

17/81

ON APPEAL
FROM THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

BETWEEN :

PETER CHANDREE

Appellant

- and -

THE STATE

Respondent

CASE FOR THE RESPONDENT

Record

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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 Haytali C.J. Corbin and Scott JJ.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.

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2. The Appellant was jointly charged together with one Dennis Fletcher 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:-

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(a) Kadir Shah said that he was a Paymaster at the Ministry of Finance. On 24th May, 1974 he had \$20,000 in his car and was escorted to the pay office by the deceased and another. At the pay office he started to put change in the change-box; the deceased remained outside. He heard two gunshots; 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.

pp.9-10

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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 various men unfamiliar to him including the Appellant who drove away the car. He identified the Appellant at an identification parade on 27th June, 1974. He denied in cross examination that the Appellant's face was puffed up at the identification parade.

pp.10-14

pp.10-11

p.12

10 (c) Punchoon Dookie, who worked at the Public Works, said that on 24th May, 1976, he saw a strange person in the pay yard; he saw the Paymaster arrive and then witnessed the shooting. He saw the strange person drive the car away with the other three men in it who had been involved in the robbery and the shooting of the deceased. The following month he identified the Appellant as the driver of the car at an identification parade. In cross examination he denied that the Appellant's face was swollen at the time of the identification parade. His deposition taken at the Magistrate's Court was then read out revealing inconsistencies in his evidence and during further cross examination he said that the Appellant's face and eyes were swollen at the identification parade: he further said "He was not the only one with swollen face and eyes".

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p.16
p.17

20 (d) Corporal Haroun Baksh gave evidence of a confession made to him by the Appellant on 26th June, 1974 whilst he was guarding the Appellant. He also gave evidence of being present throughout the taking of the Appellant's written statement by A.S.P. Richards and he said that "No threat, force, beating or inducement of any kind was used to him. He appeared to understand and he signed it." The witness went on to say: "I know Mr Rahamut Khan - a justice of the Peace attached to the High Court, San Fernando. I was in the room still guarding (the Appellant) when I heard a knock at the door. I asked who it was and Richards and Khan entered the room. Richards spoke to the accused and then to Mr Khan and handed him the statement. Mr Khan identified himself to the accused and that he was requested to witness a statement he gave to the police. The accused replied. Khan read statement slowly and loudly to the accused. After which Mr Khan wrote on it and handed to back to Richards. Khan and Richards left me with the accused."

pp.21-24
pp.21-22
pp.22-23
p.23

40 In cross examination he denied that the Appellant appeared to have been beaten or that the Appellant told him that he had been beaten. He also said that Khan asked the Appellant "whether the police had beaten him, threatened, promised him anything or induced him in any way to make that statement and that he witnessed it." The witness denied that the Appellant had been forced to affix his signature to several parts of the statement.

p.24

50 (e) Assistant Superintendent of Police Peter Richards gave evidence of the taking of the statement and said that the statement of the Appellant was taken without threat or inducement and that the Appellant's face was not swollen. The statement exhibit P.R.1 was then admitted in evidence without objection and the witness read the Appellant's statement to the jury. In cross examination the witness denied that the statement was fabricated by him or that the Appellant was forced to affix his signature thereto. The Appellant was not beaten nor was he induced by any threat to sign the certificate.

pp.24-25
Exhibit P.R.1
pp.49-51

(f) Rehamut Khan, Justice of the Peace, gave evidence that at about 12.15 p.m. on 26th June, 1974 the Appellant told him that he had given the statement to Inspector Richards and then he said he had given it voluntarily and freely. The witness said that the Appellant's face was neither swollen nor puffed up.

p.26

(g) Amelius Murrain, acting assistant Superintendent of Police, gave evidence concerning the conduct of the identification parade on 27th June, 1974 at which the witness Lionel Stephenson, identified the Appellant.

pp.26-29

(h) Adolphos Clarke, Assistant Superintendent of Police gave evidence that the Appellant was charged on the 27th June, 1974.

p.34

4. (a) The Appellant elected to make a statement from the dock. He said that following his arrest he was beaten throughout the night of 25th June, 1974 and on the morning of 26th June. He was also burnt with a cigarette ob his mouth. He said that when he went before the Justice of the Peace he told him that the signature on the statement and the certificate were his but that he had not made the statement. He also said that he showed the Justice of the Peace all over his body where he had been beaten. Finally he said that he could not remember where he was on the day of the murder but that he was "nowhere around Rio Claro district" (where the robbery and shooting had taken place).

pp.40-42

pp.40-41

(b) In his defence the Appellant called Michael Lewis who was in the cell adjoining the Appellant's cell on the night of 27th June. He said that he saw the Appellant's swollen face and he noticed marks on his body. In cross examination he said that he had been convicted "for assaulting and resisting policemen" and that he was then "on a charge of murdering a policeman". He denied that his evidence was a fabrication.

pp.42-43

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 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.

pp.57-117

p.62

pp.66-67

p.69

p.79

p.116

p.61, 58-59

p.62

pp.99-100

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

p.119

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.

pp.123-138

8. (a) The judgment of the Court of Appeal was delivered by Sir Isaac Hyatali, C.J. After reciting the charges, convictions and facts of the prosecutions case the learned Chief Justice set out the five grounds of appeal argued on behalf of the Appellant. The two main grounds were that, first the trial Judge erred in law in failing to conduct "a trial within a trial" to satisfy himself that the Appellant's confession was a voluntary one before admitting it in evidence and, second that he erred in law in leaving it to the jury to determine whether the Appellant's confession was voluntary. In considering the second ground, the learned Chief Justice considered the authorities and adopted the statement of Lord Parker, C.J. in R -v- Burgess (1968) 2 Q.B. 112, 117 which he took to summarise the decision of the Privy Council in Chan Wei-Keung -v- The Queen (1967) 2 AC 160. Applied to the facts of the Appeal, the learned Chief Justice held that the trial Judge's direction, far from being prejudicial to the Appellant, was unduly favourable to him, as was conceded by Counsel for the Appellant in the Court of Appeal.

pp.123-125

p.226

p.127

(b) In considering the first ground of Appeal the learned Chief Justice began by setting out two propositions advanced on behalf of the Appellant namely (1) where no objection is taken to the admissibility of a confessional statement, the trial judge has a duty nevertheless to satisfy himself that the statement was made voluntarily; and that that duty could only be discharged by conducting a trial within a trial; and (2) where an allegation is made that an accused was beaten and forced to append his signature to a confessional statement which he claims he did not make, the issue of voluntariness is raised thereby, which a trial Judge is obliged to determine by holding a trial within a trial. The learned Chief Justice then undertook a comprehensive review of English and Commonwealth authorities relating to the issue of the voluntariness of confession statements and he drew a distinction between a statement which an accused makes under threat or inducement and a fabricated statement not made by an accused but to which by duress or inducement he is made to append his signature. He then analysed the two situations and concluded: "It is of vital importance to note, that an objection in the terms under reference, does not allege that the accused by duress was forced to say what is contained in the statement, and further, that by duress he was forced to append his signature to what he was forced to say in the statement; but rather he was forced by duress to sign a statement containing facts which were fabricated and of which he is not the author. Accordingly, if his allegations are true, his mind did not go with his signature on the statement nor his signature with its contents. In contemplation of law therefore he did not sign the statement nor accept its contents as his. In other words, whenever an accused alleges that a confessional statement purporting to be his was in fact a fabrication, it is immaterial for the purposes under consideration that he alleges in addition that he was forced to append his signature to it."

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pp.131-136

p.136

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"The two situations referred to are, in one judgment, fundamentally different from each other. Indeed the first is the antithesis of the second ... In the first example, the accused was forced to confess and in fact did so; but in the second he never did.

... The instant case clearly falls within the second example, and we are therefore unable to agree that the objection under reference raised the issue of the voluntariness of Chandree's confession."

10 For those reasons the learned Chief Justice rejected the Appellant's submissions based on the propositions as set out supra. Having already considered shortly the three other grounds of appeal and found them without merit the learned Chief Justice dismissed the Appellant's appeal. pp.128-129

9. On the 27th March, 1980 the Appellant was granted special leave to appeal in forma pauperis to the Privy Council. p.139

20 10. The Respondent respectfully submits that this appeal should be dismissed. As to the grounds of appeal which complain of the inadequacy of the summing up to the jury, it is respectfully submitted that for the reasons given in the judgment of the Court of Appeal the appeal is without merit. pp.128-129

30 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 learned trial Judge was right in permitting the statement to be admitted in evidence.

In the absence of any objection made on behalf of the Appellant, it is respectfully submitted that it made no difference that, before the Statement was read to the jury, Corporal Baksh had denied in cross examination that the Appellant was beaten or forced to sign various parts of the statement.

40 12. It is further respectfully submitted that once prima facie evidence of voluntariness had been led by the prosecution, in the absence of specific objection taken on behalf of the Appellant to the admissibility of the statement and in the absence of the Appellant's request for, or consent to, a trial within a trial, it was not for the learned trial judge to determine the issue of voluntariness in the absence of the jury. It is respectfully submitted that even if the Court of Appeal erred in holding on the facts herein that the issue of voluntariness was not raised, the learned trial Judge was correct in permitting the statement to be admitted in evidence because he was bound to have been convinced on the evidence that the statement was made by the Appellant and made voluntarily by him.

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13. As to the second ground raised in the Court of Appeal it is respectfully submitted that for the reasons given in the judgment of the Court of Appeal the learned trial Judge's direction in leaving the issue of voluntariness to the jury, as well as the issues of whether the Appellant made the statement and what weight and value should be given to the statement was unduly favourable to the Appellant, as was conceded by Counsel for the Appellant in the Court of Appeal.

10 14. If and in so far as it may be necessary to do so, the Respondent will contend, whether or not objection was made to the admissibility of the statement on behalf of the Appellant, that for the reasons set out in its judgment at pp. 135-138 of the Record of the Court of Appeal correctly held that on the facts herein the issue of voluntariness did not arise so as to call for a trial within a trial to be held.

15. 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

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R E A S O N S

(1) BECAUSE the trial judge correctly directed the jury both in the facts and the law.

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

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

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(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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