

IN THE FIJI COURT OF APPEAL

CRIMINAL JURISDICTION

CRIMINAL APPEAL NO. 30 OF 1990
(High Court Criminal Case No. 21 of 1988)

BETWEEN

HARI NARAYAN

APPELLANT

-and-

S T A T E

RESPONDENT

Appellant in Person
Mr Ian Wikramanayake for the Respondent

Date of Hearing : 27th April, 1993
Date of Delivery of Judgment : 30th April, 1993

JUDGMENT OF THE COURT

On 29 September 1989 the Appellant was convicted after a trial in the High Court on each of two counts of murder, and on each count was sentenced to imprisonment for life. On 19 June 1990 he filed a petition on appeal in which he sought leave to appeal out of time against his convictions. That application was dealt with in chambers and on 10 July 1991 leave was given.

There were 6 principal grounds of appeal which we summarise as follows :

1. A failure to direct the assessors properly as to the defence of provocation.
2. A failure to direct the assessors on the doubts raised by the prosecution evidence as to the sides of the body on which the deceased Ram Kissun had stab wounds.
3. A failure to consider properly the defence application to edit the accused's confession and a failure to reject that confession as inadmissible.

4. A failure to direct the Assessors as to doubts in the identification of the weapon used.
5. Unfair prejudice to the Appellant in the way in which the summing-up was expressed.
6. That the verdicts were unreasonable and against the weight of evidence.

At the trial the appellant was represented by counsel, but for the purposes of his appeal he was unrepresented. There seems little doubt that this was due largely to the inadequacy of the fees payable to counsel appearing on legal aid in this Court. This is an unsatisfactory situation which should receive attention.

The appellant, being unable to obtain the assistance of counsel, has submitted a handwritten statement of the matters he wished to have considered on his appeal. These matters are generally a re-statement of the original grounds of appeal and we deal with them in the course of our judgment.

The two deceased were respectively the Appellants father-in-law and brother-in-law. The prosecution case was that on 1 February 1988 a party which included the Appellant and the two deceased left Nakaile, Wainibokasi, in a van for the purpose of bringing back the youngest daughter of Ram Kissun who had been married a few days before. Ram Kissun, who was the deceased referred to in Count 1, was the Appellant's father-in-law, and his son Rajend Prasad, the deceased referred to in Count 2, was accordingly the appellant's brother-in-law.

This family party was entertained at the home of the bride's parents at Madhuveni and left on the return journey at about 2 pm. They stopped at Korovou to replace a punctured tyre and some beer was purchased and consumed in part by the appellant. More beer was purchased at Wainibokasi and consumed after arrival back at Nakaile. The appellant then purchased

more beer which he took to his house and two of the others, namely his brothers-in-law Hari Chand and Chandar Kishore, joined him there and more beer was drunk.

The prosecution case was that the appellant had sworn at his brothers-in-law, calling them "low caste Indians and bastards". Whatever were the precise words used, Ram Kissun arrived at that stage and asked the appellant "at whom are you swearing". This resulted in the appellant picking up a beer bottle and throwing it through the door of the house towards where Ram Kissun was.

Up to this point there is little dispute as to what occurred. Thereafter, however, the accounts differed.

Hari Chand and Chandar Kishore said that immediately after the bottle was thrown the appellant went towards the kitchen. Hari Chand followed, but was met by the appellant returning and was pushed and fell into a bedroom. The appellant went into the sitting room where Chandar Kishore and the appellant's wife tried unsuccessfully to prevent him from going outside. In the course of that struggle both Chandar Kishore and the appellant's wife received injuries. The appellant was then seen outside the house striking Rajend Prasad twice with a knife which, the prosecution said, he had obtained from his kitchen. Ram Kissun then arrived and tried to get hold of the appellant but was also struck by the appellant with the knife. The appellant was then overpowered and the knife taken from him and thrown away. Both Ram Kissun and Rajend Prasad died from the injuries they received.

In a statement made under caution to the Police a few hours later the appellant gave an account which was generally consistent with the account of the prosecution witnesses as summarised above. At his trial, however, he gave a different account. Objection was made to the admissibility of the confession statement, but, after a trial within a trial, the statement was admitted.

The appellant's account as given in evidence was that, after he had thrown the bottle, he decided not to eat at his father-in-law's house that evening and went to his kitchen to get a knife to kill a fowl for his dinner. He could find no knife there and was on his way to his father-in-law's house to get a knife when Hari Chand grabbed him. He pushed Hari Chand aside and then tussled with his wife and Chandar Kishore. He pushed them both away and went outside heading for his father-in-law's house next door. On the way Rajend Prasad threatened to kill him and tried to strike him twice with something. In the course of a struggle he managed to take a round object out of Rajend's hand but then slipped and fell on top of Rajend. As he got up someone hit him from behind and he was held from the back. His neck was pressed and he lost consciousness.

These conflicting accounts were given in detail by the Judge to the assessors whose function it was to determine what credence they placed on the evidence.

We turn now to the grounds of appeal:

1. Provocation

The law as to provocation which is sufficient to reduce murder to manslaughter and which is set out in ss.203 and 204 of the Penal Code Cap.17, was explained by the Judge to the assessors in precise conformity with those sections. The direction on this topic occupies nearly four pages of the transcript and was a careful and, in our view, a correct exposition. The issues of fact were clearly stated and were left for determination by the assessors.

2. Doubt as to Stab Wounds

This ground relates to the injuries received by Rajend Prasad and concerns only Count 2. The defence to Count 2 was that the appellant acted in self defence and it was therefore said that the nature and location of the wounds was a matter of significance.

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The evidence of the pathologist was that at the time of the post mortem there were six external wounds on Rajend Prasad's body, three of which were gaping. Because of the operations which Rajend had undergone some of the wounds were surgical incisions and he was not able to say how many stab wounds there had been. He said, however, that the peritonitis which had caused death was most likely to have resulted from a stab wound to the left upper quadrant. This is generally consistent with the account given by Hari Chand that, from a distance of about 10 feet, he had seen the appellant stab Rajend "in the stomach left lower part of body".

Whatever difficulties there were in determining the source of the various wounds on the body there seems to have been ample evidence for the assessors to find that the cause of Rajend's death was one or more blows struck by the appellant with a knife. It is obvious that the assessors did not accept this was a case of self defence and it was accordingly open to the assessors to return the opinions of guilty on Count 2 which they did.

3. The Confession Statement

The appellant was taken into Police custody in the early hours of 2 February 1988. He was then taken to the hospital for medical examination and on return to the Police Station was able to sleep from about 2.15 am until 9.15 am when he was taken to the hospital for an Xray. He was not interviewed until 12.50 pm and the taking of the caution statement finished at 3.15 pm.

When objection was taken to the introduction in evidence of that statement there was a trial within a trial in the absence of the assessors. That trial occupied over a day and in the course of it evidence was given by five Police Officers. The appellant took the unusual course on a voir dire of electing to make a brief unsworn statement. The Judge then took time to consider the matter and gave his Ruling the following day.

The objection to the statement was based upon allegations that the appellant had been assaulted and induced to make the

admissions contained in the statement, and that what he had said had been wrongly recorded. Those allegations were, however, scarcely referred to in the cross-examination of the police witnesses.

Having heard all the evidence the Judge had no hesitation in dismissing the objection and the statement was duly admitted. We can find no basis upon which this ground of appeal can be supported.

4. Doubts as to the Weapon

This ground concerns the opinion of the medical witnesses as to the nature of the weapon which caused the fatal wounds. We have already referred to the pathologist's evidence as to the fatal stab wound to Rajend Prakash. In his re-examination the pathologist said that this wound (among others) could have been caused by the knife produced in evidence and which was acknowledged by the appellant in his confession statement to have been his.

As to Ram Kissun the pathologist described a deep penetrating stab wound which he considered was the cause of death. He said that wound could have been caused by the exhibit knife.

There does not appear to have been any doubt as to the weapon used such as to have called for a direction to the assessors other than that given to them.

5. Summing-up

The notice of appeal describes the summing-up as the constant posing of rhetorical questions, together with "comments appeared throughout the summing-up to the effect that there was no other explanation... than the accused's (guilt)..."

It is true that the Judge has used the rhetorical question on a number of occasions, but the summing-up, read as a whole, makes it clear throughout that the answers to those questions were matters for the assessors and not for the Judge.

The case against the appellant was a strong one and any recounting of the evidence may well have tended to leave the impression of difficulties confronting the defence. We are unable, however, to say that the summing-up presented on unfairly prejudicial picture.

6. Unreasonable Verdict

What we have said already makes it clear that the prosecution case on each Count was a strong one. Putting aside the confession statement there was ample evidence on which the assessors were entitled to conclude that guilt had been established beyond reasonable doubt on each charge. If there is added the confession statement then the case became overwhelming.

In the result we can see no merit in any of the grounds which the appellant wished to raise on appeal, and in those circumstances his appeal 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