IN THE SUPREME COURT OF THE FIJI ISLANDS

AT SUVA

CRIMINAL APPEAL CAV0003/02
(Fiji Court of Appeal No AAU0031/98S)

BETWEEN:

RAVIN CHAND

Petitioner

AND:

THE STATE

Respondent

Coram: **The Hon Justice Keith Mason, Judge of the Supreme Court**
The Hon Justice Robert French, Judge of the Supreme Court
The Hon Justice Mark Weinberg, Judge of the Supreme Court

Hearing: **Tuesday, 26 February 2008**

Counsel: **Petitioner in person**
A Prasad for the Respondent

Date of Judgment: **Thursday, 28 February 2008, Suva**

JUDGMENT OF THE COURT

Introduction

1 Ravin Chand filed a petition in 2000 for special leave to appeal against a decision of the Court of Appeal dismissing his application for leave to appeal against a conviction of murder. For reasons which have not been fully explained, his petition did not reach this Court until 2002 and then was not listed until this sitting of the Court. The delay in dealing with the petition has been deplorable.

2 We have carefully considered the petition, the directions of the trial judge and the judgment of the Court of Appeal. For the reasons that follow we are satisfied that no ground

for the grant of special leave is made out. The petition will be dismissed.

Procedural background

3 By an Information dated 1 May 1998 the Director of Public Prosecutions charged Ravin Chand and Satya Kumar with the offence of murder in the following terms:

> ***"MURDER:** Contrary to sections 199 and 200 of the Penal Code, Cap 17.*
>
> ***Particulars of Offence***
>
> ***RAVIN CHAND s/o Bisambar and SATYA KUMAR s/o Bisambar between 18th day of November and 19th day of November 1997 at Rakiraki in the Western Division, murdered DINESH KUMAR s/o Hans Raj."***

4 Mr Chand and Mr Kumar are brothers. Their trial before a judge and three assessors in the High Court commenced on 14 September 1998. While the record of the proceedings before this Court is not entirely clear, the trial appears to have occupied ten days of hearing time, including final addresses on 6 October 1998. The assessors returned verdicts of guilty of murder against each of the brothers and those verdicts were confirmed by the trial judge. Each was sentenced to the mandatory term of life imprisonment.

5 Messrs Chand and Kumar appealed to the Court of Appeal against their convictions. Their appeals were lodged out of time on 9 February 1999. They came on for hearing before the Court of Appeal on 21 February 2000. There seems to be no explanation for that delay of a year. The Court of Appeal granted the necessary extension of time. On 24 February 2000 it gave judgment dismissing Mr Chand's application for leave to appeal against conviction, it allowed Mr Kumar's application, quashed his conviction and sentence and directed that a judgment and verdict of acquittal be entered.

6 Mr Chand prepared a petition for special leave to appeal to this Court against the judgment of the Court of Appeal. A memorandum from the Officer in Charge of the Medium Security Prison dated 31 August 2006 indicates that his petition "... could have been misplaced due to the coup on 19/5/2000". He forwarded another petition on 18 July 2002. It appears from the memorandum from the Medium Security Prison that he asked on 8 March 2004 about the progress of his appeal. He was advised by an officer of the Supreme Court to write a reminder letter to the Registrar of the Supreme Court. This was done and the letter

was forwarded on 11 March 2004. When Mr Chand inquired again at the prison on 20 May 2004 about his appeal, a further inquiry from an officer of the Supreme Court on 5 July 2004 elicited the advice that the case was pending at the Supreme Court for hearing. Mr Chand was seen by Visiting Justices on 20 April 2006 and again asked about this appeal. On 31 August 2006 the Officer in Charge of the Medium Security Prison forwarded a completed petition bearing that date. That petition was lodged a few months prior to the military coup of December 2006. The Supreme Court did not sit in 2007. The petition for special leave to appeal now comes before this Court. The litany of delay that has occurred within the prison system and within this Court is deplorable, even allowing for the disruption caused by the events of May 2000 and December 2006.

Factual background

7 The facts of the case were set out in the judgment of the Court of Appeal. The deceased, Dinesh Kumar, was married to Ravin Chand's sister, Premila Wati. Mr Chand and his brother, Mr Satya Kumar, the deceased and his wife, lived at Naria which is a small settlement in the hills around Raki Raki. They farmed adjacent land. The relationship between the two brothers and the deceased was not good. They were in dispute about access to water. The deceased had dug a dam at a spring site some distance from his farm. He collected water from it and brought it through connected lengths of hosepipe to his house and vegetable patch. The pipe ran through land farmed by Mr Chand. Mr Chand wanted its route changed, claiming it damaged his crops. None of these facts, according to the trial judge's summing up, were in dispute.

8 There was evidence that the deceased changed the route of the hosepipe to take it along a creek line from his dam to his house. Mr Chand was said to have been happy with that arrangement. He drew his water from the creek and the deceased drew his water from the dam. However even after the route of the hose was changed, the water supply suffered from regular interruptions. The connections joining the lengths of the hosepipe were not securely made. Nevertheless the deceased blamed the two accused for the disconnections that occurred. They denied complicity.

9 It was not in dispute that on 18 November 1997 at about 6pm the deceased told his wife to water their tomatoes and seedlings. He said he would go and fix the hosepipe

connections as there was no water coming through. Fifteen minutes later the water came on and Ms Wati did her watering. By 11pm the deceased had not returned. Ms Wati went looking for him but did not find him. The following morning a search party was organised from the village and Mr Kumar's body was found buried.

10 When the body was exhumed, the left hand was seen to have been cleanly amputated. It was buried in a plastic bag with the body. The body was tied several times with a rope around the chest and legs and the clothes were drenched with kerosene. There was a ligature mark around the neck. An attending pathologist said that the cause of death was strangulation by ligature. In summing up the trial judge pointed to evidence that distinguished strangulation by ligature or garrotte from death by hanging. Where a ligature or garrotte is applied, both ends of the rope around the neck are pulled tight. There was no evidence of any knot or noose around the deceased's neck.

11 The pathologist gave evidence that there was pre and post-mortem bruising to the body and face, bleeding of the scalp and dislocation of the arm bone. He noticed blisters which led him to conclude that the body had been in contact with fire. His broad estimate of the time of death was between 11pm on 18 November and 4am on 19 November. Dry blood marks were found by police on the grass by a creek or drain near Mr Chand's house and there were signs of a fire in the area.

12 Both Mr Chand and his brother made statements to the police admitting that Mr Chand had killed the deceased and that his brother helped him dispose of the body by burying it. In evidence, however, Mr Chand said that he was at home at about 6.30pm on 18 November when he heard his wife call for help outside and found the deceased holding her. The deceased let her go and she ran into the house while he followed the deceased down the hill towards the creek. There he said the deceased attacked him with a long handled cane knife and chased him as he ran away. He said that the deceased fell, that he was able to get the knife and that in the ensuing struggle he cut off the deceased's hand and then kicked and punched him so that he fell into the creek. He told the court that he ran back home and got his wife to attend to the cuts he had sustained from the knife attack but did not tell her what had happened.

13 In his evidence in Court Mr Chand said that about half an hour after being treated by

his wife, he took a torch and went to look for the deceased. He found him in the creek. He tried to wake him. He shook his hands and legs. He realised that he was dead. He thought of reporting the death to the police but decided that if he did they would assault him and he had a wife and children to look after. He then decided to dig a grave and bury the deceased.

14 The statement he was said to have given to the police was different. In that, he was recorded as saying:

> *"A. **He was hitting me with the knife and the knife hit me on my right hand and when he was leaping to hit me with the knife he fell in the ploughed land and I grabbed the knife from him.***
>
> *Q. **What did you do after that?***
>
> *A. **I saw that when Dinesh was trying to get up I hit him with the knife and he tried to evade it but the knife hit his left hand and was amputed*** [sic] ***and Dinesh fell in the drain and I went to see him after punching him and when I saw him properly he was dead and was not moving and if I knew he was not dead I would have again hit him with the knife.***

15 In cross-examination Mr Chand said that the recorded statement was a lie – presumably a reference to fabrication by the police – and he did not intend to kill the deceased. He said that he called out to Satya and told him what had happened. He asked Satya to help him to dispose of the body. Satya agreed and they used Mr Chand's bullocks to pull the body out of the creek with a chain and rope tied around its chest. Their first attempt was unsuccessful and the body fell back into the creek. They reattached the chain and got the body up the bank and tied it to a tyre. They then dragged it to a site near the bush and buried it. They spread kerosene over the top of the grave to deter dogs. Mr Chand went to bed.

16 Satya Kumar's evidence accorded with that given by Mr Chand in court. He said he held the bullocks while Mr Chand attached the body to the rope leading down to it from the yoke and chain so they could pull it out. He did not see Mr Chand attach the rope. He said they got the body on the tyre and dragged it with the bullocks to the burial site. Mr Chand then gave him the knife and accidentally broke the wooden handle. He took the handle home and burnt it and threw the blade away.

17 Mr Chand's wife, Premila Wati, also gave evidence for the defence. As summarised

in the judgment of the Court of Appeal she said she was about to untie the hose to water the garden when the deceased abused and held her and she called for help. She said Mr Chand came and told her to go inside the house where she stayed until he returned a few moments later and asked her to put iodine on his shoulder. He would not tell her what had happened. He then went out and was still away when she went to sleep. A statement she had made to the police differed in important respects when she was cross-examined on it, but as the Court of Appeal put it, she maintained that it had been given under pressure and that what she told the Court was the truth. The evidence given by both Messrs Chand and Kumar was challenged in cross-examination because of discrepancies between their police statements which were both put in evidence.

The grounds of appeal in the Court of Appeal

18 There were six grounds of appeal in the Court of Appeal. They were:

Ground 1	The verdict in respect of each appellant was unsafe and unsatisfactory and was otherwise unreasonable and against the weight of the evidence.
Grounds 2 and 3	The trial judge wrongly withdrew manslaughter from the assessors' consideration.
Ground 4	There was a failure to direct that murder committed by strangulation required malice aforethought and to direct on circumstantial evidence.
Ground 5	There was a failure to direct properly about medical evidence of the cause of death.
Ground 6	There was a failure to direct on common intention.

19 The Court of Appeal granted Mr Chand's application for leave to appeal against conviction but dismissed his appeal. It granted Satya Kumar's application for leave to appeal, allowed the appeal and quashed the conviction and sentence. It directed in his case that a judgment and verdict of acquittal be entered.

The grounds for the grant of special leave

20 The grounds for the grant of special leave set out in Mr Chand's letter to the Supreme Court on 30 August 2006 were as follows:

> ***"1) Lack of Evidence of Malice Aforethought – There was no plan or***

intention to kill the victim, there was no pre-planning of the events leading to the victims death by or between me. [sic]

2) ***Inadequacy of Police Investigation into the Cause of Death – The basis upon which the Police interview with me was conducted that victim had died has a result of injuries sustained by a knife, it was thought that amutation of hands of victims was the caused of death.*** [sic]

3) ***According to law of fiji volume 26 page 13 ivii says, if a suspect taken in custody for investigation, the officer in charge and seven others police officers must be present in the present of interview. But in my interview the inspector and CID officers were present. I can say it wrong in principles of laws in Fiji.*** [sic]

4) ***Sir, In the laws of Fiji criminal act, it says on page 11 volume 6, if any person found or held in custody of police who commits any offence of criminal act, the detainee person may be taken to St Giles hospital for brain test soon as after charging. But the police failed to do the job and duties.*** [sic]

5) ***Weight of evidence supports a finding of self defence. The state must consider that i strike the cane knife at victims in self defence. The victim man handle my wife Ved Wati, and this when the problem started.*** [sic]

The trial judge's direction to the jury

21 After referring to the background of the dispute between the two accused and their deceased brother-in-law the trial judge directed the assessors to consider whether the dispute provided a motive for killing the deceased. He fairly raised defence counsel's question whether the accused, after reaching a settlement on the route of the hosepipe, would have deliberately set about disconnecting it. While the existence of disharmony was not denied, the accused counsel had said it was fanciful to extend it to a motive for murder. The trial judge put to the assessors the version of events leading to the death of the deceased which had been given by Mr Chand. He suggested that a useful starting point would be to determine the mode of death. The evidence was that the deceased died by strangulation. The State had to satisfy the assessors that the death was caused by the accused.

22 The trial judge pointed out to the assessors that Mr Chand had said that he found the deceased in the creek with his head lying towards the bottom and his feet towards the top of the bank. The height of the creek bank was greater than a man's height. If the rope he had

put around the deceased before pulling him out was around his chest, then the position of the body might have reversed so that it came up the bank head first. The trial judge asked whether it was possible that in this manoeuvre the rope could, after the reversal of orientation of the body, have come to be wrapped around the neck and thus caused the death by strangulation. The trial judge described this question as "a vital point".

23 The prosecution case as put to the jury was that the deceased was alive immediately before he was pulled out of the creek. The accused, knowing this, put a rope around his neck and pulled him out. They either knew or did not care that it would strangle him. The trial judge said that to accept this theory there had to be supporting evidence. There was a single mark at the back of the neck and evidence excluding a knot. The trial judge said:

> ***"You may think this suggestion by the State logically leads to the conclusion that the accussed simply wrapped the rope once around Dinesh's neck and, without knotting it, then tried to pull this large man up a six foot embankment after, of course, turn the body around to head first.*** [sic]

24 The trial judge adverted to the defence contention that the death was "an unfortunate accident". Counsel had hypothesised that perhaps the rope wrapped around the deceased when the chain connected to it came loose and the rope fell back into the creek.

25 The judge raised another question, namely, whether the rope was tied around the deceased at all when he was brought up the bank.

26 The trial judge told the assessors it was necessary for a conviction for murder that they be satisfied beyond reasonable doubt that death resulted from some activity on the part of the accused. He then turned to the issue of criminal liability for the death. He set out the elements of the offence of murder in s 199 of the Penal Code. He directed the assessors of their need to be satisfied of "malice aforethought" as defined in s 202 of that Code and said:

> ***"What this means is that, to be found guilty of murder the State must prove beyond a reasonable doubt that the accused intended to [either] kill Dinesh or to do him grievous bodily harm – that is a serious injury. Either separately or as well, that the State must prove that the accused did an act which, to their knowledge, would be likely to cause death, but they were indifferent to that possibility.***

27 The State's case as put to the assessors by the trial judge was that the accused

intended to accost the deceased near the hose connection and to harm him. On the State case, they made a pre-planned attack and cut off his hand. When he fell into the creek as a result of that injury they strung a rope around his neck, pulled him up the creek bank and put him on a tyre. In putting the rope around his neck they must have known of the possibility that it would kill him but were indifferent to that outcome. The State contended that the accused could not be believed and that "they either did not check to see if Dinesh was still alive or they were totally indifferent to his circumstances".

28 The trial judge referred to Mr Chand's evidence that he acted in self defence and he told the assessors that it was for the State to negative that claim beyond reasonable doubt. The prosecution did not argue that if the occasion for self defence had arisen, Mr Chand had exceeded what was reasonably necessary. The trial judge referred to the State's criticism of the evidence of self defence as fabricated. He referred to the State's contention that Satya Kumar and Mr Chand's wife, Ved Mati, had lied in their testimony. He discussed Ms Mati's statement to the police. He also reminded them of questions put by defence counsel.

29 The judge directed the assessors that if they were satisfied beyond a reasonable doubt of "malice aforethought", they had to consider whether the acts of the accused were unlawful acts or omissions. The prosecution contended that the unlawful act was the attack upon Dinesh with the cane knife. We note, however, that it was not the State's case that the attack with the cane knife caused the death of the deceased.

30 In the alternative, according to the trial judge, the State argued that the tying of the rope so that it went around the neck of the deceased was an "unlawful omission". This was a rather odd characterisation. Counsel for the accused admitted that there had been an omission on Mr Chand's part namely, leaving the deceased in the creek thinking he was alive and then going home. But, it had been submitted, this omission did not cause death.

31 The trial judge directed the assessors on the intention necessary to establish murder. He put the case to them as one of murder only. The alternative verdict of manslaughter was not open. The evidence was that the cause of death was strangulation. If the assessors found the accused not guilty of murder then they would have to have found that the Crown had not negatived self defence. The judge told the assessors that self defence and manslaughter could not sit together. The assessors would then be left with the alternative that dragging the body

from the creek on its own constituted manslaughter. They would have to assess the evidence around that specific incident and decide whether a reasonable person of sober and sound mind could have foreseen that dragging the deceased (if then alive) from the creek would be likely to have led to his death. There was a dearth of evidence on which to act. The evidence was of such poor quality that the assessors would be left to speculate on crucial points. The trial judge canvassed some theories about how the rope was tied and came to be around the deceased's neck. He considered that there was a Pandora's box of hypothetical situations. He considered it "too dangerous to allow you to consider the area of manslaughter". The case was one of either murder or a tragic accident. We would observe that if the assessors found the accused not guilty of murder, they would have to have found that the Crown had not negatived self defence. It might be that the Crown had not succeeded in satisfying them that the accused caused the death of the deceased. The judge however clearly directed the assessors in other parts of his direction that they had to be satisfied beyond reasonable doubt that the death of the deceased was caused by the activity of the accused.

Reasons for decision in the Court of Appeal

32 The first ground in the Court of Appeal was argued on the basis that there was a lack of evidence of the "malice aforethought" required to constitute murder as defined in s 202 of the Penal Code. That is to say, it was submitted that there was a lack of evidence of an intention to kill or knowledge that the act or omission causing death would probably cause grievous bodily harm, albeit accompanied by indifference to whether such harm would be caused or by a wish that it may not be caused.

33 The Court referred to the trial judge's directions about evidence relevant to the theory that the deceased was strangled while being dragged from the creek. The Court suggested that the only realistic alternative was that the deceased was garrotted with the rope after he had been injured but then observed that "this possibility was not part of the State's case". Otherwise the deceased was dragged up the creek with the rope around his neck in which event it was open to the assessors to conclude that Mr Chand was at least indifferent to the possibility that he was still alive and therefore indifferent to whether death or grievous bodily harm would be caused by such conduct.

34 The Court adverted to the history of disharmony between the two families and said:

> ***"On his own admission Ravin punched and kicked Dinesh and left him lying in the creek after he had been badly wounded and was probably bleeding to death, yet he did nothing to get help."***

It referred to Mr Chand's admission that he would have hit the deceased again with the knife if he thought he was still alive. Although in cross-examination he denied saying this, the statement had been admitted without challenge. The assessors could treat it as evidence of his attitude to the deceased. The Court said:

> ***"The cumulative effect of these circumstances could justify the conclusion that Ravin wanted to see him dead, and was recklessly indifferent to the possibility that he was still alive when pulled out of the creek."***

35 The Court considered a more straightforward version of the case against Mr Chand, namely that the attack on the deceased was planned by the accused, setting in place the chain of events which led to his death by strangulation and that self defence should be rejected. It was difficult to escape the conclusion that the verdict of guilty must have been arrived at on that basis. The Court referred to the decision of the Privy Council in ***Thabo Meli v R*** [1954] 1 All ER 373 and its application by the Court of Criminal Appeal in ***R v Church*** [1966] 1 QB 59.

36 In ***Thabo Meli*** a group of men who had struck the deceased on the head with an instrument, intending to kill him, and believing that they had succeeded in doing so, threw his body over a cliff to escape conviction. In fact he was not then dead but died later of exposure. The Privy Council held that the death had occurred during what was really one series of acts and so the crime was not reduced from murder to a lesser offence. It made no difference that the appellants erroneously believed that their first act, which was accompanied by *mens rea*, was the cause of death when in fact their second act, unaccompanied by *mens rea*, was the true cause of death.

37 In ***Thabo Meli***, it was plain that the accused had set out to kill the deceased. In ***Church***, the principles discussed in ***Thabo Meli*** were applied more generally to a situation in which no such plan to kill was present. The accused had attempted to strangle a girl who had provoked him and, mistakenly thinking she was dead, threw the body into a river where she drowned. The trial judge told the jury they could not convict of murder, and left the case to them as one of manslaughter only. The Court of Criminal Appeal regarded that direction as unduly benevolent to the accused. The jury should have been told that it was open to them to

convict of murder provided that they were satisfied that the accused's behaviour from the moment he first struck the deceased until he threw her into the river consisted of a series of acts essentially designed to cause death or grievous bodily harm.

38 ***Thabo Meli*** provides a qualification to the basic rule that the *actus reus* and the *mens rea* of any given crime must coincide in time. It holds that in some circumstances the facts constituting and surrounding the causation of criminal harm should be construed as being one continuous, and indivisible, transaction.

39 The Court of Appeal said, in applying ***Thabo Meli*** to the facts of this case:

> ***"In the present case, if the assessors had rejected the claim of self-defence (about which they were given a full direction) there can be no doubt that Ravin was rightly convicted of murder. Similarly if they had accepted his account of an attack by Dinesh, but thought he had gone too far in defending himself. Even if they regarded the blow with the cane knife as justified self defence, there could have been no call for the subsequent kicking and punching of a disabled man in circumstances clearly indicating that Ravin did not care whether he lived or died. On his own statement (if accepted as true) he clearly wanted to see him dead, and thought he had killed him. He cannot escape conviction for murder on the grounds that the victim's death was the result of his efforts to dispose of the body."***

40 In this regard the Court considered and rejected a complaint about the inadequacy of the police inquiry into the cause of death which was initially believed to be the blow with the knife.

41 The Court rejected the first ground of appeal in relation to Mr Chand. There was ample evidence on which the assessors could reach their verdict against him. However the Court held there was no evidence implicating Satya Kumar in the events which led to the death of the deceased by strangulation. There was no evidence to establish that he was a party to assaults on the deceased or that he knew or suspected the deceased was alive when they were pulling him out of the creek. He had been told by Mr Chand that he had killed the deceased and believed him to be dead. Satya Kumar's appeal was allowed and the verdict of murder set aside on the ground that it could not be supported by the evidence.

42 The Court of Appeal briefly rejected the second and third grounds of appeal that the alternative verdict of manslaughter was wrongly withdrawn from the assessors. Their

Lordships agreed with the trial judge that it was not available on the evidence.

43 The Court of Appeal held, on the fourth ground, that the trial judge had given an adequate direction about malice aforethought. As to the complaint that a direction should have been given on circumstantial evidence, the Court accepted that such a direction was unnecessary. It would have tended to confuse the assessors.

44 The fifth ground was directed to the trial judge's failure to tell the assessors that there was no evidence from the pathologist that could exclude the accused version that the deceased's death resulted from accidental strangulation. The Court of Appeal noted that defence counsel had the opportunity of cross-examining the pathologist on any matter that he might have wanted to.

45 The sixth ground really related to the position of Satya Kumar. It was, in effect, a submission that there was no evidence implicating him in the death of the deceased.

Whether special leave to appeal should be granted

46 The first ground upon which Mr Chand seeks special leave to appeal asserts an absence of evidence of malice aforethought. Under that ground he submits that there was no plan or intention to kill the deceased, there was no pre-planning of the events leading to his death. It is, of course, not necessary for malice aforethought to be established, for the purposes of murder, that there was an actual intention to kill the victim. It is sufficient to establish that the accused intended to inflict grievous bodily harm or was indifferent to whether his actions would cause death or grievous bodily harm. There was evidence of malice aforethought relevant to death by strangulation upon which it was open to the assessors to convict Mr Chand. There is no special leave ground disclosed in this respect.

47 There is no special leave ground in relation to the initial focus of the police investigation which preceded on the assumption that the death of the deceased was due to the amputation of his hand.

48 The ground relating to the police officers who it was said were required to be present at an interview, does not raise any special leave point. There was no challenge to the admissibility of the record of interview. The further requirement alleged that a person

committing an offence be subject to a brain test is of uncertain significance. Whatever it means it was not raised at trial and discloses no ground for the grant of special leave.

49 The fifth ground was that the weight of evidence supported a finding of self defence. The assessors clearly did not accept Mr Chand's version of the events that occurred. It was open to them to reject self defence and they did so. This ground for special leave is also refused.

50 We have given consideration to whether the ***Thabo Meli*** principle was, indeed, applicable to the present case. A distinction could be drawn on the basis that, at least on the petitioner's own account, there was a gap between his fight with Dinesh Kumar, and his subsequent attempts to retrieve what he thought was a corpse from the creek. During that relatively short period, he claimed to have been treated by his wife for his injuries.

51 In our view, the Court of Appeal did not err when it applied ***Thabo Meli*** and ***Church*** to this case. ***Thabo Meli*** was followed by the New Zealand Court of Appeal in ***R v Ramsay*** [1967] NZLR 1005, though in its narrower, rather than broader form. It was applied by the English Court of Appeal in ***R v Le Brun*** [1992] 1 QB 61. Similar principles have been adopted in other cases. See for example ***Fagan v Metropolitan Police Commissioner*** [1969] 1 QB 439 at 445; ***R v Miller*** [1982] 2 All ER 386 (Court of Appeal) and [1983] 1 All ER 978 at 983 (House of Lords) and ***Royall v R*** (1990) 172 CLR 378 at 405, 414 and 453.

52 In the present case the unlawful application of force and the eventual act causing death were, in our view, part of the same sequence of events. The fact that there was a short time interval between the two events did not serve to exonerate the petitioner from liability. As the Court of Appeal observed in ***Le Brun*** that is particularly so where the petitioner's subsequent actions, which caused the death after the initial assault, were designed to conceal his commission of that earlier offence. In the circumstances, the act which caused death and the necessary mental state to constitute murder did not need to coincide precisely in point of time.

53 As appears from the preceding, none of the grounds raised by Mr Chand in his petition disclosed error on the part of the trial judge or the Court of Appeal or warranted the grant of special leave. For that reason that the petition seeking special leave was dismissed.

Hon Justice Keith Mason
Judge of the Supreme Court

Hon Justice Robert French
Judge of the Supreme Court

Hon Justice Weinberg
Judge of the Supreme Court

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