

(b)

IN THE PRIVY COUNCIL

No. 19 of 1967

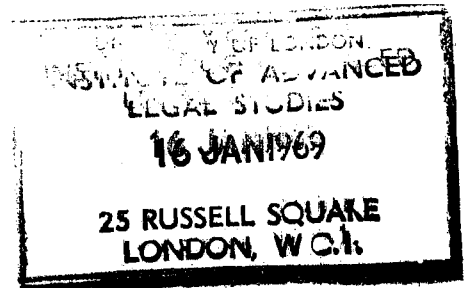
ON APPEAL FROM
THE COURT OF CRIMINAL APPEAL
OF THE SUPREME COURT OF GUYANA

B E T W E E N :

DEOKINANAN Appellant

- and -

THE QUEEN Respondent



R E C O R D O F P R O C E E D I N G S

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(i)

IN THE PRIVY COUNCIL

No. 19 of 1967

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

B E T W E E N :

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- and -

THE QUEEN Respondent

RECORD OF PROCEEDINGS

INDEX OF REFERENCE

No.	Description of Document	Date	Pa
	<u>IN THE SUPREME COURT OF</u> <u>BRITISH GUIANA</u>		
1.	Indictment		1
	<u>Prosecution Evidence</u>		
2.	Sookhia	1st November 1965	2
3.	Crispin Gonsalves	1st and 2nd November 1965	3
4.	Rookmin	2nd November 1965	6
5.	Ganesh Persaud	2nd November 1965	7
6.	Milford Bobb, Corporal of Police No.5057	2nd November 1965	11

No.	Description of Document	Date	Page
7.	Haji Ramjohn	2nd November 1965	12
8.	Jwalla Persaud	2nd November 1965	16
9.	Arjune Rana	2nd November 1965	17
10.	Jacobus Walters	2nd and 3rd November 1965	19
11.	Nanka Pinter	3rd November 1965	22
12.	Manoel Quillo	3rd November 1965	25
13.	Gulab	3rd November 1965	27
14.	Richard Edwards	3rd November 1965	28
15.	Lewis Douglas	3rd November 1965	30
16.	Shiren Ally	3rd November 1965	31
17	Shadrack Castello	4th November 1965	35
18.	Stella Barry	4th November 1965	40
19.	Sonny Kenneth Milne	4th November 1965	42
20.	Clinton Alexander	4th November 1965	44
21.	Claude Chung	4th and 9th November 1965	47
22.	Dowlatram Raghobar	9th and 10th November 1965	50
23.	Stanley Hall	10th November 1965	63
24.	Barrington Barker, Sergeant of Police No.4774	10th November 1965	64
25.	Thomas Bayne, Constable No. 4347 Police Photographer	10th November 1965	66
26.	Emanuel Verway (Shennie)	10th November 1965	68
27.	Basil Jokhai, Police Constable No.6642	10th November 1965	69

(iii)

No.	Description of Document	Date	Page
28.	Roy Coates	10th November 1965	70
29.	Balchand	10th and 11th November 1965	73
30.	Submissions by Counsel for Defence	11th November 1965	87
31.	Submissions by Counsel for Prosecution	11th November 1965	88
32.	Judge's Ruling	11th November 1965	88
<u>Further Prosecution Evidence</u>			
33.	George De Abreu, Detective Constable No.6484	12th November 1965	88
34.	Edward Gomannie	12th November 1965	90
35.	Naubat Ramjattan, Detective Constable No.5555	16th November 1965	94
36.	Eustace McAlmont, Detective Constable No.5613	16th November 1965	105
37.	Submission by Counsel for Defence	16th November 1965	106
38.	Reply by Counsel for Prosecution	16th November 1965	107
39.	Judge's Ruling	17th November 1965	108
<u>Prosecution Evidence after locus in quo</u>			
40.	Ramnarine	18th November 1965	115
41.	Dowlatram Raghubar	19th November 1965	116
42.	Emanuel Verwey	19th November 1965	117

No.	Description of Document	Date	Page
43.	Edward Gomannie <u>Defence Evidence</u>	19th November 1965	117
44.	Barrington Barker	11th November 1965	118
45.	Statement of Accused (Deokinanan) from the dock	17th November 1965	119
46.	Judge's Summing-up	22nd & 23rd Nov. 1965	119
47.	Verdict	23rd November 1965	202
48.	Minute of Sentence <u>IN THE BRITISH CARIBBEAN COURT OF APPEAL</u>	23rd November 1965	203
49.	Notice of Appeal	30th November 1965	203
50.	Grounds of Appeal <u>IN THE COURT OF APPEAL OF THE SUPREME COURT OF JUDICATURE OF GUYANA</u>	30th November 1965	203
51.	Judgment of Sir Kenneth Stoby	20th December 1966	207
52.	Judgment of Luckhoo J.A.	20th December 1966	223
53.	Judgment of Cummings J.A. <u>IN THE PRIVY COUNCIL</u>	20th December 1966	245
54.	Order granting leave to appeal in forma pauperis to Her Majesty in Council	24th May 1967	287

E X H I B I T

Exhibit Mark	Description of Document	Date	Page
"Z"	Statement of Accused produced in Court of Appeal	24th October 1963	289

(v)

DOCUMENT TRANSMITTED TO THE PRIVY
COUNCIL BUT NOT REPRODUCED.

Description of Document	Date
Address to Jury by Defence Counsel	30th November 1965
Address to Jury by Prosecution Counsel	
Notice of appeal against conviction or sentence	

LIST OF EXHIBITS EXCLUDED FROM THE RECORD

Exhibit Mark	Description of Exhibit
"A1-A3"	Three pieces of stick
"B"	Drum
"D"	Pillow Case
"E"	Launch-seat
"F"	Drum of oil
"G"	Seawater cork
"H"	Piece of Mora Wood
"J"	Kerchief and current notes
"K"	Launch "Miss Carol"
"L"	Striped shirt
"H"	Canister
"N"	Key
"O1" & "O2"	Two prayer books
"P1" & "P2"	Spectacles and case
"Q"	Tape measure
"R"	Safety razor
"S"	Mirror
"T1" & "T2"	Two note books
"V"	Blanket
"W1" & "W2"	Two pairs of trousers
"Y1" & "Y2"	Cup and plate
"AA1-AA6"	Six negatives
"BB1-BB6"	Six photographs
"DD"	Pair of Khaki pants
"HH"	Two cranks
"JJ"	Four spanners
"KK"	Shifting spanner
"SS"	Inland Marine Police No.580 dated 27th March, 1963
"TT"	Birth certificate 39561 A - 249 dated 10th September, 1957
"UU"	Depositions of Dr. M.A. Lunk

IN THE PRIVY COUNCIL

No. 19 of 1967

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

<u>B E T W E E N</u>	DEOKINANAN	<u>Appellant</u>
	- and -	
	THE QUEEN	<u>Respondent</u>

R E C O R D O F P R O C E E D I N G S

NO. 1
INDICTMENT.

In the Supreme
Court of
British Guiana

10

THE QUEEN
against
DEOKINANAN

No. 1
Indictment

IN THE SUPREME COURT OF BRITISH GUIANA,
(Criminal Jurisdiction)

County of Berbice.

PRESENTMENT OF THE DIRECTOR OF PUBLIC PROSECUTIONS
FOR BRITISH GUIANA.

Deokinanan is charged with the following
offence:-

20

Statement of Offence

10. Murder, contrary to section 100 of the
Criminal Law (Offences) Ordinance,
Chapter 10.

Particulars of Offence

Deokinanan, between the twenty-third and
twenty-fourth days of October in the year of Our
Lord one thousand nine hundred and sixty-three, on
the high seas within the jurisdiction of the
Admiralty of England, murdered Motie Singh.

30

Gordon S. Gillette.
Director of Public Prosecutions.

L.O.-3

C.G.P. & S. 1729/63

In the Supreme
Court of
British Guiana

NO. 2
EVIDENCE OF SOOKHIA

Prosecution
Evidence

No. 2

Sookhia
Examination
1st November
1965

SOOKHIA sworn states:-

I am the widow of the deceased Motie Singh, and I live at Crabwood Creek, Corentyne.

My husband worked with Raghubar, purchasing logs from along the Corentyne River. My husband died in October for about 2 years. He had been working with Raghubar for about 3 to 4 years prior to his death.

10

On Tuesday 15th October, I packed three shirts, two trousers, one blanket, 2 prayer books, spectacles, a tape measure in a canister. This is the canister, it belonged to my husband
"M" (tendered and marked "M"). I locked the canister with a key. This is the key
"N" (tendered and marked "N"). I gave my husband the key, and I took the canister to a stelling which is opposite my house. My husband went with me.

20

At the stelling I saw Heera, Dindial, and the accused whom I call "Better Boy". The three of them left walking down the stelling, and I went home. My husband was well when he left me. My husband could swim.

On Thursday 24th October I was at home, one Jwalla came to my house. He spoke to me. I went to Raghubar's sawmill at Crabwood Creek. I saw Raghubar, and I spoke to him.

On Sunday 29th October 1963, I went to the Skeldon Hospital. There I saw the dead body of my husband. I saw a cut on his neck, and on his belly.

30

On the 6th November 1963, I went to Springlands police station. There I was shown Exhibits "M" and "N". I was also shown these two prayer books. (Tendered and Marked "01" and "02"). These "01" and "02" were the books I had packed for him in the canister. I was shown this pair of spectacles and case.

These belonged to my husband, and I had packed them in the canister (tended and "P1" marked "P1" and "P2"). I was also shown this "P2" tape measure. It belonged to my husband, and I had packed in the canister. (Tendered and "Q" marked "Q"). I was also shown this razor "R" (Tendered and marked "R"), and this mirror "S" (tendered and marked "S"), and these two note "T1" books (tendered and marked "T1" and "T2"); "T2" and this blanket (tendered and marked "V"); "V" and these two pair of trousers (marked "W1"- "W1" "W2"). I had packed all of the articles in "W2" the canister on the 15th October.

10

My husband also had a hammock. He had taken the hammock also on the 15th October. He used two pieces of rope to tie up the hammock. I did not see the hammock or rope at the police station.

20

I have a son called Genesh Persaud. In October 1963, he lived with my husband and me.

Cross-examined by Mr. Wills:-

Declined

By Jury:-

The accused and my husband and I have all been on good terms. We used to speak.

NO.3
EVIDENCE OF CRISPIN GONSALVES

CRISPIN GONSALVES sworn:-

I live at Springlands, Corentyne. I am the owner and manager of the Arawak Hotel at Springlands. I am 64 years old, and I have lived all my life on the Corentyne. I am a rural Constable, and I held the rank of Sergeant Major. Two weeks ago I handed in my precept.

30

I have worked for 30 years in the Corgntyne River. I operated the Government Mail

In the Supreme Court of British Guiana

Prosecution Evidence

No. 2

Sookhia Examination
1st November 1965
(Contd.)

Cross-Examination

No. 3

Crispin Gonsalves Examination
1st November 1965

In the Supreme
Court of
British Guiana

Prosecution
Evidence

No. 3

Crispin
Consalves
Examination
1st November
1965
(Contd.)

service in that river for 1 year. I lived at the Siparuta Amerindian Mission, and was the Amerindian protector for about 5 years. The Siparuta Mission is on the left bank or British side of the river about 60 miles up river from Springlands. I have travelled as far as Wanatoba Falls about 500 miles up the Corentyne River. There are no bridges across the river from Springlands to the Wanatoba Falls.

I worked with the Goveltext Timber Company for one year - around 1959. The company was situate about - 40 miles up the river. A French ship called the Nomares went up to the Goveltext Company for sleepers to take away. I piloted this same boat up to a point called White Hill about 150 miles from Springlands. The width of the river around White Hill is about 3 miles. White Hill is above Siparuta and Cow Landing.

10

The width of the Corentyne River from No.63 is about 10 to 12 miles. The Corentyne River is tidal up to Cow Falls - about 210 miles from Springlands. The water ebbs and flows every 6 hours.

20

I travelled in the ship I piloted. I would say it is about 2000 tons.

Cross-
examination

Cross-examined by Mr. Wills:-

I did not give evidence in the previous hearing in which the accused was charged. By 2000 tons, I meant the ship can carry 2000 tons in cargo. The amount of cargo depends on the space available and the size of a ship. I do not know that tonnage of a ship refers to the displacement of water by the ship.

30

I have piloted an American boat up the Corentyne River.

I have always believed that the mouth of the Corentyne River to be from No.63. I gave evidence before the magistrate upon oath. I did not tell him the mouth of the river is 2 miles. I did not hear the magistrate read 2 miles.

40

I told the magistrate that Nemores is 10,000 tons. This is what I was told. I did not tell the magistrate 2000 tons.

By tidal I mean that the water of the river rises and falls. The water beyond Cow Falls is not tidal.

The Nemores was painted black at water level, and grey at the top.

10 I would say that White Hill is about 180 miles from the mouth of the Corentyne River.

The Goveltex Co. has closed down. The premises were about 75 miles from the mouth of the river. I might have told the magistrate that the Goveltex Co. was about 60 miles from the mouth of the river, but I cannot remember I told the magistrate that I piloted the Nemores about 30 miles further up the river to White Hill from Goveltex Co. This is an average.

20 When I told the magistrate that the water ebbed and flowed to a point of about 70 miles, I meant from Springlands.

I know Kanakaburi. There is a sandbank about 8 miles south of Kanakaburi. Going up river one meets Kanakaburi before Powis Island. Kanakaburi is a creek. There are sandbanks on the way to Powis Island from Springfields. The biggest sandbank is opposite Crabwood Creek. There are Channels on both sides of the island. Large vessels can go beyond Kanakaburi.

30 I saw the Zam go up the Corentyne River, and I saw it return. I did not see how far it went, but it went out of sight.

I worked with Goveltex fetching mails and money. I piloted the ship after the war. I have not worked with Goveltex since then.

Jury admonished: Adjourned to 9 a.m. on 2.11.65.

Tuesday 2nd November 1965

Jury checked

In the Supreme Court of British Guiana

Prosecution Evidence

Crispin Gonsalves

Cross-Examination
1st November 1965

(Contd.)

In the Supreme
Court of
British Guiana

CRISPIN GONSALVES sworn states:-

Prosecution
Evidence

Cross-examined by Mr. Wills:-

Declined.

No. 3

Re-examined:-

Crispin
Gonsalves

The Nemores was a very big ship. I have not seen that ship again.

Re-
examination
2nd November
1965

By the Jury:-

Declined.

No. 4

Rookmin

NO.4
EVIDENCE OF ROOKMIN

10

Examination
2nd November
1965

ROOKMIN sworn states:-

I am the widow of the deceased Heera. I live at Crabwood Creek. During his lifetime my husband was employed at Raghubar's saw mill.

On 15th October 1963, my husband went up the river with Motie Singh, Dindial, and the accused. My husband took his cutlass and his canister. I had packed his clothes in the canister. I also packed this plate and cup for him. They belonged to the deceased Heera. (Tendered and marked "Y1" and "Y2").

"Y1"
"Y2"

20

on 6th November 1963, I went to the Springlands Police Station where P.C.Ramjattam showed me the cup and the plate.

After the 15th October 1963, I did not see my husband alive again. I saw his dead body at the Skeldon Hospital. I attended his funeral; he was buried at the Crabwood Creek burial ground.

We were married for 16 years, and we have 6 children. My husband could swim.

30

Cross-
examination

Cross-examined by Mr. Wills:-

I know one Balchand. He lives at Crakwood

Creek, about $\frac{1}{4}$ mile from me. I know Raghubar; he lives about $\frac{1}{2}$ mile from me.

Re-examined:-

Declined.

By the Jury:-

Declined.

In the Supreme
Court of
British Guiana

Prosecution
Evidence

Rookmin

Cross-
examination
2nd November
1965
(Contd.)

No. 5

Ganesh Persaud

Examination
2nd November
1965

NO.5
EVIDENCE OF GANESH PERSAUD

GANESH PERSAUD sworn states:-

10 I am a farmer, and I live at Crahwod Creek, Corentyne. Motie Singh now deceased was my father Sookhia is my mother.

On 15th October 1963, I left my home and I went to the backdam. My father was at home; he was making preparations to go up the river.

20 On 24th October 1963, I was ploughing rice fields at the backdam. Someone spoke to me, as a result of which I went home. There I was told something, as a result of which I made preparations to go up the river to search for my father.

I went up the river in an outboard motor boat. Six others accompanied me. I stopped at Duck Creek where I made some inquiries. I then went up to Kanakaburi, and I stopped at one Claude Chung's place where I made inquiries.

On the 25th, I searched from Kanakaburi to Mc Lenon Island in the Corentyne River. I found nothing. I returned to my home.

30 On 26th October I went up the Corentyne River. The accused and others were with me. We went to Kanakaburi. One Baldeo spoke to me. As a result, I joined Ramjohn's speed boat, and I went

In the Supreme Court of British Guiana to Orealla where I joined a launch the "Ganges". I went further up river for about 2 miles. There I saw the dead body of my father.

Prosecution Evidence

It was floating in the river on the Dutch side.

No. 5

Ganesh Persaud

I took the body out of the water, and placed it in the boat. I observed that the neck was cut nearly through, and the body was 'burst' in front.

Examination
2nd November
1965

Accused was present and could have heard what Baldeo told me; about 6 feet away from me in the same boat. Baldeo told me that he had seen the dead body of Dindial floating by the Siparuta Mission.

10

(Contd.)

At the time when I found the body, accused arrived in the boat which I had left. I told him that he had murdered my father. He did not say anything. I told him this because while we were in the vicinity of Kanakaburi, the accused had told me to search there as the launch had sunk there, and that if I went up further, petrol would run out. I then told him that I had taken enough petrol.

20

At 5 p.m. on the 26th, I saw P.C.Ramjattam and Raghubar at Orealla. There I placed the dead body of my father in a coffin. There I saw the dead bodies of Heera and Dindial.

From Orealla, all the bodies were taken to the Skeldon Hospital. On 27th October 1963, I went to Skeldon Hospital. There I identified the dead body of my father, in the presence of G.M.C. Luck, and P.C.Ramjattan. The doctor examined the body by cutting, after which the body was handed over to me. Later that day I buried my father's body at the Crabwood Creek's Hindu burial ground.

30

Cross-examination

Cross-examined by Mr. Wills:-

Baldeo told me that he had seen Dindial's body floating. He said nothing more to me. He did not tell me a man's body was found floating at Siparuta. I gave evidence before the

40

magistrate. I cannot remember telling the magistrate that Baldeo had said that a man's body was found. If it is so written, then I said so, I have seen it written in the deposition; I agree I told the magistrate this. Baldeo told me that Dindial's body was found.

In the Supreme
Court of
British Guiana

Prosecution
Evidence

No. 5

Ganesh Persaud

Cross-
examination
2nd November
1965

(Contd.)

10 The first time I saw the body of Heera was at Orealla. When I found my father's body I did not know whether Heera was dead or alive. I did not know whether Heera had anything to do with the death of my father.

When I left home, I had in mind to search the river in the vicinity of Kanakaburi. Up to then I had not met the accused. The first time I met the accused after leaving my father preparing to go up river was on the Corentyne river as I left to search for my father.

20 Accused did tell me about the boat sinking. I told the magistrate that accused had said that if I went up further I would not find my father's body, and that the gasolene would finish. I did not tell the magistrate that accused had said anything about the boat sinking. Accused did tell me that the boat had sunk there.

30 I transferred to the Ganges because their boat was searching while Ramjohn's boat was on its own business. Accused had the conversation with me before Baldeo arrived in another boat. Five or six persons were present when accused spoke to me. One Brahmadat was in charge of the boat in which we were. I had fetched the petrol and put it in Brahmadat's boat. I transferred to Ramjohn's boat because I was anxious to find my father's body, and Ramjohn's boat was faster, and other boats were ahead searching. I asked Ramjohn for a lift, and he said he could not carry me too far because he had his own business to look after. He told me this before I transferred to his boat. He did not say how far he could have taken me.

40 I do not know where Siparuta is. I did not ask Ramjohn to take me as far as Siparuta. Brahmadat's launch had enough petrol to get to Siparuta. I found my father's body near to Orealla

In the Supreme
Court of
British Guiana

on the Dutch side. Brahmadat's boat arrived about 15 minutes after.

Prosecution
Evidence

No. 5

Ganesh Persaud

Balchand lives in Crabwood Creek, about a mile away from me. He lived at the same place when this incident occurred. I saw Balchand in the afternoon of the 26th; he was with the accused in the "Majestic". This was after I had found my father's body.

Cross-
examination
2nd November
1965
(Contd.)

I was aware after my father's funeral that accused was detained at the Springland police station. I did not go to Springlands after the funeral until the preliminary enquiry. I did not speak to Balchand during the interval. After finding my father's body, I did not travel in the same launch with the accused.

10

Not true that I paid money to procure Balchand to get evidence in order to put accused in trouble. I have known Balchand for about 15 years. I have never given Balchand any money, nor have I sent money to him. I do not know that Balchand owns the property he lived in, and that that property is heavily mortgaged. I do not know that he needed money in October 1963.

20

I do not know a man called "Preacher". I have known the accused for about 16 to 17 years. I do not know him to have brothers.

The first time I knew that Balchand was a witness against the accused was in the magistrate's court.

Re-
examination

Re-examined:-

30

Balchand and I have never visited each other.

By the Jury:-

At the spot where I found my father's body, the tide washes and falls.

NO. 6
EVIDENCE OF MILFORD BOBB

In the Supreme
Court of
British Guiana

MILFORD BOBB sworn states:-

Prosecution
Evidence

No. 6

Milford Bobb

Examination
2nd November
1965

I am Corporal of Police No. 5075, and the subordinate officer in charge of Weldaad Police Station. In October 1963, I was stationed at Springlands Police Station.

10 On Thursday 24th October, 1963 about 4.05 p.m. I was on duty at the Springlands Police Station. Accused and Dowlatram Raghobar came to the station. In the presence and hearing of the accused, Raghobar reported to me that the accused and three other men, Baboon, Heera and Dindial were in his launch "Miss Carol" in the Corentyne River during the night of the 23rd and early morning of the 24th October 1963, and the accused had told him that they had met in a collision with another launch, and that the
20 "Miss Carol" had sunk, and the accused had said that he did not see the other three men.

I questioned the accused as to how the incident had occurred. He said that he had been sleeping in the launch when he heard a crash, and he found himself in the water; that he swam to the shore, and he did not see the other men. He made a statement which I took down in writing. I did not caution him, as I did not then suspect him of committing any crime. I read the statement over to the accused; he said it
30 was true and correct, and signed his name to it. This is the statement (no objection, tendered and marked "Z").

Cross-examined by Mr. Wills:-

Cross-
examination

40 Raghobar made the report in the accused's presence. Raghobar did mention that a large sum of money was being carried by one of the men. He named the man, but I now cannot remember that name. I made a record of the report, but I did not record the report about the money. I was then thinking of the launch and the men on the launch.

In the Supreme Court of British Guiana

Prosecution Evidence

No. 6

Milford Bobb

Re-examination

Re-examined:-

When the report was made, I did not suspect any foul play. As far as I am aware, this was the first intimation the police were receiving as regards this incident, and I thought it was simply an accident.

By the Jury:-

Declined.

Further

Cross-

examination

2nd November

1965

By Mr. Wills:-

I took a statement from the accused because I wanted to have something on record for submission to my superior officer in the event of further investigation Raghubar was aware of what the accused was saying as regards the loss of the launch.

10

By the Jury:-

Declined.

Jury admonished. Adjourned to 1 p.m.

Jury checked at 1 p.m.

No. 7

Haji Ramjohn

examination

2nd November

1965

NO.7

EVIDENCE OF HAJI RAMJOHN

20

HAJI RAMJOHN sworn states:-

I live at Springlands, Corentyne. I am a sawmiller, and a landed proprietor. I own lands in the Corentyne River district. I am 66 years of age. I have been in business for over 40 years in the Corentyne River. I own wood cutting and balata grants, and a cattle ranch, all in the Corentyne River, and the left bank.

I have exported timber from this country to Belgium and to the West Indies. I had to bring in big ships in the Corentyne River.

30

I owned the Nathaniel Greene:- it was a

vessel of about 600 tons. I bought the ship in Georgetown, but it came from the United States. This trade plied between the Corentyne River and Barbados and Trinidad, and also locally. This ship has gone as far as Pirerci which is about 120 miles from Springlands.

In the Supreme
Court of
British Guiana

Prosecution
Evidence

No. 7

Haji Ramjohn

Examination
2nd November
1965

(Contd.)

10 I am familiar with the ship "Haywood". I chartered that ship from Nassau to fetch cargo from the Corentyne River to Barbados and Nassau. The tonnage was about 1200 tons. I took that ship to Flat Landing about 70 miles from Springlands. Flat Landing is beyond Siparuta which is about 65 miles from Springlands. Cow Landing is about 60 miles from Springlands but on the Dutch side.

20 I was the local agent for the "Marianna" a ship of about 5000 tons. This ship went as far as the Goveltex Timber Co. for timber for Belgium. Goveltex Timber Co. was about 40 miles up the Corentyne River.

Tropika is about 70 miles up on the Dutch side. Ships have travelled on the Dutch side as far as Tropika. At one time I was the local agent of the Dutch Navigation Co.'s ship. This was from 1935 to the present day.

In August 1965, there was a Dutch survey ship in the Corentyne River. It has gone as far as 120 miles up river. I would say this ship was about 2 to 3 thousand tons.

30 Wanatoba is about 400 miles from Springlands. I have gone there. Wanatoba is the name given to a Fall in the river. As far as I know there are no bridges from the mouth to Wanatoba across the Corentyne River.

40 Maam island is about 40 miles from Springlands, but not on the Dutch side. Powis Island is about 2 miles further up river from Maam island and very near to the English side. Surnep where Mr. Chung lives is near to Powis Island but lower down the river. Kanakaburi is about 2 or 3 miles down river from Surnep. Maam island is on the Dutch side, but opposite Kanakaburi.

In the Supreme
Court of
British Guiana

Prosecution
Evidence

No. 7

Haji Ramjohn

Examination
2nd November
1965

(Contd.)

The Corentyne River is tidal. During the dry season the tide washes and falls as far as Cow Falls which is about 200 miles from Springlands. And during the rainy season the tide washes and falls at a point of about 100 miles up river.

The mouth of the Corentyne River starts at No. 66, Corentyne. The mouth of the river is about 18 feet deep at low tide. The width of the river at Siparuta is about $\frac{1}{4}$ mile.

Cross-examined by Mr. Wills:-

10

I know Raghubar well. I know Crispin Gonsalves. This is the first time I am giving evidence in the Supreme Court in a matter in which the accused was concerned.

It might be in August 1965, that I gave a statement to the police in connection with this matter.

At high tide the depth of the Corentyne River is about 18 feet.

My evidence is true. I do not agree that at low tide the Corentyne River is less than 18 feet. I did not tell the magistrate that the water is 18 feet at high tide. I might have said so; if it is recorded so, I did say so. This is a mistake. If the water at the mouth is as low as 12 feet, a ship like the Marianna could have passed.

20

By tonnage of 5000 tons, I understand a ship is capable of carrying 5000 tons of cargo. By tidal river I understand that the water of the river washes and falls that is the water runs up and down. As far as I know, all rivers are tidal. I did tell the magistrate that the Corentyne River is tidal for about 60 miles. I did not take into account the dry season. 100 miles is correct; 60 miles not correct. I am not lying as regards the tide.

30

The Dutch survey ship apart, the last time I saw a big ship go up the Corentyne was in 1947. The Corentyne River brings down a great deal of

40

sand and silt, as a result of which sand banks occur in the river. I would say that the river is always navigable. There are several banks in the Corentyne river.

10 I am still the agent for the Dutch Navigation Co. I did business up to 1957. I did not export trade after 1947 when I sold the Nathaniel Greene. I have not sent lumber from the South American continent since 1947. Up to 1957, the ships no longer went up river; the cargo was brought down river and placed on the ship. During my agency, no ship belonging to the Dutch Navigation Co. went up river beyond Springlands. The "Marianna" was owned by a Belgium Co. 1945 was the last of two trips that this ship made up the Corentyne River. On both trips it went up the Corentyne River.

20 I have no expert knowledge about the navigation of ships. I cannot swear that ships as big as the "Marianna" could go up the Corentyne in 1963.

I sold the Nathaniel Green about 6 years ago.

I do not know the basis of the survey being carried out by the Dutch survey ship. I estimated the tonnage by looking at the ship. It could be have a tonnage of 1500.

Re-examined:-

30 The survey ship is far bigger than the "Nathaniel Greene" and the "Haywood", but a bit smaller than the Marianna, about $\frac{1}{2}$ the size.

After the "Marianna" left here, I saw her discharging the cargo in Belgium.

By the Jury:-

Other ships went to the Goveltex Co. but I cannot remember the names. The name "Nemores" is not familiar to me.

In the Supreme
Court of
British Guiana

Prosecution
Evidence

No. 7

Haji Ramjohn

Cross-
examination
2nd November
1965

(Contd.)

Re-
examination

Questioned
by Jury

In the Supreme
Court of
British Guiana

NO. 8
EVIDENCE OF JWALLA PERSAUD

Prosecution
Evidence

JWALLA PERSAUD sworn states:-

No. 8

I am a tractor operator, and I live at Crabwood Creek, Corentyne.

Jwalla Persaud
Examination
2nd November
1965

Around 7.30 a.m. on the 24th October 1963, I was in a boat on the Corentyne River travelling to Crabwood Creek. One Arjune and two others were with me. As we got to Surnop, a lady waved to us. We went ashore to one Sunny's landing. The accused was at the landing. Sunny's wife in the presence and hearing asked me if I had heard what had happened; if I had heard that the accused had got into a collision. I said no.

10

Accused was wearing a beach pants bluish in colour.

Accused joined me in my boat, and we arrived at Crabwood Creek after several stops. One of our stops was at Kanakaburi. At Chinboo Landing I saw one Stella Barry.

20

At Crabwood Creek, I lent the accused a brown Teryelene shirt. This is the shirt (Tendered and marked "C"). Arjune lent him a pair of khaki trousers.

I took accused at Raghubar's Sawmill at Crabwood Creek. On the way I stopped at the houses of Motie Singh and Heera. I spoke to Motie Singh's daughter, and to Heera's wife Rookmin. Accused held my cycle on the public road as I went in to these peoples' houses.

30

Cross-
examination

Cross-examined by Mr. Wills:-

Declined.

By the Jury:-

Declined.

NO. 9
EVIDENCE OF ARJUNE RAMA

In the Supreme
Court of
British Guiana

ARJUNE RAMA sworn states:-

Prosecution
Evidence

No. 9

I am a logger, and I live at Crabwood Creek, Corentyne. I am also called June.

Arjune Rama
Examination
2nd November
1965

In 1963, I had permission to cut logs at Mopena Creek which is about 45 miles up the Corentyne River from Crabwood Creek.

10 On 24th October 1963, I was travelling to Crabwood Creek in my boat. Jwalla Persaud and two others were also in my boat.

In the vicinity I saw someone waving. I went into Chung's Landing. At the landing, I saw the accused whom I know as "Better Boy". He was dressed in "shorts" and was standing in the water. Mrs. Chung was present.

20 I asked the accused what he was doing, he did not answer. Mrs. Chung said in accused's presence and hearing that "they" had met with an accident. Accused asked me to go around Powis Island, but I told him that I did not have sufficient gas. Accused came into my boat. I then drove through to Crabwood Creek, after stopping at various places, including "Chinboo Landing". There I saw the accused speaking to Stella Barry.

Accused had asked me to take him around the island to see if we could see the missing persons.

30 I used to travel along the Corentyne River about once a month in 1963. Powis Island is near to the British shore. Coming down the river, the island is on my left. I do not travel between the island and the left bank of the river, but on the other side. There is a sandbank near to the island; boats pass between that bank and the island.

At Crabwood Creek, I lent the accused a pair of khaki pants (Tendered and marked "DD").

In the Supreme
Court of
British Guiana

Prosecution
Evidence

No. 9

Arjune Rama

Examination

2nd November
1965

(Contd.)

While we were in the boat on our way to the Crabwood Creek I asked how the accident happened. He told me that Dindial took in sick with a belly pain, and they were taking him down home; While travelling, he Dindial and Motie Singh were sleeping; that when they arrived by Powis Island, he felt like the boat got a lat; that after the lat he was below the water: that whilst struggling in the water, he jammed the other person in the launch, that he found a way, and he came up; when he came up, he made about three shouts; he heard me answer; he then decided to swim ashore; he then swam ashore, and went to Powis Island, and walked across and went to Claude Chung's landing.

10

Cross-
examination

Cross-examined by Mr. Wills:-

I sell my logs to several sawmills including Raghubar. The channel between Powis Island and the sandbanks is about 200 rods wide. There is a sandbank by Kanakaburi. This is larger than the one near to Powis Island. I have passed Powis Island by night. There is nothing to mark the position of the sandbank. There are several sandbanks in the river, but none has marks.

20

I have given evidence before in the Supreme Court describing this trip with the accused. I gave the evidence about the conversation I had with the accused.

Jwalla Persaud and I work together. Jwalla Persaud was nearby when the accused and I spoke; he could have heard, I did give evidence of the conversation I had with the accused.

30

I stopped selling logs at the beginning of this year. I am now employed in Essequibo as a mechanic. When I gave evidence in the Supreme Court, I was a logger.

Not true that the chief buyer of my logs was Raghubar. My chief buyer was Saffeullah.

I know Balchand; he is a logger. I do not know to whom he sold his logs to. As far as I know, Balchand is still in the logging business.

40

At that time both Balchand and I live at Crabwood Creek. We were friendly. I have never discussed business with Balchand.

I made profits out of logging. I did the job for 4 years, but I did not like it. I got permission from the Forestry Department. I sold all my equipment to Jwalla Persaud. I did not ask Balchand to buy. Jwalla Persaud was my partner, and so I sold to him.

10 Re-examined:-

There is a channel between the bank and Kanakaburi; it is about 200 rods or "more smaller".

By the Jury:-

During the high tide, the bank opposite to Powis Island, the sandbank is covered with water and can't be seen. Chung is living at Surnep, that is, his landing is at Surnep.

20 Accused was standing in water knee deep. He was bare except for a pair of shorts.

NO.10
EVIDENCE OF JACOBUS WALTERS

JACOBUS WALTERS sworn:-

I am a Dutch subject. I live at Sisters which is on the Dutch side of the Corentyne River. I own a woodcutting grant. I am 55 years old. I have been cutting wood on the Corentyne River for about 15 years.

30 From 1945 to 1953, I was employed as the foreman of the Goveltext Co. Ships went up to the company to load sleepers. Those ships came from Belgium. The company's premises were about 40 miles from Springlands. One such ship was called "Marian", there were several others.

In June 1965 I saw a Dutch warship patrolling the Corentyne River. I saw this ship at a place

In the Supreme Court of British Guiana

Prosecution Evidence

No. 9

Arjune Rama

Cross-examination
2nd November
1965

(Contd.)

Re-examined

Questioned
by Jury

No.10

Jacobus Walters

Examination
2nd November
1965

In the Supreme
Court of
British Guiana

Prosecution
Evidence

No.10

Jacobus Walters

Examination
2nd November
1965
(Contd.)

Cross-
examination

called Wakai which is about 150 to 200 miles. Wakai is about 15 to 20 miles beyond Siparuta up river. The ship was about 5000 tons. The ship spent about 6 months in the river, going and coming.

The water of the Corentyne River washes and falls as far as Cow Falls, which are about 2 to 3 hundred miles from Springlands.

I have gone as far as Cow Falls in the Corontyne River about 8 years ago. I have not seen any bridge across the river. 10

Cross-examined by Mr. Wills:-

I do not know the capital of Holland. I know of Buxton in British Guiana. I was born in Nickerie.

I sell my logs to Raghubar. I had a pair of bison. One died, and I sold the other to one Bannarrie. I and not Raghubar paid for the pair of bison. I use a tractor to pull my logs. I paid for it, not Raghubar. I got the money from the bank in Surinam. 20

I gave the police a statement. I know Crispin Gonsalves and Haji Ramjohn.

I saw the man-owar opposite my place, and I also saw it at Wakai. The ship had no name; but it had numbers. It was painted "light blue". By tons, I mean that the ship can carry so many tons to the insurance mark. The warship is smaller than the Marian.

I say the Marian is 10000 tons because of what I heard. I spoke to the sailors on board the war-ship, and I estimate the tonnage from what the sailors said. Accused was not present. 30

The "Nathaniel Greene" went up the river last Sunday. Haji Ramjohn once owned the "Nathaniel Greene"; this ship is smaller than either the Marian and the war-ship. I cannot give the tonnage of the Nathaniel Greene. I

cannot give the tonnage of a ship unless someone tells me.

The Marian went up the river about 1950 or 1957. This was the last ship to go up the river for the Goveltex Co. The next big ship after that that I have seen in the river is the war-ship.

I would call the New Amsterdam - Resignal Ferry a big ship.

Jury admonished. Adjourned to 9 a.m. on 3.11.65.

10

Wednesday 3rd November 1965

Jury checked at 9 a.m.

JACOBUS WALTERS sworn states:-

Cross-examined by Mr. Wills:-

Declined.

Re-examined:-

The war-ship is about a quarter the size of the Marianne.

20

I have seen logs floating in the river. The tendency is for logs to float down river, rather than up river. This is my experience.

By Mr. Wills:-

When the water washes, it goes up river, and when it falls, it goes toward the sea. When the water is washing, there is always sea breeze; there is not always a breeze when the water falls. I have no experience of what happens when things are thrown into the river from the British side during washing tide.

By the Jury:-

30

Declined.

In the Supreme Court of British Guiana

Prosecution Evidence

No.10

Jacobus Walters

Cross-examination
2nd November 1965
(Contd.)

3rd November 1965

Re-examination

Further Cross-examination

In the Supreme
Court of
British Guiana

NO.11
EVIDENCE OF NANKA PINTER

Prosecution
Evidence

NANKA PINTER sworn states:-

No.11

Nanka Pinter
Examination

3rd November
1965

I live at Acabo, Corentyne River, and I am a Dutch Subject. I own a timber grant at Acabo. Acabo is about 150 miles from Crabwood Creek.

I knew Motie Singh, Dindial and Heera. I also know the accused as "Better Boy".

On 16th October 1963, Motie Singh, Dindial, Heera and the accused came to Acabo in a launch called "Miss Carol". Motie spoke to me about logs. They tied up some logs, after which they left my place. Before they left Raghubar arrived in another launch; this was a few days after the accused and his party had arrived. Raghubar, one Sonny, and another person arrived together.

10

Motie Singh, Raghubar and Sonny, and I went to a place called Lana, and after looking at some logs, we all returned to Acabo. I saw Raghubar take out 4 parcels money from his pocket, and he gave it to Motie. Accused was then in the other boat which was moored alongside the boat in which Raghubar and Motie were. Motie took out a kerchief from his pocket with money inside; he placed the money Raghubar had given him in the handkerchief, tied the money together and place it in his pocket.

20

At Acabo, the water washes and falls. I travel up and down the river. I have gone as far as Wanatoba, and I have come down as far as Crabwood Creek, and I have gone to Nickerie: I have travelled by outboard motor. There are no bridges across the river from Wanatoba to Crabwood Creek.

30

A log placed in the river at Acabo would float down to the sea.

After Raghubar gave Motie the money, Raghubar left going in the direction of Crabwood

Creek in his launch. Motie, Heera, Dindial and accused left in "Miss Carol" going down river.

I knew Motie for over 15 years. We used to purchase logs.

After he left my landing, I have not seen Motie alive again.

Neither Motie nor Raghubar had paid me any money on the day they were at my place.

Cross-examined by Mr. Wills:-

10 I was not paid for the 180 logs, I did not make it up to 200 logs because the water had not come up to enable me to do so. I had intended to make it up to 200 logs, if the water came up. 180 logs were already tied up.

I know Albert Sawh; he owns a sawmill. He used to buy logs from me; he has not done so for about 4 years now.

20 Motie Singh had not examined the logs. I would be paid after the logs have been examined and measured. I did not refuse to sell them the logs. They intended to have the logs increased to 700 odd pieces, and then to make due payment for the whole lot.

30 I have been in the logging business for about 20 years. For 700 logs I would expect \$8,000:- at that time. I have never taken a deposit for logs from anyone. It would have taken me 2 weeks to get up 700 logs. I would have expected them to return in two weeks' time to measure the logs and to pay for them.

There are many islands in the Corentyne River. There are sandbanks in some places, at low tide.

When the water falls, the water goes towards the sea; when the water washes it goes towards the source. When water washes, and a log is placed in the river, the log would go to the corner of the river, a log placed on the B.G. side would go up the river during washing tide, but

In the Supreme
Court of
British Guiana

Prosecution
Evidence

No.11

Nanka Pinter
Examination

3rd November
1965
(Contd.)

In the Supreme
Court of
British Guiana

Prosecution
Evidence

No.11

Nanka Pinter

Examination
3rd November
1965
(Contd.)

would end up on the Dutch side.

Raghubar's launch had left Acabo about $\frac{1}{2}$ an hour before Motie and the others left.

I have known the accused for about 4 to 5 years previous to 1963. He has worked with other persons buying logs; he assist in tying up the logs.

I have known Balchand for about a year now; I had not known him before. I have given evidence before in a matter in which the accused was concerned. I have given evidence twice in the magistrate's court and once in the Supreme Court. I did not know Balchand before I gave evidence for the first time. I knew Balchand from about March or April this year, the time when I gave evidence in the magistrate's court in this matter. I had heard the name Balchand before, but I did not know the person until then. I agree that I gave evidence in this matter in August 1965. I have never met Balchand at Crabwood Creek. I have never met him between August and now. I got to know him because he was pointed out to me in the magistrate's court where his name was called.

10

20

I know Maam Island: persons do work logs on the island, but I have not seen any logging camps. Maam Island is Dutch.

Not true that I have known Balchand for years. I do not know that he was convicted for stealing logs from Maam Island. I have never spoken to the Dutch Authorities on behalf of anyone who stole logs from Maam island.

30

I have seen boats belonging to Albert Sawh, but I do not know their names. I did not see Sawh's boat at Acabo at the time when Raghubar and Motie were at my place. Not true that Sawh went to my place to purchase logs. Not true that Sawh offered me a higher price than Raghubar. Not true that I did not sell logs to Raghubar.

I did not hear Raghubar say that he needed logs badly, and that they must buy logs on both

40

sides of the river. I did hear Raghubar tell Motie to buy logs; this was after the 180 logs were tied up. I cannot remember if Raghubar said that he was short of logs. Raghubar and Motie had a further conversation, but I did not understand.

I keep books of my sale of logs, but when the book is completed, I hand it over to the Dutch Government.

10 I have not sold logs to Albert Sawh for about 6 or 7 years now.

I have given evidence in the magistrate's court. I did not say that Sawh was at Acabo on the day when Raghubar and Motie Singh were there. I have sold logs to Raghubar about three weeks ago.

Re-examined:-

20 This was the first trip of which I know that accused has made with Motie Singh. I have seen the accused with other buyers. On those occasions he would be employed as a labourer to tie up the logs and to drift them down. When Motie Singh and the accused and the others went up, accused took no part in the actual transaction.

The water washes for about 5½ hours and then falls for about 6 hours. This is continuous day and night.

If a log is placed in the Corentyne River at Powis Island, I would expect to find it lower down the river in two days time.

30 By the Jury:-

Declined.

No.12
EVIDENCE OF MANOEL QUILLO

MANOEL QUILLO sworn states:-

I live at Siparuta Mission, which is on the British side of the Corentyne River. I am a log

In the Supreme
Court of
British Guiana

Prosecution
Evidence

No.11

Nanka Pinter

Examination
3rd November
1965

(Contd.)

Re-
examination

No.12

Manoel Quillo

Examination
3rd November
1965

In the Supreme
Court of
British Guiana

No.12

Manoel Quillo

Examination
3rd November
1965

(Contd.)

cutter, and I work with Pinter at Acabo, Dutch Guiana.

I know the accused as "Better Boy", and I know Motie Singh called Baboon and Heera and Dindial.

On 16th October 1963, Motie, Heera, Dindial and "Better Boy" went to Acabo. They went by launch called "Miss Caroline". Accused was then wearing a pair of darkish short pants; it appeared to have been a pair of long pants that had been cut. He put on the pants to work. 10

I know a woman called Shiren Ally. In October 1963, she was living at Siparuta. She had a small shop at Siparuta.

I came from Lethem, Rupununi in 1948. Since then I lived at Siparuta. Logs falling into the Corentyne River would drift towards the sea. At Siparuta, the water washes and falls every six hours.

Cross-
examination

Cross-examined by Mr. Wills:- 20

I worked for Pinter for about 1 year and 3 months. I stopped working for him 1 month after 16th October 1963.

While working with Pinter I got to know Raghubar and Albert Sawh. They came to our landing. I have seen Balchand once only at Crabwood Creek. I had seen him there long before I ceased working for Pinter.

I saw two launches at the landing - both launches belonged to Raghubar. 30

I worked with myself on Pinter's grant: he would supply rations, and I would cut and sell the logs. He would collect the money from the purchasers, and would pay us after he had deducted all that we owed him. Albert Sawh bought logs on a few occasions. He would pay Pinter who would pay us. Sawh would go to Pinter's landing when he purchased logs. He had a boat whose name I do not know. Sawh had bought logs twice before the

visit of Motie and accused. Albert Sawh's boat was not tied up at Pinter's landing while Raghubar's two launches were there.

I gave evidence last year in the Supreme Court in a matter in which the accused was concerned. I did not say that Albert Sawh's launch was there; I cannot remember saying so.

I have fished in the Corentyne River, at Siparuta. I have not fished at Acabo.

10 Re-examined:-

Declined.

By the Jury:-

NO.13
EVIDENCE OF GULAB

GULAB sworn states:-

20 I am a farmer, and I live at Crabwood Creek. Heera now deceased was my brother. I know the accused as "Better Boy"; I have known him for about 12 years. He can drive a launch; I have seen him driving a launch several times.

Heera lived at Crabwood Creek. On the 24th October 1963, I heard something. As a result myself and others went up the Corentyne River in a small boat. I went to search for my brother Heera. We left around 5 p.m. and went up to Powis Island where we arrived around 7 to 7.30 p.m.

On the next day, I and others searched around Powis Island, and the river; we found nothing.

30 On 26th October, I went to Cow Landing which is higher up the river than Powis Island. There I saw the dead body of Motie Singh floating in the water on the Dutch side of the river, about 1½ rods from the shore (witness points out the distance). I had known Motie Singh before. There was bush on the river bank near to the spot where I saw the body. The body was among the bush. I

In the Supreme
Court of
British Guiana

Prosecution
Evidence

No.12

Manoel Quillo

Cross-
examination
3rd November
1965
(Contd.)

No. 13

Gulab
examination
3rd November
1965

In the Supreme
Court of
British Guiana

Prosecution
Evidence

No.13

Gulab

Examination
3rd November
1965
(Contd.)

observed several chops on the neck and belly of the dead man.

About 30 rods up the river on the same bank, I saw the dead body of my brother Heera. It was floating in the water among the bush. The body had chops on the belly and hands. I placed the body in the boat, and went further up the river to a point on the English bank. The body was placed in a coffin. The body was then taken to the Skeldon hospital.

10

On 27th, I went to the hospital mortuary. There I saw the body of my brother. Drs. Luck and Balwant Singh, and P.C. Ramjattan were present. I witnessed the postmortem examination after which the body was handed over to me. I buried the body at the Crabwood Creek burial ground.

I knew Dindial for about 8 to 10 years. I also saw Dindial's body at the mortuary.

Cross-examined by Mr. Wills:-

Declined:-

20

By the Jury:-

Declined.

No.14

Richard
Edwards

Examination
3rd November
1965

NO.14
EVIDENCE OF RICHARD EDWARDS

RICHARD EDWARDS sworn states:-

I live at Parakissa Point, in the Corentyne River.

On the 23rd October 1963, around 9 a.m. I was at Parakissa. I went to Orealla at Orealla I saw Motie Singh, Heera, "Better Boy" and Dindial. They were in a launch called "Miss Carol". In the presence and hearing of the accused, I asked Motie Singh where he was going, and he said he was going to Acabo. I asked him to tow me up to Parakissa; he agreed. I tied my corial to his

30

launch, and he gave me a lift home together with my wife.

Parakissa Point is about 2 miles beyond Orealla. After dropping me at Parakissa, Motie Singh and the three others continued up river.

Cross-examined by Mr. Wills:-

I know Acabo. It takes one day to get to Acabo from Orealla up river by corial.

10 I saw the four men at Orealla around 7 a.m. I had already come from Parakissa Point to Orealla. It took me two hours to get from Parakissa point to Orealla. When I saw the launch. It was tied up at Orealla. I left on the return trip for Parakissa on the same morning.

I know the witness Ganesh Persaud. I have known him since the incident.

Jury admonished. Adjourned to 1.15 p.m.
Jury checked at 1.15 p.m.

RICHARD EDWARDS continues on his oath:-

20 Cross-examined by Mr. Wills:-

The launch was tied up on a bush outside of Orealla.

This is November, but I have forgotten today's date. I think it was the 23rd when my corial was towed by the launch.

30 I do not take my wife to Orealla every week. I cannot read and write. I cannot read the time. When I said 7 a.m. I "averaged" the time by the sun. I cannot say how I know it was the 23rd. I do not know what the date was. I really forget the date my corial was towed.

Re-examined:-

The sun rises in the morning and goes down in the afternoon.

In the Supreme Court of British Guiana

Prosecution Evidence

No.14

Richard Edwards

Examination
3rd November
1965
(Contd.)
Cross-examination

Re-examination

In the Supreme
Court of
British Guiana

By the Jury

Declined.

Prosecution
Evidence

By Mr. Wills:-

No.14

I cannot sign my name; I signed my depositions. I can spell my name. I cannot now see to sign my name.

Richard
Edwards

Questioned
by the Jury
3rd November
1965

No.15

NO.15

EVIDENCE OF LEWIS DOUGLAS.

Lewis Douglas

LEWIS DOUGLAS sworn states:-

Examination
3rd November
1965

I live at No. 79 Village, and I am a huckster. I use a small launch, and I operate between Orealla and Apora in the Corentyne River. Apora is about 100 miles from Crabwood Creek, and is on the Dutch side of the river. In going up, one reached Apora before Acabo. Acabo is about 4 miles beyond Apora. I have been carrying on this business for about 8 years.

10

During this period, I have seen dead bodies floating in the Corentyne River. A body would float down river.

20

I know Motie Singh, Heera and Dindial. I know the accused.

On 23rd October 1963 around 3 p.m. I was at Apora stelling. The launch "Miss Carol" arrived and moored at the stelling. Motie Singh, Heera, Dindial and the accused were in the launch. Motie Singh went ashore. Heera was in the engine room. Dindial and Accused were in the front of the launch near to the steering.

I overheard a conversation between Dindial and the accused. Accused told Dindial that he did not want to go at Jones' landing to buy logs, and if they stopped there, it would bring big trouble as he wanted to go home.

30

Upon his return, Motie Singh bought an exercise book from me.

Jones' Landing is at Cow Landing which is on the right bank of the river, and is below Apora stelling.

Motie Singh spoke to me, after which the launch left with Motie Singh, Heera, Dindial and accused on board. No one else was on board the launch.

10 Cross-examined by Mr. Wills:-

The launch had arrived from up river, and it left going down river. When water washes, it goes up the river. Whilst the water washes, floating bodies would go up the river, and would go down the river when water falls. Water washes for about 3 hours. I cannot give the speed of the water of the Corentyne River.

20 The river has bends. The first big bend is above Crabwood Creek; the next big bend is Kanakaburi.

Re-examined:-

The water falls longer than it washes.

By the Jury:-

Declined.

NO.16
EVIDENCE OF SHIREN ALLY

SHIREN ALLY sworn states:-

30 I am a house wife, and I now live at Warimuri in the Corentyne River, which is about 75 miles from Springlands.

On 23rd October, I was living at Siparuta in the Corentyne River. I owned a shop there. On that day, I was expecting rations from Crabwood Creek. My rations would arrive by boat. During

In the Supreme Court of British Guiana

Prosecution Evidence

No.15.

Lewis Douglas

Examination
3rd November
1965

(Contd.)

Cross-examination

Re-examination

No.16

Shiren Ally

Examination
3rd November
1965

In the Supreme
Court of
British Guiana

Prosecution
Evidence

No.16

Shiren Ally

Examination
3rd November
1965
(Contd.)

the night around 11.30 p.m. to 12 midnight I heard a slow beating of a launch. I went to the landing. I saw a launch coming towards my landing with the engine beating slowly. The launch was coming from down river. When I first saw the launch, it was from me as far as the eastern fence of the compound is (witness points to fence). I recognised the launch as Raghubar's launch "Lady Carol".

There was a small light in the launch. The launch was travelling very slowly; it was going up with the tide. I heard a sound coming from the boat, and then I heard a splash in the water as though something had fallen overboard from the launch.

10

The launch then started to move faster, towards the Dutch shore.

I had heard a voice shout before I heard the splash. It was a man's voice.

I had travelled in the Miss Carol twice before. I have seen it passing in the river every 3 weeks. It was painted red inside, and light green outside. The night was moonlight night and was bright.

20

After the launch left, I went to my house.

Cross-
examination

Cross-examined by Mr. Wills:-

I did not actually see the name of the launch. There was nothing peculiar about Raghubar's launch. I do not know any other launch of that colour on the outside. No one else has a launch of the same size. I know smaller and bigger launches. The nearest the launch got to me while I was on the landing was about 15 to 20 yards (witness points to southern wall of court room from witness box). I recognise the launch to be Raghubar's because of the beating of the engine. The colour and the size of the boat did not assist me to recognise the launch.

30

I had recognised the launch before I heard

40

the splash. When I first saw the launch the engine was beating slowly but the launch was drifting. I cannot explain why I recognise the beating of the engine. If I heard the beating of the engine only, and closed my eyes, I would not be able to say if it is Raghubar's launch passing.

In the Supreme
Court of
British Guiana

Prosecution
Evidence

No.16

Shiren Ally

Cross-
examination

3rd November
1965

(Contd.)

10 I listen to a radio, but at that time my husband had the radio some place else. He brought down the radio a week after October, - a week after I saw the launch. Thereafter we listened to the death announcements. Three days after my husband returned, I went to Crabwood Creek for goods. I spent two days at Crabwood Creek, after which I returned to Siparuta. I also went to No. 78 Market. I always buy goods from No. 78. I know the police station at Springlands. I did not go to the police station to make a report of what I had seen, nor did I tell anyone what I had seen, at No. 78 or
20 Crabwood Creek.

I know Raghubar comes from Crabwood Creek.

I first heard something about the launch "Miss Carol" about 2 days after I had seen it, and while I was still at Siparuta.

30 My husband and I left for the grant the day after he arrived. We arrived at the grant on the same day. I spent about 8 days at the grant, after which I alone travelled down to Crabwood Creek, leaving my husband at the grant. The police had come to me at the grant and I gave them a statement there and then. I did not say in a previous trial that the police had come to me for a statement after I had come down to shop.

I keep good relationship with launch owners.

I did not tell the magistrate that there was no light on the launch. I now said I told this to the magistrate. I now say that there was no light on the launch.

Re-examined:-

40 I did not see the colour of the launch, but

Re-
examination

In the Supreme
Court of
British Guiana

Prosecution
Evidence

No.16

Shiren Ally
Re-
examination
3rd November
1965

(Contd.)

Questioned
by Court

Further
Cross-
examination

I saw its shape. I say it was the "Miss Carol" because I heard of the accident in which the Miss Carol was involved. I heard this two days after. I had spoken to the Forest Ranger's wife after I heard about the accident.

By the Jury:

Everytime a launch passes in the day, I would go to the landing. I had gone out that night, because I had expected goods to arrive by launch from Crabwood Creek. My house is about 15 to 20 yards from the landing.

10

By the Court:-

I had expected goods to travel by Raghubar's launch - the launch "Miss Carol". My goods are sent up either by Miss Carol or a launch called "Sea Queen" owned by one Emananedeen. These are the only two launches that went as far as Siparuta. A third launch also goes as far as Siparuta, but this runs the mail service fortnightly.

20

By Mr. Wills:-

I was not expecting goods by Rajah's boat. One Rajah owned a shop next to mine. He owned a boat called the "Manilla". I did not say in the Supreme Court on another occasion that I was expecting goods by Rajah's boat. Rajah's boat has never fetched goods for me.

The "Sea Queen" had passed down earlier that day, and because of a conversation I had with someone on board that boat, I expected my goods to come up by the "Miss Carol". I saw the "Sea Queen" on the afternoon of the 23rd October. I spoke to Mursalene, the captain of the "Sea Queen". I did not know where "Miss Carol" was at the time I was speaking to Mursalene.

30

I have never had any transactions with anyone about loss goods. I did not speak to anyone about the loss of goods in the river. I made enquiries about my goods.

I do not know where Rajah's boat was that night. I saw Rajah's boat for the first time after I had seen Miss Carol three days after. It was coming from Springlands way. I came to my landing, but the boat did not stop. Before I saw the boat, I thought that my goods might have been arriving.

In the Supreme Court of British Guiana

Prosecution Evidence

No.16

Shiren Ally

Further Cross-examination
3rd November 1965
(Contd.)

By Mr. Fung-A-Fatt

10 The beat of the engine of the "Sea Queen" is different from that of the "Miss Carol".

By the Jury:-

Declined.

Jury admonished. Adjourned to 9 a.m. on 4.11.65.

Thursday 4th November 1965

Jury checked at 9 a.m.

NO.17
EVIDENCE OF SHADRACK CASTELLO

No.17

Shadrack Castello

Examination
4th November 1965

SHADRACK CASTELLO sworn states:-

20 I live at Orealla Mission, Corentyne, and I am a logger.

On the 24th October 1963, I went to Surnop at 1 a.m. to catch fish. David Alexander, Clinton Alexander and Wilfred Robertson were also with me. We went by canoe. Surnop is lower down than Orealla, and about 3 miles away. We were all in one canoe.

30 We had to pass Powis Island to get to where we were going. As we were passing Powis Island. I heard a voice coming from the island. The voice sounded as if someone was running in the bush. We were on the eastern side of the island. I shone my torchlight, and I saw a drum painted red and white: it was Dieselene drum, and was floating in the water at the side of the island. The drum is in the courtyard. It appeared as if it had something inside (Drum tendered and marked "F")

"F"

In the Supreme
Court of
British Guiana

Prosecution
Evidence

No.17

Shadrack
Castello

Examination
4th November
1965

(Contd.)

We placed the drum in our canoe, and we returned to the spot where I had heard the noise.

I flashed my light, and I saw several human foot prints on the mud flat at the side of the island. Alexander, Robertson, and I went on to the island. Robertson shouted: we got no answer. The footprints led into the island. I went for about 1 rod into the island: footprints went further in.

Claude Chung's place is about 2 miles lower down the river from where the footprints were. 10

We all returned to our corial. I heard a bubbling sound in the water. I shone my torch light in that direction, and I saw oil floating up to the surface of the water. There is no sandbank near to the spot where the oil was bubbling. The oil was bubbling at a spot about 2 rods from the island on the eastern side.

We went on our way to Surnop.

I found one drum that night, and we took it back to Orealla, and handed it over to the captain of the mission. 20

About 4 days later I was at Orealla. There I saw P.C. Ramjattan. He spoke to me, Clinton Alexander and Wilfred Robertson we all went to Powis Island. I pointed the spot where we had found the drum and the spot where I had seen footprints, and also the spot where I had seen the oil bubbling.

I saw Winston Chin, the diver there that day. He dived under the water at the spot I had pointed out. He came up, and said something. 30

The island was dry on the night when I saw footprints. No one lives on Powis Island; it has bushes. The bush start at a point about a rod from the water's edge. The footprints led into the bushes.

I did not know the accused previously.

(Court adjourns into courtyard in order that the witness may identify the drum he had referred to in his evidence Marshall sworn to keep jury).

Court resumes sitting. Jury checked.

SHADRACK CASTELLO continues upon his oath:-

Cross-examined by Mr. Wills:-

10 I work for anyone. At the time when I went to Powis Island, I was working with Egbert Edwards. I have never worked for a man called Mohabir. Clinton Alexander and I never worked together. I do not know if he also cuts logs. I have been cutting logs for many years now. I know Raghubar; I have known him before this story.

20 We were all in one canoe, which was about 30 feet long. Each of us had a quack and a paddle. We left home at about 1 a.m., and we returned at midday. Our hunt out was one day. We took cassava bread. I drink strong drink.

I observed the word "Surinam" on the drum I recognised it by this word, by the colour, and the fact that oil is inside. I did not open the drum, but I cannot say what is inside the drum. I found the drum, and I suggest that the drum that I pointed out downstairs is the drum.

The captain of the mission to whom I gave the drum is called Mc Lean Herman; he is an Aboriginal. I do not know anyone called Vellant.

30 We finished fishing at about 9 a.m. on the mid-day. When we left Orealla; the drum was in the canoe all the time. We arrived at Orealla about mid-day.

The next time I saw the drum was at Springlands station; this was after I had taken the police to Powis Island. Raghubar was present at the police station. I had seen drums like Exhibit "F" before. At the station, I identified the drums because of what the police told me. I can

In the Supreme
Court of
British Guiana

Prosecution
Evidence

No.17

Shadrack
Castello

Examination

4th November
1965 (Contd.)

Cross-
examination

In the Supreme
Court of
British Guiana

Prosecution
Evidence

No.17

Shadrack
Castello

Cross-
examination
4th November
1965

(Contd.)

pick out the drum at any time, because I handled the drum.

I had known before this story that Raghubar had several launches - long before. I was at Orealla from the 23rd to the 28th October. The first day I spoke to a policeman about the drum was the day I took the police to Powis Island. Besides Herman, I spoke to no one else about the drum, until I spoke to the police.

At the time when I saw the bubble. I thought something had sunk in the river. I saw oil on the water. I believed that a boat with an engine had sunk. I recall the day when dead bodies were brought to Orealla: Raghubar was there. This was a day before I went with the police to Powis Island. I did not make any attempt to see the police or Raghubar or the dead bodies. I know that the police were at Orealla in connection with the sinking of a launch. I did not speak to Raghubar before I spoke to the police. 10 20

I went to Springlands Police Station because I received a summons to attend court. I had spoken to the police before I took them to Powis island. I do not know what day the police took the drum from Orealla to Springlands. Ramjattan spoke to me and the other men about the drum at Orealla; the drum was then within sight.

On the day when I took the police to Powis Island. I did not go into the island with the police. I showed the police the foot-prints, and a policeman followed the prints into the bush. I did not go back with the police on any other day to Powis Island. One policeman went into the bush. It was P.C. De Abreu. I had shown De Abreu the footprints. (P.C. De Abreu identified). 30

Raghubar's boat was tied up at Powis Island, and I left the boat them with De Abreu on board. 40

Alexander's son David was with us when we

went fishing. I did not see De Abreu arrive at Orealla after my return to Orealla.

I had never seen footprints on Powis Island before. I cannot remember going on the island, but I passed there, long before the 24th. The footprints were still present on the day when Chin dived. I did not return to the island after that day.

10 The oil I saw was making the bubbling drifting down river.

I got to know Balchand at the Supreme Court on a previous occasion. I cannot recall seeing him before; I might have seen him before. I do not know where Balchand lives, but I have travelled with him to Court, and I learnt that he lives at Crabwood Creek.

20 On the day Chin dived, the police travelled in Raghubar's launch to Powis island. I showed the police the spot where I found the drum; I showed De Abreu. I showed no spots to P.C. Ramjattan.

I travelled in a speed boat belonging to Haji Ramjohn. Ramjohn himself was not there.

Re-examined:-

P.C. Ramjattan was present when I pointed out the spots to De Abreu.

30 I gave Herman the drum as soon as I reached Orealla, and I spoke to him. He placed the drum inside his house, where it remained until the police came. When I handed the drum to Herman, I was not aware of any launch accident.

I arrived at Powis Island with the police at about 5 p.m.: I stopped overnight, and returned home at about 5 p.m. on the next day, having left Powis island about 3 p.m. It was on the day after I had arrived, that I showed De Abreu the footprints. When I saw the bubbles, the tide was falling.

In the Supreme Court of British Guiana

Prosecution Evidence

No.17

Shadrack Castello

Cross-examination
4th November 1965

(Contd.)

Re-examination

In the Supreme
Court of
British Guiana

Prosecution
Evidence

No.17

Shadrack
Castello

Questioned by
Jury
4th November
1965

Questioned by
Court

By the Jury:-

It was a dark night when I saw the bubbles. When I shone my torch, the bubbling was about 6 feet from me. The canoe was about 4 feet wide.

By the Court:-

We were going to fish in the Surnop Creek, and we were going to use the quakes for fishing. The quakes are made like buckets.

By the Jury:-

The spot where I saw the footprints was muddy.

10

No.18

Stella Barry

Examination

4th November
1965

NO.18

EVIDENCE OF STELLA BARRY

STELLA BARRY sworn states:-

I live at Mc Lenon which is in the Corentyne River, but on the Dutch side. I know one Chinbo, he has a landing about 2 miles from Surnop.

Around 9.30 a.m. on 24th October 1963, I was at Chinbo's house. A small boat with an outboard motor arrived with four men. Jwalla Persaud, Arjune Rama, the accused, and another person were in the boat. The men came ashore. Accused was dressed in a blue beach trunk.

20

I spoke to accused. I told him that my son had just told me that he (the accused) was in an accident. I told him that I was sorry to hear what had happened. He told me that he believed that the three men had drowned. I asked him how it happened; and he said that he was asleep, and when he awoke he was under the water in the river. He further said that he believed the launch had broken up. I asked him if he did not see anything floating about on the water, or if he did not shout. He said he had no breath to shout. and he tried to swim ashore.

30

I asked him if he had been drinking the night

before, and he said no. I told him that if he had not been drinking, as soon as the water touched him, he ought to have awakened.

Cross-examined by Mr. Wills:-

I know Maam Island and Powis Island. I have lived on the Corentyne river since 1954. I have gone both to Maam and Powis Island. I have seen portions of the island under water during the high spring tides. There are two such tides every year - one in April, the other in October. No one lives on Powis island, nor on Maam island.

I know Balchand. I got to know him about 3 months before this incident. I am Dutch. I know nothing about Balchand in relation to Dutch Guiana.

I know Raghubar. He has not visited me at any time since this incident.

At the time when I spoke to the accused, the spring tide had already been over. They waited for about 15 minutes to $\frac{1}{2}$ hour. The water washed for about 6 hours before it changes.

Re-examination:-

I have never seen Powis Island when it is completely flooded. We have gone to this island to hunt, and if an island is flooded, there would be no game. We do find game on this island. The island has big mora trees.

By the Jury:-

I got to know the accused and Balchand at the same time. They called in at our landing; they were having drinks.

Jury admonished. Adjourned till 1.15 p.m.

Resumed at 1 p.m. Jury checked.

In the Supreme
Court of
British Guiana

Prosecution
Evidence

No.18

Stella Barry
Examination
4th November
1965 (Contd.)
Cross-
examination

Re-
examination

Questioned
by Jury

In the Supreme
Court of
British Guiana

NO.19
EVIDENCE OF SONNY KENNETH MILNE

Prosecution
Evidence

SONNY KENNETH MILNE sworn states:-

No.19

Sonny Kenneth
Milne

I live at No. 78 Village, Corentyne.
During October 1963, I was employed by one
Sultan Rahaman to collect logs in the
Corentyne River.

Examination
4th November
1965

I knew Motie Singh, Heera and Dindial. I
know the accused.

On 23rd October 1963, I was at Apora
stelling around 7 to 8 p.m. The launch Miss
Carol came from down river and tied up at the
Apora stelling. Motie Singh, Dindial, Heera
and the accused were in the Miss Carol. 10

In the presence and hearing of the accused,
Motie Singh asked me if I had taken this bush
rope. I told him yes. He told me that they
were going to Cow Landing to tie logs and they
wanted the bush rope. I then went into my
launch. 20

Accused came into my launch, and he asked
whose radio was in the launch, and I told him it
was mine. He asked me if I had any cigarettes,
and I told him no. He went to their launch,
and returned with a packet of Lighthouse cigarettes.
Accused told me not to worry with Motie Singh;
that the launch was not going to Cow Landing to
tie up logs; that the launch was going home
that night.

Heera called the accused who went into the
Miss Carol. Dindial started the launch, and they
all left in the launch, 30

I observed three Dieselene drums at the back
of the launch. The launch had on the port and
starboard lights, and one in engine room.

(Witness goes into Court yard escorted by
the Marshal; he returns, and continues on his oath)

I saw two drums downstairs. The drums I saw are similar to the three drums I had seen in the Miss Carol. (Second drum now marked "B" for identification).

Cross-examined by Mr. Wills:-

10 Prior to the 23rd October, I had been at Apora for about 6 days. I was not at Apora during the day of the 23rd. I asked no one's permission to take the bush rope, as no one was there. When I took it, I knew that it belonged to the party on the Miss Carol. I tied logs with the bush rope. I was taking the logs to No. 78. I did not intend to steal the bush rope.

I knew that Motie Singh was working for Raghubar. I get on well with Raghubar. We used each other's materials. I have stopped collecting logs for about 6 weeks now. I am now cutting logs.

20 Accused has given me cigarettes on several occasions before the 23rd October. We do tell each other where we are buying logs. Motie Singh did tell me that he was going to Cow Landing. While accused was speaking to me in my launch, the other men were in front speaking to one Samuel Fraser. Accused did tell me that the boat was not going to Cow Landing.

Dindial alone cranked the engine; Motie Singh was in a hammock, and Heera was at the steering wheel.

30 I had seen the Miss Carol before. Not true that accused and Dindial cranked the engine.

Accused and I were very good friends. I was employed as a logger in 1962 for Rahaman. I know one Admiral. I do not recall buying logs from one Cyrus. I know that the accused worked for one Saffie during 1962. I do not recall a party in which the accused was, seizing 180 logs from me in 1962. This has never happened.

40 From the Miss Carol the accused could have spoken loud enough for me to hear while I was in

In the Supreme
Court of
British Guiana

Prosecution
Evidence

No.19

Sonny Kenneth
Milne

Examination
4th November
1965

(Contd.)

In the Supreme
Court of
British Guiana

Prosecution
Evidence

No.19

Sonny Kenneth
Milne

Cross-
Examination
4th November
1965
(Contd.)

my launch. I have not always had a radio in my launch. My radio was on but at a low volume when the Miss Carol arrived. After the launch arrived, I switched off the radio.

The party was not annoyed at my using their bush rope. I had taken the rope from Pinter's landing.

The police came to me at Rahaman's sawmill. I gave my statement to Ramjattan. I came down to Springlands 5 days after I spoke to the accused. I understood Motie Singh to be saying that he wanted the rope to tie logs at Cow Landing. He did not get any rope at Apora, and the launch went down river.

10

I was the only person in my launch. I knew that Motie Singh was in charge of the party. I did not tell the accused anything, as I was not concerned.

Re-examined:-

Declined.

20

By the Jury:-

Declined.

No.20

NO.20

Clinton
Alexander

EVIDENCE OF CLINTON ALEXANDER

Examination
4th November
1965

CLINTON ALEXANDER sworn states:-

I am an Amerindian, and I live at Orealla Mission. I square timber.

On the 24th October 1963, I went to Surnop Creek to catch fish. David Alexander, Wilfred Robertson and Shadrack Castello were with me. We went by canoe.

30

As we got to Powis Island, I heard a noise in bush as though something was running in the bush.

Castello shone his torch towards the island. I saw a drum in the water near to the island. We picked up the drum, and placed it in the canoe. We then reversed to the spot where I had heard the sound. Castello shone his torch, and he went ashore with the two others. After a while they returned to the canoe. We pushed out to continue our trip. As we pushed off, I heard a voice coming from the water. Castello shone his torch in the direction of the sound, and I saw oil bubbling from under the water. The spot was about 20 to 24 feet from the edge of the island.

10

We then went to Surnop fished and then returned to Orealla at about 1 p.m. having left Surnop at 9 a.m.

At Orealla, I made a report to the captain Mc Lean Herman; and I left the drum at Herman's place. The drum that I picked up is now downstairs in the courtyard

20

On the 28th October I went to the captain's house as a result of a message. There I saw P.C. Ramjattan. Ramjattan spoke to me after which we all went to Powis Island. I pointed the spot where I had seen the drum. Castello, David Alexander and Robertson also went. I pointed out the spot where I had seen the bubbles. Winston Chin, the diver was present. He dived under the water at the spot I pointed out. Chin came up and said something.

30

I am 51 years old. I have gone to the very end of the Corentyne River. I have never seen any bridges across the river.

In the Supreme
Court of
British Guiana

Prosecution
Evidence

—————
No.20

Clinton
Alexander

Examination
4th November
1965

(Contd.)

In the Supreme
Court of
British Guiana

Cross-examined by Mr. Wills:-

The water washes by going up the river and falls when it goes down towards the sea.

Prosecution
Evidence

On the morning off the Powis Island, the water was falling. It was washing as we were going home. We had left home around 1 a.m. and had arrived at Powis Island around 5 a.m.

No. 20

Clinton
Alexander
Cross-
Examination
4th November
1965

After I handed the drum over to the captain, I saw it at Orealla, but I did not see it when it was removed from Orealla. The next time I saw the drum again was at Springlands Police Station. I had known that the drum had been delivered by the captain to the police. 10

I know Raghubar. I met him at the police station when I saw the drum there. I did not speak to him.

On the 28th, I went on the Powis Island, for about 2 rods. I know P.C. De Abreu. He was present as I pointed out the spots to P.C. Ramjattan.

I stopped working timber at the end of 1963. I now farm, at home and bleed balata. I used to square timber for one Mohabir who lives in Dutch Guiana. Mohabir sold his timber to buyers in Dutch Guiana. Wyapp Creek is in Dutch Guiana and flows into the Corentyne River. In August 1965, I did not tell the magistrate that I worked then in Wyapp Creek. The magistrate read my evidence to me. I have not worked timbers during this year. 20

Re-examined:-

When we arrived at Powis Island it was dark. It was not day break as yet. 30

By the Jury:-

Surnop is about 2 miles from Powis Island. I did not with my own eyes see any footprints on Powis Island. I had remained in the boat at the stern. The canoe was big (Witness demonstrates length and breadth).

NO.21
EVIDENCE OF CLAUDE CHUNG.

In the Supreme
Court of
British Guiana

CLAUDE CHUNG sworn states:-

Prosecution
Evidence

No.21

Claude Chung
Examination
4th November
1965

I am a farmer, and I live at No. 78 Village.
I have a farm at Surnop, Corentyne River.

During October 1963, my family and I were at
my farm.

10 On 24th October 1963 around 6.30 a.m. I was
at my camp at Surnop. Accused came from the bush
on the river side, into the camp. He said he
wanted to see the chief. I told him "Here I am,
what do you want?" He told me "man I wan you
take me down". I asked him "Down where?" He
said Crabwood Creek at Raghubar's sawmills. I asked
him why. He said that he and three others were
coming down the river the previous night with
Raghubar's launch, and they met with an accident.
I asked him what kind of accident. He told me
20 that a boat had jammed theirs up in the river.
I asked him which part, and he said in the centre
of the river, between Powis island, and the
Dutch shore. He said he could not say much of
what really happened, because he and two others
were sleeping, and the other was steering; and
suddenly he felt a bounce on the launch, and
he found himself in the water; that he rose up
and started to swim, catching shore. He also
said that when he came to the surface, he saw a
big boat made two circles in the river, and then
30 went away, but he could not say in which direction
it went as the night was dark.

Accused had come from a point south of my
camp. He was dressed in a pair of blue shorts, -
a store made shorts.

I offered the accused clothing, but he refused.
I offered him some tea, but accused said that he
was too fatigued but he was alright. I told
accused to wait as my boat was aground, and I
had to await the rise of the tide. When the
40 accused arrived at my camp the tide was at its
lowest. The tide started to wash around 7.30

In the Supreme
Court of
British Guiana

Prosecution
Evidence

No.21

Claude Chung

Examination
4th November
1965

(Contd.)

to 8 on that day.

I went to my farm to do some work. This was about 7 to 8 rods from the camp. Accused followed me to my farm he sat down; and told me that I may have to answer some questions. I asked him why he said so. He told me that the police would come to me first because I am the first man whose camp he had come to. I asked him how he knew that I was living there, and he said he had known that someone lived there.

10

This was the first occasion on which I had seen the accused.

Sometime later, my wife stopped a boat that was going towards Crabwood Creek. The boat came to my landing, and accused and myself went to the boat. Arjune and Jwalla Persaud were among other persons in that boat. Accused joined the boat; he told Arjune that he wished to be taken back to the island, but Arjune said he did not have enough petrol. The boat left for the direction of Crabwood Creek.

20

The river outside my camp is tidal. We do get spring tide and neap tide. My place is about 180 to 200 rods from Powis Island, to the north. Maam island is opposite to my place, but in the centre of the river. Powis island is near to the English shore. No one lives on Powis island. When the tide is low, there are certain points where a person can walk from Powis island to the mainland. Maam island is about $\frac{1}{2}$ to $\frac{3}{4}$ of a mile from my camp.

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Cross-
examination

Cross-examined by Mr. Wills:-

There is a Surnop Creek. This is south of my camp, but north of Powis island. I have been to Orealla from my camp, by launch and speed boat. A slow boat would take 2 hours, and a speed boat about 15 to 20 minutes. In my estimation Orealla is about 10 to 15 miles from Powis Island. With the falling tide, a boat will take about 2 to 3 times the time more to get to Orealla from Powis Island than with the washing tide.

40

I did not go to bed on the night of the 23rd after midnight; I could say between 8 to 9 p.m. When I went to bed the water was washing.

In the Supreme Court of British Guiana

I had known Shadrack Castello before the morning of the 24th; I had not seen him before that day and so with Clinton Alexander. I had been farming at that spot in Surnop for about a year prior to the 24th. From the water's edge, Powis Island can be seen from my camp. I do not keep any light burning in my home. In the night my landing can be seen from the river as the bush is cut away.

Prosecution Evidence

No.21

Claude Chung

Cross-examination
4th November 1965

(Contd.)

The first time I learnt that the accused was involved in an accident was when accused told me so. When Jwalla Persaud's boat stopped, I was on the sand, and the accused went to the boat. Accused went to about knee deep in the water.

During that night Raghubar and policemen and others arrived at my landing, P.C.Ramjattan was in the party.

Before adjournment is taken, jury indicated that they would like to visit Powis island, Chung's gap, and the spot where the launch was raised: and the "Miss Carol". Mr. Fung-A-Fatt says that the Miss Carol has been repainted and is in use, but can be had for inspection.

Jury admonished. Adjourned to 9.11.65 at 9 a.m.

Tuesday 9th November, 1965

9th November 1965

Jury checked at 9.05 a.m.

CLAUDE CHUNG continues upon his oath:-

Cross-examined by Mr. Wills:-

Declined.

Re-examined:-

Declined.

By the Jury:-

Declined.

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In the Supreme
Court of
British Guiana

NO.22
EVIDENCE OF DOWLATRAM RAGHUBAR

Prosecution
Evidence

No.22

Dowlatram
Raghubar

Examination
4th November
1965

I live at Crabwood Creek and I own and operate a sawmill at Crabwood Creek, Corentyne. I was born in British Guiana on 12th September 1927. My mother Rajwantie was born in British Guiana: Both my parents died in British Guiana. My father lived in British Guiana for 60 years, and my mother 73 years. My father died in 1950: he owned property in Crabwood Creek, British Guiana. I have inherited some of that property. I have made British Guiana my home, and I intend to live in British Guiana for the rest of my life.

10

In October 1963 I owned three launches, "M.L.Ganges", "M.L.Majestic" and "M.L.Carol". This last named launch is also called "Miss Carol": These launches were registered at Springlands. I sent the launch by the deceased to be registered: I did not attend at the Customs Department. One Mr. Abraham was the Sub-Comptroller at that time. The Miss Carol was used for towing timbers from the upper reaches of the Corentyne River to my sawmill at Crabwood reek.

20

I have gone up the Corentyne River as far as Cow Falls which is 200 miles up river. When not in use, it was kept at my sawmills, which are on the British side of the Corentyne River. There are no bridges between the mouth of the Corentyne river from its mouth to Cow Falls. The Corentyne River is tidal for about 75 miles up river. Around Powis Island, the river is about 30 to 40 feet deep.

30

The Miss Carol is 30 feet by 8 feet, by 3 feet, 6 inches, and it was powered by a 40 H.P. Petter Maclarum Diesel engine. It was painted green on the outside, and red inside, the fenders of the launch was painted in red. The launch has been repainted about a year ago. It is now painted blue both inside and outside. There were a port and starboard lamps, one lamp at the rear, and inside. These lamps were controlled by switches which were inside the launch. The

40

launch was built around March - April, 1963 by one Shennie. This launch has not been altered in any way; except that it has been painted.

In the Supreme
Court of
British Guiana

10 In October 1963 Motie Singh now deceased and also called Baboon was in my employment. He purchased timber on my behalf from loggers in the Corentyne River. I supplied him with a launch - Miss Carol; and I advanced him sums of money. He employed others. Motie Singh had been working with me from 1958.

Prosecution
Evidence

Dowlatram
Raghubar

Examination
9th November
1965
(Contd.)

I know the accused; he is also called "Better Boy". In October 1963, he was working with Motie Singh. He commenced to work with Motie Singh in September 1963. Both Dindial and Heera also worked with Singh in October 1963.

Whenever Motie Singh required additional money, I would receive a message as a result of which I would take up the money in my other launch "The Majestic".

20 On 15th October 1963 I gave Motie Singh \$2,000:- B.W.I. currency. This sum of money was made up of \$20 bills. On that day, Singh embarked on the Miss Carol with Dindial, Heera and the accused. The launch was then moored alongside my wharf in Crabwood Creek. They took cutlasses, axes, and their canisters. On top of the launch were keretie laths to be used as firewood. There are three pieces of keretie logs similar to those that were on the launch (tendered and marked "A1-A3"). At the rear of the launch were 3 drums of gas oil. These drums were tied on to the launch by means of rope. I have seen two drums in the courtyard (Exhibit "B" and "F"), they are similar to the drums that I had given to Motie Singh on the 15th October 1963.

"A1-A3"

The launch carried an anchor and chain about 30 to 40 feet long.

40 On the 15th the launch left my wharf and went up river with Singh, Dindial, Heera and the accused on board.

On 21st October 1963, one Bud Bud spoke to me.

In the Supreme
Court of
British Guiana

Prosecution
Evidence

No.22

Dowlatram
Raghubar
9th November
1965
Examination
(Contd.)

As a result, I boarded my launch "Majestic" with Harrilall, the captain, and one Sonny, the engineer. Sonny is also called Gomamie. I took with me \$10,000 B.W.I. currency, made of \$20, and \$10 notes, and 1500 Dutch guilders, made up in 100 guilder bills. We went up river, having left Crabwood Creek around 2.30 p.m.

Around 9 p.m. on the same night. I saw a light coming down river in the vicinity of Cow Landing. It was the launch Miss Carol. In the Miss Carol, were Dindial, Heera and Motie Singh, together with the accused. In the presence and hearing of the accused, and the others I told Motie that I had received his message, and that I had brought \$10000:- and 1500 guilders Dutch money. We then went to Cow Landing at Mr. Jones' landing. There I spoke to Jones, and I saw Singh giving Jones \$200:- Motie Singh told the accused and the two other men to go on to Pinter's landing. While he came over to the Majestic. The accused and others went up river with my launch following.

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20

Before leaving, in the presence of the accused, Singh told Jones that he would tie the 76 logs upon his return from the river.

I arrived at Pinter's landing at Acabo on the morning of the 22nd October. The Miss Carol was then moored alongside Pinter's Landing. I spoke to Pinter, as a result of which I went to Lana, with Pinter, Motie, Sonny Gomannie Heera, leaving the accused at Pinter's landing with Dindial. The Miss Carol was left at Acabo. After examining logs at Lana, we returned to Acabo around 2.30 to 3 p.m.

30

At Acabo, in the presence and hearing of accused. I told Singh to purchase Pinter's logs, the logs at Lana and Jones' logs. I also gave Singh \$3000:- B.W.I. currency, and one thousand Dutch guilders. The B.W.I. currency was made up in three parcels of \$1000:- each, Singh Checked the money, then he took out money wrapped in a handkerchief from his pocket, tied up all the money together, and replaced the handkerchief and money in his pocket.

40

I then returned home in the launch Majestic.

10 Around 3 p.m. I was in my log pen at Crabwood
Creek on the 24th October I received a message, and
I went to my office. There I saw the accused and
one Jwalla. Accused told me that Dindial had
taken ill with his appendix, and they were bringing
down Dindial for medical attention; that when
they were in front of Maam island mouth, he heard
an explosion, and he found himself under the water;
that when he floated to the surface of the water,
he found that the river was rough and it was dark.
He swam on the British side; from there he went
to Sonny Chung's camp. I asked him if he did not
see any person swimming or shouting for help. He
said no. I further asked him if he had not seen
any vessel or vessels around the vicinity of the
explosion. He said no. He said that while he
was at Sonny Chung's camp, he saw a boat going
towards Crabwood Creek; that he signalled to the
20 boat; that the boat went to Chung's landing; in
the boat were Jwalla and Arjune Rama both of Crab-
wood Creek; and that these people took him direct
to my office.

I took the accused to the Springlands Police
Station. There I met Corporal Bobb. The accused
made a report to Corporal Bobb who took down the
report which the accused signed.

30 Later that day accompanied by P.C.Ramjattam,
Corporal P.C.Halley, and the accused. I went in
my launch the Majestic to Mc Lenon a forest station
on the Dutch Shore. There I saw the captain of
the Dutch launch "Krappa". He showed me a drum of
Diesel oil. In the presence and hearing of the
accused, the captain said that on Thursday
morning opposite the forest station at Siparuta,
in the middle of the river, he had found a full
drum of Diesel oil. I recognised that drum as
one of the three drums I had given to Motie Singh
on the 15th October 1963. That drum is in the
40 courtyard (Drum tendered and marked "B").

We then went up river to Maam island, where
we arrived at about 4 a.m. on the next day. The
accused pointed out a spot about 150 feet south
of Maam island, and said "this is the spot" where

In the Supreme
Court of
British Guiana

Prosecution
Evidence

No.22

Dowlatram
Raggubar
9th November
1965
Examination
(Contd.)

"B"

In the Supreme
Court of
British Guiana

Prosecution
Evidence

No.22

Dowlatram
Raghubar

Examination
9th November
1965

(Contd.)

the explosion took place, and the launch Miss Carol sank.

We searched the river bed at that spot with grabbles. We found nothing.

We then went to Powis Island. There I was shown keretie laths, including Exhibit "A1-A3". In the water, and near to the bank, a brown shirt was found, and so was a pillow case "D" (tendered and marked "D"). This launch seat "D" was also found (tendered and marked "E"). This seat belongs to the launch Miss Carol. 10

The search continued until 6.30 p.m. Accused asked P.C. Ramjattan for permission to leave. Ramjattan permitted him to leave. The rest of us remained in the Majestic near to Maam Island.

Around 5 a.m. on 26th October 1965, another party arrived in my launch "Ganges", Ramjattan and I went to Orealla in the "Majestic". At Orealla I was shown a drum half filled with Diesel oil by the captain of the mission there. That was one of the three drums I had given to Motie Singh. I had seen that drum on the 22nd October at the rear of the Miss Carol at Acabo. 20

As a result of what I was told, Ramjattan and I went to Ann's Creek, which is about 3 miles north of Siparuta on the British side, and about 25 miles south of Maam island. At Ann's Creek, I found the dead body of Dindial floating in the river against the bank. The body was dressed in a pair of shorts and had several incised wounds. 30

One Ramjohn arrived in a speed boat, and spoke with us. We then went to Cow Landing on the Dutch side in Ramjohn's boat. Cow's Landing is opposite Ann's Creek but 5 miles away. At Cow Landing. I saw the dead body of Heera, floating in the water near to the bank of the river. I saw the accused in the launch "Ganges" Heera's body had several incised wounds.

From Cow Landing, I went to Khan's sawmill 40

at Siparuta where the coffins were made. The bodies of Dindial and Heera were placed in two coffins, and were taken to Orealla.

At Orealla, I saw the dead body of Motie Singh. There were several incised wounds on the body. It was placed in a coffin, after which they were all taken to the Skeldon hospital.

10 On 28th October, together with Ramjattan, De Abreu, and others, I went to Powis island in the Majestic. There I saw Shadrack Castello and Clinton Alexander. They took us to a spot 20 feet from the outside edge of the island. At that spot, I observed oil coming to the surface of the water. Winston Chin a diver dived at that spot after which he came up and spoke to us.

20 On 31st October 1963, I returned to the same spot. The launch Miss Carol was salvaged. The launch was taking to Sonny Chung's landing at Surnap. The launch was baled, and I observed that the seat of the launch was missing. Exhibit "E" is that seat. The anchor and chain were also missing. The sea water cork was also missing. This is the sea water cork (Tendered and marked "G") This was found at the stern of the launch. This is not where it usually is. This cork screwed on to the sea water pipe which was near to the gear box of the engine. Water from the river flows through this pipe and circulates into the engine cooling it. If the cork is missing, 30 water will come into the launch, resulting in its sinking. There was a special spanner to screw and unscrew this cork. That spanner was kept in the launch. I did not find the spanner on the 31st. This cork could not have been worked with the bare hands. There were no cutlasses on board the launch. I did not observe any damage either externally or internally to the launch. The light switches were all in the off position. The gear level was in neutral position. This gear carries 40 two movements, a forward and a reverse one. This means that when it sank, the launch was not being driven under its engine power. The throttle comprised of a lever, which was operated by hands to regulate the speed of the launch. This was at

In the Supreme
Court of
British Guiana

Prosecution
Evidence

No.22

Dowlatram
Raghubar

Examination
9th November
1965
(Contd.)

"G"

In the Supreme
Court of
British Guiana

Prosecution
Evidence

Dowlatram
Raghubar

Examination
9th November
1965

(Contd.) "H"

zero. This would indicate that the engine was not working.

On Wednesday 13th November 1963, around 11 a.m., Balchand, P.C.Ramjattan, P.C.Davids, and I went to Powis Island. Certain directions were given by Balchand. We went to a spot about 20 rods west on the island. We commenced to search for a small mora tree. P.C.Ramjattan found a mora tree about 5 or 6 inches in diameter. A portion of the bark had been shaved off. This is a part of the tree trunk (tendered and marked "H"). We continued searching until we found a big mora tree around which were tobacco, that is fallen trees. There were bush vines tied at the bottom around Exhibit "H". At the foot of the big mora tree, we dug into the earth for about 6 inches, where we found a handkerchief and a quantity of money. The handkerchief was wet and appeared to have been partly eaten by wood ants. I handed the handkerchief with the money wrapped in it as I found it to P.C.Ramjattan. The money was checked in my presence. It was \$4,780:- B.W.I. currency, and 1000 Dutch guilders. This is the money, and this is the handkerchief (all tendered and marked "J"). The money was wet, and partly eaten by wood ants. When I had given money to Motie Singh, it was not eaten by wood ants. The money found under the tree looks similar to the money I had given to Singh.

10

20

30

I have been doing business on the Corentyne River as a sawmill proprietor for about 15 years. I have seen big ships go up the Corentyne River. About 5 to 6 months ago, I have seen a Dutch ship of about 2000 tons go up the river. This was a warship. I have always observed great ships go up the river on the Dutch side; I now say up the entire river.

I know Haji Ramjohn. He once owned the "Nathaniel Greene". I have seen this ship about two or three years ago on the Corentyne River. I have seen a Dutch survey ship about 7 months ago up the Corentyne River as far as Wakai which is about 70 miles from Crabwood Creek Wakai is beyond Siparuta up river.

40

A bush rope is made of vines found in the bush. To collect such vines, cutlasses are necessary. Bush ropes are used to tie logs up into rafts.

In the Supreme
Court of
British Guiana

Cross-examined by Mr. Wills:-

Prosecution
Evidence

10 I have never had a ship salvaged before. I have seen salvaging operations, but not under water. On the 31st October I had arrived on the scene before the boat was brought to the surface. I am not aware that before salvaging all switches are turned off, nor am I aware that the gear is put into neutral position. I am not aware that the accelerator is put at zero before salvaging operations are begun.

Dowlatram
Raghubar
Examination
9th November
1965 (Contd.)
Cross-
examination

20 I agree that if the boat is at a standstill, and the engine not working, water would go up the sea pipe to a certain level. If the cork is removed, the launch should sink in 2 hours (Mr. Wills suggests to the witness 8 hours he does not accept that). The hull of the launch is about $1\frac{1}{4}$ inches thick. There is a floor above the bottom of the boat.

One man can crank the engine to start it. I cannot remember if the engine carried the crank.

At Jones' landing the water was very low so low we had to send a small boat to the landing.

Jury admonished. Adjourned to 1.15 p.m.

Jury checked at 1.20 p.m.

30 DOWLATRAM RAGHUBAR continues upon his oath:-

Cross-examined by Mr. Wills:-

My evidence about my father's residence in British Guiana is based on partly what my father told me, and what I know. I do not have any documents to show that my father and mother were lawfully married.

A ship registered in a British port must have

In the Supreme
Court of
British Guiana

Prosecution
Evidence

No.22

Dowlatram
Raghubar

Cross-
examination
9th November
1965
(Contd.)

clearance papers from the Customs Department at Springlands to trade with a Dutch port.

Off Maam Island, I pushed a pole in the water, and from there I have given the depth as 30 to 40 feet. The pole was not measured off, but I estimate the depth. The depth I gave previously was referable to Maam Island, not Powis Island. Chin dived off Maam Island as well. He dived at Maam Island first: he dived at the spot where the accused said that an explosion had taken place.

10

I told Singh that he should have had \$4,800:- B.W.I. plus 1000 Dutch guilders. I expected Pinter to supply about 200 logs. I did not expect to get 700 logs from Pinter.

I know Alfred Sawh. He is in the saw milling business. I did not know that he had been offering more for the logs on the Dutch coast than I was. I saw Pinter at his landing. I did not pay Pinter.

I was on my wharf at Crabwood Creek when I saw the ship of 2000 tons. I went up the river, and I saw the ship at Wakai. I give the tonnage as 2000 tons from personal observations. I would estimate a ship's tonnage by looking at its length, breath and depth. I saw a big boat going into the Corentyne river in 1963. I do not know the name of the boat. It was in October 1963. I subsequently went up river and I saw the ship at Apora I can see the Dutch shore from my wharf all the year round. There is no port in the Corentyne river beyond Springlands. There is a wharf at Apora where I saw a big ship tied up in 1963. I do not know of any buoys or navigation lights in the river.

20

30

I have seen the "Nathaniel Greene" on the river about 3 years ago.

On the 13th November, I did not see any footprints near the small mora tree on Powis Island. I did not see any on the 28th October.

I have known Balchand for about 6 years; I

40

knew him as a resident of Crabwood Creek. Balchand has sold me logs. He has sold me last about 3 or 4 years ago. I have employed an agent in place of Motie Singh; his name is S. Sukhunan.

The salvage operation commenced on the 28th; and the boat was eventually beached on the 31st. At the time when the salvage operations were going on, the water was calm.

10 When I last saw the "Miss Carol" the seat (Exhibit "E"), it was nailed to the boat. When I was shown the drum at Orealla, I cannot say if either Shadrack Castello or Clinton Alexander was present. The drum I saw downstairs is similar to the drum I had given Motie Singh. The drums I gave to Singh were all standard sizes, and were all painted red and white.

20 Ann's Creek is on the British Guiana side. I did not see a Creek. The floating body of Dindial was not in a Creek, but in the Corentyne river.

30 On the 13th November, accused was not among the search party. I did not give a reward for the finding of my money. I gave Balchand \$1000 after the last trial as a reward for finding the money. The money in court was never released to me. This was for his help in finding the money. I gave this money voluntarily. Balchand did not ask for a reward. I have no special reason why I did not give him the reward before the trial. I did not give him before because I was waiting to hear what evidence he would have given. I gave no one else any rewards. I would have given Balchand the reward whatever the result of the previous trial would have been.

I do not know that at the time of the first trial Balchand was in debt. I was never aware that he had any trouble with the Dutch Authorities. I was not aware that Balchand had seen the accused while the latter was in custody.

40 I paid the \$1000:- in cash.

The "Miss Carol" was insured. I made a verbal

In the Supreme
Court of
British Guiana

Prosecution
Evidence

No.22

Dowlatram
Raghubar

Cross-
examination
9th November
1965
(Contd.)

In the Supreme
Court of
British Guiana

Prosecution
Evidence

No.22

Dowlatram
Raghubar

Cross-
examination
9th November
1965

(Contd.)

report to the insurance company, but I did not follow it up. In October 1963, I would have valued the launch with engine at about \$6,000:- I gave no one any reward for assisting me to get back my launch. I did not pay Chin: he was paid by the police.

Not correct that I procured Balchand to give false evidence in this matter. I have no interest in serving a conviction in this matter.

I have spent about \$20 in repainting the launch. I have not replaced the chain and anchor.

10

The Dutch Authorities do patrol the Corentyne River.

The police used my launches in the course of their investigations. I rendered an account to the police for about 16 to 17 hundred dollars for the use of my two launches, but I have not been paid. I rendered my account after the last trial was ended, and after I gave Balchand the reward. I have consulted a lawyer about it.

20

Ramjattan picked up the money from the hole. I saw the moneym called Ramjattan's attention to it, and he took it up.

I had gone to Mc Lenon to report to the Dutch Authorities what the accused has said. We have to report to the Dutch.

Keratie wood is widely used for cooling by persons who go to purchase logs for sawmills. I did give Motie Singh and the others Keratie wood to take with them. This piece (Marked "A1") I say has come from my mill as it is cut with a band saw, and I am the only miller on Eastern Berbice who operates a band saw. I have been operating a band saw since 1960. I cannot tell the age of wood. By using a band saw, the waste of wood is less.

30

This is the first time I have given evidence about big ships in the Corentyne River, because this is the first time I was asked. This is the

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first time I am giving evidence about the markings on the Keratie wood.

Jury admonished. Adjourned to 9 am. on 10.11.65

Wednesday 10th November 1965

Jury checked at 9 a.m.

DOWLATRAM RAGHUBAR continues on his oath:-

Cross-examined by Mr. Wills:-

Mr. Wills says that he does not wish to ask this witness any more questions.

10 Re-examined:-

My launch the Miss Carol was insured with the B.G. & T. Fire Insurance Co. whose head office is in Georgetown, British Guiana. This is the policy of insurance issued to me (Tendered and marked "SS"). This is a certified extract from the Birth Register relating to my birth (tendered and marked "TT").

20 I have not registered the launch "Miss Carol" in any foreign country, Not in Dutch Guiana or elsewhere. I have had clearance papers issued in respect of Miss Carol issued by the Sub Comptroller of Customs at Springlands. The "Miss Carol" is of about 5 tons.

By the Jury:-

Before the launch was put back into operations, the engine was overhauled. This included, cleaning the piston ring, putting in new head joints, and grinding the valves.

30 The sea water cork had been taken off before the incident for purpose of cleaning the strainer which is near the cork. The special spanner was used; this spanner was supplied by the manufacturer, The pipe on which the cork (Exhibit "G") fits is vertical. That pipe is in the same position now, as it was then, the only difference being that we now use a wooden plug.

In the Supreme Court of British Guiana

Prosecution Evidence

No.22

Dowlatram Baghubar

Cross-examination
10th November 1965
(Contd.)

Re-examination

"SS"

"TT"

Questioned by Jury

In the Supreme
Court of
British Guiana

Prosecution
Evidence

No.22

Dowlatram
Raghubar

Further
Cross-
examination
10th November
1965

By Mr. Wills:-

There is a pipe which takes the water to the engine. There is an overflow pipe through which water passes out of the engine but only when the engine is in operation. There ought to be a stop cork to hold the water in the engine.

The engine was bought new in March, 1963.

I referred to my boat as "Carol". This boat was never used to transport stone. I did not intend that it should be used for this transportation of stone. I had no discussion with anyone about the boat transporting stone. This boat was not built to transport stone. I agree that the policy (Exhibit "SS") refers to a 20 H.P. engine, and to a tug "Lady Carol". I see a provision should not carry stone beyond 5 tons. I was asked if I wanted to fetch stone, and I said no. The policy was assigned to Bookers.

10

I cannot say if Motie Singh was a certified captain, nor do I know if any of the other occupants of the boat were certified mates.

20

Further re-
examination

By Mr. Fung-A-Fatt:-

I had negotiated to buy a 20 H.P. Petter engine, and the policy was made accordingly. Subsequently I bought a 40 H.P. engine.

The Miss Carol went to Nickerie once only other than that it has never gone out of the Corentyne River.

Bookers Stores Ltd. is a firm operating business in British Guiana. I had bought an engine on a hire purchase agreement, hence the assignment of the policy of insurance to Bookers. I had bought the engine from Bookers.

30

Questioned
by Jury

By the Jury:-

I cannot say whether my launch has taken goods for Shiren Ally. I have seen her once in the launch.

NO.23
EVIDENCE OF STANLEY HALL

In the Supreme
Court of
British Guiana

STANLEY HALL sworn states:-

Prosecution
Evidence

No.23

Stanley Hall

Examination

10th November
1965

10 I am a Chief officer of the Prison Department, attached to the Mazaruni Prisons. On 6th November 1963, I was attached to the New Amsterdam Prisons. On that day, I conducted and supervised visits made by relatives and friends to prisoners in the New Amsterdam prisons. On that day the accused was in custody as an unconvicted prisoner in the New Amsterdam Prisons. Around 2.15 p.m. one Balchand went to the New Amsterdam Prisons. (Balchand identified). Unconvicted prisoners were allowed 10 minutes with their visitors on that day.

20 I escorted the accused from the prisons to the visiting booth where Balchand was taken. The two persons were separated by a wire mesh. They spoke to each other in low tones. I could not hear even though I was about 5 feet away. I allowed them to speak for 10 minutes after which I escorted the accused back to the lock-ups, and Balchand was escorted out.

The particulars of this visit are recorded in a Visitors Book and the Gate Occurrences book at the New Amsterdam Prison.

Cross-examined by Mr.Wills:-

Cross-
examination

30 I was first aware that Balchand was at the prisons at 2 p.m. I did not expect him. An unconvicted prisoner is allowed two visits per week. I did not actually see Balchand pass out of the prisons.

I am 19 years now in the prison service. As far as I know only policemen and lawyers are permitted to exceed the time of their visits.

I was not requested to eavesdrop on the conversation. A visit starts when the prisoner and his visitor commences to speak. As far as I could tell, accused and Balchand spoke for 10

In the Supreme Court of British Guiana
Prosecution Evidence

minutes.

I cannot remember whether there was another unconvicted prisoner called Ramchandra also called Neil.

No.23

Re-examined:-

Stanley Hall

Declined.

Re-examined

By the Jury:-

Declined.

No.24

NO.24

Barrington Barker

EVIDENCE OF BARRINGTON BARKER

10

Examination
10th November
1965

BARRINGTON BARKER sworn states:-

I am Detective Sergeant of Police No. 4774 stationed at C.I.D., Brickdam. On 12th November 1963, I was stationed at Whim Police Station, Corentyne.

Around 10 a.m. on the 12th November, 1963 Balchand (identified) spoke to me at the Whim Police Station. As a result, I spoke to Mr. Soobrian who was then the Superintendent in charge of the Sub-Division. I permitted Balchand to go into the lockups at the Whim police station where he waited.

20

Around 1 p.m. on the same day, the accused went to the station. He was placed in the lockups in which Balchand had been placed. Only the accused and Balchand were in the lockups. They remained together for about an hour, after which Balchand and I spoke to Mr. Soobrian. Balchand then left. The accused remained in the lockups.

30

On the 12th November 1963, the accused was in custody on a charge, and he was taken to Whim to be remanded by the magistrate.

Cross-examined by Mr. Wills:-

In the Supreme
Court of
British Guiana

Prosecution
Evidence

No.24

Barrington
Barker

Cross-
examination

10th November
1965

10 There is no record of Balchand's visit to the Whim Police Station. There is no force order requiring the reason to be recorded why a man is placed in the lockups. I did not speak to the magistrate's clerk that day about Balchand's stay in the lockups. No written statement was taken by me or in my presence from Balchand that day at the Whim Police Station. I did not expect
10 Balchand at the station on the 12th November 1963. I had known him before that day. I knew he had some conversation with the matter. Balchand was placed in the lockup, but he was not placed under arrest. Accused was on a charge of murder. After Balchand was placed in the lockup I did not speak to him again until he had spent the hour with the accused. I saw the accused go into the lockups. I closed but did not lock the door. I do not agree that this was against police
20 regulations; everything was done under supervision. I could have seen anyone leaving the lockups, I had known beforehand that Balchand wanted to speak with the accused. When Balchand spoke to me, I was expecting accused to be brought to Whim to be remanded, I cannot say whether the accused had already been remanded when he was placed in the cell.

30 I do not know the name Ramchandra, called Neil. I cannot say how many prisoners were taken to Whim for remand on the 12th November. Other policemen were in the office. There was only one cell at Whim. In some cases prisoners on remand are allowed private visitors in the cell. I cannot remember the date, place or time of such occurrences. I cannot remember putting a visitor in the cell.

40 I did not search Balchand. I could not have seen the two men in the cell. I did not speak to the accused about Balchand. As far as I am aware, the accused was in the lockups once only on the 12th November. If there were other persons in the lockups, it would be after Balchand left between 2 and 2.15 p.m.

Before accused was placed in the cell, I

In the Supreme
Court of
British Guiana

Prosecution
Evidence

No.24

Barrington
Barker

Cross-
examination
10th November
1965 (Contd.)

Re-
examination

appreciated that accused could have told Balchand something which might incriminate or exculpate himself. The accused might have believed that Balchand could have helped him. I did nothing to indicate to the accused that he need not have said anything to Balchand.

Re-examined:-

I assisted in the investigations in this matter. Soobrian and Inspector Chee-A-Tow were in charge.

By the Jury:-

Balchand went to the police station on his own, he spoke to me upon his arrival.

10

No.25

Thomas Bayne

Examination
10th November
1965

NO.25
EVIDENCE OF THOMAS BAYNE

THOMAS BAYNE sworn states:-

I am Constable No. 4347 and stationed at C.I.D. Georgetown. In 1963, I was stationed at C.I.D. New Amsterdam, and was the police photographer.

20

On 31st October, 1963 at about 4.15 p.m. I went up to Powis Island with Detective Constables Ramjattan and De Abreu. I was taken to a spot. I saw a pair of short pants hanging on a sapling. The pants were dark in colour. I made a photographic exposure of the pair of pants.

At 11.15 p.m. on the same night, I took an exposure of the portion of the interior of the launch Miss Carol showing the gear lever and the sea water pipe.

30

On the 1st November, around 8 a.m. I made two exposures of the exterior of the launch Miss Carol.

At 5 p.m. on the 16th November 1963, I returned to Powis Island with Detective Constable Ramjattan and De Abreu. I was shown an area of ground at the foot of the large tree. I made a photographic exposure of the said area of ground.

10 Around 8.30 a.m. on the 17th November, I went to Springlands police station. There Ramjattan showed me a portion of a partly withered vine. I made a photographic exposure of the said vine.

I later processed the film, and I obtained 6 negatives. I did not re-touch any of the negatives. These are the 6 negatives (Tendered and marked "AAL-AA6"). From these same negatives, I made 6 enlarged prints. I did not retouch or alter any of the prints. These are the 6 prints (Tendered and marked "BB1-BB6").

20 Exhibit "BB1" shows a view of a portion of Powis Island, and includes the pair of short pants as I saw it.

Exhibit "BB2" shows the interior of the launch Miss Carol, and includes a view of the gear lever and sea water pipe.

Exhibits "BB3" and "BB4" show - two external views of the launch Miss Carol afloat.

Exhibit "BB5" shows a view of a portion of Powis Island, and includes a view of an area of ground at the foot of a large tree.

30 Exhibit "BB6" shows the withered vine whose photograph I took at Springlands police station.

On those occasions that I went to Powis Island, it was not flooded. On the first occasion the island was dry; on the second visit, it was raining, and the island was wet.

Cross-examined by Mr. Wills:-

Declined.

By the Jury:-

Declined.

In the Supreme
Court of
British Guiana

Prosecution
Evidence

No.25

Thomas Bayne
Examination
10th November
1965
(Contd.)

"AAL"

-

"AA6"

"BB1"

-

"BB6"

In the Supreme
Court of
British Guiana

NO.26
EVIDENCE OF EMANUEL VERWEY.

Prosecution
Evidence

EMANUEL VERWEY sworn states:-

No.26

I am also known as and called Shennie. I live at Springlands, and I am a boat builder. I have been so engaged for 35 to 40 years.

Emanuel
Verwey

Examination
10th November
1965

I built the launch Miss Carol in 1963, for Raghubar, in March or April 1963. The launch was 30 feet long, 8 feet wide, and 3 feet 8 inches deep. The frame of the launch was made of mora, and the exterior was made 1½ inches greenheart. When the boat was made, the fender had too small cracks on the fender, on the right side. I fitted the engine in the launch, as well as the seats, - three of them in front of the boat. The seats could have been removed to provide more space if required. Exhibit "E" is one of the seats. 10

On the gear box was a covering made of crabwood planks. This covering was not nailed down, and could be easily removed. This covering also covered the sea water cork. I see Exhibit "BB2". I see the sea water pipe and the gear lever. Exhibit "BB3" shows the Miss Carol. 20

On 2nd November 1963, I went to Raghubar's log pen at Crabwood Creek. There I saw the launch Miss Carol. I examined the launch; I found nothing wrong with the launch. I saw no damage to the launch. It was in the same condition as when it was built. I found the gear box covering, and the seat and the sea cork missing. I was alone when I examined the launch. I did not interfere with anything on the launch. 30

Cross-examined by Mr. Wills:-

Declined.

By the Jury:-

Declined.
Jury admonished. Adjourned to 1.15 p.m.

Jury checked at 1.15 p.m.

NO.27
EVIDENCE OF BASIL JOKHAI

BASIL JOKHAI sworn states:-

I am P.C.6642 stationed at Springlands Police Station.

On Monday 6th September 1965 at 1.30 p.m.. I was at the Springlands Magistrate's Court where Dr. Maurice Luck gave evidence for the prosecution in the preliminary inquiry in this case before the magistrate Mr.Owen Fung-Kee-Fung. Accused was present when the doctor gave his evidence. The Magistrate read the evidence over to the witness in the presence of the accused. The witness said that the evidence was true and correct, and signed the deposition. The magistrate also signed the depositions in the presence of the accused. The accused was given the opportunity of cross-examining the doctor but he declined.

10

20

On Wednesday 15th September, 1965, around 12.25 p.m. I was at Atkinson Field Airport around 12.30 p.m. Dr. Luck board a B.W.I.A. aircraft bounded for the United Kingdom. I saw the plane take off I watched it go out of view.

On Wednesday 4th November 1965, I went to Springlands where Dr. Luck last lived. From inquiries which I have made Dr. Luck has not returned to British Guiana. Up to the present time, he has not returned to the colony.

30

I see the signature of Dr.Luck and the magistrate on these depositions (marked "UU" for identification).

Cross-examined by Mr.Wills:-

I wrote a statement on the 18th September, 1965. I wrote no other statement. I see my statement. I see handwriting in ink as well as in pencil - both in my handwriting. I have initialled the corrections. The first date

In the Supreme Court of British Guiana

Prosecution Evidence

No.27

Basil Jokhai

Examination

10th November 1965

Cross-examination

In the Supreme
Court of
British Guiana

Prosecution
Evidence

No.27

Basil Jokhai

Cross-
examination
10th November
1965 (Contd.)
Re-examined

"UU"

No.28

Roy Coates

Examination.
10th November
1965

written was the 3rd September. I corrected the 3rd to read 4th, and September to November. I made these corrections on the 4th November while this case was in progress. I had a copy of the statement I made but I cannot find it.

I went to Dr. Luck's house once only after the 18th September, and that is in November 1965, but not before the 4th November 1965. I dated the statement the 18th September 1965 by mistake.

Re-examined:-

I visited the house of Dr. Luck up to this morning, but the doctor was not there.

(Depositions admitted and tendered, and marked "UU" Depositions read in court).

10

NO.28

EVIDENCE OF ROY COATES

ROY COATES sworn states:-

I am a mechanical supervisor employed at Skeldon estate, Corentyne. I have 35 years' experience as a mechanic. I have dealt with various types of engines. I live at Skeldon estate.

20

On 2nd November 1963, around 8 a.m. I went to Raghubar's saw mill at Crabwood Creek. I was accompanied by one Moore the Superintendent of my work shop and Inspector Chee-a-Tow.

I saw a launch called "Miss Carol" on the beach near to the saw mill. I examined the launch. I found that the sea water cork was missing. This is to be found on the right side of the gear box and near to it. The sea water cork is used for corking the sea water pipe to prevent water from going into the launch. This pipe takes in water from the sea: the water is directed to another pipe which takes it to the pump which circulates water through the engine. The pump forms part of the engine. From the sea

30

water pipe, the strainer was missing. There should have been a strainer there (Witness points out to jury on Exhibit "BB2" the sea water pipe and the pipe which lead to the engine). I was shown Exhibit "G" at the station; this would fit the pipe. Exhibit "G" is fitted by threads can be put on by hand, but it has to be tightened very tight to prevent water from coming in. If a spanner has been used to tighten this cork, it would be necessary to use a spanner to take it off.

10

When I saw the gear lever, it was in the neutral position. When the engine is out of gear, the propeller comes to a stand still. The propeller is the mechanism which drains the boat.

The compression lever was also at zero. This means that the engine had stopped working. Had there been a collision which caused the boat to sink, the gear and compression levers would have been in working position.

20

I examined the light switches. They were all in the off position.

I examined the launch both externally and internally, and I found no damage to the launch. A collision with another launch or with a sand bank would not have caused the sea water cork to have become unscrewed. Had the launch been involved in a collision resulting in its sinking, I would have expected to see some part broken, or damaged.

30

With the sea water cork removed, water would go into the launch causing the launch to sink. This would take about 1 to 1½ hours having regard to the size of the launch and the weight of the engine.

Cross-examined by Mr. Wills:-

40

I see Exhibit "G". I have seen corks like Exhibit "G". I would use a spanner or wrench. An adjustable spanner can unscrew this cork. I have experience with engines used to power boats. If the compression lever is brought to zero, the engine will stop, but the boat will continue for

In the Supreme
Court of
British Guiana

Prosecution
Evidence

No.27

Roy Coates

Examination

10th November
1965

(Contd.)

Cross-
examination

In the Supreme
Court of
British Guiana

some time. The engine will continue to beat for a little while after the compression lever is put to zero.

Prosecution
Evidence

No.28

Roy Coates

Cross-
examination
10th November
1965

(Contd.)

If the sea water cork is not screwed on tightly, the pump would get air and there will not be a full flow of water to the engine. I do not accept that water will loosen the cork. Water would strike the centre of the cork. Not necessary to tighten the cork at intervals on a long journey; "it whould last for weeks", unless someone interferences with it. Unless the cork is unscrewed unusually, it would never become dislodged. Once it is tightened properly, apart from human intervention, there will be no need to tighten the cork again. I am sure that someone had to unscrew the cork. The sea water pipe would not get hot.

10

I have seen crafts sink, but I have no scientific experience of this.

The sea water pipe was about $\frac{3}{4}$ the length of the boat from the front. I would agree that the stern of the boat will sink first.

20

Re-
examination

Re-examined:-

It would take about 30 seconds for the engine to stop after the compression lever is brought to zero.

Questioned
by Jury

By the Jury:-

If the cap or cork carries a lead seal, tightening of the cork would not damage the seal. This particular engine does not have an accellerator. I did not try to fit the cork to the pipe.

30

Questioned
by Court

By the Court:-

Whether the boat is moving or not the flow of water through the pipe would be the same. Whether the engine is being worked or not the water will flow upwards through the sea water pipe. From what I have seen I am sure that the engine must have been turned off before the launch went down, if in fact the compression lever was at zero when the launch was salvaged.

40

NO.29
EVIDENCE OF BALCHAND

In the Supreme
Court of
British Guiana

BALCHAND sworn states:-

Prosecution
Evidence

No.29

(Witness does not answer - Witness now appears and is sworn).

Balchand
Examination
10th November
1965

10 I am a logger, and I live at Crabwood Creek Corentyne. I cut logs at Mari Mari which is about 448 miles up the Corentyne River. I operate one Jagmohan Singh's grant. I own a boat which is driven by an outdoor motor.

20 I knew Motie Singh, Dindial and Heera. I also know the accused; he is called Better Boy. I had known the accused for about 15 years. We were very good friends in 1963. I was last in Mari Mari in 1965. I left there on the 11th October 1965 by boat. I did not see any bridge across the river. I have worked the grant for about 5 years; I have worked it prior to October 1963, and I have made frequent trips up and down the river. I have never seen any bridge across the river.

On the 24th October 1963, I was at Raghubar's sawmill around 2 p.m. Accused and one Jwalla arrived while I was there. Accused went and spoke to Raghubar. The two men then left the sawmill, and went in the direction of Springlands.

30 On the 25th October 1963, about 7 a.m. I left Crabwood Creek in my boat with about 3 or 4 men. I went up the Corentyne River. I went in search of the launch "Miss Carol". On the river near to Powis Island, I saw accused, P.C. Ramjattan and Raghubar and others. They were in the launch Majestic.

I assisted in searching the river between Maam and Powis Islands, but I found nothing.

About 7 p.m. of the same day I left with the accused and others in my boat, and we went to Crabwood Creek, arriving around 11 p.m. that night.

In the Supreme
Court of
British Guiana

Prosecution
Evidence

No.29

Balchand

Examination

10th November
1965

(Contd.)

On the 26th October 1963, I took 3 or 4 men up the Corentyne River in my boat. I left Crabwood Creek about 7 a.m. Near to Parrot's Island which is about 2½ miles above Powis Island, one Baldeo who was in his boat, spoke to me. As a result, I proceeded up river to Cow Landing which is on the Dutch side. There I saw the body of Heera floating in the water near to the shore. It was caught in bushes at the edge of the water. I saw a lot of wounds on the body. The body was placed in my boat.

10

I proceeded further up river. About 5 miles up, on the British side, and below Siparuta, I saw the body of Dindial. It was floating in the water near to some trees. It was about 2 rods from the shore. I observed that there were plenty of wounds on the body. I placed the body in my boat, after which I took the bodies to the sawmill of one Patrick Khan at Siparuta.

At the sawmill, three coffins were made Dindial's and Heera's body were placed in two coffins, and took them to Orealla.

20

At Orealla, I saw the dead body of Motie Singh. I noticed that the neck was almost cut off, and a wound in the front of the body. That body was placed in the third coffin. All the coffins with the bodies were taken to the Skeldon hospital. The flesh was eaten away from the feet of Motie Singh. So it was with Dindial and Heera.

30

On the way to Crabwood Creek, my boat with the bodies in it was being towed by the Majestic. I was in the Majestic and so was the accused. P.C. Ramjattan was also there. On the way, the accused said that he would like to speak to me. Ramjattan stopped me from speaking to him. In the presence and hearing of the accused, Ramjattan said no one must speak to the accused.

Jury admonished. Adjourned to 9 a.m. on 11.11.65.

Thursday 11th November 1965

Jury checked at 9 a.m.

BALCHAND continues on his oath:-

The three bodies were taken to Skeldon mortuary.

10 On Monday 28th October, 1963, the police hired my boat. I went up to Powis Island. There I saw on board the Majestic, P.C. Ramjattan, Raghubar, Winston Chin, and several others, Shadrack Castello and Clinton Alexander. These two men pointed to a spot in the river about 2½ rods east of the island. Winston Chin then threw a 'grab' into the river. He then dived into the river. He returned to the surface and spoke. We then brought up the launch Miss Carol from the river at the same spot. I was present during the entire salvage operations. The launch was then towed to Sonny Chung's landing at Surnop.

20 On the 3rd November 1963, at about 5.30 p.m. I was at Crabwood Creek Public road, when the brother of the accused called "Preacher" spoke to me. As a result, on the 6th November, I went to the New Amsterdam Prison around 2 p.m. There I spoke to a prison officer who took me to a waiting room. The accused was brought to the waiting room.

30 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 the time was up. I then left the prison.

On the 7th November I went to the Springlands

In the Supreme
Court of
British Guiana

Prosecution
Evidence

No.29

Balchand

Examination
11th November
1965
(Contd)

In the Supreme
Court of
British Guiana

Magistrate's Court. I saw P.C. Ramjattan there. I spoke to Ramjattan, and he gave me certain instructions.

Prosecution
Evidence

No. 29

Balchand

Examination
11th November
1965
(Contd.)

On the 12th November, I went to Whim Police Station. There I spoke to Sergeant Barker. I then went into the lockups at Whim Police Station. No one else was in the lockups then. The accused was brought into the lockups. The accused and I alone were there in the lockups. While there the accused said - (Mr. Wills objects to this evidence being led, 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 whom they knew had promised to assist the accused. Jury excused).

10

20

Witness continues his evidence:-

I went to the New Amsterdam Prison on the first occasion because of what the accused's brother had told me. At the New Amsterdam Prison, I told the accused I would try my best to assist him by going for the money.

At the Whim lockups, I did not promise the accused anything before he spoke to me. After he spoke to me, I promised the accused that I would go for the money. At his request, I also promised that I would go to his father-in-law. I made no other promise.

30

When I spoke to Barker, he gave me certain instructions.

Cross-
examination

Cross-examined by Mr. Wills:-

Accused spoke about the money, before he spoke of Motie Singh's death. It was at that stage that I promised to get the money. I promised to get the money, to retain \$1000:- for myself, and to give the balance to his father-in-law. Accused did not tell me that I was not to

40

let the money fall in the hands of the police. Accused told me to ask his father-in-law to go and find the "buck non", and to give them some money not to say anything. I promised to do so. Accused and I did not plan to meet on the 12th. At Whim, accused asked me "What you doing here Bal, you got the money?" I told him that I did not have the money, because I did not have proper directions. After we had our conversation, I told the accused that I was in the lockups on a warrant for a fine. I did not tell him this on the instructions of any one; I invented this.

10

It was Sergeant Barker who had placed me in the cell. I was not on a charge. I had requested a place to rest as I was tired. I did not tell Barker anything about my first visit to the New Amsterdam prison. I did tell Barker that I had gone to the police station on instructions, but I did not tell him why I was there. I was not searched.

20

I did not tell the accused at any time at Whim Police Station that I would not help him. After I left the lockup, I spoke to Superintendent Soobrian; I cannot remember if Barker was present. I cannot say who had placed the accused in the cell. I cannot say if there was a policeman outside the door as accused and I spoke.

30

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 this 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.

Re-examined:-

40

At the New Amsterdam prisons I promised to assist the accused to get the money after he had told me that the money was at the Powis Island head.

At the New Amsterdam prisons, accused first

In the Supreme
Court of
British Guiana

Prosecution
Evidence

No.29

Balchand

Cross-
examination
11th November
1965

(Contd.)

Re-
examination

In the Supreme
Court of
British Guiana

Prosecution
Evidence

Balchand

Re-
examination
11th November
1965
(Contd.)

spoke to me say that he was glad I had come as he wanted to see me very important. I asked him what was it all about that it was so important. Up to that stage, I had not promised him anything. Then he said he had the money at Powis Island and that I must go for it; that it was 25 rods in the island. I promised him to go for the money because accused had asked me to go for it.

(Mr. Fung-A-Fatt does not wish to call any further evidence on this point. Mr. Wills wishes to call Sergeant Barker as his witness).

10

Jury recalled and checked.

BALCHAND continues upon his oath:-

In the lockups at Whim, accused told me, "Man Bal, what you ah do here, you got the money." I told him that I did not get the money as I did not have proper directions. He told me that as we were together, he would tell me the correct spot where the money was. He told me to go to Powis Island - the head of the island, and "go in 25 rods from the head of the island, and must go and search for a mora tree about 5 to 6 inches thick shaven on the trunk with a cutlass, and with a vine tied with some young mora leaves around the trunk, and from the tree you must go 6 rods low side, and you will see a large big mora tree with some spurs around and some old tacobba longside the large mora tree, and dig under the mora tree root 6 inches, and you will see the money there." He said that I must take \$1000 for myself, and give his father-in-law the balance of the money. He also told me to tell his father-in-law that he must not forget the buck men who had seen him running in the island. I promised him that I will do that.

20

30

I asked him how the money got missing. He said whilst they were coming on the driver, "We slipped out the money and hide it in the launch." I asked him how the bodies got chopped. He told me that Dindial caused the whole trouble. He said that while they were coming Motie Singh and Heera wanted to go to the Dutch police station

40

to report the loss of the money; that Heera and Dindial had an argument, and Dindial told Heera to stop the launch; that Heera said "no man, abee a go report the matter at the Dutch police station". That while arguing, Dindial picked up a cutlass, gave Heera several chops. He said that Motie Singh went to assist Heera, and he (the accused) picked up his cutlass, and chopped Motie Singh on his neck; and the two of them decide to burst the belly of the men, to tie them and sink them with the boat anchor.

10

I told the accused that I would try and assist to get the money.

The accused was then taken out of the lockups.

I then left the lockups and spoke to Superintendent Soobrian.

On the 13th November, P.C. Ramjattan, Raghubar, Fizie Ramjohn and another policeman and I went in a speed boat to Powis Island. There I gave certain instructions to the police. We all separated and started to search on the island. After a while, Ramjattan called us, and we went to him. I saw on the bark of a mora tree shaven, and a vine with young mora leaves tied around the trunk of the tree. We commenced to search again. Raghubar called out, and I went up to him. I saw money tied in a handkerchief under a mora tree root. The money was wet and was eaten by wood ants. Exhibit "J" is the handkerchief and money. Ramjattan took up the money, after which the party returned to Crabwood Creek.

20

30

I have been working on the Corentyne for 14 to 15 years, and I owned a boat for 10 to 12 years. The Corentyne River is tidal up to Cow Falls in the dry season; this is about 190 to 200 miles from Crabwood Creek. During the rainy season, the river is tidal to Matapee which is about 150 miles up river from Crabwood Creek.

I have seen large ships go up the Corentyne River. Around June 1965, I have seen a Dutch ship from Holland at a place called Apora which is 135 miles from Crabwood Creek. I have no knowledge of tonnage.

40

In the Supreme
Court of
British Guiana

Prosecution
evidence

No.29

Balchand

Further
Examination
11th November
1965

(Contd.)

In the Supreme
Court of
British Guiana

Prosecution
Evidence

No.29

Balchand

Further
Cross-
examination
11th November
1965

(Contd.)

Cross-examined by Mr. Wills:-

I received 1000 dollars from Raghubar. I received this money about 1 month after the first trial. I did not expect any money from Raghubar. I accepted the money because Raghubar told me that I had worked hard. I did not consider the giving of evidence as part of the hard work; my going to Whim Police Station, I regard, as hard work.

I have one previous conviction for disorderly behaviour at Springlands Magistrate's Court. I have incurred no previous convictions in Dutch Guiana. I know Maam Island; I have gone there.

10

What I have said in answer to the prosecutor is all that the accused told me at Whim Magistrate's Court. I did tell the magistrate that the accused had told me that he had attacked Dindial. This is the fourth time I am giving evidence on oath about the conversation accused and I had at Whim. I am aware that the accused is now charged with the murder of Motie Singh. When I went to Whim, I knew that the accused was charged with murder of Motie Singh.

20

Jury admonished. Adjourned to 1.30 p.m.

Jury checked at 1.30 p.m.

BALCHAND continues on his oath:-

Cross-examined by Mr. Wills:-

This is the first time I am saying that I received \$1000:- from Raghubar.

I know the accused to be living in Crabwood Creek. We have both lived there for 15 years during which I got to know him. We have spoken on occasions during this time. He became my friend for about 4 years. I gave evidence in the magistrate's court in August 1965. I told the magistrate that I knew the accused for 4 years. That is a mistake. I cannot say if this is the first time I am saying that I have known the accused for 15 years.

30

10 I gave three statements to the police. I had given one before I saw the accused at the Whim Police Station - on the day I went to New Amsterdam prison. I cannot remember if that was the first statement I made. Ramjattan took one statement from me; I now say that he could have taken another from me. I recall Inspector Chee-A-Tow taking two statements from me; one he took this year. This is the third statement, and it related to this matter. It related to matters about which I had not been asked before, I made this third statement at my house. I knew that the accused had been re-arrested and was to be tried again.

20 One launch - the Majestic - towed the Miss Carol to Crabwood Creek. I was steering the Majestic. Raghubar did not hire me to do this. I went on the Majestic on the police instructions. I got these instructions from Chee-A-Tow. I expected to be paid to do this job. I have since been paid by the police for towing and salvaging. My boat was used for searching, but I was not paid for this. My boat was used for searching before the salvaging.

30 I did say here that when I left Crabwood Creek, I left to catch Powis Island. I left to go in the direction of Powis Island in search of the other searchers. 11.30 a.m. as recorded in the depositions as my time of departure from Powis Island with the accused can be a mistake made either by me or the magistrate. I could have given 11.30 a.m. in my statement to the police. My boat would take between 3 to 3½ hours from Crabwood Creek to Powis Island. I would say that on the 25th October 1963, I took between 3 to 3½ hours to get to Powis Island.

I do sell logs to Raghubar among others.

40 While I was speaking to the accused, the warden was walking up and down behind the accused, but some distance away. Accused and I was very close together as we spoke. As the warden passed behind him, the accused changed the conversation; there was no further conversation after the warden said time was up.

In the Supreme
Court of
British Guiana

Prosecution
Evidence

No.29

Balchand

Further
Cross-
examination
11th November
1965

(Contd.)

In the Supreme
Court of
British Guiana

Prosecution
evidence

№.29

Balchand

Further
Cross-
examination
11th November
1965

(Contd.)

On that very day before I went to the prison, I gave a statement to Inspector Chee-A-Tow. I had gone to the police station at New Amsterdam on my own. I now say that I went in search of Chee-A-Tow because I understood he wanted to see me. I did not find him at first, but I did so, and made my statement before I went to the prisons. I did mention the name Preacher to Chee-A-Tow. I had arrived in New Amsterdam around 8.30 a.m. I gave a long statement to Chee-A-Tow. I cannot remember whether I received instructions from the police regarded my proposed visit to the prison. I went to the prison on the 6th November because that was the only free day for me.

10

I did not report to the police at New Amsterdam after I left the prison. The first policeman I spoke to after was Ramjattan on the following day at Springlands. I spoke to Ramjattan about my visit to the accused at the prison. I expected to visit the accused again, and to speak about the money and the "Miss Carol" I might have heard about Motie Singh. I expected the police to make the arrangement for me to meet the accused. I believed that if I got a chance to speak to him, he would tell me where the money was if I promised to help him to get it. I had in mind to ask him what had happened. I intended to convey to the police what the accused would have told me, and I told the police this.

20

On the 12th November 1963, I spoke to Barker as well as Superintendent Soobrian. This was the first time I was seeing Soobrian. I cannot remember if Barker was present while I was speaking to Soobrian. A policeman put me in a cell. I was not searched. I was not under arrest. This was around 1 p.m. I went into the cell because I was tired and wanted to rest. I did not know that the accused would have been placed in the same cell.

30

I did not tell the accused after we had conversation that the police had held me on a warrant, and my brother was coming to take me out. It was not true that I had been arrested. I had told the accused a lie as I did not want him to know that the police had brought me there to speak to him.

40

After we spoke, I promised the accused that

I would go for the money, and give it to his father-in-law. I can't be sure at what stage of the conversation accused told me about the buck men. But he did tell me this. I understood him to want in the promise to go to the accused's father-in-law, and to speak to him about the buck men.

In the Supreme
Court of
British Guiana

Prosecution
Evidence

No.29

10 After leaving the cell, I spoke to Superintendent Soobrian. This was because I had promised to speak to him. I also spoke to Ramjattan about the conversation between the accused and me.

Balchand
Further
Cross-
examination
11th November
1965
(Contd.)

I gave a statement to the police on the 14th October 1963. I gave the statement to Ramjattan. This was after the money was found at Powis Island. When I gave the statement, I was speaking from memory. I spoke to Raghubar as we were going to Powis Island on the 13th.

20 Not true that I have framed the accused in relating the conversation we had.

I knew that I would be a witness in the case only after I received the witness summons.

30 I know one Fraser. He was charged in March 1965 for larceny of a motor engine, which was my property. He was also charged for maliciously damaging my glass window; and with being armed with an offensive weapon. Ramjattan did not give evidence. The charges were dismissed but he and I were convicted for disorderly behaviour. I gave evidence in the cases, to the effect that I had seen the accused with a knife. Fraser said that I was framing him.

Jury admonished. Adjourned to 12.11.65 at 9 a.m.

In the Supreme
Court of
British Guiana

Prosecution
Evidence

No.29

Balchand
Further
Cross-
examination
12th November
1965
(Contd.)

Jury checked at 9.05 a.m.

BALCHAND continues on his oath:-

Cross-examined by Mr. Wills:-

I cannot remember whether the magistrate said he did not believe me in dismissing the offensive weapon case, no policeman spoke to me prior to October in connection with any report. After the Miss Carol's mishap, I had a charge of disorderly behaviour dismissed. I was charged with another person, and we were both discharged. I was not convicted in Dutch Guiana for stealing logs from Maam Island. I know one Sugrin. Not true that we were convicted by the Dutch Authorities. 10

I own the house in which I live at Crabwood Creek; I have owned it for about 1½ years. I acquired the house late in 1963. I now say 1964. I bought the house after I visited the accused in prison. I had owned a house before: I had built that house in 1954. That house was mortgaged to one Ahmad Khan. I could not have reached the money, and Khan seized the house around 1960 to 1961. Not true that until I built my house in 1964, I was short of money. My present house is built on a land belonging to one Balladin. I bought the house. I bought the house about 7 to 8 months after I received the money from Raghubar. I received the thousand dollars from Raghubar after the first trial. I did not use this money to assist in the purchase of the house. I paid \$1800 for the house. Before buying the house, I live with my brother. I bought it from one Agard who lives in Essequibe. I lived in the house for a few months as a tenant before purchasing it. I did not have enough money to buy the house even with the money Raghubar gave me. 20 30

I was in British Guiana when Khan seized my house. I was not in financial straits in October 1964.

I did not speak to "Preacher" after 3rd November. I did not see him, and I made no efforts to find him. My motive was not greed in this case.

After I had seen the accused at Whim I did not expect to visit him again.

10 Re-examined:-

I was convicted at Springlands Magistrate's Court for disorderly behaviour during this year. My chief object in speaking to the accused on the second occasion was to find out where the money was.

20 The statement I made to Chee-A-Tow on the day of my visit to the prisons was my first statement in writing to the police. I made this third statement before I gave evidence in the magistrate's court in this matter.

I went to the New Amsterdam Prison because of the instructions I received from "Preacher" I did not know what accused and I would have spoken about. I promised the accused to search for the money after he had told me where the money was. I had promised to help him when we met at the prison. I did not know where exactly the money was on Powis Island.

30 "Preacher" does not have a boat and engine as far as I know.

In the Supreme
Court of
British Guiana

Prosecution
Evidence

No.29

Balchand

Further
Cross-
examination

12th November
1965 (Contd.)

Further
Re-
examination

In the Supreme
Court of
British Guiana

Prosecution
evidence

No.29

Balchand

Questioned
by Jury

Further
Cross-
examination
12th November
1965

By the Jury:-

I do not know how many cells there are at
the Whim Police Station.

By Mr. Wills:-

I do not know that the accused's brother-
in-law has a boat. I know a man called
"Joe". I do not know whether he had a boat
in October 1963.

SUBMISSIONS BY COUNSEL FOR DEFENCE

In the Supreme
Court of
British Guiana

Mr. Wills submits:

Evidence shows that promises were held out to Balchand -

Promises relating to this case - Balchand believed that if he promised to help, accused would give more information.

This had been communicated to police.

10 Police had knowledge of this, and arranged for a situation where Balchand would induce the prisoner to make a statement. Balchand was in effect an agent of the police repeating the promises of an inducement.

Police did nothing to let the accused know he need not say anything.

20 If a person believed that if he made a confession he would be assisted in the charge, the evidence would be inadmissible. No one must be tricked into making a confession, if accused spoke to a fellow prisoner, such an admission would be admissible. Accused was tricked into making admission, - tricked by police. Circumstances show that police were aware that accused may make admission.

Mr. Wills

As long as promise is relevant to charge, statement is inadmissible. This was such a promise. And it was not a matter of perfect indifferents to the police. As to whether the accused spoke.

No.30
Submissions by
Counsel for
Defence
11th November
1965

In the Supreme
Court of
British Guiana

No.31
Submission by
Counsel for
Prosecution
11th November
1965

No.31

SUBMISSION BY COUNSEL FOR
PROSECUTION

Mr. Fung-A-Fatt:

Promise was not of a nature or description which is contemplated by the rules. Promise made by Balchand related to the finding of the money. Even if promise were held out, Balchand was not a person in authority, he could not be Agent of the police.

No.32

Judge's
ruling
11th November
1965

No.32

JUDGE'S RULING

10

Oral ruling given by Court to the effect that statement is admissible.

Further
Prosecution
Evidence

No. 33

EVIDENCE of GEORGE DE ABREU

No.33
George de
Abreu
Examination
12th November
1965

GEORGE DE ABREU sworn states:

I am Detective Constable 6484 stationed at the C.I.D. New Amsterdam. In October 1963, I was stationed at No. 51 Police Station, Corentyne.

On 28th October 1963, I went up the Corentyne river with Inspector Chee-A-Tow and a party of policemen. We were investigating a report concerning the sinking of the launch "Miss Carol".

20

We went to a spot about 25 rods from Powis Island. Castello and two Amerindians were there. They pointed to a spot on the island and to a spot in the river. One Chin dived in the river at the spot pointed out by the Amerindians.

On 29th October 1963, I went on to the island. I saw from the eastern edge of the island human footprints leading from the eastern side to the western side. I followed the footprints to a spot

30

on the island where I saw a pair of short pants hanging on a tree. I took possession of the pants; it was a dark grey pants. I continued along the island where I saw more footprints leading to the northern edge of the island. The footprints lead to a mud flat and then on to the British side of the river. I followed the prints which went north until I found an opening in the bushes. I walked across from the island to the British side. From the opening a track emerged. I followed the track which took me to Sonny Chung's camp about 150 rods away. From the spot where I saw the pants to the opening on the British side is about 175 rods.

10

I handed the pair of pants to P.C. Ramjattan.

On the 31st October 1963, I was present when the Miss Carol was salvaged. It was taken to Chung's Landing, which is about 75 to 100 rods north of the northern top of the island. On that day P.C. 6347 Bayne the police photographer was present in the party on Powis Island. He took photographs of the "Miss Carol". P.C. Bayne was not with me at any stage on Powis Island. I see Exhibit "BB1".

20

Cross-examined by Mr. Wills:-

On the 28th, the Amerindians did not point out footprints. The nearest footprint was about 25 to 30 feet from the spot where Chin dived.

P.C. Bayne was shown the spots where the footprints were. This was after I had found the pair of pants. Footprints were still visible. I did not invite him to take photographic exposures of those prints. I did not think it was necessary for photographs of the footprints to be taken. I pointed out the footprints out of interest.

30

As far as I can remember, Bayne did not go to the British shore. The spots where I saw the footprints were muddy, some wet and soft. After the 28th, I took no precautions to prevent persons from going on to the island.

40

I did not put the trousers on the tree for Bayne to photograph. I did not see the photograph of the trousers was being taken by Bayne. I was present

In the Supreme
Court of
British Guiana

Further
Prosecution
Evidence

No.33
Gorge de
Abreu

Examination
12th November
1965
(Contd.)

Cross-
Examination

In the Supreme
Court of
British Guiana

when the pants were put on the tree; but I cannot remember who did so. I did not. Inspector Chee-A-Tow was present, and he was giving the instructions.

Further
Prosecution
Evidence

On the 29th, I went to Chung's camp, and I spoke to Chung and his wife.

No one measured the footprints. I was accompanied by someone along the route of the footprints, but I cannot now remember who it was. When I pointed out the footprints to P.C. Bayne, there were other footprints.

10

No.33
George de
Abreu

Re-examined:-

Cross-
Examination
12th November
1965 (Contd.)
Re-
Examination

The pants was placed on the tree on which I had found it. A portion of the tree had been cut off.

By the Jury:-

Declined.

No.34

No.34

Edward
Gommanie

EVIDENCE OF EDWARD GOMANNIE

Examination
12th November
1965

EDWARD GOMANNIE sworn states:-

I live at No. 49 Village, Corentyne. In 1963 I was employed with Raghubar as an engineer. I commenced working with him from February 1963. I serviced all the engines in the sawmill and the launches.

20

I know the launch "Miss Carol" Raghubar owns it. It was built in April 1963. I installed the engine in the boat; I was assisted by Shennie. I also installed the electrical fittings. There were five lamps - 3 in front, one in the centre and one at the back. These lamps were operated by means of switches.

30

I knew Motie Singh. I taught him to operate the engine.

The "Miss Carol" was used up river. I used to check the engine before every trip.

On 15th October 1963, I checked the engine, the sea cork and the strainer. I opened the sea cork, cleaned the strainer, fixed it back, and drew it with a spanner. Exhibit "G" is the sea cork. The spanner I used was a ring spanner specially made to fit the sea cork. By drawing I mean I tightened the sea cork, to prevent water from getting into the boat. I left the spanner in the launch, hanging on a nail beside the engine.

Later on the 15th, the Miss Carol went up river carrying Motie Singh, Dindial, Heera and the accused.

On 21st October 1963, Harrilall, Raghubar and I went up the river on the launch "Majestic". We stopped at Cow Landing. There I saw the launch "Miss Carol". The two launches went alongside. In the Miss Carol I saw Motie Singh, Dindial, Heera and accused. Raghubar spoke to Motie Singh. Then we all went to Acabo where Raghubar spoke to Pinter. Motie Singh and Raghubar went ashore at Acabo. Harrilall and I went over to the launch Miss Carol where I saw Heera, Dindial and the accused.

I checked the engine of the Miss Carol, I cleaned the sea cork strainer and I tightened back the cork with the sea cork spanner which I replaced on the nail in the launch.

I returned to the Majestic.

On the 24th October 1963 I was at Raghubar's house when I heard something. As a result, I went to the sawmill. I saw Raghubar and accused coming towards me on my way to the sawmill. I asked the accused what was wrong, and he said that the Miss Carol had got into a collision and had sunk.

I assisted to search for the launch. I was present when the maunch was salvaged after which it was taken to Chung's Landing. The launch was baled, and I examined it. I found that the sea cork and strainer were missing. There was a cover over sea cork, the propeller shaft and the gear box, made of wood. This cover could be removed. It was missing. The sea cork spanner was missing.

In the Supreme
Court of
British Guiana

Futher
Prosecution
Evidence

No.34
Edward
Gomannie

Examination

12th November
1965

(Contd.)

In the Supreme
Court of
British Guiana

Further
Prosecution
Evidence

No. 34
Edward
Gomannie
Examination
12th November
1965
(Contd.)

I found the gear lever in neutral and the compression lever at zero. The electrical switches were all in the off position. The lamps were in working condition. A seat was missing. I searched for holes in the body of the launch, but I found none. I was present when the sea cork was found under the stern by Raghubar. The threads of the sea cork are in perfect condition. This Exhibit "G" is the top of the sea cork. The other portion of the sea cork carries threads. I examined those threads, and they were in order. When the sea cork top is screwed on with the spanner, it cannot be unscrewed with the naked hand.

10

Cross-examined by Mr. Wills:-

Cross-
Examination

The launch was towed to Crabwood Creek. The sea cork cover was not put on for this purpose. The launch did not sink. It was being towed for 1 to 1½ hours. It was towed by the Majestic. No one was in this Miss Carol then. We did not stop on the way. No one baled the launch. At Crabwood Creek, it had a couple buckets of water. The valve was closed.

20

I did not expect to go on the journey to Acabo in the Majestic. I had taught Motie Singh to unscrew the sea cork, and to clean the strainer. I left the spanner in the boat in case it is required to unscrew the cork. The spanner is hung on a nail near to the engine. It was in an exposed place. I cannot say if anyone searched for the spanner below the water.

30

There is a valve at the bottom of the sea cork. When this valve is closed off, water cannot enter the sea cork. When the engine is working this valve is open to permit water to enter the engine. The valve is operated by hand on the outside of the sea cork.

I gave a statement to the police. This is the first time I have mentioned the valve, and that is because I have now been asked for the first time. I had checked the valve after it was salvaged, and I found that it was open.

40

I was present before the boat was brought up.

I did nothing to ensure that the valve was closed before the boat was salvaged. Before we started out for Crabwood Creek, the boat had some water. I did not try the engine: I changed the oil sump, put in fresh oil, and turned the engine, when it reached Crabwood Creek, I did not examine the engine at Chung's Landing.

In the Supreme
Court of
British Guiana

Further
Prosecution
Evidence

No. 34
Edward
Gomannie

Cross-
Examination
12th November
1965 (Contd.)

Re-
Examination

Re-examined:-

10 The valve carries a handle which is operated from the outside of the sea cork.

By Mr. Wills:-

I am sure the valve is operated by a lever and not a screw. I did tell the magistrate that I had found the sea cork lying on the floor. By this I mean I picked it up after Raghubar called my attention to it.

Further
Cross-
Examination

By the Jury:-

The sea cork cover can be screwed on or unscrewed by a crescent spanner or a wrench.

Questioned
by Jury

20 Jury admonished. Adjourned to 1.30 p.m.

Jury checked at 1.30 p.m.

Court informs Mr. Wills and Jury that Mr. Fund-A-Fatt has reported ill and asked for an adjournment. Mr. Wills applies for adjournment.

Jury admonished and adjournment taken to 15.11.65 at 9 a.m.

Monday 15th November 1965

Adjournment

Jury checked at 9 a.m.

As a result of a telephone conversation this

In the Supreme
Court of
British Guiana

Further
Prosecution
Evidence

No. 34

Edward
Gomannie

Adjournment
15th November
1965

morning at 7.45 a.m. with Mr. Wills, Court informs Crown prosecutor in the presence and hearing of accused that Mr. Wills has been detained in Georgetown, and wont be here much before 1.30 p.m. today, but that Mr. Wills has no objection to P.C. Ramjattan giving his evidence in his (Mr. Wills) absence, provided that he is given the opportunity when he arrived to cross-examine the witness.

Accused when asked by Court says that he has no objections to this procedure. 10

Mr. Fung-A-Fatt says he would prefer to await Mr. Wills arrival before leading any evidence at all.

Jury admonished. Adjourned to 1.15 p.m.

Jury checked at 1.30 p.m.

Mr. Wills not present. Mr. Fung-A-Fatt says he has not heard from Mr. Wills. Accused says he has not had any word.

Mr. Fung-A-Fatt asks for an adjournment. 20

Adjourned to 2 p.m.

Mr. Fung-A-Fatt says he is informed Mr. Wills has not arrived in Berbice up to this hour.

Jury told by Court that it is not in the interest of justice to have view of the Corentyne River, and also that it is impracticable to arrange such a journey, but that arrangements can be made for them to inspect the launch "Miss Carol" at Springlands. Jury would like to see the launch, and have Emanuel Verwey, Dowlatram Raghubar, and Edward Gomannie present. They also wish Exhibit "G" to be taken. Jury admonished. Adjourned to 16.11.65 at 9 a.m. 30

Tuesday 16th November 1965

No. 35
Naubat
Ramjattan
Examination
16th November
1965

No. 35
EVIDENCE of NAUBAT RAMJATTAN

Jury checked at 9 a.m.

NAUBAT RAMJATTAN sworn states:-

I am Detective Constable No. 5353 stationed at Police Headquarters, Eve Leary. In 1963 I was stationed at Springlands Police Station.

On 24th October 1963, around 4 p.m. I was at Springlands Police Station, I saw the accused. I told him that in respect of his report made about an alleged launch accident, I would like him to tell me what happened, and how the accident occurred.

Accused told me that they had left Apora at 8 p.m. on Wednesday 23rd October with the launch "Miss Carol" for Crabwood Creek, because Dindial had complained that he was sick; that on the way down river, Heera was driving and himself, Motie Singh, and Dindial were sleeping together when suddenly he heard an impact as if the launch had collided: that he found himself rolling against the other two men, and the launch was under water; that he managed to get to the surface and he swam ashore. He said that the incident occurred at 1 to 2 a.m. on 24th October in the centre of the river in front of Maam Island. He said then "when day cleaned" he walked to Sonny Ching's place.

When he spoke to me, accused was dressed in a long khaki pants and a brown shirt. Exhibit "C" is the shirt. This is "DD" the pair of pants (tendered and marked "DD")

I asked accused to take me wherē the alleged incident occurred. Accused blushed and said "me sorry, me sick." I tried to persuade him to take me to the scene, but he insisted that he could not go. At his request, I took him to Dr. Luck at Springlands. Dr. Luck examined accused in my presence, and told him that he was fit to travel. Accused then decided to take me to the scene.

At 8 p.m. the same day - 24th - I left Crabwood Creek in the launch "Majestic" with Corporal Bobb, P.C. Haley, Raghubar, Gomannie, and others. Accused person also went.

Around 10 p.m., we stopped at the Dutch Police Station at McLenon. There I spoke to one Vellant the captain of the Dutch Forestry Launch "Krappa". He

In the Supreme
Court of
British Guiana.

Further
Prosecution
Evidence

No.35
Naubat
Ramjattan

Examination
16th November
1965
(Contd.)

In the Supreme
Court of
British Guiana

Further
Prosecution
Evidence

No.35
Naubat
Ramjattan
Examination
16th November
1965
(Contd.)

showed me a filled drum and told me something. I showed Raghubar and accused the same drum, and they both said that the drum was one of the drums that were on the "Miss Carol" Exhibit "B" is the drum.

On our way up river, I told accused that Vellant had said that he had found the drum floating at Siparuta about 11 a.m. on 24th October. I asked the accused how the drum had got there a distance of about 35 to 40 miles from Maam Island. He said that the drum might have fallen off on the way down. I asked accused how many drums were on board the launch; he said three, one filled, one half filled and one empty without any cork. 10

Around 12.30 a.m. on the 25th, we arrived at Maam Island. Accused pointed to an area south of Maam Island, saying that the incident occurred there. This area was in the centre of the river, and a few rods south of Maam Island. We searched in the river as directed by accused but we found nothing. 20

Around 6 a.m. accused pointed to a spot on the British bank, and alleged that he held on to Bundarie bushes. This spot was about 100 rods south of Chung's place. I searched the spot but found nothing. We continued searching at spots directed by accused using an iron "grabbler". We found nothing. We then dragged the river by means of rope and iron but found nothing. 30

Around 1 to 2 p.m. on the said day, - I found the launch seat - (Exhibit "E"), seven pieces of Keratie laths. "A1-A3" are three of the seven pieces. I found also a pillow case (Exhibit "D"), and a stripe shirt - all near to the bank of Powis Island. This is the shirt (tendered and marked "L") These articles were found in the presence of the accused who said "The same thing a tell you, the thing happen right - this same side." This was about $\frac{1}{2}$ mile south of the spot where the accused had alleged that the incident had occurred. The spot where we used the rope and iron is about 25 to 30 feet deep. We continued the search until about 6 p.m. the same day. 40

Accused asked me to allow him to go home. I told him he could go, but he should return in the morning to continue the search. Accused left in Balchand's boat. Myself, Raghubar and Gomannie remained at Kanakaburi on the "Majestic" while the other members of the search party went away.

In the Supreme
Court of
British Guiana

Further
Prosecution
Evidence

10 About 5 a.m. on 26th October, the launch "Ganges" arrived with a search party. I then continued to drag the river with a wire rope at a spot in front of Maam Island, but found nothing.

Around 9.30 to 10 a.m., one Beer came up with his launch. Raghubar and I joined that launch, and went up river. We arrived at Orealla around 11 a.m. There I was shown a drum half filled with Dieseline. Raghubar saw the drum. We were shown the drum by McLean Harman the captain of the mission Exhibit "F" is that drum. While there I received some information as a result of which I went further up river.

No.35
Naubat
Ramjattan
Examinati---
16th Nove
1965
(Contd.)

20 Around 11.45 a.m. I arrived at Ann's Creek. There I saw the dead body of Dindial floating near to the bank on the British side of the river. The body was clothed in a pair of striped shorts, and had several wounds on the back, head and hands. I became suspicious. Ann's Creek is about 30 to 35 miles from Maam Island going south.

30 While at Ann's Creek one Ramjohn arrived in a speed boat. He spoke to me; and as a result, Raghubar and I joined Ramjohn's boat, leaving Beer with Dindial's body. We went to Cow Landing on the Dutch side of the river, and about 4 miles north of Ann's Creek.

At Cow Landing, I saw the body of Heera floating in the river near to the bank of Cow Landing. Heera's body was floating face upwards, and was clothed in a pair of striped shorts. One of the legs appeared to be missing from the knee. There was a length-wise cut from the stomach downwards.

40 The accused arrived in a launch. I pointed out the body of Heera to accused, and I asked him if he recognised the body. Accused said it looked like Heera. I drew the accused's attention to the wounds on the body, and to the distance between the

In the Supreme
Court of
British Guiana

Further
Prosecution
Evidence

No.35
Naubat
Ramjattan
Examination
16th November
1965

the place where he had alleged that the incident had occurred and where the body was found - a distance of about 30 miles -. At this stage, the accused held me around my neck, and told me something quietly. I cautioned him and arrested him.

The launch "Majestic" arrived. Balchand had also come up in his boat. The body of Heera was placed in Balchand's boat, and later Dindial's body was also placed in Balchand's boat. The bodies were taken to Khan's sawmill at Siparuta, where three coffins were made. And the bodies of Dindial and Heera were each placed in a coffin, and taken to Orealla. At Orealla I saw the dead body of Motie Singh on the landing. This body was clothed in a singlet and khaki short pants. The neck was partly severed. There was a lengthwise wound extending from the stomach to the lower region of the abdomen, with the intestines protruding. This body was placed in the third coffin, and we left for Crabwood Creek. We travelled in the Majestic. Accused, Balchand, Raghubar, Gomannie and several others were in the Majestic. 10 20

On the way down, accused attempted to speak to Balchand. I prevented this, and I said no one should speak to accused. We arrived at 9.30 p.m. Where the bodies were taken to Skeldon mortuary, and the accused was taken to the Springlands Police Station.

On 27th October, I was at the mortuary. Drs. Luck and Balwant Singh were also present. And so was Ganesh Persaud. I witness a post mortem examination being performed by Dr. Luck on the body of Motie Singh. Around 5.30 p.m. I witnessed the burial of the body of Motie Singh at the Crabwood Creek burial ground, and I marked the grave. 30

On 28th October we went to Kanakaburi. Raghubar, Inspector Chee-A-Tow, P.C. Chester and P.C. De Abreu and Gomannie were all present. At Kanakaburi I received certain information, as a result of which I went to Orealla by speed boat. At Orealla I spoke to Shadrack Castello, Clinton Alexander and David Alexander. 40

As a result of our conversation, these men

took me to Powis Island, where they pointed to a spot near to Powis Island. I saw oil coming from below the surface of the water at a spot about 36 feet from the bank of Powis Island. I dragged the area with an iron grabble and the grabble fastened to something. Later I caused Winston Chin to dive at that spot. He told me something. The depth of water at that spot was 35 feet.

In the Supreme
Court of
British Guiana

Further
Prosecution
Evidence

10 Castello then showed me some footprints on the eastern bank of Powis Island about 40 feet from the spot where the grabble held on.

No.35

Naubat
Ramjattan

20 On 29th October 1963, P.C. De Abreu showed me a pair of short trousers. He spoke to me. I later showed the trousers to Quillo, Pinter and Gomannie; they all told me something. The pants has since rotted away. I took the trousers to the Springlands Police Station, where I showed it to the accused, and I told him that it was found at Powis Island, and I cautioned him. He put the trousers on, and claimed it as his property.

Examination
16th November
1965
(Contd.)

 On Thursday 31st October, I returned to Powis Island, and I took the pair of pants with me. P.C. Bayne was with me.

30 At Powis Island I saw the launch "Miss Carol" being salvaged from the spot where the grabble held on to something. The launch was towed to Sonny Chung's Landing. The launch was baled. I examined the launch, and found the seat, the anchor and chain missing. I did not see any sign of damage to the exterior of the launch. Gomannie was present, and I gave him certain instructions. He examined the launch. In the launch I found this sea water cork (Exhibit "G") in the stern. I also found the canister (Exhibit "M"), this key (Exhibit "N"), 2 prayer books (Exhibits "O1-O2"), this pair of spectacles and case (Exhibits "P1 and P2"), this tape (Exhibit "Q"), this razor (Exhibit "R"), this mirror (Exhibit "S"), these two note books (Exhibits "T1" and "T2"), one blanket (Exhibit "V"), these two pair of pants (Exhibits "W1" and "W2"), this cup and plate ("Y1" and "Y2"). I took all these articles into my possession, and two cranks (Tendered and marked "HH1 and HH2"), these four spanners (tendered and marked "JJ1 - JJ4"), and this shifting spanner (tendered and marked "KK") I

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In the Supreme
Court of
British Guiana

Further
prosecution
evidence

No.35
Naubat
Ramjattan
Examination
16th November
1965
(Contd.)

also took these articles to the police station. Where they were all kept until produced in evidence. I found no cutlasses or axes in the launch.

On Friday 1st November 1963, the launch was taken to Raghubar's sawmill at Crabwood Creek.

On the 31st October 1963, P.C. De Abreu showed me a tree with the top portion trimmed. I placed the pants on the tree on De Abreu's directions, and I gave Bayne certain instructions. Bayne took out a photograph of the pants. The tree was about 5 rods inland from the eastern bank of Powis Island, and about 8 rods west of the spot where the Miss Carol was salvaged.

10

On 7th November 1963, I was at the Springlands Police Station when Balchand came to me; he spoke to me. As a result I spoke to Inspector Chee-A-Tow.

On the 12th November 1963, I spoke to Balchand. He left at about 8.30 to 9 a.m. Later that day at about 8 p.m. I spoke to him again.

20

At about 10.30 a.m. on the 13th November, I left Crabwood Creek with Ramjohn, Raghubar, P.C. Davidson and Balchand. We arrived at Powis Island around 12.30 at 1 p.m. We stopped at the northern end of Powis Island.

We walked for 25 rods inland in a south westerly direction. I found a small mora tree about 5 inches in diameter with a portion of the bark shaven, and the bottom tied around with a vine. Exhibit "H" is a portion of the tree trunk. I called the rest of the party, and I showed them the tree. I received further instructions from Balchand, and we continued the search. Around 4 p.m. Raghubar shouted. I went to him and I saw a spot. I dug at that spot and found a bundle of money tied in a handkerchief. The money was soaked, and both money and handkerchief appeared to have been eaten by wood ants. Exhibit "J" is the money and handkerchief. I took possession of these articles. I caused Exhibit "H" to be cut.

30

40

At the Springlands, Police Station Sergeant Jackman counted the money in the presence of Raghubar and myself. It amounted to \$4,780:-

B.W.I. currency and 1000 Dutch guilders.

10 I have known the accused for about 7 years. He lived at Crabwood Creek. He has 3 brothers and 3 sisters. One brother is called "Preacher" who lives at Crabwood Creek. I have been a policeman for 17 years, and I have served on the Corentyne for 5 years. Prior to October 1963, I have seen bodies floating in the Corentyne river. In my experience, dead bodies have a tendency to drift towards the mouth of the river.

Before October 1963, I knew the launch "Miss Carol". The launch is owned by Raghubar. It is made of wood, and carried an engine. Raghubar is a British subject. I know that the launch operates between Crabwood Creek and the upper reaches of the Corentyne River.

20 Cross-examined by Mr. Wills:-

On the way down, accused attempted to speak to Balchand. I told them both they could not speak to each other. My reason for this, was what the accused had told me just before I arrested him and I felt that at that time their speaking together might have interfered with the course of justice.

30 I had not expected to see Balchand on the 7th November 1963. After speaking to him on the 7th I expected to see Balchand again. I was expecting to see him on the 12th. On the 12th I knew that accused was a prisoner on remand at the New Amsterdam prison, and that he had to come up for remand on the 12th, as he had already been charged. I knew that there was only one cell at Whim Police Station. I knew that accused and Balchand were to meet on the 12th at Whim. After Balchand spoke to me, on the 7th, I spoke to Chee-A-Tow by telephone. I did not speak to Chee-A-Tow on the 12th.

40 I took a statement from Balchand on the 14th. I did not take a written statement from him on the 12th, as I had no reason to do so. After the money was found, I felt I had reason enough to ask him to give a statement.

In the Supreme Court of British Guiana

Further Prosecution Evidence

No. 35
Naubat Ramjattan

Examination
16th November
1965
(Contd.)

Cross-Examination

In the Supreme
Court of
British Guiana

Further
Prosecution
Evidence

No.35
Naubat
Ramjattan

Cross-
Examination
16th November
1965
(Contd.)

At Powis Island, when Raghubar shouted, I was about 4 feet from him searching. Raghubar had a cutlass embedded in the earth. I saw the money when the cutlass was wrenched by Raghubar. That cutlass was one of the cutlasses taken by the party. I would not have been able to see the money before as it was covered with earth. When Raghubar shouted I felt that something had been found which could be relevant to what we were searching for. At the time of the search, I had everyone under my supervision; I would look at them every now and again.

10

Both Raghubar and I saw the sea cork at the same time.

I checked with the Sub-Comptroller of Customs and Excise of British Guiana in relation to the "Miss Carol". I believed I made a check with the Customs Department at Nickerie in relation to the same launch. It was as a result of my checking with the British Guiana Comptroller that I believed I checked with the Dutch Authorities. I did not submit a statement in writing concerning my visit to Nickerie.

20

Not true that I arranged a meeting between Balchand and the accused. I was not aware that Balchand was holding out promises to the accused to contact his father, or to help to recover money. I expected Balchand to give me information about the recovery of money after he will have spoken to the accused. On the 12th I did not feel that it was against the interest of justice for Balchand to speak to the accused.

30

I did not record anywhere what Balchand told me when he returned to me on the 12th. No one recorded this in my presence. The first time I knew of what accused is alleged to have told Balchand is on the 14th when I took the statement from Balchand. I did not feel it was necessary to make a record of what Balchand told me on the 12th on that day.

40

Not correct that the Miss Carol was registered in Dutch Guiana. I know of no charge having been brought concerning the registration of the "Miss Carol".

I can recall 3 investigations concerning dead bodies found floating in the Corentyne River.

I found Exhibit "L" floating near to the bank of Powis Island. All the articles and objects found were found near the British side of the river except the body of Heera, and as far as I know, the body of Motie Singh.

10 On the 29th October, I left Inspector Chee-A-Tow on Powis Island and went to Springlands. I left during the afternoon hours. When I returned to Powis Island on the 31st, the top of the launch was just visible above the surface of the water.

20 When I showed the accused the pants on the 29th, Sergeant Liverpool was in the same office. I showed the accused the pants, and I told him that it had been found at Powis Island before I cautioned him, he put the pants on, and then claimed it as his property. All of this did happen. I had left Powis Island for the purpose of confronting accused with the pants and for other reasons. When I left Powis Island, I expected to take back a photographer. Bayne went with me on the 31st.

I found the spanners (Exhibits "KK1-KK4") on the "Miss Carol". I investigated the reasons for their presence on the launch.

30 De Abreu showed me the tree once, and that was on the 31st when Bayne took the photograph. He did not show me the tree on the 29th. I did not invite him to do so on the 29th.

40 I did not nor did I know whether anyone measured the footprints on Powis Island. As far as I know no attempt was made physically to link accused with the footprints seen on Powis Island. An attempt was made to take photographs of the footprints but this attempt was abandoned because when the photographer arrived the prints were smeared. I did not see any footprints leading to Surnop from the Island, nor did I get anyone to photograph footprints leading to Surnop.

Jury admonished. Adjourned to 1.30 p.m.

In the Supreme
Court of
British Guiana

Further
Prosecution
Evidence

No.35
Naubat
Ramjattan
Cross-
Examination
16th November
1965
(Contd.)

In the Supreme
Court of
British Guiana

Jury checked at 1.30 p.m.

NAUBAT RAMJATTAN sworn states:-

Further
Prosecution
Evidence

Cross-examined by Mr. Wills:-

No.35
Naubat
Ramjattan

One can walk across from Powis Island to the British shore when the tide is low. The spot where accused said he had clung to some trees is about 100 rods from Powis Islands. I saw no footprints on the British Guiana shore.

Cross-
Examination
16th November
1965
(Contd.)

When I spoke to Vellant, accused was not present, he was in the launch. I never confronted accused with Vellant. I did not do so as I had no reason then to disbelieve the accused's story that the drum might have fallen off the launch. I took a statement from Vellant; no statement was taken from McLean Herman. Vellant gave evidence in a previous trial, and so did one Jones, - both Dutch subjects. In the first trial, accused was charged with committing an offence in the Corentyne River. Winston Chin gave evidence at the previous trial.

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I measured the depth of the river at the spot pointed out by accused. My measurement was 30 feet; this was at high tide.

On the 24th October, when accused left Kanakaburi for Crabwood Creek in Balchands launch, Balchand was in the launch. Other persons were also in the launch. I had issued no instructions about the accused not speaking to anyone on that trip.

When we went to Powis Island, we carried cutlasses and axes because of what Balchand had told me.

30

Re-examined:-

Declined.

Questioned
by Court

By the Court:-

On the 24th October 1963, about 8 or 9 persons travelled down on Balchand's boat. No policeman travelled on that boat.

By the Jury:-

Declined.

In the Supreme
Court of
British Guiana

Further
Prosecution
Evidence

No.36

EVIDENCE OF EUSTACE McALMONT

EUSTACE McALMONT sworn states:-

I am Police Constable No. 5613 stationed at the Special Branch, Georgetown. During October 1963, I was stationed at C.I.D. New Amsterdam, and attached to the photographic Branch.

No.35
Naubat
Ramjattan
By the Jury
16th Nov.1965
No.36
Eustace
McAlmont
Examination
16th November
1965

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At 1.15 p.m. on 27th October 1963, I went to Skeldon Hospital mortuary together with Superintendent Sobers. There I met Doctors Luck and Balwant Singh. I saw the body of Motie Singh; the body was identified by Singh's wife. I took a photograph showing certain wounds on the body. I processed the film and obtained a negative from which I made an enlarged photograph. (At this stage, Mr. Fung-A-Fatt indicates that he does not wish to examine this witness any further).

Cross-examined by Mr. Wills:-

Cross-
Examination

20

Declined.

By the Jury:-

Declined.

Case for the Crown

In the Supreme
Court of
British Guiana

No.37

SUBMISSION BY COUNSEL FOR DEFENCE

Further
Prosecution
Evidence

No.37
Submission
by Counsel
for the
Defence
16th November
1965

Mr. Wills submits in absence of jury:-

1. There is no jurisdiction disclosed in this matter to try accused for offence alleged on the evidence.

2. There was no jurisdiction in the magistrate to convict (sic) the accused for trial.

B.G. has Admiralty jurisdiction to try indictable offences, only where offences occur on British ships, and on the high seas. It follows therefore that there is no jurisdiction to try an indictable offence allegedly committed in the territorial waters of a foreign country. Even if there were, there is no proof for purposes of Admiralty jurisdiction, the "Miss Carol" in October 1963 was a British Ship. And secondly there is no proof that great ships go into the Corentyne River.

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3. Thirdly there is no proof that the accused is a British subject which in the absence of proof of the nationality of the ship is the determining factor in deciding whether the court has jurisdiction:-

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Refers to Deokinanan -v- R. (Crim. app. No.41/1964)

Cap. 10, ss. 5 and 29 - These two secs. make it clear that there is no attempt to give the Supreme Court other than jurisdiction on high seas; jurisdiction on rivers in foreign territories is excluded.

30

S. 29 of Cap. 7 -

Colonial Court of Admiralty Act, 1890. does not give B.G. court jurisdiction to try offences committed in a foreign territorial waters.

Submits no proof that "Miss Carol" was a British ship - To do so, Crown must show -

- (i) That ship was registered in B.G. in accordance with s.4(1) of Merchant Shipping Act 1884; or
- (ii) that ship was sailing under British flag.
 Bjornsen 10 Cox Cr. C. 74 at p. 81
Allen 10 Cox Cr. C. 405
 Moody Cr. C. Vol. 1 494

In the Supreme Court of British Guiana

No.37
 Submission by Counsel for the Defence
 16th November 1965
 (Contd.)

10 Even if there had been proof as above, law requires Crown to show that the Corentyne River is one where great ships go, not have gone.

Submits that because of nature of legally admissible evidence which was led before the magistrate, the latter had no jurisdiction to commit. Therefore indictment is bad and ought to be quashed.

Refers to Anderson 11 Cox C.C. 198

No. 38

REPLY BY COUNSEL FOR PROSECUTION

Mr. Fung-A-Fatt in reply:-

- 20 Jurisdiction has been established.
- (i) There is proof that the launch is a British ship. Insurance with a firm in British Guiana.
- (ii) There is evidence that ocean going ships have gone up river to point beyond point where it alleged offence took place.
- (iii) There was prima facie case before magistrate of jurisdiction to convict.
- (iv) Sec. 5 of Cap. 10 merely provides for a fiction.
 30 Hals. Vol 1, para. 346.
- (v) Ample proof that accused is a British subject - Prima facie evidence.

No.38
 Reply by Counsel for Prosecution
 16th November 1965

In the Supreme
Court of
British Guiana

No.38
Reply by
Counsel for
Prosecution
16th Nov.1965
(Contd.)

Mr. Wills:-

There must be proof at the time of the offence that the ship was a British ship.

Decision reserved to 9 a.m. on 17.11.65.

Jury recalled and admonished.

Adjourned to 17.11.65.

No.39
Judge's
Ruling
17th November
1965

No.39
JUDGE'S RULING

R. -v- DEOKINANAN - MURDER

RULING

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The submissions of the defence may be broadly stated as follows -

- (i) This Court does not have jurisdiction to try an accused person for an offence committed in foreign waters;
- (ii) There is no proof that the "Miss Carol" is a British ship;
- (iii) There is no proof that that part of the Corentyne River where it is alleged the offence took place is a place where great ships go;
- (iv) That because of the nature of the legally admissible evidence before the magistrate, the latter had no jurisdiction to have committed the accused, and therefore the indictment is bad and ought to be quashed.

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The Supreme Court of British Guiana derives its Admiralty Jurisdiction in this way. S. 3(a) of the Colonial Courts of Admiralty Act, 1890 (53 & 54 Vict. Ch. 27) provides that the legislature of a British possession may by any Colonial Law

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In the Supreme
Court of
British Guiana

No.39

Judge's
Ruling

17th November

1965

(Contd.)

10 declare any court of unlimited civil jurisdiction, whether original or appellate in that possession to be a Colonial Court of Admiralty, and also provides for the exercise of such court of its jurisdiction under the Act, and limits territorially, or otherwise, the extent of such jurisdiction. And the British Guiana legislature has, by s. 29 of the Supreme Court Ordinance (Cap. 7), declared that the Supreme Court shall be a Colonial Court of Admiralty within the meaning of the Colonial Courts of Admiralty Act, 1890 and vests in that Court "admiralty jurisdiction in accordance with the provisions of that Act."

By virtue of s. 2 (2) of the United Kingdom Act, the limit of the jurisdiction of a Colonial Court of Admiralty is prescribed in these words -

20 "The jurisdiction of a Colonial Court of Admiralty shall, subject to the provisions of this Act, be over the like places, persons, matters, and things, as the Admiralty jurisdiction of the High Court of England, whether existing by virtue of any statute or otherwise, and the Colonial Court of Admiralty may exercise such jurisdiction in like manner and to as full an extent as the High Court in England, and shall have same regard as that Court to international law and the comity of nations."

30 It will be seen therefore that a Colonial Court of Admiralty would have the same jurisdiction and powers as were exercised in Admiralty by the High Court in England at the passing of the 1890 Act, subject however to any limitations that may be prescribed by the instrument, whether Ordinance or Order, which vests Admiralty jurisdiction in a colonial court. S. 29 of Chapter 7 does not prescribe any limitation, with the result, that the Supreme Court of British Guiana exercises the full jurisdiction in Admiralty as was vested in the High Court of England in 1890, subject to the proviso to s.3 of the Act of 1890 which says:-

40

"Provided that any such Colonial law shall not confer any jurisdiction which is not by this Act conferred upon the Colonial Court of Admiralty."

In the Supreme
Court of
British Guiana

No.39
Judge's
Ruling
17th November
1965
(Contd.)

The jurisdiction exercised by the High Court of England, so far as is relevant to this ruling, has been provided for by a number of Acts commencing in 1700 with 11 & 12 Will. 3, c. 7.

Then s. 267 of Merchant and Shipping Act in 1859 (17 & 18 Vic. C. 104) provides as follows:

"All offences against property or person committed in or at any place either ashore or afloat out of Her Majesty's dominions, by any master, seaman, or apprentice who, at the time when the offence is committed, or within three months previously, has been employed in any British Ship, shall be deemed to be and be dealt with in all respects as offences committed within the jurisdiction of the Admiralty."

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A later Act of 1855 (18 & 19 Vic. C. 91, s.21) provides that -

"If any person, being a British subject, charged with having committed any crime or offence on board any British ship on the high seas, or in any foreign port or harbour, or if any person not being a British subject, charged with having committed any crime or offence on the high seas, is found within the jurisdiction of any court of justice in her Majesty's dominions which would have had cognizance of such crime or offence, if committed within the limits of its ordinary jurisdiction, such court shall have jurisdiction to hear and try the case as if such crime or offence had been committed within such limits."

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Statute law apart, it would seem that the High Court of England exercised a general Admiralty jurisdiction, for in R. -v- Anderson, 11 Cox Cr. C. 198, where an American citizen was indicted for murder on board a vessel belonging to Nova Scotia, registered in London, and sailing under the British flag, Bovill, C.J. said at p. 205 (ibid) -

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"In the present case, if it were necessary

to decide the question on the 17 & 18 Vict. c. 104, I should have no hesitation in saying that we now not only legislate for British subject on board of British vessels but also for all those who form the crews thereof, and that there is no difficulty in so construing the statute; but it is not necessary to decide that point now. Independently of that statute, the general law is sufficient to determine this case. Here the offence was committed on board a British vessel by one of the crew, and it makes no difference whether the vessel was within foreign port or not. If the offence had been committed on the high seas it is clear that it would have been within the jurisdiction of the Admiralty, and the Central Criminal Court has now the same extent of jurisdiction. Does it make any difference because the vessel was in the river Garonne half-way between the sea and the head of the river? The place where the offence was committed was in a navigable part of the river below the bridge, and where the tide ebbs and flows, and great ships do lie and hover. An offence committed at such a place, according to the authorities, is within the Admiralty of jurisdiction, and it is the same as if the offence had been committed on the high seas."

In the Supreme
Court of
British Guiana

No.39
Judge's
Ruling

17th November
1965
(Contd.)

And in the same case, Blackburn, J. said at p. 206
(ibid) -

"From the earliest times it has been held that the maritime courts have jurisdiction over offences committed on the high seas where great ships go, which are, as it were, common ground to all nations, and that the jurisdiction extends over ships in rivers or places where great ships go as far as the tide extends. In this case the vessel was within French territory, and subject to the local jurisdiction if the French authorities had chosen to exercise it. Our decisions establish that the Admiralty jurisdiction extends at common law over British ships on the high seas, or in waters where great ships go as far as the tide ebbs and flows."

In the Supreme
Court of
British Guiana

No.39
Judge's
Ruling
17th November
1965
(Contd.)

In The Mecca, (1895) P. 95, which was a civil case, Lindley, L.J. made this general statement at p. 107 -

"The expression 'high seas', when used with reference to the jurisdiction of the Court of Admiralty, included all oceans; seas, bays, channels, rivers, creeks, and waters below low-water mark, and where great ships could go, with the exception only of such parts of such oceans, etc. as were within the body of some county."

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I understood counsel to be urging that s.2(1) of the Colonial Courts Admiralty Act, 1890, deals with the civil jurisdiction of the Admiralty courts. In my view, that section merely declares what kind of courts, i.e. courts of original unlimited civil jurisdiction, can be declared Admiralty courts, and nothing else.

I hold the view therefore that the Supreme Court has jurisdiction to try offences committed on ships in foreign territorial waters, provided of course, that the ships are British ships, and the locus is on a tidal river where great ships come and go. (See R. -v- Armstrong, 13 Cox Cr. C. 184, and R. -v- Allen (1873) 7 C & P 664; 1 Mood. C.C. 494, CCR.) And in my judgment, s.5 of the Criminal Law (Offences) Ordinance, Chapter 10 makes no difference. I do not agree with the submission that this section has the effect of limiting this Court to offences on the high seas only. That section was enacted before s.29 of Cap.7 (already referred to above). Subsection (1) of that section makes provision for trial of indictable offences mentioned in the Ordinance, and committed outside the colony but within the jurisdiction of the Admiralty of England as though those offences had been committed in the colony. Sub-section (2) does no more in my opinion than to create a fiction to enable the indictment to be framed. That sub-section provides for the venire of trial to be inserted in the margin of the indictment, and for an averment that the offence was committed on the high seas. One can well see the reason behind such a provision, and this is it. An offence referred to in that section can be committed at sea or in foreign waters, and in either case Admiralty jurisdiction can only be invoked where there is an

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allegation that the offence has been committed on the high seas. This is merely a procedural provision, and does not, as counsel has submitted, delimit the Court's jurisdiction. The provisions of s.115 of the Larceny Act, 1861, which are similar to section 29 of our Chapter 10 came up for judicial consideration R. -v- Devonshire Quarter Sessions, Ex. p. DPP. 17 Cox C.C., 593 where the allegation was that the offence has been committed in a Scottish estuary. It was held that the indictment which alleged that the offence had been committed on the high seas was good.

In the Supreme
Court of
British Guiana

No.39
Judge's
Ruling
17th November
1965
(Contd.)

This discussion on jurisdiction has progressed on the premise that the "Miss Carol" was at the relevant time a British ship. I must therefore now turn to consider the second submission that there is no proof that the "Miss Carol" is a British ship. The first case cited by counsel for the defence is R. -v- BJORNSEN 10 Cox Cr. C. 74. In that case the crime was committed on the ocean thousands of miles away from British territory, and the prosecution relied for jurisdiction on the ground that the ship was a British ship. The owner was alien born and all the crew were foreigners, but the ship was registered as a British ship, and it was sailing under the British flag. Limiting his judgment to the question of evidence only Erle, C.J. said at p.80 (ibid) -

"I am clearly of the opinion that there was prima facie evidence that she was a British ship, there was evidence of a certificate of registry in London wherein Rehder was described as the owner at that time and as resident in London, and the ship sailing under the British flag. But Rehder was described therein as sole owner, and I take it to have been proved at the trial that he was alien born. That reduces the question to this, whether the prima facie evidence of its being a British ship was rebutted by the negative proof that Rehder was alien born."

It was held that the evidence did not justify the finding that the ship was a British ship. I merely wish to observe that had the prima facie evidence remained unrebutted, the decision no doubt would have been otherwise.

In the instant case, the owner is a British subject;

In the Supreme
Court of
British Guiana

No. 39
Judge's
Ruling

17th November
1965
(Contd.)

the boat was built for him to fetch lumber in connection with his sawmill which was situate on British soil; the launch was insured with an insurance company whose office is in British Guiana - all facts not rebutted. These circumstances raise a strong prima facie case that the launch was a British ship.

The other case is R. -v- Allen, 10 Cox Cr. C. 405 where it was held that to prove that a ship is a British ship, it is not necessary to produce the register or a copy thereof; it is sufficient to show orally that she belongs to British owners, and carries the British flag. Counsel has argued that there must be two elements to satisfy the standard of proof, viz., proof of ownership, and the carrying of the British flag. I would say that these are elements which would satisfy the standard of proof required, but not the only elements. There can be other circumstances which would equally raise a presumption of the nationality of the ship - circumstances which exist here.

The third submission relates to the question whether great ships go to the point where it is alleged the offence took place. Of the test laid down by Blackburn, J. in R. -v- Anderson (supra), then in my opinion there is enough evidence to raise a prima facie case that the Corentyne river is tidal and great ships go as far as and further than Powis Island. So that this submission also fails.

S. 106 of the Criminal Law (Procedure) Ordinance, Chapter 11 sets out the procedure to be followed to quash an indictment. I must not be understood to say that in no circumstances can an indictment be quashed after an accused person has pleaded (See Section 106 (3)). But I do maintain that a motion to quash the indictment upon the close of the case for the Crown on the ground that the evidence was not enough to have warranted the committal by the magistrate may not be taken at this stage. I gathered during the discussion of this point that counsel was not pressing this submission. Whatever the position, however, I do not agree with it.

I hold that all the submissions fail, and I propose to call upon the accused for a defence to the charge.

G. L. B. PERSAUD
Puisne Judge

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Jury repeats application to visit launch at Springlands. Crown prosecutor says that arrangements cannot be completed for visit today, but will be for tomorrow.

In the Supreme Court of British Guiana

Jury admonished. Adjourned to 8.30 a.m. on 18.11.65.

No.39
Judge's Ruling

Thursday 18th November 1965

17th November 1965
(Contd.)

Jury checked at 8.30 a.m.

18th November 1965

10 Jury intimate to Court that they would wish the following things pointed out:-

- (1) Switches in launch.
- (2) Lever at sea water cork.
- (3) Spot where sea cork was found in launch.
- (4) Crank handles.
- (5) Any damage to launch.
- (6) Propellor of launch.

Marshal sworn to keep jury after Court warns jury not to communicate with any unauthorised person.

20 Court adjourns to inspect the launch "Miss Carol" at 8.45 a.m.

No.40

EVIDENCE OF RAMNARINE

Prosecution Evidence

RAMBARINE sworn states:-

I am a Marshal of the Supreme Court attached to the Sub-Registry of New Amsterdam.

No.40
Ramnarine

Examination
18th November 1965

30 Today I was sworn to keep the jury on its visit to Crabwood Creek to inspect a launch called the "Miss Carol" at the premises of the witness Raghubar. The jury visited the premises together with the trial judge, Crown prosecutor, defence

In the Supreme
Court of
British Guiana

counsel, and the Registrar, and the accused was present. I saw the jury inspect the launch, and I saw certain witnesses indicated certain things to the jury.

Prosecution
Evidence

I had the jury under my surveillance for the entire journey to and from the court house. No unauthorised person communicated with the jury in my presence.

No.40
Ramnarine

By Mr. Fung-A-Fatt

Examination
18th November
1965
(Contd.)

Declined.

10

By Mr. Wills:-

Declined.

Jury admonished. Adjourned to 9 a.m. on
19.11.1965

No.41
Dowlatram
Raghubar

No.41

EVIDENCE OF DOWLATHAM RAGHUBAR

Examination
19th November
1965

Friday 19th November 1965

Jury checked at 9.05 a.m.

DOWLATRAM RAGHUBAR sworn states:-

Yesterday at my premises at Crabwood Creek I pointed out the launch "Miss Carol" to the Court. (Launch tendered and marked "K"). I also indicated that part of the launch where I found the sea cork as well as that part of the launch where the three drums of "Dieselene" were stored. A part of the left fender of the launch is missing; this has come about because of use since it was there when the launch was salvaged,

20

By Mr. Fung-A-Fatt:-

Declined.

30

By Mr. Wills:-

Declined.

By the Jury:-

Declined.

In the Supreme
Court of
British Guiana
Prosecution
Evidence

No.41
Dowlatram
Raghubar
Examination
19th November
1965
(Contd.)

No.42

EVIDENCE OF EMANUEL VERWEY

EMANUEL VERWEY sworn states:-

I visited the launch Miss Carol yesterday with the court. I pointed out the crack on the right fender to the jury.

By Mr. Fung-A-Fatt:-

10 Declined.

By Mr. Wills:-

Declined.

By the Jury:-

Declined.

No.42
Emanuel
Verwey
Examination
19th November
1965

No. 43

EVIDENCE of EDWARD GOMANNIE

EDWARD GOMANNIE. sworn states:-

20 Yesterday I accompanied the court on its visit to inspect the launch "Miss Carol". There I pointed to the jury, the top of the sea cork and the valve. I fitted the cover, Exhibit "G" on the cork. I also pointed out the light switches, and the gear lever, the throttle, and the compression knob. I also fitted the two cranks into the engine, and turned them. I also indicated the position where the strainer fits. I also indicated the covering for

No.43
Edward
Gomannie
Examination
19th November
1965

In the Supreme Court of British Guiana

Prosecution Evidence

No.43

Edward Gomannie Examination 19th Nov.1965 (Contd.)

Defence Evidence

No.44

Barrington Barker Examination 11th November 1965

the sea water cork and the propeller shaft.

By Mr. Fung-A-Fatt:-

These demonstrations were done in the presence of accused, his counsel and counsel for the Crown.

By Mr. Wills:-

Declined.

By the Jury:-

Declined.

No.44

EVIDENCE of BARRINGTON BARKER

10

BARRINGTON BARKER sworn states:-

On 12th November 1963, I placed the witness Balchand in a cell at Whim. My intention was that Balchand would get information which may assist the police or the accused. I expected the accused to speak to Balchand about the case because Balchand requested to see the accused. I could not say whether the accused would have spoken. I did not know of any previous promise of help made by Balchand. I had placed the accused in the lockups. I expected Balchand to relate to the police what accused had said. I say so because I gathered that Balchand had a conversation with Soobrian. I gathered that Balchand was at Whim because of a previous arrangement.

Accused and Balchand spent about an hour together in the lockups. I took no steps to make sure that neither man passed anything to the other. I was in a position to see if anyone emerge from the lockups. I did not caution the accused. I did not tell the accused anything as I took him to the lockups. I knew that accused was at Whim to be remanded. There is only one cell at Whim Police Station.

Cross-Examination

Cross-examination by Mr. Fung-A-Fatt:-

On the 12th I had not known that Balchand had spoken to the accused before. I was not in charge of these investigations. I did not charge the accused. P.C.Ramjattan had instituted the charge.

Re-Examination

Re-examined:-

40

I had assisted in the investigations.

Mr. Wills closes case on this point.

STATEMENT OF ACCUSED
(DEOKINANAN) FROM
THE DOCK

Defence
Evidence

Jury recalled and checked

Accused told of his rights, elects to make
a statement from the dock.

No.45

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

Statement of
accused
(Deokinanan)
from the Dock

The Miss Carol was registered in Dutch
Guiana. She is a Dutch ship. I did not kill
Motie Singh. Thats all.

Mr. Wills says that he does not wish to call the
two witnesses who were cited for the defence.
He closes his case.

NO. 46

No.46

JUDGE'S SUMMING-UP

Judge's
Summing-up

THE QUEEN

22nd to 23rd
November
1965

against

DEOKINANAN

SUMMING-UP OF PERSAUD, J.

30 Mr. Foreman and members of the jury, this
case has occupied your attention for the last
three weeks and I wish to commend you on the
patience which you have exhibited in this
matter, and on the interest which you have
shown throughout the trial. This, to my mind,
is how it ought to be. I got the impression
throughout the trial that you were acutely
interested in what was going on, and as I say,
this is the only way a jury can determine the
facts properly.

In the Supreme
Court of
British
Guiana

No.46

Judge's
Summing-up
22nd and 23rd
November 1965
(Contd.)

We are now approaching the end of this trial and to use perhaps theatrical language, the curtain is about to fall. You have listened to a very interesting address by counsel for the defence and an equally interesting one by counsel for the prosecution. Now is the time for you to listen to directions which I propose to give you in this matter, and to my review of the evidence and then you will determine your verdict. You will arrive at your verdict as you feel the evidence points.

10

May I, members of the Jury, commend to you also, the statement made by learned counsel for the defence when he told you this morning that you have a sacred duty to perform and that you are not to consider any irrelevancies, meaning thereby any matter which did not transpire in Court. As you have visited the launch I must tell you that you are entitled to consider what you saw on the launch itself. I tell you that because I do not want you to misunderstand his observations. I do not think he was seeking to shut out from your minds what you saw when you visited the launch when he told you that you ought to consider matters which transpired in Court alone. So what I understand him to mean, (and I say to you that this is the correct approach), is that you are to consider the evidence and the evidence alone which has been led in this matter, together with all the things of importance, things which have impressed themselves on your minds on your visit of inspection. Of course, you will bear in mind the various submissions made by counsel for the defence and counsel for the Crown, and consider all of that, and consider most of all, the evidence which has been led in this matter and arrive at your verdict one way or the other as you see fit.

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You have been told, members of the jury, that you are not to have any sympathetic feelings one way or the other in this matter. Well, that is so. You are not concerned with what might have been published either in the newspapers or by talk outside of the walls of these Courts. Your duty is to consider the evidence which has been led in this matter and that alone.

40

There are, members of the jury, certain

general principles which the Judge is required to draw to the attention of the jury in all criminal cases, and I propose to do that now at the outset.

In the Supreme Court of British Guiana

10 An accused person is not required to prove his innocence. On the other hand, the law requires the prosecution to prove the guilt of an accused person before you can convict him. He is not required to say anything at all, if he so wishes, in answer to the charge. The Crown must prove him guilty to your entire satisfaction before you can convict him. One way of putting that, members of the jury, is that you must be sure of his guilt before you can convict him. Another way of putting it is that you must be satisfied beyond a reasonable doubt, a reasonable doubt being that kind of doubt that will prevent a reasonable and a just person from coming to a conclusion.

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No.46

Judge's Summing-up

22nd to 23rd November 1965

(Contd.)

You, members of the jury, are the judges of the facts in this case. By that is meant, that you have heard the evidence and you must make your findings of fact. Having done that, you will apply the directions of law which I will give you in a short while to the facts as you find; and then arrive at your verdict as you see fit.

30 You are the sole judges of the facts, members of the jury. You have heard submissions made by both sides and during the course of the summing-up you may very well hear statements by me which may give you the impression that I am expressing an opinion on the facts. Well, members of the jury, the judge is entitled to express his opinion on the facts. What he is not entitled to do is to force those opinions down the throats of a jury. It is a matter entirely for the jury either to accept any opinion on the facts which I may express or to reject them. It is a matter entirely for you. So that even though, as I say, I may express opinions on the facts, you are not bound by them. If, however, they appeal to your reason, you may accept them but then they will become yours. In other words, the

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In the Supreme
Court of
British
Guiana

responsibility for finding of facts is entirely yours. You must, however, take your directions on the law from me.

No.46

Judge's
Summing-up
22nd to 23rd
November 1965
(Contd.)

In this case, the accused is charged with the murder of Motie Singh. The indictment with which I will deal in a very short while reads as follows: that he, the accused, between the 23rd and 24th days of October - and those days are important so you will bear them in mind - in the year 1963, on the High Seas within the jurisdiction of the Admiralty of England, murdered Motie Singh.

10

Now, from the evidence which has been led in this matter, members of the jury, you must have gathered that there are no eye-witnesses to this alleged murder. Upon a statement or statements made by the accused person, one to the police and another to Balchand orally, (those statements apart) the Crown is relying exclusively on what is called circumstantial evidence in this matter.

20

Members of the jury, what the Crown is alleging is that there are certain circumstances in this case from which they ask you to say that the only reasonable and the only possible conclusion to which you can come is that the accused murdered Motie Singh. As I said, they are relying on what is described as circumstantial evidence.

Circumstantial evidence, members of the jury, may be defined as the proven fact or set of facts from which a jury may infer the existence of a fact in issue. To explain that, the Crown is alleging that certain facts existed or they have given evidence of the existence of certain facts. They say that if you accept the evidence relating to these facts, in other words, if they have established those facts, then from those facts they ask you to infer that the case has been proved against this prisoner.

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Now, that kind of evidence, that is, circumstantial evidence, must be scrutinised narrowly, carefully. It is necessary, members of the jury, before you draw the inference of the accused's guilt from such evidence, to be sure that

there are no other co-existing circumstances that would weaken or destroy the inference. The evidence must point, to put it another way, unmistakably to the guilt of the accused person and to no other conclusion before you can convict.

In the Supreme
Court of
British
Guiana

No.46

10 I will read to you, members of the jury, a statement on this aspect of the matter, on the nature of circumstantial evidence which I would commend to you and ask you to bear in mind. This is the statement which is taken from a judgment from one of the English Courts:

Judge's
Summing-up
22nd and 23rd
November 1965
(Contd.)

20 " I think one might describe it - that is, circumstantial evidence - as a network of facts cast around an accused. That network may be a mere gossamer thread, that is, a thin thread as light and unsubstantial as the air itself. It may vanish at a touch. It may be that, strong as it is in part, it leaves great gaps and rents through which an accused is entitled to pass in safety. It may be so close, so stringent, so coherent in its texture, that no effort on the part of the accused can break through. It may come to nothing, or on the other hand, it may be absolutely convincing. The law does not demand that you would act on certainties alone.

30 In our lives, in our acts, in our thoughts, we do not deal with certainties. We ought to act upon just and reasonable convictions founded upon just and reasonable grounds".

40 That, members of the jury, is the end of the statement which relates to circumstantial evidence. The real test, therefore, to which all others must in the end be reduced, is whether the evidence or so much of it as is believed is inconsistent with any other reasonable hypothesis than that of the guilt of the accused person. So members of the jury, if from all of the circumstances which you accept - it is a matter for you whether you accept them or not - you feel that there is no other possible inference from which you can draw but that the accused is guilty, then the Crown will have proved its case against him. If, however, all those facts leave you in a reasonable doubt - and I have already told you that

In the Supreme
Court of
British
Guiana

—
No.46

Judge's
Summing-up
22nd to 23rd
November 1965
(Contd.)

a reasonable doubt is that kind of doubt which will cause a reasonable and a just person from coming to a conclusion - if you are assailed with that kind of doubt in your deliberations, then your clear duty would be to acquit the prisoner. You must bear in mind, as I said before, that the Crown must prove its case.

In considering whether or not the Crown has proved its case, you are entitled to examine what the Crown has said and what the defence has said. By that I mean, what evidence has been led. In this particular case, for instance, the Crown has tendered in evidence a written statement which it is alleged the accused made to Corporal Bobb. You will remember that, and even though it might have come from the mouth of the prisoner when the investigations into this matter were originally launched, that is part of the Crown's case and you are entitled to consider it. You are also entitled to consider what he has said from the dock in answer to this charge. That is another way, members of the jury, of telling you that while you must bear in mind that the onus of proving the prisoner guilty rests on the Crown and never shifts to the defence, nevertheless, you are entitled to consider the entire case, all of the evidence and having considered that, then ask yourselves: are we satisfied, that is, beyond reasonable doubt, that the Crown has proved its case? If the answer to that is yes, then it is your duty to convict. If the answer to that is no, you are not satisfied, then equally it is your duty to acquit. So bear those things in mind, members of the jury. When it is said that the Crown must prove its case it is not meant that you are to consider only one side of the evidence. You are to consider the whole case, and as I say, arrive at your verdict as you see fit.

I have already read the indictment to you and you must appreciate that the accused is indicted for the murder of Motie Singh.

Now, murder is defined as the unlawful and felonious killing of another person with malice aforethought.

To amount to murder the killing must be

accompanied with this malice aforethought. Malice aforethought there in that definition does not necessarily mean premeditation but it implies foresight that death would or might be caused.

In the Supreme
Court of
British
Guiana

No.46

Judge's
Summing-up
22nd to 23rd
November
1965
(Contd.)

10 To do an act with malice, members of
the jury, means to do a cruel act voluntarily,
and where no malice is expressly or openly
indicated, the law will imply it from a
deliberate and a cruel act committed by one
person against another where death occurs as
a result of a voluntary act which was
intentional and unprovoked.

20 Now, as I said, although malice does not
necessarily mean premeditation, in other words,
it does not necessarily mean that there was
some premeditation or planning to kill - it
does not necessarily mean that - it certainly
does imply an intention which must precede
the act intended.

30 A man kills, members of the jury, with
malice aforethought if he deliberately does
an act either with the intention of killing, or
of causing at least grievous bodily harm and
death follows therefrom. This intention must be
either an intention to kill or to cause grievous
bodily harm to the victim. For an act done with
either of these intentions will amount to murder
if death results. Of course, such an
intention can be and often is implied from the
very act itself by an application of the rule
of law which says that a man is presumed to
intend the natural and probable consequence of
his act.

40 Let us now try to relate that definition
to the facts in this case, and when I tell
you this don't misunderstand me, I am not
trying to make a finding of fact for you - that
is a matter entirely for you - but if you find
that the accused did in fact inflict the injury
which has been described as an injury on the neck
of the man Motie Singh with a cutlass, you
may have little hesitation in coming to the
conclusion that if it was intentional and
unprovoked that he must have intended either
to cause grievous bodily harm to Motie Singh

In the Supreme
Court of
British
Guiana

No.46

Judge's
Summing-up
22nd to 23rd
November 1965
(Contd.)

or to kill him, and if those circumstances existed, then of course he will be guilty of murder, but it is a matter entirely for you.

If a man picks up a cutlass or any sharp instrument and inflicts a severe injury on another man, in the absence of anything else, the law says he presumes the natural and probable consequences of his act. Well, in those circumstances a jury may very well come to the conclusion that he intended either to do that person grievous bodily harm or to kill him, and in either case, if death results, then the offence of murder has been consummated. So, it is a matter entirely for you to decide. You will have to decide first of all, what caused the death of Motie Singh and having made that finding, then you will have to say under what circumstances Motie Singh died, and as I said before, the Crown relies on circumstantial evidence in this case, and having arrived at a conclusion, if you find for instance that the death of Motie Singh was due to an accident, well then that is an end of the matter and this accused ought to be acquitted.

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If you find that Motie Singh died as a result of either of those two wounds which have been described by the doctor in the depositions, then you may very well come to the conclusion that they were inflicted by some person, and if you come to that conclusion then you of course, are left with the question, was it the accused who inflicted those wounds or either of those wounds as the case may be? And if he did, what was his intention? Was his intention to do grievous bodily harm or to cause the death of Motie Singh? As I said, members of the jury, where you find one human being inflicting a wound of that description, with a sharp cutting instrument, on another human being, then you may very well come to the conclusion that this was no joke, he was not making fun. It must have been either to cause him grievous bodily harm or to kill but those are findings of fact which you are required to make. And, of course, you can only make those findings on the evidence which has been led before you.

30

40

Now the evidence - but before I come to

that I had in mind to give you a more or less living example of what is meant by circumstantial evidence and perhaps I can give you this example before I go on to the evidence in this matter.

In the Supreme
Court of
British
Guiana

No.46

Judge's
Summing-up
22nd to 23rd
November
1965
(Contd.)

10 I have told you that the Crown's case is that there are some circumstances which, if accepted by you, point unremittingly and unmistakably to the guilt of the accused person. That is the Crown's case. As I said before, it is a matter entirely for you, whether you accept the evidence or how much of the evidence you are prepared to accept, having examined it carefully, not arbitrarily, not out of hand. You must examine the evidence carefully and see whether you can accept the evidence which has been led in this matter or not. But to come back to this example

20 which I had in mind and which perhaps might assist you in your task which you have ahead of you. Now some of you may probably not live in New Amsterdam and you might have had to travel some distance outside of New Amsterdam to get to this Court, perhaps this morning or any other morning, for that matter, and when you left home it was dry. There was no question of rain or anything of that sort, but you come into New Amsterdam and you see the streets wet, you see the earth wet, you see

30 the grass wet and you use your experience as adults and you can with certainty say: "from what I have seen rain must have fallen in New Amsterdam during the night." Now, you have not seen the rain falling because you were not in New Amsterdam, but from what you have seen when you came into New Amsterdam you say positively that rain fell. Well, that is what you mean by circumstantial evidence. You have not seen certain things nor have witnesses

40 testified of certain things but there are other circumstances from which the Crown says you can draw certain inferences, bearing in mind that there must be reasonable circumstances if you are required to draw the inferences. The Crown says that you are to draw reasonable inferences from a certain given set of facts and if there are certain inferences which you can draw with equal reasoning - and this is important, with equal reasoning - then you are required to draw

In the Supreme
Court of
British
Guiana

No.46

Judge's
Summing-up
22nd to 23rd
November 1965
(Contd.)

that inference which is in favour of the accused person, but the inferences must be inferences of equal reasoning.

If you have one inference which is, to repeat the example which I have given you before - a certainty as far as you can express an opinion as human beings and the other inference is a remote possibility, then you will feel that there are not inferences of equal reasoning and therefore you will draw the inference to which you feel the evidence points. 10

Now, having dealt with that example, members of the jury we must now pass on to the evidence in this matter. As I said, the evidence is rather lengthy but notwithstanding that you must be well aware by now that the issues are quite clear-cut.

Broadly speaking, the evidence of the Crown is that this launch, the Miss Carol, left Crabwood Creek on the 15th of October with the accused and three other men, including the deceased Motie Singh, for a trip up the river and that somewhere along that river, in the vicinity of Powis Island, says the Crown, certain things occurred out of which this charge has been preferred against the accused person. The evidence, it seems to me, members of the jury, can be divided into various phases and I will attempt to do this with you and to bring to your attention the various phases to which the evidence points. 20 30

First of all there was, what I would describe in my own language, as, the preparation for this trip, and by that I wish to refer to the evidence of the woman Sookhia who is the wife of the man Motie Singh, and to some extent, the evidence of Raghubar, the owner of this launch.

Now, Sookhia you will recall, was the very first witness for the Crown. She gave evidence to the effect that on the 15th of October, she packed some things. She enumerated them - shirts, trousers, blankets, prayer books, spectacles, a tape measure, etc. - in a canister which belonged to her husband and that she locked the canister and gave 40

her husband the key. She took the canister to the stelling which is opposite their home. She went with her husband and at the stelling she saw Heera, Dindial, and the accused whom she knows as "Better Boy". They left walking down the stelling and she went home. She heard nothing else again until the 24th October when this man Jwalla Persaud had come to give her some news. That is all she has really said, members of the jury, up to that point, except that she says that certain items, which the Crown alleges were found in the launch after it was salvaged, belonged to her husband including that canister, you will remember, and a pair of spectacles, two prayer books and a razor, a mirror, a notebook and a blanket. She identified those things as belonging to her husband, the things which she had packed in the canister on the 15th of October. She next saw these things, she says, on the 6th November when she went to the Springlands Police Station. Well up to that time, if you accept the other part of the evidence which relates to the salvaging, the launch had already been salvaged and the contents taken out and assorted.

She further says that on the 24th of October Jwalla Persaud went to her house and gave her a message. She went to Raghubar at the sawmill and she spoke to Raghubar and on the 27th October, she went to the Skeldon Hospital Mortuary where she saw the dead body of her husband.

She also said that her husband had a hammock which he had taken with him but she did not see that hammock again and she says that the man Ganesh Persaud is her son.

In answer to you, she said that the accused, her husband and she have all been on good terms and they used to speak. Well, that is her evidence, members of the jury.

Then you have the evidence of Raghubar as to the preparation for that journey. He is the owner of that sawmill and he, at that time, owned three launches - the Ganges, the Majestic and the Miss Carol, and he employed the deceased, Motie Singh, to purchase lumber on his behalf.

In the Supreme
Court of
British
Guiana

No.46

Judge's
Summing-up
22nd to 23rd
November
1965
(Contd.)

In the Supreme
Court of
British
Guiana

No.46

Judge's
Summing-up
22nd to 23rd
November 1965
(Contd.)

He said that this lumber was purchased from loggers in the Corentyne River. He would supply Motie Singh with the launch, that is, the Miss Carol, and he would advance him sums of money and Motie Singh would employ other men.

He says he knows the accused who is also called "Better Boy", and in October 1963, he was in fact working with Motie Singh. He said the accused commenced to work with Motie Singh in September 1963 and he also said both Heera and Dindial worked with Motie Singh in October 1963. He gave you as his system that he would give Motie Singh money to go up the Corentyne River for purposes of buying lumber and that there are occasions when, if additional money is required, he (Raghubar) would take this money up and meet the launch "Miss Carol" somewhere on the river.

10

He says that on the 15th October, 1963, he gave Motie Singh \$2,000 in B.W.I. currency, made up of twenty dollar bills and he saw the man Motie Singh together with Dindial, Heera and the accused board that launch "Miss Carol", taking with them cutlasses, axes, canisters and keritti laths to be used as firewood; and he said that also on that launch were three drums of dieselene tied to the back of the launch by means of a rope and that they left his wharf on that day going up river with all four men on board. This was on the 15th of October.

20

On the 21st of October, he got a message, as a result of which he boarded his launch "The Majestic" with Harrilall and one Sonny, that is Sonny Gomannie the Engineer, and he went up the Corentyne River.

30

Now, in an effort to give you more or less a continuous narrative of this journey which this boat made so far as we can ascertain from the various witnesses, I will deal with dates rather than witnesses. I have already dealt with the departure of the launch from Crabwood Creek on the 15th October.

40

Now, the next time we hear of the launch from a Crown witness is from the witness Nanka Pinter. He said he lives at Acabo, Corentyne River. He is a Dutch subject and he owns a

timber grant at Acabo which is 150 miles from Crabwood Creek.

In the Supreme
Court of
British
Guiana

No.46

Judge's
Summing-up
22nd to 23rd
November
1965
(Contd.)

10 He knew Motie Singh, Dindial, Heera and the accused. On the 16th of October, just the day after the launch left Crabwood Creek, he saw the deceased, Dindial, Heera and the accused arrive at Acabo in a launch called the "Miss Carol". Well, you may feel that there is no difficulty in coming to the conclusion that the launch they left Crabwood Creek with on the 15th is the same launch on which they arrived at Acabo on the 16th.

20 He said Motie Singh spoke to him (the witness Pinta) about logs and that while they were there they tied up some logs, but before they left Raghubar arrived in another launch. This was a few days after the "Miss Carol's" party had arrived. Well, you will remember I was telling you that Raghubar had said that he had received a message from one "Bud Bud" on the 21st October and as a result he had gone with the launch and had met the "Miss Carol" in the Corentyne River after which subsequently they went to Pinta's landing. But we will deal with Raghubar's evidence a little later on.

30 Pinta goes on to say that Motie Singh, Raghubar and Sonny, that is, Gomannie, and he went to a place called Lana and after examining some logs there they returned to Acabo. Pinta says he saw Raghubar take out some money from his pocket and he gave it to Motie. The accused was then in another boat which was moored alongside the boat in which Raghubar and Motie were.

40 Pinta says he saw Motie take out a kerchief from his pocket with money inside, he placed the money Raghubar had given him in the handkerchief, tied all the money together and placed it in his pocket. This, Pinta says, happened at Acabo.

He said after Raghubar gave Motie the money he (Raghubar) left, going in the direction of Crabwood Creek in his launch, leaving Motie

In the Supreme
Court of
British
Guiana

No.46

Judge's
Summing-up
22nd to 23rd
November 1965
(Contd.)

Singh, Heera, Dindial and the accused in the "Miss Carol". He said that he had known Motie Singh for about 15 years and he had known him to be engaged in the purchasing of logs.

Then in answer to Mr. Wills, he said he was not paid for the 180 logs. He did not make it up to 200 logs because of the fact that the water had not come up to enable him to do so. He had intended to make it up to 200 logs if the water had come up.

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He admitted knowing a man called Albert Sawh who owns a sawmill. He admitted that this man Sawh used to buy logs from him but he had not done so for about four years.

He said that they intended to have the logs increased to 700 logs. Members of the jury, I draw this to your attention because you will remember Raghubar's evidence, with which I will deal in a little while, was to the effect that they were to buy 200 logs, as far as he could tell, anyhow. There was the evidence of Pinta that he would have made it up to 700 pieces if the tide had been up and that he would have received one payment for the whole lot. You will remember his saying that he did not receive any money up to then and that it would have taken him about two weeks to rustle up 700 logs.

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He said he had known the accused for about four to five years previous to 1963; that he had known the accused to be working with the other persons buying logs, the accused used to assist in tying up the logs. He also said that he had known Balchand for about a year from the date he gave evidence. He had not known him before. He said he had given evidence in a matter in which the accused was concerned on a previous occasion. He had given evidence twice in the Magistrate's Court but that he had not known Balchand prior to the first occasion on which he (the witness) gave evidence.

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Then he said he knew Balchand from

about March to April this year, the time when he gave evidence in the Magistrate's Court in this matter but that he had heard of the name before. He denies having ever met Balchand at Crabwood Creek. He denies knowing Balchand for several years.

In the Supreme
Court of
British
Guiana

No.46

10 Certain questions were put to him and these were the answers he gave. He said:
"I do not know that he (meaning Balchand) was convicted for stealing logs from Maam Island. I have never spoken to the Dutch authorities on behalf of anyone who stole logs from Maam Island". Well, you will recall the suggestion was that Balchand was in difficulties, having stolen logs from the Dutch coastland or Dutch bank, whatever you wish to call it, and that he (Pinta) had had occasion to speak to the Dutch authorities on behalf of this man Balchand. Well, he has
20 denied this, and not only has he denied this but there is no evidence forthcoming from any other source that this is so. This man Pinta has denied this and when I come to deal with Balchand's evidence I will draw your attention to what Balchand himself has said with respect to this aspect of the matter.

Judge's
Summing-up
22nd to 23rd
November
1965
(Contd.)

30 He denies that on the 16th of October this man Sawh had gone to his place to purchase logs and that he had offered him (the witness) a higher price than Raghubar. He denies having said in the Magistrate's Court that Sawh was at Acabo on that day when Raghubar and Motie Singh were there.

40 He said that that trip was the first trip on which he had known the accused had gone with the man Motie Singh. He said he had seen the accused with other buyers and on those occasions he would be employed as a labourer to tie up the logs and to drift them down. I understood him to be saying, and you may of yourselves so understand him, that this was the first time he has seen the accused working with Motie Singh but he had seen him working with other persons on other occasions, and further, that whenever he had seen him working on those other occasions it was not a case of his being in charge of the party but rather that the accused was employed by some person else to tie

In the Supreme
Court of
British
Guiana

No.46

Judge's
Summing-up
22nd to 23rd
November 1965
(Contd.)

logs and drift them.

Then on that very day, the 16th of October, the witness Manoel Quello said that he saw the three men and the accused at Acabo. They had gone there by the launch "Miss Carol" and he said that the accused was then wearing a pair of darkish short pants. It appeared to have been a pair of long pants that had been cut and that the accused had put on the pants to do work. Then he talked about knowing a lady called Shirin Alli who at that time had a shop at Siperuta. This is the man who, you will remember, had come from the Lethem Rupununi and had settled up the Corentyne River.

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He also was asked whether he had seen two launches tied up at Acabo and he said yes, but both of these launches belonged to this man Raghubar. In other words, he and Pinta are saying that only these two launches were there but both belonged to Raghubar.

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He denies under cross-examination saying on a previous occasion that this man Sawh's launch was there. He says he cannot remember saying so. Members of the jury, what the defence was at that stage seeking to put to the Crown's witness was that Sawh's launch was there. You may feel that it is not very material whether Sawh's launch was there or not. In any event these are the two witnesses denying this. They are saying that there were two launches tied up at Acabo but both belonged to this man Raghubar.

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Now that takes us to that part of Raghubar's evidence which relates to events on the river before the loss of this launch. He said he saw the launch depart on the 15th. Pinta and Quello had seen this launch, they say, on the 16th at Pinta's place.

Now, the next time we hear of a witness having seen that launch is from Raghubar who said that on the 21st of October he received a message as a result of which he boarded his launch "The Majestic" and he went up river. Around 9 o'clock that night he saw the launch in the vicinity of Cow landing

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and at that time all four men were on the launch, that is the "Miss Carol".

10 He said in the presence and hearing of the accused and the other men he told Motie Singh that he had received his message and that he had brought \$10,000 and 1500 guilders in Dutch money. He said they then went to Cow Landing - at Mr. Jones' landing. There they spoke to Mr. Jones and in his presence Motie Singh paid Jones \$200. Motie Singh then told the two men to go on to Pinta's landing, while Motie Singh came over to the "Majestic" and the accused and others went up river with the Majestic following. Pinta's landing, you will remember, according to Pinta, is about 150 miles from Crabwood Creek.

20 He said, before leaving, in the presence of the accused, Singh told Jones that he would tie the 76 logs upon his return up river. He said they arrived at Pinta's landing at Acabo on the morning of the 23rd October. Well, I have already dealt with Pinta's evidence in this regard.

30 Raghubar says that the "Miss Carol" was then moored alongside Pinta's landing. He spoke to Pinta as a result of which he went to Lana with Pinta, Motie, Gomannie and Heera, leaving the accused and Dindial behind with the "Miss Carol" at Acabo and after examining some logs at Lana they returned to Acabo.

40 This witness Raghubar says that at Acabo, in the presence and hearing of the accused, he told Singh to purchase Pinta's logs, the logs at Lana and Jones' logs and he also gave Singh \$3,000 in B.W.I. currency and \$1,000 Dutch guilders. He said the B.W.I. currency was made up of three parcels of \$1,000 each. He said Singh checked the money, took out some money wrapped in a handkerchief from his pocket, tied up all the money together and replaced the handkerchief and money in his pocket after which he (Raghubar) left for home.

This, members of the jury, was related

In the Supreme
Court of
British
Guiana

No.46

Judge's
Summing-up

22nd to 23rd
November

1965

(Contd.)

In the Supreme
Court of
British
Guiana

No.46

Judge's
Summing-up

22nd to 23rd
November
1965

(Contd.)

to the period 21st October to the 22nd October. He met them on the night of the 21st and he left them on the 22nd, that is the next day round and about 2.30 to 3 o'clock. So there you have one witness - it is a matter for you to say whether you accept his evidence or not - saying that up to the 22nd of October the "Miss Carol" was still afloat and these men, Motie Singh, Heera and Dindial, and the accused were all alive and on the "Miss Carol".

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Now, on the 23rd of October, Lewis Douglas says that he was on the river at Aporo, which is about 100 miles from Crabwood Creek and on the Dutch side of the river. On the 23rd around 3 p.m. he saw the "Miss Carol" arrive and moor alongside the stelling and that Motie Singh, Heera, Dindial and the accused were in that launch. He said, Motie Singh went ashore, Heera was in the engine room, Dindial and the accused were in the front of the launch near to the steering. Members of the Jury, you may or you may not - it is a matter for you - find some significance in the evidence of these witnesses, that is, Lewis and Raghubar, having regard to what it is alleged the accused told the witness Balchand, that on two occasions at least, for no apparent reason anyhow, but it turns out that the accused and this man Dindial seemed to have been together on these two separate occasions. In other words, it seems from the evidence, and it is a matter for you to say whether you accept it or not, that whenever the party moves off for purposes of conducting business that these two men, Dindial and the accused, are left together. It may be that they were employed for the same type of work and therefore they were not to be consulted when questions of business transactions were to be considered.

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Now, this man, Douglas, said that he overheard a certain conversation between Dindial and the accused. The accused told Dindial that he did not want to go to Jones' landing to buy logs and if they stopped there it would bring trouble as he wanted to go home. Well, you may find a statement of that sort does not really mean anything or you may wish to put weight on it. It is a matter entirely

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for you, but that is if you accept Douglas' evidence. He is not connected with either side it seems and he is saying quite clearly that on the 23rd at about 3 o'clock in the afternoon he saw this launch at Apora which is, according to the evidence, lower down the river.

In the Supreme
Court of
British
Guiana

No.46

10 He said he saw them, he overheard this conversation between Dindial and the accused and that he also spoke to Motie Singh after which the launch left. In fact he said that Motie Singh bought an exercise book from him at that place.

Judge's
Summing-up
22nd to 23rd
November
1965
(Contd.)

Now, this is, members of the jury, so far as the 23rd is concerned and so far as this witness Douglas is concerned.

20 Now, you have heard the various criticisms levelled at the evidence of this man called Richard Edwards, an Amerindian who lived at Parakisa Point. He says that at one time, on the 23rd of October around 9 o'clock he was at Parakisa Point and he saw this launch, and in fact he and his wife were both towed by this launch.

30 Now, in answer to Mr. Wills it is clear you may feel that this witness might well have had his boat towed by the launch "Miss Carol" but that you are not satisfied that he is sure of the date because, you will recall his saying in examination-in-chief that it was the 23rd around 9 o'clock. Well under cross-examination he said he saw the man at Orealla at 7 a.m. then he said he cannot say how he knew it was the 23rd and he did not know, on the date when he was giving evidence, what that date was, and finally he wound up his evidence by saying: "I really forget the date when my corial was towed".
40 Well, you may have no hesitation in saying that evidence of that sort is quite unreliable and it is not evidence you are prepared to act upon. It is a matter entirely for you.

You may feel, members of the jury, that the only thing that has been established by this witness, if you accept his evidence, is that his boat was towed at some point of

In the Supreme
Court of
British
Guiana

No.46

Judge's
Summing-up
22nd to 23rd
November
1965
(Contd.)

time from Orealla to Parakisa Point where he lives. So that that evidence does not assist you as to the movement of the boat, but if you accept Lewis Douglas' evidence, then the boat was at the Aporo Stelling on the 23rd some distance down the river from where this man Pinta lives at Acabo.

Now, the next time we hear of the boat is from the witness Kenneth Milne. He also speaks, members of the jury, of the 23rd of October, 1963, and of being at Aporo Stelling around 7 to 8 p.m. when the launch "Miss Carol" came from down river and tied up at the Aporo Stelling with Motie Singh, Dindial, Heera and the accused in it. From this evidence it would appear that Shirin Alli's evidence apart - and I will have to deal with that separately - this witness Milne is the last person to have seen the launch and is definitely the last person, from the evidence, to have seen these four men together, because, he is saying that on the 23rd October he saw it about 7 to 8 o'clock that night; the launch with these four men aboard at Aporo. I say that the evidence points to that conclusion because if you accept Sonny Chung's evidence, with which I will deal in a short while, and even if you accept the written statement made by the accused you may very well come to the conclusion that whatever occurred to have caused this launch to sink to the bottom of the Corentyne River occurred sometime between Milne seeing the launch and Sonny Chung speaking to the accused at Sonny Chung's landing. In other words, whatever occurred, occurred between the night of the 23rd and the morning of the 24th. This is how you may feel the evidence points. That does not take into account the evidence of Shirin Alli with which I will deal separately.

This man Milne went on to say that in the hearing and presence of the accused, Motie Singh asked if he had borrowed the bush rope and said "yes" and Motie Singh told him that they were going to Cow Landing to tie logs and they wanted the bush rope to use. He said he went to his launch. The accused came into his launch, and you will remember he alleges some conversation about a radio and about cigarettes.

The defence asks you to say, you will recall, that this did not occur; why should this man come out of the blue and enquire about a radio and why should he offer him cigarettes. Well, he said that he and the accused were very good friends, and by that he wishes you to say that there was nothing strange in the accused offering him cigarettes. Anyway, he said that he told him (Milne) not to bother with Motie Singh, that the launch was not going to Cow Landing to tie up logs, that the launch was going home that night. Well, there you have Milne's evidence and you will remember what the man Douglas said, that the accused had said something about trouble happening if they went to Cow Landing that night. He said that Heera then called the accused who went into the launch. Dindial started the launch and they all left in the launch. He said he observed three dieselene drums at the back of the launch. The launch had on the port and the starboard lights and one in the engine room.

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In answer to Mr. Wills he said he had asked no one permission to take the bush rope and that when he took it he knew that it belonged to the party on the "Miss Carol", and that he used the bush rope to tie logs. It was put quite clearly to him, that he stole these people's rope. Well, you will remember he denied this. His story is, and you may or may not accept it, depending on whether you feel he is speaking the truth, that they are in the habit, that is, purchasers or loggers, of using each other's bush rope and he saw the bush rope and he took it to tie his logs.

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He says that they did tell each other where they are buying logs. Motie Singh did tell him that they were going to Cow Landing. He said that while the accused was speaking to him in his launch the other men were in front speaking to one Samuel Fraser and he said that Dindial alone cranked the engine, Motie Singh was in a hammock and Heera was at the steering wheel. Well, there again, members of the jury, if you accept this evidence you may get the idea as to the

In the Supreme
Court of
British
Guiana

No.46

Judge's
Summing-up

22nd to 23rd
November
1965

(Contd.)

In the Supreme
Court of
British
Guiana

No.46

Judge's
Summing-up
22nd to 23rd
November
1965
(Contd.)

order of precedence, so to speak, of the members of this party. When the launch left this landing, according to the witness Milne, Heera was at the steering wheel and Motie Singh was in a hammock. Well you may feel that that together with other evidence would give you an idea as to who was in charge of the party, and as I said, what was the order of precedence of these various people in this party. You will remember Raghubar saying that as far as he was concerned Motie Singh was the man in charge and Motie Singh who employed the other people, and he Raghubar had nothing to do with it.

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The other aspect of this witness' evidence that I wish to draw to your attention is a point which was sought to be made by the defence about the cranking of the engine. The defence is urging you to say, and there is certainly evidence before you from which you can come to the conclusion that there are two cranks intended for use of this engine. You have yourselves seen the engine. I think it is right to say that you have had the cranks fitted in that part of the engine that is made to accommodate them, and the defence is saying that this witness is not speaking the truth when he said that Dindial cranked the engine because one man alone cannot crank the engine. Well, some of you have actually turned it and you will recall this man Gonannie turning the compression switch or knob and some of you turned this handle. Those of you who turned it will be able to say, from what reaction you got, whether or not one person could in fact have started this engine. It is a matter entirely for you, but what the defence is saying is that if you are satisfied that only two men could have cranked and started this engine then this man Milne is lying when he said that Dindial alone cranked this engine, and if he is lying on this aspect, then you ought to reject the balance of his evidence. Well, first of all do you feel that only one man cranked the engine? Or is it necessary for two men to crank this engine? And if you find that Milne is lying so far as the cranking of the engine is concerned, does that make you feel that you ought to reject the balance of his evidence? All questions

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of fact are for you, members of the jury. This is the point which the defence seeks to draw to your attention and you must make up your minds what you can accept.

In the Supreme
Court of
British
Guiana

No.46

10 Now, it was further alleged by the
defence in cross-examination that the accused
and this witness Milne are not on good terms.
Milne says, yes, they are very good friends
and he says this: he does not recall a
party in which the accused was, having seized
180 logs from him (the witness) in 1962.
This never happened. What was being put to
him, members of the jury, is that he is giving
this evidence against the prisoner because
a party in which the prisoner was had seized
180 logs from him in 1962. This is the
suggestion by the defence. Well, members of
the jury, it is only right to say that this
man has denied this on oath and there is no
20 other evidence to support that suggestion,
but it has been made and that is the answer.
It is a matter entirely for you to make up
your minds on. He denies it completely.
He said that this never occurred. Well, there
you are. You have the evidence and you must
make up your minds about it.

30 He says that Motie Singh and his party
were not annoyed at his using the bush rope.
He had taken that rope from Pinta's landing.
Well, members of the jury, you may feel that
it is of some significance - it is a matter
for you that this witness says that he had
taken that rope from Pinta's landing. Well
now, if that rope in fact did belong to the
Motie Singh's party and he had taken it from
Pinta's landing where it was lying, then you
may very well feel that the Motie Singh's party
or at least Motie Singh himself, with the
40 "Miss Carol" has gone on previous occasions
to Pinta's landing, and you may feel that that
might support the evidence of Pinta himself
and Raghubar that they were in fact at Pinta's
landing on the evening of the 21st of October.
So there is Milne's evidence.

As I said before, members of the jury,
Shirin Alli's evidence apart, Milne, according
to the evidence for the prosecution, is the last

Judge's
Summing-up
22nd to 23rd
November
1965
(Contd.)

In the Supreme
Court of
British
Guiana

No.46

Judge's
Summing-up
22nd to 23rd
November 1965
(Contd.)

person to have seen the launch "Miss Carol" and is certainly, according to the evidence for the prosecution, the last person to have seen as far as we are aware, and we can only go from the evidence which we have before us, the last person to have seen Motie Singh alive. This, of course, takes me to the evidence of Shirin Alli.

Now, I must tell you right off that Shirin Alli does not pretend to have seen anybody on that launch or to have recognised anybody on that launch. She does not give that sort of evidence at all. The evidence which she has given is that she saw the launch "Miss Carol" at Siperuta in the Corantyne River at about 11.30 to 12 midnight. There again, members of the jury, this is, as all through the case, a question of fact for you to decide whether you will accept her evidence or not. 10

She was cross-examined rather carefully, you may feel, and you may have gathered from her that she was saying she recognised the launch "Miss Carol" because of the beating of the engine. She further said that the colour and the size of the boat did not assist her to recognise the launch. At first she said there was a small light in the launch and when it was brought to her attention that she had told the Magistrate that there was no light in the launch she says, "yes, I now say that there was no light in the launch". 20 30

Now, that is the end of her evidence, members of the jury. You will remember she said that the closest the launch got to her was about 15 to 20 yards, and you will remember she pointed out from the witness-box to that southern wall of the room. She is saying that she heard this beating of the engine, she was expecting some goods for at that time she was operating a shop at Siperuta and that she went down to the landing. When she first saw the launch she said it was from the witness-box to that fence outside of the yard here and she says that she recognised it as the "Lady Carol", she called it. She said when she saw it it was actually not travelling under its own steam, the engine was turning over and it was drifting with the tide. 40

10 She said it was going up with the tide. I understand that to mean going up river with the tide. She heard the sound and a splash in the water after which the launch started to move faster and to go towards the Dutch shore. The noise she heard was the shouting of a man's voice. She said she had travelled on the "Miss Carol" twice before and she had seen it passing in the river every three weeks. It is painted red inside and light green outside, and she said it was a bright night in that there was a moon.

In the Supreme Court of British Guiana

No.46

Judge's Summing-up

22nd to 23rd November 1965
(Contd.)

20 Now, she said that she recognised the launch before and heard the splash. When she first saw the launch the engine was beating slowly and the launch was drifting. Then she said she could not explain why she recognised the beating of the engine. She said that if she had heard the beating of the engine only, and closed her eyes, she would not be able to say if it was Raghubar's launch. You may feel, members of the jury, that from those answers at first she was saying it was the beating of the engine that caused her to recognise the launch, and then later on under cross-examination by Mr. Wills, she said that if she had heard the beating and had her eyes closed, she would not have been able to recognise the launch.

30 Well now, you may well ask yourselves, if this is so then this evidence is unreliable, but in fairness to this witness I must point out to you that she went on to say, in answer to a question I put to her, that she had expected goods to travel up by Raghubar's launch, the "Miss Carol". Then she goes on to say that her goods are usually sent up either by the "Miss Carol" or by a launch called the "Sea Queen" owned by one Emamodeen and that these two launches are the only two launches that
40 went as far as Siperuta. A third launch also goes as far as Siperuta but this is in connection with the fortnightly mail service.

Then she goes on to say in answer to Mr. Wills that she was not expecting goods by Rajah's boat, a gentleman who apparently at that time owned a shop next to hers at Siperuta. He owned a boat called the "Urmilla". She

In the Supreme
Court of
British
Guiana

No.46

Judge's
Summing-up

22nd to 23rd
November 1965
(Contd.)

denies having said in the Supreme Court on another occasion that she was expecting goods by Rajah's boat. She said that Rajah's boat never fetched goods for her. She said that on that day the "Sea Queen" had passed down earlier and because of a conversation she had had with someone on board that "Sea Queen" - that someone was Mursalene the Captain of the "Sea Queen" - she expected goods to come up by the "Miss Carol". She saw the "Sea Queen" on the afternoon of the 23rd and at the time when she spoke to Mursalene she did not know where the "Miss Carol" was.

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Then, members of the jury, you heard the points made by Mr. Wills in that connection. He is urging that if she had a conversation with Mursalene, the Captain of the "Sea Queen", on the 23rd, and the evidence is that on the 23rd the "Miss Carol" was somewhere in the Crabwood Creek, higher up that is, then she could hardly have been expecting her goods to come by the "Miss Carol" and therefore it is idle for her to tell you that she had gone there to look for the "Miss Carol" or even to have recognised the "Miss Carol". As against that you have this: that when she had the conversation with Mursalene she did not know where the "Miss Carol" was, she could not, you may feel, have known where the "Miss Carol" was, and if you accept her story that only one of the two launches used to bring her goods, that is, either the "Miss Carol" or the "Sea Queen", and the "Sea Queen" had passed down earlier that day going down river and she says - it is a matter for you whether you accept it or not - that only those two launches used to go as far up as Siperuta and later that night she heard the beating of a launch coming up, then you may feel that she very well might have thought that it was the "Miss Carol" coming along. That of course does not dissolve the problem as to whether or not she recognised the "Miss Carol". You may feel - it is a matter entirely for you - that because of the fact that only one of two boats, according to her evidence, would go as far as Siperuta, and that because the "Sea Queen" had passed down earlier that day on its way down river that she assumed that the boat which she said

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she had seen was the "Miss Carol". It may very well have been the "Miss Carol". But you may feel, members of the jury, that if her answers are to be accepted that if she closed her eyes and she only heard the beating of the engine she would not be able to recognise the launch, when you place that answer alongside her other answers that neither the colour nor the size of the boat assisted her to recognise it, as I said, you may very well feel that she put all those circumstances together and assumed that that was the "Miss Carol" merely because she says she knew as a fact that only the "Miss Carol" and the "Sea Queen" would go that far and having seen the "Sea Queen" pass down earlier that day, then she probably argued, you may feel, that it could not possibly be the "Sea Queen" returning and it was the "Miss Carol", or you may feel that she is so familiar with the "Miss Carol" that she recognised it. But those are the answers she has given you. You must say whether you feel she has satisfied you that she did in fact see the "Miss Carol" that night; in other words that she recognised that boat as the "Miss Carol". I am not by any means suggesting to you, members of the jury, that the witness is lying nor for that matter am I suggesting that she is a witness of truth. That is a matter for you to find. I merely have examined her answers with you to assist you to come to a conclusion whether or not it was the "Miss Carol" that she had seen outside of her landing that evening.

Now, she said that she also heard something about the launch "Miss Carol" about two days after she had seen it and while she was still at Siperuta. Her husband and she left for their grant sometime after. They spent about eight days at the grant after which she travelled down to Crabwood Creek leaving her husband at the grant. The police did go to her at the grant and there she gave them a statement of the things she saw.

She said she did not say at a previous trial that the police had come to her for a statement after she had come down to the shop. Then in re-examination she said she did not see the colour

In the Supreme
Court of
British
Guiana

No.46

Judge's
Summing-up

22nd to 23rd
November
1965
(Contd.)

In the Supreme
Court of
British
Guiana

No.46

Judge's
Summing-up
22nd to 23rd
November 1965
(Contd.)

of the launch but she saw its shape. She said it was the "Miss Carol" because she had heard of the incident in which the "Miss Carol" was involved. She heard this two days after. She had spoken to the Forest Ranger's wife after she had heard of the accident.

She said in answer to you that every time the launch passes in the day she would go to the landing. She had gone out to the landing this night because she had expected some goods to arrive by launch from Crabwood Creek and that her home was about 15 to 20 yards from the landing. 10

Then she said that the beating of the engine of the "Sea Queen" is different from that of the "Miss Carol". Well there is another answer of hers which may or may not assist you. Taking all of her answers together you may, as I say, feel that she of herself did not that night recognise the boat as the "Miss Carol" but merely assumed that it was the "Miss Carol" after she heard of certain other events. On the other hand, you may feel that if in fact you can accept her evidence that there are only two boats that go up there - the "Sea Queen" and the "Miss Carol" - and she can appreciate the distinction between the boats of the engine, and as I said, the "Sea Queen" having passed earlier that day the only boat that could have gone up there is the "Miss Carol". Those are the two aspects of it and it is a matter entirely for you to say whether you can accept this woman's evidence. 20 30

Now, members of the jury, that concludes the movement of the "Miss Carol" as far as we can tell from the evidence from the time she left her owner's wharf on the 15th of October, 1963, to about midnight if you accept Shirin Alli's evidence on the 23rd of October, 1963. If you find that you cannot accept Shirin Alli's evidence, then we are left with the evidence of Milne, that is the last person as I said before other than Shirin Alli to have seen the boat, and he saw that boat you remember about 7 to 8 o'clock on the night of the 23rd of October, 1963. 40

The next phase which I propose to examine with you, members of the jury, and to which the evidence naturally points in this case, is the

report or reports made by the accused to the various persons beginning with Claude Chung, then Jawalla Persaud, Arjune and Stella Barry. I find however that it is now half past three and I propose to take the adjournment here, members of the jury, and to continue the summing-up at 9 o'clock tomorrow morning. You will no doubt turn over in your minds what I have told you this afternoon but you still are not at liberty to discuss this matter with anyone, and it is vitally important at this stage because you have not had the entire case committed for your deliberation. So, will you members of the jury, keep your own peace but return for 9 o'clock tomorrow morning. We will take the adjournment now therefore.

In the Supreme
Court of
British
Guiana

No.46

Judge's
Summing-up
22nd to 23rd
November
1965
(Contd.)

COURT RESUMES at 9 o'clock on the 23.11.65

Mr. Foreman and members of the jury, yesterday I had dealt with certain phases of this case after having given you certain directions in law and at the adjournment last evening I had just concluded reviewing the evidence of Shirin Alli, and as I remarked yesterday, I wish now to remind you that her evidence concluded, if you accept it, the movements of the launch from the time it left Raghubar's wharf on the 15th of October up to the night of the 23rd of October, 1963.

I will now pass on, members of the jury, to another phase which you might feel that you ought to give some consideration to and that is certain phases which the Crown alleges took place on the 24th of October. You will recall the Crown's case is that Motie Singh lost his life sometime during the night, between the 23rd and the 24th of October, therefore this morning we will turn to events which are alleged to have occurred on the 24th of October, and we start, members of the jury, with the evidence of Claude Chung. This phase of the case you may wish to describe as the alleged reports made by the accused to various persons. At the moment I will restrict those persons to the following, Claude Chung, Jawalla Persaud, Arjune Rama

In the Supreme
Court of
British
Guiana

No.46

Judge's
Summing-up

23rd November
1965
(Contd.)

and Stella Barry, all of whom say, to put it in one comprehensive statement, that the accused reported to them that there was an accident; that the launch "Miss Carol" was involved in an accident during the night of the 23rd October.

Now, Chung you will remember, is the farmer who, at that time, had a farm at Surnop. He lived there with his family and he said that on the 24th October, 1963, at about 6.30 a.m. he was at his Camp at Surnop. You will remember his evidence is that his camp at Surnop was north of Powis Island.

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He said he was there when the accused whom he said he did not know before, arrived and having made some enquiries for the Chief, told Chung that he wanted him to take him down. Chung asked him down where the accused said: "To Raghubar's sawmill at Crabwood Creek", and Chung asked him why and he said that he and three others were coming down the river the previous night with Raghubar's launch and they met with an accident. Chung said the accused told him that a boat had jammed them up in a collision. Chung asked him which part and he said in the centre of the river between Powis Island and the Dutch shore.

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Then Chung continues. He says that the accused said he could not say much of what really happened because he and the two others were asleep and another steering and suddenly he felt a bounce on the launch and he found himself in the water; that he rose up and started to swim catching the shore. Chung said that the accused also said that when he came to the surface he saw a big boat make two circles in the river and then went away but that he could not say which direction it had gone as the night was dark.

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Chung says that the accused had come from a point south of his camp and at that time he was dressed in a pair of blue shorts. Chung said he offered the accused clothing which offer was refused. He offered him some tea but the accused said that he was too fatigued, but he was alright. Chung said he told

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the accused to wait as his boat was then aground and he had to await the rise of the tide because at that time Chung says, the tide was at its lowest.

In the Supreme
Court of
British
Guiana

10 Then Chung went to his farm - this is Chung's evidence - to do some work. It was about 7 to 8 rods away from the Camp and the accused followed him, sat down in the farm and told him, Chung, that he may have to answer some questions. Chung said he asked him why he said so and he said, the accused told him that the police would come to him first, that is to Chung first, because he (Chung) was the first man whose camp he had gone to. Chung said he asked him how he knew that he (Chung) was living there and he said the accused replied that he had known that someone was in fact living there.

No.46

Judge's
Summing-up

23rd
November
1965
(Contd.)

20 The Crown has sought to lay some stress on this part, particularly, of Chung's evidence. The Crown has argued, why should the accused have had this conversation with Chung if you accept Chung's evidence about Chung being the first person to whom the police will have gone if in fact an accident had occurred. This is a matter entirely for you, members of the jury. You must make up your minds on it. What I understand the Crown to be urging -
30 it is a matter for you - is that Chung was and could not have been a witness to the accident and if Chung was not a witness to the accident, for what reason asks the Crown, would the police have gone to Chung first in connection with this accident? You may find some merit in that suggestion or you may not, it is a matter entirely for you.

40 Chung went on to say that his wife later stopped a boat, and it is fairly obvious you may feel, members of the jury, that that was the boat in which Arjune and Jawalla Persaud were travelling, and the accused told Arjune that he wished to be taken back to the Island, but according to Chung, Arjune said he did not have enough petrol. Well Arjune did say that this is so.

In the Supreme
Court of
British
Guiana

No.46

Judge's
Summing-up
23rd
November
1965
(Contd.)

Chung said that his place is north of Powis Island for a distance of 180 to 200 rods. Well, that you may feel, members of the jury, is important evidence from the point of view as I was saying, having regard to the fact that the evidence is that the launch was salvaged in the vicinity of Powis Island, on the eastern side of that Island. So, Chung is saying that his place where the accused went on the morning of the 24th is about 180 to 200 rods north of Powis Island and that Maam Island - you will remember Maam Island is of some importance when you come to have regard to the evidence of Ramjattan, the police constable - says Chung - is opposite to his place but in the centre of the river and Powis Island is south but nearer the English shore. I think, members of the jury, it is right to say that you, by now, ought to have had more or less a fair idea of the situation of Powis Island in relation to Chung's place and the situation of Maam Island in relation to Chung's place. What Chung is saying is that opposite to him but in the centre of the river is Maam Island and south of him going further up river, about 180 to 200 rods is Powis Island and that Powis Island is quite near to the English shore. In fact you will recall witnesses saying in low tide it is possible to walk across from Powis Island to the English shore.

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Now, in answer to counsel for the defence, Chung said that he would say that he and his family had retired to bed on the night of the 23rd about 8 or 9 o'clock and at the time when he went to bed the water was washing. He denies knowing the man Shadrack Castello and the man Clinton Alexander. He said that from the water's edge, that is, from the water's edge at his landing, Powis Island can be seen from his Camp. He says he does not keep any light burning in his home but in the night his landing can be seen from the river as the bush is cut away.

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He said that the first time he learnt of an accident in which the accused was involved was when the accused told him so. He said when Jawalla Persaud's boat stopped he (Chung) was on the sand while the accused

went out to the boat. The accused went to about knee deep in the water, and he says that later the night of the 24th October, the police arrived with the man Raghubar. So, that is Chung's evidence, members of the jury. If you accept that evidence, then it would appear that Chung is the first person that the accused spoke to and he is the first person to whom the accused alleged that there had been an accident.

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Then you have next the evidence of Jawalla Persaud and Arjune Rama. Well members of the jury, they were both in the launch which was passing down by Chung's landing at about 7.30 a.m. on the 24th October and they were on their way, they say, to Crabwood Creek, and as they got to Surnop, that is Chung's place, a lady waved to them. The evidence is that it was Chung's wife. They went ashore and they saw the accused.

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Jawalla Persaud says that in the presence of the accused, Chung's wife asked him if he had heard what had happened, if he had heard that the accused had got into a collision and he said no. He said at that time the accused was wearing a beach pants, blue in colour. The accused joined the boat and they went to Crabwood Creek. On the way to Crabwood Creek they had stopped at various places one of them being at a place called Chimbo's landing where a woman called Stella Barry was. You will remember that witness who gave evidence.

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Jawalla Persaud further says that he took the accused to Raghubar's sawmill at Crabwood Creek but on the way he stopped at the homes of Motie Singh and Heera. He said he spoke to Motie Singh's daughter and to Heera's wife Rookmin while the accused held his bicycle on the public road and that he had gone into the people's home to speak to them. Well, there again the Crown says this is rather strange conduct on the part of the accused who, according to his story, was involved in an accident on the river in which accident three persons were missing and that one would have expected him, being the survivor

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In the Supreme
Court of
British
Guiana

No.46
Judge's
Summing-up
23rd
November
1965
(Contd.)

In the Supreme
Court of
British
Guiana

No.46

Judge's
Summing-up

23rd
November
1965
(Contd.)

up to that stage at least, to have himself gone into these people's homes to tell them what had transpired but instead we find Jawalla Persaud going in. Well the Crown says that all of these circumstances point to the fact that when the accused was making this report about an accident he was lying. It is a matter for you. You consider it and say whether you think it has any substance. Here is a man who was involved with an accident in a boat, according to his story, in which three men were missing. He comes down to Crabwood Creek and he holds the bicycle while the man Jawalla Persaud who was not involved in the accident goes to tell these people what had transpired. As I said members of the jury, that is a matter entirely for you to decide upon. 10

Now, Arjune Rama, as I said, was also in that launch and he said that when he met the accused at Chung's landing the accused had asked him to go around Powis Island but he told him that he did not have sufficient gas. Well as I told you, members of the jury, Chung's landing is north of Powis Island and going back to Powis Island means going back up river, so according to this man Arjune Rama, he said he told the accused that they did not have enough gas and therefore he could not go back to Powis Island. Well, the defence says in spite of that if the accused wanted to conceal something from the people to whom he was making this report he would not have invited Arjune Rama to return to Powis Island when you bear in mind the fact that the launch was in fact salvaged so to speak outside of Powis Island. The prosecution on the other hand has submitted that at that stage no report had been yet made to the police and therefore the accused would not have thought of removing suspicion from Powis Island. There again, you have two conflicting submissions and you must make up your minds about them. 20 30 40

Rama said that the accused had asked him to take him around the Island to see if he could see the missing persons. Now, this witness Arjune Rama is the first person, according to the evidence, to whom it is alleged the accused had given some details of this accident. You

see, according to the evidence, before he had told Chung that they were involved in an accident. He had told Jawalla Persaud that they were involved in an accident but to this witness Arjune Rama, according to this witness, while they were on the boat on the way down to Crabwood Creek, he, Rama, asked how the accident happened. Well, members of the jury, you might very well feel that this is only natural. A man says to another: "You know an accident has occurred and my colleagues are missing." And you may feel that it is quite reasonable for the person to whom he is making this statement to enquire: "Well, how did the accident happen"? And Rama is saying that he asked how the accident happened and the accused told him that Dindial took in sick with a belly pain and they were taking him down home and while travelling he, Dindial and Motie Singh were sleeping; that when they arrived by Powis Island he felt like the boat got a hit and that after the hit he (the accused) was below the water; that whilst struggling in the water he jammed the other person in the launch; that he found a way and he came up; that when he came up he made about three shouts. He heard no answer. He then decided to swim ashore. He then swam ashore and went to Powis Island and walked across and went to Chung's landing. Now, if you accept that evidence, members of the jury, this was before any report was communicated to the police. In other words, at this stage the police had not yet got involved in this matter and we find, if you accept Rama's evidence, the accused telling Rama of the details of how Dindial took in with a belly pain and how when in the vicinity of Powis Island this accident occurred, and you may feel that this part of the evidence is very important indeed, because if you accept Rama's evidence the accused at that stage is admitting that he had gone to Powis Island. This is long before the police had been brought into this matter and this is long before, according to De Abreu, a pair of trousers was found on the island; this is long before, according to Ramjattan and Raghubar, that money was found on the island. This is merely at the stage where it is alleged, according to Rama, the accused is giving him an account of

In the Supreme
Court of
British
Guiana

No.46

Judge's
Summing-up

23rd
November
1965

(Contd.)

In the Supreme
Court of
British
Guiana

No.46

Judge's
Summing-up
23rd November
1965

(Contd.)

what transpired and the accused is himself placing himself on Powis Island, because, according to Rama, the accused said he then swam ashore and went to Powis Island and walked across and went to Claude Chung's landing.

Then this witness was cross-examined about his sale of logs and matters of that nature and he said he sold his logs to several sawmills including Raghubar's. He also talked about a channel between Powis Island and the sand bank being about 200 rods wide. 10

He said he had passed Powis Island by night and there was nothing there to mark the position of the sand bank, there were several sand banks in the river, none having any marks. Well, members of the jury, these are matters you may feel which obviously would relate to the question whether or not there was an accident on that river on that night, a matter with which I will deal as one of the other phases in this case. 20

This witness said he stopped selling logs, he now worked somewhere in Essequibo. He said that he had sold out all his equipment to Jawalla Persaud who had been his partner. You will remember he was taxed as to whether he did not ask Balchand to buy and he said no that Jawalla Persaud was his partner and he felt he ought to have offered him first and Jawalla Persaud had bought. So, there is the evidence if you accept it. 30 Whether or not you accept it, of course, is a matter entirely for you, because as I have indicated before, and as has been submitted to you by both counsel, you are the judges of the facts.

Then you have the evidence of Stella Barry at Chimbo's landing. She said she saw the accused with Jawalla Persaud and Arjune Rama. The accused was then dressed in a blue beach trunks and she spoke to him. I think it was one of the other men, in fact both of the other men, that is, Jawalla Persaud and Arjune Rama who, on the trip down, you will recall, lent the accused some clothes. Jawalla Persaud lent him the terrylene shirt and Arjune Rama lent him a pair of Khaki pants, you will remember. Anyway, 40

when this woman Barry saw the accused at Chimbo's landing they had this conversation and she said she told the accused that she had just heard from her son that the accused had been involved in an accident. Here again you may feel that she was only acting normally and naturally when she said she told the accused she was sorry to hear what had happened. You may feel that she was sympathetic with the accused. You may feel, as one river folk to another one she said she heard he was involved in an accident and she said she told him she was sorry to hear this and he told her that he believed that the three men had been drowned.

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Now, there again, if you accept that evidence you may feel that this is important. Here again this conversation, if you accept that a conversation did take place between Stella Barry and this accused person, was before any report had been made to the police and before the police started investigating. He not only was telling these people - Chung, Persaud, Rama and Barry - that an accident had occurred but he was now telling Barry herself that he believed that the three men had been drowned.

Then she said she asked him how it happened and he more or less repeated in substance what he had told the others, to the effect that he was asleep and when he awoke he found himself in the water, and she said that he further said that he believed that the launch had broken up. Well, when you come to consider how the launch got to the bottom of the river, if you feel that that is relevant to this case, you may yourselves feel that if there was an impact with enough force to have caused that launch to go under that water, you may feel that that impact would have caused some substantial damage to that launch.

Anyway, to get back to Barry's evidence, she said she asked him if he did not see anything floating about on the water and if he did not shout and he said he had no breath to shout and he tried to swim ashore.

In the Supreme
Court of
British
Guiana

No. 46

Judge's
Summing-up

23rd

November

1965

(Contd).

In the Supreme
Court of
British
Guiana

No.46

Judge's
Summing-up
23rd
November
1965
(Contd.)

Then you will recall her asking him if he had been drinking the night before and he said no and she told him that if he had not been drinking as soon as the water touched him he ought to have awakened. Well that is her opinion. You may feel that there is substance in it or you may feel there is not.

She says she has seen portions of Powis Island under water during the high spring tide. She said no one lives on Powis Island nor on Maam Island. She further said that she has never seen Powis Island completely flooded. In fact she has gone to Powis Island to hunt with other people and that if the Island was completely flooded there would have been no game and they had found game on the Island and the Island has big mora trees. Well, you also have a photograph which would give you an idea as to the type of trees which grow on this Island. Her evidence, if you accept it, is to the effect that during the high tide parts of that Island are covered with water but notwithstanding that there are big mora trees and in fact there is game on that Island.

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She further says that she knows Balchand; she had got to know him about three months before this incident; she was a Dutch subject and she knew nothing about Balchand in relation to Dutch Guiana and she says in answer to you that she had got to know the accused and Balchand at the same time, they had called in at her landing on a day when they were having drinks. Well, that is her evidence, members of the jury, and you must say what importance you attach to it.

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Well now, those are the four persons, Claude Chung, Jawalla Persaud, Arjune Rama and Stella Barry, unconnected with the police force to whom it is alleged the accused gave these accounts of this accident which he said had occurred on the river.

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We now pass on to the two Amerindian Indians - Shadrack Castello and Clinton Alexander. They were the two men, you will remember, who say that they were together with a boy and another man in a boat in the

vicinity of Powis Island when they heard certain noises. Now, the question of time you, may feel, is of some importance. Shadrack Castello says that on the 24th of October, he went to Surnop about 1 a.m. to catch fish. Well, the man Clinton Alexander agrees that they had gone to catch fish and that they had gone to Surnop from Orealla, Orealla being further up river and that according to this man Clinton Alexander they had left home, that is Orealla, about 1 a.m. and had arrived at Powis Island around 5 p.m. Well, you have heard the submissions. They are quite fresh in your minds both by the defence and by the Crown about this timing question.

In the Supreme
Court of
British
Guiana

No.46

Judge's
Summing-up
23rd
November
1965
(Contd.)

Mr. Wills has submitted that if they were at Surnop outside of Powis Island about 1 a.m. then this woman Shirin Alli could hardly have seen the launch as she says between 11 and 12 midnight that same night. In other words, what Mr. Wills is submitting is that Alli could not have seen that launch at that time and that launch could not therefore have travelled down from Siperuta where Shirin Alli lived at that time to Powis Island in such a short time as to have been submerged in the river at 1 o'clock when Shadrack Castello said he was at Surnop.

On the other hand, the prosecution says that if you have regard to Clinton Alexander's evidence, what is meant is that the Amerindians left at 1 o'clock and arrived at Powis Island around about 5 o'clock in the morning on their way to do this fishing. Well there is a conflict of evidence there, members of the jury, and it is a matter for you to say whose time you will accept. Whatever time you accept, you may feel that these two men did see certain things they said they saw, because, you will recall that they picked up a drum and they took that drum to the Orealla Mission, handing it over to the headman at that mission, and according to P.C. Ramjattan a drum answering to the same description was taken from the headman in the presence of these two Amerindians and taken over from them into the custody of the police. So, as I say,

In the Supreme
Court of
British
Guiana

No.46

Judge's
Summing-up

23rd
November
1965
(Contd.)

you may feel that the question of time is an important matter and you are to resolve that as you feel the evidence points. But whatever conclusion you come to about the time, you may very well come to the conclusion that these men did pass Powis Island sometime during the hours of darkness, between the 23rd and the 24th, and they did witness certain things.

Well now, let us see what they said they saw. According to Castello, when they were in the vicinity of Powis Island he heard a noise coming from the Island as if someone was running in the bush. The boat in which they were was on the eastern side of that Island. He said he shone his torch and he saw a drum painted red and white. It was a dieselene drum and was floating in the water at the side of the Island. That drum in the Court yard which you yourselves have inspected and which he pointed out to you downstairs, Exhibit "F", is the drum. He said he placed the drum in the canoe and they returned to the spot where they had heard the noise.

Well, members of the jury, let me deal immediately with the question of the identity of the drums, this one and the other drum which, according to Ramjattan he had received at Mc Clemman from a Dutch man. Are you satisfied from the evidence which has been led that those drums did in fact come from the "Miss Carol"? You have heard the questions and answers being put to these men, that is, the two Amerindian men. You have heard them saying that the drum, Exhibit "F", is the drum they found. They said they say so because they took the drum to the Orealla Mission and that drum was handed over to the police. Raghubar says that is the type of drum in which his dieselene was stored and which was tied up on the "Miss Carol". It is a matter for you to say whether you are satisfied that that drum, Exhibit "F", and in fact the drum alleged to have been found on the other side of the river are drums from the "Miss Carol". You may or may not feel so. It is a matter entirely for you. You may entertain some reasonable doubt but it is entirely a matter for you.

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Or put it this way, you may hesitate to come to the conclusion that the drum alleged to have been found on the Dutch coast is in fact one of the drums from the "Miss Carol", or on the other hand, you may be satisfied it is. It is a matter entirely for you. But, members of the jury, you may feel that if there were drums answering to a certain description on that launch and one of those drums, or a drum rather answering the same description was found floating in the river in the immediate vicinity where the launch was eventually salvaged, you may find it difficult to resist the conclusion that that drum must have come from that launch. But as I say, it is a matter entirely for you. You must regard the evidence and come to a reasonable conclusion. You are expected to arrive at reasonable conclusions from the evidence which is led.

Now, this witness Castello went on to say that he flashed his light and he saw several human footprints on the mudflat at the side of the Island. Well, members of the jury, there again, it is a question of fact entirely for you. It is true that no photographs were taken of footprints, no attempts were made to measure footprints when the police went on that Island. You may feel, as has been suggested to you, that if there were footprints at all that when the police got on the Island and started to search to investigate, like the person or persons who have made previous footprints, they themselves would have made footprints on the Island and then it would have been difficult to set apart the original set of footprints which, according to Castello, he had seen on the Island. If this is so, what then is the purpose of taking photographs of footprints which may very well have been made by persons of the search party? You may feel that it would serve no useful purpose; in fact you may feel that if the Prosecution took footprints like those and in those circumstances attempt to present evidence of photographs of such footprints that they will be dishonest.

In the Supreme
Court of
British
Guiana

No.46

Judge's
Summing-up

23rd November
1965

(Contd.)

In the Supreme
Court of
British
Guiana

No.46

Judge's
Summing-up

23rd November
1965

(Contd.)

This witness, Castello, said he saw human footprints on the mudflat at the side of the Island. Well, you may or may not accept that; it is a matter for you. He said he went on to the Island. Well, there again, he went on to the Island. Now, he is not a policeman and you may feel that he would not make any attempt to keep his footprints apart from the footprints which he said he saw on the Island. There again, you may feel there is room for confusion of footprints. Anyway, he said he went on to the Island. Robertson, that is, one of the other men, shouted and they got no answer. He observed that the footprints led into the Island. He went off about a rod into the Island but the footprints had gone further in and he apparently did not go any further.

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He gives Chung's landing about 2 miles lower down the river, that is, south of the river from where he said he saw the footprints. Well, that may very well mean, members of the jury, that he takes into account the length of the Island plus the distance along the bank to Chung's place. Anyway, he said they all returned to the corial whereupon he heard a bubbling sound in the water. He shone his torch in that direction and he saw oil floating up to the surface of the water.

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He said there is no sand bank near to that spot where the oil was bubbling and he said that spot was about two rods from the Island. He said that they found a drum. I have already mentioned that and that they handed it over to the Captain of the Mission at Orealla.

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He said about four days later he was at Orealla and he saw Ramjattan who spoke to him to Alexander and to Robertson and they all went to Powis Island where he pointed out the spot where he had found the drum; the spot where he had seen the footprints and the spot where he had seen the bubbling. He said he saw Chin, the diver, diving there at that same spot and that later on Chin came up and said something. It is perhaps significant, members of the jury, that although this witness said that he went to Surnop at 1 a.m. to catch fish, in his cross-examination he said: "we left home at about 1 a.m. and we returned at midday." So, there

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you have it, it is a matter entirely for you to make up your minds on that aspect of the matter. He said their limit out was one day. They had taken cassava bread.

In the Supreme
Court of
British
Guiana

10 Then he was cross-examined as to why he said that that was the drum, that is, why Exhibit "F" was the drum he said he had found. You remember, he said he observed the word "Suriname" on the drum. He said he recognised it by the colour and the oil inside. Well, those are matters entirely for you.

No.46

Judge's
Summing-up

23rd
November
1965
(Contd.)

He said that the next time he saw the drum was at the Springlands Police Station. This must have been after he had seen the drum at the Orealla Mission, the next time he saw it was at Springlands Police Station.

20 Then he was asked whether he had seen footprints on Powis Island before and he said no but he could not remember having gone on that Island before, but he had passed there. He said the footprints were still present on the day when Chin dived. He also said he got to know Balchand at the Supreme Court on the previous occasion. He does not know where Balchand lived but Balchand had travelled with him to this Court. He said it was dark when he saw the bubbling and the bubbling was about six feet from him when he shone his torch at it.

30 Now, together with this evidence you have the evidence of Clinton Alexander who was also in the boat. He told you that he saw the drum in the water opposite the Powis Island; that they picked up the drum and placed it in the canoe then they reversed to the spot where he had heard this sound, that is, the sound of something running in the bush; that Castello shone his torch and went ashore with the two others, then they returned and
40 they went off to do their fishing and they left Surnop about 9 a.m. the following day and arrived at Orealla about 1 o'clock when he made a report to one Mc Lean Harman, the Captain of the mission, and handed the drum over to Harman.

In the Supreme
Court of
British
Guiana

No.46

Judge's
Summing-up

23rd
November
1965
(Contd.)

Then he said, on the 28th of October, as a result of a message he went to Harman's house. There he saw Ramjattan. Ramjattan spoke to him after which they all went to Powis Island where he pointed out the spot where he had seen the drum and where he had seen the bubbles and Winston Chin, the diver, who was present dived at that spot.

Then in answer to you, he said that Surnop is about 2 miles from Powis Island, but he said he did not with his own eyes see footprints on Powis Island. He said he remained in the boat at the stern. And then he demonstrated, you will recall, the length and breadth of the canoe in which they were travelling.

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Well, members of the jury, the sum total of these two witness' evidence is that sometime during the course of that night - it is a matter for you to say, having regard to the evidence, whether it was nearer midnight or it was nearer 5 o'clock in the morning - when they were passing Powis Island, they heard a sound as though something or someone was running in the bushes. They stopped and one of them went ashore, that is Castello, did not see anything except he said he saw footprints leading from the shore to the Island inwards and that they saw that drum, exhibit "F", which they picked up and handed to McLean Harman; that they heard a bubbling sound and that Castello flashed his torch and he saw what he described as oil coming to the surface.

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Well, members of the jury, you may wish to pay some attention to the fact, if you accept the evidence, that there was this bubbling sound, you may wish to use your ordinary everyday experience in this matter and you may very well come to the conclusion that the bubbling sound could have been made by air coming from under the surface of the water and if in fact the bubbling sound was being made as a result of the launch being under the water, then you may very well come to the conclusion that when they heard this bubbling sound that the launch itself had not yet been completely enveloped in water. In other words, there

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was still air somewhere down below which was causing this bubbling sound, and if that is so, then that may give you an idea and help you to come to a conclusion as to how long before they passed that Island that that launch had been submerged. It may assist you, you may feel, in coming to a conclusion on that aspect of the matter, because if you feel that the bubbles must have been caused by air coming up from under the water, then as I said, you may very well come to the conclusion that water had not entered all the parts then of the launch and engine or whatever it is down below and therefore it must have been, if you accept all of that, it is a matter entirely for you, recently emersed in that water; that is recently, before these Amerindians got up to Powis Island. That is a matter as I repeat, members of the jury, entirely for you. You may find no merit at all in that line of reasoning. Well, if you do not accept it, you are the judges of the facts. If you find some merit in it, well then you can consider it and you would place whatever value you think it deserves on it. So that completes another phase of this case, and now we pass on to the reports the accused is alleged to have made to the people at Crabwood Creek and those people for the purposes of this case, are three persons - Raghubar first, Corporal Bobb next and P.C. Ramjattan third.

Now, Raghubar says on the 24th of October, that is after, you will recall, he had made the trip up and he had returned. I dealt with that yesterday. He received a message; he went to his office and there he saw the accused and Jawalla. The accused told him that Dindial had taken ill with his appendix and that they had been bringing him down for medical attention, and when they were in front of Maam Island mouth, he heard an explosion and he found himself in the water and that when he floated to the surface of the water he found that the river was rough and it was dark. He swam on the British side; from there he went to Sonny Chung's camp. Then Raghubar said he asked the accused if he did not see any person swimming or shouting for help. The accused

In the Supreme
Court of
British
Guiana

No.46

Judge's
Summing-up

23rd
November
1965
(Contd.)

In the Supreme
Court of
British
Guiana

said no. Raghubar said he further asked him if he had not seen any vessel or vessels around the vicinity of the explosion and he said no.

No.46

Judge's
Summing-up

23rd
November
1965
(Contd.)

Raghubar said that the accused said that while he was at Sonny Chung's camp he saw a boat going towards Crabwood Creek and he signalled the boat and came down the river and after that, according to Raghubar, he took the accused to the Springlands Police Station. 10

Well members of the jury, this is a report being made again to his employer but before the police are brought into this matter, you may feel that - it is a matter for you if you accept Raghubar's evidence - at this state the accused began to alter his version somewhat. In substance you may feel it is the same, that is, that the accident occurred, but that the details of the accident you may feel, from this stage, he began to alter slightly. For instance, if you accept what he told the other witnesses about the boat colliding with another boat and it was off Powis Island, then if you accept this evidence you will find that he is saying that whatever occurred, occurred in front of Maam Island and that it was as a result of an explosion, because according to Raghubar, he asked the accused if he had seen any vessel or vessels in the vicinity of the explosion and the accused said no. Then as I said, Raghubar took the accused to the Springlands Police Station where a report was made to Corporal Bobb. Well, this is the first time that the Police - if you accept Corporal Bobb's evidence - are being informed of some accident occurring on the river as a result of which the "Miss Carol" was lost. Now therefore we will turn very briefly to Bobb's evidence. 20 30 40

Bobb says that on Thursday the 24th October, about 4.05 p.m. Raghubar and the accused came to the station, that is Springlands Police Station, and in the presence and hearing of the accused Raghubar reported to him that the accused and three other men, Baboon, Heera and Dindial - you will remember

the evidence is that Motie Singh is described by some of his friends as Baboon - were in the launch "Miss Carol" in the Corentyne River during the night of the 23rd and the early morning of the 24th October, and that the accused had told him that they had met in a collision with another launch and that the "Miss Carol" had sunk and the accused had said that he did not see the other three men.

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Bobb is now telling you what Raghubar said in the presence of the accused, that they had a collision with another launch, that is what Raghubar is saying, and that the "Miss Carol" had sunk and that he had not seen the three men. Bobb said, thereupon he questioned the accused as to how the accident had occurred and the accused said that he had been sleeping in the launch when he heard a crash and that he found himself in the water; that he swam to the shore and he did not see the other men. Then Bobb took a statement from him which was read over to the accused and which the accused signed as being true and correct.

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Bobb says that when the report was made he did not suspect foul play. As far as he was aware, at that time this was the first intimation the police were receiving as regards this incident and that he thought it was simply an accident that was being reported.

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He said in answer to defence counsel that he took a statement from the accused because he wanted to have something on record for submission to his superior officer in the event of further investigation.

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He also said Raghubar did mention that a large sum of money was being carried by one of the men. He said Raghubar named that man but he could not now remember that name. He said he made a record of the report about the money. He gives as his reason that he was then thinking of the launch and the men on the launch. Well, that is a matter entirely for you, but he

In the Supreme
Court of
British
Guiana

No.46

Judge's
Summing-up

23rd
November
1965
(Contd.)

In the Supreme
Court of
British
Guiana

No. 46

Judge's
Summing-up

23rd
November
1965
(Contd.)

does say that he took a statement from the accused which the accused signed giving an account of what had occurred that night, and members of the jury, I wish to draw to your attention that statement because this is part of the Crown's case. What the Crown is alleging is that throughout the investigations the accused was maintaining that there was an incident which caused the loss of the "Miss Carol". You may, as I have already indicated to you, feel that you ought to consider whether or not there was an incident as one of the subsidiary questions when you come to consider whether or not Motie Singh was murdered and if he was murdered whether it was the accused who murdered him. I will deal with that aspect when I come to deal, members of the jury, with the question whether or not there was an accident. I will merely at this stage so as not to break the sequence, refer to a statement which Corporal Bobb alleges the accused made. 10

As I understand the defence, members of the jury, they did not challenge the fact that the accused made a statement to Bobb or in fact they did not challenge that this statement, exhibit "Z" was made to Corporal Bobb. So it is necessary, I feel, that I should draw to your attention what the accused was saying when he was taken by Raghubar to Corporal Bobb at the Springlands Police Station. 30

After saying that sometime during last week, the day and date he could not remember, he left Crabwood Creek with Baboon, Heera and Dindial in the launch "Miss Carol" for Acabo, Corentyne River and that the launch was being driven by Baboon, he said this:

"About 8 p.m. on Wednesday 23rd October, 1963, the four of us left Washiaboo in the launch en route to Crabwood Creek. The launch had lights on port and starboard and was driven by Heera", 40

and members of the jury, I pause to draw your attention to this, that this reference

to time by the accused in this statement might also be of some importance for he goes on:

"About 2 a.m. on Thursday 24th October, 1963, as we were about Kanakaburi, Corentyne River, I fell asleep".

10 Well members of the jury, if that is so, then it is obvious, is it not, that he must have fallen asleep on the launch. In other words, the launch was still afloat and if that is so, then Shadrock Castello could hardly have seen or heard this bubbling sound at 1 o'clock that morning. Anyway, to continue with the accused's statement:

20 "Suddenly I felt an impact and the launch went down. I caught myself in the water and I began swimming for shore. I did not see the other three men that were with me as the night was very dark. I shouted for them thrice but I received no answer. I continued drifting in the water until I reached shore by Kanakaburi. I remained there until daybreak but I did not see the other three men. At daybreak I began walking on the water side until I reached one Sonny's house. I met Sonny at home and I told him what had happened. I asked him to carry me back to the scene with his boat but he told me that he had'nt any gas."

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Then he goes on to say that he saw Jawalla Persaud passing and that he gave him a lift down and on reaching Crabwood Creek he went on reported to Mr. Raghubar and Raghubar took him to the police station where he made a statement.

40 Then he added to his statement:

"When I was drifting in the water I heard the beating of an engine but I cannot say what collided with the launch. We were not drinking rum in

In the Supreme
Court of
British
Guiana

No.46

Judge's
Summing-up

23rd
November
1965
(Contd.)

In the Supreme
Court of
British
Guiana

the launch whilst we were travelling
as there was no rum in the launch.
I lost all my belongings that were
in the launch".

—
No.46

Judge's
Summing-up

23rd
November
1965
(Contd.)

Well, that is what he is alleged to have told
the police, members of the jury, and that is
that there was an accident and the launch
was lost as a result of that accident.

Now, he is alleged also to have told
Ramjattan on the 24th of October that about 8
p.m. on Wednesday the 23rd Dindial had
complained about being sick at Aporo and that
they left to come down river and that he,
Motie Singh and Dindial were sleeping when
suddenly he heard an impact as if the launch
had collided; that he found himself rolling
against the other men and that the launch
was under the water; that he managed to
get to the surface and he swam ashore.
He said that the incident occurred at 1 to
2 a.m. on the 24th in the centre of the
river in front of Maam Island. He further
said, according to Ramjattan, that when day
cleaned he walked to Sonny Chung's place.

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Now, those are the three people to
whom the accused subsequently made the
report at Crabwood Creek, that is, Raghubar
his employer and the Corporal the statement
in writing, and P.C. Ramjattan an oral
statement all to the effect that there was
an accident and this launch sank as a result
of this accident.

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Now members of the jury, we will pass
on to the search which was put in motion as
a result of this report which was made by
the accused.

The first person whose evidence I wish
to draw your attention to is the evidence of
Ganesh Persaud the son of the deceased,
Motie Singh. He received a report on
the 24th of October. On the 25th he searched
from Kanakaburi to Mc Lemmon Island in the
Corentyne River. He found nothing. He
returned home. On the 26th he went back

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up the river. The accused and others were with him. They went to Kanakaburi and as a result of what one Baldeo told him he joined a speed-boat belonging to one Ramjohn and went to Orealla. From there he joined a launch called the "Ganges" and he went further up the river for about two miles and there he said he saw the dead body of his father on the Dutch side of the river.

In the Supreme
Court of
British
Guiana

No.46

Judge's
Summing-up

10 He took the body out of the water and placed it in the boat and he observed that the neck was cut nearly through and the body - to use his language - burst in front. He said the accused was present and could have heard when Baldeo told him that he had seen the dead body of Dindial floating by the Siperuta Mission. He said, at the time when he found the body the accused arrived in the boat which he had left and he said he told the
20 accused that he believed that he (the accused) had murdered his father but the accused made no answer. Well, he is not bound to say anything, members of the jury, even though he was not being accused by the police - he was being accused by the son of the deceased. Well he said nothing. That you may feel is not a matter which ought to be held against him.

23rd
November
1965
(Contd.)

30 Ganesh Persaud said he told the accused this because while they were in the vicinity of Kanakaburi the accused told him to search there as the launch had circled there and if he went further up the petrol would run out. Ganesh Persaud said he had taken enough petrol.

40 Then he said he took the body of his father to Orealla where he found the two dead bodies of Heera and Dindial and from there after the bodies were placed in three coffins they were taken to the mortuary and he identified the body of his father at the post mortem examination. He maintains that the accused did say that the boat had sunk in the vicinity of Kanakaburi.

In cross-examination he says that he does not know where Siperuta is; that he found his father's body near to Orealla but on the Dutch side. Well, you will remember that the evidence is that the body of this man Motie Singh was

In the Supreme
Court of
British
Guiana

—
No.46

Judge's
Summing-up
23rd
November
1965
(Contd.)

found near to a place called "Cow Landing" which is a few miles - I think the evidence is about 4 miles up river beyond Orealla. What he is saying is that he found the father's body near to Orealla but over on the Dutch side, and it may be, members of the jury, of some importance, you may feel, to consider this aspect of the evidence if you accept it, that two bodies were found over on the Dutch side, that is, the body of Motie Singh and the body of Heera and one body, the body of Dindial was found higher up the river in the vicinity of Siperuta about 5 miles away. That is the evidence. If you accept it you may know what conclusions of fact you can get from those bits of evidence. You may feel that if in fact there was an accident that the bodies would have been found in the near vicinity of each other. It is a matter entirely for you. As I say, I will deal with this question whether or not there was an accident in a little while. I am merely dealing now with the finding of the bodies and where they were found. I have already told you that Ganesh Persaud had said he found his father's body on the Dutch side of the river near to Orealla.

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Now, he says that he knew Balchand who lived in Crabwood Creek about a mile from him and he saw Balchand on the afternoon of the 26th, that is, when Balchand was with the accused in the "Majestic". He denies having spoken to Balchand - and this is, you may feel, quite important. He said: it is not true that he (the witness) paid money to procure Balchand to get evidence in order to put the accused in trouble. He said he had known Balchand for 15 years and he had never given Balchand any money nor had he sent any money to him. Well at that stage the defence was suggesting that this witness Ganesh Persaud had paid Balchand to put the accused in trouble. Members of the jury, it is only right again for me to point out that this is a mere suggestion. There is absolutely no evidence to support this suggestion and you may very well feel that having regard to the suggestion later put to Balchand himself, and to Mr. Raghubar, that Raghubar had paid the man Balchand to get

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10 this evidence to put this accused in trouble that at this stage the defence was merely strawcatching. It is a matter entirely for you but that is the suggestion put to this witness. Notwithstanding the answer, you may very well feel that this man is guilty of having paid Balchand money to procure evidence against this accused person, but as I said, it is only right for me to point out to you that there is absolutely no evidence to support this suggestion and it remains what it is, a mere suggestion.

20 Now, we pass on members of the jury, to Raghubar's evidence, and the part he played in the search for these bodies. He said that on the 24th he went up river with Ramjattan, Corporal Bobb and P.C. Hally and the accused. They went with the launch "Majestic" and they went first of all to Mc Lemman which is the Forest Station on the Dutch side. There he saw the Captain of the Dutch launch "Crapper" who showed him a drum of diesel oil and he said, in the presence and hearing of the accused, the Captain said he had found it opposite the Forest Station at Siperuta, in the middle of the river. Well, there again members of the jury, he said he recognised that drum as one of the drums he had on the launch and it is a matter for you to say whether you are satisfied. I have already dealt with this aspect of the matter that that drum had come from the launch "Miss Carol". We do not have the Captain of the Dutch launch "Crapper" here to give evidence before you.

40 Anyway, this witness went up river, that is Raghubar, to Maam Island and the accused, according to him, pointed out a spot of about 150 feet south of Maam Island and said: This is the spot where the explosion took place and the launch sank." He said they searched but they found nothing, then they went to Powis Island where he was shown three kirati laths and in the water near to the bank he saw a brown shirt floating. He also saw a pillow-case floating. Then he said he saw a seat which he said belonged to the launch, "Miss Carol".

In the Supreme
Court of
British
Guiana

No.46

Judge's
Summing-up

23rd
November
1965
(Contd.)

In the Supreme
Court of
British
Guiana

No.46

Judge's
Summing-up

23rd
November
1965
(Contd.)

Then he said the search continued without success and that afternoon the accused was allowed to leave for his home and on the next day, the 26th, the party arrived and they went to Orealla where he was shown exhibit "F", that drum. Then as a result of what they were told he and Ramjattan went to Ann's Creek which is about 3 miles north of Siparute and on the British side, about 25 miles south of Maam Island. At Ann's Creek he said he saw the body of Dindial floating in the river against the bank and he said the body was dressed in a pair of shorts and had several incised wounds.

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Then he said Ramjohn arrived in a speed boat and spoke to them. They then went to Cow Landing in Ramjohn's boat about 5 miles away and at Cow Landing he saw the dead body of Heera floating in the water near to the bank. Heera's body also had several incised wounds. Then from there he said they went to Khan's sawmill where the coffins were made, then to Orealla where he saw the dead body of Motie Singh which also had several incised wounds.

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He further goes on to say that on the 28th of October, they all returned to Powis Island and there he saw the man Shadrock Castello and Clinton Alexander and that they pointed out a certain spot and he observed oil coming to the surface of the water; that Winston Chin dived at that spot and on the 31st of October he returned to the spot and on that day the launch was salvaged after which it was taken to Sonny Chung's landing at Surnop.

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He said the launch was baled and he observed that the seat of the launch was missing. The anchor and the chain were also missing. The sea water cork was also missing and exhibit "G" is that sea water cork which he said he found later in the vicinity of the stern of the launch. You will remember his indicating to you where he said he had found it when you visited the launch. He said he found that sea water cork towards the stern of the launch and he says - and you may very well believe this - that normally the sea cork is not usually where it was found

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but screwed on to what is called the sea water pipe to prevent water from entering into the launch.

In the Supreme
Court of
British
Guiana

No.46

Judge's
Summing-up
23rd November
1965
(Contd.)

Members of the jury, I am not going to take up your time by attempting to describe the engine or to describe the launch. You have seen those yourselves and I do not wish to tire you with any detailed description. You have already seen it. You have seen the gear lever. You have seen the compression knob or switch, whatever you wish to call it. You have seen the throttle and you have had explained to you by Gomannie how these things work. You have seen also the sea water pipe. You have seen him screw and unscrew the cork or that tap or whatever you wish to call it of that pipe and as I said, I do not wish to tire you with these details, except to point out to you that both Raghubar and Gomannie have maintained that there was a special spanner with which to screw and unscrew this cork. Gomannie, as I recall the evidence, admitted that this cork could be screwed and unscrewed by any other suitable spanner, like a shifting spanner for instance, but he maintains that in this particular case the engine was supplied with a spanner specially made for this purpose, and what both of these witnesses are saying - Raghubar and Gomannie - is that this spanner was missing. You will recall Gomannie saying that when they had gone up to Acabo, that he had opened this cork, he had cleaned the strainer and he had used that spanner and he had replaced that spanner on a nail which is provided specially for that purpose, but both Gomannie and Raghubar say that when the launch was salvaged the spanner was missing. Not only was the spanner missing, they say, but that other spanners unconnected with the sea water cork were still found in the boat. Well, the Crown is asking you to infer from that, first of all, that if there was no accident, then the launch must have been deliberately sunk and if it were deliberately sunk, then whoever did that accomplished that feat by unscrewing the sea cork, removing the strainer, opening the valve and throwing away the spanner. This is what the Crown is

In the Supreme
Court of
British
Guiana

No.46

Judge's
Summing-up

23rd
November
1965
(Contd.)

alleging in substance from all those circumstances. It is a matter for you to say whether there is any merit in the submission of the Crown or whether there is some merit in the allegation made by the accused that this launch sank as a result of an accident on the Corentyne River. It is a matter for you to say which one of those two submissions you find substance in or which one you find to be an insult to your intelligence or rather far-fetched.

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Now, this man Raghubar also said that he did not see any cutlass on board, and you will remember he was saying that when they left on the 15th of October, that all of them had taken cutlasses and axes with them. Now, he also said that when the launch was taken up from the river that the light switches were all in the off position, the gear lever was in neutral and in his view, he says, this means that when the launch sank it was not being driven under its power. In other words, the engine was not engaged. This is a matter entirely for you, members of the jury, whether you accept that or not.

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The defence is criticising, and you may feel justifiably so, the absence of the diver Chin. We have not had from the Crown any reason why Chin was not called but you are not to speculate. The fact remains that Chin was not called and the defence says that who can tell, perhaps Chin when he got down below, might had to switch these switches off, he might have had to put the gear in neutral and he might have had to put all the instruments in the position in which Raghubar said he saw them, and incidentally Gomannie, in order to salvage the boat. Well, as I said members of the jury, you may feel that the defence is quite justified in criticising the absence of Chin's evidence on that score. But it is a matter entirely for you. The Crown on the other hand suggests that even if it were necessary for Chin to have done these things, even if that were so you still have the allegation made by the accused that either the launch sank as a result of an explosion or as a result of an

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impact with another vessel, and the Crown says, in either of those two cases there ought to have been some damage to the vessel which would have caused it to sink.

In the Supreme
Court of
British
Guiana

Well, you have heard the evidence that there was absolutely no damage to this vessel and that the only reason why it sank to the bottom was because of the fact that this sea water cork was opened and there was no question of any collision or any explosion. Well there again, this is a finding of fact for you to make.

No.46

Judge's
Summing-up

23rd
November
1965

(Contd.)

Now, members of the jury, that completes the evidence which relates to the finding of the bodies, and as I said, you may feel it important in this case to consider or to take into account the evidence, if you accept it, of the fact that two bodies - Motie Singh's and Heera's - were found on the Dutch side of the river while the body of Dindial was found on the British side, and according to Police Constable Ramjattan, he drew the accused's attention to the fact that Heera's body was found at a spot of about 30 miles - Raghubar says 25 miles - away from the spot where the accused said the incident had occurred. Those are all matters which you may feel are of some importance and have some bearing on this case.

Now members of the jury, we will pass on to the question whether or not there was an accident. Let me say at the outset, if you feel that from the evidence in this case you can come to the conclusion that there was an accident and that this man Motie Singh died as a result of that accident, then this accused is entitled to be acquitted, and you must acquit him because the Crown will have failed to bring home the charge against him. If you have any reasonable doubt in your minds, whether or not there was an accident, then members of the jury, again you must acquit him.

When I come to deal with the defence it will be necessary for me to draw your attention that this accused does not say here

In the Supreme
Court of
British
Guiana

No.46

Judge's
Summing-up

23rd
November
1965
(Contd.)

before you in this case that there was an accident. He has said nothing as to what transpired on the river. Mind you he is not bound to say anything in answer to the charge. He may remain quiet, but he has said previously to the police and to all of those witnesses whose evidence I have gone through up to now, that there was an accident, and as I said, when I come to deal with the defence I will draw to your attention what the accused has said here before you.

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Now members of the jury, was there an accident in fact? I have as I said already, I think, dealt with those matters, the several reports made by the accused person to those various people and the written statement by the accused to the police in all of which he maintains that there was an accident, and he describes the accident or rather the loss of the launch as a result of a collision with another vessel or an explosion while the launch was in motion, that is, while the launch was being driven along the river and that is why the evidence of Gomannie and Coates - you will remember Coates, the man from the Skeldon Estate - that is why the evidence of those two witnesses is important as to what condition they found the launch in when it was salvaged because, if you accept it - and members of the jury, I am not going to repeat Coates' evidence or Gomannie's evidence in substance - it is that when the launch was brought up to the surface, you will remember Gomannie examining it at Sonny Chung's landing and Coates examining it at Raghubar's log pen or somewhere in that part of the world - the effect of the evidence of those two witnesses is this: (but it is a matter for you whether you accept it or not) that when they examined the launch, and that is, when the launch was brought up in the river it was in this condition, that is, the gear was in neutral, the throttle was at zero, the compression was at zero and from all of these things they concluded that the launch was not actually working when it sank, but as I said, members of the jury, I do not wish to tire you with all those details but this is the sum total of what

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they are saying, and it is a matter for you to say whether you are impressed by that evidence or whether you are not. Some of you may of yourselves have knowledge of these matters, that is, the effect of the gear being neutral or the throttle being at zero. You are entitled to use your knowledge, if you have any, but that is the evidence of these witnesses and you must say what you make of it.

In the Supreme
Court of
British
Guiana

No.46

Judge's
Summing-up

23rd
November
1965
(Contd.)

I have dealt, members of the jury, with the missing spanner and it leaves for me to mention just one answer on this aspect given by the witness Raghubar when he was being cross-examined to this effect that he was not aware that before salvaging all switches are turned off nor is he aware that the gear is put into neutral position, nor is he aware that the accelerator is put into zero position before salvaging operations have begun. Well, there again that is a suggestion by the defence. As I have already remarked, we have not got Chin here but the two witnesses, Coates and Gomannie, maintain that if the situation in which they found these various levers and switches, if that situation was as they found it when the launch was salvaged, then it means, according to their opinion, that the launch went to the bottom of the river while not working, while the engine was off. Well, as I say, members of the jury, this is entirely a matter for you but these are matters which I feel you must consider when you decide, as I feel you must give some consideration to this point, whether or not there was an accident because, as I said, if you feel that there was an accident and this man lost his life as a result of this accident, then the accused is entitled to be acquitted. If you have any reasonable doubts, again you must acquit him.

There now remains, members of the jury, two other aspects on this question whether or not there was an accident and one of them being the doctor's evidence. Now, I will have cause, members of the jury, to refer to the cause of death of the other two people Heera

In the Supreme
Court of
British
Guiana

No.46

Judge's
Summing-up

23rd
November
1965

(Contd.)

and Dindial but I wish you to bear in mind that this accused is not charged with the murder of anybody else except Motie Singh, but I merely wish to refer to the cause of death in respect of those two persons to help you to say whether or not there was an accident because, according to the evidence, if you accept the doctor's testimony, Heera had incised wounds on his body which, according to the doctor, was caused or could have been caused by a sharp cutting instrument, and that death was instantaneous and that Dindial also had incised wounds on his body which could have been caused by a sharp cutting instrument and that the man Heera had one wound extending for about 12 inches long on the front of the middle line of the abdomen extending from the lower part of the sternum to the pubis with the bowels protruding.

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Well, members of the jury, we turn to the evidence which relates to the injuries found on the body of the man Motie Singh. The doctor said that he found an incised wound 2 feet long along the centre of the abdomen from a point opposite the third rib down to the pubis. The abdominal wall was cut through and its contents were protruding, Secondly, he found an incised wound 8 inches long on the left side of the neck cutting through all the structures of the neck including the trachea and the sixth cervical vertebrae, and he gives as his opinion that the cause of death was haemorrhage and shock due to injuries one and two above. He said, either of those two injuries could have caused instant death.

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Now, he also said he found the skin on the left side of the face missing and the skin and muscles of both legs missing but these were due to fishes, no question of any suggestion that these were also incised wounds as described by the doctor.

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So that there are two wounds really which the doctor said he found on Motie Singh which are really relevant for purposes of this case. First of all an incised wound 2 feet long along the centre of the abdomen -

I have already described that - from a point opposite the third rib down to the pubis and an incised wound 8 inches long on the left side of the neck cutting through all the structures of the neck including the trachea and the sixth cervical vertebrae, and as I said, the doctor gave the cause of death as haemorrhage and shock due to injuries 1 and 2 above, that is those two injuries which I have described. He said that the wounds could have been inflicted with a sharp cutting instrument such as a cutlass and great force must have been used in both cases.

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Now, what you may feel, members of the jury, the doctor is saying in his evidence as contained in the depositions which were tendered before you, that this man died from wounds. Well members of the jury, you may feel that if in fact there had been an accident that you would expect if anybody lost their lives as a result of that accident it would have been from drowning, but there is no evidence here before you, members of the jury, to suggest that Motie Singh died from drowning. The evidence is that he died from wounds inflicted by a sharp cutting instrument. If you accept that evidence, members of the jury, and there again it is a question of fact for you, you have heard counsel for the defence quite properly tell you that you are not necessarily bound by the doctor's evidence; that sort of evidence is technical evidence and is tendered to assist you to come to a conclusion. You are not to hazard any guess, members of the jury. You are to have regard to the evidence which is before you. If you feel that that evidence which is before you leaves room for you to find that Motie Singh died from drowning, well then say so. It is a matter entirely for you. If, however, you feel that Motie Singh died from the wounds the doctor said he died from, then equally you will say so, and if you come to the conclusion; if you have any reasonable doubts in your minds, well then that is the end of the matter, you will not know then how Motie Singh died, you cannot be sure how he died - in other words, when I say how he died I mean what was the

In the Supreme
Court of
British
Guiana

No.46

Judge's
Summing-up

23rd
November
1965
(Contd.)

In the Supreme
Court of
British
Guiana

—
No.46

Judge's
Summing-up

23rd
November
1965
(Contd.)

cause of his death. As I said, if you feel that this evidence that is before you leaves room for your being in reasonable doubt as to the cause of Motie Singh's death, if you feel so, you will express it in your verdict. You are not to speculate. You are to have regard to the evidence which is before you and the evidence which is before you points unremittingly to the conclusion that Motie Singh died from wounds and if he died from wounds such as those described by the doctor, you may feel, members of the jury, that those wounds could not have been suffered in an accident as described by the accused. But as I said, members of the jury, it is a matter entirely for you.

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If you find that Motie Singh died from the wounds as described by the doctor, then you may feel there is abundance of evidence to suggest that Motie Singh was killed by somebody who inflicted those wounds on him. The Crown alleges it is the accused. The accused says no. His defence is he did not kill Motie Singh. It is a matter for you to decide, first of all, if Motie Singh died from the wounds which the doctor says he found and if so whether it was the accused who inflicted those wounds. If you can answer those two questions in the affirmative it seems to me, and you may very well feel so too, that the Crown has made out a very strong case against the accused. If you have any reasonable doubt in your minds, members of the jury, then the Crown will not have made out any case at all against the accused, in which case you must acquit him. It is a matter for you to say what you make of the evidence.

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Then there is the condition of the launch itself and I now deal, members of the jury, not with the switches and the levers and things of that sort, I have already dealt with those and I do not wish to repeat myself too often. That is the external condition of the launch.

In the Supreme
Court of
British
Guiana

No.46

Judge's
Summing-up

23rd
November
1965
(Contd.)

10 You have heard the man Verwey. He is also called Shennie. You will remember he said he built that launch. In fact the launch had been built earlier, according to his evidence, that same year and that on what he calls the right fender - you have seen what he is talking about - that there was a crack, that there was a left fender. Raghubar has said that that left fender has been worn away by use since then but other than that they say - it is a matter for you again - that the launch is in the same condition physically as it was when it left Crabwood Creek on the 15th. At least Raghubar says so. Can you, members of the jury, having regard to the condition in which the witness says the launch was when it was salvaged, rule out completely the possibility that there was an accident? That is, the condition of the launch, the medical evidence, 20 the missing spanner, the evidence of Gomannie and Coates? Having regard to all of that evidence you may ask yourselves whether you can rule out completely this suggestion by the defence, during the course of the investigations, that this launch was lost as a result of an accident. As I said earlier in this summing-up, members of the jury, the cause for the loss of the launch may be of importance when you come to 30 consider whether the man Motie Singh died as a result of the loss of that launch or whether he died as a result of the injuries which the doctor said he found on him. So, having regard to all of these matters, members of the jury, you must make your findings as you see fit in accordance with the evidence and in accordance with the oath you have taken.

40 Now having said all of that, I now turn to what you may regard as very very important evidence indeed in this matter, that is the evidence of the witness Balchand. He is a logger. He lives at Crabwood Creek, he says, and he cuts logs at a place called Mari Mari which is about 448 miles up the Corentyne River. He said he knew Motie Singh, Dindial and Heera

In the Supreme
Court of
British
Guiana

No.46

Judge's
Summing-up

23rd
November
1965
(Contd.)

and he also knows the accused whom he knows as "Better Boy". He said he had known him for about 15 years. Then you will recall his answer to Mr. Wills that he had told the Magistrate then, that is, that he had told the Magistrate during the taking of his depositions which I think was in September of this year, that he had only known the accused for about 4 years.

Now, he apparently, according to his evidence, was at Raghubar's Sawmill around 2 o'clock on the 24th of October when the accused and Jawalla Persaud arrived. He said the accused spoke to Raghubar after which the accused and Raghubar left for Springlands. Then he said, on the 25th of October about 7 a.m. he left Crabwood Creek in his boat with about three or four other men and they went up the Corentyne River in search of the boat "Miss Carol". He assisted in searching the river between Maam and Powis Islands but found nothing. About 7 p.m. on the same day he left with the accused and others in his boat and they went to Crabwood Creek. Then he returned up the river on the 26th of October with some other men and when he was in the vicinity of the Island called "Parrot Island" which is about two and a half miles above Powis Island one Baldeo spoke to him and as a result of that he went up river to Cow Landing which is on the Dutch side and there he saw the body of Heera floating in the river near to the shore; it was caught in bushes near to the edge of the water and he placed the body in his boat.

He continued up river and about 5 miles up on the British side and below Siperuta he saw the body of Dindial floating in the river about 2 rods from the shore and that body was placed in his boat after which he went to Khan's sawmill at Siperuta where three coffins were made and the bodies placed in the coffins and then they went to Orealla. At Orealla he saw the dead body of Motie Singh and he noticed that there was a wound on the neck and a wound on the front of the body. That body was then placed in a third coffin and all were taken to Skeldon Estate.

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He says, on the way to Crabwood Creek his boat with the bodies in it was being towed by the "Majestic" and he (Balchand) was in the "Majestic" and so was the accused and so was P.C. Ramjattan, and on the journey down the accused said he would like to speak to the witness Balchand and Ramjattan stopped them from speaking and said that no one must speak to the accused.

10 Then, members of the jury, he goes on to say that on the 28th the police hired his boat. He went to Powis Island and there he saw Ramjattan, Raghubar, Winston Chin and several others including Shadrack Castello and Clinton Alexander and these two men indicated the spot where Chin threw a grapple in the river and then dived into the river and returned to the surface. Then he said they brought the launch "Miss Carol" from under
20 the river at that same spot and he claims that he was present during the entire operations.

Well now, members of the jury, evidence of that nature you have had from Raghubar and also from P.C. Ramjattan. The important part of this witness' testimony, you will appreciate, relates to the alleged conversation this witness had with the accused person.

30 Now, the evidence is, according to this witness, that there were two conversations, one at the New Amsterdam Prison and one at the Whim Lockups. Now, with respect to that first conversation this witness said that on the 3rd of November he was at Crabwood Creek when a brother of the accused called Preacher spoke to him and as a result on the 6th of November he went to New Amsterdam Prison around 2 o'clock. You will remember he was asked why did he worry to go on the 7th and not before. Well he said that that was
40 the most convenient time for him to have gone.

He said that there he spoke to a Prison Officer who took him to the waiting room, and the accused was brought there. Now, you will recall his saying in answer to Mr. Wills that

In the Supreme
Court of
British
Guiana

No.46

Judge's
Summing-up

23rd
November
1965
(Contd.)

In the Supreme
Court of
British
Guiana

No.46

Judge's
Summing-up

23rd
November
1965
(Contd.)

on the day when he came to New Amsterdam he had gone to the Police Station in search of Inspector Chee-a-Tow who, he understood, had been making enquiries for him. He found him subsequently and made a statement to him before he went to the Prison.

In answer to Mr. Wills, he said he did mention the name Preacher to Chee-a-Tow and that he had given a long statement to Chee-a-Tow that morning before he went to the Prison. 10

Now, he said when he met the accused in the Prison the accused said: "Bal, man ah glad you come, ah want to see you very important". He said he (Balchand) asked him what was it all about and the accused said he wanted him (Balchand) to help him because he knew he (the witness) had an engine and a boat. The witness said he asked him what he could do to help him and he said he got the money in Powis Island and he wanted the witness to go to the Island. 20

He said the Prison Officer who in the meantime had been patrolling behind the accused came up and said that time was up and he left the Prison.

Now members of the jury, you may find little difficulty in coming to the conclusion that this man Balchand did visit the Prisons on the morning of the 6th of November. As I said, you might find little difficulty in accepting that this visit did take place if you accept Balchand's evidence and also if you accept Stanley Hall's evidence - the Prison Officer - that he was there at the Prisons on duty around 2.15 p.m. when Balchand went to the Prisons and he escorted the accused from the Prison to the visiting room where the two men spoke to each other, according to him, in low tones. 30

He said he was about five feet away but he could not hear what they were speaking about. He allowed them to speak for about 10 minutes after which he escorted the accused back to the lock-up and Balchand escorted out. He said the particulars of that visit was recorded in the Gate Occurrence Book and the Visitors' Book, and in answer to Mr. Wills he said he was not requested to eavesdrop on this 40

conversation.

He said he could not remember whether there was another unconvicted prisoner called Ramchandra also called Neil. Well members of the jury, you have heard no evidence from anybody called Ramchandra so you would not consider Ramchandra an important witness in this matter at all.

10 Well now, to get back to Balchand's evidence. He visited, as I said, the accused at the New Amsterdam Prisons on the 6th of November, and according to him, there was this conversation. Then on the 7th of November he went to Springlands Magistrate's Court where he saw Ramjattan and he spoke to him and Ramjattan gave him certain instructions.

20 On the 12th of November he went to Whim Police Station. There he spoke to Sargeant Barker after which he went to the lock-ups at Whim Police Station. At that time no one was in the lock-ups and the accused was brought into the lock-ups later on. Now, there again members of the jury, you may have little difficulty in coming to the conclusion that there was this visit. Indeed, as I understand the cross-examination by learned counsel for the defence and by his address to you, the defence accepts that these two men met at the New Amsterdam Prisons and at the Whim lock-ups.

30 Sargeant Barker has given evidence about what occurred at the Whim lock-ups. This was on the 12th of November.

40 He said that Balchand went to the Station, spoke to him as a result of which he spoke to Mr. Subryan who was then the Superintendent in charge and he permitted Balchand to go into the lock-ups where he waited. Well, you will remember his saying, and Balchand saying that he requested to go into the lock-ups because he wanted to rest. The defence says that that is all untrue, that he went into the lock-ups because they were expecting the accused and that the arrangement was to place the accused and Balchand together. Well members of the jury, having regard to the fact that Balchand spoke to Ramjattan and that he got certain instructions

In the Supreme
Court of
British
Guiana

No.46

Judge's
Summing-up

23rd
November
1965
(Contd.)

In the Supreme
Court of
British
Guiana

No.46

Judge's
Summing-up
23rd
November
1965
(Contd.)

from Ramjattan, you may very well feel that the police had arranged or had facilitated this meeting between these two people at the Whim lock-ups. If you accept Balchand's evidence you may feel that his first visit, that is, the visit to the New Amsterdam Prison was as a result, if you accept his evidence, of what the accused's brother Preacher told him. That is what he says. Up to that stage, if you accept his evidence, he had not yet communicated with Ramjattan that he had given a statement to Inspector Chee-a-Tow in New Amsterdam in the morning before he went to the New Amsterdam Prison, but as I was saying you may very well feel that the evidence points to the conclusion that the police were well aware that Balchand was going to meet the accused and that they provided the facilities for their meeting at the Whim Police Station.

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Barker says around one o'clock the accused was brought to the Station and he was placed in the same lock-ups with Balchand only the two of them being in that lock-up and they remained there for an hour, after which Balchand and he (the witness) spoke to Mr. Subryan. Balchand left and then the accused remained in the lock-ups.

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He accepts that on that day the accused was in custody on a charge and he was taken to the Whim Police Station to be remanded by the Magistrate. He said he made no note of Balchand's visit to the Police Station and he had known before that Balchand wanted to speak with the accused but he did not speak to the accused about Balchand and that before the accused was placed in the cell he appreciated that the accused could have told Balchand something which might incriminate or exculpate himself and that the accused believed that Balchand could have helped him. Well members of the jury, that is the opinion or the feeling of this witness Barker. We do not know what the accused himself felt but Barker is saying that the accused may very well have told Balchand something which might have incriminated him or exculpated him. Well now, that is the evidence of Sergeant Barker.

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Now, let us go back to Balchand's evidence. He said that when he was in the lock-ups the accused asked him: "Man Bal, what you ah do here, you got the money?" And he said he told him he did not get the money as he did not have proper directions. He said the accused told him as they were together he would tell him the correct spot where the money was. He told him to go to Powis Island - at the head of the Island, and here I use the exact language which the witness used: "Go in 25 rods from the head of the Island and you must go and search for a mora tree about 5 to 6 inches thick shaven on the trunk with a cutlass, and with a vine tied with some young mora leaves around the trunk, and from the tree you must go 6 rods low side, and you will see a large big mora tree and dig under the mora tree about 6 inches, and you will see the money there."

In the Supreme
Court of
British
Guiana

No.46

Judge's
Summing-up

23rd
November
1965
(Contd.)

Then the witness continued that the accused said that he must take \$1,000 for himself and gave his father-in-law the balance of the money. He said the accused also told him that he must tell his father-in-law that he must not forget the buck-men and the witness said he promised him that he would do this. Then, according to Balchand, he asked the accused how the money got missing and he said that whilst they were coming on the river - to use his own language again - "we slip out the money and hide it in the launch". Then he said he asked the accused how the bodies got chopped. He said the accused told him that Dindial caused the whole trouble. He said that whilst they were coming Motie Singh and Heera wanted to go to the Dutch police station to report the loss of the money; that Heera and Dindial had an argument and Dindial told Heera to stop the launch; that Heera said: "no man, awe a go report the matter at the Dutch police station"; that while arguing Dindial picked up a cutlass and gave Heera several chops. The witness said that the accused further said that Motie Singh went to assist Heera and he (the accused) picked up his cutlass and chopped Motie Singh on his neck and the two of them decide to burst the belly of the men and to tie them and sink them with

In the Supreme
Court of
British
Guiana

No.46

Judge's
Summing-up

23rd
November
1965

(Contd.)

the boat anchor.

Well members of the jury, I will in a little deal with the question raised by the defence as to how much weight you ought to attach to a statement of this sort, but if you accept that this narrative by the accused is true, then you may feel that the Crown, as I have said before on another aspect, have established quite clearly the charge against the accused person. It is a matter for you to say whether you feel that the accused made this statement. 10

Here again, as I understand the defence, they are not denying that this statement had been made. What they are saying is, as I understand their submission, that the accused made this statement to Balchand as a result of a promise held out by Balchand with the connivance and the consent of the police. Well members of the jury, I have already, as you must appreciate, ruled that the statement is admissible. However, that does not preclude you from determining whether or not a promise of favour was held out to the accused with the connivance and 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. For instance, you will see whether the statement that Motie Singh and Heera wanted to go to the Dutch police station, and to see whether the fact that the bodies of those two persons were found on the Dutch side of the river, whether that is a matter which you find of some importance; then you will see whether the fact that the accused is alleged to have said that Dindial picked up the cutlass, gave Heera several chops and he (the accused) chopped Motie Singh when Motie Singh went to the assistance of Heera and that he and Dindial decided 20 30 40

to cut the belly of these two men and to tie them and sink them with the anchor chain, whether that also fits with the circumstances, circumstances being that these two men were in fact discovered, if you accept that evidence, with the front of their stomachs cut open and that Dindial himself, his body did not have that type of wound and in addition that the chain and anchor of the boat are in fact missing. If you accept that evidence those are all circumstances which you may wish to consider in the event of your coming to the conclusion that that statement was a completely voluntary one. You will also, no doubt, take into account the report which Arjune Rama alleges that the accused made to him that he did go on to Powis Island and crossed over from there on to the British shore.

In the Supreme
Court of
British
Guiana

No.46

Judge's
Summing-up

23rd
November
1965
(Contd.)

Members of the jury, what the accused is alleged to have told Balchand, you may feel, is clearly an admission of the part he played in this incident. If you accept that he did make this statement voluntarily, then you may feel that that is another element which you can properly take into account to rule out any question of an accident having occurred.

A confession, in order to be admissible, must be free and voluntary, that is, 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. The question is, members of the jury, was the prisoner induced by a person in authority to make the confession incriminating himself, on which the Crown relies with the hope of obtaining the conviction of the prisoner?

As I said, I have already ruled on the conversation but that does not rule you out, as judges of the facts, from considering whether it was a voluntary statement made by the accused and if so what weight you will place upon it. You are still entitled to consider whether it was obtained by reason of a promise held out by Balchand with the approval or connivance or both of the police. As I said the defence is not saying that this conversation

In the Supreme
Court of
British
Guiana

No.46

Judge's
Summing-up

23rd
November
1965
(Contd.)

never took place. The defence is saying that whatever took place was motivated by a promise held out by Balchand to help. The question is, members of the jury did the accused say what he is alleged to have told Balchand? Did he say that at all, and if so, did he say it because he felt either by Balchand's words or conduct that he would gain some advantage from the police in relation to this charge by saying what he said to Balchand? If you feel that that is so or you have any reasonable doubts whether that is so or not, members of the jury, then disregard this conversation. But you will no doubt bear in mind that the first visit, if you accept Balchand's evidence, was as a result of what the accused's brother and not the police told Balchand. You may very well feel, if you accept that evidence, that Balchand visited the New Amsterdam Prisons as I said as a result of what Preacher told him, and Balchand is saying that the accused asked him to assist him recovering this money, and as I said, members of the jury, you may have no doubt whatever that Balchand must have communicated this fact to the police and that the police must have facilitated this meeting. But that is not enough, members of the jury, for the point which I was trying to make. You must be of the view that the police through Balchand, held out a promise to this accused, or as I said, you may not be sure of this and if you are not sure it is the same thing as if they held out a promise to this accused.

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The onus is on the Crown to prove that this statement is voluntary, and members of the jury, there can be nothing to prevent the police or the Crown from using evidence which is made up of a statement made by one prisoner to another, provided that the prisoner who made the statement was not forced into making that statement or was not promised any reward or did not have any hope of any reward or things of that nature. There is nothing to prevent them from using that sort of evidence.

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10 What the defence is alleging is that Balchand lied when he told the accused - and Balchand accepts this - that he was there on a warrant. Well, Balchand said that he did tell the accused that because he did not want him to know that the police had brought him there to speak to him. Well there again, you have enough evidence on which you can find that the police facilitated him, but there again you have to find whether the police through Balchand held out any promise to this man to cause him to make this statement.

20 I would like to repeat that. As I understand the defence, it is not that the statement was not made but that it 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. Well as I said, members of the jury, if you find that that is so or you have any reasonable doubts in your minds, then reject the statement. If, however, you feel that there is substance in the submission of the Crown that this was a case of a man speaking to his friend in the hope of getting some assistance from his friend in relation to the recovery of this money, well then, you may feel that you are quite entitled to consider the statement and place whatever weight you wish on it. As I said members of the jury, this is the most important part of this witness' testimony and I do not wish to dwell any longer on this witness' testimony except to refer to this reward of one thousand dollars which Raghubar said he paid him and which he admitted having received.

40 He denied under cross-examination that he was under strained circumstances at the time. You remember he admitted that his house was mortgaged sometime previous and that house had been seized but subsequently he bought the house, and it is not a question of using this money to buy this house.

Raghubar said that he gave him this thousand dollars for the work he did in

In the Supreme
Court of
British
Guiana

No.46

Judge's
Summing-up

23rd
November
1965

(Contd.)

In the Supreme
Court of
British
Guiana

No.46

Judge's
Summing-up

23rd
November
1965
(Contd.)

helping to recover this money and other work in connection with the salvaging of the launch. Well members of the jury, what the defence is urging you to say is that this money was paid by Raghubar to Balchand to give false evidence in this matter. This was the suggestion put to Raghubar by counsel for the defence which suggestion was denied. It has been established that this money was paid after the first trial - you have heard that there was a previous trial in connection with this matter - was completed. The defence said that that had to be so because this was in the nature of a reward for the part he played and particularly for giving this false testimony in this case. The prosecution on the other hand urges that the money could hardly have been paid before the case was completed because if that had been done then you would have heard the other criticism that he was paid for the purpose of giving false testimony. So, either way, according to the Crown, you would have this criticism but it is a matter again entirely for you.

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Raghubar said that he gave this sum of money in cash to Balchand for the work he had done. Well there is no doubt, if you accept his evidence and the evidence of the other witnesses, that Balchand did take a very active part in the recovery of the bodies and the recovery of the launch and in fact gave evidence for the Crown in this matter, and you must say whether you feel that he was bribed, in other words, to give false testimony against this accused person.

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I wish now, members of the jury, to pass very briefly to the search on Powis Island. What the Crown is alleging is that this search took place as a result of information given to Balchand by the accused person. That is how the Crown alleges the policemen and Raghubar were able to go to Powis Island and to find the money. I have already dealt with how they were able to salvage the launch. That aspect of the case turns around the evidence of the two Amerindians as to what they saw and how they took the men to the spot, how Chin dived and the launch was in fact

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found at that spot. This part of my remarks to you will now be devoted to the search on Powis Island, in other words, the finding of the money.

In the Supreme Court of British Guiana

No.46

10 Now, first of all you have the evidence of P.C. De'Abreu. He said that on the 28th of October he went up the Corentyne River with Chee-a-Tow and a party of policemen and he went to a spot near to Powis Island and there he saw the two Amerindians. Castello and others pointed to a spot near to the Island and he saw Chin diving at that spot.

Judge's Summing-up

23rd November 1965

(Contd.)

20 He said on the 29th of October, he went on the Island and he said he saw from the eastern edge of the Island human footprints leading from the eastern side to the western side. He followed the footprints to a spot on the Island where he saw a pair of pants hanging on a tree and he took possession of that pair of trousers. He said he continued along the Island where he saw more footprints leading to the northern edge of the Island. These footprints, says this witness, led to a mudflat and then on to the British side of the river. He followed the footprints which went north until he found an opening in the bushes. He walked across and from that opening a track emerged and following that track he got to Chung's camp which was about 150 rods away.

30 Now, he said he handed that pair of trousers to P.C. Ramjattan. In answer to Mr. Wills he said on the 28th the Amerindians did not point out any footprints and that the nearest footprint was about 25 to 30 feet from the spot where Chin dived.

40 He said he did not put the trousers on the tree for Bayne to take the photograph. You will remember that there is a photograph here. He said he did not see photographs taken by Bayne but he was present when the pants were put on the tree but he could not remember who did so, and then he talked about no one measuring the footprints or taking photographs of the footprints. Well I have already dealt with that aspect of the matter, members of the jury.

In the Supreme
Court of
British
Guiana

No.46

Judge's
Summing-up

23rd
November
1965
(Contd.)

The importance of this witness' testimony you may feel is, if you accept it, that he found a pair of trousers hanging on a tree which pair of trousers he handed to P.C. Ramjattan. That pair of trousers, according to P.C. Ramjattan, he showed to the witness Quillo, Pinter and Gomannie. They spoke to him and he says that that pair of trousers has since rotted away and is no longer available to be tendered in evidence.

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He says he took that pair of trousers to the Springlands Police Station on the 29th October and he showed it to the accused and told him that it was found at Powis Island and he cautioned him. He said the accused put the trousers on and claimed it as his property.

Now members of the jury, the defence in clear terms, through cross-examination, has denied this incident. They have put to this witness that this question of the accused admitting that this pair of pants belonged to him and his trying it on never occurred at all and that Ramjattan is lying on this score. Ramjattan said that incident did occur and that the accused did admit that this pair of pants belonged to him. Well there again, there is a conflict of views. The prosecution says it occurred. The defence says no. You are faced with the problem of making a finding of fact on that score. If you feel that you cannot rely on Ramjattan's evidence, well then, reject that evidence. If it raises some doubt in your minds, then again you must reject it. If you accept Ramjattan's evidence, then it is a question for you to say how much weight you attach to it.

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If you find that De Abreu did find the pair of trousers on that Island, which pair of trousers the accused tried on and admitted as belonging to him, then you may very well feel that the accused must have been on Powis Island, and as I said before, you will no doubt remember the evidence of Arjune Rama that the accused did tell him - it is a matter for you to say whether you accept it or not - that after the accident he did go on and across over from Powis Island on to the mainland,

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but as I said members of the jury, it is a matter entirely for you.

In the Supreme
Court of
British
Guiana

No. 46

Judge's
Summing-up

23rd
November
1965

(Contd.)

10 Now, we pass on to the search proper, members of the jury. On the 13th of November, according to the Crown's witnesses this search took place. They arrived at the Island at about 12.30 to 1 p.m., and when I say they I mean Ramjohn, Raghubar Davidson and Balchand, and they went to the northern end of Powis Island. They walked for 25 rods inland in a south westerly direction - this is Ramjattan's evidence, and they found a small mora tree about 5 inches in diameter with a portion of the bark shaven and the bottom tied around with a vine. The trunk, exhibit "H", was tendered in evidence.

20 Ramjattan said he called the rest of the party and showed them this tree. He then received further instructions from Balchand and they continued to search and around 4 o'clock that evening Raghubar shouted. He went up to him and he saw a spot. He dug at that spot and found a bundle of money tied in a handkerchief. The money was soaked and both the money and the handkerchief appeared to have been eaten by wood ants and when checked it amounted to four thousand seven hundred and eighty dollars, C.W.I. Currency and one thousand Dutch guilders. You will remember 30 Raghubar's evidence is that after the two hundred dollars had been paid to Jones, he had left with Motie Singh four thousand eight hundred dollars plus one thousand dutch guilders.

40 Then he said in cross-examination that when Raghubar shouted he was about 4 feet from him searching. Raghubar had a cutlass embedded in the earth and he saw the money when the cutlass was wrenched by Raghubar. He could not have seen the money before as it was covered with earth and when Raghubar shouted he felt that something had been found which could be relevant to what they were searching for. He said at the time of the search he had everyone under his supervision and that he would look at them now and again.

Now, the defence is saying that they do

In the Supreme
Court of
British
Guiana

No.46

Judge's
Summing-up

23rd
November
1965
(Contd.)

not dispute that this man did go on to Powis Island on the 30th of November, but that all of this was a mere fake performance and that is, that Raghubar had planted this money there again with the connivance of the police and that there was no question of their having searched, using these signs which Balchand alleges the accused gave him and no question of their finding this money as a result of a search. The prosecution alleges that the search did take place and that the money was found in the circumstances under which they allege and that if it was a question of a fake search, then it would have been idle first of all for Balchand to have gone to the Whim Police Station and see the accused and it would have been idle for them to have gone to Powis Island at all and go through the whole motion to say that they found this money. 10

Well, there again members of the jury, you have two competing stories and it is a matter entirely for you. The Crown wishes to draw to your attention the state of the money, and they are saying that if you accept that the money was in that state on the 13th of November then it would mean that it had been in the earth exposed to wood ants for some time and if that is so, then it would follow that that money must have been planted there - if it was planted by the police or by Raghubar or by whoever the police wished to use - some days before the day of the search. They say that it could hardly have been eaten away partly by wood ants if it was there for a very short while. Well, there again, it is a matter entirely for you, members of the jury. 20 30

If you feel that all of this was planted there for the purpose of this case, then of course you cannot accept the testimony relating to this search. If you accept the Prosecutions' evidence on this score, then you will come to the conclusion no doubt that the money was found as has been alleged by Raghubar and by Balchand and by Ramjattan. Again the Crown says that if in fact the money was planted on this Island, then it could not have been the money which Raghubar said he had left with Motie Singh: it must be different money: So the Crown asks you to find. 40

If you were to find that this money was in fact planted there, then it could hardly be the money which Raghubar had left with Motie Singh and the Crown says, well if that is so, then where is the money that Motie Singh had been carrying? They said it was not found on the boat and it was not found on the person of Motie Singh, and they say in those circumstances there is enough evidence on which you can find two things; that there was no collision and that this was the money which Motie Singh had been carrying and which had been left with him by the man Raghubar. Well those are all questions of fact, members of the jury, for you to determine. You must make up your minds on all those issues.

In the Supreme
Court of
British
Guiana

No.46

Judge's
Summing-up

23rd
November
1965
(Contd.)

This summing-up, members of the jury, has taken quite some time simply for the reason that the evidence has been quite lengthy and I certainly do not propose to repeat all I have said yesterday. I merely wish, as I am drawing towards the end of my remarks to you, to remind you broadly of certain things I mentioned to you yesterday. Before I pass on to them, however, I wish to read to you what the accused has said in his defence from the dock, and you are entitled to consider this as carefully as you will consider the evidence for the Crown.

He says this:

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

Well, members of the jury, I pause here to tell you this, that if by that statement the accused intends to convey to you the meaning or the impression, or wishes to tell you that Raghubar, Balchand and Ramjattan have lied against him thereby causing him to stand a second trial, well that is a question of fact entirely for you. That is what you are here for, to say whether you can rely upon the evidence of the Prosecution or not. If, however, by that he wishes to convey to you any information with respect to the

In the Supreme
Court of
British
Guiana

indictment itself, well I wish to tell you that neither Raghubar, Balchand nor Ramjattan could have anything to do with the indictment itself.

No.46

He goes on to say:

Judge's
Summing-up

"The Miss Carol was registered in Dutch Guiana."

23rd
November
1965
(Contd.)

Well, Ramjattan under cross-examination, you will remember, denies this. You have Ramjattan's evidence as against this statement made by the accused. Whether this is important for you at this stage, I do not know. You must consider it. He has given it as part of his defence.

10

He said:

"She is a dutch ship".

There again, whether that is important to you at this stage is a matter entirely for you to say - whether the fact that the "Miss Carol" is registered in Dutch Guiana and whether she is a Dutch ship is material to the question whether or not the Crown has proved its case of murder against the accused person.

20

He further says:

"I did not kill Motie Singh. That is all".

Well, by that you may understand him to be saying he is denying the charge. He is saying in effect: "I did not kill Motie Singh. Let the Crown prove its case if they can".

30

Well, members of the jury, in this statement, as I said earlier in this summing-up, he does not say a word about an accident or how the launch "Miss Carol" came to sink. He does say so according to the Crown's case, in a written statement to the police and in oral statements to other witnesses, but here before you he does not say anything on that aspect of the matter. I have already remarked

that he is not bound to say anything but whatever he says you will examine as carefully as you will examine the Crown's case, and arrive at your verdict.

In the Supreme
Court of
British
Guiana

10 Members of the jury, lastly, I wish to tell you this: you will remember the general principles which I gave you yesterday, and that is, that the accused has not to prove his innocence; the Crown must prove him
10 guilty before you can convict him; you must be satisfied beyond all reasonable doubt before you can convict him. That is another way of saying that you must be sure that the Crown has established his guilt before you can convict and that burden of proving him guilty rests on the Crown throughout and never shifts.

No.46

Judge's
Summing-up
23rd
November
1965
(Contd.)

20 Further, I wish to remind you that in considering whether the Crown has established the guilt of this accused person you are entitled to, indeed you must, consider the whole of the case. By that I mean the case for the Crown as given to you out of the mouths of the various witnesses, including the written statement which it is alleged he made to Corporal Bobb and the statement which he has made here before you from the dock. Consider all of those things, members
30 of the jury, and arrive at your verdict as you feel the evidence points and in accordance with the oath which you have taken.

40 Members of the jury, before I finally leave the case in your hands, there is one other aspect I wish to draw to your attention, and that is this - I think I have already impressed this matter upon your minds throughout the hearing of this case but I feel I am justified in the circumstances to repeat this warning - this very strong warning to all of you - that this case has taken, as I explained to you a little over three weeks and you have been going and coming to and from these Courts to your homes and perhaps to your places of business and you have been free to move around in your locality wherever you live. It may be that persons have been discussing

In the Supreme
Court of
British
Guiana

No.46

Judge's
Summing-up

23rd
November
1965
(Contd.)

this case with you. During the course of this trial I warned you that you must not discuss this case with anybody. I am not saying, members of the jury, that you have. I do not know whether you have or you have not. You must know this, but if you have I am sure you would not have been, if you took my caution seriously, the author of those discussions. I am sure that if this case was discussed with you those discussions must have been thrown upon you. Well, whatever might be the case, of course there might not have been any discussions at all, I do not know, but I merely wish to warn you quite strongly that if any discussion took place in this matter, whether with you or in your presence and hearing by anyone, you are to disregard those discussions. If you arrive at a verdict in this matter other than on the evidence which you have heard in this case, it will not be a verdict which you have sworn to arrive at. You have been sworn to pay attention to the evidence, to have regard to this evidence and to arrive at a verdict accordingly.

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All of this warning to you, members of the jury can be put very briefly and that is this: arrive at your verdict, whatever verdict you see fit, in accordance with the evidence which has led in this matter and nothing else.

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Members of the jury, I do not think there is anything else I can assist you on. The evidence has, as I indicated before, been quite lengthy and that is why the summing-up has taken some time because I felt justified in the circumstances that I ought to spend some considerable time in trying to refresh your memory on the important aspects of the evidence. If perchance I have omitted any part of the evidence which you consider important, you must not feel that because I have omitted to

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deal with it that I am indicating to you that that evidence is unimportant. You are to regard all the evidence.

In the Supreme
Court of
British
Guiana

10 If during the course of your deliberations you are hazy about some witnesses' testimony, you are not sure as to what a particular witness said and you feel that you would like to be reminded of that witnesses' testimony, then it is a very simple matter. All you have to do members of the jury, is through your foreman, ask that I refresh your memory on that witness' testimony and I will do so.

—————
No.46

Judge's
Summing-up

23rd
November
1965
(Contd.)

20 You will also bear in mind, members of the jury, that you are the judges of the facts. If during the course of my summing-up I have expressed any opinions on the facts as I have already told you, then I wish you to know that as the trial Judge I am entitled to express my opinion on the facts. What I am not entitled to do - and I do not wish you to understand that I am trying to do this - is to force my opinions on you. Questions of fact are matters entirely for the jury. You must form your own opinion. If any opinions I may express or you feel counsel may have expressed, appeals to your reasoning, then
30 you accept them if you wish and you make them your own. I merely wish to impress upon your minds, members of the jury, that finding of fact - what you believe and what you do not believe - are matters entirely for you, and of course those findings of fact must be restricted, not to what you might have read in the newspapers or not what you might have been told whether
40 deliberately or otherwise outside of this Court, but to the evidence which has been led in this matter.

Now, members of the jury, counsel for the defence has done his duty. Counsel for the Crown has done his. I have now

In the Supreme
Court of
British
Guiana

just completed mine and yours now is the
function of determining whether this
accused person is guilty or not guilty
of this offence with which he is charged.
Will you, therefore, please consider your
verdict.

No.46

Judge's
Summing-up

23rd
November
1965
(Contd.)

No.47

Verdict
23rd November
1965

NO. 47
VERDICT

VERDICT: UNANIMOUS - "GUILTY"

SENTENCE: "DEATH".

NO. 48

MINUTE OF SENTENCE

In the Supreme
Court of
British Guiana

No. 48

Minute of
Sentence

23rd November
1965

The Jury having unanimously found the accused DEOKINANAN "Guilty" of the offence of "Murder", contrary to section 100 of the Criminal Law (Offences) Ordinance, Chapter 10, THE SENTENCE OF THIS COURT is that the said accused DEOKINANAN be taken from here to a lawful prison and thence to a place of execution and there be hanged by the neck until he be dead.

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Dated this 23rd day of November, 1965.

G.L.B. Persaud

PUISNE JUDGE

NO.49

NOTICE OF APPEAL

THE BRITISH CARIBBEAN COURT OF APPEAL

Notice of Appeal or Application for leave to appeal against Conviction or Sentence under Section 15 of the Federal Supreme Court (Appeals) Ordinance, 1958.

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British Guiana

Criminal Appeal No. 65 of 1965

To the Registrar of the British Caribbean Court of Appeal

In the British
Caribbean
Court of
Appeal

No.49

Notice of
Appeal

30th November
1965

Name of Appellant DEOKINANAN
Convicted at the (1) Berbice Assizes held at Berbice
Offence of which convicted (2) MURDER
Sentence Death
Date when convicted (3) 23rd November, 1965

In the British
Caribbean
Court of
Appeal

No.49

Notice of
Appeal

30th November
1965

(Contd.)

Date when sentence passed (3) 23rd November, 1965

Name of Prison (4) Georgetown Prison

I the above-named appellant hereby give you notice that I desire to appeal to the British Caribbean Court of Appeal against my (5) Conviction on the grounds hereinafter set forth on Page 2 of this notice.

Signed (6)

Deokinanan

Appellant

10

Dated this (7) 30th day of November A D 1965

1. Questions (8)

Answers

1. Did the judge before whom you were tried grant you a certificate that it was a fit case for appeal?

No

2. Do you desire the British Caribbean Court of Appeal to assign you legal aid? If your answer to this question is "Yes" then answer the following questions:-

Yes

20

(a) What was your occupation and what wages, salary or income were you receiving before your conviction?

Logger

(b) Have you any means to enable you to obtain legal aid for yourself

No

3. Is any solicitor now acting for you? If so, give his name and address.

No

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4. Do you desire to be present when the Court considers your appeal? (9)

Yes

5. Do you desire to apply for leave to call any witnesses on your appeal?

If your answer to this question is "Yes" you must also fill in Form 22 and send it with this notice

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NO. 50GROUNDS OF APPEAL

In the British
Caribbean
Court of
Appeal

No. 50

Grounds of
Appeal

30th November
1965

1. The learned trial Judge was erroneous in point of law, when he rules that the Supreme Court of British Guiana had jurisdiction to try the appellant on the indictment as laid before the Court.
2. The evidence disclosed none or insufficient facts upon which the Court could found Jurisdiction to try the appellant.
3. Inadmissible evidence in the form of an oral confession was wrongly admitted by the trial Judge without which the defendant could not be convicted.
4. Inadmissible evidence relating to the deaths of two other persons was wrongly admitted by the learned trial Judge and the effect of this was highly prejudicial to the accused.
5. The learned trial Judge misdirected the Jury in respect of their functions in dealing with alleged admissions by the accused.
6. The learned trial Judge misdirected the Jury in relation to what constituted the offence of "Murder".
7. The learned trial Judge failed to put the defence of the accused adequately to the Jury.
8. The learned trial Judge failed to direct the jury in respect of the probative value of statements made in the presence of accused persons.

Notes:

Deokinanan

- (1) Assizes or County Sessions.
- (2) e.g. Larceny, Forgery, Habitual Criminal.
- (3) Set out the actual date upon which the appellant was convicted.
- (4) If not in custody here set out appellant's address in full.

In the British
Caribbean
Court of
Appeal

No. 50

Grounds of
Appeal

30th November
1965

(contd)

- (5) If the appellant wishes to appeal against conviction he must write the word "conviction". If the appellant wishes to appeal against sentence he must write the word "sentence". If he wishes to appeal against both conviction and sentence he must write the words "conviction" and "sentence".
- (6) This notice must be signed by the appellant. If he cannot write he must affix his mark in the presence of a witness. The name and address of such attesting witness must be given. 10
- (7) If this notice is signed more than ten days after conviction or sentence appealed against the appellant must also fill in Form 3 and send it with this notice.
- (8) The appellant must answer each of these questions. 20
- (9) An appellant is not entitled to be present on the hearing of an application for leave to appeal.
- (10) These must be filled in before the notice is sent to the Registrar. The appellant must here set out the grounds or reasons he alleges why his conviction should be quashed or his sentence reduced. If one of the grounds set out is "misdirection" by the judge, particulars of such alleged misdirection must be set out in this notice. The appellant can also, if he wishes, set out, in addition to his above reasons, his case and argument fully. 30

Form F.S.C.1.

In the Court
of Appeal,
Guyana.

No. 51

Judgment of
Sir Kenneth
Stoby

20th December
1966

(contd.)

"Miss Carol" in the Corentyne River during the night of the 23rd and early morning of the 24th October, 1963, and the accused had told him that they had met in a collision with another launch, and that the "Miss Carol" had sunk, and the accused had said that he did not see the other three men. The N.C.O. questioned the prisoner as to how the incident had occurred and was told that he had been sleeping in the launch when he heard a crash, and he found himself in the water; that he swam to the shore, and he did not see the other men.

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The prisoner made a full statement to the corporal of police.

On that same day a search party went up the river but no bodies were found; another search the next day proved fruitless. On the 26th October the bodies of Motie Singh, Heera and Dindial were found floating at different points in the Corentyne River. Each body was mutilated. Motie Singh's injuries were found to be an incised wound 2 feet long along the centre of the abdomen from a point opposite the third rib down to the pubis. The abdominal wall was cut through and its contents were protruding. The doctor also found an incised wound 8 inches long on the left side of the neck cutting through all the structures of the neck including the trachea and the sixth cervical vertebrae, and he gave as his opinion that the cause of death was haemorrhage and shock due to those injuries. He said either of these two injuries could have caused instant death.

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When one of the bodies was found on the 26th October, the prisoner who was present held Detective Constable Ramjattan around his neck and whispered to him. The constable thereupon cautioned the prisoner and arrested him. What the prisoner said to the constable was not given in evidence and to speculate about

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10 the nature of the conversation would be unprofitable. It is enough to stress that the prisoner was cautioned and was arrested and therefore must have been aware that he was at the very least under grave suspicion. He was subsequently charged with the murder of Motie Singh. His first trial was abortive; he was convicted but on appeal it was held that the court had no jurisdiction to try the accused as the Corentyne River was foreign territory.

He was arraigned a second time on an indictment charging him with murder the particulars of which were that -

" Deekinanan, between the twenty-third and twenty-fourth days of October, in the year of Our Lord one thousand nine hundred and sixty three, on the high seas within the jurisdiction of the Admiralty of England, murdered Motie Singh".

20 He was convicted and sentenced to death.

The following eight (8) grounds of appeal were lodged -

- 30 "1. The learned trial Judge was erroneous in point of law when he ruled that the Supreme Court of British Guiana had jurisdiction to try the appellant on the indictment as laid before the Court.
2. The evidence disclosed none or insufficient facts upon which the Court could find Jurisdiction to try the appellant.
3. Inadmissible evidence in the form of an oral confession was wrongly admitted by the trial Judge without which the defendant could not be convicted.
4. Inadmissible evidence relating to the death of two other persons was wrongly admitted by the learned trial Judge and the effect of this was highly prejudicial to the accused.
- 40 5. The learned trial Judge misdirected the Jury in respect of their functions in dealing

In the Court
of Appeal,
Guyana

No. 51

Judgment of
Sir Kenneth
Stoby

20th December
1966

(contd.)

In the Court
of Appeal,
Guyana

No. 51

Judgment of
Sir Kenneth
Stoby

20th December
1966

(contd.)

with alleged admissions by accused.

6. The learned trial Judge misdirected the jury in relation to what constituted the offence of "Murder".
7. The learned trial Judge failed to put the defence of the accused adequately to the jury.
8. The learned trial Judge failed to direct the jury in respect of the probative value of statements made in the presence of accused persons." 10

Grounds 5 to 8 were abandoned. After some argument ground 1 was abandoned. In the main the appeal centred around ground 3 which relates to a confession.

At his trial the evidence adduced by the Crown fell into two compartments - (a) circumstantial and (b) a confession.

The circumstantial evidence was very clearly and thoroughly explained to the jury by the trial Judge. The Crown proved opportunity, motive and circumstances from which inferences of guilt could be drawn. 20

Sookhia, the wife of Motie Singh, packed his clothing and other personal belongings in a canister on the 15th October and saw him to the stelling prior to his departure. On the 6th November she identified at Springlands some of the articles she had packed.

Another witness Raghubar established that he employed Motie Singh to purchase lumber on his behalf. The system adopted was for Raghubar to supply Motie Singh with a launch - in this case the "Miss Carol" - and money. Motie Singh was given \$2,000 and employed the prisoner and two others to accompany him. The Crown proved that the four men were still in company with each other on the 16th October and traced their movements up to the 21st October when Raghubar the employer of Motie Singh arrived and handed over \$10,000 30 40

and 1500 guilders to Motie Singh. This was known to the prisoner. After delivering the money Raghubar departed leaving the prisoner, Motie Singh and the two others in the "Miss Carol". Evidence was given of the purchase of logs on the 22nd in order to show that up to then the "Miss Carol" was afloat and the four men all alive. Next there was proof of the occupants of the launch being alive up to 8 p.m. on the 23rd October. On the 24th October at about 6.30 a.m. the prisoner reported to a man named Chung that Raghubar's launch had been in a collision with another boat on the river between Powis Island and the Dutch shore. The prisoner gave Chung details of how the accident occurred. Later that same morning, the prisoner having obtained transportation to return to Crabwood Creek, gave one of the occupants of the launch precise details of how the accident occurred which resulted in the loss of Motie Singh and two others. There was some evidence by two Amerindians that on the 24th October in the early hours of the morning a noise was heard coming from Powis Island as if someone was running in the bush.

After the report to the police at Crabwood Creek, the finding of the bodies and the arrest of the prisoner, as earlier described, there were clearly circumstances and inferences from which a jury properly directed could have convicted the prisoner. Be that as it may, it is the events which took place after the prisoner's arrest and charge which form the main ground of appeal. These events in chronological order are as follows: On the 3rd November a man named Balchand was at Crabwood Creek when the prisoner's brother spoke to him. As a result of the conversation Balchand went to the New Amsterdam prison about 2 p.m. Balchand and the prisoner met in the waiting room. The prisoner said "Bal man, ah glad you come, I want to see you very important". Balchand asked "what was it all about, so important". The prisoner replied that as Balchand had a boat with an outboard motor he could go to Powis Island where the money was. At that stage the prison officer announced that time was up and Balchand left.

In the Court
of Appeal,
Guyana

No. 51

Judgment of
Sir Kenneth
Stoby

20th December
1966

(contd.)

In the Court
of Appeal,
Guyana

No. 51

Judgment of
Sir Kenneth
Stoby

20th December
1966

(contd.)

The next day a police constable saw Balchand and gave him certain instructions.

On the 12th November by arrangement with the police Balchand went to a police station at Whim (between New Amsterdam and Springlands there are police stations with a Court attached to each. A preliminary investigation with regard to an indictable offence can be heard at any one of these courts. There was nothing significant in the choice of Whim as the place where Balchand and the prisoner would meet). The prisoner was placed in the cell with Balchand. On seeing Balchand the prisoner said "Man Bal, what you do here, you got the money". Balchand replied that he had not been given proper directions. The prisoner then gave detailed instructions as to where the money could be found. Subsequently the money was found in accordance with the directions. The prisoner told Balchand to keep \$1,000 for himself and to give his father-in-law the balance and to tell his father-in-law not to forget the buck (Amerindian) men who had seen him running on the island. Balchand promised to do so and then asked how the money "got missing". The prisoner replied that whilst they were coming on the river, "We slipped out the money and hide it in the launch." Balchand asked him how the bodies got chopped and he told him that Dindial caused the whole trouble. He said that while they were coming Motie Singh and Heera wanted to go to the Dutch police station to report the loss of the money; that Heera and Dindial had an argument, and Dindial told Heera to stop the launch; that Heera said "no man, awee a go report the matter at the Dutch police station." That while arguing, Dindial picked up a cutlass, gave Heera several chops. He said that "Motie Singh went to assist Heera, and he (the accused) picked up his cutlass, and chopped Motie Singh on his neck; (this was one of the injuries which the doctor said would cause instant death) and the two of them decide to burst the belly of the men, to tie them and sink them with the boat anchor."

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The submission of counsel for the appellant is that the confession was inadmissible as it was not voluntary and was obtained by hope of advantage held out by a person in authority.

In the Court
of Appeal,
Guyana

—
No. 51

Judgment of
Sir Kenneth
Stoby

20th December
1966

(contd.)

Certain legal principles with regard to confessions are well settled. To be admissible, the burden is on the Crown to prove that the confession is voluntary. The reason for this rule was explained by Pollock C.B. in R. v. Baldry (1852) 2 Den. C.C. 430 and in Ibrahim v. R. (1914) 1.C. 599 where Lord Sumner said at page 609 -

" It has long been established as a positive rule of English criminal law, that no statement by an accused is admissible in evidence against him unless it is shown by the prosecution to have been a voluntary statement, in the sense that it has not been obtained from him either by fear of prejudice or hope of advantage exercised or held out by a person in authority."

Whether a confession is admissible or inadmissible is a question for the trial judge alone. If he rejects the confession, that is an end of the matter; if he admits it he must still explain to the jury that what weight, if any, is to be attached to the confession is for them and he must also explain the principles on which confessions are admissible and leave it to the jury to decide whether any inducement was made.

Two comparatively recent cases have put the law in its correct perspective. In R. v. Cleary (1964) 48 Cr. App. R. 116 -

" The prisoner, who was suspected of complicity in a capital murder, was interviewed by police officers at a police station. During the interview the prisoner's father arrived and spoke to the prisoner in the presence, but not in the hearing, of the police officer. At the end of this conversation the prisoner's father said to the prisoner in the hearing of the

In the Court
of Appeal,
Guyana

No. 51

Judgment of
Sir Kenneth
Stoby

20th December
1966

(contd.)

police officers: 'Put your cards on the table. Tell them the lot. If you did not hit him, they cannot hang you.' The prisoner subsequently made a statement to the police. The judge ruled that, as a matter of law, the father's words to the prisoner could not amount to an inducement held out to him in the presence of a person in authority and that the statement was, accordingly, admissible. 10

Held, that the father's words were capable of amounting to an inducement, and that the judge should have left it to the jury to decide whether they did in fact amount to an inducement, and should have directed the jury that, if they so regarded them, the subsequent statement of the prisoner to the police was voluntary and admissible only if the jury took the view that the prisoner was not affected by the inducement. As the question of the words amounting to an inducement had wrongly been treated by the judge as a question of law, the conviction must be quashed." 20

R. v. Priestley, April 5, 1966, unreported, stresses a point often overlooked; in this case it was said by the C.C.A. that "A concept of inducement based on the construction of precise words derived from a series of authorities decided before the Criminal Evidence Act, 1898, has today no reality in practice because it is essential in every case to look at the particular facts which are relied on as an objection to the admissibility of a statement on the ground of inducement, remembering that the burden never shifts from the Crown to satisfy the court that the alleged confession is in truth a voluntary statement". 30

The danger of selecting passages from the judgments of previous cases and treating those judgments as deciding questions of law without relating the principle expounded to the facts of a particular case is a danger which must always be guarded against. As pointed out in 40

Priestley the period in which the decisions were given is of the utmost importance, for, as Professor Wigmore has said the state of the law prior to the Trials for Felony Act 1836, the Indictable Offences Act 1848 and the Criminal Evidence Act 1898, exercised considerable influence on the mind of the judge giving the decision. What, however, is not indisputable is that not only is the burden on the Crown to prove a confession voluntary, but it is the judge's duty, and his alone, to arrive at a decision in accordance with recognised principles. 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.

We were urged to say that the confession was not voluntary because Balchand was a person in authority and he induced the prisoner to confess by reason of a promise.

Again there is no lack of authority for the proposition that a confession induced by a person in authority is inadmissible. What must be decided then is whether Balchand was a person in authority. In *R. v. Simpson* (1834) 1 Mood 410, and *R. v. Boughton* (1910) 6 Cr. App. R.8, it was held that someone engaged in the arrest, detention, examination or prosecution of the accused is a person in authority, and on the other hand a person detaining an accused is not necessarily a person in authority. In England as far as I have been able to ascertain no attempt has ever been made to formulate a rigid rule as to

In the Court
of Appeal,
Guyana

No. 51

Judgment of
Sir Kenneth
Stoby

20th December
1966

(contd.)

In the Court of
Appeal,
Guyana

—
No. 51

Judgment of
Sir Kenneth
Stoby

20th December
1966

(contd.)

how it can be determined whether a person is or is not in authority. The decided cases give considerable assistance in showing how various judges approached the matter.

In R. v. Jenkins (1822) Russ & Ry 492, a private prosecutor was held to be a person in authority; in R. v. Enoch (1833) 5 C. & P. 539, Park and Taunton, JJ. rejected a confession when the prisoner was left in charge of a woman to whom she confessed and in R. v. Windsor (1861) 4 F. & F. 366, Charwell, B. and Crompton, J. also held a confession under such circumstances inadmissible. It was held in R. v. Frewin (1885) 6 Cox C.C. 530 that where a promise is made by a person who does not in fact have authority such confession is admissible although the prisoner having regard to his knowledge may reasonably suppose the promisor to be a person in authority. Since the confession although held to be admissible was not received in evidence Frewin's case may be regarded as inconsistent with the trend of the authorities. Although no unerring guide can be laid down, what emerges is that if an accused genuinely believes the person to whom the confession is made possesses some degree of authority then such person is a person in authority. That is to say, the test is subjective.

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What then is the evidence? On the 2nd November the visit to the prison by Balchand was made at the prisoner's request. Previous to this visit the police had refused to allow the prisoner to speak to Balchand. Before Balchand visited the prison he had been to the police station and made a statement. It is obvious he must have told the police of his proposed visit, and equally obvious that the prisoner did not know what Balchand had done. The prisoner's request to Balchand to obtain the money, undoubtedly money taken from Motie Singh was admissible evidence. No question of a promise arose. This was a bold

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attempt by the prisoner to requisition Balchand's help in defeating the course of justice. In the prisoner's mind Balchand was a friend who could carry out his instructions, not someone who would influence the course of the prosecution, but someone who would help illegally to destroy the evidence.

In the Court
of Appeal,
Guyana

No. 51

Judgment of
Sir Kenneth
Stoby

20th December
1966

(contd.)

10 After the visit on the 2nd November, Balchand very properly reported again to the police who without the knowledge of the prisoner arranged for them to meet in a cell on the 13th November. It is this second meeting which counsel said converted Balchand into a person of authority.

20 I have already recorded what took place in the cell. Let me stress the sequence of events. The request made by the prisoner to search for the money and if found how it was to be disposed of; then the promise to carry out the instructions followed by a promise to the prisoner and lastly the confession.

30 Counsel contends that the admission made by Constable Barker at the voire dire that he expected Balchand to report what the prisoner said and Balchand's admissions under cross-examination that he believed the prisoner would say where the money was if he promised to help him was sufficient to make Balchand a person in authority. My own interpretation of this cross-examination is that when Balchand said he believed the prisoner would say where the money was if he promised to help him he meant help him find the money. At the point of time to which Balchand was referring he did not know that the prisoner would say how the money was obtained. The whole tenor of Balchand's admission shows he was referring to the finding of the money.

40 I have already indicated that the test to be applied in determining when a person is in authority is a subjective test. Despite this fact in each case a judge has to make up his mind on two things -

- (a) Did the prisoner know that the person to whom he made the confession was a person

In the Court
of Appeal,
Guyana

No. 51

Judgment of
Sir Kenneth
Stoby

20th December
1966

(contd.)

in authority; or

- (b) Is it reasonable to say that he believed the person to be a person in authority.

In answering these questions an important factor must be the nature of the promise made and how the promise came to be made. When one speaks of a promise made by a person in authority the clear implication is that someone has approached the prisoner, made a threat or promise as a result of which a confession is extracted.

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Public policy frowns on such an action; but where a prisoner seeks out a friend or where friend encounters friend and the friend charged in his distress solicits help from his friend - albeit a treacherous one - on what legal ground can a conversation between betrayer and betrayed be deemed inadmissible. The informer and the spy are always regarded with suspicion and disfavour. Subterfuge under any name or whatever the cause is abhorrent. Neither the conduct of the police nor Balchand excites approval but the true test of admissibility is not whether the conduct of the police is reprehensible but whether the confession is free and voluntary. In the past, judges have exercised their discretion and rejected confessions obtained by the exercise of a trick. In *Histed* (1898) 19 Cox C.C. 16 Hawkins J. said -

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" No one, either policeman or anyone else, has a right to put questions to a prisoner for the purpose of entrapping him into making admissions. A prisoner must be fairly dealt with."

But in *R. v. Derrington* (1826) 172 E.R. 189 - it was held that -

" If a prisoner in gaol on a charge of felony, ask the turnkey of the gaol to put a letter in the post for him, and after his promising to do so, the prisoner give him a

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letter addressed to his father, and the turnkey, instead of putting it into the post, transmit it to the prosecutor; - this letter is admissible in evidence against the prisoner, notwithstanding the manner in which it was obtained."

See also the Canadian case of R. v. Todd (1901) 13 Man 364 where a man named Todd was tried for murder:-

10 " Suspicion had immediately pointed to Todd, but there was insufficient proof even to detain him. Two individuals were therefore engaged by the Winnipeg police to associate with Todd in an effort to obtain further information. The two - neither of whom was a member of the police force - managed to gain Todd's confidence by telling him that they were members of an organized gang.

20 Todd appeared interested and asked to be admitted into this select group. Told that membership was limited to persons who had committed serious crimes, he promptly confessed the crime under investigation.

30 Duduc, J. in considering the statement's admissibility, was forced to come to the same conclusion as so many judges had before him. 'The means employed in this case,' he said, '..... were contemptible; but it does not seem to be a sufficient ground for excluding the evidence.' "

I hold that there is no ground for concluding that Balchand was a person in authority; no ground for substituting the discretion of an appellate court for the discretion of the trial judge and no ground for holding that the confession was not free and voluntary.

40 In coming to these conclusions I have purposely refrained from taking into consideration the fact that at the voire dire, the accused did not give evidence. Counsel told us that in view of R. v. Hammond (1941) 28 C.C.A. Rep. 84 he did not think it advisable to do so. Whether Hammond was correctly decided is not an issue in this Court but

In the Court
of Appeal,
Guyana

No. 51

Judgment of
Sir Kenneth
Stoby

20th December
1966

(contd.)

In the Court
of Appeal,
Guyana

No. 51

Judgment of
Sir Kenneth
Stoby

20th December
1966

(contd.)

since the crux of the matter at the voire 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.

The other point in this appeal which counsel for the appellant at first advanced for argument but later did not proceed with was whether the High Court of the Supreme Court of Judicature had jurisdiction to try the accused on the indictment. Nevertheless I consider it essential to embody in my judgment the legal position in this territory with respect to the exercise of criminal jurisdiction of the Admiralty by our courts. This will serve to save further research in the matter.

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The authority for the exercise of the courts of Guyana of the criminal jurisdiction of the Admiralty is provided for by the Admiralty Offences (Colonial) Act 1849. (See Halsbury's Statutes 2nd Edition Vol. 6 page 519).

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Prior to 1536 felonies committed on the high seas could not be tried by a jury, but were triable by the court of Admiralty in accordance with the civil law. As a result The Offences at Sea Act 1536 was passed giving jurisdiction in certain offences committed at sea to the Admirals but with provision for trial by the common law. Then in 1799 the Offences of Sea Act (see Halsbury's Statutes Vol. IV) specified that all offences on the high seas should be tried in the same manner as offences on land thereby extending the jurisdiction exercised under the 1536 Act to all offences.

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Thereafter the Offences at Sea Act 1806, provided for a more speedy trial of offences committed in distant parts of the sea or in any haven, river, creek or place where the Admirals have power, authority or jurisdiction and that instead of carrying offenders to

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England for trial they could be tried under the King's Commissions. In 1826, the Admiralty Offences Act which named certain commissioners for oyer and terminer to try offences committed within the Admiralty Jurisdiction ended the necessity of sending out special ad hoc commissions. Then in 1844 the Admiralty Offences Act conferred the entire jurisdiction to the Assize Court. Finally, in 1849 this jurisdiction was given to the Courts in the colonies and the provisions of this Act are in substance repeated in section 5 (1) of Chapter 10 of the Laws of Guyana, while subsection (2) thereof deals with the procedure to be adopted in the framing of the indictment. These subsections are as follows:-

" 5. (1) All indictable offences mentioned in this Ordinance which are committed within the jurisdiction of the Admiralty of England and are cognizable by the Court shall be deemed to be offences of the same nature and liable to the same punishments as if they had been committed in the Colony, and may be dealt with, inquired of, tried, and determined therein in the same manner in all respects as if they had been actually committed therein.

(2) In any indictment relating to any of those offences, the venue in the margin shall be the same as if the offence had been committed in the county of the Colony in which the offence is tried, and the offence shall be averred to have been committed on the high seas;

Provided that nothing herein contained shall alter or affect any of the laws relating to the government of Her Majesty's naval or military forces."

Thus it will be seen from subsection (2) that there is no necessity to aver that a crime was committed in foreign territorial waters but enough to say the crime was "on the high seas within the jurisdiction of the Admiralty".

In the Court
of Appeal,
Guyana

No. 51

Judgment of
Sir Kenneth
Stoby

20th December
1966

(contd.)

In the Court
of Appeal,
Guyana

No. 51

Judgment of
Sir Kenneth
Stoby

20th December
1966

(contd.)

In R. v. Bruce 168 E.R. 782 it was argued that the Offences at Sea Act 1536 did not extend the jurisdiction of Admiralty because the Statute of Richard II (15 Richard II, Chapter 3) passed in 1391 owing to the increasing usurpation of jurisdiction of the Admiral's Court, limited the jurisdiction of that Court to the High Seas and the great rivers "below bridges". This argument prevailed and since then Admiralty jurisdiction is confined to the High Seas and the great rivers below bridges. This case and R. v. Mannion (1846) 2 Cox 158 show the geographical extent of the jurisdiction of the Admiralty and what is meant by river, haven, creek, etc. The Tolten (1946 2 A.E.R. p. 372) is a civil case which dealt extensively with the geographical extent of the criminal jurisdiction of the Admiralty and puts it beyond doubt that "high seas" is a term of art, meaning as far as the tide ebbs and flows or where great ships could go and limited to below bridges.

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There is abundant evidence in this case that the tide ebbed and flowed as far as 210 miles up the Corentyne River and likewise there is abundant evidence to show that the place where it is reasonable to suppose the offence took place was geographically within the jurisdiction of the Admiralty.

Counsel for the appellant while conceding that the Court had jurisdiction, submitted the "Miss Carol" was not proved to be a British ship for the purpose of Admiralty jurisdiction.

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While there was no evidence that the "Miss Carol" was flying a British flag or indeed any flag at all, there was evidence that the owner was a British subject. In Chartered Mercantile Bank of India v. Netherlands India Steam Navigation Co. (1883) 10 Q.B.D., it was held that if a ship belongs absolutely and entirely to English owners she is an English ship before she is registered and whether she is registered or not, and that her nationality depends solely upon her ownership. I therefore hold that on the evidence the "Miss Carol" was a

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British ship for the purpose of Admiralty jurisdiction.

As there were no other arguable grounds of appeal, and as I have held the confession admissible, the appeal is dismissed and the conviction and sentence affirmed.

Dated this 20th day of December, 1966.

KENNETH S. STOBY,

Chancellor

In the Court
of Appeal,
Guyana

No. 51

Judgment of
Sir Kenneth
Stoby

20th December
1966

(contd.)

10

NO. 52

JUDGMENT OF LUCKHOO, J.A.

IN THE APPEAL COURT OF THE SUPREME COURT OF
JUDICATURE

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

CRIMINAL APPEAL No. 65 of 1965

DEOKINANAN

-v-

THE QUEEN

In the Court
of Appeal,
Guyana

No. 52

Judgment of
Luckhoo, J.A.

20th
December
1966

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JUDGMENT

E.V. LUCKHOO, J.A.

The Appellant was on the 23rd day of November, 1965, convicted on an indictment charging him with the murder of Motie Singh between the 23rd and 24th days of October, 1963, on the High Seas within the Jurisdiction of the Admiralty of England, and was sentenced to death. This indictment was laid

In the Court
of Appeal,
Guyana

No. 52

Judgment of
Luckhoo, J.A.

20th
December
1966

(Contd.)

against him after a previous trial for the murder of the said Motie Singh was declared to be a nullity by the Caribbean Court of Appeal (Criminal Appeal No. 41 of 1964), and consequently the conviction was quashed, and the sentence of death set aside. The reasons for so deciding were: that there was no evidence that the Corentyne River is at any point a place where great ships go; the indictment itself had disclosed no admiralty jurisdiction to try the appellant for an offence committed on the Corentyne River; there was no averment in the indictment that the offence was committed on the High Seas and Admiralty Jurisdiction could not be invoked; the appellant had been tried on an indictment postulating territorial jurisdiction; and on the proceedings before the Supreme Court there could have been neither a Judgment nor verdict of acquittal, nor an order for a new trial. A new indictment was then laid, the Appellant was tried again and convicted. He now appeals. On this appeal some attempt was again made to argue that the Supreme Court still had no jurisdiction to try him, despite the averment in the new indictment and the evidence pertaining thereto. This was, however, not pursued. His Counsel said:

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" Whilst at the beginning I had felt that there was no jurisdiction, I have been bent the other way by authority and was abandoning those grounds except for the point whether or not the ship was a British Ship".

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Under Section 5 (1) of Chapter 10 it is provided that:

" All indictable offences mentioned in this Ordinance which are committed within the jurisdiction of the Admiralty of England and recognizable by the Court shall be deemed to be offences of the same nature and liable to the same punishment as if they had been committed in the Colony, and may be dealt with, inquired of, tried, and determined therein, in

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the same manner in all respects as if they had been actually committed therein...."

And under Section 5 (2) that:

" In any indictment relating to any of those offences, the venue in the margin shall be the same as if the offence had been committed in the county of the Colony in which the offence is tried, and the offence shall be averred to have been committed on the high seas:

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Provided that nothing herein contained shall alter or affect any of the laws relating to the government of Her Majesty's naval or military forces...."

On the evidence the jurisdiction of the Admiralty of England was legally established and by virtue of the above provisions it was within the competence of the Supreme Court to try the indictment as laid which fell within and complied with those provisions.

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The "Miss Carol" was a British Ship because the evidence disclosed that the owner, at the material time, was a British Subject, resident in this country. It was built, fitted and insured in this country, and was used in connection with the business and occupation of its owner; nothing was really offered in contradiction. In law, this is enough (See Chartered Mercantile Bank of India -v- Netherlands India Steam Navigation Co. (1883) 10 Q.B.D.

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On the 16th October, Motie Singh, the deceased, left Crabwood Creek for the upper reaches of the Corentyne River on the "Miss Carol", the launch of his master Dowlatram Raghubar, who entrusted to him \$2,000 (BWI currency) for the purchase of logs; with him were his own three servants, Dindial, Heera and the Appellant. At Acabo, further up the Corentyne River, on the 21st October, Raghubar gave to Motie Singh a further sum of \$,3000 and one thousand Dutch Guilders in the presence of the Appellant, and spoke to him in the hearing of

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In the Court
of Appeal,
Guyana

No. 52

Judgment of
Luckhoo, J.A.

20th
December
1966
(Contd.)

In the Court
of Appeal,
Guyana

No. 52

Judgment of
Luckhoo, J.A.

20th
December
1966
(Contd.)

the Appellant; Motie Singh there and then counted the said money, took out money wrapped in a handkerchief from his pocket, tied up all the money together, and replaced the handkerchief with the money in his pocket. Of this sum he spent \$200:- and so ought to have had \$4,800 (BWI currency) and 1,000 guilders in his possession.

Then, with this large sum of money, he and his three men continued their travel up river in this launch. Kenneth Milne saw the four persons, all alive on board about 7 p.m. - 8 p.m. on the night of the 23rd October; Shiren Ally, a shop owner living at Suparuta, Corentyne River went to her landing about 11.30 to midnight on the 23rd October, after she heard the engine beat of a launch, in the hope of receiving goods which she was expecting to arrive by launch; she saw a launch travelling slowly; the nearest it got to her was about 15 - 20 rods; she took it to be the launch "Miss Carol", she heard a sound coming from the boat, and then a splash in the water as though something had fallen overboard from the launch; before the splash she heard the voice of a man shout; the launch then started to move faster towards the Dutch Shore. The launch never came to her landing.

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Shadrack Costello later that same night was in a canoe with others in that river passing Powis Island when he heard a voice coming from the island; there was a sound as if someone was running in the bush; no one lives on Powis Island; it has bushes; the bush starts at a point about 1 rod from the water's edge. He shone his torchlight and saw a drum floating in the water, at the side of the island (later identified as a drum from the "Miss Carol"); he saw several human footprints on the mudflat at the side of the island which led onto the island; he and others went on the island and shouted, but there was no answer; he returned to his canoe, heard a 'bubbling' sound in the water, shone his torchlight and saw oil floating up

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to the surface of the water; the oil was 'bubbling' at a spot about 2 rods from the island on the eastern side. This spot was later pointed out to the Police. A diver, one Winston Chin went below, and there was the "Miss Carol" at the bottom of the river; it was brought to the surface and, as will be seen later, in silent testimony, told a story remarkable in its revelations, and constant in its conclusions.

In the Court
of Appeal,
Guyana

No. 52

Judgment of
Luckhoo, J.A.
20th December
1966

(Contd.)

10 Claude Chung was at his farm at Suparuta, Corentyne River, about 2 miles from where the footprints were seen on Powis Island, at about 6.30 a.m. on 24th October when the Appellant came to him from the bush on the river side into his camp, and, said that he and three others were coming down the river the previous night with Raghubar's launch, when a boat "jammed" theirs between Powis Island and the Dutch Shore; that he was sleeping when it happened, felt a bounce and found himself in the water, rose up and started to swim for shore; when he came to the surface he saw a big boat which was supposed to have collided with the launch and caused it to sink. Later that day on his way back to Crabwood Creek the Appellant told Arjune Rama that while he was travelling with Motie Singh and others, he was sleeping and felt like the boat got a "hit"; that after the "hit" he was below in the water; that whilst struggling in the water he jammed the other 'person' in the launch, that he found a way and came up; when he came up he made three shouts, but he heard no answer; he then swam ashore, went to Powis Island, and walked across and went to Claude Chung's landing. The Appellant a little afterwards spoke to Stella Barry and told her he believed the three other men were drowned, and that the launch had broken up, and he had no breath to shout. About 3 p.m. that said day the Appellant reported to Raghubar the owner of the launch at Crabwood Creek and told him of an 'explosion' after which he found himself under the water; when he floated to the surface of the water he found the river was rough and dark; he swam and went to Chung's Camp; he

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In the Court
of Appeal,
Guyana

—
No. 52

Judgment of
Luckhoo, J.A.

20th
December
1966
(Contd.)

did not see any person swimming or shouting for help; he had not seen any vessel around the vicinity of the explosion. The Appellant was taken to the Police Station and after speaking to Corporal Bobb gave a statement. In that statement he told of an 'impact' which caused the launch to go down; he shouted for his companions thrice but received no answer; when he was drifting in the water he heard the beating of an engine but could not say what collided with the launch; he lost all his belongings in the launch.

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On the 26th October the dead bodies of Motie Singh, Heera and Dindial were found floating at different points in the Corentyne River.

In view of the account given by the Appellant to the effect, that there was an accident when he and the three other men were in the launch, and that he believed the other three were drowned, the medical examination of all three bodies became relevant to the issue before the jury as to whether Motie Singh died by accident or by design. The medical evidence disclosed that Motie Singh, Heera and Dindial lost their lives in much the same way. This was inconsistent with accident, and consistent with design. All bore a number of incised wounds, Motie Singh - two, Heera - ten, and Dindial 21, inflicted with a sharp cutting instrument, such as a cutlass, with a great deal of force; the neck of Motie Singh was almost severed, and instant death could have been caused, in any of the three cases, by any one of two of the injuries received; the bowels of each person was protruding as a result of incised wounds of different lengths from somewhere in the region of the abdomen downwards towards the pubis; the cause of death was shock and haemorrhage due to the injuries received.

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The Appellant was medically examined on the 24th October; nothing abnormal was found, he appeared to be in good health; he had no wounds.

10 About three days after the appellant told of the 'collision', 'crash', or 'explosion' involving the launch, it was lifted from the bed of the Corentyne River. Instead of the wreck from a 'collision', 'crash', or 'explosion' appeared an undamaged boat; intact; the personal belongings of Motie Singh were there to be seen, his spectacles, prayer book, cannister, etc., but the large sum of money which he had possessed was not there.

Immediately it became difficult to reconcile the condition of the launch with any of the differing accounts given by the Appellant as to how he came to be in the water. The expert evidence clearly pointed to, and confirmed, that the "Miss Carol" was not involved in a collision or crash of any kind; that there was no explosion; that the sinking was not brought about by misadventure, but was rather by design.

20 Edward Gomaire, an engineer, who serviced the "Miss Carol" for Raghubar was present when it was salvaged and found that the sea cork and strainer were removed, which would have the effect of letting water into the boat; the sea cork was found under the stern; the threads were in perfect condition; when the sea cork is screwed on with the spanner it cannot be unscrewed with the naked hand; the launch had a spanner for this purpose; as late as the 21st October, 1963, he had cleaned the sea cork strainer and tightened back the cork, with the sea cork spanner, which he replaced on the nail in the launch, but which was not there when it was salvaged; he found the gear lever in neutral, and the compressor lever at zero, and the electrical switches were all in the off position, and the lamps were in working order.

40 The significance of this was fully explained by the witness Roy Coates a mechanical supervisor of 35 years experience who on the 2nd November inspected the salvaged launch in the custody of the police and said that he saw the gear lever in the neutral position; that when the engine is out of gear the propellor would come to a standstill; the compressor lever was also at zero; this meant that the engine had been brought to a standstill; if there had been

In the Court
of Appeal,
Guyana

No. 52

Judgment of
Luckhoo, J.A.

20th
December
1966
(Contd.)

In the Court
of Appeal,
Guyana

No. 52

Judgment of
Luckhoo, J.A.

20th
December
1966

(Contd.)

a sudden collision which caused the boat to sink he would have expected to find the gear and compressor levers in working position; there was no damage to the launch externally or internally; a collision with another launch or with a sand bank would not have caused the sea water cork to have become unscrewed; had the launch been in a collision resulting in its sinking he would have expected to see some part broken or damaged; with the sea water cork removed, water would go into the launch causing it to sink; this would take about 1 - 1½ hours having regard to the size of the launch and the weight of the engine; he was sure someone had to unscrew the cork; from what he saw he was sure that the engine must have been turned off before the launch went down, if the compressor lever was at zero when the launch was salvaged (which was the case).

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The cutlasses which were placed aboard the launch were missing when the launch was salvaged.

On the above the Jury was entitled to consider that only four persons were on a launch; that launch was found at the bottom of the river intact; the cork of the launch was unscrewed to let water in; the compressor lever was at zero to stop the engine; the gear lever was in a neutral position so that the propellor could not revolve; the lights which were working were turned off; three of the four persons were later found dead; they all had died from shock and haemorrhage due to severe injuries from a sharp cutting instrument; an attempt was made to disembowel all of them; the only survivor was unhurt; a large sum of money in the possession of one of the dead men was missing; the survivor's account that an accident had occurred was not borne out by the condition of the launch; his story differed in material aspects as told to different persons; the launch must have been sunk by human agency; the three persons must have been killed by human

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agency; the motive for the killing of the deceased could be traceable to the unlawful taking of his money amounting to 1,000 guilders and \$4,800 B.W.I. currency, all but \$10 of which was recovered from its hiding place on Powis Island; the appellant on his own admission was on that Island on the fateful night.

In the Court
of Appeal,
Guyana

No. 52

Judgment of
Luckhoo, J.A.

20th
December
1966

(Contd.)

10 This circumstantial evidence of undoubted cogency was reinforced by certain oral statements made by the Appellant to one Balchand, a witness for the prosecution on the 6th November, 1963 at the New Amsterdam Prison after he was charged and when he was in custody. (This will be referred to as 'the Prison conversation'). 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 20 then was conceded, and its veracity not questioned.

At this conversation the Appellant revealed that he had 'the money' on Powis Island. How it was brought about, and what was said, will be of much importance in considering the admissibility of a similar but more extended conversation between the two of them on the 12th November (six days afterwards) at a cell at Whim Police Station, the admissibility 30 of which was questioned, and now constitutes the main ground of appeal. This conversation will be referred to as 'the Whim conversation'.

At the trial it was objected that what the Appellant said to Balchand at this conversation was not voluntary but was induced by a promise or promises made by Balchand to him 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 his mind to 40 a man whom they knew had promised to assist the accused, but who in reality had no intention of so doing and so procured information from the accused which ought to be rejected.

Before this court it was argued that: the

In the Court
of Appeal,
Guyana

No. 52

Judgment of
Luckhoo, J.A.

20th
December
1966
(Contd.)

accused told Balchand about how Motie Singh came to his death because Balchand had promised to go to Powis Island, get the money which was the motive for the alleged crime and use it in trying to suborn witnesses - all matters which at the time were relevant to the charge and the death of Motie Singh. It was after those promises had been made and the appellant believed that Balchand would have helped him that Balchand then asked him questions about how the man died, and the accused told more than he would otherwise have done; that Balchand was used as an agent of the police to extract a confession from the accused, and that his presence in the cell at Whim was for the purpose of trapping the accused, who was there in custody and already charged with the offence; and that this constituted a grave malfeasance against the spirit of English Jurisprudence. This Court was asked to find: that the trial judge had no alternative on the evidence, but to find that the confession was made in consequence of inducements of a temporal character, relating to the charge before the Court held out at the instance of a person who had some authority over the accusation and should never have been admitted.

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The question now is, whether on the evidence before the trial judge, in the absence of the jury, it was within his province, after the application of legal principles to admit this conversation.

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The principles of law to be applied are well settled, and were fully appreciated by the Trial Judge.

It was incumbent on the Prosecution to prove affirmatively that the conversation (which was tantamount to a confession in law) was made voluntarily. It would not be deemed to be voluntary, if it was caused by any inducement or promise, proceeding from a person in authority, and having reference to the charge against the Appellant, whether addressed to him directly or brought to his

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10 knowledge indirectly, or if such inducement or promise gave the accused person reasonable grounds for supposing that by making a confession he would gain some advantage or avoid some evil in reference to the proceedings against him; if, however, there was an inducement or promise held out by a person in authority which was collateral to the proceeding, or was held out by a person not in authority, it would not be involuntary. (See Stephen's Digest on the Law of Evidence 5th Ed. Art.)

It will then be excluded if made (i) in consequence of (ii) any inducement (iii) of a temporal character (iv) connected with the accusation or relating to the charge (v) held out to the accused by a person having some authority over the subject matter of the charge or accusation (See R. v. Joyce 1957 3 A.E.R. at p. 625).

20 The law was placed on its present basis since the middle of the nineteenth century after varying and fluctuating judicial approaches.

The facts must now be examined to determine whether there was any legal impropriety which caused that self incriminating evidence to come to light and if so whether the appellant would be entitled to demand as of right its rejection.

30 'The Whim conversation' cannot be considered an isolation from 'the prison conversation' which provides the background to and explains its origin. The one continues from, and is an extension of, the other. Therefore it will become necessary to examine the first to be able to understand and appreciate its effect on the second, and with what result.

40 Balchand was no stranger to the Appellant. He was a friend of long standing. He had taken the Appellant home in his boat on the 25th October when a Police search was being made for the missing launch and men. He was present with the Appellant when the dead bodies were found floating in the River on the 26th October and the

In the Court
of Appeal,
Guyana

No. 52

Judgment of
Luckhoo, A.J.

20th
December
1966
(Contd.)

In the Court
of Appeal,
Guyana

No. 52

Judgment of
Luckhoo, A.J.

20th
December
1966
(Contd.)

Appellant was taken in police custody. The Appellant had tried to speak to him that very day, but was prevented from so doing by the Police.

After that he had received a message from the Appellant's brother-in-law, one 'Preacher' in consequence of which he went to the New Amsterdam Prison on the 6th November, where the Appellant was in custody. At the prison he was allowed to have an interview with the Appellant.

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There could be little doubt as to what 'Preacher' had told Balchand which caused him to go to the Prison, because as soon as the Appellant saw him in the waiting room he said:-

"Bal man, ah glad you come, I want to see you very important".

The fact of this interview was proved by independent evidence.

A prison officer patrolled nearby, though not within hearing distance.

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Balchand asked the Appellant what was it all about so important?

The Appellant then told him that he wanted his help as he (Balchand) had an engine and a boat.

Balchand then asked him what he could do to help him.

The Appellant then said that he got 'the money' on Powis Island, and he wanted him to go to the Island. It however became necessary to change the conversation when the prison warden patrolled behind the Appellant. Before leaving the prison that day Balchand had promised the Appellant to go for 'the money' 25 rods in the Powis Island as he had requested.

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Here then was a voluntary admission made by the Appellant to Balchand that he, the

Appellant, had 'the money' on Powis Island. There could be little doubt that he was referring to 'the money' which was missing from Motie Singh's possession. He must have had the recent possession of that money the very night the launch went down (and when Motie Singh died); he must have hidden it on that Island that very night; as there is no evidence that he went on that Island at any time other than that night. Therefore a not unreasonable inference is that he was in some way involved in the killing of Motie Singh, who like the other two occupants of the launch did not die from accident.

In the Court
of Appeal,
Guyana

No. 52

Judgment of
Luckhoo, A.J.

20th
December
1966
(Contd.)

A person like the Appellant held in custody was powerless to act on his own. He must seek the aid of, and act, through another whom he believed to be trustworthy. The Appellant turned to his good friend who had an engine and boat. Obviously he hardly wished to see his ill-gotten gains disappear from his grasp, or go to waste on a desolate island. Balchand could help him solve his problem; that was why he sent for Balchand, and was glad to see him at the prison.

It was not argued, nor could it be, that what the accused told Balchand at the prison was due to or in consequence of any inducement or promise; that when Balchand agreed there to try his best to assist the accused to go for the money, that he, Balchand, was a person in authority or that his promise related to the charge against him. Nothing had there transpired to remotely suggest that the accused was influenced by anyone to tell of 'the money' or where it was. He did so freely and of his own volition to fulfil a predominant urge to achieve a certain end.

He was prepared to show his hands and commit his confidence to someone whom he trusted in this gamble to retrieve his hidden loot.

It then became Balchand's duty to report to the Police what he had been told at the Prison, and he did so.

It must have been apparent to the Police that 'the prison conversation' was prematurely terminated

In the Court
of Appeal,
Guyana

No. 52

Judgment of
Luckhoo, A.J.

20th
December
1966

(Contd.)

because the time for the interview had come to an end and the presence of the prison officer was an impediment in the way of the Appellant's freedom of communication.

A meeting between the Appellant and Balchand was facilitated on the 12th November by placing Balchand in the same cell which the Appellant would occupy when he was taken to the Police Station at Whim that day for remand.

Normally, the Police are not expected, and ought not, to originate situations under which a prisoner awaiting trial is unsuspectingly brought into proximity with another whom he has no desire to meet for the sole purpose of securing information, which would not otherwise have been divulged. Criticism of such conduct would be justified, and may well adversely affect the reception of evidence derived in this manner.

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Different considerations, however, apply in the intent case.

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The Police had not created the situation of the meeting of the prisoner and Balchand on the 6th November. They later became aware of it and acted in a certain way. In pursuance of their duties it would be necessary to seek to foil legitimately any attempt to remove 'the money' from where it was hidden, so as to be able to secure it for its evidential value in the interests of justice, and to be made available afterwards for the use of its true owner.

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In arranging for Balchand to meet the prisoner alone in a cell at Whim, they were in effect providing the opportunity for the prisoner to continue further with his unfinished conversation. They anticipated this would be done; but if the evidence is to be received, Balchand must say or do nothing, which would render it involuntary, in a legal sense. He must not pose as a person in authority, and under this guise induce by a promise (having a bearing on the charge) the making of any confession; he may use the situation but must not abuse it by violating recognised judicial precepts. After

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all, there was nothing to prevent the prisoner from seeking the help of another, if he were to lose faith in Balchand, in which case, 'the money' may have been lost to its true owner and its evidential value to the administration of justice.

The crucial question then would be, whether anything had transpired during 'the Whim conversation' to render the same inadmissible.

10 Had the image of Balchand in the eyes of the Appellant changed at any time since 'the prison conversation'? Had any event occurred, or was any pretence made, to clothe him with the mantle of 'a person in authority' (as is known to the law) or to suggest that he had assumed that role? Did the Appellant ever consider or believe him to be such a person?

20 The very first words spoken by the Appellant, who was the first to speak, would indicate that the same atmosphere and relationship which obtained at 'the prison conversation' prevailed. His words were

"What you doing here Bal, you got the money?"

'Bal' was still his trusted friend; the recovery of 'the money' was still his earnest desire.

30 Balchand reported that he could not get 'the money' because he did not have proper instructions. The Appellant immediately proceeded to give full detailed directions to enable him to know precisely where 'the money' could be found, which was clearly based on facts, as 'the money' was so recovered. Then followed directions as to how 'the money' was to be utilized (\$1,000 for Balchand, the balance for the father-in-law of the accused and instructions not to 'forget' the buck men who had seen 'him' (the Appellant) running in the island). All of this was obviously quite spontaneous and perfectly
40 voluntary, although very self incriminating. Not a word came from any inducement. It would be convenient to regard this much as the first part of 'the Whim conversation'. Balchand then promised

In the Court
of Appeal,
Guyana

No. 52

Judgment of
Luckhoo, A.J.

20th
December
1966

(Contd.)

In the Court
of Appeal,
Guyana

No. 52

Judgment of
Luckhoo, A.J.

20th
December
1966
(Contd.)

to carry out these instructions just as he had promised at the prison to assist in getting 'the money'. They were all promises to comply with requests emanating from the Appellant, and were not in any way directly or indirectly referable to the charge. Whilst the first part of 'the Whim conversation' concerned a detailed description of how to reach 'the money' buried under a tree, and how to distribute that money, the second part, which followed after Balchand's promises to assist, related to answers given by the Appellant to two questions asked by Balchand, that is - "How the money 'got' missing?" and "How the bodies 'got' chopped"? Clearly in fact and in law there could be no possible basis for the rejection of the first part of the conversation.

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Now as to the second part: Balchand said he believed the Appellant would give him information only if he promised to help him. This was only his opinion which may have been wholly unjustified since at the prison the disclosure was made before any promise to assist, just as in the first part of 'the Whim conversation' (which included instructions not 'to forget' the buck men who had seen him running on the island).

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All of these substantial disclosures seemed to spring from a mind which trusted implicitly the person to whom the communication was being made.

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It seemed to be taken for granted that assistance would be forthcoming upon the revelation of the confidence. The two questions 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. At the stage when those questions were asked the Appellant had already gone very far in incriminating himself, without any vestige of an inducement. If he did not care to satisfy Balchand's curiosity and tell of 'How the money got missing?' and 'How the

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bodies got chopped'? there was no compulsion. Balchand had never promised (nor was it suggested that he did so) to assist only if he was told. The law is clearly stated by Taylor in his excellent work on the law of evidence - 11th Edition Vol. 1 Art. 881, with ample authority cited at page 595 -

In the Court
of Appeal,
Guyana

No. 52

Judgment of
Luckhoo, A.J.

20th
December
1966
(Contd.)

10 "An inducement in order to exclude a confession, whether it assumes the shape of a promise, a threat, or mere advice must have reference to the prisoner's escape from the criminal charge against him. If no inducement has been held out relating to the charge, it matters not in what way the confession has been obtained; for whether it were induced by a solemn promise of secrecy, even confirmed by oath or by reason of the prisoner
20 having been made drunken or even, by way of deception practised upon him, or false representation made to him for that purpose, it will be equally admissible, however much the mode of obtaining it may be open to censure, or render the statement itself liable to suspicion".

30 If the question would not have been answered but for promises to do what the Appellant wanted done, the most that could be said is that the answers resulted from collateral promises, which could not affect the charge against the Appellant

40 The offer of some merely collateral convenience, or temporal advantage unconnected with the result of the prosecution, is not such an inducement as will render a confession inadmissible (See R. v. Lloyd 1834 6 C & P). The promise or words, to have such effect, must have reference to the result of the prosecution; suggesting a more favourable determination of the proceedings. Taylor in his work (supra) at page 595 puts it this way -

"A promise of some merely collateral benefit

In the Court
of Appeal,
Guyana

No. 52

Judgment of
Luckhoo, A.J.
20th
December
1966
(Contd.)

or boon will not be deemed
such an inducement as will
authorise the rejection of a
confession made in consequence".

Nothing which transpired during the whole of 'the Whim conversation' could with any reason be interpreted as signifying to the Appellant that he would derive some advantage in relation to the charge against him, if he answered the two questions asked, or said, anything. Balchand's promises to help him to enrich himself or his family of ill gotten gains and to pay money in an attempt to pervert the course of justice, or to collude or conspire with him in any other criminal way had no bearing on the charge and could not aid the Appellant in avoiding a confession made in the belief that he had succeeded in procuring the support of his friend to add to and further his criminal designs. This motive does not militate against the truth of what was said and render it unsafe to accept. However in reality it was the Appellant who had induced Balchand to be his 'contact man' for which he was to be recompensed by the payment of \$1,000, out of 'the money' after its recovery. This was the main project. To give some of it to the buckmen who had seen him running away was merely incidental, and may have been thought to be useful. At the most it was no more than a collateral promise. In Derrington (1826) 2 C & P 345, where a turnkey promised he would put a letter in the post, but detained it, it was received in evidence as a confession. And the evidence was also received where a person took an oath that he would not mention what defendant told him (Shaw 1334) 6 C & P 373).

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I am satisfied that there is nothing

to be deduced from all the evidence concerning the circumstances of 'the Whim conversation' from which it could be said that the Appellant was induced to speak by unfair or improper means. I do not find any principles of law offended. Justice and common sense requires the reception of what was said by the Appellant. He wanted, and desired, to speak entirely for purposes of his own.

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It was proved affirmatively before the trial Judge that the whole of the confession was free and voluntary and there was no inducement express or implied held out by a person in authority. There were only two persons present throughout the whole of that conversation. The only two persons who would know what was said would be Balchand and the Appellant. At the voir dire Balchand laid the foundation for the reception of the evidence; however, it was not considered desirable to call the Appellant to contradict or dispute Balchand's positive assertions as to what transpired in that cell. Indeed, it was never specifically put to Balchand in cross-examination that anything else, or something else, was said other than what he had narrated. There was no attempt to hint or suggest that he was a person in authority; that he had induced the Appellant to disclose where the money was; that he had made any specific promises in relation to the charge; or that he had done or said anything which could be described as objectionable or improper, in relation to what was said by the Appellant.

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The trial Judge was right in admitting the evidence since nothing had occurred from which it could be truly said that incriminating statements were made, in consequence of any inducement

In the Court
of Appeal,
Guyana

No. 52

Judgment of
Luckhoo, A.J.

20th
December
1966
(Contd.)

In the Court
of Appeal,
Guyana

No. 52

Judgment of
Luckhoo, A.J.

20th .
December
1966
(Contd.)

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 learned trial Judge explained to the jury that the Crown was relying 'exclusively on what is called circumstantial evidence' (apart from the statements made to Balchand orally); he explained carefully and fully the implications of the circumstantial evidence in the case and how it should be considered, so that the Jury were aware that even if they gave no weight to the confession, the circumstantial evidence must point unremittingly and unmistakably to the guilt of the accused person and to no other conclusion before they could convict.

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The cogency of the evidence of the finding of 'the money', which the Jury was entitled to find was the money which Motie Singh possessed, could hardly have been missed (the amount of guilders were exact - 1,000; instead of \$4,800 BWI currency there was \$4,700, but it was in the same denominations); it was found on the uninhabited island, which the Appellant had crossed on the fateful night; the Appellant's short pants was actually found hanging on a tree on that island on the 29th October; the Appellant wanted Balchand on the 6th November to recover that money for him; on the 12th November he told Balchand he must go in search for a mora tree about 5 to 6 inches thick shaven on the trunk with a cutlass, and with a vine tied with some young mora leaves around the trunk, and from the

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tree he must go 6 rods on the low side, and he will see a large big mora tree with some spurs around and some old tacobba longside the large mora tree, and he must dig under the mora tree root 6 inches and he will see the money there; these instructions were followed on the next day and led to the finding of the money, tied in a handkerchief, which was how Motie Singh kept it; the launch obviously did not go to the bottom by accident, Motie Singh did not die by accident, neither did the other two fellow travellers; the only person alive was the one who must have taken Motie Singh's money from the launch and buried it on Powis Island, that is the Appellant.

In the Court
of Appeal,
Guyana

No. 52

Judgment of
Luckhoo, A.J.

20th
December
1966

(Contd.)

The circumstantial evidence which existed before, and led to, the charge against him was ample to establish the guilt of the Appellant; that evidence, was strengthened by 'the prison conversation' which disclosed that the Appellant had hidden money which obviously came from Motie Singh, whose neck had been almost severed, on Powis Island; was further strengthened by 'the Whim conversation' which told of how and where to find 'the money', and how it was obtained and about Motie Singh's death; and last, but by no means least, the finding of 'the money' in the way described and directed by the Appellant, who chanced the confidence of his friend, in a gamble which did not pay off.

The circumstantial evidence was overwhelming. Even if 'the Whim conversation' were to be excluded, it is difficult to see how the Jury could have reached any other conclusion.

The Appellant has had a fair trial.

In the Court
of Appeal,
Guyana

He was properly convicted.

No. 52

Judgment of
Luckhoo, A.J.

I can find no merit in the only grounds of appeal argued viz. that the "Miss Carol" was not a British Ship and that 'the Whim conversation' was inadmissible.

20th
December
1966
(Contd.)

The Appeal must therefore be dismissed. The conviction and sentence is affirmed.

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E.V. LUCKHOO

JUSTICE OF APPEAL.

NO. 53

JUDGMENT OF CUMMINGS, J.A.

In the
Court of
Appeal
Guyana

No. 53

Judgment of
Cummings
J.A.

(Dissenting)

20th
December
1966

IN THE APPEAL COURT OF THE SUPREME COURT OF
JUDICATURE

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

CRIMINAL APPEAL NO. 65
OF 1965

DEOKINANAN

- v -

THE QUEEN

J U D G M E N T

P.A. CUMMINGS, J.A.

The appellant was, at the time of the incident with which this case is concerned, a logger residing at Crabwood Creek, Corentyne River. He was employed by the now deceased Motie Singh of Crabwood Creek on a launch, "Miss Carol", owned by one Raghubar, and engaged in the transportation of logs in the Corentyne River. Motie Singh was employed by Raghubar to purchase lumber on his behalf from loggers in the Corentyne River, for which purpose the latter, from time to time, advanced him sums of money. Motie Singh employed on the launch the accused from September, 1963, and two other men, Dindial and Heera (both now deceased) from October 1963.

On the 15th October, 1963, while the "Miss Carol" was moored at Crabwood Creek, Raghubar gave Motie Singh \$2,000 British West Indian

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In the
Court of
Appeal
Guyana

No. 53

Judgment of
Cummings,
J.A.

(Dissenting)

20th December
1966
(Contd.)

currency to purchase logs. Accordingly, Motie Singh, Heera, Dindial and the accused then embarked in the "Miss Carol" on a log-purchasing mission up the Corentyne River. They took with them cutlasses, axes, and their canisters. On the top of the launch were keratie laths to be used as firewood. At the rear of the launch were three drums of gasoil which were secured to the launch by rope. The launch carried an anchor and chain about 30' to 40' long.

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As a result of a message he received from Motie Singh, Raghubar at about 2.30 p.m. on the 21st October, 1963 boarded his launch "Majestic" along with its captain, Harry Lall, and engineer, Gomannie, and travelled up the Corentyne River to meet the "Miss Carol". Around 9 p.m. on 21st October, 1963, the "Majestic" met the "Miss Carol" coming down river in the vicinity of Cow Landing. On the "Miss Carol" were Dindial, Heera, Motie Singh and the accused. In their presence and hearing Raghubar told Motie Singh that he had received his message, as a result of which he had brought \$10,000 British West Indian dollars and 1,500 Dutch guilders.

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Both launches with their respective parties then went to several landings in the upper Corentyne River arranging to purchase logs. At a place called "Pinter's Landing" Raghubar in the presence and hearing of the accused, told Motie Singh to purchase Pinter's logs, the logs at Lana, and Jones' logs, and gave Motie Singh \$3,000 B.W.I. currency and 1,000 Dutch guilders. The B.W.I. currency was made up in three parcels of \$1,000 each. Motie Singh checked the money, took some other money wrapped in a handkerchief from his pocket, tied up all the money together and replaced the handkerchief and money in his pocket. Raghubar then returned home in the "Majestic" leaving Motie Singh, Dindial, Heera and the accused on the launch, "Miss Carol".

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Several witnesses saw the "Miss Carol" with the accused, Motie Singh, Dindial and Heera on board at different points in the Corentyne River on the 23rd October, 1963. Two of them spoke

with the accused separately at 3 p.m. and 8 p.m. respectively at Apora Landing where the launch was then moored. One witness said that accused indicated that there was trouble brewing Motie Singh and himself as Motie Singh wanted the "Miss Carol" to go to Jones' Landing to tie up logs, but that he wanted to go home that night.

In the
Court of
Appeal Guyana

No. 53

Judgment of
Cummings,
J.A.

(Dissenting)

20th December
1966

(Contd.)

10 Between 11.30 and midnight, a housewife at Siparuta, a short distance from Powis Island, heard the beating of the engine of a launch which she recognised as the "Miss Carol". As she went out to the landing she saw the launch coming down river slowly with the tide. She heard a sound - a man's voice and a shout - coming from the boat, and then a splash in the water as though something had fallen overboard from it. It then started to move fast towards the Dutch Shore. In cross-examination, however, this witness said:-

20 "I did not see the colour of the launch but I saw its shape. I say it was the "Miss Carol" because I heard of the accident in which the "Miss Carol" was involved. I heard this two days after. I had spoken to the Forest Ranger's wife after I heard about the accident."

30 Two Amerindians Shadrack Castello and Clinton Alexander - who were on their way from Orella to Surnop at about 1 a.m. on the 24th October, 1963, were passing Powis Island. They were on the eastern side of the island. Castello said he heard a voice coming from the island. The voices sounded as if someone was running in the bush. He shone his torchlight and saw a drum painted red and white floating in the water near to the island. They took up the drum, placed it in their canoe and later gave it to the Amerindian Captain at Orella. It was later identified by Raghubar as one of the drums he had given to Motie Singh at Crabwood Creek on
40 the 13th October, 1963.

Castello said he flashed his light and saw several human footprints on the mudflat on the southern side of the island. He and one Robertson went on to the island and walked about

In the
Court of
Appeal Guyana

No. 53

Judgment of
Cummings,
J.A.

(Dissenting)

20th
December
1966
(Contd.)

one rod into the island. The footprints went further in. He said that the place at which he saw the footprints was about two miles above Claude Chung's place. On returning to their corial, he heard a bubbling sound in the water; shining his torch-light in that direction, he saw oil floating up to the surface of the water. This was at a spot about two rods from the eastern side of the island. They went on to Surnop. He later pointed out to P.C. Ramjattan the spots where he had:-

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- (a) found the drum;
- (b) seen footprints, and
- (c) seen oil bubbling in the water

The other Amerindian, Clinton Alexander, who also testified, said much the same thing, but added that as they pushed off from the island he heard a voice coming from the water at the spot where there was the bubbling sound in the water.

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On the 24th of October, 1963, the accused told several witnesses, including the police, on different occasions that the launch had met with an accident and had sunk, but his accounts to them seemed to vary somewhat.

In his statement to the police on the 24th October, 1963, he said:-

"About 8 p.m. on Wednesday, 23.10.63, the four of us left Washiaboo in the launch en route to Crabwood Creek. The launch had lights on port and stabbord and was driven by Heera, about 2 a.m. on Thursday 24.10.63 as we were about Kanakaburi Corentyne River I fell asleep, suddenly I felt an impact and the launch went down I caught myself in water and I began swimming for shore. I did not see the three other men that were with me as the night was dark. I shouted for them thrice but I received no answer.

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"I continued drifting in the water until I reached shore by Kanakaburi.

"I remained there until day-break but I did not see the other three men.

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"At daybreak I began walking on the water side until I reached one Sonny house. I met Sonny at home and I told him what had happened. I asked him to carry me back to the scene with his boat but he told me that he had'nt any gas.

"About 8 a.m. I saw Jawalla Persaud of Crabwood Creek passing in his boat and I called him, he came to me, I told him what had happened and I asked him to bring me down to Crabwood Creek and he did so.

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"On reaching Crabwood Creed I went home to Mr. Raghubar and I told him what had happened, he brought me to Springlands Police Station where the matter was reported and I made this statement.

"When I was drifting in the water I heard a beating of an engine but I cannot say what collided with the launch.

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"We were not drinking rum in the launch whilst we were travelling as there was no rum in the launch.

"I lost all my belongings that were in the launch."

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On the 25th of October, the police went with accused to the spot where he said the accident had taken place. They searched but found nothing. Later that day, however they found the seat of the "Miss Carol", seven pieces of keratie laths, a pillow-case and a striped shirt near to the bank of Powis Island; and the 26th October they recovered drums of Dieseline which were later identified as two of those which

In the
Court of
Appeal Guyana

No. 53

Judgment of
Cummings,
J.A.

(Dissenting)

20th December
1966

(Contd.)

In the
Court of
Appeal Guyana

No. 53

Judgment of
Cummings,
J.A.
(Dissenting)

20th
December
1966
(Contd.)

were on the "Miss Carol" when she left
Crabwood Creek and when she was at Apora on the
23rd October.

Later on that same day the bodies, with
wounds on them, of Motie Singh, Heera, and
Dindial were discovered floating in different
parts of the Corentyne River. Shortly after
Heera's body was the accused arrived. When shown
the body and asked if he recognised it he said
it looked like Heera. His attention was drawn
to the wounds on the body and to the distance
between the place where he had alleged the
incident had occurred and where the body were
found. P.C. Ramjattan said that at that stage
accused held him around his neck and told him
something quietly. He cautioned and arrested
him. On their way down river accused attempted
to speak to one Balchand but Ramjattan prevented
him from doing so as he felt that at that stage
the course of justice might have been impeded.

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On the 28th October Castello and Alexander,
the two Amerindians, led the police party to a
spot near Powis Island where the party observed
that oil was coming from below the surface of
the water at a spot about 36 feet from the bank
of Powis Island. A diver went down and the
launch was salvaged from that spot on 31st
October. It was examined by the owner, Raghubar
his engineer, Gommanie, the builder, John
Vervej, and an expert. They all said that their
findings on examination ruled out the possibi-
lity of an accident.

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On Powis Island on the 24th of October,
1963 the police found a pair of short pants.
Raghubar says he took them to the accused while
in custody. After cautioning him accused tried
them on and claimed them as his own.

The prosecution sought to lead evidence
of a confession alleged to have been made by the
accused to the witness Balchand, to which
Counsel for the accused objected on the grounds
that it was not free and voluntary. The learned
trial Judge, after the voir dire, admitted the
confession, which was as follows :-

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"In the lockups at Whim, accused told me, 'Man Bal, what you ah do here, you got the money?' I told him that I did not get the money as I did not have proper directions. He told me that as we were together he would tell me the correct spot where the money was. He told me to go to Powis Island - the head of the island, and 'go in 25 rods from the head of the island, and must go and search for a mora tree about 5 to 6 inches thick shaven on the trunk with a cutlass, and with a vine tied with some young mora leaves around the trunk, and from the tree you must go 6 rods low side, and you will see a large big mora tree with some spurs around and some old tacaoba longside the large mora tree, and dig under the mora tree root 6 inches, and you will see the money there.' He said that I must take \$1,000 for myself, and give his father-in-law the balance of the money. He also told me to tell his father-in-law that he must not forget the buck men who had seen him running in the island. I promised him that I will do that.

"I asked him how the money got missing. He said whilst they were coming on the river 'we slipped out the money and hide it in the launch.' I asked him how the bodies got chopped He told me that Dindial caused the whole trouble. He said that while they were coming Motie Singh and Heera wanted to go to the Dutch police station to report the loss of the money; that Heera and Dindial had an argument, and Dindial told Heera to stop the launch; that Heera said, 'No man, awe a go report the matter at the Dutch police station.' That while arguing Dindial picked up a cutlass, gave Heera several chops. He said that Motie Singh went to assist Heera, and he (the accused) picked up his cutlass, and chopped Motie Singh on his neck; and the two of them decide to burst the belly of the men, to tie them and sink them with the boat anchor.

"I told the accused that I would try and assist to get the money. The accused

In the
Court of
Appeal Guyana

No. 53

Judgment of
Cummings,
J.A.

(Dissenting)

20th December
1966

(Contd.)

In the
Court of
Appeal Guyana

No. 53

Judgment of
Cummings
J.A.

(Dissenting)

20th December
1966

(Contd.)

was then taken out of the lockups. I then left the lockups and spoke to Superintendent Soobrian."

In cross-examination Balchand said:-

"Accused spoke about the money, before he spoke of Motie Singh's death. It was at that stage that I promised to get the money. I promised to get the money, to retain \$1,000 for myself, and to give the balance to his father-in-law. Accused did not tell me that I was not to let the money fall in the hands of the police. Accused told me to ask his father-in-law to go and find the 'buck men', and to give them some money not to say anything. I promised to do so. Accused and I did not plan to meet on the 12th. At Whim, accused asked me, 'What you doing here Bal, you get the money?' I told him that I did not have the money because I did not have proper directions. After we had our conversation, I told the accused that I was in the lockups on a warrant for a fine. I did not tell him this on the instructions of any one; I invented this.

"It was Sergeant Barker who had placed me in the cell. I was not on a charge. I had requested a place to rest as I was tired. I did tell Barker that I had gone to the police station on instructions, but I did not tell him why I was there. I was not searched.

"I did not tell the accused at any time at Whim Police Station that I would not help him. After I left the lockups, I spoke to Superintendent Soobrian; I cannot remember if Barker was present. I cannot say who had placed the accused in the cell. I cannot say

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if there was a policeman outside the door as accused and I spoke.

10 "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 this 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".

The police, along with Balchand, Raghubar and others carried out a search on Powis Island and found the money.

The medical evidence established that all the deceased died as a result of the wounds seen on their bodies.

20 At the close of the case for the prosecution Counsel for the accused submitted that the Court had no jurisdiction to try the offence but the learned trial Judge over-ruled the submission.

The accused 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 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."

That was in effect a denial of the confession.

In his summing-up to the Jury the learned trial Judge gave what, in my view, is a full and accurate direction on the law with regard to circumstantial evidence. He referred to the alleged confession and told the Jury that it was open to them to find whether it was free and

In the
Court of
Appeal Guyana

No. 53

Judgment of
Cummings
J.A.

(Dissenting)

20th December
1966
(Contd.)

In the
Court of
Appeal Guyana

No. 53

Judgment of
Cummings
J.A.

(Dissenting)

20th December
1966

(Contd.)

voluntary and, if so, to determine what weight to give to it in the circumstances. But it is important to observe that nowhere in his summing-up did he tell the Jury that it was open to them, even if they rejected the alleged confession, to convict the accused on the other evidence if they were satisfied that the witnesses had spoken the truth.

The Jury convicted the accused and he was sentenced to death. 10

He appealed to this Court on several grounds, but at the hearing of the appeal relied mainly on two:

(a) That the Court had no jurisdiction to try the indictment because -

(i) As laid in the indictment the offence took place on the High Seas, and the Corentyne River, where the evidence disclosed that the offence had taken place was not on the High Seas. 20

(ii) There was no proof that the ship on which the offence was alleged to have been committed was a British Ship.

(iii) The evidence that the offence was committed on a ship was inadmissible.

(b) The alleged confession of the accused was inadmissible as it was not free and voluntary but had been induced by a person in authority. 30

Early in his argument, Mr. Wills, Counsel for the appellant, conceded that "High Seas" is a term of art and consequently would include rivers in foreign territories, below bridges where the tide ebbs and flows and where great ships go and hover". Subject to the question of its admissibility, the evidence disclosed that the point at which the offence took place on the Corentyne River fell within the meaning of "High Seas". 40

It was proved that the ship was built in Guyana, was owned by a British subject and although used for trading between this country and Surinam, was based at Crabwood Creek in Guyana. The learned trial Judge held that although no registration papers were produced and the launch was not flying a British flag, there was sufficient acceptable prima facie evidence to establish this fact. The accused, in his statement from the dock, said that the ship was a Dutch ship and was registered in Dutch Guiana, but the learned trial Judge must have rejected this, more particularly perhaps because the accused could not be cross-examined on it.

In the
Court of
Appeal Guyana

No. 53

Judgment of
Cummings
J.A.

(Dissenting)

20th December
1966

(Contd.)

I find support for the trial Judge's view in the case of Chartered Mercantile Bank of India, London & China -v- Netherlands India Steam Navigation Co., Ltd. (1893) L.J. N.S. Vol. 5, where Lord Justice Brett said inter alia at page 263, "The nationality of a ship depended on her ownership."

Jurisdiction for the exercise of the Admiralty jurisdiction of England by the Courts of Guyana is conferred by The Admiralty Offences (Colonial Act, 1849), which provides for the trial of Admiralty Offences in the colonies and defines "colony" as follows :-

"5. Interpretation of 'colony'.

For the purposes of this Act the word 'colony' shall bear any island, plantation, colony, dominion, fort, or factory of Her Majesty, except any island within the United Kingdom, and the islands of Man, Guernsey, Jersey, Aldersey and Sark, and the islands adjacent thereto respectively....
....."

Section 5 of the Criminal Law (Offences) Ordinance, Cap. 10 provides:

"5. (1) All indictable offences mentioned in this Ordinance which are committed within the jurisdiction of the Admiralty of England and are

In the
Court of
Appeal Guyana

No. 53

Judgment of
Cummings
J.A.

(Dissenting)

20th December
1966

(Contd.)

cognizable by the Court shall be deemed to be offences of the same nature and liable to the same punishments as if they had been committed in the Colony, and may be dealt with, inquired of, tried, and determined therein in the same manner in all respects as if they had been actually committed therein.

(2) In any indictment relating to any of those offences, the venue in the margin shall be the same as if the offence had been committed in the county of the Colony in which the offence is tried, and the offence shall be averred to have been committed on the high seas:

xx

xx

xx"

The indictment was preferred in the following terms:

"Particulars of Offence

Deokinanan between the twenty-third and twenty-fourth days of October in the year of Our Lord one thousand nine hundred and sixty-three, on the high seas within the jurisdiction of the Admiralty of England murdered Motie Singh."

Consequently, I am of the opinion that, subject perhaps to the admissibility of the confession the Court had jurisdiction to try the offence.

The other point that remains to be considered is the admissibility of the alleged confession. In this connection it is important to give consideration at the outset to Balchand's role in the investigation, the circumstances surrounding the making of the alleged confession and the nature of the evidence proffered by the Crown at the voir dire.

Balchand was a logger who lived at

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Crabwood Creek, Corentyne. He used to cut logs at Mari Mari on one Jagmohan Singh's grant, which is 448 miles up the Corentyne River. He owned a boat which was driven by an outboard motor, and in the course of his work made frequent trips up and down the Corentyne River. He knew the deceased and the accused, and was friendly with the latter for about 15 years. He, in his boat, was one of a police party searching for the "Miss Carol" on 25th October, 1963. He continued assisting in the search and on 26th October, 1963 was one of the party who, while in his boat, saw Heera's body floating in the water. It was he who, after seeing the other bodies transported them in his boat to the sawmill of one Patrick Khan at Siparuta. Later he joined the "Majestic" another of Raghubar's launches, and the "Majestic" towed the bodies in his boat to Crabwood Creek.

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He was present assisting the police when the accused was cautioned and arrested, after which the accused expressed a desire to speak to him, but P.C. Ramjattan prevented him.

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During the investigations the police had hired his boat and he went up in charge of it to Powis Island along with the police. Inspector Chee-a-Tow had instructed him to steer the launch "Majestic" when she towed the "Miss Carol" to Crabwood Creek after having been salvaged. The accused, being present while all of this was going on, must have been aware of the role that Balchand was playing. He was paid by the police for the towing and salvaging.

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Up to this stage then, Balchand was at least a potential witness for the prosecution and must have appeared to the accused to have been close to the police in connection with the investigations - someone who perhaps, in the mind of the accused, could influence the course of the investigation by virtue of his position. It seems that Balchand had some interest also in assisting Raghubar - who would have been the virtual prosecutor on any charge relating to the disappearance of the money - in finding his launch and money. Raghubar showed his

In the
Court of
Appeal Guyana

No. 53

Judgment of
Cummings
J.A.

(Dissenting)

20th December
1966

(Contd.)

In the
Court of
Appeal Guyana

No. 53

Judgment of
Cummings
J.A.
(Dissenting)

20th December
1966

(Contd.)

appreciation of Balchand's services by giving him \$1,000 after the trial. He said in cross-examination;

"I did not give him before because I was waiting to hear what evidence he would have given. I gave to no one else any reward. I would have given Balchand the reward whatever the result of the previous trial would have been."

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On the 6th November, 1963, Balchand went to the New Amsterdam Prison and spoke with the accused. His version of the conversation is as follows :-

"Accused said to me, 'Bal man, ah glad you come, I want to see you very important.' I ask him what it all about so important. He said he wanted me to help him because he know 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. I told the accused that I would try my best to assist him by going for the money."

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It is important to observe that that was all that was said at the New Amsterdam Prison as a prison officer was patrolling within earshot, and then the time for the visit expired and Balchand had to leave. He said he had gone to the New Amsterdam Prison to see the accused as a result of a conversation he had had with the accused's brother on the 3rd of November, 1963. (This is not supported by any other evidence).

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In cross-examination, however, he said:

"On that very day before I went to the prison, I gave a statement to Inspector Chee-a-Tow. I had gone to the Police station at New Amsterdam on my own. I now say that I went in search of Chee-a-Tow because I understood he wanted to see me. I did not

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find him at first, but I did so, and made my statement before I went to the prisons. I did mention the name 'Preacher' to Chee-A-Tow. I had arrived in New Amsterdam around 8.30 a.m. I gave a long statement to Chee-A-Tow. I cannot remember whether I received instructions from the police regarding my proposed visit to the prison

In the
Court of
Appeal Guyana

No. 53

Judgment of
Cummings
J.A.

(Dissenting)

10

....

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"I spoke to Ramjattan about my visit to the accused at the prison. I expected to visit the accused again, and to speak about the money and the 'Miss Carol', I might have heard about Motie Singh. I expected the police to make the arrangement for me to meet the accused. I believed that if I got a chance to speak to him, he would tell me where the money was if I promised to help him to get it. I had in mind to ask him what had happened. I intended to convey to the police what the accused would have told me, and I told the police this.

20th

December

1966

(Contd.)

20

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"I did tell the accused after we had conversation that the police had held me on a warrant, and my brother was coming to take me out. It was not true that I had been arrested. I had told the accused a lie as I did not want him to know that the police had brought me there to speak to him."

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It is clear from Balchand's own evidence that the police had "brought" him to Whimto speak to the accused. This was not a visit at the request of the accused. He continued:

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"After leaving the cell, I spoke to Superintendent Soobrian. This was because I had promised to speak to him. I also spoke to Ramjattan about the conversation between the accused

In the
Court of
Appeal Guyana

No. 53

Judgment of
Cummings
J.A.

(Dissenting)

20th
December
1966
(Contd.)

and me."

Why did Balchand want that money while in prison? Is it not reasonable to infer that the pressing need for it was that it could be used to influence the course of the prosecution in his favour?

Detective-Sergeant Barker, who, though not in charge of, was assisting in, the investigations, said at the voir dire that his intention when he "placed" Balchand in the cell at Whim was that Balchand "would get information which might assist the police or the accused". He expected the accused to speak to Balchand about the case because Balchand requested to see the accused. He expected Balchand to relate to the police what the accused had said. He was aware that Balchand was at Whim because of a previous arrangement. He appreciated before he placed accused in the cell that the accused could have told Balchand something which might incriminate or exculpate himself; and that the accused might have believed that Balchand could have helped him. "I did nothing to indicate to the accused that he need not have said anything to Balchand."

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It should again be observed that this was not done at the request of the accused. It is a police arrangement with Balchand.

This was all the evidence adduced at the voir dire and it was upon this that the learned trial Judge exercised his discretion.

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Detective-Constable Ramjattan (who was not called at the voir dire) said when he later gave evidence that on their way down river with the bodies of the deceased, the accused attempted to speak to Balchand and he prevented him because he felt that at that stage their speaking together might have interfered with the course of justice. On the 7th November, 1963, while he was at Springlands Police Station Balchand went and spoke with him, as a result of which he spoke with Inspector Chee-A-Tow. On the 12th November, 1963, he spoke to Balchand who left him at about 8.30 to 9 a.m. Later that day, at about 8 p.m. he spoke to him again. He

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10 said that after speaking with Balchand on the 7th November, he expected to see him again. He was expecting to see him on the 12th November. He knew that on that date the accused was a prisoner on remand at the New Amsterdam Prison, and that he would come up for remand on the 12th, as he already been charged. He knew that there was only one cell at Whim Police Station, and that the accused and Balchand were to meet on the 12th at Whim. He was not aware that Balchand was holding out promises to the accused to contact his father or to help to recover the money, but he expected Balchand to give him information about the recovery of the money after he would have spoken to the accused. (All of this was not before the learned trial Judge at the voir dire).

20 In these circumstances, therefore, it is clear that prior to going to the accused in the prison, Balchand had become, in addition to being a potential prosecution witness with regard to the finding of the bodies and the salvaging of the launch, a police informer; a sort of private detective being used by the police, and if not prior to going, certainly after leaving the prison and going to the police, he had become a material prosecution witness as to the whereabouts of the money. The police were well aware that he proposed, on the strength of a promise
30 which he had made to the accused at New Amsterdam Prison and proposed to continue to hold out, to extract from him and convey to them how he got the money and how the deceased met his death.

40 Counsel for the Crown in his address to the Jury conceded that the meeting at Whim Police Station between the accused and Balchand was arranged by the police. It was in this context that the police planted Balchand in the cell at Whim Police Station. This concession by the Crown was not before the learned trial Judge at the voir dire.

In Kuruma, son of Kaniu -v- The Queen (1955) 1 A.E.R. p.236, Lord Goddard, in delivering the opinion of the Privy Council, referred to the case of R. -v- Letham, (1861) 121 E.R. at page

In the
Court of
Appeal Guyana

No. 53

Judgment of
Cummings
J.A.

(Dissenting)

20th
December
1966

(Contd.)

In the
Court of
Appeal Guyana

No. 53

Judgment of
Cummings
J.A.

(Dissenting)

20th
December
1966

(Contd.)

589, and said at page 239 letter "C":

"The Court of Queen's Bench held that though the defendant's answers could not be used against him, yet if a clue was thereby given to other evidence, in that case the letter, which would prove the case, it was admissible. Crompton, J., said:

'It matters not how you get it; if you steal it even, it would be admissible.....'

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In their Lordships' opinion, when it is a question of the admission of evidence strictly, it is not whether the method by which it was obtained is tortious but

whether what has been obtained is relevant to the issue being tried."

But at page 240 letter "A" he said:

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"It is right, however, that it should be stated that the rule with regard to the admission of confession whether it be regarded as an exception to the general rule or not, is a rule of law which their Lordships are not qualifying in any degree whatsoever. The rule is that a confession can only be admitted if it is voluntary and, therefore, one obtained by threats or promises held out by a person in authority is not to be admitted. It is only necessary to refer to R. -v- Thompson where the law was fully reviewed by the Court for Crown Cases Reserved."

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In Ibrahim -v- The King. (1914) Cox.C.C. 599, Lord Sumner, who delivered the opinion of the Board, thus laid down the law at page 609:

"It has long been established as a positive rule of English criminal law, that no statement by an accused is

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admissible in evidence against him unless it is shown by the prosecution to have been a voluntary statement, in the sense that it has not been obtained from him either by fear or prejudice or hope of advantage exercised or held out by the person in authority."

10 Lord Coleridge, C.J., in Reg. -v- Fennell, (1881) 7 Q.B.D. 147, laid down the same principle in other words at pp. 150-1,

20 "The rule laid down in Russell on Crimes, 5th ed., vol. iii, pp.441, 442, is, that a confession, in order to be admissible, must be free and voluntary; that is, 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 influence."

30 Lord Sumner states the above rule as a 'positive rule of English criminal law'. Whether the statements sought to be admitted be 'voluntary' or not is, however, a question of fact. When that fact is determined, the law steps in and declares the statement admissible or inadmissible in evidence, according as the trial Judge finds it is 'voluntary' or not. The onus rests upon the Crown or prosecution to show that the statement is a 'voluntary' one before it can be received in evidence. This proposition is a corrolary to the above rule laid down by the Privy Council in Ibrahim's case, but Lord Sumner also expressly approves of it and says in the same case at page 610:

"The burden of proof in the matter has been decided by high authority in recent times in Reg. -v- Thompson, (1893) 2 Q.B. 12."

40 The Court in this last case consisted of Lord Coleridge, C.J., Hawkins, Day, Wills and Cave, JJ., and the judgment was delivered by Cave, J. See p. 16 where, quoting from Taylor

In the
Court of
Appeal Guyana

No. 53

Judgement
of Cummings
J.A.

(Dissenting)

20th
December
1966
(Contd.)

In the
Court of
Appeal Guyana

No. 53

Judgment of
Cummings
J.A.
(Dissenting)

20th
December
1966
(Contd.)

on Evidence, (8th Ed. vol. 1 s. 872) he says:

"The material question consequently is whether the confession has been obtained by the influence of hope or fear; and the evidence to this point being in its nature preliminary, is addressed to the judge, who will require the prosecutor to show affirmatively, to his satisfaction, that the statement was not made under the influence of an improper inducement, and who, in the event of any doubt subsisting on this head will reject the confession."

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The case cited in support of this proposition is Reg. -v- Warringham, (1851) 2 Den. 447, where Parke, B., (Judge whose views favoured the admission of all statements of the accused which are relevant) says to the counsel for the prosecution, at page 448;

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"You are bound to satisfy me that the confession, which you seek to use in evidence against the prisoner, was not obtained from him by improper means. I am not satisfied of that, for it is impossible to collect from the answers of this witness whether such was the case or not."

Parke, B., adds:

"I reject the evidence of admission not being satisfied that it was voluntary."

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Later at page 17, Cave, J., (Reg. -v- Thompson, ubi supra), says that the Judge has to ask "Is it proved affirmatively that the confession was free and voluntary - that is, was it preceded by any inducement to make a statement held out by a person in authority? And he ends his judgment by saying at page 19:

"But, on the broad, plain ground that it was not proved satisfactorily

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that the confession was free and voluntary, I think it ought not to have been received."

The cases establishing and illustrating this rule are very numerous both in England, Ireland and in Canada. A very clear and concise statement of the rule is to be found in Rex -v- Tutty (1905) 9 Can.Cr. Cas. 544, a Nova Scotia case. It is there laid down at pp. 547-8, that:

10 "the onus was upon the prosecution to establish that the statement of the prisoner was entirely free and voluntary and I think it was not sufficient for this purpose that the officer should swear to this. He should have proved it by negating the possible inducements by way of hope or fear that would have made the statement of the prisoner inadmissible."

20 said Again in Thiffault v. The King, Duff, C.J., (p.596):

30 "The second objection is on the ground that the voluntary character of the statement signed by the accused has not been established. The law governing the decision on the point raised by this objection was stated in a judgment of this Court in Sankey v. The King, (1927) 4 D.L.R. 245 at pp. 269-70 48 Can.C.C. 97, at pp.100-1 S.C.R. 436, at pp. 440-1, in the course of which it was said:

40 "We feel, however, that we should not part from this case without expressing our view that the proof of the voluntary character of the accused's statement to the police, which was put in evidence against him, is most unsatisfactory. That statement, put in writing by the police officer, was obtained only upon a fourth questioning to which the accused was subjected on the day following his arrest. Three previous attempts to lead him to 'talk' had apparently proved abortive - why we

In the
Court of
Appeal Guyana

No. 53

Judgment of
Cummings
J.A.

(Dissenting)

20th
December
1966
(Contd.)

In the
Court of
Appeal Guyana

No. 53

Judgment of
Cummings
J.A.

(Dissenting)

20th
December
1966
(Contd.)

are left to surmise. The accused, a young Indian, could neither read nor write. No particulars are vouchsafed as to what transpired at any of the three previous 'interviews'; and but meagre details are given of the process by which the written statement ultimately signed by the appellant was obtained. We think that the police officer who obtained that statement should have fully disclosed all that took place on each of the occasions when he 'interviewed' the prisoner; and, if another policeman was present as the defendant swore at the trial, his evidence should have been adduced before the statement was received in evidence. With all the facts before him, the Judge should form his own opinion that the tendered statement was indeed free and voluntary as the basic for its admission rather than accept the mere opinion of the police officer, who had obtained it, that it was made 'voluntarily and freely'.

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"It should always be borne in mind that while, on the one hand, questioning of the accused by the police, if properly conducted and after warning duly given, will not per se render his statement inadmissible on the other hand the burden of establishing to the satisfaction of the Court that anything in the nature of a confession or statement procured from the accused while under arrest was voluntary always rests with the Crown. Rex v. Bellos, (1927) 3 D.L.R. 186; Prosko v. The King (1922), 37 Can C.C. 199, 66 D.L.R. 340. That burden can rarely, if ever be discharged merely by proof that the giving of the statement was preceded by the customary warning and an expression of opinion on oath by the police officer, who obtained it, that it was made freely and voluntarily."

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In considering whether the onus has been discharged, it is important that the trial Judge should bring his mind to bear on what must now be considered to be the extended meaning of the terms 'voluntary' and 'person in authority'

"The terms 'voluntary' and 'authority' used in the statement of this rule are used in artificial or technical senses. Originally, like the expression 'free and uninterrupted use' as definitive of a person's right of travel on a highway, they represented very simple concepts, and were when first used appropriate terms; but in the process of evolution of the common law, they have come to represent very complex concepts, and are now misleading."

Mc Keown, C.J., in his judgment in Rex v. Godwin, in the Supreme Court of Canada, (1924) 2 D.L.R. ante p. 362, very aptly says:-

"The question whether or not a statement is voluntary must be determined in relation to the mental attitude of the accused when he made the statement in question, rather than from the standpoint of his hearers or questioners, who, in this case, testify they made no threats to him nor did they hold out to him any inducement to speak. No doubt that is so. The officers speak very clearly upon this point and I believe what they say; but that does not throw much, if any, light on the decisive question, which is - How did the accused himself regard the inquiry, or what result did he think his answers or silence might lead to?"

In Phipson on Evidence, 10th Ed., at paras. 796 and 797 on page 330, the learned author states:

"To exclude a confession, the inducement must have been held out by a person in authority, i.e. someone engaged in the arrest, detention, examination, or prosecution of the accused, or by someone

In the
Court of
Appeal Guyana

No. 53

Judgment of
Cummings
J.A.

(Dissenting)

20th
December
1966

(Contd.)

In the
Court of
Appeal Guyana

No. 53

Judgment of
Cummings
J.A.

(Dissenting)

20th December
1966

(Contd.)

acting in the presence and without the dissent of such a person, or perhaps by someone erroneously believed by the accused to be in authority.

"The following have been held to be persons in authority; a constable or other officer having the accused in custody; or in cases of felony perhaps a private person arresting; the prosecutor or his wife, or a partner's wife where the offence concerned a partnership; or his attorney; the prisoner's employer if the offence had been committed against his person or property but not otherwise; a magistrate a magistrate's clerk and a coroner.

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"It is doubtful whether a private person, to whose temporary custody the accused has been committed by a constable is a person in sufficient authority; or the chaplain of a goal.

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A doctor called in by the police to examine an accused person is an independent medical expert and in no sense an agent of the police, and a confession made to him is admissible, but in Scotland he is a person in authority as acting for the police. The captain of a ship as such would seem not to be in such a position with regard to the crew, nor is the wife of a constable a person in authority. In R. v. Smith, it seems to have been assumed by the court and by counsel that a R.S.M. who threatened to keep a number of soldiers on parade until he received a confession, was a person in authority."

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The ground of the exclusion was recently considered in the Court of Appeal in England in R. v. Harz. (1966) 3 A.E.R. p. 436 Castley, J., said at p. 456 letter D:

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"The English case law in relation

to confessions has mainly developed during a period in legal history when most persons charged with criminal offences were poor, illiterate and pathetically ignorant, and when, moreover, they had no right to go into the witness box to deny or explain what they were alleged to have said. In those circumstances, justice required that extreme and even exaggerated care should be taken to ensure that the jury did not hear any admission which was not clearly shown to have been voluntary. The situation today is very different. It seems to me that the interests of justice would be adequately served if the principle were simple to be that no admission should be receivable in evidence if it appeared from examination of the circumstances in which it was made that there was any realistic danger that it might be untrue; but I do not think that in the present state of the authorities it is open to this court to decide this case by application of that principle. If my view of the law is thereafter held to be wrong and Theiger, J.'s view prevails I shall be content".

It will be observed that the Court granted leave to appeal to the House of Lords in that case.

What then is now the underlying principle to be applied?

In *R. v. Baldry*, 2 Den. C.C. 430, Pollock, C.B., said that the true ground of the exclusion is not that there is any presumption of law that a confession not free and voluntary is false, but that it would not be safe to receive a statement made under any influence or fear. If that is a correct statement of the law - and it has been held to be so by the Court for Crown Cases Reserved in *R. v. Thompson*, (1893) 17 Cox p. 641 per Cave, J., at p.645 which was approved by the Judicial Committee of the Privy Council in *Ibrahim v. R.* - *ubi supra* - then the categories of "persons in authority" are not closed. The term must logically include

In the
Court of
Appeal Guyana

No. 53

Judgment of
Cummings
J.A.

(Dissenting)

20th
December
1966
(Contd.)

In the
Court of
Appeal Guyana

No. 53

Judgment of
Cummings
J.A.

(Dissenting)

20th
December
1966
(Contd.)

any person, be he friend or foe, policeman or police decoy, who is in a position to create in the mind of the accused hope or fear. In my view, for the purposes of the application of the rule of exclusion under consideration, the test to determine whether or not a person is "in authority" must be whether or not that person is 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 is charged. It is an "authority" to influence the mind of the accused, so that his confession does not flow spontaneously but is the result of hope or fear.

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Since the test is a subjective one, it can only be applied by drawing a reasonable inference from the surrounding circumstances as they were known to and probably appreciated by the accused, because no one but himself could say with any degree of certainty just what went on in his mind at the time he made the confession. It seems to me that the accused in the instant case at all material times from his knowledge of the role that Balchand had been openly fulfilling in the case, would have been seeing in him, not only a trusted friend but also a person so close to the police in the carrying out of the investigations that they were likely to be regarding him as one of themselves, and in that setting Balchand would have the necessary scope to fulfil his promise. Accused might very well have been saying to himself:

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"The police would suspect my brother, my father or any other friend of mine if any of them were seen moving up and down the river and/or hovering around Powis Island - not so with Balchand, he was in their employ acting for them and for Raghubar; moreover he is my friend I could trust him".

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In other words, he may have regarded Balchand as a friend who was in the strategic position of

an ad hoc policeman; - as a "person in authority"

Balchand, then, for the purposes of the application of the rule was a "person in authority".

Counsel for the Crown urged that there was no inducement in this case because, inter alia, the promise was the result of a request from the accused. In my view that does not matter. See R. v. Windsor & anor., (1864) 4 F. & F. p. 363. The question really is: Was the alleged confession "obtained by any direct or implied promises, however slight", or by the exertion of any improper influence"? Would the accused have answered Balchand's questions.

(a) "How the money got missing"?

(b) "How the bodies got chopped"?

if Balchand has not first promised to

(a) find the money;

(b) give it to accused's father-in-law to,

inter alia, suborn two potential Crown witnesses who accused thought had seen him on the island?

If the answer is "No", then the alleged confession should be excluded; if it is, "It is unlikely" or "It is impossible to tell", then also it should be excluded.

The promise which Balchand made was only a trick to get the confession. It was like carrots held to a donkey's nose - an inducement

Bearing in mind that the onus is on the prosecution to prove positively and affirmatively that the confession was voluntary, and that Balchand's mental attitude when he approached the accused at Whim police station was that if he promised to help the accused he would speak to the following witnesses, ought to have been called by the prosecution or at least put up for cross-examination by Counsel

In the
Court of
Appeal Guyana

No. 53

Judgment of
Cummings
J.A.

(Dissenting)

20th December
1966

(Contd.)

10

20

30

In the
Court of
Appeal Guyana

No. 53

Judgment of
Cummings
J.A.

(Dissenting)

20th
December
1966
(Contd.)

for the accused at the voir dire.

1. Detective-Constable Ramjattan - to be questioned on the numerous conversations he had with Balchand concerning the latter's "visits" to the accused at the New Amsterdam Prison and the cell at Whim Police Station; and perhaps to be asked on this issue what it was that the accused has whispered in his ears just before he cautioned and arrested him. It may well have been that he told Ramjattan the same thing he told Balchand at the New Amsterdam Prison, and this may have been the origin of the police "arrangement". This should have been expressly negated. 10

2. Sgt. Barker - The defence ought not to have been embarrassed by having to call this witness in an endeavour to prove that the confession was not free and voluntary.

3. Inspector Chee-A-Tow - to testify as to his conversations with Balchand both before and after the latter's visit to the prison. 20

Had these witnesses been called at the voir dire, it would have emerged, as it did later in the trial, that both Ramjattan and Inspector Chee-a-Tow definitely had conversations with Balchand both before and after he went to the prison and to the cell at Whim, and the trial Judge would no doubt have found the details of these conversations of material assistance to him in the exercise of his discretion, but both the accused and the learned trial Judge were deprived of this evidence. 30

It seems that the nature of the Crown's onus to prove positively and affirmatively that the confession was free and voluntary was not fully appreciated, and this resulted in the accused having to endeavour - even to the extent of calling a prosecution witness - to show that the confession was not free and voluntary. Fortunately for the fair name of Justice, both Ramjattan (when subsequently called at the trial) and Barker at the voir dire were frank 40

in their answers, so that the Crown at the end of the case conceded that Balchand was placed in the cell with the accused "by arrangement" with the police. It is not sufficient for Balchand to have said in cross-examination at the voir dire that he does not remember whether the police gave him any instructions before he went to the prison at New Amsterdam. What the details of this arrangement were and the manner in which the purpose of the arrangement was consummated can only now be arrived at by a reasonable inference drawn from the following proven facts:

(a) The police knew that Balchand and the accused were friends.

(b) When they had made up their minds to charge the accused they prevented him from speaking to Balchand.

(c) Balchand was assisting the police in their investigations in the presence of the accused.

(d) It became apparent from the time the bodies were seen by Balchand and put into his boat he was a potential witness for the prosecution, consequently in a position to discuss the case with the police and other prosecution witnesses.

(e) Balchand had gone to the New Amsterdam Prison after speaking with the police, spoken with the accused and told the police of his conversation with the accused - albeit - he says at the request of the accused.

(f) Before the alleged confession was made in the cell at Whim Magistrate's Court. Balchand told the police that he believed the accused would only give him information if he promised to help him.

(g) Balchand said before going into the cell it was his intention to convey to the police what information he obtained from the accused while in the cell.

(h) The police expected Balchand to convey

In the
Court of
Appeal Guyana

No. 53

Judgment of
Cummings
J.A.

(Dissenting)

20th December
1966

(Contd.)

10

20

30

40

In the
Court of
Appeal Guyana

No. 53

Judgment of
Cummings
J.A.

(Dissenting)

20th
December
1966
(Contd.)

to them what information he got from the accused while in the cell.

(i) With this knowledge the police plant Balchand in a cell into which they expected the accused to be brought, and the accused is duly brought and after the promises of help, one of which related to the charge, are made, he is alleged to have confessed.

I find it impossible to draw any inference other than that the police placed Balchand in that cell in order that he should continue to hold out an inducement and so get information which he was to convey to them; Would not Balchand then had so conducted the conversation with the accused as to achieve his objective? "Actions speak louder than words." (No one can now recapture Balchand's manner and demeanour in that cell - the inflections and tone of his voice). In my view the alleged confession was the result of an implied inducement. Even if I am wrong in such a positive inference, the prosecution has not in my view positively and affirmatively negatived this inference. In fact, they have never attempted to do so.

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The inducement - or at least a part of it was in relation to an advantage to be gained by the accused with respect to the charge.

The situation then is, that the police planted in the cell of an accused person a police informer or private detective and potential witness for the prosecution, with knowledge that that person intended to get information from the accused for conveyance to the police by holding out inter alia an inducement in relation to an advantage to be gained by the accused with respect to the trial of the offence for which he was then charged. The person could reasonably in the mind of the accused have been regarded as a person in authority.

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Moreover, the confession was obtained by the police by an obvious circumvention of the Judge's rules, a fact which could not be fully appreciated at the voir dire although it clearly

emerged after the statement had been admitted

Should the learned trial Judge in the circumstances have admitted the alleged confession? It is now a well-settled rule that the admissibility of any statement or admission by a prisoner is a preliminary or subsidiary question for the trial Judge alone to determine. The authorities for this proposition are very numerous, definitive and conclusive, among which is the Privy Council case of Ibrahim v. The King ubi supra. Lord Sumner says at p. 610;

"There was no evidence to the contrary. With Reg. v. Thompson before him, the learned Judge must be taken to have been satisfied with the prosecution's evidence that the prisoner's statement was not so induced either by hope or fear, and, as is laid down in the same case, the decision of this question, albeit one of fact, rests with the trial judge."

Again at p.613:

"I am not aware of any distinct rule of evidence that, if such improper questions are asked, the answers to them are inadmissible, but there is clear authority for saying that the judge at the trial may in his discretion refuse to allow the answers to be given in evidence."

In Taylor on Evidence, 8th ed., vol. 1. s. 872, it is laid down:

'As the admission or rejection of a confession rests wholly in the discretion of the judge, it is difficult to lay down particular rules, a priori, for the government of that discretion; and the more so, because much must necessarily depend on the age, experience, intelligence and character of the prisoner, and on the circumstances under which the confession is made.'

In the
Court of
Appeal Guyana

No. 53

Judgment of
Cummings
J.A.

(Dissenting)

20th
December
1966

(Contd.)

In the
Court of
Appeal Guyana
No. 53

Judgment of
Cummings
J.A.
(Dissenting)

20th
December
1966
(Contd.)

"Hawkins, J., in Reg. v. Miller, (1895), 18 Cox C.C. 54, says at p.55: 'Every case must be decided according to the whole of its circumstances.'"

"In Rex v. Booth, (1910); 5 Cr. App. Rep. 177, at p.179, Darling, J., quoting Channell, J., in Rex v. Knight, 20 Cox C.C. 711, says: 'the moment you have decided to charge him' (the accused) 'and practically got him into custody, then inasmuch as a judge even can't ask a question or a magistrate, it is ridiculous to suppose that a policeman can. But there is no actual authority yet that if a policeman does ask questions it is inadmissible - what happens is that the judge says it is not advisable to press the matter'."

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This judgment is cited with approval in Ibrahim v. The King, ubi supra, and Lord Sumner proceeded to add at page 613, after the quotation, "and of this Darling, J., delivering the judgment of the Court of Criminal Appeal, observes the 'principle was put very clearly by Channell, J.'":

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"Although the Judges' rules are administrative directions the observance of which the police authorities should enforce upon their subordinates as tending to the fair administration of justice. It is important that they should do so, for statements obtained from prisoners contrary to the spirit of these rules may be rejected as evidence by the judge presiding at the trial."

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R. v. Vjisin, (1918) 1 K.B. p. 531 at pp. 539-40. In Mc Dermott v. The King, (1948); 76 C.L.R. p. 501, Dixon, J., at page 513 said:

"It is apparent that a rule of practice has arisen deriving almost certainly from the strong feeling for the wisdom and justice of the traditional English principle expressed in the precept nemo tenetur se ipsum

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accusare. It may be regarded as extension of the common law rule excluding voluntary statements. In referring the decision of the question whether a confessional statement should be rejected to the discretion of the judge, all that seems to be intended is that he should form a judgment upon the propriety of the means by which the statement was obtained by reviewing all the circumstances and considering the fairness of the use made by the police of their position in relation to the accused. The growth of rules of practice and their hardening so that they look like rules of law is a process that is not unfamiliar."

In the
Court of
Appeal Guyana

No. 53

Judgment of
Cummings
J.A.
(Dissenting)

20th
December
1966

(Contd.)

And in the same case Dixon, J., continued (p. 515):

"Here as well as in England the law may now be taken to be, apart from the effect of such special statutory provisions as s. 141 of the Evidence Act, 1928 (Vict.) that a judge at the trial should exclude confessional statements if in all the circumstances he thinks that they have been improperly procured by officers of police, even although he does not consider that the strict rules of law, common law and statutory, require the rejection of the evidence. The Court of Criminal Appeal may review his decision and if he considers that a miscarriage has occurred it will allow an appeal from the conviction."

Had a policeman obtained the alleged confession in the circumstances disclosed in the instant case, it would have been in flagrant disregard of the Judge's rules. Such a statement would no doubt have been excluded by the learned trial Judge upon a proper exercise of his discretion, had all the facts been before him at the voir dire.

In dealing with the facts in Mc Dermott's case ubi supra, Dixon, J., went on to say at page

In the
Court of
Appeal Guyana

515:

No. 53

Judgment of
Cummings
J.A.
(Dissenting)

20th
December
1966

(Contd.)

"The character of the questions, the absence of any insistence or pressure in putting them, the fact that no questions were put directed to braking down or destroying the prisoner's answers or statements and the fact that there was no attempt to entrap, mislead or persuade him into answering the questions, still less into answering them in any particular way, these are all matters which negative such a degree of impropriety as to require the exclusion of the testimony as to the prisoner's admissions."

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Can that be said of the circumstances of this case? Here the police flagrantly and knowingly circumvented the Judges' Rules by a trick to obtain the alleged confession, In Phipson - ubi supra - at page 331, para. 759, the following passage appears:

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"In the nineteenth century it was held that a confession induced by false representations or deception practised upon the accused - R. v. Derrington 2 C. & P. 372 - or obtained by plying him with alcohol - R. v. Spilsbury, 7 C & P. 187 - was admissible; it is very doubtful whether the cases would now be followed in England and Wales."

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In my view they will not be followed. To follow them would be to defeat the policy upon which the rule was formulated. This view seems to be supported by the case of R. v. Mangin, (1894) 6 Q.L.J. Aus. I have not had the opportunity of reading the case, but the following note appears in Vol. XIV of the English and Empire Digest (1956 Ed.) p. 484 under the heading -

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SCOTTISH, IRISH AND COMMONWEALTH
CASES.

"3197. Wilfully untrue representation. M. was charged with having stolen gold from a co. G., a private detective, who had worked himself into M's confidence, gave evidence that he told M. that he came from S. Africa and had done business in diamonds. M. replied, 'that money could be made here if one went the right way about if.' G. then, by means of false statements, induced M., by promising to participate in gold robberies, to admit he had some gold scraped from the co.'s reports. The statements were admitted to be false. Evidence admitted and prisoner was convicted:-

In the
Court of
Appeal Guyana

No. 53

Judgment of
Cummings
J.A.
(Dissenting)

20th
December
1966

(Contd.)

Held: the representations being untrue, and being made after the subject - matter of the charge had been taken, all subsequent confessions of M. were inadmissible as being induced by such false statement and the conviction must be annulled. - R. v. Mangin (1894), 6 Q.L.J. 63. - AUS.

In R. v. Histed, (1898) 19 Cox p. 16, the prisoner was charged with bigamy. The Clergyman who married her on the occasion of the first marriage, produced the marriage register but was unable to identify her as the person. A detective, while the prisoner was on remand, took the clergyman to the police Station. Pointing him out to the prisoner the detective said:

"'Do you know this gentleman?' The answer which appeared upon the depositions was as follows: 'Yes, you are the Mr. Cobb who married me and Charles Histed at Stockbury Church on the 4th day of September, 1886. James Bigg was one witness, and a police-constable was there named Reeves or Reed.'

"By his Lordship,

Q. Did you caution the woman?

A. No, my Lord.

In the
Court of
Appeal Guyana

No. 53

Judgment of
Cummings
J.A.
(Dissenting)

20th
December
1966

(Contd.)

Q. What was the object of the question?

A. It was simply a remark.

Q. Do you really mean to tell me that?

A. Yes.

"Murphy, on behalf of the prisoner submitted that a statement obtained in this manner was not admissible evidence.

"Chambers, Q.C. in reply.

"HAWKINS; J. I shall not allow this question to be put. It is a matter on which I hold a strong opinion. No one either policeman or anyone else, has a right to put questions to a prisoner for the purpose of entrapping him into making admissions. A prisoner must be fairly dealt with. In this case no caution was given by the detective. The fact was, that to the knowledge of the detective there was no evidence of identity against the prisoner. Mr. Cobb failed to recognise her, and so, by a trick, he endeavoured to set the case on its legs again out of her own mouth. This cannot be permitted. In my opinion, when a prisoner is once taken into custody, a policeman should ask no questions at all without administering previously the usual caution.

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"There being no evidence of identity prisoner was discharged."

The following note appears at the end of the report:

"NOTE. The decisions in the cases of Reg. v. Gavin (15 Cox C.C. 656) and Reg. v. Brackenbury (17 Cox C.C. 628) were subsequently brought to the notice of the learned Judge, who said: 'I

entirely agree with the ruling of Smith J., in Reg. v. Gavin. Cross-examination of a prisoner by a policeman should not be permitted, and in my discretion I should exclude evidence obtained in that way.' The case I have just tried shows exactly the danger of allowing such evidence to be given."

10 Would it not, then, make a mockery of the Judges' Rules and all the learning thereon if the police can knowingly substitute for one of themselves an ad hoc policeman to do exactly what the rules preclude themselves from doing?

20 The conclusion, then, to be drawn from this consideration of the authorities is that the trial Judge's discretion with regard to the admissibility of the confession of an accused person is a judicial discretion and must accordingly be exercised in accordance with well established principles. He must pay due regard to the principles of the Common Law and to the policy of the Legislature in safeguarding persons against being inveigled into admitting criminal responsibility. It would be most incongruous if the action of the police in evoking statements was opposed to 'the fair administration of justice' and yet the trial Judge should submit to the Jury the very statement which had been improperly made to them by a prisoner. If it does not clearly appear that these principles were appreciated and/or applied by the trial Judge or that all the facts necessary for a proper exercise of the discretion, and this Court will review his decision and, if there appears to have been a miscarriage of justice, quash the conviction.

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40 If the learned trial Judge in this case appreciated the principle of the Crown's onus, he does not seem to have applied it. Moreover, had he known of the police "arrangement" - subsequently conceded by the Crown but of which he was not aware at the voir dire - he may very well have rejected the confession. In the circumstances, I consider that the confession should have been excluded and should not now be allowed to stand.

In the
Court of
Appeal Guyana

No. 53

Judgment of
Cummings
J.A.
(Dissenting)

20th
December
1966

(Contd.)

In the
Court of
Appeal Guyana

No 53

Judgment of
Cummings
J.A.
(Dissenting)

20th
December
1966

(Contd.)

Counsel for the Crown urged that in the absence of the confession the other evidence was sufficient to justify the conviction. I have at the beginning of this judgment reviewed the evidence, and that may or may not be so - I express no opinion as to that here - but how do we know whether the Jury, having examined the manner and demeanour of the witnesses - if they did in fact bother to do so having regard to the confession - accepted their evidence as true?

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The law with regard to the application of the proviso is clearly and authoritatively set out in Makin v. Attorney General for New South Wales. (1893) 17 Cox C.C. 704 at page 711, where Lord Herschell, in delivering the opinion of the Board said :

"The point of law involved is, whether where the judge who tries a case reserves for the opinion of the Court the question whether evidence was improperly admitted, and the Court comes to the conclusion that it was not legally admissible, the Court can nevertheless affirm the judgment if it is of opinion that there was sufficient evidence to support the conviction, independently of the evidence improperly admitted, and that the accused was guilty of the offence with which he was charged. It was admitted that it would not be competent for the Court to take this course at common law, but it was contended that sect. 423 of the Criminal Law Amendment Act, of 1888 (46 Vict. No. 17) empowered, if even it did not compel, the Court to do so. That section is in these terms: 'The judge by whom any such question is reserved shall as soon as practicable state a case setting forth the same with the facts and circumstances out of which every such question arose, and shall transmit such case to the judges of the Supreme Court, who shall determine the questions, and may affirm, amend, or reverse the judgment given, or avoid or

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arrest the same, or may order an entry to be made on the record that the person convicted ought not to have been convicted, or may make such other order as justice requires. Provided that no conviction or judgment thereon shall be reversed, arrested, or avoided on any case so stated, unless for some substantial wrong or other miscarriage of justice.

"It was said that, if without the inadmissible evidence there were evidence sufficient to sustain the verdict, and to show that the accused was guilty, there has been no substantial wrong or other miscarriage of justice. It is obvious that the construction contended for transfers from the jury to the court the determination of the question whether the evidence, that is to say, what the law regards as evidence, established the guilt of the accused; the result is that, in a case where the accused has the right to have his guilt or innocence tried by a jury, the judgment passed upon him is made to depend not on the finding of the jury but on the decision of the Court. The judges are in truth substituted for the jury, the verdict becomes theirs and theirs alone, and is arrived at upon a perusal of the evidence without any opportunity of seeing the demeanour of the witnesses and weighing the evidence with the assistance which this affords. It is impossible to deny that such a change of the law would be a very serious one, and that the construction which their Lordships are invited to put upon the enactment would gravely affect the much cherished right of trial by jury in criminal cases. The evidence improperly admitted might have chiefly influenced the jury to return a verdict of guilty and the rest of the evidence which might appear to the court sufficient to support the conviction might have been reasonably disbelieved by the jury in view of the demeanour of the witnesses. Yet the court

In the
Court of
Appeal Guyana

No.53

Judgment of
Cummings,
J.A.
(Dissenting)

20th
December
1966

(Contd.)

In the
Court of
Appeal Guyana

No. 53

Judgment of
Cummings
J.A.
(Dissenting)

20th
December
1966

(Contd.)

might under such circumstances be justified or even consider themselves bound to let the judgment and sentence stand. These are startling consequences, which strongly tend in their Lordships' opinion to show, that the language used in the proviso was not intended to apply to circumstances such as those under consideration. Their Lordships do not think that it can properly be said that there has been no substantial wrong or miscarriage of justice where on a point material to the guilt or innocence of the accused the jury have, notwithstanding objection, been invited by the judge to consider in arriving at their verdict matters which ought not to have been submitted to them. In their Lordships' opinion substantial wrong would be done to the accused if he were deprived of the verdict of a jury on the facts proved by legal evidence, and there were substituted for it the verdict of the Court founded merely upon a perusal of the evidence. It need scarcely be said that there is ample scope for the operation of the proviso without applying it in the manner contended for. Their Lordships desire to guard themselves against being supposed to determine that the proviso may not be relied on in cases where it is impossible to suppose that the evidence improperly admitted can have had any influence on the verdict of the jury, as for example where some merely formal matter not bearing directly on the guilt or innocence of the accused has been proved by other than legal evidence."

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Although this was mere obiter in that case, it is nevertheless, very authoritative obiter. However, it was referred to with approval in the Privy Council in Ibrahim v. The Queen, (1914) and was followed by the Court of Criminal Appeal in Dyson v. The Queen (1908-1910) A.E.R. Re. at page 738. In the latter case the Court was considering the effect of the proviso to section 4, sub-section (1) of

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the Criminal Appeal Act of 1907, and this is what Lord Alverstone, C.J., said:

10 "There yet remains the proviso to s. 4(1) of the Criminal Appeal Act, 1907, to be considered. By that proviso, although the point raised by the appeal was decided in the appellant's favour, yet the court may dismiss the appeal, if they are of the opinion that no substantial miscarriage of justice had arisen. The proper question to have left to the jury was whether the prisoner was guilty of accelerating the death by the injuries he inflicted on the child in December, 1907; (R. v. Martin). We are of the opinion that we cannot act under the proviso, for the reason that we ought not to substitute this court for the jury. Unfortunately, the Court does not possess the power to order a new trial, and therefore, although there has been a miscarriage of justice, we are unable to interfere. In all probability, had the right direction been given, the jury would have found the prisoner guilty of the offence which the prosecution suggested had been committed but, having regard to some of the evidence it is not certain that they would have so decided, and consequently it is too doubtful a case to enable us to act under the proviso. In Makin v. A.G. for New South Wales, Lord Herschell, L.C. said (1894) A.C. at p.70):

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40 "Their Lordships do not think it can properly be said that there has been no substantial wrong or miscarriage of justice, where on a point material to the guilt or innocence of the accused the jury have, notwithstanding objection, been invited by the judge to consider in arriving at their verdict matters which ought not to have been submitted to them.'

If for 'invitedmatters' be read the words 'have been told by the judge they might find a verdict of guilty on matters which ought not to have been submitted to',

In the
Court of
Appeal Guyana

No. 52

Judgment of
Cummings
J.A.
(Dissenting)

20th
December
1966

(Contd.)

In the
Court of
Appeal Guyana

No. 53
Judgment of
Cummings
J.A.
(Dissenting)

20th
December
1966
(Contd.)

them,' the cases are very similar.
The conviction must be quashed."

In R. v. Fisher, Channell, J., in the
course of delivering the judgment of the Court
of Appeal which with him comprised Lord
Alverstone, C.J., and Coleridge, J., said:

"We are of opinion that the
evidence as to the other cases was
inadmissible, because it was not
relevant to prove that he had committed 10
the particular fraud for which he was
being charged, in that it only amounted
to a suggestion that he was of a
generally fraudulent disposition. On
the other hand, if all the cases had
been frauds of a similar character,
showing a systematic course of
swindling by the same method, then the
evidence would have been admissible.
We think that in this case the jury 20
may have been influenced by the
evidence of the other cases, and, there-
fore, in accordance with the rule laid
down by this Court, although there was
sufficient evidence to support a
conviction without the additional
evidence introduced, the conviction
cannot stand."

As I have stated earlier in the course of
this judgment, the trial judge did not tell the 30
Jury that it was open to them, even if they
rejected the alleged confession, to convict
the accused on the other evidence if they were
satisfied with the manner, demeanour, and/or
credibility of the witnesses who gave that other
evidence. Consequently, they may have paid no
or little regard to these things. It is
therefore, impossible to say that the Jury were
not strongly influenced by, or for that matter
acted entirely upon the alleged confession. 40

I would allow the appeal quash the convic-
tion and set aside the sentence.

P.A. CUMMINGS.
JUSTICE OF APPEAL

Mr. Fred Wills for Deekinanan.
Mr. E.A. Romao for Crown.

NO. 54

ORDER GRANTING SPECIAL LEAVE TO APPEAL
IN FORMA PAUPERIS TO HER MAJESTY
IN COUNCIL

In the Privy
Council

No. 54

Order
granting
special
leave to
appeal in
Forma
Pauperis to
Her Majesty
in Council
24th May
1967

AT THE COURT AT BUCKINGHAM PALACE

The 24th day of May 1967

PRESENT

THE QUEEN'S MOST EXCELLENT MAJESTY

MR. SECRETARY CROSLAND
MR. GORDON WALKER

MR. WIGG
MISS JENNIE LEE

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W H E R E A S there was this day read at
the Board a Report from the Judicial Committee of
the Privy Council dated the 27th day of April 1967
in the words following, viz:-

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"WHEREAS by virtue of His late Majesty
King Edward the Seventh's Order in Council
of the 18th day of October 1909 there was
referred unto this Committee a humble Petition
of Deokinanan in the matter of an Appeal from
the Court of Appeal for Guyana between the
Petitioner and Your Majesty (Respondent)
setting forth that the Petitioner desires to
obtain special leave to appeal in forma
pauperis to Your Majesty in Council from the
Judgment of the Court of Appeal for Guyana
dated the 20th December 1966 dismissing his
Appeal against his conviction in the Supreme
Court of British Guiana (Criminal
Jurisdiction) on the 23rd November 1965 on a
charge of murder: And humbly praying Your
Majesty in Council to grant his special leave
to appeal in forma pauperis to Your Majesty
in Council from the Judgment of the Court
of Appeal for Guyana dated the 20th December
1966 or for further or other relief:

"THE LORDS OF THE COMMITTEE in
obedience to His late Majesty's said Order
in Council have taken the humble Petition

In the Privy
Council

No. 54

Order
granting
special
leave to
appeal in
Forma
Pauperis to
Her Majesty
in Council
24th May
1967
Continued

into consideration and having heard Counsel in support thereof and in opposition thereto Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioner to enter and prosecute his Appeal in forma pauperis against the Judgment of the Court of Appeal for Guyana dated the 20th December 1966:

"And Their Lordships do further report to Your Majesty that the authenticated copy of the Record produced by the Petitioner upon the hearing of the Petition ought to be accepted (subject to any objection that may be taken thereto by the Respondent) as the Record proper to be laid before Your Majesty on the hearing of the Appeal". 10

HER MAJESTY having taken the said Report into consideration was pleased by and with the advice of Her Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution. 20

Whereof the Governor-General or Officer administering the Government of Guyana for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

W.G. AGNEW.

EXHIBIT "Z"

STATEMENT OF ACCUSED PRODUCED IN COURT
OF APPEAL

S. Ali
A.S.C.
2.11.65

Exhibit "Z"
Statement of
Accused
produced in
Court of
Appeal 24th
October 1963

Sringlands Police Station

Deokenanan age 25 years states

10 I am a Logger and residing at Crabwood Creek
Corentyne River.

I am employed by Mr. Ragabhar of Crabwood
Creek to transport logs in the Corentyne river
with his launch "Miss Carol".

Sometime during last week the day and date
I cannot remember I left Crabwood Creek in company
with Baboon, Heerah and Dindial all of Crabwood
Creek in launch "Miss Carol" for Akaboo,
Corentyne River the launch was driven by Baboon.

20 About 8.00 p.m. on Wednesday 23.10.63 the
four of us left Washiaboo in the launch enroute to
Crabwood Creek. The launch had lights on Port and
starboard and was driven by Heerah, about 2.00 a.m.
on Thursday 24.10.63 as we were about Kanakaburi
Corentyne river I fell asleep, suddenly I felt an
impact and the launch went down I caught myself
in water and I began swimming for shore. I did
not see the three other men that were with me as
the night was very dark. I shouted for them
thrice but, I received no answer.

30 Deokinanan.

I continued drifting in the water until I
reached shore by Kanakaburi.

I remained there until day-break but I did
not see the other three men.

At day break I began walking on the water
side until I reached one Sonny House. I met Sonny

Exhibit "Z"
Statement of
Accused
produced in
Court of
Appeal 24th
October 1963
Continued

at home and I told him what had happened. I asked him to carry me back to the scene with his boat but he told me that he haven't any gas.

About 8.00 a.m. I saw Jawalla Persaud of Crabwood Creek passing in his boat and I called him, he came to me, I told him what had happened and I asked him to bring me down to Crabwood Creek and he did so.

On reaching Crabwood Creek I went home to Mr. Raghubar and I told him what had happened, he brought me to Springlands Police Station where the matter was reported and I made this statement.

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Deokinanan

When I was drifting in the water I heard a beating of an engine but I cannot say what collided with the launch.

We were not drinking rum in the launch whilst we were travelling as there was no rum in the launch.

I lost all my belongings that were in the launch.

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Deokinanan.

Taken by me at Springlands Police Station at 4.15 p.m. on 24.10.63. which was read over to witness who said it is true and correct and signed his name to it in my presence.

W. Bobb Cpl. 5075

24.10.63.

IN THE PRIVY COUNCIL

No. 19 of 1967

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

R E C O R D O F P R O C E E D I N G S

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