32, 1961

No. 70 of 1960

IN THE PRIVY COUNCIL

ON APPEAL

FROM THE FEDERAL SUPREME COURT OF THE WEST INDIES

BETWEEN

SHOUKATALLIE ... Appellant

and

THE QUEEN ... Respondent

CASE FOR THE RESPONDENT

RECORD

1. This is an appeal from an order, dated the 14th September, 1960, of the Federal Supreme Court of the West Indies (Hallinan, C.J., Rennie and Marnan, J.J.) dismissing an appeal from a judgment, dated the 3rd June, 1960, of the Supreme Court of British Guiana (Bollers, Ag.J. and a jury), whereby the Appellant was convicted of the murder of one Rampat and was sentenced to death. p.283 p.261

2. The indictment charged the Appellant jointly with his brother, Mohamed Ali, with the murder of Rampat, also called Peeka (hereinafter called "the deceased"), on the 10th February, 1960. Mohamed Ali was also convicted of murder, but the Federal Supreme Court allowed his appeal and set his conviction aside. p.1

3. The trial took place before Bollers, Ag.J. and a jury between the 16th May and the 3rd June, 1960. The evidence for the Crown included the following:

(i) Sancharie, the widow of the deceased, identified the clothing worn by the deceased when he left home on the 9th February, 1960. She said she had identified a body brought to her landing by the police on the 15th February as that of the deceased. p.5 l.25 - p.6 l.2 p.6 l.12

(ii) Bhopaul Maraj, a tailor, identified the shorts found on the body as some which he had made for the deceased. p.10 l.18

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p.14 11.1-5 (iii) Pooran Rampat, the son of the deceased, said he had been present when the body of the deceased had been recovered from the middle of the river, tied to a log with bush vines.

p.14 l.25 This had been just opposite a creek horn or branch which flooded at high water, and half way between the houses of the two
p.14 l.39 accused on the river bank. The deceased would have had to pass this place on his way to Lamma, where he kept some cows. In 1959 the
p.15 l.6 Appellant had been shot, and some had said the deceased had shot him.

p.22 l.25 (iv) Ramdowar said that the deceased had stayed one Tuesday night, about three months before the trial, with him at Mahaica Creek. He had left at 5.30 the next morning, but had not returned at 10 a.m. when he had been expected. (The 9th February, 1960 was a Tuesday).

p.24 l.34 (v) Sancharie, also called Bucksa, the wife of Ramdowar, confirmed his evidence. At 11 a.m. on the Wednesday she had seen both accused
p.25 l.20 in front of their houses, the Appellant bathing.

p.28 l.32 (vi) Dindial said that on the night of the 9th February, 1960 he had slept at Joe Hook.
p.29 l.6 About 9 a.m. on the 10th he had seen the deceased going down the river in a corial. Half an hour later he had heard two shots. 100 rods further down the river he had seen both accused in the creek horn, the Appellant chopping wood, and Mohamed Ali twisting a vine. In cross-examination he agreed that he had been convicted of wounding Mohamed Ali and both accused had been convicted of wounding him.

p.34 (vii) John Rajalall had been with Dindial and had heard the shots and seen the two accused chopping wood and twisting vines. The witnesses had not gone into the creek horn.

p.38 (viii) Seenarine Singh said that on a Wednesday morning he had been walking past the creek horn when he had seen the Appellant cutting wood with an axe and Mohamed Ali with a cutlass and a vine. Mohamed Ali had dragged a man with a khaki shirt, who did not move,
p.39 from the side of a corial. He had then

come towards the witness with a cutlass, so the witness had run away.

(ix) Ramkarran said that on the morning of the 10th February, 1960 he had been going for his cows to the north of the Appellant's house, when he had heard a shot and the deceased shouting, "Ow Shoukat, you shoot me". to which the Appellant had replied "Shut you rass, you na dead yet". Another shot had then been fired. p.45 l.23 p.46 l.30 p.46 l.39

(x) Samaroo, the brother of Ramkarran, said that at 9 a.m. on the 10th February, 1960, he went to the Appellant's house to recover a small boat which he had lent him, and, while on the river, he had heard a shot. He had looked round and seen the Appellant in a corial, which Mohamed Ali had been steering; the deceased had been about 8 rods away in another corial, and had shouted, "Ow Shoukat, you shoot me". The Appellant had fired again at the deceased, who had fallen down in his corial. The two accused had then taken the deceased's corial to the left bank of the river; the witness had been frightened and had rowed away. In cross-examination he agreed that three years before his brother had fought with Mohamed Ali, and there was an action pending in the High Court in which the father of the accused was claiming that his cows had been killed by members of the witness' family. p.51 l.23 p.51 l.30 - p.52 l.28 p.52 l.37

(xi) Kadiram, a rural constable, had found recently chopped wood in the creek horn on the 12th February, 1960 and marks in the mud where something had been dragged. p.59 l.5 p.59 l.33

(xii) Rampersaud said that at about 2.30 p.m. on the Wednesday on which the deceased had been missing the Appellant had come to him and asked him to plough some rice fields, which he never had done before. The Appellant had made a remark about being seen bathing that morning by Sancharie. p.63 l.13 p.63 l.26

(xiii) Sookrajie spoke of a quarrel between the Appellant and the deceased over a cow; she had told the Appellant that it was the deceased who had shot him, whereupon the Appellant had threatened the deceased. p.69

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p.74 l.1 (xiv) Detective Constable Joseph Maltay had taken a statement on the 13th February, 1960, from
p.296 the Appellant (Exhibit "E"), in which the Appellant had said he was working on his farm at the time of the murder. The second accused had also made a statement denying any part in the murder.

p.80 ll.18-24 (xv) P.C. Mohamed Haniff had told the Appellant on the 20th February, 1960 that he had been seen committing the murder. The Appellant had asked whether Bucksa had said she had seen him, and had added that they were not on speaking terms and Bucksa would say anything.

p.85 l.13 (xvi) Balwant Singh, a pathologist, had carried out a post mortem examination of the deceased.
p.85 l.38 He said death was due to drowning and gunshot wounds in the back.

p.104 4. The Appellant elected to make a statement from the dock, in which he denied killing the deceased, who, he said, had been a good friend. There had been disputes between his family and that of Samaroo, which, he said, explained why the witnesses had given
p.105 evidence against him. The second accused also made a statement from the dock in similar terms. Evidence called on behalf of both accused included the following:-

p.108 ll.16-37 (i) Rose Dalgetty, mother of both accused, said that on the day on which the deceased had disappeared the Appellant had been working in his garden up to 4 p.m.

p.111 l.22 - p.114 l.29 (ii) Jehangir, aged 82, the father of both the accused, said he had got up about 8.30 a.m. on the day on which the deceased had been missing. A man he assumed to be the Appellant had been working in the Appellant's garden until about 2 p.m. In cross-examination he agreed that he had made a statement to a police constable that he had gone back to bed and that his wife had told him the Appellant was working in the garden.

pp.115-116 (iii) Kampta Persaud said that one day towards the end of March Seenarine Singh had told him that he had been paid $100 to say that he had seen the murder when he had not, and had been promised work in another place if the Appellant should be acquitted.

RECORD

(iv) Haliman Alli said she had lived with the Appellant for three years as his wife. On the Wednesday in question she had seen him leave to work on his farm at about 6 a.m. She had taken him some tea at 11 a.m., and he had returned at about 2 p.m. or 2.30 p.m. He had then bathed, and talked to Bucksa who had been passing on the river. p.124 ll.2-30

(v) John Collins said that he heard Seenarine tell Kampta Persaud that he had seen nothing but had got $100 and was to be given work far from the district if the Appellant should get off. p.131 ll.22-34

5. The jury were taken to view the scene of the murder. On the 2nd June, 1960, the Court sat at 9 a.m., and the learned Judge began his summing up at 10.14 a.m. He continued until 4.50 p.m., with an interval between 11.20 a.m. and 12.30 p.m. The learned Judge began by telling the jury that they must only consider the evidence which they had heard and seen. They must judge the witnesses by the standards of the neighbourhood from which they came; it was a district where there was not much police protection; time and distance were not necessarily accurately recalled. The jury were the judge of fact, and their findings must be based on reason. The learned Judge defined the onus of proof, and said that the case against each accused must be separately considered. He defined the crime of murder, and the evidence necessary to establish that the two accused had acted in concert. There was little doubt that the body which had been found was that of the deceased. The learned Judge went through the evidence of each witness in detail. He dealt in particular with the evidence relating to identification, motive, and intention, and that showing that some of the prosecution witnesses had a motive for being ill-intentioned towards the accused. He went through the defences of alibi raised by the accused. The jury he said, might think that the Appellant had shot the deceased in cold blood and that the second accused had acted in concert in drowning the deceased by putting his body into the river, but it was a matter for them. The only verdicts open were guilty or not guilty of murder. pp.106-108 pp.155-253

6. The jury retired at 4.05 p.m. They returned to Court at 8.40 p.m., when the foreman said that they had not yet reached a verdict. In answer to a question from the Judge, he said they did not need

any further directions on the law. The learned Judge then addressed them in the following terms:-

pp.254 l.7 - 255 l.15

BOLLERS J: Gentlemen of the jury, I want to remind you of the oath that each and everyone of you took at the commencement of this case. It reads as follows:-

> "You shall well and truly try and true deliverance make between Our Sovereign Lady the Queen and the prisoners at the Bar whom you shall have in charge, and a true verdict give according to the evidence. So help you God".

I want to direct your attention to the last two sentences in that oath that you have taken - "And a true verdict give according to the evidence. So help you God".

Well, the evidence that has been led in this case by the Crown and by the accused persons is clear and I can see no difficulty at all why you should not arrive at a final conclusion in this matter.

When you get into that jury-room you must put all extraneous matter away from your deliberations. If you take extraneous matter and improper matter into your deliberations in deciding whether the case has been proved or not proved against the accused persons, then you will not be acting in accordance with the oath which you have taken.

It appears to me that this Colony is reaching a stage, or wants to reach a stage, when it can manage its own affairs. Well, this kind of thing that is going on amongst the jury would not help. In my very humble submission I cannot see how it will help one way or the other.

Now, you must return to that jury-room and consider the matter again and then make up your minds one way or the other. If you feel one way and another member of the jury thinks another way, then you must examine the arguments of each other and accept reason. You must not be pig-headed. Not because you may feel one way or the other does it mean that you must never give way, even though sound commonsense and good reason are placed

before you.

> The community is looking to you to return a verdict in accordance with the evidence and in accordance with your own conscience. If you fail to do that you will not only be bringing disgrace upon the community but you will be bringing disgrace upon yourselves, which is perhaps even worse.
>
> Gentlemen of the jury, I am now going to order you to return to that jury-room and consider the matter calmly and dispassionately, and give you an opportunity of arriving at an honest verdict in this case. Please see that you do not besmirch the fair name of your country. Please return to the jury-room.

The jury thereupon retired once more, but returned at 10.00 p.m. and asked for further directions upon accomplices after the fact. The learned Judge said that he had not referred to accomplices in his summing up but only to persons acting in concert. He then gave the jury further directions as to persons acting in concert. The jury again retired, and returned at 1.35 a.m. with a verdict of guilty against both accused, who were sentenced to death. pp.255-259

7. Both accused appealed to the Federal Supreme Court. The appeal was heard by Hallinan, C.J. and Rennie and Marnan, JJ. between the 8th and 14th September 1960. The appeal of the Appellant was dismissed, while that of the second accused was allowed and his conviction set aside. p.292 l.30

8. In delivering the judgment of the Court, Hallinan, C.J. related the facts and issues in the case. p.284 He rejected an application to admit further evidence in the form of an affidavit by one Ramdass to discredit the witnesses Seenarine Singh and Ramkarran, and held that in any event Ramdass' evidence was of no weight. p.286 l.12-41 He also rejected an application to introduce affidavits sworn by two jurymen to the effect that they had been intimidated into reaching their verdict. p.286 l.42-p.288 l.11 Certain of the grounds of appeal related to the directions given by the learned Judge after the jury had retired. The first of these directions, the learned Chief Justice said, was similar to that given in R. v. Creasey 37 Cr.App. R.179. p.289 There the Court of Criminal Appeal had held that no sensible jury could have failed to understand that the Recorder meant that they should try once more to see if they could come to a conclusion one way or the other, although

the direction might have been put a little differently. The learned Judge's direction when the jury returned the second time had not dealt, as requested, with accessories after the fact, but only with persons acting in concert. The jury by their question had shown that some of them were in doubt whether the second accused was guilty of murder. The Judge should have dealt with the possibility that the second accused might have been an accessory after the fact, if he had taken no part in the proceedings until he thought the deceased was dead. The learned Judge's adjuration to the jury when they returned for the first time had been too strongly worded, and it was undesirable to subject juries to such long hours of strain. Nevertheless these two factors, even taken together, did not constitute a sufficient ground of appeal, and in the case of the Appellant there had been no miscarriage of justice. In the case of the second accused the jury's question when they returned the second time showed they might have had a doubt about his guilt, and the Judge had given little or no help in resolving the doubt. Considering all these factors, the Court held that his trial was not satisfactory. His appeal was accordingly allowed and his conviction and sentence set aside.

9. The Respondent respectfully submits that the Judgment of the Federal Supreme Court was correct in regard to the Appellant. The jury must have understood the adjuration of Bollers, Ag.J. to mean that they should do their best to agree upon a verdict. The learned Judge did not insist upon a verdict being reached in any event. The words used by him at the end of his directions included, "I am now going to —— give you an opportunity of arriving at an honest verdict in this case". This must clearly have shown the jury that they were not being compelled to return a verdict and the language did not constitute an improper direction to the jury. The further request made by the jury to the Judge for directions about 'acting in concert' shows that the indecision among the jury related to the second accused and not to the Appellant.

10. It is further respectfully submitted that the length of the day's hearing is not a ground upon which this Appeal should be allowed. No complaint of exhaustion was made by any member of the jury during the hearing, and sufficient adjournments were made for their rest and refreshment. The

jurors were also supplied with refreshments after they had retired.

11. The Respondent respectfully submits that on any view of these matters the Appellant has suffered no miscarriage of justice. On all the evidence, a reasonable jury properly directed could have come to no other verdict in the Appellant's case but one of guilty. Alternatively, if, contrary to the Respondent's submission, the Federal Supreme Court was wrong in dismissing the Appellant's appeal, the Respondent respectfully submits that this is a proper case for remission to that Court with an intimation that a new trial be ordered pursuant to Regulation 22 (2) of the Federal Supreme Court Regulations, 1958.

12. The Respondent respectfully submits that the judgment of the Federal Supreme Court of the West Indies was right and ought to be affirmed, and this appeal ought to be dismissed, for the following (amongst other)

R E A S O N S

(1) BECAUSE Bollers, Ag.J. directed the jury rightly upon the desirability of their reaching a verdict.

(2) BECAUSE the jury were not subjected to any coercion or undue strain;

(3) BECAUSE upon the evidence any reasonable jury properly directed would without doubt have convicted the Appellant;

(4) BECAUSE of the other reasons given in the judgment of the Federal Supreme Court.

J.G. LE QUESNE

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SHOUKATALLIE

- v -

THE QUEEN

CASE FOR THE RESPONDENT

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