

*Privy Council Appeal No. 70 of 1960*

Shoukatallie - - - - - *Appellant*

v.

The Queen - - - - - *Respondent*

FROM

**THE FEDERAL SUPREME COURT OF THE WEST INDIES**

REASONS FOR REPORT OF THE LORDS OF THE JUDICIAL  
COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE  
5TH JULY, 1961

*Present at the Hearing:*

LORD DENNING

LORD MORRIS OF BORTH-Y-GEST

MR. L. M. D. DE SILVA

[*Delivered by* LORD DENNING]

In British Guiana on 10th February, 1960, a man named Rampat (also called Peekka) was murdered. Their Lordships will call him Peekka. He had gone in the early morning to visit his cows at a creek on the Mahaica River. He was paddling a corial, which is a dug-out canoe. He never returned alive. Five days later his body was recovered from the river: and from its condition it appeared that someone had shot him with a shot-gun, then his body (whilst he was still alive) had been tied to a log of wood by means of vine branches, and it had then been thrown into the river.

Suspicion fastened on two brothers named Shoukatallie (No. 1 accused) and Mahomed Ali (No. 2 accused). They were arrested and charged with the murder. On 16th May, 1960, they were indicted in the Supreme Court of British Guiana and tried before Bollers, J. and a jury. The case was heard on 15 days between 16th May, 1960, and 3rd June, 1960 (including a visit to the locus in quo) and in the early morning of 3rd June, 1960, the jury found Shoukatallie (No. 1 accused) guilty of murder: and they also found Mahomed Ali (No. 2 accused) guilty of murder but in his case with a very strong recommendation to mercy. Bollers, J. sentenced both of them to death. Both appealed to the Federal Supreme Court (Hallinan, C.J., Rennie and Marnan, F.J.J.) who, on 14th September, 1960, dismissed the appeal of Shoukatallie: but they allowed the appeal of Mahomed Ali and set aside his conviction and sentence. Shoukatallie applied for special leave to appeal to Her Majesty in Council and was granted it. His appeal was heard on 4th and 5th July, 1961, when their Lordships said that they would humbly advise Her Majesty that his appeal should be dismissed. They now give their reasons.

The appeal was based on the conduct of the Judge at the trial. It was said that he had exerted undue pressure on the jury to come to an agreement: and that for this reason the verdict could not stand. The point cannot properly be appreciated without some description of the nature of the case.

The case for the Crown was that Shoukatallie and Mahomed Ali were acting together in concert in a common design to kill Peekka. The evidence of the prosecution was to the following effect:—Shortly before his death Peekka was paddling along the river in his corial. A shot rang out. It came from another corial in which were the two accused men Shoukatallie (No. 1 accused) and Mahomed Ali (No. 2 accused). Shoukatallie was the man who had fired the shot. He had a gun in his hand. Mahomed Ali was steering the corial. Shoukatallie shouted out: "Shut your rass, you no dead yet". Shoukatallie then fired the gun again at Peekka. Peekka fell on his face in his

corial. Mahomed Ali then paddled their corial close to Peekka's corial. Shoukatallie got hold of Peekka's corial and pulled it across the creek. A short time later, Shoukatallie and Mahomed were seen near two corials. Shoukatallie was chopping wood. Mahomed was twisting vine branches. Five days later a search was made in the river and a diver employed. The body of Peekka was found tied to a log of wood by a vine. A post-mortem examination indicated that Peekka was shot, then tied up and immersed in the water while still alive.

The accused men, Shoukatallie and Mahomed Ali, did not give evidence on oath. They both made statements from the dock denying they were in the vicinity or knew anything at all about the crime. The defence attacked the credibility of the witnesses for the prosecution saying that four of the principal witnesses were members of a family who had a feud with the family of the accused, and that the fifth had been bribed.

Before their Lordships Mr. Phineas Quass argued strongly that on the evidence either *both* Shoukatallie and Mahomed Ali were guilty of murder or that *neither* was guilty. "How strange, then," he said, "that as the matter stands, Shoukatallie has been found guilty and Mahomed Ali goes free!"

Their Lordships think the case is not so simple as that: for, even if the jury rejected the alibi of the accused men (as they did), nevertheless they would have to consider whether the evidence of the prosecution was sufficient to bring home the guilt of *both* accused. So far as Shoukatallie was concerned, there could be no doubt. On the evidence, if accepted, he was the man who fired both shots. But what about Mahomed Ali? Even if the evidence of the prosecution was accepted, was it altogether clear that the shooting was pre-arranged? Might it not, perhaps, be that Shoukatallie fired the shots on his own account, with Mahomed Ali merely a spectator?

The learned Judge himself had that possibility in mind. He put it clearly to the jury that if Mahomed Ali took no part in the crime, and his presence there was merely accidental, they should acquit him. But he pointed out a difficulty in taking that view. If the medical evidence was accepted, it was not the shots which killed Peekka, but the immersion in the water. So he told the jury: "You may very well feel that the number 1 accused shot Peekka in cold blood, with malice aforethought, and that while he was still alive the number 2 accused then joined in concert with him in order to kill Peekka by drowning him and that it was in those circumstances that Peekka came to his death. If you feel that they were acting in concert then, they would be equally guilty of the offence of murder in the eye of the law."

Now clear and comprehensive as he was, the Judge in his summing-up seems to have missed one point which might operate in favour of Mahomed Ali: up to the moment that Peekka fell shot, Mahomed Ali may have been merely a spectator. Then Peekka fell so badly wounded that he was to all appearances dead, so that Mahomed Ali *thought* he was dead. Then Mahomed Ali, in order to save his brother Shoukatallie from conviction, helped him to dispose of the body by throwing it into the water. In that event Mahomed Ali would not have been guilty of murder for he had no intent to kill. He would only have been guilty of manslaughter. Another view which the jury might conceivably have taken was that, despite the medical evidence, Peekka was actually shot dead, so that he was not alive but dead, before Mahomed Ali took any part in the matter. In that event Mahomed Ali would only have been guilty as an accessory after the fact.

Their Lordships must now recount the concluding stages of the trial. On 2nd June, 1960, the jury took their places at 8.40 a.m. The Judge sat at 9 a.m. Crown counsel continued his final address until 10 a.m. when he concluded it. The court then adjourned for a few minutes until 10.14 a.m. when the Judge began his summing-up. It lasted from 10.14 a.m. to 4.50 p.m. but with a break of one hour and ten minutes for lunch from 11.20 a.m. to 12.30 p.m. So the summing-up took nearly 5½ hours to deliver. The jury retired at 4.50 p.m. Looking back on it now, it would have been better if the Judge had not finished his summing-up that night but had left it over till the next morning: but no doubt he thought that the jury would be able to reach their

verdict in an hour or so. At 5.30 p.m. they were served with sandwiches, tea and ice-cream. At 8.40 p.m. they returned into court. It is not known whether they returned at their own initiative or at the request of the Judge. Then this took place:

“The Marshal: Have the jury arrived at a verdict? The Foreman: No, My Lord, we are disagreed on our verdict.”

The Judge clearly interpreted this as meaning: “We have not yet agreed on our verdict”, for he went on to say:

“The Judge: I would like to know, Mr. Foreman, if the jury need any further directions.

The Foreman: No, My Lord.”

The Judge evidently could not see why the case should cause the jury any difficulty. He seems to have thought that some one or more of them were not mindful of their duty, for he went on to address them in this way:

“Bollers, J.: Gentlemen of the jury, I want to remind you of the oath that each and every one of you took at the commencement of this case. It reads as follows:—

‘You shall well and truly try and true deliverance make between Our Sovereign Lady the Queen and the prisoners at the Bar whom you shall have in charge, and a true verdict give according to the evidence. So help you God.’

I want to direct your attention to the last two sentences in that oath that you have taken—‘And a true verdict give according to the evidence. So help you God.’

Well, the evidence that has been led in this case by the Crown and by the accused persons is clear and I can see no difficulty at all why you should not arrive at a final conclusion in this matter.

When you get into that jury-room you must put all extraneous matter away from your deliberations. If you take extraneous matter and improper matter into your deliberations in deciding whether the case has been proved or not proved against the accused persons, then you will not be acting in accordance with the oath which you have taken.

It appears to me that this Colony is reaching a stage, or wants to reach a stage, when it can manage its own affairs. Well, this kind of thing that is going on amongst the jury would not help. In my very humble submission I cannot see how it will help one way or the other.

Now, you must return to that jury-room and consider the matter again and then make up your minds one way or the other. If you feel one way and another member of the jury thinks another way, then you must examine the arguments of each other and accept reason. You must not be pig-headed. Not because you may feel one way or the other does it mean that you must never give way, even though sound commonsense and good reason are placed before you.

The community is looking to you to return a verdict in accordance with the evidence and in accordance with your own conscience. If you fail to do that you will not only be bringing disgrace upon the community but you will be bringing disgrace upon yourselves, which is perhaps even worse.

Gentlemen of the jury, I am now going to order you to return to that jury-room and consider the matter calmly and dispassionately, and give you an opportunity of arriving at an honest verdict in this case. Please see that you do not besmirch the fair name of your country. Please return to the jury-room.”

At 8.49 p.m. the jury retired to the jury room but they returned again at 10 p.m. and asked for further directions:

“The Foreman: We would like further legal directions as to accomplices after the fact.

The Judge: I am not quite sure what that means. During the course of my summing-up I did not mention the word 'accomplices'. What I did mention was 'acting in concert in pursuance of a common design to commit the offence for which the accused persons stand charged'. Do the jury desire further directions on that aspect of the matter?

The Foreman: Yes."

The Judge then proceeded to direct the jury about principals in the first degree and in the second degree but he did not deal with accessories after the fact. Presumably he thought it did not arise. He again made his own view of the facts fairly clear when he said:

"You may feel that in this case the number 1 accused shot Peekka and having shot Peekka, when he was in a helpless condition but still alive, he decided to drown Peekka, and it was at that stage that the number 2 accused proceeded to act in concert with the number 1 accused and assisted him, and was present at aiding and abetting the number 1 accused in the killing of Peekka. If you find that is so, then they would be equally guilty of murder."

Their Lordships notice that in these further directions the learned Judge missed the one point that he had missed in his summing-up, namely, that Peekka may have been dead or to all appearances dead and that Mahomed Ali (the No. 2 accused) believed he was dead before he took any part in the matter.

At 10.15 p.m. the Judge concluded his further directions and the jury retired again.

At 1.35 a.m. on 3rd June, 1960, the jury returned and gave verdicts as follows:—

"Unanimous verdict: No. 1 accused guilty of murder.

Unanimous verdict: No. 2 accused guilty of murder with a very strong recommendation to mercy."

On the 14th September, 1960, the Federal Supreme Court set aside the conviction of Mahomed Ali the second accused. They observed that the Judge had not directed the jury on the point that their Lordships have already mentioned. The Federal Supreme Court put it in this way: "The jury may have thought the deceased (Peekka) was dead before the second appellant (Mahomed Ali) assisted in the disposal of his body or, even if he was not dead that the second appellant (Mahomed Ali) might have believed that he was, so that when he assisted in tying the deceased to a log and putting him in the river he had not the intention to kill" in which case "the second appellant was not guilty of murder". Now if Peekka was already dead before Mahomed Ali gave any assistance, he could only be guilty as accessory after the fact: whereas if Peekka was still alive but Mahomed Ali believed he was dead, he would only be guilty of manslaughter, not of murder. It was the failure of the Judge to assist the jury on this point which lead (amongst other reasons) to the Federal Supreme Court quashing the conviction. It is a point which was not available to Shoukatallie and is clearly enough to distinguish the two cases.

Now Shoukatallie appeals on the ground that the Judge exerted undue pressure on the jury when they returned at 8.40 p.m. Their Lordships have already set out the passage in full. The gist of the complaint is that the Judge told the jury that they *must* give a verdict one way or the other. He never told them that they were at liberty to disagree: and they may have been left under the impression that they would not be discharged until they did agree.

In England in olden times there would have been nothing wrong in a judge telling the jury that they must agree and that he could not discharge them until they did agree: for that was indeed the law of the land. Lord Coke said that "a jury sworn and charged in case of life or member cannot be discharged by the Court or any other, but they ought to give a verdict", see Co. Litt. 227b, Co. 3rd Inst. 110; and Sir William Blackstone said that: "when the

evidence on both sides is closed, the jury cannot be discharged till they have given in their verdict", see 4 Blackstone Commentaries 360. Strong measures of coercion were adopted to secure a verdict. The jury were not allowed to separate. They were kept in the jury room without meat, drink or fire (candle-light excepted) until they did agree. You have only to read the report of *Penn and Meade's* case (1670) 6 Howell's State Trials 951 at pp. 962-6 to see what compulsion was brought to bear upon jurors. "Our ancestors", said Cockburn, C.J., "insisted on unanimity as the very essence of the verdict, but they were unscrupulous as to the means by which they obtained it", see *Winsor v. The Queen* (1866) L.R. 1 Q.B. 289 at p. 305.

All that is, of course, ancient history now. We have outlived those inhumanities. No longer is any measure of coercion acceptable. Once the judge has finished his summing-up and the jury given in charge of the bailiff, they are still not allowed to separate but they are provided with refreshment and, if need be, accommodation for the night in an hotel, see *Rex v. Neal* [1949] 2 K.B. 590. If they should return and say they cannot agree, the judge usually explains to them that it is their duty to agree if they can honestly and conscientiously do so. He tells them that they must be unanimous but he explains what unanimity means on the lines of the direction of Finlay, J. in *Rex v. Klein* (Feb. 9th 1932 unreported) which was followed in substance in *Rex v. Walheim* (1952) 36 Cr. Ap. R.167 and *Reg. v. Creasey* (1953) 37 Cr. Ap. R.179. He reminds them that it is most important that they should agree if it is possible to do so: that, with a view to agreeing they must inevitably take differing views into account; that if any member should find himself in a small minority and disposed to differ from the rest, he should consider the matter carefully, weigh the reasons for and against his view, and remember that he may be wrong; that if, on so doing, he can honestly bring himself to come to a different view and thus to concur in the view of the majority, he should do so; but if he cannot do so, consistently with the oath he has taken, and he cannot bring the others round to his point of view, then it is his duty to differ, and, for want of agreement, there will be no verdict.

It is everyday practice for a judge thus to exhort a jury to reach a verdict. There is nothing wrong in it, indeed it may be very proper he should do so, so long as he does not use phrases which import a measure of coercion such as was held to have been exerted in *Rex v. Mills* [1939] 2 K.B. 90.

The question in this case is whether the Judge went beyond exhortation which is permissible, and exerted some measure of coercion which is not. The words spoken by the Judge show clearly enough what was in his mind. He thought it was a straightforward case which should not present an honest jury with any difficulty in reaching a verdict: and he could only account for their disagreement by supposing that some of them were taking extraneous and improper matter into their deliberations or were being pig-headed about it. So he reminded them of the oath which each and everyone of them had taken—an oath which makes it clear that it is their duty to give a verdict, a true verdict, according to the evidence. He directed them to put aside all extraneous matters, and told them to accept reason one from the other. And he asked them not to besmirch the fair name of their country. It was perhaps, as the Federal Supreme Court said, too strongly worded and might have been differently put. But the Federal Supreme Court did not see in it such a measure of coercion as to invalidate the verdict. Nor do their Lordships. The more especially as the conduct of the jury shows that they were not in the least coerced by it. They deliberated for more than an hour and then came back with a request for further directions on a pertinent point—about the case of Mahomed Ali—which they had seen for themselves. Then after further directions, they deliberated for another 3½ hours and then came back with a verdict from which, one can readily infer, reflected the course of their discussions. They unanimously found Shoukatallie (No. 1 accused) guilty. But they only found Mahomed Ali (No. 2 accused) guilty with a strong recommendation to mercy. It is apparent that they thought that Mahomed Ali did not participate in the shooting of Peekka, but only came in after the shooting and helped Shoukatallie dispose of the body. But they thought that when the body was put into

the water, Peeka was still alive; and for that reason Mahomed Ali was guilty of murder. The Judge had told them so. But as Mahomed Ali played so minor a part, they made a strong recommendation to mercy. If they had realised that, even though Peeka was still alive, there was still a possible point in favour of Mahomed Ali—in that he might have *thought* that Peeka was dead—the jury might well have found Mahomed Ali not guilty of murder, but at most of manslaughter. At any rate, in view of the non-direction, it was quite right for the Federal Supreme Court to allow the appeal of Mahomed Ali and set aside his conviction of murder: and at the same time to dismiss the appeal of Shoukatallie.

Their Lordships notice, as did the Federal Supreme Court, the heavy strain on the jury in listening and deliberating over so many hours. It was unfortunate and unforeseen: but it is no ground for upsetting the verdict. And, as their Lordships have said, despite the strain, the jury came to a verdict which can readily be understood.

Their Lordships notice that, before the Federal Supreme Court, the appellants sought to adduce affidavits from two of the jurors as to what took place in the jury room. The Federal Supreme Court quite rightly refused to admit these affidavits and the point was not pressed before their Lordships.

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

Handwritten text, possibly a date or reference number.

Handwritten text, possibly a name or title.

Handwritten text, possibly a name or title.

Handwritten text, possibly a date or reference number.

In the Privy Council

---

SHOUKATALLIE

v.

THE QUEEN

---

DELIVERED BY LORD DENNING

Printed by Her Majesty's Stationery Office Press  
HARROW  
1961