

IN THE FIJI COURT OF APPEAL

Criminal Jurisdiction

Criminal Appeal No.66 of 1981

Between:

VILASH CHAND
s/o Niranjan

Appellant

and

REGINAM

Respondent

G.P. Shankar for the Appellant
A. Gates for the Respondent

Dates of Hearing: 5th & 26th July, 1982

Delivery of Judgment: 26th July, 1982

JUDGMENT OF THE COURT

Gould V.P., (Orally)

The appellant has brought this appeal from his convictions on two counts of murder and one of attempted murder in the Supreme Court of Fiji at Lautoka on the 5th October, 1981.

He was arraigned and tried together with one Rakesh Kumar and a body of evidence was placed before the learned Judge and assessors. Unfortunately just before the summing up was to commence, an unexpected and in our experience unprecedented event was reported to the learned Judge. It was that the accused Rajesh Kumar had died in his cell a short time before; it seems that he committed suicide.

The learned trial Judge conferred with counsel and decided to continue the trial so far as the appellant was concerned, by summing up the case against him. He

had prepared a draft of his proposed summing up and it was clearly necessary that he make some modifications or changes in it to cope with the new situation. A joint trial on three serious charges is seldom uncomplicated and in the present case both accused had objected to the admissibility of statements allegedly made by them.

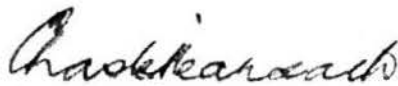
The learned Judge summed up accordingly, the assessors having of course been informed of the situation. Unfortunately it has been found, that though a copy of the original proposed summing up is available, no record was made of the changes which it was found necessary to incorporate to deal with the new circumstances.

This Court has had the benefit of a report from the learned trial Judge and it is apparent that the situation cannot be adequately or satisfactorily remedied. It is not possible therefore, for this Court to consider the validity or otherwise of the appellant's convictions and the only avenue open is to order that the appellant be tried again. No other course, it appears to us, will manifestly ensure that justice be done to both the appellant and the prosecution.

The appeal is therefore allowed, the present convictions quashed and a new trial of the appellant is ordered.



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Vice President



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Judge of Appeal



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Judge of Appeal