

17/81

ON APPEAL
FROM THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

B E T W E E N :

DENIS FLETCHER 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 the 15th July, 1977 which dismissed the Appellant's appeal against his conviction of murder and sentence of death at the Port of Spain Assizes (Braithwaite, J. and a jury of twelve) on the 3rd June, 1976.

20 2. The Appellant was jointly charged together with one Peter Chandree and one Lincoln Noreiga 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:-

30 (a) Kadir Shah said that he was a paymaster at the Ministry of Finance. On the 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 gun shots; in response to a male voice he threw his car keys on 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) Lionel Stephenson, a labourer at Works Department, said that he was at the pay yard on 24th May, 1974, that he heard gun shots and saw the deceased holding his abdomen. He saw a man kick down the gate and go inside the paymaster's office. The man was the Appellant. He identified him at an identification parade on 11th September, 1974. In cross

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examination he admitted inconsistencies in his evidence at the Magistrate's Court and said that he had been confused. pp.12-14

(c) Punchoon Dookie, who worked at the Public Works, said that on 24th May, 1974 he was in the pay yard and he saw the shooting. He saw the Appellant kick the gate and go into the pay booth. He later saw four men, one of whom was the Appellant, drive off. He identified the Appellant at an identification parade. pp.14-16
17-19
pp.4-15

10 (d) Inspector Melville King gave evidence of his conduct of an identification parade on the 11th September, 1974 at which the witnesses Stephenson and Dookie identified the Appellant. pp.30-31

20 (e) Adolphus Clarke, Assistant Superintendent of Police, said that on 10th September, 1974 he went to C.I.D. San Fernando where he saw the Appellant. After cautioning him the Appellant said that he would tell him what happened and that he wanted to give a statement. The witness wrote down the statement given by the Appellant who then attached his certificate that he gave the statement voluntarily. He said that he did not threaten or induce the Appellant to give the statement. The Appellant's statement was then read to the jury. No objection by counsel for the Appellant was made thereto. In cross examination he denied making up the statement and he denied tricking the Appellant into signing it. pp.34-38
p.35
pp.51-54
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30 4. The Appellant elected to make a statement from the dock. He said that he sustained gun shot wounds in an incident in August, 1974. He was taken out of the hospital into police custody and was questioned about the killing of the deceased. He said he knew nothing about it. He was then asked by Mr Clarke to sign some documents which we was told concerned the incident in which he was shot. He was told everything would be all right. He signed the documents and was told he was going to be a witness for the Crown. pp.43-45

40 5. The learned trial Judge summed up to the jury. He 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. The trial judge 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 if they gave the statement its full weight, without any more evidence at all, that they could convict the Appellant. As to the Appellant's contention that he was tricked into signing the statement and certificate the learned trial judge said: "... if you feel that there has been any trick employed on (the Appellant) to sign these documents, it would mean that there would be no value to anything that appears pp.57-117
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pp.70-71
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above his name,, any such trick would be sufficient to make that statement completely worthless. And if you find that there was no trickery or you are in any doubt as to whether there was or not, I would suggest to you - and I think it is a suggestion you will have to follow - you will have to reject the statement altogether."

6. The jury returned a verdict of guilty of murder against the Appellant who was sentenced to death.

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 delivered 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 reviewed those English and Commonwealth authorities which he considered relevant and concluded in respect of the Appellant that "his allegation was that he signed the confessional statement attributed to him in consequence of a false representation made by the Police that it contained his report of a shooting incident in which he was involved. He denied making the statement, and alleged that it was fabricated by the Police. His objections did not raise any issue as to its admissibility and it was rightly left to the jury as questions of fact for their exclusive determination." The only other ground of appeal advanced on behalf of the Appellant was that the trial judge erred in directing the jury that they should determine whether or not the Appellant's confession statement was voluntary. The learned Chief Justice considered that the direction, although erroneous, was in the circumstances favourable and not prejudicial to the Appellant. His appeal was in those circumstances dismissed.

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30 9. On 27th March, 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. Save only for the question of leaving the issue of voluntariness to the jury in respect of the summing up, which, it is respectfully submitted, dealt properly and adequately with both the facts and the law.

11. As to the first ground of appeal raised in the Court of Appeal, it is respectfully submitted that the prosecution having led evidence to establish prima facie the voluntariness of the Appellant's statement and there being no objection taken on behalf of the Appellant as to its admissibility, the

trial judge was correct in permitting the statement to be admitted in evidence. It is further submitted that quite apart from the absence of any objection made to the admissibility of the statement there was no cross examination prior to the reading of the statement to the jury which might have indicated to the trial judge that the admissibility of the statement might be in issue.

10 12. The Respondent respectfully repeats and adopts the submissions made in paragraph 12 of its Case in the appeal of Peter Chandree -v- The State. Privy Council Appeal No.8 of 1981.

13. It is respectfully submitted, if and in so far as it may be necessary to do so, that the Appellant's allegations, first made after the statement had been read to the jury, that he was tricked into signing the statement which he was led to believe was a witness statement concerning another incident, raised an issue properly to be determined by the jury and not by the trial Judge, as to whether the Appellant had in fact ever made any statement at all.

20 14. The Respondent respectfully submits 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

REASONS

(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 in evidence.

30 (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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Charles Russell & Co
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