

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL
ON APPEAL FROM THE COURT OF CRIMINAL APPEAL IN
THE STATE OF TRINIDAD AND TOBAGO

B E T W E E N:

No. 8 of 1981

PETER CHANDREE

Appellant

-and-

THE STATE

Respondent

-and-

No. 13 of 1981

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DENNIS FLETCHER

Appellant

-and-

THE STATE

Respondent

-and-

No. 9 of 1981

LINCOLN NOREIGA

Appellant

-and-

THE STATE

Respondent

CASE FOR THE APPELLANT
LINCOLN NOREIGA

Record

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1. This is an appeal pursuant to a grant of special leave dated the 27th November 1980 from the judgment of the Court of Appeal of Trinidad and Tobago (Sir Isaac Hyatali, CJ, Corbin and Scott, JJA) dated the 15th July 1977 dismissing the Appellant's appeal against his conviction for murder at the Port-of-Spain Assizes before Braithwaite J. and a jury on the 3rd June 1976, when he was remanded in custody until 10th June, 1976, whereupon he was sentenced to be detained during Her Majesty's (scil. the State's) pleasure.

p.141
p.123
p.138
p.122
p.122

2. The principal issues which arise on this appeal are:

- (i) whether an allegation that a confession statement has been fabricated and that the signatures thereto have been extracted by acts and/or threats of violence, raises any issue as to the voluntariness and consequent admissibility of the said confession which requires to be resolved upon the voir dire;
- (ii) whether the doctrine of constructive malice still applies to the law of murder in Trinidad and Tobago.

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3. On the 6th September 1974 at Rio Claro, Trinidad, Peter Chandree was committed for trial and on the 17th October 1974 at Rio Claro, Dennis Fletcher and the Appellant were committed for trial. p.3

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4. The Appellant was indicted in a single count with murder, alleging that he, together with Peter Chandree and Dennis Fletcher "on the 24th day of May 1974 at Tabaquite Road, Rio Claro in the county of Nariva, acting together with one Rudy John murdered Andrew Britto". p.1

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5. On the 2nd October 1975 the indictment was endorsed by the Attorney General with a certificate entering the case against Chandree, Fletcher and the Appellant for trial at Port-of-Spain instead of San Fernando pursuant to section 3(5) of the Criminal Procedure Ordinance, Ch.4, No.3. p.3

6. The trial took place between the 17th May and the 3rd June 1976 before Braithwaite J. and a jury of 12.

p.121

7. The case for the State was that:-

(i) on the 24th May 1974, at about 9.15 to 9.30 a.m. the Appellant together with Chandree, Fletcher and John took part in a robbery at the Pay Station, Tabaquite Road, Rio Claro, of some 20,000 dollars from one Shah, a paymaster attached to the Ministry of Finance, in the course of which one Corporal Britto, one of two armed escorts of the said Shah, was shot and killed by Rudy John. The State alleged that Chandree, who was unarmed, mingled with those awaiting payment and on arrival of the paymaster gave a prearranged signal to the Appellant, Fletcher and John, all of whom were armed. When Corporal Britto made a move as if to draw his gun, he was shot by John, firstly in the abdomen and subsequently in the head. At about the time when the killing was taking place, the Appellant and Fletcher were between them demanding and obtaining the money stolen in the robbery and covering the paymaster and members of his staff in the pay office with their firearms, which were also loaded. After the money had been taken, Chandree drove John, Fletcher and the Appellant away from the scene in the paymaster's car.

pp.9,11,
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Record

- (ii) on the 25th June 1974 Chandree was arrested by Corporal Russell and taken to the CID office in San Fernando, where he was detained; p.20
- (iii) on the 10th September 1974 Fletcher was arrested at San Fernando Hospital by P.C. Logan and taken to the CID office where he was detained; p.29
- 10 (iv) on the 11th September 1974 Noreiga was arrested with a bandaged right foot at his home in Fyzabad by Sergeant McMillan, who took him to the CID office in Siparia, where a Dr. Baird attended to his injured foot. On the 12th September Assistant Superintendent Clarke took a statement under caution (Exhibit AC4) from Noreiga which he signed as voluntary and correct and which was witnessed by P.C. Stewart (who was not called at the trial). Later the same day a Justice of the Peace, one Malcolm O'Brien, read Noreiga's statement to him and obtained his confirmation that it was voluntary, a certificate to which effect was appended to the statement. On the 13th September Inspector Small held an identification parade incorporating Noreiga at which he was identified by a State witness Puchoon Dookie. Later on the same day Assistant Superintendent Clarke formally charged Noreiga. p.32
- 20 pp.36,54-6
- p.38
- p.56
- 30 p.36

8. The State called twenty two witnesses and during its case the Appellant's confession statement (Exhibit AC4) was read to the Court, pp.54-6 no objection to it being taken by the defence, minus the first thirteen lines, which were excluded in the exercise of judicial discretion.

9. Chandree made a statement from the dock pp.40-2 and called one witness, Michael Lewis.

10 10. Assistant Superintendent Clarke was then p.43 recalled by the Court.

11. Fletcher made a statement from the dock. pp.43-5

12. The Appellant gave evidence and called one witness, his case being in three parts:

20 (i) an alibi, supported by the witness, the pp.46-7 same Michael Lewis as called by Chandree, to the effect that the Appellant, on the morning of the robbery from about 8 until noon was at La Brea Magistrate's Court in order to hear a case in which the witness Lewis was appearing as a defendant;

30 (ii) an account of how his statement under pp.45-6 caution (Exhibit AC4) came into existence, namely, that on the 12th September 1974 at the CID office, Siparia, one Inspector Franklyn (who was not called) told the Appellant to sign some documents without reading them; that the Appellant objected and the Inspector "began mashing my sick feet saying "Sign there! Sign there!"; that Assistant Superintendent Clarke came

into the room and by similar methods sought to persuade the Appellant to sign, without success; that Inspector Franklyn then pointed a gun at the Appellant's head and ordered him to sign or be shot; that the Appellant in fear signed two documents; that another officer present, one Sergeant Richards (also not called) told the Appellant to copy something from a book onto each document, which he did, and that finally he confirmed the truth and voluntary nature of the statement to the Justice of the Peace under further threat from Inspector Franklyn of being shot;

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- (iii) an account of how, when the witness Puchoon Dookie picked out the Appellant on the identification parade, the witness alleged that the Appellant shot Corporal Britto; this was reiterated by the witness at the committal proceedings, but retracted at the trial.

p.46

p.91

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13. The learned Judge summed up the case to the jury, in the course of which he directed them:-

- (i) that the substance of the Appellant's complaint concerning the taking of his statement under caution (Exhibit AC4) being that it was not his own statement at all, having been fabricated in its entirety and that his signature thereto was extracted by acts and/or threats of violence, there arose no issue for his determination as to the voluntariness and consequent admissibility thereof;

p.62

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- (ii) that it was for the jury to decide whether the Appellant made the statement, whether he signed it voluntarily and what weight and value to give it; p.62
- (iii) that if, having decided the issues at (ii) above in favour of the State, the jury was then to give the statement its full face value, it would have no alternative but to convict the Appellant of murder; pp.61,79
- 10 (iv) that "without any more evidence, if you come to the conclusion that (this statement was) given and given voluntarily, that is the end of the case."; pp.61,79
- (v) that if the jury found out that the Appellant participated in the robbery, he must therefore be guilty of murder. pp.62,81
pp.99-100
14. On the 3rd June 1976 the Appellant, together with Chandree and Fletcher, was convicted of murder. pp.118,
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- 20 15. The Appellant appealed against his conviction to the Court of Appeal of Trinidad and Tobago on various grounds, his appeal being dismissed in a judgment delivered by Sir Isaac Hyatali, CJ on the 15th July 1977. pp.123-
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16. The Court of Appeal held as follows:-
- (i) that the learned trial Judge had erred in leaving to the jury the question of whether the confession was voluntary and that if they found it was not, they should disregard it; p.126

(ii) that this misdirection was unduly favourable to the Appellant; p.127

(iii) that "it is of vital importance to note p.136
that an objection in the terms under
reference does not allege that the accused
by duress was forced to say what is
contained in the statement and further,
that by duress he was forced to append his
signature to what he was forced to say in
10 the statement; but rather he was forced
by duress to sign a statement containing
facts which were fabricated and of which
he is not the author. Accordingly, if
his allegations are true, his mind did
not go with his signature on the statement
nor his signature with its contents. In
contemplation of law, therefore, he did
not sign the statement nor accept its
contents as his. In other words, whenever
20 an accused alleges that a confessional
statement purporting to be his was in fact
a fabrication, it is immaterial for the
purposes under consideration that he alleges
in addition that he was forced to append
his signature to it".

(iv) that "the submission that a trial-within- p.137
a trial is required to be held to determine
admissibility when the objection is confined
to the allegation that the accused did not
30 make the confessional statement attributed
to him, conflicts, in our judgment, with

the general rule ... that questions of fact are for the jury to determine. Such an objection does not go to admissibility. It raises a pure question of fact as to whether it was made or not; and for the judge to rule on that question would be tantamount to an unauthorised usurpation of the functions of the jury".

10 17. The Court of Appeal did not have raised before it the question of whether constructive malice applies to the law of murder in Trinidad and Tobago and therefore gave no ruling on the subject, but the Appellant never the less respectfully invites the Judicial Committee so to do.

18. The Appellant respectfully submits that the Court of Appeal erred in its third and fourth rulings referred to above and that the Appellant has thereby suffered injustice.

20 19. On the 27th November 1980 the Judicial Committee of the Privy Council granted the Appellant special leave to appeal against the judgment of the Court of Appeal of Trinidad and Tobago.

20. The Appellant respectfully submits that the judgment of the Court of Appeal was wrong in substance and ought to be reversed and that this appeal ought to be allowed for the following (amongst other)

REASONS

- (1) BECAUSE the Appellant was prejudiced by the learned trial judge's failure to determine upon the voir dire the admissibility in evidence of the Appellant's statement under caution.
- (2) BECAUSE the learned trial judge misdirected the jury that had the Appellant been forced, as he alleged, to sign the said statement, no issue as to its voluntariness arose and that the question of whether the Appellant was so forced was for the jury alone to determine.
- (3) BECAUSE the learned trial judge misdirected the jury that if a number of persons set out to commit an offence, such as armed robbery, and in the course of the commission of that offence a person is killed, all are guilty of murder.
- (4) BECAUSE the Appellant was prejudiced by the learned trial judge's failure to leave the issue of manslaughter to the jury.

BARBARA CALVERT.

D. JOHN DICKSON.

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