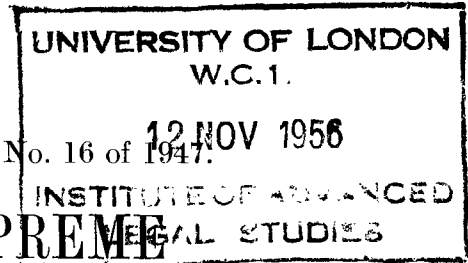


73, 1948

In the Privy Council.



ON APPEAL FROM THE SUPREME  
COURT OF FIJI

152A2

BETWEEN—WALLI MOHAMMED and ALI MOHAMMED APPELLANTS

AND

THE KING ... .. RESPONDENT

CASE FOR THE RESPONDENT

RECORD

1.—This is an Appeal from a Judgment of the Supreme Court of Fiji (Seton, C.J. with the aid of four assessors) dated the 30th July, 1946, which convicted the Appellants on an information charging them with the murder of Lachmi Prasad, a young Indian cultivator whose body was found about 9 a.m. on the 9th September, 1945, with very severe cuts on the head and neck which had caused death from shock and hæmorrhage.

pp. 173-174

p. 46, l. 30

p. 51, ll. 10-15

p. 57, l. 39

2.—There was no doubt that Lachmi Prasad had been murdered, but there was doubt about how many persons took part in the murder, about the precise circumstances of the murder, and about the motive of the 10 murderers. The Respondent submits that the learned Chief Justice made full allowance for all these doubts and rightly directed the assessors and himself on all aspects of the case. There was evidence to support the conclusion of the Chief Justice (agreeing with the unanimous opinion of the assessors) that, whatever else remained obscure, it was established beyond any reasonable doubt that the Appellants were, themselves or with others, the murderers.

3.—The first Appellant (often called "Ballu") made five statements to the police who were investigating the murder :

20 (1) The first statement, made on Sunday the 9th September, 1945, denied that Lachmi Prasad had been at the first Appellant's house on the preceding evening or night ; admitted that Lachmi Prasad and the first Appellant had been enemies and not on speaking terms for three or four months when the first Appellant's brother had been arrested

RESPONDENT'S CASE

RECORD

for having arms, but said that at the time of the murder Lachmi Prasad and the first Appellant were friends.

pp. 178-9

(2) The second statement, made on the 10th September, 1945, admitted that the second Appellant and Lachmi Prasad had been at the first Appellant's house on the evening of the 8th September; alleged that about a month before Lachmi Prasad had told the first Appellant that "he had girl friends in Kathar's daughter and Chilar's daughter," and that Lachmi Prasad had said "You know where I am going;" pointed out that Lachmi Prasad's body was found in the direction of Chilar's house; alleged that Lachmi Prasad had left in that direction while the second Appellant remained two or more hours with the first Appellant before leaving in the same direction; and denied that anyone else had come to his house thereafter. 10

p. 179, l. 38—  
p. 181, l. 17

(3) The third statement, made later on the 10th September, said that Lachmi Prasad and the second Appellant had left the first Appellant's compound together but had shortly returned with Shiusharan and Bishun Deo; that the second Appellant had asked him to go with them; that the first Appellant had refused; that all four went away; that after midnight the other three returned without Lachmi Prasad; that on the first Appellant asking where Lachmi Prasad was, Bishun Deo showed him a revolver saying, "Here is Lachmi Prasad"; that the second Appellant and Bishun Deo threatened that they would do the same thing to him as they did to Lachmi Prasad if the first Appellant talked; that Shiusharan produced an open clasp knife, and the first Appellant promised to say nothing; that Shiusharan said "If you talk we will cut you just like we cut Lachmi and threw him in the creek"; and that fright was the reason why he had lied to the police. The statement then gave yet another account of the events of Saturday night, the 8th September. The first Appellant admitted going with the other four. They went down the path to the creek (near which Lachmi Prasad's body was found), Shiusharan ran past the first Appellant, seized Lachmi Prasad and threw him down, whereupon Bishun Deo sat on Lachmi Prasad's chest and the second Appellant with his hands pressed Lachmi Prasad's face down. Shiusharan then cut Lachmi Prasad's throat and the first Appellant ran home. Half an hour later the second Appellant, Bishun Deo and Shiusharan came to the house, and the two latter asked why the first Appellant had run away. The first Appellant said "You all did not tell me you were going out for that sort of work" but on being threatened promised that he would not tell anybody. 20 30 40

p. 181, l. 25—  
p. 183, l. 46

(4) The fourth statement made, after a formal caution, on the 11th September said that on the evening of the 8th September the first Appellant had gone with the second Appellant, Lachmi Prasad, Bishun Deo and Shiusharan to Ramsumer's house which they reached

about 8 p.m.; that after a conversation between the others which the first Appellant did not hear, Bishun Deo called on them all to get into lorry K.57, which they did; that near a wooden bridge the lorry stopped and the party got off; that Bishun Deo led the way followed by Shiusharan, Lachmi Prasad, Ramsumer, the second Appellant and the first Appellant, in that order; that the first four entered the water; that Shiusharan turned round and struck Lachmi Prasad on the back of the neck with a cane knife; that the first Appellant ran towards the lorry, hearing the sound of chopping with a knife; that Bishun Deo came running to the lorry and took a sack; that all returned to the lorry with the body in the sack, the legs hanging out, and put the sack and body in the lorry; that the first Appellant would not touch the body but the other four carried the body off and returned in half an hour without the body; that the first Appellant was threatened with death if he told anyone; that the reason for killing Lachmi Prasad was his friendship with Ramsumer's two daughters with whom the second Appellant, Bishun Deo and Shiusharan were also friendly; that in his other statements he had lied from fright; and that he was willing to point out the scene of the murder.

p. 183, ll. 7-11

p. 183, ll. 36-41

(5) The fifth statement was made, also after a caution, on the evening of the 12th September. In it the first Appellant gave a different account of the murder alleging that the second Appellant was not present and that it was Ramsumer who killed Lachmi Prasad by repeated blows of a cane knife.

pp. 184-5

4.—The first Appellant was arrested at 9 p.m. on the 12th September, 1945, and on being charged and cautioned made a statement reaffirming his fifth statement and saying that "the statement concerning Ramsumer and Bishun that they have done the killing is the one I know." At the preliminary hearing the first Appellant, after the statutory warning, said: "I did not murder Lachmi Prasad. I do not know anything about it."

p. 64, ll. 32-47  
p. 187, ll. 10-23p. 65, ll. 11-17  
p. 159, l. 39

5.—The first Appellant did not exercise his right to give evidence on oath, nor did he make an unsworn statement from the dock, nor was any evidence called on his behalf.

6.—The more important other evidence admissible in the case of the first Appellant (apart from evidence of identification, cause of death and the scene of the crime) may be summarised as follows:

(i) Shiusharan, Ramsumer and Bishun Deo each gave evidence denying that he had any part in the murder. Shiusharan had an alibi supported by other evidence; Ramsumer was the father of several persons mentioned in the case and by reason of his age was unlikely to have taken part in such an expedition as the first Appellant

p. 79, ll. 16-20  
p. 92, ll. 12-15;  
p. 120, l. 4

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## RECORD

described ; and Bishun Deo while admittedly on a lorry owned by Ramsumer on the night of the murder (in the company of Ramsumer's son Ramsaran) gave detailed evidence of his movements.

p. 91, ll. 26-44

(ii) Ramsumer's lorry K.57 was not in use on the 8th September, 1945, and had been jacked up for years until Sunday 9th September when it was fitted with tyres, taken to the river and washed, preparatory to being put into service under a recent decision of the authorities.

p. 138, l. 41—  
p. 139, l. 13  
p. 141, ll. 12-23

(iii) Lachmi Prasad was seen at the first Appellant's house about 6 p.m. and about 6.30 p.m. on Saturday 8th September with other 10 persons of whom only the first Appellant was identified.

p. 50, l. 47—  
p. 51, l. 8

(iv) In 1944 Lachmi Prasad had been paid £20 as an informer against a brother of the first Appellant, and had tried to act as an informer on several other occasions in respect of other persons. This had caused unfriendliness between the first Appellant and Lachmi Prasad.

p. 53, l. 27—  
p. 54, l. 2  
p. 38, ll. 11-24 ;  
p. 158, l. 37—  
p. 159, l. 23  
p. 142, l. 37—  
p. 143, l. 29

(v) The first Appellant had on Saturday the 8th September arranged to do some work for Mangal on Sunday morning (9th September) but did not come, and was found ploughing his own land instead. 20

(vi) On the 18th September, 1945, acting on information, the police found burnt clothing on the land of the first Appellant away from his compound. Some fragments of the burnt clothing were on top of the soil and some had been ploughed in.

p. 31, l. 34—  
p. 35, l. 10 ; p. 74,  
l. 13

(vii) A piece of sacking found near the body and scrapings from the floor of Ramsumer's lorry K.57 on analysis gave presumptive tests for blood. The presumptive tests on the pieces of cloth removed from the first Appellant's land were inconclusive. The analysis, however, did not prove or disprove the presence of human blood on any of the articles. 30

p. 66, l. 39—p. 67,  
l. 34

(viii) The first Appellant on the 11th September 1945, took the police to the scene of the crime and purported to tell them what had occurred when Lachmi Prasad was killed.

7.—The Respondent submits that this evidence fully supported the finding of the learned Chief Justice that the first Appellant was one of Lachmi Prasad's murderers.

8.—The second Appellant made four statements to the police who were investigating the murder :

p. 176, l. 31—  
p. 177, l. 37

(1) The first statement, made on Sunday the 9th September, 1945, said that on Saturday afternoon the 8th September the second 40 Appellant with Lachmi Prasad was at the first Appellant's house ; that Lachmi Prasad refused to play cards on the ground that if he didn't

go down towards the school he would miss his chance ; that about 6 p.m. the second Appellant followed by Lachmi Prasad had left the first Appellant's house ; and that when the second Appellant turned towards his own house Lachmi Prasad walked further, whither the second Appellant did not know.

10 (2) The second statement was made on the 12th September, 1945. The second Appellant denied hearing Lachmi Prasad ask the first Appellant to come to Ramsumer's house, or that Lachmi Prasad asked the second Appellant to come there. The second Appellant also denied seeing either Bishun Deo or Shiusharan on the 8th September. The second Appellant then gave an account of how (as he alleged) the first Appellant had on the morning of the 12th September tried to induce the second Appellant to give false evidence bearing out the first Appellant's account of the murder by Bishun Deo and Shiusharan, and of threats by Ramsumer. The second Appellant refused to give false evidence whereupon the first Appellant threatened him with arrest. p. 185, l. 31—  
p. 187, l. 9

20 (3) In the third statement made on the 17th September, 1945, the second Appellant purported to give an account of his movements on the 8th September after he had left the first Appellant's house followed by Lachmi Prasad, showing that he had gone home and stayed there. After conflicting statements about seeing Ram Krishan, the second Appellant denied that on the 8th September the first Appellant had at any time come to the second Appellant's house. pp. 189-190

30 (4) The fourth statement was made, after a formal caution, on the 18th September, 1945. The second Appellant said that on the 7th September Lachmi Prasad had told him that the first Appellant and Lachmi Prasad had bought and given Ramsumer tyres for which Ramsumer had not paid. According to the second Appellant, he then accompanied Lachmi Prasad to Ramsumer's house (where Bishun Deo was in the compound) and waited while Lachmi Prasad went in intending to ask Ramsumer whether he was paying for the tyres or returning them. Ramsaran and Dayaram (sons of Ramsumer) were then fixing the lorry. Lachmi Prasad reported that Ramsumer was not at home and had hidden the tyres. The second Appellant, Bishun Deo and Lachmi Prasad went elsewhere. The second Appellant and Lachmi Prasad later returned to Ramsumer's house, but as Ramsumer had not returned Lachmi Prasad talked with Ramsaran telling him that the tyres were £2. 10s. 0d. each and that the second Appellant would come for the money on the following morning. On Saturday 40 the 8th September in the morning the first Appellant asked the second Appellant to go with him that night to get tyres, and said that Lachmi Prasad was coming. At 4 or 4.30 p.m. Lachmi Prasad came to the second Appellant's house and asked him if the first Appellant had said something about tyres. The second Appellant told Lachmi Prasad pp. 193-196

RECORD

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p. 195, l. 16

“ yes, if you people will go early then I will come, or else no I am not coming.” Later the second Appellant met the first Appellant and went to the first Appellant’s house where Lachmi Prasad also came, but refused play cards as he would miss his chance. The first Appellant suggested they should go and get the tyres when Mohammed Jahuri arrived. The second Appellant then went home. The statement continues that about 1 a.m. Dayaram and Ramsaran came and woke the second Appellant promising him money when the tyres were sold. The three went to Dayaram’s house where Bishun Deo and Lachmi Prasad were. Shortly after the first Appellant arrived. The second Appellant refused to drink liquor because “ if we get drunk and go “ there and if the guards catches us we will not be able to run away.” Lachmi Prasad, who was drunk, was then put on the back of a lorry (not K.57 but “ the army truck ”) with Bishun Deo, Ramaran and the first Appellant, while Dayaram and the second Appellant sat in front. Dayaram drove to near the scene of the crime. At the first Appellant’s suggestion they got off as “ from here in the straight road is the place “ where the tyres are.” Lachmi Prasad could not walk. Dayaram and the first Appellant each took a hand, Ramaran walking behind, and Bishun Deo and the second Appellant behind them. Lachmi Prasad fell on the ground and vomited and the first Appellant struck him with a cane knife. At the first blow the second Appellant ran back a chain followed by Bishun Deo. Ramsaran came to the second Appellant, who said “ You people have killed Lachmi to-day.” Then the first Appellant came running and the second Appellant and Bishun Deo promised the first Appellant not to tell anybody. The party drove off in the lorry. Bishun Deo asked Ramaran what they were going to do with Dayaram and the first Appellant’s blood-stained clothing. Ramaran said to give all the clothing to the first Appellant and he will burn them, and to throw the knife in the river or hide it in the swamp. Ramaran said to leave the second Appellant at the river “ then we will see about the rest.” The second Appellant went home. The following morning he saw a lot of smoke on the land which the first Appellant was ploughing. On the next morning the first Appellant told the second Appellant that Lachmi Prasad had been killed because he had put the first Appellant’s brother in gaol, had burned the house of the first Appellant’s father-in-law and had been after the first Appellant’s wife also. The first Appellant told the second Appellant that if the second Appellant told anyone about it the second Appellant would be killed.

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p. 195, l. 49

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p. 196, l. 10

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p. 196, l. 17

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p. 65, ll. 1-7

p. 196, l. 38

p. 159, l. 36

9.—The second Appellant was arrested on the 19th September, 1945, and on being charged and cautioned said that whatever he had to say had been given in his fourth statement. At the preliminary hearing, after the statutory warning, the second Appellant said : “ I do not wish to say “ anything just now.”

10.—The second Appellant did not exercise his right to give evidence on oath, nor did he make an unsworn statement from the dock, nor was any evidence called on his behalf.

11.—In addition to such of the evidence mentioned in paragraph 6 of this case as was also admissible against the second Appellant, evidence was given of the following amongst other matters :

(i) Dayaram and Ramaran each gave evidence denying that he had any part in the murder, and there was other evidence to support these denials. p. 82, ll. 48-49

10 (ii) Gajaraj Singh had a week or ten days before the murder been negotiating with Lachmi Prasad and the second Appellant about army tyres and Gajaraj Singh had asked the first Appellant if he knew what kind of tyres they were, but the first Appellant said he did not know. p. 145, l. 40—  
p. 146, l. 23

(iii) The second Appellant and others were at the second Appellant's house when news of the murder came; and the party wishing to see the body went off first to a place near the school and then to the river. p. 136, ll. 5-52  
p. 152, l. 39—  
p. 157, l. 15

(iv) The second accused went on the lorry with Lachmi Prasad's body when it was removed from the place where it was found. p. 143, ll. 39-43

20 (v) The second Appellant on the 18th September took the police to the first Appellant's land and pointed out where on Sunday the 9th he had seen smoke. The police there found fragments of burnt clothing. p. 62, l. 42—p. 63,  
l. 16; p. 68, ll. 1-48

(vi) The second Appellant then took the police to the scene of the murder. He showed the police where the lorry had stopped and pointed out the place where the body was found as being the place where Lachmi Prasad had been killed. p. 63, ll. 27-53;  
p. 69, l. 49—p. 70,  
l. 22

12.—In his summing up to the assessors the learned Chief Justice carefully distinguished between the evidence which was admissible against the respective Appellants. He examined the evidence in detail and pointed out how much of it was inconclusive. After pointing out that there was conclusive evidence that Lachmi Prasad was murdered, the learned Chief Justice told the assessors the question was whether the evidence was also conclusive that the two Appellants took part in the crime. He asked whether it was conceivable that innocent persons would not have given evidence or have made statements; and whether in the case of each accused the inference from his statements coupled with his silence at the trial was not irresistible that he is a guilty person. pp. 160-171

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13.—The assessors unanimously found both the Appellants guilty of murder. p. 172, l. 27

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14.—The learned Chief Justice then gave Judgment convicting both the Appellants of murder.

15.—The Respondent submits that the conviction was right and should be affirmed, and that this appeal should be dismissed for the following amongst other

### REASONS

1. Because in respect of each of the Appellants the trial was in every respect regular and proper.
2. Because the evidence established beyond any reasonable doubt the guilt of each of the Appellants. **10**

FRANK GAHAN.



In the Privy Council.

No. 16 of 1947.

ON APPEAL FROM THE SUPREME COURT  
OF FIJI.

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BETWEEN  
WALLI MOHAMMED and  
ALI MOHAMMED ... APPELLANTS  
AND  
THE KING ... .. RESPONDENT.

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CASE FOR THE RESPONDENT

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