

17/81

IN THE PRIVY COUNCIL

No. 24 of 1980

ON APPEAL FROM

THE COURT OF TRINIDAD AND TOBAGO

SEERAJ AJODHA

-v-

THE STATE

RECORD OF PROCEEDINGS

Messrs. Gastèrs
44 Bedford Row,
LONDON,
WC1R 4LL

Solicitors for the
Appellant

Messrs. Charles Russell & Co
Hale Court,
Lincoln's Inn,
LONDON, WC2.

Solicitors for the
Respondent.

ON APPEAL FROM

THE COURT OF TRINIDAD AND TOBAGO

B E T W E E N : -

SEERAJ AJODHA

Appellant

-V-

THE STATE

Respondent

NO.	DESCRIPTION OF DOCUMENT	DATE	PAGE
<u>IN THE HIGH COURT OF SAN FERNANDO</u>			
1.	Particulars of Trial		1
2.	Minute of Trial	17th January 1975	2 - 4
3.	Notes of Evidence of:-		
	Angela Dowlatt		5 - 11
	Pearl Bruce		11 - 12
	Lionel Reid		12 - 16
	Darlington Lewis		16 - 19
	Raymond Scott		19
	Lincoln Grant		20 - 21
	Rawlston Stewart		21 - 23
	Modeste Estrade		23 - 28
	Lionel Reid (Recalled)		28
	Rupert Titus		28 - 29
	Jeremiah Gordan		29 - 34
	Darlington Lewis (Recalled)		34
	Jeremiah Gordan		34 - 39
	Hamilton Bridgeman		39 - 40
	Seeraj Ajodha		40 - 47
	Gangadeen Tahaloo		47 - 52
4.	Statement of Seeraj Ajodha	11th January 1973	53 - 54
5.	Summing up of Mr Justice McMillan		55 - 103
6.	Verdict and Sentence		104 - 105
7.	Notice of Application for leave to Appeal		106 - 107

IN THE COURT OF CRIMINAL APPEAL

8.	Judgment of Court of Criminal Appeal		108 - 111
9.	Order granting special leave to Appeal		112 - 114

DOCUMENTS TRANSMITTED BUT NOT REPRODUCED

Notes of Evidence of :-
 Hugh Baird
 Bhawaini Maharaj
 Harryram Gosine
 Eric Joseph
 Clinton Jordan
 Basoo Basoutan

M I N U T E - Guilty (2)

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE
Sub-Registry, San Fernando

No.57 of 1974

Present: The Hon. Mr. Justice Mc Millan
On the 8th, 9th, 10th, 13th, 14th, 15th,
16th, and 17th days of January, 1975.

OUR SOVEREIGN LADY THE QUEEN

AGAINST

1. SEERAJ AJODHA 2. GANGEDEEN TAHALOO

FOR

1. MURDER 2. ROBBERY WITH AGGRAVATION
3. RAPE

Mr. Dwarika of Counsel for the Crown.

Mr. Persadsingh of Counsel for the accused Ajodha.

Mr. Shah of Solicitor for the accused Ajodha.

Mr. Misir, Q.C. and Mrs. May of Counsel for the
accused Tahaloo.

The Cause was called on - the accused were placed
at the Bar - the Act of Indictment was read aloud by the
Registrar, to which the accused pleaded not guilty.
Mr. Dwarika joined issue for the Crown - the foll. jurors
were called and sworn:

- | | |
|--------------------------|-----------------------|
| 1. Zide Hosein - Foreman | 2. Michael Fuentes |
| 3. Clyde Sandy | 4. Soogoon Ramsuthag |
| 5. Ramdeo | 6. Kimraj Nanan |
| 7. Hector Gelelle | 8. Linton Braithwaite |
| 9. Rienzi Maharaj | 10. Oswald Trotman |
| 11. Bonifacio Garcia | 12. Riley Sewlal |

Defence Counsel for the accused Ajodha challenged
Avis Ramdeen.

Mr. Dwarika stated the Case for the Prosecution
and in support thereof called the following witnesses:-

Dr. Hugh Baird P.C. Leo Reyes Bhawanie Maraj
Harryram Goshe Jasodra Gosine Cpl Eric Joseph
Angela Dowlath Insp. Pearl Bruco Sgt. Lionel Reid

During the evidence of this witness the Crown wished
to tender into evidence the statement of the accused
Tahaloo. The jury was taken out of hearing. Defence
Counsel Mr. Misir, Q.C. submitted to the Court that
he was not contending that the statement of the accused
was obtained by false but that the accused was forced
to sign a prepared statement.

/...

The statement was tendered at a later stage of the Trial. The jury returned. The foll. witnesses were next called: Cpl. Darlington Lewis, Cpl. Raymond Scott, Cpl., Clinton Jordan Borough P.C. Lincoln Grant, Rawlston Stewart, Sgt. Modeste Estrade, Ragoo Ramoutar, Rupert Titus, Asp. Jeremiah Gordon and Asp. Hamilton Bridgeman.

CASE FOR THE CROWN CLOSED

At this stage the jury was again taken out of hearing because Defence Counsel Mr. Misir, Q.C. wished to make a no case submission to the Court. The jury was taken out of hearing. Defence Counsel for the accused Tahaloo stated that the accused was not a party to the killing and therefore should not be called upon on the capital charge. He referred to:- 1. Crown's Cases - Vol. 168 Pg. 1009 Duffy's and Hunt's. 2. Cox Criminal Cases Vo. 8 Pg. 96 Prices.

Crown Counsel replied. The submission was overruled by his Lordship.

The accused AJODHA when informed of the 3 courses of defence open to him by his Lordship gave evidence on oath and called no witnesses.

CASE FOR AJODHA CLOSED

The accused TAHALOO when informed of the 3 courses of defence open to him by His Lordship gave evidence on oath and called no witnesses

CASE FOR TAHALOO CLOSED

Defence Counsel Mr. Singh addressed the jury on behalf of the accused Ajodha. Defence Counsel Mr. Misir, Q.C. addressed the jury on behalf of the accused Tahaloo. Mr. Dwarika replied on behalf of the Crown.

His Lordship the judge then summed up the evidence and stated the Case to the jury, whereupon the jury having retired from 1.02 p.m. to 3 p.m. returned the following verdict.

VERDICT

Accused Ajodha:-

1st Count - Guilty
2nd " - Not Guilty
3rd " - Not Guilty

/...

Accused Tahaloo:-

- 1st count - Not Guilty
2nd " - Guilty of Robbery
3rd " - Guilty

The prisoner Ajodha having been called upon by the Registrar to state if he had anything to offer why judgment should not be awarded against him declared he had not.

The prisoner Tahaloo having been called upon by the Registrar to state if he had anything to offer why judgement should not be awarded against him remained silent; Defence Counsel Mr. Misir, Q.C. pleaded for leniency, whereupon His Lordship pronounced the following sentences:-

That the accused AJODHA for his said offence do suffer the penalty of death by hanging.

That the accused TAHALOO for his offence be imprisoned in the Royal Gaol for the terms of seven (7) years on the 2nd count seven (7) years on the 3rd count, and that he do receive twenty (20) strokes with the Birch on the 3rd count, sentences to run concurrently and to be computed from the 3rd day of January, 1975, and that he be there kept to hard labour during the whole of the said terms of his imprisonment.

Dated this 17th day of January, 1975.

Asst. Registrar,
San Fernando.

ANGELA DO:LATT on oath:

Live Grant Trace, Rosellac. Age 20. Stitcher at a Garment factory in Rosellac. Krishendath Gosein was my boy-friend for 7 years.

On the 9th January, 1973 I left home about 6.30 a.m. and came to San Fernando with Krishendath in his van PN-3252. There were school children in the van. I did not go to work. We dropped off the children in San Fernando and about 8.30 a.m. went by the wharf. We left there about 12 noon. We were waiting there for Krishendath's father but did not see him, and left. We went to Phillipino. He drove into a gravel road inside the cane field and parked. I was sitting at the back seat and he came and sat with me. He did not have on a shirt then. He had taken off his shirt by Cross-crossing. We sat talking. About 5 minutes later I heard him bawl, "Oh! God," and he jumped towards the steering wheel. I looked out and saw two masked men. One had a handkerchief over his face with two holes for his eyes. The other had on a black vest with two eye holes also. They were bareheaded - indians.

Krishendath started the van but he did not have time to move it. The two men pulled him out from it. They opened the driver's door and pull him out. Krishendath struggled with them as if to get away. The man with the black vest chopped him on his head with the cutlass. I can't recall their exact positions but I know he was chopped on his head. Krishendath ran a little distance but the man with the cutlass ran him down. He was running towards the Siparia Erin Road.

I lost sight of both of them. The other man came to me. I was still in the van. He had on the handkerchief mask which was folded diagonally in half and tied behind his head - like this (demonstrates with handkerchief). I was trying to lock up the van to stop inside. The man with the handkerchief told me to come out and if I did not it was trouble. I noticed he had an ice pick in his hand.

While closing up the door he fired a blow with the pick at me. It caught me on my left breast. I came out of the van. He was standing right outside. I was afraid, because of what he said. He went in the

van and took up my handbag in which I had my lunch, \$10.00, a compact and a ladies wrist watch. He searched the bag and took out the money. I did not see if he took anything else from it. There was a seat cover on the floor of the van. He took it up and carried it to the back of the van and rested it on the ground and told me to take off my clothes. I did not respond. He pulled off my skirt and panties. I had on two panties - a black one and a light pink one. He then ordered me to lie on the seat cover. I did so because I was afraid. He then took his penis and placed it in my private parts and had sex with me for about 10 minutes. He discharged in me. While having sex I got scraped on my elbow (right) on the ground - part of my body was on the cover and part on the ground. My head got bruised on the gravel also.

Exhibit D.J.1 is the seat cover. While he was having sex the man with the cutlass came back - still with the black mask. He stood up looking. The man who was having sex with me asked what was my boyfriend's name. I told him Krishna - which was not correct. Krishendath's his name. He asked where I came from. I also said Oropouche.

The black-vested man asked him if he can't "come". He did not reply. Then the one having sex said, "Let us go," and he got up off me and both ran East and disappeared in the cane..

I put on my clothes and went looking for Krishendath. I found him face down on the ground and with a chop on his back. I touched him but got no response. He appeared to be dead. I got nervous. I ran to the main road and saw two (2) boys on a motor cycle. I stopped them and spoke with them and they went with me to where Krishendath was. One of them left to get the Police. The other fellow and I waited by the body. I saw a policeman coming on the Main Road in a car. He stopped and went to the spot. I showed him the body and the seat covering, and made a report to him. The two men on the motor-cycle were not the same two men who attacked us. I say so because they were of different complexion, height and age.

I don't recall how the motor-cyclists were dressed but the man with the cutlass had a black vest, blue jersey (2 different blues in front and back and stripes in front) and wearing crepesoles shoes. I don't recall what kind of pants he had on. He was about 40 and fair.
.. He.

He was taller than the other one with handkerchief mask.

The one who had sex with me had on a long sleeve shirt with blue stripes - (To Court - Blue shirt with stripes) a short pants and also crepesoles and red jockey shorts and the mask. Jockey shorts had white elastic band. I saw them when he was having sex because he had pulled down his pants. He was dark complexion, medium build and about 25 years. I will be able to recognise the clothing they wore.

Shown clothing:

Krishendath was wearing a long dark coloured pair of pants. This is it. "D" for identification.

This is the blue jersey the black masked man was wearing. "E" for identification.

This is the striped shirt that the other man was wearing. To Court - I made a statement saying it was a blue shirt with white stripes when asked by the Court. It was a shirt with blue stripes. Marked "F" for identification.

This pair of jockey shorts looks like the one the man who had sex was wearing. "G" for identification. He had on this striped shirt.

I was never asked to identify anybody.

Q. Do you recognise any one in this Court resembling either of these men?
Objection by both counsel. Sustained.

Adjourned - 9th January, 1975

Cont'd - Thursday 9th January, 1975

Accused and jury present.

Appearances as before.

ANGELA DOULATT on oath continuing in chief:

From the scene I was taken by the Police to the San Fernando Police Station and then to the Hospital where I was examined by a male doctor and I was then taken home. There I gave the woman police constable my two panties I was wearing (1 light pink and 1 black). These are the panties. Tendered and marked together A.D.1. No objection. I met the woman police constable first at the station.

Before I left the scene for the Police Station other police under Mr. Gordon arrived. I spoke with them and gave Mr. Gordon a description
..of.

of the two men who attacked us.

Cross-examined Persad Singh:

I left home on the 9th January, 1973 at 6.30 a.m. It was after 7.00 a.m. when Krishendath picked me up. There were already school children in his van and we came straight to San Fernando, arriving there about 8.00 a.m. He dropped off the children at San Fernando first and we then went to the Wharf arriving about 8.30 a.m.

We waited there until about 12.00 noon waiting for his father and then left and went to Phillipine arriving there about 12.15 p.m. We were there for about 5 minutes when the incident occurred.

[Dwarika states he omitted to put certain things to witness. Court was granted leave at end of cross-examination].

It was right after incident I stopped police in car. It was before 1.00 p.m. I think though - I had no watch. I don't know if it was before or after 1.00 p.m.

It was to woman constable Bruce I gave my underwear. It was almost dark then - don't know what time it was.

I gave police a written statement on the 9th January, 1973 not on the 10th January, 1973. In the Magistrate's Court I admit I said I gave statement on the 10th January, 1973 and it took long to give. What happened was that on the 9th January, 1973, I gave statement to Police which was recorded and I returned on the 10th January, 1973 to check it. It was not taken by A.S.P. Gordon but by a woman police constable.

I was at the station from about 8.00 a.m. on the 10th January, 1973. It took about 1 hour to check my statement but I remained there for the rest of the day. I had signed it on the 9th January, 1973.

I said in the Court below I gave a statement on the 10th January because I did on that day give one about a suspected man. I did leave the police on the afternoon of the 10th January, 1973 with police in a jeep. At Cross-crossing I did not point out to police a man as the man who had raped me. I pointed to a man at Cross-crossing because when I saw him he resembled the man who raped me and I told the police that. I did not say he was the man. He was arrested and taken to the station with me. I then gave a statement lasting 2 hours concerning that man (suspected). I did not then ask for any first statement to be brought
..back.

back to me. I did not call for any original statement after I returned to the station with this suspected person. It was not handed to me again. Don't recall if I said so in the Court below. I said in the Court below I made a new statement but the first one did not cancel. I left two statements with the police.

I did not sign 2 statements on the 10th January, 1973. I don't recall what I said before Magistrate. I don't recall saying before Magistrate that I had signed at least 2 statements on the 10th January, 1973. If I said so It was not true. I was confused. I was not telling lies. I told the Magistrate I was confused.

To Court:

I gave police 2 statements one on the 9th January, 1973, the second on the 10th January, 1973 in the afternoon. The second was about suspected man 7.

I saw police around on the scene. I don't know what they were doing. They were looking around and I was talking to Mr. Gordon.

L.R.3 is photo of Krishendath showing his pants slightly pulled down and revealing underpants with wide waist band.

This pair of black pants ("D" for identification) is the pants he was wearing.

The man I pointed out at cross-crossing resembled the shorter of the 2 men who attacked us.

Cross-examined by Misir:

On the 10th January, 1973 I returned to the Police Station about 8.00 a.m. I remained there whole day. I was going home around 4.00 p.m. when I pointed out man at cross-crossing and returned with police to the Station. There were 3 police and myself when I pointed man out. They took man in jeep and we returned to the Station.

To Court: At time I was on my way home and before pointing out man at cross-crossing I had given police no statements - sorry, one statement.

It was after he was arrested and we returned to the Station I gave another statement concerning him.

After giving second statement I left Station leaving suspected man there. My uncle came and took me home after I gave the second statement. .That.

That statement was not the second statement I gave that day. After I checked my statement of the 9th January, 1973, I remained at the Station not doing anything. I just wanted to know what was happening as my boy-friend had got killed. I did not purport to identify anyone in the statement during that time. I was never asked to do so.

I don't remember returning to the Station after the 10th January, 1973, in about a week after or for the purpose of checking my two statements.

I gave evidence on two different days before the Magistrate. On the second occasion (31/1/73) I said the incident happened on the 9th January, I gave statement on the 10th January. Don't recall saying about a week after the 10th January, 1973, I went back to the Station that I remained there about two hours or that the man I saw at the cross-crossing roundabout was not there or that I made no more statements or that the two statements I had given before were read for me or that I found them in order.

I never returned to the Station after the 10th January, 1973 and no statements were read back to me and I did not say so. Witness admits signature to deposition.

Deposition tendered and marked A.D.2.

Recess - Resumption.

Both accused and jury present.

ANGELA DOPLATT cross-examination (continued):

I still maintain having heard deposition. I gave one statement on the 9th January, 1973 and the other on the 10th January, 1973.

I don't recall returning to Station after the 10th January, 1973. I may have done so but it was not in connection with giving statements but possibly for my memory to be refreshed by the police as to what I had said so far.

When the deposition was read I heard that my watch was discovered in my handbag in Magistrate's Court. That was what happened. I had discovered I had made a mistake in saying my watch was missing after the incident. It was in fact still in my bag it turned out.

The man who had sex with me had on a short pants not long, under that he had on red jockey shorts.

I agree the first day I gave evidence in the Magistrate's Court I spoke only of his outer garments. It was on the following day I

..spoke..

spoke about his jockey shorts. During the interval between I was not shown any jockey shorts. The first time I was shown was in the Magistrate's Court. Don't recall which day of giving evidence. Don't recall if I was shown them by force by anyone. The first time I recall was when I was giving evidence. It resembled the one the man had on.

On the 10th January, 1973, I was not shown any jockey shorts at the Police Station or on any other occasion then.

Re-examined and with leave:

This is my handbay. (Tendered and marked A.D.3. No objection) and this is the watch in it. That is what I thought was missing after the incident. (Asked to look at police exhibits) L.R.1 is photo of Siparia Erin Road. The road entrance on the left is the gravel road into which Krishendath backed the van and parked.

L.R.2 is that road with van parked.

L.R.5 is a close-up of van with left door open. It's the back side door. That is the one the man opened and ordered me out.

In L.R.6 I see the seat covering what he placed on the ground and on which he had sex with me.

To Persad Singh:

When I left the scene Krishendath was on the ground as in L.R.3 - pants in that condition and under-wear showing.

Don't recall colour of his underpants. Krishendath's clothes were never shown to me until today and all I have seen is his long pants.

To Misir:

The man who had sex with me kept on his shirt. When the man blow at me with ice pick I tried to pull away but it caught me on my breast. I bled as a result. I was wounded before he had sex.

PEARL BRUCE on oath:

I am a woman police inspector.

On the 9th January, 1973, I saw Angela Dowlatt at San Fernando Police Station. I took her to San Fernando General Hospital where she was examined by Dr. Baird in my presence. He gave me a swab and advice letter to take to the Government Chemist. I recorded a statement from Angela Dowlatt subsequently - she also gave me two pair of panties - one pink and one black and I took them to Government Chemist with the swab.

A.D.1 contains both panties.

I received the chemist's report with respect to the panties.

Tendered and marked P.B.1. No objection.

Cross-examination declined by Persad Singh and Misir.

LIONEL REID on oath:

Police Sergeant 4263.

On the 9th January, 1973, I assisted in inquiries. I spoke with A.S.P. Gordon and went to the home of the accused No.2 at Picton Settlement, Diamond Village. I got there about 8.35 p.m. I did not see him there on arrival but he came in about 5 minutes later. I identified myself and the other police (Sgt. Estrada and P.C. Lewis) to him.

I told him I was assisting in report of murder and I had received information that he was one of the men responsible for the killing of Krishendath Gosine. He said, "I don't know anything about that. I just came from theatre."

I saw a striped shirt on a line. It was damp. P.C. Lewis took possession of it. ("F" for identification is the shirt.) I took the accused and shirt to C.I.D. San Fernando. There P.C. Lewis handed shirt to Mr. Gordon. At Diamond Village I had asked the accused who was the owner of the shirt when P.C. Lewis took it from the line. The accused said it was his. I left them in the office.

On the 10th January, 1973, I attended a post mortem at San Fernando Mortuary, performed by Dr. Baird on the deceased body identified by Bhawani Persad Maharaj as his nephew Krishendath Gosine. I returned to C.I.D. about midday. No.2 was still in C.I.D. Office. I spoke to him later on the night of the 10th January, 1973. At that stage I was aware he had given the police a statement. I witnessed it. The accused told me.

Misir objects: Objection will be taken to statement and before any evidence of this nature be given about this conversation, admissibility of statement should be determined.

(Court sends jury out).

Misir: In concluding statement recorded obtained by force and if established it would not be admissible and any subsequent conversation following the taking of it also inadmissible. This witness was a party

..to.

to the force used and accused still operating under fear when this conversation is alleged to have taken place. Conversation not voluntary.

Dwarika: Whether statement obtained by force or not is separate issue. This conversation is something different from it and made long after to this witness.

Agreed that the Court will deal with issue of admissibility of witness' statement as well as of the conversation at same issue.

Adj. 10th January, 1975

10th January, 1975 - Cont'd.

Both accused and jury present.

Appearances as before.

Jury sent out for issue to be tried.

The issue:

Misir - not now contending statement obtained by force but that accused forced to sign a prepared statement which he did not give, and matter for jury on reflection.

Jury recalled

Sgt. Reid cont'd in chief:-

Yesterday I was saying that on the night of the 10th January, 1973, sometime after Accused No.2 had given a statement he told me that sometime after I had given him a handkerchief mask in which he (No.2) had wrapped a stone and then throw it in the cane field. I asked him if he knew the spot in which he had thrown the mask. He said yes. I asked him to take me there. Before he told me anything - i.e. when he said he wanted to speak to me, I cautioned him and then he told me about the handkerchief mask. This was after 10.00 p.m. on the 10th January, 1973.

The next day I and other police were taken to a spot on a road in Phillipine about 150 yards East of the scene where the body of Krishendath Gosine was found. We searched for the handkerchief mask but did not find any such mask. We returned to C.I.D. San Fernando. I had been to the scene of the crime on the 9th January, 1973, with other police.

(Persad Singh defers to Misir).

Cross-examined by Misir:-

A.S.P. Gordon was in charge of C.I.D. then. When report of crime was received I did not go initially to the scene, I went sometime after 5 p.m. on the 9th January, 1973.

Later I went to No.2's home. He lives there with his brother and his brother's family. He was not there. He had on long pants when he arrived. He was taken to C.I.D. and kept there for the night.

The next morning at about 8.30 he gave a statement to P.C. Jordan and released. He was subsequently taken into custody - not 5 minutes later, but at 8.35 p.m. On the 10th January, 1973, he was brought in by Sgt. Nelson and other police. He was not at the C.I.D. all day.

P.C. Jordan was a member of C.I.D. also. I did not see the statement the accused gave to Jordan. The statement I witnessed was taken between 9.00 and 10 p.m. that night - a cautioned statement.

I was in the room and signed as a witness. Other police were there - Mr. Gordon and Cpl. Estrada - no other police present. The statement was completed at 10.20 p.m.;

Any conversation between the accused and myself would have been after that time. The accused did not speak to me after the statement was recorded. I have not noted this anywhere.

I cautioned him after, when he said he wanted to speak to me. I thought it necessary. I did not go with him that night to look for handkerchief. I went the next day (11/1) between 11.00 and 12 noon.

Accused No.2 placed before Magistrate on the 12th January. I don't recall whether I was in attendance then. Mr. Gordon took the charge on the 12th January. I do not recall that both accused on that day made complaint before the Magistrate that they were beaten and forced to sign a prepared statement or requested medical attention. I don't recall being in Court. I don't recall their counsel requesting they be medically examined and don't recall Magistrate so ordering.

Don't recall whether they were taken to a doctor that day. I don't know that Accused No.1 was not arrested on the 12th January, Don't know No.2 was arrested and taken before Magistrate that day. I only know about No.2 accused.

..I don't.

I don't recall when No.1 was arrested but it was not on the 12th January, 1973 - sometime after - days after.

I was not part and parcel of any beating of No.2 on the night of the 12th January, 1973 to force him to sign any prepared statement. He made a voluntary statement in the morning and gave another in the evening. Neither Mr. Gordon, Estrada nor I beat No.2 that evening in the C.I.D. office. We did not kick, cuff or otherwise beat him. We did not strike his private parts, belly or feet or back. Mr. Ramoutar, J.P., came into C.I.D. after statement recorded.

Police did not hold hand of the accused making him write certificate or sign that statement. I admit he did not by himself write that statement. It was recorded by Mr. Gordon from what the accused said - not a prepared statement.

I did not tell the accused - and no one did - that an indian man named Ramoutar was coming to the room and to answer to suit anything he asked yes or no or more licks in his arse. That never occurred. Mr. Ramoutar did come in. He spoke to accused and wrote on the statement.

Cross-examined by Persad Singh:

No.1 was not beaten by me on the 11th January, 1973, or for the purpose of asking him to sign a prepared statement. I did not hold his head down in water to achieve the purpose.

I still say I don't recall being in Court on the 12th January, 1973, when the accused first charged before the Magistrate or on the 17th January, 1973.

I was not present when No.1 signed any statement. Don't recall if I was in Court on the 30th January, 1973. Don't recall on what day I gave evidence at Preliminary Inquiry. No. 1 was not beaten at all.

I first became involved in inquiry sometime after 5 p.m. on the 9th January, 1973, when I went on the scene.

I saw Angela Dowlatt that night. I was not in company with other policemen who were taking her home on the 10th January, 1973.

I was not present in any room when No.1 was beaten. I did not thereafter tell him that Clarkie was coming and to answer to suit or else more licks in his arse. I was not present when Mr. Titus, J.P. was brought in. I know nothing of those events if at all they occurred.

I was not there.

On the night of the 10th January, 1973, I was in Mr. Gordon's office at same time. I was not in his office on the 11th January, 1973, with No.1.

I was at C.I.D. on the 9th January, 1973, and on the 10th January, 1973, I don't know another man was pointed out by Miss Dowlatt on the 10th January, 1973. On the 10th January, 1973, I was in Mr. Gordon's office from 9 p.m. until after Mr. Ramoutar left.

I was there during the time the statement was taken and up to when Mr. Ramoutar left. I then returned to C.I.D. office. I was at the Station before 9.00 p.m. - from since about 4.00 or 5.00 p.m. I was assisting in investigations in this matter.

I don't know Police came to Station with Miss Dowlatt and a man whom she pointed out. Up to now I don't know of a third man having been arrested.

I don't recall where I was on the 12th January, 1973. I don't recall being in Court and accused No.1 making complaints to Magistrate or requesting medical examination.

I don't recall going to Diamond Village area a week after the 9th January, 1973, to get a policeman P.C. Grant who lives in the area. I don't recall going to call him.

Re-examined:-

I saw when Mr. Titus arrived at C.I.D. on the 11th January, 1973, as I was in the C.I.D. office. I was not in any room with No.1 accused. As a witness at a Preliminary Inquiry I will only be in court when giving evidence and after that sent out again.

DARLINGTON LEWIS on oath:

Corporal - No.5405.

In January, 1973, I was a police constable. On Friday 12th January, 1973, I swore to information and obtained search warrant to search the premises of No.1 accused. This is warrant, Tendered and marked D.L.1. I had previously been to the home of the accused on the 9th January, 1973. I executed this warrant on the 12th January, 1973. I went there about 12.30 p.m. that is to a house at Picton Settlement.

..I saw.

I saw a woman who gave her name as Mrs. Seeraj and wife of the accused.

I never met the accused there. I don't know as a fact he was there. I read warrant to Mrs. Seeraj and asked her certain questions and made a search and found certain items of the nature mentioned in the warrant. I found clothing and 1 ice pick, 1 cutlass, 1 bag and 1 pair rubber boots. I found one jersey (blue) - E for identification and one pair of long trousers.

I see the woman whom I saw in the house. I searched the house of the accused. I know her as Mrs. Seeraj (indicates woman in public seat in Court). (Mrs. Ajodha Seeraj called into Court. Woman identified by witness walks forward in response, and told to resume seat).

I took article I found in that house in her presence to the C.I.D. and I showed them to No.1 accused and he said they were his. Persad Singh - new evidence and objects.

Overruled.

Jersey E for identification - tendered and marked D.L.2.

These are the boots. This is the cutlass. This is the ice pick and this is the pair of trousers (blue). Together tendered and marked D.L.3.

I also went to house of No.2 accused at Picton Settlement. First on the 9th January, 1973 with other police at 2.30 p.m. He was not there and after at 8.30 p.m. I did not meet him on arrival on the second occasion but I was in company with Sgt. Reid, Cpl. Estrada and P.C. Jordan. About 10 minutes after the accused arrived. Sgt. Reid spoke to the accused and told him he was investigating a report of murder of Krishendath Gosein and he had information that he (accused) was involved. The accused declined knowledge of or involved in it and said he had just come from theatre.

On reaching downstairs I saw a shirt hanging on a line. I asked the accused whose it was. He said he was the owner. I took it from the line - both cuffs and the collar were damp. I took it to C.I.D. and gave it to A.S.P. Gordon. F. for identification is that shirt. Blue jersey tendered and marked D.L.4. No objection.

Cross-examined Persad Singh:

I obtained search warrant for No.1 after 8.00 a.m. on the 12th January, 1973. I believe in San Fernando Magistracy. Magistracy opens
..at.

at 8.00 a.m. I don't recall time I got it exactly but I executed it at 12.45 p.m. I returned to C.I.D. about 1.30 p.m. or after. I don't know if both accused were taken to Port of Spain in prison van that day.

I obtained warrant sometime after 8.00 a.m. or before 12 noon. Looked at warrant - see it was issued by Mr. Titus. I now say I went to his home at Cooper Street to obtain it on the 12th January, 1973.

I don't recall seeing Mr. Titus on the 11th January, 1973. I don't think I was at the San Fernando Station that day.

This is the first time I have said that I showed the accused the articles I found in his house and that he said they were his. The question did not arise before.

I was involved in inquiries from the 9th January, 1973. I saw Miss Dowlatt that day. Don't recall seeing her on the 10th January, 1973. I was not with her when she pointed out any man by cross-crossing. I was not at C.I.D. on the 10th January. I reached there on the 11th January about 7.00 p.m. and left about 1.00 a.m. on the 12th January.

I was not in Mr. Gordon's office during that time. I don't recall seeing Mr. Titus on the night of the 11th January. I was not engaged in inquiries into this matter on the night of the 11th January.

I still don't recall time I obtained warrant from Mr. Titus. I don't recall being around Magistrate's Court on the 12th January. When I executed warrant at home of No.1 accused, he was already in custody. I did not know then where he lived.

Q. Did you not think it expedient to take him along to show you?

A. No.

I left for Picton Settlement about 12.25 p.m. or just after. I don't know that he had already been taken before the Magistrate. I was assisting at all stages in this inquiry. I don't recall where I was before 12.20 p.m. that day. I left for the C.I.D. to go and execute the warrant.

I can't say exactly how long after I obtained the warrant I left to execute, but possibly four or five hours after. Mr. Titus does not work at the Magistracy.

I did show clothing to the accused on the 12th January. I don't know he was in Court on that day.

Cross-examined by Misir:

I don't know that No.2 was placed before Magistrate on that day (12/1) also. I swore to information to obtain a warrant (D.L.1) in the daytime.

I don't know Mr. Titus works with Universal Travel Service in San Fernando. I know he is a counsellor. I went to his home.

Re-examination declined:RAYMOND SCOTT on oath:

Corporal - 6016. On the 11th January, 1973, as a police constable I went to St. Croix Road, Princess Town to the home of one Rampersad with Cpl. Ross and other police.

As we approached the house I saw accused Seeraj Ajodha (No.1) sitting on a bench under the house. When Cpl Ross and I approached the accused got up and ran upstairs, via the back stairs. I was in plain clothes, Ross in uniform.

I went up the front steps and Ross went after the accused up the back steps. We caught up with the accused upstairs in the living room.

Cpl. Ross asked the accused for his name. He said Sonnyboy from San Francique. After further questioning he said my name is really Seeraj Ajodha and they call me Bhadase and I live at Diamond Village.

Cpl. Reid told him he was wanted for questioning in connection with the murder of one Gosine. He said, "I don't know anything about that." He was later taken to Princess Town Police Station arriving there about 3.00 p.m. and then to San Fernando C.I.D.

Cross-examined by Persad Singh:-

The accused did run. He did not remain sitting where he was. He did not run into the nearby canes. There was a girl in the kitchen downstairs. We did not arrest the accused while he was sitting on the bench and take him into the cane.

He was saying his name was Sonnyboy from San Francique. When he said he did not know anything about the murder we did not start to beat him up. We did not strike him. We had no warrant for his arrest.

He was arrested around 2.30 to 2.45 p.m. on the 11th January, 1973.

..Cross-examination.

LINCOLN GRANT on oath:-

Borough Constable - No.6237 and live at Diamond Village on the Extension Road running East to West from Papourie Road to Priam Street. It's on the East side of Phillipine.

On the 9th January, 1973, I went to work at 3.50 p.m. - before that I was at home. At about 1.00 p.m. I saw one Bhaḍase - accused No.1. I was cutting galvanise under my house (high house). The accused was walking towards Papouri Road - i.e. going East on the Extension Road. He called out to me "Grant". I said, "Right O man."

He had a bag slung over his shoulder - a large brown plastic-like bag. This bag shown me looks like it - Z for identification. The bag appeared to have something in it. I had known him for about 15 years in the Diamond Village area. He was in Pieton Settlement.

Cross-examined by Persad Singh:

I "habitually" see accused No.1 pass to and from my house. I would not be able to recall any other date as such on which I see him pass my house.

I recall the 9th January, 1973, not because A.S.P. Gordon asked me about that day. He asked me if I had seen the accused on that day. In Magistrate's Court I said I remembered that day because my attention was called to it on the 16th January, 1973 by A.S.P. Gordon. He summoned me to his office and asked me whether I had seen accused on the 9th January, 1973 and whether I had seen him with a bag. I did not then know the accused was charged with Murder. I saw him on other occasions in January, 1973 with bags and other articles.

Cross-examination by Misir declined:

Adj. 13/1/75

Re-examination declined:

Monday 13th January, 1975 - Cont'd:

Both accused and jury present:

Appearances as before:

RAWLSTON STEWART on oath:

Prison Officer, Golden Grove. Up to March 3, 1973 I was Asst. Reception Officer at the Royal Gaol, Port of Spain. My duties as such were to certify reception of a prisoner that names of persons correspond with that on warrant. Then I would search the prisoner by removing clothes and searching him and clothes.

If while searching prisoner we observe any marks of violence the prisoner is questioned as to how he got them. If no marks of violence but prisoner complains of violence a statement is taken from him. The escorting officer is required to witness it. When this is done the prisoner is taken to prison medical officer to be examined. Report from doctor and of prisoner then sent to Prison Superintendent who is required to forward same to Deputy Commissioner of Prison and by him to the Commissioner of Police.

On the 13th January, 1973, I was at reception at Royal Gaol. These two accused were brought in to prison. I received them and checked the warrants. I called names therein and they answered to them. I proceeded to search them thoroughly. I noticed no marks of violence and
..neither

neither complained to me. Mr. James John was the reception officer but I dealt with the two prisoners.

Cross-examined by Persad Singh:

This was two years ago exactly. I cannot say now if No.1 Ajodha was ever examined or No.2. After the prisoners were handed over to prison from the reception I would not know what happens to them.

It was never brought to my knowledge that the Magistrate had requested they be examined by the 17th January, 1973. Never did it come to my knowledge that accused so requested before the Magistrate and asked that this request be noted in writing.

I didn't know that they were then facing a charge of robbery. I received one warrant in respect of each - murder. I don't recall which prisoner I examined first. Examinations were sometime before mid-day.

Cross-examined by Misir:

On the 15th January, 1974, I was still attached to Prison Department. I did not receive a summons to give evidence at Preliminary Inquiry on the 15th January, 1974. I don't know when they were committed for trial. Can't remember whether on the 7th January, 1973, I checked a warrant for committing Magistrate with respect to these two accused. I never gave evidence against them before the Magistrate.

Don't know both accused sent back to Magistrate on the 15th January, 1974, for further evidence to be taken or that they were recommitted on the 29th January, 1974 for trial.

On Saturday last I received a request to attend Court. Last Thursday I gave a statement to Inspector Archer at the Royal Gaol. I knew this case was then in progress.

Mr. James John was an admission of accused in 1973 in charge of my department. I was his assistant. He is still alive as far as I know.

Re-examined:-

I worked at reception at Royal Gaol for approximately 18 months and left there in March, 1973 when I was transferred to Golden Grove Prison.

To Misir:-

I was not transferred to Golden Grove at the time of the Prison fire. After the fire prisoners were transferred to Golden Grove but fire at the Royal Gaol was on the 1st January, 1974.

I don't know when or if these two accused were transferred or that they are in remand at Golden Grove now.

I am still at Golden Grove now.

To Dwarika:-

Prisoners are still kept at the Royal Gaol.

MODEST ESTRADA on oath:

Police Sergeant - 5585.

On the 10th January, 1973, I was at C.I.D. San Fernando. At about 8.50 p.m. A.S.P. Gordon called me to his office. There I saw accused No.2 with him, No one else. Shortly after Sgt. Reid came in.

Mr. Gordon said that the accused was about to make a statement and he was about to have a written record of it and he wanted Sgt. Reid and myself to be present. We sat down. Mr. Gordon cautioned accused to read. He read it. He asked accused to sign it. Accused did so. Mr. Gordon then asked the accused whether he wished to write down what he intended to say or if he wished someone to do so. Accused asked Mr. Gordon to write it down.

Mr. Gordon then wrote on the paper that accused requested him to write statement and handed it back to the accused and told him to read it and sign it. Accused did so and handed the paper back to Mr. Gordon. He began talking and Mr. Gordon wrote. When he was finished talking Mr. Gordon handed him the paper and told him to read what was written and say whether he wanted anything corrected, altered or added it and if it was correct to sign it. Accused read it and signed it.

Mr. Gordon then handed the accused a specimen certificate and told the accused he was requested to write a similar certificate on the statement. Accused did so and signed it. Accused's statement was voluntary - no threats, promises or inducements were made to the accused.

Mr. Gordon then summoned a Justice of the Peace. Shortly after Mr. Ramoutar came into the office. Mr. Gordon told the accused that the gentleman who first came in was Mr. Ramoutar and told Mr. Ramoutar that the accused was Tahaloo and that he (Mr. Gordon) was investigating report of a murder and robbery, that Tahaloo was a suspect that he had cautioned Tahaloo who had given a statement and handed the statement to Mr. Ramoutar. Mr. Ramoutar showed the accused the statement and the signature thereon and asked if the signature was his. The accused said yes.

Mr. Ramoutar read the statement to the accused and asked if this was his statement. Accused said yes. Mr. Ramoutar wrote a certificate on the statement and left the office. I had also signed statement as having witnessed it. (Looking at the statement) I now say I did not sign it. Sgt. Reid and I left after Mr. Ramoutar left.

The accused appeared quite cool when giving the statement. No force applied to accused in my presence to induce him to sign statement or give statement.

On the 11th January, 1973, I was at C.I.D. San Fernando also. At about 7.30 p.m. Mr. Gordon called me to his office. On entering I saw accused No.1 - Ajodha. Mr. Gordon told me accused was about to give a statement which he was about to have recorded. He got a bit of paper and cautioned Ajodha. He wrote out caution on paper and handed the paper to the accused to read. The accused read it and signed it.

Mr. Gordon then asked accused whether he wanted to write his statement himself or whether he wished someone to do so for him. The accused told Mr. Gordon that he (Mr. Gordon) could do the writing. Mr. Gordon wrote on paper what the accused requested and the accused then began talking and Mr. Gordon wrote. When accused was finished Mr. Gordon handed him the paper and asked him to read what was written and told him if he wanted to add, correct or alter anything he could do so. The accused read the statement and Mr. Gordon said if it was correct to sign it. The accused signed the statement. Mr. Gordon then gave him a specimen certificate and told him he should attach a similar certificate to the statement. Accused did so and signed it and handed statement to Mr. Gordon. After this Mr. Gordon summoned a Justice of the Peace. Shortly after Mr. Titus entered and Mr. Gordon told the accused Mr. Titus was a J.P. and told Mr. Titus that the accused was Seeraj Ajodha who was a suspect in respect of murder, rape and robbery which he was investigating that the accused had given a statement and handed the statement to Mr. Titus and told Mr. Titus he had cautioned the accused. Mr. Titus showed the accused a signature on the statement and asked if it was his. The accused said yes. Mr. Titus then read the statement aloud and asked the accused if this was his statement. The accused said yes. He asked the accused if anyone had threatened him or beaten him or made any promises to

to him to make the statement. Accused said no. This was also done by Mr. Ramoutar in respect of No.2 accused. Mr. Titus attached a certificate to the statement and left the office.

Neither I nor anyone in the room used any threats to the accused to induce him to make the statement. I did not sign as a witness.

Cross-examined by Persad Singh:-

Not true that Sgt. Reid and I showered blows on No.1 to induce him to make statement. Sgt. Reid was not present when Titus was there. If I said he was to the Magistrate it was a mistake. I did say so to the Magistrate - it was a mistake.

I was not in Court on the first day of the Preliminary Inquiry - 12th January, 1973. I was on leave as from that morning about 9.00 a.m. I was on duty up to then. Court starts at 9.00 a.m. and the office opens at about 8.00 a.m. I was not in Court when any request was made by the accused to be medically examined.

Mr. Gordon charged both men on the 11th January, 1973 - the last one at about 11.00 p.m. No.1 was the last one and charged in the C.I.D. office. No.2 was charged shortly after lunch.

I don't know who took the information across to the Magistrate's Court. On the 12th January, 1973, I left for the C.I.D. office and leave and went to Moruga. I did not go to the precincts of the Magistrate's Court that day.

I first saw Mr. Titus about 9.40 p.m. on the 11th January, 1973. I was one of the investigating officers in this matter. I first saw No.1 about 6 p.m. on the 11th January, 1973. Sorry, have made mistake - it was about 7.30 p.m. I had no conversation with him. He was in Mr. Gordon's office all the time. I was present from about 7.30 p.m. until about 9.50 p.m. It was about $1\frac{3}{4}$ hours. Accused was in my presence with Mr. Gordon before he affixed his signature to the statement. I don't know what the accused was doing before I went into Mr. Gordon's office.

I began assisting in enquiries from the 9th January, 1973 from 7.35 p.m. and until the accused No.1 was charged. I did not see accused No.1 on the 10th January, 1973 or on the morning of the 11th January, 1973. Mr. Gordon had no suite in his office. There are suites

in different areas of the compound.

Not true I had been seeing the accused from the day-time of the 11th January, 1973, when he was arrested and not true Sgt. Reid and I beat him. I was on leave. I was on leave from sometime shortly before lunch until about 6.00 p.m. on the 11th January, 1973, and until Mr. Gordon called me to his office. I had not seen No.1. I assisted in enquiries on the 9th January, 1973 and on the 10th January, 1973.

I don't recall seeing Angela Dowlatt on the 10th January, 1973, or on the 9th January, 1973. I did not see her on the 12th January, 1973. Not true Sgt. Reid and I inflicted physical violence on the accused.

Accused would have been kept in the charge room on the 12th January, 1973, prior to going to Court. I did not see them at all that day. When Mr. Seeraj affixed his signature to his statement only Mr. Gordon and I were present.

When the Justice of the Peace was there neither Mr. Gordon nor I left the accused alone with him. I did not sign as having witnessed statement. Mr. Gordon asked me to be present when the Justice of the Peace came. Immediately after the Justice of the Peace left Mr. Gordon asked me to leave and I left.

Not true that before Mr. Titus came in I told the accused that Clarkie the boxer is coming and answer to suit or its more licks again or I'll kill him again or any such thing.

I was assisting in enquiries into murder, rape and robbery and accused were so charged. The information would have been before the Magistrate on the 12th January, 1973. I gave evidence but don't know into what charge. I gave evidence in 1974 - January 22nd. I know the accused were alleging they had been beaten to give statements. I did not know then that the allegation was that Sgt. Reid and I had beaten accused only that police had done so. I want to give evidence about what occurred in Mr. Gordon's office.

No one suggested to me in Magistrate Court that either I or Sgt. Reid had beaten either accused. No one suggested that I man-handled No.1.

..Under.

Under cross-examination in Magistrate's Court I said no threats or promises used but it was never put to me that I had beaten or man-handled either accused.

I also said there, "I can say No.1 was not beaten because it was within my knowledge." It was never put to me however that I had beaten him.

I recall that another person was taken up as suspect. I did not say so in Magistrate's Court because I did not remember. I said there then, "No other suspect was taken up as I did not remember." I don't know about that person being identified however.

I think he was picked up on the 10th January, about 4.00 p.m. I am not speaking of my own personal knowledge. I was not present.

Recess - Resumption.

Both accused and jury present.

Cross-examined by Misir:-

I still say that in January, 1974 when I gave evidence I did not know it was being specifically alleged that I had beaten wither accused.

Mr. Gordon never told me so, or that it was alleged that I was jumping up in Mr. Gordon's office before the Justice of the Peace came in to certify No.2's statement and saying I was bringing Ramoutar for him and if he did not say what he was told to say I would kill his arse.

I got a summons in 1974 to give evidence at Preliminary Inquiry. I don't know it was to rebut that. Mr. Gordon did not tell me that it was alleged that I held No.2's hand and made him write crapaud-foot writing.

I don't know that either accused so alleged when they gave evi^d at the Preliminary Inquiry. I was not there. I gave a statement before I gave evidence in the Magistrate's Court in January, 1974. I don't know the A.C. gave any directions to have statement from.

I gave statement on the 12th January, 1973 and evidence on the 22nd or the 23rd January, 1974. I gave statement either before I went on leave or after I returned. Mr. Gordon is head of C.I.D. San Fernando. Sgt. Reid, myself, Lewis Jordan were all in members of C.I.D. then. I never went to the scene of the crime on the 9th January, 1973.

On the evening of the 9th January, 1973, I was taken by P.C. Lewis to the home of No.2. Sgt. Reid was present. Accused was told then

28

of reports and said that he knew nothing about it. He accompanied us to the C.I.D. and was kept in custody. Sometime after I ascertained he gave a statement to P.C. Jordan, On the 10th January, 1973 I ascertained that later that same day. I did not then know the effect of the statement.

Mr. Gordon did not tell me that accused was raising an alibi in that statement when he summoned me to his office on the 10th January, 1973, in the presence of No.2 or that the accused wished to change his statement.

I don't know what caused the accused to change heart. I don't know he had a change of heart. I did not hold No.2's hand and make him sign statement. I did not cuff him, beat him or otherwise illtreat him. No one struck him in his back while I was so doing.

The statement the accused signed was not a prepared statement. There is a Mr. Ramdwar, Asst. Commissioner.

SGT. LIONEL REID re-called and sworn:-

I said I witnessed statement of No.2 and signed as such. This is the statement and this is my signature thereto.

To Misir:

Accused No.2 was arrested after he gave that statement. He was under arrest when he went to Phillipine next day. Accused did speak to me after statement recorded and did tell me something about handkerchief mask. He did know why he was taken to Phillipine next day.

RUPERT TITUS on oath:

Live 26 Cooper Street, San Fernando. Manager of International Travel Service and a Justice of the Peace:

On the 11th January, 1973, about 9.15 p.m. I received a request from the police to come to C.I.D. San Fernando and went there. I was shown into A.S.P. Gordon's office. There I saw him and three others. One was seated - accused No.1. Ajodha. Cpl. Estrado and Sgt. Reid were standing. A.S.P. Gordon informed me in the presence of the accused that he was investigating reports of murder, rape and robbery, that Seeraj Ajodha was a suspect in the matter. He told the accused I was Rupert Titus a Justice of the Peace and said to me he had taken a statement from the accused. He handed me the statement. I told Ajodha that my name was Rupert Titus a Justice of the Peace and asked if he had given statement to the police. He said yes.

I asked if it was given voluntarily. He said yes. I asked if he was beaten, threatened or if any promises were made to him. He said no. I read the statement to him. He said it was correct. I showed him signatures thereto. He said they were his. I attached my certificate to the statement and left. This is the statement. X for identification. The accused appeared quite comfortable to me.

Cross-examined.

Cross-examined by Persad Singh:

On the morning of the 12th January, 1973, I recall as I was leaving home shortly before 8.00, a police officer came to me to obtain a warrant in this matter. I think it was P.C. Lewis.

On the 11th January, 1973, I was in room with Police and accused No.1 for about 20 - 25 minutes. I am sure that I saw Cpl. Reid as I came in. He may or may not have been in the room thereafter. I was concerned with the accused's statement but he ushered me in. I was never alone with the accused. At no time that night did the accused or anyone allege that he was being forced to sign the statement. I gave evidence for the first time at the Preliminary Inquiry in January, 1974.

Cross-examination by Misir declinedRe-examination declined:JEREMIAH GORDON on oath:

Asst. Supt. of Police. In January, 1973 I was attached to C.I.D. San Fernando. On the 9th January, 1973 a report was made at C.I.D. I left in company with P.C. Lewis (Cpl.) and other police for Phillipine, via the Siparia Erin Road. As I got to a certain point I saw a gravel road on the Eastern side of the Main Road leading east from the Main Road. I got there about 1.45 p.m.

I saw Cpl. Joseph of Penal Police Station in uniform and Angela Dowlatt. Cpl. Joseph spoke to me. On the Southern side of the gravel road I saw a white Commer van, PN-3252 facing west. On the grass verge on the southern side in advance of the van I saw the body of an East Indian man face downwards - bare back and bleeding from wounds from head and back. Body was lifeless and apparently dead. Right side of hip pockets were turned out. On the south side of the body I saw a Barclays Bank (D.C.O.) and a brown envelope torn, a cheque and typewritten memo - both torn. I took possession of the articles. H.G.1 is the bank book. J.G.1 contains the cheque and memo. Envelope was official one. North of body in gravel road I saw stains resembling blood.

On examination of PN-3252 I saw the left front door open. In the cane field on the south side of the road I saw a seat. In bag I saw a black ladies handbag, open, and small change purse in it. Angela Dowlatt identified them as hers. A seat was missing from the van. At the back
...?

of van I saw a seat cover * on the road. I took possession of it. E.J.1 is that seat cover. Area around seat appeared quite recently trampled.

Opposite van on north side of road I saw a trace running through canes. I followed along the trace and I came up to a tall steel tower with electric wires about 15 feet from the gravel road. There was a sort of thatch shed rigged up on the lower end of the tower.

This place takes us up to Diamond Village and Papturi Road and Priam Road in that Village. P.C. Reyes arrived and on my instructions took photographs.

Angela Dowlatt gave me a description of the two men. That plus the information I had received, I spoke to P.C. Lewis (now Cpl.) and other police and gave them certain instructions.

Dr. Baird visited the scene, viewed the body and pronounced it dead and ordered its removal to the mortuary of the San Fernando Hospital. This I caused to be done under police escort. Later that day P.C. Lewis spoke to me. I gave Sgt. Reid certain instructions. Later that night about 9.25 p.m. Cpl. Lewis handed me striped shirt D.L.4. He and Sgt. Reid spoke to me. At that time accused Tahaloo, No.2, was at C.I.D. office. I told accused I was an Assistant Superintendent of Police and making enquiries into report of murder of one Krishendath Gosine and rape and robbery upon one Angela Dowlatt at Phillipine in a trace of the Siparia Erin Road about 12.30 p.m. on the 9th January, 1973 that a description of one of them and therefore he was suspected.

The accused said he knew nothing of the report.

On the morning of the 10th January, 1973 I gave Cpl. Jordan certain instructions and later that morning he handed me a written statement signed by accused - C.J.1. I read it. After which I allowed the accused to leave. He did so about 8.30 a.m. on the 10th January, 1973.

I continued investigations. Sometime later I received further information. I gave instructions and accused No.2 again brought to C.I.D. office around 8.35 p.m. on the 10th January, 1973. Sometime after his arrival I again spoke to him and told him again of the report and that I had received from the information that he was masked with a
handkerchief.

handkerchief and armed with an ice pick, and Seeraj Ajodha was masked with a black mask and armed with a cutlass. They both attacked Krishendath Gosine and Angela Dowlatt in the van at Phillipine, pulled Krishendath Gosine out of the van. That Ajodha (whom I referred to S. Badase) dealt deceased chops resulting in his death and that he attached Angela Dowlatt in the van, robbed and raped her. I cautioned accused - (quoted).

I left him in the back of my office and went in. Minutes after my arrival in my office, Sgt. Reid came and spoke to me. I gave him certain instructions. He left. Within minutes I left the office and met Sgt. Reid coming towards my office with No.2. I admitted accused and allowed accused to sit. I sat. Accused told me, "I will tell you what happened." I asked if he would like to make a statement. He said yes. I called Sgt. Reid and Cpl. Estrada in and then wrote on prescribed forms and read them and handed the forms to him, inviting him to read them and sign. He did so affixing date.

I took form from him and he continued making statement which I reduced to writing. After I had finished, I handed statement to him and asked him to read it. He did so. Said it was correct, signed and affixed date. I then handed him a specimen of the Judges' Rules which he read and attached a certificate to the statement in his own hand. I used no force, threats or promises and statement voluntary. Y for identification is that statement.

I summoned Mr. Ramoutar, J.P. and Clerk - Magistracy, San Fernando who came to my office. In the accused's presence and hearing I told him I was making enquiries into murder, rape and robbery in which accused is suspected and that he made this statement and handed Mr. Ramoutar statement. Mr. Ramoutar asked the accused if he made the statement. The accused No.2 said yes. He asked if the signature was No.2's. Accused said yes. Mr. Ramoutar read the statement aloud to him. Accused said it was correct and Mr. Ramoutar affixed a certificate at the bottom of the statement. (Statement tendered).
Misir wishes to object formally as to the admissibility.

Court.

Court:- What formal objection. I understood your case was statement not made by the accused and that he signed a prepared statement as a result of force.

Misir - That is so and agree matter for jury. (only indicates defence does not admit statement made) Statement Y - tendered and marked J.G.2.

I asked accused for clothing he was wearing on the evening of the 9th January, 1973. He showed me the under-pants he was wearing - read and white. I took possession of it. G is that under-pants. Tendered and marked J.G.3.

On the 11th January, 1973, I interviewed No.2, Seeraj Ajodha in my office in San Fernando. I identified myself to him and told him I was making enquiries into a report of murder of Krishendath Gosine; rape and robbery of Angela Dowlatt, etc.

I told the accused I had information that he who was also called Badase, was masked with black mask and armed with a cutlass and that Ganga Tahaloo was masked with handkerchief over his face and had an ice pick and together they attacked Krishendath Gosine and Angela Dowlatt in the van, they pulled him out, that he dealt chops to Krishendath Gosine resulting in his death and that Tahaloo robbed and raped Angela Dowlatt, that a description of the men were given and he fitted the description given of the men and therefore he was suspected. I cautioned him. He said, "Boss, let me tell you what happen."

I asked if he would like to make a statement. He said yes. I then called in Cpl. Estrada to my office and told him I invited him to be present as Ajodha wanted to make a statement. I wrote out both cautions on the prescribed form and read them to No.1. I handed him forms invited him to read and sign caution. He did so and returned sheet to me and began making statement which I recorded. When finished I handed statement to him and invited him to read it. He did so and said it was correct and signed and dated it.

I then handed a copy of the Judges' Rules and indicated the appropriate certificate to him. He wrote it at the foot of the statement and signed it. I later summoned Mr. Titus, J.P. On his arrival I told him I was making enquiries into report of murder, rape and robbery and accused was suspected and made statement which I recorded and handed

..statement.

statement to Titus. He asked the accused if he made the statement. He said yes. He asked the accused if signatures were his. He said yes. Mr. Titus asked him if he was forced or beaten to make the statement. The accused said no.

Mr. Titus then read statement aloud. Accused said it was correct and Mr. Titus affixed a certificate at the bottom of the statement and left. X for identification is that statement. Tendered and marked J.G.4 - no objection.

During the course of my enquiries Cpl. Lewis handed me a blue jersey. D.L.2 is jersey. Also a pair of blue trousers, part of D.L.3, and a bag (2 for identification) I took possession of the pants. (D for identification) from the body of the deceased at mortuary of Hospital. Pants D - tendered and marked J.G.5 - No objection.

I took the blue jersey and trousers (both D.L.3) and pants from deceased (J.G.5) and the under pants (J.G.3) blue striped shirt (D.L.4) to Government Chemist with advice letter for analysis report. I received report sometime later from Government Chemist. Now say J.G.5 not sent for analysis.

This is report re striped shirt (D.L.4). Report tendered and marked J.G.6 - no objection.

This is report re underpants (J.G.3). Report tendered and marked J.G.7.

This is report re blue jersey and trousers (D.L.3). Report tendered and marked J.G.8.

I charged accused No.2 with offences of murder, robbery and rape about 12.45 p.m. on the 11th January, 1973, cautioned him. He said he has already made a statement. I served him with copies of charge. He was taken to Magistrate's Court and remanded to the 12th January, 1973 by a J.P.

I charged Ajodha with same offences at 10.10 p.m. on the 11th January, 1973 jointly with No.2. I cautioned him (No.1). He said he had nothing more to say, I was not present when he was taken to Court on the 12th January, 1973.

Photo Ex. L.R.1 - 6 are of scene. L.R.1 shows Siparia Erin Road and Gravel Road on left.

L.R.2 shows gravel road and van. Man with hand extended is Cpl. Baksh indicating spot where body of Krishendath Gosine was.

L.R.3 is dead body of Krishendath Gosine where I found it.

L.R.4 shows gravel road and arrow indicating stains resembling blood that I saw. Body of deceased would be in cane just behind where I am standing in photo.

L.R.5 is front of van and L.R.6 is of back.

Width of gravel road - 13' 10". From stains in road indicated by arrow to dead body - 13'. From van to dead body - 88'. From body to Siparia Erin Road - 100'.

During the course of my enquiries I interviewed B. P.C. Grant.

DARJINGTON LEWIS (recalled by Crown):-

I said I went to the home indicated to me as that of No.1 I took possession of certain items these included this bag (Z for identification). I showed this to Accused No.1 who said it was his. By consent "Z" tendered and marked D.L.5.

Cross-examination declined by Persad Singh:

Recess - Resumption

Both accused and jury present

JEREMIAH GORDON re-called : - Cross-examined by Persad Singh:

I began enquiries on the 9th January, 1973. No.2 was first charged at 12.45 p.m. on the 11th January, 1973. He was first taken before J.P. on the 11th January, 1973, sometime after 1.00 p.m. I did not go with him.

No.1 was charged at 10.10 p.m. on the 11th January, 1973. I would have expected he was taken to Court on the 12th January, 1973, I was not present.

I did not swear to any information before Mr. Ramgoolam in respect of No.1 accused. I charged him. I did not write out any information but I did sign one. I laid several informations against both accused. Murder - Robbery - Rape. They were laid on the 12th January, 1973, before Magistrate when both accused appeared before him. I was not present. I was informed that the matter was adjourned to the 17th January, 1973. I (was not informed by prosecution but by my recording Clerk.

It was never brought to my attention before the 17th January, 1973,

..tina

that both accused asked to be medically examined. I so indicated on the 7th February, 1973, when I gave evidence for the first time at the Preliminary Inquiry and question asked me by Counsel. I was person in charge of case (enquiries).

On the 12th January, 1973, I left my office at 6.40 a.m. for Port of Spain - for the Attorney General's office. There would be record at the Police Station, San Fernando re who transported the accused to Magistrate's Court on the 12th January, 1973. I have not seen it.

I heard on the afternoon of the 7th February, 1973, that both accused had given evidence that day, that they had been beaten by the Police and had not yet seen a doctor. It's a serious allegation I agree, if made.

Inspector Bridgeman was Court prosecutor in January, 1973.

Angela Dowlatt gave a statement on the 9th January, 1973. I know this because W.P. Insp. Bruce handed me a statement made by Angela Dowlatt.

~~On the 10th January, 1973, sometime after 4.00 p.m., another~~ statement by Angela Dowlatt was handed to me.

It came to my knowledge that she identified a man at Cross-Crossing as resembling the person who attacked her. Miss Dowlatt left ~~the Station around 4.00 p.m.~~ I understood that she came back. I was informed the man was brought in then. I spoke to him. Miss Dowlatt ~~did not have her first statement brought back as far as I know.~~ She was in the C.I.D. office not my private office and I would not know if she called for her first statement or whether it was brought to her.

She was on that occasion in the C.I.D. for sometime. Can't say if it was 2 hours. I don't know when she left. The man identified by Miss Dowlatt was one Michael Harrinarayn from Oropouche. He was kept at Station for sometime but this was because of transport.

Statement signed by No.1 was not a prepared statement. By officers did not beat him to force him to sign it.

Sgt. Estrada was present in my office when Mr. Titus was there. ~~Sgt. Reid was not there. Quite sure. Not true that Estrada and Reid~~ beat accused No.1 on my instructions.

I had conversation with B.P.C. Grant. Don't recall date but

between 11th January, 1973 and 16th January, 1973. It was after No.1 was charged.

In Magistrate's Court I said I had spoken to Grant on the 11th January, 1973 at about 2.00 p.m., but that's not correct. I did not realise when deposition read over that it was a mistake. I now realise that. At that time I was making the final check. No.1's statement was not the only evidence against him I said I had interviewed Mr. Grant. I did so after accused was charged.

At time I charged No.1 I cannot say whether his statement was the only evidence I had against him. I am a layman. I charged him immediately after I obtained his statement and before seeing Grant.

Between the 12th January and the 17th January, 1973, I was still making investigations. I did not send for Grant. Now say I did. He came. It may have been the 16th January, 1973. I can tell from his statement if I see it.

Shown document. It was the 16th January, 1973. I would have had a copy in my possession before I give evidence on the 7th February, 1973. I did not deliberately tell a lie before the Magistrate when I said it was the 11th January, 1973.

Not true that when Grant came to me I put to him that he had seen No.1 on a certain day and time. I did ask him where he was on the 9th January, 1973. I never left the accused alone with Mr. Titus after I summoned the latter to my office. I was seated at my desk and No.1 seated opposite to me. Sgt. Estrada was sitting at the side of No.1. I did not ask Sgt. Estrada to sign as having witnessed statement but I noted that he was present at head of the statement.

I did not think it wise or necessary for Estrada to sign as having witnessed. Not true that Reid and Estrada were both in the room when Titus arrived and not true that both told No.1 before Titus arrived that they would beat him up if he did not answer to suit.

Shown L.R.3 - I see jockey shorts showing on body with apparently wide waist band. Deceased had severe wound across back. It had bled but not bleeding when I viewed the body. I took possession of the jockey shorts. I did not send it to the Government Chemist. I have it here in Court.

..I first.

between 11th January, 1973 and 16th January, 1973. It was after No.1 was charged.

In Magistrate's Court I said I had spoken to Grant on the 11th January, 1973 at about 2.00 p.m., but that's not correct. I did not realise when deposition read over that it was a mistake. I now realise that. At that time I was making the final check. No.1's statement was not the only evidence against him I said I had interviewed Mr. Grant. I did so after accused was charged.

At time I charged No.1 I cannot say whether his statement was the only evidence I had against him. I am a layman. I charged him immediately after I obtained his statement and before seeing Grant.

Between the 12th January and the 17th January, 1973, I was still making investigations. I did not send for Grant. Now say I did. He came. It may have been the 16th January, 1973. I can tell from his statement if I see it.

Shown document. It was the 16th January, 1973. I would have had a copy in my possession before I give evidence on the 7th February, 1973. I did not deliberately tell a lie before the Magistrate when I said it was the 11th January, 1973.

Not true that when Grant came to me I put to him that he had seen No.1 on a certain day and time. I did ask him where he was on the 9th January, 1973. I never left the accused alone with Mr. Titus after I summoned the latter to my office. I was seated at my desk and No.1 seated opposite to me. Sgt. Estrada was sitting at the side of No.1. I did not ask Sgt. Estrada to sign as having witnessed statement but I noted that he was present at head of the statement.

I did not think it wise or necessary for Estrada to sign as having witnessed. Not true that Reid and Estrada were both in the room when Titus arrived and not true that both told No.1 before Titus arrived that they would beat him up if he did not answer to suit.

Shown L.R.3 - I see jockey shorts showing on body with apparently wide waist band. Deceased had severe wound across back. It had bled but not bleeding when I viewed the body. I took possession of the jockey shorts. I did not send it to the Government Chemist. I have it here in Court.

..I first.

I first saw No.1 about 7.45 p.m. on the 11th January, 1973. I did not tell him I had a statement for anyone else and at no time served him with a copy of any such statement.

It never came to my knowledge that before the Magistrate, Counsel for both accused were requesting copies of their statements. Not true No.1 was beaten several times to affix his signature to a prepared statement.

Cross-examined by Misir:

This case was listed for trial last year. Don't recall if it was in June, 1974 list. I know it came on again in July, 1974 and adjourned beyond the long vacation to October, 1974.

I accept it was called again on the 7th October, 1974 but I was absent - out of the country. I was on the Federal Maple. I understood the case was adjourned to this month - 8th January, 1975.

On the 7th February, 1973, when I gave evidence at Preliminary Inquiry no direct allegation was made that I had beaten No.2 accused. I recall that it was put by Counsel that Sgt. Estrada and I beat No.2. I did not nor did Estrada, either on the night of the 10th January, 1973 or any other time. I did not wrap a stone in his clothes or have his legs opened and neither Estrada nor I beat him from behind in his private parts.

Not true that Estrada or Reid said to accused No.2 they were bringing Ramdwar to him or that if he did not answer to suit he would be beaten or any such words.

Q. I suggest that you gave accused impression that Ast. Commissioner Ramdwar would be called in and that nothing was given to remove that impression when Ramoutar came in that he was not Mr. Ramdwar.

A. That was not so.

When Mr. Ramoutar came in I told him I had statement from accused as suspect, handed it to Mr. Ramoutar who actually told accused he (Mr. Ramoutar) was a J.P. and asked if he had given the statement.

Q. Did you do anything else when Mr. Ramoutar came in?

A. I told him to sit.

Mr. Ramoutar arrived at the Station about 9.40 p.m. Sorry about 10.40 p.m. I sent for him only after I had completed the statement.

I did not find it necessary to send for him before. He lives at the corner of Kushworth and a cross street. Quite nearby.

I would not agree I did not want him present when I was taking the statement.

To Court:

I took statement from the accused.

I did the same thing the following night with No.1 and only sent for Mr. Titus after statement recorded.

Miss Dowlatt gave no names only description of assailants. She never said a tall fair man or tall dark man. She said indian. There are many tall fair and short dark indians. I had other information and not in a position to disclose sources.

Michael Harnarayan was an indian - dark complexion, slim, medium height - I would say about 23 - 24 years. He was brought in about 4.00 p.m. and released about 11.00 p.m. on the 10th January, 1973. This would be after No.2's second statement taken by me.

No.2's statement amounted to an alibi. I saw it just after 8.00 a.m. on the 10th January, 1973. There is an obligation on our part to check on alibis. I did not interview anyone mentioned in it.

As far as I know No.2 was arrested and charged at 12.45 p.m. on the 11th January, 1973. I do not admit that after giving his second statement on the night of the 10th January, 1973, No.2 was charged for murder, or rape or robbery. I know Sgt. Reid went with No.2 to Phillipine on the 11th January, 1973; it was after he had given the statement to me. I don't recall the time of day. The accused was under arrest then, but not charged with any offence.

It was Sgt. Reid and a police party who brought No.2 from his home on the 9th January, 1973. I saw the accused that night and spoke to him. I actually cautioned him and he said he knew nothing of the incident. I did not first see No.2 on the morning of the 10th January, 1973.

I said accused was released. It is noted in my diary. He was brought back to the Station by Cpl. Nelson and other police. I don't know from where. I saw him leave the C.I.D. office when released on the 10th January, 1973. I don't know where he went to. He was not kept in the Station all the time. When I released him I had Miss Dowlatt's

..statement

statement. While ~~Mr. H.S.~~ released Michael Haranarayan was pointed out by her. Accused was brought back in to CID at 8.35 p.m. and statement commenced at 9.00 p.m.

I summoned other people to give evidence at the Preliminary Inquiry. Baldeo Samaroo and Ramnarine Rampersad. But they were not called by the prosecution to give evidence.

I said I did not send under-pants worn by the deceased to the Government Chemist. I took the under-pants from No.2 on the 10th January, 1973, after the statement he gave to me. He was wearing it and I asked him to take it off. I kept it in my possession until it was sent to the Government Chemist on the 15th January, 1973.

I got it back sometime later - don't recall if it was on the 19th January, 1973. The report is dated that day. I would have got it after. I never showed it to Angela Dowlatt.

Not true I gave accused No.2 a prepared statement to sign knowing full well he had been forced by violence into signing it. He told me what is in that statement.

Re-examined:

This is the under-pants (jockey shorts), I took from the body of deceased. Tendered and marked J.G.9. It is blue with white waist band.

Neither accused nor Justice of the Peace requested that they be left alone to themselves.

Miss Dowlatt gave me a description of the two men whom she alleged attacked them.

HAMILTON BRIDGEMAN on oath:

Assistant Superintendent at San Fernando. On the 12th January, 1973, I was prosecutor at Magistrate's Court, San Fernando. That day both accused appeared in Court on charges of murder, robbery and rape.

Mr. Haranarayan was the Magistrate. Charges were read to them. I recall no requests being made by either accused. I was given no instructions by the Magistrate with respect to either accused.

Cross-examined by Persad Singh:

I don't recall Counsel making a request to the Magistrate that the two accused be examined before the 17th January, 1973. They were brought to Court between 9.00 - 10.00 a.m. Don't recall when matter

was actually called. It is possible that such a request might have been made. I have no such recollection. I don't recall if Insp. Martin was in Court.

Shown R.R.3 - Magistrate's Case Book for the 12th January, 1973. I see 408/10 of 1973. I see note: Counsel requested both accused be medically examined before next hearing. I still say I have no such recollection.

Magistrate never told me to see that they were medically examined. Had I been told so, I would have had it done.

I took no further part in the Preliminary Inquiry after that day. I don't know if I was in Court on the 17th January, 1973, when it was called on again.

I may have told Mr. Gordon that the case was adjourned to the 18th January, 1973. He was not in Court on the 12th January. Sgt. Reid may have been in Court. I am unable to say same with respect to Cpl. Estrada. There are many police in Court. I can't recall seeing Mr. Gordon on the 12th January, 1973. I would have seen him there after, but don't recall when exactly. We are in same Station and he is my superior. I may have seen him on the 11th January, 1973. I did not assist in enquiries in this matter. I was only aware that I would be required as a witness in this case. I gave no evidence at the Preliminary Inquiry.

Cross-examination by Misir declined:

Re-examination declined:

CASE FOR THE CROWN CLOSED

Adj. 15/1/75.

Wednesday 15th January, 1975 - Cont'd

Both accused and jury present

Appearances as before:

Jury sent out for Submissions.

Misir submits:- No case. Dunfries Case 168 C.C. 1009. Price 8 Cox C-C-96. That No.2 accused on evidence not a party to killing and should not be called on.

Court: Matter for jury when directed - Over-ruled.

Jury recalled and both accused called on and informed of their rights.

No.1 elects to give evidence on oath.

SHERAJ AJODHA ON OATH:

Live at Diamond Village, Picton Settlement, with wife and eight

children. I had nothing to do with alleged murder, rape or robbery at Phillipine.

On the 11th January, 1973, I was at my brother-in-law's home at Barrackpore, St. Croix Road. I was sitting downstairs. A police jeep came up and stopped in front of the house. Two police came up with pistols in their hands and ask, "Who is Badase". I said I was. They ask my next name. I said Seeraj Ajodha. They ask if I live at Picton Settlement Diamond Village. I said, "yes". They tell me, "You is the man I want." I ask "What for." They tell me about some girl and boy dead in Phillipine. I said, "I know nothing about that."

They told me I would have to go to the Station with them. I said, "All right." I spoke to my brother-in-law. I was still under the house. They took me from there and put me in the jeep and drove a little way to a lonely spot where there were cane fields. They took me from the jeep to the cane and start beating me - cuff, kick, gun in my ear and tell me this is only the smoke. After that I was put back in the jeep and taken to Princess Town Police Station. There I was taken to the back of the Station and they start beating me again. I ask what they beating me for. They said I'll know in time.

I was put back in the jeep and taken to San Fernando C.I.D. This was evening time. There I met a man who said he was Supt. of police, Jeremiah Gordon. He ask me some questions like where I work. I told him I was sick with rheumatism in my foot. He ask what I know about a crime in Phillipine. I said I know nothing about it. He asked if I accompanied anyone anywhere on the 9th January, 1973. I said, "No." He ask me for a statement concerning the crime. I said I know nothing about it.

It had a thick rule on top a table. He told the next policeman to take me in the back and he hit me with the ruler on my neck. This was in his office.

Sgts. Estrada and Reid and other police were there. I now know names of Reid and Estrada. They take me to the back and throw me on the ground and start cuffing and kicking me on my back, neck and chest. After that I was taken back to Mr. Gordon's office. He ask if I was ready to give a statement. I said I ready to give a statement. I told him I know nothing about the crime. He said not that, and asked "about the crime." I said I know nothing about it. He told the same set of *police*

to take me to the back again. They did so and start kicking and cuffing me again. They take me and push my head in a sink with water saying, "You bitch, you won't talk, I'll make you talk." Both Reid and Estrada were saying so.

They then bring me back to Mr. Gordon's office. Mr. Gordon ask me if I was ready to give a statement. I said, "I always ready, but what you want from me I know nothing about it." Three times they take me to the back.

They bring a few sheets of paper with writing on it and Mr. Gordon told me, "Sign it right now or else I'll bring Clarkie for you." When I heard that I got frighten because I fear more licks and I sign the paper. They then put me to sit in another office nearby Mr. Gordon's. They handcuff me to the wall and left me sitting for the night.

In the morning I was taken before Magistrate and charge of murder, ^{read,} I told the Magistrate I was beaten to make a statement and I would like to see a doctor. My Counsel also made a similar request. Magistrate said, "Take him to the doctor." I was then remanded by Magistrate and taken to the Royal Gaol. I was not taken to any doctor.

I first appeared in Court on the 12th January, 1973. In February, 1973 I also appeared and gave evidence on oath. I said in evidence I was beaten. In January, 1974, I again was taken before Magistrate. I again gave evidence on oath. What I said in evidence and before the Magistrate is the truth.

Cross-examination by Misir declined:

Cross-examined by Dwarika:

Woman identified by police as Mrs. Seeraj Ajodha, is my wife - mother of my children and she lives with me at Picton Settlement up to the time I was arrested.

Blue jersey (D.L.2) resembles a jersey of mine. Can't remember if I was wearing such a jersey on the 9th January, 1973. Nobody showed me that jersey on the 12th January, 1973 and I did not say it was mine.

Shown cutlass (D.L.3) - Can't remember if I have one like that or whether that is mine.

Shown Ic pick (D.L.3) - That is not mine. I can't remember if I have one like that.

Shown tall rubber boots (D.L.3) - I have boots like that at home. Don't know if that is mine. I have no special mark to know if it is mine. Mine are not turned down. These blue pants (D.L.4) are not mine. This bag (D.L.5) looks like a bag I have. Can't remember using such a bag on the 9th January, 1973. Can't recall that on the 9th January, 1973, I was wearing the blue jersey and these pants and carrying that or a similar bag.

I know No.2 accused. He lives about 4 or 5 houses from me - not far. I don't know Angela Dowlatt and did not see her on the 9th January, 1973.

I have been in custody since the 11th January, 1973. I have been examined by the prison doctor since. He just watch my eye and opened my mouth. I told him I have pains in my joints and he ordered the infirmary doctor to give me medicine. The doctor examined my body. I got no injections.

It was on second occasion - 17th January, 1973 - when I was remanded I saw the prison doctor. I told him I was suffering from rheumatism. Everyday the reception officer tells remand prisoners if they want medicine to line up, and then if we do you say what you are suffering from.

I went to Royal Gaol on remand on the 12th January, 1973. I was not asked anything about illness until the 17th January, 1973. It was only then I was told if I wanted medicines to get in the line. The doctor did not take off my clothes. He only examined my penis. That was all he examined, with my eyes and mouth - not my whole body and all I said to him was I was suffering from rheumatism which I told him I was suffering from before.

I never saw P.O. Stewart before he gave evidence in this Court. I can't say whether he was the officer who received me in prison. Don't recall whether it was on the 13th January, 1973, I was taken to Royal Gaol on remand for first time.

The Reception Officer asked if my name was Seeraj Ajodha. He did not examine my body. He took off my clothes but that was to search them not me. I was naked.

..Someone.

Someone asked if I had any complaints but not the one who stripped me. I said I was beaten by police to sign statement and showed him marks on my body. He made a note of it. Police were not there when that occurred. I was not asked to sign that paper and I was not taken to see a doctor. I had marks on my body for a few weeks.

When I saw the doctor on the 17th January, 1973, I told the doctor about marks on my body and he said he would take it in writing. Don't know his name. In January '74 I saw the same doctor and reminded him about the blows I got. He said he can't recall that, that the place burn down and all the documents lost. He told the officer then to note in writing what I was saying.

I did have marks on my body on first remand and I did make complaints and I did have marks on the 17th January, 1973 from the beating.

I live and grew up in Diamond Village. I work at Usine for 15 years as a sugar curer not as a cane cutter. I know the Siparia Erin Road in Phillipine. Don't recall whether Papouri Road meets the Siparia Erin Road in Phillipine. From Diamond Village I walk in the Phillipine Road to get to the Siparia Main Road. I don't know if that road is called the Papouri Road. I know the Catholic Church on Diamond Village. I know B.P.C. Grant. He lives about 200 - 300 from the Diamond Main Road. I live on opposite of same road but further in. I pass in front of Grant's house many times. When I do I am going to Priam Street. You can get to Phillipine by passing there - no road. Don't know if you can through the canes.

Trafalgar is a cane street. You can't pass in front of Grant's house to get there. I don't know of any rig in Trafalgar. I don't go there - no cause. Only the workers in that estate go there. There is a trespass notice.

I don't know the gravel road shown in L.R.1 off the Main Road. Never saw FN-3252. I see a man in L.R.3. I did not attack and chop him.

On the 9th January, 1973, I went shopping. I was not in Phillipine on the 9th January, 1973 with or without No.2. He is not my friend. He calls me "Mister". I know him to talk to him but he is not

my friend. I don't bathe my children.

I know Seenath's Coconut Street, i.e. back of Priam Street. Streets between Priam Street and Siparia Erin Road. I call D.L.5 a bag. I don't call it a chicken bag. I don't deal in chickens. I never pick coconuts in Seenath's estate and never went there with No.2. Never drank coconut water there with him. I never agreed to make 'a spin' up the Main Road. I never had bag with cutlass and ice pick. I did not see any van reversing or parking on the gravel road. I had no mask from any bag and no dirty handkerchief. I put on no black vest and don't know anything about No.2. We were not together that day.

I saw no girl and her boyfriend and I kill nobody. I never go anywhere and did nothing as alleged in statement. I gave no statement. I did not burn any mask.

I did not call out to Grant around 1.00 p.m. I was by my brother-in-law on the 11th January, 1973. I always go there. My sister is dead and I take foodstuffs there for him and the children. I went there on the 11th January, 1973. I did not go there on the 9th January, 1973. I went on the 10th January, 1973 and again on the 11th January, 1973.

I was downstairs when the police arrived in a jeep - not a car. I did not run as vehicle pulled up. Cpl. Raymond Scott was one of the police. Don't know others. I did not run upstairs. I was not cornered upstairs. I never gave false name - Sonny boy from San Francisco. I called brother-in-law Sonny boy. I called to him and told him to tell my wife police take me in.

Police told me they wanted to question me concerning the death of some boy and girl in Phillipine. They mentioned no names. They said murder. I said I knew nothing about it.

On the 11th January, 1973, I heard talk about somebody getting killed in Phillipine - murder. I don't know whether it was a boy or a girl - not interested. I always minding own business and I was suffering. I am 45 years now.

I don't know the name of the road where police took me in corner and beat me. Cpl. Scott was one of the men who beat me - cuff, *kick*

and put gun in my ears. Both police had gun. I can't say how long I get beaten. I had no watch and when I get licks I can't average time. They beat me at Princess Town again - Scott and other police there - from the time I reach 7. They beat me at San Fernando again, all over my body - neck, back and chest. I fall down. Afterwards they did not tell me to walk and I was put to sit down. I was limping next day to Court because of the blows and the rheumtism.

I told the Magistrate I get blows. So did my Counsel after. I told Magistrate I was beaten to sign a statement not make a statement. No one made me give any statement and none wrote any statement. They made me sign a statement. Supt. Gordon told me his name on the 11th January, 1973 - Jeremiah Gordon. I did not call his name to Magistrate when I alleged I was beaten.

I never gave a statement. One of the police said, "I will bring Clarkie for you." I don't know any Clarkie. I get frightened because I think they were bringing a more serious man.

Don't remember whether Mr. Gordon said he was calling Mr. Titus, J.P. I saw Mr. Titus giving evidence. Don't recall seeing Mr. Titus that night after I sign the statement. Don't recall his talking to me that night. Don't recall whether anyone said he was Rupert Titus and a J.P. I never told anyone I had given a statement, that no threats, promises or it was voluntary. No one asked me that. Shown statement - J.G.4. It was already written when I was asked to sign. I sign several times. Don't recall number of times. Nothing was written in my presence on the paper by anyone.

I did not append any certificate at the end of statement. I only sign my name. Certificate is not in my handwriting. That is not my handwriting and I don't remember writing any such certificate. I can't read very well and I never read anything on that "statement".

Apart from the blow with the ruler by Mr. Gordon in his office at San Fernando all beating there was in the back of C.I.D. In Mr. Gordon's room one of the police told me they were bringing Clarkie; that's all. They did say answer to suit or more licks in my arse. They tell me a lot of things.

I recall telling the Magistrate on the 7th February, 1973 in evidence that up to that day I had not seen a doctor. But I was saying the police did not carry me to any doctor as directed. I had then

..seen.

seen prison doctor and infirmary officer many times.

Not true I was giving that evidence before Magistrate in order to prepare foundation for challenging statement. Not true I was trying to extricate myself in that statement.

Re-examination declined:

Mr. Persad Singh closes case for No.1

Recess - Resumption.

Both accused and jury present

No.2 accused elects to give evidence on oath

GANGADEEN T.MH'LOO on oath:

Live at Picton Settlement. Before I was arrested I was in Transport Department, Usine working on the rail tracks.

On the 9th January, 1973, Sgt. Reid and other police came to my home. They told me of report of murder. I said I knew nothing about it. I was brought to the Police Station, San Fernando. I remained that night in the C.I.B. I was kept there.

On the 10th January, 1973, I gave P.C. Jordon a statement. That statement is true and correct. For the rest of that day I was at C.I.D. San Fernando. I was kept there. Later that evening Sgt. Estrada and Sgt. Reid beat me to sign a statement. Sgt. Estrada tell me if I don't sign the statement they will bring Ramdwar for me and more licks in my arse. Sgt. Estrada held my hand and signed the statement.

The certificate at end of statement he also held my hand and made me write it and sign it. That statement is J.G.2. I never said what is recorded in it. After I sign the statement an indian man came to the room. Estrada told me before he came in, that when the indian man come anything he ask me to answer yes or no to suit.

I did not know the indian man before. I thought he was police. Next day police took me to the man's office. I was afraid and did not tell him anything. After statement taken on the night of the 10th January, 1973, I was kept at the Station.

On the 11th January, 1973, I was taken by Sgt. Reid to a trace in Phillipine. This was before I was taken to the indian man's office.

On the 12th January, 1973, I was taken before Magistrate and represented by Counsel. In my presence my Counsel told the Magistrate that

..I.

I was beaten by the police to sign a statement and I wanted to seek medical attention.

Next day I was taken to the Royal Gaol on remand.

On the 7th February, 1973, I gave evidence before the Magistrate at Preliminary Inquiry.

On the 29th January, 1973, I also gave evidence at further hearing. My evidence before the Magistrate is the truth. On the 9th January, 1973, I was not in company with accused, I did not go with him to Phillipine and did not take part in any murder, rape or robbery,

Cross-examined by Dwarika:

On the night of the 10th January, 1973, Sgt. Estrada told me only when an indian man come in answer to suit. The indian man who came in was Mr. Ramoutar. He spoke to me. I can't remember if he said his name was Rago Ramoutar or he was a J.P. He may have done so.

He showed me the statement I had first signed. Can't remember if he asked me if my name was Gangadeen Tahaloo. He may have asked me if I had first given a statement. It is possible he asked and I said that I gave it.

Don't remember him asking me if I was beaten or threatened. He may have. If he did I would have told him yes or no. I don't recall what I answered or if I answered.

I can't remember if he read the statement, but I would not say he did not. Don't remember if he explained what he read. If he read it I would have understood.

I have no wife but I have a girl friend. I don't live with her. I saw her on the 9th January, 1973, about lunch time on my way home from work - lunch time is midday. I was not in her company that day. I first saw her in passing. I was with her last, one week before the 9th January, 1973, I had no sex with her then. I had no sex with anyone on the 9th January, 1973.

Shown red jockey shorts (J.G.3) - That is mine. I was wearing it on the night of the 10th January, 1973. I was asked to take it off by P.C. Lewis. Mr. Gordon was not there. I was wearing it on the night of the 9th January, 1973, from about 12.30 p.m.

I know No.1 as Mr. Bedase. He lives near me. Don't know if he
..works.

works. I don't know if he was working on the 9th January, 1973. Don't recall seeing him on the 9th January, 1973, when I returned from work. I did not speak to him that day. Quite sure.

I grow up in Diamond Village. Don't know area called Trafalgar. I know Siparia Erin Road, Phillipine. I would take Papouri Road to go to Diamond Village from Phillipine. I don't know Seenath Coconut field. I know coconut fields in area but not owners.

I know the Catholic Church in Diamond Village. I know there is a trace by the Church but don't know where it leads to - never went there.

If one stands by the Church and look towards Phillipine, I can't say whether we can see a rig. I don't see any. I only know rigs by Pointe-a-Pierre.

L.R.1 shows a road - Don't know where it is. Would not deny it is of Siparia Erin Road, but there were lots of gravel roads leading off it. Don't recall seeing PN-3252 on the 9th January, 1973. There is a man in C.R.3. Never saw him. I am called Conchs.

I was not in coconut with No.1 on the 9th January, 1973, I never met him bathing his son. I never went with him on any spin. Never did anything alleged in statement I signed on night of the 10th January, Never saw ice pick (D.L.3).

We never put on mask and I did not. Man in van never jumped through door on me, nor did I saw anyone else pull him out of van. No scramble. No.1 did not chop him. He did not run and I did not proceed to stab any woman or have sex with her. I was not there. I did not search her handbag and take \$10.00.

When police came to me on the night of the 9th January, 1973, I had heard of murder at Phillipine. I did not tell him who was killer. Blue striped shirt (D.L.4) is mine. I had it on the morning of the 9th January, 1973. I went to work in it. It's my working shirt. I did not see when police take it but I had it home. I did not wash it when I came from work. Shirt was wet with perspiration. I was fixing truck helping to put the engine back in the line and so on.

Police never let me go on the morning of the 10th January, 1973, after giving P.C. Jordon a statement. They never told me to go. I was kept in the Station. They did not bring me back in the Station the evening and I never volunteered to make any statement.

Q. Who is Mr. Ramdwar.

A. It seems to me he is a police. I never knew he was a policeman until it was mentioned here in Court.

On the night of the 10th January, 1973, Sgts. Reid and Estrada and A.S.P. Gordon beat me, in the same room in which I signed statement and in which Mr. Ramoutar saw me - kicks, cuffs and they wrap a wire in cloth and hit me on my "stones" with it. Can't remember who did what now. Estrada held my hand and pushed it to make me write. He did that every time I signed and for the certificate. He was in fact making the characters with my hand (demonstrates).

He make all the letters with my hand or nothing would have been written. Shown J.G.2. I have signed it seven times. Shown C.J.1. That is my first statement. I signed it of my own free will.

Q. Is it not the same as on J.G.2?

A. They look alike.

I still say Estrada hold my hand and make me write. Not true I signed voluntarily. Not true I said what's recorded there and it was not read to me by the police. I never told police anything.

I told Magistrate in giving evidence police said if I don't talk they will kill my arse. I did not talk. I only sign.

I don't know I went before Mr. Ramoutar on the 11th January, 1973, to be remanded. Don't know what he did. I was frightened and said nothing to him. It was over in the Magistracy. I had injuries (marks) on my body.

Mr. Rawlston Stewart was at Prison when we arrived there on the 13th January, 1973. I don't know what he was doing. He did not strip me. I was not searched that day. No.1 was in the line with me. When they reached me Stewart was called to the phone and when he came back he forgot and searched the man after me. He never spoke to me and so I did not complain.

I know there is a prison doctor. I did not ask to see him and made no complaint at reception.

I understood we should have seen the doctor on the 14th January, 1973, as routine but that did not happen. I found this out about a minute after admission.

Adjourned - 16.1.75

16th January, 1975 - Cont'd.

Both accused and jury present.

GANGADEEN TAHALOO (resworn) Cross-examination cont'd:

Both striped shirt and red jockey shorts in evidence belong to me and I was wearing them on the 9th January, 1973. I heard the person who raped Miss Dowlatt was wearing similar garments. It was not I. I accept No.1 as fairer than I am.

From Phillipine if one takes Paouri Road you come to Diamond Village Junction. Mr. Maharaj's shop is on right hand side of junction. Opposite to shop is road where I live leading to Diamond Village Settlement. One would come to No.1's house first not mine in going along that road. Mr. Oley Mohammed lives on Papouri Road beyond the junction on the way to Barrackpore. Sookoor has shop near by to Mr. Mohammed. There is no short cut through Ajodha's premises to the shop. I live behind Sookoor's shop.

The road in which I live does not rejoin the Papouri Road. I still say there is no short cut through Ajodha's yard to Sookoor's shop. I was not passing through there on the 9th January, 1973 to go for ice. There are big drains - 4 - 5 feet.

I was not protecting Miss Dowlatt from No.1. I did not give any statement to A.S.P. Gordon. I did not volunteer statement to Gordon. I was not released after first statement. On being taken back into custody I did not voluntarily give another statement. I gave none. I did not subsequently tell Sgt. Reid I threw handkerchief mask in canefield.

I went to Phillipine on the 11th January, 1973, with Sgt. Reid. I went in a gravel road with him. Don't recall seeing any rig when there. I did not take him to any spot - he took me.

It was off the Siparia Erin Road. Don't know if looking back from that road we could see the Siparia Erin Road. The area was Picton not Trafalgar. I don't know where that gravel road leads to. Now say it takes you to the Picton office and into Diamond Village, but I have not passed there.

I said police struck me in my testicles. They got swollen. I was able to walk however. I made a complaint to the doctor at the Gaol. I don't remember when. I did not attack Krishendath Gosine in the van. I

..did.

did not rape Miss. Dowlatt. I did not join No.1 to go and rob persons in van.

Cross-examined by Persad Singh declined

Re-examined Misir declined:

Misir - Case for No.1 closed

9.39 a.m. - Persad Singh addresses.

10.39 a.m. - Misir addresses

11.25 a.m. - Recess - Resumption - Both accused and jury present.

11.45 p.m. - Dwarika addresses

12.45 p.m. - Dwarika ends.

Adjourned - 16.1.75.

16th January, 1975 - Cont'd.

Both accused and jury present

9.30 a.m. - Court about to open up. Misir taken ill. Court rises.

10.00 a.m. - Resumption.

Both accused and jury present.

Persad Singh also holding for Misir.

12.58 p.m. - Court ends summing up.

1.00 p.m. - Jury retires

3.04 p.m. - Jury returns. Both accused and jury present.

Verdict unanimous

No.1 - Guilty Murder - Not guilty on other 2 counts.

No.2 - Not Guilty murder - guilty of robbery with aggravation and guilty of rape.

Allocutus: No.1 - Nothing

No.2 - Nothing

Dwarika - 18.4.72 - Larceny from person committal admitted.

Sentence:-

No.1 - Death

No.2 - 7 years concurrently on each count and 20 strokes with the birch on count of Rape.

Exhibit J.G.3.
/s/ H.E. Harnarayan,
Se. Mag. 7.2.73.

S T A T E M E N T

NAME: Seeraj Ajodha SEX: Male AGE: 43 years
OCCUPATION: Labourer ADDRESS: Diamond Village.
INVESTIGATING OFFICER TAKING STATEMENT: Ast. Supt. Gordon.
OTHERS PRESENT: 5585 Cpl. Estrada. DATE: 11.1.73.
TIME COMMENCED: 8.10 p.m. - 9.20 p.m. PLACE: C.I.D. San Fernando.

After being cautioned as follows you are not obliged to say anything unless you wish to do so but whatever you say may be put into writing and given in evidence.

/s/ Seeraj Ajodha.

I, SEERAJ AJODHA 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.

/s/ Seeraj Ajodha.

On Tuesday 9th January, 1973, about 12 o'clock in the day I was home bathing one of my son when one of my neighbour Gangadeen Tahaloo come home by me and tell me let we go down by the coconut, ah tell him to wait and when ah finish bathe all my children I will go, so when ah done bathe all of them he tell me we will meet in Seenath Coconut field and he left me home. I then take a chicken bag and my cutlass and I went and meet Gangadeen in the coconut. We pick a few water coconuts and drink them. When we done Gangadeen tell me let we walk up the hill. When we reach up the hill I looked towards Debe Main Road. I see a white van reversing from the Main Road along the Estate Gravel Road. Gangadeen tell me let we make a spin and see what happening. We walked through the canefield and we come on the Gravel Road direct by the van. Gangadeen went by the hytension rig and he take out two mask - one black and one was a dirty handkerchief, and an ice pick from in the straw. He tied the handkerchief over his face and I put on the black mask over my face. He had the ice pick and I had my cutlass and the two ah we walked up to the van - Gangadeen in front and I behind him. He went to the driver's door and he peep inside the van, ah see a man jumped up inside the van, the man ah see open the driver door and he jumped on top of Gangadeen. The two fellows fall on the ground. The man was on top of Gangadeen. Ah make a lash at the man with my cutlass. It catch the man somewhere on his head. The man and Gangadeen get up and start to scramble, so I make a next lash at the man with my cutlass. It catch the man somewhere on his back. The man run a little distance along the gravel road towards the Main Road and he fall on the edge of the gravel road so I went and stand up on the side of the Gravel Road by the cane, facing the
/van.....

van ah see an indian girl bawling and running about inside the van. Gangadeen open the left door of the van. He hold the girl hand and pull she out of the van and he had sex with the girl on a piece of mat on the gravel road at the back of the van. When he pull out the girl I see Gangadeen with a purse at the back of the van. He searched the purse and he throw it to me. I catch the purse, open it but I did not see any money in it and I throw it by way Gangadeen was having sex with the girl. After Gangadeen finish having sex with the girl he get up and come to where I was on the side of the gravel road and said, hand me the cutlass. I hand him the cutlass and I take up my bag and ah run a little along the gravel road into the cane field. Gangadeen run straight along the Gravel Road when as was inside the cane ah take off my mask, tear it up in pieces and ah went Trafalgar Estate and when ah reach by a ravine bank ah burn it and ah mix up the ashes in some mud and water and throw it in the ravine water. Ah pick some dry coconuts from the Coconut field and ah went home. I did not see Gangadeen. I stay home for about two hours and ah went by the home of my brother-in-law Ramcoonir Rampersad at Lengua Village Barrackpore where the police hold me today.

/s/ Seeraj Ajodha.

11.1.73.

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.

/s/ Seeraj Ajodha.

11.1.73.

This statement ended at 9.20 p.m. on 11.1.73

I certify that I read the above statement to Seeraj Ajodha at 9.55 p.m. on the 11th January, 1973 at the C.I.D. Office, San Fernando he said it was correct and that he made it of his own free will. He also admits to all of his signatures on the statement.

/s/ Rupert Titus.

Justice of the Peace.

11th January, 1973.

REGINA V. SERRAJ AJODHA AND GANGADHAR TAHALOOFOR

- (1) MURDER
- (2) ROBBERY WITH AGGRAVATION, and
- (3) RAPE

SUMMING-UP OF THE HON. MR. JUSTICE K. ST. R. MCWILLAN AT THE SAN FERNANDO
ASSIZES ON FRIDAY 17TH JANUARY, 1975:

Mr. Foreman and Members of the Jury,

We are now at the stage of this trial, which is now in its ninth day, I think, when it is my function to review the evidence you have heard in this case and to give you directions in law ...

(At this stage Mr. Frank Misir, Counsel for Accused No. 2, falls ill, and the Court is adjourned.)

R E S U M P T I O N:

Mr. Foreman and Members of the Jury,

Just before the unfortunate incident involving Mr. Misir took place, I was telling you we are now at the stage when it is my function to review the evidence in this case before you and to give you directions on the law. The case is now in its eight day but, despite that, I do not think it would be necessary for me to review in detail the evidence of all the witnesses; but to whatever extent I purport to do so I trust that you would give the same patient consideration to it as you have apparently done during the rest of this trial.

Briefly, the case for the Crown is that on the morning of the 9th January, 1973, Krishendath Gosine left his parents' home first, to take some children to school in San Fernando and, secondly, to meet his father some where around the wharf in San Fernando. It would appear /that ...

that on the way he met Angela Dowlath who told you she was his girl friend. And having dropped the children in San Fernando they proceeded to the wharf in a van driven by Krishendath Gosine, and there waited until approximately mid-day, and failing to see Mr. Gosine they then drove off to the Phillipine area where Gosine backed his van into a gravel road off the Siparia-Larin Road, and they proceeded to sit in the back of that van where she, Angela Dowlath, had been sitting from the time she got in. Not long afterwards, it appeared from her evidence, two masked men came up to that vehicle. Krishendath, she said, jumped forward towards the driver's seat and attempted to start up the vehicle, you may think in an attempt to drive it off, but before he could do so the two men, she said, proceeded to open the driver's door, pulled him out of the vehicle and there was a struggle. She said one of those men was armed with a cutlass, and he proceeded to chop Krishendath in his head. Krishendath, she said, got up and ran towards the Siparia-Larin Road and the man, the man who had chopped him, ran behind him. The other man, she says, then came up towards the van. She was there and she tried to turn up the windows and lock the van, but he came towards the front door and made a blow at her with an ice pick which she tried to avoid, but it caught her on her chest. He then proceeded to order her out of the vehicle. She did so. He searched the vehicle, she said, took up her purse in which there was, among other things, a wrist watch and \$10.00, and then took up a seat cover and put it on the ground behind the van and ordered her to take off her clothes. She did not, she said. He pulled off her skirt and panties - and she was wearing two of them,- and she laid down on the seat cover and he proceeded to have sex with her. In the course of this the other man, the man with the cutlass who had run off behind Krishendath, returned, spoke to the man who was having sexual intercourse with her, and shortly after he got up and the two of them ran off through the cane. In the course of time the police arrived; the dead body of Krishendath was discovered lying just off that gravel road, about 100 feet in or so from the main road. The doctor was sent for, Dr. Hugh Baird, and he pronounced the body dead and ordered its removal to the mortuary of the San Fernando Hospital

/where ...

where next day he performed a post-mortem on it. The body was identified to him by Bhawani Maharaj as that of his nephew Krishendath, in the presence of Sgt. Reid.

According to the doctor, his examination revealed a four inch incised wound going through the scalp and the bone in the left frontal temporal region parallel to the mid line, and he indicated. A two inch incised wound transversing the scalp and the left mastoid region, and he indicated, and said there was an associated fracture of the optical bone and internal haemorrhage in that area; and thirdly a six inch gaping wound of the right loin transversing the tissue and down to the ribs of the posterior lateral chest wall, and he indicated. The first injury to the left frontal temporal region was about three-quarters to one inch deep. The second injury went through the scalp and, in his opinion, the force of the blow causing that wound resulted in a fracture of the underlying bone. The third injury in the right loin area involved skin and muscle only, and though it was down to the bone, it did not involve the bone. In his opinion a very sharp cutting instrument, such as a cutlass, was used with a great deal of force to inflict those injuries. The post-mortem was performed about 8.00 a.m. on the morning of the 10th and, in his view, it was about 18 hours after death.

Meanwhile, Angela Dowlath had been taken to him on the evening of the 9th January about six o'clock. He examined her and found abrasions on her right elbow; three one inch scratch marks on the back and below and medial to the right scapula or shoulder blade, and he indicated; and, thirdly, a small superficial two inch wound below the middle of the left clavicle, that is, he said, on top of the breast, and he indicated. There was nothing significant about the genitals. He took a swab which he sent for analysis to the Government Chemist first, he said, along with certain clothing which was taken from her but, subsequently, he corrected that, and said only the swab was sent by him. The report on that swab which was taken from the vaginal orifice indicated the presence of acid phosphates and seminal fluid. Acid phosphates, he indicated, was a substance which is found in the male seminal fluid, and there was a rather strong concentration of it, about 100%, when normal it is between 8 and 12% and that indicated, he said, that she had sexual
/intercourse ...

intercourse within 72 hours of his examination which, I remind you, was on the evening of the 9th January 1973, about 6.00 p.m.

With reference to Krishendath Gosine, he said death, in his opinion, was due to shock and haemorrhage and the compound fracture of the skull. And with reference to Angela Dowlath, he said, in his opinion, the puncture wound on her breast was caused by something like an ice pick.

He was cross-examined. And the significance of that was that he found no injury to Angela Dowlath's private parts. As regards the abrasions on her back, he said, he thought they were caused by fingernails, particularly the three parallel ones, as distinct from being caused by a flat hard surface; this, he said, because they were parallel and about one inch in length. That on the right elbow he mentioned could have been caused by her coming into contact with a hard surface. He said she was not communicating much to him; she was not speaking very much. As far as he was concerned she was surprisingly calm.

Meanwhile the police were making enquiries as a result of what they had been told, presumably by Angela Dowlath. And in the course of these enquiries they took into custody, first, No. 2 Accused on the 9th January - the same evening - some where after 8.35 p.m., at his home. They took with them from his home a blue striped shirt. On the following morning he gave a statement to Const. Jordan. That statement I would refer to in due course; but it amounted to an alibi. But later that very evening he is alleged to have given a statement which put him on the scene and, in terms of that statement, with one of the persons who made the attack on Krishendath Gosine, though in it he said it was Krishendath Gosine who jumped on him; and in it he also is alleged to have said he had sexual intercourse with Angela Dowlath.

On the 11th January No. 1 Accused was taken into custody from his brother-in-law's home at St. Croix, and taken to the C.I.D. at Police Headquarters, San Fernando. He, too, made a statement in which he admitted chopping Krishendath Gosine.

Consequently, the two accused are now before you charged with the offences of murder, robbery and rape, and it is your function to

/enquire ...

enquire and determine on the evidence whether they are Guilty or not of any of these offences. In the discharge of that function you would be required to determine which witnesses you believe to be witnesses of truth and which are not; to determine what evidence of the witnesses is true or not; to give such weight to the evidence you accept as true as you think fit, and to come to conclusions of fact based on the evidence you accept as true. In the discharge of that function you are your complete masters, circumscribed, as I am wont to say, by the evidence you have heard in this case, your own consciences and the dictates of justice.

Justice favours no one and requires you to give to each his due. To the Crown by returning a verdict of Guilty on such counts that you are satisfied any of the accused is Guilty of; and to the accused by returning a verdict of Not Guilty if you are not satisfied of his guilt on any of the counts in respect of which you are not so satisfied.

You will recall that I told you your function is to determine what witnesses you believe and what evidence of theirs you believe. I stress this now because, Members of the Jury, in a case such as this it is inevitable that certain measures of sympathy are felt, both for the bereaved family of the deceased and, perhaps, even for the accused who now find themselves in this trial. But feelings of sympathy must find and take no part in your deliberations. Equally, you may have heard or, indeed, read certain things in connection with this case either before the trial commenced or during the course of it. I need only remind you in case you have read one of today's periodicals that it bears a most inaccurate record of what is alleged to have transpired in this Court, and so you will discard that sort of thing from your minds - anything you have heard or read about this case - and deal with the evidence alone in this case as you have heard it, and your impressions as you have formed them of the witnesses as they paraded before you and gave their evidence. In that context I repeat, you will determine which witnesses you believe to be witnesses of truth, what evidence of theirs you accept to be true, and give such weight as you think fit to the evidence you accept as true, and come to conclusions of fact based on

/the ...

the evidence you accept as true. Now that is your function.

In reviewing the evidence I may make comment on the witnesses, the nature of their testimony and such like. If I do, Members of the Jury, remember that while I am entitled so to do yours is the sole functions of making up your minds about the witnesses and their evidence and coming to conclusions of fact based on their evidence, such as you accept, and that while I am free to make comments in this case, you are free therefore, and feel free, to disregard any such comment of mine and come, as you ought, to your own independent conclusions.

You may, however, accept any such comment of mine. But if you do, Members of the Jury, I would hope and, indeed, I exhort you to adopt it not because I make them here as judge, but because you, as you have been told, are the judges really of the facts in this case and you come to it only because in the final analysis, after your own independent deliberations, decide that it is the only conclusion to which you will subscribe. But I repeat, you are free to accept or reject any such comment of mine and come, as you ought, to your own independent conclusions.

When it comes to the law, however, you will take your directions from me. In that regard you will apply the law as I give it to the facts as you find them and see whether you are able to arrive at a verdict of Guilty, as the Crown will have you, on any of the counts on which the two accused are before you, or Not Guilty, as the defence will have you.

Members of the Jury, let me then as a first direction in law tell you that every person who comes before you accused of a crime is presumed in law to be innocent, a presumption which prevails throughout the length and breadth of every trial until guilt is proved. No accused is required to prove his innocence; the Crown alleges and the Crown must prove. And to prove guilt the Crown must lead evidence of such a nature and quality that first of all impresses you that it comes from witnesses who speak the truth, for it is only on the evidence of truthful witnesses that you can be asked to act. So I repeat, the Crown must lead evidence of such a nature and quality that comes from

/witnesses ...

witnesses who speak the truth and leaves you feeling sure in your minds of the guilt of the accused. No less standard will suffice. You must have evidence which satisfies you of the guilt of the accused, and not rumours or anything that you may have read in the Press.

Now, Members of the Jury, to impress upon you the extent of the burden or obligations or requirement on the Crown to prove guilt, I need only remind you that at the stage at which I called upon the accused to offer a defence I gave them three options, one of which was that they could remain perfectly silent, and that should re-emphasize to you the fact that they do not have to do a thing, and that it is the Crown that must prove guilt. And to prove guilt the Crown must lead evidence, as I told you, which satisfies you to the extent that you are sure about it, and if you are not sure your duty is to acquit. If, however, you are sure your duty, equally, would be to convict if on the evidence an offence is made out.

If then I may attempt to put, as it were, in perspective the effect of the obligation or requirement on the Crown to prove guilt to the extent that I have indicated and the presumption of innocence which now prevails in favour of the accused, I would put it this way: that if after having heard all the evidence in this case you are not satisfied to the extent that you are sure, you have real foundations for doubt, either because you are not impressed by the witnesses who gave evidence before you, or because of anything mooted by or on behalf of the defence, then you must acquit. It will be otherwise, of course, if you are satisfied on the evidence that their guilt has been established to the extent that you are sure.

How then does the Crown hope to satisfy you in this case? It comprises, first of all, of the evidence of what I would call the Gosine family, which would include Bhawanit Maharaj; of Dr. Baird, which I have already given you; of Angela Dowlath herself; what I would call the police testimony; and then the testimony of the two Justices of the Peace who gave evidence before you.

Let me briefly then remind you of the nature of the evidence, of the Gosine family. It is that, and according to Jassodra Gosine,

/the ...

the mother of the deceased, she had spoken to Krishendath her son and given him a cheque, a bank pass book, and some money, \$245.00, to go and meet his father, Harry Ram Gosine on the wharf. His father, Harry Ram Gosine, told you that he left home that morning on the understanding that his son was to meet him by the wharf around mid-day, and Bhawani Maharaj told you around seven o'clock that morning Krishendath Gosine came to him and took up his daughter to take her to school, and you have the evidence of Angela Dowlath that Krishendath took her up some where in the Rousillac area with children in the van. She sat in the vehicle and they drove to San Fernando where the children were let out. They went to the wharf, waited almost until mid-day; they did not see Mr. Gosine, and they went to this gravel road in Phillipine.

You heard that a cheque was found by the police in that area after the report was made, and a bank book, which were identified by Harry Ram Gosine and his wife as being their pass-book, and the cheque which Jassodra Gosine gave to Krishendath. There is no mention of the sum of \$245.00.

Bhawani Maharaj told you that around 1.30 p.m. that day he received certain information and he went to a certain gravel road off the Siparia-rin Road which he purported to say was the area shown in the pictures which are in evidence, and that he saw Krishendath lying on the side of the road apparently dead, with a lot of "chops" on him; and we have from the evidence of the doctor that there were three such sounds. And on the 10th he went to the mortuary and identified the body to Dr. Baird in the presence of the police. He said the body shown in these photographs which are in evidence is the body of Krishendath Gosine.

I do not think I need trouble you further with the evidence of the Gosines' or even Bhawani Maharaj. But at this stage, Members of the Jury, let me say this: I have told you I do not propose to refer to the evidence of the witnesses necessarily in great detail; I shall do so only to the extent I think it necessary to re-focus on your minds, as it were, the whole of their evidence, and all of their evidence is for you. So that if I do not mention any particular bit

/of ...

of evidence do not think it is because I consider it unimportant; you and you alone will attach what importance or weight you think fit to such of the evidence as you have heard, and you will therefore deliberate on it even though I, as it were, were to gloss over it; all of it is for you.

I turn then to the evidence of Angela Dowlath. I have already told you how she described having gone in that vehicle with Krishendath to San Fernando, waited on Mr. Gosine by the wharf, he did not appear, and they went back to Phillipine. On the way and near the Cross-Crossing area, Krishendath, she said, took off his shirt. She still remained in the back of the vehicle. He stopped somewhere apparently, it does not matter to this case, and reversed into this gravel road which was identified to you in these pictures. Krishendath came to the back of the vehicle and they sat talking. About five minutes later, she said, she heard him bawl "Oh God!" and he jumped towards the steering wheel. She looked out and saw two masked men - both were Indians. One had a "handkerchief mask" over his face with two holes in it, she said, and she described how the handkerchief was folded along the diagonal line, as it were, and tied over his eyes and behind his head. The other man, she said, had on a black mask also with two eye holes. They were both bare-headed. And she described how Krishendath jumped forward, started up the vehicle, and said that the two men pulled him out and there was a struggle. Krishendath struggled with them as if to get away, she said. The man with the black mask, whom she told you at some stage had a cutlass, chopped him in his head. She could not recall their exact positions, and you might think: here is a struggle going on, people are shifting around, and so she is not able to recollect. He was chopped in the head. Krishendath ran a little distance, she said, in the direction of the main road, and she lost sight of him, and the man with the black mask and the cutlass ran after him. The other man, she said, came to her. She was still in the van. He still had on the handkerchief mask. She then tried to secure herself inside the van, but the man told her to come out, and that if she did not it was trouble. She noticed then, she said, that he had an ice pick in his hand. while

/she ...

she was attempting to close up the door, she said, he fired a blow at her with the ice pick and it caught her on her left breast. He was outside. She said she was afraid because of what he said. All that we know he said at that stage is that he told her to come out. She said she came out. He took up her hand-bag, searched it, took out her money. \$10.00. She could not recall whether he took out anything else. Then she said he took up a seat cover which was on the floor of the van, carried it to the back, rested it on the ground and told her to take off her clothes. I remind you she said she did not respond. He pulled off her skirt and the two panties, a black one and a light pink one, and ordered her to lie on the seat cover. She described how she was lying with the upper part of her body and head, as it were, off of the seat cover. She said she did so because she was afraid. The man proceeded to take out his penis, place it in her private parts, and you might think she means her vagina, and had sex with her for about 10 minutes. He discharged in her, she said. And whilst having sex she got scraped on her elbow on the ground; her head also got bruised.

I will remind you here that at this stage she has not described or indicated that this man with the handkerchief mask in any way held her other than take off her skirt and panties. And I mention this because of the doctor's evidence that, in his opinion, these three parallel one inch scratch marks or impressions on her back appeared to be inflicted by finger-nails. It is a matter for you whether you think she was so confused that she did not remember it, or whether if they were caused by finger-nails, whether they were caused by somebody else's finger-nails.

Whilst having sex, she said, the other man, the man with the black mask and the cutlass who had gone after Krishendath, returned, stood up and asked the man, presumably who was then on top of her having sex, if he can't come. I need hardly tell you the significance of that word "come" in our local dialect. But whether it means discharge whilst in the act of intercourse, or coming with him, going away with him, is a matter that you will deliberate upon. Shortly after, she said, the chap got up from her and said "Let's go," and he said the

... /fella' ...

fella' with the black mask ran east and disappeared in the cane. She got up, dressed herself, and went looking for Krishendath whom she found face down on the ground with a "chop" on his back. She touched him; she said there was no response, and he was apparently dead to her. She became nervous; she ran to the main road where she saw two boys going by on a motor cycle. She stopped them and spoke to them. They went with her. They saw where Krishendath was lying, and one of them, she said, left to go and get the police; the other fellow remained with her by the body. And then she saw a policeman coming up in a car. She signalled the vehicle to stop and the vehicle stopped. And you heard from Const. Eric Joseph that he was in fact coming up that road that day in his vehicle, when he was flagged down and stopped by a motor cyclist. He returned and spoke to Angela Dowlath and went and viewed the scene with her. And then other police arrived on the scene.

Angela Dowlath told you that the man with the cutlass and the black mask had on a blue jersey - two different shades of blue, one shade in front and the other in the back - and that he was wearing crepe-soles. She did not recall the kind of pants he had on; but he was about 40 years, she said, and a fair skinned East Indian, and he was taller than the other one, the one with the handkerchief mask whom she alleged had sex with her; that one she said had on a long sleeve shirt with blue stripes. I need hardly remind you, Members of the Jury, because at the time I was not too sure what she was saying, and though I have recorded "a long sleeve shirt with blue stripes" I asked her whether it was a blue shirt with stripes or a shirt with blue stripes because some people are not always precise in their language, and at that stage she said it was a blue shirt with stripes. Subsequently when she purported to identify a shirt of which you may have no doubt was found on the premises of No. 2 Accused because he said it was his, though he did not know when the police took it out, it was a shirt with blue stripes, and she said that was the shirt. And I reminded her of what she had said, and then she explained she was confused. It is a matter for you, Members of the Jury, whether you accept her answer. I remind you, however, that the first thing she did say was that it was

a long sleeve shirt with blue stripes. In this court also she was shown a jersey with two different types of blue, and she also said that looked like the blue shirt, she called it, which the man with the black mask was wearing. Now she purported to be positive about the shirt - the blue striped shirt. But though in effect she said that was the shirt, as regards the blue jersey she said that looked like it. You may think, it is a matter for you, that in reality she could really only be sure that it was a shirt similar, even though the similarities were identical. She was also shown a pair of red jockey shorts, which you heard the police took from No. 2 Accused, and she said it looked like the one that the man who had sex with her was wearing; and she was able to discover this because for the purpose of having sex he had dropped his pants, as it were, and had only withdrawn his penis through his under-pants. It is a matter for you whether that did take place. You will recollect that there was some talk that she had only given evidence about this red jockey shorts after a day's adjournment; in other words she had been only speaking on the first day of the preliminary enquiry about his shirt and trousers or something like that, and it was not until the next day that she came and spoke about red jockey shorts, and I have no doubt the inference you are being asked to draw by the defence is that there is something sinister about this and she was prompted to speak about it some time in the interval. Now that is an inference, I say this because the defence in this case is that these two men have been framed, and that, you may think, is another instance as to how they are being framed. It is a matter entirely for you. I will deal with that aspect of the defence in greater detail in due course.

You heard how the police came, she saw them there - a lot of them. She could not tell you what they were doing; she was then speaking to Asst. Supt. Gordon who was in charge of the enquiries you heard. And finally the body was removed. She was taken to the police station and then to Dr. Baird who examined her, and I have already told you what Dr. Baird found about her.

Now, Members of the Jury, she was cross-examined. And I am not, Members of the Jury, going to bother very much about the cross-

/examination ...

examination. It was largely directed, I remind you, as to what the police were doing on the scene. She said she was not paying too much attention to that. She was asked about these two men whom she stopped. She said they were not the two men who assaulted her; they were dressed differently. We have not seen or heard from them. That is what she said. Indeed, Const. Joseph told you he saw one man, and you heard from her that one man alone remained whilst the other went to summon the police. It is a matter for you what you make of the absence of these two men.

It was suggested to her that the parents did not approve of the relationship between herself and Krishendath. She said she was not aware of that. And you have only her answer. The gosines gave evidence here and it was not suggested to them that they opposed any relationship.

And the only part of her evidence really in cross-examination I will come to was the fact that she gave two statements. Here she said she gave the first one on the night of the 9th, and the other on the afternoon of the 10th. You heard from her that having given a statement on the 9th she returned to the C.I.D. at San Fernando early on the morning of the 10th about eight o'clock, and on that occasion she read over the statement for the purpose of being accurate, as it were. She remained at the police station nearly all day; and around four o'clock that afternoon on her way home with police again, in the area of Cross-Crossing she pointed to a man, Michael Harrynarine, whom she told you resembled one of the men who attacked her. She said she never said that it was the man who had had sex with her, and she stuck to that. She said, "I only said he resembled the man." The fact is the police apprehended this person and took them all back to the C.I.D. That man you heard was in custody until about eleven o'clock that night. At that stage, the stage between their returning to the C.I.D. and her departure some two hours later, she said she gave a second statement and it concerned Michael Harrynarine; it occupied the better part of two hours; but, she said, she did not withdraw the first statement - it was not cancelled, as it were. It is a matter for you what you believe.

/She ...

She was cross-examined as to whether she did not give the second statement on the 10th and, Members of the Jury, she said no. She denied that she had said so before the magistrate, but said if in fact she did it was an error. The depositions were put in, and it appears from those depositions at the preliminary enquiry she did say she had given the second statement on the 10th. Members of the Jury, the statement was called for by defence counsel for No. 2 Accused, who took some document and said, in effect, he was not pursuing it. It is a matter for you. Frankly, I do not know what it was all about; no further point was made about it. And you may think it matters not whether the statement was made on the 10th or the 9th. You have only her word for it now here that the first statement was given on the night of the 9th of January and the next one on the evening of the 10th January, and in the absence of anything else, apart from her depositions which is to the contrary, it is a matter for you whether you will accept that or not.

And then she was asked if about a week later after the 10th she did not go back to the police station where her statement was shown to her? She said she had no recollection, but if she did it would only be for the purpose of refreshing her memory for giving evidence. Well, Members of the Jury, the depositions show that she did say she went back about a week later. Again, Members of the Jury, counsel for No. 2 Accused having asked that question said, "Madam, there is nothing wrong in your going back a week later after the 10th," and no further comment has been made in this Court about it; and I do likewise.

And then it transpired again in cross-examination that in the court below the wrist-watch which is one of the articles which the accused are charged with stealing was in the hand-bag in the magistrate's court. And I say no more to you than this: that is the end of this matter in so far as it concerns the article charged. If there is any robbery at all it would now only be in respect of an alleged \$10.00 she had in her hand-bag, and it would be a matter for you whether you believe her or not that she had \$10.00 in her hand-bag.

She was asked if she had given a description to the policemen. She said yes, she told them they were two Indians; they were bare-headed ...

headed; one was fair, wearing a black mask and taller than the one with the white mask who was dark; and the taller one was about 40, and the dark and shorter one about 25, I think, she said. Members of the Jury, that is the description she is alleged to have given the police. No policeman was asked what description she gave. It was put to Asst. Supt. Gordon: "Did she say a tall man?" He said no. "Did she say a short man?" He said no. And that is as far as we have it from Asst. Supt. Gordon who said she gave a description. And indeed it may be a bit surprising if she did say a tall fair man and a short dark man, that the Superintendent said she never said a tall man or a short man. Whether he was intending to say that is not how she said it or not is a matter for you. You have heard and seen Asst. Supt. Gordon. I remind you all he said was she never said tall, she never said short, and he was left there. And all we have from her is the descriptions she gave is of a taller fair man about 40 who was wearing a black mask and had a cutlass, and who chopped Krishendath and ran after him, and a shorter dark Indian man who had on a handkerchief mask and who had the ice pick and who wounded her with it, and who had sex with her in the manner in which she indicated. And it would be a matter for you whether you think now that description possibly fits these two accused. But since she never purported to make any identification of them at any stage and was not invited so to do you will agree with me, I am sure, that this case does not hang so much on whether the description fits these two men as much as it depends on the statements they are alleged to have given. Of course, you can use what she said, if you accept it in regard to the descriptions of the assailants, and see whether you might be assisted in any way in believing the police version as to the way these statements were extracted or not; but do not let that description unduly influence you because it is so easy to have two people, one darker and one lighter than the other. It would have been better if Miss Dowlath was made to identify these two man at an identification parade. This was not done. And so I leave Miss Dowlath's evidence.

PART TWO:

The next person we have is Constable Joseph, who told you how he came up and what he had seen. And he described, looking at these pictures, saying that was the scene and that was what he saw: the van, the body. You were told by the photographer the person in the second photograph, L.R. 2, with his left hand outstretched was indicating a spot where a body was; you have been told by Mr. Gordon that that spot was where the body of Gosine was. I do not think I need trouble you much with Const. Joseph's evidence. Const. Joseph described the area and he described how he found Miss Dowlath - she was crying, her hair was dishevelled, her clothing ruffled, he said. There was a sort of white dust at the back of her hair, and a similar sort of white dust on her skirt. He told you he saw stains resembling blood about 80 or 90 feet east of the van, and that the body was about 15 feet away from these stains. He told you he saw a seat cover, which you have seen in this photograph behind that vehicle; that the spot marked by the arrow in the photo exhibit L.R. 4 was the spot with the stains, and Asst. Supt. Gordon, who is seen in that photograph, was standing up approximately where the body was, except that it was just behind him. The van door was open, as you have seen it in the photograph, and there was a seat to the left rear side of that van, apart from the cover, and he purported to point out what appears to be an object just on the threshold of that cane-field in L.R. 6.

Members of the Jury, I pause here to make this comment. No one, not even Angela Dowlath, told you that that seat was moved by anybody. You heard from some police witnesses, I do not recall whom, I think it was Const. Joseph, possibly Mr. Gordon, that a seat was missing from that vehicle. Who put it there? One of the things in this case is, you will recall, that in the statement of No. 2, the statement on which the police relies, he said when he met Miss Dowlath, she was naked. And if she was naked, the question is why was she naked? Miss Dowlath told you that Krishendath's pants was in that position as shown in L.R. 3 when she came upon it. Was he being searched? You heard he had \$245.00, and that accounts for the position of his pants? Or was

/it ...

it that Miss Dowlath was having sex with Krishendath? A lot will depend in due course on what you believe; but unless you believe she was not having sex with Krishendath you may wonder whether, assuming you ignore the statements for the moment and forget what is in them, whether any one had sex with her at all, apart from Krishendath, that is. And I mention this because again I remind you one of the defences in this case is that they have been framed, these two accused. And if so Miss Dowlath is not speaking the truth. That is the effect of saying they were framed. When she said the man had sex with her, she is trying only to cover up the fact that she was out with Krishendath and not at work as she was supposed to have been, which is where she told you she set out for that morning before she was picked up.

And now I leave P.C. Joseph's evidence and I turn to Inspector Pearl Bruce who told you that on the evening of the 9th she recovered from Miss Dowlath her two panties, the black and the pink, both of which she purported to identify - Miss Dowlath said the two panties in court were hers - and which were sent to the Government Chemist for analysis only on the 15th January. His report was made some where around the 19th January, and spermatozoa was found by the Government Chemist in areas outlined in those panties. And if she had sex, whether voluntary or otherwise, with anyone you may not be surprised if you are told that spermatozoa were found in her panties which she promptly put on after the event. That is really the effect of Insp. Pearl Bruce's evidence, except that she was the one who took the swab which the doctor took from Miss Dowlath.

Now Members of the Jury I now turn to the rest of the police evidence, and I begin not in the order in which it was given; indeed you may notice I am not following the order of the presentation of witnesses to you; I am going to try to harness the evidence in a manner which I think would best follow the chronology of events and thus tend to lay it in better perspective.

Sgt. Reid told you that with Sgt. Estrada, then a corporal, and Const. Lewis he went to the home of No. 2 Accused on the evening of the 9th January, 1973 about 8.35 p.m., and within five minutes or
/thereabouts ...

thereabouts the accused came in. He told him that he had received information that he was one of the men responsible for the killing of Krishendath Gosine, and the accused promptly denied any knowledge of it, saying that he had just come from the cinema. He told you that he saw the striped shirt on the line which he took into his possession and handed over to Const. Lewis, and he purported to identify that blue striped shirt, which the accused in this Court, in the witness stand, admitted was his. He said the accused told him he was the owner of that shirt. He said he noticed that the shirt was damp at the collar and at the cuffs. Accused No. 2 was asked when he gave evidence: Did you wash it? He said, "No, I did not wash that shirt; that shirt I wore to work that day and it was soaking wet and I put it on the line," and it is a matter for you whether you believe that is the reason why it got wet or not. And then Members of the Jury he told you the accused was taken into the C.I.D. There he remained until the next day.

Next morning he said he attended the post-mortem and then he returned to the station. And I will read this part of his evidence to you: "I returned about mid-day. No. 2 Accused was still in the C.I.D. Office. At that stage I was aware he had given the police a statement; I witnessed it." Subsequently he said the only statement he witnessed was one taken later on the evening of the 10th. And it is a matter for you; I do not think that you will quarrel with that because it is not suggested that he witnessed the first statement. He corrected himself. He told you that he witnessed a statement given that evening by Accused No. 2 to Asst. Supt. Gordon. But before that he said when cross-examined - and you will remember it was being suggested to him that the Accused No.2 was kept in the police station all day - he said no, he gave a statement at 8.30 to Const. Joseph and was released. Now that was the direct opposite of what he had said in chief the day before when he said at mid-day No. 2 was still in the police station. The following day he said he was released about 8.35 on the morning of the 10th, and was brought back in by Sgt. Nelson and other policemen. He was not at the C.I.D. all day.

/Now ...

Now Members of the Jury it is a matter for you whether you believe Sgt. Reid (and indeed Asst. Supt. Gordon) when he said the accused was released on the morning of the 10th or not, or whether as the accused himself said he was kept at that police station all day, and as Sgt. Reid said initially in examination-in-chief that when he returned at mid-day the accused No. 2, Tahaloo, was still there.

Then a lot was put to him about what happened in the Magistrate's Court on the morning of the 12th when both accused were charged before the magistrate. He said in relation to that he does not recall being in attendance in court on that day; he does not recall where he was; and he does not recall any of the accused making any complaints, or their counsel making any complaints about police brutality and requesting any medical examination of the two accused; and he does not recall or know whether they were taken to a doctor; indeed, he said, No. 1 Accused could not have made any complaint, he was not arrested on the 12th. Well I need hardly remind you there is sufficient evidence including the records from the Magistrate's Court to show No. 1 Accused was before the magistrate on the 12th together with No. 2 Accused.

He denied that he and Sgt. Estrada beat No. 2 Accused or No. 1 Accused at any time or any place. And I am not going to go into the details of the alleged beating, suffice it to say you will recall it was being put to them that they had one or the other accused out in the back of the station; they were beating them in the back; then they beat them in the room, and so on. Well Sgt. Reid, if I recall, said he was not present when No. 1 signed any statement, and he does not recall where he was, and all he knows is about No. 2 Accused and his statement; but he also denied beating him. It is a matter for you. You have heard him, you have heard his answers. He does not recall where he was on the 12th. He was positive he was not present when No. 1 is alleged to have made a statement; and though he was present when No. 2 did, neither he nor Sgt. Estrada nor any one else beat them. It is a matter entirely for you.

What he said was that on the night of the 10th Asst. Supt. Gordon called him into his room and there he saw Accused No. 2 sitting

/down ...

down, and he was told the accused wanted to make a statement, and he was required to witness it, and that is all he did. And you have heard that Mr. Ramoutar, I think it was, was called in at that stage after the statement was supposed to have been taken and recorded and it was in every way a voluntary statement. Mr. Ramoutar was called to give evidence.

Mr. Ramoutar is a Justice of the Peace and Clerk of the Peace at the Magistracy, San Fernando. He told you that when he came in Asst. Supt. Gordon told him why he was called, and told the accused who he was. He himself said he told the accused that he was a Justice of the Peace and his name was Ramoutar. He asked him if he had given a statement and if it was obtained by threats or force, and the accused said no, that it was a voluntary statement. He asked him if he signed it, he said yes; he acknowledged the signatures on it, whereupon Mr. Ramoutar said he read it to him, the accused appeared to have understood it, and he affixed a certificate to the effect as recorded thereon. Members of the Jury it is a matter for you whether you believe that transpired before Mr. Ramoutar. Not one suggestion was put to Mr. Ramoutar that the evidence he gave was not true. What is suggested is that Sgt. Reid and Sgt. Extrade had beaten the accused and after he had been forced, because of the violence used, to sign a prepared statement he was conditioned to this effect: a man called Ramdwar is coming in here and if you don't answer to suit, more licks, more blows. Well, Members of the Jury, they both denied that, Sgt. Extrade and Sgt. Reid. And I need only remind you that not a word was put to Mr. Ramoutar that what he alleged to have done in the presence of Accused No. 2 did not take place. It would be a matter for you therefore whether you believe that it was not a prepared statement which the accused was forced to sign, or whether it was as the accused says.

This done, Sgt. Reid tells you that Mr. Ramoutar left, and shortly after Accused No. 2 is alleged to have told him that the mask, which is referred to in that statement, he had wrapped a stone in it - the handkerchief mask - and thrown it in the cane-field, and that he could show them the spot. And you heard from Sgt. Reid that he went

/on ...

on the following morning, the 11th January, to a spot to which he was taken by the accused Tahaloo, but there he found nothing - a spot in the cane in the Philippine area. Again I need hardly remind you that the accused Tahaloo admits going to that spot, but denied that he took the police there; he said the police took him. Well it is a matter for you what you believe. In that regard you are asked to say whether you think Sgt. Reid would just pick up a man and walk with him to the cane-field if something was not told him about it? Well you will answer that again as best as you see fit.

And then Sgt. Reid went on to speak of events of the 11th. But before I go on may I remind you that Sgt. Estrada also gave evidence, and like Sgt. Reid he denied all suggestions of police brutality, and stated quite categorically before you that what is in that statement taken on the night of the 10th was recorded by Asst. Supt. Gordon as a result of what the accused himself said, and that it was not a prepared statement; and I need hardly remind you that Mr. Gordon said the same thing.

Earlier that day, however, you have Const. Jordan recording from the accused, Tahaloo, a statement which removes him from the scene completely. That statement is in evidence, Members of the Jury, and you have heard in it an account of Tahaloo leaving home about 6.10 a.m. to go to work at Usine Ste. Madeleine where he was a part-time labourer, he said. He walked out to the junction near Nanan's shop. He waited some time. He took a car. On reaching Priam Street he stopped a car, but his brother wanted to travel and so he let him go, and then later he boarded another one and went to San Fernando, and then finally arrived at his place of work. He finished working around 11 a.m., and it is from there that I will really begin. He returned to the Transport Office on the trolley with other members of his gang. He left the Transport Office and walked through the Caroni Ltd. private road and went home, apparently walking, and he arrived home about 12.40 p.m. And you will remember he said he then took off the shirt he was wearing as the same was wet with perspiration and he put it on a line. He remained home until 2.00 p.m. He left home; he went to Diamond

/Junction ...

Junction. He caught a car driven by one Dagger and came to San Fernando, He dropped off at the Globe Cinema and walked to Coffee Street. He met a friend; they spoke to each other and they went to the cinema. And then he talks about returning home, and you will recall that on his return home that night of the 9th the policewere there waiting on him.

Members of the Jury, a lot has been said in this Court about the police not checking his alibi; but the only part of this alibi that concerns us is the period I would say between 11.00 a.m. and if you want, just prior to 2.00 p.m., for we have it from Const. Joseph that it was about 1.00 p.m. Angela Dowlath stopped him, or the motor cyclist, and it was around that time he saw Angela Dowlath. You have if from Angela Dowlath that this incident occurred before 1.00 p.m. They got there about 12.30 or thereabouts and within a few minutes ... She did not have a watch, but it would have been between 12 noon and 1.00 p.m. So nothing that happened really before 11.00 is of much concern. But from thereon, between 11.00 and 2.00 - because if the accused did something at one o'clock he could safely be in a taxi at two o'clock in that area. The only person who could tell us where this accused was between 11.00 a.m. and 2.00 p.m. is the accused himself and, according to this statement he finished working at 11.00 a.m. and returned to the Transport Office on the trolley. He left the Transport Office and walked through Caroni Ltd. and went home; he arrived there about 12.30 p.m. I don't know; he worked at Usine. You know where Malgretoute is and you may have some idea about the length of time it would take somebody to walk through Caroni Private Road there and arrive back in the Diamond Village area. There is nobody mentioned here who can speak about the time he is supposed to have left, according to the statement, his place of work or employment and the time he reached home which is alleged to be 12.30 p.m. in that statement, and 2.00 p.m. when he alleges he left home again. Duty or no duty on the police to check an alibi there is no person mentioned to be in the company of this accused in what you might consider to be the relevant period, some time after twelve o'clock when Angela Dowlath told you they went there, and between 12 and 1.00 p.m. when this incident is

/alleged ...

alleged to have occurred. Of course, he said he gave this statement himself, so I need hardly remind you of the apparent error on it. It is recorded thereon that it was taken by Const. Jordan on the 10th January, 1972, and he said it was a mistake, it should be the 10th January, 1973. And you may well think that that is in fact a mistake since the accused does not challenge that he gave a statement that morning; indeed, he said he gave it.

Now I go back to Sgt. Reid. Before I get to Sgt. Reid, you heard from Cpl. Scott that about 2.30 to 2.45 p.m. he went to a house in Princes Town, and at the home of one Rampersad, sitting under the house he saw Accused No. 1. He was in company with other policemen. As they stopped the vehicle and approached Accused No. 1 ran upstairs; he was followed up the backstairs by one of the policemen; he himself went up the front stairs, and the accused, as it were, was cornered upstairs. He was asked his name. It is alleged he gave his name as Sonny Boy from San Francique, and then changed it and said he was Bhadase, and then he is alleged to have given the name under which he now appears, Seeraj Ajodha. It is a matter for you whether you believe that. You will recall that the accused said he did call out Sonny Boy, but Sonny Boy is how he calls his brother-in-law, and he had called to tell him, "Tell my wife" in effect "that I am being taken in by the police." Cpl. Scott told you that he told the accused he was wanted for questioning concerning the death of Krishendath Gosine, but the accused denied any knowledge of it. He was taken to Princes Town; he got there about three o'clock. He was then taken to San Fernando.

It was put to Cpl. Scott that from the time the accused denied knowledge of the death of Krishendath Gosine he was hauled off into the cane, beaten, taken to Princes Town, beaten, and taken to San Fernando where he was again beaten. Well he denied this. It is a matter for you. We don't know why they stopped at Princes Town. He denied they went off into a lonely spot in the cane, and you have his evidence about that. You will determine whether you believe Cpl. Scott or not.

/s/ ...

I turn then to Sgt. Estrada. He told you that about 7.30 p.m., on the 11th, this is whilst No. 1 was in custody, he was called into the private office of Mr. Gordon to witness a statement from No. 1 Accused. And I need hardly remind you he, like Asst. Supt. Gordon, said that statement was a voluntary statement. He denied that he beat No. 1 Accused or that anybody else did. And it was a statement recorded by Asst. Supt. Gordon as a result of what No. 1 is alleged to have said. He read it himself, he was invited - as indeed with No. 2 Accused - to sign it if it was correct. He signed it. He was given a certificate, pro forma certificate, which he copied on to the foot of that statement and signed it.

And then you heard that Mr. Titus was called in and identified as a Justice of the Peace. You heard Mr. Titus tell you that he told the accused who he was - he was a Justice of the Peace. He asked him if he was beaten or if any statement was forced out of him. He denied it. He asked him if it was a voluntary statement, he said yes. The accused acknowledged the signatures on it. And then he read it to the accused; the accused appeared to have understood it, said it was correct, and he appended a similar certificate.

Now, Members of the Jury, Asst. Supt. Gordon when he gave evidence, Sgt. Estrada when he gave evidence, told you that Sgt. Reid was not there. Sgt. Reid himself told you that he was not there. But lo and behold the first thing that Mr. Titus tells you when he gave evidence-in-chief was that "I received a request from the police to come to the C.I.D. Office, San Fernando. There I was shown into Asst. Supt. Gordon's office, There I saw him and three others. One was sitting - Accused No. 1 Ajodha. Cpl. Estrada and Sgt. Reid were standing. Supt. Gordon informed me that he was investigating reports of murder, rape and robbery and that Ajodha was a suspect in the matter and that he had given a statement," and so on. He puts Sgt. Reid standing in that room with Cpl. Estrada. And when cross-examined about it he said, "well, I am not too sure if he was in there when I was going through my routine with the accused about the statement, but he ushered me into that office."

/Members ...

2-11-1968
L.C. MYER

Members of the Jury, that is Mr. Titus, a Justice of the Peace, who told you first that Sgt. Reid was there, and he ushered him into the office was also what he said. It is a matter for you then whether you believe Sgt. Reid was there on the night when the statement was alleged to have been obtained from the Accused Ajodha. And if you believe he was there why the attempt at concealing it? Both Mr. Titus and Mr. Ramoutar told you that no one made any complaints to them and so on, and as I remind you nothing has been suggested otherwise.

And so we are at the stage where this accused, No. 1, is in custody and some police go off to his home, that is Darlington Lewis, who told you that whilst this accused, No. 1, was in custody he obtained a warrant - and that was on Friday 12th; he obtained it from Mr. Titus, I think. I am not going to bother much about whether he obtained it in the morning or not. Mr. Titus told you he got the warrant on the morning, he thought. And Const. Lewis set off for the premises of No. 1 Accused. He saw a woman who purported to identify herself as Mrs. Seeraj Ajodha. And whatever might have been the difficulties then facing the Crown, when the accused Seeraj Ajodha gave evidence, the woman whom Cpl. Lewis identified in this Court as Mrs. Seeraj was identified by the accused Ajodha when he gave evidence as his wife. He was asked if this is his wife, and he said yes. And you may infer from that - it is only an inference now, but it is one which you can conveniently make if you so wish - that if Cpl. Lewis told you that he went to a house where he saw that woman, Mrs. Seeraj, that it was the house of No. 1 accused. There he said he read the warrant to Mrs. Seeraj and made a search, and found articles of the description mentioned in the warrant: the blue jersey which is in this Court, and which the accused told you resembles one he had, or he had one like it. He found an ice pick, a cutlass, a bag and a pair of rubber boots. Members of the Jury, I am not concerned about the rubber boots. Really, you are concerned about the blue jersey, an ice pick, the cutlass and a bag, all of which are in evidence before you. On his return to the station Cpl. Lewis said he showed the items to the accused who said they were his.

/well ...

Well, Members of the Jury, you will recall he admitted that it was the first time he said in any court or any where ... that he was giving this evidence, and he was giving it because it did not arise before. And I want you to understand what was happening. He had said he had gone to the home of the accused. The accused was in custody and at the C.I.D. He did not know the accused or where he lived. And I asked him: how do you know you went to the home of the accused? And this is how Mrs. Seeraj came into the picture. You may well then believe that if all along he had been saying he had gone to the home of the accused and had not been challenged about it, he may not necessarily have adverted to the fact that he had shown these articles to the accused on his return to the station because there was no question before the day he gave evidence here that he had gone to his house; but since it transpired here he said it and he said that is the reason why he is now giving that evidence. It is a matter entirely for you, Members of the Jury, whether you accept that explanation given by Cpl. Lewis, or whether you believe it is something ad hoc, on the spur of the moment, again the workings of the police mind to frame this poor unfortunate accused, as the defence will have it; that is a matter for you to determine.

I leave his evidence then and I go to Asst. Supt. Gordon. I am not going to go into the earlier part of it in detail. The report was made at the C.I.D. on the 9th; he went to the scene; there he saw Miss Dowlath, Const. Joseph. Policemen came; he gave instructions. These photographs were taken; they were put in evidence by the officer who took them, Const. Reyes. He noticed precisely what you see in these photographs: the van, the body, the seat cover, some stains apparently resembling blood and a seat at the side of the van; and he summoned Dr. Baird. The body was removed. Miss Dowlath was sent on to the police station.

But what is important is that he was asked in relation to Miss Dowlath whether she gave him a description, and I remind you he said yes. Asked if she had said a tall man or a short man, he said no. And I have already commented on that and I do not intend to do so any further.

/The ...

The next thing we know from him is that he had found Angela Dowlath's hand-bag with a change purse, and the passbook with the cheque with some memo attached to it. And you may well believe he found that there; there is no challenge about it. And these were identified: the bag by Angela Dowlath; the passbook, the cheque and the memo by the Gosines.

Then he said he gave Sgt. Reid certain instructions. That night Cpl. Lewis handed him a blue striped shirt, and Sgt. Reid spoke to him. At that time, he said, Accused No. 2 was at the C.I.D., and of this you may have no doubt. He told the accused he was an Asst. Supt. making enquiries into a report of murder of Krishendath Gosine, and also rape and robbery upon Angela Dowlath on the 9th January at 12.20 p.m. at Phillipine; that a description of the men was given; that he fitted the description of one of them and, therefore, he was suspect. Now Members of the Jury, that is the Superintendent's conclusion, that this accused, Tahaloo, fitted a description given by Miss Dowlath. The accused however said he knew nothing of the report. He was kept in custody, and on the morning he told you he gave Cpl. Jordan instructions and Cpl. Jordan obtained a statement from the accused which I read, that is the statement saying he had gone to work, I remind you of it; and he was allowed to leave, i.e. the accused.

Now, Members of the Jury, this is one of the burning issues in this case: was Tahaloo allowed to leave or not; or was he kept in custody; and was he beaten at any time, any place. I remind you the first thing that Sgt. Reid said on returning from the post-mortem at mid-day on the 10th was that he saw the accused Tahaloo still in the station. Later, of course, I remind you he purported to say he was sent home. But it is a matter for you to say whether that, too, is a twist of police evidence to frame anybody.

Supt. Gordon continued investigations. Some time later he received further information and he gave instructions and Accused No. 2 was again brought to the C.I.D. Nobody came and told you that they went back for Tahaloo. Tahaloo told you he was there all along. And you have evidence from Sgt. Reid, I remind you, that he was there at

/mid-day ...

And it is a matter for you whether you believe Tahaloo that he was kept at that station all day, or whether you believe the police that he was released and he left, and some unknown policeman went and brought him in at 8.35 p.m. on the night of the 10th.

Now this is significant. Some minutes after his arrival, said the Superintendent, "I again spoke to him and told him of the report," and that he had received further information that he was masked with a handkerchief and armed with an ice pick, and that Seeraj Ajodha was masked with a black mask and had a cutlass.

Now may I pause here to tell you that nothing this officer is telling Tahaloo is either evidence against Tahaloo or, more particularly, against Ajodha. That is what he is telling him. And he says that Ajodha was supposed to have chopped the man, and he is the one who attacked and robbed Miss Dowlath and raped her. And he cautioned the accused, and he told you what the caution was. And then lo and behold he does not say the accused told him anything. He says I left him at the back of the office and went in. And you may ask yourselves a question: why is the Superintendent of Police going through this whole report, telling him he is the man with the handkerchief mask and the ice pick, cautioning him thus - you are not obliged to say anything, but whatever you say will be taken down - and as far as I can interpret, promptly turning his back and leaving him outside at the back of the office? Then he continued: "Minutes after my arrival in my office Sgt. Reid came and spoke to me; I gave him certain instructions. He left. Within minutes I left office and met Sgt. Reid coming towards my office with No. 2 Accused." He was asked how long, he said within minutes. "I admitted the accused and allowed accused to sit. I sat. The accused, that is Tahaloo, told him, "I will tell you what happened." "I asked if he would like to make a statement, he said yes. I called Sgt. Reid and Sgt. Estrada in." And then he read out the caution on the prescribed form, he said. You know the caution at the beginning of the form. The accused read it; the accused signed it; he then handed the form back to the Superintendent. The Superintendent recorded what he said; he passed it

/to ...

to him to read; invited him to read it and if it was correct to sign it. He said that was done; the accused signed it in the several places where it bears his signature. He passed him the specimen certificate which the accused copied from and again affixed his signature. And then you heard about Mr. Ramoutar coming in.

I remind you it was put to the Superintendent, as to Sgt. Reid and Sgt. Estrada, that the accused had been beaten to sign what was a prepared statement, and he denied it, as did Sgt. Reid and Sgt. Estrada. It is a matter for you, Members of the Jury, whether you believe him, Sgt. Reid or Sgt. Estrada, or the three of them. You have seen him, you have heard him, and I have made comments on the leaving of this accused who, according to him, was brought to him; according to the accused he was in the station all day long. Asst. Supt. Gordon says he cautioned him, did not wait for any reply; he left him in the back, with whom, I don't know. Sgt. Reid speaks to him within minutes of his coming into the office. "Within minutes", that is all he is prepared to say. Within minutes on each occasion; he leaves the office and sees Sgt. Reid coming with No. 2 Accused who is admitted.

Now Members of the Jury, is this again an attempt to remove Sgt. Reid from the scene? When I say from the scene - from the back where it is alleged he was beating the accused. It is a matter entirely for you. You have seen the police witnesses, and you and you alone have the responsibility of determining what you make of any of them. My function is only, as I say, to review the evidence and re-focus the points established on either side in this case. That is what I am doing.

Now I have dealt with Mr. Ramoutar already. I need only then go on to remind you that on the following night Asst. Supt. Gordon said he interviewed No. 2 accused in his office. He did say before that he took off a jockey shorts from the accused, Tahaloo, on the night of the 10th, and Tahaloo told you yes he was asked for it and he handed it up. Those were the shorts he was alleged to have been wearing on the 9th January, and you heard that spermatozoa was found in some area above the crutch encircled by the Government Chemist.

/..ell ...

Well you have an explanation about that given to you by defence counsel as to how spermatazoa might end up on male underwear when worn. You may think, and I seriously say to you, that such a thing is possible, that it may come on as it were because of the excitement of the male mind, if not the male organ. But I repeat, you are not going to decide this case really on whether spermatazoa was found on a man's underwear, but really what is in effect in this case the integrity of the police, and whether those statements were in fact given by the accused or not.

And so I go on to the night of the 11th when accused Seeraj Ajodha is at the C.I.D. and is ushered into Mr. Gordon's Office. And Mr. Gordon identifies himself to the accused, told him he was making enquiries into a report of murder and so on, that he had information that he, the accused, was called Bhadase, and that he was the one with the black mask and armed with a cutlass, and that Gangadeen Tahaloo was masked with the handkerchief mask over his face and an ice pick. And just as I have said when he made these similar comments to Tahaloo they were not evidence against Ajodha, similarly nothing alleged to have been said here to Ajodha is evidence against Tahaloo; indeed it is not evidence against Ajodha. That a description of the men were given, and he was suspected - he fitted one of the descriptions. Mr. Gordon cautioned him, and according to him: "Boss, let me tell you what happen," that is the reply. Now it is only if Ajodha goes on to accept anything that is alleged to have been said to him by the Superintendent at that stage that you may consider it evidence against him, Ajodha. And he, Gordon, said, "Very well. I asked him if he would like to make a statement, he said yes. I called in Cpl. Estrada to my office, informed him of the position and wrote out the caution" and so on, passed it to the accused who read it, signed it, passed it back, and the accused proceeded to make a statement which he recorded. He said Sgt. Estrada did not sign it; and Sgt. Estrada said he did not sign it; but that Sgt. Estrada was there, and Sgt. Estrada said he was there, and it is so noted indeed on the statement, and you may have little doubt that Sgt. Estrada was there. It was put to

/Sgt. Estrada ...

Sgt. Estrada that he was there beating the accused that night and telling him that Clarkie was going to come, and if he did not answer to suit, or words like that, licks like fire, and so on.

I am not going into all that, Members of the Jury; you heard it, and I am sure you remember it. You may have little doubt that Sgt. Estrada was there. What you may have to query still was whether Sgt. Reid was there because this accused said, first the Superintendent took a rule and struck him with it because he would not admit anything, and told them to take him out to the back, and that Sgts. Estrada and Reid took him out and there "conditioned him," to use a term his counsel used, by violence, brought him back in, he still would not answer, he went back out, and so on. And I can only remind you Mr. Titus first said when he went in that room Sgt. Reid was there standing up with Sgt. Estrada. And secondly when cross-examined by the accused he said, "well, I really don't know if he was there when I was reading the statement," and so on, "to the accused because I was concerned with that; but that was the Sergeant who ushered me in." I think he said, "I know him well." And you may well believe it: he is a Sergeant of Police in this area, and Mr. Titus is a Justice of the Peace in this area.

And so Members of the Jury I leave you to determine what you make of Supt. Gordon's evidence. He said he called in Mr. Titus. There was no question about Clarkie and so on. He called in Mr. Titus. Mr. Titus told you what he did. And Mr. Titus apparently being satisfied with what went on before him affixed his certificate.

86
85

PART THREE:

And so, Members of the Jury, it is because of what is contained in these two statements that the accused were charged, first, with murder, and rape and robbery. And when I say these two statements, I mean the two statements which the defence said were prepared statements - not the words from the lips of either accused.

Let me then read the alleged statement of No. 2 Accused first because that is the first one recorded on the night of the 10th. It begins by saying he lives at Ricton Settlement, Diamond Village. He knows a fellah called Seeraj Ajodha alias Bhadase, his neighbour, "we friendly." I need hardly remind you that the accused Ajodha said "I know him. I am not a friend of his. The man puts a handle to my name. He 'misters' me," to use his words.

"On Tuesday 9th January, 1973 I came from work at Usine Ste. Madeleine about 12.30 p.m. I was passing through Ajodha yard about 1.00 p.m. to buy a piece of ice in Sookoor parlour I see Ajodha bathing one of his son under a tree in his back yard and he stop me, and he tell me lets go down in the back and make a spin, ah tell Ajodha ah going home and come back, ah went home, ah put on a striped shirt and a pair of Clarke's shows and ah went back and meet Ajodha at his house and ah tell him let we go, he had a cane-cutting cutlass in one hand, and a chicken feed bag folded in his other hand. From Ajodha yard we walk down Diamond Main Road, we pass by the Catholic Church through the coconut following a trace, we come out in a place call Trafalgar, a cane estate near the Debe Main Road into one of the estate gravel road, we stop at one of the junction of the gravel road talking when I see a white van reversing along the same gravel road from the Debe Main Road coming towards us. The van stop, and Ajodha tell me let we go by the van and see what they doing, both of us began walking quietly towards the van, when we reach near the van we stop and I hear voices coming from in the van, at that point Ajodha tell me that we going to rob them, Ajodha asked me if I had anything to put over my face. I told him yes my

/handkerchief ...

handkerchief and I take out my handkerchief folded it and tied it around my head covering my nose down and Ajodha take out an ice pick and a black mask from in the bag he was carrying, he handed me this ice pick and he put on the mask on his face, Ajodha walked up to the back of the van he peep in the van, then he call me by the beckoning of his hand, I went to the van by the driver door and I peep inside the van and I see a man and woman inside the van, the man see me, he jumped through the driver door fall on me and the two of us fall on the ground. My ice pick fall, the fellow was on top of me, and Ajodha chop the fellow some where on his back, the fellow got up ran in the cane-field Ajodha chase him, the fellow run back on the gravel road and began running towards the Debe Main Road followed by Ajodha, the fellow fall down on the side of the gravel road, Ajodha come back to the van, he searched the girl's purse and put it back in the van, I then told the girl to come out of the van, she was naked. She come out of the van and tell me don't do her anything if ah want sex take sex, ah take out a piece of mat from inside the van put it on the ground at the back of the van, ah tell she to lie down if she want to give me sex, she lie down and ah had sex with she, she tell me not to let Ajodha do she anything. When as was finish having sex with she, she put on she clothes and she ran to the Main Road and Ajodha and me run down the gravel road on the way he tell me that he chop the fellow and the fellow got a good cut, Ajodha pass through the coconut and went home, I pass by the Catholic Church, and I went home."

That, I remind you, Members of the Jury, is the second statement of Gangadeen Tahaloo, which puts him on the scene; which puts him as having been told by No. 1 Accused that they are going to rob them, that is presumably the people in the van, after they have gone down by the van, and Ajodha asked him about a mask; he took out his handkerchief and put it on his face. Ajodha took out a black mask and an ice pick from the bag and gave the accused, Tahaloo.

/Now ...

Now, Members of the Jury, so far as it concerns Tahaloo, if you have no doubt - and understand me well - if you have no doubt that that statement came from the lips of Gangadeen Tahaloo and was not a prepared statement which he was forced to sign, and only if you are satisfied that it was not a prepared statement he was forced to sign, then it implicates the accused Gangadeen Tahaloo and Gangadeen Tahaloo alone, and in no way can be used as evidence against the accused Seeraj Ajodha, for the simple reason it is not evidence on oath, it was not said in his presence; and nothing said by one accused about another is evidence against that other. It would be wrong in law and immoral therefore for you as jurors to consider that statement as any evidence against Accused No. 1. And it implicates No. 2 Accused, Tahaloo, to this extent only, that he has put himself there; that he admits that he was told they were going to rob the people in the van; that he masked himself; that he accepted an ice pick, knowing full well that his companion, whoever it was, had a cutlass, and that if he, knowing that, went there and the intention was that they would use those weapons - the cutlass and the ice pick - if they had cause to, then he is guilty of whatever use is made of those weapons, and whatever else they jointly intend to do therefor. In other words, though you have no positive evidence, and on this statement you have him saying he was surprised by Krishendath Gosine; that Krishendath Gosine was the one who jumped on him, but the other man was the one who chopped Krishendath Gosine. If you believe that in accepting the ice pick, knowing his companion had a cutlass, and that the reason why they took it was to make use of it for effecting a robbery, which is a matter that you might infer in the circumstances if you want to, you need not, then he will be guilty of any crime to which the person weilding the cutlass is guilty of. But only if you are prepared to infer from the evidence of Miss Dowlath, or from the statement given by this accused, that he knew that these weapons, shall I call them, were to be used and had decided without saying anything ...but by arming himself, as it were, and masking himself with his companion, had an intention of using it, either to rob or, if surprised, for the purposes of effecting their escape, use it for violence, then, of course, he would be guilty, if

/it ...

it were used for that purpose, of any offence of which the person who used it is guilty. And similarly, if he used the ice pick, and the other man with the cutlass is in a similar frame of mind as his, prepared to mask himself, prepared to arm himself, this is to inflict violence on anybody for the purpose of robbery and, if necessary, to effect their escape if surprised, and they use it, then the one is as guilty as the other. So that if he used the ice pick on Miss Dowlath and that was within their common contemplation, the other is as guilty of the use of it on Miss Dowlath as No. 2 is. But let me remind you, the statement as such is no evidence against Ajodha - this statement of Tahaloo. You have Miss Dowlath's evidence and you have this statement which is evidence against Tahaloo, and evidence against him only.

But we have a statement from Seeraj. And Seeraj tells you this:

"On Tuesday 9th January, 1973 about twelve o'clock in the day I was home bathing one of my son when one of my neighbour Gangadeen Tahaloo come home by me and tell me let we go down by the coconut, ah tell him to wait and when ah finish bathe all my children I will go, so when ah done bathe all of them, he tell me we will meet in Seenath Coconut field and he left me home. I then take a chicken bag, and my cutlass and I went and meet Gangadeen in the coconut, we pick a few water coconuts and drink them, when we done Gangadeen tell me let we walk up the hill, when we reach up the hill I looked towards Debe Main Road, I see a white van reversing from the main road along the estate gravel road, Gangadeen tell me let we make a spin, and see what happening. We walked through the cane-field and we come on the gravel road direct by the van Gangadeen went by the hytension rig and he take out two masks one black, and one was a dirty handkerchief, and an ice pick from in the straw, he tied the handkerchief over his face, and I put on the black mask over my face, he had the ice pick and I had my cutlass and the two ah we walked up to the van Gangadeen in front, and I behind him, he went to the driver's door and he peep inside the van ah see a man jumped up inside the van ..."

/And ...

And you heard from Miss Dowlath Krishendath jumped from behind to the steering-wheel.

"the man ah see open the driver door and he jumped on top of Gangadeen, ah make a lash at the man with my cutlass, it catch the man somewhere on his head, the man and Gangadeen got up and start to scramble, so I make a next lash at the man with my cutlass it catch the man somewhere on his back, the man run a little distance along the gravel road towards the main road and he fall on the edge of the gravel road so I went and stand up on the side of the gravel road by the cane facing the van, ah see an Indian girl bawling and running about inside the van, Gangadeen open the left door of the van, he held the girl hand, and pull she out of the van and he had sex with the girl on a piece of mat on the gravel road at the back of the van. He searched the purse and he throw it to me I catch the purse open it but I did not see any money in it, and I throw it by way Gangadeen was having sex with the girl. After Gangadeen finish having sex with the girl he get up and come to where I was on the side of the gravel road and said hand me the cutlass, I hand him the cutlass and I take up my bag and ah run a little along the gravel road into the cane-field, Gangadeen run straight along the gravel road. When ah was inside the cane ah take off my mask, tear it up in pieces and ah went Trafalgar Estate and when ah reach by a ravine bank ah burn it, and ah mix up the ashes in some mud and water and throw it in the ravine water, ah pick some dry coconuts from the coconut field and ah went home. I did not see Gangadeen, I stay home for about two hours and ah went by the home of my brother-in-law Ramsoomir Rampersad at Lengua Village, Barrackpore where the police hold me today."

Members of the Jury, that statement, as you perceive, refers to No. 2 Accused; but it was given by No. 1. It is therefore no evidence against No. 2 Accused in the same fashion in which the statement given by No. 2 Accused is no evidence against No. 1 Accused. And it is only evidence against No. 1 Accused in the same way as the

/statement ...

statement of Accused No. 2 is evidence against him if, and only if, you are satisfied in your minds that it is not a prepared statement he was forced to sign. In other words if in respect of either of these two incriminating statements, let me say, you have reason for doubting the integrity of the police in this case and are not prepared to say with the police these statements were not prepared and were not forced out of them and were not signed by them in the manner they alleged, only then can you say it implicates them. If you have doubts about that, remember it is the Crown to satisfy you that statements were given by accused persons, and if you are not satisfied, having regard to what transpired in this Court, the way the case was canvassed on either side, then you will throw these statements out, you cannot use them. And if you throw them out you will take it from me that that is the end of this case in respect of either accused. It is only if you are satisfied that the police acted above board, you do not go along with the defence, you reject it and say these were not prepared statements which they were forced to sign, then and only then, you will consider them and consider what weight you can give to them. You will apply each statement to the person who gave it and see where it leaves you.

Now I have dealt with the statement of Tahaloo. May I tell you that Ajodha's statement, if you accept it, and only if you accept it was not a prepared statement he was forced to sign, says in the circumstances he alleges here that he chopped Krishendath, or the man in the van, which we heard was Krishendath Gosine, and then ran him down a little distance, and it is a matter for you whether he inflicted the three chops or not. If you do, Members of the Jury, it would seem to me that you will have to convict him, certainly of murder, which I shall describe to you now.

Members of the Jury, murder is committed where a person of sound memory and discretion, unlawfully killeth any reasonable creature in being and under the Queen's Peace, with malice aforethought either express or implied, death following within a year and a day.

/When ...

When shorn of its legal jargon what that means, Members of the Jury, is this: that if you, without any just cause or excuse, kills another human being under the Queen's Peace, which means he is not an alien enemy whom you can hound down in times of war, with the intention either, expressly, of killing him or to cause him grievous bodily harm, and death follows within a year and a day, that is murder. And your only excuse in those circumstances would be that you are insane and not responsible.

Members of the Jury, just as there is a presumption of law that every accused person is presumed innocent until he is proved guilty in the manner and to the extent I have indicated to you at the outset, so there is a presumption that every person who is arraigned before you is sane, just as you and I are presumed to be sane until the contrary is established. And we have no evidence of that nature; and as far as we are concerned both these accused are sane persons.

As I say, neither in the statement of Tahaloo, so far as it concerns him, nor in the statement of Ajodha so far as it concerns him, is there any excuse apparent for the use by Ajodha of a cutlass, and it would be for you whether he intended to cause death in those circumstances, or to cause grievous bodily harm which may be implied ... the intention can be implied from a voluntary act, deliberate, unprovoked and which is likely to cause serious injury; and the more serious the injury - and from the doctor's evidence it was quite serious - and the more dangerous the weapon used, the more readily might a jury infer that either death was the intention or, at least, grievous bodily harm. And you may well be hard put to say that in the circumstances as you heard it, either from Angela Dowlath or from Ajodha himself in the statement, if you accept it as a proper statement, that he did not have one of those intentions. And it seems to me if you accept that statement as having been made by Ajodha the verdict on the first count in respect of Ajodha is Guilty of Murder. But you can only come to that conclusion if you have no doubt of the authenticity of the statements, the persons from whose lips they came, and the integrity of the policemen in this case. If you have doubts about it, reason for doubts, you have got to

/reject ...

reject it, blue shirt or not; that does not matter; that is not sufficient evidence in my view to arrive at a verdict of Guilty in this case.

Now my function is to review the evidence and to make comment. I have drawn attention to the evidence in respect of Ajodha, No. 1 Accused, and I have made comments. You and you alone, Members of the Jury, are the persons whose function it is to determine what you make of the police in this case or not. You have a responsibility to the community which you serve and, if in the faithful discharge of that responsibility the police leave this Court free, their integrity unassailed, that is the fortunate consequence of your verdict. But if, on the other hand, they leave here with their integrity tarnished, their characters blackened, then that is the unfortunate consequence of your verdict. That is not a matter for you. But if that is your just opinion and feeling, having heard the evidence in this case, you are not worthy as jurors if you fail to exercise your function according to the requirements of the law. What you find in respect of Ajodha is a matter for you. But I repeat, the crux of the case against him on the first count, indeed, if you will, of all the counts, depends on what you make of that statement. Was it a statement he was forced to sign? A prepared statement, the contents of which he knew nothing, as he alleges? Or was it a statement made by him? And if so are you prepared to act on it?

As regards the second count, dealing with Ajodha, because there are two accused; they are indicted jointly but must be tried separately in your minds. And so you can convict one and acquit the other; you can convict both, or you can acquit both. But it seems to me in this case, and this is only a comment, that if you will decide to acquit one because you have foundation for doubting the integrity of the police in this case with respect to the statement, then it seems to me you are going to be in a difficult position, and are not going to be able to distinguish one from the other. You may, if you can honestly sit down and do it. But it seems to me that they are all in the same basket here. Whether you think you can separate them and

/extract ...

extract one and reject the other is a matter for you. My honest opinion is that is something that I do not think one can satisfactorily do here. But if you can, Members of the Jury, that is your function and do not let anything I say take it away from you.

Well now, if he is Guilty of Murder because you accept his statement and are prepared to act on it, is he Guilty of Robbery? Well Members of the Jury, you heard they put on masks, According to Ajodha, "Let me take a spin." He does not know what is happening. But here you have two men being armed, one with a cutlass, one with an ice pick, according to Ajodha, and they go up to the van. What is the purpose for which they are going there? To murder? They may not have had the intention, either of them, at the time, and Ajodha may have wielded the cutlass because he saw his friend being attacked. When I say "attacked," being attacked by somebody who was entitled to attack them, and whom they had no rights to resist. And if in those circumstances he chopped him and caused his death you may well decide it is murder.

Was it also for the purpose of robbery? Well he does not say anything about going to rob; but he does say when he came back after chasing Krishendath, the bag was thrown to him and he searched it and found nothing. Does that indicate that they were on a common escapade in respect of getting what they could? If you do not think he went there to rob then acquit him. You can only convict him if you think he went there intending jointly to rob either of those two persons, and in this particular instance, Angela Dowlath, and only if you are satisfied that Angela Dowlath had \$10.00 in her purse and the one or the other of them having handled it, it was no longer there. But you must find a common purpose, a common intention formulated there and then, is sufficient. But not because the bag is thrown to him and he looks in it and tosses it aside, not because of that you will say, well he is guilty. You may use that, if you will, to decide what you can of two men putting on masks and arming themselves and going down to a couple in this manner.

And the same with rape. There is no evidence against him anywhere that he participated in the rape; indeed Angela Dowlath said that when he came back he said to the other fellow, "Man, you can't

/come ...

come!" which ever way you want to interpret that word. Unless you find that they had that intention from the way they behaved before, or he in some way lent aid and encouragement, and there is no evidence of this apart from his words, "Man you can't come!" And if you think that is encouraging him to go on to that stage, well then you may say he was a party to the rape.

But not merely because one man, the other man, may have raped Angela will you say he is Guilty of Rape. You must find that they either had a common intention, and there is no positive evidence of this, or he in some way gave aid and encouragement to the other man in the act. And if you are not satisfied about that you will acquit him.

Remember, Members of the Jury, he does not have to prove his innocence. He may be Guilty of Murder if you accept this statement; but it does not necessarily follow he is Guilty of either of the other offences.

PART FOUR:

I turn now to Tahaloo. Unless you are satisfied Tahaloo was on a common enterprise with whoever it was - he said it was No. 1 Accused; that is not evidence against No. 1. Unless you are satisfied about that you may well take the view they went there, they did not intend to make any use of these - it is a matter for you, if despite the mask and arming themselves you say they did not intend to use violence; they may have intended to scare people. It is a matter for you; I don't know. But if you say they did not intend violence, and when Krishendath jumped him he did not anticipate that his colleague would use the cutlass, then you can say Not Guilty of murder. And if you have any doubts about it the verdict, too, must be Not Guilty of murder.

When it comes to the evidence of the ice pick, he has withdrawn himself from making any blow at Miss Dowlath and using that in his statement. Miss Dowlath said she was in effect stabbed by this man; she tried to get away. The doctor's evidence was it looked like a puncture wound. Do you believe this accused dropped the ice pick and did Miss Dowlath nothing? Do you believe he is trying to extricate himself; That is if you have no doubts about the authenticity of this statement. It is a matter for you. But if you accept Miss Dowlath's evidence/^{as} against what is in this statement you may either decide she submitted because she was afraid or because she was ordered to, either on her version or, despite what the accused said in this statement, the accused Tahaloo, she says, "You want sex, take it!" If you decide, and only if you believe and accept that she was afraid and submitted, in other words, "Look, you want sex, take it; but do not injure me," and submitted because she was placed in fear at that moment, can you say she submitted because rape is only committed where a person has sexual intercourse unlawfully with a woman against her will by violence or by putting her in fear. So if you believe Miss Dowlath was out for a good time that day and was prepared to take the first man who came along after her boy friend ran then it is not rape. But if you believe she was forced into submission then it is rape, and so the accused Tahaloo will be Guilty of rape. The question will be, as I said before,

/whether ...

whether you think this other accused, Ajodha, in any way aided or encouraged him. But this does not arise unless you are satisfied that there was rape, which is sexual intercourse contrary to her will and by force or by fear - and he said he had sexual intercourse with her. The only question is whether it was by force, fear or violence, which is a matter you will decide.

So this statement corroborates Miss Dowlath that a man had sex with her. Apart from the evidence of spermatozoa on panties and what have you, this statement corroborates Miss Dowlath and tends to implicate Tahaloo, and does implicate him, if you accept the statement as genuine, and only if, however, you are satisfied that Miss Dowlath did not offer freely her consent. Whether you will say the first accused, Ajodha, encouraged or aided, or was a prior party, and there is no positive evidence of this, is a matter for you, and if you have doubts you will acquit Ajodha of that.

And the same with robbery. Of course, this accused, Tahaloo, does not mention in his statement anything about the hand bag, except to say something Ajodha, or the other man, did. That is not evidence against Ajodha. Tahaloo extricated himself. So it is only if you accept Miss Dowlath's evidence and are sure about it - when I say accept, I mean sure about it - that the man who had sex with her took up her purse and searched it, and only if you are satisfied she had \$10.00 in it, may you infer that he took it from her, in which case it will be, at least, larceny. But if you believe she was brought to a state of fear because two armed and masked men had come upon her and she was induced by fear to stand by and offer no resistance then it will be robbery.

Robbery is the felonious taking of goods or money to any value from the person of another or in his presence, against his will, by violence or by putting him in fear.

In this case there is evidence in which you could accept there was violence used to Miss Dowlath. You may not. I have told you what robbery is. There is evidence - her evidence; there is the doctor's evidence which would indicate, if you wish, that she may have been subjected to violence. Whether you accept that, I don't know. Certainly there is evidence upon which you could say she was put in fear.

/The ...

The question is: was money found in this purse taken from the bag, and was it taken? If it was there certainly was robbery.

Was there robbery with aggravation? That is committed, as charged in this indictment, where two or more people are involved in it. And this is the crux in this case. If you are not satisfied that Ajodha was a party - and remember, as far as Miss Dowlath is concerned, even if you accept that Ajodha was the man with the cutlass, she never suggested he took any part in going through her hand-bag. And if you reject that Ajodha was not a party to any plan to rob, or never aided or abetted in any robbery or larceny, then there is no robbery with aggravation as charged.

There may be robbery if you accept that she was put in fear, her money was taken from the hand-bag, and only if you are satisfied she was put in fear; or, of course, you may say simple larceny. But I venture to think that if you decide that Gangadeen Tahaloo raped Miss Dowlath - and that is a matter for you - then you will say he was guilty of robbery. But he would be only guilty of robbery with aggravation if you are satisfied the other man with him was also a party to robbing her.

Before you can make up your minds on any of these things, Members of the Jury, you have to consider the defence. What was the defence, apart from the attack on the police witnesses and their integrity in this case? As I say you may have no doubt, in so far as complaints were made, that these two men made complaints on the 12th before the magistrate. Well much depends on what you make of them; of No. 2's alibi, first of all, which was put in his statement which he said he gave to the police. Well it was a statement to the police; it is evidence. It is a matter for you whether you are prepared to act on it. He was in the box; he was cross-examined. He said he had come from work and where he went. It is a matter for you. There is nobody brought to support him. And there is indeed no person known to the police within that period - 11.00 a.m. to 2.00 p.m. - whom they could go and enquire from as to where he said he had gone in this first statement. It is a matter for you whether you believe he was not there.

/He ...

He protested at all stages from the witness box he was not in Phillipine with anybody at all, and murdered no one, raped no one, robbed no one. If you accept he was not there, Members of the Jury, that is the end of the case against him. If you have any doubts as to whether he wastthere or not, that is the end of the case against him. It is only if you reject what he would have you believe - that he was not there - and go on to say that you accept the manner in which the statement was taken as stated by the police, and believe it to be so, and have no doubt about it, will you be in a position to say, certainly, he was Guilty of rape, if you believe Miss Dowlath was in fear, or Not Guilty, if she was not put in fear or if she freely consented, or if you have doubts about it.

And then you will consider whether he was Guilty of robbery. Miss Dowlath's evidence you have. It is a matter for you.

Murder, only if you believe there was a common plan to rob or use violence. The only thing you have about that, indirectly, from which you make make moment of - it is a matter for you - is there masking themselves and arming themselves; at least his masking himself with his companion, whoever he was.

On this issue of his incriminating statement let me first deal with when he was asked about making complaints to the Prison doctor. Members of the Jury, he did not say he made any complaints to the Prison doctor; indeed, he said, when the Prison Officer was searching them on the 13th January when they were remanded in prison, he did not even search him. He said the phone went, "he searched the man before me, and when he came back from the phone he went and search the man after me. So he did not search me, so he can't say I had no injuries." You heard Officer Stewart. It is a matter for you whom you believe. Stewart said they had no marks of violence on them. It is a matter for you. Do you think even if they were beaten they would be beaten in a manner in which obvious marks would be shown or not? It is a matter for you. They made the allegation; you have heard and seen them. It is a matter for you.

/And ...

And then Ajodha said the man did not search him. "He was not there; somebody else searched me." And what is more, "They did not search my body, they searched my clothes. I made no complaints. I did not know I could make any. I made before the magistrate." That is established. "I did not make to the doctor until the 17th, and the doctor examined my tongue and my penis," and told him something or the other, but he did not examine his body. And sometime in 1974 he saw the same Prison doctor, he reminded him of it, and the doctor said, "I have no notes or recollection, and the fire destroyed everything."

Members of the Jury, in answer to that the Crown reminded you of the depositions, which are in evidence, of the accused Ajodha before the magistrate and when he gave evidence at the preliminary enquiry, and he says, "Up to today, the 7th February, 1973, I have not seen any doctor." He attempted here to say what he meant was neither the police nor the Prison authorities referred him to a doctor in response to any complaints made in the magistrate's court or any directions given by the magistrate. It is a matter for you whether you believe him on that explanation or not. The fact is you have evidence from the Prison Officer he examined him, he found no marks. Whether you believe the Prison Officer or not is a matter for you.

My only comment in all this is, despite Superintendent Bridgeman's showing here before you, and I say "showing" because I am surprised, and I say this as a judge with all the weight and authority that it can carry, I am surprised as a judge that a police prosecutor in charge of a case at the preliminary enquiry does not know, or is not aware, that complaints are being made in court of police brutality. He is there to carry on the case for the police at that stage, and his function is to ensure that justice is done, either the police's integrity be unassailed, or the accused be acquitted if that is what justice requires. And it would have been better for him to pay attention and appreciate what was going on, as did in fact go on - complaints were made. Whether or not the magistrate directed any medical examination or not we only have the word of the accused for that. In the light of what goes on I don't know what you will believe.

/It ...

It is a matter entirely for you. But that much is certain - they complained. And in my view it would have been the imperative function and duty of that police officer to pass on that information so that if only for the police own protection no such attack could be made here as was made in this case. It was not done. What you make of what has gone on in this Court is a matter entirely for you. You can convict both; you can acquit both. You can acquit one and convict the other, or vice versa. It is a matter entirely for you.

But the crux of this case, I repeat, is: are the police to leave here untarnished or not? In the course of your function in this case that consequence is inevitable. I should only hope that in accordance with the oath you have taken you arrive at whatever just verdict you think the evidence and the dictates of justice require in this case.

Is there anything, Mr. Dwarika, you think I can usefully add?

STATE COUNSEL: Would Your Lordship wish to refer to the fact that it is alleged Sgt. Estrada held the hand of the accused?

HIS LORDSHIP: When it comes to that, Members of the Jury, I am grateful to counsel; I have noted it. In determining what you make in terms of No. 2 Accused, I think it was, that Sgt. Estrada or somebody else was jumping up like a peacock, that he was beaten and that he was forced into signing this thing, you will compare what you know is the voluntary statement given to Cpl. Jordan and the signature on that, with the signatures on the challenged statement of Tahaloo, and see whether you are left with the impression or not that it was a man whose hand was held and whose hand was used to make characters by somebody else, or whether it is so authentic when compared with the other one, the genuine one, as to leave you with no doubt that that did not occur. And if you think that did not occur then, of course, you will have to reflect carefully on all the other allegations made. If you have doubts about it the benefit of the doubt always must be given to an accused, and so it will be the same as if he had established his point. I remind you he does not have to establish it; he has only got to genuinely confuse the issue, let me put it that way, and if because of that you are left in doubt he must have the benefit of

/that: ...

that doubt. But I repeat, and I have made my comments, and I would remind you I have made them because I believe I have a duty to make them. But yours is the sole responsibility of determining what is and what is not in this case.

Mr. Persadsingh?

MR. PERSADSINGH: The fact that Asst. Supt. Gordon denied here that he had categorically stated he had seen Borough Const. Grant on the 11th.

HIS LORDSHIP: I must thank you. Mr. Foreman and Members of the Jury, I am being blown apart by two fans on either side of me and it is difficult to keep track of my notes. One matter I forgot in this case concerns Borough Const. Grant who told you it was not until the 16th January he was called by Asst. Supt. Gordon and asked if he had seen this accused, Ajodha, on the 9th. Members of the Jury, it is apparent to me, and I am sure to you at this stage, that the accused Ajodha passes in front of Grant's house on many occasions, with or without a bag, and what would make Grant recall that day in particular from another is a matter for you, if, when on the 16th he is asked about the 9th. But clearly, you can have no doubt despite what the Superintendent said ... Grant told you the Superintendent asked him, "If I had seen him on the 9th, and that is why I remembered that day." You may believe him; you may say you do not; if he passes there often and he has no reason to remember one day from the other, you don't see why you should accept him. That is a matter for you. But Grant has said, nevertheless, that he did see Ajodha around one o'clock passing his home away from the Phillipine area; in other words, going in the opposite direction to Phillipine. And you have evidence in this case that if you go in the direction whence he came you will end up around the area where this alleged murder is supposed to have taken place. You heard the two accused cross-examined about the area. They denied much knowledge about it, until Accused No. 2 said if you pass along some road from Phillipine you finally end up where he lived and pass Ajodha's house too.

/But ...

But I do not think all that is going to be of much consequence, except that I ask you to bear in mind, just as I ask you to bear in mind the cross-examination of the police officers, I ask you to bear in mind the cross-examination of these two accused and the effect left with you then, that is the impression formed of them. That is a matter for you. Did they impress you - any of them on either side - as the sort of witnesses who you honestly feel were speaking the truth so you are prepared to say, on the one hand, I go along with the Crown and the police; or, on the other hand, these two accused have impressed me to the extent that, having regard to other things in this case, I am not prepared to go along with the Crown's case. But whether or not you believe either side, I repeat, is solely your responsibility. Bearing this in mind, you do not have to believe anything the accused say. Theirs is not to prove; the Crown must prove. So if you genuinely have doubts and cannot accept those two statements as being authentic, genuine, not prepared statements of which the accused are not the authors, then you cannot convict.

Mr. Foreman, and Members of the Jury, you will now retire to consider your verdict.

PART FIVE:VERDICT AND SENTENCE:

No. 1 Accused, Seeraj Ajodha, Guilty of Murder. Not Guilty of Rape.
Not Guilty of Robbery with Aggravation.

Prisoner Called Upon:

Seeraj Ajodha: I have nothing to say.

No. 2 Accused, Gangadeen Tahaloo, Not Guilty of Murder. Guilty of Rape.
Guilty of Robbery.

Prisoner Called Upon:

Gangadeen Tahaloo: I have nothing to say.

STATE COUNSEL: No. 2 Accused on the 18th April, 1972 was convicted of Larceny from the Person at the San Fernando Magistrate's Court and was ordered to serve four months' with hard labour.

(Admitted).

HIS LORDSHIP: Seeraj Ajodha, the jury in their wisdom have found you Guilty of Murder, and you Tahaloo, Guilty of Robbery and Rape. There was evidence, which if they accepted, could have led positively to these verdicts. It means that they are satisfied that the attacks you made on the police are mere fabrications. I am not surprised, after hearing the evidence of Mr. Titus and Mr. Ramoutar, that is the view they took on the evidence.

This Seeraj, was a most brutal murder. Not only did you chop and wound the deceased, but you went in hot pursuit of him. And since Angela Dowlath could only speak of the infliction of one wound in her presence, it means you pursued him and inflicted two more.

Fortunately for you, Tahaloo, the jury have not - again I am not surprised - found you Guilty of the offence of Murder. I think if you believe in God, from now on you should pray to him every day for you could easily have been found Guilty of the offence of Murder also. I have no doubt in my mind that the statement you gave to the police, since the jury decided you gave it, was an attempt to extricate yourself from rape. I have no doubt that

/Angela ...

HIS LORDSHIP:
(Cont'd).

Angela Dowlath's version is to be preferred instead of yours. You have one conviction for dishonesty, but in the circumstances of this case, perhaps if you had not accompanied Seeraj he would not have been here today for me to pass that sentence the law prescribes for me to pass on him.

But however fool-hardy these two people were to go into the place in which they did, our highways and byways must be free for all those who wish to walk therein. In sentencing you, therefore, I will bear in mind that the jury have decided that you were no party to the infliction of a wound or serious wounds on Krishendath Gosine. So I shall treat you only as having been before us on a charge of rape and robbery. In respect of each of these offences you will do seven years with hard labour. And in addition you will receive twenty strokes with the birch. The sentences will run concurrently.

SENTENCE OF DEATH PASSED UPON NO. 1 ACCUSED.

THE COURT OF APPEAL

Criminal Form VI

NOTICE OF APPLICATION FOR LEAVE TO APPEAL AGAINST A CONVICTION UNDER SECTION 5 (b)

To the Registrar of the Supreme Court.

I, SERRAJ AJODHA, having been convicted of the offence of Murder and (being now a prisoner in Her Majesty's Prison) at Royal Gool

(or) now living at and being desirous of appealing against my said conviction Do Hereby Give You Notice that I apply to the Court of Appeal for leave to appeal against my said conviction on the grounds hereinafter set forth.

(Signed) Serraj Ajodha Applicant

(or Mark)

Signature and Address of Witness attesting Mark

Dated this 17th day of January, 1975

PARTICULARS OF TRIAL AND CONVICTION

- 1. Date of Trial: 17th Jan. 1975
2. In what Court tried: H.C. of Justice San Fernando
3. Sentence: Death by Hanging

§ GROUNDS FOR APPLICATION

My Counsel will supply grounds

You are required to answer the following questions:-

- 1. If you desire to apply to the Court of Appeal to assign you legal aid and on your appeal, state your position in life, amount of wages, or salary, &c., and any other facts which you submit show reasons for legal aid being assigned to you.
2. If you desire to be present when the Court of Appeal considers your present application for leave to appeal, state the grounds on which you submit that the Court of Appeal should give you leave to be present thereat.
3. The Court of Appeal will, if you desire it, consider your case and argument if put into writing by you or on your behalf, instead of your case and argument being presented orally. If you desire to present your case and argument in writing set out here as fully as you think right your case and argument in support of your appeal.

State if you desire to be present at the final hearing of your appeal.

*Here state the offence, e.g., Larceny, Murder, Forgery, &c.

†Where applicant for any reason not in custody.

‡Fill in all these particulars.

§Here state as clearly and concisely as possible the grounds on which you desire to appeal against your conviction.

TRINIDAD AND TOBAGO

O. III, r. 17(1)

Criminal Form II

IN THE HIGH COURT OF JUSTICE

Appeal No.....

R. v.

1. Seeraj Ajodha 2. Gangadeen Tahaloo - 1. Murder 2. Robbery with Aggravation 3. Rape

PARTICULARS OF TRIAL

- (1) Where tried? 1st Assize Ct., San F'do.
(2) When tried? 8th, 9th, 10th, 13th, 14th, 15th, 16th and 17th January, 1975
(3) Name of Judge who tried? Mc Millan, J.
(4) Verdict of Jury? Guilty accd. 1: 1st count; accd. 2: 2nd count - Robbery and 3rd Count
(5) Sentence, and any orders made consequent thereon? accd. 1: Death by hanging accd. 2: 2nd count - 7 yrs. H.I. : 3rd count - 7 yrs. H.I. to run concurrently and 20 strokes with the Birch on the 3rd count

- (a) Restitution of property.
(b) Orders referred to in Section 2.

(6) Copy of the list of exhibits directed by these Rules to be kept by the proper officer of the Court of Trial. List of exhibits included

(7) Whether a Certificate under Section 5 (b) was given? No.

(8) Name and address of the Prosecutor? State names of Counsel and/or Solicitor for prosecution, and address of Solicitor. Mr. L. Dwarika c/o Legal Dept., San F'do.

#2
(9) Whether Appellant was defended by Counsel and Solicitor privately or by Counsel at request of Court? Give name of Counsel and/or Solicitor for Appellant and address of Solicitor.
Counsel: Mr. B. Persadsingh
Sol. Mr. S.M. Shah, Harris Pro., S/F'do. accd. 1 was defended by Mr. G. Misir, Q.C. and Mrs. R.S. May, privately

(10) Name and address of Shorthand Writer? Messrs. G. Harris and N. Chan c/o Supreme Ct., San F'do.

(11) Whether Appellant bailed before trial if so in what amount, and whether with sureties, if so in what amount?
Neither of the Appellants were granted bail

Dated this 11th day of August, 1975

(Signed) B.H. Singh
Officer of the Court Trial

TRINIDAD AND TOBAGOIN THE COURT OF APPEALCriminal Appeal
No. 2 of 1975

SEERAJ AJODHA

v.

THE STATE

Coram: Sir Isaac Hyatali, C.J.
C.E.G. Phillips, J.A.
E.A. Rees, J.A.

July 18, 1977.

Vernon de Lima and R. Nelson for Seeraj Ajodha

Oka Seepaul and B. Dolsingh for The State

J U D G M E N TDelivered by Sir Isaac Hyatali, C.J.

The appellant Seeraj Ajodha and one Gangadeen Tahaloo were arraigned before McMillan J. and a jury at the San Fernando Assizes on an indictment containing three counts. The first charged them with the murder of Krishendath Gosine (the deceased) at Phillipine on 9 January, 1973; the second with robbing Angela Dowlath with aggravation on the same date of \$10.00 in cash and a wrist watch; and the third with having carnal knowledge of the said Angela Dowlath on the same date without her consent. The jury found the appellant guilty of murder and not guilty on the other two counts. Tahaloo was found not guilty of murder but guilty on the second and third counts.

The facts in support of the prosecution's case were these:- At about midday on 9 January, 1973 the deceased and his girlfriend Angela Dowlath were seated together in a parked van on a gravel road at Phillipine off the main road known as the Siparia-Lrin

Road when two masked men came up to the vehicle.

The deceased attempted to drive the van away but before he could do so the two men opened the driver's door and pulled him out of the van. A struggle ensued between them. One of the men who was armed with a cutlass (the armed man) proceeded to chop the deceased on his head. The deceased began to run towards the main road but the armed man pursued him. The companion of the armed man ordered Dowlath out of the van after threatening and wounding her with an ice pick. After doing so, he went into the van and took \$10.00 and a wrist watch from her purse. He then began to have sexual intercourse with Dowlath at the rear of the van without her consent.

While doing so, the armed man who had pursued the deceased, returned and asked the companion whether he could not ejaculate. Soon afterwards he ejaculated, told the armed man 'let's go' whereupon they both disappeared from the scene.

A report was made and the deceased was found by the police about 100 feet from the main road apparently dead. A post mortem examination performed by Dr. Baird revealed that the deceased had sustained three wounds: a 4" incised wound through the scalp and bone on the left side of the head; a 2" incised wound traversing the scalp and left mastoid region; and a 6" incised gaping wound of the right loin. Death was due to shock and haemorrhage resulting from the wounds on the head.

The only evidence connecting the appellant with the commission of the offences charged against him was a confessional statement which the prosecution led evidence to establish was given voluntarily. In it he stated, inter alia, that he and Tahaloo came upon a van parked on a gravelled road. Tahaloo then produced a black mask and a handkerchief, gave the appellant the mask which he put over his face, while Tahaloo tied the handkerchief over his face. Tahaloo had an ice pick and he, the appellant, was armed with a cutlass. They both walked towards the van whereupon the deceased jumped on Tahaloo. A struggle ensued between them and while the deceased was on top of Tahaloo on the ground, the appellant chopped the deceased on his head. As the struggle continued between Tahaloo and the deceased the appellant

dealt the deceased another blow with the cutlass on the back. The deceased then ran a little distance away and fell on the gravelled road. The appellant stood on the side of the gravelled road thereafter and saw Tahaloo pulling a girl out of the van. After he had done so he began to have sexual intercourse with her at the rear of the van. When he had finished he joined the appellant at the side of the gravelled road and they both left the scene.

After evidence was led to show that the appellant had made the statement attributed to him voluntarily, and that it was certified by a Justice of the Peace that it was so made, counsel objected to its admissibility on the ground that the appellant had not made it and that moreover he was beaten and forced by police officers to sign a prepared statement.

The learned trial judge taking the view that no issue had been raised as to the voluntariness of the statement, admitted it in evidence without conducting a trial within a trial. No complaint was made on appeal against the summing-up, but the appellant's conviction was attacked on the grounds that:

- (1) the whole of the trial of the appellant was a nullity since the appellant was unlawfully tried on an indictment in which a count for murder (a capital offence) was improperly joined with counts for robbery with aggravation and rape (non capital offences) contrary to s.16 of the Jury Ordinance Ch.4 No.2: and
- (2) the learned trial judge erred in not holding a trial within a trial to determine the issue of the admissibility of the confessional statement attributed to the appellant since he had raised that issue by his allegation that he was beaten and forced to append his signature to the said statement which he never made.

Both these points have been raised in previous cases before this Court and even though Mr. Nelson sought, by a sustained and attractive argument to convince us to hold that the whole of the trial was a nullity we were not persuaded to change the views which we expressed in the decisions of this Court on this point in Singh & Ors. v R. # 12,14 & 16/75 dated 26 February, 1976 and Thomas & Paul v The State # 27 & 28/75 dated 12 November, 1976 to the effect that the appellant's trial on the charge of murder was valid and that his trial on the other counts was invalid.

The only question however that arises from the joint trial is whether, as we stated in Singh's case (supra) and Thomas and Paul's case (supra), the appellant was prejudiced by the reception of the evidence tendered in proof of the counts charging him with the robbery and rape of Angela Dowlath, the friend of the deceased.

In our opinion, the evidence was relevant to and probative of the prosecution's case which was that the appellant and his confederate Tahaloo, murdered the deceased in pursuance of a common plan of which the robbery and rape charged against them were an essential part; and as it could not be said in the circumstances, that its prejudicial value outweighed its probative value it was properly admissible in proof of the prosecution's case.

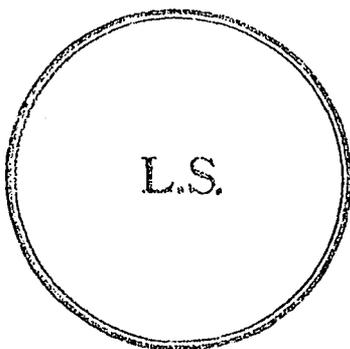
Put another way, as the court stated in the course of the submissions, if the indictment against the appellant and Tahaloo was for murder only, the evidence of the robbery and rape would have been relevant and admissible to prove that they were acting in concert and that the murder was committed by them in pursuance of the common plan alleged by the prosecution. Indeed having regard to the evidence of the prosecution, the acquittal of Tahaloo by the jury on the charge of murder can only be credited to his very good fortune.

With respect to the second point argued in this appeal, it is only necessary to say that on 15 July 1977 this Court ruled against a similar point raised in Chandree & Others v The State No. 28, 29 and 37 of 1976. The same result must necessarily follow in the instant case. Accordingly we reject the complaints made against the appellant's conviction and dismiss his appeal.

Isaac E. Hyatali
Chief Justice

Clement E. Phillips
Justice of Appeal

Evan A. Rees
Justice of Appeal



At the Council Chamber Whitehall

The 27th day of March 1980

BY THE RIGHT HONOURABLE THE LORDS OF THE JUDICIAL
COMMITTEE OF THE PRIVY COUNCIL

WHEREAS by virtue of the Trinidad and Tobago Appeals to Judicial Committee Order 1976 there was referred unto this Committee a humble Petition of Sceraj Ajodah in the matter of an Appeal from the Court of Appeal of Trinidad and Tobago between the Petitioner and The State Respondent setting forth that the Petitioner prays for special leave to appeal *in forma pauperis* to the Judicial Committee from a Judgment of the Court of Appeal dated 18th July 1977 which dismissed the Petitioner's Appeal against his conviction at the San Fernando Assizes of murder: And humbly praying Their Lordships to grant the Petitioner special leave to appeal *in forma pauperis* to the Judicial Committee against the Judgment of the Court of Appeal dated 18th July 1977 or for further or other relief:

THE LORDS OF THE COMMITTEE in obedience to the said Order have taken the humble Petition into consideration and having heard Counsel in support thereof and in opposition thereto Their Lordships do grant special leave to the Petitioner to enter and prosecute his Appeal *in forma pauperis* against the Judgment of the Court of Appeal of Trinidad and Tobago dated 18th July 1977.

AND THEIR LORDSHIPS do further order that the proper officer of the said Court of Appeal be directed to transmit to the Registrar of the Privy Council without delay an authenticated copy of the Record proper to be laid before the Judicial Committee on the hearing of the Appeal.

E. R. MILLS,
Registrar of the Privy Council.