Privy Council Appeal No. 79 *of* 1935

Mahadeo - - - - - - - - - - - *Appellant*

v.

The King - - - - - - - - - - - *Respondent*

FROM

THE SUPREME COURT OF FIJI

REASONS FOR REPORT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 11TH JUNE, 1936.

Present at the Hearing:

THE LORD CHANCELLOR.
(VISCOUNT HAILSHAM)
LORD RUSSELL OF KILLOWEN.
SIR LANCELOT SANDERSON.
SIR GEORGE LOWNDES.
SIR SIDNEY ROWLATT.

[*Delivered by* SIR SIDNEY ROWLATT]

This is an appeal *in forma pauperis* by special leave from the judgment of the Supreme Court of Fiji sitting at the Lautoka Circuit Court dated 17th May, 1934, by which the appellant was found guilty of the murder of a boy named Ramautar, and being a young person within the meaning of the Fiji Ordinance No. 37 of 1932 was, pursuant to section 12, sentenced to be detained as the Governor might direct. The appellant is in fact about 16 years old. Ramautar, the boy alleged to have been murdered, was about 13 years old.

Pursuant to Ordinance No. 6 of 1875 the trial was held before the Chief Justice of Fiji, who is the only judge in the Island, sitting with assessors, and by section 29 of the same Ordinance the decision was vested solely in the judge. By virtue of section 32 of Ordinance No. 4 of 1875 the trial, for all purposes material to the present appeal, fell to be governed by the English common law.

The materials before their Lordships on the hearing of the appeal consisted of the official note (not taking questions and answers verbatim), the judge's own somewhat abbreviated notes, a resumé of the remarks of the Chief Justice to the assessors at the close of the case, in the nature of a summing up, which resumé was handed by the then Chief Justice to the then Attorney-General after the institution of this appeal and brought before their Lordships as an exhibit to an affidavit by the Attorney-General for Fiji, and lastly a note

of the summing up in longhand made by one of the counsel for the defence at the trial and exhibited to an affidavit by him.

Certain incidents in the trial to which it will be necessary to refer appear from affidavits made by counsel for the defence and the then Attorney-General. In substance there is no conflict as to these incidents.

The case was tried upon information by the Attorney-General pursuant to the procedure in force in the Colony, by which the appellant was charged with murder, and one Mathura his step-father and another boy, Sarandas, were charged, Sarandas with aiding and abetting and Mathura with being an accessory after the fact. In the result Sarandas was discharged at the close of the case for the prosecution and Mathura, like the appellant, was convicted.

The history of the case can be stated comparatively briefly. The only evidence as to the actual homicide was given by one Sukraj, a labourer about 25 years of age. The effect of this was as follows :—

On the morning of the 18th January, 1934, the appellant, the witness Sukraj, the dead boy Ramautar who was about 13 years of age, and Sarandas, about the same age as Ramautar, namely 13 years of age, were weeding in a field belonging to Mathura. A quarrel resulting in a struggle arose between Ramautar and Sarandas, who was the stronger boy. The appellant told Sukraj to separate them and on his refusal intervened himself. At this moment the deceased had hold of Sarandas's legs. The appellant released Sarandas and caught Ramautar by the throat while he was on the ground. The witness and Sarandas were then cutting grass. The appellant called out in a short time and said, " Come and see what has happened to Ramautar." When the witness and Sarandas got up to him the deceased was quivering. That went on for three minutes, when he died.

Sukraj then deposed that on the suggestion of the appellant they took the body and put it under a tree with the deceased's turban round his throat and leaving it there returned to Mathura's house. There was independent evidence that the four youths were working together in the field in question and the deceased's dead body was seen by independent witnesses under the tree. As regards what actually happened there is only the evidence of Sukraj.

It appears that Sukraj arrived at Mathura's house before the other two and said nothing. The appellant, when he came, told the deceased's mother and her husband who apparently lived in Mathura's stable that Ramautar had hanged himself. Mathura was not then in. On his return he was told, according to Sukraj, everything. He then told the others to say nothing and went himself to Tavua Police Station some miles away from Tagi Tagi where these events

happened and reported that a boy had taken his horses out to graze and had not returned. Subsequently Mathura, the appellant, and Sukraj removed the body from under the tree and hid it in broken ground in the bush. A search for the supposed lost boy was maintained in the neighbourhood till the 24th January, that is for six days. Nothing more happened until the 13th February when Sarandas being at Tavua was sent for by a Mr. Powell who had apparently heard some rumours and in consequence of what he said took him to Mr. Probert the Sub-Inspector of Police, where he repeated his statement which was taken down and put in evidence at the trial. This was to the effect that the deceased after the quarrel had left the others and that they had afterwards found him hanging dead. He also disclosed that Mathura had told him that they had since made away with the body.

In consequence of this, on the 14th February, the police went to Tagi Tagi and saw the appellant under whose guidance they found some 36 human bones, not including a head, which medical evidence given at the trial declared to be those of a person of either sex of about the deceased's age. The death of the person whose bones they were might according to the medical evidence have occurred at the time of the disappearance of Ramautar, the remains having been attacked by animals. Curiously enough there were also found at the same place a number of teeth, shown by expert evidence to be without question those of a person in middle life.

That evening the police took the appellant and Mathura to the Police Station and both made statements which were put in evidence. The appellant's statement concurred with Sarandas's previous statement that the deceased had left the others and that they had found him hanged. He described how he, Sukraj and his father had subsequently hidden the body in the bush. Mathura denied that he had been told that Ramautar was dead when he reported his alleged loss to the police and had joined in the search during the following days. On the next day Sarandas made another statement to the effect that it was Sukraj who had a quarrel with Ramautar but that the latter's actual death was caused by Mahadeo gripping him by the throat. This statement therefore corresponds with Sukraj's evidence, except that naturally Sukraj substituted Sarandas as the person who had the quarrel with the deceased. This statement was made after Sarandas was charged with being accessory after the fact.

Sukraj was then charged with being accessory after the fact and cautioned as the others had been. He then made a statement which was substantially in accordance with the evidence that he gave. On the previous day he had made a statement confirming the suicide story as up to that time put forward by the others. These statements were not admitted at the trial in circumstances to which it will be necessary to refer hereafter.

On the same day, 15th February, the appellant was charged with murder, apparently on the strength of statements of Sukraj, and after being cautioned made a statement in which he alleged that Ramautar had been killed by a stone thrown at him by Sarandas.

Some days after, namely, on the 6th March, Sarandas being in custody asked to see the District Commissioner, before whom he made a further statement in all material respects so far as the appellant is concerned the same as his previous one. The appellant on that occasion declined to make a statement.

At the trial the prosecution was conducted by the Attorney-General, and Mathura and the appellant were separately defended. At the opening of the proceedings the Attorney-General stated that he had received a letter from the solicitors for the defendants requiring production of all statements made by the three accused and by Sukraj, other than those produced as exhibits in the proceedings. This letter was taken exception to by the Attorney-General as containing insinuations that the prosecution had suppressed documents. In point of fact the Attorney-General was not aware that there were two statements, namely, those by Sukraj, which had not been produced. The Chief Justice characterised the letter as being highly improper. In the result the statements of Sukraj were not produced but they were available on the hearing of this appeal before their Lordships. The refusal of these documents is the subject of the first comment which their Lordships feel bound to make upon the conduct of this trial. There is no question but that they ought to have been produced, and their Lordships can find no impropriety in the letter asking for their production. It is true that upon cross-examination without the statements Sukraj admitted that he had at first put forward a story of suicide. But it is obvious that counsel defending the appellant was entitled to the benefit of whatever points he could make out of a comparison of the two documents *in extenso* with the oral evidence given and an examination of the circumstances under which the statements of the witnesses changed their purport.

Evidence having been given counsel addressed the Court. Defending counsel had arranged between themselves that the counsel defending the appellant should leave to the counsel who appeared for Mathura that part of the defence which consisted in a criticism of the evidence of the death from a medical point of view. This arrangement was not known to the Chief Justice and when counsel for Mathura, counsel for the appellant having finished his address, was proceeding to deal with that part of the case, he was told by the Chief Justice that he must confine himself to the question of the implication of Mathura as accessory, the question as to the guilt of the appellant having already been exhausted by the address of the appellant's counsel. Unfortunately counsel

did not then inform the Chief Justice of the arrangement or ask for an adjournment in order that the appellant's counsel might renew his speech on the subject omitted. In the result the Court was never addressed on this part of the case on behalf of the appellant although counsel desired that it should be. The view of the Chief Justice was entirely ill-founded. Whether the deceased was murdered by the appellant was in issue as between each prisoner and the Crown, and Mathura's counsel would have been entitled to insist on proof of it and challenge the evidence of it even if the appellant had pleaded guilty.

After counsel had finished their addresses the Chief Justice addressed the assessors, apparently very shortly. He explained that he was not summing up to a jury but intimated that in a case of this kind corroboration was necessary but that he thought that there was corroboration sufficient to support a conviction. He apparently considered that the circumstance that Sukraj when he came back to Mathura's house before the others, had said nothing was corroboration of his story in the witness box as to the manner in which the deceased came by his death, because his silence was due to a knowledge that the death was caused by the son of his master Mathura of whom he stood in fear. It is unnecessary to point out that this is no corroboration at all and in their Lordships' view there was absolutely no other corroboration.

It is well settled that the evidence of an accessory, which Sukraj plainly was on his own showing, must be corroborated in some material particular not only bearing upon the facts of the crime but upon the accused's implication in it and further that evidence of one accomplice is not available as corroboration of another, (*The King* v. *Baskerville* [1916] 2 K.B. 658). This rule as to corroboration, as was pointed out in the case just cited, long a rule of practice, is now virtually a rule of law, and in a case like the present it is a rule of the greatest possible importance, the position being that there are three persons all implicated in a crime and one of them or two of them exculpates himself or themselves by fastening the guilt upon the other. In the present case, moreover, all the persons concerned had originally given false statements and belonged to a class of persons who are at the best not reliable witnesses.

In addition to the three comments which their Lordships have already felt bound to make on the conduct of this trial, there is a fourth, which is the most serious of all. The Attorney-General in his address, and the Chief Justice in his observations to the assessors, appear both of them to have treated this case as one of murder or nothing, on the footing that the homicide being proved malice was presumed. Upon the facts of this case as they appear from Sukraj's evidence, there is revealed affirmatively no more than a case of manslaughter. There is nothing to suggest

that the appellant appreciated that he was applying a dangerous pressure to the throat of the deceased who was apparently a weakly boy. The view taken by the Chief Justice was based upon a statement of the law as to the presumption of malice long found in textbooks but recently explained and largely qualified by the decision of the House of Lords in *Woolmington's* case [1935] A.C. 462. But apart altogether from that case it never could be maintained that where the evidence for the prosecution points affirmatively no further than manslaughter the law would enlarge the proof and transform the case into one presumptively of murder.

Their Lordships have not overlooked the limits which the Board observes in dealing with criminal appeals. It is not necessary to repeat once more the rule set forth in *Re Dillet* 12 A.C. at p. 459, which has been recalled in several recent decisions. In the present case their Lordships are of opinion that there were really no materials here for a conviction for murder as opposed to manslaughter and in addition the trial was so conducted as in three separate respects, namely, the exclusion of the statements, restriction of the address by counsel, and the neglect of the rule requiring corroboration, to exhibit a neglect of fundamental rules of practice necessary for the due protection of prisoners and the safe administration of criminal justice.

In these circumstances their Lordships have humbly advised His Majesty that this appeal should be allowed and the conviction set aside.

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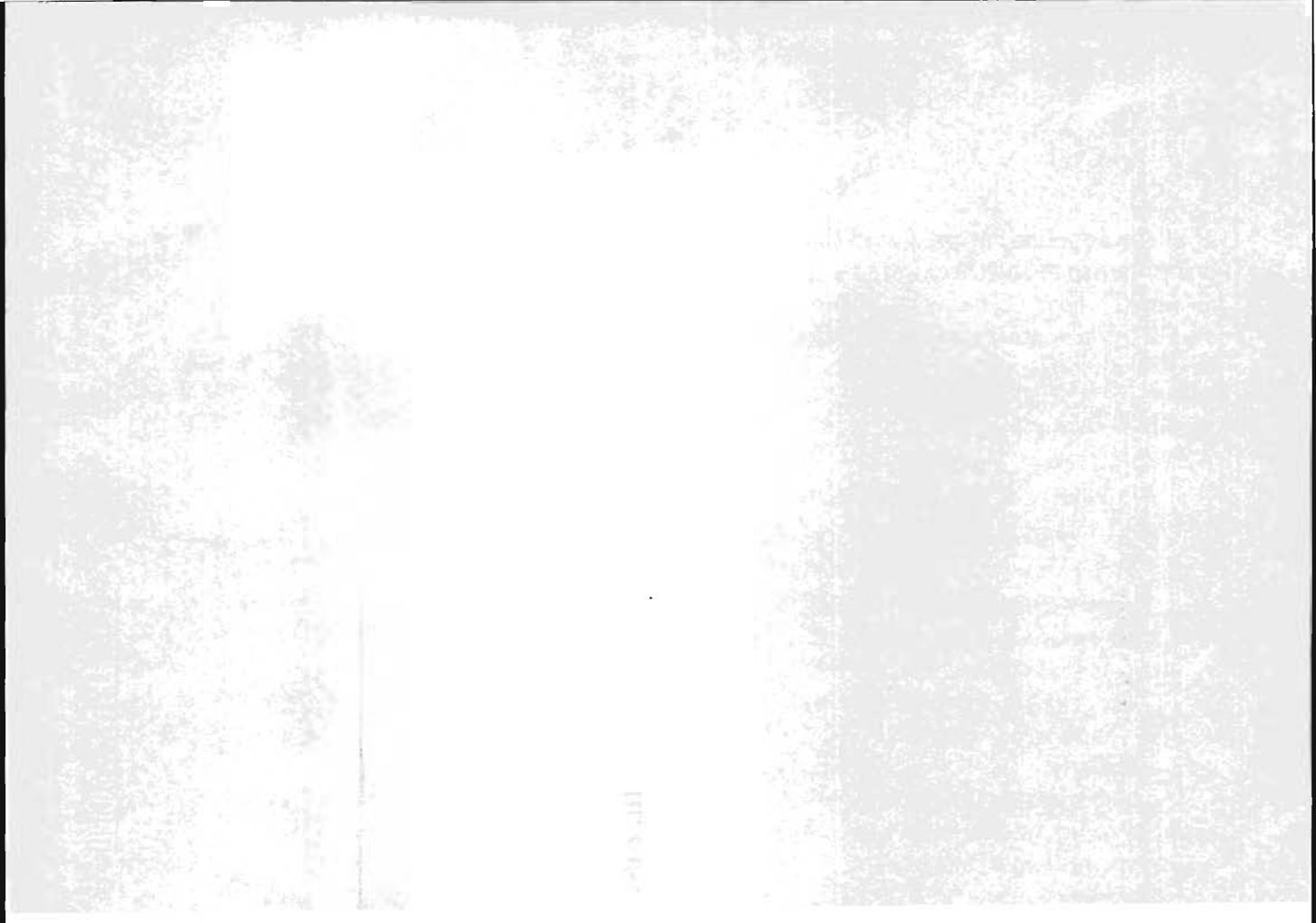

In the Privy Council.

MAHADEO

v.

THE KING

DELIVERED BY SIR SIDNEY ROWLATT

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