IN THE FIJI COURT OF APPEAL

Criminal Jurisdiction

Criminal Appeal No.50 of 1982

Between:

MAHENDRA PRASAD s/o Sukhdeo — Appellant

and

REGINAM — Respondent

S.R. Shankar for the Appellant
D. Fatiaki and G.E. Leung for the Respondent

Date of Hearing: 15th March, 1983
Delivery of Judgment: 15th March, 1983

JUDGMENT OF THE COURT

Gould V.P. (Orally)

This is an appeal from a conviction of murder in the Supreme Court of Fiji (Western Division) at Lautoka.

The main feature of the trial was that it was one in which the only possible alternative verdicts were murder and manslaughter, and in which the result was essentially determined by whether the Court accepted the evidence of the appellant or the contents of an earlier statement he had made to the Police, as being true.

Counsel attacked the summing-up on a number of grounds and it is to be kept in mind that it is the summing-up as a whole, rather than individual sentences, which must determine a matter. The first and second grounds alleged that there was no sufficient direction

upon the subject of lies on the part of the appellant, and that the direction upon onus was insufficient. As to the first of these we take the view that it is not a case which called for the wellknown direction in Broadhurst v. The Queen (1964) A.C. 441 as everything was subsidiary to the main question of credibility as between the appellant's evidence and his statement to the Police. It is not a case in which the divergence between the former and the latter might have been explained by motives of fear and the like. It was a question of the credibility of the evidence as a whole.

As to onus the main complaint was that the learned Judge had used such expressions as "sometimes the expression 'proof beyond reasonable doubt' is used; all this means is that you must be sure of his guilt before you convict him. If you are not sure then you must acquit". Further the learned Judge said "giving the same careful consideration to the evidence as you would to a matter of grave and vital importance in your own domestic or business lives".

There are various ways in which such matters may be left to a jury or assessors and on the summing-up as a whole we are not prepared to say that the wording adopted by the learned Judge was insufficient. We reject an argument that the learned Judge by constantly referring to the appellant's statement gave an impression to the assessors that a conviction of murder was what he desired.

There was an attempt to bring the case within such principles as are laid down in Thabo Meli v. The Queen (1954) 1 W.L.R. 228 and R. v. Church (1955) 2 All E.R. 72, and considered by this Court in Tara Chand (1968) 14 F.L.R. 73. The suggested basis was that the appellant might have considered his wife to be dead before he finally put the scarf around her throat. We have no need to consider this ground because it is

entirely inconsistent with the statement made by the appellant to the Police which was quite obviously accepted by the learned Judge and assessors as reflecting the true circumstances.

The final ground, hardly persisted in, was that the learned Judge failed to comply with the Criminal Procedure Code in that he did not write a judgment or enter a conviction. Mr. Shankar conceded that a conviction was entered and we are of opinion that the judgment, brief though it was, sufficiently complied with the relevant sections of the Code in a case in which the learned Judge had followed the unanimous opinion of the assessors.

For these reasons we dismiss the appeal.

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Vice President

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Judge of Appeal

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Judge of Appeal