IN THE FIJI COURT OF APPEAL

Criminal Jurisdiction

Criminal Appeals Nos 67,64 & 65 of 1982

Between:

1. CHANDAR DEO a.k.a. SUREND s/o Latchna
2. RAM CHANDAR a.k.a. SURESH s/o Yenkanna
3. SHIU LAL s/o Katwaru — Appellants

and

R E G I N A M — Respondent

Mr. A. Ali for the 1st Appellant
Mr. V. Maharaj for the 2nd Appellant
Mr. A.K. Singh for the 3rd Appellant
Mr. A. Gates for the Respondent

Date of Hearing: 7th & 8th November, 1984

Delivery of Judgment: 24th November, 1984

JUDGMENT OF THE COURT

Mishra, J.A.

The three appellants were convicted by the Supreme Court at Labasa of murder and sentenced to imprisonment for life.

Each appeals against his conviction.

At about 2 p.m. on 15th July, 1981 the deceased Dilraji, an elderly woman, went to attend to her bullocks tethered some distance away from her home in the settlement of Wavuwavu. She was wearing, as she normally did, a necklace of gold sovereigns. Her body was found at about

6 p.m. that afternoon in a drain next to standing sugarcane close to where one of the bullocks had been tethered. Injuries on her head and body indicated her having been hacked to death with a sharp instrument. The necklace was gone.

According to the prosecution, the three appellants were interviewed on 18th and 19th July, 1981 and admitted killing the deceased for her sovereigns. When formally charged, each allegedly made another statement to the same effect. Also produced in evidence were ten sovereigns allegedly found by the police at a place described to them by the appellants.

This constituted the only evidence against the appellants.

At the trial they denied involvement in the murder of the deceased. The statements, they claimed, were fabricated by the police and their signatures on them were obtained by force after repeated beatings. They had given no information to the police about any sovereigns. Each appellant called witnesses to account for his movements during the period when the deceaased must have met her death.

At the application of counsel, a trial within a trial was held to test the admissibility of the alleged confessions before any evidence was called in the presence of the assessors.

According to the evidence in the trial within a trial, the first appellant was brought to police station, Labasa, in the afternoon of 18th July, 1981 and interviewed by Asst. Supt. Chattar Pal in the conference room on the first floor in the presence of Deputy Supt. S.K. Singh. According to these two officers, no fourth person was present in the room. The appellant, when questioned on his movements on 15th July, 1981, told them he was going to tell the truth

and made a lengthy statement describing how the killing was planned by the three appellants and carried out by him. There was no ill-treatment of the appellant at any time; no assault, no threats, no compulsion. The first appellant, said these witnesses, took them later in the night to Wavuwavu and pointed out various places referred to by him in the statement.

When formally charged he again, according to Sgt. Santa Prasad, made another statement to the same effect in the presence of Sgt. Shiu Dayal. Both of these police witnesses testified that the appellant made the statement quite willingly of his own accord and that no violence or coercion was used by either of them.

The appellant's version of what occurred at the police station was entirely different. He said that Supt. S.K. Singh was not in the conference room at all. Instead, Supt. Chattar Pal had with him policemen named Naidu, Abhay, Amrit and Vishwa. When the appellant denied all knowledge of how the deceased had met her death, according to him, -

> "Chattar Pal said, "Hit him" and he hit fist in his hand. Naidu started hitting me in the stomach with his fist. He kicked me and I fell down. Abhay kicked me. Vishwa started hitting me. Amrit gave me a slap on the back of my neck. Naidu said, "Jagessar is saying you killed the old lady". Then Chattar Pal said, "Very well, don't assault him, Lock him in a small room and we will get Jagessar to confess him tomorrow". I was locked in a small room. There was one table and one chair in the room. "

The next morning at 8 a.m. the same officers returned and again asked him to confess. He refused. Then -

> "Vishwa started hitting me in my stomach. Naidu said not to hit on the upper or lower part, but to hit the stomach. I started crying. Chattar Pal was there, Naidu, Vishwa, Abhay and Amrit. Amrit also assaulted me. He gave me a slap and also poked a pin in my left thumb nail. I didn't count, but there were quite a number of times. "

And again -

> "After that Naidu brought something and asked me to sign on that. I couldn't say what was written on it. It was a paper and something was written on it. I was forced to sign in a number of places. I don't know how many pages. I did sign when they assaulted me because of fear. I signed in a number of places. "

As for his charge statement he denied giving any to Sgt. Santa Prasad at any time. All his signatures were made at the same time on Sunday morning.

After the first appellant had been interviewed, the second appellant was also brought to Labasa Police Station and interviewed by Supt. Chattar Pal in the presence of Supt. S.K. Singh. Again, according to these officers no one else was in the room. The second appellant also, after some interrogation admitted his part in the plan to kill the deceased and confirmed, by and large, what the first appellant had said viz. that the three appellants had together planned the killing, that he the second appellant had given his knife and his clothes to the first appellant to use at the time of the killing, later had taken them back and thrown them into mangrove; that he and the third appellant had taken five sovereigns each and he had hidden his five near Udu bridge. According to these police witnesses, no violence or pressure of any kind was used during the interview and the second appellant willingly signed the record of the interview at several places.

They then took this appellant to Navuwavu where he searched for the hidden sovereigns but failed to find them. He said they might have been washed away by the high tide.

When formally charged he gave a signed statement to Sgt. Santa Prasad in the presence of Sgt. Shiu Dayal in which he made substantially the same admissions adding that he had gone on Friday to check the sovereigns and they were still where he had hidden them but that on that morning he had been unable to find them. Sgt. Santa Prasad and Sgt. Shiu Dayal both said that the statement was freely given by the second appellant without any coercion of any nature.

The appellant's version was that when he denied complicity in the killing of the deceased -

> "Then Chattar Pal said, "Hit" and smacked his fist into his hand. He said that to Sgt. Amrit. Then Amrit held my right hand and Vishwa held my left hand. Then Naidu and Amrit started hitting me. Naidu hit me in the stomach, so did Anil. I didn't count how many times they hit me. I felt pain and started crying. Amrit then took off my shirt and my clothes and made me lie on the table. It was a big table. I then slept on the table. I was laid on the table. Amrit held one of my hands in front and Anil held one of my hands. Vishwa pressed on both of my legs and Naidu stood on my stomach. They kept asking me where the sovereigns were. I said I did not know. When I started crying in the early hours one of the officers brought my shirt and put it in my mouth. I became unconscious and I didn't know what happened. I later regained consciousness. "

He, too admitted that the signatures on the statement were his - placed there when threatened with further assault.

He denied he had told them anything about the whereabouts of the sovereigns and said that the excursion

to Udu bridge was the police officers' own idea. There, he said, they forced him to go into the water to look for the sovereigns and, when he failed to find them, had beaten him again, urinated on him and threatened to subject him to sodomy.

He, like the first appellant, insisted that Supt. S.K. Singh was not present in the conference room and that he the appellant made no statement to Sgt. Santa Prasad.

The third appellant was also brought to the police station Labasa during the night of 18th-19th July, 1981. According to the prosecution evidence, he was also interviewed by Supt. Chattar Pal in the presence of Supt. S.K. Singh after 8 a.m. Again, they say, there was no fourth person in the room.

After a somewhat longer interrogation, according to the prosecution, this appellant also admitted his part in the preparation and execution of the plan to kill the deceased. He said he and the second appellant had taken the sovereigns and run away from the place. As for their whereabouts he said that he had returned to the place where he had hidden them but they had been stolen and he could not find them.

When formally charged he, according to the prosecution, also made a statement to Sgt. Santa Prasad in which he substantially repeated the admissions. About the sovereigns he said :-

> "He gave the sovereigns to me and Suresh. We went and hid it in mangrove and then don't know what happened. "

He was, therefore, not taken to Wavuwavu to look for them. The prosecution witnesses stated that at no time was any violence or threat used against the third appellant.

The appellant, on the other hand, said that when he denied receiving any sovereigns from the first appellant -

> "Chattar Pal said "Hit him" and punched fist into his hand as he said so. I was sitting then. Naidu punched me in my stomach. He got hold of my hands and pulled me from the chair. When I stood up Vishwa punched me from the side in my stomach. I hold my stomach with my right hand. Then Anil punched me in the stomach. I yelled out loudly. Vishwa and Anil then kept punching me in the stomach and I tried to save myself by bending over. Naidu was then holding my left hand. Amrit came and caught hold of my right hand. Vishwa and Anil continued punching me in the stomach. "

And again -

> "Vishwa then stood on my stomach, still wearing his boots. He stood on one foot. I then fainted and didn't know what happened. "

When he came to, he was beaten again but he made no confession of any kind.

He was later given a pen, he said, and asked to sign some papers with writing on them. He said, "Then because I couldn't do anything, I signed". He admitted that the signatures were his.

Sgt. Amrit Lal and Corporal Naidu called to testify denied that they were, at any time, in the conference room when the three interviews were conducted.

Of the three appellants only the second, who had by then engaged counsel, complained to the Magistrate on 20th July, 1981 that he had been assaulted. Dr. Ovini examined him that day as a result of the Magistrate's order but found no sign of any injuries at all.

Some days later the third appellant obtained the services of Mr. Kohli, a solicitor. At his request a Dr. Jaspal examined the third appellant on 25th July, 1981. He found a ¼" cut on the nose, one contusion to the right of stomach and another on lower abdomen. He said they would be 6 to 7 days old and would have been caused by a blunt object.

There was no medical evidence relating to the first appellant.

The Learned Judge in his ruling said -

> " I am completely satisfied that the statements taken from the three accused persons are admissible, they were properly taken as described by the police witnesses, that they were freely and voluntarily given by the accused, without force, duress, threats or violence being used, and no inducements offered to persuade the accused to make the statement.
>
> I am satisfied that there was no substance in the various allegations some of them scandalous accusations made by the three accused, which all bore a remarkable similarity - except for the incident at Udu described by Accused 2 which allegation by Accused 2 I reject. I believe the evidence of ASP. Chattar Pal, DSP. S.K. Singh, Sgt. Shiu Dayal, Sgt. Santa Prasad, Sgt. Amrit, and Cpl. Naidu without any reasonable doubt. "

The rest of his ruling dealt with the evidence of a district officer who had interviewed the three appellants after the interviews to enquire if they had any complaints against the police. To this evidence, for reasons he gave in his ruling, the Judge attached little weight.

Though each appellant has filed separate grounds of appeal several of them overlap and, where they don't counsel have generally joined forces in supporting them.

The first appellant's main ground of appeal is:-

> "THAT the Learned Trial Judge erred in law when dealt with the ruling of the voir dire, on the 3rd day of June 1982, of the first Appellant in failing to deal separately the evidence against the first Appellant by dealing with the evidence as a whole of all three accused when in fact the statements of confessions of all Appellants/Accused were taken at different times and by different people. Hence there has been a substantial miscarriage of justice. "

Counsel referred to Archbold on Criminal Pleading and Practice (39th Edition: para 597) where in a joint trial the need for dealing separately with the evidence relating to each accused is emphasized. That paragraph, however, deals with a judge's summing-up to the jury, not to a ruling at the conclusion of a voir dire.

It was clear at the very commencement of this trial that the prosecution relied mainly on the admissions allegedly made by each appellant and that they would constitute the bulk of the evidence in the trial proper. The interviewing officers in each case were the same. So also the charging officers. The nature of the allegations, except for what occurred at Udu bridge was almost identical, and the policemen named by each appellant were also the same. There was no question here of any mistake or slip of memory. All the policemen were either telling deliberate lies to support a monumental frame-up, or the appellants were making false allegations. The sole issue was whether, having heard the appellants, the Judge was still satisfied that the police officers, who were the same in each case, had told the truth. The brief ruling quite understandably was confined to that question. This Court approved of such a course in Ganga Ram v. R. (46 of 1983) where it said :-

"Accordingly we wish to say that it has always been thought desirable that findings adverse to an accused person, if they must be pronounced during the course of a trial, should be as economically worded as possible. "

We are satisfied that the Judge's reluctance at this early stage to go into the details of evidence, which he later so meticulously recalled in detail in his summing-up, was deliberate and careful. There was no failure on his part which could be said to have resulted in miscarriage of justice.

Another ground concerning this voir dire and urged on behalf of the first and the third appellants reads -

"That the learned trial Judge erred in not reconsidering his ruling on the voir dire after fresh evidence was received in the trial proper. "

Dr. Ovini had been called by the prosecution to give the results of his examination of the second appellant ordered by the Magistrate. This examination had been conducted at the Labasa Hospital on 20th July, 1981. No question was put to him by Counsel of the other two appellants who apparently had not been informed by their clients that they, too, had been examined by Dr. Ovini when he visited the prison on 22nd July, 1981, to perform the functions of a visiting prisons doctor.

After the voir dire, but before the commencement of the trial proper, application was made by counsel to reopen the voir dire, admit further evidence from Dr. Ovini, and reconsider his ruling as to admissibility. The learned Judge who was advised of the nature of the additional evidence, considered it as adding little to the evidence of Dr. Jas Pal called by the third appellant during the voir dire. He refused the application.

When Dr. Ovini gave evidence in the trial proper he told the court that he had examined the third appellant on 22nd July, 1981, at the prison and found him physically fit. He had "deep bruises in lower left quarter just over the umbilical region - also over right lower quadrant - just above right hip bone".

Dr. Jas Pal, called by the third appelland said he also found these bruises on him. In addition, he found what he described "coarse crepitation and effusion" resulting from damage to capillaries of the lungs. This he said could have been caused by blunt force. Dr. Ovini, however, differed. He said, "Not likely that blows on stomach could cause that".

Counsel for the third appellant submits that this additional and more detailed medical evidence was sufficient to require the Learned Judge to reconsider his earlier ruling on admissibility. In support he cites R. v. Watson (1980 2 All E.R. 293). The headnote to that case reads -

> "Because a judge retains control over the evidence to be submitted to the jury throughout a trial, he is not precluded, by the fact that he has already ruled at a trial within a trial in the jury's absence that a written statement by the accused is admissible in evidence as being voluntary, from reconsidering that ruling as a later stage of the trial if further evidence emerges which is relevant to the voluntary character of the statement, and from ruling in the light of that evidence that the statement is not admissible. However, the occasions on which a judge should allow counsel to submit that a previous ruling on the admissibility of evidence should be reconsidered are likely to be rare, and judges should continue to discourage counsel from making such submissions where they are founded on tenuous evidence. "

No fresh application in the present case was made after Dr. Ovini's evidence in the trial proper, but the earlier application and the effect of that evidence cannot but have remained in the judge's mind. We fail to see anything significantly additional in Dr. Ovini's evidence which might have persuaded the judge to reverse his earlier opinion particularly when there was nothing to indicate that any complaint had been made by the third appellant to Dr. Ovini with regard to the alleged violence. When dealing with this aspect of the evidence in his summing-up the first question the judge directed the assessors to ask themselves was whether or not the alleged statements were in fact made by the appellants. Their unanimous answer was obviously in the affirmative.

We are unable to accept the submission that the learned Judge erred in not reviewing his earlier decision on the admissibility of the alleged statements at the conclusion of Dr. Ovini's evidence in the trial proper, or that he might have reversed it if he had.

The submission, therefore, fails.

The first appellant's next ground, supported by the other two appellants is :-

> "THAT the Learned Trial Judge by disbelieving the first Appellant (as well as the other Appellants) in his ruling of the voir dire on the 26th day of August, 1982 by saying "I resolved without a shadow of doubt in favour of the Crown witnesses who must have been in a straight forward honest witnesses. I cannot say the same for the Accused" (Page 151 of the Record) in effect withdrew the first Accused constitutional right of giving evidence on oath at the close of the prosecution case because he the Learned Trial Judge disabled himself from treating any evidence that the First Appellant may have given in his defence in an objective manner. Hence there has been a substantial miscarriage of justice. "

In the trial proper Supt. Chattar Pal testified that on the morning of 20th July, 1981 he was told that the three accused who were then waiting in their cells to be taken to court wanted to see him. He went and spoke to each of them, after cautioning them under rule 3, and was told where the sovereigns were hidden.

Objection was taken to the admission of this conversation on the ground that it had occurred after the appellants had been formally arrested and charged and was, therefore, in breach of the Judge's Rules. The appellants, for their part, denied that this encounter ever took place. The question therefore of violence, coercion or forced signatures did not arise. The sole issue before the Court at this stage was whether the episode had occurred at all. The defence, however, submitted that, even if the prosecution version were accepted, there had been a breach of the Judge's Rules and asked for a trial within a trial. As a matter of caution the judge decided to hold one to test the admissibility of the oral statements allegedly made by the appellants.

The evidence was brief. Const. Chandrika Prasad, who was on duty near the cells that morning stated that the three appellants had been talking to each other for sometime. To ascertain if this was possible the court inspected the cells. According to Constable Prasad, the third appellant called him at 7.30 a.m. and told him to inform the C.I.D. Inspector that he wished to tell him where the sovereigns were. A request to the same effect was made by the other two appellants.

Supt. Chattar Pal later went to the cells with Det. Const. Anirudh Prasad. The 3rd accused said to him,

> "We have decided that the three of us are going to tell the truth. That all three of us took the sovereigns placed them near the stone up the slope near Chandar Deo's house. Branches are lying on top of the stone. This is the truth. "

Supt. Chattar Pal took this down in his notebook. The others said substantially the same thing and offered to show him the place.

To each, according to Supt. Chattar Pal, he said, "We will think about it".

The three appellants were then taken to court.

As a result of this conversation a search was mounted by the police and ten sovereigns in two paper bags were found without the appellants' assistance.

The three appellants who had been in the cells since the morning of 19th July, 1981, stated that their meals were brought to them by policemen but they never spoke to any of them. The whole episode was a complete fabrication on the part of Supt. Chattar Pal and the two constables.

The Learned Judge reviewed the prosecution testimony in some detail and admitted the oral statements as having been volunteered without any interrogation on the part of Supt. Chattar Pal. In the course of his ruling he said -

> "There was a straight conflict of credibility between the prosecution witnesses and the accused, and the conflict I resolve without a shadow doubt in favour of the Crown witnesses who in my opinion were straight-forward honest withnesses. I can't say the same for the accused. "

Counsel submits that in Fiji the trial Judge sitting with assessors is, unlike in a jury case, the final arbiter of fact as well as law and that a positive expression of opinion on credibility reflects prejudging of the eventual outcome and has the effect of deterring the accused from giving evidence in trial proper. He cites Ganga Ram & Another v. R. (46 of 1983) where this court said :-

> " However in the trial within a trial situation in criminal cases, it is sometimes inevitable that a Judge will be obliged to take an adverse view of the accused person's credibility at a stage part-way through a trial; the pronouncement of his ruling will, of necessity, disclose that fact. Hence the need for particular restraint at that stage. This is especially so in the assessor system as it prevails in this country, for the Judge is part of, indeed may be the ultimate, fact-finding tribunal. "

In that case, however, the Judge had not merely rejected the accused's evidence in the voir dire but had gone further to say that any evidence that he might give during the course of the trial would be difficult to accept without very close scrutiny.

No such expression was used here.

The standard of proof in case of admissibility of confessions is the same as in the case of eventual guilt - that of beyond reasonable doubt. In a case such as this involving a direct conflict between a positive assertion and a complete denial resolution is impossible without acceptance of one which would necessarily imply rejection of the other. Even if the sentence "I cannot say the same for the accused" were omitted the impression created would hardly be different. We do not consider that the learned Judge's treatment of the matter transgressed the bounds of propriety.

We, therefore, reject the submission.

In another ground relating to this ruling the first appellant repeats his allegation of failure to deal with each appellant's case separately. We say no more than to reiterate what we have already said in relation to his first ruling except to point out the difficulty of dealing

separately with each appellant's evidence where that evidence in each case amounts to no more than a complete denial.

This ruling is also challenged in ground 3 of the second appellant's appeal, again supported by Counsel for the other two appellants. It reads -

> "(a) THAT the Learned Trial Judge wrongly exercised his discretion in admitting the statement of the Appellant allegedly made to the Prosecution witness A.S.P. Chattar Pal, after he was charged, regarding the whereabouts of the sovereigns.
>
> (b) THAT the Prejudicial value in admitting the alleged statement far out-weighed the Probative value. "

Not much argument was directed towards (b) above and we do not propose to deal with it in detail. If the assessors accepted the prosecution version of the episode that let to the discovery of the sovereigns its probative value would undoubtedly be considerable. Discretion was, on that score, properly exercised.

As for (a), Counsel submits that the mutual contradiction between what the appellants allegedly said in their cells and what appears in their signed statements is so irreconciable that one or the other can only be explained on the basis of fabrication. This, he says, would particularly be so if one considers the undisputed fact that from the time the first appellant was brought in for questioning until they were all formally charged the three were never together at any time. If then they told lies in their written statements about what they did with the sovereigns how is it, he sasks, that they all told the same lies. This, of course, would be a strong argument if what they said in those statements could be demonstrated to be lies. Here, however, they may equally be compatible

with truth. The second appellant after fully admitting his part in the affair, according to the prosecution, took them to Udu bridge to find the sovereigns and was surprised that they were no longer where he had placed them. He could not explain why. The third appellant, on the other hand, knew at the time of the interview that they were no longer there. In his charge statement he said, "He gave the sovereigns to me and Suresh. We (emphasis supplied) went and hid it in mangroves and then don't know what happened." In the interview, according to the prosecution, he had first said that he had returned to the place where the sovereigns had been hidden but they had been "stolen". Again, that he had hidden them in a hurry and was not quite sure exactly where.

We do not consider it to be beyond the bounds of possibility that, one of the appellants, unbeknown to the others, had removed the sovereigns from the mangrove and when in the police cell the others questioned him their new location came to light. The subsequent statement to the police would then be the result of their joint decision. Consequently we do not consider the two sets of statements to be mutually as irreconcilable as Counsel would have us believe. The issue at that stage was purely one of admissibility and the learned Judge, in our view, correctly resolved it on the basis of credibility of witnesses.

The rest of the grounds relate to the learned Judge's directions to the assessors in his summing-up. The following were urged by Counsel for the third appellant, supported also by Counsel for the other two appellants :-

> "(D) The learned trial Judge erred in failing to give any or any proper directions to the assessors on the question whether the Appellant had the requisite intent to commit the said offence.

(E) The learned trial Judge erred in failing to give any or any proper directions to the assessors on the question whether the Appellant had a common intent in the prosecution of a common purpose. "

The Judge drew the assessors' attention to the fact that the first appellant alone had done the actual killing but told them that they could also found the 2nd and the third appellants guilty "for being part of the plan to kill her, by counselling or procuring accused 1 to kill her." No objection is taken to this part of the summing-up. Reference, however, is made to the second appellant's statement where during the interview he said "There was no plan but we talked of stealing. "

This, submits Counsel, called for a direction, as to whether the intent of the appellants, or of any of them, fell short of that required for murder. We do not think the sentence quoted here can be treated in isolation. The second appellant, in his interview, went on to say how the stealing was to be done. He said, "I met Kobu near my house and he said at the moment there is no harvesting of cane. Kill the old lady and take the sovereigns. "

It is clear from each appellant's statement that the plan called for the killing of the deceased prior to the removal of the sovereigns. Her bullock was to be tethered at the place picked for the killing where she would have to come to untether it, the first appellant was to kill her while the other two waited towards the creek to collect the knife, clothes and the sovereigns.

On that evidence any direction relating to larceny or robbery would only have tended to confuse the issue. We, therefore, reject the submission under that ground.

Under E above, Counsel submits that directions ought to have been given in the summing-up to satisfy the

requirements of Section 22 of the Penal Code which reads :-

> "22. When two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another, and in the prosecution of such purpose an offence is committed of such a nature that its commission was a probable consequence of the prosecution of such purpose, each of them is deemed to have committed the offence. "

This Section would have relevance if the purpose of the joint venture was something less than murder and murder had occurred only as a probable result of that common purpose. Nothing in the evidence here supported any common intent to prosecute such a purpose. If statements given to the police were accepted as true each appellant, as the trial Judge put it, was "part of a plan to kill her". Nothing less. We are satisfied that the directions he gave in relation to counselling and procuring and aiding and abetting were correct and adequate and that no further directions under Section 22 of the Penal Code were required.

The submission fails.

The last ground which all counsel urged strongly may conveniently be summarised as containing a two-pronged criticism of the summing-up:

(a) that it failed adequately to deal with the evidence relating to each appellant separately; and

(b) that it failed sufficiently to draw the assessors' attention to the features supportive of the defence, thus placing the prosecution case in an unduly favourable light.

The case undoubtedly disclosed several unsatisfactory features and the learned trial judge no doubt showed his concern when he said in his summing-up :-

> "As you will have realised in spite of the mass of evidence you have heard there is almost no other evidence to prove conclusively the involvement of the accused except for those statements and the incident relating to the gold sovereigns. No one saw the killing, no one saw any of the accused with a weapon in his hand near the scene, or in any compromising situation. No bloodstained knife was found, no knife that could be said to have been the knife used, no bloodstained clothing - other than that of the deceased herself, and no fingerprints. No one, but the person or persons responsible, knows the exact time and circumstances of the killing. "

It was this perhaps which caused him to deal with what evidence there was with such meticulous care. He told them at an early stage -

> " So in effect the Crown case against each accused depends to a very great extent on his interview record, his charge and caution statement, and the incident concerning the alleged finding of the ten gold sovereigns. "

Each assessor was provided with copies of the statements made by each appellant.

The Judge then devoted a large part of his very lengthy summing-up describing in detail how, according to the prosecution evidence, each appellant was interviewed and the allegations levelled against the police by each appellant. He put before the assessors, the alibi of each appellant in considerable detail and the evidence adduced by the defence in support of each alibi. At the end of the summing-up he again summarised for the assessors the evidence relating to each appellant, both for and against.

There is no suggestion anywhere that he gave any erroneous direction with regard to the burden or standard of proof. He said :-

> "An accused person does not ever have to prove his innocence, or indeed prove anything at all. Even on the question of alibi, contrary to what Crown Counsel has said, once the question of alibi has been raised it is up to the Crown to negative it if it can. The onus remains the same. "

Reading the summing-up as a whole, therefore, we are unable to find any substance in the submission that the trial Judge's treatment of each appellant's case separately was in anyway at fault.

As for the unsatisfactory features of the prosecution case Counsel for the first appellant in his ground 8 listed nine matters which, he said, called for special comment. He, however, conceded that the learned Judge did in his summing-up draw the attention of the assessors to every single one of them. Counsel, however, went further to submit that the unsatisfactory features were such that the Judge erred in not exercising his power to overrule the unanimous advice tendered by the assessors. In our view he cannot be criticised, in the present case, for not exercising that power. As for this court, we say no more than to repeat what it said in Shiu Rattan v. R. (16 FLR 109) :-

> "Though there were some unsatisfactory features about the evidence for the prosecution, the findings of fact in the Supreme Court depended almost entirely upon the credibility of the witnesses, and, the assessors having been properly directed, the Court of Appeal was not entitled to come to a different conclusion. "

There were two other grounds, one relating to calling an additional witness and the other concerning an attack on the character of a defence witness. The additional witness was merely offered for cross-examination and the question as to character was directed at a witness, not at any of the appellants. The grounds have no merit and we dismiss them without comment.

The appeal of each appellant is dismissed.

(Sgd.) G.D. Speight
Vice President

(Sgd.) G. Mishra
Judge of Appeal

(Sgd.) M.E. Casey
Judge of Appeal