

O N A P P E A L
FROM THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

B E T W E E N :

LINCOLN NOREIGA

Appellant

- and -

THE STATE

Respondent

CASE FOR THE RESPONDENT

Record

10 1. This is an appeal by special leave in forma pauperis from a judgment of the Court of Appeal of Trinidad and Tobago (Sir Isaac Hyatali C.J., Corbin and Scott J.J.A.) dated 15th July 1977 which dismissed the Appellant's appeal against his conviction or murder and sentence of death at the Port of Spain Assizes (Braithwaite H and a jury of twelve) on the 3rd June 1976.

20 2. The Appellant was jointly charged together with one Peter Chandree and one Denis Fletcher with the murder of Andrew Britto ("the deceased"), a Corporal of Police. The trial took place between 17th May 1976 and 3rd June 1976 and lasted 15 days. All three Defendants were convicted of murder.

3. At the trial the prosecution called material evidence to the following effect:-

(a) Kadir Shah said that he was a Paymaster at the Ministry of Finance. On 24th May 1974, escorted by the deceased and another, he took \$20,000 in his car to the pay station. At the pay-office he started to put change into the change box; the deceased remained outside. He heard two gunshots; in response to a male voice he threw his car keys on to a table and they fell outside. He heard his car start and drive away. He saw the deceased on the ground; he appeared to be dead. His car and the money were gone.

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(b) Punchoon Dookie, who worked at the Public Works said that on 24th May 1974 he was in the pay yard and he

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saw the shooting. He saw the Appellant standing outside the pay-booth. He later saw four men, one of whom was the Appellant.

(c) Chesterfield Small, Ex Inspector of Police, gave evidence of carrying out an identification parade on 13th September 1974 at which Dookie identified the Appellant.

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(d) Adolphos Clarke, Assistant Superintendent of Police, gave evidence that on 12th September 1974 he went to Siparin Police Station where he saw the Appellant. He cautioned the Appellant who said "I am going to tell you what happened". He recorded what the Appellant had to say; the Appellant signed the statement which he said was correct. The witness made no threats to him nor in any way induced him to make the statement. He then read the statement to the jury (apart from 13 lines thereof which were deleted in the absence of the jury) without any objection being taken by or on behalf of the Appellant. In cross examination he denied stamping on the Appellant's foot, he denied that a gun was held to the Appellant's head or that he was told that he would be shot and pushed through the window unless he signed the statement.

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(e) Malcolm O'Brien said that on 12th September 1974 he was a Justice of the Peace for County St Patrick. He went to C.I.D. Siparin where he met Assistant Superintendent of Police, A Clarke, and the Appellant. He was given a statement which he read over to the Appellant. The Appellant agreed with it and said that he had signed it and that it was made without threats or promises. The Appellant did not appear to be afraid.

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4. (a) The Appellant gave evidence on oath. He said that having been arrested he at first refused to sign the statement. pp.45-46 He only signed after the police had stamped on his injured foot, held a gun to his head and told him that unless he signed they would shoot him, push him out of the window and say that he was shot while attempting to escape. He was also threatened so that he would tell the Justice of the Peace that he had signed the statement voluntarily. The Appellant gave evidence of an alibi in that he said that at the time of the shooting he was at La Brea Magistrates Court where he spoke to Michael Lewis.

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(b) Michael Lewis gave evidence on behalf of the Appellant in that he said that on the morning of 24th May, 1974, the day of the shooting, he saw the Appellant at the La Brea Magistrates Court.

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5. The learned trial Judge summed up to the jury. He repeatedly stressed the importance of the confession statement and that the jury must decide whether the Appellant gave the statement at all and, if he did, what weight should be attached to it. He directed the jury that

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if they gave the statement its full weight they could convict the Appellant without any more evidence at all. The trial Judge also dealt with the jury's function, his own function and the burden and standard of proof. He directed the jury on the law of murder and of common design.

6. The jury returned a verdict of guilty of murder against the Appellant, who was sentenced to be detained during Her Majesty's pleasure.

10 7. The Appellant appealed to the Court of Appeal. The appeal was heard before Sir Isaac Hyatali C.J., Corbin and Scott JJ.A., the judgment of the Court being given on 15th July, 1977 dismissing the appeal.

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20 8. The judgment of the Court of Appeal was delivered by Sir Isaac Hyatali, C.J. After reciting the charges, convictions and facts of the prosecution case the learned Chief Justice considered the submission made on behalf of Chandree and adopted by the Appellant that the learned Judge was wrong to admit the confession statement without first conducting a trial within a trial. The learned Chief Justice's consideration of that submission is set out in paragraph 8(b) of the Respondent's case in Peter Chandree -v- The State Privy Council Appeal No. 8 of 1981. The learned Chief Justice also considered the submission that the learned Judge erred in law in leaving it to the jury to determine whether the Appellant's confession was voluntary. His reasoning is as set out in paragraph 8(a) of the Respondent's case in Peter Chandree -v- The State.

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30 The learned Chief Justice also considered two further complaints made on behalf of the Appellant, namely, that his defence was not put adequately to the jury and that the jury were not directed that in law a statement made by one accused in the absence of and implicating his co-accused, was not evidence against the latter. The learned Chief Justice concluded that both complaints were wholly unjustified.

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9. On the 27th November 1980 the Appellant was granted special leave to appeal in forma pauperis to the Privy Council.

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40 10. The Respondent respectfully submits that this appeal should be dismissed and respectfully repeats and adopts the submissions made in paragraphs 10 - 14 of its case in the appeal of Peter Chandree -v- The State (excluding the reference to the cross examination of Corporal Baksh).

11. The Respondent respectfully admits that this appeal should be dismissed and the Judgment of the Court of Appeal of Trinidad and Tobago should be affirmed for the following among other

R E A S O N S

(1) BECAUSE the trial Judge correctly directed the jury both on the facts and the law.

(2) BECAUSE in all the circumstances the Appellant's statement was properly admitted.

(3) BECAUSE in all the circumstances there was no call for the trial Judge to hold a trial within a trial.

(4) BECAUSE, further, in all the circumstances it was not for the trial Judge in the absence of a request by, or the consent of, the Appellant. to hold a trial within a trial.

(5) BECAUSE on the facts herein the issue of voluntariness did not arise so as to call for a trial within a trial to be held.

(6) BECAUSE of the other reasons set out in the judgment of the Court of Appeal.

STUART MCKINNON Q.C.

JONATHAN HARVIE

IN THE PRIVY COUNCIL

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