



IN THE FIJI COURT OF APPEAL

At Suva

Criminal Jurisdiction

CRIMINAL APPEAL NO. 12 OF 1991
(High Court No. 4 of 1991)

BETWEEN:

GANGA RAM

APPELLANT

-and-

S T A T E

RESPONDENT

Mr. C. Singh for the Appellant
Mr. I. Mataitoga for the Respondent

Date of Hearing : 17th August, 1992
Date of Delivery of Judgment : 24th August, 1992

JUDGMENT OF THE COURT

The appellant was convicted on 22nd April, 1991 of the murder of Bal Ram.

Bal Ram died on 31st August, 1990 from severe wounds inflicted with a knife. The prosecution case was that the appellant and Bal Ram's wife Anjana Devi had formed an attachment for each other, but that Anjana Devi had reconciled with her husband and resumed living with him. Following the death of Bal Ram the appellant and Anjana Devi were together charged with his murder. At their trial both were found guilty by the Assessors but the trial Judge differed from the Assessors in respect of Anjana Devi and found her not guilty. That finding was the

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subject of an appeal by the State and that appeal was heard by a Court differently constituted from the present appeal.

The prosecution case in respect of the appellant depended almost entirely on a confessional statement made to the Police by him. The effect of that statement was that the appellant and Anjana Devi had together attempted to kill Bal Ram in his home by suffocation, using a pillow for that purpose. The appellant had then carried Bal Ram to the road and had there inflicted serious injuries on him with a knife and that it was these injuries, rather than the attempted suffocation, which caused his death.

In the course of the trial objection was taken on behalf of the appellant to the admissibility of the confession obtained under caution by Detective Corporal Vijay Kumar Singh and to the subsequent charge statement recorded by Corporal Ravi Narayan. This objection was heard by the Judge on a trial within a trial in the absence of the Assessors. The appellant gave evidence alleging that he had signed his confession because he was beaten and threatened, and that his charge statement was obtained from him in similar circumstances.

The Judge heard extensive evidence as to the taking of the two statements and concluded that, notwithstanding the evidence of the appellant and witnesses who gave evidence on his behalf,

the statements had been made voluntarily. He accordingly admitted the evidence objected to.

Upon the resumption of the trial evidence was again given by the appellant and his witnesses that the statements had not been voluntarily made, but the Assessors nevertheless found him guilty.

In his notice of appeal the appellant relied upon six grounds, but two of those were subsequently abandoned and we accordingly deal only with the remaining four:

1. The admission of the confessions

It was argued that the Judge erred in admitting the confessions because at the relevant time he was in custody.

We accept that at the time each confession was made the appellant must be regarded as having been in custody. It is also the case that he was cautioned before making his first statement. Accordingly, those confessions could not properly be given in evidence unless it was shown beyond a reasonable doubt that they were made voluntarily. This was essentially an issue of fact which depended upon the Judge's observation of the witnesses and his evaluation of their evidence.

In a detailed and careful ruling the Judge first correctly directed himself as to the principles he had to apply and then

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gave his reasons for the decision he had reached that the confessions had been voluntarily made.

The effect of the submission for the appellant on this ground of appeal was that, in the light of the evidence given by the appellant and his witnesses, the Judge could not properly have admitted the confessions. This submission, however, is based on the proposition that the Judge was somehow bound to accept the defence evidence as to what occurred, or at least to have entertained a reasonable doubt because of it. This cannot be correct. This Court cannot substitute its own view of the witnesses for that of the Judge who saw and heard them. As we are unable to see that the Judge erred in principle in his approach to the matter this ground must fail.

2. Evidence of Co-accused

It was argued that, as the co-accused, Anjana Devi, gave evidence at the trial the Judge ought to have warned the Assessors that she was an accomplice and accordingly that there ought to have been corroboration of her evidence within the well-known principle enunciated in R. v Baskerville (1916) 2 K B 658.

What the Judge did was to direct the Assessors that the evidence given by Anjana Devi was admissible in the trial for all purposes. This, in our view, was a correct statement of the law.

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The submission now made arises from a confusion between, on the one hand, the evidence given by one of two or more accused, and, on the other hand, evidence given for the prosecution by a person who was or purports to have been an accomplice of the person or persons charged, but who is not himself or herself charged on that occasion.

We have no doubt that no accomplice direction was required on this occasion.

3. Intoxication

This submission concerned the form of the direction required where there is a defence of intoxication. It was argued that the Judge had directed the Assessors that it was for the prosecution to show that drunkenness had rendered the accused incapable of forming the intent to commit the crime, rather than to show that, because of drunkenness, the accused did not form such intent.

What the Judge said in the relevant part of his summing up was:

"It is for you to decide whether in the circumstances accused 1 had the intent required to support the charge. You have to consider the state of mind of accused 1 at the time. When he struck the blows was he sufficiently in control of his mental faculties in spite of any alcohol he may have consumed to form the intention to do grievous harm or to kill. If he was capable of forming the intent did

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he in fact intend to kill Bal Ram or to cause him grievous harm? If he had such an intention then your opinion will be one of murder."

We consider this to have been a correct direction so that this ground must fail.

4. Direction as to confessions

The contention was that the Judge did not fully and properly direct the Assessors on the issue of weight and/or probative value of the confessions.

We can find little support for this contention. The Judge told the Assessors that they needed to decide whether the statements were fully and voluntarily given. More specifically he directed that the Assessors needed to be satisfied beyond a reasonable doubt that the appellant made the statements attributed to him and that those statements were true. He also reviewed the evidence given by the witnesses, including that of the appellant, as to the manner in which the statements were obtained. We consider there is no doubt that the question of the confessions was left properly to the Assessors.

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In summary, we are unable to accept any of the grounds of appeal as having been made out and the appeal against conviction is dismissed.

Michael M Helsham

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Mr Justice Michael M Helsham
President, Fiji Court of Appeal

Moti Tikaram

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Sir Moti Tikaram
Resident Judge of Appeal

Peter Quilliam

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Sir Peter Quilliam
Judge of Appeal