Privy Council Appeal No. 46 of 1955

Ramsook Ramlochan - - - - - - - - - *Appellant*

v.

The Queen - - - - - - - - - - - *Respondent*

FROM

THE SUPREME COURT OF TRINIDAD AND TOBAGO

REASONS FOR REPORT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 30TH APRIL, 1956

Present at the Hearing:
LORD OAKSEY
LORD TUCKER
LORD KEITH OF AVONHOLM

[*Delivered by* LORD KEITH OF AVONHOLM]

The appellant was convicted on 3rd June, 1955, of murder by verdict of a jury after a trial held at the San Fernando Assizes of the Supreme Court of Trinidad and Tobago presided over by Mr. Justice Celestain. The appellant appealed to the Court of Criminal Appeal for Trinidad and Tobago on various grounds. The Court (Perez, C.J., Gomes and Archer, J.J.) dismissed his appeal on the 29th July, 1955. The appellant has obtained special leave to appeal *in forma pauperis* to this Board against the judgment of the Court of Criminal Appeal.

The person of whose murder the appellant was convicted was a young woman named Minwatee Ramlochan, also called Toy, 13 years and 4 months old at the time of her death, whom the appellant had married by Hindu rites on 15th May, 1954. He had, however, a wife at that time from whom he was living separate so that his marriage to Toy was not a legal marriage. Toy met her death on 12th June, 1954, within a month of her marriage, in circumstances that will be mentioned later.

The appellant had been previously tried for the murder before Mr. Justice Duke and a jury in March, 1955, when the jury disagreed. One of the points taken for the appellant in this appeal is that he was prejudiced in his defence at the second trial through his counsel being refused a copy of, or access to, the Judge's notes of the first trial. No provision is made by the laws of Trinidad and Tobago for the taking of shorthand notes of the proceedings at the trial of a person on indictment. Section 10 of the Criminal Appeal Ordinance (Ch. 3. No. 2-1940) provides that on appeal against conviction or sentence, or on application for leave to appeal, the trial Judge shall furnish to the Registrar, in accordance with rules of Court, his notes of the trial. It will be convenient to deal with this point now.

Application for a copy of these notes appears to have been made by the appellant's counsel by letter of 26th April, 1955 (the terms of which are not before the Board), which was referred by the Chief Justice to Mr. Justice Duke. Intimation was made to counsel by letter from the Clerk

to the Judges dated 6th May, 1955, that Mr. Justice Duke had refused the application. Nothing further was done in the matter until the evidence for the prosecution at the second trial was completed. Appellant's counsel then intimated that he proposed to call the Clerk to the Judges to prove his signature to the letter of 6th May. The trial Judge having indicated that this was unnecessary some further discussion took place on the appellant's right to have the Judge's notes, upon the authority of *R.* v. *Boysie Singh & others* 1950 11 Rep. T. & T. 17. The discussion concludes with the note: " Court states that it cannot overrule another Judge's orders. Will consult him." The following day the Court informed counsel that the Judge's notes had been forwarded and were now at the Court's disposal. If counsel wished to know what was said by any witness the Court would consult the notes and if it was necessary to contradict the witness would call the Registrar to put them in evidence. Appellant's counsel maintained, however, that he should have a certified copy of the notes which the Court explained was impossible at that stage. Certain of the prosecution witnesses were subsequently recalled at the request of appellant's counsel and certain passages from the Judge's notes were put to some of these witnesses without, in their Lordships' view, any material effect on their previous evidence. After these witnesses had left the box appellant's counsel stated that there might be other contradictions in the notes and wished to have the Judge's notes to peruse. This application was refused. Their Lordships thought fit, in the course of the hearing of this appeal, to order copies of the Judge's notes to be made available to appellant's counsel and to adjourn the hearing to enable counsel to see whether the notes disclosed any material discrepancies in the evidence given by witnesses at the second trial. In the result counsel stated that he had discovered no material discrepancy which had not been put to witnesses at the trial.

On any view their Lordships would accordingly find themselves unable to give any weight to this particular ground of appeal. They consider it desirable, however, to express their opinion on the point raised. No authority has been cited to show that a party is entitled as of right to access to a Judge's notes in a previous trial, for use in a subsequent trial, and in their Lordships' opinion no such right exists apart from any statutory provision. In *R.* v. *Boysie Singh & others* which was relied on by appellant's counsel it was held that:

> " Where there is a re-trial and it is desired to prove at the second trial inconsistent testimony of witnesses at the first trial it is undesirable for Counsel of a prisoner at the first trial to give evidence of statements made at that trial. The Judge's long hand note of the evidence is the best evidence of such testimony."

This in their Lordships' opinion is a decision only on what is the best evidence of what was said at a previous trial. It does not follow that a party is entitled to demand production of a Judge's notes of the evidence at the first trial for purposes of cross examination of witnesses at the second trial, though it may be thought convenient, or proper, or desirable, in some cases to make such notes available to the parties. The Court of Criminal Appeal in their judgment took the view that it was contrary to authority to say that a judge's longhand notes of evidence are the best evidence of the testimony given and that on this point the case of *R.* v. *Boysie Singh & others* should be overruled. Their Lordships would reserve judgment on this point which it is not necessary to decide for the purposes of this appeal.

Before proceeding to consider the other points taken for the appellant before the Board their Lordships would now state some of the facts disclosed by the evidence in the case, and more particularly those bearing on grounds of appeal taken by appellant's counsel. The murder disclosed some puzzling features on which no light could be thrown by the evidence. The body was found by the witness Baboonie about 7.30 a.m. on the 12th June at the foot of an immortelle tree some 284 feet from the appellant's house. The head was completely severed from the body and lay close to the body. The body was clothed in a dress and slip and the hair was neatly tied in a cloth at the back of the head. The feet

were bare and there was dough on the palms of the hands and on the back of the fingers below the knuckles. There was a chop or cut, in the root of the tree, in which there appeared to be some bloodstains. There was very little blood at the spot where the body was lying, four or five tablespoonsful at the most, and only a little blood on the clothing near the neck. The body and organs were drained of blood and it was clear that the girl could not have been murdered at the point at which the body lay. No place appears to have been found at which the murder could have been committed. The medical evidence was that the head had been severed from the body by one blow delivered from behind by a sharp heavy cutting weapon, such as a cutlass.

The dead girl was last seen alive by the witnesses Pherangie and his wife Baboonie in their house about 8 o'clock of the evening of the 11th June. Their house and the appellant's house were in the same yard some 50 feet apart. The witnesses were related to the appellant who was the grandson of Baboonie's sister, though he generally called her Aggie, which means grandmother. Toy was regularly in and out of Baboonie's house and invariably so after the appellant left for his work in the mornings about 6 o'clock. There had been some talk that evening of the appellant leaving Toy alone in his house that night and of going himself to a party, but Pherangie thought he had persuaded him to stay at home with Toy.

Next morning the appellant came into Pherangie's house on his way to his work about 6 a.m., ate some fruit and then left. Baboonie asked him where Toy was and he said: "She is there home." About 6.20 Toy's father stopped at the appellant's house, called out his daughter's name, got no reply and proceeded on his way. Baboonie was with him at the time. Baboonie had missed Toy that morning. She had seen no sign of her from her house, nor had Toy come across to see her, as was her custom. After Toy's father had gone she entered and searched round Toy's home and found no trace of her until she found the body by the immortelle tree.

The day after the murder the appellant made a statement to the police giving, *inter alia*, details of various household duties which he said Toy had performed for him before he left for his work on the morning of 12th June and concluding with the sentence, "When I left home at 6 o'clock my wife was alive in the kitchen." He said so also in his evidence. The appellant has throughout and in his evidence at the trial maintained that he did not leave his house that night. There was, however, evidence laid before the jury that he had been seen on three separate occasions in the middle of the night some distance from his house. The witness, Boodram, who had patrol duties to perform during the night in connection with his employment, said he saw the appellant about 2 a.m. with a girl Sookdayah going up a track leading to the house of the girl's father, Sukdeo. Later that night he saw the appellant and Sukdeo walking in the direction of the appellant's house and Sukdeo had a cutlass in his hand. Another witness, Abdool Rahaman, said he was out hunting manicou that night with three dogs, a lance and a head-light when he met the appellant with a torchlight and a cutlass in his hand. The time, he says, was 3.30 to 4 o'clock. The appellant, he says, told him he was hunting too. To the Court he said: "Accused only had a cutlass, no gun or dogs. One cannot hunt with a cutlass alone."

The medical evidence was to the effect that the girl must have been killed between 4 a.m. and 7 a.m.

The only other evidence which it is material to notice for the purposes of this appeal relates to certain garments belonging to or said to belong to the appellant. These were two pairs of khaki trousers and a grey shirt. One pair of trousers was found hanging damp on a line in the appellant's house when the house was searched by the police on the day of the murder. The other pair was in the possession of the appellant when he was found by the police at his place of work on the morning of the murder. The grey shirt was being worn by the appellant when he was interviewed by the police the same morning. The trousers found in the house had some blood stains on the right-hand pocket and leg. The other pair of trousers had a blood stain on the lower part of the

right leg. The shirt had a number of blood spots on the back. These were all found by analysis to be human blood of Group O. This is one of the two commonest blood groups and was the blood group of the appellant and of the dead girl. The accused denied knowledge of the trousers found in his house hanging on a line. He also denied that he was wearing the grey shirt at all that night. His evidence was that he left the house in khaki trousers and a white shirt and changed into working clothes consisting of grey flannel trousers and the grey shirt which he said he kept in the truck of his employer at the place where he worked. At the trial he accounted for the stains on the back of the grey shirt through suffering from eczema, but the doctor who examined his body at the police station on the day of the murder saw no source of bleeding and no signs of eczema. No signs of blood were found on any other garments of the accused or in scrapings of his finger nails or washings of various parts of his body.

Some evidence was led on whether he had a white shirt at all with him that morning. The police evidence was that he had not and that when they took the grey shirt from him they supplied him with a white shirt to take its place. In the statement made to the police at the time the appellant said nothing about a white shirt although he referred to the khaki trousers. The relevant passage is: "When I take up work I change the pants I leave home in, that was a long khaki pants, I put on an old pants which I had in the truck on which I works, and the truck pulls out."

Their Lordships now come to the second ground of appeal which is that in cross examination of the accused certain improper and prejudicial questions were put to him which represented a complete change of front in the case hitherto taken by the prosecution and which were taken up later by the judge and made matter for consideration by the jury. The relevant extract of this cross examination from the Judge's notes of the trial is as follows:

> "My plan was not to leave her in this house alone and go to Ramlal's house where there would be several people who could say Ramsook was there and I and my partner would sneak out from the dinner come back and kill my wife in that house and then return to Ramlal's house. I had no plan at all so Baboonie and Pherangie could not spoil my plan. I did not leave them (Baboonie and Pherangie) and go home at 8. We went to sleep. I never left the house. I did not sneak out whilst my wife was sleeping and that is how I was seen with Sookdeo at 2.30 a.m. I was home sleeping. I did not re-arrange any plan because I had no plan. My partner and I did not arrange a point in the bushes where my wife was to be killed. I had no partner. I did not arrange to get her to leave the house, follow me to this track. I did not go home sneak into my house.
>
> Seunarine states there is no evidence to support these suggestions of the Crown.
>
> Court rules there is some evidence from which the jury may or may not find the inferences the only logical conclusions to which they should come. The evidence is circumstantial and it will be for the jury to say whether or not the suggestions are warranted by their findings.
>
> Continuing: I did not wake my wife and tell her I was going to the dinner. I did not induce my wife to follow me. I did not have on two pairs of khaki trousers, I only have one pair.
>
> Question: You walked as if in the direction of Ramlal's house and as you come to the point to where your partner was armed with a cutlass?
>
> Answer: I know nothing about that. My wife woke me to go to work.
>
> Question: As you got past that point and before your wife knew what was happening her head was off?
>
> Answer: I know nothing about that. I was home sleeping.

Question: You were at that time wearing that grey shirt?

Answer: That grey shirt stops in the truck all the time.

Question: As the man swung the cutlass blood from the cutlass or from the body of your wife spattered your shirt?

Answer: I knows nothing about that. I was home sleeping.

Question: You and your partner remained there until all the blood drained out of the body?

Answer: I knows nothing about that. I have no partner.

. . . . . .

Question: I suggest Sookdeo was the partner?

Answer: I had no partner at all."

The summing up by the judge includes the following passages:

" The Crown is relying entirely on circumstantial evidence, circumstantial or indirect evidence. There is no direct evidence that the accused or anyone else committed the act which resulted in the death of Minwartee on the 12th of June ; there is no direct evidence on that at all.

. . . . . .

Now gentlemen, if you are satisfied that the evidence given by the Prosecution is reliable and trustworthy, having regard to all the other evidence in the case, then and only then may you proceed to the next step in dealing with this circumstantial evidence ; namely, that you are satisfied beyond reasonable doubt that you have drawn the correct inference from the facts before you, and then that they prove the case for the Crown with the accuracy of mathematics ; in other words, that you are irresistibly impelled to one conclusion and one conclusion only and that is, that the accused murdered the girl Minwartee. If that is so, then you will convict him—it matters not if there were other persons with him ; if each took part in the furtherance of a common criminal purpose, in encompassing the death of that woman and one of them struck the fatal blow, even if it was not he, the accused, he would nevertheless be guilty of murder. That is the position.

He need not necessarily have struck the . . . blow himself ; if you are satisfied beyond reasonable doubt that he was the person aiding and abetting some other person or persons to do this act, with full knowledge, then he would be equally guilty as the others—quite independently of the others. If, however, you feel doubtful or hesitant in your mind that that is the only reasonable conclusion to which you could come, then gentlemen you should acquit. For mere suspicion is not enough to warrant a conviction. That gentlemen, is the law as I understand it, on which I have just tried to make myself clear and by which you should be guided in dealing with this evidence which has come before you.

. . . . . .

Now gentlemen, if you think that the only reasonable conclusion that you can come to is that there was some other person who was concerned in this crime, it does not matter who the other person is, as far as you are concerned. You are not concerned with trying any other person except the man in the dock and you must not strain to find or come to any conclusion adverse to him ; you must feel entirely impelled to any conclusion that you may come to—you must feel reasonably safe that that is the only conclusion that reasonable men would come to.

Then if you conclude that there were two persons concerned, the theory of the Crown becomes possible: that the blood stains were caused on the back of the shirt of the accused by blood from the same cutlass that was swung with a sweep. The doctor found that it was one wound, one cut ; and that the cutting must have started from behind. And the Crown's suggestion is that they were walking

in Indian file and she behind him and that another person acting in concert with him gave one wound, one cut and that the sweep of that cutlass threw spots of blood on the back of the accused.

Now it becomes very important both to the Crown and to the defence whether the accused had that shirt on his back on the 12th June, 1954, at Standard Road—very important to both sides. That is one of the big issues in this case joined between the Crown and the accused. The accused says that that shirt is his working shirt . . . 'I did not have that shirt on until I reached Palo Seco where I work; it always remains there; for two months that shirt did not reach home—has not been home.' Well, if that was so, even if it got blood stains it could not possibly be connected with this case; it must have been somewhere other than in the vicinity of Standard Road or elsewhere from where this crime was committed. If it was in the truck at Palo Seco, two miles away, it could not possibly have anything to do with this case and so it is of paramount importance that you should make your decision one way or the other and if you are in doubt, you will resolve it in the favour of the accused.

. . . . . .

If there was more than one person concerned and he killed her with the help of another, you might find then that there is another person who might have a motive; you must remember that the Crown is not saying that he actually did the act, the whole attitude is that someone else did the act but he was equally guilty because he was present aiding and abetting; it was with his knowledge and sanction; he normally may have been content, but this other person concerned might have wished her death."

Their Lordships are unable to take the view that there was any illegitimate or improper exercise of counsel's right and duty to cross examine the accused. The Crown case was that the accused had murdered this girl. How and in what circumstances the fatal blow was struck was one of the mysteries of the case. Whether or no the accused, if he carried out the murder, was assisted by someone else was another unknown feature in the case. Whether the accused himself struck off the girl's head or was a party to someone else doing so was immaterial. In either case he was guilty of murder. It was open to the jury to take either view on the circumstantial evidence in the case and they may well have thought that the evidence pointed more to the accused having the assistance of someone else, particularly the fact that the body and the head must have been transported from the place where the murder was committed to the place where the body and head were found. It was suggested by counsel for the appellant that he might have been present at the time of the murder without having intentionally facilitated it and been no more than an accessory after the fact. But in the circumstances of this case this suggestion is, in their Lordships' opinion too incredible to be worthy of serious consideration. Nor are their Lordships able to see that there was any change of front in the conduct of the case by the prosecution. The Crown was not bound to state its theories in advance. These theories were inferences from evidence which it may be assumed Crown Counsel explained to the jury in opening that he was about to lead. Their Lordships are unable to extract from the evidence led for the prosecution that the Crown had tied itself to any view of how the murder was committed. In cross-examination counsel was, however, in their Lordships' view, bound to put to the accused any inferences from the evidence which he proposed to put before the jury. So also in his summing up the Judge was entitled to state to the jury the alternative inferences which might be drawn from the evidence as to the manner of the murder. It is true that no other person was indicted along with the accused for the murder. But that may have been because, whatever suspicions there were, there were no incriminating circumstances attaching to any other person sufficient in the opinion of the Crown to justify it in bringing against any other person an accusation of murder.

There were many incriminating circumstances attaching to the appellant which were all before the jury including some to which their Lordships have not found it necessary to refer. The evidence was very fully placed before the jury by the Judge in his summing up. On the evidence it was open to the jury, in their Lordships' opinion, to take the view that the accused committed this deed alone or that he committed it with the assistance of some other person. The trial Judge did not, in their Lordships' view, exclude the first alternative though he may have stressed the view that the evidence might be taken to indicate that the murder was committed by more than one person. But that is not, in their Lordships' opinion, fatal to a conviction because it was a view open to the jury to take on the evidence.

Counsel for the appellant took a further objection that the trial Judge in dealing with the evidence failed to direct the jury that they must be satisfied not only that the accused was present but that there was evidence that he was present aiding and abetting the commission of the crime. In their Lordships' view there was an adequate direction given on aiding and abetting in the passages in the summing up which have been already quoted. In the circumstances of this case and on the whole evidence led it would, as their Lordships have already indicated, have been impossible to hold that if the accused was present at the murder he was not at least aiding and abetting.

For the reasons given their Lordships have humbly advised Her Majesty that the appeal should be dismissed.

(39710) Wt. 8069—3 100 6/56 D.L.

In the Privy Council

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v.

THE QUEEN

DELIVERED BY LORD KEITH OF AVONHOLM

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