

**VIJAY KRISHNA GOUNDAR, SHYAM MURTI, SEN CHAND &
SURJIT KUMAR v STATE**

a Court of Appeal Criminal Appeal
Casey, Ward and Byrne, JJ
1 December, 2000
AAU0010/96L (on appeal from HAC008/94L)

b *Murder – appeal against conviction – whether trial judge misdirected himself on identification – whether confessions were voluntary and should be admitted – whether 15 year old juvenile’s will was overborne – Police Act Standing Orders of Fiji Police Force rule 29.*

c Appellants intended to kill deceased at Wailoaloa Beach, Nadi and use his van to drive to Ba to steal \$10,000 but house empty. Appellants appealed on six grounds: failure of the trial judge to direct the assessors and himself on the question of identification, wrongly admitting the confessional statements of the appellants, giving no proper direction on the weight and probative value of the confessional statements. At the hearing counsel for the appellants sought leave to add a further ground that the appellants should have been separately represented.

d **Held** – (1) Appellants were represented at trial by experienced counsel who did not make an application for separate representation, and there was no real conflict of interest, thus leave on seventh ground of appeal refused.

- e (2) No Turnbull-type direction from the Judge was necessary as identification was not a real issue.
(3) Despite length of delay in conducting and concluding interviews, Judge had ample reasons to admit the statements.
(4) Although Murti was a juvenile, being a cane-cutter, he was used to the hard realities of life and was more mature than a person under 17 who was not so employed.

Appellants properly convicted.

No Cases referred to in judgment

f *Abhay K Singh for the appellants
Josaia Naigulevu for the respondent*

1 December 2000. **JUDGMENT**

Casey, Ward and Byrne, JJ.

g This is an appeal against the convictions for murder of the Appellants in the High Court at Lautoka on the 22nd of May 1996.

The Appellants were charged with the murder of a van driver named Mohammed Faiz at Wailoaloa Beach, Nadi on or about the 6th of January 1994. The cause of death was certified as asphyxia due to drowning. At the time of his

death, the deceased was aged about 20. His body was found at about 5.30 a.m. on the 6th of January 1994, by a woman and her husband who were walking along the beach. The body was facing downwards but was not submerged in the water as the tide was just going down. Part of the body was covered with sand.

a

The events leading up to the murder are described by the four Appellants in records of interview conducted at Nadi Police Station on the 16th and 17th of February 1994 and are brief.

At some time between 11.30 p.m. on the 5th of January and approximately 1.00 a.m. on the 6th of January 1994 the Appellants engaged the deceased to drive them to Wailoaloa Beach. There they intended to kill him and then use his van to drive them to Ba where they planned to steal \$10,000.00 which they believed to be in a house there. As it happened the house was empty when they arrived in Ba. The method they used to kill the deceased was to strangle him with a belt, belonging to the second and the youngest of the Appellants Shyam Murti. On being satisfied after feeling his body go limp that he was dead they then dragged him to the sea and pushed his head in the water about six times. They then left in the van for Ba and were not arrested until the 16th of February 1994.

*b**c*

Originally the Appellants gave six grounds of appeal alleging failure by the trial judge to direct the assessors and himself on the question of identification, wrongly admitting the confessional statements of the Appellants, and giving no proper direction on the weight and probative value of the confessional statements.

d

At the hearing before us, counsel for the Appellants, who did not appear at the trial, sought leave to add a further ground namely that the Appellants should have been separately represented at their trial.

e

After hearing submissions from Mr. Singh and Mr. Naigulevu, we refused leave to add this ground because at the trial the Appellants had been represented by very experienced counsel, Mr. G.P. Shankar, who did not make any application to the trial judge for separate representation of the Appellants and there was no real conflict of interest.

f

Counsel for the Appellants first argued that the learned trial judge was wrong in not directing the Assessors and himself on the question of identification of the Appellants. In our view this is not a case where identification was a real issue and consequently did not merit a Turnbull-type direction.

g

Counsel for the Appellants then argued that because of the length of time during which the interviews were conducted on the 16th and 17th of February 1994 from approximately 8.40 p.m. to 8.14 a.m. the next day this Court should hold that the questioning was oppressive and the confessions therefore should not have been held to be voluntary.

Particular attention was paid by Mr. Singh to the record of interview of

a the youngest of the Appellants Shyam Murti, who gave his age to the Police at the time his record of interview began as 17 years, when there was later evidence in the form of his birth certificate that he was aged only 15 years. Murti was arrested and brought to the Nadi Police Station at 2.56 p.m. on the 16th of February, but his interview did not begin until 8.37 p.m. that day. It concluded at 7.30 a.m. the following day for reasons which we shall give shortly.

b It was submitted by Mr. Singh that as a juvenile, defined in the Juvenile Act Cap. 56 as a person who has not attained the age of 17 years he should have been interviewed in the presence of a parent or guardian, and he was not. This was a reference to Rule 29 of the Standing Orders of the Police Force issued by the Commissioner of Police which states that as far as practical children and young persons who are included in the expression "juveniles" in the Juvenile Act should only be interviewed in the presence of a parent or guardian. It was alleged that the absence of such a person during the interview affected the fairness of the interview because, being under 17, it was more likely that his will had been overborne, thus rendering his confession involuntary.

c It is apparent that the reasons why Murti was detained for some six hours at the Police Station before his interview began, were that when he was brought to the Station, he gave the names of the other Appellants who were involved in the murder. It took the Police considerable time to arrest the other three and during that time, he was free to move around but not leave the Station. They also had to arrange for the Deputy Divisional Crime Officer Western, S.P. Selva Naicker to come to Nadi which he was not able to do until after 8.00 p.m. It was also necessary to arrange for extra Police to conduct and be present at the interviews of the Appellants.

d Despite the length of the delay which included a break of some 42 hours while the Police and the Appellants visited the scene of the crime, Ba and Legalega where the deceased's van was abandoned, we are satisfied that it was adequately explained. We consider the judge had ample reasons to admit the statements.

e As to the alleged vulnerability of the Appellant Murti because of his age, in our opinion the learned trial judge was correct when he said in his ruling on the Voir Dire that although Murti was a juvenile in the eyes of the law, being a cane-cutter he was used to the hard realities of life and so more mature than a person under 17 who was not so employed. Clearly the assessors who were unanimous in their decision accepted this also.

f Considering all the evidence we are satisfied that the Appellants were properly convicted and their appeals are therefore dismissed.

Appeals dismissed.

Marie Chan