IN THE FIJI COURT OF APPEAL

CRIMINAL JURISDICTION

CRIMINAL APPEAL NO. 11 OF 1991

BETWEEN:

THE STATE — Appellant

and

ANJANA DEVI
(d/o Subarmani) — Respondent

Mr I. Mataitoga (D.P.P.) for the Appellant
Mr T. Fa for the Respondent

Date of Hearing: 11th June, 1992
Delivery of Judgment: 12TH November, 1992

JUDGMENT OF THE COURT

The Respondent, Anjana Devi (Accused 2), was jointly charged with one Ganga Ram (Accused 1) of murdering Bal Ram (husband of the Respondent) at Nadi on 31st August, 1991.

The trial took place at Lautoka High Court before S. Sadal J. with the aid of 3 assessors. All 3 assessors expressed the

opinion that both accused were guilty as charged. The learned Judge accepted the opinion of the assessors in respect of Ganga Ram and so convicted him as charged and then imposed on him the mandatory sentence of life imprisonment. He, however, found himself unable to agree with the assessors' opinion in respect of the Respondent. He gave his reasons for doing so in a written judgment before acquitting her. The relevant part of his judgment reads as follows:

> *'As far as Accused 2, Anjana Devi is concerned I have directed myself in accordance with my summing up and have borne in mind the nature and quality of evidence adduced from various witnesses in this case. I have also borne in mind the submissions made by counsels for the prosecution and the defence.*
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> *I have carefully considered every word of evidence given throughout this trial. I find on considering the evidence that I am completely satisfied that the deceased, Bal Ram, on 31st August 1990 was struck with a knife causing serious injury from which he died. I accept the post-mortem report of Dr. Satish Prasad and find that the deceased died from "transected spinal cord" and "blood loss from neck wound" inflicted by knife. The deceased died from act of violence inflicted upon him by Accused 1, Ganga Ram. This was in the night and about 10 chains away from the house of the deceased. There is no evidence that deceased died from smothering or suffocation. Dr. Dhanna Gounder said the deceased was alive at the time knife wounds were inflicted.*
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> *Accused 2 was having sexual relationship with Accused 1. Accused 1 used to visit her at her house. Accused 1 and the deceased used to get on well. At one stage Accused 2 had eloped with Accused 1. This was in 1983. Later Accused 2 reconciled with the deceased and both started living together. After sometime Accused 1 again started to visit Accused 2 and the deceased. In fact Accused 1 and the deceased used to drink together at deceased's house. On this night of killing both were drinking together.*
>
> *I have paid very careful attention to assessors' opinions as regards Accused 1 but I am unable to find any reason whatsoever for concurring with them. In her interview with the police Accused 2 is alleged to have said that she planned with Accused 1 to kill the deceased. But as evidence unfolded there was no such plan to kill the deceased in the night of 31st August 1990. Accused 2 did not know that there was an arrangement between Accused 1 and the deceased to drink beer at her house. Accused 1 had visited Accused 2 in the morning about 9am and had meal there. Again in the afternoon Accused 1 visited her and had milk. Accused 1 did not inform Accused 2 that he will be coming again at night and drink beer with the deceased. In fact Accused 1 got the beer after 5pm. It was the deceased when he returned home after cutting cane who informed Accused 2 that Accused 1 would be coming with beer to drink. Accused 2 had given hot water for the deceased to have his bath. The deceased and Accused 2 were living happily. Therefore this part of confession about the plan cannot be true. Accused 2 came to know in the night from Accused 1 that the deceased was killed but she did not quite believe that. According to her she told police from the beginning of the involvement of Accused 1. This part of her evidence was not rebutted by police. Further deceased was killed about 10 chains away*

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from his house. Accused 2 was no where near the place. On the evidence as presented it could not be said she aided and abetted Accused 1 in unlawfully causing the death of the deceased. There is no evidence of any active participation by Accused 2 in this offence. There may be suspicion but suspicion does not prove anything. I have my doubts of Accused 2 being an aider and abetter in this offence. Therefore I do not accept the unanimous opinion of the assessors. I find Accused 2, Anjana Devi, not guilty of the offence as charged and she is accordingly acquitted. '

It is against this acquittal that the State has appealed to this Court on the following grounds:

"(i) *that the learned trial Judge misdirected himself when he held that there was no evidence of planning by Anjana Devi d/o Subarmani when there was ample evidence in her caution and charge statements.*

(ii) *that the learned trial Judge failed to refer to the fact that in Anjana Devi's charge and caution statements there is evidence as to how she aided and abetted the killing of her husband, (the deceased) which was corroborated with the medical evidence on the post-mortem of the deceased, and this amounted to a serious fault in the judgment. The learned trial Judge failed to appreciate the possibility of a conviction on the basis of a voluntary confession - R -v- Wendo (1963) 39 AL J.R. 77 and Tara Chand & Ors. -v- R. (1968) 14 F.L.R. 73.*

(iii) *that the learned trial Judge failed to satisfactorily explain his reasons for over-ruling the opinions of the assessors and thus erred in law. The learned trial Judge erred in law and in fact in over-riding the unanimous decision of the assessors without disclosing cogent reasons for doing so - Shiu Prasad -v- R (1972) 18 F.L.R. 68."*

The prosecution case against the Respondent was based on her cautioned interview statement (Ex 9(b)) and her charge statement (10(b)) admissibility of both of which was challenged. The trial Judge conducted a trial within a trial and admitted the interview statement as voluntary, holding that there was no assault, threat, promise or inducement made. However, he found it *"disquieting that a female was being interviewed and charged and kept for the whole night in a classroom without a female police officer being present."* (Record p.55.) He also admitted the charge statement (10(b)) which was taken at Nadi Police Station because he was satisfied that it was quite properly taken and voluntarily made and *"does contain what Anjana Devi actually said .....* " (ibid)

The trial record shows that apart from the two statements already mentioned, the police had earlier recorded a plain statement (D1) from the Respondent on 31/8/90 in which she exculpated herself and put the blame on Accused 1. This statement like the cautioned interview statement (9(b)) was recorded at Namata School which was being used as a temporary police station. The first interview was recorded by D/SIP Naicker. It commenced at "1655 hrs and was completed at 1830 hrs". If this statement is to be believed the Respondent never wanted her husband killed although she readily admits carrying on an illicit affair with the 1st Accused. For some reason D/SIP Naicker was not called to give evidence in the trial. Soon after completion of Respondent's statement Accused 1 was interviewed by D/Sgt Adi Sen at the same school. His interview started at '1845 hrs' and was completed 40 minutes after midnight; i.e. the early hours of the morning of 1st September, 1990. It was after the interview of the 1st Accused that the Respondent was again questioned this time under caution by D/IP Sushil Chandra. This cautioned interview started at 1 am on 1/9/90 and it ended at 25 minutes after 5 the same morning. In almost the whole of the first five pages of this 8-page interview the Respondent made no incriminating answers. However, at the end of page 5 when confronted by what Accussed 1 is alleged to have said, it is then that the Respondent is recorded as replying -

> *"Now, I want to tell the truth. It is about two weeks ago myself and Ganga Ram planned to murder my husband."* (Answer to Question 72 at p.113).

Little later she is supposed to have answered as follows:

> *"Q-73* *What did you people plan?*
> *A-* *Ganga Ram and myself are in love and I thuoght to have my husband murdered and we can stay together .*
>
> *Q-74* *Before this did you people at any time try to murder your husband?*
> *A-* *We tried but could not do on that day.*
>
> *Q-75* *When was it ?*
> *A-* *On Thursday two weeks ago.* (p.114)

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..... *Q-92* *Than what happened ?*
A- *When Bal Ram went off to sleep than Ganga Ram came and asked me where was the pillow and I told him that it was in the sitting room on the sack mat.*

Q-93 *Than what did Ganga Ram do ?*
A- *Took the pillow and pressed the mouth of my husband.*

Q-94 *Than what happened ?*
A- *My husband fell of the bed but Ganga Ram did not leave and kept on pressing and kept on moving and reached up to the sitting room and he keptq on pressing foor very long.*

Q-95 *What were you doing ?*
A- *I was lying on the bed and watching.*

Q-96 *Than what happened ?*
A- *Ganga Ram called me and said to dress up Bal Ram and I dressed him up.*

Q-97 *What clothes did you put on him ?*
A- *Light blue shirt and dungree pants.*

Q-98 *Than what happened ?*
A- *Ganga Ram called for the knife,I brought the knife and than said to load Bal Ram on the shoulder which I did. I handed him the knife and Ganga Ram went through the back door. Before he left I told him to put the body near the road.*

Q-99 *Why did you say like this ?*
A- *I thuoght that someone will find the body early.*

Q-100 *Than what happened?*
A- *Ganga Ram returned after an hour knocked the door and I opened the door and said that he has left the body near the house of Shankara and than he left.*

Q-101 *When Ganga Ram returned did he have the knife with him ?*
A- *He did not have."* (p.115)

About an hour and half later the Respondent was charged with murder. She thereupon made the charge statement (Ex 10(b)) wherein she is alleged to have said, inter alia -

> *"Ganga Ram asked me if my husband has slept.I told him he has not slept.After sometime Ganga Ram pressed the face of my husband with a pillow and my husband struggled and fell off the bed and he loosened his hands and legs..I than loaded my husband on Ganga Ram's shoulder.Ganga Ram asked me for the cane knife and I gave him the cane knife.After that Ganga Ram took my husband and went towards the road.After sometime Ganga Ram came and told me that he has left my husband near the road"*

The Respondent gave evidence on oath denying being a party to the killing of her husband although she did implicate the 1st

Accused. She maintained throughout that she was taken to Namata School as a witness. She denied that Accused 1 smothered or tried to smother her husband in her presence with a pillow at her home. We are, therefore, confronted with 3 written statements and one oral testimony given on oath by the Respondent.

The power given to the State to appeal against an acquittal by the High Court is a rare one and the innovation was only introduced relatively recently by Court of Appeal Act (Amendment) Decree 1990 (Decree No. 7). Needless to say this new statutory right given to the State has never been debated in Parliament but as long as it remains on our statute books it is the duty of the Courts to recognise, interpret and apply the law as it stands. However, it might be of interest to note the position in England from which we have inherited so much of our laws. It is summarised in "Blackstone's Criminal Practice 1992" at page 1511 as follows:

> *"Leaving aside the relatively infrequent references by the Home Secretary (see D23.1), the function of the Court of Appeal (Criminal Division) is to hear appeals brought by persons who have been convicted and sentenced in Crown Court proceedings. Until recently that was virtually its only function, and the prosecution had no right of redress if they considered that the accused had been wrongly acquitted or sentenced too leniently. It is still true that an accused acquitted on indictment can never have the verdict in his favour overturned. There is, however, a procedure by which the prosecution can test the correctness of a ruling on law given by the Crown Court judge during the course of the trial which culminated in an acquittal, although the accused himself remains acquitted come what may. That procedure was introduced by the Criminal Justice Act 1972, s.36. More recently, ss. 35 and 36 of the Criminal Justice Act 1988 have empowered the Court of Appeal actually to increase an offender's sentence where it considers that the sentence imposed by the Crown Court was unduly lenient. Only the Attorney-General has standing to refer either type of case to the Court of Appeal."*

Section 2 of this Decree No. 7 repeals and replaces Section 21 of the Court of Appeal Act . S.21(2) now reads as follows:

> *" (2) The State on a trial held before the High Court may appeal under this Part to the Court of Appeal-*

(a) against the acquittal of any person on any ground of appeal which involves a question of law alone;
(b) with the leave of the Court of Appeal or upon the Certificate of the judge who tried the case that it is a fit case for appeal against the acquittal on any ground of appeal which involves a question of fact alone or a question of mixed law and fact or any other ground which appears to the Court to be a sufficient ground of appeal; and
(c) with the leave of the Court of Appeal against the sentence passed on the conviction of any person unless the sentence is one fixed by law."

Rule 35 of the Rules of the Court of Appeal prescribes that an appeal to the Court of Appeal shall be by way of rehearing.

However, the specific topic of an appeal by the State against acquittal is dealt with in s.23(1)(b) of the Court of Appeal Act. That section provides:

"(b) on any such appeal against acquittal shall allow the appeal if they think that the verdict should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence or that the judgment of the Court before whom the appellant was acquitted should be set aside on the ground of a wrong decision of any question of law or that on any ground there was a miscarriage of justice, and in any other case shall dismiss the appeal;"

It was not suggested that this section is not applicable to the case of an acquittal by a Judge after a verdict of guilty has been entered by the assessors, and, as presently advised, we shall proceed on the basis that it does.

However, in deciding this case, we have not found it necessary to explore the extents of the operation of s.23(1)(b). Leave to the State to appeal on mixed questions of fact and law was given.

In Fiji, with its assessor system, the ultimate tribunal of both fact and law is the trial Judge in the High Court. Section 299(1) of the Criminal Procedure Code, Cap. 21 states that when the case on both sides is closed, the Judge shall sum up and shall then require each of the assessors to state his opinion orally, and shall record such opinion. And subsection (2) of this Section provides -

"The judge shall then give judgment, but in doing so shall not be bound to conform to the opinions of the assessors:"

And this is followed by a proviso the relevant part of which for our purpose reads -

"....except that, when the judge does not agree with the majority opinion of the assessors, he shall give his reasons, which shall be written down and be pronounced in open court, for differing with such majority opinion and in every such case the judge's summing up and the decision of the court together with, where appropriate, the judge's reasons for differing with the majority opinion of the assessors, shall collectively be deemed to be the judgment of the court for the purposes of this subsection and of section 157."

Proceeding on the assumption that the self-incriminating answers recorded in the two challenged statements were voluntarily given and were true, we nevertheless find it necessary to refer to the medical evidence because of its relevance to time, place and cause of death because they only went to admissions that the accused was a party to smothering the deceased and to death caused by smothering. It is clear from the record that it was the prosecution case that the Respondent (the 2nd Accused) aided and abetted the 1st Accused in killing Bal Ram by smothering him with a pillow at the deceased's residence late at night on 31 August, 1991. The 1st Accused then carried him away about 10 chains and left him on the road after inflicting wounds on the deceased body.

The medical evidence was referred to and summarised by the trial Judge as follows:

'Dr Satish Prasad did the post-mortem examination on the body of the deceased. His report is Exhibit 1. Dr. Satish Prasad was not called as a witness because he is away overseas. Dr. Dhanna Gounder (PW7) explained the nature of the wounds as stated in the post-mortem report. Dr. Gounder testified that from the nature of the wounds as described in the post-mortem report the deceased suffered a violent death. The post-mortem report stated one major injury to the deceased as - "A large gaping incised wound starting anteriorly from (R) cheek (between the lower and upper sets of teeth) and extending posteriorly below the (R) ear and following the base of the occiput and ending below the (R) ear". The lower part of the right ear was missing. There were more wounds (super-imposed) in the main cut. The spinal cord was completely cut off. The neck was only attached to the body by muscles and skin.

The cause of death as described in the post-mortem report was due to "transected spinal cord at C_2 level" and "blood loss from the neck wound". Dr. Gounder stated that the injuries could well have been caused by a sharp instrument - such as a knife similar to the one produced in Court. Do you have any reasonable doubt as to the doctor's findings? If you do you should give the benefit of the doubt to the accuseds. But if you don't have any such reasonable doubt, can you have any doubt that the deceased met his death after a vicious attack on him with a knife at some time around 3 am of 31st August 1990. Dr. Gounder was an expert witness and he said the deceased was alive at the time when he received those injuries. The post-mortem report also revealed soiling by the deceased. Dr. Gounder said in cases of hacking it was very unusual to soil.'

It is quite clear from the medical evidence that Bal Ram was not dead after the smothering incident and that he was hacked to death later on some 10 chains away from the house. The death occurred as a result of knife wounds and not the smothering. The fact that the medical evidence also shows that the lungs were inflated and that faeces matter was found in the deceased's underpants does not alter the finding of the cause of death.

It is quite obvious to us that as far as the Respondent is concerned she believed that her husband was dead when she assisted her co-accused in loading her husband on to his back. Since Bal Ram was not dead can she be found guilty of murder although she mistakingly believed that her husband was dead? We think not unless it can be shown that she was a party to husband's subsequent killing. There is of course her statement that she gave her co-accused a cane knife at his request but there is no evidence that she knew or intended that the other person should use the knife to finish the job so to speak. Nor is there any evidence that she took part in or assisted her co-accused to inflict fatal knife injuries on Bal Ram. It is completely consistent with her evidence and a belief that the other accused wanted the knife so that he could make it appear as if the death was caused by the knife wounds.

Even on the issue of aiding and abetting her statements provide very tenuous evidence. On the critical day there was no evidence of any planning as far as the Respondent was concerned. She took no part in smothering the deceased although she did indicate to her co-accused at his request where the pillow was.

She, however, did become aware subsequently that her co-accused had allegedly killed the deceased and dumped him on the road. To this extent in the light of all the evidence she might have been liable to be charged as an accessary after the fact but she was not charged with that offence nor was the question of attempted murder in issue before the Court below or before us. Some support from our view could be found in the Privy Council case of ***Shoukatallie v The Queen*** [1962] A.C. 81. In this case the Appellant and Mahomed Ali (the No. 2 Accused) were jointly charged with the murder of one Peeka, both were convicted and sentenced to death by the Supreme Court of British Guiana. Both appealed to the Federal Supreme Court of West Indies in 1960 which allowed Mahomed Ali's appeal but dismissed that of Shoukatallie. The latter then appealed to the Privy Council.

The case for the Crown was that Shoukatallie and Mahomed Ali were acting together in concert in a common design to kill Peeka. The evidence of the prosecution was to the following effect: Shortly before his death Peeka was paddling along the river in his corial. A shot rang out. It came from another corial in which were the two accused men Shoukatallie (No. 1 Accused) and Mahomed Ali (No. 2 Accused). Shoukatallie was the man who had fired the shot. He had a gun in his hand. Mahomed Ali was steering the corial. Shoukatallie shouted out: "Shut "your rass, you no dead yet." Shoukatallie then fired the gun again at Peeka. Peeka fell on his face in his corial. Mahomed Ali then paddled their corial close to Peeka's corial. Shoukatallie got hold of Peeka's corial and pulled it across the creek. A short time later, Shoukatallie and Mahomed were seen near two corials. Shoukatallie was chopping wood. Mahomed was twisting vine branches. Five days later a search was made in the river and a diver employed. The body of Peeka was found tied to a log of wood by a vine. A post-mortem examination indicated that Peeka was shot, then tied up and immersed in the water while still alive." (p.83)

In the hearing before the Privy Council it was strongly argued by the Appellant's counsel that either both Shoukatallie and Mahomed Ali were guilty or both were not guilty:-

'How strange "then," he said, "that as the matter stands, Shoukatallie has "been found guilty and Mahomed Ali goes free!" '

The Privy Council felt constrained to refer with approval to the Federal Court's decision to allow Mahomed Ali's appeal. The headnotes so far as relevant to the appeal before us read as follows:

" Per curiam. *The Federal Supreme Court had rightly set aside the conviction of the co-accused. He might have thought that the deceased was dead when he fell wounded, and in that event in assisting in disposing of the body he had no intent to kill and would only have been guilty of manslaughter, and the jury were without direction on that point; further, and again there was no direction on the matter, the jury might conceivably have taken the view that, despite the medical evidence, the deceased was actually shot dead, so that he was not alive before the co-accused took any part in the matter, in which case he would only have been guilty as an accessory after the fact (post, pp. 86, 89, 92)."*

Lord Denning delivering the reasons from their Lordship's report dismissing Shoukatallie's appeal asked - "*So far as Shoukatallie was concerned, there could be no doubt. On the evidence, if accepted, he was the man who fired both shots. But what about Mahomed Ali? Even if the evidence of the prosecution was accepted, was it altogether clear that the shooting was pre-arranged? Might it not, perhaps, be that Shoukatallie fired the shots on his own account, with Mahomed Ali merely a spectator?*" (See p.86 of the Report.)

However, in the case before us it is still possible on the evidence to hold inferentially that the Respondent was a party to her husband's killing because at all material times on 31/8/91 she intended that her co-accused should kill her husband whether by smothering him or by knifing him subsequently. But the matter does not rest there because so far we have proceeded on the assumption that her challenged statements were voluntary and true. For we cannot overlook the Judge's views as disclosed in his summing-up and the findings he made in his judgment.

We are of the view that by the time the trial Judge came to sum up he began to entertain some doubts about her confession and her complicity. This he was entitled to do after hearing

her evidence again and bearing in mind all the other evidence and the submissions of the counsel. At the voir dire stage he was concerned only with admissibility of the statements and not their probative value. With regard to the case against the Respondent, this is what the trial Judge said in his summing-up -

> *"Anjana Devi has given evidence on oath. She denied being present when it is alleged that accused 1 smothered or suffocated Bal Ram with a pillow. She admitted having sexual relationship with accused 1 but accused 1 denied having any kind of relationship. Accused 2 stated accused 1 and the deceased went to steal Shankaran's goat after the meat they cooked finished. She said accused 1 took her dead husband's knife. Later accused 1 came and told her that he killed her husband.*
>
> *It has been said quite correctly that the prosecution does not have to prove motive for any crime. If you accept both accuseds were having sexual relationship and wanted to stay together - prosecution says it was a motive or reason for killing Bal Ram. It is true accused 2 left the deceased in 1983 for three months. The two got reconciled and were living happily. There is no evidence of any subsequent quarrels. Why would she kill her husband? If she wanted to she could have left her husband as she had done before. Motive in itself does not really prove anything, but is may be a significant circumstance when taken in conjunction with other circumstances, a choice of circumstances, then it may assist in leading to satisfaction that no other reasonable hypothesis is open. That is the only way that that evidence of relationship is usable by you in this case.*
>
> *Was accused 2 party to the murder of Bal Ram? If after carefully considering the evidence you are left in reasonable doubt about the guilt of accused 2 then it is your duty to express the opinion that she is not guilty of murder. She had made a statement to Senior Inspector L S Naicker. It is quite clear from this statement the killing of her husband was far from her mind. She did not want her husband to be killed and she had told this to accused 1, Ganga Ram. Anjana Devi said Ganga Ram told her about 1am that he killed her husband but she did not quite believe that. She said she told this to the police when first questioned. She was cross-examined as to why she did not tell this to DCO/Western Paras Ram. She maintained she told him. Paras Ram was not called to rebut this piece of evidence. He was the supervising officer there. The deceased was hacked to death about ten chains away from his house. Anjana Devi was not there. There is nothing in her statements to police admitting that she took any part whatever in the actual assault on the deceased or that she actively assisted Ganga Ram in an assault on the deceased. This is a matter for you to decide. If you have any doubt you should give the benefit of the doubt to Anjana Devi and find her not guilty of murder. In fact Anjana Devi did not even know accused 1 Ganga Ram was coming to her house in the night of 30th August 1990 to have drinks with deceased. Where is the evidence of any planning? Accused 1 had visited her twice during the day but he did not say he would be coming at night to drink beer with the deceased. In fact he got the beer well after 5 pm that day. She was told of this by her deceased husband."*

An examination of the summing-up and the judgment leaves us in no doubt that not only did the Judge have reservations about the Respondent's complicity he also had doubts about her confession. On both of these scores we find that his views were not without foundation. We also share the Judge's view that but for the two incriminating statements there is no other evidence to support the charge of murder. It is possible that had the Judge specifically directed the assessors that if they believed that the Respondent only assisted in loading the deceased in the mistaken belief that he was already dead she could not be found guilty of murder, the assessors might have returned a verdict of not guilty.

As for the Respondent's intention the following passage from the Judge's summing-up at p.88 is relevant -

> *"She had made a statement to Senior Inspector L S Naicker. It is quite clear from this statement the killing of her husband was far from her mind. She did not want her husband to be killed and she had told this to accused 1, Ganga Ram."*

As noted by the Judge the Respondent also claimed that she told DCO Western Paras Ram this but *"Paras Ram was not called to rebut this piece of evidence"*, although he was the supervising officer. Then he goes on to say *"In fact Anjana Devi did not even know accused 1 Ganga Ram was coming to her house in the night of 30th August 1990."* (p.89)

In his judgment the Judge found, from clear evidence, that the deceased died as a result of knife wounds inflicted on him, some 10 chains away from his house and that the Respondent was nowhere near the scene, and that there was no evidence that he died from smothering or suffocation.

He also expresses doubts about certain part of the confession and gives his reason for his doubts (see 2nd para at page 91 of the record). He goes on to say - *"I have my doubts of Accused 2 being an aider and abetter in this offence."*

Grounds (i) and (ii) of the State's appeal are based on the assumption that the Respondent's challenged statements were properly admitted and were true.

We have borne in mind the length of the Respondent's questioning and the circumstances under which she was kept at the temporary police station the whole night without the presence of any female police officer and without any toilet facilities nearby. We are not surprised that the trial Judge ultimately entertained doubts about certain parts of her confession. Having examined the whole of the evidence given in the Court below and the whole course of the trial we feel on hindsight that the trial Judge would have been justified in rejecting on the voir dire the confessional statements at least on the basis of unfairness.

As for ground (iii) the trial Judge did give his reasons for not accepting the assessors' opinion and these reasons are neither fanciful nor perverse.

Applying the cardinal principle that an accused person is entitled to the benefit of any reasonable doubt we do not feel that we will be justified in upsetting the trial Judge's acquittal of the Respondent. We are of the view that no miscarriage of justice has occurred and that a retrial is not called for.

The State's appeal against acquittal of the Respondent Anjana Devi is therefore dismissed.

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Justice Michael Helsham
President, Fiji Court of Appeal

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Sir Moti Tikaram
Resident Judge of Appeal

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Justice Arnold Amet
Judge of Appeal