof the Petitioner and the said Mathura and the said Sarandas each pleaded not guilty.

20 5. THAT on the 14th day of May 1934 Chalmers and Rice of Lautoka aforesaid the Solicitors acting for the Petitioner and for the said Mathura of which said firm I am a member wrote a letter in the following form to the District Inspector of Constabulary at Lautoka aforesaid (who conducted the case for the prosecution at the preliminary investigation in the Police Court) and sent a copy thereof to The Honourable The Attorney General aforesaid :-

Lautoka.

14th May, 1934.

The District Inspector of Constabulary,  
Lautoka.

Dear Sir,

Re Rex v. Mahadeo and Mathura.

30 In connection with the trial of these cases we are asked by counsel for the accused that you arrange for production of all statements by the three accused and by Sukraj other than those which have already been produced as exhibits in Court.

We should be glad if you would kindly make arrangements accordingly.

Yours faithfully,

CHALMERS & RICE.

6. THAT immediately after the said pleas were taken the letter cited in paragraph 5

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Council

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Affidavit of  
Phillip Rice, 9th  
April, 1935 -  
continued.

hereof was read out by the learned Attorney General in open Court to His Lordship The Chief Justice who then commented on such letter in manner following :-

That such letter cast an imputation upon the integrity of the learned Attorney General and the Police and that the same should not have been written.

7. TWO statements made by the witness Sukraj who is hereinafter mentioned (copies of which accompany the Petition herein) were at a later stage of the trial perused by His Lordship The Chief Justice who ruled that the defence were not entitled to have access to the said statements or to take copies thereof and the same were therefore not made available to the defence for any purpose. 10

8. THAT following upon the matters set forth in paragraph 6 hereof the said Attorney General opened the Case for the Crown and the evidence (notes of which accompany the Petition herein) was heard on the said 15th and on the 16th days of May 1934 by His Lordship The Chief Justice of Fiji and the four Assessors appointed and sworn in accordance with the provisions of "The Jurors and Assessors Ordinance 1933" and statements were duly read out to the Court put in as part of such evidence and marked as exhibits C, E, F, G, H, J, and K. 20

9. THAT immediately after the said witness Sukraj referred to in paragraph 7 hereof entered the witness box and had been sworn a warning was issued to him by the learned Chief Justice in these terms namely :- 30

"That if he the said Sukraj thought the answer"  
"to any question might incriminate him he"  
"might ask the learned Chief Justice if he was"  
"obliged to answer it and that he need say"  
"nothing which the learned Chief Justice"  
"thought might lead him into trouble."

10. UPON several occasions during the cross-examination of the said Sukraj by me this deponent and by counsel appearing for the said Mathura the learned Chief Justice of his own motion informed 40

the said Sukraj that he need not answer questions put to him and by reason thereof the cross-examination of such witness by each of the counsel for the defence was seriously hampered.

In the Privy  
Council

No.24

Affidavit of  
Phillip Rice, 9th  
April, 1935 -  
continued.

11. AT the conclusion of such evidence His Lordship The Chief Justice ruled that there was no case for the said Sarandas (who was unrepresented by counsel) to answer and he the said Sarandas was thereupon discharged.

10 12. AFTER the said evidence had been taken and before any counsel had addressed the Court His Lordship The Chief Justice referring to a matter raised in the Lower Court deposition of the witness Ghisiawani which had not been put in evidence or opened in any way during the trial suggested that Mr. D. C. Chalmers the senior partner of the said firm of Solicitors acting for the Petitioner in his defence had possibly used improper means to try and obtain a state-  
20 ment from the said Ghisiawani and that Mr. Chalmers' conduct required explanation. Mr. Chalmers was at the time absent in New Zealand.

13. ON the 17th day of May 1934 as counsel for the Petitioner I addressed the Court in terms set forth in paragraph 13 of the Petition herein.

14. FOLLOWING on such address counsel appearing for the said Mathura commenced to address the Court but when such counsel commenced to  
30 adduce grounds to shew that the Petitioner was not guilty of the said charge of murder such counsel was stopped by the learned Chief Justice who ruled despite protest that it was my province only as counsel for the Petitioner to adduce such grounds and that I had exhausted them.

15. THE learned Attorney General then addressed the Court in terms set forth in paragraph 15 of the Petition herein.

40 16. WHEN the learned Attorney General in opening his final address (referred to in paragraph 15 hereof) said: "My submission is that there is strong corroboration in the evidence of

In the Privy  
Council

No.24

Affidavit of  
Phillip Rice, 9th  
April, 1935 -  
continued.

Sarandas and that that is perfectly good as against the other accused," I immediately objected that Sarandas's written statements being Exhibits "C" "G" and "J" (Sarandas had not testified) were not evidence because they were not made in the presence of any of the accused and that therefore they could not be referred to as evidence against the Petitioner. His Lordship The Chief Justice agreed that these written statements of Sarandas were not evidence but ruled that nevertheless the learned Attorney General was entitled to refer to them as he had already done. When subsequently on three occasions in the same address the learned Attorney General made similar references to the same statements of Sarandas I took no further objection as I felt that the matter had been concluded in favour of the learned Attorney General by His Lordship's ruling.

10

17. THE learned Chief Justice then addressed the said Assessors in terms set forth in paragraph 17 of the Petition herein.

20

18. FOLLOWING on the address referred to in paragraph 17 hereof the said Assessors and the learned Chief Justice retired together and when the Court resumed the opinions of the said Assessors were taken whereupon the learned Chief Justice delivered the judgment of the Court in the terms set forth in paragraph 18 of the Petition herein.

19. DELAY has occurred in presenting the Petition herein partly owing to the taking of opinion of and subsequent incidental correspondence with Counsel in New Zealand to which Dominion there is to and fro communication by mail generally at monthly intervals and partly owing to the fact that the copies of statements referred to in paragraphs 5 and 7 of the Petition herein and also in paragraphs 5 and 7 of this Affidavit although applied for by letter on the said 14th day of May 1934 and again on the 12th day of September 1934 were not supplied until the 8th day of December 1934. After receipt of such statements by my firm on the latter date the whole case was again sent to the said Counsel in New Zealand in order that pursuant to Privy Council Rules he might certify this case as a proper one for an appeal in forma pauperis such Counsel having previously advised in writing to that effect. However while

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holding the same view as before he returned the case to my firm expressing the opinion that the necessary certificate should be that of a Barrister practising in Fiji and not elsewhere.

In the Privy  
Council

No.24

Affidavit of  
Phillip Rice, 9th  
April, 1935 -  
continued.

10 20. I CRAVE leave to refer to what appears to me a serious error in the official notes of evidence copies of which as aforesaid accompany the said Petition herein. In the notes of evidence of the witness Jack Probert a statement of the witness Sukraj has erroneously been referred to as "Exhibit H" whereas "Exhibit H" as is clear from a later passage in the notes of evidence of the said Jack Probert was really a statement of the Petitioner Mahadeo.

SWORN at Ba aforesaid in the )  
Colony of Fiji this Ninth ) (Sgd) P. RICE  
day of April 1935 )

Before me:

(Sgd) J.N. LELEN

20 A Commissioner of the Supreme Court  
of Fiji for taking Affidavits.

No. 25

AFFIDAVIT OF NATHANIEL STUART CHALMERS,  
WITH EXHIBIT.

No.25

Affidavit of  
Nathaniel Stuart  
Chalmers, 25th  
April, 1935.

(Heading as in document No. 24)

30 I NATHANIEL STUART CHALMERS formerly of Ba in the Colony of Fiji now of Auckland in the Dominion of New Zealand (but temporarily residing in the said Colony of Fiji) Barrister and Solicitor of the Supreme Court of Fiji make oath and say as follows :-

1. THAT I acted as counsel for one Mathura who was arraigned in the Supreme Court of Fiji (Lautoka Circuit Court) jointly with the Petitioner Mahadeo (the abovenamed Appellant)

In the Privy  
Council

No.25  
Affidavit of  
Nathaniel Stuart  
Chalmers, 25th  
April, 1935 -  
continued.

and one Sarandas on the 15th day of May 1934 upon  
the following alleged offences respectively that  
is to say :-

First Count.

Statement of Offence.

Murder.

Particulars of Offence.

Mahadeo on the 18th day of January 1934  
in the District of Ba murdered Ramautar.

Second Count.

10

Accessories after the fact to murder.

Particulars of Offence.

Mathura and Sarandas well knowing that  
Mahadeo had committed murder did on  
the 18th day of January 1934 and on  
other days thereafter in the District  
of Ba receive comfort harbour assist  
and maintain the said Mahadeo.

2. THAT upon the said joint arraignment of the  
said Mathura the said Sarandas and the Petitioner  
(Appellant herein) an alleged amendment of the  
informations against the Petitioner and the said  
Mathura and the said Sarandas was applied for by  
The Honourable The Attorney General of Fiji  
Counsel appearing for the Crown the desired so  
called amendment being in the following form :-

20

First Count

Statement of Offence.

Murder.

Particulars of Offence.

30

Mahadeo on the 18th day of January 1934  
in the District of Ba murdered Ramautar.  
Sarandas on the same date was present  
aiding abetting and assisting Mahadeo.

## Second Count.

## Statement of Offence.

Accessory after the fact to murder.

## Particulars of Offence.

Mathura well knowing that Mahadeo had murdered Ramautar did on the 18th day of January 1934 and on other days thereafter in the District of Ba receive comfort harbour assist and maintain the said Mahadeo.

10

DATED this 15th day of May 1934  
(Sgd) R. S. THACKER.  
Attorney General.

3. THAT thereupon I objected to the said application and in such objection was supported by Mr. P. Rice counsel appearing for the Petitioner but despite such objection the said application was allowed by the Trial Judge His Lordship The Chief Justice of Fiji.

20

4. THAT upon being called upon to plead to the information set forth in paragraph 2 hereof the Petitioner and the said Mathura and the said Sarandas each pleaded not guilty.

30

5. THAT I am not a member of the firm of Chalmers and Rice of Lautoka aforesaid the Solicitors who acted for the Petitioner and for the said Mathura but nevertheless I am aware that on the 14th day of May 1934 that firm wrote a letter in the following form to the District Inspector of Constabulary at Lautoka aforesaid (who conducted the case for the prosecution at the preliminary investigation in the Police Court and sent a copy thereof to The Honourable The Attorney General aforesaid :-

Lautoka.  
14th May, 1934.

The District Inspector of Constabulary,  
Lautoka.

Dear Sir,

40

Re Rex v. Mahadeo and Mathura.

In connection with the trial of these cases we are asked by counsel for the accused

In the Privy  
Council

No.25

Affidavit of  
Nathaniel Stuart  
Chalmers, 25th  
April, 1935 -  
continued.

In the Privy  
Council

No. 25

Affidavit of  
Nathaniel Stuart  
Chalmers, 25th  
April, 1935 -  
continued.

that you arrange for production of all statements by the three accused and by Sukraj other than those which have already been produced as exhibits in Court.

We should be glad if you would kindly make arrangements accordingly.

Yours faithfully,  
CHALMERS & RICE.

The said letter was written on my advice as counsel.

10

6. THAT immediately after the said pleas were taken the letter cited in paragraph 5 hereof was read out by the learned Attorney General in open Court to His Lordship The Chief Justice who then commented on such letter in manner following :-

That such letter cast an imputation upon the integrity of the learned Attorney General and the Police and that the same should not have been written.

Annexed hereto and marked "A" is an extract from "The Fiji Times & Herald" of the 23rd day of May 1934 the only newspaper in circulation in Fiji reporting the matters above referred to which extract in my opinion fairly describes the events in question.

20

7. TWO statements made by the witness Sukraj who is hereinafter mentioned (copies of which accompany the Petition herein) were at a later stage of the trial perused by His Lordship The Chief Justice who ruled that the defence were not entitled to have access to the said statements or to take copies thereof and the same were therefore not made available to the defence for any purpose.

30

8. THAT following upon the matters set forth in paragraph 6 hereof the said Attorney General opened the case for the Crown and the evidence (notes of which accompany the Petition herein) was heard on the said 15th and on the 16th days of May 1934 by His Lordship The Chief Justice of Fiji and the four Assessors appointed and sworn in accordance with the provisions of "The Jurors and Assessors Ordinance 1933" and statements were

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duly read out to the Court put in as part of such evidence and marked as exhibits C, E, F, G, H, J, and K.

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Council

No.25

Affidavit of  
Nathaniel Stuart  
Chalmers, 25th  
April, 1935 -  
continued.

9. THAT immediately after the said witness Sukraj referred to in paragraph 7 hereof entered the witness box and had been sworn a warning was issued to him by the learned Chief Justice in these terms namely :-

10 "That if he the said Sukraj thought the answer"  
"to any question might incriminate him he"  
"might ask the learned Chief Justice if he"  
"was obliged to answer it and that he need"  
"say nothing which the learned Chief Justice"  
"thought might lead him into trouble."

20 10. THAT upon several occasions during the cross-examination of the said Sukraj by me this deponent and by counsel appearing for the Petitioner the learned Chief Justice of his own motion informed the said Sukraj that he need not answer questions put to him and by reason thereof the cross-examination of such witness by each of the counsel for the defence was seriously hampered.

11. AT the conclusion of such evidence His Lordship The Chief Justice ruled that there was no case for the said Sarandas (who was unrepresented by counsel) to answer and he the said Sarandas was thereupon discharged.

30 12. AFTER the said evidence had been taken and before any counsel had addressed the Court His Lordship The Chief Justice referring to a matter raised in the Lower Court deposition of the witness Ghisiawani which had not been put in evidence or opened in any way during the trial suggested that Mr. D. C. Chalmers the senior partner of the said firm of Solicitors acting for the Petitioner in his defence had possibly used improper means to try and obtain a statement from the said Ghisiawani and that Mr.  
40 Chalmers' conduct required explanation. Mr. Chalmers was at the time absent in New Zealand. I am not a member of the said firm of Solicitors of which Mr. D. C. Chalmers is the Senior Partner and there is no professional connection between that firm and myself.

In the Privy  
Council

No.25  
Affidavit of  
Nathaniel Stuart  
Chalmers, 25th  
April, 1935 -  
continued.

13. ON the 17th day of May 1934 Mr. P. Rice as counsel for the Petitioner addressed the Court in terms set forth in paragraph 13 of the Petition herein.

14. FOLLOWING on such address I commenced to address the Court but when I commenced to adduce grounds to shew that the Petitioner was not guilty of the said charge of murder I was stopped by the learned Chief Justice who ruled despite protest that it was the province only of Mr. P. Rice as counsel for the Petitioner to adduce such grounds and that Mr. Rice had exhausted them.

10

15. THE learned Attorney General then addressed the Court in terms set forth in paragraph 15 of the Petition herein.

16. WHEN the learned Attorney General in opening his final address (referred to in paragraph 15 hereof) said: "My submission is that there is strong corroboration in the evidence of Sarandas and that that is perfectly good as against the other accused," Mr. Rice immediately objected that Sarandas's written statements being Exhibits "C" "G" and "J" (Sarandas had not testified) were not evidence because they were not made in the presence of any of the accused and that therefore they could not be referred to as evidence against the Petitioner. His Lordship The Chief Justice agreed that these written statements of Sarandas were not evidence but ruled that nevertheless the learned Attorney General was entitled to refer to them as he had already done.

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30

17. THE learned Chief Justice then addressed the said Assessors in terms set forth in paragraph 17 of the Petition herein.

18. FOLLOWING on the address referred to in paragraph 17 hereof the said Assessors and the learned Chief Justice retired together and when the Court resumed the opinions of the said Assessors were taken whereupon the learned Chief Justice delivered the judgment of the Court in the terms set forth in paragraph 18 of the Petition herein.

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19. I CRAVE leave to refer to what appears to

me a serious error in the official notes of evidence copies of which as aforesaid accompany the said Petition herein. In the notes of evidence of the witness Jack Probert a statement of the witness Sukraj has erroneously been referred to as "Exhibit H" whereas "Exhibit H" as is clear from a later passage in the notes of evidence of the said Jack Probert was really a statement of the Petitioner Mahadeo.

In the Privy Council  
                      
No.25  
Affidavit of Nathaniel Stuart Chalmers, 25th April, 1935 - continued.

10 SWORN at Ba aforesaid )  
in the Colony of Fiji ) (Sgd) N.S. CHALMERS  
this 25th day of April )  
1935 )

Before me:  
(Sgd) J.B. WILLIAMS  
A Commissioner of the Supreme Court of Fiji.

"A"

20 This is the Extract marked "A" referred to in the annexed Affidavit of Nathaniel Stuart Chalmers sworn at Ba in the Colony of Fiji this 25th day of April 1935

Exhibit "A" to Affidavit of Nathaniel Stuart Chalmers.

Before me:  
(Sgd) J. B. WILLIAMS  
A Commissioner of the Supreme Court of Fiji.

EXTRACT FROM FIJI TIMES & HERALD of 23rd May, 1934

30 COUNSEL CENSURED  
INCIDENT AT LAUTOKA  
LETTER TO POLICE

Strong exception to what he regarded as an imputation that the Crown had withheld certain statements was made at the Supreme Court Session at Lautoka last week by the Attorney-General Mr. R.S. Thacker.

At the commencement of the trial of an

In the Privy  
Council

Exhibit "A" to  
Affidavit of  
Nathaniel Stuart  
Chalmers -  
continued.

Indian youth charged with the murder of another Indian lad, the Attorney-General referred to a letter which had been sent by Messrs. Chalmers & Rice, Counsel for the accused, to the District Inspector of Constabulary, asking that all statements given in the case, in addition to those already produced at the Lower Court hearing, be produced at the trial. The Attorney-General stated that a copy of the letter had also been forwarded to him, and he regarded it as an imputation that statements had been withheld by him.

10

"Whoever is responsible should know more about legal etiquette than make a charge of that sort" remarked the Attorney-General. He took the strongest exception to it.

After perusing the letter His Honour the Chief Justice said that he considered it a grossly improper letter which he could not censure too strongly. To write a letter to the District Inspector suggesting that statements were being withheld and then send a copy of it to the Attorney-General was an imputation that he also was concerned in the matter.

20

Mr. Rice, who was appearing for the accused, and whose firm had written the letter, said that he would like to explain to the Court that it was not intended to imply that any statements were being intentionally withheld.

His Honour: "But I have the written statement before me. You cannot go past the written word. I have expressed my strong disapproval of the action."

30

In reply to Mr. N. Chalmers, appearing for another accused charged with being an accessory after the fact, and who asked if he could make an explanation, His Honour said that he did not want to hear anything further. He had the letter before him and he expressed strong disapproval of it.

The trial then proceeded.

40



No. 26

ORDER in COUNCIL granting special leave to appeal in forma pauperis to His Majesty in Council.

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AT THE COURT AT BUCKINGHAM PALACE

The 13th day of August, 1935

PRESENT

THE KING'S MOST EXCELLENT MAJESTY

10 Lord Chancellor                      Lord Marshall of Chipstead  
Lord Southborough                      Sir Philip Sassoon

W H E R E A S there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 26th day of July 1935 in the words following, viz :-

20 "WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of Mahadeo praying for special leave to appeal in formâ pauperis from the conviction of murder and sentence passed upon the Petitioner by the Supreme Court of Fiji on the 17th May, 1934:

30 "THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble 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 leave ought to be granted to the Petitioner to enter and prosecute his Appeal in formâ pauperis against the conviction of murder and sentence passed upon the Petitioner by the Supreme Court of Fiji dated the 17th day of May 1934.

"And Their Lordships do further report to Your Majesty that the proper officer of the said Supreme Court ought to be directed to transmit to the Registrar of the Privy Council

In the Privy Council

No.26

Order in Council granting special leave to appeal in forma pauperis to His Majesty in Council, 13th August, 1935.

In the Privy  
Council

No.26

Order in Council  
granting special  
leave to appeal  
in forma pauperis  
to His Majesty in  
Council, 13th  
August, 1935 -  
continued.

without delay an authenticated copy under seal of the Record proper to be laid before Your Majesty on the hearing of the Appeal upon payment by the Petitioner of the usual fees for the same."

HIS MAJESTY having taken the said Report into consideration was pleased by and with the advice of His 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 or Officer administering the Government of the Colony of Fiji for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

10

E.C.E. LEADBITTER.

No.27

AFFIDAVIT OF NATHANIEL STUART CHALMERS

(Heading as in document No.24)

No.27  
Affidavit of  
Nathaniel Stuart  
Chalmers, 5th  
October, 1935.

I, NATHANIEL STUART CHALMERS formerly of Ba in the Colony of Fiji now of Auckland in the Dominion of New Zealand Barrister and Solicitor of the Supreme Court of Fiji make oath and say as follows :

20

1. That at the trial of the abovenamed Petitioner for murder held at Lautoka in the said Colony of Fiji on the 15th, 16th, and 17th days of May 1934 I appeared as counsel for Mathura who was charged with being an accessory after the fact to the said alleged murder and who was tried contemporaneously with the said Petitioner.
2. That prior to such trial I assisted Mr. Phillip Rice counsel for the said Petitioner and solicitor for such Petitioner and the said Mathura with the preparation of the briefs in defence of such two accused. Such briefs contained (inter alia) elaborate matter dealing with the medical aspects of the said case.
3. Mr. Rice and I decided that the only defence open to us in the case of the said Mathura was that of the innocence of the alleged principal

30

namely the said Petitioner and that therefore the defence of either of these two accused really involved the defence of the other.

In the Privy  
Council

No.27

Affidavit of  
Nathaniel Stuart  
Chalmers, 5th  
October, 1935 -  
continued.

4. By reason of the matter set forth in paragraph 3 hereof an arrangement was made between Mr. Rice and me that our addresses were to be split into compartments whereby Mr. Rice was to deal with the question of absence of evidence of malice and also lack of corroboration of the evidence of the witness Sukraj an accomplice and I was to deal with the evidence as to the cause of death of the deceased boy Ramautar which matter involved an analysis of the medical facts of the case.
- 10
5. I commenced my final address to the Court by criticising the practice of tendering evidence in the form of statements by accused persons.
6. I then went on to discuss whether suicide was a reasonable theory whereby to explain the cause of death of the deceased boy Ramautar arguing that if it were then the Petitioner Mahadeo was not guilty of the said charge of murder.
- 20
7. At this stage His Lordship the Chief Justice informed me that I must confine myself to argument in defence of the said Mathura and that I must not make a second speech in defence of the Petitioner Mahadeo whose counsel had already concluded his address. I then submitted to His Lordship that I was fully entitled to argue upon the lines I desired because an essential ingredient of the charge against my client the said Mathura was that the Petitioner had committed murder and that if it could be shown that such alleged murder had not in fact been committed then the charge against my client must automatically collapse. His Lordship however definitely ruled against me upon this question whereupon I was compelled to discontinue my address telling His Lordship that in view of the said ruling I could not proceed. There was much further matter concerning the cause of death of the said Ramautar which I desired to urge to the Court
- 30
- 40

In the Privy  
Council

and which I would have so urged but for the ruling.

No.27  
Affidavit of  
Nathaniel Stuart  
Chalmers, 5th  
October, 1935 -  
continued.

SWORN at Auckland in)  
the Dominion of New ) (Signed) NAT. S. CHALMERS  
Zealand this 5th day)  
of October 1935 )

Before me:

(Signed) A.M. GOULDING

A Commissioner of the Supreme  
Court of Fiji for taking affidavits  
in and for New Zealand.

10

No.28  
Affidavit of  
Phillip Rice,  
21st October,  
1935.

No. 28  
AFFIDAVIT of PHILLIP RICE.

(Heading as in document No. 24)

I PHILLIP RICE of Ba in the Colony of Fiji  
Barrister and Solicitor make oath and say as  
follows :-

1. THAT I am a member of the firm of Chalmers  
& Rice of Ba and Lautoka in the said Colony of  
Fiji the Solicitors acting for the Petitioner  
herein.

20

2. THAT I appeared as Counsel for the said  
Petitioner on his trial for murder held at Lautoka  
aforesaid on the 15th 16th and 17th days of May  
1934.

3. THAT prior to such trial I realised (in  
connection with the preparation of the brief in  
defence of the said Petitioner) that the medical  
aspect of the case would be an important factor  
thereof and with a view to furnishing myself and  
Counsel then to be engaged for Mathura (the  
alleged accessory after the fact to the said  
murder for whom my firm also acted as Solicitors)  
with adequate material upon which to cross-examine  
and address the Court concerning the medical  
aspects of the case I wrote a letter dated

30

the 10th day of March 1934 to a Medical Practitioner one Dr. P. O. Andrew who practises at Takapuna Auckland New Zealand and who is a personal friend of mine in which letter I briefly described the facts of the said case and requested him to purchase on my behalf some medical work apt to fit a lawyer for the purpose aforesaid.

In the Privy  
Council

No.28  
Affidavit of  
Phillip Rice,  
21st October,  
1935 - continued.

10 4. IN response to this request I received by the next mail from New Zealand the Fifth Edition of Professor Glaister's work on Medical Jurisprudence and Toxicology and also a small work entitled Anatomy for Junior Nurses.

20 5. Mr. N. S. Chalmers (who is not a member of my said firm) was engaged to appear as Counsel for the said Mathura and he and I in collaboration after my receipt of the said books prepared elaborate briefs for the defence of the Petitioner and the said Mathura dealing in detail with (inter alia) the medical aspects of the said case and using the said two books in connection therewith.

6. Mr. N. S. Chalmers and I decided that the only defence open to us in the case of the said Mathura was that of the innocence of the alleged principal namely the said Petitioner and that therefore the defence of either of these two accused really involved the defence of the other.

30 7. BY reason of the matter set forth in paragraph 6 hereof an arrangement was made between Mr. N. S. Chalmers and me that our addresses were to be split into compartments whereby I was to deal with the question of absence of evidence of malice and also lack of corroboration of the evidence of the witness Sukraj an accomplice. Mr. Chalmers on the other hand was to deal with the evidence as to the cause of death of the deceased boy Ramautar which matter involved an analysis of the medical facts of the case.

40 8. I did not tell the Court that Mr. Chalmers and I had so agreed to divide up the aspects of the said case and at this stage as I cannot recollect whether or not Mr. Chalmers did I am compelled to refrain from expressing any opinion upon the matter

In the Privy  
Council

No.28  
Affidavit of  
Phillip Rice,  
21st October,  
1935 - continued.

9. AFTER reading the transcript of the shorthand notes taken on the hearing of the Petition for special leave to appeal in this case I conferred regarding the same with Ransley Samuel Thacker Esquire Acting Chief Justice of Fiji and former Attorney-General of Fiji who appeared as Counsel for the Crown at the said trial.

10. AS a result of the conference referred to in paragraph 8 hereof and of my own previous clear recollection of the matter supported by contemporary pencil notes made by me in Court at the said trial I am confident that the following represents substantially a full fair and accurate account of the incident which immediately preceded the conclusion of the final address of Mr. N. S. Chalmers:

10

I had concluded my address and had sat down without having informed the Court that Mr. Chalmers and I had agreed to divide into compartments our submissions in the case. Mr. Chalmers then commenced to address the Court. He began by a criticism of tendering evidence in the form of statements by accused persons and went into detail tending to shew that in this case such evidence was unreliable. During this portion of his address there was no interruption.

20

He next passed on to discuss whether suicide was a reasonable theory whereby to explain the cause of death of the deceased boy Ramautar urging that if it were then the abovenamed appellant Mahadeo was clearly not guilty of the charge of murder levelled against him. At this stage His Lordship the Chief Justice informed Mr. Chalmers that he must confine himself to argument in defence of Mathura (the alleged accessory) for whom he appeared and that he must refrain from argument in defence of the said appellant Mahadeo whose Counsel (namely I the said Phillip Rice) had already concluded.

30

Mr. Chalmers then submitted to his Lordship the Chief Justice that as it was an essential ingredient of the charge against his client Mathura that murder had in fact been committed by Mahadeo he (Mr. Chalmers) was fully entitled to adduce argument to shew that Mahadeo was not guilty of the said charge of murder. A discussion

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then took place between His Lordship and Mr. Chalmers upon this point the result of which was that His Lordship definitely ruled that Mr. Chalmers was not entitled to argue upon the said lines he desired. Mr. Chalmers thereupon informed His Lordship in effect that in that event it seemed useless for him to proceed or something to that effect the exact terms of which I cannot recall. Mr. Chalmers having been thus stopped  
 10 sat down.

SWORN at Suva in the Colony )  
 of Fiji by the said Phillip ) (Signed) P. RICE  
 Rice this 21st day of October )  
 1935 )

Before me:

(Signed) R. CATEN

A Commissioner of the Supreme  
 Court of Fiji.

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No. 29

20

AFFIDAVIT OF THE ATTORNEY GENERAL  
 WITH EXHIBITS

(Heading as in document No. 24)

I, THE HONOURABLE RANSLEY SAMUEL THACKER now Acting Chief Justice of the Colony of Fiji and Acting Chief Judicial Commissioner for the Western Pacific and lately His Majesty's Attorney-General for the Colony of Fiji, Barrister-at-Law of Gray's Inn, make oath and say as follows :-

30 1. THAT I did in my capacity as His Majesty's Attorney-General for Fiji on the 15th day of May, 1934, and on subsequent days conduct the prosecution on behalf of the Crown at the trial of one Mahadeo who was arraigned at the Lautoka Circuit Court of the Supreme Court of Fiji on a charge of murder jointly with one Sarandas and one Mathura who were charged respectively as a principal in

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 Council

No.28  
 Affidavit of  
 Phillip Rice,  
 21st October,  
 1935 - continued.

No.29  
 Affidavit of the  
 Attorney General,  
 22nd October,  
 1935.

In the Privy  
Council

No.29  
Affidavit of the  
Attorney General,  
22nd October,  
1935 - continued.

the second degree and as an accessory after the fact to the said murder.

2. THAT I have read the affidavits of Nathaniel Stuart Chalmers dated the 25th day of April, 1935, of Phillip Rice dated the 9th day of April, 1935, and of the Appellant Mahadeo dated the 9th day of April, 1935, arising out of the said trial.

3. THAT I have read the Petition for leave to appeal in forma pauperis of the said Appellant.

4. THAT I have read the petition signed by Mr. J. M. Pringle, Barrister-at-Law. 10

5. THAT I have read the transcript of the shorthand notes of Messrs. Martin Meredith & Co., of New Court Carey Street, London, W.C.2.

6. THAT to the best of my recollection and belief Mr. Rice addressed the Court at the conclusion of the evidence and then sat down. That Mr. Chalmers then addressed the Court on behalf of Mathura and was proceeding to adduce arguments to show that Mahadeo was not guilty of the offence of murder, and was then told by the Chief Justice that he must not do so but must confine himself to the defence of his own client Mathura, who was charged with being an accessory after the fact. That there was no intimation whatever by either Mr. Rice or Mr. Chalmers to the Chief Justice that they had arranged between themselves to address the Court, the one as to certain parts of the evidence and the other as to other parts of the evidence. That there was no intimation to the Chief Justice that Mr. Chalmers had arranged with Mr. Rice to address the Court on the medical evidence and that no such intimation was made either before Mr. Chalmers commenced his address or at the time when he was stopped by the Chief Justice, or at any other time. 20 30

7. THAT the Chief Justice addressed the Assessors after speeches by Counsel and that the substance of his remarks is contained in the Annexure marked "A" which said Annexure is a copy of a document handed to me by the Chief Justice in or about the month of October, 1934. The notes in the Chief Justice's note book are as shown in the record supplied by the Registrar of the Supreme Court. 40



8. THAT I am unable to recollect at this time whether the Chief Justice said to the Assessors "Mahadeo never denied that he committed murder. There is one further point. Mention was made in the Attorney-General's address of matters which as he said eliminated the possible defence of manslaughter". That I am not prepared to state that these remarks were not made.

In the Privy  
Council

No.29

Affidavit of the  
Attorney General,  
22nd October,  
1935 - continued.

10 9. THAT in my final address to the Court I submitted that the evidence did not disclose a case of accident in that the evidence of Sukraj was quite clear that the accused Mahadeo was kneeling over Ramautar with his hands to his throat and that in a very short time, that is, 3 minutes, Ramautar died. That I further said that there was no evidence of justification which would justify an acquittal. That I further said that there was no evidence, moreover, of such provocation or other circumstances as would justify a  
20 verdict of manslaughter. That I further submitted that there was some evidence of malice in that after Mahadeo had been asked to separate the two boys Sarandas and Ramautar, and after he (Mahadeo) had been successful in dragging away Sarandas, he (Mahadeo) then proceeded to throttle Ramautar. That I further said that he intended to do grievous bodily harm to Ramautar, or at least some act of violence and that, if death resulted, that was, in law, murder.

30 10. THAT I further submitted that even if the Court held that the evidence of malice was weak, as I admitted it was, it was not the duty of the Crown to prove malice, and that when the prosecution had proved the homicide, the onus lay on the accused to prove that it was justifiable or excusable or that there was some evidence of provocation or other circumstances which would reduce the offence to manslaughter.

40 11. THAT the accused Mahadeo did not give evidence on his own behalf, nor make any statement not under oath.

12. THAT in making the submission referred to in paragraph 10 of this Affidavit I had in mind the law as stated in Archbold's Criminal Pleading, Evidence & Procedure 29th Edition at page 873 wherein it is stated as follows :-

In the Privy  
Council

No.29  
Affidavit of the  
Attorney General,  
22nd October,  
1935 - continued.

"In every charge of murder the fact of killing being first proved all the circumstances of accident, necessity, or infirmity are to be satisfactorily proved by the prisoner unless they arise out of evidence produced against him for the law presumeth the fact to have been founded in malice until the contrary appeareth. Foster's Crown Law, page 255. And again from Archbold on the same page "as a general Rule all homicide is to be presumed to be malicious and murder unless the contrary appears from circumstances of alleviation excuse or justification". 10

and again from Archbold on the same page:

"Therefore the prosecutor is not bound to prove malice or any facts or circumstances besides homicide from which the jury may presume it, and it is for the defendant to give any evidence of such facts and circumstances as may prove the homicide to be justifiable or excusable or that at most it amounted to manslaughter". Rex v. Greenacre 8 C. & P. 35. 20

That I had in mind also similar passages in the following Text Books:

Stephen's Digest of the Criminal Law.

Russellon Crimes.

Halsbury's Laws of England.

Odgers on the Common Law.

13. THAT no protest or objection was made by either Mr. Rice or Mr. Chalmers at any time during the trial that the above extracts referred to in paragraph 12 were not correct statements of the law. 30

14. THAT the Chief Justice made no comment at any time during the trial that the above extracts referred to in paragraph 12 were not correct statements of the law.

15. THAT I am unable to say whether the Chief Justice accepted my submissions as correct statements of the law, or whether the Chief Justice 40

directed himself properly as to the onus on the prosecution.

In the Privy  
Council

No.29

Affidavit of the  
Attorney General,  
22nd October,  
1935 - continued.

16. THAT the Chief Justice did consider to some extent the possibility of manslaughter if he said (as he is stated to have done according to the affidavit of Mr. Rice) as follows:- "This is not a manslaughter case. This is a case of murder or nothing as against Mahadeo".

10 17. THAT the Chief Justice did not exercise the powers contained in Section 23 of the Criminal Procedure Ordinance 1875 as amended by the Criminal Procedure (Amendment) Ordinance 1928 namely to "examine the accused person with a view to enabling him to explain anything that has been deposed to in evidence against him". That Mr. Rice informed the Chief Justice that the accused would not give evidence. That I have not known since I have been Attorney-General for Fiji, that is, for twenty one months, of the  
20 exercise of such power. That I am informed by legal practitioners in Fiji, that they do not recollect any Chief Justice exercising the said power, and that they would strongly deprecate the exercise of this power.

18. THAT, with reference to the allegations made on page 17 of the transcript that Counsel had applied to the Court for copies of the depositions and that the said copies had been refused, the Chief Justice did so order, but that some 6 weeks  
30 later, the Registrar, by order of the Chief Justice forwarded a copy of the official notes of evidence to Messrs. Chalmers & Rice. That I attach hereto as Annexure marked "B-1" a copy of a letter dated the 12th day of September, 1934, from Messrs. Chalmers & Rice and "B-2" a copy of the Registrar's reply dated the 1st day of November, 1934.

19. THAT Dr. Harper, the District Medical

In the Privy  
Council

No.29

Affidavit of the  
Attorney General,  
22nd October,  
1935 - continued.

Officer, Lautoka, who gave evidence on behalf of the prosecution was unable to say whether Ramautar had died from strangulation.

20. THAT it was not possible for such strangulation to be proved for the reason that only the scattered bones of the boy Ramautar were found.

21. THAT the petition signed by Mr. Pringle Barrister-at-Law is different in form and substance to the Petition signed by the Appellant, a copy of which was served on the deponent. That there is no allegation in the Appellant's signed Petition such as is set out in paragraph 14 of the Petition signed by Mr. Pringle.

10

SWORN at Suva in the )  
Colony of Fiji by the )  
said Ransley Samuel Thacker ) (Sgd) RANSLEY S.  
this 22nd day of October, ) THACKER.  
1935: )

Before me:

(Sgd) R. CATEN

20

A Commissioner of the Supreme  
Court of Fiji.



"A"

In the Privy  
Council

This is the true copy of the document referred to in the annexed Affidavit of RANSLEY SAMUEL THACKER sworn at Suva in the Colony of Fiji this 22nd day of October, 1935:

Exhibit "A" to  
Affidavit of the  
Attorney General.

Before me:

(Sgd) R. CATEN

A Commissioner of the Supreme  
Court of Fiji.

10 If you were a jury I should have to address  
you at considerable length upon what evidence you  
may regard as corroboration of the evidence of  
Sukraj who is admittedly implicated in this case.  
I should have to warn you on many points upon  
which a jury must be advised but in the form of  
trial adopted in this Colony the onus of deciding  
all points of the nature indicated lies upon me  
and I have come to the conclusion after consider-  
ing all the evidence that it is sufficient to  
20 support a conviction if in your opinion the  
accused Mahadeo is guilty of the murder of Ramautar.

It is for you individually - you need not be  
unanimous to give me your true opinion based on  
the evidence as to the guilt of the accused. I  
will make just a few comments for your assistance.

If the evidence of Sukraj stood by itself I  
would say to you that it was advisable not  
to convict but corroboration does not mean that  
there must be exact repetition of an accomplice's  
30 evidence - corroboration may be found in what I  
term corroboration of conduct (Example given).

Now in this case there is corroboration of  
Sukraj's evidence both in evidence and in the  
conduct of both the accused.

You will recollect that the witnesses

In the Privy  
Council

Exhibit "A" to  
Affidavit of the  
Attorney General -  
continued.

Munessar and Ghisiawani in reply to me stated that Sukraj came home first at noon but said nothing. From this it may be inferred that he knew the other boys had made up a story and that he was frightened of his master's son. Sukraj himself was also clear that when Mahadeo came home he first said that Ramautar had hanged himself and then asked where his father was.

Mahadeo could have given evidence and contradicted this but he has not done so. You may also consider why Mahadeo's mother has not been called for the defence; you have heard that she was present when Mahadeo came home; there were independent witnesses Munessar and Ghisiawani who might have been cross-examined but the defence produced no evidence. Mahadeo certainly knows who killed Ramautar and while he has made statements implicating other people he has never once from beginning to end said I am innocent I did not do it. Today he might have sworn on oath had he seen fit to do so that he was innocent yet he remains silent.

10

20

I should warn you that and you will of course understand that the charge against Mathura stands or falls with that against Mahadeo. If you are of opinion that Mahadeo is not guilty then you must say that Mathura is not guilty but if you are of opinion that Mahadeo is guilty then I do not think that Mathura's case will cause you much difficulty.

30

I would warn you that relationship has no bearing in a case like this but it may give you a desire to make some recommendation to mercy and I always see that full effect is given to such.

My room is at your disposal if you wish to confer for any time.

---

"B-1"

In the Privy  
CouncilExhibit "B-1"  
to Affidavit of  
Attorney General.

This is the true copy of the document referred to in the annexed Affidavit of RANSLEY SAMUEL THACKER sworn at Suva in the Colony of Fiji this 22nd day of October, 1935:

Before me: (Sgd) R. CATEN

A Commissioner of the Supreme Court of  
Fiji.

DC/TC

10

FIJI  
12th September, 1934.

The Registrar of the Supreme Court,  
SUVA.

Dear Sir,

Rex v Mahadeo and Mathura.

20 After conviction and sentence in this case we received instructions to take the opinion of leading counsel in New Zealand as to whether an appeal to the Privy Council would lie; and in order that the eminent counsel whose opinion was being sought might be able to advise on the surest foundation, we asked Robert Crompton Esquire, K.C., C.B.E., to approach His Lordship the Chief Justice of Fiji, and respectfully ask for a copy of the Notes of Evidence taken by the official typist at the trial. Mr. Crompton informed us that His Lordship was not prepared to grant the request.

30 In view of His Lordship's refusal we feel somewhat diffident about renewing the application; but as the Privy Council is to be moved for leave to appeal and as it appears necessary that the fullest and most reliable information should come before their Lordships of the Judicial Committee when the application is made we feel the duty devolves upon us to make a further application for a certified copy of these notes of evidence.

Yours faithfully,

CHALMERS & RICE.

In the Privy  
Council

"B-2"

Exhibit "B-2"  
to Affidavit of  
Attorney General

This is the true copy of the document referred to  
in the annexed Affidavit of RANSLEY SAMUEL THACKER  
sworn at Suva in the Colony of Fiji this 22nd day  
of October, 1935:

Before me: (Sgd.) R. CATEN.

A Commissioner of the Supreme Court  
of Fiji.

S.C. No. 2/9

Office of the Registrar,  
Supreme Court,  
Government Buildings,  
SUVA, FIJI,

10

1st November 1934.

Gentlemen,

Rex v. Mahadeo.

With reference to your notice dated the 13th  
October, 1934, and filed in the Supreme Court Reg-  
istry on the 17th October, 1934, I now forward you  
a copy of the official notes of evidence taken at  
the above trial. The other documents referred to  
in the said notice are not in the custody of the  
Court.

20

I have the honour to be,  
Gentlemen,  
Your obedient Servant,

(Sgd.) B.St.J. FISHER.

Registrar.

Messrs. Chalmers & Rice,  
Solicitors,  
LAUTOKA.



No. 30

AFFIDAVIT OF THE ATTORNEY GENERAL  
WITH EXHIBIT.

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In the Privy  
Council.

No. 30

Affidavit of the  
Attorney General,  
22nd October,  
1935.

IN THE PRIVY COUNCIL

ON APPEAL FROM THE SUPREME COURT OF FIJI  
LAUTOKA CIRCUIT COURT

BETWEEN MAHADEO of Tagi Tagi in  
the District of Ba

Appellant

10

AND HIS MAJESTY THE KING  
Respondent

I, THE HONOURABLE RANSLEY SAMUEL THACKER now Acting Chief Justice of the Colony of Fiji and Acting Chief Judicial Commissioner for the Western Pacific and lately His Majesty's Attorney-General for the Colony of Fiji, Barrister-at-Law of Gray's Inn, make oath and say as follows:-

- 20 1. That I did in my capacity as His Majesty's Attorney-General for Fiji on the 15th day of May, 1934, and on subsequent days conduct the prosecution on behalf of the Crown at the trial of one Mahadeo who was arraigned at the Lautoka Circuit Court of the Supreme Court of Fiji on a charge of murder jointly with one Sarandas and one Mathura who were charged respectively as a principal in the second degree and as an accessory after the fact to the said murder.
- 30 2. That I have read the affidavits of Nathaniel Stuart Chalmers dated the 25th day of April, 1935, of Philip Rice dated the 9th day of April, 1935 and of the Appellant Mahadeo dated the 9th day of April 1935, arising out of the said trial.
3. That I have read the Petition for leave to appeal in forma pauperis of the said Appellant.
4. That with reference to paragraph 3 of the said

In the Privy  
Council

No. 30

Affidavit of the  
Attorney General,  
22nd October,  
1935 - continued.

petition no reason for the objection mentioned therein was given at the trial. That the amendment affected only Sarandas, who was undefended, and that the said Sarandas made no objection to the said amendment and that neither Mr. Chalmers nor Mr. Rice suggested any reason why their respective clients were prejudiced by reason of the said amendment.

5. That with reference to paragraphs 6 & 7 of the said Petition, I protested at the opening of the trial at the contents of the letter referred to in paragraph 5 of the said Petition on the ground that there was an innuendo in it that the prosecution had kept back certain statements made by the accused. That I made this protest immediately after being informed by the local police inspector Mr. Lucchinelli that no statements existed other than which appeared in the depositions. That during the trial, however, two statements made by the witness Sukraj were produced by the police in addition to the one appearing in the depositions, which said statements had not been produced to me. That the Chief Justice said they were not admissible as Sukraj was a witness, and that the documents referred to were not statements but police proofs. His Lordship said he would take charge of them and peruse them overnight. That he would then decide whether the defence might have access to them. On the following morning on opening of Court he refused permission for the Defence to see the documents. That I did not in fact see the said statements until after the trial when upon request by Messrs. Chalmers & Rice, copies were given to them. That the said statements were retained in the possession and custody of the Chief Justice until they were produced in accordance with the said written request.

7. That the Chief Justice did in fact disallow certain questions in cross-examination which he stated might tend to incriminate the witness Sukraj but that such disallowance did not seriously prejudice the Appellant.

8. That I am informed and verily believe that while police investigations were proceeding one of the witnesses for the prosecution, one Ghisia-wani, the mother of Ramautar, was taken away in a motor car from her home to the office of Messrs.

Chalmers & Rice, as deposed to by her in her Lower Court, and thereupon interrogated at the said office but that neither of the Solicitors concerned knew, at the time, that the said Ghisiawani had been so brought against her will.

In the Privy  
Council  
No. 30  
Affidavit of the  
Attorney General  
22nd October,  
1935 - continued.

10 9. That I am informed and verily believe that the said Solicitors well knew at the time that the said Ghisiawani had been interviewed by the police and that a statement had been taken from her by the police, but that I am unable to state whether in these circumstances it was improper for the said Solicitors to have questioned the witness.

10. That no shorthand notes of the speeches of Counsel were taken at the trial in accordance with the general instructions by the Chief Justice. That the report of my final address to the Court as set out in paragraph 15 of the Petition is in substance accurate but that it does not contain all that I said.

20 11. That I did refer in my final address to the Court to the statements made by Sarandas but that is also clear from the Petitioner's own account of the Chief Justice's address to the Assessors that the Court did not take into account any of the statements made by Sarandas against Mahadeo and that it relied on the evidence of Sukraj and on the circumstantial evidence in the case.

30 12. That the Chief Justice handed me in or about the month of October 1934, a copy of a note of his address to the Assessors, which said note I was informed was written out immediately after the said address and while the Assessors were absent from the Court considering their opinions. That the Annexure marked "A" is a true copy of the document handed to me by the Chief Justice.

40 13. That the accounts of the speeches of Counsel as set out in paragraph 13 of the Petition and of the address by the Chief Justice to the Assessors as set out in paragraph 17 of the Petition are in substance correct but that these said accounts are from notes taken by Counsel for the accused and that they do not contain all that was said. That the said accounts are not verbatim and were taken down in longhand and not in shorthand, during the trial.

In the Privy  
Council

No. 30

Affidavit of the  
Attorney General,  
22nd October,  
1935 - continued.

14. That the Chief Justice in sentencing the accused Mahadeo stated, as is set out in paragraph eighteen of the Appellant's Petition "As your age appears uncertain I shall take the merciful view that you are only sixteen and instead of passing sentence I shall order you to be detained during His Majesty's pleasure", whereas the only evidence available on the point was contained in the evidence of Sub-Inspector Probert given in cross-examination as follows: "I found out Mahadeo's age from his mother. She gave it as between seven-teen and eighteen." That the birth of the Appellant was not registered with the Registrar of Births, Marriages and Deaths.

10

That Section twelve of the Juvenile Offenders Ordinance 1932 prohibits the passing of a sentence of death upon a child or young person. That the definition in the said Ordinance of a young person is as follows:- "Young person" means a person who is twelve years of age or upwards and under the age of sixteen years".

20

15. That affidavits of Nathaniel Stuart Chalmers dated the 5th day of October, 1935, and of Phillip Rice dated the 21st day of October, 1935, have been produced to and read by me and that to the best of my knowledge and recollection the contents thereof are substantially correct.

SWORN at Suva in the Colony)  
of Fiji by the said Ransley ) (Sgd.) RANSLEY S.  
Samuel Thacker this 22nd ) THACKER.  
day of October, 1935: )

30

Before me:

(Sgd.) R. CATEN.

A Commissioner of the  
Supreme Court of Fiji.

"A"

In the Privy  
Council

This is the true copy of the document referred to in the annexed Affidavit of RANSLEY SAMUEL THACKER sworn at Suva in the Colony of Fiji this 22nd day of October, 1935:

Exhibit "A" to  
Affidavit of  
Attorney General.

Before me: (Sgd) R. CATEN

A Commissioner fo the Supreme  
Court of Fiji.

10 Exhibit "A" to this Affidavit is the same document as Exhibit "A" to the Affidavit of the Attorney General printed on page 65.

No. 31

AFFIDAVIT OF PHILLIP RICE WITH EXHIBIT

No. 31  
Affidavit of  
Phillip Rice, 23rd  
October, 1935.

IN THE PRIVY COUNCIL

ON APPEAL FROM THE SUPREME COURT OF FIJI  
LAUTOKA CIRCUIT COURT

20 BETWEEN MAHADEO of Tagi Tagi in  
the District of Ba but now  
in custody at Mukuluva  
Island in the Colony of  
Fiji Appellant

AND HIS MAJESTY THE KING  
Respondent

I, PHILLIP RICE of Ba in the Colony of Fiji Barrister and Solicitor make oath and say as follows:-

1. That I am a member of the firm of Chalmers & Rice of Ba and Lautoka in the said Colony of Fiji the Solicitors acting for the Petitioner herein.
- 30 2. That I appeared as Counsel for the said Petitioner on his trial for murder held at Lautoka

In the Privy  
Council

No. 31.  
Affidavit of  
Phillip Rice,  
23rd October,  
1935 -  
continued.

aforesaid on the 15th 16th and 17th days of May,  
1934.

3. That with reference to contents of paragraph 12 of that Affidavit of Ransley Samuel Thacker Esquire dated the 22nd October 1935 wherein he refers to a note of the Chief Justice's address in this case and annexes a copy of the same I desire to comment in reply as follows:-

(a) There is already on the record of this Case a note of the Chief Justice's address to the assessors as is referred to in paragraph 17 of my Affidavit dated the 9th day of April 1935. 10

(b) Such address was prepared by me from long-hand notes taken by me in pencil as Counsel at the trial. A true copy of such long-hand notes is hereto annexed and marked "A".

(c) The narrative of the Chief Justice's address referred to in sub-paragraph (a) hereof was prepared by me from my own said contemporary long-hand notes (referred to in sub-paragraph (b) hereof) within about 48 hours of the said trial in order that I might refer the same to Counsel who advised the appeal in this case. 20

4. That my observations in paragraph 3 hereof apply also to the contents of paragraph 7 of the second Affidavit of the said Ransley Samuel Thacker Esquire dated the said 22nd day of October 1935.

5. In reference to paragraph 17 of the said Affidavit of Ransley Samuel Thacker Esquire in particular the passage "that Mr. Rice informed the Chief Justice that the accused would not give evidence" I respectfully desire it to be understood that I did not use the expression in the sense that the accused was unwilling to do so but simply informed the Court that as Counsel I had made the decision not to lead any evidence for the defence. 30

6. With reference to paragraph 10 of the said first-mentioned Affidavit of the said Ransley Samuel Thacker Esquire I have to state that the report of his final address to which he therein refers as "in substance accurate" was prepared by me in a precisely similar manner to the report of the Chief 40

Justice's address referred to in paragraphs 3 and 4 hereof and this also was the method whereby I prepared the reports of the speeches of Counsel and the address by the Chief Justice referred to in paragraph 13 of the said last-mentioned Affidavit.

In the Privy Council

No. 31.  
Affidavit of Phillip Rice, 23rd October, 1935 - continued

10 SWORN at Suva in the Colony)  
of Fiji by the said Phillip ) (Sgd) P. RICE  
Rice this 23rd day of )  
October 1935 )

Before me:

(Sgd.) R. CATEN.

A Commissioner of the Supreme Court of Fiji.

"A"

This is the true copy of long-hand notes marked "A" referred to in the annexed Affidavit of Phillip Rice sworn at Suva in the Colony of Fiji this 23rd day of October 1935 .

Exhibit "A" to Affidavit of Phillip Rice.

20 Before me: (Sgd.) R. CATEN.  
A Commissioner of the Supreme Court of Fiji.

If you were a jury I should have to address you as to corroboration.

But you are only here for opinion as to facts.

On me to say what corroboration etc. what is evidence and not.

In order to assist you:-

(1) There is sufficient evidence to convict each if you see fit.

(2) Rests on corroboration.

Exhibit "A" to  
Affidavit of  
Phillip Rice -  
continued.

If Sukraj by itself I say advisable not to  
convict.

Corroboration by conduct  
(House in Lautoka illustration)

In this case corroboration by conduct:

(1) Whole of Mahadeo's conduct corrobora-  
tion of fact he did murder.

Sukraj came first knows other boy made up story.  
Frightened of master's son.

Sukraj clear - Mahadeo came first thing Ramautar  
hanged himself then where my father? 10

Strong corroboration.

Mahadeo could contradict it.

But independent witness - father and mother.

XXD - Defence could have called boy's own mother.

Four persons -

(1) One dead.

(2) One gave evidence.

His evidence must be corroborated.

(3) Boy discharged yesterday. 20

Never denied that he committed murder.

One point mention made of manslaughter. Possible  
defence manslaughter.

Not a manslaughter case. If nothing charge  
against Mathura falls to ground.

Relationship makes no difference when a felony.

Exhibition of authority by the owner's son.

Mahadeo murder or nothing.

If facts of recommendation to mercy desirable.

There is enough evidence on which to give an  
opinion if you so wish. 30

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E X H I B I T SEXHIBIT "C" - STATEMENT OF SARANDAS  
(F/N Baijara)

Exhibits

"C"Statement of  
Sarandas,  
13th February,  
1934.

I commenced to work for Mathura last November as a labourer and finished my work last Sunday owing to the fact that I have been unable to leave his house during the last three weeks.

- 10 2. During this period I have been told by Mathura to say nothing about Ramautar having committed suicide and that if anyone asked me, to say that he went out as usual that morning with the horses and that he had not turned up for lunch..
3. I admit that I was seen by the Sub-Inspector at Ba on a Wednesday about a week after Ramautar hanged himself and that when I was questioned I denied all knowledge of the fact that Ramautar had hanged himself and I did that because I was frightened of Mathura and his son.
- 20 4. On last Sunday night my brother-in-law, Ramdhani, came to Mathura's and asked for permission to take me to Tavua to see my sister, Rajmanti, who was sick.
5. Mathura at first refused but later allowed me to leave and was accompanied by Mathura's son, Basdeo.
6. Mathura told Ramdhani to be sure and bring me back again to his house.
- 30 7. After I had seen my sister I left her house with one Mustan and we went to the latter's house about 5 o'clock in the morning where we remained about 15 minutes.
8. Mustan told me that Mr. Powell wanted to see me and when I asked him why, he replied "He wants to see you about something."
9. I went to Mr. Powell's in company with Dudhai (my step-father) and he (Mr. Powell) said "I have a rumour that Ramautar hanged himself. You were with him, tell me what you know about it".

Exhibits

"C"  
Statement of  
Sarandas,  
13th February,  
1934 -  
continued.

10. I then told him as follows:-

"On a Thursday about 6 o'clock in the morning  
"Mathura came to where I was sleeping and told  
"me, Mahadeo, Sukraj and Ramautar to go and cut  
"grass. We each took a hoe and went to Mathura's  
"land near Badal's house which is about half a  
"mile from Mathura's, where we commenced to weed  
"the Canē. About 12 o'clock Sukhraj told Ramautar  
"to go and bring some drinking water from Badal's  
"well. Ramautar refused and stated that he was  
"not servant of Sukhraj. Sukhraj then ran towards  
"him and pushed him and Ramautar fell down.  
"Ramautar got up at once and went on with his  
"work. Mahadeo then asked Ramautar why he would  
"not go and get the water and Ramautar replied  
"'I won't go'. Mahadeo then slapped him across  
"the face with both hands and again ordered him  
"to go and get the water. Ramautar was crying  
"and left. He went towards where Badal's well  
"is situated. We again started to weed and  
"after about half an hour I said to Mahadeo that  
"I was thirsty and hungry and that we had better  
"go home and have food. Mahadeo suggested that  
"Ramautar had possibly gone home and that we had  
"better all go, too. We then left and walked  
"towards the track, Mahadeo being in front, and  
"as we reached the track I was spoken to by him  
"and he pointed out a body that was hanging in  
"a tree. Its face was towards me and I saw at  
"once that it was Ramautar. I went with the  
"others to where he was and I think we were about  
"12 feet away from the body. It had a white  
"calico turban around its neck, the other end  
"being tied to a branch of a saijhan tree. Under-  
"neath the tree was a big heap of stones and his  
"feet were about a foot above the top of the  
"stones. Sukhraj then said 'He is finished'.  
"We then left the body and walked to Mathura's  
"house where we saw Mathura's wife. I heard  
"Mahadeo say to his mother 'Ramautar is hanging  
"from a tree'. She then told Mahadeo to go and  
"get his father, Mathura, and told him that he  
"had gone towards Daya Singh's house. Mahadeo  
"then ran towards Daya Singh's house and later  
"returned. He was away about half an hour and  
"was followed by Mathura. He asked me if it was  
"true that Ramautar hanged himself and I said  
"'Yes'. Mathura then said 'I will go and get  
"the Inspector'. He then said 'If the police

10

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30

40

10 "come, tell them that Ramautar hanged himself and  
 "say nothing about the assault on him by Sukraj and  
 "Mahadeo'. He then left and returned in about an  
 "hour's time with Jamidar Singh. Jamidah Singh and  
 "Mathura then warned us again that if the police  
 "came whilst they were away to say nothing of the  
 "assaults made on Ramautar and to say that he hanged  
 "himself. He also told us to remain at home and  
 "not to go back to work again. It was then about  
 "4 p.m. Jamidar Singh and Mathura then said 'We  
 20 "are going to the court, you people remain here and  
 "do not go out anywhere'. About 5 p.m. Sukraj left  
 "to go to his home which is about a mile from  
 "Mathura's. Mahadeo and me remained at Mathura's  
 "and about 9 p.m. we went to sleep. Mathura and  
 "Jamidar Singh had not then returned. About 6 o'clock  
 "next morning Mathura awakened me and Basdeo. He  
 "told me to go and milk the cows and that after we  
 "were finished milking we would go and search each  
 "house for Ramautar. I then said to Mathura  
 30 "'Ramautar is hanging from a tree, why go and search  
 "in the houses for him?'. At that time Sukraj  
 "came and then Mathura said 'We have thrown the  
 "body away already'. He then asked us to go to each  
 "house and make enquiries about Ramautar because  
 "he had told the sergeant that Ramautar had taken  
 "the horses out for grazing and had not returned  
 "home. He also told us to say nothing of the fact  
 "that Ramautar had hanged himself. Mahadeo, Sukraj  
 "and me then left and made enquiries at all the houses  
 40 "as to whether Ramautar had been seen. We got home  
 "about 3 p.m. and about 4 p.m. Mathura arrived with  
 "a Fijian constable and the search was then contin-  
 "ued until about 6 p.m. on the Friday. Mathura  
 "assisted in the search that day. On the following  
 "day, Saturday, about 7 o'clock in the morning Mathura  
 "said that he was again going to the police. No  
 "search was made by anyone that morning but about  
 "12 o'clock Mahabir came and told me that the sergeant  
 "wants everybody. Kalpi, Mahadeo and me then went  
 50 "and saw the sergeant who was searching with about  
 "25 people. We helped him and we returned home  
 "about 3 or 4 o'clock, the others also knocked off  
 "searching. The sergeant with Badal continued to  
 "search in the cane field and about 5 o'clock I again  
 "went to search with Jamidar Singh, Sarajdin, Mathura  
 "and Mahadeo. We returned at sunset. On Sunday  
 "the sergeant returned and the search was continued  
 "with about 14 people. On Saturday and Sunday the  
 "sergeant asked me if I knew where the boy had gone

Exhibits"C"

Statement of  
 Sarandas,  
 13th February,  
 1934 -  
 continued.

Exhibits"C"

Statement of  
Sarandas, 13th  
February, 1934 -  
continued.

"and I told him that I did not know anything ex-  
"cepting that Ramautar had gone out grazing horses  
"and had not returned."

That is all.

Taken by me this 13th day of February 1934 at  
Narovurovu.

(Sgd.) J. PROBERT.  
Sub-Inspector

(Sgd.) ZAMIN HUSSAIN.

(Sgd.) SHARANDAS.

10

"E"

EXHIBIT "E" - STATEMENT of MAHADEO  
(F/N Mathura)

Statement of  
Mahadeo, 14th  
February, 1934.

On a Thursday about three weeks ago I left  
Mathura's house about 6 o'clock in the morning and went  
to the field to weed the cane.

2. Sukraj, Ramautar and Sarandas were with me.

3. Basdeo, my brother, and a boy named Badalu  
went with us for a short distance as they were  
grazing the cattle.

4. Sukraj, Ramautar and Sarandas had been working  
with me for the previous week at weeding the cane.

20

5. Ramautar had not been looking after the horses  
during that time but before that he used to graze  
them.

6. Sarandas and Ramautar commenced to quarrel  
and they spoke in a language I could not under-  
stand.

7. They slapped each other and then I stopped  
them. It is true that Ramautar fell over and that  
Sarandas fell over as well.

30

8. I caught hold of Sarandas and then pushed him  
away.

9. Ramautar then told me that he was going home

to see my father and I asked him to stop for awhile and finish his work and then we would go together.

10. Ramautar was crying and I let him go and told him that I would tell my father also when I went home.

11. I asked Sarandas why he had hit Ramautar and he told me that he had used bad language.

12. Ramautar then left and I stayed behind with the other two.

10 13. About 12 o'clock Sarandas, Sukraj and me went from where we were working towards the track near Badal's house. We walked along this track towards my house and when we reached Dhuki's house we met Basdeo and Badalu.

14. I asked them both if Ramautar was at home and they told me that he was not.

15. Sukraj then went towards his home and Sarandas and me returned along the track to look for Ramautar.

20 16. Sarandas was in front and I saw him stop when he was about  $2\frac{1}{2}$  chains from Badal's house. I hurried up to him and then he said "Look, he has hanged himself."

17. We went to a saijan tree and I then saw that it was Ramautar. I saw that he had a white turban around his neck and that his feet were only about two inches from the ground.

30 18. Sarandas lifted him up and when the turban became slack it came undone where it was tied to the tree.

19. The body then fell on the ground near the stones and Sarandas started to cry and said "He is dead".

20. We both ran towards my home, Sarandas reaching there first.

21. I saw that my mother, Munessar and his wife were having their food in the stable. They asked

Exhibits

"E"

Statement of  
Mahadeo, 14th  
February, 1934 -  
continued.

## Exhibits

"E"

Statement of  
Mahadeo, 14th  
February, 1934 -  
continued.

Sarandas why he was crying but he said nothing, and I then told them that Ramautar had hanged himself.

22. My mother told me that my father had gone to Tulsiram's to pay his rent and I went to look for him and I found him at Daya Singh's house.

23. I saw Dewa there but neither Daya Singh nor any labour were there. I called my father away from Dewa and I then told him that during that morning Sarandas had slapped Ramautar, that Ramautar had then left to go home and that later we had found him hanging from a tree. 10

24. My father came with me to our home and soon afterwards left to report the matter to the police at Tavua. He returned about dark by himself.

25. Sukraj came soon afterwards and had some talk with my father. I do not know what they said.

26. I went to bed and went to sleep and sometime later during the night I was awakened by Sukraj who told me to get up and go with him to do some work.

27. I asked him where we were going to at that time of night and he said "To do some work". 20

28. My father, Sukraj and me then left home and we walked along the track towards Badal's house. We had no lamp.

29. Soon we came to where Ramautar was lying on the ground and both my father and Sukhraj picked him up and carried him towards Badal's house. We left the track, went behind Badal's house, down through the canefield where he had been working that day, then along a gully and then past some thick bush. From there we went up on a stony hill where there are a lot of balawa trees. 30

30. I sat down on a stone and my father and Sukraj took Ramautar's body about half a chain away.

31. I went off to sleep. I mean I was almost asleep when Sukraj and my father came back and told me to get up as we were going home. We went home through the new fence and there Sukraj left us to go home and we went along the straight track to our home.

32. I did not hear any digging nor any stones being moved by Sukraj and my father before they came 40

back to me without Ramautar. We had no tools with us.

33. On the Sunday after Ramautar's death I am sure that Sarandas was with the search party, because Naranjan Singh spoke sharply to him about slapping Ramautar.

34. As far as I know my father and Sukhraj have not been away from their homes since Ramautar's death.

10 35. About a week ago my father-in-law came to my father's house and they had a talk. Sarandas was at home also and when I came home Sarandas told me that my father and my father-in-law had gone up the hill to see Ramautar.

36. I do not know what time they returned.

That is all.

(Sgd.) MAHADEO (in script).

Taken by me at Namosau this 14th day of February 1934.

20

(Sgd.) J. PROBERT  
(Sgd.) ZAMIN HUSSAIN.

EXHIBIT "F" - STATEMENT OF MATHURA (F/N Baldeo)

On a Thursday about four weeks ago I went to Tulsiram's about 6 a.m. and on my return Mahadeo met me on the track near the creek. He asked me where I had sent Ramautar but he did not offer any explanation as to why he had asked me.

2. It was not his usual practice to come and ask me where Ramautar was.

30 3. I asked him what had happened and Mahadeo then said "He has not come for his food".

4. I then told Mahadeo that I had sent Ramautar to the hills with horses.

5. I went to my home at once with Mahadeo and I

Exhibits

"E"

Statement of  
Mahadeo, 14th  
February, 1934 -  
continued.

"F"

Statement of  
Mathura, 14th  
February, 1934.

## Exhibits

"F"

Statement of  
Mathura, 14th  
February, 1934 -  
continued.

then went to search for Ramautar on the hills by myself.

6. I found my horses (three) but could find no trace of Ramautar and I returned to my home about 5 p.m.

7. I then went to Tavua and saw Naranjan Singh. I told him that a boy named Ramautar had taken my horses to the hills and had not turned up at home and that I could not understand what had happened to him. I reported about 5.30 p.m.

10

8. I returned to my home, had my food and went to sleep.

9. On the next day Mahadeo, Sarandas, Sukhraj and me continued the search until about 1 o'clock and we then went back to my home.

10. At about half past one o'clock I went to Tavua Police Station and saw Naranjan Singh who sent a Fijian constable with me. We went to my home first and then we continued the search with Mahadeo, Sarandas, and Sukraj until dusk.

20

11. The search was continued on Saturday. I continued the search with Mahadeo, Sarandas, and Sukraj until 1 o'clock and I again went to Tavua police station.

12. Naranjan Singh returned with me and we went straight to the hills and on the way Naranjan Singh asked a lot of people to come and help in the search, and about 25 people came with us. We continued the search until dark but could not find Ramautar.

30

13. The search was continued all day Sunday with the help of about 12 people besides the two police.

14. Late on Sunday afternoon I sent Sarandas to Namoli to make enquiries as to whether Ramautar was there.

15. Next day I reported to the Inspector at Ba.

16. Since that day I have searched for Ramautar at Nadi, Lautoka, and Ba. I came from Nadi today and went there last Monday.

40



17. Sometime last week I sent Sukraj to Ra to make enquiries and I sent Munessar yesterday to Nadroga.

18. When I went to Tulsiram's that Thursday morning I left my home about 6 o'clock and it would take me about half an hour to walk there. I did not stop there more than two or three minutes and then went to Qalela and to Mahenga's house where I remained and had my lunch. Mahenga was not there but Hoala Singh and two other men whose names I do not know were there also. I left there about 12.30 pm. and went towards Tulsiram's house again. I saw Battan Singh who told me that Tulsiram had not returned. Later I saw Dewa with some other Punjabis whom I do not know.

19. I was with Dewa when Mahadeo came and told me about Ramautar.

20. I did not think it strange that Mahadeo should walk 50 chains to where I was to let me know that Ramautar had not come home for his mid-day meal.

21. Ramautar had never stayed away all day previous to this.

22. I know Kuttan. He works at the Tagi Tagi telephone. I remember telling him about 5 p.m. on the Thursday about Ramautar being missing. I had no further conversation with him. I did not ask him to ring the Tavua police for me. I did not get any message through Kuttan from Mr. Hunter. I am sure that it was about 5 p.m. when I reported to Kuttan. I cannot understand why Kuttan should say that I told him about 10 o'clock in the morning.

23. I am quite sure that I ordered Mahadeo to take the horses out that morning although I do not know whether he went or not.

24. Badalu, Basdeo, Ramautar's mother have since told me that he actually did take the horses out.

25. Basdeo and Badalu were looking after the cows that day.

26. It is true that I told Mahadeo, Sarandas and Sukhraj that morning at my house to weed the cane. I cannot understand why these three people should say that Ramautar was with them weeding the cane.

Exhibits

"F"

Statement of  
Mathura, 14th  
February 1934 -  
continued.

Exhibits"F"

Statement of  
Mathura, 14th  
February 1934 -  
continued.

27. It is true that I asked no one to help in the search on Thursday, Friday and Saturday morning.

28. When I reached home on that Thursday I saw Munessar's wife, Ghisiawani. She was sitting at the doorway and Munessar was asleep inside.

29. I cannot understand why Sukraj and Mahadeo should say that I went out on Thursday night with them for it is not true.

30. It is not true that on that Thursday either Munessar or his wife told me that Ramautar was dead. 10

That is all.

(Sgd.) MATHURA (in script)

Taken by me at Namosau this 14th day of February, 1934.

(Sgd.) J. PROBERT.

(Sgd.) ZAMIN HUSSAIN.

"G"

Statement of  
Sarandas, 15th  
February 1934.

EXHIBIT "G" - STATEMENT OF SARANDAS  
(F/N Baijaran).

I want to tell you about what happened on the Thursday when Ramautar, Sukraj, Mahadeo, and me were working together weeding Mathura's cane. 20

2. We left home about 6 o'clock in the morning and about 12 o'clock Sukraj asked Ramautar to go and get some water for us.

3. Ramautar refused and told Sukraj that he was not Sukhraj's servant.

4. Sukraj and Ramautar then had an argument and Sukraj rushed at Ramautar and pushed him over. He then bent down and caught hold of Ramautar by the shoulders and at that time Mahadeo ran up and caught hold of Ramautar by the throat. 30

5. Mahadeo continued to squeeze Ramautar's throat and after a little while Ramautar stopped struggling.

6. At that time I was quite close to them and could see plainly what had happened.

7. Mahadeo then said "He is dead".

8. I then went and touched Ramautar and I thought he was dead.

9. Sukraj then suggested to us that we take the body away somewhere and hang it up in a tree.

10 We agreed and then Mahadeo took Ramautar's turban from his head and tied it around Ramautar's throat.

11. Sukraj and Mahadeo then picked up the body and carried it towards the track. I went with them.

12. They put the body on the ground near a saijhan tree and left it there.

13. We left at once and went towards Mathura's house and whilst on the way Sukraj suggested that he should go home first and if any enquiries were made about Ramautar he would say that Mahadeo and me were out on the hills looking for him.

14. I reached home with Mahadeo about 6 or 7 minutes later and we saw Mathura's wife, Ramautar's mother, Munessar and Sukraj.

15. We sat down also and Mahadeo told Munessar that Ramautar was hanging by a tree.

16. Mathura's wife then told Mahadeo to go and find Mathura.

17. Mahadeo left at once and he was running.

18. About an hour later Mahadeo and Mathura returned.

19. Mathura took the three of us away by ourselves and asked what had happened to Ramautar.

20. Sukraj told him everything just as it had happened and Mathura then ordered us to remain at home and to say nothing about Ramautar being assaulted by Sukraj and Mahadeo.

Exhibits

"G"

Statement of  
Sarandas, 15th  
February 1934 -  
continued.

## Exhibits

"G"

Statement of  
Sarandas, 15th  
February 1934 -  
continued.

21. He then left and said that he was going to the police.

22. About 3 o'clock Mathura returned with Jimidar Singh and both of them told us that they were going to the police station to report.

23. They both went away from the house but I do not know where they went to.

24. Next morning Mathura told me that Ramautar's body had been thrown away in the bush.

25. Sukraj and Mahadeo were there also.

10

That is all.

(Sgd.) SHARANDAS.

Taken by me at Namosau this 15th day of February 1934.

(Sgd.) J. PROBERT.  
Sub-Inspector.

(Sgd.) ZAMIN HUSSAIN.

"H"

Statement of  
Mahadeo, 15th  
February 1934.

## EXHIBIT "H" - STATEMENT OF MAHADEO.

We four were cutting grass. Sarandas and Ramautar had a quarrel. They threw stones at each other. Both threw stones at each other. I warned him not to throw stones at anyone. May be get hurt. They used bad language too. Then I warned Sarandas but he did not stop. Sarandas threw one stone again and Ramautar got hurt. The stone hit him on the forehead and he fell down on the ground. Sarandas then ran towards him and lifted him up. Sukraj and me ran towards Ramautar and at that time Sarandas was crying. Ramautar was dead - finished. Sarandas lifted him up and walked away and put him in the tree shade. Sarandas was crying and saying he has been hanged. Then he went home still crying. Everyone made enquiries and asked what had happened and he said nothing. I went and told my father and he told me that he was going to Tavua to report. My father came home and then went to Tavua. I do not know what he reported there.

20

30

I do not know what advice he got from Babugee. My father went to a hilly place towards Tavua in the daylight. I do not know what for. Sukraj told me that the body was moved from there. It was shifted in the night. Sukraj woke me up and we went. Sukraj, my father, and I went. Babugee came too but he waited on the road. That is all I want to say.

Exhibits

"H"

Statement of  
Mahadeo, 15th  
February 1934 -  
continued.

(Sgd.) MAHADEO (in script)

10 Taken by me at Namosau this 15th day of February 1934.

(Sgd.) ZAMIN HUSSAIN. (Sgd.) J. PROBERT.

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EXHIBIT "J" STATEMENT OF SARANDAS.

6th March 1934.

"J"

Statement of  
Sarandas, 6th  
March 1934.

Mr. Subramaniam sworn as Hindustani Interpreter.

20 Four of us were working for Mathura weeding grass. Sukraj, Ramautar, and Mahadeo were with me. Sukraj asked Ramautar for some water and he replied that he was not his servant. Then Sukraj caught hold of Ramautar and pushed him down. Then Mahadeo came up and caught hold of Ramautar's throat. He pressed his throat and then Ramautar died. I also noticed that he was dead. Then Sukraj suggested that a cloth be tied round Ramautar's neck and that he be hung up in a tree. Then Mahadeo tied a cloth round Ramautar's neck and Sukraj and Mahadeo carried Ramautar to a tree. I went with them. They laid the body down under a tree. Then the three of us went home. Before we reached the house  
30 Sukraj went on ahead. When we all reached the house Mahadeo told Ramautar's father, Munessar, that Ramautar had committed suicide. Munessar and his wife began to cry. I don't know her name. Mahadeo's mother was there as well and told him to go and fetch his father. Mahadeo, and myself told Mathura the whole story. Mathura took us some distance from the house. When we told him no one else heard. Mathura said he would go and fetch the sergeant and that when he

## Exhibits

"J"

Statement of  
Sarandas, 6th  
March, 1934 -  
continued.

came we were to say that Ramautar went for water and committed suicide. He told us we were to say nothing else, only that Ramautar had committed suicide. Mathura went away in the direction of the Tavua Courthouse. I don't know whether he went there. About one hour or one and a half hours later Mathura returned with Jamidar Singh and they took us three - Sukraj, Mahadeo and myself - to a little distance away from the house. Mathura and Jamidar Singh both told us that we should all make the same statement, that is that Ramautar had killed himself. Then they went away saying that they were going to fetch the sergeant, Sukraj, Mahadeo and myself remained at home. Later, Sukraj went away to his home. I live in Mathura's house and work for him. Mahadeo is Mathura's son. We went to bed before Mathura returned. I don't know when he returned. Next morning Sukraj came to work as usual and Mathura told the three of us to go and search for Ramautar every from house to house. I told Mathura that Ramautar was dead and lying under a tree but Mathura said we had thrown Ramautar into the bush. Mathura said he had told the sergeant that Ramautar had been herding cattle in the bush, and was lost. He told us to tell the same story to the sergeant when he came. Ramautar died on a Thursday. A Fijian constable came on Friday at about 5 p.m. He did not ask us anything but Mathura had a conversation with him and then we all went to the bush with the constable. We all looked for the body but could not find it. On the Saturday the sergeant came and asked us where Ramautar was and we told him that he had been herding cattle. Then the sergeant took about 25 people and searched for Ramautar. They could not find Ramautar.

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30

Sworn interpreter - (Sgd.) SUBRAMANIAM

(Sgd.) SARANDAS.

The statement of Sarandas, four pages, taken by me this 6th day of March 1934.

40

(Sgd.) W. BURROWS,  
D.C., Ba.

EXHIBIT "K" - STATEMENT OF MAHADEO.

6th March 1934.

Mr. Subramaniam sworn as Hindustani  
Interpreter.

I wish to consult with Mr. Chalmers before I  
make any further statement.

(Sgd.) MAHADEO (in script)

The statement of Mahadeo taken this 6th day of  
March 1934.

(Sgd.) WILLIAM BURROWS.

District Commissioner,  
Ba.

Exhibits  
          
"K"  
Statement of  
Mahadeo, 6th  
March 1934.

IN THE PRIVY COUNCIL

No.79 of 1935.

ON APPEAL FROM THE SUPREME  
COURT OF FIJI

---

BETWEEN

MAHADEO .. Appellant

- and -

THE KING Respondent

---

RECORD OF PROCEEDINGS.

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BARROW, ROGERS & NEVILL,  
26, Budge Row,  
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Solicitors for the Appellant.

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Solicitors for the Respondent.