

Louis Leopold Myrtille

Appellant

v.

The Queen

Respondent

FROM

THE COURT OF CRIMINAL APPEAL OF MAURITIUS

REASONS FOR REPORT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL OF THE 26TH JULY 1984,
DELIVERED THE 2ND OCTOBER 1984

Present at the Hearing:

LORD KEITH OF KINKEL

LORD SCARMAN

LORD ROSKILL

LORD BRIGHTMAN

SIR ROBIN COOKE

[Delivered by Lord Roskill]

At the conclusion of the submissions of counsel on 26th July 1984, their Lordships, after careful consideration, stated that they would humbly advise Her Majesty that this appeal must be dismissed and that they would give their reasons later. Those reasons are now given.

On 6th April 1982, the appellant was convicted of a singularly brutal murder of a woman. That murder was committed on 2nd December 1979. The appellant's trial took place before Espitalier-Noel J. and a jury. The jury returned a verdict of guilty by a majority of 7 to 2. The learned judge sentenced the appellant to death. His appeal against conviction was dismissed by the Court of Criminal Appeal of Mauritius (Moollan CJ., Glover and Lallah JJ.) on 13th July 1982.

Subsequently, special leave to appeal in *forma pauperis* was sought by the appellant and was granted by their Lordships on 18th November 1982. The reason for that grant of leave was a complaint on his behalf that certain statements of prosecution witnesses, and in particular, statements (now known to be four in

number) made by the principal prosecution witness, a man named Francois Brulecoeur, said to be inconsistent with evidence given at the trial, had been wrongly withheld from the defence, and that an application by the defence for the production of those statements had not only been wrongly refused by the learned trial judge, but that wrongful refusal had, in its turn, been wrongly upheld by the Court of Criminal Appeal of Mauritius.

When the petition was heard by this Board those statements had still not been made available. Accordingly, it appeared to their Lordships that there might be some risk of a miscarriage of justice unless the statements in question were seen and duly considered by the Board.

These statements were accordingly made available to their Lordships on the hearing of the appeal, and indeed had previously been made available to the appellant's solicitors and counsel. Their Lordships were supplied with copies of the original statements, which were in Creole, and of full English translations. Having considered carefully the learned judge's note of the evidence given at the trial, those statements including their translations, and the learned judge's summing-up, of which a full transcript was available, their Lordships are unhesitatingly of the opinion that there are no relevant or material discrepancies between the evidence given at the trial and the contents of those four statements, and that there are, therefore, no grounds whatever for thinking that there has been any miscarriage of justice involved in the appellant's conviction.

Learned counsel for the appellant in his submissions, which were the more commendable because of their succinctness, complained that the practice followed in the courts below, in relation to the non-production of these statements, not only did not accord with the practice in England in these matters but was in flat contradiction of that practice, and that the Court of Criminal Appeal of Mauritius, in giving reasons for upholding the learned judge's refusal to order production of these statements, had misunderstood and therefore misapplied what they had conceived to be the relevant English practice.

Their Lordships must first consider what happened at the trial as evidenced by the learned judge's full and careful note. After a submission regarding the ordering of a full shorthand note of the evidence which the learned judge in his discretion rejected and which, though an attempt was made to revive this issue before their Lordships, is so unarguable as not to merit further mention, learned counsel then appearing for the appellant applied "for entire copy

of the statements made to the police by witnesses whether called by the prosecution or not". Such an application, made in those terms, was of course untenable, and it is not surprising that it failed. Had it been made in a more limited form there is nothing to show that the application might not have succeeded. Learned counsel for the prosecution, stating that he was acting on direct instructions from the Solicitor-General for Mauritius, told their Lordships that the original statements in Creole had always been available for inspection and copying by the defence and that what had been demanded and refused was the production of English translations of those original statements in Creole. Their Lordships were told that it had never been the practice in Mauritius to supply English translations as well as making copies of the original statements in Creole available.

This statement was accepted by learned counsel for the appellant who, of course, had not appeared in the courts below. Their Lordships are in no position to decide what happened at the trial. Plainly if the defence wanted to see these statements in their original form and then copy them for themselves, or to translate them themselves, they should have been allowed to do so, unless the prosecution could show good reason for objecting to production. Why that did not happen is not now capable of ascertainment.

But whatever the position at the trial, their Lordships, like the appellant's counsel, have now seen these statements. In the case of Francois Brulecoeur, whose evidence if accepted was deadly to the appellant, there were four previous statements respectively dated: 5th, 6th and 13th December 1979, and 14th January 1980. Brulecoeur had given evidence at the preliminary hearing on 20th February 1981, and at the trial on three days, 31st March and 1st and 2nd April 1982. Having regard to these intervals of time it is not surprising there were certain discrepancies between the evidence given both at the preliminary hearing and at the trial.

Much play was made by learned counsel by reason of the existence of the certain discrepancies. For example, at the trial Brulecoeur mentioned that the dead woman's body had been put into two gunny bags. At the preliminary hearing and indeed in certain of the statements he mentioned the body put only into one such gunny bag. It was also pointed out that he insisted at the trial that he had only made one statement to the police when in fact it was proved at the trial that he had made the four to which their Lordships have already referred.

The learned judge mentioned the former point in his summing-up in connection with the discrepancy between

the evidence given at the trial and at the preliminary hearing. He left it to the jury to consider whether or not this discrepancy had any bearing upon this witness's credibility and the majority of the jury plainly held that it did not.

Their Lordships having read most carefully all the statements are satisfied that these and other suggested inconsistencies are of the most trivial nature and that even if these statements had been made available at the trial for cross-examination little if any use could or would have been made of them. Indeed a wise advocate might well have thought that cross-examination upon such trivia would have been likely to be wholly counter-productive.

A similar complaint was made in connection with a witness named Dookhee. But here again there was inconsistency only of detail and not of substance.

The Court of Criminal Appeal of Mauritius in rejecting this part of the argument on the appellant's behalf sought guidance from what they said was the English practice. This they took from the 40th edition of *Archbold's Criminal Pleading* (1979) paras. 445 and 451. The passages quoted by the Court of Criminal Appeal embody a number of judicial decisions in England which will also be found collected in the latest edition of *Archbold* (41st edition 1982) para. 4.178 et seq. But in December 1981 the Attorney-General of England issued comprehensive guidelines to prosecutors throughout England and Wales as to the practice to be followed in connection with these and related problems. These guidelines will be found set out in [1982] 1 All E.R. 734. These guidelines were in fact issued before the appeal and indeed before the trial in the present case but knowledge of them would appear most understandably not to have reached Mauritius timeously. These guidelines do not, of course, state the law but they do state the practice which prosecuting authorities must follow in this connection in England. Their Lordships have no reason to think that those guidelines are not now being fully followed in England and, of course, had they been followed in the instant case the complaints already dealt with in this opinion would not have arisen.

Counsel for the appellant invited their Lordships to state as a matter of law how in future such matters as these should be dealt with in Mauritius. Their Lordships must firmly decline that invitation. The matter is largely one of practice and not of law, and if a satisfactory practice can be evolved in Mauritius, as it has been in England, problems of the kind under discussion need no longer arise in the former country. Their Lordships respectfully draw

the attention of the proper authorities in Mauritius to the English guidelines and venture to suggest that it might be desirable for them to consider their adoption, of course with such modifications as may be thought appropriate in the light of local conditions of which their Lordships have no sufficient knowledge. Their Lordships observe that, whatever the reason in the instant case, production of these statements has ultimately only been obtained as a result of the grant of leave to appeal to their Lordships' Board. This should not have been necessary and their Lordships would hope that the adoption of such guidelines as those just mentioned will prevent the recurrence of any complaints such as has been made in this case. It was for these reasons that their Lordships have humbly advised Her Majesty that this appeal be dismissed.



