Privy Council Appeal No. 19 of 1967

Deokinanan – – – – – – – – – *Appellant*

v.

The Queen – – – – – – – – – *Respondent*

FROM

THE COURT OF APPEAL, GUYANA

REASONS FOR REPORT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 1ST FEBRUARY, 1968

Present at the Hearing:

VISCOUNT DILHORNE
LORD HODSON
LORD UPJOHN

[*Delivered by* VISCOUNT DILHORNE]

On 23rd November 1965 the appellant was convicted of the murder of Motie Singh after trial by jury in the Supreme Court of British Guiana.

He appealed to the Court of Appeal of Guyana which by a majority (Stoby C. and Luckhoo A.J.: Cummings J. A. dissenting) dismissed the appeal. Now by special leave of the Judicial Committee, he appeals to the Privy Council.

At the trial evidence was given that on 15th October 1963 the appellant, Motie Singh and two men named Heera and Dindial had gone up the River Corentyne in a launch belonging to one Raghubar to buy timber for Raghubar's sawmill at Crabwood Creek near the mouth of the river. Before they left Raghubar gave Motie Singh $2,000 and on 22nd October at Acabo about 150 miles up river he gave Motie Singh a further $3,000 and 1,000 Dutch guilders for the purchase of timber.

On 24th October at about 6.30 a.m. the appellant came on foot to Claude Chung's camp at Sunrop and asked to be taken down to Crabwood Creek. He told Chung that he and three others were coming down the river the previous night in Raghubar's launch when they met with an accident. He told Chung that "a boat had jammed theirs up the river" "in the centre of the river between Powis Island and the Dutch shore": that 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 found himself in the water" and that when he came to the surface he saw a big boat make two circles in the river and then go away.

The appellant got a lift in a canoe which was going downstream and in the course of the journey he told one of the men in the boat about the accident. He did not tell him that there had been a collision.

The same day he reported to Raghubar at Crabwood Creek. He told him that when the launch was in front of Maam Island there had been an explosion and he had found himself in the water. He said that he had not seen any vessel in the vicinity.

The appellant was then taken to the Police Station where he made a statement. He did not then say that there had been an explosion but that he had felt an impact and had heard the beating of an engine but could not say what the launch had collided with.

A search was made. At 4 a.m. the next day, 25th October, the search party which consisted of the appellant, two policemen and Raghubar were by Maam Island when the appellant pointed to a place in the river and said " This is the spot." Nothing was found there.

On 26th October the body of Dindial was found floating in the river by Ann's Creek about 25 miles up river from Maam Island and the bodies of Heera and Motie Singh were found floating in the river at Cow Landing about 5 miles from Ann's Creek. All three had wounds caused by a sharp cutting instrument. Motie Singh had a severe wound in his neck and he and Heera had had their stomachs cut open.

The bodies were put in a boat belonging to one Balchand, a logger, and the boat was towed by a launch down to Crabwood Creek. Balchand, who said that in 1963 he was a great friend of the appellant, travelled in the launch with the appellant and others. On the way down the appellant said that he would like to speak to Balchand but P.C. Ramjattan would not allow him to do so.

On 28th October the missing boat was found, sunk near Powis Island. It was brought to the surface. There was no sign of an explosion or collision. Cutlasses which had been on board were missing; so was the anchor and chain. The sea cork had been taken out and there was no doubt but that the launch had been deliberately sunk.

The appellant was arrested and taken to the New Amsterdam Prison.

On 3rd November a brother of the appellant called " Preacher " spoke to Balchand and as a result Balchand went to the prison to see the appellant on 6th November. The appellant was brought to the waiting room and Balchand's account of what happened was as follows:

> " 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.
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> 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."

Balchand also said that on this occasion he had told the appellant that he would try his best to assist him by going for the money. It was, he said, his intention to tell the police any information he got from the appellant.

Mr. Kellock for the appellant did not contend that what the appellant had said to Balchand on this occasion was inadmissible in evidence. Balchand's promise to help by going for the money was not given expressly or impliedly on condition that the appellant told him what had happened. The appellant's admission that he had got the money showed that his stories of an accident were not true.

On 7th November Balchand went to the Magistrates Court and saw P.C. Ramjattan. He said that Ramjattan gave him certain instructions but what they were, he was not, nor was Ramjattan, asked to say.

On 12th November Balchand went to Whim Police Station. After speaking to Sergeant Barker, he was placed in the lockup though not charged with any offence. He was put there in the hope that he would get information from the appellant and communicate it to the police. Cummings J. A. in his dissenting judgment expressed the view that he had been placed there by the police with knowledge on the part of the police that he would hold out an inducement to the appellant to confess. There is nothing in the record to justify the conclusion that he was instructed by the police to hold out any inducement to the appellant. Indeed it seems somewhat unlikely that the police would take a step which might render any information obtained from the appellant inadmissible in evidence.

At about 1 p.m. the appellant was brought to the station and placed in the cell with Balchand. They were alone together for about an hour. Balchand's account of what happened is as follows:

> " 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 tacooba 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, 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.
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> I told the accused that I would try and assist to get the money."

After the conversation Balchand told the appellant that he was in the lockup on a warrant for a fine. This was untrue.

When Balchand left the lockup, he spoke to Superintendent Soobrian and the next day he went with police officers to Powis Island where the money, amounting to $4,780 and 1,000 Dutch guilders, was found hidden exactly as the appellant had said.

Counsel at the trial objected to the admission in evidence of the statements made by the appellant to Balchand at Whim Police Station on the ground that they were induced by a promise to help the accused held out by a witness with the knowledge and consent of a person in authority, that is to say, Sergeant Barker, and were not made voluntarily. The trial Judge ruled that the evidence was admissible. The question to be decided in this appeal is whether he was right to do so.

In *Ibrahim v. The King* [1914] A.C. 599 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 be 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."

In *R. v. Thompson* [1893] 2 Q.B. 12 Cave J. said at page 15: " If it " (the confession) " proceeds from remorse and a desire to make reparation for the crime, it is admissible. If it flows from hope or fear, excited by a person in authority, it is inadmissible."

In *R. v. Harz* [1967] A.C. 760, decided in the House of Lords on the same day as judgment was given in the Court of Appeal in this case, the accused had been told that if questions put to him were not answered, he would be prosecuted for failing to answer them, and the question for decision was whether the answers given were admissible in evidence on

his trial for conspiracy to cheat and defraud the Commissioners of Customs and Excise. It was argued that as the threat did not relate to the charge or contemplated charge against the accused, it was admissible.

Lord Reid, with whom the other noble Lords agreed, was of the opinion that the admissibility of a statement induced by a threat did not depend on whether the threat related to the charge or contemplated charge against the accused. If the confession was induced by a threat, it was not voluntary and was not admissible.

Although this case was concerned with a threat, it is interesting to note that Lord Reid in this respect drew no distinction between a threat and other forms of inducement whether by a promise of favour or the holding out of a hope of advantage (*ibid.* pp. 818, 819).

In the light of what has been said in the cases referred to, the question for decision in this case is whether the prosecution established at the trial that the appellant's confession was free and voluntary and that he was not induced to confess by any promise or hope of advantage held out to him by a person in authority.

The appellant did not give evidence at the trial. Balchand's evidence as to the conversation at Whim Police Station was not contradicted nor was it challenged in cross-examination.

At their meeting on 6th November Balchand told the appellant that he would try to help him by going for the money. That promise was not conditional upon the appellant telling Balchand what had happened. Balchand went to the prison to see the appellant at the request of the appellant's brother. The appellant said that he was glad Balchand had come as he thought Balchand was a friend upon whom he could rely to assist him.

At Whim Police Station Balchand repeated the promise he had already given and he was told by the appellant what to do with the money when he had found it. As Luckhoo A. J. said in his careful and thorough judgment, nothing had happened to make Balchand appear to the appellant in a different light to that in which he had appeared on 6th November.

Luckhoo A. J. rightly said "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."

Luckhoo A. J. held that the two questions Balchand asked "were not tied to or hinged on any promises. They were independent of any promise to assist. . . ." He went on to say "If he" (the appellant) "did not care to satisfy Balchand's curiosity and tell of 'How the money got missing?' and 'How the 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."

Their Lordships entirely agree with these observations. On the evidence given by Balchand, the appellant cannot have thought that his confession was the price he had to pay for Balchand's help. In their Lordships' opinion it was established that the confession was not induced by any promise or hope of advantage held out to the appellant and was free and voluntary.

Further even if a promise by Balchand had induced the confession, Balchand was not and could not in their Lordships' opinion have been regarded by the appellant as a person in authority. It has long been established that a confession must be induced by a person in authority to be inadmissible in evidence (see *R. v. Row* (1809) Russ & Ry 153: *R. v. Gibbons* (1823) 1 C & P 97: *R. v. Moore* (1852) Den R 522).

In *R. v. Wilson* [1967] 2 W.L.R. 1094 Lord Parker C. J. said at page 1100:

> "The first question that arises is whether Captain Birkbeck was a person in authority. There is no authority so far as this court knows which clearly defines who does and who does not come within that category. It is unnecessary to go through all the cases; it is clear, however, in *Reg v. Thompson* (*supra*) that the chairman of a company whose money was said to have been embezzled by the prisoner was held to be a person in authority. It is also clear that in some cases it has been held that the prosecutor's wife is a person in authority, and in one case that the mother-in-law of a person whose house had been destroyed by arson was said to be a person in authority *vis-à-vis* a young girl employed by the owner of the house, in other words she was looked upon as a person in authority in relation to that girl.
>
> Mr. Hawser in the course of the argument sought to put forward the principle that a person in authority is anyone who can reasonably be considered to be concerned or connected with the prosecution, whether as initiator, conductor or witness. The court find it unnecessary to accept or reject the definition, save to say that they think that the extension to a witness is going very much too far."

In this case at the time of the confession Balchand was no more than a possible witness for the prosecution and their Lordships agree that the mere fact that a person may be a witness for the prosecution does not make him a person in authority.

Sir Kenneth Stoby, Chancellor, based his judgment in the Court of Appeal primarily upon the ground, that Balchand was not and could not have appeared to the appellant to be a person in authority. Cummings J. A. in his dissenting judgment, said that Balchand must have appeared to the appellant from the part he played in the search to have been "close to the police" and "someone who perhaps in the mind of the accused could influence the course of investigation by virtue of his position". He thought that Balchand "could reasonably in the mind of the accused have been regarded as a person in authority".

Their Lordships do not agree. In their opinion the evidence shows clearly that the appellant did not so regard him. He thought that Balchand was his friend. If he had not thought that and had thought that Balchand was "close to the police", it is not likely that he would have asked Balchand to become in effect an accessory after the fact. He cannot have thought Balchand when he met him in the lockup at Whim a person in authority.

Mr. Kellock argued that a person in authority meant a person who could fulfil the promise made and that as Balchand could have done what he promised, he was a person in authority. He contended that in the cases where confessions induced by promises made by persons in authority had been excluded, the promisor always had power to fulfil the promise.

If this be the case, it does not follow that that is the meaning to be given to the words "person in authority". The fact that a person could have kept his promise may show the reality of the promise and that it was a real inducement, but it is not a definition of those words. Mr. Kellock was unable to cite any case in support of his contention. In their Lordships' opinion his contention cannot be sustained.

Mr. Kellock also argued that it was to be inferred from the decision in *R. v. Harz* (*supra*) that it was no longer necessary and part of the law that to be inadmissible a confession has to be induced by a person in authority. He submitted that it is illogical that a confession should not be regarded as inadmissible if the inducement came from someone without authority and yet a confession brought about by the same inducement is inadmissible if induced by a person in authority. Although the inducement is the same in one case the confession is regarded as free and voluntary and in the other it is not.

This question was not considered in *R. v. Harz* (*supra*) and it cannot be concluded that the decision in that case inferentially declared what has long been regarded as part of the law, was not the law.

In *R. v. Todd* (1901) Manitoba Law Reports 364 the accused was induced to confess by two detectives who were not peace officers, representing that they were members of an organised gang of criminals and that to gain admission to the gang he had to satisfy them that he had committed a crime of a serious nature. Dubuc J. held that the promise was not made by a person in authority and consequently the confession was admissible. Bain J. who was of the same opinion, said:

> " A person in authority means, generally speaking, anyone who has authority or control over the accused or over the proceedings or the prosecution against him. And the reason that it is a rule of law that confessions made as the result of inducements held out by persons in authority are inadmissible is clearly this, that the authority that the accused knows such persons to possess may well be supposed in the majority of instances both to animate his hopes of favor on the one hand and on the other to inspire him with awe, . . ."

The fact that an inducement is made by a person in authority may make it more likely to operate on the accused's mind and lead him to confess. If the ground on which confessions induced by promises held out by persons in authority are held to be inadmissible is that they may not be true, then it may be that there is a similar risk that in some circumstances the confession may not be true if induced by a promise held out by a person not in authority, for instance if such a person offers a bribe in return for a confession.

There is, however, in their Lordships' opinion, no doubt that the law as it is at present only excludes confessions induced by promises when those promises are made by persons in authority.

For the reasons stated, their Lordships humbly advised Her Majesty that the appeal should be dismissed.

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In the Privy Council

DEOKINANAN

v.

THE QUEEN

DELIVERED BY

VISCOUNT DILHORNE

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