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4/, 1961

IN THE PRIVY COUNCIL

No. 31 of 1961
No. 32 of 1961

ON APPEAL

FROM THE COURT OF APPEAL FOR EASTERN AFRICA

B E T W E E N :

THE QUEEN	Appellant
- and -	
SHARMPAL SINGH s/o PRITAM SINGH	Respondent
- and between -	
SHARMPAL SINGH s/o PRITAM SINGH	Appellant
- and -	
THE QUEEN	Respondent

(Consolidated Appeals)

RECORD OF PROCEEDINGS

CHARLES RUSSELL & CO.,
37 Norfolk Street,
Strand, W.C.2.
Solicitors for the Crown.

T.L. WILSON & CO.,
6 Westminster Palace Gardens,
S.W.1.
Solicitors for Sharmpal Singh.

17, 1961

IN THE PRIVY COUNCIL

No. 31 of 1961
No. 32 of 1961

ON APPEAL

FROM THE COURT OF APPEAL FOR EASTERN AFRICA

B E T W E E N :

THE QUEEN — Appellant

- and -

SHARMPAL SINGH s/o PRITAM SINGH — Respondent

- and between -

SHARMPAL SINGH s/o PRITAM SINGH — Appellant

- and -

THE QUEEN — Respondent

(Consolidated Appeals)

RECORD OF PROCEEDINGS

INDEX OF REFERENCE

E X H I B I T S

LIST OF DOCUMENTS TRANSMITTED BUT NOT REPRODUCED

1. Notes of O'Connor P. of argument in the Court of Appeal for Eastern Africa.

2. Notes of Gould J.A. of argument in the Court of Appeal for Eastern Africa.

3. Notes of Crawshaw J.A. of argument in the Court of Appeal for Eastern Africa.

IN THE PRIVY COUNCIL

No. 31 of 1961
No. 32 of 1961

ON APPEAL
FROM THE COURT OF APPEAL FOR EASTERN AFRICA

B E T W E E N :

THE QUEEN — Appellant

- and -

SHARMPAL SINGH s/o PRITAM SINGH — Respondent

- and between -

SHARMPAL SINGH s/o PRITAM SINGH — Appellant

- and -

THE QUEEN — Respondent

(Consolidated Appeals)

RECORD OF PROCEEDINGS

In the Supreme Court of Kenya

No. 1

Information, 26th May 1960.

No. 1
INFORMATION

COLONY AND PROTECTORATE OF KENYA

I N F O R M A T I O N

IN HER MAJESTY'S SUPREME COURT OF KENYA

AT KISUMU

THE 30th DAY OF May 1960.

Criminal Case NO. 117 of 1960.

At the Sessions holden at Kisumu on the 30th day of May 1960 the Court is informed by the Attorney-General on behalf of Our Lady the Queen that SHARMPAL SINGH s/o PRITAM SINGH is charged with the following offence:-

STATEMENT OF OFFENCE

MURDER contrary to section 199 of the Penal Code.

In the Supreme Court of Kenya

No. 1

Information, 26th May 1960 - continued.

PARTICULARS OF OFFENCE

SHARMPAL SINGH s/o PRITAM SINGH on or about the night of 28th/29th February 1960 at Kibuye, Kisumu in the Central Nyanza District of the Nyanza Province murdered AJEET KAUR w/o SHARMPAL SINGH.

Dated at Kisumu this 26th day of May, 1960.

G.A. TWELFTREE,
Provincial Crown Counsel,
for Attorney-General.

Criminal Case NO. 117 of 1960.

R.M. Kisumu Cr.C. 886/60.
Police Case NBG. 163/60.

To: SHARMPAL SINGH s/o PRITAM SINGH,
c/o Officer of Remand Centre, KISUMU.

TAKE NOTICE that you will be tried on the above information at the Sessions of the Supreme Court of Kenya to be holden at Kisumu on the 30th day of May, 1960 at 9 o'clock in the forenoon.

E.S. SIMPSON,
Deputy Registrar,
Supreme Court of Kenya.

KISUMU.
This 26th day of May, 1960.

No. 2

Notes of Proceedings, 30th May 1960.

No. 2

NOTES OF PROCEEDINGS

IN HER MAJESTY'S SUPREME COURT OF KENYA AT KISUMU
CRIMINAL CASE NO. 117 OF 1960.

(From Original Criminal Case No.886 of 1960 of the Resident Magistrate's Court, Kisumu).

REGINA .. .. .. PROSECUTRIX

v e r s u s

SHARMPAL SINGH PRITAM SINGH ACCUSED

9.10 a.m. Monday 30th May, 1960.

Twelftree for the Crown.
Sood for the Accused who is present in Court.

Twelftree applies to amend the information by striking out "the night of 29th February/1st March 1960" and inserting "the night of 28th/29th February 1960".

Sood No objection.

Order Information amended accordingly.

Sood I appreciate it was a typing error and I do not ask for an adjournment.

Twelftree Dr. Ngure one of the witnesses is ill and may not be available for three days. It is important to start now as Dr. Rogoff another witness is leaving the Colony soon. I propose to take the case as far as I can and then ask for an adjournment if Dr. Ngure is not available.

Sood I agree to that course.

Accused charged states:

"Not Guilty"

Plea

Not Guilty.

Assessors

1. DINUBHAI RATILAL PATEL
2. KANJI GOKALDAS HIRJI SOMAIA
3. DAHYABHAI UMEDBHAI PATEL

Assessors state do not know Accused or anything about the case concerning him. Accused and his advocate no objection to any of the assessors.

Twelftree charge. Accused and wife lived at house in Jaipur Street, Kisumu. Same house Upkar Singh and wife lived. Evening of 28th February, Upkar Singh went out, returned about 9.30 p.m., went to bed. Accused and wife slept in room with one of Upkar Singh's children. Upkar Singh saw to locking up when came in. Woke up early morning - lights on, doors open, door of Accused's room open, lights on. Accused's wife not there. Went outside saw wife lying in Courtyard. Shout, Upkar Singh's wife and Accused came. Wife carried to cement part of courtyard and then to bedroom. Doctor called, considered serious, taken to Nyanza General Hospital. Dr.Treadway came, treatment, but dead. Dr. Ngure Post Mortem. Dr. Rogoff called in second Post Mortem. Two wounds on chest found Post Mortem, cause of death asphyxia. Police called in. No signs of breaking in, no

In the Supreme Court of Kenya

No. 2

Notes of Proceedings, 30th May 1960 - continued.

signs of struggle in courtyard. Partly made coat found in bush little way from flat. Mattress on which wife slept, taken by Police, also wife's clothing, both found to be stained by urine. Crown say wife strangled by husband in bed that night. Circumstances of death results in release of urine. Calls,

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Prosecution Evidence

No. 3.

John Fyfe, Examination.

PROSECUTION EVIDENCE

No. 3

EVIDENCE OF JOHN FYFE

P.W.1. JOHN FYFE, sworn in English:-

I am an Inspector of Police and officer in charge of the Central Crimes Investigation Department, Kisumu. At about 7.15 a.m. on 29th February, 1960, I went to a house in Jaipur Street, Kisumu, where I saw Chief Inspector Shaw. I took some photographs of the house and the compound, I took three. This is a photograph of the entrance to the compound, Exhibit A. This is a photograph of the inside of the compound Exhibit B, and this is a second photograph of the inside of the compound showing part of the building Exhibit C. I then went to Nyanza General Hospital, where I saw the body of an Asian female. I took a photograph of her face. This is it Exhibit D. I took another photograph of wounds to her body, this is it Exhibit E. I developed the negatives and made the prints I have produced myself.

Later on the same day, 29th February, 1960, I returned to the house in Jaipur Street and examined it for finger-prints. I examined the window of a bedroom and the inside of a toilet. I mark the bedroom and toilet doors on Exhibits B (a) and (b) respectively. I found no identifiable marks on these two places. I examined the whole house carefully and found no evidence of forced entry. Later I drew a plan of the building, it is 1/10 inch to a foot, this is it Exhibit F. The toilet I have referred to is marked B. I mark the bedroom, the window of which I examined, "C". I also draw in the window. I handed the plan Exhibit F to Chief Inspector Shaw.

Cross-Examined

Q. You went to the Nyanza General Hospital at about 8.10 a.m.?
A. Yes.

Q. You took the photographs of the woman?
A. Yes.

Q. At what time did you take them, 8.15 a.m.?
A. Immediately I arrived.

Q. At about 8.15 a.m.?
A. Yes.

Q. Not later than 8.20 a.m.?
A. 8.15 approximately.

Q. You examined the courtyard of the house carefully?
A. Yes.

Q. It is bounded on three sides by flats?
A. Yes.

Q. The concrete front of the courtyard is marked D?
A. Yes.

Q. The area of the concrete is higher than the murram or earth part?
A. Yes.

Q. Also D?
A. Yes, I mark it D.1.

Q. That marked C is the boys quarters?
A. Yes.

Q. The room marked A can be entered from outside by a door (a)?
A. Yes.

Q. E is the bathroom?
A. A shower room.

Q. Between E and A is a verandah?
A. Yes, marked V.

Q. This verandah can be entered from the courtyard by doors?
A. Yes, one set of double swing doors.

In the Supreme Court of Kenya

Prosecution Evidence

No. 3

John Fyfe,

Cross-examination - continued.

Q. Each opens separately and anyone can go in and out by opening only one?
A. Correct.

Q. From (a) in room A, there are a number of steps leading down, five?
A. Yes, a number of steps.

Q. Across the courtyard is a square not marked?
A. Yes.

Q. It is in fact a similar type of flat?
A. Yes.

Q. Everything in fact is duplicated?
A. Yes.

Q. In room A there is a window, I mark it (c)?
A. Yes.

Q. There is an entrance to another flat from the courtyard, which I mark (d)?
A. Yes.

Q. There are windows along this wall (x)?
A. Yes.

Q. The line Y is a drain?
A. Yes.

Re-Examined - None.

No. 4

Donald Bradwell,

Examination.

No. 4

EVIDENCE OF DONALD BRADWELL

P.W.2. DONALD BRADWELL, sworn in English:-

I am a Government Analyst, I am F.R.I.C. On 8th March, 1960, I received certain articles from Dr. Rogoff, the Police Pathologist. I received this mattress, Exhibit G, these pantaloons, Exhibit H.1, this blouse, Exhibit H.2, these underpants Exhibit H.3. I examined these articles and found extensive urine stains on the mattress, pantaloons and underpants Exhibits G, H.1 and H.3 respectively. I ringed them with coloured pencil - indicated - I found heavy

bloodstains on the pantaloons, Exhibit H1, and on the underpants, Exhibit H.3. I found no blood on the mattress. I found smears of soil on the back of the blouse, Exhibit H.2 and on the pantaloons, Exhibit H.1. I kept all these articles in my possession before producing them at the Preliminary Inquiry. The urine stain on the mattress was a large one and passed right through the mattress, from one side to another. In my opinion it was a complete micturition. The underpants, Exhibit H.3., were stained with urine over a large area, which I have marked. The same with the pantaloons, Exhibit H.1.

In the Supreme Court of Kenya

Prosecution Evidence

No. 4

Donald Bradwell, Examination - continued.

Cross-Examined

Cross-examination

Q. From the stains on the clothes could you test the content of the urine?
A. I did some chemical tests for urine.

Q. Did you test both the mattress and garments?
A. I tested them separately, and the pieces cut out were cut out for the purpose of the tests.

Q. You took a sample from each?
A. Yes, I tested each article separately in several places.

Q. Anything special constituent in the urine?
A. Just the normal constituents of urine.

Q. You did not look for anything odd?
A. I do not understand.

Q. Anything abnormal?
A. Only the normal constituents of urine.

Re-Examined

Re-examination.

Q. Had there been anything odd, would you have found it?
A. Urine has constituents which I found. I do not know what was in defence counsel's mind.

No. 5

No. 5

EVIDENCE OF CHARLES CALVIN TREADWAY

Charles Calvin Treadway, Examination.

P.W.3. CHARLES CALVIN TREADWAY, sworn in English:-

I am B.M., B.S. and Provincial Surgeon Nyanza

In the Supreme Court of Kenya

Prosecution Evidence

No. 5

Charles Calvin Treadway,

Examination - continued.

General Hospital. As a result of a call, I went to Nyanza General Hospital at 4.0 a.m. on 29th February, 1960. I went to the operating theatre where I saw a woman on the operating table. Dr. Hasham was there. Shown Exhibits D and E, states these are photographs of the woman. I examined her. I could not be sure if the woman was dead or alive, so I took immediate steps to resuscitate her if she was not dead, I gave her an intra-venous injection of glucose saline and nor-Adrenalin. I also gave an intra-cardial injection of Adrenalin. There was no response at all. I then further examined the woman and found she was dead. In the course of giving the intra-venous injection I cut into the left leg. What happened was I picked up the left arm to find a vein, it was cold and no vein showed, so I dropped it and went to the left leg the best available to find a vein. I formed the opinion that the woman had been dead at least a quarter of an hour, possibly an hour and a quarter or longer.

I saw two incised wounds on her abdomen. I probed them. The first was approximately 1½ inches long by 4 inches deep, lying over the right lobe of the liver along the sub costal margin below the level of the seventh rib. The other was about ¼ inch long by 1½ inches deep, 1 inch below the ninth rib on the left. Exhibit E shows the injuries I saw. When I first saw the woman she was fully clothed. I myself removed all her nether garments. I noticed they were all normally arranged, but they were all wet with what smelt like urine. I saw considerable blood, mainly on her upper garments. When I examined her I did not consider her to have suffered from anaemia. I know Dr. Rogoff and later I saw Dr. Rogoff with the body and pointed out the injection punctures and incision I had made and explained what I had done to it.

Adjourned at 10.45.

James Wicks
J.

Court resumes as before at 11.00 a.m.

Witness reminded of his oath for Cross-Examination.

Cross-Examined

Q. You were called out at about 4.30 a.m.?
A. I received the telephone call at 4.30 a.m.

Q. How long to arrive at the hospital?
A. I arrived at about 4.35 a.m.

Q. Examined her between 4.30 a.m. and 4.45 a.m.?
A. Yes.

Q. Death would have occurred in a minimum of ¼ of an hour to an hour and a quarter or longer?
A. Yes.

Q. It could be a maximum of one hour?
A. I am not competent to give an exact estimate - approximately an hour at most.

Q. Is it clinically possible to find there has been profuse bleeding?
A. It depends on whether the loss was before or after death. Before death there can be clinical signs of great blood loss and in fact almost none.

Q. Great shock causes extravasation of blood into the tissues?
A. Not usually.

Q. Half an hour?
A. If there is very low blood pressure over a period so that the tissue dies from lack of oxygen, then extravasation of blood pressure would allow the blood to go through the walls of the veins.

Q. The wounds shown on Exhibit B, would they cause one a certain amount of shock?
A. Yes.

Q. And haemorrhage also?
A. Yes.

Q. A considerable amount?
A. I did not do the Post Mortem, but such wounds could cause the loss of a few c.c's to complete extravasation.

Q. One wound appears to be very open, is it open because of reaction to the injury?
A. I do not understand.

In the Supreme Court of Kenya

Prosecution Evidence

No. 5

Charles Calvin Treadway,

Cross-examination - continued.

Q. Inflicted before or after death?
A. It depends on wehther the cut is along the tissue, where there would be little gaping, or across the tissues when, as in this wound, Exhibit E, there would be great gaping.

Q. Such gaping would be more before death than after?
A. Yes, but unfortunately this fibrous tissue remains alive long after death has taken place.

Q. In a person who is alive the results are more pronounced than when dead?
A. Yes.

Q. If you found a dead person's heart was contracted would this be likely to be due to disease?
A. Unlikely to be due to disease.

Q. What could it be due to?
A. It would mean that the heart had stopped instantly that is contracted, and indicates anoxia, that is lack of oxygen, or a nervous cause.

Q. The spasms could be caused by shock and haemorrhage?
A. Yes could be.

Q. If fluid is found in the cardial sack does this indicate heart disease?
A. It depends on the quantity and character.

Q. Could it be due to pericarditis?
A. Yes.

Q. What is pericarditis?
A. Literally inflammation of the pericardium.

Q. Could it be hyperstatis?
A. Possibly.

Q. This could be due to some morbid deposit in some other part of the body?
A. Yes.

Q. For instance disease in say the kidneys?
A. Yes.

Q. You would call puss a morbid deposit?
A. It depends on the meaning of morbid.

Q. A deposit due to some disease?
A. Yes.

Q. If there was puss in the kidneys, would there be nephritis?
A. Depends on the part of the kidney.

Q. The calyx?
A. Probably pyelitis.

Q. Nephritis?
A. Could be.

Q. Both conditions fairly bad for the person suffering from them?
A. Yes.

Q. If a person had puss in the calyx, puss in the bladder and pericardium, would that person be in a debilitated condition?
A. Yes.

Q. The resistance of such a person would be reduced?
A. No, it could be increased.

Q. Why increased?
A. Because a person could be creating antibodies to throw off the condition.

Q. If the person was a woman pregnant 22 to 24 weeks?
A. It is very common for a pregnant woman to have a pyelitis.

Q. Pericarditis?
A. No.

Q. Would it be common for a pregnant woman to have nephritis and pericarditis?
A. No, not common.

Q. A bad condition?
A. Yes.

Q. If such a person was also suffering from pulmonary oedema would that aggravate it?
A. Yes.

Q. The general condition would be bad?
A. Yes.

In the Supreme Court of Kenya

Prosecution Evidence

No. 5

Charles Calvin Treadway,

Cross-examination - continued.

Q. If such a woman were to be embraced violently during coitus could it cause compression of the chest that might lead to asphyxia?
A. I imagine it would need to be extremely violent.

Q. In a person who was suffering from these four things, if she were embraced during a sexual embrace, she would need less force to cause asphyxia?
A. Yes.

Q. A highly excited sexual embrace could cause this compression of the chest?
A. Yes conceivably.

Q. And could also cause shock and haemorrhage?
A. I find that very hard to believe.

Q. If there was a considerable amount of fatty infiltration into the heart, that would slow a bad heart?
A. Not as fit as a lean heart, it might indicate a fat person.

Q. Would you say the more fatty infiltration, the worse the heart would be?
A. Yes.

Q. In a woman 22 to 24 weeks pregnant would her urine contain some special content?
A. Yes.

Q. Some phosphates?
A. Yes.

Q. Her urine would be different from a child's?
A. Depends on the age of the child, sex and development.

Q. A child of 4?
A. Conceivably they could be very similar.

Q. Very different also?
A. Oh certainly.

Q. A woman about 22 to 24 weeks pregnant if she had had recent sexual intercourse, her urine would contain spermatozoa?
A. Not necessarily.

Q. It could do?
A. Yes.

Q. The sperms need not be intact?
A. No, any stage.

Q. A person who has been strangled say with the fingers must have some external marks on the neck?
A. Should have.

Q. If the person was strangled with a ligature the victim should have marks of injury on the neck?
A. Not necessarily.

Q. Taylor's Medical Jurisprudence 11th Edition Vol.1 p.494/5 "The general ..... to the throat". You agree with this?
A. By and large yes.

Q. In this case no visible marks on the neck?
A. Not easily visible.

Re-Examined

Q. Is pulmonary oedema a disease?
A. No, the result of a disease.

Q. Respiratory disease?
A. Not necessarily.

Q. If no such disease could it be caused by asphyxia?
A. Yes.

Q. Always present in asphyxia?
A. Almost always present.

Q. Could it have any connection with kidney diseases?
A. Nephritis yes. I would not think that pyelitis caused by pregnancy would lead to pulmonary oedema.

Q. To cause pericarditis would the nephritis or pyelitis have to be serious?
A. I could not imagine pyelitis caused by pregnancy causing that. Nephritis could, but it would have to be a serious case.

Q. What state would a woman be like if she were pregnant and had acute nephritis?
A. That is one of the few reasons for terminating a pregnancy, normally she would be a very sick woman.

In the Supreme Court of Kenya

Prosecution Evidence

No. 5

Charles Calvin Treadway,

Re-examination - continued.

Q. How would she be if she had pyelitis?
A. I would say that almost every woman who has had two children has had pyelitis and most of them do not know it.

Q. A person with pericarditis would they know it?
A. They would be acutely ill.

Q. Walk about?
A. Could but they would not want to.

Q. Exhibit E, the wound is almost across the lines of tension?
A. Yes.

Q. The wound would draw it closed or shut?
A. Open.

Q. Elastic tissues in the body take time to die?
A. Yes, under favourable conditions can be left alive for weeks after death.

Q. The injury could have caused extensive loss of blood?
A. Yes.

Q. Whether the person was alive or dead?
A. Yes.

No. 6

Maurice Gerald Rogoff,

Examination.

No. 6

EVIDENCE OF MAURICE GERALD ROGOFF

P.W.4. MAURICE GERALD ROGOFF, sworn in English:-

I am B.M., B.S. and Government Pathologist, Kenya. On 1st March, 1960, I went to Nyanza General Hospital where I examined the corpse of a young Asian woman, identified to me by Chief Inspector Shaw. Exhibit E is a photograph of the woman. A Post Mortem examination of the body had been performed, I saw Mr. Treadway, P.W.3, and he informed me and showed me what he had done to the body. I saw a doctor Stephen Ngure and he told me, and showed me, what he had done to the body. I performed a Post Mortem examination of the body. She was a woman aged about 22, normal build. On

external examination I found the wounds made by Dr. Treadway, P.W.3, on the left groin and also a cardiac puncture wound on the left chest. On the right groin there was a wound made by Dr. Ngure, and a Post Mortem incision made down the centre of the body, made by Dr. Ngure. I found two other wounds, one at the level of the seventh left rib 2 inches from the midline, 1½ centimetres long, ¼ centimetre wide and half an inch deep. The second wound was on the right chest on the level of the 7th to 8th rib, 3 inches long from the midline, along the lower portion of the chest. This wound penetrated through the cartilage of the ribs and entered the upper surface of the liver. I found small blood spots inside the lining of the eyes also on the face. The eyes, the lips, the membrane of the mouth and nose, the skin of the face had a purplish cyanotis discoloration. I found no external marks on the face, the front or the back of the neck. I found no other external marks on the body and apart from the incision, there were no external abnormalities found on external examination.

I performed an internal examination and found an absence of any disease, there was a pregnancy of 22 to 24 weeks. I found features of asphyxia in the lungs and resultant effect in the organs from the asphyxia. In the region of the neck I found extensive haemorrhage into the muscles under the skin and into the thyroid gland. Also in the salivary gland under the right jaw and into the right muscle of the lower jaw, all these injuries were ante mortem. The hyoid bone was not damaged, but it was quite elastic, but I found bruising of cartilages of the larynx, and also bruising over both left and right internal carotid arteries. The windpipe showed considerable bruising and the surface of the windpipe showed haemorrhagic blood spots. As I have said the lungs showed signs of asphyxia. The region of the chest above the left breast, showed an area of haemorrhage in the muscles, they were ante-mortem. I took deep sections of the two stab wounds. That in the left chest was ½ inch deep and was inflicted post mortem. The stab wound in the right chest penetrated 1 inch into the upper part of the liver and was also inflicted post mortem. I say this because I took sections of the tissue of the two wounds and a microscopic examination showed no reaction to the injury, one

In the Supreme Court of Kenya

Prosecution Evidence

No. 6

Maurice Gerald Rogoff,

Examination - continued.

would find had the wounds been inflicted ante-mortem. Put simply, if live flesh is cut it reacts, if dead it does not. Exhibit E shows the two stab wounds. The one next to the ruler gapes because the muscle has been cut. In my opinion these two wounds could have been caused by a sharp instrument, such as a knife, and I cannot say how long after death they were inflicted. Up to a quarter of an hour after death these would be reactive and as I found none, I say the wounds were inflicted a quarter of an hour or more after death. I cannot say how long after the quarter hour. That is if it was half an hour or three quarters. As regards the chest, I found a large number of areas of haemorrhage under the layers of membranes lining the lungs and under the lining inside the chest cavity, that is in the muscles of the chest. I found a collection of fluid in the lung tissues. This is a common result of the lowering of the oxygen content of the blood caused by asphyxia. I found no indication of disease of the lungs. The heart showed no signs of disease or abnormality. I found areas of haemorrhage on the inside and outside of the heart muscles, this is one of the phenomena of asphyxia. It can be caused by other things. The heart was contracted, this only indicates the stage of the heart cycle when the heart stopped. A contracted heart is also often found when pressure has been applied to the carotid artery. I found fluid in the pericardial sac. This is not abnormal. I found no signs of heart disease or degenerations. The liver was normal, except for the cut which I have referred to. The kidneys were quite normal. I found puss in the kidneys which is quite normal in pregnant women. It is not a disease entity, it is an infection, infected urine. There was also a small quantity of puss in the small quantity of urine I found in the bladder. Apart from the puss there was no abnormality in the urinary system, except that apart from the small amount of urine in the bladder it was empty. This is unusual, we expect to find some quantity of urine in a dead body. In the case of asphyxia the bladder is usually found empty. This is one of the usual reactions of asphyxia and found in about ninety per cent of cases. I found no injuries to the head. The scalp showed numerous pin point haemorrhages, which are found when death was caused by asphyxia. The brain showed

haemorrhage spots in all areas, also indicative of asphyxia. The brain was also waterlogged which is not uncommon in the case of asphyxia death. The reproductive organs showed a pregnancy of 22 to 24 weeks, nearer to 24 weeks. There was no abnormality. I found spermatozoa in a vagina smear. I found large numbers of fresh spermatozoa. This was indicative of intercourse just before death. I cannot prove that it was before death. The only other condition I found was a slight loss of blood. I found no signs of blood loss in the body. The blood loss could have been caused by the stab wound to the liver. I found very little blood loss into the abdominal cavity, and none around the liver wound. As regards the neck and chest, the injuries could have been caused by the hands being on the throat and the knee or elbow on the chest, this would be the simplest way of causing it. The injuries to the neck and chest were, in simple language, internal bruises caused by pressure which could have been applied in all sorts of ways. I just give the simplest way in which they could be caused. Such pressure would be fatal if enough was used over a sufficiently long period of time also to cause the heart to stop beating. To asphyxiate a person, all that is necessary is to stop breathing and cut off the blood supply to the brain. One could asphyxiate by pressure on the chest. The pressure would need to be resisted. That is if the person was lying, pressure downwards with resistance at the back. The effect of this is to stop breathing by stopping the rise and fall of the chest.

Adjourned to 2.15 p.m.

James Wicks
J.

2.15 p.m. Court resumes as before.

Witness reminded of his former oath for further examination in chief.

In order to put sufficient pressure on the front of the chest, there must be resistance at the back. Depending on the surface, bruising would or may not be caused to the back. By surface I mean if the body is pressed onto a rocky or rough surface, the back can be expected to show the

In the Supreme Court of Kenya

Prosecution Evidence

No. 6

Maurice Gerald Rogoff,

Examination - continued.

marks of the object on which it lay, usually by internal bruising. If the body is lying on a soft surface, no external or internal bruising of the tissues of the back need be caused. A bed with a thin mattress I would class as soft. I found no marks of bruising on the skin or on a sectionary of the back on the deceased body. Murram has the characteristic of damaging the skin and tissues from the sharp content in it. I do not think concrete would cause the local bruising as with murram, but one would expect areas of generalised bruising. One of the causes of vaginal inhibition is pressure on the neck. The artery branches and at the point of branching there is a nerve centre, pressure at this point for a short time, say a minute, can cause vaginal inhibition, that is the actual stopping of the heart. The pathological features of vaginal inhibition are similar to asphyxia. In all cases of strangulation, an element of vaginal inhibition is present. It does happen in vaginal inhibition that the victim loses control and micturates.

On Friday 4th March, 1960, I received a parcel from P.C. 1537 Oyambera Ebock, in it I found a bed-mattress, a pair of long blue Punjabi pantaloons, one pair of underpants and an unfinished womans blouse. This is the mattress Exhibit G. These are the trousers Exhibit H.1. These are the underpants Exhibit H.2., and this the blouse Exhibit H.3. Later I handed them to Mr. Bradwell P.W.2. the Government Analyst.

Cross-examination.

Cross-Examined

Q. Did you notice any disease in the lungs?
A. There was no disease in the lungs.

Q. Any old disease of the lungs?
A. No. No old disease.

Q. Any old adhesions?
A. No. I do not think so.

Q. If there were this would indicate pleurisy?
A. The end result of a disease - one can get adhesions from a cold under certain circumstances.

Q. The process for detecting bleeding caused before or after death is not very clear?
A. The better proposition is that the method of

using the amount of blood lost as an indication, is not accurate and one does not use it, one looks to other evidence.

Q. It is difficult to establish whether a wound was caused just before or after death?
A. If it was caused just before or after yes, but not if caused a quarter of an hour or more after death, then there is no difficulty.

Q. How much fluid is there normally in the pericardial sac?
A. There is no normal figure, it can be an ounce to 20 ounces.

Q. Would fluid in the pericardial sac indicate pericarditis?
A. Certainly not.

Q. In a normal healthy individual the amount of fluid in the pericardial sac would be infinitesimal?
A. No. The amount varies tremendously and depends on many factors. The reason why it varies is that it is linked to factors such as excitement, blood pressure, humidity and heat, and in a normal healthy person it can vary between one ounce and 20, and the variations do not take long to occur.

Q. A person who is not healthy would that affect the amount of liquid?
A. It depends on the disease, with Beri-Beri it might be as much as 2 to 3 pints.

Q. A case of nephritis?
A. There are six recognised types of nephritis and each affect the quantity and nature of the pericardial fluid in different ways, in one type the pericardium becomes dry and sticks to the wall of the heart.

Q. If a pregnant woman suffers from nephritis how would that affect the pericardial fluid?
A. It depends on the type of nephritis.

Q. In your report I see there was puss in the calyx and the bladder?
A. Yes.

Q. Was it due to any infection?
A. Infection of urine. In a pregnant woman urine

In the Supreme Court of Kenya

Prosecution Evidence

No. 6

Maurice Gerald Rogoff,

Cross-examination - continued.

tends to become stagnant and becomes infected. What happens is, that the bladder is not emptied completely and the residue becomes infected.

Q. The puss in the calyx is nephritis?
A. No. Puss in the calyx is found in pyelographitis or pyelitis. Pyelographitis is not one of the six types I referred to as embracing nephritis.

Q. Pyelographitis can cause pericarditis?
A. Yes, but the fluid in this case was quite normal and there was no sign of pericarditis.

Q. Exhibit E why does it gape?
A. Because the muscle tissue was cut.

Q. Exhibit E was taken at about 8.30 a.m.?
A. There it is just gaping.

Q. Reaction?
A. No reaction at all, gaping because the muscle is cut.

Q. You have examined many cases of strangulation?
A. Quite a few.

Q. It is usual in cases of strangulation for there to be marks on the outside?
A. Not at all, there can be and need not be.

Q. In a case of normal strangulation great force is used?
A. No, great force is often used, but it does not need great force to cause strangulation.

Q. Where unnecessary force is used marks will be left?
A. Not necessarily. In a recent case of the strangling of an Asian woman, the only external sign was a mark near the left ear where it is presumed she turned to pull the hands away. Marks can be left or need not be.

Q. If a person is strangled gently there would be no marks?
A. Marks could be left, it depends on where the fingers were in relation to the blood vessels, the direction of the force applied.

Q. If a victim were being strangled gently how long before death takes place?
A. From a few seconds to a matter of minutes.

Q. If an expert who knew the human anatomy did it, little sign would be left?
A. If an expert; yes, a matter of a few seconds and little internal evidence would be left, a matter of knowing where to press.

Q. Do you agree it is difficult to cause homicidal strangulation without leaving marks on the neck?
A. I do not agree.

Q. It could be that no external marks are left?
A. It is a question on which no dogmatic answer can be given, as I have said it depends on the position of the hands in relation to the blood vessels, the direction of the pressure, the state of the victim, whether in repose or excited, it is a very open subject.

Q. Murderers usually use more force than is necessary for taking life?
A. I agree.

Q. In this case no fractures at all?
A. No, but the hyoid bone was very flexible and bent very easily when I handled it and this is probably why it did not break.

Q. The injuries on the chest, the internal bruising was on the left side?
A. Yes.

Q. No bruising on the right side at all?
A. No.

Q. Could this process, throat or chest be caused by one man or two?
A. One or two, but one man could do it.

Q. Two persons may have done it?
A. Possibly.

Q. Had one person have caught the woman from the back the other in front, could it happen?
A. Medically possible but highly improbable.

Q. If a person was strangled on say this table would it cause internal bruising?
A. It might do.

Q. Because the surface is smooth?
A. Yes and no projections.

In the Supreme Court of Kenya

Prosecution Evidence

No. 6

Maurice Gerald Rogoff,

Cross-examination - continued.

Q. The same would be the result on polished concrete?
A. Yes, a polished surface and the same applies.

Q. Did you find any signs of strangulation on the face?
A. No, no bruising but there was the blueness and pin point haemorrhages to the eyes.

Q. Any blood escaped from the ears?
A. No.

Q. In a case from asphyxia this could happen?
A. It could, but it is not a necessary sign of strangulation.

Q. No saliva available for examination?
A. No. Any saliva there had been was no longer there because of the first Post Mortem.

Adjourned 3.30 p.m.

3.45 p.m. Court resumes as before.

Witness reminded of his former obligation for further cross-examination.

Q. The external injuries you found, could they have been caused by a commando blow?
A. They could have been yes.

Q. What is a commando blow?
A. A blow struck at the front or side of the neck in a particular position.

Q. The compression of the chest could have been caused by a violent sexual embrace?
A. Not impossible. It is difficult to imagine it in the normal way.

Q. A commando blow would be sufficient to kill?
A. To cause vaginal inhibition, it usually causes unconsciousness but it can kill.

Q. The compression of the chest could of itself cause death?
A. Yes but not likely, but it would not cause the internal damage to the neck.

Q. Either the injury to the neck or chest could cause death?
A. Yes that is possible.

Q. In this case the deceased was 22 years of age?
A. Yes.

Q. Did you examine her bowels?
A. Yes.

Q. Were they congested?
A. Yes.

Q. What was deceased's weight?
A. 100 to 120 lbs., she was short well built.

Q. My instructions are she was plump and weighed about 140 lbs?
A. I only saw her after death, I would not exclude the possibility of 140 lbs.

Q. You found some fatty infiltration of the deceased's heart?
A. Yes.

Re-Examined

Q. What is pericarditis?
A. Pathological changes in the pericardium.

Q. Inflammation?
A. Yes and other things.

Q. The gaping wound, had it been inflicted elsewhere would it gape?
A. On the chest or abdomen yes, on the head no. Wherever there are muscles under the skin there is a tendency to gape.

Q. Had there been a commando blow, what would the internal bruising be like?
A. There would be internal bruising at the point of impact just above and just below.

Q. That is a little wider than the edge striking?
A. Yes.

Q. Had there been one commando blow would it be localised?
A. Yes. If the blow was on one side it would damage that side, but not the other.

Q. Was the internal bruising consistent with a commando blow?
A. No, the bruising I found was on both sides of the neck and this is not consistent with a commando blow.

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Prosecution Evidence

No. 7

Agya Singh, Examination.

No. 7

EVIDENCE OF AGYA SINGH

P.W.5. AGYA SINGH, sworn Punjabi:-

I live in a house in Jaipur Street, Kisumu. The house contains a number of flats. In one of the flats Upkar Singh Pardesi and his wife live. In the same flat Upkar Singh's sister and her husband live. The husband is Sharmpal Singh s/o Pritam Singh, accused identified. Exhibit C is a picture of where I live. My flat is marked (a), Upkar Singh and Accused's flat is (b) on the left. I was sleeping at home on the night of 28th/29th February with my wife. I went to sleep. At about quarter to 4.0 a.m. my wife woke me up. I spoke to her and I went to the flat belonging to Upkar Singh and saw his sister's body on the verandah inside. I crossed the concrete and the bracket light, which I mark X on Exhibit C, was on. I saw no-one in the court-yard when I went across it. I went into Upkar Singh's vernadah and Upkar Singh, his wife, my wife, a houseboy and my two boys were there. The Accused was there also. The Accused's wife was lying on the verandah, she was dressed in normal clothes, and she had a wound on the right chest. There was blood and the clothes were stained with it. I saw no signs of life. The body was taken into Accused's room, Upkar Singh's wife and the Accused started massaging the hands of the woman with Ghee. I do not know if it was hot or cold. I brought an electric pad to keep her warm. I plugged it in and put the pad on her chest. The pad is 18 inches long and 12 to 13 inches wide, and it covered her chest. Dr. Hasham arrived and asked for hot water, I went and got an electric kettle and water was boiled. When it was hot the doctor said it was no longer required. I later helped to put the woman in a van and it was driven away by Upkar Singh. Before my wife woke me up I had not heard any noise. I went to sleep at about 11.0 p.m. Looking at the entrance door to my flat, my bed-room window can be seen (Exhibit C) the door is open and one can see across the verandah. There is a kitchen between my bedroom and Accused's bedroom. When I saw the Accused that morning, he was weeping.

Adjourned to 9.0 a.m. tomorrow.

James Wicks
J.

9.40 a.m. Tuesday 31st May, 1960.

Court resumes as before.

Cross-Examined

Witness reminded of his former oath for cross-examination.

Q. For how long was the electric pad applied?
A. 5 to 7 minutes.

Q. The temperature of the pad?
A. If applied for half an hour, it would read 60°F.

Q. Quite sure not applied for more than 5 to 7 minutes?
A. Yes.

Q. You are an electrician by trade?
A. Yes.

Re-Examined

Re-examination.

Q. When you say 60°F, do you mean it would increase its heat by 60° or reach 60°?
A. Reach 60°F.

Q. Have you ever carried out a test with the pad?
A. No. This is from experience of using it at home.

Q. What is the temperature of this room F?
A. I do not know.

Q. Kisumu is rarely below 70°F?
A. I do not know.

Q. It takes half an hour to lose 10°F?
A. I just feel it with my hand and know.

Q. Do you know the difference between Centigrade scale and Fahrenheit?
A. No.

Q. Do you know the Reaumur scale?
A. No never heard of it.

Q. Do you know at what temperature Fahrenheit water boils?
A. Yes, 212.

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Prosecution Evidence

No. 8

Akwir Andere, Examination.

No. 8

EVIDENCE OF AKWIR ANDERE

P.W.6. AKWIR ANDERE, sworn in Luo:-

I am P.C. 2687 of the Kenya Police, attached to the C.I.D. On the morning of 29th February, 1960, I accompanied Chief Inspector Shaw to a house in Jaipur Street, Kisumu. There I made a search of the area and found a piece of cloth under a bush. I picked it up and handed it to Chief Inspector Shaw. Later I went back to where I had found the cloth and made a further search. I went with Chief Inspector Shaw. We found nothing further. I would recognise the piece of cloth if I saw it again. Exhibit H.2. This is the piece of cloth. The distance from the bush to where I found the piece of cloth to the nearest house was about 10 to 11 paces.

Cross-Examined None.

No. 9

Stephen Nicholas Ngure, Examination.

No. 9

EVIDENCE OF STEPHEN NICHOLAS NGURE

P.W.7. STEPHEN NICHOLAS NGURE, sworn in English:-

I am L.M.S. East Africa and a Registered Medical Practitioner. On 29th February, 1960, I went to the Nyanza General Hospital and performed a Post Mortem on the body of a young Asian woman, identified to me by one Upkar Singh Pardesi, identified as that of Ajeet Kaur. Exhibit E is a photograph of the woman. On external examination of the body, I found several wounds. I found a stab wound 2½ inches long by 1½ inches broad, it was on the right lower side of the chest below the right breast and near the costal margin. There was a cut through the dress at the corresponding position, and there was blood on the dress. I found a second stab wound ¼ inch by ½ inch on the left side about the same level as the first wound. It was very superficial just puncturing the skin. I found a long 7 inch incision in the left groin, it was about ½ inch broad, it had gone through the subcutaneous skin

and fat, but it has not cut into the blood vessels. I found no other wounds. I also found a small bruise on about the middle of the right upper arm, and another bruising behind the right thigh. I found extensive lividity over the whole of the back and the left side of the face and ear, this is not unusual in a corpse if not extensive, but in this case it was very gross. Lividity means gravitation of blood after death, the blood runs to the lowest part of the body and discolours the skin red. The mucous membranes of the mouth and conjunctive showed cyanosis, that is a symptom of lack of oxygen in the blood before death. There was also congestion of the conjunctiva but no haemorrhage. The face also looked to be congested but I could not find any bruises other than the ones I have described. I found no anaemia noticeable, by anaemia I mean loss of blood. On internal examination and examining the respiratory system, I found the mucous membranes also showed a fair amount of cyanosis, the trachea and bronchi were full of frothy mucous, which extends right through to the small bronchi. Both lungs showed signs of lividity from gravitation of blood on the posterior or dorsal aspect. That is gravitation of blood. The pleural surfaces of the lungs showed a few pin point haemorrhages. The cardiovascular system, that is heart system, was found to be normal. The abdomen - I found a fair amount of blood in the peritonial cavity. The first stab wound I described was found to have cut through the cartilages of the 7th and 8th ribs and had also cut into the liver to a depth of about an inch. The uterus was pregnant about 16 to 18 weeks, that cannot be ascertained accurately unless one measures the foetus, and I did not open the uterus. At the time I thought that the wound in the groin and the second wound I described on the left chest, were both inflicted ante-mortem. The two bruises I found I later ascertained were not in fact bruises, but were hypertacis or gravitation of the blood. I found no internal bruising. I was verydoubtful of the cause of death, I formed the opinion that the stab wound of itself would not cause the death of the woman, she had not lost enough blood. There were signs of asphyxia, these were the conditions I have described in the respiratory system. At the time the reason for the asphyxia was obscure. I was of opinion that death was due to asphyxia

In the Supreme Court of Kenya

Prosecution Evidence

No. 9

Stephen Nicholas Ngure,

Examination - continued.

mainly, and possibly from haemorrhage and shock from the stab wound. When I received the body into the mortuary, it was dressed. I had it undressed to perform the post mortem. The clothes were these drawers Exhibit H.3., these pantaloons Exhibit H.1., this dress Exhibit J, this slip Exhibit K, this brassiere Exhibit L. The matching cut to the first stab wound I mentioned is here indicated on Exhibit J. I can find no matching cut on the slip Exhibit K. I handed all this clothing to Chief Inspector Shaw. Later Dr. Rogoff came and I pointed out to him all that I had done in my Post Mortem.

Cross-examination.

Cross-Examined

Q. In your report you said there had been a fair amount of bleeding into the pericardial cavity?
A. Yes.

Q. That would have indicated a fair amount of haemorrhage?
A. No it does not.

Q. Exhibit J. The discolouration here is all blood?
A. Yes.

Q. Exhibit K, this also?
A. Yes.

Q. Exhibit L, and on this?
A. Yes.

Q. This (headdress not exhibited) Exhibit M, also blood?
A. Yes.

Q. All this blood on this clothing together with the blood in the pericardial cavity show external bleeding?
A. No. The conjunctiva showed no anaemia. All the blood on the clothes I would not consider to be a lot of blood, considered in relation to loss from a body.

Q. What do you mean by a fair amount of bleeding?
A. About 3 or 4 ounces in the pericardial cavity. I did not measure.

Q. Sufficient to cause shock?
A. No.

Q. The bleeding together with the agony of the stabbing would that cause shock?
A. It could but I would not say so in a normal person.

Q. Who do you mean by a normal person?
A. A person who is not frightened. It depends on the physique of the person, assaulted women are usually more subject to shock from acts of violence than men are.

Q. A woman suddenly attacked at night would suffer a great amount of shock?
A. Very likely.

Q. All the more likely if attacked by a stranger?
A. Yes.

Q. You say in your P.M. report that the wound that caused the bleeding was ante-mortem?
A. That was what I thought at the time, but to establish it it is necessary to make a microscopic examination.

Q. That caused you to report shock and haemorrhage from that wound?
A. Yes but that was not the major thing, the major thing was the asphyxia.

Q. All the bleeding on the clothes was from that one wound?
A. Yes.

Q. All this bleeding would be more likely to take place from a person who is alive than a person who is dead?
A. Yes.

Q. You say there was hypostatis in the lungs. This is a sediment or morbid deposit in the body?
A. In Post Mortems it means gravitation to the lowest part of the body.

Q. But do you agree "a sediment or morbid deposit in the body"?
A. No I do not, not in Post Mortem, hypostatis means falling to the bottom and as I say in Post Mortems it means blood or fluid falling to the lowest part of the body.

Adjourned 11.0 a.m.

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Prosecution Evidence

No. 9

Stephen Nicholas Ngure,

Cross-examination - continued.

11.15 a.m. Court resumes as before.

Witness reminded of his former oath for further cross-examination.

Q. In your P.M. report when you describe the cardiovascular system, you mention the pericardial surface, you refer to the heart?
A. Yes the covering outside the heart.

Q. What do you mean by pericardial surface, was she suffering from inflammation of it?
A. No she was not.

Q. Dr. Rogoff says there was fluid in the pericardial sac, this is not due to injury?
A. Every one has fluid in the pericardial sac, it is a natural and normal condition.

Q. In a normal person the fluid is a lubricant and not perceptible to the naked eye?
A. It is more of a shock absorber and it is visible to the naked eye.

Q. How much fluid would you find in a normal person?
A. I do not know.

Q. Would 10 ounces be excessive?
A. I do not think so, it might be a bit much.

Q. The presence of fluid in the pericardial sac, does that show pericarditis?
A. Usually it does.

Q. You say lungs, old adhesions, would this be old pleurisy?
A. It could be. It indicates old infection which has burnt itself out.

Q. The lungs are damaged?
A. No the lungs could be normal.

Q. You also state the lungs have signs of hypostatis, this together with the adhesions would this indicate that she had had chronic bronchitis?
A. No.

Q. You say on the back there was gross lividity. Lividity means?
A. Hypostasis.

Q. A morbid deposit?
A. No. Lividity, Hypostasis, deposit of blood which has flowed to the lowest part.

Q. But the dictionary says?
A. I do not accept it in post mortem work.

Q. Lividity means bruises, bluish colour?
A. I do not accept that. In post mortem work lividity and hypostasis mean the same thing.

Q. Was the back blue?
A. Bluish, she was cyanised almost violet.

Q. Not normal?
A. No not normal.

Q. Could the bluish colour be due to a fall?
A. No. It is very simple if a person dies and is lying on his back the blood gravitates to the back and causes lividity, if lying on his face and stomach it gravitates to the front, and there will be lividity there. The cyanosing indicated lack of oxygen before death.

Re-Examined

Q. Adhesions, are they common?
A. Fairly common.

Q. Lots of people have them?
A. Yes.

Q. When you talk of fluid in the pericardial sac, do you mean fluid ounces or weight?
A. Fluid ounces.

Q. You say a live person is more likely to bleed than a dead person. Could you say also that a dead person may bleed more than a live person?
A. Yes.

Q. You expressed an opinion of the amount of bleeding, would you say the first wound bled a lot?
A. It is difficult to say how much, one must take into consideration the place where she bled, the amount of blood on the ground.

Court: You were asked "Q. The presence of fluid

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Prosecution Evidence

No. 9

Stephen Nicholas Ngure,

Re-examination - continued.

in the pericardial sac, does that show pericarditis?" and you answered "A. Usually it does" that seems to contradict your previous statement, that fluid in the pericardial sac is a natural and normal condition.

Witness: I was being asked about large amounts and I meant increased amount, that is if there was an excessive amount of fluid it might indicate pericarditis.

No.10

Abdul Ibrahim Hasham,

Examination.

No.10

EVIDENCE OF ABDUL IBRAHIM HASHAM

P.W.8. ABDUL IBRAHIM HASHAM, sworn in English:-

I am B.M., B.S. Bombay. I am a registered Medical Practitioner. Early in the morning of 29th February, 1960, at about a quarter to four, Upkar Singh Pardesi came to see me, I went to his house with him to Jaipur Street. I arrived there at about 4.0 a.m. I went into his house into the first room, a bedroom, I saw a woman lying on the floor, she was covered with blankets, I think they were rugs, Exhibit E, this is a picture of the woman I saw. Also there was Upkar Singh's wife, not Upkar Singh, Sharmpal Singh, Accused identified, and another asian man who I do not know. I examined the woman and I thought she was shocked. I did not think that she was dead at the time. She was unconscious. I felt for her pulse, I thought at first that I felt it, but I was not sure. I felt her with my hand. Her abdomen was very warm, but her face was very cold. I examined her for injuries and found two wounds, one on the right side of the chest at about the bottom of the ribs and the other towards the midline. There was bleeding from the first large wound, the other was not bleeding at all. When I say bleeding it had been bleeding but had stopped. I made arrangements for the woman to be taken to Hospital, and I went ahead to the Nyanza General Hospital. Soon after I arrived the woman arrived with Upkar Singh and his wife. I had called for Dr. Treadway, P.W.3, and he arrived. I was present when Dr. Treadway

examined the woman in the operating theatre. I noticed that the woman's underpants were wet, I considered that she had passed urine on her clothes. I and Dr. Treadway formed the opinion that the woman was dead.

Cross-Examined

Q. You examined the woman. Did you examine her face?
A. Yes.

Q. Was there anything?
A. Yes her neck was a little stiff.

Q. The eyes were closed?
A. I do not remember.

Q. Did you examine the tongue?
A. No I did not.

Q. The face was not swollen?
A. I did not think so, but I did not know the woman before so I would not know how her face was normally.

Q. At the time you thought she was alive?
A. I felt she was alive, I thought I had felt a very faint pulse but I could not be sure.

Re-Examined None.

No.11

EVIDENCE OF UPKAR SINGH PARDESI

P.W.9. UPKAR SINGH PARDESI, sworn in English:-

I am employed by Motor Mart Ltd., Kisumu. I am married, my wife is named Suderjit Kaur. I live in Jaipur Street, Kisumu, in a flat, there are other flats there, Exhibit C, this shows my flat and the door is marked (b). The door to the left almost under the light is the door to my one. Exhibit F, I understand this, it is a plan of my flat and the surrounding flats and courtyard.

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Prosecution Evidence

No.11

Upkar Singh Pardesi,

Examination - continued.

My W.C. is marked B. There are two bedrooms marked A and C, and the verandah is marked V. This verandah leads onto a courtyard. The drain is marked Y, it also shows the end of the concrete. The rest of the courtyard is murram. In February, 1960, I, my wife and two children aged about 7 and 5 years lived in the flat. I have a sister named Ajeet Kaur, she had a nickname Liti. Exhibit D is a picture of my sister. Ajeet Kaur lived in my flat for 5 or 6 months last year. Then we went to India together. That was at the beginning of September, 1959. My sister was married in India before and she went to India with me in September to fetch her husband. I met her husband in India, he is Sharmpal Singh, Accused identified. I returned to Kisumu at the end of December or beginning of January this year. My sister and the Accused came with us and I went to live with my family in Jaipur Street. My sister and the Accused lived with us. I and my family occupied the room marked C on the plan and my sister and Accused occupied the room marked A. There is a door from their room which leads down some steps. The flat is a ground floor one. My children slept in any room they wanted to, they used to change about. There were two beds in my sisters room, one parallel to the wall next to the courtyard where the window is marked (b). I draw the beds on this (photostat copy of Exhibit F) marked F.1. I mark them 1 and 2. The Accused used to sleep on bed 1. My sister used to sleep on bed 2. Shown a bed, states this is the bed I marked 2, Exhibit N. On 28th February, 1960, I was at home, in the evening we were all at home. Sometime after 7.0 p.m. some of my friends came & I went with them to Kibos leaving at about 7.30 p.m. I left my wife, our two children, Accused and my sister in the house. I returned at about 9.30 p.m. I entered the flat by going up the steps, through the door marked (a) on the plan, and into Accused's room marked A. Accused opened the door for me. I entered and Accused closed the door and bolted it. My sister was in her bed, the one I marked 2, and my child Amajeet aged about 7, was with her. The light was on, Accused switched it on before opening the door. The light is at the side of the door through which I came. I went straight to my room crossing the verandah on my way, I checked the verandah door and found it locked. The key was in the lock, which is its

normal place. The light was not on. There is a light in the courtyard, it was not on. The switch to the courtyard light is on the verandah between my room and the bathroom, marked E on the plan. I went to my room, took off my clothes, read a book for about half an hour and then went to sleep on the floor. It was then before 11 p.m. The windows throughout the flat are steel frame with iron bar burglar proofing, they are parallel about 3 inches to 3½ inches apart. All the windows in the flat are like this. I had shut my bedroom door when I went in. I woke up at about 3.45 a.m. the next morning. I felt a little thirsty and went for a glass of water to the kitchen, which I mark K on the plan, I had to go onto the verandah. When I came out of my room I saw that the courtyard light was on also the light in my sister's room. I had my glass of water. I went to my sister's room to find why the light was not off. I stood in the door and looked in. The door was open. I saw my sister's bed, marked 2 was empty. I went out of the verandah door, it was shut but was not locked. When I looked in my sister's room, Accused was in his bed, marked 1 on the plan and Amajeet, my son, was with him, they appeared to be asleep. I saw that the toilet room light was on and the door half closed. The toilet is marked B on the plan. I went a little further and saw the body of my sister on the murram part of the yard. The spot is marked X on the plan and I put a ring round it. I went to her and shouted her name, she did not reply. She was lying on her back her left arm was stretched out and her right arm was near her chest, her legs were a little bent. Her head was towards the boys quarters, marked C on the plan, and her legs were towards the exit from the yard. Her clothes were bloodstained. When my sister did not reply, I called for my wife, she came followed by the Accused. I felt my sister near her heart for heart beat, I thought the heart was beating, I felt over the clothes. I and my wife took Ajeet from the murram and laid her on the concrete part of the courtyard. We put her down near the mark Y on the plan. The house boys came out. The house boys and the Accused then took the body inside to the room marked A, via the verandah. The body was placed on the floor opposite the bed marked 2. I rushed for the doctor, I went and got Dr. Hasham, P.W.8, who followed me in his car -

In the Supreme Court of Kenya

Prosecution Evidence

No.11

Upkar Singh Pardesi,

Examination - continued.

Q. Why put the body on the floor?
A. Her clothes were all bloodstained.

When I returned after calling Dr. Hasham, the body was in the same place. The doctor examined my sister and said the body must be taken to the hospital for an examination. I took my sister to the hospital in a motor van. I placed her in the van. I put the bedding in with her. On arrival we took my sister into the operating theatre.

Adjourned to 2.15 p.m.

2.15 p.m. Court resumes as before.

Witness reminded of his former oath for further examination in chief.

Later a European doctor arrived, he was Dr. Treadway. Shortly after he came out of the operating theatre and told me my sister was dead. I then returned to my house in Jaipur Road. On arrival home I went into the courtyard, I looked into the corner and saw one of my sisters head-dresses and a shoe there. I came out and saw the other shoe in the drain, the shoes were a pair, shown Exhibit M, states this is the head-dress Exhibit M. Shown some shoes, states these are the shoes Exhibit O. I recognise the shoes as belonging to my sister, Ajeet Kaur. I left these articles where they lay. After seeing these things I went and called the Police. I returned with Chief Inspector Shaw and Inspector Whitehead. When I saw my sister in the yard she was wearing Indian style garments, Exhibit J was the dress she was wearing, also pantaloons to match Exhibit H.1. are the ones. I did not notice if she was wearing anything under these two outer garments. When I first found her I examined her, I lifted her frock and saw a wound on the left side of her chest, I saw only one wound. When I lifted her frock I saw she was wearing underwear like that Exhibit K, Exhibit H.2, my sister was stitching this on the day before she died. I saw it when I returned from Kibos at about 9.30 p.m., it was in her room, room A on the plan. There was a chair near her bed and it was near the door leading to the verandah, and it was on this chair. I think it was there by itself. This mattress Exhibit G, I gave this to Chief Inspector Shaw,

I am not sure how long after my sister died. Chief Inspector Shaw also took away the bed Exhibit N. When I took the body of my sister to the hospital I saw that the headdress was there also the shoes, as I have said. I do not know who collected them. The Police investigated round my flat. My sister's body was brought back to the flat at about 1.0 p.m. on the same day, 29th February, 1960, it was again collected on the same day and taken back to the hospital. Before this my sister was quite healthy. As far as I remember she never wet her bed. My sister used to wear bangles about 4, she wore one steel one and four gold ones. It is a religious custom to always wear a steel bangle, gold bangles are ornamental. Normally my sister wore the steel and the gold bangles. When I saw my sister that night I did not notice anything about the bangles.

Q. When you first saw your sister you say you felt her heart beat, how did you do that?
A. By placing my hand flat over the heart. The plam of the hand flat.

Q. Demonstrate that - Witness demonstrates hand flat whole of palm and fingers on body, fingers almost to armpit.

Q. What kind of heartbeat did you feel?
A. Not very strong.

The light in the courtyard was near to the toilet. When I first saw my sister that light was not shining directly on her, I saw her by the light from my window room C on plan. When I saw my sister I was shocked to see her like that. When I went to fetch the doctor I went through the door in my sister's room (a) on the plan. The door was bolted. I was present when Dr. Ngure, P.W.7, performed the Post Mortem, and I identified the body of my sister to him.

Cross-Examined

Q. The gold bangles, are they worn all the time by girls recently married?
A. Yes.

Q. Most Hindu and Sikh brides sleep with their bangles on?
A. Yes.

In the Supreme Court of Kenya

Prosecution Evidence

No.11

Upkar Singh Pardesi,

Cross-examination - continued.

Q. The steel bangle is worn by all Sikhs, male and female, all the time because of religious significance?
A. Yes.

Q. You are wearing yours now?
A. Yes.

Q. The boys quarters, C on sketch, the windows open on to the yard?
A. Yes.

Q. The light in the courtyard shines on all the doors of the boys quarters?
A. Yes.

Q. There were blood stains on the murram at the point marked X on the sketch?
A. Yes.

Q. When you saw her there were they wet?
A. I saw them where she had lain when we had carried her away. I think they were wet.

Q. The part Y on that sketch was there blood there?
A. When we had taken her away, there was blood where she had lain.

Q. Any blood near the spot Y before you put your sister there?
A. I do not remember seeing any blood there.

Q. Your room C on plan, does your wife sleep on a bed along the wall where there is a window?
A. Yes.

Q. With her feet towards the murram courtyard?
A. Yes.

Q. Mark this window.
A. Window marked (2a).

Q. The other window (c) overlooking the murram courtyard, your wife lying on her bed can see that window (c)?
A. Yes.

Q. The gate in the courtyard is a double one?
A. Yes.

Q. One of the gates was completely broken at the time?
A. Yes.

Q. Completely off the hinges?
A. Yes.

Q. Like this Exhibit A?
A. Yes.

Q. Exhibit B?
A. That show the broken door, it had broken up, the frame having come from it.

Q. During the day and night a stranger could quite easily get into the courtyard and walk about?
A. Yes.

Q. You slept in room C in the sketch, did you hear any noises in the courtyard at all during the night?
A. No.

Q. Did you hear any noises inside your flat that night?
A. No.

Q. Had you not gone out to get a glass of water you would not have seen your sister's body till the morning?
A. Yes.

Q. Room A on sketch. The door marked (a), this door is left bolted at night?
A. Yes.

Q. Not locked with a key?
A. There is a key but it is not locked.

Q. This door was only bolted at night?
A. Yes.

Q. Anyone could go out by merely unbolting it?
A. Yes.

Q. Accused arrived in Kenya in January this year?
A. In December last year.

Q. Can you remember the date you reached Kisumu - 4th January?
A. I think it was the 2nd or 3rd of January.

In the Supreme Court of Kenya

Prosecution Evidence

No.11

Upkar Singh Pardesi,

Cross-examination - continued.

Q. Your sister and brother-in-law had been married then only about 8 months?
A. 8 to 9 months.

Q. Within 2 months after arrival in this country you found your sister in the courtyard in the condition she was?
A. Yes.

Q. Did you ever have any complaint from your sister of your brother-in-law ill treating your sister?
A. No.

Q. Were they happy together?
A. I would say they were very happy together.

Q. Anything odd about any knife in the kitchen belonging to the family?
A. No.

Q. Any knife missing?
A. No.

Q. Ever seen Accused with a knife?
A. No.

Q. Does your son, Amarjeet, ever wet the bed at night?
A. Yes sometimes he does.

Q. If a person was carrying another through the door to the verandah to the yard, would he make a noise sufficient to wake you?
A. The doors are double and he would be likely to make a noise going through one, I might hear or I might not.

Q. Your sister was well built, plumpish?
A. She was well built.

Q. Weighed about 140 lbs.?
A. About that yes.

Q. When you found the body did you look at her eyes?
A. I looked at her face.

Q. Do you remember if her eyes were open or closed?
A. Her eyes were closed.

Q. The mouth also closed?
A. Yes.

Q. When you saw her on the ground, did you notice if her clothes were drenched in blood?
A. Yes they were bloodstained.

Q. Her right hand was near the left chest?
A. No near the right chest, near where the wound was.

Q. Do you believe Accused killed your sister?
A. No.

Re-Examined

Q. When you passed through the verandah door did you make any noise?
A. I opened the verandah door without any fear and I made some noise.

Q. Normally?
A. Yes normally.

Adjourned 3.15 p.m.

3.30 p.m. Court resumes as before.

Twelftree applies to recall Mr. Treadway, has given notice to Defence.

Sood No objection to application, but I wish to put more questions to Mr. Treadway, ask he be recalled not today.

Twelftree I will find when he will be available.

No.12

EVIDENCE OF INDERJIT KAUR

P.W.10. INDERJIT KAUR, sworn in Punjabi:-

I am the wife of Upkar Singh Pardesi, P.W.9, I have two children. My home is a flat of two bedrooms. During the month of February, 1960,

In the Supreme Court of Kenya

Prosecution Evidence

No.12

Inderjit Kaur,

Examination - continued.

I and my husband occupied one bedroom and my husband's sister, Ajeet Kaur, and her husband occupied the other bedroom, his name is Sharmpal Singh, Accused. We were all together in the flat on the evening of 28th February this year. My husband left the flat with some friends that evening. I do not know the time, it was a little dark perhaps 6.45 p.m. I ate my food with Ajeet Kaur and the Accused. I went to bed at 8.0 p.m. to 8.15 p.m. I took one of my children with me to my room. The other was asleep in Ajeet Kaur's room. That was my son, Amajeet, and he was asleep on the large bed. Sometimes Ajeet slept on that bed, sometimes her husband, it was the one on the right hand side under the window. I went to sleep and Ajeet was crocheting and Accused was reading, they were in their room. Ajeet did a lot of sewing and she was stitching a blouse on the Sunday, Exhibit H.2. is the one. I last saw it on that Sunday when Ajeet took it into her room. I went to sleep and my husband called me, I woke up, it was night and dark. When my husband called me he was near the window to our room, he was outside. I got up and went outside. As I went out Accused followed, he followed when I called out to him that something had happened to Jeeti. I asked him to come. I went out and saw Jeeti on the ground and my husband was there. I looked at Ajeet, she just lay there. Ajeet was picked up and carried on to the concrete, and from there across the verandah to her own room. The body was placed on the floor. That was because she was bleeding. My son, Amajeet, was there asleep on the large bed, not the one under the window, the one on the right as one goes into the room from the verandah. I and others tried to resuscitate Ajeet, we massaged her hands and feet. A neighbour brought an electric blanket and put it on Ajeet. My husband went and got Dr. Hasham, P.W.8. My husband then took Ajeet to the hospital. Exhibit N is one of the beds from Accused's room, this is the one on the left as one goes into the room, and this is the mattress that goes with it Exhibit G. On the following morning I had this bed and mattress taken out into the courtyard and a European Police Officer came and collected them. I took the mattress outside. I noticed it was stained yellow from the quilt and it was wet. Between the time that the mattress was taken outside and the Police

Officer collecting it, I am not sure whether it was used or not. The guests we had had their own clothes. When I took the mattress out of Ajeet's room it was wet, it was not wetted again before the Police took it, it was still wet from the first wetting I saw. When I saw Ajeet that night I saw her clothes were bloodstained and her trousers were wet with urine. I would recognise her clothes if I saw them again. Exhibit H.1. these are her trousers, she was wearing these, also these drawers Exhibit H.3, they were both wet with urine. She was also wearing this slip Exhibit K and jacket Exhibit J. On the evening of the Sunday Ajeet wore two bangles on each arm, all gold ones, also a Sikh steel bangle. When I saw Ajeet lying in the yerd, I did not notice whether or not her bangles were on her arms. Later we looked for the bangles, I do not remember who told us they were missing, we were all weeping. When I saw Ajeet lying in the yard she was not wearing her headdress. She was not wearing her shoes. Ajeet normally kept her headdress under her pillow, when she slept she did not wear it. When I saw Ajeet lying in the courtyard, I saw the headdress and right shoe inside the toilet, and the left shoe in the drain in courtyard. That is the headdress Exhibit M, and these are Ajeet's shoes Exhibit O. I do not know who picked up the headdress or shoes, they went to the hospital with Ajeet but I do not know who picked them up. When I saw Ajeet lying in the courtyard her clothes were normal, not disarranged. The trousers were properly tied. The jacket Exhibit J was in place. She wore a slip under the upper garment, Exhibit K is the one, when I saw her this was normal. Before this happened Ajeet was quite healthy.

Cross-Examined

Q. A few days before this happened did Ajeet Kaur complain to you of any pain in the body?
A. Yes on a Sunday.

Q. Did she mention the part where the pain was?
A. Yes here - indicates right side below ribs at about line of nipple.

Interpreter: Although the witness says left side she points to the right.

In the Supreme Court of Kenya

Prosecution Evidence

No.12

Inderjit Kaur,

Cross-examination - continued.

Q. Did you say the pain was at the waist on the left hand side?
A. Yes.

Further Cross-Examination reserved.

Adjourned to 9.0 a.m. tomorrow.

James Wicks
J.

9.0 a.m. Wednesday, 1st June, 1960.

Court resumes as before.

Witness reminded of her former oath.

Q. When did you first see this mattress Exhibit A?
A. After I had returned from the hospital.

Q. The mattress when you saw it was it very wet or just damp?
A. It was just damp as if a child had passed urine during the night.

Q. You must have used some cloth on the floor before putting the deceased there?
A. Yes.

Q. Could this mattress have been used on the floor?
A. No.

Q. Have any of your children other than this night passed urine on this mattress?
A. Yes a child belonging to someone else.

Re-examination.

Re-Examined

Q. How long before 28th February, 1960, that that other child passed urine on this mattress?
A. About 8 days before.

No.13

EVIDENCE OF OYAMBERA EBOCK

In the Supreme Court of Kenya

Prosecution Evidence

No.13

Oyambera Ebock, Examination.

P.W.11. OYAMBERA EBOCK, sworn in Luo:-

I am P.C. 1527 of the Kenya Police. On 3rd March, 1960, Chief Inspector Shaw handed me a parcel. I took it to the C.I.D. Headquarters Nairobi and handed it to a doctor. The doctor was at this court to give evidence and he is a European doctor with scars on his face.

Cross-Examined None

No.14

EVIDENCE OF MOHAMED SHARIF MOGHUL

No.14

Mohamed Sharif Moghul, Examination.

P.W.12. MOHAMED SHARIF MOGHUL, sworn in English:-

I am an Inspector of Police stationed at Kisumu. On 29th February, 1960, I went to C.I.D. Headquarters, Kisumu, where I saw Chief Inspector Shaw, he was with Sharmpal Singh, Accused identified, it was before 12.0 midday. The Accused made a statement which I translated from Punjabi to English and which Chief Inspector Shaw recorded. When the statement was complete I read it back to the Accused in Punjabi and he said it was correct and he signed it. I also signed it as did Chief Inspector Shaw. When it was recorded I, the Accused, C.I. Shaw and Inspector Whitehead were present. Accused appeared to be excited when he made the statement. Nc inducement was held out to the Accused to make the statement.

Sood No objection to admissibility. Statement marked Identification 1.

Cross-Examined

Cross-examination

Q. When you say Accused was excited do you mean upset?
A. It was difficult to understand what he said.

Q. This was at about 10.30 a.m.?
A. Before midday.

In the Supreme Court of Kenya

Prosecution Evidence

No.14

Mohamed Sharif Moghul,

Cross-examination - continued.

Q. It could be about 10.30 a.m.?
A. It might have been.

Q. Accused appeared to be very grieved and in a state of sorrow?
A. He appeared to be worried.

Q. That is what you meant by worried?
A. Yes.

Re-Examined None.

No.15

Robert Shaw,

Examination.

No.15

EVIDENCE OF ROBERT SHAW

P.W.13. ROBERT SHAW, sworn in English:-

I am a Chief Inspector of the Kenya Police. Police Headquarters Kisumu. As a result of a report on the early morning of 29th February, 1960, I went to an Asian house in Jaipur Street, Kisumu, arriving at about 6.20 a.m. I was taken there by one Upkar Singh Pardesi, P.W.9. Exhibit B, this is a picture of the corner of the building where I went. Superintendent Whitehead was with me, also P.C. Akwir Andere. On arrival I made certain investigations, I found in the courtyard a small patch of blood about 8 inches in diameter, it was wet. It was on the murram portion of the courtyard, about 2½ paces from the wall of a bedroom. This is a plan of the buildings and courtyard Exhibit F and the spot where the blood was is marked X. The Photograph Exhibit B shows this murram and I put an X where I saw the patch of blood. The murram is a stony loose surface type. I found no signs that would indicate that a struggle had taken place near this patch of blood. I dragged my foot in the murram and it left an impression showing that, had there been a struggle, signs would have been left. The blood was in one patch, roughly circular. I saw no drip marks leading up to the patch of blood. I found a patch of congealed blood about 12 inches in diameter, on the plan Exhibit F this was on the concrete at the spot marked Y. The place is shown on Exhibit B and I marked it with a Y.

This patch of blood showed a drag mark towards the drain-pipe shown on the photograph Exhibit B. I saw no spots of blood or splashes of blood near this patch. Apart from the blood, I found no signs of liquid in the courtyard, the murram and the concrete were both dry. I found nothing else in the courtyard. I went into the toilet, it is marked B on the plan Exhibit F. There was nothing in the toilet and the concrete floor was dry. I found no stains there of any kind. Nothing there was disarranged. I did not examine the door of the toilet. I then went into Upkar Singh Pardesi's house. I entered it through a verandah marked V on the plan Exhibit F. I went from the verandah to room marked A on the plan Exhibit F. There was one bed in the room which was along the wall to the courtyard, it is marked 1 on this plan Exhibit F.1. There was a mattress and bedding on the bed. I did not examine it. I examined the room and found some bloodstained blankets, they were near the door, the outside door marked (a) on the plan Exhibit F. There were steps outside. The floor of the room was concrete, it was dry and there were no stains on it. By stains I mean no bloodstains or signs of liquid. The floor was bare there were no carpets. I exmained all the other parts of Upkar Singh Pardesi's flat. All the doors worked properly and all the windows were secure. I looked for any signs of possible entry to the flat and found none. The windows were all barred with vertical iron bars about 4 inches apart, some are mosquito proofed. The door from room A on Exhibit F marked (a), are double doors, they were quite secure and showed no signs of breaking. The verandah doors to the courtyard are double doors, I found them secure. One half was bolted and the other half could be secured by locking a mortise lock, the key was in the lock. The courtyard is surrounded on three sides by a wall and on the fourth side by flats. All the flats open onto a courtyard, and there are double doors to the outside. One of the doors was broken, or rather had been allowed to fall to pieces, it was old damage and the broken door was resting against the other sound one. This photograph, Exhibit A, shows that. P.C. Akwir Andere, P.W.6, handed me a blouse, Exhibit H.2. is the one. P.C. Akwir showed me a bush on a piece of waste ground between the block of flats and the Kakamega Road. The bush was 22 paces from the courtyard doors. I then went

In the Supreme Court of Kenya

Prosecution Evidence

No.15

Robert Shaw,

Examination - continued.

to Nyanza General Hospital, into the operating theatre, again with Superintendent Whitehead. I saw the body of a young Asian female lying on the operating table, Exhibit E is a photograph of the woman. I saw two wounds, one on the right and one on the left of the chest. I examined the girl's clothing, she was fully dressed and I would recognise the clothing, these were the pantaloons she was wearing Exhibit H.1, these are the underpants Exhibit H.3, this the dress Exhibit J and this the vest Exhibit K. I did not make a full examination of the clothing at the time. I saw that the dress and vest were bloodstained, the dress had a tear in it, indicates right bottom and the vest also a tear, indicates top left at position below the left breast. I attempted to match up the tear in the dress with the wounds and found no matching tear in the dress to the wound on the left and no matching tear in the vest to the wound on the right. The tear in the dress matched in line vertically with the large wound, but the dress had to be rumpled up about 3 inches to match horizontally. I found that the tear in the vest Exhibit K matched the small wound on the body. This tear matched the wound vertically and horizontally. It is not possible to match up the tear in the dress Exhibit J with the wound on the right side, and my conclusion is that the dress was off or pushed right up when the small wound was inflicted. A headdress was draped round the girl's shoulders, Exhibit M was the one. She was also wearing brassiere Exhibit L. I then returned to Jaipur Street and at about midday went back to the hospital, the body was then in the mortuary and Dr. Ngure, P.W.7, performed a post mortem. I assisted Dr. Ngure in undressing the body and took possession of all of the clothing, it was as I have described and identified. I kept the clothing in my possession until 3rd March, 1960, when I made a parcel of the pantaloons Exhibit H.1, the pants Exhibit H.3, the blouse Exhibit H.2, and the mattress Exhibit G, each article was in a separate wrapping and the parcels then bundled into one large parcel. I sealed it and gave it to P.C. 1527 Oyambera Ebock, P.W.11. I retained the remainder of the clothing in my possession until I handed it in as exhibits at the lower court. After the Post Mortem was completed by Dr. Ngure the body was handed back to the relatives, this was at about 1.30 p.m. At 9.30 p.m. on the same day 29th February, 1960, I re-took possession of the body and put it back

in the mortuary. At about 10.30 a.m. on 1st March, 1960, Dr. Rogoff, P.W.4, performed a second Post Mortem examination on the body. On 1st March, 1960, at about 4.15 p.m. I went to Upkar Singh Pardesi's home and took possession of the mattress Exhibit G, it was this one that I parcelled up and gave to P.C. Akwir on 7th March, 1960, at Upkar Singh Pardesi's house. I took possession of a bed Exhibit N is the one. On the same day I took possession of a pair of shoes, Exhibit O are the ones, I found them lying on the verandah V on the plan Exhibit E. I retained the bedstead and shoes in my possession until handing them in as exhibits in the lower court. When I first saw the body in the operating room I saw she was wearing a steel bangle on her left arm, and earrings, Exhibit D shows both the earrings and the bangle. On 3rd March, 1960, I received some photographs and a sketch plan from Inspector Fyfe, P.W.1, Exhibits A to F inclusive. I handed these in as exhibits in the lower court.

Adjourned 10.20 a.m.

10.45 a.m. Court resumes as before.

Witness reminded of his former oath.

During the course of my investigations I interviewed Sharmpal Singh, Accused identified. It was on 29th February, 1960, at the C.I.D. Offices Kisumu, it was at 10.30 a.m. Present was Superintendent Whitehead and Inspector Moghue, P.W.12, who acted as interpreter. The Accused was not under arrest and I had not decided to arrest him or charge him with any offence. The Accused made a statement and Inspector Moghue interpreted it. I recorded the statement in English on the typewriter and when it was complete Inspector Moghue read it over to the Accused and he agreed it was correct and signed it. Inspector Moghue and I also signed it. This is the statement, Identification 1. Read in English and Punjabi and put Exhibit P. In the course of the statement, Accused mentioned "I have been shown a coloured jacket", I showed the Accused a jacket Exhibit H.2. is the one. The statement mentions an old car, there was one in the courtyard, Exhibit B the front part of the car can just be seen on the left edge of this. I mentioned something Upkar Singh had said as stated in the statement.

In the Supreme Court of Kenya

Prosecution Evidence

No.15

Robert Shaw, Cross-examination.

Cross-Examined

Q. You saw a pool of blood near the point Y?
A. Yes.

Q. Was it a fairly thick pool?
A. Yes.

Q. Did it appear to be heavy bleeding?
A. Quite a lot of congealed blood.

Q. Another patch on the murram marked X?
A. Yes.

Q. Wet blood?
A. Yes.

Q. A lot of blood there?
A. I cannot say, it had sunk into the murram. I cannot say to what depth.

Q. The double doors from the verandah to the courtyard, were normal size?
A. Yes.

Q. You opened it?
A. Yes one half of it.

Q. The hinges were noisy?
A. Yes very noisy.

Q. The Accused made no attempt to leave Kisumu since the incident?
A. Yes.

Q. Always prompt and willing to give you information?
A. Yes.

Q. His demeanour friendly?
A. Yes.

Q. Is your impression that he answered questions frankly?
A. That is a difficult question, he gave all questions due consideration and then answered.

Q. The Accused confessed to having had sexual intercourse with his wife that night?
A. Yes.

Q. He also said the boy urinated in his bed that night?
A. I believe he did.

In the Supreme Court of Kenya

Prosecution Evidence

No.15

Robert Shaw, Re-examination.

Re-Examined

Q. That was in a statement?
A. The Accused volunteered that the boy had urinated in the bed that night.

Twelftree Mr. Treadway is in the middle of an operation and will not be available until 2.0 p.m. Request adjournment to that time.

Sood No objection.

Adjourned to 2.0 p.m.

James Wicks
J.

2.0 p.m. Court resumes as before.

No.16

No.16

Charles Calvin Treadway (Recalled), Examination.

EVIDENCE OF CHARLES CALVIN TREADWAY (RECALLED)

CHARLES CALVIN TREADWAY, recalled by leave of the Court, and reminded of his former oath.

Q. If you were to put your hand like that, palm flat over the heart fingers to left armpit, would you be able to feel their pulse?
A. Possibly.

Q. If the person were dead would you feel a pulse?
A. Yes possibly, but it would be your own. If the person were alive one might feel ones own pulse, or the other person's or both.

Q. Can one feel one's own pulse?
A. It is a notorious mistake that when one feels for another's pulse one is only feeling one's own.

Q. Only laymen?
A. Even doctors.

Cross-Examined

Cross-examination.

Q. It is possible for one to feel the pulse as described?
A. I would doubt it very much in a woman.

Q. It is possible?
A. Oh yes.

Re-Examined None.

Twelftree That closes the case for the prosecution. S.302 (1) C.P.C. complied with.

In the Supreme Court of Kenya

Defendant's Evidence

No.17

Defendant's Unsworn Statement.

DEFENDANT'S EVIDENCE

No.17

DEFENDANT'S UNSWORN STATEMENT

Sood The defendant does not wish to call any witnesses. Accused wishes to make an unsworn statement.

"I did not kill my wife. We have never been on bad relations with one another, neither have we had any trouble. I did not even touch her with my own hand. On that night we had intercourse at about ¼ to 11 p.m. or 11 p.m. Amajeet also urinated on the bed that night. That is all I have to say".

Sood That closes the defendant's case.

No.18

Counsel's Speeches.

No.18

COUNSEL'S SPEECHES

Twelftree Charge. Instant grasping of neck. Defence of death during intercourse put to doctor not mentioned by Accused. Say Accused after having sexual intercourse leant on wife's chest and asphyxiated her. Medical evidence of asphyxia. No marks of struggle on murram. Possibilities examined

(a) Accident during sexual act.

(b) Ajeet Kaur went to toilet and attacked.

Why take blouse so unfinished as to be unwearable. Why leave steel bangle and earrings. Say Accused took these things and scattered round as if robbery. At least 1¼ hours before strangling and stabbing. Position of light switch in Accused's room. Pressure on chest.

Say no other explanation and chain of circumstantial evidence against Accused is complete. Say Accused guilty of Murder.

Sood Crown case.

Circumstantial evidence.

Medical evidence - asphyxia.

Explanation of robbery.

223/52 v. 19 E.A.K.A. p. 268.

283/51 v. 20. E.A.K.A. p. 144.

Say not guilty, as consistent with innocence as guilt.

Adjourned 3.30 p.m.

James Wicks
J.

No.19

ADDRESS TO ASSESSORS AND THEIR OPINIONS

Note of address to Assessors:

1. Charge - Killing malice aforethought.
2. Onus on Crown throughout.
3. Circumstantial evidence.
   (a) principles.
   (b) illustration of difference between circumstantial and direct evidence.
4. Onus when considering defence, on innocence in circumstantial evidence - sufficient if a doubt to acquit.
5. Evidence.
   (a) Outline leading up to finding of body.
   (b) Action on finding of body.
      (i) Dr. Hasham. Agya Singh's pad.
      (ii) Mr. Treadway at Nyanza General Hospital.
      (iii) Conclusion of death.
   (c) Post Mortem.
      (i) Dr. Ngure.
      (ii) Dr. Rogoff.

In the Supreme Court of Kenya

No.19

Address to Assessors and their Opinions - continued.

(d) C.I. Scott inspection of flat, taking possession of mattress, blood on murram and on concrete.

(e) Urination.

(f) Possible explanations.

(i) Intruder or intruders

(a) Ajeet goes out

(b) hiding in flat

(ii) Inmate. Boy Amajeet only 7.

(iii) Sexual embrace. Others, Accused.

6. How evidence and explanations related to principles regarding circumstantial evidence.

3.45 p.m. Court resumes as before, Assessors addressed in accord with note.

Adjourned 4.40 p.m.

5.10 p.m. Court resumes as before.

Assessors opinions:

1. DINUBHAI RATILAL PATEL:

I do not think he is guilty. There is no direct evidence and there must be. Moreover, Upkar Singh Pardesi should have called for Sharmpal Singh before calling Mrs. Pardesi. When Dr. Hasham was called, in his opinion she was alive.

2. KANJI GOKALDAS HIRJI SOMAIA:

I believe the Accused is not guilty. I do not accept circumstantial evidence. Someone may have intruded. He may have hid himself in the room. After sexual intercourse it is always the habit of the lady to go out and urinate. There may have been more than one intruder who came to steal and might have attacked the lady, got hold of her and also strangled her. There is no certain proof that she was dead or alive at the time of the stabbing.

3. DAHYABHAI UMEDBHAI PATEL

I think that the Accused is not guilty. Her husband says they were happy. There must be direct evidence of murder and there was none.

Dr. Hasham when he came said he thought her heart was beating.

Adjourned to 9.0 a.m. Friday 3rd June, 1960, for Judgment.

James Wicks
J.

In the Supreme Court of Kenya

No.19

Address to Assessors and their Opinions - continued.

No.20

No.20

Judgment of Mr. Justice Wicks, 3rd June 1960

JUDGMENT OF MR. JUSTICE WICKS

The Accused Sharmpal Singh s/o Pritam Singh is charged with Murder contrary to Section 199 of the Penal Code, the particulars of that offence being that on or about the night of 28th/29th February, 1960, at Kibuye, Kisumu, Nyanza Province, he murdered Ajeet Kaur, his wife.

I explained the nature of the charge to the assessors and instructed them that it was not for the Accused to prove his innocence, that the onus of proving the guilt of the Accused rested on the prosecution, that the prosecution must satisfy them beyond reasonable doubt of the guilt of the Accused before their opinion can be guilty. That if they are not satisfied on the basis of proof that I have indicated that the Accused did the act which caused the death then they need go no further and their opinion must be not guilty, but if they are so satisfied then to amount to murder the killing must have been committed with malice aforethought. That this does not necessarily mean premeditation, but implies foresight that death would or might be caused. That a person is presumed to intend the normal consequences of his act and the law implies malice from a deliberate cruel act by one person against another.

Before outlining the evidence for the assistance of the assessors I instructed them that the evidence alleged to implicate the Accused in the death was circumstantial evidence. I instructed the assessors that circumstantial evidence is admissible and not unusual in criminal cases and that where, as in this case, there are no eye-

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No.20

Judgment of Mr. Justice Wicks, 3rd June 1960 - continued.

witnesses of the death and such testimony is not available, they are entitled to infer from the facts proved other facts necessary to complete the elements of guilt or to establish innocence. That if they admit such evidence they should do so cautiously, they should examine it closely if only because evidence of that kind may be fabricated to throw suspicion on another. Also that before drawing an inference of the Accused's guilt from circumstantial evidence they must be sure that there are no other co-existing circumstances that would weaken or destroy the inference. On the other hand, circumstantial evidence is often the best evidence as it is evidence of surrounding circumstances which by undesigned coincidence is capable of proving a proposition with great accuracy, whereas eye-witnesses may have lied and succeeded in concealing that they do so from the Court. That circumstantial evidence to justify the inference of guilt must be incompatible with the innocence of the Accused and incapable of explanation upon any other reasonable hypothesis than that of guilt.

I instructed the assessors that in a case such as this where the defence suggests explanations, and they seek other explanations, as indeed they must, which weaken or destroy the inference of guilt, which are compatible with the innocence of the Accused or which are capable of a reasonable hypothesis other than that of guilt, then the onus remains throughout on the prosecution and all that is necessary for the defence to succeed is that there be a reasonable probability that such an explanation is well founded or, to put it in another way, that such explanation leaves them in doubt, and then the defence is entitled to succeed and the Accused must be acquitted.

The evidence is that the Accused lived with his wife, Ajeet Kaur, in a room in a flat in Jaipur Street, Kisumu. Upkar Singh Pardesi (P.W.9), Ajeet's brother, lived with his wife, Inderjeet Kaur (P.W.10), and their two children in the other room in the same flat. There are several flats opening on to a courtyard and there is a door which leads from the Accused's room and down some steps to the outside of the building. There were two beds in the Accused's room, one along the wall next to the courtyard on which the Accused usually slept and the other, on

which Ajeet Kaur usually slept, along a wall in which there is a door leading to a verandah, from which one can reach the courtyard through double doors, the kitchen, the room occupied by Upkar Singh Pardesi, and a shower room.

At about 7.30 p.m., on 28th February, 1960, some friends having called; Upkar Singh went away with them leaving his wife, their two children, the Accused and Ajeet in the flat. Upkar Singh returned alone at about 9.30 p.m. and went up the steps to the outside door to the Accused's room. The light in the room was put on and the Accused opened the door and let Upkar Singh in. The Accused then shut and bolted the door. Upkar Singh saw that Ajeet was in her bed and with her was Amarjeet Singh, a boy aged about 7 years, one of Upkar Singh's children. Upkar Singh then went to his room and on the way checked the verandah door and found it was locked and that the key was in its usual place in the lock. The verandah light and the yard light were not on. Upkar Singh shut the door to his room, undressed, read a book for about half an hour and then went to sleep on the floor, it was then before 11.0 p.m. At about 3.45 a.m., the next morning, Upkar Singh woke up, felt thirsty, and went to the kitchen to get a glass of water. On the way he saw that the courtyard light was on, as also was that in the Accused's room, the door of which was open. Upkar Singh consumed his glass of water and then went to the Accused's room to find out why the light was on, he stood in the doorway and saw that Ajeet's bed was empty, the Accused was in his bed with the boy Amarjeet and they appeared to be asleep. Upkar Singh then went out of the verandah door, which was shut, but not locked, into the yard, saw that the toilet room light was on and the door half closed, then going a little further he saw, by the light that came through his bedroom window, Ajeet's body lying on the murram part of the yard. Ajeet was lying on her back, her left arm was stretched out, her right arm was bent, the hand being near her waist and her legs were a little bent, her head was towards the boys' quarters, her legs towards the exit door from the yard to the outside of the building. Upkar Singh saw that Ajeet's clothes were blood-stained, shouted his sister's name and, when she did not reply, he shouted for his wife and she came, followed by the accused. Upkar Singh

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Judgment of Mr. Justice Wicks,

3rd June 1960 - continued.

felt near Ajeet's heart over her clothing for heart-beat and thought her heart was beating. Upkar Singh and his wife then lifted Ajeet from the murram and placed her on the concrete part of the courtyard. By this time the houseboys had come out of their quarters and they and the Accused carried Ajeet into her room and put her on the floor opposite to her bed. Upkar Singh then went off to fetch Dr. Hasham (P.W.8). Dr. Hasham was called at about a quarter to four and arrived at the flat in Jaipur Street at about 4 a.m., he went into the Accused's room and saw Ajeet lying on the floor covered with blankets or rugs. Dr. Hasham thought that Ajeet was in a state of shock, he did not think she was dead, he felt for her pulse and thought at first that he felt it beat, he was not sure. On an examination for injuries Dr. Hasham found two wounds, one on the right side of the chest at about the bottom of the ribs and the other towards the middle, there was bleeding from the first wound which was a large one, the other was not bleeding at all. Dr. Hasham made arrangements for Ajeet to be taken to the Nyanza General Hospital, Kisumu, and went on ahead and called Mr. Treadway (P.W.3), the Provincial Surgeon. Soon after Dr. Hasham arrived at the Hospital, Ajeet was brought there by Upkar Singh and his wife. Mr. Treadway examined Ajeet in the operating room of the Hospital and, not being sure whether she was dead or alive, he took immediate steps in an attempt to resuscitate her, he administered an intra-cardial injection of Adrenalin, he picked up her left arm to find a vein, but it was cold and no vein showed, he then went to the left leg as the best available place to find a vein and made an incision administering an intra-veinous injection of Glucose Saline and Nor-Adrenalin. There was no response at all and Mr. Treadway reached the conclusion that Ajeet was dead and had been dead for at least a quarter of an hour, possibly an hour and a quarter or longer. Mr. Treadway examined Ajeet at between 4.30 a.m. and 4.45 a.m.

Later on the same morning Dr. Ngure (P.W.7) carried out a post mortem examination on Ajeet's body. Dr. Ngure found that the stab wound on the right chest measured 2½ inches by 1½ inches, had cut through the cartilages of the 7th and 8th ribs and into the liver to a depth of about an inch. The wound on the left chest was found to

be superficial. Dr. Ngure described the term 'lividity' as meaning the discoloration of the skin after death caused by blood flowing to the lowest part of the body and there staining the skin red, and said that he found extensive lividity over the whole of the back and the left side of the face and ear, that this was not unusual in a corpse if not extensive, but in this case it was very gross, that it was cyanosed almost violet in colour indicating lack of oxygen in the blood before death. The mucous membrances of the mouth and conjunctiva showed cyanosis, a symptom of lack of oxygen before death. The mucous membranes of the respiratory system showed a fair amount of cyanosis and the trachea and bronchi were found to be full of frothy mucus which extended right through to the small bronchi, the pleural surfaces of the lungs showed a few pin-point haemorrhages. Dr. Ngure was very doubtful as to the cause of death and formed the opinion that the stab wound of itself would not have been the cause as not enough blood had been lost. Dr. Ngure was of opinion that the wound on the chest was suffered before death though it would have necessitated a microscopic examination to have determined that, and came to the conclusion that death was due to asphyxia mainly and possibly from haemorrhage and shock from the stab wound. Dr. Ngure having completed his post mortem examination the body was handed over to the relatives at about 1.30 p.m.

At about 9.30 p.m. on the same day Chief Inspector Shaw (P.W.13) took possession of the body and replaced it in the mortuary and on the following day Dr. Rogoff (P.W.4), the Government Pathologist, carried out a second post mortem examination on Ajeet's body. Mr. Treadway (P.W.3) and Dr. Ngure (P.W.7) were present and pointed out to Dr. Rogoff what they had done to the body. Dr. Rogoff found small blood spots inside the lining of the eyes also on the face. The eyes, the lips, the membranes of the mouth and nose, and the skin of the face had a purplish cyanotic discoloration. In the region of the neck Dr. Rogoff found extensive haemorrhage into the muscles under the skin and into the thyroid gland, also into the salivary gland under the right jaw and into the right muscle of the lower jaw. There was bruising of the cartilages of the larynx and also bruising over both the left and right carotid

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arteries, the windpipe showed considerable bruising and the surface of the windpipe showed haemorrhagic blood spots. The region of the chest above the left breast showed an area of haemorrhage into the muscles and a large number of areas of haemorrhage was found under the membranes lining the lungs and under the lining inside the chest cavity. All of these conditions are symptoms of asphyxia. Dr. Rogoff also found a collection of fluid in the lung tissues which he said was a common result of the lowering of the oxygen content of the blood caused by asphyxia. Also areas of haemorrhage were found inside and outside the heart muscles and this condition is one of the phenomena of asphyxia, although it can have other causes. An examination of the brain disclosed haemorrhagic spots in all areas, which is an indication of asphyxia, the brain was waterlogged, a condition not uncommon in the case of death from asphyxia. Apart from some pus and a small amount of urine found in the bladder it was empty and one expects to find a small amount of urine in a dead body, that the bladder is found empty is one of the normal reactions of asphyxia and is found in ninety per cent of cases of death from this cause.

Dr. Rogoff described the two wounds to the lower chest, as had Dr. Ngure (P.W.7), said he took deep sections of them and found that both had been inflicted after death. Dr. Rogoff explained that had the wounds been inflicted up to a quarter of an hour after death there would be reaction and he found none on a microscopal examination of the sections, in the result the conclusion was that the wounds had been inflicted a quarter of an hour or more after death. Dr. Rogoff could not say how long after the expiry of a quarter of an hour after death the wounds were inflicted. Mr. Sood cross-examined Mr. Treadway, Dr. Rogoff, and Dr. Ngure at some length on the wound found on Ajeet's right chest. On the point of the wound gaping, Mr. Treadway explained that it was difficult to relate the degree of gaping which can be affected by reaction as the cut was across the tissue. Mr. Treadway also said that "this fibrous tissue remains alive long after death has taken place" and, as I have said, Dr. Rogoff's evidence was that this period had passed when the wound was inflicted. Dr. Ngure was insistent that there had not been a sufficient blood loss to have caused death.

There were no eye-witnesses who deposed to having seen Ajeet receive her injuries and as a result the determination of the question as to whether or not Ajeet received the stab wounds before or after death is clearly of importance. Mr. Sood, who appears for the Accused, refers to the possibility of an intruder having caused Ajeet's injuries. If Dr. Rogoff's evidence is accepted the circumstances of an intruder or intruders being responsible can be put very shortly - Ajeet met her death by strangulation, or strangulation plus damage to the left chest by compression, and a quarter of an hour or more after her death the two stab wounds were inflicted to the lower part of the chest, so if an intruder or intruders were responsible, one or more of them strangled her and then waited, or came back, a quarter of an hour or more later and stabbed her dead body - a startling sequence of events. Upkar Singh's evidence was that when he found Ajeet's body in the yard, "I felt my sister near her heart for heart-beat. I thought the heart was beating. I felt over the clothes". Asked how he felt the heart the witness answered that he did so by placing the palm of the hand flat over the heart, and, asked to demonstrate that, the witness put his right hand over the region of the heart, the whole of the palm and fingers on the body, fingers almost to the armpit. Mr. Treadway (P.W.3) was recalled by leave of the Court and, given a demonstration as Upkar Singh had given it, was asked if it would be possible to feel a pulse. Mr. Treadway replied that it was possible and if the person were dead one could possibly feel a pulse but it would be one's own, that it is a notorious mistake that when one feels for another's pulse one is only feeling one's own, and that even doctors make this mistake. As Upkar Singh did not see any other sign of life it is very possible that he was mistaken when he thought he felt Ajeet's heart beating and he was in fact feeling his own pulse. Agya Singh (P.W.5), who lives in another flat opening on to the same courtyard, was woken up at about 4.0 a.m. by his wife who had heard the noise in the courtyard. He went into the verandah and saw Ajeet's body lying there, her clothes were stained with blood and he saw no signs of life. The body was taken to the Accused's room and Inderjeet Kaur, Upkar Singh's wife, and the Accused started to rub her hands with ghee. Agya Singh then went and

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fetched an electric pad from his room, plugged it in and put the pad on Ajeet's chest. Agya Singh said that the pad took about half an hour to reach a temperature of 60°F. Agya Singh, although an electrician by trade, did not know the difference between the heat scales Centigrade and Fahrenheit and 60°F. is difficult to realise in a place like Kisumu. However, it is reasonable to assume that the pad was a normal body-heating pad. Agya Singh said it was on for about 5 to 7 minutes. Then Dr. Hasham (P.W.8) came and he found Ajeet covered with blankets or rugs. Dr. Hasham, as I have said, thought the woman was shocked and did not think that she was dead at the time, he felt for her pulse and thought at first that he felt it but was not sure, he felt her abdomen and found it was very warm but her face was very cold, and her neck was a little stiff. Clearly a possible reason for the abdomen being very warm was the presence of the blankets or rugs and the fact that an electric heating pad had been used. However, Dr. Hasham does not speak of observing any other signs of life apart from his uncertain belief that he had felt a pulse. Ajeet was taken to Nyanza General Hospital, Dr. Hasham was there in the operating room and, as Mr. Treadway said, he could not be sure if she were alive or dead and took immediate steps in an attempt to resuscitate her, he failed and came to the conclusion that she had been dead at least a quarter of an hour, possibly an hour and a quarter or longer. Mr. Treadway, when he picked up Ajeet's left arm, so as to find a vein into which he could administer an injection, found that it was cold. It is reasonable to assume that doctors are loath to assume death until it is clearly established. Mr. Treadway, it seems, took this attitude in an operating theatre, with all its conveniences, and came to the conclusion that death had taken place at least a quarter of an hour before, possibly an hour and a quarter or more and, if Mr. Treadway was reluctant to concede that death had taken place when in an operating theatre, it is reasonable to attribute a similar attitude to Dr. Hasham when the body is on the floor in a bedroom, and even more so to a layman examining the body when it was lying in a courtyard. The Accused made a statement to the Police, at the time he was not under arrest and it was not then intended to bring any charge against him. I was satisfied

it was made under circumstances such that it could be admitted into evidence and admitted it. As to whether or not Ajeet was alive when she was found, the Accused, speaking of when he helped to carry Ajeet into his room, said in his statement, "I do not think that my wife was then alive as her hands and feet were too cold". Regarding the electric pad and ghee the Accused continued in his statement, "Then a neighbour brought an electric blanket and put it under her to warm her, it was switched on. Then her soles of the feet and palms of her hands were rubbed with hot ghee". The evidence of Dr. Ngure (P.W.7) regarding the primary cause of the death of Ajeet being asphyxia is fully borne out and elaborated by Dr. Rogoff. I accept Dr. Ngure's evidence and that of Dr. Rogoff and find as a fact that Ajeet died as a result of asphyxia during the early hours of 29th February, 1960. Dr. Ngure said that at the time he carried out his post mortem examination he thought that the wound on the right of the chest had been inflicted before death but to establish this it would be necessary to carry out a microscopic examination. Dr. Rogoff made such an examination with the result that I have set out. I accept this evidence and find as a fact that the stab wounds on the right and left of Ajeet's body were inflicted a quarter of an hour or more after she had met her death from asphyxia.

On certain aspects the medical evidence is not free from difficulty, for instance, Mr. Treadway was cross-examined at great length on certain suppositions and possibilities relating to Ajeet's health, yet Mr. Treadway did not carry out a post mortem examination. Again, a passage from Taylor's Medical Jurisprudence was put to Mr. Treadway who is the Provincial Surgeon and it was not put to Dr. Rogoff who is the Government Pathologist. As regards Ajeet's health, Mr. Treadway was cross-examined on a number of points, the effect of fluid in the pericardial sac and the possibility and effect of pericarditis perhaps due to some morbid deposit in another party of the body, disease of the kidneys, nephritis, as to the meaning of pus being found in the kidneys in the calyx the possibility and effect of there being pulmonary oedema. On these aspects of the medical evidence, Dr. Ngure was questioned regarding the pericardial sac and said he found

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no inflammation present and that it is a normal condition for fluid to be in the pericardial sac, that it acted as a shock absorber to the heart. Dr. Ngure was questioned closely on his use of the word "hypostasis", and refused to agree that it meant a morbid deposit in the body, insisting that in post mortem work it meant the gravitation of the blood to the lowest part of the body after death. In cross-examination Dr. Rogoff said he found no disease of the lungs, that the fluid in the pericardium was quite normal and he found no signs of pericarditis, that he found pus in the calyx of the kidneys and in the bladder, that the condition was pyelonephritis or pyelitis and not one of the six recognised conditions known collectively as nephritis. That pyelitis was an infection of the urine and in the case of pregnant women urine tends to become stagnant and infected through incomplete micturition. On this point Mr. Treadway said that almost every woman who has had two children has had pyelitis and most of them do not know it. Considering the medical evidence as a whole it seems to be clear that Ajeet was, at the time of her death, a normal, healthy young woman, who was 22 to 24 weeks pregnant, suffered from pyelitis, a common condition in pregnancy, and had some adhesions in the lungs which indicated an old condition which had cleared up. That this was so seems to be borne out by her relatives for Upkar Singh said that his sister was quite healthy, with which opinion his wife, Inderjeet Kaur, agreed, although she did say that on the Sunday before the death Ajeet complained to her of a pain in the left side just below the ribs.

I have found that Ajeet died as a result of asphyxia. It is part of the prosecution case that this asphyxia was caused by strangulation. Neither Dr. Ngure nor Dr. Rogoff found any marks or bruises on Ajeet's neck, face, or left chest, the evidence being that the only external marks found on the body, apart from the symptoms of asphyxia and post mortem changes, were the stab wound on the right chest, that on the left chest and the consequences of the treatment administered by Mr. Treadway. In the cross-examination of Mr. Treadway there was the following, "Q. A person who has been strangled say with the fingers must have some external marks on the neck? A. Should have. Q. If the person was strangled with a ligature the victim should have marks of injury on the neck? A. Not necessarily". Mr. Sood

then put a long passage taken from Taylor's Principles of Medical Jurisprudence, 11th Edition, Vol. 1, to Mr. Treadway. The passage is to be found at page 494, the last paragraph, to just before the small print on page 495. Mr. Treadway agrees "by and large" with the proposition and Mr. Sood stresses the following parts of the passage, "it is difficult for homicidal strangulation to be accomplished without the production of some appearances of violence to the skin. It is doubtful whether strangulation ever takes place without some marks being found on the neck indicative of the means used, but there is a remote possibility that death could be caused in this manner, without leaving any appreciable trace of violence" and later, "There is nothing to justify a witness in stating that death has resulted from strangulation if there should be no local asphyxial changes or marks of violence about the neck or face of the deceased". This passage was, as I have said, put to Mr. Treadway, the Provincial Surgeon, and left at his agreement with it "by and large". The passage was not put to Dr. Rogoff, the Government Pathologist, and I do not suggest that it should have been, the result is, however, that I must consider it and Mr. Treadway's opinion on it as best I can. The passage involves a mass of propositions, including one that certain symptoms of asphyxia cannot be simulated in a body after death, and is taken out of a context. As far as the passage itself is concerned the first extract I have quoted is preceded by the sentence, "It must be remembered, however, that there may not always be any well defined marks, for a person may be strangled by the application of pressure to the neck through some soft medium" and is followed by the sentence, "Suicides and murderers generally employ much more violence than is necessary for the purpose of taking life". This last proposition refers to a generality, what is the position in exceptional cases when only sufficient force has been used as was necessary to take life? An illustration is given. The second extract I have quoted is followed by the sentence, "The state of the countenance alone will not warrant the expression of an opinion, for there are many kinds of death in which the features may become livid and shot with petechiae from causes totally unconnected with the application of external violence to the throat". Here the author

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considers one symptom only of asphyxia, the state of the countenance, what of the presence of one or more of the many other symptoms described by Dr. Ngure and Dr. Rogoff? Dr. Rogoff's evidence on the point was:- "Q. It is usual in cases of strangulation for there to be marks on the outside? A. Not at all, there can be and need not be. Q. In a case of manual strangulation great force is used? A. No. Great force is often used, but it does not need great force to cause strangulation. Q. Where unnecessary force is used marks will be left? A. Not necessarily. In a recent case of the strangling of an Asian woman, the only external sign was a mark near the left ear where it is presumed she tried to pull the hands away. Marks can be left or need not be. Q. If a person is strangled gently there would be no marks? A. Marks could be left, it depends on where the fingers were in relation to the blood vessels, the direction of the force applied. Q. If a victim were being strangled gently how long before death takes place? A. From a few seconds to a matter of minutes. Q. If an expert who knew the human anatomy did it, little sign would be left? A. If an expert, yes, a matter of a few seconds and little internal evidence would be left, a matter of knowing where to press. Q. Do you agree it is difficult to cause homicidal strangulation without leaving marks on the neck? A. I do not agree. Q. It could be that no external marks are left? A. It is a question on which no dogmatic answer can be given, as I have said it depends on the position of the hands in relation to the blood vessels, the direction of the pressure, the state of the victim whether in repose or excited, it is a very open subject. Q. Murderers usually use more force than is necessary for taking life? A. I agree. Q. In this case no fractures at all? A. No, but the hyoid bone was very flexible and bent very easily when I handled it and this is probably why it did not break". Regarding the internal damage to the left chest Dr. Rogoff's evidence was that compression applied to the left chest would not necessarily leave any external marks of violence if the person suffering the injury were lying on a soft surface such as a mattress, that the compression to the chest could of itself have caused death, but it was not likely, further that it would not cause the internal damage to the neck. I accept Dr. Rogoff's evidence. I have

considered all the evidence on this point, but referred only to an outline, and in the result I find that the asphyxia suffered by Ajeet was caused by strangulation and pressure on the left chest.

When Inderjeet Kaur (P.W.10) saw Ajeet that night she saw that her clothes were bloodstained and her trousers were wet with urine and when she saw Ajeet lying in the courtyard she saw that her clothes were normal and not disarranged and that her trousers were properly tied. As I have said Dr. Hasham was present when Mr. Treadway examined Ajeet in the operating theatre, he noticed that her underpants were wet and he was of opinion that she had passed urine on her clothes. Mr. Treadway removed Ajeet's nether garments and noticed that they were all normally arranged but they were all wet with what smelt like urine. At the post mortem examination Dr. Ngure handed Ajeet's trousers or pantaloons (it is an Indian style garment) and drawers, among other clothing, to Chief Inspector Shaw and at the second post mortem Dr. Rogoff found the urinary system empty except for a small amount of urine in the bladder. On 1st March, 1960, at about 4.15 p.m., Chief Inspector Shaw went to Upkar Singh's house and took possession of the mattress which had been on Ajeet's bed and on 3rd March, Chief Inspector Shaw made parcels of the mattress, the drawers, the trousers and other clothing, made them into one large parcel and sent them to Mr. Bradwell (P.W.2), a Government Analyst. Mr. Bradwell examined the drawers and trousers and found large areas of urine stain on them which he marked with pencil, and extensive urine stains on the mattress which he found had passed from one side to the other and, in Mr. Bradwell's opinion, it represented a complete micturition. The evidence is that Upkar Singh's two children slept in the flat where they felt inclined and, when he returned to the flat at about 9.30 p.m., on 28th February, and was admitted by the Accused, Upkar Singh saw that his son Amarjeet, aged about 7, was in bed with Ajeet, and when he woke up at about 3.45 a.m. and looked in at the Accused's door he saw that Amarjeet was in the Accused's bed with the Accused. It seems that Amarjeet wets the bed on occasions and the Accused said in his unsworn statement that Amarjeet had wet the bed that night. Mr. Sood asked Mr. Bradwell

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about the constituents of the urine that he found on the mattress, the force of which question Mr. Bradwell said he did not understand, and the point was not taken further. Later Mr. Sood ascertained from Mr. Treadway that the urine of a woman 22 to 24 weeks pregnant, as was Ajeet at the time of her death, would contain a special constituent, that is phosphate. Asked if the urine of a child of 4 would be different, Mr. Treadway said it depended on the age and sex of the child, that the urine of a child aged 4 could be similar. It seems that Mr. Sood may have made a mistake in putting an age of 4, for Amarjeet is aged 7, and the evidence of Inderjeet Kaur is that the other child, aged 5, slept in her room. However, it seems quite possible that had Mr. Bradwell been asked about the presence of phosphate in the urine stains, if it is a persistent or detectable constituent, it would have been found present, for the evidence was that another child had wet the same bed some eight days before. Chief Inspector Shaw arrived at the flat in Jaipur Street at about 6.20 a.m. on 29th February, that is, about 2½ hours after Ajeet's body was discovered, he found a patch of blood about 8 inches in diameter at the point where Ajeet's body had been found, the blood had soaked into the murram and was wet, he found a second patch of blood about 12 inches in diameter at the point where Ajeet's body was placed on the concrete, it was congealed. Apart from the blood, Chief Inspector Shaw found no signs of liquid in the courtyard and the murram and concrete were both dry, the toilet was examined and nothing was found to be disarranged, the concrete floor was dry, and no stains of any kind were found. Chief Inspector Shaw then entered the flat through the verandah and examined the Accused's room, the floor was of concrete, it was dry and no bloodstains or signs of liquid were found on it. In his statement the Accused said that Ajeet was carried into her room and put on a cloth on the ground and then she was covered over with a blanket and Chief Inspector Shaw found some bloodstained blankets near the door in the Accused's room which leads to the outside of the building. Upkar Singh's evidence was that as far as he remembered, Ajeet never wet her bed. If Dr. Rogoff's evidence that it is abnormal to find such a small quantity of urine in a dead body, as was found in Ajeet's, and that this is

one of the normal reactions of asphyxia found in about ninety per cent of cases, is accepted, and I do accept it, then it would be reasonable to expect to find signs of urine at the place where Ajeet was asphyxiated. Had she been attacked when she was in the toilet then one could expect to find traces of urine on the floor, for if the urine went on to her clothing, and her trousers were found to be properly tied, it seems impossible that the remainder could have gone into the closet leaving the floor dry. If the micturition was on the murram where she was found, on the concrete where she was first placed, or on the floor of the room, signs of it should have been found, for Chief Inspector Shaw was there about 2½ hours after Ajeet was found and the blood found on the murraum was then found to be still wet. The only reasonable conclusion is that Ajeet urinated whilst in her bed, as Mr. Bradwell (P.W.2), the Government Analyst, said there appeared to have been a complete micturition passed on the mattress that had been on Ajeet's bed, though of course it is possible that the child Amarjeet also urinated on the mattress during that night.

Both Chief Inspector Shaw and Inspector Fyfe (P.W.1) made a careful inspection of the flat for signs of forcible entry and found none. Chief Inspector Shaw found that the windows were all barred with vertical iron bars about 4 inches apart, the doors were all secure. When Upkar Singh returned at about 9.30 p.m. on the evening of 28th February, and had been admitted, the Accused bolted the door to the outside of the building and when Upkar Singh went to fetch Dr. Hasham he went through the same door and had to unbolt it. There are double doors from the verandah to the yard, one of these was found bolted and the other could be secured by locking it and the key was found in the lock, the hinges to this door squeaked badly when it was used. There is only one entrance to the courtyard from the outside of the building, and this is through double doors one of which was found to be broken, or had been allowed to fall to pieces, it was old damage and the broken door was found to be resting against the other sound one, so the courtyard was in no way secure. On the afternoon of 28th February, Ajeet worked stitching a blouse, it was put in exhibit and is only partly completed. In

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his statement the Accused said he had been shown a coloured jacket and Chief Inspector Shaw in his evidence said that the Accused was shown this partly completed blouse. The Accused continues in his statement, "This belongs to my wife. Yesterday evening she was making it and sewing it. At about 8.0 p.m. last night I saw it on a chair in our room near the door, at the foot of the bed. When she went to bed she was not wearing it", and Upkar Singh, having identified this partly completed blouse, said in his evidence that he saw it in the Accused's room when he returned from Kibos at about 9.30 p.m. that night, it was on a chair near Ajeet's bed, the chair being near the door leading to the verandah. P.C. Akwir Andere (P.W.6), who accompanied Chief Inspector Shaw to the flat at about 6.20 a.m. on 29th February, found this partly completed blouse under a bush, he pointed out to Chief Inspector Shaw where he had found it and the place was 22 paces from the doors to the yard, on some waste ground between the doors and the Kakamega Road. Ajeet wore a Sikh steel bangle all the time and was in the habit of wearing four gold bangles, and when she was found she was wearing the Sikh steel bangle, her ear-rings, but not the gold bangles, which are missing. Ajeet's head-dress, which Inderjeet Kaur (P.W.10) says she usually placed under her pillow when she slept, was found in the toilet and was blood-stained, one of her shoes was also found in the same toilet and the other was found in the yard drain.

If Ajeet went to the toilet during the night it is reasonable that she should put on her head-dress and shoes, put on the light, open the bed-room door, put on the light to the yard, and go towards the toilet. If she was then attacked and strangled one would expect to find some evidence of the micturition outside the flat at the place where she was attacked, and none was found. Having strangled Ajeet, would the intruder take four gold bangles and leave the steel one and the ear-ring? Had there been one or more intruders, would one go into the flat, into the room where a light was on and the dead woman's husband and a child were sleeping and take just a partly completed blouse, go out and leave it under a bush? Then wait a quarter of an hour or more after the death and take the body to the murram

where it was found, or it being there, inflict stab wounds on it? Had Ajeet been strangled where she was found it would have been reasonable to find signs of a struggle. Chief Inspector Shaw's evidence was that he dragged his foot in the murram surface and found that it left an impression indicating that, had there been a struggle, signs would have been left and no such signs were found. The head-dress was blood-stained when found, and it is a reasonable inference that it became bloodstained a quarter of an hour or more after Ajeet was strangled, for there was no blood until then, unless the assailant was injured and there is no evidence of that, such as drip marks or splashes anywhere on the concrete or murram, and Upkar Singh's evidence is that he did not see the blood on the murram or on the concrete until Ajeet's body had been carried away. So, having waited a quarter of an hour or more before stabbing the body, would an intruder take Ajeet's shoes, put one in the drain and put the other and the head-dress in a lighted toilet? I do not accept this, it is not a reasonable possibility that an intruder or intruders, having strangled a woman, would wait around, whilst lights were on in a bedroom, in a toilet and in a yard and then stab their victim before decamping, the intruders or one of them going into a lighted room where a man and a child are sleeping and take a partly completed blouse, which is then abandoned just outside the premises. Consider the possibility that Ajeet was attacked by an intruder or intruders whilst in her bed. The intruder enters through the verandah door which someone has carelessly left unlocked when returning from the toilet. Ajeet is strangled by one or more of the intruders and then carried out of the room to the murram. Would she have her shoes on whilst in bed? If not, and that seems to be unlikely, is it reasonable that an intruder would collect them and take the head-dress from under the pillow before carrying the body out, the light being on and the Accused and a child sleeping in the same room? Then wait for a quarter of an hour or more after the death before stabbing their victim, and having done so, put the light on in the toilet and place the head-dress and one shoe there and the other in the yard drain and then decamp, in the course of all this having put the lights on in the bedroom, the yard and the toilet? As a variation, the intruder or intruders, having

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strangled Ajeet, waited a quarter of an hour or more in the bedroom before collecting the shoes, head-dress and partly completed blouse and, carrying them and the body out, laid it on the murram and stabbed it at once and then positioned the shoes and head-dress. This variation necessitates that the intruder or intruders remained in the room with the dead woman for a period, that with the Accused and a child asleep in the same room. If the intruder or intruders came from the boys' quarters in the yard, or had concealed themselves in the old car, the same factors apply. As a further variation, the assailant was one of the inmates of the flat, other than the Accused, or an intruder or intruders who had concealed themselves somewhere in the flat, say the kitchen, the shower room or even under the beds, before the flat was locked up. It is reasonable to exclude the possibility of it being the boy aged 7 for it is unlikely that he could carry out a body weighing 140 lbs., but even if it were he, there are the additional hazards that he would have to secure and dispose of the knife and get into the Accused's bed without waking him up, for if he woke him up it is reasonable that the Accused would see that the light was on, investigate and find Ajeet missing. If Ajeet was attacked by any other inmate than the Accused then there are all the hazards to be met as if the assailant were an intruder or intruders except that Ajeet would not be so likely to raise the alarm if the attacker were an inmate, but there are the additional hazards that the inmate would have to unlock and open the verandah door, at least put on the light in the toilet and, having placed the partly completed blouse under the bush, have to return to the flat. If Ajeet was attacked in her bed by an intruder who had hidden, say, under it, there are the additional hazards that the intruder would have to put on the lights, open the bedroom door, and unlock and open the verandah door. I do not accept these as reasonable possibilities. Weighing the evidence with the greatest care and considering the possibilities I have set out and other variations, I am satisfied that Ajeet was not attacked by an intruder or intruders laying in wait outside the flat or lurking inside it, or by an inmate of the flat other than the Accused.

In cross-examination, Mr. Treadway was asked

about four diseases or disabilities which Ajeet may have been suffering from, which I have referred to, and the evidence was then as follows: "Q. If such a woman were then to be embraced violently during coitus could it cause compression of the chest that might lead to asphyxia? A. I imagine it would need to be extremely violent. Q. In a person who was suffering from these four things, if she were embraced during a sexual embrace, she would need less force to cause asphyxia? A. Yes. Q. A highly excited sexual embrace could cause this compression of the chest? A. Yes, conceivably. Q. And could also cause shock and haemorrhage? A. I find that very hard to believe". Then Dr. Rogoff was asked in cross-examination, "The compression of the chest could have been caused by a violent sexual embrace?", and Dr. Rogoff replied, "It is difficult to imagine it in the normal way". This evidence could be the basis of a defence, or a possible explanation of the facts, and I take it to be such, particularly in view of the principle that circumstantial evidence to justify the inference of guilt must be incapable of explanation upon any other reasonable hypothesis than that of guilt. The evidence is that Dr. Rogoff took a vaginal smear and on examination found a large number of fresh spermatozoa present, this being an indication of intercourse just before death. If the intercourse had been with an intruder or intruders, the same difficulties of reconciling the evidence arises as if Ajeet had just been strangled, but with the additional factors of the possible alarm during the commission of a rape and that Ajeet's drawers and trousers were properly adjusted. There are a number of possibilities: if the trousers and underpants were taken off to make the rape possible then if Ajeet was strangled in the course of the rape the micturition would take place then and when the underpants and trousers were replaced they would have been dry, and dry when found. As a variation, if the rape was completed and the underpants and trousers properly adjusted before Ajeet was strangled, this just adds the hazards of the rape to the circumstances of robbery which I have referred to. If the person having sexual intercourse and causing the asphyxia was the Accused then the possibilities of the assailant being an intruder or intruders or an inmate all go. The Accused made an unsworn statement in which he said that on that night he

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had intercourse at about a quarter to 11 p.m. or 11 p.m. If the evidence I have referred to related to this intercourse, be it later, and death from asphyxia took place during it, would the Accused replace Ajeet's drawers and trousers? Would they then have been dry? It would appear to be unlikely. However, whether it was during intercourse or whilst Ajeet was just lying in her bed, to strangle one's wife is murder, be it to stifle her complaints because she objects to intercourse, or refuses to submit to it, or even, she having consented to intercourse, the Accused strangled her to gratify his lust. Regarding the suggested illnesses, as I have said, I accept that at the time of her death Ajeet was a normal healthy girl.

Consider the facts proved, inferring that the Accused was the assailant. The Accused strangles Ajeet, either during intercourse, before it, or after. In the course of being strangled Ajeet urinates, and this is one of the normal reactions of asphyxia. The evidence is that urine was found on Ajeet's drawers and trousers and on the mattress to her bed. The Accused, having decided to dispose of the body so that it will appear as if Ajeet had been killed by robbers whilst going to, or at the toilet, ascertains that the household has not been disturbed, if it has he waits until all is again quiet, he picks up Ajeet's shoes and takes her head-dress from under the pillow, puts her over his shoulder and leaves the room, taking the partly completed blouse from the chair, something near at hand to be evidence of robbery, opens the verandah door (doing this makes no more noise than if he were going to the toilet), carries the body to the murram part of the courtyard where it will be out of the direct beam of the courtyard light, and lays it down. By this time a quarter of an hour or more has expired since Ajeet died, which is the evidence, and he then stabs the body. Ajeet's head-dress is then soaked in the blood and placed in the toilet, together with one of her shoes, to make it appear that she was attacked whilst in the toilet and staggered out, or was dragged out, to where she lay, so the other shoe is placed in the drain. To further the evidence of a motive of robbery the Accused takes off Ajeet's gold bangles, or he has already taken them off before taking the body from the room, but, being a Sikh, does not consider an article of

religious significance to be the subject of theft so leaves the steel one (a distinction which a robber would not be likely to make) and the evidence is that Ajeet was wearing her steel bangle when found. Either before or after the stabbing the Accused places the partly completed blouse under a bush on the waste ground to give the appearance that the thieves dropped it or threw it down when they fled. For greater security from detection it would not be necessary for the Accused to put on any lights until he returns to the flat, the light in the toilet would not shine on the body and the switch to the yard light is in the flat and when it is put on the body is out of its direct light. As Upkar Singh said, the yard light was on, but he saw the body in the light that came from his bedroom window. The Accused then goes to bed, feigns sleep and leaves someone else to make the discovery and to arrive at the conclusion that Ajeet was murdered by robbers whilst in the toilet. There is one point. If the assailant was the Accused, then would not the boy Amarjeet be woken up by the noise of the attack and be able to say what happened? First, Amarjeet is only aged 7 and if he did see something it is unlikely that he would realise what had happened or, if he had, be able to understand the nature of an oath so as to be a competent witness. Even if Amarjeet had given evidence it is improbable that it would take the matter further, for Amerjeet, being in the habit of sleeping in the same room as a young married couple, or in his parents' room, would be unlikely to be disturbed by noise made by spouses. Ajeet, being in bed with her husband, was not likely to alarm Amarjeet and, once the act of strangulation was begun, she would not then be able to raise an alarm. Even if Amarjeet was woken up, there were only Ajeet and the Accused in the room and it would be necessary only to wait until the child had gone to sleep again before taking out Ajeet's body.

As I have said, the Accused made a statement. In it he says that he woke up at about 2.30 a.m. on 29th February, unlocked the premises, went to urinate in the toilet, returned, and, having locked up, went to bed, he then described what happened when he was woken up by Upkar Singh and the remainder is very much in accord with the evidence of the other witnesses. The Accused

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also made an unsworn statement in which he denied killing his wife, saying that they had been happy together, that he did not touch her, that they had the intercourse I have referred to and that Amarjeet urinated in the bed that night. The Accused's statement and his unsworn statement are both evidence in the case and must be considered in the same way as the other evidence in the case, and even if the statement and/or the unsworn statement of the Accused is rejected if, having considered all the evidence, there is a doubt as to the guilt of the Accused, he must have the benefit of it and be found not guilty.

The Assessors were unanimous in their opinion that the Accused is not guilty. As reasons for their opinion the first and third assessors said there was no direct evidence, and there must be, and the second assessor said he does not accept circumstantial evidence. From their reasons it is clear that the assessors have failed, or refused, to consider and weigh the evidence or to accept the law as I explained it to them. I do not accept the opinion of the assessors. In a case such as this, where it is permissible to infer from the facts proved other facts necessary to complete the elements of guilt or to establish innocence, where it must be ascertained that there are no other co-existing circumstances that would weaken or destroy the inference of guilt, and where the evidence must be examined to see that that which points to guilt is incompatible with the innocence of the Accused and is incapable of explanation upon any other reasonable hypothesis than that of guilt, the reasons given by assessors, if based on the evidence and considered in accordance with the law, would be of great assistance. As an instance of their reasons, the first assessor said that when Dr. Hasham was called he thought Ajeet was alive and the third assessor said Dr. Hasham thought her heart was beating. How can this be reconciled with the other evidence? In an attempt, disregard the medical evidence that the stab wounds were inflicted after death (I have found that they were) and consider the possibility that Ajeet was stabbed whilst in the toilet, for that is the inference to be drawn from her bloodstained head-dress being found there. She has a gaping wound in her lower chest, would the blood flow down her trousers? The state of the trousers

does not support that this happened, the clothing indicates a flow of blood on to the murram, soaking the jacket on the way. Staggering out of the toilet, or being dragged out, would the blood from the open wound drip and splash on to the floor of the toilet and on to the concrete outside? No such drips or splashes were found. Again, the first assessor gave as a reaon for his opinion that Upkar Singh should have called for the Accused before calling his wife. I cannot see the logic in this, no point was taken on it during the taking of evidence or in the addresses of counsel and the evidence was that Upkar Singh called his wife who called out to the Accused and he followed her out, which seems to be a perfectly normal sequence of events under the circumstances. As is seen from the reasons given for their opinions, the assessors have given the Court little or no assistance.

Having considered all the evidence carefully in accordance with the law, I am satisfied and find that there is a chain of circumstantial evidence, as I have set out above, pointing to the guilt of the Accused and, being satisfied that there are no other co-existing circumstances that weaken or destroy the inference of guilt, to be drawn from the circumstances, and the circumstantial evidence being incompatible with the innocence of the Accused and being incapable of explanation upon any other hypothesis than that of guilt, I find that the Accused did, of malice aforethought, cause the death of Ajeet Kaur, his wife, by strangling her, and the verdict is

Guilty of Murder as charged.

J. Wicks
J.

Kisumu,
3rd June, 1960.

In the Supreme Court of Kenya

No.21

Sentence and Application and Order for leave to Appeal,

3rd June 1960.

No.21

SENTENCE AND APPLICATION AND ORDER FOR LEAVE TO APPEAL

9.0 a.m. Friday 3rd June, 1960.

Court resumes as before.

Judgment read.

Twelftree Nothing to say.

Sood Nothing to say.

Accused I have nothing to say.

Sentence: 10

You, having been found guilty of murder, are to be hanged by the neck until dead.

James Wicks
J.

Accused informed of his right to appeal. Notice of motion of appeal to be filed within 7 days.

James Wicks
J.

Sood Applies for leave to appeal on law and on the facts.

Twelftree No objection.

Order. Leave to appeal on law and on the facts granted. 20

James Wicks
J.

No.22

Notice of Appeal,

6th June 1960.

No.22

NOTICE OF APPEAL

TAKE NOTICE that SHARMPAL SINGH S/O PRITAM SINGH appeals to Her Majesty's Court of Appeal for Eastern Africa against the decision of the Honourable Mr. Justice James Wicks given at Kisumu

the 3rd day of June, 1960 whereby the appellant was convicted on a charge of Murder contrary to Section 199 of Penal Code, Chapter 24 of Laws of Kenya 1948 and sentenced to death.

The appeal is against conviction and sentence.

Dated this 6th day of June, 1960.

R.K. SOOD.

ADVOCATE FOR THE APPELLANT:

To

The Deputy Registrar,
Supreme Court of Kenya,
KISUMU.

The address for service of the appellant is care of R.K. SOOD, Advocate, Barclays Bank Chambers, Central Square, KISUMU.

Filed at Kisumu the Sixth day of June, 1960.

E.S. SIMPSON,

DEPUTY REGISTRAR,
SUPREME COURT OF KENYA,
KISUMU.

In the Court of Appeal for Eastern Africa

No.23

Memorandum of Appeal,

2nd August 1960.

No.23

MEMORANDUM OF APPEAL

IN HER MAJESTY'S COURT OF APPEAL FOR EASTERN AFRICA AT NAIROBI

CRIMINAL APPEAL NO. 112 OF 1960

BETWEEN

SHARMPAL SINGH S/O PRITAM SINGH .. APPELLANT

AND

REGINA .. .. RESPONDENT

(Appeal from a conviction and sentence of Her Majesty's Supreme Court at Kenya at Kisumu (Mr. Justice James Wicks) dated 3rd day of June 1960 in

Criminal Case No. 117 of 1960

Between

Regina .. .. Prosecutrix

and

Sharmpal Singh s/o Pritam Singh .. Accused)

Sharmpal Singh s/o Pritam Singh, the appellant above-named, appeals to Her Majesty's Court of Appeal for Eastern Africa against the decision above-mentioned, whereby the appellant was convicted of murder and sentenced to death on the following grounds, namely:-

1. That the learned Judge misdirected himself in law in finding that -

   (i) there was a chain of circumstantial evidence pointing to the guilt of the appellant;

   (ii) there were no circumstances which weakened or destroyed the inference of guilt;

   (iii) the circumstantial evidence was incompatible with the innocence of the appellant and incapable of explanation upon any hypothesis other than that of guilt.

2. That the findings of the learned Judge were based largely upon theory and speculation, and not upon facts proved by, or reasonably to be inferred from, the evidence.

3. That the finding of the learned Judge that the appellant murdered his wife was against the weight of the evidence.

4. That the learned Judge erred in failing to give due weight to the conflict of evidence with regard to the time of the deceased's death, or to attach proper significance thereto when considering whether the stab wounds found on the deceased's body were inflicted before or after death and, if the latter, whether they were inflicted at least a quarter of an hour after death.

5. That the learned Judge erred -

(i) in finding that the stab wounds were inflicted a quarter of an hour or more after the deceased had died from asphyxia;

(ii) in attaching significance to the absence of any outward signs of urine on the murram, especially when no analysis was made of the murram at the place where the deceased's body was found;

(iii) in attaching significance to the presence of urine in the bed in view of the evidence that the same might have been caused by the child Amarjeet;

(iv) in finding that the deceased's head-dress was found in the toilet and was bloodstained when found.

DATED at Nairobi this 2nd day of August 1960.

(Sgd.) ? ?
S.R. KAPILA & KAPILA
ADVOCATES FOR THE APPELLANT.

To the Honourable the Judges of Her Majesty's Court of Appeal for Eastern Africa.

And to the Honourable the Attorney General of Kenya.

In the Court of Appeal for Eastern Africa

No.23

Memorandum of Appeal,

2nd August 1960 - continued.

The address for service of the appellant is:-

Messrs. S.R. Kapila & Kapila, Advocates, Imperial Chambers, Government Road, Nairobi.

Filed the 2nd day of August 1960.

(Sgd.) ? ?

DY. REGISTRAR.
COURT OF APPEAL FOR EASTERN AFRICA.

No.24

Notes of O'Connor, P. of Further Evidence of Maurice Gerald Rogoff,

11th November 1960.

No.24

NOTES OF O'CONNOR, P. OF FURTHER EVIDENCE OF MAURICE GERALD ROGOFF

IN HER MAJESTY'S COURT OF APPEAL FOR EASTERN AFRICA AT NAIROBI

CRIMINAL APPEAL NO. 112 OF 1960

BETWEEN

SHARMPAL SINGH S/O PRITAM SINGH .. APPELLANT

AND

REGINA .. .. RESPONDENT

NOTES OF EVIDENCE TAKEN BY O'CONNOR, P.

11.11.60. Bench and Bar as before save that Webber now appears for the Respondent. Appellant present in person. Reasons for making order for further evidence explained shortly.
Webber calls:

MAURICE GERALD ROGOFF:- Sworn:-

XXD SALTER: B.S., B.Ch., Govt. Pathologist, Kenya. Qualified 1950 University of Capetown.

I am acquainted with Professor's Gordon and Turner. Professor Gordon was not one of my instructors. Professor Price is a Professor of Roman Law and Professor Turner a professor of medical jurisprudence in University of Capetown

and had been Government Pathologist. I "sat at his feet" when I was studying medicine.

I have not read the transcript of evidence.

p.15, l.43 to p.16, l.14 put to witness.

p.19, ll.4 to 8 " " "

I relied on the microscopic examination for my opinion.

Q. You drew a line of 15 minutes to decide whether the wounds were inflicted ante or post-mortem.
A. I do not think I said ¼ hour exactly. I do not think I drew a hard and fast line.

In my experience ¼ hour was the average time. It was not up to me that there might be 5 minutes variation either way. I did not, and am not, drawing a deadline at ¼ hour. ¼ hour is an elastic, estimated, average, period.

Q. Is it difficult or impossible to tell whether a wound is inflicted ante or p.m. if it is inflicted about the time of death?
A. Yes: I agree. I said that in the Lower Court.

I would put the time at 15 minutes before to 15 minutes after death. A period of ½ hour encompassing point of death. That is the period of difficulty.

Q. You can't say in this case whether these wounds were inflicted at or within 14 minutes of death?
A. Yes, I can say that in this case the wounds were inflicted longer than 14 minutes after death. I say that because a microscopic examination showed no reaction.

Q. Do you agree that an injury and death can be so simultaneous in time that you would get no microscopic reaction?
A. No.

Q. In what respect would you disagree?
A. I disagree on the ground that the death of the individual and the tissues are not necessarily simultaneous.

G. Turner and Price p. 608 put to witness.

In the Court of Appeal for Eastern Africa

No.24

Notes of O'Connor, P. of Further Evidence of Maurice Gerald Rogoff,

11th November 1960 - continued.

"The absence of tissue reaction does not necessarily indicate that a wound was p.m. in origin". Do you agree?
A. No.
I never heard that from the lecturer. That proposition emerged when published in this text-book.

I think that proposition emerged after the case of R. v Carr in 1952.

I do not think it was acceptable by the medical profession in South Africa after 1956 when doubts were cast on it.

I would have accepted it from 1952 to 1956.

"There may have been insufficient time ..... "

I do not agree with that. It conflicts with the earlier part of the same paragraph and with my own experience. I can quote works published subsequently which prove that this is not necessarily correct.

I have not known cases where it has been correct.

I do not think that this is a matter of medical opinion - yes it is that I disagree with these opinions.

"In small words ..... reaction" - I do not agree.

"The intensity ..... bodies". I agree that the course of tissue reaction is variable. "narrow limits". I do not know what that means. I would not dispute that the author's experience is greater than mine. "but an estimate ..... experimentally". I agree.

Q. While it is always desirable in case of doubt to have a microscopic examination that is not necessarily conclusive as to whether wound inflicted before or after death.
A. I do not agree.

I am saying that in my opinion a microscopic examination of tissues can be conclusive.

On occasion it cannot be conclusive.

The one case I had in mind is whether the injury was inflicted at or about the time of death.

That is the only circumstance which would prevent it being conclusive.

Q. Are you as confident in that opinion as in your opinion as that to find pus in the kidneys of a pregnant woman is normal (p.16).
A. Yes.

W. I hope that Salter is not going to introduce matters not covered by the order for additional evidence.

SALTER: I only want to test the value of Dr. Rogoff's opinion. I was going to put it to him that if he was wrong about one, he was wrong about another.

WEBBER: I object.

Ruling. The questions must be confined to the question of ante- or p.m. signs on which the additional evidence has been allowed.

ROGOFF: I do not say that there may not be uncertainty about it but I give my opinion.

SALTER: Do I understand you to say that leaving out cases where wound inflicted at or about time of death you could say that wound was inflicted 14 minutes after death?
A. No, I say that these wounds were inflicted at least 15 minutes after death and may be more.

Yes that is based on the estimated average period of 15 minutes. That is based on my experience of this type of trauma.

The period is elastic and is variable. ?extent?

re-exd. WEBBER:

Q. Given this period of 15 minutes after death what do you say of injuries inflicted after that?
A. There is no tissue reaction for injuries inflicted 15 minutes or more after death.

It is difficult to say whether if there is re-action it is ante or post mortem.

In the Court of Appeal for Eastern Africa

No.24

Notes of O'Connor, P. of Further Evidence of Maurice Gerald Rogoff,

11th November 1960 - continued.

I see Taylor 11th edn. p. 262/263 refers to test by Christison.

GORDON TURNER & PRICE. This is not a work commonly known in the U.K. I know it was reviewed in the Medical Legal Journal. I see vol.21.

SALTER objects.

Ruling. It is a review signed by initials in which the qualifications of the author are not given. Not allowed.

G.T. & P. P.608.

I agree to first 2 sentences of the para. "Altho....."

After the body stops breathing the tissues are still capable of reacting to an injury to a limited extent. "margination" means the slowing of blood stream and settling of white cells on the edges close to the walls of the blood vessels.

Therefore a wound inflicted immediately after death may given an appearance of an ante-mortem wound.

Explains next sentence.

"The absence ..... origin".

I disagree.

"There may be .... reaction". This is inadequate and is contradictory to the earlier parts of that passage.

"Death" does not indicate whether death of person or death of the tissue.

The contradiction is in the phrase "There may have been insufficient time before death for the development of tissue reaction". Earlier it says "although margination and a limited emigration of leucocytes may occur in tissues in response to injuries after somatic death". I say it is contradictory in that either there is no time for the development of this reaction and it says in the second place that there is time for a limited

reaction to take place. We do not know whether the author means somatic death or death of the tissues.

If death has been instantaneous in many cases you can still see the reactions due to the response to injury in terms of early stages of inflammation.

If you do not get such reaction I conclude that the injury was inflicted after the tissue death as opposed to somatic death.

"In small wounds .... exudation" I do not accept that because it is a recognized form of diagnosis of certain blood diseases where the skin can be injured by any significant degree of violence e.g. scratching of surface and the inflammatory action that results in observed over a period of 24 to 96 hours. This test is the "Rebuck test" and has been described in medical journals. "Disease of Blood". Vol. 13, Issue 5 of May 1958. Article is by three men. It does not give qualifications, but merely indicates Department of Medicine, Vienna. My opinion is supported by accounts of tests in other countries.

G.T. & P. p. 608 end of para "the association ... re-action" that does not clarify the matter.

The reactions in terms of inflammatory changes which are shown by tissues injured has been proved experimentally to be completely unrelated to the degree of failure of circulation which is the result of severe injury.

I am referring to another publication where a record is made of the inflammatory response by performing this Rebuck test.

Q. Had the passages in G.T. & P. been put to you at the trial would they have changed your opinion?
A. No.

I have read an Article in which the reaction of the Rebuck test bore no relation to the state of the circulation.

I base my disagreement with this half sentence on my medical reading generally.

In the Court of Appeal for Eastern Africa

No.24

Notes of O'Connor, P. of Further Evidence of Maurice Gerald Rogoff,

11th November 1960 - continued.

To Court (Gould)

Q. You described 15 minutes as an average and you then said there would be no reaction after 15 minutes ...
A. 15 minutes is an average.

There may be cases in which there would be no reaction to wounds inflicted less than 15 minutes after death.

It is possible that these wounds could have been inflicted less than 15 minutes after death. It is possible but unlikely.

These wounds must have been inflicted at least 10 minutes after somatic death. That is the shortest possible period.

Every stab wound inflicted within 10 minutes after somatic death will show a reaction detectable by microscopic examination. The wounds in question do not show a reaction.

SALTER: I apply to call the evidence of Dr. Dockray who will give evidence on the matter dealt with by the last witness.

I have to keep within the ordinary principles. Matters have arisen since the trial in criticism of Dr. Rogoff.

Rogoff at the trial said 15 minutes dogmatically. He has now said 15 minutes elastic and variable. He has now said 10 minutes at a minimum. That is new evidence on which I should like to call another opinion. He has changed his opinion to a certain extent. That opens the door to evidence dealing with the extent which his evidence might be qualified.

WEBBER: I oppose the application. If it were granted I should have to call evidence to contradict Dockray. This text book was not written since the trial.

Disagree that Dr. Rogoff has changed to some extent. He says minimum time is 10 minutes. He maintains 15 minutes average. If XXD at the trial he might well have given exactly the same evidence. Court has gone as far as it can go.

Adj. to 2.30. K.O.C.

11.11.60

2.30 p.m. Bench and Bar as before.

Application to call Dr. Dockray's evidence refused.

SALTER: Emphasise major point:

If this period of 15 minutes is variable and elastic it is very difficult to say to what extent it is variable and elastic. Rogoff said 10 minutes minimum. No other evidence to support that view must be based on view that tissues would remain alive after somatic death.

K. Simpson on Forensic Medicine 3rd p.16.

"It is fair to add that when injuries occur closely ....."

If that proposition is accepted what is meant by "at or about time of death"? 5 minutes.

Case for appellant was that taken in conjunction with other factors it was open to doubt that these wounds were p.m.

It has not been satisfactorily established on this evidence that the wounds were not ante-mortem.

Regarding passages in G. Turner and Price, Rogoff has disagreed with some and accepted others.

Men of great experience.

Not only a difference of medical opinion but it is a difference of opinion that should be resolved in favour of men whose experience is greater.

But difference must raise doubts which should be resolved in favour of the appellant.

WEBBER: Crux of this evidence is that because there was no cellular reaction, the wounds must have been inflicted considerably p.m.

Keith Simpson aids Crown case inasmuch as there can be reactions similar to wounds inflicted a.m. from wounds inflicted at or immediately after somatic death.

In the Court of Appeal for Eastern Africa

No.24

Notes of O'Connor, P. of Further Evidence of Maurice Gerald Rogoff,

11th November 1960 - continued.

If G. Turner & P. say it is possible to show a.m. effects by inflicting wounds immediately p.m. the converse does not hold true. If there is no cellular reaction, the wounds must have been inflicted considerably after death.

Rogoff has explained the reasons for disagreeing with G.T. & P. that absence of reaction does not indicate that wound was p.m.

He explained how each wound had a local reaction in addition to a general reaction.

It is dealing with the type rather than the no. of cells present from which you can tell whether there has been a cellular reaction.

Regarding small wounds - he said that even trivial scratch produces reaction from 24 to 96 hours.

If tissue is living effect of a.m. wound can be simulated on somatically dead body.

Other evidence plus Rogoff, Judge right to find guilty. Only possible verdict.

C.A.V.

K.K. O'Connor

11.11.60.

No.25

Notes of Gould, J.A. of Further Evidence of Maurice Gerald Rogoff,

11th November 1960.

No.25

NOTES OF GOULD, J.A. OF FURTHER EVIDENCE OF MAURICE GERALD ROGOFF

IN HER MAJESTY'S COURT OF APPEAL FOR EASTERN AFRICA AT NAIROBI

CRIMINAL APPEAL NO. 112 of 1960

BETWEEN

SHARMPAL SINGH S/O PRITAM SINGH APPELLANT

AND

REGINA RESPONDENT

NOTES OF EVIDENCE TAKEN BY GOULD AG. V.P.

11.11.60. Bench and Bar as before save that Webber now appears for the Respondent.

Reasons for making order for further evidence explained by the President shortly.

PRESIDENT: We have thought it right to call Dr. Rogoff before court in order that the passages may be put to him. Think the defence should fill them.

WEBBER: Perhaps I could lead it or be allowed to re-examine.

CT: Certainty to re-examine.

SALTER: Would the court be prepared to hear Dr. Dockery on the point?

CT: There should be an application. Should make it after Dr. Rogoff and counsel will be heard.

Court calls Dr. Rogoff.

MAURICE GERALD ROGOFF: XXD by Salter

Q. B.M. B.S. Government Pathologist in Kenya.
A. Yes.

Q. When qualified.
A. 1950. University of Capetown.

Q. You would then be well aware of authors of Gordon Turner & Price.
A. Acquainted with Prof. Gordon & Turner.

Q. Was Gordon one of your instructors?
A. No.

Q. I see Turner & Price had high medical degrees.
A. Price was Professor of Law or R.L. at Capetown. Turner was Professor of Forensic Medicine. When he lectured to us in 1947 he was a lecturer. Held it about 4 years.

Q. You sat at his feet.
A. Yes.

Q. Have you read record.
A. No.

Q. P.15, l.43 to p.16, l.14
P.19, ll. 4 - 8.

In the Court of Appeal for Eastern Africa

No.25

Notes of Gould, J.A. of Further Evidence of Maurice Gerald Rogoff,

11th November 1960 - continued.

You appear to rely first upon the microscopic examination for your opinion.
A. Yes.

Q. Secondly you appear to draw a dead line of 15 mins.
A. I don't think I made it an exact deadline.

Q. (Same passages read)
A. I don't think I made a hard and fast ½ hour. A quarter of an hour is the average time you can see these reactions after death. It was never put to me that it might be a little more or less.

Q. You said - p.19. Are we to take the ¼ hour definitely.
A. It is an elastic period.

Q. Are we agreed it is difficult or impossible to tell whether a wound is a.m. or p.m. if it was inflicted at or about the time of death.
A. I agree (to both. Difficult and probably impossible). I said that also in the lower court.

Q. At or about. Can you express that in minutes.
A. That is where the 15 mins. average came in. 15 mins. before to 15 mins. after which encompasses the period of dying, there is this difficulty.

Q. Would you say that if caused within 5 minutes of death either way - difficult.
A. The 15 before to 15 after encompasses the period of difficulty.

Q. You cannot say in this case whether the wounds were inflicted at or within 14 minutes after death.
A. Yes. I can say: that the wounds were inflicted after the expiration of 14 minutes after death.

Q. You say that because microscopic examination showed no reaction.
A. Correct.

Q. Would you agree with me that an injury and death can be so simultaneous that you can get no reaction.
A. I would not agree with that entirely.

Q. In what respect.
A. I disagree on the grounds that the death of the individual and the death of the tissues are not necessarily simultaneous.

Q. Gordon Turner & Price.
P. 618. 3rd Edn. "The absence ... origin".
Do you agree in general with that proposition.
A. No. I don't agree with that. Did you hear that proposition from the lecturer.

Q. Did you hear that proposition from the lecturer.
A. No. It emerged.

Q. When you qualified in 1950 that proposition was not acceptable.
A. It was not put. It emerged after case of R. v Carr in 1952.

Q. From 1952 was it acceptable generally by the profession in S.A.
A. I don't think so. It was accepted approximately up to 1956.

Q. Would you have accepted it in that period.
A. Up to that date or just after I was prepared to accept it. (1952-6).

Q. Text book gives a reason "There ... reactions".
A. I don't agree because it conflicts with the earlier part of the same paragraph.

Q. That the only reason.
Ct. No, from my own experience. And I can quote a work published subsequently which proves this point is not necessarily correct.

Q. Have you known cases in which it has been correct.
A. No.

Q. Is it just a matter of difference of medical opinion.
A. I don't think so.

Q. But you disagree with this text book.
A. Yes.

Q. "In small wounds ... reaction".
A. I don't agree with that.

In the Court of Appeal for Eastern Africa

No.25

Notes of Gould, J.A. of Further Evidence of Maurice Gerald Rogoff,

11th November 1960 - continued.

Q. (Next passage). The intensity etc.
A. Yes, I would agree.

Q. Would you agree with the conclusion that the course of tissue reaction is therefore variable.
A. Yes. I agree.

Q. Would you agree (next passage - too narrow limits) Agree?
A. Qualified argument because phrase narrow limits is vague. I don't know what he means. He may mean 5 mins. to an hour.

I would not dispute his experience is greater than mine.

Q. (Next passage to"experimentally") Do you agree?
A. It is merely a statement of procedure.

Q. Agree can arrive at estimate by comparison.

Q. Is that really what is being said is that while desirable when in doubt to have a microscopic examination it is not necessarily conclusive as to whether wwound inflicted before or after death. Do you agree.
A. I do not agree that it is not necessarily conclusive.

Q. You say in your opinion it is conclusive.
A. I say that a microscopic examination of tissues can be conclusive.

Q. That implies that on occasions it is not conclusive.
A. Yes.

Q. What it means is that it can't be conclusive if inflicted at or about the time of death.
A. That is the one case I had in mind.

Q. You say those are the only circumstances which would prevent it from being conclusive.
A. Yes. Correct.

Q. Are you as confident in that as you were at (record p.16) that to find pus in the kidneys of a pregnant woman is normal.
A. Yes.

WEBBER: (I hope L.F. is not going outside the purpose of this recall)

SALTER: I only want to test the value of the opinion given by Dr. Rogoff. If wrong in one aspect might be wrong in another.

WEBBER: Still object.

CT. We can't have this. The order has been for further evidence on one point. Unless we are to go into complete medical credit we can't have it.

SALTER: As court pleases.

XXN continues.

Q. You really say it is a matter of medical opinion whether it is conclusive or not.
A. Yes.

Q. You hold one opinion - these authors another. Would you agree there is uncertainty.
A. I am not going to say there is no uncertainty about anything. I give my opinion.

Q. There was no other factor on which you based your opinion?
A. No.

Q. Want to come back. Leaving out circumstances of wound being inflicted at or about time of death where it is in doubt. You can say it was almost 14 mins.
A. I can't say exactly 14 mins. I said at least 15 mins.and may be more.

Q. That is based on your estimated average period of 15 mins.
A. Yes.

Q. Estimated on your experience.
A. Yes. My experience of this type of problem.

Q. You have said period is elastic and varies.
A. Yes. It is elastic and it is variable.

Re-ex. Webber.

Q. What do you say about injuries inflicted 15 mins. or more after death.
A. From approximately 15 mins. after death there is no reaction in the tissues.

In the Court of Appeal for Eastern Africa

No.25

Notes of Gould, J.A. of Further Evidence of Maurice Gerald Rogoff,

11th November 1960 - continued.

Q. You say if none 15 or more after death.
A. Yes.

Q. If is reaction can you say a.m. or p.m. etc.
A. Difficult if not impossible.

Q. Taylor, p. 262-3. Does he refer to a test by Christianson.
A. Yes.

Q. Does it in fact refer to the ability to produce wounds similar to those which might have been a.m. but inflicted immediately p.m.
A. Yes.

Q. p. 208 of G.T. & P. Is that a work commonly known in U.K.
A. No.

Ct. It was reviewed in the medical legal journal. (Salter. Can this be evidence)
A. It is a review under initials - as advice to the profession.

Ct. We can't have it without knowing the qualification of the contributor.

WEBBER: Can assume it is acceptable to the journal.

Ct. Must be excluded.

Re-ex (Contd)

Q. p. 608 of G.T. & P.

"It may ... tissue reaction".
A. I agree with both those sentences.

Q. (Continues from same page) Explain.
A. Simply. After body stops breathing the tissues are still capable of responding to the effects of an injury to a limited extent. The word "margination" there means the slowing down of the blood stream and the lining of inside wall of blood vessel by white cells contained in normally flowing blood.

Q. Pause there.
Does that accord with the fact that it is possible to simulate a.m. wounds on a body immediately after death.
A. Yes.

To Ct. i.e. Wound immediately p.m. may appear as a.m.

Q. 2nd part "Marked cellular ... "

There is the limited passage before that of white cells. Clear cut division between cutting body just dead and before death.

Q. There may ... tissue reaction.
A. In the first place the remark is inadequate and is contradictory to the earlier part of the passage, i.e. may be emigration of leucocytes. The inadequacy arises from failure to say whether dealing with death of person or tissues. Somatic or tissue death.

Q. If it purports to deal with somatic death. Can't follow the contradictions.
A. It arises in the fact that in the phrase "there may have been ... for development ... lesser reaction." Earlier in the para. it says "although margination and a limited emigration of leucocytes may occur in tissue in response to injuries after somatic death". I say it is contradictory in that either there is no time for the development of this reaction (first part says that) and that there is time for the reaction to take place to a limited extent (2nd part).

Q. Time being.
A. Even that is indefinite because we don't know whether author means somatic death or death of the tissue.

Ct. If there is instantaneous death in many cases you can still see the reaction in terms of the early stages of inflammation for a period of time afterwards.

Q. If you don't get such a reaction what is your conclusion?
A. That the injury was inflicted after the tissue death as opposed to somatic death.

Q. The passage "In small wounds ... edudation".
A. I do not accept that proposition.

Q. Why?
A. Because it is recognised form of diagnosis of certain blood diseases where the skin can be

In the Court of Appeal for Eastern Africa

No.25

Notes of Gould, J.A. of Further Evidence of Maurice Gerald Rogoff,

11th November 1960 - continued.

injured by any significant degree of violence, such as simple scratching on top of the skin and the inflammatory reaction which results from this injury is observed over 24-96 hours. This is known as the Rebuck test and has been described in a large number of medical journals.

I have them. The important one is known as the Journal of Blood. It is published in America (of diseases of blood) and deals with investigations into diagnosis of disease and treatment. Vol. 13, Issue 5 May 1958. Contains an article by 3 men. One H. Browsteiner of Dept. of Medicine of Vienna, Austria.

It deals with studies of changes which occur in a test of this kind under various circumstances of disease and in normal health called Journal of Haemolology.

A. My view is supported by descriptions of tests in various other countries.

Q. G.P. & T.

"-while in reverse ... reaction".
A. That does not clarify the matter at all.

Q. Even if there were a severe injury and associated circulatroy failure would you obtain a reaction if inflicted, immediately before or after death.
A. The reactions in terms of inflammatory changes shown by tissue that is injured has been proved experimentally to be completely unrelated to the degree of failure of circulation - which is the result of a severe injury.

Q. What experiments do you refer to.
A. Another publication where a record is made of the inflammatory response elicited by performing this Rebuck test.

PRESIDENT: Rebuck is a slight injury?
A. I say that small and severe wound reaction are not influenced by circulation. One of Rebuck's tests in this sense is that a local injury is capable of causing a local reaction and that reaction does not depend on state of circulation. A severe injury would also have reaction.

Q. Had the G.T. & P. extract been put to you at the trial would you have changed opinion.
A. No.

Q. Do you find support for your opinion in it.
A. It illustrates a case in which reaction is unaffected by state of the circulation. Depends on the types of cells rather than the numbers.

I have my opinion on my medical reading generally. This is merely one illustration.

SELF.

Q. Could the wounds have been inflicted less than 15 minutes after death.
A. As an extreme case there is that possibility.

Q. Do you mean "possible but unlikely" by "extreme case".
A. Yes. Just that.

Q. Is it possible to give any inner or outer limit.
A. I think the lower period must be at least 10 minutes after somatic death. I am quite sure that is the shortest possible period.

Q. In converse - reaction will be observable by microscopic examination in every wound of this kind inflicted up to ten minutes after death (somatic).

To Ct. Last answer read. I stand by that.

A. These wounds showed no reaction.

SALTER: I apply to call Dr. Dockery upon the point the last witness dealt with.

I would have to bring self within ordinary principle. I can only submit that matters have arisen out of points put to Rogoff which were controversial. Did not arise at trial. Particularly last question by court.

PRESIDENT: The evidence of Rogoff does not differ substantially from trial. Nothing which could not have been answered at trial.

SALTER: Think he has modified his view. 10 minutes. That is important in extent. Other

In the Court of Appeal for Eastern Africa

No.25

Notes of Gould, J.A. of Further Evidence of Maurice Gerald Rogoff,

11th November 1960 - continued.

medical testimony may help. He has in fact changed his opinion to an extent. Opens door to question of extent.

WEBBER: I oppose. If granted it would be endless. I would have to be permitted to call other medical witnesses. This 1953 book has not arisen since trial.

I disagree that Rogoff has changed to some extent. He has said that the minimum time is ten minutes. But he still takes 15 minutes as an average. Had he been pressed in his evidence at trial may be he would have given the same evidence as today.

Submit the court has gone as far as it possibly can go in trying to clear up the matter.

Reserved till 2.30 p.m.

T.G.

2.30 p.m. Bench and Bar as before.

By Court: We have considered the application for another witness. Consider no case made out for departing from ordinary rules. Could not be said not to have been obtainable at the trial.

Do counsel wish to address on the evidence given.

SALTER: I would like only to emphasise one major point. If this period of 15 minutes is variable and elastic it is difficult to say to what extent. Rogoff said 10 mins. the absolute. There is no other evidence to support that view. Must be based on fact that tissues would remain alive for that period. But there is still unchallenged the proposition in Keith Simpson 3rd p.16, which I think was accepted generally. Before at or about.

If accept that what is meant by "about" the time. If minimum reduced now to 10 is it not possible that it might have been 5.

Evidence shows that the margin is so narrow that submit never established that the wounds were not ante mortem.

Rogoff has agreed with certain passages in G.T. & P. while agreeing with others. The authors have much longer experience than Dr. Rogoff.

The difference of opinion between those authors and Rogoff. Should be resolved in favour of greater experience. The fact that there is such a difference of opinion is enough to resolve matter in favour of appellant.

WEBBER: The crux is that because there was no cellular reaction they must have been inflicted considerably post mortem. Submit the passage from Simpson aids the Crown and not defence, inasmuch as there can be reactions similar to wounds a.m. from wounds at or immediately after. In so far as G.T. & P. says, it does, that no reaction means?

It is possible to show ante mortem effects by inflicting wounds on a body by wounds immediately post mortem.

But the converse is not true. If there is no cellular reaction then the wounds must have been inflicted considerably after death.

Rogoff has explained why he disagreed with the 2 reasons given in G.T. & P. for the statement that the absence of tissue reaction does not indicate that the wound was necessarily p.m.

As regards time he explained that each wound has a local reaction. He said it is dealing with the type of cells rather than the number, from which you can tell that there has been a cellular reaction. In the case of small wounds he said that even the most trivial cutting of the skin produces a reaction which lasts up to 24-96 hours. That would be in a living body.

If court considers the other evidence in conjunction with Rogoff's the verdict of the judge was the only possible one.

C.A.V.

T. Gould

11.11.60.

In the Court of Appeal for Eastern Africa

No.26

Notes of Crawshaw, J.A. of Further Evidence of Maurice Gerald Rogoff,

11th November 1960.

No.26

NOTES OF CRAWSHAW, J.A. OF FURTHER EVIDENCE OF MAURICE GERALD ROGOFF

IN HER MAJESTY'S COURT OF APPEAL FOR EASTERN AFRICA AT NAIROBI

CRIMINAL APPEAL NO. 112 OF 1960

BETWEEN

SHARMPAL SINGH S/O PRITAM SINGH Appellant

AND

REGINA Respondent

NOTES OF EVIDENCE TAKEN BY CHAWSHAW, J.A.

11.11.60 Bench and Bar as before save that Webber now appears for the Respondent. Reasons for making order for further evidence explained by the President shortly. Webber calls:-

MAURICE GERALD ROGOFF, for XXn. by appellant:-

M.G. Rogoff, sworn

Qualified 1950, Univ. Capetown. Acquainted with Professors Gordon and Turner. Not one of my instructors. Professor Price was professor of Roman Law and Turner professor of forensic medicine. In 1947 he was a lecturer and for about 4 years thereafter.

15/43 (Passage read to witness).
19/4 (" " ").

I relied on microscopic examination for my opinion. I do not think I drew a hard and fast line up to ¼ hour; that would be average time. I did not mean strict line of ¼ hour. It is elastic period. I said that injury inflicted at or about the time of death makes difficult or impossible to say whether inflicted ante or post mortem. If 5 minutes of death either way it comes within the 15 minutes I have mentioned. I can say in this case that wound was inflicted after the period of 14 minutes from death and not within 14 minutes. I say that because the microscopic

examination showed no re-action. True I would not agree entirely; an injury and death might be almost simultaneous and yet show no re-action. I disagree on ground that the death of the individual and tissues are not necessarily simultaneous. I do not agree with the extract now read to me from Gordon Turner and Price "The absence of tissue reaction ... in origin" (p.688). I think this proposition emerged in 1952 from R. v. Carr case. It was accepted by medical profession in S.A. until approx. 1956, but not I think afterwards. I was prepared to accept it up to 1956 from 1952. I do not agree with the passage which continues:- "There may have been ..." because it conflicts with earlier part of paragraph and also it is not necessarily correct. I have not known a case where it has been correct. I do not think this is just a matter of difference of medical opinion, although I differ from book. I do not agree with (Further passage read). I agree course of reaction is therefore variable. I do agree that never possible within narrow limits, because "narrow" is too uncertain. "Arrive at estimate by confusion" - I agree. What the passages amount to is that it is not always safe to rely on microscopic examination; I do not agree with that. In my opinion microscopic examination of tissues can be conclusive; at time it cannot be. The case I had in mind when not conclusive, would be is injury inflicted at or about time of death somatic death. These are the only circumstances when not conclusive. I am as certain of this as I am that puss in kidneys quite normal in pregnant woman. (Webber objects to extraneous questions - objection sustained).

There may be uncertainty but I have given my opinion. I do not say timing exactly 14 minutes; I could not say that. What I think I did say was at least 15 minutes and may be more, based on estimated average period, based on my experience.

ReXn. Injuries inflicted approx. 15 minutes as after death there is no re-action in tissues. If no re-action, then approx. 15 minutes or more after death. I see Taylor p.263 top - Christopher test.

Gordon Turner and Price is not well known in

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No.26

Notes of Crawshaw, J.A. of Further Evidence of Maurice Gerald Rogoff,

11th November 1960 - continued.

England. When published in 1953 it was reviewed in Medical Legal Journal. (Salter objects - but withdraws if it is a recognised journal. Journal disallowed, as author of review not known).

608 Gordon T. & P. After body stops breathing, tissues still capable of responding to effects of injury to limited extent. Margination means slowing down of blood-stream and lining of inside wall of blood vessel by white cells contained in normally flowing blood - flows to walls of blood-vessels. This accords with possibility of post-mortem wound giving appearance of ante-mortem wound provided reaction in body still dead is clear cut decision from strong re-action whilst alive. "Insufficient time for ... reaction". This remark is inadequate and is contradictory to earlier passages of Inadequacy arises from word 'death' - does not make clear if refers to death of the person or death of tissues, which might not be instantaneous. The contradiction arises in phrase "These may have insufficient ... tissue reaction." Earlier in para. it says "Although margination ... somatic death". Contradictory in that either there is no time for development of this re-action, or in 1st quotation, and 2nd quotation that there is time for a limited extent. Time being indefinite because not known if author means somatic death or death of tissues.

Instantaneous death, in many cases you can still see re-action in terms of earlier stages of inflammation within period of 10 minutes after death. If no such re-action, conclusion is that injury inflicted after tissue death as opposed to somatic death. It fits in with what I said before as to microscopic examination: it relates to when a person stops breathing and somatic death.

I do not accept "In small wounds ... escudation", because it is recognised form of diagnosis of certain blood diseases where the skin can be injured by insignificant degree of violence, such as simple scratches on top of surface skin and inflammatory re-action which results from injury is observed over period 24 to 96 hours. This test is known as Rebuck test, as has been described in many medical journals. I have one here, journal called "Blood". It is journal of

diseases of blood published in America. Vol.13 issue 5 of May '58. Article is by 3 men - Brastimer & others - Dept. of Med., Vienna. The article deals with changes which occur in test of this kind. It is a recognised journal. My view is supported by those accounts of experiments and experiments in other countries. I consider "which in severe ... reaction" does not clarify matter at all.

Reaction in terms of inflammatory changes that are shown by tissue which is injured has been proved experimentally to be completed unrelated to degree of failure of circulation which is result of severe injury. I refer to experiment recorded in another publication as to inflammatory response the Rebuck test (Med. Journal of diseases of children). Local reaction to small and severe wound is unaffected by circulation. Had G.T. & P. been put to me at trial, it would not have changed my opinion at all. Medical Qualifications of writer in journal are given. The article is one example where the last part of quotation not accurate.

Court: The 15 mins. might be 10 mins. or a little less in certain circumstances - in extreme case. Possible but unlikely. The lower period I would say could not be less than 10 mins. after somatic death. I am quite sure of this. Even wound inflicted within 10 mins. after death would show reaction.

Salter applies to call Dr. Dockery on point in issue this morning. Submits new evidence by Rogoff in that he now says 10 minutes.

Webber: Endless. Crown call evidence to contradict what Dockery says. Opposes application Rogoff still sticks to 15 mins. as average, and will not go lower than 10 mins. Had he been pressed in XXn. on the 15 mins. he would presumably have mentioned the unlikely lower time of 10 mins.

Adjourned to 2.30 p.m.

Sgd. E.D.W. Crawshaw,
J.A. II

In the Court of Appeal for Eastern Africa

No.27

Judgment (a) Gould, J.A. (Concurred in by O'Connor, P. and Crawshaw, J.A.),

28th November 1960.

No.27

JUDGMENT

(a) GOULD, J.A. (Concurred in by O'Connor, P. and Crawshaw, J.A.)

This appeal has been brought from a judgment of the Supreme Court of Kenya at Kisumu dated the 3rd June, 1960, whereby the appellant was convicted of the murder of his wife Ajeet Kaur on or about the night of the 28/29th February, 1960.

The appellant is a young man and had been married to the deceased for less than one year. The evidence was that the marriage was a happy one and the deceased had been pregnant for a period estimated by one doctor as from 16 to 18 weeks, and by another as from 22 to 24 weeks. The evidence against the appellant was circumstantial and it is right to say at once that the direction by the learned trial judge to the assessors and to himself upon the subject of the nature and effect of circumstantial evidence was impeccable, and has not been criticised in any way.

The following description of the premises in which the couple lived is taken from the judgment under appeal:-

> "The evidence is that the Accused lived with his wife, Ajeet Kaur, in a room in a flat in Jaipur Street, Kisumu. Upkar Singh Pardesi (P.W.9), Ajeet's brother, lived with his wife, Inderjeet Kaur (P.W.10), and their two children in the other room in the same flat. There are several flats opening on to a courtyard and there is a door which leads from the Accused's room and down some steps to the outside of the building. There were two beds in the Accused's room, one along the wall next to the courtyard on which the Accused usually slept and the other, on which Ajeet Kaur usually slept, along a wall in which there is a door leading to a verandah, from which one can reach the courtyard through double doors, the kitchen, the room occupied by Upkar Singh Pardesi, and a shower room".

The undisputed facts are accurately summarised in the judgment:-

"At about 7.30 p.m., on 28th February, 1960, some friends having called, Upkar Singh went away with them leaving his wife, their two children, the Accused and Ajeet in the flat. Upkar Singh returned alone at about 9.30 p.m. and went up the steps to the outside door to the accused's room. The light in the room was put on and the Accused opened the door and let Upkar Singh in. The Accused then shut and bolted the door. Upkar Singh saw that Ajeet was in her bed and with her was Amerjeet Singh, a boy aged about 7 years, one of Upkar Singh's children. Upkar Singh then went to his room and on the way checked the verandah door and found it was locked and that the key was in its usual place in the lock. The verandah light and the yard light were not on. Upkar Singh shut the door to his room, undressed, read a book for about half an hour and then went to sleep on the floor, it was then before 11.0 p.m. At about 3.45 a.m., the next morning, Upkar Singh woke up, felt thirsty, and went to the kitchen to get a glass of water. On the way he saw that the courtyard light was on, as also was that in the Accused's room, the door of which was open. Upkar Singh consumed his glass of water and then went to the Accused's room to find out why the light was on, he stood in the doorway and saw that Ajeet's bed was empty, the Accused was in his bed with the boy Amerjeet and they appeared to be asleep. Upkar Singh then went out of the verandah door, which was shut, but not locked, into the yard, saw that the toilet room light was on and the door half closed, then going a little further he saw, by the light that came through his bedroom window, Ajeet's body lying on the murram part of the yard. Ajeet was lying on her back, her left arm was stretched out her right arm was bent the hand being near her waist and her legs were a little bent, her head was towards the boys' quarters, her legs towards the exit door from the yard to the outside of the building. Upkar Singh saw that Ajeet's clothes were bloodstained, shouted his sister's name and, when she did not reply, he shouted for his wife and she came, followed by the accused. Upkar Singh felt near Ajeet's heart over her clothes for heart-beat and thought her heart was

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beating. Upkar Singh and his wife then lifted Ajeet from the murram and placed her on the concrete part of the courtyard. By this time the houseboys had come out of their quarters and they and the Accused carried Ajeet into her room and put her on the floor opposite to her bed. Upkar Singh then went off to fetch Dr. Hasham (P.W.8). Dr. Hasham was called at about a quarter to four and arrived at the flat in Jaipur Street at about 4 a.m., he went into the Accused's room and saw Ajeet lying on the floor covered with blankets or rugs. Dr. Hasham thought that Ajeet was in a state of shock, he did not think she was dead, he felt for her pulse and thought at first that he felt it beat, he was not sure. On an examination for injuries Dr. Hasham found two wounds, one on the right side of the chest at about the bottom of the ribs and the other towards the middle, there was bleeding from the first wound which was a large one, the other was not bleeding at all. Dr. Hasham made arrangements for Ajeet to be taken to the Nyanza General Hospital, Kisumu, and went on ahead and called Mr. Treadway (P.W.3), the Provincial Surgeon. Soon after Dr. Hasham arrived at the Hospital, Ajeet was brought there by Upkar Singh and his wife. Mr. Treadway examined Ajeet in the operating room of the Hospital and, not being sure whether she was dead or alive, he took immediate steps in an attempt to resuscitate her. He administered an intra-cardial injection of Adrenalin, he picked up her left arm to find a vein, but it was cold and no vein showed, he then went to the left leg as the best available place to find a vein and made an incision administering an intravenous injection of Glucose Saline and Nor-Adrenalin. There was no response at all and Mr. Treadway reached the conclusion that Ajeet was dead and had been dead for at least quarter of an hour, possibly an hour and a quarter or longer. Mr. Treadway examined Ajeet at between 4.30 a.m. and 4.45 a.m."

There were two post-mortem examinations made. The details of the first, by Dr. S.N. Ngure, are given in the following passage :-

"Later on the same morning Dr. Ngure (P.W.7)

carried out a post mortem examination on Ajeet's body. Dr. Ngure found that the stab wound on the right chest measured 2½ inches by 1½ inches, had cut through the cartilages of the 7th and 8th ribs and into the liver to a depth of about an inch. The wound on the left chest was found to be superficial. Dr. Ngure described the term "lividity" as meaning the discoloration of the skin after death caused by blood flowing to the lowest part of the body and there staining the skin red, and said that he found extensive lividity over the whole of the back and the left side of the face and ear, that this was not unusual in a corpse if not extensive, but in this case it was very gross, that it was cyanosed almost violet in colour indicating lack of oxygen in the blood before death. The mucous membranes of the mouth and conjunctiva showed cyanosis, a symptom of lack of oxygen before death. The mucous membranes of the respiratory system showed a fair amount of cyanosis and the trachea and bronchi were found to be full of frothy mucous which extended right through to the small bronchi, the pleural surfaces of the lungs showed a few pin-point haemorrhages. Dr. Ngure was very doubtful as to the cause of death and formed the opinion that the stab wound of itself would not have been the cause as not enough blood had been lost. Dr. Ngure was of opinion that the wound on the chest was suffered before death though it would have necessitated a microscopic examination to have determined that, and came to the conclusion that death was due to asphyxia mainly and possibly from haemorrhage and shock from the stab wound. Dr. Ngure having completed his post mortem examination the body was handed over to the relatives at about 1.30 p.m."

The body was, however, recovered by the police about 9.30 p.m. the same night and on the following day the second examination was carried out by Dr. M.G. Roggof, the Kenya Government Pathologist. That is described as follows in the judgment :-

"Mr. Treadway (P.W.3) and Dr. Ngure (P.W.7) were present and pointed out to Dr. Rogoff what they had done to the body. Dr. Rogoff found small bloodspots inside the lining of

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the eyes also on the face. The eyes, the lips, the membranes of the mouth and nose, and the skin of the face had a purplish cyanotic discoloration. In the region of the neck Dr. Rogoff found extensive haemorrhage into the muscles under the skin and into the thyroid gland, also into the salivary gland under the right jaw and into the right muscle of the lower jaw. there was bruising of the cartilages of the larynx and also bruising over both the left and right carotid arteries, the windpipe showed considerable bruising and the surface of the windpipe showed haemorrhagic blood spots. The region of the chest above the left breast showed an area of haemorrhage into the muscles and a large number of areas of haemorrhages was found under the membranes lining the lungs and under the lining inside the chest cavity. All of these conditions are symptoms of asphyxia. Dr. Rogoff also found a collection of fluid in the lung tissues which he said was a common result of the lowering of the oxygen content of the blood caused by asphyxia. Also areas of haemorrhage were found inside and outside the heart muscles and this condition is one of the phenomena of asphyxia, although it can have other causes. An examination of the brain disclosed haemorrhagic spots in all areas, which is an indication of asphyxia, the brain was waterlogged, a condition not uncommon in the case of death from asphyxia. Apart from some pus and a small amount of urine found in the bladder it was empty and one expects to find a small amount of urine in a dead body, that the bladder is found empty is one of the normal reactions of asphyxia and is found in ninety per cent of cases of death from this cause.

Dr. Rogoff described the two wounds to the lower chest, as had Dr. Ngure (P.W.7) said he took deep sections of them and found that both had been inflicted after death. Dr. Rogoff explained that had the wounds been inflicted up to a quarter of an hour after death there would be reaction and he found none on a microscopacal examination of the sections, in the result the conclusion was that the wounds had been inflicted a quarter of an hour or more after death. Dr. Rogoff could not say how long after the expiry of a quarter of an

hour after death the wounds were inflicted. Mr. Sood cross-examined Mr. Treadway, Dr. Rogoff and Dr. Ngure at some length on the wound found on Ajeet's right chest. On the point of the wound gaping, Mr. Treadway explained that it was difficult to relate the degree of gaping which can be affected by reaction as the cut was across the tissue. Mr. Treadway also said that 'this fibrous tissue remains alive long after death has taken place' and, as I have said, Dr. Rogoff's evidence was that this period had passed when the wound was inflicted. Dr. Ngure was insistent that there had not been a sufficient blood loss to have caused death."

The evidence by Dr. Rogoff as to the time when the stab wounds were inflicted with relation to the time of death was of vital importance in the reasoning of the learned judge when he was considering the circumstantial evidence. He said, though he examined various possibilities in detail later in his judgment :-

"If Dr. Rogoff's evidence is accepted the circumstances of an intruder or intruders being responsible can be put very shortly - Ajeet met her death by strangulation, or strangulation plus damage to the left chest by compression, and a quarter of an hour or more after her death the two stab wounds were inflicted to the lower part of the chest, so if an intruder or intruders were responsible, one or more of them strangled her and then waited, or came back, a quarter of an hour or more later and stabbed her dead body - a startling squence of events."

The learned judge did accept Dr. Rogoff's evidence, when he said :-

"Dr. Ngure said that at the time he carried out his post mortem examination he thought that the wound on the right of the chest had been inflicted before death but to establish this it would be necessary to carry out a microscopic examination. Dr. Rogoff made such an examination with the result that I have set out. I accept this evidence and find as a fact that the stab wounds on the right and left of Ajeet's body were inflicted

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a quarter of an hour or more after she had met her death from asphyxia."

The finding that the deceased met her death from asphyxia has not been attacked, but one of the main grounds argued on the appeal was that the finding that the stab wounds were inflicted a quarter of an hour or more after death ought not to be supported. It will be convenient at this point, to set out the grounds as embodied inthe Memorandum of Appeal, though they were not argued by counsel in the order indicated :-

"1. That the learned Judge misdirected himself in law in finding that :-

(i) there was a chain of circumstantial evidence pointing to the guilt of the appellant;

(ii) there were no circumstances which weakened or destroyed the inference of guilt;

(iii) the circumstantial evidence was incompatible with the innocence of the appellant and incapable of explanation upon any hypothesis other than that of guilt.

2. That the findings of the learned Judge were based largely upon theory and speculation, and not upon facts proved by, or reasonably to be inferred from, the evidence.

3. That the finding of the learned Judge that the appellant murdered his wife was against the weight of the evidence.

4. That the learned Judge erred in failing to give due weight to the conflict of evidence with regard to the time of the deceased's death, or to attach proper significance thereto when considering whether the stab wounds found on the deceased's body were inflicted before or after death and, if the latter, whether they were inflicted at least a quarter of an hour after death.

5. That the learned Judge erred -

(i) in finding that the stab wounds were inflicted a quarter of an hour or more after the deceased had died from asphyxia;

(ii) in attaching significance to the absence of any outwards signs of urine on the murram, especially when no analysis was made of the murram at the place where the deceased's body was found;

(iii) in attaching significance to the presence of urine in the bed in view of the evidence that the same might have been caused by the child Amarjeet;

(iv) in finding that the deceased's head-dress was found in the toilet and was blood-stained when found."

Counsel for the appellant commenced his argument by indicating that he would challenge the finding as to the time when the stab wounds were inflicted, as incorrect, and would comment on the conflicting evidence regarding the estimated time of death. He submitted that, on the evidence, it was quite likely that the wounds were inflicted before death or almost contemporaneously with it. He referred to the medical evidence. Dr. Ngure said that at the time of examination he thought that the wounds were inflicted ante-mortem, but qualified that opinion by saying that to establish that as a fact it would be necessary to make a microscopic examination. On the subject of bleeding Dr. Ngure said (a) that the deceased had not lost enough blood for the stab wounds to constitute the sole cause of death (b) that the bleeding of which he saw evidence would be more likely to have taken place from a live person than from a dead body and (c) (in re-examination) that a dead person may bleed more than a live one.

Dr. Treadway, Provincial Surgeon, Nyanza General Hospital, said that he could not be sure if the deceased was alive or dead when he first saw her, but after his test showed that she was dead he formed the opinion that she had been dead "at least a quarter of an hour, possibly an hour and a quarter or longer", and then he said "I am not competent to give an exact estimate - approximately an hour at most". Dr. Treadway did not

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say whether or not he conducted any tests to determine the time of death. On the subject of bleeding the witness said that the wounds (by which he no doubt meant the deep wound on the right side) could cause haemorrhage, from the loss of a few cubic centimetres to complete extravasation, but that extensive loss of blood could be caused whether the person were alive or dead. In the cross-examination there is a passage concerning the time of infliction of the wounds which we will set out :-

"Q. One wound appears to be very open, is it open because of reaction to the injury?
A. I do not understand.

Q. Inflicted before or after death?
A. It depends on whether the cut is along the tissue, where there would be little gaping, or across the tissues when, as in this wound, Exhibit E, there would be great gaping.

Q. Such gaping would be more before death than after?
A. Yes, but unfortunately this fibrous tissue remains alive long after death has taken place.

Q. In a person who is alive the results are more pronounced than when dead?
A. Yes"

In re-examination on this topic he said :-

"Q. Exhibit E, the wound is almost across the lines of tension?
A. Yes.

Q. The wound would draw it closed or shut?
A. Open.

Q. Elastic tissues in the body take time to die?
A. Yes, under favourable conditions can be left alive for weeks after death."

Dr. Rogoff's evidence, as has been seen, was that he took deep sections of the stab wounds and a microscopic examination of the tissue showed no reaction to the injury - "if live flesh is cut it reacts, if dead, it does not." The tissue

would have been reactive until a quarter of an hour after death, and therefore the wounds were inflicted not less than a quarter of an hour after death. In cross-examination he said that it was difficult to establish if a wound has been caused "just before or after" death, but if it has been caused a quarter of an hour or more after death there is no difficulty. Dr. Rogoff said that the deep wound gaped because the muscle had been cut - he does not appear to have been questioned upon the comparative degrees of gaping to be expected from ante and post-mortem wounds, but, as he had just expressed the firm opinion that these wounds were post-mortem, it is a fair assumption that he saw nothing in the degree of gaping which would cause him to qualify his opinion. This witness does not appear to have been questioned on the subject of the bleeding.

As to the degree of the bleeding which had taken place there was evidence from the Government Analyst that the pantaloons and underpants of the deceased were heavily bloodstained. The evidence of Chief Inspector Shaw was that on the murram portion of the courtyard (where other evidence indicates that the deceased was found) there was "a small patch of blood about 8" in diameter, it was wet". The murram was a stony loose surface type, though it was soft enough to show an impression when the witness dragged his foot in it. There was also a patch of congealed blood about 12" in diameter on the concrete part of the courtyard where the deceased had been placed, prior to her removal into the flat. Upkar Singh said that he could not remember seeing any blood at that spot before they placed the deceased there.

Before dealing with counsel's submissions on this evidence we will refer briefly to the evidence, upon which he relied, concerning the time of death. The earliest attempt to ascertain whether the deceased was dead or alive was made by Upkar Singh after he found the body at about 3.45 a.m. He felt for a heartbeat, by placing his hand flat over the region of the heart on top of the clothing; he thought he felt a beat, not very strong. The next attempt was made by Dr. A.I. Hasham who was called by Upkar Singh, according to the doctor, at about 3.45 a.m. and arrived at the flat at 4 a.m. If that is the case Upkar Singh must have found the deceased before 3.45 a.m.

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though the discrepancy is not necessarily very great. Dr. Hasham did not think that the deceased was dead at the time. He thought she was shocked, and, when he felt her pulse, he thought "at first" that he felt it, but was not sure. The evidence does not disclose where the doctor felt for the pulse. He said that her face was very cold but her abdomen very warm; it does not appear, however, that the doctor was told that other inmates of the flat had applied an electric pad or blanket to the abdomen. Mr. Treadway put the time of his examination at between 4.30 a.m. and 4.45 a.m. and, as has been seen, he was not sure until he had made tests whether she was alive or dead.

Mr. Treadway was recalled later in the case and said that it is a notorious error, made even by doctors, to mistake the pulse in one's own hand for a pulse in the body of another. Where the person concerned was a woman he doubted whether her pulse could be felt by placing the hand flat over the region of her heart, though it was possible.

It is of course self-evident that if death had not occurred when the deceased was found, the stab wounds could not have been inflicted a quarter of an hour, or more, after death, as Dr. Rogoff says that they were. In that case the hypothesis upon which the learned judge based most of his reasoning would be a false one. It was submitted by counsel for the appellant that the evidence concerning the amount of bleeding was more consistent with ante-mortem infliction of the wounds. He conceded that he could not stress the evidence as to the gaping of the large wound very much in the appellant's favour, though he relied upon Mr. Treadway's statement that it is more pronounced in a person alive than in one who is dead. Counsel submitted further that at least a real doubt as to whether the deceased was dead when found, arose from the evidence of Upkar Singh, Dr. Hasham and Mr. Treadway.

We are not inclined to think that very much is to be drawn from the amount of the bleeding. The general trend of Dr. Ngure's evidence can be taken to be that more bleeding is to be expected from a person who is alive; though that may be accepted generally it is apparently not an inflexible rule, but in any event what is lacking in the present case is any statement of opinion

one way or the other, as to whether the quantity of blood actually shed in the present instance, might reasonably have been the result of the particular wounds, if inflicted post-mortem. Some bloodstained clothing and two comparatively small pools do not necessarily denote a great quantity of blood. We think that there was insufficient expert evidence on the subject to render this question anything but indeterminate and that it provides no appreciable support for either side. Very similar considerations apply to the question of the gaping of the big wound. It was a deep stab wound and all that the evidence indicates is that, in the part of the body in which it was inflicted, it might be expected to gape, possibly a little more if inflicted before death, than after it. There was no opinion expressed that (on this account) the particular wound could not have been inflicted after death and Dr. Rogoff obviously held the contrary opinion.

We have not overlooked what was frequently stressed by Counsel before this court, that the general onus of proof lies upon the Crown. That does not mean, in our opinion, that every facet of the evidence which does not support the Crown's case, thereby tends to derogate from the strength of the evidence upon which the Crown does rely. The two matters upon which we have so far expressed an opinion are, in our view, entirely neutral.

The third matter is in a different category. It was essential to the case of the Crown (having regard to the reasons given by the learned judge for convicting the appellant) that the stab wounds be proved to have been inflicted an appreciable time after the death of the deceased. The onus of proving this beyond any reasonable doubt was on the Crown, and counsel for the appellant has pointed to the evidence of Upkar Singh and Dr. Hasham as establishing the existence of such a doubt; we do not think that their evidence is supported by that of Mr. Treadway, who rapidly established the fact that the deceased was in fact dead except to the extent of his very hesitatingly expressed view that death had taken place from a quarter of an hour to an hour and a quarter before his examination. If that had been expressed as a firmly held opinion based on sound premises it would have provided a substantial

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measure of support for the evidence that a pulse was perceptible when the deceased was found. As has been seen, however, Mr. Treadway said that he was not competent to give an exact estimate.

If the evidence of Upkar Singh, Dr. Hasham and Mr. Treadway as to the probable time of death, stood alone, we would agree, and think that the learned judge would have agreed, that there was doubt on this particular point, and that the Crown had therefore not discharged the onus which rested upon it. There is, however, the evidence of Dr. Rogoff, who has, to the knowledge of this court, frequently given evidence in capital cases in his capacity of Government Pathologist, and whose opinion must carry weight. He, alone, of the medical witnesses made the microscopic examination, which, as Dr. Ngure said, was necessary in order to establish whether the wounds were inflicted ante-mortem or post-mortem. Based upon that examination, Dr. Rogoff's opinion was that the wounds were inflicted not less than a quarter of an hour after death, and he considered the ascertainment of that fact to present no difficulty. If he is right, the deceased was certainly dead when she was found, and the reasoning of the learned judge, so far as this factor is concerned, was firmly based. The learned judge accepted Dr. Rogoff's opinion, and counsel for the appellant, in contesting the validity of that finding, pointed in the first place to the evidence of Upkar Singh, Dr. Hasham and Mr. Treadway which we have discussed above, and also sought to rely upon passages from certain medical text books. These passages were not quoted in the Court below or put to any of the witnesses - in particular, in so far as one or more of the passages was relied upon as tending to throw doubt upon Dr. Rogoff's evidence, generally accepted practice would require that he should have been given an opportunity of commenting upon them in cross-examination.

Objection having been taken by Crown Counsel to the passages in question, we permitted them to be quoted de bene esse, reserving our opinion as to whether they constituted material which we might appropriately consider. Under English practice and law of evidence there is no doubt that medical text books are not evidence per se, though if passages from them are put to a medical

expert he may refresh his memory from them or describe them as representing his own views; Collier v. Simpson 5 C. & P. 73; see Phipson on Evidence (9th Edn.) p. 409. In R. v. Taylor 13 Cox 77, counsel was not permitted to read a case from Taylor's "Medical Jurisprudence" to the jury. As a court of appeal (unless it admits further evidence) decides a case upon what was before the court below, it follows that counsel on appeal may not refer to passages, which have not been adopted or made the basis of testimony given by medical experts below.

Counsel for the appellant submitted that under the Indian Evidence Act, which is (with certain amendments) in force in Kenya, greater latitude is permitted. Sections 57 and 60 of the Act were referred to. Section 57 enumerates a number of facts of which courts must take judicial notice and continues :-

> "In all these cases and also on matters of public history, literature, science or art, the Court may resort for its aid to appropriate books or documents of reference."

We do not think that this section, taken alone, would assist the appellant's argument. As is stated in the commentary upon it in Sarkar on Evidence (9th Edn) p. 492 :-

> "But obviously, it cannot be meant that the court is to take judicial notice of all facts mentioned in all books of public history, literature, etc. Only books of accepted or recognised authority may be resorted to and for obtaining information regarding only undisputed and notorious facts."

On page 499 it is said :-

> "S. 57 however does not intend to make books or documents of reference themselves evidence. What is obviously meant is that the court may use the books of reference in appraising the evidence given and coming to a right understanding the conclusion upon it. It has been held that the court can dispense with evidence only of what may be regarded as notorious facts of public history."

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The section is not intended, in our opinion, to enable or require a court, to solve for itself by reference to text books, difficult and perhaps controversial questions in medical or other science.

Section 60 of the Act however goes further and there is unanimity among legal text books writers on the subject, that it effects a change from the English law. It should be read with section 45 which is as follows :-

"45. When the Court has to form an opinion upon a point of foreign law, or of science or art, or as to identity of handwriting (or finger impressions), the opinions upon that point of persons specially skilled in such foreign law, science or art, (or in questions as to identity of handwriting) (or finger impressions) are relevant facts.

Such persons are called experts."

Section 60 so far as it is relevant, reads :-

"60. Oral evidence must, in all cases whatever, be direct; that is to say :-

. . . . . .

if it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds:

Provided that the opinions of experts expressed in any treatise commonly offered for sale, and the grounds on which such opinions are held, may be proved by the production of such treatises if the author is dead or cannot be found, or has become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense which the Court regards as unreasonable."

The proviso last quoted has effected a change from the principles followed under English law. In Woodroffe's Law of Evidence (9th Edn.) page 516, is the following passage :-

"The first proviso, which makes an exception to the general rule analogous to the exceptions

made in section 32, should be read with section 45, ante, and is an alteration of the rule of English law, which does not admit this evidence. The treatise in order to be admissible, must be one commonly offered for sale, and the author of it must not be producible within the meaning of the section. Strictly the burden of proving these facts will be upon the person who desires to give such treatise in evidence. Section 45, ante, refers to the evidence of living witnesses given in Court. This section makes scientific treatises and the like, commonly offered for sale, evidence, if the author be dead, or under any of the circumstances specified in section 32 which renders his production impossible or impracticable."

There are similar passages in Sarkar on Evidence (9th Edn) p.521 and in Monir's Law of Evidence (3rd Edn) p.511. There are a number of cases in which the proviso has been acted upon. In Tikam Singh v Dhan Kunwar (1902) 24 I.L.R. (Allahabad) 445 the court of appeal considered a number of treatises and text books for the purposes of ascertaining the utmost limit of the period of gestation. Scientific evidence had however been given in the court below and the same books may have been referred to there. The same problem was considered in Howe v. Howe (1915) 38 I.L.R. (Madras) 466, in which the court was not acting in a purely appellate capacity, but as a court confirming a decree of divorce by a District Judge. Such confirmation is rendered necessary by section 17 of the Indian Divorce Act, 1869, which provides also that the High Court shall have power to direct further inquiry to be made or additional evidence taken and that the additional evidence is to be certified by the District Judge. In Howe v. Howe there was apparently no expert evidence before the District Judge, but the High Court, instead of directing that it be taken, said, at page 471 :-

"With regard to this we are of opinion that, although there was no expert evidence in the Court below, we are entitled under section 60 of the Evidence Act to consider and act upon the opinions of experts contained in the treatises to which we have referred. We are prepared to hold that it has been shown in

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this case that there was no access by the petitioner at any time during which the child could have been begotten."

The case of Queen-Empress v. Dada Ana (1891) 15 I.L.R. (Bombay) 452 was a reference to the High Court under section 307 of Indian Code of Criminal Procedure, in a case in which the prisoner had been acquitted by a majority of the jury, with whom the trial judge disagreed. Under those circumstances the High Court may exercise any of the power which it might exercise on appeal. In the judgment of Jardine J. (at page 457) there is reference to his having consulted Taylor's & Chevers' works on medical jurisprudence, though it is not stated whether he acted under Section 57 or Section 60.

Perhaps the most informative discussions of the section are to be found in the judgments in Grande Venkata Ratnam v. Corporation of Calcutta A.I.R. (1919) Cal. 822; this report is not obtainable in Nairobi and we are indebted to counsel in Mombasa for making it available. At p. 864 the judgment of Chitty J. reads :-

"In the appeal however this Court can and must go into the questions of facts, and it was strenuously argued that the deductions of the analyst were erroneous. Counsel for the accused attempted to show this by more or less cursory references to the treatises, which the analyst admitted, were leading authorities on the subject of butter analysis.

. . . . . .

The use of such books by the Court is regulated by Ss. 57 and 60, Evidence Act. The former section first enumerates thirteen facts of which the Court may take judicial notice. The penultimate paragraph of the section says :

'In all these cases and also on all matters of public history, literature, science or art the Court may resort for its aid to appropriate books or documents of reference.'

This section does not justify the Court in

treating the opinions or deductions of the authors of such books as evidence in the case whether to supplement or rebut that already given. S. 60 however allows the opinion of experts expressed in any treatise commonly offered for sale and the grounds on which such opinions are held, to be proved, by the production of such treatises in circumstances which no doubt apply in the present case. The conclusion seems to be that books of reference may be used by the Court on matters (inter alia) of science to aid it in coming to a right understanding of and conclusion upon the evidence given, while treatises may be referred to in order to ascertain the opinions of experts who cannot be called, and the grounds on which such opinions are held. In these cases the direct evidence on the record, relating to the quality of the ghee in question consists of the sworn testimony of the analyst, which stands alone and uncontradicted. I think that we should be very careful to avoid introducing into the case extraneous facts culled from text-books, and also to refrain from basing a decision on opinions, the precise applicability of which to the ghee in question it is impossible to gauge. This is an error which was strongly condemned by the Judicial Committee of the Privy Council in the case of Sajid Ali v. Ibad Ali. We may however usefully refer to these books in order to comprehend and appraise correctly the evidence of the expert, who has actually analyzed the ghee in question and gives on oath his opinion as to the result of such analysis. It would, I think, be dangerous to base the decision of the Court solely on the evidence of books whether for a conviction or an acquittal."

In the judgment of Woodroffe, J. in the same case, at p. 871, is the following :-

"It seems to me however clear that the use of scientific treatises may lead to error if either those who so use them, are themselves not expert in the matter dealt with or are assisted by experts to whom passages relied upon may be put. At any rate, having no expert knowledge myself I am not prepared to decide this matter on conclusions drawn from

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the books without the assistance of expert evidence. It is said for the defence that the matters on which they rely, were substantially put to the prosecution, but the Advocate General says that in eleven instances this was not done and in part at least this is admitted. Not only should such passages be put to the prosecution expert but he should be given notice by cross examination of the deductions which the defence seek to draw from them so that he may give an answer if he can."

In the judgment of the Privy Council in Sajid Ali v. Ibad Ali (1895) 22 I.A. 171 (referred to by Chitty J. supra) is the following, at pp. 181-2:-

"The learned Judge, after an examination of the evidence, cites passages from the treatise of Dr. Ross on Diseases of the Nervous System, and Dr. Quain's Dictionary of Medicine, and then proceeds to quote various dicta of English Judges in cases of insanity and incapacity, which appear to their Lordships to have little or no bearing upon the facts of the present case. Under the influence apparently of these medical and legal authorities, and relying on the fact spoken to by Dr. O'Brien, that there had been extravasation of blood in the brain, he held that the deceased must, at the time when he made his third will, have had 'a fresh access of his terrible malady'. That speculative theory, for it is nothing else, illustrates the danger of deriving inferences of fact from medical books and judicial dicta, instead of depending upon the facts established by the evidence in the case."

These passages illustrate the danger of over free use of text books and the like, and point their proper function as assisting the court to a right understanding of and conclusion upon the evidence given. There is also the opinion of Woodroffe, J. that all passages relied upon by the defence should be put to the expert witness for the prosecution for his opinion.

In the present case that was not done and the position is complicated by the fact that the

passages relied upon were put forward for the first time on appeal. They may not be evidence in the strict sense, being tendered for the purpose of appraisal and understanding of evidence given below, but they certainly are akin to evidence and we were most reluctant to accede to an application which appears to offend against the usual rules concerning the calling of further evidence on appeal. Nevertheless the courts in India have apparently so construed the sections as to allow of such a practice and, this being a capital case, we felt that it was incumbent upon us to consider the passages to which counsel referred us.

Counsel for the appellant drew attention to passages in Medical Jurisprudence, by Gordon Turner and Price and to Forensic Medicine by Keith Simpson. The former work is not one with which the court is familiar; two of the three authors are shown as being highly qualified in pathology and the third in law. The book is published by E. & S. Livingstone Ltd. and is in its third (1953) Edition; the preface indicates a hope that it will be of value to both medical and legal professions and it can reasonably be assumed that it is a book commonly offered for sale within the meaning of section 60 of the Indian Evidence Act. That section in fact uses the word "treatise" but the meaning ascribed to that term in the Shorter Oxford English Dictionary is wide enough to include a book on a particular subject.

The only passages, among those referred to, which in our opinion, merited consideration, were those which tended to provoke thought on the subject of Dr. Rogoff's inferences as to the time of death, arising from his microscopic examination of the tissue from the two wounds. The more important passage is in Gordon Turner & Price at p. 608 :-

"It may be possible on naked-eye examination to state that a wound is ante-mortem in origin if it shows evidence of a marked inflammatory reaction. In cases of doubt an ante-mortem wound must be distinguished from a post-mortem wound by a microscopic examination for evidence of tissue reaction. Although margination and a limited emigration of leucocytes may occur

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in tissues in response to injury after somatic death, marked cellular exudation and reactive changes in the tissue cells are seen in ante-mortem wounds only. The absence of tissue reaction, however, does not necessarily indicate that a wound was post-mortem in origin. There may have been insufficient time before death for the development of tissue reaction, or, in the case of small wounds, the reaction may have terminated in resolution. In small wounds such as small contusions, the degree of cellular injury may have been insufficient to elicit an appreciable leucocytic exudation, while in severe injuries the associated circulatory failure may have interfered with the normal reaction."

Prima facie this indicates that in the opinion of the authors the test of absence of tissue reaction, of which Dr. Rogoff gave evidence, is not necessarily a conclusive one.

In Forensic Medicine by Keith Simpson, there is the following passage in the section relating to injuries to the body after death, at pp.15-16:-

"All such injuries have one thing in common: they lack a vital reaction. Abrasions to the cutis are sharply defined, becoming brown as the raw grazed skin tissue dries, and hardening like parchment. No local flushing is present, for the vessels being dead are incapable of such vital change.

Post-mortem blistering can occur from exposure to heat, for dead tissue fluids may be swollen by heat or even boiled raising cuticular weals.

As regards bruising after death, there can be no doubt that it is possible. Heavy blunt injury can tear dead vessels and open up tissue spaces into which blood may seep passively. Such extravasations of blood will not extend far, and the difficulty of distinguishing them from ante-mortem bruises is seldom great.

It is fair to add, on the contrary, that when injuries occur closely at or about the time of death it may be impossible to say whether they occurred just before, at, or about the time of death. An opinion that they took

place 'at about the time of death' is the most than can safely be offered. The blood remains fluid for some time - indeed may never clot at all, and may percolate into spaces opened up by injury, at, or after, death."

Counsel for the appellant relied upon the sentence which commences, "It is fair . . . . . ". The opening sentence of the passage quoted supports Dr. Rogoff's view, except as to the period of fifteen minutes mentioned by him; but the whole passage is in such general terms, that it would be unwise to seek to draw from it anything specifically referable to the present problem.

Having considered these passages, of which only that quoted from Gordon Turner & Price appeared materially to conflict with the evidence of Dr. Rogoff; we thought that though, in all the circumstances, we might justifiably refuse to attach any weight to the new material, our proper course, in a capital case, was to call Dr. Rogoff before this court, under rule 42 of the Eastern African Court of Appeal Rules, 1954, for further cross-examination. We so ordered, (though with reluctance as a departure from normal practice was involved) in order that the omission to put these passages to him as an expert witness in the lower Court, might be remedied.

On the 11th November, 1960, the further evidence of Dr. Rogoff was accordingly taken before this Court. Except in a matter which we do not consider material he adhered to what he had said in the Supreme Court. He did not put forward the period of a quarter of an hour after death (as the earliest at which the wounds in question could have been inflicted) as a rigid minimum. It was more of an elastic period and fifteen minutes was an average; it had never been put to him in the Supreme Court that it might be a little more or less. He was quite sure that the shortest possible period would be ten minutes; in every wound of the kind in question, microscopic examination would reveal a reaction if it had been inflicted within ten minutes after death. He agreed with what was said in Forensic Medicine, by Keith Simpson, that "when injuries occur closely at or about the time of death it may be impossible to say whether they occurred just before, at, or about

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the time of death." The period of difficulty in the witness's view was between a quarter of an hour before and a quarter of an hour after death. The passage above quoted from Medical Jurisprudence by Gordon Turner and Price was put to him. He did not agree with the statement that the absence of tissue reaction did not necessarily indicate that a wound was post-mortem in origin. This was a proposition which emerged in 1952 and was generally accepted by the profession in South Africa up to about 1956. He did not agree with the statement because it was in conflict with the earlier part of the same passage, by reason of his own experience and by reason of subsequent publications on the subject. The conflict referred to was to be found in the contrast between the statements (a) that margination and a limited emigration of leucocytes may occur in tissues in response to injury after somatic death and (b) that there may have been insufficient time before death for the development of tissue reaction. We understand the point to be that if tissues can react from an injury after somatic death the fact that an injury was inflicted a very short time before somatic death should not prevent the development of reaction. The witness did not agree either with the statement that in severe injuries, associated circulatory failure may have interfered with the normal reaction. In Dr. Rogoff's opinion the degree of inflammatory changes shown by injured tissues has been proved experimentally to be completely unrelated to the degree of failure of circulation.

Having considered this evidence we do not think that we ought to be influenced against accepting it, or to say that the learned trial judge erred in accepting Dr. Rogoff's evidence in the Supreme Court, by the passage relied upon by counsel for the appellant in the text book by Gordon Turner and Price. We have, on the one hand, general statements in a text book published seven years ago; the science of medicine is a living science and we cannot tell whether the authors, at the present time, would or would not adhere to the opinion expressed. On the other hand we have an expert witness of considerable experience, dealing with a particular problem, and basing himself upon experience and recent medical study. Though he conceded a minimum

period of ten minutes instead of the fifteen minutes mentioned in the Supreme Court, this is not sufficiently material to affect the reasoning of the learned trial judge.

We now return to counsel's argument that the evidence as a whole should have left the learned judge in doubt as to whether the wounds were inflicted before or after death. The learned judge had before him a certain amount of evidence, to which we have already referred, that a heartbeat in the deceased was discernable at a time subsequent to the infliction of the wounds. Such a state of affairs would be quite incompatible with Dr. Rogoff's evidence. He had also an uncertain estimate by Dr. Treadway as to the time of death. We should mention that the references by Dr. Treadway in his evidence to the possibility of fibrous tissue remaining alive for a long time after death, do not appear to us to conflict with the evidence of Dr. Rogoff; he was dealing with the minimum and not the maximum period of the life of tissue after somatic death. The learned trial judge preferred the opinion of Dr. Rogoff based upon microscopic examination to the other evidence which we have mentioned and we see no reason for saying that he was wrong. We are therefore unable to accept as a valid ground of appeal the submissions of counsel relating to the time of death.

We proceed now to counsel's argument that even upon the basis of the acceptance of Dr. Rogoff's evidence, the conviction ought not to be supported. In this part of our judgment we will have occasion to refer to the period of time which elapsed between the death of the deceased and the stabbing of her body. In so doing we will refer to it as "a quarter of an hour" as being consistent with Dr. Rogoff's evidence generally, though Dr. Rogoff's evidence before this Court indicates that it may conceivably have been only ten minutes. We do not consider that the difference is material. Counsel's argument was that the learned judge resorted to a great deal of theory and speculation, and in doing so failed to appreciate that it was insufficient to show that no one else could have committed the crime, but that the evidence must show that the appellant did commit it. He relied on R. v. Wallace, 23 Cr. App. R.32. as indicating that a court is not concerned with suspicion, however grave, or theories, however ingenious.

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That principle, however, does not detract from the fact that it is the bounden duty of a judge in dealing with circumstantial evidence, to consider every possible set of circumstances, in the process of determining, as he must, whether the evidence is incapable of explanation upon any other reasonable hypothesis than that of the guilt of the prisoner. He must examine every other reasonable possibility and test it against the evidence - only if it is incompatible with the evidence may he discard it.

That is the approach adopted here by the learned trial judge and in a long and careful judgment he set out his reasons for eliminating various possibilities. In addition to accepting Dr. Rogoff's evidence that the stab wounds were inflicted at least a quarter of an hour after death, he made another basic finding of fact. It was that the deceased had urinated in her bed, the mattress of which was stained with what appeared to the Government Analyst to be a complete micturition. He accepted the medical evidence that only a very small quantity of urine was found in the bladder of the deceased, that it is abnormal to find such a small quantity, and that micturition is a normal reaction in about ninety per cent of deaths by asphyxia. The trousers of the deceased, when she was found, were properly tied, but her trousers and underpants were wet with urine. The learned judge found on this evidence that it would be reasonable to expect to find traces of urine upon the place where the deceased had been asphyxiated. The police saw no stains other than those of blood, in the yard or lavatory. The learned judge said :-

"Had she been attacked when she was in the toilet then one could expect to find traces of urine on the floor, for if the urine went on to her clothing, and her trousers were found to be properly tied, it seems impossible that the remainder could gave gone into the closet leaving the floor dry. If the micturition was on the murram where she was found, on the concrete where she was first placed, or on the floor of the room, signs of it should have been found, for Chief Inspector Shaw was there about 2½ hours after Ajeet was found and the blood found on the murram was then found to be still wet. The only reasonable conclusion is that Ajeet urinated whilst

in her bed, as Mr. Bradwell (P.W.2), the Government Analyst, said there appeared to have been a complete micturition passed on the mattress that had been on Ajeet's bed, though of course it is possible that the child Amarjeet also urinated on the mattress during that night."

Counsel for the appellant submitted that the absence of traces of urine in the courtyard and lavatory were inconclusive, particularly in the absence of any scientific tests of the murram where the deceased was found. In our opinion the evidence as a whole amply supports the view of the learned judge.

The evidence against the appellant, was, basically that he had started the night in the same bedroom as his wife. According to his own unsworn statement he has sexual intercourse with her at about 10.45 or 11 p.m. and the medical evidence showed that she had in fact had sexual intercourse just before death. There were internal bruises to her neck and chest which could have been caused in a number of ways - the simplest way, in Dr. Rogoff's opinion, being pressure from an elbow or a knee on her chest and hands on her throat. There were no bruises on her back, and the presence of bruises could be expected if she had been asphyxiated on a rough or rocky surface; murram, in Dr. Rogoff's opinion, would be expected to cause damage to skin and tissues, and concrete, more generalised bruising. The expectation of back bruising on a hard surface was based on the necessity of there being resistance at the back in order that sufficient pressure be put on the front (chest and neck) to cause asphyxia. The evidence pointing to the deceased having urinated in the bed (already discussed), combined with the absence of back bruising pointed to strangulation in bed. The child in the room can be disregarded as a possible aggressor. The gap of at least a quarter of an hour between the asphyxia and the stabbing is consistent with the body of the deceased having been removed from her bed to the murram courtyard in the meantime. There was no trace of blood in the bed or bedroom. There were no signs of forcible entry into the flat. A partly completed blouse, which the deceased had been sewing, and which was in the bedroom the

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previous evening, was found a little distance outside the courtyard. Four gold bangles had been removed from the arm of the deceased, but a steel one, having religious significance, had been left, as had two gold ear-rings. Her head-dress and one shoe were found in the toilet and one shoe in the courtyard.

The learned judge examined the various possibilities which occurred to him, and we will give a brief analysis of this part of his judgment. First if, in spite of the evidence that the deceased was asphyxiated in her bed, she had put on the light and gone to the courtyard and toilet, and had been attacked after leaving the flat, the learned judge said :-

(a) One would expect to find some sign of micturition where she was attacked.

(b) It is unlikely that the intruder would distinguish between the gold and steel bangles when he removed the bangles, or that he would leave the ear-rings.

(c) There could be no reason for an intruder to go into the flat and bedroom and remove a partly completed blouse.

(d) There could be no reason for the intruder waiting a quarter of an hour or more before stabbing the deceased.

(e) It would be reasonable to expect signs of a struggle if she was strangled on the murram where she was found.

The learned judge also referred to the blood-stained head-dress being found in the toilet, and that the stains must have got upon it at least a quarter of an hour after death - it would appear however, that, though there was evidence that the head-dress was first seen in the toilet, the witness did not say it was bloodstained. It was produced and was in fact bloodstained, but there was no evidence about the stains. The learned judge, having seen it, may have taken the view that it could not have been stained by accidental contact with some bloodstained object after being found, but the evidence is silent upon the point.

The learned judge then considered the possibility that the deceased was attacked by an intruder or intruders while in bed. If so, she must have been carried out to the murram. He reasoned :-

(a) Would an intruder take out her shoes, and head-dress, which was under her pillow, in the circumstances that the light was on, and the accused and a child in the room.

(b) Would the intruder, having asphyxiated the deceased in the bed, and carried her outside, stab her a quarter of an hour later, and then put on the light in the toilet and place the headdress and shoe therein and another shoe in the yard, leaving also a light in the bedroom?

(c) Would the intruder carry away the partly completed blouse?

The learned judge considered also the possibility of the intruder being an inmate of the flat itself, and was of the opinion that, though the deceased might not be so likely to have raised an alarm if she saw a person known to her, the assailant would have had to encounter all the hazards which would have faced an intruder from outside, in addition to having to unlock and open the verandah door and after having placed the body and various articles in position, including the blouse, would have had to return to the flat.

The learned judge did not consider on the evidence, that either of the two possibilities which we have mentioned, were reasonable possibilities, and rejected them. He also referred to other possibilities, rather more remote, which we do not deem it necessary to deal with here.

Counsel for the appellant called attention to a number of points in favour of the appellant. There was no knife found on the scene and none was missing from the house. There was no blood found on the appellant's clothing. The existence of two wounds - one small and one large - was consistent with an intruder having first threatened the deceased by holding a knife against her and then having stabbed her. It appears to us that there is nothing in the second and third

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of these points if the wounds were inflicted a quarter of an hour or more after death. As to the first, there was at least time to wash a knife, if not to dispose of it by other means.

Upon the basis of the acceptance of the medical evidence that the wounds were inflicted at least a quarter of an hour after death, and having regard to the strength of the evidence that the deceased was asphyxiated in her bed and later carried out and stabbed in the murram portion of the courtyard, we are of opinion that the learned judge was justified when he found it proved beyond reasonable doubt that the appellant was the assailant.

At the hearing of the appeal the court raised the query whether, even accepting that the death had been caused by the appellant, the evidence was sufficient to establish beyond reasonable doubt that the appellant intended to cause death or grievous bodily harm or knew that his act would probably cause death or grievous harm, so that his crime would be murder. This was a matter not relied upon by counsel for the appellant in the memorandum of appeal or in his argument before this Court. That does not relieve us from the necessity of considering it, particularly having regard to the principle that circumstantial evidence must exclude all reasonable possibilities save that of guilt. The learned judge considered the question and mentioned the medical evidence indicating that the deceased had had sexual intercourse shortly before her death and the appellant's statement that they had had intercourse at about a quarter to eleven or eleven p.m. He quoted the following medical evidence :-

"In cross-examination, Mr. Treadway was asked about four diseases or disabilities which Ajeet may have been suffering from, which I have referred to, and the evidence was then as follows: 'Q. If such a woman were then to be embraced violently during coitus could it cause compression of the chest that might lead to asphyxia? A. I imagine it would need to be extremely violent. Q. In a person who was suffering from these four things, if she were embraced during a sexual embrace, she would need less force to cause asphyxia? A. Yes. Q. A highly excited sexual embrace could cause

this compression of the chest? A. Yes, conceivably. Q. And could also cause shock and haemorrhage? A. I find that very hard to believe'. Then Dr. Rogoff was asked in cross-examination, 'The compression of the chest could have been caused by a violent sexual embrace?', and Dr. Rogoff replied, 'It is difficult to imagine it in the normal way'."

That of course, is not the whole of the medical evidence and relates particularly to the chest pressure. Dr. Rogoff also said :-

"As regards the neck and chest, the injuries could have been caused by the hands being on the throat and the knee or elbow on the chest, this would be the simplest way of causing it. The injuries to the neck and chest were, in simple language, internal bruises caused by pressure which could have been applied in all sorts of ways. I just give the simplest way in which they could be caused. Such pressure would be fatal if enough was used over a sufficiently long period of time also to cause the heart to stop beating."

There were no external marks upon the throat of the deceased and, though the medical evidence indicates that marks may or may not be left by a strangler, we think that the absence of marks indicates that there was no violent struggle and is more consistent with a firm pressure. In our opinion, these injuries are quite consistent with the appellant having killed his wife during or just after a sexual embrace, applying pressure in an excess of sadism to frighten or torment her, or to overcome resistance. The learned judge said :-

"the accused made an unsworn statement in which he said that on that night he had intercourse at about a quarter to 11 p.m. or 11 p.m. If the evidence I have referred to related to this intercourse, be it later; and death from asphyxia took place during it, would the accused replace Ajeet's drawers and trousers? Would they then have been dry? It would appear to be unlikely. However, whether it was during intercourse or whilst Ajeet was just lying in her bed, to strangle one's wife is murder, be it to stifle her complaints because

In the Court of Appeal for Eastern Africa

No.27

Judgment (a) Gould, J.A. (Concurred in by O'Connor, P. and Crawshaw, J.A.),

28th November 1960 - continued.

she objects to intercourse, or refuses to submit to it, or even, she having consented to intercourse, the accused strangled her to gratify his lust".

We are, with respect, unable to agree with all that is said in that passage. To strangle one's wife is only murder if the act of strangulation is done with the intention of killing or doing grievous harm or with knowledge that the act will probably cause death or grievous harm - section 202 of the Penal Code. We do not think that the circumstantial evidence eliminates as a reasonable possibility that the appellant did not have such an intention or such knowledge, but caused a great deal more harm than he intended or anticipated. The learned judge considered it unlikely that the appellant would have replaced the trousers of the deceased in such circumstances, or that they would have been wet. Why not? The trousers could have been left in the bed during sexual intercourse and become wet in that way. Before taking the body outside to simulate death by an attack by an intruder the appellant could be expected to replace the trousers and underpants. With respect we are unable to agree with the reasoning of the learned judge on this particular matter. The evidence of the relations between the appellant and the deceased shows that they lived a happy married life. The deceased was pregnant and no motive whatever has been shown for an intentional killing.

In all the circumstances we are of opinion that the evidence did not exclude the reasonable possibility that the appellant killed his wife by an unlawful assault but without the intent necessary to constitute legal malice. The fact that such a case was not relied upon in the Supreme Court or before this Court does not relieve either Court from considering it: Mancini v. Director of Public Prosecutions (1942) A.C.1. The learned judge in the Supreme Court, did consider it and he rejected it, but, taking the view of the evidence most favourable to the appellant, we have reached a different conclusion.

For these reasons the appeal is allowed, the conviction of murder is quashed and the sentence passed by the learned judge set aside; in lieu thereof the appellant is convicted of manslaughter contrary to section 198 of the Penal Code and sentenced to imprisonment for eight years.

Dated at Nairobi this 28th day of November, 1960.

K.K. O'CONNOR. PRESIDENT.

T.J. GOULD. JUSTICE OF APPEAL

E.D.W. CRAWSHAW. JUSTICE OF APPEAL

In the Court of Appeal for Eastern Africa

No.28

Order,

28th November 1960.

No.28

ORDER

IN HER MAJESTY'S COURT OF APPEAL FOR EASTERN AFRICA
AT NAIROBI

CRIMINAL APPEAL NO. 112 OF 1960

BETWEEN

SHARMPAL SINGH S/O PRITAM SINGH — APPELLANT

AND

THE QUEEN — RESPONDENT

(Appeal from the conviction and sentence of H.M. Supreme Court of Kenya at Kisumu (Mr. Justice James Wicks) dated 3rd day of June, 1960, in

Criminal Case No. 117 of 1960

Between

The Queen — Prosecutrix

and

Sharmpal Singh s/o Pritam Singh — Accused)

In Court this 28th day of November, 1960.

Before the Honourable the President (Sir Kenneth O'Connor) the Honourable Mr. Justice Gould, a Justice of Appeal and the Honourable Mr. Justice Crawshaw, a Justice of Appeal.

THIS APPEAL coming on for hearing on the 1st and 2nd day of September 1960 in the presence in custody of the appellant AND UPON HEARING Clive Salter Esquire of Her Majesty's Counsel and A.R. Kapila Esquire of counsel for the appellant and K.C. Brookes Esquire of counsel for the respondent it was ordered that the appeal do stand for judgment and it thereafter becoming necessary to hear further medical evidence and upon hearing on the 11th day of November 1960 the additional evidence of Dr. M.G. Rogoff it was ordered that the appeal do stand for judgment and upon the same coming for judgment this day IT IS ORDERED that this appeal be allowed in part and that the conviction for murder and the sentence of death passed thereupon be set aside and that in lieu thereof the appellant do stand convicted of manslaughter and be sentenced to imprisonment for

In the Court of Appeal for Eastern Africa

No.28

Order,

28th November 1960 - continued.

eight (8) years.

GIVEN under my hand and the Seal of the Court at Nairobi the 28th day of November, 1960.

M.D. DESAI.

ASSOCIATE REGISTRAR.

Extracted on 28th November 1960.

No.29

In the Privy Council

No.29

Order in first Appeal granting special leave to appeal to Her Majesty in Council,

26th June 1961.

ORDER IN FIRST APPEAL GRANTING SPECIAL LEAVE TO APPEAL TO HER MAJESTY IN COUNCIL

At the Court at Buckingham Palace.

The 26th day of June 1961

PRESENT

THE QUEEN'S MOST EXCELLENT MAJESTY

Lord President	Sir Eric Harrison
Earl St. Aldwyn	Mr. Vosper
Lord Craigton	Sir Philip McBride
Mr. Secretary Amery	Sir John Vaughan-Morgan

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 12th day of June 1961 in the words following viz:-

"WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a Petition of Your Majesty in the matter of an Appeal from the Court of Appeal for Eastern Africa between Your Majesty Petitioner and Sharmpal Singh son of Pritam Singh Respondent setting forth: that the Petitioner prays for special leave to appeal to Your Majesty in Council fromthe Judgment and Order of the Court of Appeal for Eastern Africa dated the 28th November 1960 whereby the Respondent's Appeal from a Judgment dated the 3rd June 1960 of the Supreme Court of Kenya was allowed and his conviction of the murder of his wife was quashed and the death sentenced passed by the said Supreme Court set aside and a conviction of manslaughter and a sentence of eight years imprisonment substituted therefor: And humbly praying Your Majesty in Council to grant the Petitioner special leave to appeal from the Judgment and Order of the said Court of Appeal dated the 28th November 1960 for further or other relief:

"THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and in opposition thereto Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted

In the Privy Council

No.29

Order in first Appeal granting special leave to appeal to Her Majesty in Council,

26th June 1961 - continued.

to the Petitioner to enter and prosecute the Appeal against the Judgment and Order of the Court of Appeal for Eastern Africa dated the 28th day of November 1960:

"AND Their Lordships do further report to Your Majesty that the proper officer of the said Court of Appeal ought to be directed to transmit to the Registrar of the Privy Council without delay an authenticated copy under seal of the Record proper to be laid before Your Majesty on the hearing of the Appeal upon payment by the Petitioner of the usual fees for the same".

HER MAJESTY having taken the said Report into consideration was pleased by and with the advice of Her Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

Whereof the Governor or Officer administering the Government of Kenya for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

W. G. AGNEW.

No.30

Order in second Appeal granting special leave to appeal to Her Majesty in Council,

26th June 1961.

No.30

ORDER IN SECOND APPEAL GRANTING SPECIAL LEAVE TO APPEAL TO HER MAJESTY IN COUNCIL

At the Court at Buckingham Palace

The 26th day of June 1961

PRESENT

THE QUEEN'S MOST EXCELLENT MAJESTY

Lord President	Sir Eric Harrison
Earl St. Aldwyn	Mr. Vosper
Lord Craigton	Sir Philip McBride
Mr. Secretary Amery	Sir John Vaughan-Morgan

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 12th day of June 1961 in the words following viz:-

In the Privy Council

No. 30

Order in second Appeal granting special leave to appeal to Her Majesty in Council,

26th June 1961 - continued.

"WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of Sharmpal Singh son of Pritam Singh in the matter of an Appeal from the Court of Appeal for Eastern Africa between Sharmpal Singh son of Pritam Singh Petitioner and Your Majesty Respondent setting forth: that the Petitioner prays for special leave to appeal in forma pauperis to Your Majesty in Council from the Judgment and Order of the Court of Appeal for Eastern Africa dated the 28th November 1960 allowing the Petitioner's Appeal from the Judgment of the Supreme Court of Kenya dated the 3rd June 1960 and quashing his conviction of the murder of his wife and setting aside the sentence of death and in lieu thereof convicting the Petitioner of manslaughter and substituting a sentence of eight years imprisonment: And humbly praying Your Majesty in Council to grant the Petitioner special leave to appeal in forma pauperis from the Judgment and Order of the Court of Appeal for Eastern Africa dated the 28th November 1960 and for further or other relief:

"THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and in opposition thereto Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioner to enter and prosecute his Appeal in forma pauperis against the Judgment and Order of the Court of Appeal for Eastern Africa dated the 28th day of November 1960:

"AND Their Lordships do further report to Your Majesty that the proper officer of the said Court of Appeal ought to be directed to transmit to the Registrar of the Privy Council without delay an authenticated copy under seal of the Record proper to be laid before Your Majesty on the hearing of the Appeal upon payment by the Petitioner of the usual fees for the same".

HER MAJESTY having taken the said Report into consideration was pleased by and with the advice of Her Privy Council to approve thereof

In the Privy Council

No.30

Order in second Appeal granting special leave to appeal to Her Majesty in Council,

26th June 1961 - continued.

and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

Whereof the Governor or Officer administering the Government of Kenya for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

W. G. AGNEW.

No.31

Order for Consolidation,

1961.

No.31

ORDER FOR CONSOLIDATION

(SEPARATE DOCUMENT)

E X H I B I T S

Exhibits

P

P - STATEMENT OF SHARMPAL SINGH

Statement of Sharmpal Singh, 29th February 1960.

Cr.C.No.117 of 1960 Exhibit No.P.

Date and Time and Place: 29.2.60. 10.30 a.m. C.I.D.

SHARMPAL SINGH s/o PRITAM SINGH
c/o Upkar Singh,
Kibuyu,
Kisumu.

states:

I am a male adult Singh aged 20 years, and I live with my brother-in-law at Kibuyu, Kisumu. I am employed as a clerk at Kassim's Auto Service, Kisumu. In April 1959 at Caonke, Post Office Attari, Amritsar, East Punjab, India, I was married to Ajit Kaur. Before the marriage I did not know the girl, it was arranged by Sikh custom In June 1959, she returned to Kenya with her father, and then returned to India in October 1959 together with her father and her eldest brother. We all then returned to Kenya on 29th December 1959. I then came to Kisumu with my wife and lived with my brother-in-law UPKAR SINGH. We all shared one flat. In one room, I and my wife sleep on separate beds, and in another room sleep my brother-in-law, his wife and one child. The other child sleeps in my wife's bed.

On the 29th February 1960, at about 2.30 a.m. or 3 a.m., I woke up and got out of bed. I then went to the door leading to the compound and found that it was locked. I unlocked it with the key which is left in the lock. I put on the light in the courtyard. I opened the door leading to the compound which makes a lot of noise on being opened. I then went into the toilet in the courtyard and urinated. I then went back into the house and shut the door. I then locked this house door with the key, I left the key on the lock, and then put off the courtyard light I then returned to my bed and slept. I did not hear my wife leave the room. I was then woken up by UPKAR SINGH and his wife who came running into my room and who then woke me. He said to me "Come out Jiti is lying outside". I got up and went out, and I saw three of the house boys also come

Exhibits
P
Statement of Sharmpal Singh, 29th February 1960 - continued.

out of their houses. I saw my wife was lying on the ground near to the drain on her back, and I saw that her front was covered in blood. We then picked her up and brought her into the verandah of the house. Then Upkar Singh told his wife to spread out a cloth in my bedroom, and we then carried my wife into her bedroom and put her on this cloth on the ground, and then covered her over with a blanket. I do not think that my wife was then alive as her hands and feet were too cold. Her hands were soft but semi-clenched. She was pale in colour. Then a neighbour brought an electric blanket and put it under her to warm her; it was switched on. Then her soles of the feet, and palms of her hands were rubbed with hot ghee. By this time Upkar Singh had gone to bring the doctor. The Doctor came and examined the wound and the pulse of my wife, and felt her stomach, and he ordered her to be taken to hospital. She was then put into the car of Upkar Singh and he and his wife took her to hospital. I stayed behind to watch the two small children as Upkar Singh told me to stay.

I have been shown a coloured jacket. This belongs to my wife. Yesterday evening she was making it and sewing it. At about 8 p.m. last night I saw it on a chair in our room near to the door, at the foot of her bed. When she went to bed she was not wearing it. There was another piece of cloth of the same material, it was in the baby chair in the same room. This piece is still there. Since we came to Kisumu my wife has had no troubles with any of the Asians. My wife was expecting a baby. The baby was due in another six months. She has not been under any doctor. I was the father of this child.

When I went out to the toilet, I did not see anyone, or hear any noise. About three or four days ago, one night at about 10 p.m., when I went to the lavatory, I saw three men standing in the courtyard near to the old car. I thought that they may be from the boys quarters, and I went to the toilet. When I came out these men had gone. I then went and knocked at the boys quarters and found that the boys were inside. Our neighbours have also seen them. I can not recognise them again if I see them. I did not tell Upkar Singh that a short time after I returned to bed my wife went out. I was asleep

Exhibits

P

Statement of Sharmpal Singh, 29th February 1960 - continued.

and did not hear her go out.

This has been read over and is true.

R.O.C. sgnd. Sharmpal Singh.
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Statement interpreted from the Punjabi and English language to the best of my skill, knowledge and belief.

M.S. Mougal.

A.I. Mougal.