

73, 1948

P.C. Appeal No. 16 of 1947. W.C.1.

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LEGAL STUDIES

APPELLANTS' CASE

In the Privy Council.

ON APPEAL
FROM THE SUPREME COURT OF FIJI.

BETWEEN

- 1. WALLI MOHAMMAD, and
- 2. ALI MOHAMMAD

Appellants,

AND

THE KING

Respondent.

10

CASE ON BEHALF OF THE APPELLANTS.

RECORD.

1. This is an appeal by special leave from a conviction and sentence of the Supreme Court of Fiji dated, 30th July, 1946.

p. 174.
p. 173.

The Appellants were charged and tried in the Criminal Circuit Court, Lautoka Sessions, Fiji, for the murder of one Lachmi Prasad, hereinafter called "the deceased." The four Assessors who tried the Appellants returned an unanimous verdict of guilty, and the Court sentenced the Appellants to death.

2. At about 9 a.m. on Sunday, the 9th September, 1945, the body of the deceased was found with severe injuries lying in some rough ground near the Malika Creek in the Sambeto Valley, by the witness Ramdhani. The matter was reported by telephone to the police, who took up the investigation.

p. 49, l. 39.

3. The investigation consisted mainly of five statements taken by the police from the 1st Appellant, five from the 2nd Appellant, one from the woman with whom the 1st Appellant had been living as man and wife for some years, and one each from the woman's father and brother. These will be dealt with presently.

The statements of the two Appellants were alleged to have been taken before their arrest, and to have been made voluntarily to the police, without any pressure, and after they had been duly cautioned.

In regard to the 1st Appellant, however, prosecution witness Harnam Singh has stated:—

That from one to three days after the murder, one Sergt. Major Ahmed, who was not called by the prosecution, took him, the witness, to the house of the 1st Appellant.

p. 128.
Q.1619-1625.

RECORD.

p. 129.
Q.1626-1629.

That Sergt. Major Ahmad said to the 1st Appellant: "If you tell the truth we will make you a crown witness and save you—get you out of the trouble", to which the 1st Appellant replied: "I have a very dear child, a son. I will take my oath on that child that I do not know anything about this affair."

p. 130.
Q.1654.

That Sergt. Attar Singh who was also present was taking down a statement of the 1st Appellant.

p. 130.
Q.1658.

That the 1st Appellant had been then arrested "and was being taken to and fro while the investigations were going on."

p. 59, l. 30.
p. 176.

4. On the 9th September, 1945, at 5 p.m., Constable Ramcharitra recorded the first statement of the 1st Appellant at Sabeto, Nadi—Ex. J. 10

In it he stated, *inter alia*, that the deceased did not come to his house in the evening of Saturday, the 8th September, 1945, that the 2nd Appellant did come that evening, and that he, the 1st Appellant, was friendly with the deceased except for some three to four months when his brother Mangara was arrested for having firearms in his possession.

p. 59, l. 40.
p. 176.

5. On the same date, the 9th September, 1945, at 7.45 p.m., Constable Ramcharitra recorded the first statement of the 2nd Appellant at Sabeto, Nadi—Ex. K. 20

In it he stated, *inter alia*, that at about 4.30 p.m. on Saturday, the 8th September, 1945, he went to the house of the 1st Appellant to borrow an axe. Shortly thereafter the deceased arrived wearing a black shirt, and white shorts. He asked the deceased to play cards, but he declined, saying that he had to go away otherwise he would miss his chance. He and the deceased left the house at about 6 p.m., and then parted company.

p. 52, l. 18.

6. On the 10th September, 1945, Spencer, Assistant Superintendent of Police, Nadi, took possession of a Fargo passenger lorry No. K.57, the property of witness Ramsumer, at the latter's house. It is discussed later. 30

p. 52, l. 40.
p. 178.

7. On the 10th September, 1945, at 11 a.m., Superintendent Spencer took a second statement from the 1st Appellant at Nadi Station, through Constable Ramcharitra—Ex. L.

This statement comes into line with the first statement of the 2nd Appellant.

In it he stated, *inter alia*, that his previous statement that the deceased had not come to his house on the Saturday night was incorrect. At about 5.45 p.m. on the 8th September, 1945, the 2nd Appellant came home with him to borrow an axe. Shortly thereafter the deceased arrived, dressed in a black shirt, with white shorts with belt and dagger. He asked the deceased where he was going. The latter gave a reply from which he inferred that he was going to see the daughters of one Chillar, and of the witness Kathar, with whom he had previously stated he was 40

friendly. The 2nd Appellant asked the deceased to play cards, but he declined, saying: "If I play I'll miss a good chance". The deceased then left the house. The 2nd Appellant left at a little after 8 p.m. RECORD.
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8. On the same date, the 10th September, 1945, at 7.30 p.m., Sergt. Attar Singh took a third statement from the 1st Appellant at Sabeto, Nadi—Ex. M. p. 60, l. 29.
p. 179.

This statement was made in two parts, and was made in the presence of Hooper, Superintendent of Police, who stated in evidence:—

10 "He was very much afraid in view of the statement he had made and asked for police protection . . . we asked him if he would like to sleep at the Lautoka Police Station and he said he would. He came in with a Police party of which I was a member and was given a bed in the station. This was on the night of the 10th September". p. 66, l. 22.

In the first part of his statement the 1st Appellant stated, *inter alia*, that shortly after the arrival at his house of the 2nd Appellant, followed by the deceased, on the 8th September, 1945, they left his house, and returned with witnesses Shiusharan and Bishun Deo. They asked him to go out with them, but he refused. They went away at about 6.30 or 20 7 p.m. At about 12.30 or 1 a.m. they returned without the deceased. He asked them where the deceased was. Bishun Deo produced a revolver and said: "Here is Lachmi Prasad". They threatened him with the same fate as the deceased if he talked about the incident. Then they went away, and he went to sleep. p. 180, l. 1.

In the second part of his statement, which he prefaced by saying, "I now further wish to tell the truth", he for the first time admitted his presence at the scene of the crime. He stated, *inter alia*, that at about 6.15 p.m. on the 8th September, 1945, when he was asked to accompany the 2nd Respondent, Shiusharan, and Bishun Deo, he did so. They went 30 to Malika Creek, where Shiusharan seized the deceased and threw him down, Bishun Deo sat on his chest, the 2nd Appellant placed his hands on the deceased's face, and Shiusharan cut his throat with a clasp knife. He then ran away. At about 9 p.m. the others came to his house and threatened him not to tell any one. p. 180, l. 32.

9. On the 11th September, 1945, at 11 a.m. Sergt. Attar Singh took a fourth statement from the 1st Appellant at Naboutini, Nadi—Ex. N. p. 60, l. 41.
p. 181.

In it he stated, *inter alia*, that at about 8 p.m. on the 8th September, 1945, he, accompanied by the 2nd Appellant, the deceased, Shiusharan, and Bishun Deo, went to the house of the witness Ramsumer, the father 40 of the woman with whom he was living. Bishun Deo said: "Come on let us all get on the lorry No. K.57." They got on this lorry and drove away. On the way Shiusharan and Bishun Deo said they were going to kill a goat. They drove about three miles towards Votualevu, and the lorry stopped on the side of a wooden bridge over a big creek, where they got off. The others went on. Shiusharan had a cane knife. From p. 182, l. 27.

RECORD. about half a chain distant he saw Shiusharan strike the deceased with the cane knife. He ran away towards the lorry. Bishun Deo came to the lorry and took away a sack. They returned with a body in the sack, which they put in the lorry. They drove on about ten or twelve chains to an old camp site, where the other four took out the body and laid it on the ground. From there the other four carried the body inland. Then they drove away.

p. 183, l. 36. He added that the reason for killing the deceased was his friendship with Ramsumer's two daughters, Muni and Chukhi.

p. 183, l. 44. Finally, he stated that he was willing to show the place where the 10
p. 66, l. 40. deceased was murdered. This was in reply to a question to that effect put by Hooper, Superintendent of Police.

p. 66, l. 44, to p. 67, l. 36. In the afternoon of the same date he is alleged to have taken the Police to show them the spot, but was apparently not very successful.
p. 73, l. 7.

p. 61, l. 15. 10. On the 12th September, 1945, at 6.35 p.m., for some reason not explained, Sergt. Attar Singh took a fifth statement from the 1st Appellant at Naboutini, Nadi—Ex. O.
p. 184.

In it he stated that he was told by Ramsumer that they were going to fetch one Kartar's daughter for Bishun Deo. He, the deceased, Ramsumer, and Bishun Deo drove in lorry No. K.57 along the Votualevu 20 road to a spot about a chain from where the body was found. Ramsumer had a cane knife in his hand. They walked towards Kartar's house. Ramsumer struck the deceased many times with the cane knife. Bishun Deo brought a sack from the lorry, and took it towards where the body was lying. He then walked away in the direction from which the lorry had come. The lorry picked him up, and dropped him near his house. He got home at about 8 or 8.30 p.m.

p. 61, l. 29. 11. On the same date, the 12th September, 1945, at 1 p.m., and again at 4.15 p.m., Sergt. Attar Singh took a second statement from the 2nd Appellant at Naboutini, Nadi—Ex. P. 30

p. 185. In the 1 p.m. statement he contradicted certain statements made by the 1st Appellant in his statement Ex. N.
p. 186, ll. 2-10.
p. 182, ll. 10-28.

p. 186, l. 24. In his 4.15 p.m. statement he stated that that morning the 1st Appellant had asked him to make certain false statements to corroborate him, and that he had refused to do so.

p. 64, ll. 5, 36. 12. On the same date, the 12th September, 1945, at 9 p.m., the 1st Appellant is alleged to have been arrested.

p. 187. On the same date he made a statement (Ex. S) after being charged with murder.

p. 184. He said he had stated all the facts in the statement (Ex. O) which 40 he had made that day.

p. 187. 13. On the 14th September, 1945, Corporal Walli Mohammad took a statement at Naboutini, Nadi, from Bhagwan Devi, the woman with whom the 1st Appellant had been living—Ex. W.

The sole purpose of this statement appears to have been to supply a motive or motives for the 1st Appellant to murder the deceased. In this connection she stated:—

RECORD.

That about ten or twelve days before the murder the 2nd Appellant told the 1st Appellant that the deceased had threatened to put a gun in the 1st Appellant's house, and had stated that he would share the same fate as his brother Mangara. The 1st Appellant did not believe it.

p. 187, l. 31.

A similar incident occurred on the following day.

p. 188, l. 1.

10 A few days later the deceased informed the 1st Appellant that he had stolen £20 or £25 from his father's house, which he had deposited with the 2nd Appellant, who would not return the money.

p. 188, l. 13.

The deceased had informed the 1st Appellant that he had lent a gun to the 2nd Appellant, who would not return it. The deceased asked the 1st Appellant to try and get it back for him. The 1st Appellant saw the deceased and asked him to return it. The deceased refused, and said he would see what he was going to do to the deceased.

p. 188, l. 23.

14. When Bhagwan Devi was examined as a prosecution witness before the Committing Magistrate she retracted her statement, Ex.W, and stated the circumstances under which it was given. She stated that when she came to Lautoka to see the 1st Appellant in gaol, she was picked up by the Police and taken in a Black Maria under a false pretext back to Naboutini, where she was made to sign a paper after being threatened and assaulted.

p. 44, l. 25.

In the Sessions Court, after being treated as a hostile prosecution witness, she denied having made the statement. She said that her signature was taken after she had been threatened and beaten, and she amplified the allegations she had made before the Committing Magistrate.

p. 105, l. 25,

to
p. 107, l. 50.

30 She stated further that the deceased and the 1st Appellant had always been good friends, and were related to one another.

p. 106, l. 1.

In the Sessions Court her evidence was corroborated in part by prosecution witness Harnam Singh, who stated that she had been taken in a police lorry from Lautoka, to Naboutini.

p. 129, ll. 18
to 40.

Corporal Walli Mohammad was recalled to deny Bhagwan Devi's allegations. He stated that she was questioned and then made her statement. No threats were used. After considerable prevarication he eventually admitted that he, his father Sergt. Major Ahmed who was not called as a witness, and Superintendent Hooper, were in the police van which brought her from Lautoka, to Naboutini.

p. 109, l. 14,
to p. 110,
l. 50.

p. 110, l. 30.

40 Superintendent Hooper, who was recalled, described Bhagwan's allegations as "a pack of lies". He could not remember who were in the police van which brought her to Naboutini, nor who issued the instructions for her to be brought. He stated that she had previously made another statement (not produced) on the 10th September, 1945. Nobody told her that she need not make a statement unless she wanted to do so.

p. 112, l. 35.

to p. 114, l. 27.

p. 113, l. 17.

p. 113, l. 41.

p. 112, l. 38.

p. 114, l. 25.

RECORD. 15. On the 17th September, 1945, at 2.45 p.m. Corporal Walli Mohammad took a statement at Naboutini from the witness Ramsumer, the father of Bhagwan Devi—Ex. U.

p. 108, l. 15.
p. 191.

In it he purported to implicate the 2nd Appellant. He stated that at about 4 p.m. on Saturday, the 15th September, 1945, when he was proceeding in his lorry with his son Ramsaran, they picked up the 2nd Appellant on the road. The 2nd Appellant sat with him in the front. On the way he said to the 2nd Appellant, " what troubles you people have done ". The 2nd Appellant replied, " what can I do, Maharaj, I have now made a mistake ". He also said that they had killed the deceased 10 while he was drunk.

p. 30, l. 28.

When examined before the Committing Magistrate, Ramsumer retracted his statement. He denied that the 2nd Appellant had said anything to him when he boarded his lorry. The Police forced him to make his statement, Ex. U. Corporal Walli Mohammad said, " sign it or he would wipe me out ".

p. 93, ll. 1-4.

In the Sessions Court he again retracted his statement, and was treated as hostile. He stated that they were sitting in the front of the lorry, and the 2nd Appellant at the rear. He only went some thirty chains with them. They had no conversation. He was assaulted and beaten 20 and made to sign his statement. The lorry had a hood in the driver's part. The hood had a glass window. It was impossible for anyone sitting in front to talk to anyone sitting in the back.

p. 93, l. 43.

p. 97, l. 48.

p. 98, l. 44.

p. 108, l. 18.

p. 112, l. 1.

Corporal Walli Mohammad denied that any threats were used to Ramsumer. So did Superintendent Hooper.

p. 108, l. 38.

p. 192.

16. On the same date, the 17th September, 1945, at 4 p.m., Corporal Walli Mohammad took a statement at Naboutini from Ramsaran, son of Ramsumer—Ex. V.

In it he purported to corroborate in part Ramsumer's version of his conversation with the 2nd Appellant in the lorry on the 15th 30 September, 1945.

p. 33, l. 28,
to p. 34, l. 18.

When examined before the Committing Magistrate, Ramsaran retracted his statement, and stated that he signed it after being threatened by the Police. They were referring to his father's statement and writing his one.

p. 101, l. 3,
to p. 102, l. 42.

p. 102, l. 27.

In the Sessions Court he again retracted his statement, and was treated as hostile. He said he had been threatened by the Police. They said, *inter alia*, that his father had made a statement similar to what they recorded as his statement, and he was made to sign it.

p. 109, l. 3.

p. 109, l. 9.

Corporal Walli Mohammad denied that any threats were used. He 40 admitted that Ramsaran was unwilling to make a statement, until his father was brought in.

p. 112, l. 19.

Superintendent Hooper gave similar evidence.

17. The Appellants submit that the statement of Bhagwan Devi, in which she implicated the 1st Appellant by providing motives for his

RECORD.
 killing the deceased, and the statements of Ramsumer and Ramsaran which recorded a confession of guilt by the 2nd Appellant, should not have been admitted in evidence in the Sessions Court. Nor should the Court have permitted these witnesses to be treated as hostile and cross-examined by the prosecution. After they had retracted their statements before the Committing Magistrate, their evidence in the Sessions Court cannot be said to have taken the prosecution by surprise. They should either not have been called as witnesses, or the evidence they desired to give should have been accepted.

- 10 The admission of these statements, and of the evidence given in cross-examination by the prosecution, have seriously prejudiced the Appellants in a prosecution conducted before lay Assessors, and has resulted in a grave miscarriage of justice.

18. On the 17th September, 1945, at 8.40 p.m., soon after the statements of Ramsumer and Ramsaran implicating the 2nd Appellant had been taken by Corporal Walli Mohammad, the same officer took a fourth statement from the 2nd Appellant at Nadi Police Station—Ex.Q. p. 62, l. 8. p. 189.

He was apparently cross-examined in regard to the statements made by Ramsumer and Ramsaran.

- 20 In regard to his ride in the lorry with Ramsumer and Ramsaran on the 15th September, 1945, referred to in paragraphs 15 and 16 herein, he denied that Ramsumer had asked him about his troubles, and that he had told Ramsumer that he had made a mistake. p. 190, l. 25.

19. On the 18th September, 1945, Corporal Walli Mohammad took a fifth statement from the 2nd Appellant at Nadi Police Station (Ex.R.), and at last succeeded in getting the 2nd Appellant to implicate both the Appellants. p. 62, l. 21. p. 193.

The recording of this long statement commenced at 1 a.m., and concluded at 3.15 a.m. p. 62, l. 21. p. 196, l. 29.

- 30 In it he stated, *inter alia*, that on Friday, the 9th September, 1945, at about 4.30 p.m. the deceased came to his house and asked him to accompany him to Ramsumer's house, giving as a reason that he wanted to demand from Ramsumer the money for some tyres which he, the deceased, and the 1st Appellant, had left with Ramsumer. At about 5 p.m. he and the deceased went to Ramsumer's house, where the deceased asked him to wait while he went and asked Ramsumer whether he intended to pay for the tyres, or to return them. About five or ten minutes later the deceased rejoined him on the road. He asked the deceased if he had got the money. The deceased replied that Ramsumer
 40 was not at home and had hidden the tyres somewhere, but would let him know when he returned. p. 193, l. 9.

Later in the day they returned to Ramsumer's house, but they were informed by his son Ramsaran that Ramsumer had not yet returned. Ramsaran asked the deceased what the price of the tyres was, and was informed that the price was £2 .10 . 0. It was arranged that he, the p. 193, l. 47. p. 194, l. 5.

- RECORD. 2nd Appellant, would call for the price of the tyres at 10 a.m. on the following day.
- p. 194, l. 20. On the following morning the 1st Appellant asked him to accompany him to get the tyres, adding that the deceased was coming to see him in the evening, when he would let him know what time had been arranged to fetch the tyres.
- p. 194, l. 37. At about 4 or 4.30 p.m. the deceased came to his house, and asked him if the 1st Appellant had said something to him about the tyres. He replied yes, and that if they went early he would accompany them.
- p. 194, l. 52.
p. 195, l. 2. At about 5 p.m. he went to the 1st Appellant's house, where the deceased also arrived. He suggested a game of cards, but the deceased declined to play, saying that if he played cards he would miss his chance. Then the 1st Appellant said: "Ali Mohammad let us go and bring the tyres". He replied that he would do so if he were called at his house before 8 p.m. He then went home. 10
- p. 195, l. 16. At about 1 a.m. on the following morning, the 9th September, 1945, Dayaram and Ramsaran, the sons of Ramsumer, came to his house. Ramsaran said that the 1st Appellant and the deceased had sent them to fetch him. He protested, but Dayaram said that he would give him some money when he sold the tyres. He then accompanied them to Dayaram's house. The deceased and Bishun Deo were there. The 1st Appellant also arrived. They drank liquor, and the deceased got drunk and fell down. The others lifted him on to the back of an army truck. They drove along the Votualevu road on to a wooden bridge, and drove along a track to the right. When the lorry stopped the 1st Appellant said to get off, as that was the road where the tyres were. The deceased could not walk. They held the deceased and took him to a place where there was some para grass. The deceased fell to the ground, and then the 1st Appellant struck him on the throat with a cane knife. They returned in the lorry. On the way back it was arranged that the 1st Appellant should burn the clothing of himself and Dayaram, on which there was blood. He then went home. 20
- p. 195, l. 49. The next morning he saw a lot of smoke on the land where the 1st Appellant was ploughing. He could show the Police the place where the deceased was killed.
- p. 196, l. 10. The next morning he asked the 1st Appellant the reason for killing the deceased, to which he replied that the deceased had put his brother in gaol, burnt his father-in-law's house, and had been after his wife. 30
- p. 196, l. 15. 20. On the same date, the 18th September, 1945, at 11.15 a.m., the 2nd Appellant showed the Police the spot on the 1st Appellant's land where he alleged he had seen smoke rising on the morning of the 8th September, 1945. There were signs of fresh ploughing; and small fragments of ash, alleged to be the remains of burnt clothing, were found. 40
- p. 155, l. 13. In regard to the so-called fresh ploughing, it is in evidence that the 1st Appellant had been ploughing his land for a week previously.

In regard to the so-called traces of burnt clothing, the learned Chief Justice in his summing up stated: RECORD.
p. 167, l. 31.

“ That material has been referred to as clothing but I do not think there is enough in what has been produced here to satisfy you or anybody else what exactly it was that was burned ”.

21. On the same date, the 18th September, 1945, the 2nd Appellant showed the Police the spot where the deceased was killed. p. 69, l. 49,
to p. 71, l. 13.

22. On the 19th September, 1945, the 2nd Appellant is alleged to have been arrested. p. 65, l. 1.

10 On the same date he made a statement (Ex. T.) after being charged with murder. He said that he had stated all the facts in the statement (Ex. R.) which he had made the previous day. p. 196.

23. In regard to the main motive ascribed to the 1st Appellant, that he killed the deceased in revenge for the information he gave to the police regarding Mangara's possession of a tommy gun, the learned Chief Justice summed it up as follows:—

20 “. . . On the other hand it does appear from the evidence that the state of enmity, on the face of things at any rate, ceased to exist some five or six months before this crime took place. It seems clear from the evidence we have heard that these persons, Walli and Lachmi included, were all working in the same gang at the camp and were on very good terms, constantly in and out of each other's houses, and so on. What was in their hearts we can't say . . . That seems to be a somewhat inadequate motive for a man to take part in such a desperate crime as this ”. p. 160, l. 38.

24. In the case of the 2nd Appellant the evidence shows that, when he heard of the killing of the deceased, he not only went to the spot, but actually accompanied the body back on the police lorry, and delivered it at Lautoka. p. 88, l. 41.
p. 136, ll. 10,
50.
p. 143, l. 39.
p. 153, l. 20.

30 And on Sunday morning the 2nd Appellant enquired where the deceased was, and complained that he had promised to help him to get some timber posts, and that he had not turned up and had let him down. p. 152, l. 31.

In view of his visit to the spot on the morning of the 9th September, 1945, no value can be attached to his taking the Police there on the 18th September, 1945, as stated in paragraph 21 herein.

25. On the 30th July, 1946, the learned Chief Justice summed up. p. 160.

He pointed out that the statement (Ex. W.) of Bhagwan Devi to the Police on the question of motive should be entirely ignored. p. 161, l. 25.

40 He pointed out that there was a good deal of contradiction about the time at which the affair took place. p. 163, l. 41.

He pointed out that the fact was that Ramsaran and Bishun Deo were in Ramsaran's army lorry on the night of the murder, and that there was nobody else with them. p. 164, l. 37.

RECORD.
 p. 165, l. 37. He stated that no notice should be taken of the statements made to the Police by Ramsumer (Ex. U.) and Ramsaran (Ex. V.), mainly in view of the fact that they had changed them in Court.

p. 167, l. 40. In regard to the traces of burnt material in the 1st Appellants' field, he stated that the evidence was not very conclusive, "but it is something at any rate that needs explanation, but no explanation has been forthcoming".

p. 168, l. 11. He stated that it seemed to him that when the 1st Appellant in his statement (Ex. N.) said he would show the scene of the crime, and in what he did subsequently, he was "merely bamboozling the police, because in Superintendent Hooper's view there was nothing at the spot which he pointed out to indicate that the murder had been committed there". **10**

p. 168, l. 18. He stated that the evidence against the 1st Appellant consisted of "principally almost entirely—his statements, the evidence, for what it is worth, of his ploughing on the Sunday morning when he should have been elsewhere, of the finding of burnt material on his land for which he has offered no explanation".

p. 170, l. 44. Finally he stated:—

"you will no doubt ask yourselves whether it is conceivable that these two persons, if they had been innocent would have made all the contradictory statements they have done, and . . . that these two persons, if innocent, would not have taken the opportunity which they have had of either giving a statement from the dock or going into the witness box and giving evidence. . . Finally, you will consider the case of each accused separately. Take his various statements and ask yourselves the question whether the inference from these statements, coupled with his silence today, is not irresistible that he is a guilty person". **20**

p. 172, l. 27. 26. On the 30th July, 1946, the Assessors returned an unanimous verdict of guilty against both the Appellants. **30**

p. 173. 27. On the same date the learned Chief Justice delivered judgment agreeing with the opinion of the Assessors, and sentenced both Appellants to death.

He stated, *inter alia*, :—

p. 173, l. 11. "The evidence in regard to several aspects of this case is inconclusive. I do not think that the motive has been clearly established nor have many details relating to the commission of the crime. For example: at what place were the fatal wounds inflicted and at what time? Were there others present in addition to the two accused and the deceased? Was a lorry used to carry the murderers and their victim to the scene of the murder or to carry the body after the murder had been committed to the spot **40**

where it was subsequently found? By means of what pretext was the victim induced to go with his murderers? RECORD.

“ In my view, the statements of the accused are totally inconsistent with their innocence; on the contrary, the only conclusion possible from them coupled with the silence of the accused at their trial is that they took part in the murder of the deceased.” p. 174, l. 7.

Mr. Sharma, who appeared for the accused Ali, has suggested that a party of which the accused and the deceased were members may have set out to steal tyres; that the deceased may have had a quarrel with a member of the party, other than either of the two accused, and that the deceased may have met his death at the hands of that member in which case the accused would have no responsibility for the deceased's death. This, of course, is possible but, if it were the case, why should not the accused have said so, either in their statements to the Police or at their trial? p. 174, l. 11.

28. By an Order in Council dated the 10th March, 1947, special leave to enter this appeal was granted. p. 174.

29. The Appellants submit that the conviction and sentence of the Supreme Court dated the 30th July, 1946, have resulted in a grave miscarriage of justice, and should be set aside for, *inter alia* the following

REASONS:—

1. Because the statements to the Police of Bhagwan Devi, Ramsumer, and Ramsaran should not have been admitted in evidence in a trial with lay Assessors, and it is not sufficient that the learned Judge advised them that “ no notice should be taken of those statements.” The statements were intended and calculated to influence the Assessors, and should not have been admitted. Their admission has seriously prejudiced the Appellants. p. 167, l. 32.
2. Because in view of the retraction of these statements by these persons before the Committing Magistrate, permission should not have been given in the Sessions Court to treat these witnesses as hostile and to cross-examine them. On the contrary, the evidence they intended to give should have been admitted and accepted.
3. Because in view of the learned Judge's opinion “ I do not think there is enough in what has been produced here to satisfy you or anybody else what exactly it was that had been burned ” on the 1st Appellant's land, the learned Judge misdirected the Assessors in telling them that “ it is something at any rate that needs an explanation, but no explanation has been forthcoming ”. p. 167, l. 40.

RECORD.
p. 171, l. 3.

4. Because the learned Judge misdirected the Assessors in stating, in the circumstances of this case, that the question they had to ask themselves was whether the inference from the statements made by the Appellants to the Police, coupled with their silence in Court, was not, in the case of each one, "irresistible that he is a guilty person".

p. 173, l. 11.

5. Because in view of the opinion of the learned Judge that "the evidence in regard to several aspects of this case is inconclusive," he should have directed the Assessors to find the Appellants not guilty.

6. Because the learned Judge misdirected himself in fact in holding that the 2nd Appellant had not said in his statements to the Police that the Appellants were members of a party which set out to steal tyres, and for this reason he rejected the suggestion made by Counsel for the accused, which he recognised as affording a possible explanation of what had happened, and as one, which, if accepted, would show that "the accused would have no responsibility for the deceased's death".

7. Because the conviction of the Appellants has resulted in a grave miscarriage of natural justice.

C. S. REWCASTLE.
CHARLES BAGRAM.

HY. S. L. POLAK & Co.,
Danes Inn House,
265, Strand, London, W.C.2,
Solicitors for the Appellants.

P.C. Appeal No. 16 of 1947.

In the Privy Council.

ON APPEAL

FROM THE SUPREME COURT OF FIJI.

BETWEEN

WALLI MOHAMMED AND
ANOTHER - - - *Appellants,*

AND

THE KING - - - *Respondent.*

CASE FOR THE APPELLANTS.

HY. S. L. POLAK & Co.,
Danes Inn House,
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