

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
16 JAN 1969
25 R. L. SQUARE
LONDON, W.C.1.

1.

IN THE PRIVY COUNCIL No. 19 of 1967
ON APPEAL FROM THE COURT OF APPEAL OF
THE SUPREME COURT OF GUYANA

B E T W E E N :

DEOKINANAN Appellant
- and -
THE QUEEN Respondent

CASE FOR THE RESPONDENT

Record

- 10 1. This is an appeal by Special Leave granted on the 24th May, 1967 from the judgment of the Court of Appeal of the Supreme Court of Guyana (Stoby, C., and Luckhoo, J.A., Cummings, J.A. dissenting) dated the 20th December, 1966 dismissing the Appellant's Appeal against his conviction on the 23rd November, 1965 in the Supreme Court of British Guiana (Criminal Jurisdiction) (Persaud J., and a Jury). The Appellant had been charged with, and was convicted of murder.
- 20 2. Briefly, the murder for which the Appellant was charged and convicted was that of one Motie Singh. Motie Singh, the Appellant, one Heera and one Dindial were occupants of a motor launch on a voyage on the Corentyne River, which separates Guyana from Dutch Guiana. Motie Singh had a considerable amount of money upon him. The launch foundered at night, and the Appellant was the sole survivor. According to statements made by the Appellant to various people, the launch was on its way downstream. He had been asleep when there was a collision (or explosion) and he found himself in the water. He had shouted, and then swam ashore to the Guyana side. The incident occurred in mid-stream opposite Maam Island, according to the Appellant. The launch was later recovered from the river bottom just off Powis Island, which is adjacent to the Guyana bank of
- 30

Record

the river. It showed no sign of collision or explosion. The sea cock and strainer were open, the electrical switches were in the "off" position, the engine was in neutral, and the compression was at "zero". The launch, when it started on its voyage, carried cutlasses. The body of Dindial, which had several incised wounds, was recovered from a spot some 25 miles upstream from Maam Island, on the Guyana bank. The bodies of Motie Singh and Heera, which also had incised wounds, were recovered from the Dutch bank, approximately opposite the spot where Dindial's body was recovered, but five miles away. 10

According to the medical evidence the wounds suffered by Motie Singh probably caused instantaneous death. The Appellant was taken into custody. According to the evidence of one Balchand, he was approached by the brother of the Appellant, who said that the Appellant wished to see him. He thereupon visited the Appellant in prison. The Appellant told Balchand that he wanted Balchand's help because he knew that the latter had a boat. The Appellant said he had the money in Powis Island and wanted Balchand to go there. Before the Appellant had time to give detailed directions a Prison Officer said that time was up and Balchand departed. By arrangement with the Police he was later put into a lock-up cell with the Appellant. He told the Appellant an untruth as to his reason for being in the cell. 20

The Appellant gave him specific instructions as to where the money was to be found on Powis Island and Balchand promised to go for it and dispose of it in the way directed by the Appellant. Balchand then asked the Appellant how the money "got missing". The Appellant said "we slipped out the money and hide it in the launch". Balchand then asked how the bodies "got chopped". The Appellant said that Dindial had caused the whole trouble. Motie Singh and Heera wanted to go to the Dutch Police Station to report the loss of the money. Heera and Dindial had an argument and Dindial chopped Heera with a cutlass. Motie Singh went to assist Heera and the Appellant picked up his cutlass and chopped Motie Singh. This evidence, which was admitted at the trial, was the only direct evidence that the Appellant had personally struck and killed Motie Singh. 30 40

3. The principal questions arising on this appeal are:

(a) As to whether the confession by the Appellant to Balchand was not made voluntarily and ought to have been excluded from the trial;

10 (b) As to whether the confession was obtained in breach of the Judges Rules, and if so, whether it ought to have been excluded from the trial by the Trial Judge exercising his discretion.

(c) As to whether, assuming the statement was made voluntarily and was not obtained in breach of the Judges Rules, it was obtained in such circumstances as to make its reception in evidence so unfair to the Appellant that the Judge in his discretion ought to have excluded it; and

20 (d) Whether, assuming the confession ought not to have been received in evidence, and ignoring it, the remaining evidence was such that a reasonable jury, properly directed, would have been bound to convict the Appellant of the offence with which he was charged.

4. Evidence was given for the Prosecution as follows:

30 (a) Sookhia said that she was the widow of Motie Singh and lived at Crabwood Creek, Corentyne. Her husband worked for one Raghubar, purchasing logs along the Corentyne River. On Tuesday the 15th October (1963) she packed her husband's belongings for a voyage, and went with her husband to a stelling, here she saw Heera, Dindial and the Appellant. Her husband could swim. On the 24th October one Jwalla (Persaud) came to her house. On the 29th October she identified the body of her husband. It had a cut on the neck and on the stomach.

p 2/3

40 (b) Crispin Consalves gave evidence about the Corentyne River. It is some 10 to 12

p 3/6

Record

miles wide at its mouth, and about 3 miles wide 180 miles upstream from the mouth. The river is tidal for about 240 miles, and the water ebbs and flows every 6 hours.

p. 6

(c) Rookmin said she was the widow of Heera. On the 15th October 1963 Heera went up the river with Motie Singh, Dindial and the Appellant. He took his cutlass. He could swim.

p.7/10

(d) Ganesh Persaud said that he was the son of Motie Singh and Sookhia. On the 25th October he searched the Corentyne River and found nothing. On the 26th October he went up the Corentyne River with the accused and others. At Kanakaburi one Baldeo told him that he had seen the dead body of Dindial floating by the Siparuta Mission. The Appellant was present and could have heard what Baldeo told him. As a result of what Baldeo said he went up the river and 2 miles above Orealla he found the dead body of his father floating in the river on the Dutch side. The neck of the body was cut nearly through and it was "burst" in front. At the time he found the body he told the Appellant that he (the Appellant) had murdered Motie Singh. The Appellant did not say anything. The witness said this to the Appellant because, while they were in the vicinity of Kanakaburi the Appellant had told him to search there as that was where the launch had sunk, and that if he went higher up river he would run out of petrol.

10

p.7 1.29

p.8 1.10

20

p.8 1.5

p.8 1.15

30

p.9 1.7

In cross-examination he said that the first time he saw the body of Heera was at Orealla. When he found his father's body he did not know whether Heera was dead or alive or whether Heera had anything to do with the death of his father. He had not met the Appellant before going on the river. The Appellant had told him about the boat sinking and said that if he went further up he would not find his father's body and the gasoline would finish. It was not true

40

Record

that he paid money to procure Balchand to get evidence to put the Appellant in trouble. He had known Balchand for about 15 years but the first time that he knew that Balchand was a witness was in the Magistrates Court.

p.10 1.15

In answer to a question by the Jury he said that at the spot where he found his father's body the tide washed and fell.

10

(e) Police Corporal Milford Bobb said that on the 24th October the Appellant and Raghubar came to Springlands Police Station. Raghubar, in the presence of the Appellant, said that the Appellant and the three other men were in Raghubar's launch "Miss Carol" on the night of the 23rd/24th October and that the Appellant had told him there had been a collision with another launch. The witness questioned the accused who said he had been sleeping when he heard a crash and found himself in the water. He swam to the shore and did not see the other men. He took a statement but did not caution the Appellant because he did not then suspect him of committing any crime. In the statement (which was received at the trial but omitted from the Record before the Court of Appeal) the Appellant said that about 2 o'clock on the morning of the 24th October, as they were about Kanakaburi, he fell asleep. Suddenly he felt an impact and the launch went down whereupon he began swimming for shore. He did not see the three other men as the night was very dark. He shouted for them three times but received no answer. He drifted in the water until he reached the shore by Kanakaburi and then at day break he walked until he reached one Sonny's house (i.e. Mr. Chung), whom he told what had happened. At 8.00 a.m. he saw Jwalla Persaud passing in his boat and called him. He told Jwalla what had happened and was taken to Crabwood Creek where he reported to Mr. Raghubar what had happened. While he was drifting in the water he heard a beating of an engine but he could not say what collided with the launch. He lost all his belongings in the launch.

p.11/12

20

p.289

30

40

Record

- p.11. 1.36 Cross-examined the witness said that Raghubar had mentioned that a large sum of money was being carried by one of the men.
- p.12/15 (f) Haji Ramjohn said that Maam Island was on the Dutch side of the river but opposite Kanakaburi. Kanakaburi was about 2 or 3 miles down river (that is north) from Surnep, where Mr. Chung lived. Surnep was near Powis Island, which was 2 miles up river from Maam Island and very near the English side. 10
- p.13. 1.35
- p.16 (g) Jwalla Persaud said that at about 7.30 on the morning of the 24th October he was in a boat on the Corentyne River travelling to Crabwood Creek. One Arjune and two others were with him. At Surnep a lady waved to him and they went ashore. The Appellant was at the landing and the lady, Sonny's wife, asked if the witness had heard that the Appellant, who was there at the time, had been in a collision. The witness said he had not. The witness was wearing beach pants bluish in colour. At Crabwood Creek, on the way to Raghubar's saw mill, he stopped at the houses of Motie Singh and Heera. He spoke to Motie Singh's daughter and to Heera's wife Rookmin. The Appellant held the witness's cycle on the public road as he went into these peoples' houses. 20
- p.17/19 (h) Arjune Rama said that Jwalla Persaud and two others were in his boat on the 24th. He gave similar evidence to that given by Jwalla Persaud but added that, when they went to Chung's landing and met Mrs. Chung, the Appellant asked him to go around Powis Island. He told the witness that he did not have enough gas. On the way down river the witness asked the Appellant how the accident happened and was told that Dindial took sick with a belly pain and they were taking him home. While travelling he, (the Appellant), Dindial and Motie Singh were sleeping. 30
- p.17. 1.20 When they arrived by Powis Island he felt "like the boat got a lat" below the water. 40
- p.18. 1.7

Record

While he was struggling in the water he jammed "the other person in the launch", then he came up, made about three shouts, heard no answer and decided to swim ashore. He swam ashore and went to Powis Island and then walked across and went to Claude Chung's landing.

- 10 (i) Jacobus Walters gave evidence of the nature of the vessels which used the Corentyne River. p.19/21
- 20 (j) Nanka Pinter said that he was a Dutch subject living at Acabo, which was about 150 miles from Crabwood Creek. He knew the four occupants of the launch. On the 16th October they came to Acabo in the launch called Miss Carol. A few days after the 16th Raghubar arrived in another launch and the deceased, Raghubar and another man went to a place called Lana to look at some logs. On their return the witness saw Raghubar take four parcels of money from his pocket and give it to the deceased. The Appellant was then in the other boat which was moored alongside the boat in which were Raghubar and the deceased. The deceased took a handkerchief from his pocket with money inside, placed the money given to him by Raghubar in that handkerchief, tied the money together and placed it in his pocket. 30 Raghubar then left going in the direction of Crabwood Creek in his launch, and the four occupants of "Miss Carol" left going downstream about half an hour later. p.22. 1.20. p.24 1.2
- 40 In re-examination he said that this was the first trip when he had seen the Appellant with the deceased although he had seen the Appellant with other buyers. On those occasions the Appellant was employed as a labourer to tie up the logs. The Appellant took no part in the actual transaction at Acabo. p.25, 1.17
- (k) Manoel Quillo said that he lived at Siparuta Mission, which was on the British side of the river. He was working with the previous witness at Acabo. On the 16th p.25/27

Record

- p.26. 1.7 October he saw the "Miss Carol". The Appellant was then wearing a pair of darkish short pants which appeared to have been a pair of long pants cut down.
- p.27/28 (l) Gulab stated that he lived at Crabwood Creek and was the brother of Heera. He knew the Appellant and said that the Appellant could drive a launch; the witness had seen the Appellant driving a launch several times. He searched on the river on the 24th and 25th October and again on the 26th. On the 26th he went to Cow Landing and there he saw the dead body of Motie Singh floating in the water on the Dutch side about $1\frac{1}{2}$ rods from the shore. There was bush on the river bank near the spot where he saw the body and the body was among the bush. About 30 rods up the river on the same bank he saw the dead body of Heera floating in the water among the bush. 10
- p.27. 1.18
- p.28. 1.6. (m) Richard Edwards said that he lived at Parakissa Point, which was about 2 miles upstream from Orealla. On the 23rd October at about 9.00 a.m. he saw the four men in the launch at Orealla. He asked Motie Singh where he was going and was told to Acabo. He asked for a tow to Parakissa and Motie Singh agreed. After being dropped at Parakissa Motie Singh and the three others continued up river. 20
- p.28/30
- In cross-examination he said that he saw the four men at Orealla at around 7.00 a.m., having already come down from Parakissa. He was not sure that the date was the 23rd October and when he said 7.00 a.m. he averaged the time by the sun. 30
- p.30/31 (n) Lewis Douglas stated that he lived at No. 79 Village and operated a launch between Orealla and Apora. He had been carrying on business for about 8 years and during his period he had seen dead bodies floating in the river. A body would float down river. On the 23rd October at about 3.00 pm. he was at Apora stelling. The 40

launch arrived with the four men on board; Dindial and the Appellant were in the front of the launch and he overheard a conversation between them. The Appellant told Dindial that he did not want to go to Jones Landing to buy logs and if they stopped there it would bring big trouble as he wanted to go home.

10 In cross-examination he said that the launch had arrived from up river and left down river. Bodies would float up the river while the water washed and would go down when the water fell. In re-examination he said that the water fell for longer than it washed.

p.31. 1.11.

20 (o) Shiren Ally stated that she was living at Siparuta where she owned a shop. On the 23rd October she was expecting rations from Crabwood Creek. These rations were to arrive by boat. Between 11.30 and midnight she heard the slow beating of a launch and went to the landing. She saw a launch coming towards the landing from down river and she recognised it as the "Miss Carol". The launch was travelling very slowly and going up with the tide. She heard a sound from the boat and then a splash in the water as though something had fallen overboard. The launch then started to move faster towards the Dutch shore. She heard a man's shout before she heard the splash. In cross-
30 examination she said that she recognised the launch to be Raghubar's because of the beating of the engine. The colour and size of the boat did not assist in recognition. The nearest it came to her was about 15 to 20 yards. If she heard the beating of the engine only and closed her eyes she would not be able to say if it was Raghubar's launch. Although the engine was beating slowly the launch was drifting. There was no light
40 on it.

p. 31/35

p.32 1.35

In answer to a question by the Court she said that only three launches went as far as Siparuta. One of them ran the fortnightly mail service. The second was the "Sea Queen" and the third was the "Miss Carol".

In answer to further questions by the prosecution and the defence she said that the "Sea Queen" had passed down earlier in the day and because of a conversation she had had with someone on board she was expecting her goods to come up by the "Miss Carol". The beat of the engine of the "Sea Queen" was quite different from that of the "Miss Carol".

p.35/40

(p) Shadrack Castello said that he lived at Orealla. On the 24th October he went to Surnep at 1.00 a.m. to catch fish. Clinton Alexander and two others were with him. They had to pass Powis Island to get where they were going. As they passed the Island they heard a voice coming from it. The voice sounded as if someone was running in the bush. They were on the eastern side of the Island and the witness shone his torch, whereupon he saw a Dieselene drum, painted red and white, floating in the water at the side of the Island. He identified the drum, which he had taken into his canoe. He

10

p.36 1.3.

He flashed his light and saw several human footprints on the mud flat at the side of the Island. He and two others went to the Island and one of them shouted but got no answer. The footprints led into the Island and they followed them for about 1 rod. The footprints went further in. Chung's place was about 2 miles lower down the river from the footprints. On returning to their canoe he heard a bubbling sound in the water and, shining his torch, he saw oil floating up. There was no sand bank near the spot. The oil was bubbling at a spot about 2 rods from the Island on the eastern side. About 4 days later he was at Orealla and there saw P.C. Ramjattan. They all went to Powis Island and he pointed to the spot where he had found the drum, seen the footprints, and seen the oil bubbling. Chin, the diver, dived under the water at the spot he pointed out. He came up and said something.

20

30

p.36 1.26.

40

In cross-examination he said that he left home at about 1.00 a.m. and returned at

mid-day. They finished fishing at about 9.00 a.m. When he returned to Powis Island with the Police the footprints were still there and he showed them to the Police. P.C. De Abreu followed the footprints into the bush.

p.37 l.30.

(q) Stella Barry stated that she lived at McLennon, which is on the Dutch side of the river. At about 9.30 a.m. on the 24th October she was at Chinbo's landing, which is about 2 miles from Surnep. A small boat containing Jwala Persuad, Arjune Rahma, the Appellant, and another man arrived. She spoke to the Appellant and told him that she had heard from her son that he was in an accident. The Appellant told her that he believed that the three men had drowned. She asked how it had happened and the Appellant said he was asleep and when he awoke he was under the water. She asked if he did not see anything floating or if he did not shout. He said he had no breath to shout and tried to swim ashore.

p. 40/41

p.40 l.34.

(r) Sonny Kenneth Milne stated that he lived at 78 Village and knew the four occupants of the "Miss Carol". On the 23rd October he was at Apora stelling around 7.00 to 8.00 p.m. The launch came from down river and tied up. In the presence of the Appellant Motie Singh asked the witness if he had taken the bush rope. The witness said he had. Motie Singh said they were going to Cow Landing to tie logs and they wanted the rope. The Appellant came into the witness's launch and told him not to worry with Motie Singh; the launch was not going to Cow Landing to tie logs, it was going home that night. All four men left in the launch, which had three Dieselene drums at the back and port and starboard lights on, together with a light on in the engine room.

p.42/44

In cross-examination he said that Motie Singh did not get any rope at Apora. The launch went down river.

p. 44 l.10

Record
p. 44/46

(s) Clinton Alexander gave evidence in chief substantially the same as that given by Shadrack Castello.

p.46 1.4

In cross-examination, the witness said that they left home at around 1.00 a.m. and had arrived at Powis Island around 5.00 a.m. The water was falling when they arrived. It was washing as they were going home.

p.47/49

(t) Claude Chung stated that he had a farm at Surnep. At around 6.30 a.m. on the 24th October he was at his camp at Surnep. The Appellant came from the bush on the riverside into the camp, and said that he wanted to be taken down to Crabwood Creek. When asked why, the Appellant said that he and three others were coming down the river the previous night with Raghubar's launch and they had an accident. A boat had jammed their boat in the river.

10

p.47 1.19

The witness asked in which part of the river and the Appellant said in the centre of the river, between Powis Island and the Dutch shore. The Appellant stated that he could not say much of what really happened because he and two others were sleeping and the other was steering. He felt a bounce on the launch and then found himself in the water. When he rose up he started to swim for the shore. When he came to the surface he saw a big boat make two circles in the river and then go away but he could not say in which direction it went as the night was dark. When the Appellant came to the camp, he came from a point south and was dressed in a pair of store made blue shorts. The tide was then at its lowest and started to wash around 7.30 to 8.00 that day. The witness went to his farm to do some work and was followed by the Appellant, who said to the witness that he, the witness, might have to answer some questions. The witness asked why and was told that the Police would come first to the witness because the witness was the first man into whose camp the Appellant had come. Later the witness's wife stopped Arjune's boat, which was going towards Crabwood Creek. The Appellant joined the boat and told Arjune that he wished to be

20

30

40

taken back to (Powis) Island, but Arjune said he didn't have enough petrol. The witness's place was about 180 to 200 rods to the north of Powis Island. Maam Island was opposite to the witness's place but near the centre of the river. Powis Island was near the English shore and no one lived there. When the tide was low there were certain points where a person could walk from Powis Island to the mainland.

Record
p.48, 1.18.

10

(u) Dowlatram Raghubar said that he lived at Crabwood Creek where he owned a saw mill. In October 1963 he owned three launches, one of which was the "Miss Carol". The "Miss Carol" was 30 feet by 8 feet by 3 feet 6 inches and was powered by a 40 H.P. diesel engine. It had port and starboard lamps, one lamp at the rear and one inside. These lamps were controlled by switches inside the launch.

p. 50/62

20

In October 1963 Motie Singh was in his employment. He purchased timber on the witness's behalf from loggers in the Corentyne River. The witness supplied Motie Singh with a launch and advanced him sums of money. Motie Singh employed others. The witness knew the Appellant and in October 1963 the Appellant was working with Motie Singh. Dindial and Heers also worked with Singh in 1963. Whenever Motie Singh required additional money the witness would receive a message and would take the money up the river in his other launch "The Majestic".

p.51, 1.4.

30

On the 15th October 1963 he gave Motie Singh \$2000 in British West Indian Currency. This was made up of \$20 bills. On that day the four men embarked in the "Miss Carol" taking cutlasses, axes and their canisters. There were also keretie laths to be used for firewood, and at the rear of the launch were three drums of gas oil tied on to the launch by rope. The launch carried an anchor and chain about 30 to 40 feet long. On the 21st October he received a message and as a result went up the river in the "Majestic". He took with him \$10,000 in British West Indian currency and 1,500 Dutch guilders. He left Crabwood Creek around 2.30 p.m., and around 9.00 p.m. on the same night he saw a light coming down river in the vicinity of Cow

p.52, 1.3.

40

Record

p.52, 1.12.

Landing. It was the "Miss Carol" and on board were the four occupants. In the presence and hearing of the Appellant the witness told Motie Singh that he had received his message and had brought \$10,000 and 1,500 guilders. Both launches then went to Cow Landing. Motie Singh told the Appellant and the two other men to go on to Pinters Landing at Acabo. Motie Singh got into the "Majestic" and followed the other launch upstream. The witness arrived at Acabo on the morning of the 22nd. The "Miss Carol" was moored alongside the landing.

10

p.52, 1.35.

The witness, Motie Singh and others went off to look at logs, and returned to Acabo around 2.30 to 3.00 p.m. There, in the presence and hearing of the Appellant, the witness told Motie Singh to purchase logs and gave him \$3,000 in British West Indian currency and 1,000 Dutch guilders. Singh checked the money, took out money wrapped in his handkerchief, tied up all the money together, and replaced the handkerchief in his pocket. The witness then returned home in the Majestic. Around 3.00 p.m. on the 24th October the witness saw Jwalla Persaud and the Appellant in his office. The Appellant told the witness that Dindial had been taken ill with his appendix and they were bringing him down for medical attention. When they were in front of Maam Island he heard an explosion and found himself underwater. When he floated to the surface he found the river was rough and it was dark and he swam to the British side, from where he went to Sonny Chung's camp. The witness asked the Appellant if he saw any person swimming or shouting for help but the Appellant said he did not. The witness further asked if he had not seen any vessel around the vicinity of the explosion. The Appellant said he had not. The Appellant, according to the witness, then went on to speak about the events at Chung's camp and how he had returned to Crabwood Creek with Jwalla and Arjune. These people brought the Appellant direct to the witness's office. The witness then took the Appellant to the Police Station, where the Appellant made a report to Corporal Bobb. Later that

20

30

p.53, 1.17.

40

day, the witness, accompanied by the Appellant, P.C. Ramjattan and Corporal Halley went in the "Majestic" to McLenon. The witness there met the Captain of a Dutch launch who showed him a drum of diesel oil which, in the presence of the Appellant, the Dutch Captain said he had found in the middle of the river opposite Siparuta on Thursday. The drum was one of the three drums the witness had given to Motie Singh on the 15th October. The party then went up river to Maam Island where they arrived at about 4.00 a.m. on the 25th October. The Appellant pointed out a spot about 150 feet south of the Island and stated that that was the spot where the explosion had taken place and the "Miss Carol" sank. The witness with his party searched the river bed at that spot with grapples but found nothing. They then went on to Powis Island where the witness saw keretie laths. In the water and near the bank was a brown shirt and so was a pillow case. The seat of the launch was also found. The search continued until 6.30 p.m. Around 5.00 a.m. on the 26th October another party arrived and the witness, with P.C. Ramjatten, went to Orealla in the "Majestic". There the witness saw a drum half filled with diesel oil. This was one of the three drums he had given to Motie Singh and he had seen the drum on the 22nd at the rear of the "Miss Carol" at Acabo. As a result of various things told to the witness, they went to Ann's Creek, which was 3 miles north of Siparuta on the British side and about 25 miles south of Maam Island. There they found the dead body of Dindial. They then went to Cow Landing on the Dutch side. This was opposite Ann's Creek but 5 miles away. Here they found the dead body of Heera. From Cow Landing they went to Siparuta where three coffins were made. They then went on to Orealla where they saw the dead body of Motie Singh. On the 28th October with Ramjattan, De Abreu and others the witness went to Powis Island in the "Majestic". There they met Shadrack Castello and Clinto Alexander who took them to a spot 20 feet from the outside of the Island. The witness observed oil coming to the surface. Chin,

Record

p.54, l.3.

Record

p.55 1.16

the diver, dived at that spot. On 31st October the witness returned to the same spot. The launch "Miss Carol" was salvaged. The seat of the launch was missing as also were the anchor and chain and the sea water cork. The sea water cork was found in the stern of the launch which was not where it usually was. The cork screwed onto the sea water pipe near the gearbox. There was a special spanner to screw and unscrew the cork and the spanner was kept in the launch but the witness did not find it on the 31st. The cork could not have been worked with bare hands. There were no cutlasses on board and the witness did not observe any damage either externally or internally. The light switches were all in the off position, the gear lever was in neutral, and the throttle was at zero. On the 13th November at about 11.00 a.m. the witness together with Balchand and two policemen went to Powis Island. As a result of directions given by Balchand they went to a particular spot where, digging at the foot of a big Mora tree for about 6 inches, they found a handkerchief and a quantity of money. The money totalled \$4,780 British West Indian Currency and 1,000 Dutch guilders. It was similar to the money the witness had given to Singh.

p.56 1.20

In cross-examination the witness said he had never seen a ship salvaged before and was not aware that before salvaging all switches were turned off, the gear lever put in neutral, and the accelerator at zero. If the cork was removed from this particular launch, it would sink in two hours. One man could crank the engine to start it. The witness had told Singh that he should have had \$4,800 British West Indian currency plus 1,000 Dutch guilders. The witness gave Balchand \$1,000 after an earlier trial as a reward for finding the money. This was given voluntarily and was not asked for. It was not correct that he procured Balchand to give false evidence in the matter.

p.58 1.11

p.59 1.23
p.60 1.7

p.63/64

(v) Stanley Hall stated that he was the Chief Officer of the Prison Department. Around 2.15 p.m.

on the 6th November Balchand had arrived to visit the Appellant. Unconvicted prisoners were allowed 10 minutes with their visitors on that day. Balchand and the Appellant talked together in low tones and the witness could not hear what they were saying. After allowing them to speak for 10 minutes Balchand was escorted away and the Appellant returned to the lock-up.

10 In cross-examination he said that he first was aware that Balchand was at the prison at 2.00 p.m. and he did not expect him. He was not requested to eavesdrop on the conversation between the Appellant and Balchand.

(w) Detective Sergeant Barrington Barker stated that on the 12th November, 1963 the Appellant was in custody. On that day at about 10.00 a.m. Balchand spoke to the witness and as a result of this the witness spoke to Mr. Soobrian who was then the Superintendent in charge of the Sub-Division. The witness allowed Balchand to go into the lock-up, where he waited. At around 1.00 p.m. on the same day the Appellant was placed in the lock-up with Balchand. Only the Appellant and Balchand were there and they remained together for an hour after which Balchand and the witness spoke to Mr. Soobrian.

p.64/66

30 In cross-examination he said that he had known Balchand before the 12th November and he had known before that date that Balchand wanted to speak with the accused, but he did not expect Balchand at the Police Station on the 12th November. The Appellant was in custody on a charge of murder. Before the Appellant was placed in the cell the witness appreciated that he could have told Balchand something which might incriminate or exculpate himself. The Appellant might have believed that Balchand could help him. The witness did nothing to indicate to the accused that he need not say anything to Balchand.

p.65 1.14

40 In answer to a question by the Jury the witness said that Balchand went to the Police Station on his own.

Record
p.66/67

(x) Constable Thomas Bayne stated that he was a Police photographer and had taken various photographs, including one of a pair of short dark pants hanging on a sapling on Powis Island.

p.68

(y) Emanuel Verwey said that he was the builder of the "Miss Carol". On the 2nd November he inspected the launch and found no damage. It was in the same condition as when it was built. The gear box covering, the seat, and the sea cork were missing.

10

p.69/70

(z) P.C. Basil Jokhai put in the deposition of one Dr. Luck taken before the Magistrates. Dr. Luck was not in Guyana at the time of the trial and the medical evidence as disclosed in the depositions was relied upon. The deposition was not remitted with a record to the United Kingdom but will be available upon the hearing of the appeal.

p.70/72

(aa) Roy Coates stated that he was a mechanic with some 35 years experience. On the 2nd November, 1963 he examined the "Miss Carol". His evidence as to the condition of the launch tallied with that given by the other witnesses, but he said that, had the launch been involved in a collision resulting in its sinking he would have expected to see some part broken or damaged. A collision with another launch or with a sandbank would not have caused the sea water cork to have become unscrewed. With the sea water cork removed, the launch would have taken about 1 to 1½ hours to sink.

20

30

p.72 1.14

In cross-examination he said that someone had unscrewed the cork. In answer to a question by the Court he said that the engine must have been turned off before the launch went down.

p.73/86

(ab) Balchand said that he lived at Crabwood Creek and owned a boat which was driven by an outboard motor. He knew the four occupants of the launch. He had known the Appellant for about 15 years and was a very good friend of his in 1963. On the 24th October he was at Raghubar's saw mill around 2.00 p.m., when the Appellant and Jwalla arrived and spoke to

40

p.73 1.15

Record

Raghubar. On the 25th October, with three or four men, he went up the river in his boat in search of the launch. On the river near Powis Island he saw the Appellant, P.C. Ramjattan, Raghubar and others in the "Majestic". He assisted in searching the river between Maam and Powis Islands but found nothing and at about 7 o'clock on that day he returned, carrying the Appellant, to Crabwood Creek. On the 26th October he took three or four men up the river in his boat, leaving at about 7.00 a.m. At Parrots Island, about 2½ miles upstream from Powis Island, one Baldeo spoke to him and as a result he went up to Cow Landing where he found the body of Heera. He then went further up river and on the British side, below Siparuta he found the body of Dindial. At Siparuta three coffins were made and he took them with the two bodies to Orealla where he saw the dead body of Motie Singh. On the return to Crabwood Creek his boat with the bodies in it was being towed by the "Majestic". He, with P.C. Ramjattan and the Appellant were in the "Majestic". On the way the Appellant said he would like to speak to the witness but P.C. Ramjattan stopped him from doing so. On the 28th October the police hired his boat and he went up to Powis Island. He saw P.C. Ramjattan, Raghubar, the diver Chin, and several others including Shadrack Castello and Clinton Alexander. The latter pointed to a spot in the river about 2½ rods east of the Island. The diver threw a grab into the river and then dived. When he returned to the surface they brought the launch up from that spot. The witness was present throughout the entire salvage operation. At about 5.30 p.m. on the 3rd November he met, in Crabwood Creek, the brother of the Appellant, who was called "Preacher", who spoke to him. As a result on the 6th November he went to the New Amsterdam Prison around 2 o'clock and spoke to a Prison Officer who took him to a waiting room. The Appellant was brought in and said "Bal man ah glad you come, I want to see you very important". The witness asked him what it was that was so important. The Appellant said he wanted the witness to help because he knew the witness had an engine and a boat. The witness asked what he

p.72 1.7

P.74 1.35

P.75 1.21

p.75 1.31

Record

could do to help and was told that the Appellant had the money on Powis Island and wanted the witness to go there. A Prison Officer was patrolling the Appellant and he changed the conversation. The Prison Officer then said that time was up and the witness left the prison. On the 7th November the witness went to the Magistrates Court where he saw P.C. Ramjattan to whom he spoke and who gave him certain instructions. On the 12th November he went to Whim Police Station where he spoke to Sergeant Barker. He then went into the lock-up and the Appellant was brought in and spoke to him. At this point Counsel for the Defence objected. The Jury went out, and the witness continued with his evidence. He said that he went to New Amsterdam Prison because of what Preacher had told him. At the prison he told the Appellant he would try his best to assist him by going for the money. At the lock-up he did not promise the Appellant anything before the latter spoke to him. After the Appellant spoke the witness promised the Appellant that he would go for the money. At the request of the Appellant he also promised that he would go to the Appellant's father-in-law. He made no other promise. When the witness spoke to Sergeant Barker he was given certain instructions.

In cross-examination the witness said that the Appellant spoke about the money before he spoke about Motie Singh's death. It was at this stage that the witness promised to get the money. He was to retain \$1,000 for himself and give the balance to the Appellant's father-in-law. The Appellant told the witness to ask his father-in-law to find the "buck men" (i.e. the Castelllos) and give them some money not to say anything and the witness promised to do so. The Appellant and the witness did not plan to meet on the 12th November. At the lock-up the Appellant asked the witness "What are you doing here bal, you got the money?" The witness told him he did not have the money because he had no proper directions. After they had had their conversation he told the Appellant that he was in the lock-up on a warrant for a fine. He invented this story and it was not told to the Appellant on anyone's instructions. It was Sergeant Barker

p.76 1.6

10

p.76 1.30

20

p.77 1.5

30

40

Record

- who had placed him in the cell. He had requested a place to rest as he was tired. He did not tell Barker anything about the first visit to the New Amsterdam Prison but he did tell Barker that he had gone to the Police Station on instructions without telling him why he was there. At the Police Station he was waiting to see what information he could get from the Appellant with the intention of turning this information over to the police. He had formed this intention when he and the Appellant spoke at the prison. He believed that the Appellant would give information only if he promised to help. The witness told the police this. He did not promise the Appellant to get free of the charge.
- In re-examination he said at the prison he promised to assist the Appellant to get the money after he had been told that it was at Powis Island.
- The Learned Trial Judge was addressed by Counsel. Counsel for the Defence said that promises had been held out to the Appellant by a person who was in effect an agent of the police, and with the object of inducing the Appellant to make a statement. The police did not warn the Appellant that he need not say anything. The confession was obtained by a trick by the police.
- The Learned Trial Judge ruled that the statement was admissible and Balchand continued his evidence in chief before the Jury. He repeated the opening remarks made to him by the Appellant in the lock-up, and his answer that he had not got the money because he did not have proper directions. The Appellant then gave him precise directions as to where the money was to be found on Powis Island. He was to take \$1,000 for himself, give the balance to the Appellant's father-in-law and tell the father-in-law that the latter must not forget the "buck men" who had seen him running in the island. The witness promised that he would do that. The witness then asked how the money got missing. The Appellant said that whilst they were coming on the "driver" (sic) "we slipped out the money and hide it in the launch". The witness then asked how the bodies got chopped and was told that

p.77 1.36

p.87

p.88 1.11

p.78 1.13

p.78 1.34

p.78 1.40

Record

Dindial caused the whole trouble. While they were coming Motie Singh and Heera wanted to go to the Dutch Police Station to report the loss of the money. Heera and Dindial had an argument and Dindial told Heera to stop the launch. Heera said that he would not, they were going to report the matter to the Dutch. While arguing, Dindial picked up a cutlass and gave Heera several chops. Motie Singh went to assist Heera and the Appellant picked up his cutlass and chopped Motie Singh on the neck. The two of them decided to burst the belly of the men, to tie them and sink them with the boat anchor. The witness told the Appellant that he would try to assist to get the money. The Appellant was then taken from the lock-up and the witness left and spoke to Superintendent Soobrian. On the 13th November P.C. Ramjattan, Raghubar, Ramjohn and another policeman went with the witness in a speed boat to Powis Island. There the witness gave instructions to the police and they separated and started to search. The money was found in the place described to the witness by the Appellant. 10

p.79 1.25

In cross-examination the witness said that he had told the Magistrate in the Magistrates Court that the Appellant had told him that the latter had attacked Dindial. When the witness went to the lock-up he knew that the Appellant had already been charged with the murder of Motie Singh. The witness received \$1,000 from Raghubar. He received this about one month after the first trial of the Appellant. On the day he went to the prison but before he visited the Appellant, he gave a statement to Inspector Chee-A-Tow. He had gone to the Police Station at New Amsterdam on his own. He went in search of Chee-A-Tow because he understood the latter wanted to see him. He made his statement before he went to the prison and he mentioned the name Preacher to Chee-A-Tow. He could not remember whether he received instructions from the police regarding his visit to the prison. He went there on the 6th November because that was the only day free for him. He did not report to the police after leaving the prison. The first policeman he spoke to was Ramjattan, on the following day, when he spoke about his visit to the prison. He expected to visit the Appellant again and speak 20 30 40

p.80 1.17

p.80 1.21

p.82 1.1

Record

p.82 1.22

about the money and the "Miss Carol", and he might have heard about Motie Singh. He expected the police to make the arrangement for him to meet the Appellant. He believed that if he got a chance to speak to him the latter would tell the witness where the money was if he promised to help to get it. The witness had in mind to ask what had happened. He intended to convey to the police what the Appellant would tell him, and he so told the police. On the 12th November when he was put into a cell he was not under arrest and he went to the cell because he was tired and wanted a rest. He did not know that the Appellant would be placed in the same cell. He told the Appellant a lie about his presence in the lock-up because he did not want the Appellant to know that the police had brought him there to speak to the Appellant. After he had spoken to the Appellant he promised to go for the money and give it to the Appellant's father-in-law. After leaving the cell he spoke to Superintendent Soobrian, because he had promised to do so. He gave a statement to the police on the 14th October (November?), this was after the money was found at Powis Island.

10

20

30

In re-examination he said that his chief object in speaking to the Appellant on the second occasion was to find out where the money was. He went to the prison because of the instructions he had received from Preacher. He did not know what he and the Appellant would speak about. He promised the Appellant to search for the money after he had been told where it was.

p.85 1.12

40

(ac) Detective Constable George De Abreu stated that on the 29th October he went up the river with Inspector Chee-A-Tow and a party of policemen to investigate a report concerning the sinking of the launch. They went to a spot 25 rods from Powis Island and Castello and two Amerindians pointed to a spot on the Island and a spot on the river. Chin dived in the river. On the 29th October he went to Powis Island and saw from the eastern edge human footprints leading from the eastern side to the western side. He followed the prints to a spot on the Island where he saw a pair of short dark grey pants

p.88/90

Record

hanging on a tree. He continued along the Island where he saw more footprints leading to the northern edge. The prints lead to a mud flat and then on to the British side of the river. He followed the prints which went north until he found an opening in the bushes. From the opening a track emerged and he followed the track which took him to Sonny Chung's camp about 150 rods away.

In cross-examination he said that no one measured the footprints and no photographs were taken of them.

10

p.90/94

(ad) Edward Gomannie said that in 1963 he was employed by Raghubar as an engineer. He accompanied Raghubar on his trip up the river in the "Majestic" on the 21st October. When they reached Acabo, he saw Heera, Dindial and the Appellant in the "Miss Carol". He went aboard the Miss Carol, cleaned the sea cork strainer and tightened back the cork with the sea cork spanner which he replaced on the nail in the launch. He was present when the launch was salvaged and he examined it. He gave evidence tallying with that of other witnesses as to the items, including the sea cork spanner, which were missing. He was present when the sea cork was found under the stern by Raghubar. The threads on the sea cork were in a perfect condition and so also were the threads on the other portion of the sea cork. When screwed on with a spanner the sea cork could not be unscrewed by the naked hand.

20

p.91 e.g.

30

p.92 1.16

In cross-examination he said that the launch was towed to Crabwood Creek with the sea cork out but the valve closed. With the valve closed, water could not enter the sea cork. With the engine working the valve was open to permit water to enter the engine, the valve was operated by hand on the outside of the sea cock. When the launch was salvaged the valve was open.

p.94/104

(ae) Detective Constable Naubat Ramjattan said that on the 24th October at about 4.00 p.m. he was at Springlands Police Station and saw the Appellant. He asked what had happened. The Appellant told him that the launch had left Apora at 8.00 p.m. on Wednesday the 23rd for

40

p.95 1.12

Crabwood Creek because Dindial had complained that he was sick. On the way down the river Heera was driving and he, Motie Singh and Dindial were sleeping together when suddenly he heard an impact as if the launch had collided. The Appellant found himself rolling against the two other men and the launch was under water. He managed to get to the surface and swam ashore. The incident occurred at 2.00 a.m. on the 24th

10 October in the centre of the river in front of Maam Island. When the Appellant was dry and cleaned he walked to Sonny Chung's place. The witness asked the Appellant to take him to the spot where the incident occurred. The Appellant blushed and said "me sorry, me sick" the witness tried to persuade the Appellant to take him to the scene but the Appellant insisted that he could not go. At his request he took him

20 to Dr. Luck who examined the Appellant and said that he was fit to travel. The Appellant then decided to take the witness. At 8.00 p.m. on the same day the witness left Crabwood Creek in the Majestic with two other policemen, Raghubar, the Appellant and others. They stopped at McLenon and collected the oil drum, which the witness had been told was found floating at Siparuta at about 11.00 a.m. on the 24th

30 The witness asked the Appellant how the drum had got 35 to 40 miles from Maam Island. The witness said the drum might have fallen off on the way down. At 12.30 a.m. on the 25th they arrived at Maam Island and the Appellant pointed to an area south of the Island saying that this was where the incident occurred. This was in the centre of the river. They searched the river but found nothing. Around 6.00 a.m. the Appellant pointed to a spot on the British bank and said that he held on to bundarie bushes. This spot was about 100 rods south of Chung's place. The

40 witness searched the spot but found nothing. Around 1.00 to 2.00 p.m. on the same day the witness found the launch seat and various other items all near the bank of Powis Island. This was about half a mile south of the spot where the Appellant had alleged that the incident occurred. The articles that were found were shown to the Appellant who said "the same thing I'll tell you, the thing happened right - this

p.96 1.10

p.96 1.19

Record

same side". The Appellant asked to be allowed to go home and was allowed to do so on terms that he returned the next morning to continue the search. At about 5.00 a.m. on the 26th the launch "Ganges" arrived with a search party and the witness continued to drag the river in front of Maam Island but found nothing. Between 9.30 and 10.00 a.m. one Beer came up with his launch Raghubar and the witness joined the launch and went up river. They arrived at Orealla around 11.00 a.m. and the witness saw a drum half filled with Dieselene. They received further information and went further up river arriving at Ann's Creek at about 11.45. There the witness saw the dead body of Dindial. It had several wounds on the back, head and hands. He became suspicious, Ann's Creek being about 30 to 35 miles from Maam Island. As a result of further information they went to Cow Landing on the Dutch side of the river and there found the body of Heera. It had a length-wise cut from the stomach downwards. The Appellant arrived in a launch and the witness drew the Appellant's attention to the wounds on the body and the distance between the place where he had alleged the incident occurred and the place where the body was found, a distance of about 30 miles. At this stage the Appellant held the witness around the neck and told him something quietly. The witness cautioned the Appellant and arrested him. The two bodies were taken to Khan's saw mill at Siparuta where three coffins were made. The party then went to Orealla where they saw the dead body of Motie Singh. The neck was partly severed and there was a length-wise cut from the stomach down. They then left for Crabwood Creek. On the way down the Appellant attempted to speak to Balchand but the witness prevented this and said no one should speak to him. On the 28th October the witness received information as a result of which he went to Orealla and spoke to Shadrack Castello and the two Alexanders. As a result of this conversation the men took him to Powis Island, where they pointed to a spot where the witness saw oil coming from below the surface. He dragged the area with a grapple which fastened on to something. Later he caused Chin to dive

10

20

30

40

Record

at that spot. The depth of water there was 35 feet. Castello showed the witness some prints on the eastern bank of Powis Island about 40 feet from the spot where the grapple held on. On the 29th October Police Constable De Abreu showed the witness a pair of short trousers. He took the trousers to the police station where he showed them to the Appellant and told him that they were found at Powis Island and cautioned him. The witness put the trousers on and claimed them to be his own property. The witness returned the trousers to Powis Island on the 31st October. Next, the witness dealt with the salvaging of the "Miss Carol", from the spot where his grapple had fastened. There were no cutlasses or axes in the launch. On the 7th November he was at Springlands Police Station when Balchand came and spoke to him. As a result, the witness spoke to Inspector Chee-A-Tow. On the 12th November the witness spoke to Balchand who left about 8.30 to 9.00 a.m. At about 8.00 p.m. on the same day he spoke to Balchand again. The witness next gave evidence about the recovery of the money, and then went on to say that he had been a policeman for 17 years and had served on the Corentyne river for 5 years. Before October 1963 he had seen bodies floating in the river. In his experience dead bodies had a tendency to drift towards the mouth of the river.

p.100 1.16

In cross-examination he said the reason for refusing to allow Balchand to speak to the Appellant on the way down river was what the Appellant had told him just before he was arrested. He felt that if the Appellant and Balchand spoke together they might have interfered with the course of justice. He had not expected to see Balchand on the 7th November but after speaking to him he was expecting to see him on the 12th. He knew the Appellant was a prisoner on remand at New Amsterdam Prison on the 12th, and he knew that he had to come up for remand on the 12th as he had already been charged. He knew the Appellant and Balchand were to meet at Whim Police Station on the 12th. He took a written statement from Balchand on the 14th November. It was not true

p.101 1.21

p.101 1.40

Record

- p.102 1.23 that he arranged a meeting between Balchand and the Appellant and he was not aware that Balchand was holding out promises to the Appellant to contact the latter's father or to give help in recovering the money. He expected Balchand to give him information about the recovery of the money after he had spoken to the Appellant. On the 12th November he did not feel it was against the interest of justice for Balchand to speak to the Appellant. The first time he knew of what the Appellant was alleged to have told Balchand was on the 14th when he took a statement. He did not know whether anyone had measured the footprints on Powis Island. As far as he knew no attempt was made physically to link the Appellant with the footprints. An attempt was made to take photographs of the footprints but it had to be abandoned because when the photographer arrived the prints were smeared. 10
- p.103 1.32
5. The Jury expressed a desire to see the launch and in particular to look at the switches, the level of the sea water cork, the spot where the cork was found, the crank handles, the propeller, and also to look for any damage. This was done and thereafter three witnesses gave evidence as to the inspection by the Jury. 20
- p.118 6.(a) Sergeant Barrington Barker was re-called to give evidence for the Defence. He stated that he placed Balchand in a cell at Whim Police Station on the 12th November. His intention was that Balchand would give evidence which might assist the Police or the Appellant. He expected the Appellant to speak to Balchand about the case because Balchand had requested to see the Appellant. He did not know whether the Appellant would speak. He did not know of any previous promise of help made by Balchand. He expected Balchand to relate to the Police what the accused said and his reason for so expecting was that he understood Balchand had had a conversation with Superintendent Soobrian and was at Whim because of a previous arrangement. The Appellant and Balchand spent about an hour together in the lock-up. He did not caution the Appellant nor did he tell the Appellant anything as he took him to the lock-up. 30 40

In cross-examination by the Crown he stated that on the 12th November he had not known that Balchand had spoken to the Appellant before. He was not in charge of the investigations and did not charge the accused. P.C. Ramjattan had instituted the charge.

- (b) No other witnesses were called for the Defence, but the Appellant made a statement from the dock in which he said "I am innocent of this charge. This is the second time that Raghubar, Balchand and Ramjattan have caused me to stand trial wrongfully." p.119 1.7
7. The learned trial Judge, in a lengthy summing up, commenced his review of the evidence by saying that there were no eye witnesses to the alleged murder and that, apart from statement made by the Appellant, one to the Police and another orally to Balchand, the Crown was relying on circumstantial evidence. He continued by saying that the Crown alleged that there were certain circumstances from which they invited the Jury to say that the only reasonable and the only possible conclusion to which the Jury could come was that the Appellant murdered Motie Singh. The Judge then repeated that the Crown was relying on circumstantial evidence, and explained what this meant. Next, he went on to define the offence of murder, and then told the Jury the questions they had to answer. These were: first, what caused the death of Motie Singh; then, under what circumstances Motie Singh died (and here the learned Judge repeated that the Crown relied on circumstantial evidence); next whether Motie Singh died as the result of an accident; if he did not, whether he died as a result of either of the two wounds inflicted upon him; then, if they came to the conclusion that the wounds were inflicted by some person, as to whether it was the Appellant who inflicted the wounds or either of them; if the Jury decided that it was the Appellant, then they must ask themselves what his intention was. He then went on to review the circumstantial evidence in detail. Dealing with the charge levelled against the Appellant by Motie Singh's son, he mentioned that the Appellant had remained silent, but p.119/202 p.122 1.16 p.126 1.13

Record

p.169 1.20 added that he was not bound to say anything and that the Jury might feel that this was not a matter which ought to be held against the Appellant. When dealing with the medical evidence as to the nature of the wounds found on the three dead men, he referred to the wounds found on Heera and Dindial. He stressed however to the Jury that the Appellant was not charged with the murder of anybody else except Motie Singh, and he referred merely to the cause of death of the other two persons to help the Jury to decide whether or not there had been an accident. He then pointed out that it was for the Jury to decide the two questions, viz. whether Motie Singh died from the wounds found by the Doctor and if so whether those wounds were inflicted by the Appellant. If the Jury had any reasonable doubt in their minds then they must acquit the Appellant. Turning to the evidence of Balchand, he expressed the view that the Jury might find Balchand's evidence "very very important". He dealt with the activities of Balchand during the search for the bodies and the search for the money, and then stated that the important part of Balchand's testimony related to the alleged conversation Balchand had with the Appellant. Mentioning that Balchand had had certain instructions from Ramjattan he said the Jury might very well feel that the meeting of the two men at Whim lock-up was arranged or facilitated by the police. After saying that he had ruled the evidence to be admissible, he told the Jury that this did not preclude them from determining whether or not a promise of favour was held out to the Appellant with the connivance and consent of the police. If the Jury so felt then they must reject the statement. If they had any reasonable doubt in their minds then again they must reject it. But if they felt this was a case of a man speaking to his friend quite voluntarily without any promise being held out by the police directly or through Balchand, then they would consider the statement and place whatever weight upon it that they felt it deserved. If they concluded that the Appellant had used the words he was alleged to have used then, if they felt further that he used those words because he felt from Balchand's word

10

20

30

40

or conduct that he would gain some advantage from the police in relation to the charge, then, or if they had any reasonable doubt as to whether this was so, they were to disregard the conversation.

8. Sir Kenneth Stoby, Chancellor, delivering the first judgment in the Court of Appeal, said that of the eight grounds of appeal, in the main the appeal had centred round the third ground. This ground was that inadmissible evidence in the form of an oral confession was wrongly admitted by the trial Judge without which the Defendant could not be convicted. Dealing with this ground the learned Chancellor said that at the trial the evidence adduced by the Crown had fallen into two compartments, (a) circumstantial, and (b) a confession. The circumstantial evidence had been clearly and thoroughly explained to the Jury by the trial Judge. The Crown had proved opportunity, motive and circumstances from which inferences of guilt could be drawn. He outlined the circumstantial evidence, up to the moment of arrest of the Appellant, and said that on this evidence there were clearly circumstances and inferences from which a Jury properly directed could have convicted the Appellant. It was the events which had taken place after the arrest and charge which formed the main ground of appeal. He outlined these events and continued that the submission of Counsel for the Appellant had been that the confession was inadmissible as not being voluntary and as having been obtained by hope of advantage held out by a person in authority. It was the duty of the Crown to prove a confession voluntary, but it was the duty of the Judge to decide whether or not voluntariness had been proved. A Judge could, in the exercise of his discretion, if he thought it necessary for the protection of an accused person, reject a confession although there had been compliance with the Judges Rules. This was not an arbitrary rejection. As examples of situations where the discretion to exclude might be exercised, the learned Chancellor mentioned confessions obtained by a trick practised on the accused, or situations where there had been some
- 10 p.207/223
p.10 1.14
- 20 p.210 1.20
p.211 1.26
- 30 p.213 1.1
- 40

Record

- impropriety on the part of the Prosecution. Conversely, even where there had been a breach of the Judges Rules, a Judge might still admit a confession if satisfied that it was voluntary. On looking at the summing up and the direction given by the Judge in this case it was clear that he had exercised his discretion judicially.
- p.215 1.10 It had been urged that the confession was not voluntary because Balchand was a person in authority and had induced the Appellant to confess by reason of a promise. As to the conversation at the prison, it was obvious that Balchand must have told the Police of his proposed visit and equally obvious that the Appellant did not know what Balchand had done. The Appellant's request to Balchand to obtain money was admissible evidence. No question of a promise arose. In the Appellant's mind Balchand was not a person who would influence the course of the prosecution but someone who would help illegally to destroy the evidence. It had however been contended that it was the events leading up to the second meeting, in the lock-up, which had converted Balchand into a person in authority, in that Balchand's admissions under cross-examination that he believed the Appellant would say where the money was if he (Balchand) promised to help, was sufficient to make Balchand a person in authority. In the learned Chancellor's view, the promise to help was no more than a promise to help find the money. When a trial Judge was determining whether or not a person was in authority, it was necessary for him to make his mind up on two things:
- Did the prisoner know that the person to whom he had made the confession was a person in authority, or alternatively was it reasonable to say that the prisoner believed the person to whom he confessed to be a person in authority?
- p.216 1.40
- p.217 1.30
- p.218 1.5 In answering these questions an important factor must be the nature of the promise and how it came to be made. Neither the conduct of the police nor Balchand excited approval; however the true test of admissibility was not whether the conduct

Record

of the police was reprehensible but whether the confession was free and voluntary. In the view of the learned Chancellor there was no ground for concluding that Balchand was a person in authority; no ground for substituting the discretion of the Appeal Court for the discretion of the Trial Judge; and, no ground for holding that the confession was not free and voluntary. The learned Chancellor reached these conclusions purposely refraining from taking into consideration the fact that, at the Voir Dire, the Appellant did not give evidence. As the crux of the matter at the Voir Dire was the prisoner's state of mind when he was alleged to have confessed, his failure to give his version of what took place deprived the trial Judge of hearing available evidence.

10

p.219 1.31

p.220 1.1

p.223/244

9. Luckhoo, J.A., agreed with the Chancellor. In dealing with the circumstantial evidence, the learned Justice of Appeal drew attention to the fact that, in view of the account given by the Appellant that there had been an accident and that he believed the other three men were drowned, the medical examination of all three bodies became relevant to the issue as to whether Motie Singh died by accident or design. The medical evidence disclosed that Motie Singh, Heera and Dindial lost their lives in much the same way, this being inconsistent with the accident and consistent with design. The totality of the circumstantial evidence, which was of undoubted cogency, was reinforced by the statements made by the Appellant to Balchand in the prison. No objection was taken to the admissibility of this conversation, nor was it suggested that anything else was said other than what was deposed to. Its admissibility then was conceded, and its veracity not questioned. The objection that was taken was as to what had happened at the second meeting. It was said of this conversation that it was not voluntary because it was induced by a promise made by Balchand with the knowledge and consent of a person in authority. Before the Court of Appeal it had been argued that the Appellant told Balchand about how Motie Singh came to his death because of Balchand's promise to go to

20

30

40

p.228 1.17

p.231 1.9

Record

Powis Island and get the money and further to use it in trying to suborn the witnesses, all matters which at the time were relevant to charge of murdering Motie Singh. It was only after these promises had been made and the Appellant had believed that Balchand would have helped that Balchand asked him questions about how Motie Singh died, whereupon the Appellant told more than he would otherwise have done. In these circumstances, it was said that the trial Judge had no alternative but to find that the confession was made in consequence of inducements of a temporal character, relating to the charge before the Court, and held out by a person who had some authority over the accusation. In the view of the learned Justice of Appeal, the principles of law to be applied were fully appreciated by the trial Judge. The principles applicable were, that a confession would be excluded if it was made in consequence of any inducement of a temporal character connected with the accusation or relating to the charge, and held out to the accused by a person having some authority over the subject matter of the charge or accusation. In his view the conversation in the lock-up could not be considered in isolation from the conversation in the prison. As to the conversation in the prison, it was not argued, not could it be, that what the Appellant told Balchand was due to or in consequence of any inducement or promise; (a) that Balchand was a person in authority or (b) that his promise related to the charge against the Appellant. After this first conversation it became Balchand's duty to report to the Police and he did so. The Police having become aware of the prison conversation, were under a duty to seek to foil legitimately any attempt to remove the money. In arranging for Balchand to meet the Appellant alone at the lock-up they were, in effect, providing the opportunity for the prisoner to continue his unfinished conversation, and they expected this would be done. Balchand might use, but not abuse the situation. If he posed as a person in authority, and under this guise induce by a promise having a bearing on the charge, any confession resulting therefrom would be

10

p.232 1.20

20

p.233 1.13

p.233 1.29

30

p.235 1.26

p.235 1.40

40

Record

involuntary. The evidence showed, and here the learned Justice of Appeal adopted the approach of the learned Chancellor that the test to be applied was a subjective one, that the Appellant never considered Balchand to be a person in authority. Up to the moment of Balchand's promise, all that was said was quite spontaneous and perfectly voluntary, although very self-incriminating. The promises then given were not in any way directly or indirectly referable to the charge, but the questions then asked were not tied to or hinged on any promises. They were independent of any promise to assist and arose naturally from the disclosure volunteered. When the questions were asked the Appellant had already gone very far in incriminating himself without any vestige of inducement. Balchand had never promised, nor was it suggested that he did so, to assist only if he was told. If the question would not have been answered but for promises to do what the Appellant wanted done, the most that could be said was that the answers resulted from collateral promises which could not affect the charge against the Appellant. The learned Justice of Appeal was satisfied that there was nothing concerning the conversation at the lock-up from which it could be said that the Appellant was induced to speak by unfair or improper means, and he did not find any principles of law offended. Justice and common sense required the reception of what was said by the Appellant. He wanted, and desired to speak entirely for purposes of his own. The trial Judge was right in admitting the evidence since nothing had occurred from which it could be said that statements were made in consequence of any inducement of a temporal character, connected with the accusation, and held out to the Appellant by a person who had some authority over the accusation. The circumstantial evidence which existed before and led to the charge was ample to establish the guilt of the Appellant, and overall the circumstantial evidence was overwhelming. Even if the lock-up conversation were excluded it was difficult to see how the Jury could have reached any other conclusion.

10 p.237 1.9
 p.237 1.40
 p.238 1.6
 p.238 1.37

20 p.239 1.28

30 p.241 1.5

40 p.241 1.39
 p.243 1.18
 p.243 1.36

Record

p.245/286		10. Cummings, J.A., agreed that in order to determine whether or not a person was in authority the question to be answered must be whether or not that person was in a position to make a promise, the fulfilment of which would, in the mind of the accused, create an advantage in his favour in relation to the trial of the offence for which he was charged.	
p.270	1.5	He thus agreed that the test was a subjective one. The learned Justice of Appeal, however, dissented from the other two members of the Court on the question of whether Balchand was a person in authority. He said that, by reason of the part Balchand played in the search, when the Appellant was present Balchand must have appeared to the Appellant to have been close to the Police in connection with the investigations, someone who perhaps in the mind of the Appellant could influence the course of the investigation by reason of his position. Referring to Balchand's relations with the Police, including his remark that he gave a statement to Inspector Chee-A-Tow, before he went to the prison, he said it was clear that prior to going to the Appellant in prison, Balchand had become, in addition to a potential prosecution witness with regard to the finding of the bodies and the salvaging of the launch, a police informer. Further, if not prior to going to the prison, then certainly after leaving it, he had become a material	10
p.270	1.16		
p.271	1.3		
p.257	1.36		20
p.261	1.18		
p.261	1.27		30
			40
p.270	1.16	prosecution witness as to the whereabouts of the money. As the "authority" test was a subjective one, it could only be applied by drawing a reasonable inference from the surrounding circumstances as they were known to and probably appreciated by the Appellant. It seemed to the learned Justice of Appeal, that at all material times the Appellant would have been looking upon Balchand not only as a trusted friend but also as a person so close to the Police in the carrying out of the investigations that they were likely to be regarding Balchand as one of themselves, and in that setting Balchand would have the necessary scope to fulfil his promise to collect the money. Thus, the Appellant may have regarded Balchand as a friend who was in the strategic position of an ad-hoc policeman, and thus a person in	
p.271	1.1		

authority. Counsel for the Crown had urged that there was no inducement because the promise was the result of a request from the Appellant. This did not matter. The question really was, was the alleged confession obtained by any direct or implied promises, however slight, or by the exertion of any improper influence. The learned Justice of Appeal asked himself if the Appellant would have answered Balchand's two questions if

10 Balchand had not first promised to find the money, and give it to the Appellant's father-in-law, inter alia to suborn potential Crown witnesses who the Appellant thought had seen him on the Island. If the answer to this question was no, then the alleged confession should be excluded. If the answer was "it is unlikely", or "it is impossible to tell", then also it should be excluded. Bearing in mind that

20 the onus was upon the prosecution to prove that the confession was voluntary, the prosecution ought to have called at the Voir Dire: Detective Constable Ramjattan, Inspector Chee-A-Tow, and Sergeant Barker. As regards the last named, the Defence ought not to have been embarrassed by having to call this witness in an endeavour to prove that the confession was not voluntary. If these witnesses had been called at the Voir Dire, together with the

30 concession made by Counsel for the Crown in his closing address to the Jury that the police had planted Balchand in the cell, it would have emerged that both Ramjattan and Inspector Chee-a-Tow had conversations with Balchand both before and after he went to the prison and the lock-up. The trial Judge would no doubt have found the details of these conversations of material assistance to him in the exercise of his discretion. It seemed that the nature of the Crown's onus to prove positively and

40 affirmatively that the confession was free and voluntary was not fully appreciated, and this resolved in the accused having to endeavour to show that the confession was not free and voluntary. In his view the alleged confession was the result of an implied

inducement, which was at least to a part, in relation to an advantage to be gained by the

p.271 1.24
 p.261 1.38
 p.272 1.34
 p.274 1.19

Record

p.274	1.41	Appellant with respect to the charge. If he were wrong in such positive inference, then in his view the prosecution had not proved positively and affirmatively that there was no implied inducement. Furthermore the confession was obtained by an obvious circumvention of the Judges Rules, which fact could not be clearly appreciated at the Voir Dire, although it emerged after the statement had been admitted. In these circumstances he asked himself if the trial Judge ought to have admitted the alleged confession. If it had been obtained by a policeman in the circumstances disclosed it would have been a flagrant disregard of the Judges Rules and no doubt would have been excluded by the trial Judge upon a proper exercise of his discretion. It would make a mockery of the Judges Rules if the police could knowingly substitute for one of themselves an ad-hoc policeman to do exactly what the Rules precluded themselves from doing.	10
p.277	1.36	If the trial Judge had known of the police arrangement at the Voir Dire, he might very well have rejected the confession. In these circumstances he considered that the confession should have been excluded and should not now be allowed to stand. The remaining question was, would there have been a conviction in the absence of the confession? Here the learned Justice of Appeal considered the principles governing the exercise of the Proviso. The trial Judge did not tell the Jury that it was open to them, even if they rejected the confession, to convict the Appellant on the other evidence, therefore the Jury may have paid no or little regard to these things. It was impossible to say that the Jury were not strongly influenced by, or for that matter acted entirely upon the alleged confession. Therefore he would allow the appeal and quash the conviction.	20
p.281	1.9		
p.281	1.37		30
			40

11. The judgment of the Court of Appeal was given before the decision of the House of Lords in Commissioners of Customs and Excise v. Harz, and all the members of the Court of Appeal directed themselves on the basis that a promise which induces a confession must relate to the charge against the accused. It

is respectfully submitted, however, that the views of the Chancellor and Luckhoo, J.A., would not have differed if they had directed themselves on the basis that the promise does not need to relate to the charge against the accused. They took the view, correctly it is submitted, that in the eyes of the Appellant, Balchand was not a person in authority. They further took the view, the Chancellor by inference, and Luckhoo, J.A., expressly, that there was, in any event, no inducement, and it is respectfully submitted that in taking this view they were correct. It is further submitted that, on the evidence, it was not open to Cummings, J.A., to take the view that the Appellant might have regarded Balchand as a person in authority. It is further submitted, respectfully, that if the final confession was made in response to a promise, and it is submitted it was not, then there were no circumstances in the case which might in any way suggest that the ultimate confession was untrue or at least untrustworthy. If the true test be that of realistic danger that a confession may be untrue, then it is submitted that in the present case there was no such danger.

12. It is respectfully submitted there was no breach of the Judges Rules, and that, on this point, the reasoning of Luckhoo, J.A., (although he did not specifically refer to the Rules) is to be preferred to that of Cummings, J.A. Further, if there was a breach of the Judges Rules, then it is submitted that the learned Chancellor, and Luckhoo, J.A., (by inference) were correct in holding that the learned trial Judge had rightly exercised his discretion, and that there were no circumstances that would require the exclusion of the confession. It was, it is submitted, apparent on the Voir Dire that Balchand went to the lock-up by arrangement with the Police. It is further submitted that, apart from the Judges Rules, there were not circumstances in the case such as would have required the learned trial Judge to exercise his discretion against admitting the confession.

Record

13. It is submitted that, if, contrary to the submissions above, the confession ought to have been excluded, then nevertheless any reasonable Jury, hearing only the admissible evidence, could not, if properly directed, have failed to convict. It is submitted that Cummings, J.A., wrongly directed himself on the principles governing the exercise of the Proviso. There was, it is submitted, other evidence directly implicating the Appellant in the murder of Motie Singh. Apart from such evidence, there was, as found by the Chancellor and Luckhoo, J.A., overwhelming circumstantial evidence. If this evidence did not point conclusively to the fact that the hand that struck fatal blows against Motie Singh was that of the Appellant, it nevertheless, is submitted, pointed conclusively to the fact that the Appellant was culpably involved in the murder of Motie Singh. 10

14. It is submitted that the judgment of the majority of the Court of Appeal was correct and that the appeal ought to be dismissed for the following among other 20

R E A S O N S

1. BECAUSE, on the evidence, the Appellant's confession was voluntary, not being made to a person either in, alternatively believed by the Appellant to be in, a position of authority, as a result of any inducement or promise. 30

2. BECAUSE there was no breach of the Judge's Rules, alternatively: no such breach as would have merited the exclusion of the confession by the trial Judge in the exercise of his discretion.

3. BECAUSE there were no, or no sufficient circumstances as would otherwise have merited the exclusion of the confession by the trial Judge in the exercise of his discretion. 40

4. BECAUSE there were no valid reasons for substituting the discretion of the Court

41.

Record

of Appeal for the discretion of the trial Judge.

5. BECAUSE, in any event, there was no miscarriage of justice, there being, without the confession, such evidence that any reasonable Jury, hearing only the admissible evidence, and being properly directed, would not have failed to convict.

GERALD DAVIES

10

15th January, 1968.

19 OF 1967

IN THE PRIVY COUNCIL

ON APPEAL FROM THE COURT OF APPEAL
OF GUYANA

DEOKINANAN Appellant

- and -

THE QUEEN Respondent

CASE FOR THE RESPONDENT

CHARLES RUSSELL & CO.,
37, Norfolk Street,
London W.C.2.