17/81

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL No. 24 of 1980

ON APPEAL

FROM THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

BETWEEN

SEERAJ AJODAH Appellant

and

THE STATE Respondent

CASE FOR THE APPELLANT

Record

1. This is an Appeal by Special Leave granted 27th March 1980 from a Judgment of the Court of Appeal of Trinidad and Tobago (Sir Isaac Hyatali C.J. Phillips and Rees JJ) dated July 18th 1977 which dismissed an Appeal by the Appellant against his conviction on 17th January 1975 in the High Court of Justice for Trinidad and Tobago (The Hon. Mr. Justice McMillan and Jury) for murder in respect of which he was sentenced to death. p.111 p.105

2. The Appellant and one other namely Gangadeen Tahaloo was tried on an indictment containing three counts. p.3A

The first Count charged both with the Murder of Krishendath Gosine at Phillipine in the County of Victoria on 9th January 1973. p.3A

The Second Count charged both with the robbery with aggravation of Angela Dowlath of Ten Dollars in cash and a wrist watch valued at $29.00. p.3A

The Third Count charged both with the rape of Angela Dowlath on the 9th January 1973 at Phillipine in the County of Victoria. p.3A

The Appellant and his Co-Defendant pleaded not guilty to each of the Counts. The Appellant was convicted on Count One and his Co-Defendant on Counts Two and Three. The sentence on the Co-Defendant was seven years hard labour on each count the sentences to run concurrently and 20 strokes with the birch on the Third Count. p.2 p.105

3. The principal issues which arise on this Appeal are

(1) As to the duty of the Trial Judge to consider in the absence of the Jury the admissibility of a statement made by the Appellant when the evidence adduced in the course of the trial shows that there is an issue as to whether the statement was made and/or signed voluntarily or whether it was made and/or signed by reason of threats and violence to the Appellant by the police.

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(ii) The Appellant and his Co-Defendant having been charged with both capital and non-capital offences namely those of murder, robbery with aggravation and rape when the Jury Ordinance Chapter 4 No. 2 Section 16 requires the offences to be tried separately and that the offence of murder shall be tried by twelve jurors and the offences of robbery with aggravation and rape shall be tried by nine jurors the Judge erred in law in allowing the three counts to be tried together.

(iii) That the Judge did not consider whether the evidence in respect of the allegations of robbery and rape was admissible in respect of the allegation of murder and did not exercise his discretion to decide whether the evidential value of proof of the alleged robbery and rape to a person other than the deceased and in the absence of the deceased and of one of those charged outweighed the prejudicial effect of such proof.

4. The case for the Crown was that Krishendath Gosine and Angela Dowlath were together inside a van which was parked on a gravel road in a deserted country district. The Appellant and the Co-Defendant approached the van and at the time were wearing face-masks. One of the defendants allegedly, the Appellant opened the van door and pulled out Krishendath Gosine and attacked him with a
p.5 cutlass. Krishendath Gosine then ran off followed by
pp.55/56 his attacker. The other masked man, alledgedly the Appellant's Co-Defendant ordered Angela Dowlath out of the van then entered the van and took money from her handbag. Thereafter he ordered her to strip and had
p.6 sexual intercourse with her on the ground at the back of the van without her consent. The man who had attacked and followed Krishendath Gosine returned to the van and the two men ran off. Angela Dowlath went to look for Krishendath Gosine whom she found lying injured and
p.56 apparently dead some distance from the van. Later she made statements to the police and identified a man as
p.35 being similar in appearance to the man that had raped her.
p.35/38 That man, Michael Harnaryan was detained by the police for
p.27/67 questioning but was released. Angela Dowlath was not
p.7, p.10, p.69 asked to and did not at any time identify the Appellant or his Co-Defendant.

5. The premises at which the Appellant lived were
p.16/17/79 searched on 12th January 1973. Clothing, an ice pick, a cutlass, a bag and a pair of rubber boots were removed.

6. On 11th January 1973 police officers went to the home
p.19/58 of the Appellant and took him to the Princess Town Police Station arriving at 3 p.m. From the Police Station the Appellant was taken to the San Fernando C.I.D. where he was interviewed by Superintendent Jeremiah Gordon. The Superintendent gave evidence that the Appellant elected to make a statement. Corporal Estrada was called into the Superintendent's office and that then the Appellant was cautioned, handed a copy of the Judge's rules. After the Appellant had signed a statement made but not written by him the Superintendent called in a Justice of the Peace
p.33 namely Mr. Titus. The latter read the statement to the Appellant asking him if the statement was given voluntarily to which the reply was 'yes'. Mr. Titus also asked the
p.28 Appellant if he had been beaten to which the Appellant replied he had not been beaten. The Appellant was charged
p.33 at 10.10 p.m. on the 11th January 1973.

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7. The case for the Appellant was that he had no part in the commission of the crimes alleged in the three counts. In evidence he said that when the police arrived at his home and told him that they wanted to question him about the deceased and Angela Dowlath he denied any knowledge of the crimes. That he agreed to go to the police station. On the journey to the police station he was taken to a cane field where he was beaten and threatened by the police. After he had arrived at the police station he was beaten. When he was taken to the San Fernando C.I.D. he was placed in Superintendent Gordon's office and was hit with a ruler after he said he knew nothing of the crimes. Sergeants Estrada and Reid removed him from the Superintendent's office beat him, returned him to the office but when he continued to say he knew nothing about it he was taken from the office and beaten again. The Appellant was taken back to the Superintendent's office and under threat told to sign a prepared statement by which time he was afraid of further beating so he signed the statement. When he appeared before the Magistrates on 12th January 1973 he asked to see a doctor. The Magistrate ordered him to be examined by a Doctor but he was not examined by a Doctor for the purpose of seeing whether he had been beaten.

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8. At no stage of the trial did the learned judge consider in the absence of the jury whether the statement of the Appellant was admissible. Although Counsel for the Appellant did not raise the question of the admissibility of the statement the fact that the Appellant was alleging he was induced by force and threats to sign a prepared statement was apparent from the examination and cross-examination of Crown witnesses before it was admitted in evidence during the course of Superintendent Gordon's examination-in-chief.

p.33

(a) Sergeant Lionel Reed

In reply to cross-examination by Counsel for the Appellant when the Serjeant replied "No I was not beaten by me on 11th January 1973, or for the purpose of asking him to sign a prepared statement. I did not hold his head down in water to achieve the purpose".

p.15

"No I was not beaten at all". "I was not present in any room when No I was beaten. I did not thereafter tell him that Clarkie was coming and to answer to suit or else more licks in his arse. I was not present when Mr. Titus was brought in. I know nothing of those events if at all they occurred."

p.15/73
p.15

This witness was asked questions about the complaints made by Counsel for the Appellant at the Magistrates Court on 12th January 1973. The witness said

p.73

"I do not recall that both accused on that day made complaint before the Magistrate that they were beaten and forced to sign a prepared statement or requested medical attention. I don't recall being in Court. I don't recall their Counsel requesting they be medically examined and don't recall Magistrate so ordering".

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(b) Corporal Scott

In reply to cross-examination by Counsel for the Appellant the witness said

p.19/77 "When he said he did not know anything about the murder we did not start to beat him up. We did not strike
p.19/77 him."

(c) Rawlston Stewart, prison officer

In examination in chief referred to procedure if
p.21/22 marks of violence observed on complaints are made by prisoners that they have been the subject of violence. 10

(d) Sergeant Modest Estrada

In reply to cross-examination by Counsel for the Appellant said

"Not true that Sergeant Reed and I showered blows on
p.25/78 No 1 to induce him to make a statement."

p.26/78 "Not true I had been seeing accused from the time of the 11th January 1973 when he was arrested and not true Sergeant Reid and I beat him. I was on leave."

p.26/84, 86 "Not true that before Mr. Titus came in I told the accused that Clarkie the boxer is coming and answer to 20
suit, or it's more licks again or I'll kill him again or any such thing.

p.26/84/86 "I gave evidence in 1974 - January 22nd. I know the accused were alleging they had been beaten to give statements. I did not know the allegation was that Sergeant Reid and I had beaten accused only that police had done so ------ No one suggested to me in Magistrate's Court that either I or Sergeant Reid had beaten either accused. No-one suggested that I had
p.27/84/86 man-handled No. 1. Under cross-examination in 30
Magistrates Court I said no threats or promises used but it was never put to me that I had beaten or man-handled either accused.

I also said there "I can say No. 1 was not beaten
p.27 because it was within my knowledge". It was never put to me however that I had beaten him.

(e) Rupert Titus Justice of the Peace

In reply to cross-examination by Counsel for the Appellant said:-

p.29/78/79 "At no time that night did the accused or anyone 40
allege that he was being forced to sign a statement".

9. After the Appellants had been admitted and tendered
p.33 as exhibit J.G.4. but before the Appellant gave his evidence
p.53/54 relating to the violence and threats alleged Superintendent
pp.41/42/46 Gordon in reply to cross-examination by Counsel for the Appellant said:-

"Statement signed by No. 1 was not a prepared statement.
p.35/86 My officer did not beat him to force him to sign it ------"
"Not true that Estrada and Reid beat accused No. 1 on my instructions". 50

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"Not true that Reid and Estrada were both in the room when Titus arrived and not true that both told No. 1 before Titus arrived that they would beat him up if he did not answer to suit". p.36/86

"Not true No. 1 was beaten several times to affix his signature to a prepared statement". p.37

10. The Appellant respectively submits that the learned trial judge must have been aware by reason of the questions asked of the Crown witnesses that the Appellant was alleging his statement was not made voluntarily and therefore before that statement could be admitted as evidence the question as to it's admissibility must be decided by him and there had to be a trial within a trial as the Appellant was entitled to a ruling on admissibility from the Judge.

R v Frances & Murphy 1959 43 Cr App R

Ibraham v Rex 1914 AC p.599

R v Richards 1967 51 Cr App R. p.266

11. The question of the admissibility of the Appellant's statement was crucial as there was no other evidence on which the Appellant could be convicted. The learned Judge so directed in his summing up.

"And it seems to me if you accept that statement as having been made by Ajodha the verdict on the first count in respect of Ajodha is Guilty of Murder. But you can only come to that conclusion if you have no doubt of the authenticity of the statements, the persons from whose lips they came and the integrity of the policeman in this case. If you have doubts about it, reason for doubts, you have got to reject it, blue shirt or not; that does not matter; that is not sufficient evidence in my view to arrive at a verdict of Guilty in this case." p.92 p.93

The learned Judge after directing the jury that it is their function alone to decide on 'what they make of the police case' and whether the police 'leave this Court free their integrity unassailed' continues his summary with further reference to the Appellants statement. p.93

"But I repeat, the crux of the case against him on the first count, indeed, if you will, of all the counts depends on what you make of the statement. Was it a statement he was forced to sign? A prepared statement, the contents of which he knew nothing as he alleges? Or was it a statement made by him? And if so are you prepared to act on it".

The learned Judge in his summing up stated that it was because of what was contained in the statement made by the Appellant and his Co-Defendant that they were charged with murder, rape and robbery. p.85/95

12. The Appellant respectfully submits that the learned trial Judge erred in law in that he delegated the function which is his alone on the question of the admissibility of evidence to the jury in the following passage which referred to statements made by the Co-Defendant and the Appellant.

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"In other words if in respect of either of these two incriminating statements, let me say, you have reason for doubting the integrity of the police in this case and are not prepared to say with the police these statements were not prepared and were not forced out of them and were not signed by them in the manner they alleged, only then can you say it implicates them. If you have doubts about that, remember it is the Crown to satisfy you that the statements were given by accused persons, and if you are not satisfied, having regard to what transpired in this Court, the way the case was canvassed on either side, then you will throw these statements out you cannot use them. And if you throw them out you will take it from me that is the end of this case in respect of either accused. It is only if you are satisfied that the police acted above board, you do not go along with the defence you reject it and say these were not prepared statements which they were forced to sign, then and only then, you will consider what weight you can give to them. You will apply each statement to the person who gave it and see where it leaves you.

13. The Appellant further submits that by reason of the number of passages in the summing up which referred to the integrity of the police and in particular the police leaving the Court with their integrity tarnished or untarnished the suggestion was made directly or by inference that the police officer who gave evidence where on trial and that this was prejudicial to the Appellant's Case. In particular the learned Judge at the end of his summing up said

pp.84,91,92, 93

"But the crux of this case, I repeat is:- are the police to leave here untarnished or not? In the course of your function in this case that consequence is inevitable."

p.101

14. At the hearing of the Appellant's appeal in the Court of Appeal of the Supreme Court for Trinidad and Tobago on July 18th 1977 no complaint was made against the summing up. That Appeal was based on two grounds. The first that the trial was a nullity because a Court for murder was improperly joined with counts for robbery with aggravation and rape contrary to the Jury Ordinance Chapter 4 No. 2 Section 16 and the second that the learned trial Judge erred in not holding a trial within a trial to determine the admissibility of the confession statement attributed to him when he had raised that issue by allegations he was beaten and forced to sign a statement he had not made.

p.108
p.110

15. The judgment of the Court of Appeal was delivered by Sir Isaac E. Hyatali C.J. who rejected the submissions made on behalf of the Appellant on both grounds. On the first ground because that Court had held in previous decisions of the Court that a trial on a charge of murder was valid even when tried on other counts the trial of which was invalid. The Court of Appeal held that the only point to be considered was whether the Appellant was prejudiced by the reception of evidence tendered in proof of the second and third counts which related to robbery with aggravation and rape. The Court of Appeal held that the evidence was relevant to and probative of the prosecutions case against the Appellant and his Co-Defendant on the charge of murder and it could not be said that its prejudicial value outweighed its probative value and therefore it was properly admissible.

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16. The Court of Appeal rejected the submission on the second ground by reason of their decision on a similar point in Chandree & Others v The States No. 28, 29 and 37 of 1976. p.111

17. The Court of Appeal were in error on a matter of fact in that the Court attributed an objection made by Counsel for the Appellant's Co-Defendant as to the admissibility of that defendant's statement to Counsel for the Appellant who therefore respectfully submits that the Court of Appeal having found that p.110 p.12/13 p.31/32

"The learned trial judge taking the view that no issue had been raised as to the voluntariness of the statement admitted in evidence without conducting a trial within a trial". p.110

Never directed or had directed to their consideration the true issue which was that the question of the voluntariness of the Appellant's statement had been raised during the case for the Crown and that though no objection as to its admissibility had been taken by Counsel for the Appellant at the trial. The learned trial judge had never considered the question of the admissibility of the statement made by the Appellant. The Court of Appeal have not ruled on the true issue which was whether the trial judge erred in law in permitting the statement to be tendered in evidence without first ruling on its admissibility.

18. The Appellant respectfully submits that the decision of the Court of Appeal of the Supreme Court of Trinidad and Tobago /Sir Isaac Hyatali C.J. and Scott J.A./ in Chandree & Others v The State No. 28, 29 and 35 of 1976 was wrong in law in that when forced by violence, threats or otherwise to sign a statement said to have been prepared for signature the issue of voluntariness is raised as by signing such a document in law the signatory purports to accept the contents as correct. In the above case Sir Isaac Hyatali C.J. who delivered the judgment held that if an accused was forced to make a confession and did so that raised the issue of the voluntariness of the statement whereas if the accused was forced to sign a statement prepared by a police officer or another that did not raise the issue of voluntariness. The Appellant submits the Court of Appeal erred in law in so finding.

19. The Appellant submits that the Court of Appeal erred in finding that the probative value of the evidence relating to the counts charging the Appellant and his Co-Defendant with robbery with aggravation and rape outweighed its prejudicial value because they failed to give due weight to the following:-

(i) The murder was committed by a person other than the person who committed the robbery and rape.

(ii) The murder was effected in a place not within sight of the person robbing and raping Angela Dowlath.

(iii) The persons committing the crimes could not be identified.

20. The Appellant accordingly submits that the Judgment of

the Court of Appeal of the Supreme Court for Trinidad and Tobago is wrong in law and should be set aside and that this Appeal should be allowed and the Appellant's conviction for murder be quashed and the Appellant be awarded his costs for the following among other reasons.

R E A S O N S

1. BECAUSE the learned Trial Judge erred in law in failing to consider the question of the admissibility of a statement made by the Appellant.

2. BECAUSE the learned Trial Judge erred in his directions to the Jury in that he in effect by his directions left the question of the admissibility of the Appellant's statement to the Jury whereas the function of the Jury is to consider the weight and value to be attached to evidence once such evidence, in this case the Appellant's statement has been ruled admissible.

3. BECAUSE the learned Trial Judge permitted capital and non-capital offences to be tried together without first exercising his discretion as to whether the prejudicial value of the evidence relating to the charges of robbery with aggravation and rape outweighed its probative value in respect of the charge of murder.

4. BECAUSE the learned Trial Judge in his summing up erred in law in that he directed the Jury to consider the evidence of police officers in such a manner that the Jury were misled as to their function in assessing and deciding what weight and value to place on that evidence.

5. BECAUSE the Court of Appeal of the Supreme Court for Trinidad and Tobago erred in law in that the Court did not consider matters relating to the learned Trial Judge's errors in law in his directions to the Jury in his summing up on the evidence and matters relating to the Appellant's Statement and based their reasons on incorrect findings of fact.

6. BECAUSE the Court of Appeal of the Supreme Court for Trinidad and Tobago exercised their discretion on the question of the prejudicial effect and probative value of the evidence adduced relating to the Robbery with Aggravation and rape and did not consider whether the learned Trial Judge should have ruled on this matter before the evidence was tendered.

BARBARA A. CALVERT

JOHN J. REILLY

No. 24 of 1980

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O N A P P E A L

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and

THE STATE — Respondent

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