

*Privy Council Appeal No. 10 of 1966*

**Ramnath Mohan and another**    -   -   -   -   -   -    *Appellants*

v.

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

FROM

**THE SUPREME COURT OF TRINIDAD AND TOBAGO**

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REASONS FOR REPORT OF THE LORDS OF THE JUDICIAL  
COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE  
20TH OCTOBER, 1966

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*Present at the Hearing :*

LORD HODSON

LORD PEARCE

LORD PEARSON

*[Delivered by LORD PEARSON]*

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A man named Mootoo Sammy was wounded in an encounter with the appellants on the 21st September 1964, and in consequence of one or more of the wounds which he then received he died in a hospital in Port of Spain, Trinidad, on the 4th October 1964. The appellants were prosecuted for the murder of Mootoo, and after trial before Fraser J. and a jury at the Port of Spain Assizes were both on the 24th May 1965 convicted of the murder and sentenced to death. Their appeals to the Court of Appeal of Trinidad and Tobago were dismissed on the 25th October 1965. Special leave to appeal was granted by your Lordships' Board on the 23rd March 1966.

The main argument presented on behalf of the appellants can be summarised as follows:—

- (a) the medical evidence as recorded in the judge's notes (there being no shorthand note of the evidence) shows that the death of Mootoo was caused, or may have been caused, by only one of the wounds inflicted on him;
- (b) each of the appellants was entitled to be acquitted unless it was proved either that he inflicted the fatal wound or that the two appellants in attacking Mootoo were acting in pursuance of a pre-arranged plan;
- (c) the evidence left it uncertain which of the two appellants inflicted the fatal wound;
- (d) there was no evidence from which the jury could properly infer that the two appellants were acting in pursuance of any pre-arranged plan;
- (e) therefore the convictions should be set aside.

It was also argued on behalf of the appellants that the learned judge had not sufficiently directed the jury on the issue of self-defence and had in effect withdrawn that issue from the consideration of the jury. As to this argument it is enough to say that, after full consideration of the summing-up, their Lordships are of opinion, in agreement with the

judgment of the Court of Appeal, that the directions given to the jury on the issue of self-defence were amply sufficient and that the issue was not withdrawn from the jury.

As to the main argument on behalf of the appellants, the respondent's counsel conceded that the evidence left it uncertain which of the appellants inflicted any particular one of the wounds sustained by Mootoo, but they did not agree as to the effect of the medical evidence with regard to the cause of the death nor as to the absence of sufficient evidence for inferring a pre-arranged plan. But the main argument by the respondent's counsel was to this effect:—

- (a) on the facts of this case the prosecution did not have to establish that the appellants were acting in pursuance of a pre-arranged plan;
- (b) it was sufficient for the prosecution to show, and it was shown, that the appellants were engaged in a common act of attacking Mootoo with highly dangerous weapons described in the evidence as "cutlasses", and one or more of the wounds which they inflicted caused the death;
- (c) each of them was actively participating, and aiding and abetting the other of them, in the attack on Mootoo, and each of them was rightly convicted as a principal offender whether in the first or the second degree.

The appellants were father and son. The father, Ramnath Mohan, was in the evidence sometimes called "Ramnath" and sometimes "Dailah". He will be referred to as "the appellant Ramnath". He was at the time of the events out of which this case arose between 50 and 60 years of age, and he had previously borne a good character. The son is named Deodath Ramnath in the Record, but in the evidence as summarised in the judge's notes he was called "Deonath". He will be referred to as "the appellant Deonath". He was 18 years of age at the time of the events.

The events took place at Warrenville, Cunupia, which is a few miles from Port of Spain on the way to San Fernando. They took place in the early evening of Sunday the 21st September 1964, approximately at and after 8 p.m., at a time when night had fallen but there was moonlight as well as some street lighting. The events began outside the house of the witness Enos Davis, which is in a road called "Robert's Trace", and they finished outside the house of the appellant Ramnath, which is in South Main Road. The route by road from the one house to the other was indirect: you would have to go from Davis's house westward along Robert's Trace to the junction with South Main Road, and there turn sharply to the left and go along South Main Road in a south-easterly direction. The two houses however were less than 100 yards apart; any loud noise outside Davis's house would easily be heard in the appellant Ramnath's house; and there was a short cut between the two houses by a track passing over the intervening rice field or garden land.

There was a christening party at Davis's house in Robert's Trace. When the appellant Deonath was coming away from it he met a mentally deficient boy, and there was an altercation between them. Three men, Mootoo and Deonarine and Ramtahal, came out of a neighbouring house, and took the part of the boy. The appellant Deonath was accused of "wringing" the boy's hand, and a quarrel developed between Mootoo and the appellant Deonath. The evidence is that Mootoo "chucked" the appellant Deonath and that the appellant Deonath "chucked him back". Presumably the word "chucked" means pushed or struck or threw over. The quarrel continued. So far there is no dispute as to the facts.

As to the subsequent events, different witnesses who had been in different places testified to different parts of what had happened or what had been said, and also there were in the evidence of the witnesses for

the prosecution some inconsistencies, as would be expected of eye witnesses giving their recollections of a series of rapid events observed by the light of the moon or a street lamp. Nevertheless, the witnesses for the prosecution were in substance all telling the same story, which was in outline to this effect:—

While the appellant Mootoo and Deonath were still quarrelling, the appellant Ramnath came on the scene with a "cutlass" (also described as a "poniard") held behind his back. When one or more of the bystanders sought to restrain him, he said "Where is Mootoo Sammy? I am going to open his back". Having found Mootoo, the appellant Ramnath "ran him round" threatening him with the cutlass, and chased him along Robert's Trace to the road junction and round the corner and along South Main Road towards the appellant Ramnath's house. Deonath was following some distance behind the appellant Ramnath. As Mootoo was coming along the pavement towards the appellant Ramnath's house, the appellant Deonath emerged from a pepper tree which was in front of that house. He was armed with a cutlass, described as a "brushing cutlass" having a long handle and a short blade. He barred the way for Mootoo, and Mootoo turned back or turned away. Both appellants attacked him with their cutlasses, and both struck him. He tried to defend himself with something in the nature of an oil can which he had picked up. Deonath picked up a piece of wood and, in order to rescue Mootoo, struck the appellant Deonath on the head with it. The appellant Ramnath with his cutlass threatened Deonath, and Deonath ran away to escape from him. A man called Roodall came up and shielded Mootoo, and the appellants desisted from their attack. Mootoo was taken to hospital.

He had received, together with minor wounds, a very severe wound on the right leg below the knee and very severe wound in the back. The pathologist, who carried out the post-mortem examination, said "Death was due to massive pulmonary embolism. An embolism may be defined as any clot or particle of fat or particle of cancer cell that becomes separated from a primary site in one part of a vein or artery and is transported in the circulation. This was due to thrombus arising in the deep vein of the right leg the site of an incised wound of the right leg. Associated with these was a wound on the right posterior chest wall severing several ribs and cutting three with collapse of the right lower lobe of the lung". That is a passage from the judge's notes of the evidence. From this passage and other passages in the notes of the evidence it is clear that death was caused by the "embolism" arising from the severe wound in the leg, but it is not clear whether or not in the opinion of the pathologist the "associated" wound in the back was a contributory cause of the death. So far as appears from the notes of evidence, there is a possibility that the death may have been caused solely by the leg wound. The actual evidence may have been fuller and more definite. It may be significant that the point now principally relied on by counsel for the appellants was not argued at all in the Court of Appeal, and was only very obscurely covered (if at all) in the grounds of appeal to that Court. The Court of Appeal said in their judgment "It was the first two major wounds which occasioned his death."

However that may be, the main argument presented on behalf of the appellants in this appeal was as stated above, and it will be considered on the hypothesis that the death may have been caused solely by the leg wound. The question then arises whether each of the appellants can be held responsible for the leg wound, when it may have been inflicted by the other of them. There is conflicting evidence as to which of them struck the blow on Mootoo's leg, the evidence for the prosecution tending to show that the appellant Deonath struck it and the evidence for the defence tending to show that the appellant Ramnath struck it. There is uncertainty on that point.

Also it cannot be inferred with any certainty from the evidence that the appellants had a pre-arranged plan for their attack on Mootoo.

It is however clear from the evidence for the defence, as well as from the evidence for the prosecution, that at the material time both the appellants were armed with cutlasses, both were attacking Mootoo, and both struck him. It is impossible on the facts of this case to contend that the fatal blow was outside the scope of the common intention. The two appellants were attacking the same man at the same time with similar weapons and with the common intention that he should suffer grievous bodily harm. Each of the appellants was present, and aiding and abetting the other of them in the wounding of Mootoo.

That is the feature which distinguishes this case from cases in which one of the accused was not present or not participating in the attack or not using any dangerous weapon, but may be held liable as a conspirator or an accessory before the fact or by virtue of a common design if it can be shown that he was party to a pre-arranged plan in pursuance of which the fatal blow was struck. In this case one of the appellants struck the fatal blow, and the other of them was present aiding and abetting him. In such a case the prosecution do not have to prove that the accused were acting in pursuance of a pre-arranged plan.

In *R. v. Kupferberg* (1918) 34 T.L.R. 587, the accused had in an earlier trial been acquitted on a charge of conspiracy, and in a later trial he was charged and convicted of aiding and abetting. Lawrence J., in giving the judgment of the Court of Criminal Appeal, said that

“Mr. Purchase had also contended that the acquittal on the count charging conspiracy, which was framed on the same clause of the Regulations as the charge of aiding and abetting of which the appellant had been found guilty, entitled the appellant to plead *autrefois acquit*. That was not so, because conspiracy was not the same as aiding and abetting. The two offences had different ingredients: previous agreement was necessary in the one but not in the other.”

The same distinction was drawn, though incidentally in *King v. The Queen* [1962] A.C. 199 at p. 207, where Lord Morris of Borth-y-Gest delivering the judgment of the Board said “The view of the jury may have been that it was the appellant who struck the blow or blows that killed Peterkin and that Yarde, being present, had been a party to a plot to kill or being present had aided and abetted”. A person who is present aiding and abetting the commission of an offence is without any pre-arranged plan or plot guilty of the offence as a principal in the second degree.

Accordingly on the facts of this case the argument for the appellants cannot be sustained.

Their Lordships have humbly advised Her Majesty that the appeal be dismissed.



In the Privy Council

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**RAMNATH MOHAN AND ANOTHER**

v.

**THE QUEEN**

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DELIVERED BY  
**LORD PEARSON**