

JUDGMENT

17/1970

IN THE PRIVY COUNCIL

No. 10 of 1969

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O N A P P E A L  
FROM THE FIJI COURT OF APPEAL

---

B E T W E E N :-

THE ATTORNEY GENERAL FOR FIJI Appellant

- and -

HARI PRATAP S/O RAM KISSUM Respondent

---

R E C O R D O F P R O C E E D I N G S

---

UNIVERSITY OF LONDON  
INSTITUTE OF ADVANCED  
LEGAL STUDIES  
6 - DEC 1971  
25 RUSSELL SQUARE  
LONDON W.C.1

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Solicitors for the Appellant

Solicitors for the Respondent

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R E C O R D O F P R O C E E D I N G S  
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O N A P P E A L  
FROM THE FIJI COURT OF APPEAL

---

B E T W E E N :-

THE ATTORNEY GENERAL FOR FIJI Appellant

- and -

HARI PRATAP S/O RAM KISSUM Respondent

---

R E C O R D O F P R O C E E D I N G S

---

10

No. 1

CHARGE

In the  
Magistrates  
Court at  
Labasa.

FIRST COUNT

Statement of Offence (a)

No. 1  
Charge,  
(Undated)

RECEIVING MONEY ON FORGED DOCUMENT: Contrary to  
Section 374 (a) of the Penal Code. cap. 8.

Particulars of Offence (b)

20

HARI PRATAP S/O RAM KISSUN and SHRI PRASAD S/O  
BIROGI, on the 12th day of April, 1966 at Nasea  
Labasa in the Northern Division with intent to  
defraud received from the bank of New Zealand  
Labasa, the sum of £93. 0. 0. by virtue of a  
forged instrument, namely a cheque in the sum of  
£93. 0. 0. drawn in favour of cash on the Bank of  
New Zealand purporting to be the cheque of  
MAHABEER S/O Ram Charan and signed by the said  
MAHABEER S/O Ram Charan knowing the same to be  
forged.

In the  
Magistrates  
Court at  
Labasa

## SECOND COUNT

## Statement of Offence (a)

RECEIVING MONEY ON FORGED DOCUMENT: Contrary to  
Section 374(a) of the Penal Code. cap. 8.

No. 1  
Charge,  
(Undated)  
(Contd.)

## Particulars of Offence (a)

HARI PRATAP s/o RAM KISSUN and SHRI PRASAD s/o  
BIROGI, on the 2nd day of July, 1966 at Nasea,  
Labasa in the Northern Division with intent to  
defraud received from the Bank of New Zealand  
Labasa, the sum of £86. 0. 0. by virtue of a  
forged ~~document~~ instrument, namely a cheque in the  
sum of £86. 0. 0. drawn in favour of cash on the  
Bank of New Zealand purporting to be the cheque of  
MAHABEER s/o Ram Charan and signed by the said  
MAHABEER s/o Ram Charan knowing the same to be  
forged.

10

20

## THIRD COUNT

## Statement of Offence (a)

RECEIVING MONEY ON FORGED DOCUMENT: Contrary to  
Section 374(a) of the Penal Code. cap. 8.

## Particulars of Offence (b)

HARI PRATAP s/o RAM KISSUN and SHRI PRASAD s/o  
BIROGI, on the 13th day of December, 1966 at Nasea,  
Labasa in the Northern Division with intent to  
defraud received from the Bank of New Zealand  
Labasa, the sum of £100. 0. 0. by virtue of a  
forged ~~document~~ instrument, namely a cheque in the  
sum of £100. 0. 0. drawn in favour of cash on the  
bank of New Zealand purporting to be the cheque of  
MAHABEER s/o RAM CHARAN and signed by the said  
MAHABEER s/o RAM CHARAN knowing the same to be  
forged.

30

## FOURTH COUNT

## Statement of Offence

RECEIVING MONEY ON FORGED DOCUMENT: Contrary to  
Section 374(a) of the Penal Code. cap. 8.

40



Particulars of Offence (b)

In the  
Magistrates  
Court at  
Labasa

10 HARI PRATAP s/o RAM KISSUN and SHRI PRASAD s/o  
BIROGI, on the 27th day of January, 1967 at Nasea,  
Labasa in the Northern Division with intent to  
defraud received from the Bank of New Zealand  
Labasa, the sum of £80. 0. 0. by virtue of forged  
~~document~~ instrument namely a cheque in the sum of  
£80. 0. 0. drawn in favour of cash on the Bank of  
New Zealand purporting to be the cheque of  
MAHABEER s/o Ram Charan and signed by the said  
MAHABEER s/o Ram Charan knowing the same to be  
forged.

No. 1  
Charge,  
(Undated)  
(Contd.)

(sgd) P. Chandra.

Taken before me

DISTRICT CRIME OFFICER  
(NORTHERN)

FIRST COUNT (ALTERNATIVE)

Statement of Offence

20 FORGERY: Contrary to Section 364(2)(a) of the  
Penal Code, Cap. 8.

Particulars of Offence (b)

30 HARI PRATAP s/o RAM KISSUN and SHRI PRASAD s/o  
BIROGI, on the 12th day of April, 1966 at Nasea,  
Labasa in the Northern Division with intent to  
defraud forged a valuable security namely, a  
cheque No. B44980 in the sum of £93. 0. 0. drawn  
in favour of cash on the Bank of New Zealand,  
Labasa purporting to be the cheque of Mahabir  
s/o Ram Charan.

SECOND COUNT (ALTERNATIVE)

Statement of Offence

FORGERY: Contrary to Section 364(2)(a) of the  
Penal Code, Cap. 8.

Particulars of Offence

HARI PRATAP s/o RAM KISSUN and SHRI PRASAD s/o  
BIROGI, on the 2nd day of July, 1966 at Nasea,  
Labasa, in the Northern Division with intent to

In the  
Magistrates  
Court at  
Labasa

defraud forged a valuable security namely, a cheque  
No. B46389 in the sum of £86. 0. 0. drawn in favour  
of cash on the Bank of New Zealand, Labasa purpor-  
ting to be the cheque of Mahabir s/o Ram Charan.

No. 1  
Charge,  
(Undated)  
(Contd.)

THIRD COUNT (ALTERNATIVE)

Statement of Offence (a)

FORGERY: Contrary to Section 364(2)(a) of the  
Penal Code, Cap. 8.

10

Particulars of Offence (b)

HARI PRATAP s/o Ram Kissun and SHRI PRASAD s/o  
Birogi, on the 13th day of December, 1966 at Nasea,  
Labasa in the Northern Division, with intent to  
defraud forged a valuable security namely, a cheque  
No. C87802 in the sum of £100. 0. 0. drawn in favour  
of 802 on the Bank of New Zealand, Labasa purporting  
to be the cheque of Mahabir s/o Ram Charan.

FOURTH COUNT (ALTERNATIVE)

Statement of Offence

20

FORGERY: Contrary to Section 364(2)(a) of the  
Penal Code, Cap. 8.

Particulars of Offence

HARI PRATAP s/o Ram Kissun and SHRI PRASAD s/o  
Birogi, on the 27th day of January, 1967 at Labasa  
in the Northern Division, with intent to defraud  
forged a valuable security namely, a Cheque No.  
131534 in the sum of £80. 0. 0. drawn in favour of  
cash on the Bank of New Zealand, Labasa purporting  
to be the cheque of Mahabir s/o Ram Charan.

30

(sgd) P. Chandra DSI.

Taken before me

DISTRICT CRIME OFFICER  
(NORTHERN)

No. 2  
PROCEEDINGS

In the  
Magistrates  
Court at  
Labasa

In the Magistrates Court  
28th March, 1967

No. 2  
Proceedings,  
28th March,  
1967.

Both Accused in person.  
Chandra for Prosecution.  
10 Chauhan for 2nd Accused.  
1st Accused not represented.

Court: Do you agree that you should use the  
word "instrument" in order to follow the  
wording of the subsection and that you  
should have alleged knowledge as stated  
in (2) of 374?

20 Chandra: Yes. Apply to amend each count by  
deleting "document" and substituting  
"instrument" and by adding words "knowing  
the same to be forged" at the end of  
particulars of offence in each count:  
Delete full stop after and place after  
"forged" at very end.

Court: Granted.

Charges as amended read and explained in  
Hindustani. After both accused have consented to  
trial by this Court and Section 211a, C.P.C.  
explained.

1st Accused: Wish to be tried by this Court.

30 2nd Accused: Wish to be tried by this Court.

1st Accused: "I plead not guilty to all 4 counts."

2nd Accused: "To my knowledge it is false."

Court: Pleas of "Not Guilty" to all counts  
entered for both Accused.

Chandra: This will take 2 days.

Court: Adjourned to 17.4.67 "for mention" (will  
be heard on 22nd May).

Bail extended for both Accused.

In the  
Magistrates  
Court at  
Labasa

17th April, 1967

Chandra for Prosecution.  
Both Accused present.  
Chauhan for 2nd Accused.

No. 2

Proceedings,  
(Continued)  
17th April,  
1967.

Adjourned to 8th May "for mention" will be  
heard on 22nd May. Bail extended.

(sgd) R.A. Kearsley  
Magistrate 17.4.67.

10

8th May,  
1967.

8th May, 1967

Chandra for prosecution.  
Both Accused present.  
Chauhan for 2nd Accused.

Adjourned to 26.5.67. Bail extended.

(sgd) R.A. Kearsley.  
8.5.67.

22nd May,  
1967.

22nd May, 1967

1st Accused in person, not represented.  
2nd Accused present, represented by Chauhan.  
Chandra for prosecution.

All four counts as amended again read and  
explained to Accused in Hindustani. Both Accused  
say they understand each charge.

Right of trial by Supreme Court and provisions  
of S. 211a C.P.C. explained in Hindustani to  
Accused.

20

30

1st accused: I want to be tried by this Court.

2nd accused: I want to be tried by this Court.

Pleas:

1st accused: 1st Count:- "Not guilty".  
2nd Count:- "Not guilty".  
3rd Count:- "Not guilty".  
4th Count:- "Not guilty".

2nd accused: 1st Count:- "Not guilty".  
2nd Count:- "Not guilty".

3rd Count:- "Not guilty".  
4th Count:- "Not guilty".

In the  
Magistrates  
Court at  
Labasa

Court: Anything either accused wishes to  
have explained?

1st Accused: No.

2nd Accused: No.

No. 2  
Proceedings,  
22nd May,  
1967.  
(Contd.)

10

1st Accused: I have requested copies of the  
cheques. Police have offered me photo  
copies of three of the 4 cheques and  
asked me to bring a photographer to  
photograph this 4th cheque. I refused  
to have the cheque photographed by my  
own photographer.

Court: Why?

20

1st Accused: They might have disputed the authenti-  
city of the photograph.

Court: So you refused to accept even this  
three photographs they were prepared to  
supply?

1st Accused: Yes. I will ask for an adjournment.

Court: It seems to me your attitude has been  
foolish: The Police have done more to  
assist you than you were entitled to  
expect. Your explanation of why you did  
not take your own photographer to photo-  
graph the 4th cheque is not satisfactory.

30

Chandra: As a matter of fact we have since had the  
4th cheque photographed in Suva. Here  
are photographs of all 4 cheques. (Hands  
photographs to 1st Accused who takes  
them).

2nd Accused: I do not want anything else explained.

Court: Proceed:

In the  
Magistrates  
Court at  
Labasa

No. 3

MAHABIR

Prosecution  
Evidence.

1 P.W. - MAHABIR s/o Ramcharan,  
Sworn on Ramayan in Hindi.

No. 3  
Mahabir  
Examination

(This witness asked to be sworn on Veda, no Veda available. Says Ramayan would be equally binding. Warned that as he has said that oath on Ramayan would be binding any false material statement he may make in evidence would be perjury).

10

I live at Korotari. I am a cultivator. I have known 1st Accused for 10 or 15 years. I do not know 2nd Accused.

I am illiterate. I execute documents by affixing my thumb print.

On 28.1.65 I opened account at Bank of New Zealand, Labasa. I deposited £200. 0. 0. that day. 1st Accused went to bank with me and helped me open account. I gave a specimen left thumb print to the bank when I opened the account. This might have been the card on which I gave that specimen thumb print.

20

Court: MFI. (1).

1st Accused witnessed specimen thumb print. He signed the card on which I gave the specimen. MFI (1) might bear his signature. I cannot say.

Whenever I wanted to draw money 1st Accused would accompany me to the bank and help me draw the money. He would sign something. A Bank Officer would fill in the body of my cheques. I would tell the Bank Officer what to write.

30

To Court: I cannot speak any English at all.

Q. Then how did you tell the Bank Officer what to write?

A. 1st Accused would tell him.

Court: You are wasting time, you wretched man, Please be more sensible.

I would collect the cash personally. I would get a cheque from a bank officer whenever I wanted to draw money. I did not keep a cheque book.

In the  
Magistrates  
Court at  
Labasa

I received cane bonus money from S.P.S.M. Limited. I would go every now and again with 1st Accused to see whether or not cane bonus money had been deposited by S.P.S.M. Limited in my account. Cane bonus money was deposited in my account last year and this year.

Prosecution  
Evidence.  
No. 3  
Mahabir  
Examination  
(Contd.)

10

Earlier this year I asked 1st Accused to go to bank with me to see whether or not monies had been deposited in my account. He declined, saying his health was not good. I therefore took Sahadeo and Jai Karan with me to the Bank.

1 p.m. adjourned to lunch.

2.15 p.m. resumed.

Both Accused present.  
Chauhan for 2nd Accused.  
Chandra for prosecution.

20

Witness continues after being told he is still on oath:-

Jai Karan is my son. At Bank I learned something when I went there with Sahadeo and Jai Karan. My suspicions were aroused. I went to 1st Accused at Shank Raj's shop. I told him that £180. 0. 0. of my money had been withdrawn without authority. Accused said he could not go to the bank with me because he was not well.

30

I went back to the bank at 2 p.m. I made further enquiries. After this, on another day, the next day I think, I took a constable and checked at the bank. The next day I went again to the bank and got a statement of my account. I found something wrong in that statement of account. Four of the withdrawals shown on that statement, for £80. 0. 0., £93. 0. 0., £86. 0. 0. and £100. 0. 0. were not made or authorised by me. I did not authorise the execution of 4 cheques for £80. 0. 0., £93. 0. 0., £86. 0. 0. and £100. 0. 0. I did not myself execute any cheque for any one of

40

In the  
Magistrates  
Court at  
Labasa

those 4 amounts. I authorised neither the 1st Accused nor the 2nd Accused to withdraw any of those 4 amounts from my account.

Prosecution  
Evidence.

To Court: I had only one account at the bank - the only bank account I have ever opened.

No. 3  
Mahabir  
Examination  
(Contd.)

Chandra: No further questions.

10

Cross-  
Examination

Cross-Examination 1st Accused:

I have known you well for 10 years. Before that 10 years I knew you but not well.

We have known each other intimately for about 2½ years.

We did not see the manager before I opened the account. You spoke to a bank officer at the Bank in order to open the account.

20

I wanted to buy land in Savusavu. It's not true that I asked you to arrange a bank loan so I could buy this land. The reason I wanted to open a bank account was to avoid having to go to S.P.S.M. Limited for my cane monies. I am not telling lies. If the bank records show I asked for a loan on 28.1.65 the bank records would be incorrect. I was not advised by the bank manager to open the account which I opened. Prior to 28.1.65 I did not have an account because I was in good health - when I became ill I decided to open the account in order to avoid going to S.P.S.M. Limited for my monies.

30

I have been attended to by Doctor Reddy, Doctor Kuver, Doctor Bhindi and Doctor Parshuram. My stomach swells, my chest pains and my body aches when I feel bad. I do not know the name of my ailment. I have been like that for 2 or 3 years. I had a motor-car in which I used to visit the doctor once or twice a week. You used to drive me in that car. I did not pay you for that. I went to Suva for medical examinations. I do not know what was found wrong with me. My body sometimes feels as if it is burning. You accompanied me to Suva. I loaned you £30 and I paid your

40



fares. I have loaned you the total sum of £110. 0. 0. First I loaned you £70. 0. 0. without security. Later I loaned you £30. 0. 0. At the time of those loans we were very friendly. Had you asked me for more money I would have loaned it to you if I had had it.

In the  
Magistrates  
Court at  
Labasa

Prosecution  
Evidence.

No. 3  
Mahabir  
Cross-  
Examination  
(Contd.)

10 I would take you to the bank whenever I wanted to draw money. I would buy a cheque and give it to one of the bank officers' and after it had been filled in you would witness my thumb print on the cheque. Nobody else ever witnessed my thumb print on a cheque. I always took you to this bank with me. Last year I checked my account only once. That was because I wanted to prepare an income tax return.

20 I withdrew £40 to purchase a car. I also withdrew other monies to purchase that car. I withdrew a total of £420. 0. 0. to purchase that car.

I cannot say when I returned from Suva last year after being medically examined. After my return I did not draw any money from the bank of New Zealand.

I opened a savings bank account at the Bank of New Zealand just before I went to Suva last year. I now have 2 bank accounts at the Bank of New Zealand.

30 3.15 p.m. Adjourned to 15 minutes as witness says he is not feeling well.

3.35 p.m. Resumed.

Both accused, counsel and prosecutor present.

Cross-Exam. continues after the witness told he is still on oath:

40 I have not drawn anything from either account since my return from Suva last year. I mean that since my last return from Suva last year I have not withdrawn anything. I have been to Suva only once in my life. I pay for things in cash and also on credit. I owe Dr. Kuver something for his services.

In the  
Magistrates  
Court at  
Labasa

Prosecution  
Evidence.

No. 3

Mahabir

Cross-  
Examination  
(Contd.)

On the day I asked you to go to the bank with me and you refused I went to the bank without you. I went without you because you refused to accompany me. It is not true I went without you first and then later went to you and asked you to accompany me. It is true you told me you would accompany me to the bank at 2 p.m. but I could not wait as I was ill.

It is not true that I wanted to loan £500. 0. 0. to my wife's brother on that date.

10

I am not telling lies.

It is not true I admitted in Gopal & Son's shop that I had withdrawn £100. 0. 0. but not £93. 0. 0. I did not withdraw either of those sums.

Chauhan: I object to the presence in Court of Mr. Dashwood the Manager of the Bank of New Zealand. The case involves two cheques apparently signed by Mr. Dashwood as a witness. That seems to show that Mr. Dashwood is interested - on two grounds: he is the Manager and his signature is on the cheques. Again certain bank officer's will give evidence later. Mr. Dashwood may unwillingly reveal the evidence of prior witnesses to them. My clients defence depends fundamentally on banking procedure. Not a word of the present witnesses answers to me should be let out.

20

30

Court: The essence of your objection is the possibility that what the present witness is about to say in cross-examination will be communicated by Mr. Dashwood to some bank officer who is to give evidence in this case?

Chauhan: Yes.

Court: And do you mean that the bank is interested in the present witnesses evidence because, say, it's efficiency will be questioned?

40

Chauhan: Yes, definitely.

Court: Mr. Dashwood is in Court. He has been in Court since the hearing began this morning. Does he wish to exercise his right to remain in Court:

In the Magistrates Court at Labasa

Dashwood: Yes, particularly as the efficiency of my bank is going to be questioned.

Prosecution Evidence.

10 Court: Mr. Dashwood may remain. He is warned that he must on no account communicate or permit the communication of any part of the evidence of this witness to any bank officer who is a witness in this case.

No. 3  
Mahabir  
Cross-  
Examination  
(Contd.)

It is now 4.30 p.m.

Adjourned to 9.30 a.m. tomorrow,  
23.5.67.

(sgd) R.A. Kearsley,  
22.5.67.

9.45 a.m. Resumed. 23rd May, 1967

20 Both Accused, Counsel and Prosecutor present.

Court observes that Mr. Dashwood is present in Court.

Witness Mahabir in box.

Cross-Exam. Chauhan (witness first reminded he is still on oath).

30 I changed from being an Arya Samajist to Sanatani yet I took my oath on the Ramayan. I deem it to be a binding oath. Had there been a Veda available, I would have sworn on it but oath on the Ramayan binds me just as strongly as oath on the Veda.

1st Accused has been my clerk ever since I opened the bank account on 28.1.65.

All of my withdrawals were witnessed by 1st Accused. In all I made many withdrawals.

In the  
Magistrates  
Court at  
Labasa

Prosecution  
Evidence.

No. 3

Mahabir  
Cross-  
Examination  
(Contd.)

Court: Can you remember whether or not you withdrew or authorised the withdrawals of £200. 0. 0. in February, 1966, £40. 0. 0. in June 1966, £50. 0. 0. in June, 1966, £383. 0. 0. in July 1966, £200. 0. 0. in October 1966 or £100. 0. 0. in December 1966.

A. No. I remember nothing. I cannot say whether or not I withdrew or authorised the withdrawal of those sums. 10

Court: Do you really mean that?

A. Yes.

Court: How do you remember that you did not withdraw or authorise the withdrawal of the four sums to which the charge relate?

A. Because I am sure that I did not withdraw any monies after cane bonuses were distributed last year. 20

I am certain that the cane bonus was paid out last year. I cannot say when the cane money was paid out last year.

10.30 a.m. Adjourned for mid-morning break.

10.45 a.m. Resumed. Both accused, counsel and prosecutor present.

Witness Mahabir in box says:

"I am not feeling well, I am giddy". Witness stood down after being told he should not discuss the case with any other witness. 30

No. 4PAUL WINSTON HICKFORDIn the  
Magistrates  
Court at  
Labasa2 P.W. - PAUL WINSTON HICKFORDProsecution  
Evidence.

Sworn on Bible in English.

No. 4  
Paul Winston  
Hickford  
Examination

10 I am a bank officer stationed and living in Suva. I am employed by Bank of New Zealand. I was with Bank of New Zealand, Labasa from December 1965 to 10th April, 1967. I know 1st Accused: I have known him since about January 1966. I was introduced to him in the bank premises by a fellow bank officer. That was about January, 1966. Since then I have had personal dealing with him. I do not know a Mahabir s/o Ram Charan but I do know that a person of that name has an account at Bank of New Zealand, Labasa.

20 I do not know 2nd Accused.

I see a Bank of New Zealand cheque No. B44980 dated 12th April, 1966. It has the bank counter cheque stamp on it. The body of the cheque is in my hand-writing. That is to say the words "cash" and "Ninety three pounds" and "Mahabir f/n Ram Charan" are in my handwriting. Also, the letters "LHTM" are written by me.

To Court:

30 The first accused's signature appears on this cheque as if he were witness to the affixing of the thumb print on the cheque. I have no recollection of the execution of that cheque. I am familiar with the signature of the 1st Accused.

My signature appears on this cheque as if I witnessed the signature of the first Accused. I have no recollection of affixing my signature.

To Court continued:

I have no recollection of the affixing of the thumb print on the cheque.

40 The practice in the Bank of New Zealand Labasa when an illiterate customer wished to draw

In the  
Magistrates  
Court at  
Labasa

Prosecution  
Evidence.

No. 4  
Paul Winston  
Hickford  
Examination  
(Contd.)

money from his own account by means of a cheque was, and is as far as I know, as follows: The illiterate customer would come to the bank with some literate person. In the presence of a bank officer the customer would affix his thumb print to a cheque. The literate person who accompanied him would sign the cheque as a witness and the bank officer would sign as witness to the signature of the literate person. The body of the cheque might be filled in before execution by some unknown person. Sometimes the bank officer himself, if requested, would fill in the body of the cheque. Not always would I make sure that the customer understood that he knew what was written in the body of the cheque. The nature of the transaction would be obvious, the customer would be handed money in exchange for the cheque. He would know he was drawing out money and one would assume he could count.

10

Court: Cheque B44980 MFI (3).

20

The presence of 1st Accused's signature and my signature on the cheque, the presence of the thumb print over the words "MAHABIR F/N RAM CHARAN" which words are in my hand writing and the way the cheque has been filled in is my handwriting. Show me that 1st Accused have come to the bank with a person described to me as Mahabir f/n Ram Charan. 1st Accused and that person must have affixed their signature and thumb print respectively to the cheque in my presence and I must have affixed my signature in their presence. This must all have happened on 12th April, 1966 which is the date of the cheque written in my handwriting. Either the customer or the 1st Accused would have told me that the customer was Mahabir f/n Ram Charan. I recollect none of this but is all clearly indicated and must have happened.

30

I did not personally give cash for the cheque but I have no doubt that the cheque was cashed, that £93. 0. 0. was given for it.

40

It is possible that the cheque was not immediately cashed. It is possible that, after execution, the cheque was given to a man in the street who later that day came into the bank and cashed the cheque.

However, I have no doubt that the cheque was cashed that day. That is shown by the "PAID" stamp on the left front by the teller stamp in the middle front of the cheque. Those stamps would not have been put there if the cheque had not been cashed. Also on the back of the cheque are figures indicating the denomination of the notes paid out. They were apparently written there by the paying out teller in accordance with established practice. It would be contrary to established practice for those figures to be there if the cheque was not cashed.

In the Magistrates Court at Labasa

Prosecution Evidence.  
No. 4  
Paul Winston Hickford Examination (Contd.)

10

If that cheque was cashed, and I have no doubt it was, I must have handed it to presenter and someone must have later cashed it, perhaps immediately. I certainly would not have handed it to anyone except the customer who executed it or to his assistant, the 1st Accused.

Ex-in-Chief resumed:

20

This cheque is a counter cheque. It would not have been given to the customer unless he paid 2d for it.

Chauhan: Object to evidence of what happened based on marks on cheques.

30

Court: Objection very late. I would have objected at the very beginning if I were you - as I did before the Chief Justice in R v. Krishna and Others. On the authority of Myers vs. D.P.P. (1964) 3 W.L.R. 145. My objection was over-ruled by the Chief Justice and I must respectfully follow him by over-ruling your objection.

Cross-Exam. 1st Accused:

Cross-Examination

You were introduced to me in January 1966. I do not remember who introduced us.

40

I must have compared the thumb print on the cheque with a specimen thumb print in the bank's custody. I did not suspect that the thumb print on the cheque was false. I noticed no difference between the thumb print on the cheque and that on

In the  
Magistrates  
Court at  
Labasa

the specimen card. This is the specimen thumb  
print of a client of the bank called Mahabir f/n  
Ram Charan. I see the 1st Accused's signature  
under that specimen thumb print.

Prosecution  
Evidence.

Court: Specimen card admitted Ex. "A".

No. 4

Paul Winston  
Hickford  
Cross-  
Examination  
(Contd.)

I agree that the thumb print on Exhibit "A"  
is different from the thumb print on the cheque.  
The same thumb could not have produced the two  
prints. Indians say "Checklif" for cheque leaf:  
"kitna paisa mango" means how much money do you  
want?. "Dui Peni" means two pence.

10

Sometimes illiterate customers come to the  
bank without interpreters - they are assisted by  
Indian or Fijian staff members.

If an illiterate customer is known to a bank  
officer he will himself witness the thumb prints  
of the customer and get a fellow bank officer to  
witness his own signature.

20

It would be quite wrong for the illiterate  
customers' thumb print to be witnessed out of  
the bank officer's sight. I have never known that  
to happen and I do not believe it ever happens in  
my bank.

It could possibly happen that the witness  
would sign in the presence of the bank officer  
but not in the presence of the illiterate customer.  
Always the illiterate customer affixes his thumb  
print in the presence of the bank officer. I  
agree that it would be contrary to bank practice  
for the witness to sign as a witness if he did not  
see the thumb print affixed. I have never known  
that to happen. I do not agree that that does  
happen.

30

The practice is for the witness to sign after  
the thumb print is affixed and for the bank officer  
to sign last. That is a strict practice.



Cross-Exam Chauhan:

I know 1st Accused well. I do not know 2nd Accused at all.

No recollection what happened at all.

12.45 p.m. Adjourned to 2 p.m.

(sgd) R.A. Kearsley.

2 p.m. Resumed.

Counsel, both Accused and Prosecutor present.

Re-Exam:

I know of no case in which the witness signed as a witness to the affixing of a thumb print when the thumb print had not been affixed in the presence of the witness.

Never has a blank cheque been produced to me with a thumb print on it.

Court: Any objection to release of this witness?

1st Accused: No.

Chauhan:

In the Magistrates Court at Labasa

Prosecution Evidence.

No. 4  
Paul Winston  
Hickford  
Cross-  
Examination  
(Contd.)

Re-Examination

10

20

In the  
Magistrates  
Court at  
Labasa

No. 5

MAHABIR (Continued)

Prosecution  
Evidence.  
No. 5  
Mahabir  
Cross-  
Examination  
(Contd.)

1 P.W. - MAHABIR S/O RAM CHARAN.

Resworn on Ramayan in Hindustani.

To Court:

I was in court this morning, after I got back from hospital, while the last witness was giving evidence.

10

Cross-Exam. by Chauhan continued:

I did not withdraw any money after the canemones were paid out last year.

Master Shiu prepares my income tax returns. 1st Accused has never prepared my income tax returns. No one beside 1st Accused ever helped me with bank withdrawals.

20

I do not know whether or not Shant Raj is manager of Gopal & Sons. I went to see 1st Accused at that shop. I have seen 1st Accused preparing income tax returns at that shop. I have also seen him preparing promissory notes and receipts. I know he is an ex-law clerk.

I would go to the Bank, purchase a cheque and then I, 1st Accused and a bank officer would sign the cheques. I cannot say whether or not the bank officer would write out the body of the cheque.

30

1st Accused would do the talking for me at the bank. I would only sign the cheque by affixing my thumb print.

1st Accused would sign the cheque first. The bank officer would sign the cheque. I would affix my thumb print last.

I never affixed my thumb print to a blank cheque. It was always filled in before I executed.

In the  
Magistrates  
Court at  
Labasa

10 It was like this: I would get a counter cheque, 1st Accused would write a cheque, I would put my thumb print on cheque and the 1st Accused and bank officer would sign. Then the money would be paid. The money was always paid to me, not 1st Accused.

Prosecution  
Evidence.  
No. 5  
Mahabir  
Cross-  
Examination  
(Contd.)

I cannot read or write or speak English at all.

It is not true that bank officer sometimes gave me cheque to sign and then moved away so that I put my thumb print on the cheque when he was not present.

To Court:

20 I see the last witness (Hickford stands) I am sure that he has attended to me in the bank when I have cashed a cheque with 1st Accused. I cannot say when or how many times.

1st Accused: No questions arising.

Chauhan: No questions arising.

Re-Exam. Chandra:

30 When I went to the bank with 1st Accused things were done in the following order ..... I just cannot remember. All I can remember is that I used to go with 1st Accused after my thumb print and get my money.

Re-Examination

In the  
Magistrates  
Court at  
Labasa

No. 6

ERIC GRAHAM HARGREAVES

Prosecution  
Evidence.

3 P.W. - ERIC GRAHAM HARGREAVES.

No. 6  
Eric Graham  
Hargreaves  
Examination

Sworn on Bible in English.

I am a bank officer living and stationed in Labasa. I am employed by Bank of New Zealand, Labasa. I have been with the bank in Labasa since 7th April, 1966.

10

I know 1st Accused. I have known 1st Accused since about 2 months after 7th April, 1966. I am familiar with his signature. I have become familiar with his signature in course of my duties.

Exhibit "A" bears 1st accused's signature as a witness to the thumb print of one Mahabir f/n Ram Charan. I do not know that Mahabir. I only know that a person of that name has an account at the bank.

20

The procedure followed with an illiterate customer drawing money from his account is as follows: the customer brings a literate person with him to the bank, a bank officer then usually writes out a cheque in accordance with the customers instructions usually interpreted by the literate person. Then that customer executes the cheque and the literate person and the bank officer countersign the cheque. The literate person signs before the bank officer does. The literate person is always asked to assure the bank officer that the customer is the person he says he is. The literate person must always be known to the bank officer. That is not quite correct. If this witness is not known to the bank officer his signature must tally with a specimen signature in the bank's custody. We must be able to authenticate the witness's signature in that way. If the illiterate customer draws money were known to me I personally would cash his cheque without being able to authenticate the witness's signature.

30

40

I see cheque No. B46389 dated 2nd July, 1966 drawn on the Bank of New Zealand, Labasa in the sum of £86. 0. 0.

In the  
Magistrates  
Court at  
Labasa

To Court:

Prosecution  
Evidence.

No. 6  
Eric Graham  
Hargreaves  
Examination  
(Contd.)

10 The date is in my handwriting. So is the word "Cash" and the words "Eighty Six Pounds" and the figures "86". So is the printing "MAHABIR S/O RAM CHARAN" my signature appears in the lower left corner over the signature of 1st Accused. I know his signature well. It follows that 1st Accused came to the bank with someone purporting to be Mahabir s/o Charan who instructed me to write out a counter cheque for £86. 0. 0. I made out the cheque. The person purporting to be Mahabir s/o Ram Charan then affixed his thumb print in the lower right hand corner. Then 1st Accused signed the cheque and I countersigned. This took place  
20 on 2.7.66. I remember none of this but it must have happened, or otherwise these things would not appear on that cheque. I must then have checked the account to see that there were sufficient funds - that is indicated by my initials in top left corner and by the stamp at the top left corner which must also have been put there by me. Then I would have returned the cheque to the customer.

30 I did not personally cash this cheque but I can see it must have been cashed because of the teller's stamp in the middle front of the cheque and the figures on the back of the cheque which figures show the denomination of notes given for the cheque. Those figures would not have been written unless the cheque were cashed. The stamp in the middle front of the cheque does not of itself necessarily mean that the cheque was cashed. It means that the cheque was presented to the bank on 2nd July 1966. That stamp together  
40 with the figures on the rear necessarily mean that the cheque was cashed in the bank on 2nd July, 1966.

Ex-in-Chief resumed:

I do not remember who paid for the counter cheque. No indication who paid.

In the  
Magistrates  
Court at  
Labasa

Prosecution  
Evidence.

No. 6

Eric Graham  
Hargreaves  
(Cont'd.)  
Cross-  
Examination

Cross-Exam. 1st Accused:-

Sometimes the literate person who accompanies the customer fills in the body of the cheque. Always the literate person signs after the customer and before the bank officer. My signature appears above yours on cheque No. B46389 because you wrote your signature so low on the cheque that I could not sign under it. That often happens.

10

I have no idea who received the money from the teller who paid out.

To Court:

It is possible as far as I can tell that this cheque No. B46389 was handed to a person in the street by the customer and that that person cashed the cheque. There is no way of telling whether or not that could have happened.

1st Accused: No question arises.

Cross-Exam. Chauhan:

20

I do not know 2nd accused.

I suppose that 1st Accused told me that the person with him was Mahabir s/o Ram Charan.

I have no recollection whatsoever of the transaction.

No. 7

GARRY ERNEST PENNIALL

In the  
Magistrates  
Court at  
Labasa

4th P.W. - GARRY ERNEST PENNIALL.

Prosecution  
Evidence.

Sworn on Bible in English.

No. 7

Garry Ernest  
Penniall  
Examination

10 I am a bank teller with the Bank of New  
Zealand, Labasa. I live in Labasa. I have been  
with Labasa branch for about 15 months. I do not  
know 1st or 2nd Accused.

I see Cheque No. C87802 dated 15th December  
1966 for £100. 0. 0.

Court: MFI (5)

To Court:

By looking at this cheque I can tell certain  
things, but I have no recollection of those things.

20 All of the figures in red on the back of this  
cheque are in my handwriting. I would not have  
written those figures unless I had given cash in  
exchange for that cheque. I am certain that I  
gave nine £10 notes and ten £1 notes for that  
cheque. The "55" means that this was the 55th  
cheque I cashed that day. The cheque was cashed  
on 15th December. That is indicated by the red  
stamp on the front of the cheque. As you can see  
the figure 2 is in the corner of each stamp. That  
is the number of the stamp. Therefore I must have  
30 affixed that red stamp. The stamp shows the date  
15th December 1966. Therefore I must have cashed  
that cheque on that day. It is a strict rule  
that a teller must not use another teller's stamp.

I have no idea to whom I paid that money.

Ex-in-Chief resumed:

I see cheque No. 131534 dated 27th January  
1967 in the sum of £80. 0. 0.

Court: MFI. (6)

In the  
Magistrates  
Court at  
Labasa

Prosecution  
Evidence.

No. 7  
Garry Ernest  
Penniall  
Examination  
(Contd.)

All the figures in blue on the back of that cheque are in my handwriting. The red rubber stamp on the front is my teller stamp. I can tell by the number in the corner of that stamp, No. 2. Those figures and stamp taken together necessarily mean that I cashed that cheque on 22nd January 1967, that I gave seven £10 notes one £5 note and five £1 notes for that cheque. I paid out that money but I have no idea to whom. I have no recollection of this transaction at all.

10

The signatures L.E. Dashwood on MFI. (5) and MFI. (6) are not the signatures of the present manager Mr. Dashwood. They are of his daughter who was then employed in the bank but is now in New Zealand.

I see MFI. (4). The figures on the back in red are in my handwriting. The blue stamp in the middle stamp is my teller's stamp. It was my stamp on 2nd July, 1966. Those figures together with that stamp necessarily show that I cashed that cheque on 2nd July, 1966. I gave eight £10 notes one £5 note and one £1 note. I have no idea to whom I gave the money.

20

Cross-  
Examination

Cross-Exam. 1st Accused:

I have no idea whose handwriting is in the bodies of MFI. (5) and MFI. (6). I am sure the signatures are those of Miss Dashwood.

Cross-Exam. Chauhan:

30

Nil.

Re-Exam:

Nil.

4.50 p.m. Adjourned to 2.15 p.m. tomorrow to take the evidence of two witnesses from Suva.

Bail extended.

(Sgd) R.A. Kearsley.



No. 8  
PROCEEDINGS

In the  
Magistrates  
Court at  
Labasa

24th May, 1967

2.20 p.m. Resumed.

Both accused, Counsel and Prosecutor present.

10 Chandra: I wish to add 4 alternative counts.  
I will not wish to adduce further  
evidence from witnesses already called.

1st Accused: Object. Case has been pending for last  
three months. Take by surprise.

Chauhan: Object. Late stage. Material  
witnesses already heard. Taken defence  
by surprise.

20 Court: Bearing in mind the provision of S.204,  
C.P.C. I will grant leave to add these  
4 alternative charges; Every prosecu-  
tion witness who has been called must  
be recalled for cross examination if  
1st accused or Counsel for 2nd accused  
so wishes.

No. 8  
Proceedings,  
24th May,  
1967.

In the  
Magistrates  
Court at  
Labasa

No. 9

UMA KANT S/O RAM KARAN

Prosecution  
Evidence  
No. 9  
Uma Kant  
Examination

5th P.W. - UMA KANT S/O RAM KARAN

Sworn on Ramayan in English.

I am a detective constable stationed and lives in Suva. I am action Police Photographer. 10

On 17th February, 1967 I received from Detective Inspector Shastanand Maharaj at Police Headquarters. MFI. (3), (4), (5) and (6). I photographed them that day in his presence. I also separately photographed the thumb print impressions on 3 of those cheques: MFI. (3), (4) and (6).

Here are the negatives of those thumb prints impressions.

Court: Negatives MFI. (3A), (4A) and (6A), MFI. (3A) is the negative of the photograph of the thumb print on MFI. (3), the cheque for £93. 20

MFI. (4A) is the negative of the photograph of thumb print on MFI. (4) the cheque for £86.

MFI. (6A) is the negative of the photograph of the thumb print on MFI. (6) the cheque for £80.

Since I took the photographs the negatives have been in my custody.

Chandra: I wish now to tender these negatives. 30

Court: Admitted MFI. (3A) becomes Exhibit "B", MFI. (4A) becomes Exhibit "C", MFI. (6A) becomes Ex. "D".

I returned the four cheques to Detective Shastanand Maharaj that same day.

On 12th May, 1967 I received from Detective Shastanand Maharaj the finger print impressions of a person. This is the finger print form containing those impressions.

Court: MFI. (7)

I photographed the thumb print marked "X" on the form in Sub/Inspector Shastanand's presence. Here is the negative of that photograph. It has been in my custody since I made the photograph.

In the  
Magistrates  
Court at  
Labasa

Prosecution  
Evidence  
No. 9  
Uma Kant  
Examination  
(Contd.)

Court: Exhibit "E".

10 I developed prints of Exhibits "B", "C" and "D" and enlarged them. I handed the enlargements to Sub/Inspector Shastanand that day, the 12th May, 1967, the same day I developed and enlarged them. Here they are.

Court: MFI. (8), (9) and (10).

MFI. (8) is the enlarged print of Exhibit "B".

MFI. (9) is the enlarged print of Exhibit "C".

MFI.(10) is the enlarged print of Exhibit "D".

20 On 12th May, 1967 I also, in Sub/Inspector Shastanand's presence developed and enlarged a print of Exhibit "E". I handed that enlarged print to the Sub/Inspector that same day. Here is the enlarged print. Actually I made three enlarged prints of Exhibit "E" and handed them to the Sub/Inspector that day. One is affixed alongside MFI. (8) one alongside MFI. (9) and one alongside MFI. (10).

Court: Those three enlarged prints of Exhibit "E" are MFI. (8A) and (9A) and (10A).

30 Cross- Exam. 1st Accused. Nil.

Cross-  
Examination

Court: You sure? It seemed earlier that you were disputing the finger print evidence.

1st Accused: I am sure. No questions.

Cross-Exam. Chauhan: On 17th February I received cheques.

In the  
Magistrates  
Court at  
Labasa

No. 10  
PROCEEDINGS

Court: I have forgotten to comply with S.4(1)  
C.P.C. in relation to the alternative  
counts.

No. 10  
Proceedings,  
24th May,  
1967.

All four alternative charges read and explained  
in English and Hindustani. Both Accused say they  
understand. 10

Right of trial by Supreme Court and provisions  
of S.211A C.P.C. explained.

1st Accused: I wish to be tried by this Court on all  
of the 4 alternative counts.

2nd Accused: I wish to be tried by this Court on all  
of the 4 alternative counts.

1st Accused: I plead not guilty to all of the 4  
alternative counts.

2nd Accused: I plead not guilty to all of the 4  
alternative counts. 20

No. 11UMA KANT (Continued)In the  
Magistrates  
Court at  
Labasa

Cross-Exam. Chauhan continued:

Prosecution  
EvidenceNo. 11  
Uma Kant  
Cross-  
Examination  
(Contd.)

10 On 17th February 1967 I received and took photographs of MFI. (3), (4) and (6). The negatives of those photographs are Exhibits "B", "C" and "D". They are photographs of the thumb print impressions on the cheques, not of the cheques.

On the 12th May 1967 I developed and enlarged prints of those negatives. Those prints are MFI. (8), (9) and (10).

20 On the 12th May, 1967 I received the finger prints form MFI. (7) and took a photograph of the thumb print marked "X" on that form. The same day I developed and enlarged prints of that photograph Ex. "E" is the negative. MFI. (8A) (9A) and (10A) are 3 of those enlarged prints.

The size of the thumb print impressions on the cheques are not the same size as they are in the negatives Exhibits "B", "C" and "D". I mean that they are not necessarily the same size the sizes in the negatives may be smaller or larger or same size. I do not know.

The same applies to the negative of the photograph of the thumb print on the form. I am referring to Exhibit "E" and MFI. (7).

30 I have no negatives showing the thumb print impressions larger than they are in Exhibits "B", "C", "D" and "E".

Exhibits "B", "C" and "D" have been in my custody since I photographed the thumb prints until I produced them in Court. The same applied to Exhibit "E".

40 There were no enlarged photographs of the thumb prints until 12th May, 1967 apart from some which were just a little bigger than the actual impressions. They were about 2½ inches high.

In the  
Magistrates  
Court at  
Labasa

Prosecution  
Evidence

No. 11

Uma Kant

Cross-

Examination  
(Contd.)

You show me a photograph of MFI. (3) (cheque No. B44980.) In this photograph the thumb prints measures about  $\frac{1}{2}$  high and a little more than  $\frac{1}{2}$  wide. At one stage I made photographs showing the thumb prints bigger than in this photographs some about  $1\frac{1}{2}$  or 2 inches high various sizes. I gave those to Sub/Inspector Shastanand Maharaj on 17th February, 1967 the day I made them.

Prior to 12th May I made no print of Exhibit "E".

10

Court: What a ridiculous question. How could he have made a print of Exhibit "E" before 12th May if Exhibit "E" did not come into existence before 12th May?

Re-Exam. Chauhan: Nil.

Court: Adjourned to 9.15 a.m. tomorrow.  
Bail extended.

(Sgd) R.A. Kearsley.

20

No. 12SHASTANAND MAHARAJIn the  
Magistrates  
Court at  
Labasa9.20 a.m. 25th May, 1967Prosecution  
Evidence

Both Accused, Counsel and Prosecutor present.

No. 126th P.W. - SHASTANAND MAHARAJ S/O DUDH NATH MAHARAJShastanand  
Maharaj  
Examination

10

Sworn on Ramayan in English.

I am a Detective Inspector. I am living and stationed at Suva. I am in charge of Criminal Record Office, Fiji Police Force. My duties include searching and filing of finger prints. I studied finger prints at the finger print section of Auckland Police, Wellington Police and New Scotland yard. I have been engaged in the classification, searching, comparison and filing of finger prints for the last 10 years. I have done no other work for the last 10 years. I have specialised on finger prints work in the Police Force for the last 10 years. During the course of my duties I have examined many hundreds of thousands of sets of finger print impressions.

20

Court: There are only 3,650 days in 10 years you know.

Witness continues:

I have never found two identical finger prints made by different persons. According to the science of finger print identification the chances are 4,300,000,000 (four thousand three hundred million) to one against two people having identical finger prints.

30

On 17th February, 1967 I received from Detective Constable Mishra at Police Headquarters these four cheques, MFI. (3) for £93, MFI. (4) for £86, MFI. (5) for £100, and MFI. (6) for £80. He also handed me this finger print form.

40

Court: Finger print form MFI. (11).

That same day I was present when the last witness photographed the thumb prints on all of

In the  
Magistrates  
Court at  
Labasa

Prosecution  
Evidence

No. 12  
Shastanand  
Maharaj  
Examination  
(Contd.)

those 4 cheques. He handed the four cheques back to me that same day immediately after taking those photographs. One of those cheques MFI. (5) for £100 I handed to Detective Constable Mishra because the thumb print on it had insufficient detail for identification purposes.

I kept the other three cheques MFI. (3), (4), and (6) in my custody until they were marked for identification in this trial.

Court: Admitted. MFI. (3) becomes Exhibit "F".

MFI. (4) becomes Exhibit "G".

MFI. (6) becomes Exhibit "H".

On 17th February, 1967 I compared the thumb prints on Exhibit "F", "G" and "H" with the impressions on MFI. (11). None of the impressions on MFI. (11) was identical with any of the prints on Exhibit "F", "G" and "H". The prints on "F", "G" and "H" are definitely made by the same person. That person could not possibly be the person whose finger prints appear on MFI. (11).

On 28th February, 1967 I received from Deputy Superintendent Hurst a sealed envelope containing MFI. (7). That day I compared, the left thumb print marked "X" on MFI. (7) with the thumb prints on Exhibits "F", "G" and "H". I used a special magnifying glass. All of the thumb prints on Exhibits "F", "G" and "H" were identical with the thumb print marked "X" on MFI. (7).

On 12th May, 1967 I handed MFI. (7) to Detective Constable Uma Kant the last witness. He photographed the thumb print marked "X" in my presence that day. Since I received MFI. (7) I had kept it in my custody. That same day I received enlarged prints of the photographs of the thumb prints on Exhibits "F", "G" and "H" which Constable Uma Kant had taken on 17th February. They are MFI. (8), (9) and (10).

That same day I received from Constable Uma Kant enlarged prints of the photograph which he had taken earlier that same day of the thumb print marked "X" on MFI. (7). Those enlarged prints are MFI. (8A), (9A) and (10A). I mounted MFI. (8), (9) and

10

20

30

40



(10) and (8A), (9A) and (10A) on the cardboard backing as they are now.

In the Magistrates Court at Labasa

I found the 16 points of identification between MFI. (10A) and MFI. (10), between MFI. (9A) and MFI. (9), and also between MFI. (8A) and MFI. (8). Those points of identification are marked with red lines and figures 1 to 16.

Prosecution Evidence No. 12

10

I kept MFI. (8A), (9A), (10A), (8), (9) and (10) in my custody until they were marked for identification by the Court.

Shastanand Maharaj Examination (Contd.)

I also kept MFI. (7) and MFI. (11) from the times I received them until they were marked for identification in Court.

Court:	Admitted.	MFI. 8A	becomes	J
		" 8	"	J(1)
		" 9A	"	K
		" 9	"	K(1)
		" 10A	"	L
		" 10	"	L(1)

20

M.F.I. (7) becomes Ex. "M". MFI. (11) becomes Ex. "O".

Ex "J(1)" is enlarged photograph of thumb print on Exhibit "F" the cheque for £93. Ex "J" is enlarged photograph of the thumb print marked "X" on Ex. "M".

30

Ex. "K(1)" is enlarged photograph of thumb print of Ex. "G" the cheque for £86. Ex. "K" is enlarged photograph of the thumb print marked "X" in Ex. "M".

Ex. "L(1)" is enlarged photograph of thumb print on Ex. "H" the cheque for £80. Ex. "L" is enlarged photograph of the thumb print marked "X" in Ex. "M".

40

There is no doubt at all that the person whose thumb print is marked "X" on Ex. "M" is the same person whose thumb print is on the three cheques Exhibits "F", "G" and "H". That person is undoubtedly not the person whose finger prints appear on Ex. "O".

In the  
Magistrates  
Court at  
Labasa

Cross-Exam. 1st Accused.

I informed Superintendent Hurst of the result of my findings on 28th February, 1967.

Prosecution  
Evidence  
No. 12  
Shastanand  
Maharaj  
(Contd.)

I decided about the thumb print on MFI. (5) the cheque for £100. On 17th February 1967. I made that decision without having a photograph of the thumb print taken.

Cross-  
Examination

I received the finger prints of several other people for comparison with the thumb prints on the cheques. Those other people were Ram Sumer, Imam Dean, Sadhu, Jagessar, Tular Ram, Ghisiyawan, Mahabir, Ram Charan, Jai Ram, Jai Karan and Hari Pratap. I compared the prints of all of those people with the prints on all 4 cheques except MFI. (5).

10

Cross-Exam. Chauhan:

I received Ex. "M" from superintendent Hurst on 28th February, 1967 at Police Headquarters. He handed Ex. "M" to me personally. The same day I informed him of my findings. I have had 10 years of experience, I was with Auckland Police for 2 months. That was in 1960. I was on a finger print course. I have no certificate degree or diploma. I was with Wellington Police for 2 months. I was at New Scotland yard for 6 months. I have testified in trials in Supreme Court twice.

20

To Court:

16 points of identification are required as absolute proof and accepted as absolute proof of identification at Scotland Yard. In New Zealand they accept, I think, only 12 points of identification as positive proof.

30

There are no points of no identification between any print on Ex. "O" and the thumb prints on any of the four cheques.

A "point of identification" is a characteristic exactly the same on one print as a characteristic on another.

40

The points of identification I have marked are quite clear points of identification.

To 1st Accused:

I could not find any points at all on MFI.  
(5) the cheque for £100. It was too blurred.

I told no one that there were 9 points of  
identification on MFI. (5).

To Chauhan:

10

I used a magnifying glass to find the points  
of identification, not the enlarged photographs.

Re-Exam:

Actually there are more than the points of  
identification between the thumb prints on the  
cheques and the thumb print marked "X" on Ex. "M".  
I could have shown them but they would have been  
superfluous.

In the  
Magistrates  
Court at  
Labasa

Prosecution  
Evidence  
No. 12  
Shastanand  
Maharaj  
Cross-  
Examination  
(Contd.)

In the  
Magistrates  
Court at  
Labasa

No. 13

DENNIS JAMES MERRIGAN

Prosecution  
Evidence

7th P.W. DENNIS JAMES MERRIGAN

No. 13

Sworn on Bible in English.

Dennis James  
Merrigan  
Examination

I am a bank officer employed in Bank of New Zealand, Labasa where I live. I have been with this branch for 1 year 6 months. I mostly perform the duty of teller. I see Ex. "F", a cheque for £93. The figures in red on the back of that cheque were written by me. All of them were.

10

The blue stamp on the middle front of the cheque was my teller's stamp on 12th April, 1966. That stamp has my number 1 and the letter "A" in the corners. It was my stamp. I would on no account have written the figures in red on the back of this cheque unless I were paying out cash in exchange for that cheque. The cheque must have been presented to be cashed, not paid into an account. Taking the figures on the back and the stamp together this necessarily mean that the cheque was cashed on 12th April, 1966 and that I gave nine £10 notes and three single notes for that cheque.

20

I do not know who cashed the cheque. I have no recollection of the transaction. I have known 1st Accused since I came to Labasa. I am familiar with his signature. Ex. "F" bears his signature. I have seen 2nd Accused somewhere but I don't know him. I don't know Mahabir s/o Ram Charan.

30

Cross-  
Examination

Cross-Exam. 1st Accused:

Overdraft account customers are generally known to bank officers.

Cross-Exam. Chauhan: Nil.

No. 14

GARRY ERNEST PENNIALI

In the  
Magistrates  
Court at  
Labasa

4th P.W. GARRY ERNEST PENNIALI (Recalled)

Prosecution  
Evidence

Sworn on Bible in English.

No. 14

Garry Ernest  
Penniall  
(Recalled)

10

Recalled for Cross-Exam. in relation to alterna-  
tive counts.

Cross-  
Examination

Cross-Exam. 1st Accused:

Overdraft account customers are not  
necessarily known to bank officers. It would  
depend on how frequently the customer visited the  
bank.

I cashed MFI.(5), the cheque for £100. I  
have no idea who this person who cashed the cheque  
was.

20

Cross-Exam. Chauhan: Nil.

In the  
Magistrates  
Court at  
Labasa

No. 15

ERIC GRAHAM HARGREAVES

Prosecution  
Evidence  
No. 15  
Eric Graham  
Hargreaves  
(Recalled)  
Cross-  
Examination

3rd P.W. ERIC GRAHAM HARGREAVES (Recalled)

Sworn on Bible in English.

Recalled for Cross-Exam. in relation to alternative counts.

10

Cross-Exam. 1st Accused:

I have known you since about 2 months after 7th April, 1966.

I do not agree that a customer with an overdraft would be known to the officers in the bank.

It is likely that a customer with a big credit balance would be known to the officers. I am not aware of the state of your account. I cannot remember how many times I have witnessed Mahabir's cheques. I would have to look up the cheques.

20

1st Accused: I want to know how many cheques this witness has witnessed: I ask that he make a check.

Court: He will be recalled after making a check if you wish.

I have never known the witness to sign a blank cheque and then the customer and bank officer to sign in his absence. That would be a wrong thing to do.

30

I know Bhikam Singh.

1st Accused: I will call Bhikam Singh. I have just noticed he is sitting in Court.

Court: He has just left the Court. It is up to you whether or not you call him.

I do not agree that sometimes bank officers take the customer's thumb print first and then obtain the witness's signature in the customer's absence.

Sometimes a bank officer who knows the illiterate customer will witness his thumb print and get another bank officer to counter-sign.

It is the duty of the bank officer to make sure who the illiterate customer is.

10 In the case of Ex. "G" I did not compare the thumb print on the cheque with a specimen thumb print. I say that because I know what my practice is, not from recollections of the event. It is not the practice for the bank officer to compare the thumb print and the cheque with the thumb print on the specimen signature card. I say this whatever Mr. Hickford may have said in his evidence.

If you came into the bank and told me you wanted a counter cheque for Mahabir I would not give it to you unless he were with you.

20 Cross-Exam. Chauhan:

When the person drawing money is illiterate the bank officer must largely depend on the literate witness, must trust him.

In the  
Magistrates  
Court at  
Labasa

Prosecution  
Evidence

No. 15  
Eric Graham  
Hargreaves  
(Recalled)  
Cross-  
Examination  
(Contd.)

In the  
Magistrates  
Court at  
Labasa

No. 16

DEREK JOHN HARVEY HURST

Prosecution  
Evidence  
No. 16  
Derek John  
Harvey  
Hurst  
Examination

8th P.W. DEREK JOHN HARVEY HURST

Sworn on Bible in English.

I am a deputy superintendent of Police living  
and stationed in Labasa.

10

On 28th February, 1967 at 8.30 a.m. at Labasa  
Police Station I received a sealed envelope from  
Detective Constable No. 355 Mishra. That same day  
I took the envelope by 'plane to Suva and handed  
the envelope to Detective Inspector Shastanand  
Maharaj at Police Headquarters.

Cross-Exam. 1st Accused: Nil.

Cross-Exam. Chauhan: Nil.

Court: Adjourned to 9 a.m. 1st June, 1967.  
Bail extended.

20

BEFORE PYARA  
SINGH ESQ.

BEFORE PYARA SINGH ESQ.

1.6.67.

Constable Mishra for Crown.

Both Accused present.

Chauhan for 2nd Accused present.

Magistrate not available (sick)

Adjourned to 3.6.67 at 9 a.m.

(Sgd) Pyara Singh  
1.6.67.

30



BEFORE R.A. KEARSLEY ESQ.3.6.67.

9 a.m. Both Accused present.

Chauhan for 2nd Accused.

Chandra for Prosecution.

10

No. 17PAUL WINSTON HICKFORD  
(Recalled)In the  
Magistrates  
Court at  
LabasaProsecution  
Evidence  
No. 17  
Paul Winston  
Hickford  
(Recalled)  
Cross-  
Examination2nd P.W. PAUL WINSTON HICKFORD

Sworn on Bible in English.

Recalled.

Chandra:

20 Submit this witness for Cross-Exam. re-  
alternative counts.

Cross-Exam. 1st Accused:

I arrived in Labasa from Suva on 31.5.67.

On 31.5.67 at about 7.30 p.m. I was not in  
the Labasa Club. I was at that Club that after-  
noon. I got there at about 4.15 p.m. I left at  
about 5.15 p.m.30 On Thursday ..... I am sorry I have got the  
times muddled. On Wednesday 31.5.67 I was at the  
Club from about 4.15 p.m. until about 7.30 p.m.  
Mr. Dashwood, the bank manager, Mr. Sewell the  
bank securities clerk, Mr. Hastie, a bank officer,  
Mr. Hargreaves, a bank officer and others were  
with me at the club. Mr. Hargreaves arrived at  
the club with me. I do not know when he left. I  
did not have any conversation with Hargreaves  
about this case, when I was at the club.I might have witnessed cheques executed by  
Mahabir s/o Ram Charan. I do not know how many

In the  
Magistrates  
Court at  
Labasa

Prosecution  
Evidence

No. 17

Paul Winston  
Hickford  
(Recalled)  
Cross-  
Examination  
(Contd.)

times I have witnessed cheques executed by 2nd accused. I do not agree that customers with overdrawn accounts are mostly known to all of the bank's officers. Some customers with overdrawn accounts are known to the bank's officers. I do agree that a customer with a big account would probably be well known to most of the bank's officers in the branch with which that customer dealt. I agree that a customer with an overdrawn account would be better known by the officers of a particular branch than the usual customer.

10

Regarding Ex. "F" the cheque for £93. I did compare the specimen thumb print on Ex. "A" with the thumb print on the cheque. I did not notice any difference - the fact that you witnessed both thumb prints may have made me careless. It is definitely my personal practice in cases like this to compare the thumb print on the cheque with the thumb print on the specimen card. It is not a rule at this branch that the thumb print on the cheque must be compared with the specimen thumb print.

20

I know nothing about any other cases of cheques being cashed with the wrong thumb print on them apart from the four cheques in this present case.

I now know that 2nd Accused's account is overdrawn.

Cross-Exam. Chauhan:

Some people regularly bring in illiterate customers for the purpose of cashing cheques and such like. We get to know and to trust those people.

30

1st Accused was such a person - he often brought in people who were illiterate or needed assistance in transacting business with the bank.

Re-Exam. Chandra: Nil.

Adjourned to 19.6.67. at 11 a.m.

Bail extended.

R.A. Kearsley,  
3.6.67.

40

19.6.67. - 3.10 p.m.

Both Accused present.

Chauhan for 2nd Accused.

Chandra for Prosecution.

In the  
Magistrates  
Court at  
Labasa

Prosecution  
Evidence  
No. 18  
Mahabir  
(Recalled)  
Examination

No. 18

10

MAHABIR (Recalled)

1st P.W. Mahabir s/o Ram Charan

Sworn on Ramayan in Hindi.

Recalled.

Chandra:

I at no time gave 1st or 2nd Accused per-  
mission to .....

1st Accused: Object. Prosecution has closed its  
evidence.

20

Court: Over-ruled. Prosecution has been  
permitted to recall and may ask  
questions relating to the forgery  
charges.

Chauhan: Object. This witness has sworn  
earlier that he was not aware of the  
existence of 2nd Accused, therefore  
this question is redundant.

Court: Over-ruled. Put the question again.

30

Q. Did you ever authorise the 2nd  
Accused to affix a thumb print on a  
cheque in order to withdraw your money  
from the bank?

A. No, never.

Q. Did you ever authorise 1st Accused to  
witness a thumb print of 2nd Accused  
on a cheque in order to draw money from  
the bank?

A. No, never.

In the  
Magistrates  
Court at  
Labasa

Cross-Exam. 1st Accused:

I am also known as "Pardhan". I used to be  
Pardhan of the Arya Samaj at Korotari.

Prosecution  
Evidence

(Court Clerk: "Pardhan" means President. "Arya  
Samaj" is a branch of Hinduism.)

No. 18

Mahabir  
(Recalled)  
(Contd.)

I am an adherent of Arya Samajist. Arya  
Samajists believe in the Ramayan. I am bound by an  
oath on the Ramayan.

10

Cross-  
Examination

I went to the bank with Samkaran and Jaikaran.  
I was first informed that the thumb prints on the  
four cheques were not mine when I went to the bank.  
Constable Mishra first told me that a thumb other  
than my own had been put on cheques to draw money  
from my account. Mishra never told me he would  
see that you went to gaol. I loaned £220 to Ram  
Khewal last year. I loaned you £80 last year.

I am ill. I have been seriously ill for the  
past 2 years. At times my illness affects my  
memory. Then I have difficulty in remembering.

20

I am quite sure that I never authorised  
either of the accused to draw money using the thumb  
print of anyone but myself.

It is not true that I took the money which was  
drawn by means of the cheques in this case.

Q. It is not possible that 2nd accused's thumb  
print got onto the cheques by accident when  
both of you were in the bank?

30

A. No. I have never been to the bank with 2nd  
Accused. I do not even know him.

When I went to Suva I took money with me but  
I do not remember how much. You were in Suva with  
me. I was not cheated in Suva. I went to Suva  
once only, only once in my life.

Cross-Exam. Chauhan:

I knew of the existence of 2nd Accused but was  
not acquainted with him. I did not know where he  
lived. I have never been acquainted with him. I

40

first found out his name when this case started.

Re-Exam: Nil.

Court: Adjourned to 11 a.m. tomorrow 20.6.67.  
Bail extended.

R.A. Kearsley.  
19.6.67.

In the  
Magistrates  
Court at  
Labasa

Prosecution  
Evidence  
No. 18  
Mahabir  
(Recalled)  
Cross-  
Examination  
(Contd.)

10

20.6.67.

Both accused present.

Chauhan for 2nd Accused.

Chandra for Prosecution.

No. 19

PETER MICHAEL SEWELL

No. 19

Peter  
Michael  
Sewell  
Examination

20

9th P.W. PETER MICHAEL SEWELL

Sworn on Bible in English.

I am Securities Officer with Bank of New Zealand, Labasa.

I live in Labasa. I have been securities officer for nearly 6 months and I have lived in Labasa and been attached to the Bank for 3 years.

30

I have access to the books and records of the bank.

I do not know 2nd Accused personally. I know that a person called Mahabir s/o Ram Charan has an account with our Labasa branch.

I have known 1st Accused for as long as I have been in Labasa.

I do not know Mahabir s/o Ram Charan. A person called Shiri Prasad s/o Birogi has an account with the bank.

In the  
Magistrates  
Court at  
Labasa

Prosecution  
Evidence  
No. 19  
Peter  
Michael  
Sewell  
Examination  
(Contd.)

Specimen signatures of all customers are kept by the bank.

This is specimen signature card of Shiri Prasad s/o Birogi.

To Court:

Q. How do you know:

10

A. Because that is what is written on the card. I did not write that.

Q. Whose signature appears on the card as witness?

A. That of 1st Accused and bank officer.

I am familiar with the signature of 1st Accused. I have often seen him sign his signature.

Q. According to what is written on the card, whose specimen thumb print is on the card?

Chauhan:

20

Object. What the card says is heresay.

Court:

Let us have some evidence on practice before I rule.

Witness:

When an account is opened the customer affixes his thumb print for signature on a "specimen signature" card in the presence of a witness and a bank officer. That witness must be known to the bank officer if it is a thumb print that is affixed by the customer. That is a strictly adhered to practice.

30

Court:

What does 1st Accused have to say: Attitude at the moment is that this "specimen signature" card having been signed by 1st Accused is admissible in evidence against him. It amounts to a statement by him that the card bears the thumb print of a certain person.

1st Accused: I object to the card being put in.

Court: The card is admitted Ex. "P".

Witness continues:

Ex. "A" bears the signature of 1st Accused and a bank officer.

10 Ex. "A" means that the thumb print on it is of a customer called Mahabir s/o Ram Charan.

Ex. "P" means that the thumb print on it is of a customer called Shiri Prasad s/o Birogi.

Both of these cards were in bank's custody until 20th May, 1967 on which day I handed both of them to Constable Mishra.

20 When an illiterate person seeks to open an account he must be accompanied by a witness who is known to the bank officer dealing with the matter. The new customer places his thumb print on a specimen signature card in front of witness and bank officer. That is a strictly adhered to practice. The witness and the bank officer then countersigned that card.

When such a customer wants to draw money by a cheque the same principles and practice apply. The customer must affix his thumb print on the cheque in the presence of witness and bank officer who countersign after he has signed.

30 Here is a statement of the account of Shiri Prasad s/o Birogi. I cannot say whether or not 2nd Accused is this Shiri Prasad s/o Birogi - that is just a name to me, a name in our books. This statement is a copy of entries in the original statement of this customer's account which is kept continuously up to date. That statement of account is one of the ordinary books of the bank entries in it are made in the usual and ordinary course of business; also it is kept  
40 in the custody and control of the bank.

I have examined this copy with the original entries. The copy is correct. The signature appearing on this copy is mine.

In the  
Magistrates  
Court at  
Labasa

Prosecution  
Evidence  
No. 19  
Peter  
Michael  
Sewell  
Examination  
(Contd.)

In the  
Magistrates  
Court at  
Labasa

Prosecution  
Evidence

No. 19

Peter  
Michael  
Sewell  
Examination  
(Contd.)

Chauhan: Object to admission.

1st Accused: No objection.

Court: Copy of statement of account admitted Ex.  
"Q".

The same applies to this copy of the statement of account of a customer called Hari Pratap s/o Ram Kissun. There is only one customer of the bank called Hari Pratap s/o Ram Kissun - that is 1st Accused. 10

The original of which this is a copy is one of the ordinary books of the bank - entries in the original are made in the usual and ordinary course of the bank's business and the original is kept in the custody and control of the bank. The signature on this copy is mine.

Court: Admitted Ex. "R". 20

Here is a copy of the statement of account of one Mahabir s/o Ram Charan. That is just a name to me. I do not know that person personally.

The original of which this is a copy is one of the ordinary books of the bank - entries in the original are made in the usual and ordinary course of the bank's business and the original is kept in the custody and control of the bank. The signature on this copy is mine.

Court: Admitted. Ex. "S". 30

By looking at Ex. "Q" I can tell by what appears there that £93 was never withdrawn from the account of Shiri Prasad s/o Birogi. Nor was £86 or £83. £100 was withdrawn on 15.2.66 by means of a cheque the last three figures of which were 352. £100 was never withdrawn by a cheque the last three figures of which were 802. The £100 cheque was the first cheque drawn on the account. It overdrew the account. It overdrew the account by £100.

By looking at Ex. "S" I can see that there were drawings of £93 by means of a cheque of which the last three figures were 980 of 12th April, 1966, of £86 by means of a cheque of which the last three 40



figures were 398 on 2nd July, 1966, of £100 by means of a cheque of which the last three figures were 802 on 15th December, 1966 and £80 by means of a cheque of which the last three figures were 534 on 27th January, 1967.

In the  
Magistrates  
Court at  
Labasa

Ex. "F" cheque for £93, bears 1st Accused's and Mr. Hickford's signatures as witnesses.

Prosecution  
Evidence

No. 19

Peter  
Michael  
Sewell  
Examination  
(Contd.)

10 Ex. "G", a cheque for £86 bears 1st Accused's and Mr. Hargreave's signatures as witnesses.

Ex. "H" cheque for £80, bears 1st Accused's and Miss Dashwood's signatures as witnesses.

MFI. (5), cheque for £100 bears 1st Accused's and Miss Dashwood's signatures as witnesses.

20 Hickford, Hargreaves and Miss Dashwood were all bank officers on the dates of the cheques they witnessed. Hickford and Hargreaves are still bank officers. Miss Dashwood is still a bank officer but in New Zealand.

Ex. "R", statement of Hari Pratap's account, shows entries in red. They are overdrawn withdrawals. Dishonour fees have twice been charged.

Dishonour fees are charged only if the customers' cheques are dishonoured.

There are no withdrawals of £93, £86, £100 or £80 from Hari Pratap's account.

30 On 10.2.67 I handed Ex. "H", cheque for £80 to Corporal Lateef.

On 14.2.67 I handed Ex. "F", cheque for £93, Ex. "G", cheque for £86, and MFI. (5), cheque for £100 to Corporal Lateef.

When I handed those cheques to him they were in the bank's custody. They were in exactly the same condition as they are now in - no alterations or additions since I handed them over.

4 p.m.

40 Chauhan: Ask for adjournment as I have to attend township board meeting.

In the  
Magistrates  
Court at  
Labasa

Court: Adjourned to 17.7.67 "for mention".

28th and 29th August to be reserved for  
this trial exclusively.

Prosecution  
Evidence  
No. 19  
Peter  
Michael  
Sewell  
Examination  
(Contd.)

Bail extended.

R.A. Kearsley  
20.6.67.

17.7.67.

10

Chandra for Prosecution

Chauhan for 2nd Accused.

Adjourned to 28th August.  
Bail extended.

R.A. Kearsley  
17.7.67.

25.7.67.

Counsel, Prosecutor and both accused present.

Case called to hear evidence of this witness  
visiting on holiday.

20

No. 20  
Elizabeth  
Dashwood  
Examination

No. 20

ELIZABETH DASHWOOD

10th P.W. ELIZABETH DASHWOOD

Sworn on Bible in English.

I live in Tauraga, New Zealand.

I am a bank clerk in the Bank of New Zealand,  
Tauraga.

From September, 1966 until February, 1967, I  
was employed in the Labasa Branch of the Bank of  
New Zealand. I was ledger keeper. I also attended  
to customers at the counter.

30

After I had been working in the Labasa branch  
I came to know 1st Accused. I am familiar with  
his signature. I have seen him sign his name

several times, perhaps half a dozen times, and I have many times looked at his specimen signature in the custody of the bank.

I do not know anybody by the name of Mahabir s/o Shiu Charan.

I do not know 2nd Accused.

10 I see MFI. (5), a cheque for £100, C87802. The signature on the bottom left hand corner is that of 1st Accused. The signature immediately above his is my own. The writing in the body of this cheque is mine. 1st Accused brought a man into the bank on 15th December, 1966, the date of the cheque. Apparently that person could not write. One of them, 1st Accused for the other person, asked me to write the cheque. I wrote out what I was asked to write. Then the man with 1st  
20 Accused put his thumb print in the bottom right hand corner of the cheque. The words "Mahabir f/n Ram Charan" above the thumb print were written by me. One of those two must have told me that his name was Mahabir and that his father's name was Ram Charan - otherwise I would not have written those words above the thumb print. Then 1st accused signed the cheque and then I signed it. Then I had a look at the specimen signature card of Mahabir s/o Ram Charan. I saw that there was  
30 a thumb print on that card. Then I initialled the cheque in the top left hand corner to show that the cheque was good for cashing. Before I wrote out the cheque I made sure that there were sufficient funds in Mahabir's account by looking at his statement of account. I handed the cheque to one of those two. I do not know who actually cashed the cheque. The oblong "counter cheque" stamp on the left front of the cheque shows that the cheque was issued over the counter to the  
40 customer and did not come out of the customer's cheque book.

I see Ex. "H", a cheque for £80, No. 131534.

1st Accused brought a man into the bank on 27th January, 1967, the date of the cheque. One of them said this man's name was Mahabir s/o Ram Charan. One of them asked me to write out the body of the cheque which I did. I had a look at

In the  
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Prosecution  
Evidence  
No. 20  
Elizabeth  
Dashwood  
Examination  
(Contd.)

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Prosecution  
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No. 20  
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Dashwood  
Examination  
(Contd.)

Mahabir's statement of account to see if he had sufficient funds. I then got a counter cheque and wrote out the body of the cheque i.e. the date and amount of the cheque in words and figures and the word "cash". The man with 1st Accused then affixed his thumb print in the bottom right hand corner of the cheque. Then 1st Accused signed in the bottom left hand corner of that cheque and I signed above his signature. The signatures in the bottom left corner of the cheque are 1st Accused's and mine. I then had a look at Mahabir's specimen signature and saw that it bore a thumb print. Then I initialled the top left hand corner of the cheque to show it was good for cashing. I wrote the words "MAHABEER F/N RAM CHARAN" at the bottom of the cheque. I would have written those words only if either 1st Accused or the man with him had told me that that was the man's name and father's name. Then I handed the cheque to either 1st Accused or the other man.

10

20

To Court:

It is most unlikely that 1st Accused told me that his companion's name was Mahabir out of his companion's hearing.

Chauhan: I object to the last answer. It was elicited by a leading question from the Court.

Court: I was attempting to sum up what the witness was trying to express. Any authority for objection?

30

Chauhan: Para. 1395 Page 535 Arch. 36 Edition.

Court: Over-ruled.

Cross-  
Examination

Cross-Exam. 1st Accused:

I did not notice any difference between the thumb prints on the cheques and that on the specimen signature card. I can see no difference between the thumb prints on Ex. "A" and MFI. (5). I can see no difference between the thumb print on Ex. "A" and the thumb print on Ex. "H".

40

I never witness a cheque unless I know the other witness.

You undoubtedly were the other witness I can tell that by your signature. I do not know whether or not there was anybody else present beside you and the man who put his thumb print on the cheque.

In the Magistrates Court at Labasa

10 It is not possible that some person other than you brought Mahabir into the bank and that you took no part in the proceedings until after the thumb print was affixed.

Prosecution Evidence No. 20 Elizabeth Dashwood Cross-Examination (Contd.)

Cross-Exam. Chauhan: Nil.

Court: Adjourned to 14.8.67 "for mention". (For trial on 28th and 29th August.)

Bail extended.

R.A. Kearsley  
15.7.67.

14.8.67.

20 Chandra for prosecution.

Chauhan for 2nd Accused.

1st Accused in person.

2nd Accused present.

Court: Adjourned to 28th August, 1967.

Bail extended.

R.A. Kearsley  
14.8.67.

In the  
Magistrates  
Court at  
Labasa

No. 21  
PROCEEDINGS

No. 21  
Proceedings,  
28th August,  
1967.

28.8.67.

1st Accused present.

2nd Accused present.

Chauhan for 2nd Accused.

10

Chandra for prosecution.

Court:

At 11 a.m. on Friday 25.8.67 the Manager of B.N.Z. Labasa (Mr. Dashwood) and Securities Officer of B.N.Z. Labasa (Mr. Sewell) came to my chambers without appointment or prior notice and informed me that Mr. Sewell had received from 1st Accused a "Notice to produce" certain documents. I told them that a notice to produce was ineffectual in a criminal case and declined to discuss the matter further with them apart from informing them that I would inform 1st Accused and counsel for 2nd Accused in open Court of their visit. The 2nd Accused who appears to be intelligent and has been handling his defence with apparent understanding and confidence is advised that the only function of a notice to produce in a criminal trial is to enable proof of document by secondary evidence when original is in custody of prosecution.

20

In this case he should apply to Court for issue of subpoena. Court Clerk will advise him as to procedure.

30

1st Accused:

I issued notice to produce because Mr. Sewell is a prosecution witness. He has not been cross-examined by either of us yet. Miss Dashwood was called after Mr. Sewell's evidence in chief because she was visiting Labasa briefly.

Court:

That is so. However, you should have applied

40

to Court under S. 130 C.P.C., not issued notice to produce under OXXV. R. 8 Mag. Ct. Rules which applies only to civil procedure - 0111, R.7. Do you now wish to make a "statement" under S.130 C.P.C.?

In the Magistrates Court at Labasa

1st Accused:

No. 21  
Proceedings,  
28th August,  
1967.  
(Contd.)

10 I should like Mr. Sewell to go outside before I speak.

Court:

Very well (Sewell retires).

1st Accused:

I need a cheque dated early 1967 drawn by Rama s/o Matai witnessed by Peter Sewell and myself. It is relevant because I affixed my signature in absence of Rama. This contradicts prosecution evidence as to procedure.

Court:

20 That would affect credibility of prosecution witness, I agree.

1st Accused:

In addition, this cheque was wrongly debited on the account of one Rama s/o Taileu.

Court:

What has that got to do with the case?

1st Accused:

30 It shows that evidence which has been given that thumb prints on cheques are always compared with the thumb print on the specimen signature card is incorrect. Affects credibility.

(2) I need statement of account of Rama s/o Mati to show that the above cheque was not debited on his account.

(3) I need statement of account of Rama s/o Taileu to show that above cheque was wrongly debited on his account.

In the  
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Labasa

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Proceedings,  
28th August,  
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(Contd.)

- (4) I need cheque in sum of £200 drawn by one Rama s/o Taileu bearing the thumb print of one Anup s/o Jhariar dated sometime in 1961. Affects credibility of prosecution witnesses as to procedure.
- (5) My statement of account at B.N.Z., Labasa from 24th September, 1965 onwards to date of closing.

Court:

10

I will consider whether or not to order production of these documents in the light of what Mr. Sewell says in Cross-exam.

Chandra:

May I call a Policeman from Ba who has to return as soon as possible. Sewell is stationed in Labasa - no inconvenience to him.

1st Accused:

No objection.

Chauhan:

20

No objection.

Court:

Very well.

Prosecution  
Evidence  
No. 22  
Ram Sumer  
Examination

No. 22

RAM SUMER

11th P.W. RAM SUMER S/O MOHAN

Sworn on Ramayan in English.

Detective Sergeant of Police living and stationed in Ba.

30

On 23.5.67 at 10.25 a.m. I charged 2nd accused with the offences now before Court. I also cautioned him. 2nd Accused and I both spoke in Hindustani. He made a statement in Hindustani which I wrote down in Nagri script. I read back



in Hindustani what I had written down. He appeared to understand and approve of what I had written down and he signed the statement. Here is the statement bearing his signature. It was quite voluntary.

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Labasa

I prepared a written translation into English of the statement. Here it is.

Prosecution  
Evidence  
No. 22  
Ram Sumer  
Examination  
(Contd.)

10           Witness reads statement aloud in Hindustani. Court interpreter's interpretation into English compared with written translation into English - one conforms with the other.

Court:

Statement admitted Ex. "T" Translation admitted Ex. "T1".

20           On same day I charged 1st Accused with offences now before court. I cautioned him. We spoke in English. He speaks very good English. I wrote down what he said in English. I read back to him in English what I had written down. He appeared to understand and approve of what I had written down. He signed the statement. Here is that statement bearing his signature. It was quite voluntary. Witness read statement aloud in English.

Court:

Admitted (after 1st Accused says he has no objection) Ex. "U".

30 X-Exam: Nil.

Cross-Exam. 2nd Accused: Nil.

Chandra:

There is another Policeman witness he is going on leave shortly - May I call him now?

1st Accused: No objection.

Chauhan: No objection.

In the  
Magistrates  
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No. 23

ABDUL LATEEF

12th P.W. ABDUL LATEEF S/O MAQBOCL

Prosecution  
Evidence

Sworn on Koran in Hindi.

No. 23  
Abdul Lateef  
Examination

Detective Corporal living and stationed in  
Labasa.

10

On 10.2.67 I received cheque No. 131534, Ex. "H", from Peter Sewell at B.N.Z., Labasa branch. I kept it in custody until I handed over to Constable Mishra.

On 14.2.67 I received cheque No. B44980 Ex. "F" from Peter Sewell at B.N.Z. Labasa branch as well as cheque No. B46389, Ex. "G", and cheque No. C87802, MFI. (5).

On 16.2.67 I handed these 4 cheques to  
Detective Constable Mishra at Labasa Police Station.

20

On 13.2.67 I took the finger prints of MAHABIR s/o Ram Charan at Labasa Police Station by coating his fingers with finger-prints ink and pressing the fingers onto Ex. "O". That is the usual method. Ex. "O" bears the finger prints of Mahabir s/o Ram Charan.

On 16.2.67 I handed Ex. "O" to Detective Constable Mishra with the 4 cheques I have already referred to.

On 15.2.67 between 8.35 a.m. and 10.30 a.m. I interviewed 1st Accused at Labasa Police Station and recorded that interview in question and answer form. We spoke in English. I did not caution him. I did not suspect him of committing the offences for which he is now charged.

30

Court: Why were you interviewing him?

Witness: Because his signature was on the cheques. This did not cause me to suspect him.

Court: You knew this money had been wrongly drawn out of the account of Mahabir by means of these cheques?

40

A. Yes.

Court: And you did not suspect him of having done anything wrong?

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A. I did not suspect him.

Court: You knew that Mahabir had complained that the cheques did not bear his thumb print but someone else's thumb print?

Prosecution  
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No. 23  
Abdul Lateef  
Examination  
(Contd.)

10

A. Yes.

Court: And you did not suspect 1st Accused of having done anything wrong?

A. I did not.

Court: I did not believe you.

20

By L.N. 14 of 1967 the C.J. notified the coming into force of the new Judge's Rules on 1.3.67 which implied that these rules were not in force before 1st March, 1967 in Fiji although in force in England.

The interview is not, in my view, admissible under the new rules because I simply do not believe this witness when he insist that he did not suspect 1st accused of having committed an offence. However, the interview is admissible under the old Judge's Rules which were in force at the time.

12.55 p.m. Adjourn for lunch.

2.15 p.m. resumed.

30

Both accused, Chauhan and Prosecution present. Witness, reminded he is still on oath, Continues in examination in chief.

I recorded interview in my notebook at the time of the interview in a running record. It went as follows:

Q. What do you know about this cheque No. 131534?

A. It has been drawn and witnessed by me, drawn by someone.

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(Contd.)

- Q. Do you know who has drawn it?  
A. I do not know. Mahabir should have drawn it.  
Q. Do you know what day was 27.1.67?  
A. I do not know.  
Q. Do you know Mahabir s/o Ram Charan?  
A. Yes.  
Q. If Mahabir has drawn the cheque you would know?  
A. Yes.  
Q. Can you be certain whether Mahabir has drawn the cheque?  
A. No, I cannot be.  
Q. Why did you witness it?  
A. Sometime it happens when the bank is busy, they, the bank, asked to witness it and sometime we do not see the person.  
Q. You are known to the bank?  
A. Yes.  
Q. You remember presenting it to the teller and receiving the money?  
A. I never presented any cheques for the clients.  
Q. How would the clients know the various changes to be taken?  
A. It is their funeral.  
Q. You know very well Mahabir obtains counter cheques and has no cheque book of his own?  
A. Yes, he obtains counter cheques and has no cheque book of his own.  
Q. Is it your signature on the cheque No. 131534 as witness?

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30

- A. Yes, it is my signature.
- Q. You say that you witnessed the cheque at the bank while not knowing the people?
- A. I take it as genuine, that is why witness it.
- Q. Mahabir denies any knowledge of this cheque. What do you say about it?
- 10 A. As far as I think it belongs to him.
- Q. This is not a month now - could you recollect this incident?
- A. No, because the cane money was distributed and I had witnessed many cheques, about 50 or 60 of them, of various people.
- Q. What will happen if it is proved that Mahabir has not drawn it?
- A. I do not know.
- 20 Q. Have you given your specimen signature in the bank in Mahabir's account.
- A. Yes.
- Q. None of Mahabir's cheques are drawn without your signature and what you say that at times you have signed as witness while the bank is busy and not knowing for whom you have signed but for Mahabir your particular signature is required?
- A. I should think Mahabir has drawn it.
- 30 Q. Did you see Mahabir placing his thumb mark on the cheques?
- A. Yes, many times and should have on this occasion as well.
- Q. Who obtains counter cheque forms for Mahabir?
- A. I ask for him.
- Q. Who writes the body of the cheques?

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Abdul Lateef  
Examination  
(Contd.)

A. When the bank is not busy, they write the body but when they are busy I write it.

Q. You know that you should not witness a cheque for any person when you do not know them?

A. I know it, yes, that I should not sign it.

Q. Then why did you sign it?

A. I took it as genuine cheque it is my mistake.

Q. Now there is another cheque No. B.44980. What you know about it?

A. It is my signature as witness and I say Mahabir should have drawn it.

Q. This cheque is dated 12.4.66. Do you remember this date?

A. No.

Q. Do you remember Mahabir drawing £93 from the bank?

A. He has drawn many times in various amounts.

Q. Mahabir claims that he has not drawn this money.

A. He should have drawn.

Q. Why should he deny?

A. I do not know.

Q. Who wrote the body of this cheque?

A. Maybe the bank officers. I did not write this.

Q. What if it is proved that it is not Mahabir's thumb print on this cheque?

A. I do not know. That it mean I am in trouble.

Q. Mahabir claims that he did not withdraw this money £93.

10

20

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- A. He should have.
- Q. Why should Mahabir deny this?
- A. He is mistaken.
- Q. Is it not your thumb print on the cheque B.44980.
- 10 A. No sir.
- Q. Now there is another cheque No. B46389 drawn on 2.7.66 for £86.
- A. Yes, there is my signature.
- Q. You remember this?
- A. No.
- Q. Mahabir claims that he did not withdraw this money £86.
- A. He should have drawn.
- 20 Q. Who has written the body of this cheque?
- A. Not me.
- Q. Why should Mahabir deny this?
- A. I say that he is mistaken about his account. I heard Mahabir talking in the shop yesterday that he did not withdraw £383 but he was explained by his son that it was drawn and deposit made to B.P.'s.
- Q. You see at the back of this cheque it is written 8/10, 1/5, 1/1. Do you think
- 30 Mahabir would have told that to the teller.
- A. He should have.
- Q. Have you given your signature for anyone else apart from Mahabir?
- A. Yes. I should think because I have opened many people's account.

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No. 23  
Abdul Lateef  
Examination  
(Contd.)

- Q. Can you name any person for whom you have given your specimen signature?
- A. The bank would know.
- Q. I know that, but can you name?
- A. There was last year some but I cannot remember.
- Q. Can you say it is Mahabir's thumb print and he has drawn the money?
- A. I am positive that it is Mahabir's thumb print and he has drawn the money.
- Q. Now there is another cheque No. C87802. What you know about it?
- A. This should have been drawn by Mahabir.
- Q. Is it your signature on this cheque as witness?
- A. Yes, it is my signature.
- Q. Mahabir claims that he has no knowledge about this money and he has not drawn it.
- A. He should have drawn it.
- Q. Do you remember that Mahabir has drawn £100?
- A. I do not remember but he should have. I remember he has drawn £383 and £200 twice.
- Q. Do you maintain that it is his thumb print on this cheque?
- A. Yes, I say that the thumb print is of Mahabir.
- Q. Why should Mahabir deny it?
- A. He is mistaken about his account.
- Q. Do you obtain counter cheques for Mahabir?
- A. Yes.
- Q. Where does the thumb mark is made.

10

20

30



A. The thumb mark is taken in the presence of the bank officer.

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Q. Did you cash Mahabir's cheque?

A. After witnessing the cheque is handed to Mahabir, and he cashes it himself.

Prosecution  
Evidence  
No. 23  
Abdul Lateef  
Examination  
(Contd.)

10

Cross-Exam. 1st Accused:

Cross  
Examination

This matter was reported to Police from the bank on 10.2.67. I think the report was made by telephone. It may have been a Friday, I am not sure. It may have been raining, I cannot say. Soon after the matter was reported I started looking for you in town. I did not find you that day. On 11.2.67 you may have come to see me. I do not remember. I interviewed you on 15.2.67. I do not remember your coming to Police Station, on 11.2.67. If you had, I would have interviewed you on 11.2.67.

20

(Witness asks if he may look at his note book and does so)

Yes, I agree that you came to Police Station on 11.2.67 at 8.30 a.m. It is not true that Constable Mishra asked you to admit the offence and promised to settle with Mahabir if you admitted. That certainly did not occur in my presence, sight or hearing.

30

Q. Who put it into your mind that without my witnessing the cheque Mahabir could not draw money?

A. I did not have that idea. Yes, I was told that Mahabir could not draw without your witnessing cheque. I think Peter Sewell told me. I cannot be more definite than that.

Court: Mr. Chauhan, counsel for 2nd accused asked leave to be absent from the court for a short time and he went outside during examination in chief. He has not returned. Does 2nd Accused wish to ask questions?

40

2nd Accused: No questions.

Re-Exam: Nil.

Chauhan enters Court.

In the  
Magistrates  
Court at  
Labasa

No. 24

PETER MICHAEL SEWELL (Recalled)

Prosecution  
Evidence

No. 24

Peter  
Michael  
Sewell  
(Recalled)  
Cross-  
Examination

9 P.W. PETER MICHAEL SEWELL

Resworn on Bible in English.

Cross-Exam. 1st Accused:

I was not complainant in this case. I suppose it was Mahabir. I am not positive.

10

I first came to know that certain cheques had been forged when Police asked me to produce them - I mean the 4 cheques in this case.

Corporal Lateef asked me. I do not remember the date. I think it was about April, 1967.

On 10.2.67 I handed a cheque for £80, Ex. "H" to Corporal Lateef. On 14.2.67 I handed three more cheques to Corporal Lateef.

20

It would be after the Police asked me for the cheques that I came to know they were subpoenaed.

Corporal Lateef told me he suspected that the cheques were forged when he took delivery of them from me. I did not tell the Police these cheques were forged, Police told me. I did not make any complaint by telephone or otherwise.

Mahabir has never come to see me in the bank on 19.2.67 or any other time. If he saw anyone in the bank I do not know who it was.

30

Ex. "Q" and Ex. "S" were not typed by me. I do not keep or prepare the originals of these two accounts. Ex. "Q" and Ex. "S" were checked by me against originals.

Ex. "Q" is a copy of the account of Shiri Prasad s/o Birogi. If 2nd Accused has an account at the bank and if 2nd Accused is Shiri Prasad s/o Birogi then Ex. "Q" is a copy of his account. It must be because we have only one customer by that name.

40

I do not know how many Mahabirs have accounts with bank. Only one Mahabir s/o Ram Charan has an account.

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Magistrates  
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Labasa

By "bank" I mean Labasa branch of Bank of New Zealand.

Prosecution  
Evidence

No. 24

Peter  
Michael  
Sewell  
(Recalled)  
Cross-  
Examination  
(Contd.)

10

Ex. "S" was not prepared by me. I checked it with original and found it to be true copy of original. I do not keep the originals. I compared all three exhibits "Q", "R", and "S" with the originals in bank custody and found them to be correct.

I cannot swear that thumb print on Ex. "P" is 2nd Accused's thumb print. I cannot swear that Ex. "A" contains Mahabir's thumb print.

Constable Mishra recorded a statement made by me. I have no objections to that statement being produced.

20

Court: Does 1st Accused want to Cross-examine on the statement?

1st Accused: Yes.

Court: Any inconsistency between statement and evidence?

Chandra: No.

Court: Sure?

Chandra: Yes.

Court: 1st Accused may not see statement.

30

Mahabir never came to bank and spoke to me about his account. I do not know him at all. I handed the cheques over to Police because they had some sort of written authority to take them.

It is not necessary that a person signing a cheque as a witness must have an account with the bank. As long as we know the witness, he is O.K. He does not have to have an account with us.

An illiterate person by which I mean a person who cannot sign his name, cannot cash a cheque without a witness.

In the  
Magistrates  
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Labasa

Prosecution  
Evidence

No. 24

Peter  
Michael  
Sewell  
(Recalled)  
Cross-  
Examination  
(Contd.)

I know Narbada Prasad s/o Sobharam Mistri by sight. I have never handled any transactions of his.

I do not know Ghisiyawan s/o Changa or how he draws money.

4.55 p.m. Adjourned to 9.30 a.m. tomorrow.

Bail extended.

(sgd) R.A. Kearsley.  
28.8.67.

10

9.35 a.m. 29.8.67.

Both Accused present.

Chauhan for 2nd Accused.

Chandra for prosecution.

Witness Peter Sewell in box, reminded he is still on oath.

20

Cross-Exam by 1st Accused continues.

I have had a look at this last two cheques debited on the account of Ghisiyawan s/o Changa.

One of these, a cheque dated 21.7.67 was witnessed by Malakai Yadraca a bank officer and Mr. Dashwood, the Manager. The other a cheque dated 8.8.67 was witnessed by Jai Karan and Miss Naigulevu, Jai Karan is unknown to me. Miss Naigulevu is a bank officer.

I have had a look at this last two cheques debited on the account of Narbada Prasad s/o Sobharam Mistri. One of these, a cheque dated 17.7.67, was witnessed by M.S. Baran who is not known to me and by Miss Luwai who is a bank officer. The other a cheque dated 1.8.67 was witnessed by Harendra Prasad who is unknown to me and by Malkai Yadraca who is a bank officer.

30

All of the 4 cheques I have just mentioned were cashed in the bank on the same dates as the cheques are dated.

40

There is no cheque for £40 drawn by Rama s/o Matai dated early 1967.

In the Magistrates Court at Labasa

I don't know whether there is any cheque drawn by Rama s/o Matai witnessed by you and me.

Prosecution Evidence

No. 24

10 I remember witnessing a cheque drawn by Rama s/o Matai which was also witnessed by you and me. ~~I can't also witnessed by you and me.~~ I can't say whether or not there is only one such cheque. It is entirely unlikely that you witnessed that cheque in absence of Rama but in my presence.

Peter Michael Sewell (Recalled) Cross-Examination (Contd.)

I have checked from 1.1.61 to 31.12.61 and found no cheque for £200 drawn by Rama s/o Tailan (or s/o Tailen) - there is no such father's name as Tailen in our records - we spell our customer Rama's father's name "TAILAN". I don't know about before 1961.

20 No cheque drawn by Rama s/o Matai has been wrongly debited on the account of Rama s/o Tailan this year.

Between a year and 18 months there was disputes about a cheque drawn by Rama s/o Matai was wrongly debited on account of Rama s/o Tailan. Rama s/o Matai executes cheques by affixing his thumb print. Rama s/o Tailan executes cheques by signing his name.

30 The cheque drawn by Rama s/o Matai was passed for cashing. It was wrongly debited on the account of Rama s/o Tailan because I wrote the wrong father's name on the cheque. Either I got mixed up between the two Rama's or the other witness told me the wrong father's name. You were the other witness.

If Rama s/o Matai said he went to bank alone and you obtained his thumb print not in my presence and my signature not in his presence then I would say he was definitely wrong.

40 I know Shiu Nath s/o Badal. You used to come to the bank with him.

I know of Tularam s/o Firai. I'm familiar with his name but I don't know him. You may have

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brought him to me in the bank many times - I can't remember.

There are occasions when an illiterate customer comes to cash a cheque and the bank officer dealing with him doesn't really know who he is. In such cases he has to rely on the witness brought in by the illiterate person as to the identity of the customer. That's why in such cases the witness must be known to the bank. If he's a crook and brings in a man who is not merely a customer - that's on the risks of banking - this bank would have to replenish the customer's account.

10

I can't imagine any responsible officer in the bank guarantee's an overdrafts to someone he didn't know anything about. I don't remember 2nd Accused was coming to me for an overdraft.

I have not discussed this case with any other witness since the case began. I know nothing about this testimony of Paul Hickford - haven't any knowledge of what he said in evidence or whether or not his evidence changed. I was talking to Constable Mishra outside the Courthouse yesterday. We were talking mainly about our cars. We did not discuss my evidence. I did show him the notice to produce which you had served on me. We were talking quite openly. I know nothing about Mishra receiving a note during this case. I certainly did not receive a note anywhere near the Courthouse.

20

30

It's not true I obtained your signature on Rama s/o Matai's cheque when he was not present.

11 a.m. Adjourned for 15 minutes.

15 minutes later: Resumed.

Both accused, Counsel and Prosecutor present.

Witness Sewell reminded he is still on oath and Cross-Examination continues:-

Exhibit "R" is statement of your account from 5.4.66 to 17.5.67. Police asked me to prepare statements between those dates. I suppose it was Corporal Lateef or Constable Mishra. There is copy of your statement from 27.9.65 onwards excluding Ex. "R".

40

To Court:

The original was at the time of making one of the ordinary works of the bank and entries in that original were made in the usual and ordinary course of business and the original is in the custody and control of the bank. I have examined this copy with the original and found the copy to be correct.

10 Court: Admitted. Ex. "R" (1).

I never found any fault in your dealings with the bank on behalf of your clients.

I usually handed the cheque back to you at his execution and witnessing when you brought in an illiterate person to draw money.

I don't remember any dealings with Obleas s/o Gangadin.

20 I have checked the bank's record and been unable to find any record of Mahabir s/o Ram Charan ever requesting an overdraft. If he had there would be a record of the request.

Cross-Exam Chandra: Nil.

Re-Exam: Nil.

Court: Is this witness required, now to produce anything?

1st Accused: No.

Chauhan: No.

30 1st Accused: I've forgotten to ask one question.

Court: Go ahead.

Q. Whom did Mahabir approach after he discovered that money had been wrongly drawn from his account?

A. Apparently he approached no-one in the bank about it.

Re-Exam:

He may have approached Mr. Hargraves who is on

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holiday in New Zealand. I have asked everyone in the bank today and they all say Mahabir did not approach them. Besides Hargraves, Miss Dashwood, Mr. Hickford and Mr. Merrigan were all here then but they are away now. Mahabir could have approached any of them for all I know.

Chauhan: No questions.

11.50 a.m. Court:

I am going to Suva this afternoon. Adjourned to 11.9.67 - priority. Bail extended.

11.9.67 2.35 p.m.

Chandra for Prosecution.

Both accused present.

Chauhan for 2nd Accused.

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No. 25

KRISHNA DATT MISHRA

13th P.W. KRISHNA DATT MISHRI s/o RAM KISHORE MISHRA

Sworn on Ramayan in English.

Police Constable, Stationed Labasa.

I took over investigation of this case on 16.2.67 from Corporal Abdul Lateef. I received Exs. "F", "G" and "H" and MFI. (5) from him on 16.2.67 also Ex. "O". On 17.2.67 I handed those 5 things to Inspector Sasta Nand Maharaj who has given evidence in this case. On 18.2.67 I received MFI. (5) back from him since then I kept it in my custody until it was marked for identification in Court.

Court: Admitted MFI. (5) Invoices Ex. "V".

On 20.2.67 at Labasa Police Station I recorded statements of 1st Accused. He spoke in English. I recorded in English and read back what I had recorded to him in English. He appeared to understand and approve of what I read back and he signed the statement. Here is that statement meaning his

10

20

30

40



signature. I did not caution him. Statement completely free and voluntary.

Witness reads statement aloud in English.

1st Accused:

10 I object to admission of that statement - rather I object to a few lines of it i.e. "Without my witnessing it they will not accept the cheques of Mahabir s/o Ram Charan." That was written by mistake - I can't remember whether or not it was read back to me. It might have been read back to me, I don't know. The words I have quoted are not true. It follows that I did not say those words.

Court:

Do you agree that the statement was completely true and voluntary, that there was no threat or inducement?

20 1st Accused:

Yes, I agree, I might have said those words. They might have been read back to me. If I did say them, which I cannot believe, it was a mistake.

Court:

30 You seem to be saying that you did not say those words at all. It seems to me that it is a perfectly good ground of objection to the admissibility of a statement (and this applies in my view as much to a part as to the whole of a statement) that it was not made at all. I'll consider the matter further during the "tea break".

Adjourned for 15 minutes. (3.05 p.m.)

3.45 p.m.

Resumed. Both Accused - Chauhan and Chandra present.

Court:

In my view para 1115 Arch. 36th Edition

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presupposes that a statement has been made. Here the accused says that he did not make a part of a statement. He implies that the witness wrote down something he did not say. I will hold a "Trial within a trial" to decide whether or not the words were in fact spoken.

Witness continues:

After being reminded he is still on oath:-

10

1st Accused most definitely said those words. I would certainly not have written down something he did not say. I read those words back to him. He did not object to any part of the statement. He is an intelligent man. I know him very well. He used to be a law clerk. He is about 33 years of age. He signed the statement at the bottom of every page.

Cross-  
Examination

Cross-Exam. 1st Accused:

20

I did suspect you of being involved in fraudulently drawing money out of Mahabir's account at the bank. The statement was in narrative form but I asked questions from time to time to clear ambiguous. I asked you if you could read and write English well and you said "Yes". Then I wrote "I can read and write English" etc. I knew you were an ex-law Clerk and educated. I did not write down any of the questions. I put to you. I used to be friendly with you. I still have nothing against you. I read the statement back to you as soon as you had finished making it. I agree that the bank would accept one of Mahabir's cheques as long as it was witnessed by someone they knew. I agree they would not insist on you in particular witnessing the cheque. It was your statement not mine. I did not ask you any question about those words.

30

I did not take the words to mean that you were the only person whom the bank would accept as a witness. I understood you to mean that there must be some witness known to the bank otherwise the bank would not accept the cheque.

40

Court:

Does that satisfy 1st Accused?

1st Accused:

So long as that is the meaning attributed to the words I have no objection.

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Court:

Very well. Proceed with the case. Statement is admitted Ex. "W".

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10 4.20 p.m.

Chauhan:

Would appreciate adjournment at this stage as I have a meeting to attend.

1st Accused: No objection.

Chandra: No objection.

Court: Very well. Adjourned to 9 a.m. tomorrow 12.9.67. Bail extended.

20

(sgd) R.A. Kearsley.

12.9.67.

9.05 a.m.

Chandra for Prosecution

Both Accused present.

Chauhan for 2nd Accused.

Witness reminded he is still on oath.

Ex-in-Chief continues:

30 On 27.2.67 I took the finger print impressions of 2nd Accused at his house at Waigele, Labasa. Ex. "M" is the result, the original of those finger prints. 2nd Accused gave me the name ISHRAI PRASAD (s/o BIROGI). On 28.2.67 I handed Ex. "M" to Deputy Superintendent Hurst at Labasa Police Station. On 1.3.67 at 1.25 p.m. at Labasa Police Station I recorded 2nd Accused's statement after I had cautioned him.

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Chauhan:

Object to admission of this statement.  
Chauhan looks at original of statement and then  
withdraws his objection.

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Witness continues:-

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2nd Accused spoke in Hindustani and I recorded  
what he said in Nagri script, which is the script  
generally used by Indians in Fiji in the Hindustani  
language. I read back to 2nd Accused in Hindustani  
everything I had recorded. He appeared to under-  
stand and approved of what I read back and he  
signed the statement. The statement was completely  
free and voluntary. Here is the statement and a  
written translation in English prepared by me.

10

Witness proceeds to read statements aloud in  
Hindustani. After few sentences interpreted into  
English by Court Interpreter it appears to Court  
that the written translation submitted by the  
witness is so inaccurate that it will have to be  
rewritten.

20

Court:

Adjourned for  $\frac{1}{2}$  hour to enable proper written  
translation to be prepared.

Court Clerk will assist witness if he wishes.

$\frac{1}{2}$  hour later - resumed.

Prosecutor, Counsel and both Accused present.

Witness continues after being reminded he is still  
on oath:

30

There is a written translation of the state-  
ment into English which I have prepared during  
this adjournment with the assistant of Mr. P. Ram,  
Solicitor in the Court office. (Other translation  
returned to prosecution).

(Witness reads original statement aloud in  
Hindustani. As he reads Court Interpreter inter-  
prets what he says in English. Corrections made  
in written translation so as to make it conform  
with Court Interpreter's interpretation).

40

Chauhan:

I object to the words "and he obtained a £100 advance" in the English translation. It should be "..... he obtained a £100 for me".

Court Interpreter:

10 The words "forme" are not there. The translation is correct: "..... he obtained a £100 advance."

Court:

Carry on. I will accept Court Interpreter's interpretation.

20 (Witness complete reading original statement aloud in Hindustani. Various corrections made in the written translation into English to bring it into conforming with Court Interpreter's interpretation).

Court:

Statement admitted Ex. "X". Translation admitted Ex. "XI".

30 On 8.3.67 at 9.20 a.m. I recorded a statement made to me by 1st Accused in Labasa Police Station in presence of Constable Net Ram. I cautioned 1st Accused before he made that statement. He spoke in English and I recorded the statement in that language and read it back to him in that language. 1st Accused speaks good English. It was a completely free and voluntary statement. 1st Accused appeared to understand and approved of what I read back and signed every page of the statement. Here it is. I have made a mistake. I did not read the statement back to him but handed it to him and he appeared to read it. Then he signed every page. The statement was in question and answer form.

Court:

40 Statement admitted Ex. "Y".

On 23.3.67 I arrested both 1st and 2nd Accused. They were then charged by Sergeant Ram Sumer.

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20.5.67 I collected specimen signature card Ex. "P" and Ex. "A" from the witness Peter Sewell. I kept these in my custody until they were given into the custody of the Court i.e. until Ex. "A" was marked for identification and until Ex. "P" was admitted.

Cross-Exam. 1st Accused:

Cane bonuses are distributed at beginning and middle of each year.

10

I see Ex. "S". It shows that Mahabir has drawn money after June, 1966. Rather it shows that someone drew money out after June. Ex. "A" doesn't say who drew the money out.

I don't remember whether or not Mahabir told Police that he told me that £180 had been withdrawn without authority. I don't know whether or not he said that on oath.

20

Court:

He did.

Mahabir never mentioned the £180 in any statement recorded by me.

Chandra:

There is no reference to £180 in any of Mahabir's statements to the Police.

On 17.2.67 I received Ex. "V" from Inspector Sasta Nand Maharaj who has given evidence. That was same day I handed Ex. "V" to him for checking the thumb print. I kept that cheque Ex. "V" with me until it was given into the custody of the Court. By "with me" I mean in my custody. Most of the time it was in the Exhibit Room at the Station. The key of that Exhibit Room was not kept by me. It was kept by the Crime Writer at the Station. By "Station" I mean Labasa Police Station.

30

On 17.2.67 Sasta Nand Maharaj told me that the thumb print on Ex. "V" could not be identified I don't know whether or not he photographed Ex. "V".

40

I have been in the Police Force for 10 years - this is my 10th year. I am in no way expert in finger prints.

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On 1.3.67 I was informed by the present prosecutor that the other 3 cheques in this case had been checked and that the thumb prints on them were of 2nd Accused.

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10 I don't know whether or not the bank was asked to let the Police have a copy of your statement of account only from 5.4.66 to 17.5.67. I don't know why those dates were specified in the request if they were specified. I can't remember.

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I don't know why you were not charged with forgery. I charge on instructions. I don't make the decision whether or not to charge and what to charge with.

20 You were not charged on 1.3.67 although Police then knew that the three cheques were forgeries, because further enquiries had to be made. 2nd Accused had to be asked if he wanted to make an explanation. There was never any doubt after 1.3.67 as to whose finger prints were on the 3 cheques. Exhibits "B", "G" and "D".

I did not take the statements of all of the witnesses from the bank. I took only one or two of them, the rest were taken by Corporal Lateef.

30 On 23.3.67 when you were charged with receiving money on forged documents there was evidence that the documents had been forged - that's why you were charged.

It's not true that you were not charged until 23.3.67 because of doubt about whose thumb prints were on the cheques.

I know Mahabir. I think he was a friend of yours.

40 I searched your house during my investigation and took possession of a number of your articles. I don't remember whether or not I returned any of those articles. Police record will show. I took all of the cheque butts I could find in your

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house. None of them have been returned to you. You applied for their return but your request was refused.

You told me you were positive that Mahabir had drawn £100 because he had admitted this to his son Jaikaran. I did not take Jai Karan's statement. I don't know why his statement was not taken. His statement was not taken at all as far as I know. I made no enquiries at all from Jai Karan. That must have been overlook. I know Jai Karan very well. He is a tailor. He works in Nasea.

10

I don't know whether or not Sasta Nand Maharaj actually compared Ex. "V" with Mahabir's or 2nd Accused's finger prints.

Mahabir was then complainant in this case. As far as I know Peter Sewell was not the complainant in this case. I did not write on any Police document that Peter Sewell was the complainant. Another officer may have written that, in fact his name does appear as complainant on the Police file cover. I don't know why his name appears there. Perhaps I typed the name Peter Sewell on the file cover.

20

12.45 p.m.

Adjourned to 2.15 p.m.

2.15 p.m.

Resumed.

Prosecutor.

30

Counsel and both Accused present.

Chandra:

There is an entry in the Labasa Station Diary to the effect that Mr. Peter Sewell rang the Police Station at 2.57 p.m. and asked Police to come to the bank.

Court:

Does either Accused want the witness Peter Sewell recalled?



1st Accused: No.

Chauhan: No.

Cross-Exam. by 1st Accused continues after witness reminded he is still on oath:-

I don't know why Sewell is shown on file cover as complainant.

I don't know who told Mahabir that the 4 cheques in this case had been forged. I can't remember telling him. I might have told him.

Q. How many cases such as this have been reported against me this year?

Court:

You sure you want to ask that question?

1st Accused:

Yes, sure.

A. One Ramessar of Naqiqi and one Imam Ali also reported that their money had been wrongly drawn from the Bank of New Zealand, Labasa by means of cheque witnessed by you.

I am positive that Ex. "V" was returned to me on 17.2.67.

Witness:

May I consult the diary?

Court:

Yes.

(Witness consults Police File)

Witness:

I'm sorry it was on morning of 18th February 1967. There is an entry in the case diary made by me which says that.

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That same day he gave me photo copies of all 4 of the cheques together with Ex. "V" itself.

Q. How is it that at the beginning of this trial when I asked for photo copies of all 4 cheques I was told by the Police Prosecutor that they were all in Suva?

Chandra:

I said that the negatives were in Suva. 10

A. I don't know about that.

The photo copy of Ex. "V" was handed to me on 18.2.67.

Q. I put it to you that on 17.2.67 a photo had not been taken of Ex. "V".

A. It has been photographed. On morning of 18.2.67 Sasta Nand handed the photo to me. 20

There was no evidence of forgery to support the reports of Ramessar and Imam Ali. It was found that the thumb prints on the cheques were correct, that they were Ramessar and Imam Ali's thumb prints.

I may have met you in Mr. Chauhan's office on 15.5.67. I did not tell you that there were only 9 points of similarity between the thumb print on Ex. "V" and something else. I didn't tell you that that was why you had not been supplied with a photo copy of Ex. "V". I mean I can't remember telling you any such thing. I met you on 2 or 3 occasions in Chauhan's office after this case was reported to the Police. 30

I am now sure that on morning 18.2.67 I received photo copies of all 4 cheques in this case together with the original of Ex. "V" from Sasta Nand Maharaj.

I never advised you to plead guilty. I never told you I would get Mahabir to withdraw his complaint if you admitted these offences. 40

Cross-Exam. Chauhan:

I enquired about 2nd Accused's saving bank account. He has operated a saving bank account at

the Bank of New Zealand's Labasa Branch since 1962.

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Re-Examination

10 In Ex. "X" at the beginning there are the words "This was a book account" I understood 2nd Accused to mean saving bank account. That's how local people refer to a saving bank account. I suppose it's because a book is issued to the customer who has a saving bank account whereas a person who had an ordinary current account is not issued with a book.

Re-Exam:

On 12.2.67 2nd Accused did not have paid out his account.

Court:

That's hearsay, isn't it.

20 Witness:

Yes, I have seen his bank book.

It may be I was told not to interview Jaikaran because someone else had interviewed him.

1st Accused:

Object.

Court:

Over-ruled.

30 Mahabir certainly did report this case to the Police on the same day that Peter Sewell rang the Police Station i.e. on 10.2.67.

3.30 p.m.

Adjourned for 15 minutes - tea.

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3.45 p.m.

Resumed.

Prosecutor, Counsel and both Accused present.

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Fong  
Examination

SAKIUSA FONG

14th P.W. SAKIUSA FONG

10

Sworn Bible English.

I am bank officer with the Bank of New Zealand's Labasa Branch.

I have known 1st Accused since I was a small boy. I do not know 2nd Accused. I have worked at the Bank for about 8 years - in Labasa all that time. I am familiar with signature of 1st Accused - I have seen him sign his name many times.

I see Ex. "A" - and specimen signature card kept at the bank. 1st Accused's signature appears on that card as a witness - so does mine. I have no recollection of either 1st Accused or me signing Ex. "A" but I have no doubt we did sign Ex. "A" because I see our signatures on Ex. "A". Mahabir must have affixed his thumb print to Ex. "A" in my presence. I would not have signed Ex. "A" if he had not affixed his thumb print in my presence. 1st Accused must also have been present when the thumb print, was affixed to Ex. "A". Both witnesses must have been present when the thumb print was affixed otherwise there would have been a serious breach of bank practice. It is also strict bank practice that the witnesses must sign in each other's presence.

20

30

Specimen signature cards are kept in the strong room at night but they are kept in a cabinet, which is kept locked, during the day. The head ledger keeper keeps the key of that cabinet but all bank officers from time to time during the day borrow that key from him in order to look at things in the cabinet.

40

No one not employed in the bank would be permitted to open that cabinet.

To Court:

I don't know Mahabir f/n Ram Charan. I wouldn't know him if I saw him.

A witness would not be asked to sign before the thumb print was affixed to Ex. "A".

10 The practice regarding the execution of specimen signature cards is very strictly adhered to in the bank. Both witnesses must be present when the thumb print is affixed. The witnesses must sign in each other's presence after the thumb print has been affixed.

Cross-Exam. 1st Accused:

I would not say that all customers with overdrafts are known to all bank officers. Some such customers are known to individual bank officers.

20 . I have never known a bank officer to commit a breach of the practice I have described. I admit that a breach would be possible. You have been having dealings with the bank ever since I started working for the bank.

I signed as a witness to the thumb print on Ex. "A" not as a witness to your signature.

Cross-Exam. Chauhan: Nil.

Re-Exam: Nothing worth noting.

Chandra: That's the case.

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ember, 1967.

Chauhan:

Submit no case for 2nd Accused to answer.

Charge of receiving, 3rd count no proof of that  
print. 10

As to all of receiving counts there is no  
evidence of money transaction. All bank Officers  
said they did not know 2nd Accused and had no  
recollection of the transactions.

As to the forgery counts there is no evidence  
of identity of person who affixed thumb prints to  
the cheques.

No evidence of intent to defraud.

No evidence of whose thumb print is on the  
specimen signature card Ex. "P". 20

1st Accused:

I submit no case to answer.

As to receiving counts no evidence of intent  
to defraud.

As to forgery counts the Prosecution has not  
been fair to me. 3 P.W. Hargreaves has not been  
produced for my Cross-Exam.

Chandra:

I agree no case to answer against 2nd Accused  
on 3rd count. 30

Court:

Adjourned to 9 a.m. Friday 15.9.67.  
Bail extended.

(sgd) R.A. Kearsley.

15.9.67.

Chandra for Prosecution.

Chauhan for 2nd Accused.

Both Accused present.

Court:

10

I find that there is a case to answer against 1st Accused on all counts and that there is a case to answer against 2nd Accused on all counts except the 3rd count of which he is acquitted.

S.201. C.P.C. complied with.

1st Accused:

I don't want to give evidence at all. I do not wish to call witnesses.

Court:

20

Are you sure? Have you thought carefully about this?

1st Accused:

Yes, I'm sure.

2nd Accused:

I don't want to give evidence at all. I do not wish to call witnesses.

Court:

You have been advised by Mr. Chauhan on this matter?

30

2nd Accused:

Yes.

1st Accused:

I do not wish to address.

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Chauhan:

I am prepared to address now.

Court:

Very well.

Chauhan:

Re the receiving money charges, it is essential that intent to defraud be proved. Knowledge that document is forged is essential. Essentials, intent and knowledge.

10

Accused is aged and illiterate.

Court:

What evidence?

Chauhan:

His own statements to the Police. Also the circumstances of the case point to that.

20

On the evidence 1st Accused would have bluffed 2nd Accused into thinking that they were cashing one of 2nd Accused's cheques. 2nd Accused could on the evidence have believed that all was above board.

35th Arch., paras 2184, 2185 and 2186.

Court:

Is a statement made by accused to Police and received in evidence, evidence only is so far as it consists of admissions?

30

Chandra:

Submit everything in that statement, whether for or against the maker becomes evidence - not only admissions. I'm 100% sure in my heart of hearts that I'm right.

Court:

I doubt the validity of that submission. I



think you should take time to consider further.  
This may affect your decision not to give or call  
evidence.

Adjourned to 9 a.m. Monday 18.9.67.

In the  
Magistrates  
Court at  
Labasa

No. 27  
Proceedings,  
15th September,  
1967.  
(Contd.)

18th September,  
1967.

10

18.9.67.

Chandra for Prosecution.

Chauhan for 2nd Accused.

Both Accused present.

Chauhan:

Ask that 2nd Accused be again asked whether  
or not he wants to give evidence.

Court:

20

Very well. S.201 (1) C.P.C. again complied  
with.

2nd Accused:

I want to make an unsworn statement from the  
dock. I have no witnesses.

No. 28

SHRI PRASAD

Defence  
Evidence  
No. 28  
Shri Prasad  
18th Septem-  
ber, 1967.

30

2ND ACCUSED STATEMENT FROM DOCK:

Whatever I said to Constable Mishra in the  
statement he read to the Court is true. That is  
my statement and that is the truth.

In the  
Magistrates  
Court at  
Labasa

No. 29  
PROCEEDINGS

No. 29  
Proceedings,  
18th September,  
1967.

Court:

Does 1st Accused wish to change his election not to give or call evidence or not to address the Court?

1st Accused:

10

I don't want to give or call evidence, but I now wish to address the Court.

1st Accused Addresses:

None of the bank officers has identified 1 P.W. Mahabir or 2nd Accused. I P.W. has himself identified 2nd P.W. Hickford as being present at time of cashing cheque.

Re cheque of £100 - I have given 2 statements to Police explaining - I told Police about Jaikaran - Police did not take his statement.

20

Court:

Apparently nothing to stop you taking it.

Chauhan:

I have no more to say.

Court:

Adjourned for judgment to 9 a.m. 25.9.67.

Bail extended.

25.9.67.

Chandra for Prosecution.

Chauhan for 2nd Accused.

30

Both accused present.

Court:

I very much regret that my judgment is still being typed. In order to be quite sure that there is no further adjournment and I will now adjourn until 2.15 p.m. tomorrow 26.9.67. Bail extended.

(sgd) R.A. Kearsley.  
25.9.67.

In the  
Magistrates  
Court at  
Labasa

No. 29  
Proceedings,  
18th September,  
1967.  
(Contd.)

In the  
Magistrates  
Court at  
Labasa

26.9.67.

2.20 p.m.

Chandra for Prosecution.

No. 30  
Judgment,  
26th Septem-  
ber, 1967.

Both Accused present.

Chauhan not present.

Judgment delivered.

10

No. 30

JUDGMENT

At the close of the prosecution case these two accused stood charged as follows:-

FIRST COUNT

Statement of Offence (a)

RECEIVING MONEY ON FORGED DOCUMENT: Contrary to Section 374(a) of the Penal Code, Cap. 8.

Particulars of Offence (b)

HARI PRATAP s/o RAM KISSUN and SHRI PRASAD s/o BIROGI, on the 12th day of April, 1966 at NASEA, LABASA in the Northern Division with intent to defraud received from the Bank of New Zealand, Labasa the sum of £93. 0. 0. by virtue of a forged instrument, namely a cheque in the sum of £93. 0. 0. drawn in favour of cash on the Bank of New Zealand purporting to be the cheque of MAHABEER s/o RAM CHARAN and signed by the said MAHABEER s/o RAM CHARAN knowing the same to be forged.

20

30

FIRST COUNT (ALTERNATIVE)

Statement of Offence (a)

FORGERY: Contrary to Section 364(2)(a) of the Penal Code. Cap. 8.

Particulars of Offence (b)

In the  
Magistrates  
Court at  
Labasa

10 HARI PRATAP s/o RAM KISSUN and SHRI PRASAD s/o BIROGI, on the 12th day of April, 1966 at Nasea, Labasa in the Northern Division, with intent to defraud forged a valuable security namely, a cheque No. B44980 in the sum of £93. 0. 0. drawn in favour of cash on the Bank of New Zealand, Labasa purporting to be the cheque of Mahabir s/o Ram Charan.

No. 30  
Judgment,  
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(Contd.)

SECOND COUNTStatement of Offence (a)

RECEIVING MONEY ON FORGED DOCUMENT: Contrary to Section 374(a) of the Penal Code, Cap. 8.

Particulars of Offence (b)

20 HARI PRATAP s/o RAM KISSUN and SHRI PRASAD s/o BIROGI, on the 2nd day of July, 1966 at Nasea, Labasa in the Northern Division with intent to defraud received from the Bank of New Zealand, Labasa, the sum of £86. 0. 0. by virtue of a forged instrument, namely a cheque in the sum of £86. 0. 0. drawn in favour of cash on the Bank of New Zealand purporting to be the cheque of MAHABEER s/o RAM CHARAN and signed by the said MAHABEER s/o RAM CHARAN knowing the same to be forged.

SECOND COUNT (ALTERNATIVE)Statement of Offence

30 FORGERY: Contrary to Section 364(2)(a) of the Penal Code, Cap. 8.

Particulars of Offence

HARI PRATAP s/o RAM KISSUN and SHRI PRASAD s/o BIROGI, on the 2nd day of July, 1966 at Nasea,

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Magistrates  
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Labasa

No. 30  
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ber, 1967.  
(Contd.)

Labasa, in the Northern Division, with intent to defraud forged a valuable security namely, a cheque No. B46389 in the sum of £86. 0. 0. drawn in favour of cash on the Bank of New Zealand, Labasa purporting to be the cheque of Mahabir s/o Ram Charan.

THIRD COUNT

Statement of Offence (a)

10

RECEIVING MONEY ON FORGED DOCUMENT: Contrary to Section 374(a) of the Penal Code, Cap. 8.

Particulars of Offence (b)

HARI PRATAP s/o RAM KISSUN and SHRI PRASAD s/o BIROGI, on the 13th day of December, 1966 at Nasea, Labasa in the Northern Division with intent to defraud received from the Bank of New Zealand, Labasa, the sum of £100. 0. 0. by virtue of a forged instrument, namely a cheque in the sum of £100. 0. 0. drawn in favour of cash on the Bank of New Zealand purporting to be the cheque of MAHABEER s/o RAM CHARAN and signed by the said MAHABEER s/o RAM CHARAN knowing the same to be forged.

20

THIRD COUNT (ALTERNATIVE)

Statement of Offence (a)

FORGERY: Contrary to Section 364(2)(a) of the Penal Code, Cap. 8.

Particulars of Offence (b)

30

HARI PRATAP s/o RAM KISSUN and SHRI PRASAD s/o BIROGI, on the 13th day of December, 1966 at Nasea, Labasa in the Northern Division, with intent to defraud forged a valuable security namely, a cheque No. C87802 in the sum of

£100. 0. 0. drawn in favour of 802 on the Bank of New Zealand, Labasa purporting to be the cheque of Mahabir s/o Ram Charan.

In the  
Magistrates  
Court at  
Labasa

FOURTH COUNT

Statement of Offence (a)

10 RECEIVING MONEY ON FORGED DOCUMENT: Contrary to Section 374 (a) of the Penal Code, Cap. 8.

No. 30  
Judgment,  
26th September, 1967.  
(Contd.)

Particulars of Offence (b)

20 HARI PRATAP s/o RAM KISSUN and SHRI PRASAD s/o BIROGI, on the 27th day of January, 1967 at Nasea, Labasa in the Northern Division with intent to defraud received from the Bank of New Zealand, Labasa, the sum of £80. 0. 0. by virtue of forged instrument, namely a cheque in the sum of £80. 0. 0. drawn in favour of cash on the Bank of New Zealand purporting to be the cheque of MAHABEER s/o RAM CHARAN and signed by the said MAHABEER s/o RAM CHARAN knowing the same to be forged.

FOURTH COUNT (ALTERNATIVE)

Statement of Offence

FORGERY: Contrary to Section 364 (2)(a) of the Penal Code, Cap. 8.

Particulars of Offence

30 HARI PRATAP s/o RAM KISSUN and SHRI PRASAD s/o BIROGI, on the 27th day of January, 1967 at Labasa in the Northern Division, with intent to defraud forged a valuable security namely, a cheque No. 131534 in the sum of £80. 0. 0. drawn in favour of cash on the Bank of New Zealand, Labasa, purporting to be the cheque of Mahabir s/o Ram Charan.

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Magistrates  
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At the conclusion of the prosecution case both of the accused submitted "no case to answer". I upheld that submission to the extent of acquitting 2nd accused of the 3rd count.

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1967.  
(Contd.)

The prosecution sought to prove that on four occasions the two accused, acting in concert, went together to the Labasa branch of the Bank of New Zealand where they pretended to the bank officer who attended to them that 2nd Accused was one Mahabir s/o Ram Charan, an illiterate customer who maintained a current account, that on each of those occasions 2nd Accused, in the presence of 1st Accused and the bank officer, affixed his thumb print, as drawer, to a cheque which later the same day was cashed at the bank, that neither of the accused had Mahabir's authority to act in this way, that the 4 cheques were forged and that the monies given by the bank in exchange for the cheques were received by the accused with intent to defraud.

10

20

The prosecution called 14 witnesses: 7 bank officers, 6 Police Officers and Mahabir the illiterate customer. All of these witnesses impressed me very definitely as being truthful and thoroughly reliable except 1 P.W. Mahabir and 12 P.W. Abdul Lateef. Mahabir, I have no doubt, did his best to tell the truth but he was vague and confused. Consequently I have placed no reliance upon his evidence as to matters of detail and I have accepted only those elements of his evidence which were undisputed or corroborated after carefully considering the possibility of mistake on his part. Abdul Lateef was a police officer. He swore, falsely in my view, that when he interviewed 1st Accused on 15.2.67 he did not suspect him having done anything wrong. Perhaps this witness thought that if he admitted he had suspected 1st Accused his account of the interview would not be admissible. Be that as it may, none of this witness's evidence-in-chief (which related to the interview on 15.2.67, the recording of Mahabir's finger print impressions and the receipt and delivery of various exhibits) was

30

40



disputed and I see no reason why I should not accept that evidence.

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ber, 1967.  
(Contd.)

10 26 exhibits - statements, photographs,  
finger print impressions, "specimen signature  
cards", cheques and copies of bank statements -  
were admitted, I am quite satisfied that they  
were all properly produced and proved by wit-  
nesses all of whom were thoroughly reliable  
except one, 12 P.W. Abdul Lateef, to whose  
evidence I have already referred. He swore that  
he recorded the finger print impressions of  
Mahabir on Ex. "O". I do not doubt that he did.  
In any case Ex. "O" is not essential to the  
prosecution case. Once it is proved that the  
thumb prints on the cheques are those of 2nd  
Accused it necessarily follows that they are  
not, the thumb prints of Mahabir. Again, this  
20 witness's evidence of the receipt and delivery  
of various exhibits in the "chain of production"  
was not disputed and was corroborated by P.W.  
9 Sewell and 13 P.W. Mishra. Consequently I  
accept his evidence of receipt and delivery of  
exhibits with full confidence.

30 Four cheques, Ex's "F", "G", "V", and "H"  
were admitted in evidence. Each of those  
cheques bears a thumb print in the bottom  
right hand corner where the drawer usually  
signs. 16 points of identification common to  
each of the thumb prints of Ex's "F", "G" and  
"H" and the thumb print marked "X" on Ex. "M"  
were discovered by 6 P.W. Sastanand Maharaj  
whose evidence I accept as the thoroughly re-  
liable evidence of an expert witness. Those  
points of identification are to be seen on Ex's  
"J", "K" and "L", which are enlarged photographs  
of the thumb print marked "X" and Ex. "M", and  
in Ex.'s "J(1)", "K(1)" and "L(1)" which are  
40 enlarged photographs of the thumb prints on  
the three cheques Ex.'s "F", "G", and "H".  
Ex. "M" was recorded by 13 P.W. Mishra who  
swore that the thumb print marked "X" on Ex.  
"M" is that of 2nd Accused. Having carefully  
considered the evidence of 5 P.W. Uma Kant,

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ber, 1967.  
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6 P.W. Sastanand Maharaj, 8 P.W. Hurst and 13 P.W. Mishra, all of which evidence I accepted as truthful and thoroughly reliable, I am left in no doubt whatsoever that the thumb prints on Ex.'s "F", "G" and "H" were put there by 2nd Accused.

4 prosecution witnesses, 2 P.W. Hickford, 3 P.W. Hargreaves, 9 P.W. Sewell and 10 P.W. Elizabeth Dashwood gave evidence regarding the practice which they swore was followed at the bank in relation to the execution of cheques by illiterate customers. I had no hesitation in accepting the evidence of those witnesses, as far as it went, as being truthful and thoroughly reliable. That 2 P.W. Hickford and 10 P.W. Elizabeth Dashwood followed a practice of checking the thumb print on the customer's specimen signature card" whereas, according to 3 P.W. Hargreaves (recalled) that was not the general practice in no way weakened my faith in the testimony of those 4 witnesses. Having carefully perused their evidence I have no doubt whatsoever that at all material times a certain practice was strictly followed when a customer unable to write his signature and not known to the bank officer who attend to him wished to draw money from his account by means of a cheque. I have no doubt, and find as fact, that that practice was for the customer to affix his thumb print, as drawer, to the cheque in the presence both of the bank officer and of some literate person known to or identifiable by the bank officer. The thumb print would not be affixed until after the literate person had identified the customer to the bank officer and the cheque had been written out. After the thumb print had been affixed in the presence of the bank officer and the literate person they would both countersign the cheque. It would have been a serious breach of practice for the customer to be allowed to affix his thumb print out of the presence of the literate person. Whereas the possibility of this happening was admitted by 2 P.W. Hickford it was plain that such a breach was close to unthinkable in the mind of that witness.

10

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30

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The signature of 1st Accused, as a witness, on Ex. "F", was identified by 2 P.W. Hickford who also identified his own signature next to that of 1st Accused. This witness swore that he wrote in the date, 12th April, 1966, the words "cash" "Ninety three pounds" "Mahabir f/n Ram Charan" and the letters "LHTM" on the front of this cheque.

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Magistrates  
Court at  
Labasa

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1967.  
(Contd.)

10

The signature of 1st Accused, as a witness, on Ex. "G", was identified by 3 P.W. Hargreaves who also identified his own signature next to that of 1st Accused. This witness swore that he wrote in the date, 2nd July, 1966, the words "cash" "eighty six pounds" and "Mahabir s/o Ram Charan" and the figures "86" on the front of this cheque.

20

The signature of 1st Accused, as a witness on Ex.'s "V" and "H" was identified by 10 P.W. Elizabeth Dashwood who also identified her own signature next to that of 1st Accused on both of these cheques. This witness swore specifically that the words "Mahabir f/n Ram Charan" on these two cheques were written by her. She did not specifically swear that she had written anything else on Ex. "V". However, she swore in relation to Ex. "H" "I then got a counter cheque and wrote out the body of the cheque i.e., the date and amount of the cheque in words and figures and the word "cash"."

30 Clearly, when she swore that "the writing in the body" of Ex. "V" was hers she meant that all of the handwritten words and figures on the front of that cheques, except 1st Accused's signature, were written by her.

30

40

In Ex. "w", a statement recorded by 13 P.W. Mishra on 20.2.67, 1st Accused admitted that his signature was on 4 cheques which clearly were Ex's. "F", "G", "V", and "H". He did not give or call evidence, or in any way dispute during the trial that he had signed those 4 cheques as a witness to the thumb print of the drawer.

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(Contd.)

In Ex. "Y", a statement recorded by 13 P.W. Mishra on 8.3.67, 1st Accused admitted that he had known 2nd Accused "since last one year" and that he had, late in 1966 and early in 1967, gone to the bank with 2nd Accused and witnessed cheques for him. He further stated, in effect, that on many occasions he had at the request of bank officers signed cheques as a witness out of the presence of the drawer and after the drawer had affixed his thumb print. He suggested that the thumb print of 2nd accused on Ex.'s "F", "G" and "H" could have been obtained by trickery and denied knowing how the thumb prints came to be on the cheques.

10

2 P.W. Hickford, 3 P.W. Hargreaves and 10 P.W. Elizabeth Dashwood were quite sure that they were the bank officers who had attended to the execution of Ex's "F", "G", "V" and "H". For my part I am satisfied that they were right having considered the evidence of practice in relation to the execution of cheques by illiterate customers which I have accepted and the undisputed evidence that the cheques were filled in by those 3 witnesses and counter-signed by them. I am left in no doubt at all that 2 P.W. Hickford attended to the execution of Ex. "F", that 3 P.W. Hargreaves attended to the execution of Ex. "G" and that 10 P.W. Elizabeth Dashwood attended to the execution of Ex.'s "V" and "H".

20

I am certain that the thumb prints of Ex.'s "F", "G" and "H" were affixed to those cheques by 2nd Accused. I have no idea who affixed the thumb print to Ex. "V" as that thumb print has not been identified.

30

I am sure, and I find as fact, that 1st accused was present when the thumb prints were affixed to Ex's "F", "G", "V" and "H". The evidence of practice relating to the execution of cheques had lead me irresistibly to that conclusion.

40

I am sure, and I find as fact, that 1st accused knew when he witnessed the 4 cheques that the thumb prints they bore purported to be those of Mahabir. "Mahabir s/o Ram Charan" or "Mahabir f/n Ram Charan" is clearly written or printed over or under the thumb print in every case. Logically and properly, although there is no definite evidence on the point, those words would have been written before or at the time the thumb prints were affixed and before the witness signed. 1st accused did not in cross-examination or otherwise, suggest that those words were not there when he witnessed the cheques. None of the three witnesses who attended to the execution of the cheques knew Mahabir or 2nd accused - they swore and I believed them. I reject the suggestion made by 1st accused in cross-examination that 2nd accused must have been known to these witnesses as he had an overdraft. I cannot seriously entertain the suggestion that these 3 witnesses wrote "Mahabir s/o Ram Charan" or "Mahabir f/n Ram Charan" as the drawer's name on cheques they knew were being drawn by another man. Obviously the main purpose of insisting on the presence of a witness when an unknown to the bank officer person executes a cheque by affixing his thumb print is that the witness should identify that person. I do not doubt that 9 P.W. Sewell was telling the truth when he swore "There are occasions when an illiterate customer comes to cash a cheque and the bank officer dealing with him does not really know who he is. In such cases he has to rely on the witness brought in by the illiterate person as to the identity of the illiterate customer". I do not doubt that 3 P.W. Hargreaves was telling the truth when he swore "The literate person is always asked to assure the bank officer that the customer is the person he says he is". Ex. "W" reveals that 1st accused undoubtedly knew Mahabir "very well" at all material times.

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As to the dates on which the 4 cheques were executed it is not disputed and it is at least

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1967.

(Contd.)

probable and I have no reason to doubt that they were all executed by 2nd Accused on the dates on which they purport to have been executed i.e. Ex. "F" on 12.4.66. Ex. "G" on 2.7.66. Ex. "V" on 15.12.66 and Ex. "H" on 27.1.67 I so find as fact.

4 P.W. Peniall and 7 P.W. Merrigan swore that they were sure that they had cashed Ex's "F", "G", "V" and "H" although they had no recollection of doing so. They, and also 2 P.W. Hickford and 3 P.W. Hargreaves, gave evidence which I had no hesitation in accepting of the practice which was followed by bank tellers in cashing cheques. They referred to stamps on the fronts of the cheques and to figures on the backs of the cheques which were put there by 4 P.W. Penniall and 7 P.W. Merrigan and which would not have been put there unless Ex. "F" were cashed by 7 P.W. Merrigan on 12.4.66 and Ex.'s "G", "V" and "H" by 4 P.W. Peniall on 2.7.66, 15.12.66 and 27.1.67 respectively. Ex. "S", a properly admitted copy of Mahabir's bank statement the meaning of which was not disputed, corroborates the verbal evidence in this regard. I hold as fact that those cheques were cashed in the bank on those dates. It must be borne in mind that, as P.W. Hargreaves told the Court any or all of those cheques could have been cashed by a person who was neither 1st accused or 2nd accused.

I have found as fact that 1st accused was present when all 4 cheques were executed and that he knew at the time of execution that they purported to be executed by Mahabir. In fact as 1st accused well knew Ex's "F", "G", and "H" were executed by 2nd accused. I am satisfied on the evidence of Mahabir, and so find as fact, that he did not affix his thumb print to Ex. "V". After execution all 4 cheques were cashed and the sums stated on these cheques were received. I am satisfied on the evidence of Mahabir,

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30

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and so find as fact that he did not receive any part of those monies and that he did not authorise any person to draw or receive any part of those monies.

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Magistrates  
Court at  
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(Contd.)

10 1st accused conducted his own defence, speaking fluently in English, with confidence and understanding. He is undoubtedly an intelligent man. In Ex. "Y" he is described as a "clerical agent". It is obvious, from that exhibit and from Ex. "W", from the evidence of Mahabir and from the evidence of 2 P.W. Hickford (recalled in cross-exam by Counsel) that it was part of his business to assist bank customers in their dealings with the bank and that both Mahabir and 2nd accused were clients of his who placed reliance upon him. I have no doubt that he took a leading part in the execution of the 20 4 cheques Ex's "F", "G", "V" and "H" full knowing that they were to be cashed, if not by himself or 2nd accused, by some person who had no right to cash them. Undoubtedly the cheques were cashed and monies received without Mahabir's authority.

30 Bearing in mind the provisions of Section 24 of the Penal Code I find that 1st accused is guilty as charged on all 4 counts of receiving money on forged documents and I so convict him.

Although I have no doubt that the 1st is also guilty on the 4 alternative counts I will refrain from so finding.

40 As to the 2nd accused, I am convinced, after observing and hearing him in Court and perusing the statement, Ex. "X", which he adopted in his statement from the dock, that he is an elderly, illiterate and doddering man. After considering the whole

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of the evidence against him, which is formidable,  
I am left in doubt that he really knew that he  
was taking part in fraudulent transactions. I  
acquit him on all counts including the alterna-  
tive counts.

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(Contd.)

(sgd) R.A. Kearsley.

Magistrate  
Northern Division.  
26.9.67.

10

Chandra:

1st accused has P.C.'s as in certificate.

1st Accused:

Admit P.C.

Court:

Will disregard last P.C. Has 1st accused  
anything to say in mitigation?

1st Accused:

20

Nothing to say.

To Court:

34 years of age. Married, 2 children. 8  
years primary education. Self-employed clerk.

Court:

6 months imprisonment on each count - conse-  
cutive.

Advised of right of appeal and told Court  
Clerk will assist if wishes to Appeal.

30



1st Accused:

Give notice of intention to appeal. Ask  
for Bail.

Court:

Bail refused.

(sgd) R.A. Kearsley.  
26.9.67.

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Magistrates  
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ber, 1967.  
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No. 31

PETITION AND GROUNDS OF APPEAL

In the  
Supreme Court  
Appellate  
Jurisdiction

TO HER MAJESTY'S SUPREME COURT OF FIJI

The petition of HARI PRATAP s/o Ram Kissun  
sheweth:-

No.31  
Petition and  
Grounds of  
Appeal, 27th  
September  
1967.

10

1. That on the 26th day of September 1967, your  
Petitioner was convicted by the Magistrate's Court  
of the 1st class at Labasa of the following offence:-

STATEMENT OF OFFENCE

1st Count: Receiving Money on a forged document:  
6 months.

Contrary to Section 374(a) Penal Code, Cap. 8.

2nd Count: Receiving Money on forged document:  
6 months.

Contrary to Section 374(a) Penal Code, Cap. 8.

20

3rd Count: Receiving Money on forged document:  
6 months.

Contrary to Section 374(a) Penal Code, Cap. 8.

4th Count: Receiving Money on forged document:  
6 months.

Contrary to Section 374(a) Penal Code, Cap. 8.

2. That upon his conviction for the said offence  
your Petitioner was sentenced to the total of 2  
years imprisonment..

30

3. That your Petitioner desires to appeal against  
the said conviction/sentence upon the following grounds  
grounds:-

Statement of Grounds of Appeal attached.

(Sgd) ?

Supervisor of Prisons  
Northern Division.

Presented this 27th day of September, 1967.

(Sgd) Hari Pratap.

Appellant.

In the  
Supreme Court  
Appellate  
Jurisdiction  
No. 31  
Petition  
and Grounds  
of Appeal  
27th  
September  
1967.

GROUND'S OF APPEAL

1. That on the 26th day of September, 1967, your petitioner was convicted by the Magistrate Court of the 1st Class at Labasa on the 4 counts of Receiving Money on Forged instrument under Section 374 (a) of Penal Code Cap.8.
2. That upon his conviction for the said offence your Petitioner was sentenced to 2 years imprisonment. 10
3. That your Petitioner desires to appeal against the said conviction and sentence upon the following grounds amongst others :-
- (a) That there is no evidence against your Petitioner that he received the money.
- (b) The learned Magistrate erred in law and in Principle by taking the evidence of 14 prosecution witnesses in about 6 months. The undue delay has prejudiced the defence case, and also it has given the prosecution witnesses to rehearsal the evidence. 20
- (c) The learned Magistrate has erred in law by threatening your petitioner at the beginning of the trial by using the words "Dont' you worry, I will stay in Labasa and I will see you", in open Court. 30
- (d) The learned Magistrate erred in law by requesting one of the Counsel present in Court Mr. Sarvan Singh to advise your Petitioner to plead guilty on 3 counts and the prosecution 40

(cont'd)

will withdraw the one count. This suggestion was made in open court and Mr. Singh's reply was "He can advise us we can't advise him."

In the  
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Appellate  
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No. 31  
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- 10 (e) At the joinder of the alternative counts the plea and consent was not taken from either of the accused.
- (f) The learned Magistrate erred in law and in principle by taking the evidence of the prosecution witnesses bit by bit.
- 20 (g) Upon your Petitioner's repeated requests the learned Magistrate erred by not allowing the Prosecution witness Mr. Hargreaves to be recalled as previously ordered by the trial Magistrate (I refer page 55 of the records of the proceedings).
- 30 (h) At the time when your Petitioner made an application to the Court for recalling of Prosecution witness Mr. Hargreaves, the learned Magistrate erred in saying "Sooner the law changes the better it is".
- 40 (i) That the learned Magistrate erred in law by eliciting leading questions to the prosecution witness, in support I refer page 76 of the records of proceedings where Mr. Chauhan made an objection and was overruled by Court. Also I refer the evidence of Bank Officer Mr. Peter Sewell in whose evidence the exact wording from law book has been elicited by Court.
- (j) That the learned trial Magistrate erred in law by interviewing the Manager of the Bank and prosecuting witness Mr. Peter Sewell during the course of the trial in the absence of the Prosecutor and the accused.

(cont'd)

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- (k) The learned Magistrate erred in law by allowing the Bank of New Zealand's Manager Mr. Dashwood to be present in Court during the course of trial.
- (l) The learned Magistrate erred in law by saying "the Bank Officers are truthful witnesses" during the course of trial. 10
- (cont'd) (m) The learned Magistrate erred in convicting your Petitioner on the evidence adduced during the course of trial.

Dated at Labasa this 27th day of September, 1967 at 2 p.m.

(Sgd). Hari Pratap.

APPELLANT IN PERSON. 20

No. 32

JUDGMENT

No. 32  
Judgment  
22nd  
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1968.

This is an appeal against the decision of the Magistrate's Court of the First Class sitting at Labasa whereby the Appellant was convicted on each of four counts of Receiving Money on a Forged Document contrary to section 374 (a) of the Penal Code and sentenced to 6 months' imprisonment on each count which were ordered to run consecutively. 30

The particulars of offence on each count read as follows:

FIRST COUNT

Particulars of Offence.

HARI PRATAP s/o Ram Kissun and SHRI PRASAD s/o Birogi, on the 12th day of April, 1966 at NASEA, LABASA in the Northern Division with intent to defraud received from the Bank of New Zealand Labasa, the sum of £93.0.0.

40

by virtue of a forged instrument, namely a cheque in the sum of £93.0.0. drawn in favour of cash on the Bank of New Zealand purporting to be the cheque of MAHABEER s/o Ram Charan and signed by the said MAHABEER s/o Ram Charan knowing the same to be forged.

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10

Second Count

Particulars of Offence

20

HARI PRATAP s/o Ram Kissun and SHRI PRASAD s/o Birogi, on the 2nd day of July, 1966 at NASEA, LABASA in the Northern Division with intent to defraud received from the Bank of New Zealand Labasa, the sum of £86.0.0. by virtue of a forged instrument, namely a cheque in the sum of £86.0.0. drawn in favour of cash on the Bank of New Zealand purporting to be the cheque of MAHABEER s/o Ram Charan and signed by the said MAHABEER s/o Ram Charan knowing the same to be forged.

Third Count

Particulars of Offence

30

HARI PRATAP s/o Ram Kissun and SHRI PRASAD s/o Birogi, on the 13th day of December, 1966 at NASEA, LABASA in the Northern Division with intent to defraud received from the Bank of New Zealand Labasa, the sum of £100.0.0. by virtue of a forged instrument, namely a cheque in the sum of £100.0.0. drawn in favour of cash on the Bank of New Zealand purporting to be the cheque of MAHABEER s/o Ram Charan and signed by the said MAHABEER s/o Ram Charan knowing the same to be forged.

40

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Fourth Count

Particulars of Offence

HARI PRATAP s/o Ram Kissun and  
SHRI PRASAD s/o Birogi, on the  
27th day of January, 1967 at  
NASEA, LABASA in the Northern  
Division with intent to defraud  
received from the Bank of New  
Zealand Labasa, the sum of  
£80.0.0. by virtue of forged  
instrument namely a cheque in  
the sum of £80.0.0. drawn in  
favour of cash on the Bank of  
New Zealand purporting to be  
the cheque of MAHABEER s/o Ram  
Charan and signed by the said  
MAHABEER s/o Ram Charan knowing  
the same to be forged.

10

The Appellant who appeals against conviction only, describes himself as a "Clerical Agent" and has, I am given to understand, had some experience as a lawyer's Clerk, conducted his own defence in the Court below and formulated his own grounds of appeal of which, originally, there were thirteen. When the appeal was first lodged, the Appellant sought, in addition, to impugn the motives of the learned trial Magistrate, to supplement the record of the proceedings in the Court below and also to call additional evidence.

20

He was offered but declined to accept legal advice and assistance in the presentation of his appeal. He was informed that the hearing of his actual appeal could not begin until after the hearing and determination of his applications to supplement the record and to call additional evidence.

30

From October 1967, when the appellant's first application for bail pending appeal was heard, onwards the Appellant forwarded a series of very lengthy and somewhat involved and complicated letters and memoranda to the

Chief Registrar in connection with his appeal which he insisted, as he was entitled to do, in conduction in person.

An examination of these papers has taken an immense amount of time at a period when this Court has been somewhat over-loaded with work and had had only one Judge sitting instead of the two normally available for both Criminal and Civil work.

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10           On 5th January 1968 the Appellant decided that he would, after all, like to have legal aid and he was granted legal aid. The hearing of the application to supplement the record was then adjourned so that the Appellant could instruct Counsel. Senior Crown Counsel then asked the Court to note that although the Crown was willing to agree to this further adjournement, as  
20           required by the Appellant, the Crown had in fact come to Court ready, willing and able to argue both the application to supplement the record and the actual appeal without any further delay.

At the request of and for the convenience of the Appellant and his Counsel the hearing of the application to supplement the record was adjourned to 9th February 1968 which was the first available date to Counsel for the Appellant.

30           On 9th February 1968 the Appellant appeared with Counsel who informed the Court that the Appellant had decided to withdraw his application to supplement the record. I then pointed out that the Appellant had earlier indicated he wished to impugn the motives of the learned trial Magistrate and in this connection sought leave to call additional evidence. To this, Counsel for  
40           the Appellant, after a brief adjournment to enable him to take instructions, replied that he had received instructions from the Appellant which had been reduced to writing to abandon the application to call additional evidence in this respect. He further stated that he did not intend to impugn the motives of the learned trial Magistrate and that there was nothing in the record to support the grounds of appeal which raised such issues.



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As a result of the abandonment and withdrawal of a number of the grounds of appeal, the appeal was argued on the basis of the following eight remaining grounds:-

- (a) That there is no evidence against your Petitioner that he received the money.
- (b) The learned Magistrate erred in law and in principle by taking the evidence of 14 prosecution witnesses in about 6 months. The undue delay has prejudiced the defence case and also it has given the prosecution witnesses to rehearsal the evidence. 10
- (e) At the joinder of the alternative counts the plea and consent was not taken from either of the accused. 20
- (f) The learned Magistrate erred in law and in principle by taking the evidence of the prosecution witnesses bit by bit.
- (g) Upon your Petitioner's repeated requests the learned Magistrate erred by not allowing the prosecution witness Mr.Hargreaves to be recalled as previously ordered by the trial Magistrate (I refer page 55 of the records of the proceedings). 30
- (i) That the learned Magistrate erred in law by eliciting leading questions to the prosecution witness. In support I refer page 76 of the records of proceedings where Mr. Chauhan made an objection and was overruled by Court. Also I refer the evidence of Bank Officer Mr. Peter Sewell in whose evidence the exact wording from law book has been elicited by Court. 40

(j) That the learned trial Magistrate erred in law by interviewing the Manager of the Bank and prosecution witness Mr. Peter Sewell during the course of the trial in the absence of the Prosecutor and the accused.

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10 (m) The learned Magistrate erred in convicting your Petitioner on the evidence educed during the course of trial.

(Cont'd)

20 The facts giving rise to the charges in this case were that Mahabir s/o Ram Charan was an elderly illiterate person who maintained a current account at the Labasa Branch of the Bank of New Zealand. The practice adopted when an illiterate customer wished to withdraw money from his account at the Bank was this: He would place this thumb print on his cheque, as his signature, as the drawer of the cheque, in the presence of a literate person who identified the illiterate to a bank officer. The literate person and the bank officer would then both sign the cheque as witnesses to the thumb print of the drawer and the bank officer would then pay the money due on the cheque.

30 Shri Prasad s/o Birogi was another aged illiterate who also had a bank account at the same bank.

The Appellant, Hari Pratap, who carries on business as a "Clerical Agent" knew both Mahabir and Shri Prasad. He had, on a number of occasions, identified them to a bank officer and witnessed their thumb impressions on their cheques and thereby assisted them to operate their respective current accounts.

40 The case for the prosecution in the Court below was that on each of the occasions referred to in the 1st, 2nd and 4th counts the Appellant went to the bank with Shri Prasad and knowingly, falsely identified him as Mahabir to a bank officer.

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Shri Prasad then placed his thumb print on a cheque form which the Appellant, again falsely, identified to the bank officer, as the thumb print of Mahabir. Both the Appellant and the bank officer then signed these cheques as witnesses and the money drawn by the cheque was paid out by the bank officer from Mahabir's account.

In respect of the 3rd count the same procedure was alleged to have been followed by the Appellant with the exception that it is not known for sure who it was whom the Appellant falsely identified to the bank officer as Mahabir. 10

The Appellant did not give evidence or call any witnesses at his trial.

The Appellant had admitted to the police in the course of their enquiries that he had signed each of the cheques concerned as a witness. Independent evidence confirming this was also given by the bank officer who had also signed each of these cheques as a witness. 20

Expert finger print evidence was given which was accepted and which proved clearly that the thumb print on each of the cheques concerned in the 1st, 2nd and 4th counts was the thumb print of Shri Prasad and was not that of Mahabir.

The thumb print on the cheque for £100 concerned in the 3rd count had insufficient detail upon it for identification purposes. It is not known for sure whose thumbprint it is. 30

Mahabir gave evidence in respect of each of the cheques concerned, which were drawn for the following amounts:-

in the 1st count for £93,

the 2nd count for £86,

the 3rd count for £100, 40

and the 4th count for £80.

He expressly stated that at no time did he

execute or authorise the execution of any cheques for any of these amounts.

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10 This evidence was accepted by the learned trial Magistrate in this judgment, but there can be no doubt that in respect of the cheque for £100, concerned in the 3rd count, the only evidence that the thumbprint on that cheque is not that of Mahabir is Mahabir's own uncorroborated testimony.

(Cont'd)

20 In an earlier part of his judgment the learned trial Magistrate recorded that Mahabir was vague and confused as a witness and that he place no reliance in his evidence save where it was undisputed or corroborated. In respect of the 3rd count there was no evidence of the identity of the person whose thumb print was on this cheque for £100 dated 13th December 1966. The only evidence that it was not Mahabir's thumb print is that of Mahabir himself. In view of the unreliability of Mahabir as a witness and the very properly cautious approach adopted towards it by the learned trial Magistrate, the case against the Appellant on the 3rd count does not appear to me to have been established with that degree of certainty that is necessary to sustain a conviction on a serious criminal charge  
30 such as this.

The appeal against conviction on the 3rd count must, therefore, be allowed.

40 I have examined the record of the proceedings in the Court below and studied the fully reasoned judgment of the learned trial Magistrate with considerable care. In my view his findings of fact were based upon ample and compelling evidence and there are no grounds why they should be disturbed.

The 1st ground of appeal complains that there was no evidence that the Appellant personally received the money referred to in these charges. The Court below specifically

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referred to the provisions of section 21 of the Penal Code in this respect. The relevant part of section 21 reads:

"21. When an offence is committed, each of the following persons is deemed to have taken part in committing the offence and to be guilty of the offence, and may be charged with actually committing it, that is to say -

10

(a) "Every person who actually does the act .... which constitutes the offence;

(b) Every person who does ... any act for the purpose of enabling or aiding another person to commit the offence;

(c) Every person who aids or abets another person in committing the offence;

20

....."

It is quite immaterial who actually received the money if the accused aided and abetted in the receipt of this money on a forged cheque. In my view there are no merits in either the 1st or the last grounds of appeal except in their relation to the conviction on the 3rd count with which I have already dealt.

The 2nd ground of appeal, and in some respects the 4th ground also, complains of the length of time taken in the Court below to hear and determine this case.

30

The Appellant first appeared in the Court below charged with these offences on 28th March 1967 and the prosecutor then said the trial was expected to take two days.

The trial opened with the hearing of evidence, nearly 2 months later, on 22nd May. It was not concluded until 18th September 1967 when it was adjourned for judgment that was given 10 days later. I have examined the causes for the inordinate time that the trial took. Some adjournment may well have been necessary but, in my view, there is justification for the Appellant's complaint that the time taken to hear and determine this case was too long and covered too long a period. Once the trial had begun it should, as far as possible, have been continued from day to day until it was completed. In fact 4 consecutive days were spent on the trial in May, then three in June, two in August and finally four in September. This is not satisfactory. I have studied the record to see the reason for these delays. Some must be attributed to what appears to have been the inordinately long cross-examination to which the Appellant subjected some of the witnesses for the prosecution - some adjournment were because a witness or the Magistrate was sick or one side or the other requested them, but the trial was still spread out over far too long a period.

10

20

30

40

I appreciate there are always pressures in any Court of other cases that must be heard but the volume of work in the Court below is not greater than elsewhere. It is the duty of a trial Court, once a trial has begun, to give a part heard case priority and, as far as may be possible, to continue the hearing from day to day - even if it means devoting only a part of the day to a case - until it is completed.

What this Court must consider now is whether as a result of such delays, the trial can be considered to be so unsatisfactory, that either a miscarriage of justice has occurred or that the decision finally reached should not be upheld.

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After giving the matter careful consideration I have come to the conclusion that inordinate delays though there seem to have been, no miscarriage of justice has occurred as a result, although I believe that some of the irregularities which did occur during the hearing, to which I will refer, may have been partly a result thereof.

(cont'd)

I will deal with the 3rd ground of appeal later and now pass to the 4th ground which complains of the action of the Court below in taking the evidence of witnesses 'bit by bit'. 10

This was, I think, partly due to the long time occupied by the trial. An examination of the record does, however, show that the evidence of the witnesses for the prosecution was not recorded in normal sequence for a number of different reasons, as the following instances show :- 20

1. The 1st witness for the prosecution was taken ill in the course of his evidence on the second day of the trial. He was quite properly allowed to stand down whilst the case proceeded. When he felt better later in the case he was recalled to the box to complete giving his evidence. No exception can be taken to this procedure. 30

2. After the charge was amended during the trial by the additional of 4 counts, a number of witnesses who had already given evidence were recalled so that the defence could cross-examine them further. This procedure is expressly authorised by section 204 of the Criminal Procedure Code, and no exception can be taken to it. 40

3. The 10th witness for the prosecution, a temporary visitor to Fiji on holiday, and the 11th and 12th witnesses for the prosecution, who were policemen, were also allowed to be called out of turn at the request of the prosecutor. One of these policemen was required to return to his station at Ba as soon as possible and the other was due for leave. The Court below exercised its discretion quite properly in allowing their evidence to be interposed.

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I note that in fact the Appellant said he had no objections, when asked, to these policemen being called out of order so that they could be released. All these matters are properly accounted for, but I am of the opinion that the need for some of them might well not have arisen had the trial been continued from day to day once it had started.

The 5th ground of appeal complains that the learned trial Magistrate did not allow a witness for the prosecution to be recalled as he had previously ordered. The manner in which this ground of appeal is phrased is somewhat misleading as there was no question of the Magistrate disallowing the recall of the witness. The position was this:- The 3rd witness for the prosecution, who was a bank officer, was recalled for further cross-examination by the Appellant after additional counts had been added to the charge. In reply to the Appellant this witness said he could not remember how many times he had witnessed the execution of cheques by the bank's illiterate customer Mahabir and would have to look up the cheques to ascertain this. The Appellant then said he wanted the witness to make this check. The learned trial Magistrate told him the witness would be recalled after making a check, and the Appellant carried on with his cross-examination.



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The original record made at the time by  
the Magistrate reads:-

"Court: He will be recalled after  
making a check".

Added to these words, in a different ink, and  
initialled and dated by the learned trial  
Magistrate, in the original record, is the  
following wording:

"if you wish RAK 24.9.67" 10

The hearing of this case was com-  
pleted on 15th September 1967 for judgment.  
These words would appear to have been added  
to the record, after the hearing, in the  
period that the Magistrate was preparing his  
judgment.

The Appellant complained of this  
alteration of the record and the Supreme  
Court called for the Magistrate's comments  
on the matter. When these were received a  
copy was sent to both the Appellant and the  
Crown for their information. These comments  
read as follows:- 20

"I deliberately added the words  
"If you wish" to the record to  
make it clear that my intention  
was to recall the witness only  
if the appellant wished him to  
be recalled and not regardless  
of his wishes. I seem to  
remember that I wrote these  
words in ink of a distinctive  
colour to make them stand out  
and that I initialled and dated  
that addition to make it clear  
when it had been made". 30

At the hearing of the Appeal Counsel for  
both the Appellant and the Crown agree that  
nothing really turns on this matter. Strictly  
speaking, once a record has been made by a  
judicial officer it should not be added to or 40

altered in any way, except possibly to correct obvious "clerical" errors or to expand abbreviations or any particular method of shorthand "note form" used by the judicial officer, the meaning of which may be known only to himself so as to make his notes intelligible when a formal copy of the record is made.

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10 It is clear that the record should be read and taken as it was before the addition was made and without regard to the Magistrate's comments. In order there should be no mistake about this, however, I feel I should state that I am abundantly satisfied that the Magistrate acted throughout in good faith in this matter.

20 The 3rd witness for the prosecution was not in fact recalled to give further evidence under cross-examination of any check he had made of the number of times he had witnessed the signature on cheques of Mahabir.

At the close of the case for the prosecution the Appellant submitted that he had no case to answer on two grounds:-

1. That there was no evidence of an intent to defraud.

and 2. That the prosecution had not been fair to him and that the 3rd witness for the prosecution had not been produced for cross-examination.

30

The learned trial Magistrate ruled that the Appellant did have a case to answer and called upon him to elect how to make his defence as is provided in section 201 of the Criminal Procedure Code. The Appellant then elected not to give evidence or call witnesses and did not make an unsworn statement.

40

It is in these circumstances that the Appellant complains that despite his repeated requests the Magistrate would not allow the 3rd witness for the prosecution to be recalled. The record does not support the allegations that the Appellant ever requested

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that the 3rd witness for the prosecution be recalled or that this request was ever refused or that the Magistrate would not allow the 3rd witness for the prosecution to be recalled.

Nevertheless it must be remembered that the Appellant was not legally represented at his trial. He had undoubtedly been given the impression, when the 3rd witness for the prosecution said in cross-examination that he would have to make a check before he could answer the question of how many times he had witnessed Mahabir's thumbprint on a cheque, that the 3rd witness for the prosecution would be recalled to deal with the point after he had made this check. He really should have been recalled for this purpose. When, at the close of the case for the prosecution, the Appellant complained that the 3rd witness for the prosecution had not been recalled for further cross-examination, the Appellant should have been asked if he still wanted him to be recalled.

10

20

This was not done, however, the Appellant now complains that this is a ground for appeal against his conviction. During the hearing of the appeal I enquired of Counsel for the Appellant in what way the response by the 3rd witness for the prosecution to this question would have affected the issues in the trial, or have been material or relevant. I was not told or satisfied how this matter could have either affected the issue or have been material or relevant to it.

30

I am unable to comprehend how, whether the witness had replied "twice" or "two hundred" or any particular number, the issue in this case would have been affected. The evidence of the fingerprint expert was that the thumbprint on the cheques concerned in the 1st, 2nd and 4th counts was that of Shri Prasad and was not that of Mahabir, and this evidence was accepted by the Court below.

40

If I could have been shown how this evidence would in the slightest way have affected the issue in this case or have been material or relevant, I would have offered the Appellant the right to have either:-

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(1) The case sent back to the Court below for the 3rd witness for the prosecution to be recalled and further cross-examined by the Appellant.

10

or (2) The 3rd witness for the prosecution recalled in this Court for further cross-examination by the Appellant.

The Appellant, who was represented by Counsel, did not ask for this to be done.

20

I am quite satisfied that there are no merits in this ground of appeal and that no miscarriage of justice has occurred by reason of the facts complained of. If need be I would in these circumstances have applied the provision.

30

The first part of the 6th ground of appeal concerns a question put by the learned trial Magistrate to the 10th witness for the prosecution at the end of her evidence-in-chief. There appears to me to be no merit in this complaint. The Court was entitled to put the question, even in the leading way in which it is said it was put, to ensure it understood properly what it thought the witness was intending to imply by her evidence. The second part of this ground of appeal was not referred to by counsel for the Appellant. I have examined the record in this connection and there appears to me to be no merit in the point raised.

40

The 7th ground of appeal complains that the learned trial Magistrate interviewed the Manager of the Bank of New Zealand and the prosecution

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witness Peter Sewell during the course of the trial in the absence of the Prosecutor and the accused.

Reference to this matter is contained in the record of proceedings for 28th August 1967 when, in open Court, in the presence of the prosecutor, the Appellant and the person charged jointly with him and Counsel for 2nd accused, the learned trial Magistrate informed all parties of what had occurred on 25th August, 1967. He said that on that date the Manager of the Bank of New Zealand at Labasa came to the Chambers of the Magistrate without an appointment or prior notice, with his subordinate bank officer Peter Sewell, who had been called as a witness in the case for the prosecution. The Bank Manager informed the Magistrate that Peter Sewell had received from the Appellant a notice to produce certain documents. The Magistrate very properly declined to discuss the matter with the Manager of the Bank or Peter Sewell. He told them they should not have come to see him and that he would have to inform all parties of their visit which should not, of course, have been made.

10

20

The learned trial Magistrate, having informed all parties in open Court of this visit, informed the Appellant that if he wished he could apply to the Court Clerk for a subpoena and that the Court Clerk would advise him the correct procedure to achieve the purpose he understood the Appellant had in mind.

30

The learned trial Magistrate appears to me to have acted with exemplary candour and propriety in an embarrassing position in which, through no fault of his own, he found himself. The Appellant has not cause for complaint against the Magistrate in this respect, who appears to me to have gone out of his way to be as fair, open and helpful to the Appellant as he possibly could.

40

The 8th ground of appeal is in effect on the general ground that the verdict is unreasonable and cannot be supported having

regard to the evidence. For the reasons I have already given I am abundantly satisfied that there was ample evidence, which, if believed, and it was believed, not merely supported the charges on the 1st, 2nd and 4th counts but which led inevitably to the conclusion that the Appellant was guilty on each of these counts. The 8th ground of appeal must, therefore, also fail.

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10 I now return to the 3rd ground of appeal which complains that when alternative counts were added to the charge the consent of the Appellant to summary trial was not given and no pleas were taken. It is submitted that as a result the trial was a nullity.

(cont'd)

20 The record shows that what happened was this:- The Appellant was originally charged, jointly with Shri Prasad, an aged and illiterate person, with four counts of Receiving Money on the four forged cheques referred to in each count contrary to section 374 (a) of the Penal Code. They appeared in Court and, after a number of minor amendments had been made to the charges, they were read over to them. They each consented to summary trial and each pleaded "Not Guilty" to each count.

30 On 24th May 1967 the third day of the trial when the evidence of only four witnesses had been taken, the prosecutor applied for leave to add four alternative counts.

The four alternative charges to which the prosecutor referred were as follows:-

First Count (alternative)  
Statement of Offence

FORGERY: Contrary to section 364 (2) (a) of the Penal Code, Cap.8.

Particulars of Offence

40 HARI PRATAP s/o Ram Kissun and  
SHRI PRASAD s/o Birogi, on the

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12th day of April, 1966 at Nasea,  
Labasa in the Northern Division,  
with intent to defraud forged a  
valuable security namely, a cheque  
No.B44980 in the sum of £93.0.0.  
drawn in favour of cash on the Bank  
of New Zealand, Labasa, purporting  
to be the cheque of Mahabir s/o  
Ram Charan.

(cont'd)

Second Count (Alternative)

10

Statement of Offence

FORGERY: Contrary to section 364 (2) (a) of the  
Penal Code, Cap.8.

Particulars of Offence

HARI PRATAP s/o Ram Kissun and SHRI  
PRASAD s/o Birogi, on the 2nd day of  
July, 1966, at Nasea, Labasa in the  
Northern Division, with intent to  
defraud forged a valuable security  
namely, a cheque No.B46389 in the  
sum of £86.0.0. drawn in favour of  
cash on the Bank of New Zealand,  
Labasa purporting to be the cheque  
of Mahabir s/o Ram Charan.

20

Third Count (Alternative)

Statement of Offence

FORGERY: Contrary to section 364 (2) (a) of the  
Penal Code, Cap.8.

Particulars of Offence

HARI PRATAP s/o Ram Kissun and SHRI  
PRASAD s/o Birogi, on the 13th day  
of December, 1966, at Nasea, Labasa  
in the Northern Division, with intent  
to defraud forged a valuable security  
namely a cheque No.C87802 in the sum  
of £100.0.0. drawn in favour of 802  
on the Bank of New Zealand, Labasa  
purporting to be the cheque of  
Mahabir s/o Ram Charan.

30

Fourth Count (alternative)Statement of Offence

FORGERY: Contrary to section 364 (2) (a) of the Penal Code, Cap.8.

Particulars of Offence

10 HARI PRATAP s/o Ram Kissun and  
SHRI PRASAD s/o Birogi, on the  
27th day of January, 1967, at  
Labasa in the Northern Division,  
with intent to defraud forged a  
valuable security namely, a  
cheque No. 131534 in the sum of  
£80.0.0. drawn in favour of cash  
on the Bank of New Zealand, Labasa  
purporting to be the cheque of  
Mahabir s/o Ram Charan.

20 The learned trial Magistrate heard and  
considered the objections to this application  
and, according to the record, then said:

30 "Court: Bearing in mind the provision  
of S.204, C.P.C. I will grant  
leave to add these 4 alter-  
native charges. Every prose-  
cution witness who has been  
called must be recalled for  
cross-examination if 1st  
accused or counsel for 2nd  
accused so wishes".

40 Having said this the trial continued  
without the recall of any of the witnesses  
who had previously given evidence and with-  
out any formal order that any additional  
counts be added to the charge. Further,  
the additional counts were not read over  
to the accused, nor were the accused asked  
if they wished to be tried on them by the  
Magistrate's Court or the Supreme Court nor  
were their pleas taken.

It is not absolutely clear from the  
record whether the Magistrate in fact  
intended to make an order immediately

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Supreme  
Court  
Appellate  
Jurisdiction  
No. 32  
Judgment  
22nd March  
1968.

(cont'd)



In the  
Supreme  
Court  
Appellate  
Jurisdiction  
No. 32  
Judgment  
22nd March  
1968.

amending the charge as the prosecutor had asked immediately amending the charge as the prosecutor had asked should be done, or whether to do this at some later stage, but he had not in fact made or recorded any order, as ought to be done and recorded in brief terms as for example -

(cont'd)

"Order: Charge amended under C.P.C. 204 by adding 4 counts."

The evidence-in-chief of the next witness, the 5th witness for the prosecution, was then taken. Counsel for the 2nd accused had just opened his cross-examination when the Magistrate pointed out that he had not yet obtained the accused's consent to summary trial or taken their pleas on the four additional counts. The four additional counts were then read for the first time and interpreted and explained to the accused. Each accused then consented to summary trial on each of the four additional counts and each accused pleaded "Not Guilty" to each additional count and the trial proceeded. No objection was taken to the Course followed either by the Appellant or Counsel for the 2nd accused.

10

20

At the conclusion of the trial, in his judgment the learned trial Magistrate referred to these four additional counts in the following terms:-

30

"Although I have no doubt that the 1st accused is also guilty on the 4 alternative counts I will refrain from so finding."

The first question for consideration is:

"When was it that the original charge was in fact amended by the addition of these four alternative counts?"

It is not possible to answer this question directly by reference to the record itself because the record is silent on this point. It must, therefore, be a matter of inference to be drawn from the record and the surrounding circumstances.

In the  
Supreme  
Court  
Appellate  
Jurisdiction  
No. 32  
Judgment  
22nd March  
1968  
(cont'd)

The provisions of the Criminal Procedure Code by which a charge may be amended are contained in section 204 (1), of which the material part reads as follows:-

10

"204 (1). Where, at any stage of a trial before the close of the case for the prosecution, it appears to the court that the charge is defective, either in substance or in form, the court may make such order for the alteration of the charge, either by way of amendment of the charge or by the substitution or addition of a new charge, as the court thinks necessary to meet the circumstances of the case:

20

Provided that where a charge is altered as aforesaid, the court shall thereupon call upon the accused person to plead to the altered charge:

.....

Having regard to this section I have, after considering the whole of the circumstances, come to the conclusion that the charge in this case was not in fact amended, either effectively or ineffectively, until the time when the four additional counts were actually read out in open Court to the Appellant and his co-accused. Their consents to summary trial and their pleas to these additional counts were then taken, as is required to be done by section 204 (1). In these circumstances I am satisfied that there was in fact no irregularity in the sense

30

40

In the  
 Supreme  
 Court  
 Appellate  
 Jurisdiction  
 No. 32  
 Judgment  
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 (cont'd)

complained of in the 3rd ground of appeal.

At the hearing of the appeal learned Counsel for the defence took the matter a stage further however. He contended that it was not sufficient merely to read the four additional counts and to take the accused's consent and pleas on these counts alone, and that the learned trial Magistrate should have taken the accused's consents and pleas afresh to the original four counts in addition to the four new counts.

10

This contention is based on the wording section 204 (1) of the Criminal Procedure Code and with special reference to the meaning of the word "charge" in that section.

It is submitted that on a criminal trial in the Magistrate's Court there can only be one charge. In this connection reference is made to section 121 of the Criminal Procedure Code. It seems clear to me that there can only be one charge before the Court at a trial. If more offences than one are charged, whether in the alternative or not, they must be made the subject of separate counts in the charge. It is contended that if there is any alteration in one of several counts in a charge, or if other counts are added to the charge, the charge itself is altered. The altered charge in this case consists of the original counts and the new counts that have been added. It is the case for the Appellant that it is this "whole" altered charge to which the accused should have been called upon to plead after the additional counts had been added, and not merely the additional counts.

20

30

At first sight there seems to be considerable substance in this view. When however the words used in section 204 (1) of the Criminal Procedure Code are examined critically and in detail, it appears that if

40

so construed curious results, which it is doubtful could ever have been contemplated, ensue.

10 It is contended that the word "charge" in Criminal Procedure Code section 204 (1) means the whole charge and all of the counts in a charge. If that is so the section provides that the original "whole" charge may be altered, inter alia, by the addition of a "new charge". But if the new charge is to be "added" to the old charge in this sense, it would mean that there would in the result be more than one charge before the Court. This would conflict with the provisions of section 121 which clearly envisages that there may never be more than one charge and that all additional offences averred must be made the subject of separate and different  
20 counts in the charge.

In my view, therefore, the words in section 204 - "the court may make such order for the alteration of the charge .... by way of ..... addition of a new charge" must intend and mean "the court may make such order for the alteration of the charge .. by way of ..... addition of a new count to the charge".

30 In other words in this section the word "charge" must there be used as and be interpreted as the word "count to the charge", if section 204 is to be construed properly and consistently with section 121.

40 The first proviso to section 204 appears to me to cover, as it stands, the case where a charge, consisting of one count charging one offence, is altered. In such a case the accused must be called upon to plead to this altered "charge". Where, however a charge contains several different counts, I construe the word "charge" in the first proviso to section 204 (1) to mean and have reference to "a count in a charge". After giving this matter careful consideration and bearing in mind the cardinal principles that the Court must apply to the construction of statutes, I

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Court  
Appellate  
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(cont'd)

cannot think of any other construction to which this proviso can be open, if it is to be construed consistently both with itself and with section 121 of the Code.

In my view the additional alternative counts which were added to the charge in the Court below should have been numbered 5,6,7 and 8, respectively. They all formed a part of the original charge, which was amended, not by the addition of a new "charge" but the addition of these four new counts.

10

It was sufficient compliance with the provisions of the first proviso of section 204 (1) for the Appellant's pleas to be taken to these four additional counts, as was done in the Court below. It was not, in my view, necessary for the Appellant's pleas to be taken again to the first four original counts. Even if I am wrong in this view, no conceivable miscarriage of justice can have occurred by only taking the Appellant's pleas to the additional counts. In my view, in these circumstances, if it was an irregularity, it was one of procedure and not substance and did not go to the jurisdiction. In that event I would, therefore, apply the proviso of section 325 (1) of the Criminal Procedure Code.

20

For the reasons I have given I am of the opinion that there is insufficient merit in any one of the Appellant's grounds of appeal to justify any interference with the conviction of the Appellant on the 1st, 2nd and 4th counts. Counsel for the Appellant has conceded at the hearing of the appeal, that there was sufficient evidence to support a conviction on each of the alternative counts of forging the four cheques referred to therein. If I had any doubts of the correctness of the conviction on the 1st, 2nd and 4th counts I would have substituted convictions on the appropriate alternative counts, but like the Magistrate in the Court below I do not propose to do so and these counts are very properly not proceeded with.

30

40

In the result the appeal against the conviction on the 3rd count is allowed, but it is dismissed in respect of the convictions on the 1st, 2nd and 4th counts.

(sgd) Hammett J.  
CHIEF JUSTICE.

In the  
Supreme  
Court  
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(cont'd)

SUVA.

22nd March, 1968.

In the  
Supreme  
Court  
No. 33  
Order on  
Revision  
22nd March  
1968

No. 33

ORDER ON REVISION

The accused was convicted on each of four counts of receiving money on forged documents contrary to section 374 (a) of the Penal Code and was sentenced to 6 months' imprisonment on each count. On appeal his conviction on the third count was set aside.

10

On each of the other counts the evidence showed that he received, either as the principal or as a person who may be charged as a principal by virtue of the provision of section 21 of the Penal Code, the sums of £93, £86 and £80, respectively, by means of carefully calculated and premeditated acts of dishonesty. He, a comparatively educated man, betrayed the trust and preyed upon the ignorance of an elderly illiterate man who had apparently been very generous to him.

20

He did so by deliberately falsely identifying another old illiterate Shri Prasad as Mahabir and knowingly and falsely witnessing Shri Prasad's thumbprint on cheques, before a bank officer, as that of Mahabir. Thereby considerable sums of money were paid out of Mahabir's bank account without his knowledge or consent for which he, the accused, has never accounted and in respect of which he has made no restitution.

30

He has by these offences of dishonesty extracted from the Bank, or Mahabir's bank account, a total of £259.

The accused is not a man of previous good character. For each of these offences committed as a series of systematic fraud on widely different occasions and which were clearly carefully premeditated, the accused was sentenced to 6 months' imprisonment. If he had had no previous convictions this might well have been an

40

appropriate but nevertheless lenient sentence of each of these offences, in these circumstances.

10 The accused does, however have no less than four previous convictions of which the first was for embezzlement for which he was fined £50 and two subsequently were for fraudulent conversion, for each of which he was sentenced to 6 months' imprisonment.

The accused has now been convicted of three more offences, indicating fraud of a particularly despicable type, for which I consider the sentences passed of 6 months' imprisonment were quite inadequate. He has clearly not responded to the leniency that has been shown him in the past and has persisted in committing such offences involving dishonesty.

20 I do therefore set aside the sentences of 6 months imposed on counts 1, 2 and 4 respectively and in lieu thereof I pass a sentence of 12 months' imprisonment on each of such counts. In addition, under the provisions of section 40 of the Penal Code I order that the accused be subject to Police supervision for 3 years from the date of his release from Prison.

(sgd) Hammett J.

CHIEF JUSTICE

30 SUVA.

22nd March, 1968.

In the  
Supreme  
Court  
No. 33  
Order on  
Revision  
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(cont'd)



NO. 34.

CERTIFICATE OF PREVIOUS CONVICTIONS

In the  
Supreme Court  
No. 34  
Certificate  
of Previous  
Convictions.

Court and place of Trial	Date of Sentence	Office (Quoting Law and Section)	Sentence	Name convicted under
Labasa MC	20.10.59.	Embezzlement: Section 300 (a)(ii) of Penal Code, Cap.8.	Fined £50 or 3 months Imp. (C/F.No.360/59)	Hari Prataps/o Ram Kissun.
Labasa MC	17. 7.61.	Conversion:Section 305 (1) of Penal Code, Cap.8.	6 months Imp-risonment (C/F.No.206/61)	- do -
Labasa MC	4. 9.61.	Conversion:Contrary to Section 305(1) (c) (ii) of P.C. Cap.8.	6 months Imp-risonment (consecutive) C/F. No.206/61	- do -
Labasa MC	17. 6.63.	Writing letter for another and failing to sign name and address:Section 380 (1) of Penal Code, Cap.8.	Fined £1.0.0. or 7 days and 5/- costs. (C/F. No. 172/63)	- do -

NO. 35.  
Notice and grounds of Appeal

To: The Registrar of the Court of Appeal.

In the  
Fiji Court  
of Appeal  
No. 35  
Notice and  
Grounds  
of  
Appeal  
28th  
March  
1968.

I, HARI PRATAP son of Ram Kissun a convicted Prisoner convicted before the Magistrate's Court of Fiji at Labasa of the offence of Receiving Money On Forged Document and sentenced to 2 years & there after appeal being allowed in Supreme Court in its appellate Jurisdiction on one count & sentence increased on 3 counts to three years on the 22nd day of March, 1968, and detained in H.M. Gaol at SUVA.

10

I, the above-named appellant, hereby give you notice that I desire to appeal to the Court of Appeal against :-

- (a) My conviction, and decision of the Supreme Court of Fiji in its appellate Jurisdiction.

on the following grounds:-

20

1. The Learned Appellate Court Judge erred in his decision and overlooked the injustice occurred while holding the Appellant was rightly convicted under Section 21 of the Penal Code in the absence of no evidence whatsoever educed by the 2nd accused against the Appellant and the 2nd accused's acquittal during the original trial.

30

2. The Learned Appellate Court Judge erred in allowing convictions to stand on 3 counts and overlooked miscarriage of justice occurred while at the joinder of the alternative counts plea and consent was not taken and the provisions of Section 204 of C.P.C. Cap 9 Laws of Fiji was borne by the learned Magistrate in mind but only part of it were applied and the rest was ignored whereby the appellant has been deprived and deceived of his rights and the trial is at nullity.

40

In the  
Fiji Court  
of Appeal  
No. 35  
Notice and  
Grounds of  
Appeal  
28th March  
1968.

3. The learned Appellate Court Judge erred in his decision and overlooked the injustice occurred while the principal prosecution witness and the Bank Manager were unreasonably interviewed and advised by the trial Magistrate while the same privilege was refused to the Appellant and the learned Magistrate insulting remark to your Petitioner. 10
  
4. The Appellate Court erred in supplying to the Appellant the incomplete copy of the proceedings of the Magistrate's Court and it further erred by not allowing the Appellant to Re-peruse and inspect the original records of proceedings despite the Appellant's repeated requests by his letters dated 2.1.68, 3.1.68 and 8.1.68 and the Learned Judge erred and ignored the Appellant's application dated 5.1.68 for an order that the true copy of proceedings be supplied to the Appellant: WHEREBY the Appellant could not properly brief the legal aid counsel assigned to him and the truth hidden behind and injustice done to the Appellant with this regard remains a mystery, particularly while the original trial lasted for 6 months without any cause and the witness concerned, knowing at the time that he was not released by the Court, disappeared from the Colony completely. 20 30
  
5. The Legal Aid Counsel assigned should have complied with my written instructions, particularly while he argued the appeal in Appellate Court on all the grounds filed by me in person and he should have applied for a re-trial in accordance with my written instructions. 40
  
6. The Appellate Court erred in Reviewing the Sentence on 3 counts without giving prior notice to the Appellant or his Legal Aid Counsel

assigned within a reasonable time and while appeal against conviction had partly been allowed, which is not justified.

In the  
Fiji Court of  
Appeal No. 36.  
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Appeal  
28th March  
1968.

7. The Appellate Court erred in not informing fully by its letter dated 2.1.68 and addressed to Mr.A.I.N. Deoki with regard to the tampering of records and it further erred by not supplying the complete copy of proceedings to the said Mr.A.I.N. Deoki which has caused the un-necessary delay in hearing of Appeal while the brief was refused by the said Mr. A.I.N. Deoki.

10

State:- (a) Whether you desire to be present in person on the hearing of the appeal. YES.

20

(b) Whether you desire the Court to assign you legal aid. NOT AT ALL.

Dated at SUVA this 28th Day of March, 1968.

(sgd) Hari Pratap,  
Appellant in person.

No. 36.

In the  
Fiji  
Court of  
Appeal  
No. 36.  
Additional  
Ground of  
Appeal.  
22nd  
April  
1968.

ADDITIONAL GROUND OF APPEAL

S U B J E C T to leave, the Appellant intends to file the following ground of appeal in addition to his Notice of Appeal dated 28th day of March, 1968:-

7 .... Under all the circumstances of the case and in particular interview and the advise of principal prosecution witness and the Bank Manager in Chambers by the learned Trial Magistrate and an attempt to show the records of proceedings be used as genuine by adding, altering, and crossing material words at various places to the original records without the knowledge of the Appellant and in his absence on a Sunday, the records of proceedings has been deceitful and the Judgment cannot be said satisfactory. 10  
20

DATED and FILED this 22nd day of April, 1968.

Sgd. Hari Pratap

(HARI PRATAP)

Appellant in Person. 30

To: The Registrar,  
Fiji Court of Appeal;

The Honourable,  
The Attorney-General,  
SUVA

NO. 37

Gould, V.P.

JUDGMENT

In the  
Fiji  
Court  
of  
Appeal  
No. 37  
Judgment  
22nd  
May  
1968.

10 The appellant was convicted by the Magistrate's Court sitting at Labasa on each of four counts of receiving money on a forged document contrary to section 374 (a) of the Penal Code (Cap. 8 Laws of Fiji 1955; now s. 381 (a) Laws of Fiji, 1967) and sentenced to six months' imprisonment on each count, to run consecutively. Another accused person tried jointly on the same counts was acquitted on all of them. The appellant appealed to the Supreme Court, which, by reason of a weakness in the chain of evidence on the third count, quashed the conviction on that count, but sustained the other three. After the appeal in the Supreme Court, the learned Chief Justice reviewed the sentences passed by the magistrate and, having considered the  
20 appellant's criminal record, increased the sentence on each of the counts, 1, 2 and 4 to twelve months' imprisonment.

30 In the Magistrate's Court proceedings the appellant appeared in person. After commencing his appeal to the Supreme Court he at first declined the legal assistance which was offered to him, but later agreed to accept and was granted legal aid. It would appear that he has, at some time, had some experience as a lawyer's clerk. From the Supreme Court decision the appellant brought the present appeal, again, by his own choice conducting the appeal in person. As the appeal to this court, from the Supreme Court in its appellate jurisdiction, is confined to questions of law, the task was in fact one beyond the capability of the appellant. He made frequent references to matter not on the record of appeal and  
40 his submissions, some of which he was permitted to make in writing, were sometimes scandalous in character. Our perusal of the record of proceedings in the Supreme Court shows that the appellant's complaints were fully and patiently investigated there, and that his counsel had, on instructions, withdrawn applications to supplement the record for the purpose of

In the  
Fiji  
Court of  
Appeal  
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Judgment  
22nd  
May  
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(cont'd)

impugning the motives of the trial magistrate. One aspect of the proceedings in the Magistrate's Court, however, has caused us serious concern. It appears, partly by implication, from Ground 2 of the Notice of Appeal, which reads :-

"The Learned Appellate Court Judge erred in allowing convictions to stand on 3 counts and overlooked miscarriage of justice occurred while at the joinder of the alternative counts plea and consent was not taken and the provisions of Section 204 of C.P.C. Cap. 9 Laws of Fiji was borne by the learned Magistrate in mind but only part of it were applied and the rest ignored whereby the appellant has been deprived and deceived of his rights and the trial is at nullity."

10

20

This ground has reference to events which took place on the third day of the proceedings before the magistrate. At 2.20 p.m. the prosecutor stated that he wished to add four alternative counts; the record reads :-

"Chandra:

I wish to add 4 alternative counts. I will not wish to adduce further evidence from witnesses already called.

30

1st Accused:

Object. Case has been pending for last three months. Take by surprise.

Chauhan:

Object. Late stage. Material witnesses already heard. Taken defence by surprise.

Court:

Bearing in mind the provision of S.204, C.P.C. I will grant leave to add these 4 alternative charges. Every prosecution witness who has been called

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must be recalled for cross examination if 1st accused or Counsel for 2nd accused so wishes".

A witness, Uma Kant, was then called and gave evidence of considerable importance to the chain of proof. Then, the same afternoon, the following appears in the record -

"Court:

I have forgotten to comply with S.4 (1) C.P.C. in relation to the alternative counts.

All four alternative charges read and explained in English and Hindustani. Both Accused say they understand.

Right of trial by Supreme Court and provisions of S.211A C.P.C. explained.

1st Accused:

I wish to be tried by this Court on all of the 4 alternative counts.

2nd Accused:

I wish to be tried by this Court on all of the 4 alternative counts.

1st Accused:

I plead not guilty to all of the 4 alternative counts.

2nd Accused:

I plead not guilty to all of the 4 alternative counts".

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(cont'd)

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In the  
Fiji  
Court  
of  
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May  
1968.

(cont'd)

It transpires that the four counts charged the appellant with forgery and were expressed to be alternative to the original counts. In the event, the magistrate convicted the appellant upon the original four counts, but not on the alternative ones.

One question which arises from the course which the proceedings took, and which was considered in the Supreme Court is what is the effect of the interval between the granting of leave to add the alternative charges and their being read and explained to, and pleaded to by, the two accused who were then before the court. If the amendment took place on the earlier occasion there is authority for saying that the evidence (which was material) given after the amendment and prior to the plea was a nullity - *Eronini v. The Queen* (1953) Vol. 14 Selected Judgments of the West African Court of Appeal 366. As a matter of inference from the record and the surrounding circumstances, the learned Chief Justice held that the charge was not amended until the time when the four additional counts were read out in open court. We do not propose to examine this finding but proceed to the next question which was decided by the learned Chief Justice.

It arises from the fact that, when the accused were asked to plead upon the amendment, they pleaded only to the four additional counts, and were not asked and did not plead again to the original four. The submission of counsel for the appellant in the Supreme Court, that this was fatal to the trial, is summarized in the judgment of the learned Chief Justice, as follows:-

"This contention is based on the wording section 204 (1) of the Criminal Procedure Code and with special reference to the meaning of the word "charge" in that section.

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10 It is submitted that on a criminal trial in the Magistrate's Court there can only be one charge. In this connection reference is made to section 121 of the Criminal Procedure Code. It seems clear to me that there can only be one charge before the Court at a trial. If more offences than one are charged, whether in the alternative or not, they must be made the subject of separate counts in the charge. It is contended that if there is any alteration in one of several counts in a charge, or if

20 "other counts are added to the charge, the charge itself is altered. The altered charge in this case consists of the original counts and the new counts that have been added. It is the case for the Appellant that it is this "whole" altered charge to which the accused should have been called upon to plead after the additional counts had been added, and not merely

30 the additional counts."

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(cont'd)

It will be convenient at this stage to set out the relevant provisions of the Criminal Procedure Code (Cap. 14 - Laws of Fiji, 1967). They are :-

40 "120. Every charge or information shall contain, and shall be sufficient if it contains, a statement of the specific offence or offences with which the accused person is charged, together with such particulars as may be necessary for giving reasonable information as to the nature of the offence charged.

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121 (1). Any offences, whether felonies or misdemeanours, may be charged together in the same charge or information if the offences charged are founded on the same facts or form, or are part of, a series of offences of the same or a similar character.

121 (2). Where more than one offence is charged in a charge or information, a description of each offence so charged shall be set out in a paragraph of the charge or information called a count. 10

204 (1). Where, at any stage of the trial before the close of the case for the prosecution, it appears to the court that the charge is defective, either in substance or in form, the court may make such order for the alteration of the charge, either by way of amendment of the charge or by the substitution or addition of a new charge, as the court thinks necessary to meet the circumstances of the case: 20

Provided that - 30

(a) where a charge is altered as aforesaid, the court shall thereupon call upon the accused person to plead to the altered charge;

(b) where a charge is altered under this subsection the accused may demand that the witnesses or any of them be recalled and give their evidence afresh or be further cross-examined by 40

the accused or his barrister and solicitor and, in such last-mentioned event, the prosecution shall have the right to re-examine any such witness on matters arising out of such further cross-examination".

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Court  
of  
Appeal  
No. 37  
Judgment  
22nd  
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1968.

10 The Criminal Procedure Code does not define the word "charge" but it is obvious that the question of the construction of section 204 (1) must be approached in the light of the earlier sections quoted, which show that a charge is something which contains statements of the sum total of the offences which are intended to be tried together. Each offence is to be set out in a separate count. That a charge is to be in writing is indicated by the rules for framing charges contained in  
20 section 123.

(cont'd)

When one looks at section 204 with this background it is clear that, with one exception, the comprehensive meaning attaching to the word "charge" by reason of the earlier sections is fitting and appropriate. The exception is in the words permitting alteration of the charge "by the .. addition of a new charge". There appears to be no specific provision in the Criminal Procedure Code to the effect that not more than one charge is to be tried at one time, which, of course is the universal rule. But in any event the addition of a new charge, in the sense of section 121, would not be the "alteration" of an existing charge. Therefore if "addition of a new charge", is to have any meaning at all, it must be read as "addition of a new count". The question is whether that consideration entitles the  
30 court to construe the word "charge" as "count" where it appears to proviso (a) to the section. The learned Chief Justice arrived at the conclusion that it did so by reasoning expressed in the following passage from his judgment:-  
40

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Court  
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No. 37  
Judgment  
22nd  
May  
1968.

(cont 'd)

"In my view, therefore, the words in section 204 - "the court may make such order for the alteration of the charge.. by way of... addition of a new charge" must intend and mean "the court may make such order for the alteration of the charge ... by way of .. addition of a new count to the charge. 10

In other words in this section the word "charge" must there be used as and be interpreted as the word "count to the charge", if section 204 is to be construed properly and consistently with section 121.

The first proviso to section 204 appears to me to cover, 20  
as it stands, the case where a charge, consisting of one count charging one offence, is altered. In such a case the accused must be called upon to plead to this altered "charge". Where, however a charge contains several different counts, I construe the word "Charge" in the first 30  
proviso to section 204 ( 1 ) to mean and have reference to "a count in a charge". After giving this matter careful consideration and bearing in mind the cardinal principles that the Court must apply to the construction of statutes, I cannot think of any other construction to which this 40  
proviso can be open, if it is to be construed consistently both with itself and with section 121 of the Code".

This view of the section was adopted by Crown Counsel in argument before this court, but with great respect, we take the view that this is not the correct interpretation. Where there is only one offence contained in a charge it may be amended by a change in its own wording, the substitution of another offence or the addition of one or more counts: We feel that where the learned Chief Justice refers to "a charge, consisting of one count charging an offence" he visualizes it being amended only in its particulars or by substitution. Then the direction to call upon the accused person to plead to the "altered charge" can only mean plead to the resultant varied or new charge. But where it is amended by the addition of another count surely the "altered charge" is the original charge as altered by the addition. We do not see that any difference arises whether there is only one offence contained in the original charge or whether there are two or more.

Section 204 clearly embraces in the concept of alteration, variation, substitution and addition. Whichever course is taken, it is the original charge which is altered. When you add material to an existing object it is the existing object which is altered - it is not the new material. When you add a count to an existing charge it is not the new count which is altered, but the existing charge. We see no escape from the plain meaning of the words "altered charge" in proviso (a) and do not find anything that can be drawn from the one anomaly in the earlier part of the section, of sufficient weight to affect what we consider to be the only possible construction of the proviso.

It is idle to speculate upon the underlying reason for the provision. Where an accused person has pleaded not guilty to a number of counts in a charge he is at

In the  
Fiji  
Court of  
Appeal  
No. 37  
Judgment  
22nd  
May  
1968.  
(cont'd)

In the  
Fiji  
Court Of  
Appeal  
No. 37  
Judgment  
22nd  
May  
1968.  
(cont'd)

liberty to change his plea to "guilty" at any time so the provision offers him no advantage. On the other hand it does appear to afford him the opportunity, where he has pleaded "guilty" to some counts and "not guilty" to others of reversing his plea of "guilty". That is just. If an accused person has pleaded guilty to counts (a) and (b) and not guilty to counts (c) and (d) of a charge, he is surely entitled to reconsider his position if the prosecutor then proposes to add two new counts.

10

In our judgment the result of the failure to take the appellant's plea to the whole charge upon the amendment is that the proceedings thereafter became a nullity. On not dissimilar legislation in Nigeria a similar conclusion was reached in Fox v. Commissioner of Police Vol.12 Selected Judgments of the West African Court of Appeal at p. 215 and Eronini v The Queen (supra). It is true that the Criminal Procedure Ordinance (Cap. 43) which was the legislation which applied, contains a provision in section 164 (4) that "when a charge is so amended ... the charge shall be treated for the purpose of all proceedings in connection therewith as having been filed in the amended form". That section does not appear in the Fiji Criminal Procedure Code but we feel that its absence makes no difference to the fact that at least from the time of the amendment, the proceedings must be taken as having continued without any plea being taken, when a plea was required by law.

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Crown Counsel has submitted that the case should be treated as one in which no valid amendment was ever made, and that the trial in relation to the original four counts should be held valid, provided no prejudice to the appellant arose. This point was not considered specifically in the West African cases referred to above, though the fact that it does not appear to have been raised may indicate that it was not considered a valid argument. Before

40

10 this court counsel contended that the amend-  
 ment was irregular because the taking of a  
 plea was a necessary ingredient. It was there-  
 fore legally irrelevant to the proceedings.  
 Aply though this argument was presented, we  
 are unable to agree with it. Under section  
 204 the charge must first be altered and then  
 ("thereupon" is the word used) the plea must  
 be called for. If the plea was completely  
 forgotten and never called for, the charge  
 would nevertheless have been amended.

In the  
 Fiji  
 Court  
 Of Appeal  
 Judgment  
 No. 37  
 22nd  
 May  
 1968.

(cont'd)

20 The learned Chief Justice expressed  
 the view that if he was incorrect in his  
 construction of section 204 he would have  
 applied the proviso of section 325 (1) of  
 the Criminal Procedure Code (now s.300(1)  
 Cap. 14 Laws of Fiji 1967), on the ground  
 that no conceivable miscarriage of justice  
 could have occurred. While we sympathise  
 with this opinion from a factual point of  
 view, we are unable to agree that this  
 omission was one which was curable by the  
 application of the proviso. We understand  
 from Crown Counsel for the West African  
 cases above-mentioned were not quoted in  
 argument before the learned Chief Justice  
 but they support our own view that proceed-  
 ings after there has been failure to call  
 for a plea which is required by law, are a  
 nullity. We know of only one case in  
 30 which it is said there is jurisdiction to  
 try a person without a plea being taken  
 (except for those cases in which a plea of  
 not guilty is entered on refusal to plead)  
 and that is where a person is, after due  
 investigation found mute by visitation of  
 God and yet is capable of following the  
 proceedings - see Archbold, Criminal  
 Pleading and Practice (36th Edn) Para.427.

40 We have observed that in *R. v McVitie*  
 (1960) 2 All E.R. 498 the court appeared to  
 indicate a wide view of the power to  
 exercise the proviso, though it refrained  
 from saying that it could be applied where  
 the indictment disclosed no offence. *R. v.*  
*Thomson* (1914) 2 K.B. 99, which is referred



In the  
Fiji  
Court of  
Appeal  
No. 37  
Judgment  
22nd  
May  
1968.  
(cont'd)

to in R. v McVitie, is a strong case in that the proviso was applied though the indictment was bad for duplicity. In our opinion the defect in the case before us was more fundamental. From the time the plea should have been taken, but was not, the appellant was not properly before the court. The proceedings were null and void and the evidence given could not be regarded. We do not think it is open to this court to say that by virtue of the proviso, we can give full value to the evidence which we have held the magistrate must disregard, and convict the appellant where the magistrate could not lawfully do so. In our judgment such a course would do violence to established principles concerning the trial of persons accused and would therefore involve a miscarriage of justice.

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From the point of view of the case before us we have arrived with reluctance at the conclusion we have expressed, as there was ample evidence which if it could lawfully be regarded, would justify the conviction of the appellant. Nevertheless we must apply the law as we find it and accordingly the appeal is allowed and the convictions and sentences of the appellant on the three remaining counts are quashed.

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T.J. GOULD  
VICE PRESIDENT  
J.P. TRAINOR  
JUDGE OF APPEAL

30

R. KNOX-MAWER  
JUDGE OF APPEAL

SUSA,

22ND MAY, 1968.

Appellant in person  
Solicitor for the Respondent:

B.A. Palmer, Esquire,  
Senior Crown Counsel,  
for the Crown.

40

No. 38

ORDERGranting Special Leave to Appeal  
to Her Majesty in Council

At the Court at Buckingham Palace

The 18th day of March, 1969

PRESENT

THE QUEEN'S MOST EXCELLENT MAJESTY

LORD PRESIDENT  
MR. SECRETARY ROSSCHANCELLOR OF  
THE DUCHY OF  
LANCASTER  
MR. SILKINIn the  
Privy  
Council  
No. 38  
Order  
granting  
Special  
Leave to  
Appeal to  
Her Majesty  
in Council  
18th March  
1969.

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 17th Day of February 1969 in the words following, viz, :-

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 the Attorney-General for Fiji praying for special leave to appeal to Your Majesty in Council from a Judgment of the Fiji Court of Appeal dated the 22nd May 1968 and pronounced in the matter of the conviction of Hari Pratap s/o Ram Kissun Respondent by the Magistrate's Court at Labasa on three counts of receiving money on a forged document contrary to section 374 (a) of the Penal Code:

"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 no one appearing at the Bar on behalf of the Respondent 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 against the Judgment of the Fiji Court of Appeal dated the 22nd May 1968:

"AND Their Lordships do further report to Your Majesty that the proper officer of the said Fiji Court of Appeal ought to be

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In the  
Privy  
Council  
No. 38  
Order  
Granting  
Special  
Leave to  
Appeal to  
Her Majesty  
in Council  
18th March  
1969

directed to transmit to the Registrar of the Privy Council 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."

HER MAJESTY having taken the said Report into consideration was pleased by and with the advice of Her Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

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(cont'd)

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.

W.G. AGNEW.

EXHIBIT "W"  
Statement by Hari Pratap, 1st Accused  
FIJI POLICE.  
Statement Form.

EXHIBITS  
"W"  
Statement  
by  
Hari Pratap  
1st  
Accused  
20th  
February  
1967.

10 Cr/Exp Number 23/67. Police Station: Labasa.  
Statement by: Hari Pratap, father's name:  
Ram Kissun, Male Race: Indian. Place of  
Birth: Naria, Ra. Age: 33 years. Employment  
Clerical Agent. Resides at Bulileka, Labasa.  
Recorded by: d/C355 K.D. Mishra on 20th  
February, 1967 Time: 1205 hrs. Interpreter self  
from English to English.

20 I read and write English well and I  
like to make my statement in English. The  
Police have once interviewed me concerning  
the alleged Forgery of Cheques which were  
witnessed s/o Ram Charan very well of  
Korotari from last 3 or 4 years. I am not  
quite certain but about 2 or 3 years ago  
Mahabeer came to me and I think he met me  
in my office. He spoke to me and asked me  
if I can help him in opening the cheque  
account in the bank of New Zealand at  
30 Labasa. I agreed and on the same day I  
went with him to the Bank and spoke to the  
Manager then Mr. Robertson. He opened the  
cheque account and he put his specimen of  
thumb print and I witnessed that thumb print  
on the specimen card held by the bank. I  
have been shown by the police (D/C 355 Mishra  
D/C355) a cheque leaf No. B44980 dated  
12/4/1966 for the sum of £93.0.0. I identify  
my signature on that cheque leaf and the  
thumb print I should say is that of Mahabeer  
40 s/o Ram Charan of Korotari, Labasa. I cannot  
positively say that the thumb on this cheque  
is that of Mahabeer, but since I have  
witnessed his many cheques I presume that  
this thumb print is his on this cheque. I  
have been told by the police (D/C 355

## EXHIBITS

"W"  
Statement  
by Hari  
Pratap  
1st  
Accused  
20th  
February  
1967.

Mishra...) that many expert have compared the thumb print on the cheque with the print of Mahabeer and they say that the thumb

Sgd. Hari Pratap

Sgd. K.D.Mishra d/C 355.

(cont'd)

print is not that of Mahabeer s/o Ram Charan and to this reply I maintain that this should be Mahabeer's print and no one elses. The reason why I say it that my signature is on the cheque leaf. I have been shown by the police that 2nd cheque No. B46389 dated 2.7.66 for the sum of £86.0.0. I identify the signature of mine on it and as I have explained in the previous case is the same explanation in to this case. I maintain that Mahabeer must have put his thumb print and only then I have witnessed it. If the expert says that it is not the thumb print of Mahabeer and is of some one else, I have nothing to say to that but I like to say that it should be the print of Mahabeer and no one elses. I have been shown with the 3rd cheque leaf No. C87802 dated 13.12.1966 for the sum of £100.0.0. and I identify my signature on that leaf as well. I am quite certain that Mahabeer had put the thumb print on this cheque leaf and even he had told his son Jai Karan that he had drew the sum of £100.0.0. and no other monies. I have also seen the 4th cheque leaf No.131534 in the sum of £80.0.0. I identify the signature of mine on this cheque leaf and I have witnessed it. I am quite sure that the thumb print of that of Mahabeer and no one else and that is why I have witnessed it. I agree that all the cheques have been written by the Bank staffs and not by me. The reason is that I only write cheque leaves when the bank staffs are very busy but the thumb prints got to be put in presence of Bank staffs and they got to witnessed it as they have done in these 4 cheques. I then witness it as my specimen

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signature is not in the bank and without my witnessing it they will not accept the cheques of Mahabeer s/o Ram Charan. I have not produced these 4 cheques to the teller and withdrew the monies as I have never did this for my clients. I give them the cheque and they withdraw it themselves. At times I have just witnessed and cheques and hand back the cheques to the bank staff who witnessed it and hand it to the drawer. I have no trouble with Mahabeer and I have no reason to give as to why he says that he have not withdrawn and received these monies, but I think he is confused. The reason why I have issued him the cheque No. A263575 to him which is the security for the sum of £70.0.0. I have borrowed from him. Similarly I have given him a cheque No. B34184 for the sum of £30 which money I have borrowed from him. These 2 cheques were not to be produced to the bank but were merely securities. I have not forged these 4 cheques and obtained the money.

(sgd) Hari Pratap Sgd. K.D.Mishra 355

I hereby certify that I have read and explained the contents of this statement in English to Hari Pratap and he appeared to understand its contents, approve of them.

(sgd) K.D. Mishra 355.

1300 hrs.

EXHIBITS  
"W"  
Statement  
by Hari  
Pratap  
1st  
Accused  
20th  
February  
1967.

(cont'd)

30                    EXHIBIT "X1"  
Statement of Shri Prasad, 2nd accused  
FIJI POLICE            -            STATEMENT

Cr Number 23/67. Police Station Labasa.  
Statement by SHIRI PRASAD. father's name  
Birogi Male. Race: Indian Place of Birth:  
KOROVATU, Labasa. Age: 60 years Employment:  
Cultivator. Resides at WAIQILI, LABASA.  
40 Recorded by D/C 355 K.D. Mishra on 1st

EXHIBITS  
"X1"  
Statement  
of Shri  
Prasad  
2nd  
Accused  
1st March  
1967.

EXHIBIT  
 "X1"  
 Statement  
 of Shri  
 Prasad  
 2nd  
 Accused  
 1st March  
 1967.  
 (cont'd)

March, 1967. Time 1325 hrs. Interpreter:  
 Self from Hindi to English.

You are not obliged to say anything but  
 you may yourself make a statement and what  
 ever you say, might perhaps be written down  
 and given in evidence.

(sgd) K.D.Mishra D/C 355 sgd. Shri Prasad.

I, Shri Prasad son of Birogi wish to  
 make a statement. I desire that whatever I  
 say, be written down. I have been told that  
 I need not to say anything, but what ever I  
 say perhaps it may be given in evidence.  
 (sgd) Shri Prasad. (sgd) K.D. Mishra D/C 355.  
 (sgd) Salik Ram P.C. 481.

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I have an account with the Bank and last  
 year I drew money out on many occasions. I  
 opened the account more than two years ago:  
 Bhikam opened my account. This was a book  
 account. I dont remember but last year I  
 had a discussion between Hari Pratap and  
 me. Hari Pratap said where do you have your  
 income return prepared and I said with  
 Bhikam and he said I will prepare it  
 properly and I said you arrange an advance  
 for me from the bank of £200. He said al-  
 right I will try and have it given to you.  
 After that I went to the Bank one day with  
 him. Hari Pratap talked to the Bank and  
 told me that the Bank people wanted the  
 lease. I then said that money was required  
 to get the lease. Then Hari Pratap had  
 £19 taken out of the Bank. I affixed  
 thumb print and then the money was taken  
 out. I then got the lease and when the  
 lease arrived then I went with Hari Pratap  
 and he obtained a £100 advance. I had  
 told the Bank to take my cane proceeds also.  
 After that I drew money from the Bank on  
 many occasions, Hari Pratap went with me  
 each time and drew money after talking to  
 the Bank. I do not remember but I think  
 that once I drew £60, once ten, five once  
 £40 and did not draw out any money after-  
 wards. Every time Hari Pratap went with

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EXHIBITS  
 "X1"  
 Statement  
 by Shri  
 Prasad  
 2nd  
 Accused  
 1st March  
 1967.  
 (cont'd)

10 me and caused the money to be withdrawn. I  
 used to give him 2d and he used to buy the  
 cheque, then I used to place the thumb mark.  
 He used to take it and bring the money and  
 give it to me. Police has told me that one  
 cheque which was drawn on 12th April last  
 year for £93 with my thumb print against  
 and cashed in the account of Mahabeer son  
 of Ram Charan, I do not know anything about  
 it. I think it must be Hari Pratap's trick.  
 Similarly the £86 drawn out, £100 drawn out  
 and £80 drawn out I do not know anything  
 about them. To my knowledge I did not  
 place my thumb print and withdraw money from  
 Mahabeer's account. If I knew I would not  
 have placed by thumb. Hari Pratap has  
 played a trick with me. I am illiterate  
 and where ever Hari Pratap required me to  
 place my thumb in the Bank I placed my  
 20 thumb. I remember that each time I  
 affixed my thumb I took money from the Bank.  
 I admit that it is possible that the thumbs  
 on these four cheques shown to my by the  
 police and alleged to be my thumb could be  
 mine but those monies £93, £86, £100 and £80  
 I never drew out from the Bank. Nor do I  
 know anything about them. I do not know  
 Mahabeer son of Ram Charan. I know that  
 Hari Pratap is playing a trick on me.

30 (sgd) Shri Prasad. (sgd) K.D.Mishra,  
 (sgd) Salik Ram P.C. 481.

Shri Prasad s/o Birogi cannot read this  
 statement. I hereby certify that I have  
 read over the contents of this statement  
 in Hindi to Shri Prasad s/o Birogi and  
 that I have told him that he can correct,  
 alter or add anything and that he approved  
 the contents thereof.

(sgd) K.D. Mishra sgd. Salik Ram P.C.481.

40 I hereby certify that I have translated  
 the contents of this statement from Hindi to  
 English to the best of my knowledge and



EXHIBIT "XI"  
Statement by  
Shri Prasad  
2nd Accused  
1st March  
1967

ability.

Sgd. K.D. Mishra D.C. 355

K.D. Mishra D.C. 355.

(cont'd)

"Y"  
Statement  
Of Hari  
Pratap  
1st  
Accused  
8th March  
1967

EXHIBIT "Y"

Statement of Hari Pratap, 1st Accused. 10

FIJI POLICE STATEMENT FORM.

Cr/Case Number 23/67. Police Station:  
Labasa. Statement by Hari Pratap. Father's  
name Ram Kissun, Male. Race Indian. Place of  
Birth: Naria, Ra. Age: 33 years. Employment  
Clerical Agent. Resides at Bulileka, Labasa.  
Recorded by D/C 355 K.D. Mishra on 8th  
March 1967. Time: 0920 hrs. Interpreter: 20  
Self from English to English.

You are not obliged to say anything un-  
less you wish to do so but what you say may  
be put into writing and given in evidence.

(Sgd) K.D. Mishra D/C 355.

" Hari Pratap.

I Hari Pratap s/o Ram Kissun wish to make a  
statement. I want some one to write down what  
I say. I have been told that I need not to  
say anything unless I wish to do so and that 30  
what ever I say may be given in evidence.

(sgd) Hari Pratap.  
" K.D. Mishra D/C 355.  
" J.N. Ram P.C. 241.

Q. You know that I have brought you  
here in connection with the forgery  
case of Mahabeer s/o Ram Charan of  
Korotari, Labasa?

A. Yes.

## EXHIBITS

"Y"  
Statement  
Of Hari  
Pratap  
1st  
Accused  
8th March  
1967.

Q. You remember on 20.2.67 I showed you four photographic copy of cheques and you identified the signatures on all the cheques nos. B44980, B46389, C87802 and 131534?

A. Yes.

Q. Do you know one Shri Prasad s/o Birogi of Waiqele, Labasa?

A. Yes.

Q. "Since when do you know him?"

A. "Since last one year".

Q. "Do you remember that once Shri Prasad approached you and asked you if you can help him in advancing loan from the bank some times 1 year ago?"

A. Yes.

Q. Did you made any arrangements?"

A. I was with him and I interpreted for him.

Q. "Do you know that you witnessed his specimen thumb print when his new account was opened?"

A. I don't remember but if my signature is on the specimen then surely I must have witnessed it and account was opened on that day.

Q. Do you know on opening of the account £100 over draft was advanced to him?

A. Yes.

(cont'd)

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## EXHIBITS

"Y"  
Statement  
of Hari  
Pratap  
1st  
Accused  
8th March  
1967.  
(cont'd)

- Q. Do you know that later last year and even this year you went with Shri Prasad and witnessed his cheque in order to withdraw money?
- A. "Yes ."
- Q. "Can you say how many times?"
- A. "No."
- Q. "Do you know that on cheques Nos. 10  
B44980, B46389 and 131534 are the  
thumb prints of Shri Prasad and  
money been withdrawn from Mahabeer's  
account, which has been witnessed  
by you ?(copy of cheques shown).
- A. No.
- Q. "Now these cheques have been examined  
by the finger print expert and he has  
said that the print are of Shri 20  
Prasad's. Can you explain how Shri  
Prasad's prints come on these  
cheques?
- A. "I don't know, should have been  
obtained by some tricks".
- Q. "You said tricks, on whose part?"
- A. On the part of the drawer or some  
one else."
- Q. "You know Shri Prasad and Mahabir  
very well. If Shri Prasad's put a  
thumb print on a cheque which has 30  
the name of Mahabeer, then why did  
you witness it?"
- A. "Many times it happens that while I  
am on a savings Bank counter on  
bank, the Bank officers bring the  
cheque to me and seeing the name and  
thumb print I take it as a genuine  
and witness it. For example a case  
of Rama s/o Matai of Daku where £40

EXHIBITS  
 "Y"  
 Statement  
 of Hari  
 Pratap  
 1st  
 Accused  
 8th  
 March  
 1967.  
 (cont'd)

- cash was involved and was drawn on other persons account.
- 10 Q. You know Shri Prasad and Mahabeer very well. When a cheque on these two persons were produced to you for witnessing, it is not your duty to see that the thumb print of the person and name are of the same person, if those cheques would have brought by some.
- A. One else apart from bank officer I could have not witnessed it without cross checking.
- Q. "Do you know that when a illiterate person goes to the bank to withdraw the money his thumb print is put in presence of the bank officer and a witness?
- 20 A. No. It is practice that some time they gave the money without an outside witness.
- Q. The day you have witnessed this cheque, did you see Mahabeer at the bank?
- A. I would have seen him if he was at the same counter where the cheque was written and I was on the same counter, but if I witness the cheques on the saving bank counter I would not have seen him.
- 30 Q. Did you see Shri Prasad on any occasions there?
- A. Same answer as above.

I have read the above statement and I have been told that I can correct alter or add anything I wish. This statement is true. I have made it of my own free will.

(sgd) Hari Pratap,  
 " K.D. Mishra.  
 D/C. 355.

EXHIBITS  
"T1"  
Statement  
by  
Shri Prasad  
2nd  
Accused  
23rd March  
1967.

EXHIBIT "T1"

Statement by Shri Prasad.

TRANSLATION OF CHARGE STATEMENT

B-2 PAGE: 1

FIJI POLICE STATEMENT FORM

Cr/Tor Number: 23/67 Police Station: Labasa 10  
Statement by: SHRI PRASAD. Father's name:  
BIROGI Male/Female Race. Indian. Place of  
Birth: Korovatu, Labasa. Age: 60 years.  
Employment: Cultivator. Resides at: Waiqele,  
Labasa. Recorded by: D/Sgt. 571 R. Sumer on  
23rd March, 1967. Time: 1025 hrs. Inter-  
preter: Self. From: Hindi to Hindi.

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"You are charged as shown below. Do you  
wish to say anything? You are not oblige to  
say anything unless you wish to do so but what 20  
ever you say will be taken down in writing and  
may be given in evidence". .

Receiving money on forged cheque Contrary to  
Sec. 374 (a) of the Penal Code, Cap. 8. In  
that (First Count) you on 12.4.66 at Labasa in  
the Northern Division together with HARI PRATAP  
s/o RAM KISSUN received the of £93 on forged  
cheque No. B44980 from the account of MAHABIR  
s/o RAM CHARAN at Bank of New Zealand. SECOND  
COUNT - That you SHIRI PRASAD on the 2.7.66 30  
with HARI PRATAP received the sum of £86 on  
forged cheque No. B46389 from the account of  
MAHABIR s/o RAM CHARAN at Bank of New Zealand.  
THIRD COUNT - That you SHIRI PRASAD on 15.12.66  
with HARI PRATAP received the sum of £100 on  
forged cheque C87802 from the bank of New  
Zealand from the account of MAHABIR s/o RAM  
CHARAN. FOURTH COUNT - That you on 27.1.67  
with HARI PRATAP received the sum of £80 on  
forged cheque No. 131534 from the account of 40

MAHABIR s/o RAM CHARAN at Bank of New Zealand.

(sgd) Shiri Prasad (In Hindi)  
 " R. Sumer D/Sgt. 571.  
 " J.N. Ram P.C. 241.

10 I SHIRI PRASAD s/o BIROGI wish to make a statement. I want someone to write down what I say. I have been told that I need not say anything unless I wish to do so and that whatever I say may be given in evidence.

EXHIBITS  
 "T1"  
 Statement  
 by Shiri  
 Prasad  
 2nd  
 Accused  
 23rd  
 March  
 1967.  
 (cont'd)

(sgd) Shiri Prasad (In Hindi)  
 " R. Sumer D/SGT. 571.  
 " J.N. Ram P.C. 241.

20 I do not know how much money Hari Pratap took out. He was my clerk. When I needed the money then Hari Pratap used to accompany me to the Bank and he used to do all the talking to the big Manager. He used to tell me to put the thumb print on the cheque and I used to put the thumb print thinking to be my cheque. He did not use to tell me how much money he withdrew. The amount I needed he used to give me. I withdrew Ten Pounds, withdrew Eighty pounds, withdrew Forty pounds I withdrew money many times thinking to be mine. The rest he knows what he was  
 30 doing.

(Sgd) Shiri Prasad (In Hindi)  
 " R. Sumer D/Sgt. 571.  
 " J.N. Ram P.C. 241.

40 SHIRI PRASAD s/o BIROGI cannot read this statement. I hereby certify that I have read over the contents of this statement in Hindustani to Shiri Prasad s/o Bircgi and that I have told him that he can correct, alter or add anything and that he approved the contents thereof.

Sgd. R. Sumer D/Sgt. 571.  
 " J.N. Ram P.C. 241.

EXHIBITS  
 "T1"  
 Statement  
 by Shiri  
 Prasad  
 2nd Accused  
 23rd March 1967  
 (cont'd)

I certify that I have translated the content  
 of this statement from Hindustani into English  
 to the best of my knowledge and ability.

Sgd. R. Sumer,  
 D/SGT. 571 R. SUMER

10

"U"  
 Statement  
 by Hari  
 Pratap  
 1st  
 Accused  
 23rd March  
 1967.

EXHIBIT "U"

Statement by Hari Pratap 1st Accused.

B - 1 PAGE: 1

FIJI POLICE STATEMENT FORM

Cr/Tor Number: 23/67. Police Station: Labasa  
 Statement by: HARI PRATAP father's name:  
 Ram Kissun Male/female: Race: Indian. Place  
 of Birth: Rakiraki, Labasa. Age 33 years.  
 Employment: Clerk Resides at: Bulileka, Labasa.  
 Recorded by: D/Sgt. 571 R. Sumer. On: 23rd  
 March, 1967. Time: 1100 hrs. Interpreter:  
 Self from English to English.

20

You are charged with the following  
 offence. Do you wish to say anything? You  
 are not obliged to say anything unless you  
 wish to do so but what ever you say will be  
 taken down in writing and may be given in  
 evidence.

30

Receiving money on Forged Document:  
 Contrary to Section 374 (a) of the Penal  
 Code Cap. 8 (4 counts).  
 1st Count =

That on 12.4.66 at Labasa in the  
 Northern Division you together with Shiri  
 Prasad s/o Birogi with intent to defraud  
 received the sum of £93 on forged cheque  
 No. B44980 from the account of Mahabir s/o

Ram Charan at Bank of New Zealand.

2nd Count =

10 That you on 2.7.66 at Labasa in the Northern Division you together with Shiri Prasad s/o Birogi with intent to defraud received the sum of £86 on forged cheque No. B46389 from the account of Mahabir s/o Ram Charan at Bank of New Zealand.

EXHIBITS  
"U"  
Statement  
by Hari  
Pratap  
1st  
Accused  
23rd  
March  
1967.

3rd Count =

That you on 15.12.66 at Labasa in the Northern Division you together with Shiri Prasad s/o Birogi with intent to defraud received the sum of £100 on forged cheque No. C87802 from the account of Mahabir s/o Ram Charan, at the Bank of New Zealand.

(cont'd)

4th Count =

20 That you on 27.1.67 at Labasa in the Northern Division you together with Shiri Prasad s/o Birogi with intent to defraud received the sum of £80 on forged cheque No. 131534 from

(sgd). R. Sumer D/Sgt. 571  
" Hari Pratap.  
" J.N. Ram P.C. 241.

the account of Mahabir s/o Ram Charan at Bank of New Zealand.

30 (sgd). R. Sumer D/Sgt. 571.  
" J.N. Ram P.C. 241  
" Hari Pratap.

I Hari Pratap s/o Ram Kissun wish to make a statement, I want someone to write down what I say. I have been told that I would not say anything unless I wish to do so and that whatever I say may be given in evidence.



EXHIBITS  
"U"  
Statement  
by Hari  
Pratap  
1st  
Accused  
23rd  
March  
1967.

(sgd) Hari Pratap.  
" R. Sumer D/Sgt. 571  
" J.N. Ram P.C. 241.

I have already given my statement. That's  
all.

(sgd) Hari Pratap.  
" R. Sumer D/Sgt. 571.  
" J.N. Ram P.C. 241.

10

(cont'd)

I have read the above statement and I have  
been told that I can correct alter or add  
anything I wish. This statement is true.  
I have made it of my own free will.

Sgd. Hari Pratap.  
" R. Sumer D/Sgt. 571.  
" J.N. Ram P.C. 241.

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O N A P P E A L  
FROM THE FIJI COURT OF APPEAL

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B E T W E E N :-

THE ATTORNEY GENERAL FOR FIJI

Appellant

- and -

HARI PRATAP S/O RAM KISSUM

Respondent

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R E C O R D O F P R O C E E D I N G S

---

CHARLES RUSSELL & CO.,  
Hale Court,  
21, Old Buildings,  
Lincoln's Inn,  
London, W.C.2.

T.L. WILSON & CO.,  
6, Westminster Palace Gardens,  
London, S.W.1.

Solicitors for the Appellant

Solicitors for the Respondent