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IN THE PRIVY COUNCIL

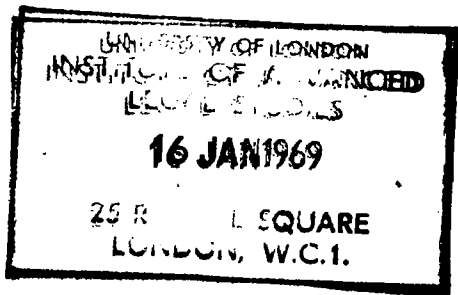
ON APPEAL FROM THE COURT OF CRIMINAL APPEAL  
OF THE SUPREME COURT OF GUYANA

B E T W E E N :

DEOKINANAN Appellant

- and -

THE QUEEN Respondent



CASE FOR THE APPELLANT

10 1. This is an appeal in forma pauperis by Special  
Leave of the Judicial Committee granted upon the 27th  
day of April 1967 from the judgment of the Court of  
Appeal of Guyana (Stoby, C. and Luckhoo, J.A.;  
Cummings, J.A. (Ag) dissenting) dated the 20th day of  
December 1966, which dismissed an appeal from the  
judgment of the Supreme Court of British Guiana  
(Criminal Jurisdiction) (Persaud, J. and a jury)  
dated the 23rd day of November 1965, whereby the  
20 Appellant was convicted of murder and sentenced to  
death.

2. The question raised on this appeal is whether a  
statement made by the Appellant whilst on remand in  
custody after having been charged, was admissible in  
law, and if so, whether it ought to have been  
excluded from evidence, having regard to the manner  
in which it was obtained.

3. The Appellant and the Respondent are hereinafter  
referred to respectively, as "the accused" and "the  
prosecution".

30 4. The indictment charged the accused with the  
murder of Nottie Singh, hereinafter referred to as  
"the deceased", between the 23rd and 24th days of  
October 1963, on the high seas within the jurisdiction  
of the Admiralty of England. The trial commenced on  
the 1st of November 1965 and concluded upon the 23rd  
of November 1965 (a previous trial was quashed by the  
Court of Appeal upon a point of jurisdiction).

5. Evidence was given for the prosecution that one Raghubar was a sawmiller at Crabwood Creek at the mouth of the River Corentyne which separates Guyana (formerly British Guiana) from Dutch Guiana. He had three launches, "Ganges", "Majestic" and "Miss Carol" in which his employees would travel up-river for the purpose of buying logs which would then be floated down-river to the mill. The deceased was employed by Raghubar by whom he would be given sums of money for log purchase. The deceased in turn would employ the other members of the crew. On the 15th day of October 1963 the deceased left Crabwood Creek in the "Miss Carol" with a crew of three, namely, the accused, Heera and Dindial. The deceased was given Two thousand dollars by Raghubar for purchasing logs. 10

6. The deceased and the crew were seen by a witness called Nanka Pinter on the following day at a place called Acabo which is about 150 miles south of Crabwood Creek on the Dutch side of the river. They were joined by Raghubar in the launch "Majestic" and he testified (inter alia) that he gave the deceased additional funds comprising Three thousand dollars and One thousand Dutch guilders. Raghubar left on the 22nd day of October 1963. The remaining four men were seen the following day by witnesses named Douglas and Milne at Apora Stelling which is fifty miles north of Acabo on the Dutch side of the river. A witness called Shirin Ally stated that she heard a boat's engine which she recognised as being that of the "Miss Carol" between 11.30 p.m. and midnight of the same day. She was on the Guyana bank of the river and stated that she heard a man's voice and a splash as if some object had been thrown overboard. In summing up to the jury the learned trial judge emphasised that the evidence of Shirin Ally should be treated with caution. 20 30 40

7. Further evidence was given by Claude Chung that at 6.30 a.m. on the 24th day of October 1963 the accused came to his farm at Sunrop on the Guyana side of the river in the vicinity of Powis Island and stated that he wanted to be taken to Crabwood Creek. He had been coming

down-river with three other men in the "Miss Carol" the previous night and the launch had been in a collision near Maam Island. He was the sole survivor. Chung declined to transport the accused but about one hour later two men, Jawalla Persaud and Arjune Rama arrived at Chung's farm and they took the accused to Crabwood Creek. The accused told them about the collision and after seeing Raghubar, made a written statement to the Police later the same day. It was commented upon both at the trial and by the Court of Appeal that the accounts given by the accused during this day varied in detail.

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8. Evidence was also given by two Amerindians called Shadruck Castello and Clinton Alexander that they went to Powis Island about 5 a.m. on the 24th day of October 1963 and heard footsteps and a bubbling noise. They found a fuel drum floating on the river which was identified at the trial as being similar to one of three which had been aboard the "Miss Carol".

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9. On the 25th day of October 1963 a search was begun of the Corentyne River. Apart from the Police, the participants included Raghubar, Ganesh Persaud (son of the deceased) and a logger called Balchand. On the following day the bodies of the deceased and Heera were found in the river near the Dutch bank and the body of Dindial was found on the Guyana side. The medical evidence was that all three bodies had serious incised wounds which were the cause of death and not drowning. The search party went to Powis Island on the 28th day of October where they were joined by Shadrack Castello and Clinton Alexander. Oil was observed upon the water and on the 31st day of October the "Miss Carol" was salvaged from this spot. When examined, the launch did not appear damaged as though involved in a collision but the anchor and chain, cutlasses and the sea cork (which was later found in the vicinity of the stern) were among the items that were missing.

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10. A witness called Balchand gave evidence of being a member of the search party. The Police had hired his boat. When the bodies were found he said that the accused attempted to speak to him but this was prevented by P.C. Ramjattan who, when he gave

evidence, explained that he did not consider that it was in the interests of justice for anybody to speak to the accused. According to Balchand, but this was not corroborated, the accused's brother spoke to him on the 3rd day of November 1963 as a result of which the witness went to New Amsterdam Prison where after seeing a prison officer, he spoke to the accused in a waiting room. The evidence continued:-

"Accused said to me, 'Bal man, ah glad you come, I want to see you very important.' I asked him what was it all about so important. He said that he wanted me to help him because he knew I had an engine and a boat. I asked him what I could do to help him. He said that he got the money in Powis Island, and he wanted me to go to the Island. The prison officer was patrolling behind the accused, and he changed the conversation. In the presence of the accused, the prison officer said that time was up. I then left the prison." 10 20

11. Balchand continued by saying that he went to Springlands Magistrates' Court where he saw P.C. Ramjattan who gave him "certain instructions". On the 12th day of November he went to Whim police station where he spoke to Sergeant Barker. He then went to the lock-ups and the accused was brought in. At this point an objection was made by counsel for the Defence. 30

"on the ground that the statement allegedly made by the accused was not voluntary, but induced by a promise to assist the accused held out by the witness with the knowledge and consent of a person in authority, that is to say, Sergeant Barker, and that the circumstances were such that the police created in the mind of the accused that he was free to speak voluntarily to a man who they knew had promised to assist the accused." 40

The Jury then retired whereupon Balchand continued his evidence very briefly, only saying that he told

the accused he would assist him by going for the money and also promised he would go to his father-in-law. Finally, Balchand stated he was given "certain instructions" by Sergeant Barker.

10 12. Balchand was then cross-examined in the absence of the Jury when he stated (inter alia) that he had promised to get the money; he would keep one thousand dollars for himself and give the balance to the accused's father-in-law who he would ask to find the "buck men" (the two Amerindians, Castello and Alexander) and give them money not to say anything. He told the accused he was in the lock-ups on a warrant for a fine which was not true. He explained to the Court that he had been placed in a cell by Sergeant Barker as he told him he wanted a place to rest as he was tired. (This, also, was not true.) After he left the lock-ups he spoke to Superintendent Scobrian. The cross-examination concluded:-

20 "At Whim I was waiting to see what information I could get from the accused with the intention to turn over the information to the police. I had formed the intention when the accused and I spoke at the New Amsterdam Prison. I believed that the accused would give me information only if I promised to help him. I told the police this. I did not promise the accused to get free of the charge."

30 13. No further evidence was called by the Prosecution in the absence of the Jury but the Defence called Sergeant Barker who stated (inter alia) that his intention was that Balchand would get information from the accused which he would relate to the police. He did not know of any previous promise of help made by Balchand who was with the accused for about an hour. The accused was not cautioned and was not told anything as he was taken to the lock-ups. The Sergeant knew that  
40 the accused was at Whim to be remanded. He had been charged by P.C. Ramjattan. No record was kept of the meeting with Balchand.

12. After submissions had been made by counsel on each side, the learned trial judge ruled that the

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statement was admissible. It is respectfully submitted that this ruling was incorrect in that the Prosecution had not established that the statement (which was not before the Court) was freely and voluntarily made but on the contrary, that it had been induced to be made on behalf of a person in authority, namely Sergeant Barker for whom Balchand was an agent. Further, that if, contrary to the accused's contention, the statement was admissible in law, it is further submitted that it should have been excluded in the discretion of the learned trial judge in view of the circumstances by which it was obtained and that at the time, the accused was in custody after having been charged with the offence. The learned trial judge does not appear to have considered the question of exclusion of the statement in his discretion.

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15. When the Jury returned, Balchand continued his evidence by giving the directions he had received from the accused on the whereabouts of the money on Powis Island. Balchand then asked him how the money got missing and how the bodies got drifted and the accused was said to have described how Dindial and Heera had a quarrel during which Dindial chopped Heera with a cutlass. The deceased went to assist Heera and the accused picked up his cutlass and chopped the deceased on his neck. The two of them (presumably the accused and Dindial) decided to tie the other two up and sink them with the boat anchor. At the end of this account Balchand then told the accused that he would try and assist to get the money. He then left the lock-ups and spoke to Superintendent Soobrian. On the 13th day of November he went to Raghubar and the police to Powis Island where Raghubar found the money. It was tied in a handkerchief under a tree root. It was wet and had been partially eaten by wood ants.

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16. Balchand, during cross-examination, stated he had received One thousand dollars from Raghubar after the first trial. This was for "working hard". He went on the "Majestic" on police instructions and had been

paid by the police for towing and salvaging. Before he went to New Amsterdam prison he gave a long statement to Inspector Chee-A-Tow. He expected to visit the accused again and tell the police what happened. He told the accused a lie about the reason for him being at Whim as he did not want the accused to know that the police had brought him there for the purpose of speaking to the accused.

10 17. P.C. Ramjattan gave evidence after Balchand and corroborated the fact that they had spoken together. He knew of the arrangement for the meeting on the 12th day of November at Whim Police Station and also knew that on that day the accused was to come up for remand at the Magistrates' Court as he had already been charged. He did not arrange this meeting himself but he had reported the meeting between  
20 himself and Balchand on the 7th day of November to Inspector Chee-A-Tow. The Inspector was not called as a witness.

18. The accused made the following statement from the dock:-

"I am innocent of this charge. This is the second time that Raghubar, Balchand and Ramjattan caused me to stand trial wrongfully.

30 The "Miss Carol" was registered in Dutch Guiana. She is a Dutch ship. I did not kill Motie Singh. That's all."

No witnesses were called on behalf of the Defence.

19. During the final speech of counsel for the Crown it was conceded "that the meeting between accused and Balchand was arranged by police, by P.C. Ramjattan." This was in contradiction to the evidence of that officer from whom it appeared by implication that the meeting had been arranged by the Inspector.

40 20. When in the course of his summing up the learned trial judge dealt with the evidence of Balchand, he described it as "very, very important"

and that the important part related to the alleged conversation with the accused. He reviewed the evidence of the two meetings and indicated that the second one was facilitated by the police in order to obtain evidence from the accused; also that if the narrative said to have been given by the accused to Balchand was accepted, the Jury may well feel that the Crown had established the charge quite clearly. He reminded them that he had ruled that the statement was admissible and also stated that the Jury were not thereby precluded:-

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"from determining whether or not a promise or favour was held out to the accused with the connivance or consent of the police. If you feel so, then you must reject the statement. If you have any reasonable doubt in your minds whether that is so or not, again you must reject it. But, if you feel that this was the case of a man speaking to his friend quite voluntarily, without any promise being held out by the police whether by themselves or through Balchand, then you will, of course, consider the statement and place whatever weight you feel it deserves, and if you find that that is so and you come to consider the statement, then of course you are entitled to examine that statement and to see whether that statement fits in with the other circumstances in this case."

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21. The learned trial judge returned later in his summing-up to this aspect of the case and dealt with the voluntary nature of confessions. He stated:-

"It must not be extracted by any sort of threats or violence nor obtained by any direct or implied promises, however slight, nor by the exertion of any improper thing."

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It is respectfully submitted that if this test had been applied by the learned trial judge at



the conclusion of the voir dire he should have ruled the alleged statement inadmissible bearing in mind particularly that the burden of proof remained on the Prosecution and that the only witness called for the Prosecution on the voir dire was Balchand.

10 22. The learned trial judge went on to say that as he understood the Defence, it was that the statement was made "because a promise of assistance, a promise of favours being shown to the accused in relation to the charge was made by Balchand on the instructions of the police to the accused." It is respectfully submitted that this was a misapprehension and that the statement was made as a result of a promise to recover the money. Further, the learned trial judge does not appear to have considered with the jury the position arising if they rejected the alleged statement and considered only the remainder of the evidence.

20 23. Upon the 30th day of November 1965 the accused filed a Notice of Appeal which contained eight grounds. The hearing of the appeal was primarily occupied with ground three which was as follows:-

"3. Inadmissible evidence in the form of an oral confession was wrongfully admitted by the trial judge without which the Defendant could not be convicted."

30 24. The appeal was heard on 22nd, 23rd and 26th days of September 1966 and the judgments of the last were delivered upon the 20th day of December 1966. In the course of his judgment the learned Chancellor dealt with the discretion of a trial judge in relation to confessions in the following passage:-

40 "A judge in his discretion can, if he thinks it necessary for the protection of an accused person, reject a confession although there has been compliance with the Judges' Rules; not an arbitrary rejection but a decision made because of some impropriety on the part of the prosecution; a trick practised on an accused, and so on. Conversely, where there has been a breach of the Judges' Rules, a judge if satisfied that a confession is

voluntary may still admit it. When one looks at the summing up and the direction given by the judge after he had admitted the confession it is obvious this experienced judge exercised his discretion judicially."

It is respectfully submitted that it does not appear that the learned trial judge considered the exercise of his discretion and if he had, that it should have been exercised against the admission of the statement in view of the circumstances under which it was obtained taking into account the matters referred to by the learned Chancellor in the passage quoted above who also stated that "in the past, judges have exercised their discretion and rejected confessions obtained by the exercise of a trick." 10

25. The learned Chancellor also considered whether Balchand was a "person in authority" and concluded that he was not but he does not appear to have considered whether Balchand was an agent of the police for the purpose of obtaining the statement. 20

26. In the course of his judgment concurring with the learned Chancellor, Luckhoo J.A. appeared to emphasise that to make a confession inadmissible, the inducement or promise must have reference to the charge against the Appellant and what he described as "merely collateral convenience or temporal advantage unconnected with the result of the prosecution" was not sufficient. He quoted from Taylor on Evidence and cited R v. Lloyd (1834) 6 C. & P. 393 but this reasoning has since been disapproved of by the House of Lords in Commissioners of Customs and Excise v Harz (1967) 1 All E.R. 177. The learned judge, apparently differing from the learned Chancellor in this respect, stated that he could find nothing in all the evidence relating to the conversation at Whim "From which it could be said that the Appellant was induced to speak by unfair or improper means." He also considered the 30 40

circumstantial evidence which he described as overwhelming.

27. The accused respectfully adopts the reasoning contained in the dissenting judgment of Cummings J.A. (Ag) in which he emphasised (inter alia) that the evidence of P.C. Ramjattan was not before the Judge at the voir dire and the concession made by the Crown upon this point was not made until after the conclusion of the whole of the evidence.

10 Balchand was a potential Prosecution witness who had become "a sort of private detective being used by the police"; "an ad hoc policeman" who became for the purpose of the rule of law, "a person in authority". The statement should have been excluded and its admission had "made a mockery of the Judges' Rules". The learned judge also pointed out that as the Jury were not told that they could convict the accused even if they rejected the confession, one could not know what attention, if any,

20 they may have paid to the circumstantial evidence and in these circumstances he considered that the conviction should be quashed.

28. The accused respectfully submits that this Appeal should be allowed and that his conviction should be quashed for the following (amongst other)

#### R E A S O N S

1. BECAUSE the confession made by the accused was wrongfully admitted in evidence or, alternatively, if it were admissible in law, it should have been excluded in the discretion of the learned trial judge having regard to the manner in which it was obtained.
  2. BECAUSE of the reasons given in the dissenting judgment of Cummings J.A.
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JOHN A. BAKER

Nb 19 of 1967

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OF CRIMINAL APPEAL OF THE  
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B E T W E E N :

DEOKINANAN Appellant

- and -

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C A S E

FOR THE APPELLANT

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