

(9)

IN THE PRIVY COUNCIL

No. 18 of 1971

ON APPEAL
FROM THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

B E T W E E N :

SAMSOONDAR RAMCHARAN

Appellant

- and -

THE QUEEN

Respondent

RECORD OF PROCEEDINGS

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
10 MAY 1973
25 RUSSELL SQUARE
LONDON W.C.1

~~WILSON & CO.~~ FREEMAN
6/8 Westminster Palace
Gardens,
London, SW1P 1RL.
Solicitors for the Appellant

CHARLES RUSSELL & CO.,
Hale Court,
Lincoln's Inn,
London, WC2A 3UL.
Solicitors for the Respondent

(i.)

IN THE PRIVY COUNCIL

No. 18 of 1971

O N A P P E A L
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B E T W E E N :

SAMSOONDAR RAMCHARAN Appellant

- and -

THE QUEEN Respondent

RECORD OF PROCEEDINGS

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1.

IN THE PRIVY COUNCIL

No. 18 of 1971

O N A P P E A L
FROM THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

B E T W E E N :

SAMSOONDAR RAMCHARAN Appellant

- and -

THE QUEEN Respondent

RECORD OF PROCEEDINGS

In the High
Court

NO. 1

No. 1

10

INDICTMENT

Indictment
(Undated)

THE QUEEN V. SAMSOONDAR RAMCHARAN

IN THE HIGH COURT OF JUSTICE
PORT OF SPAIN

INDICTMENT BY THE ATTORNEY GENERAL

SAMSOONDAR RAMCHARAN is charged with the following offences:

FIRST COUNT:

STATEMENT OF OFFENCE

20 STOREBREAKING AND LARCENY, contrary to section 27 (a) of the Larceny Ordinance Ch. 4 No. 11.

PARTICULARS OF OFFENCE

SAMSOONDAR RAMCHARAN, sometime between the 14th and 16th days of October, 1967, at Port of Spain in the County of St. George broke and entered the store of City and Loan Association and stole therein a quantity of jewellery valued \$128,000.00 and 2,000.00 in cash, the property of the said City and Loan Association.

In the High Court

SECOND COUNT:

STATEMENT OF OFFENCE

No. 1

Indictment (Undated) continued

RECEIVING STOLEN GOODS, contrary to section 34(1) (a) of the Larceny Ordinance Ch. 4 No. 11.

PARTICULARS OF OFFENCE

SAMSOONDAR RAMCHARAN, sometime between the 14th day of October, 1967 and the 6th day of November, 1967 in the County of St. George, did receive a quantity of gold jewellery consisting of bracelets, chains, rings, a medal, earrings and other articles of jewellery, the property of City and Loan Association, knowing the same to have been stolen.

10

Karl T. Hudson Phillips
Attorney General

No. 2

NO. 2

Journal Entries 12th, 13th and 14th October 1970

JOURNAL ENTRIES

12th, 13th, 14th October, 1970

Coram: Achong (J)
Pleas: 1st Ct. - Not Guilty - 2nd Ct. Not Guilty

Verdict: 1st Ct. Not Guilty
2nd Ct. Guilty

20

Rd. on bail to 30/10/70 for sentence pending a Probation Officer's report

B.W.S. \$20,000.00

R. Lewis
C.C.
14/10/70

30th October 1970

30/10/70 Accd Present

Order: Fine \$1,500.00 or 18 months H.L.
Own Bond in \$1000.00 t.k.p. and b.o.g.b. for 12 months

30

3.

In default 6 months H.L. W.S.P. 30/10/70

O.P. \$500.00 today T.A. 2 weeks.

W.S.P.
18/11/70
M.

D. Ramkissoon
C.C.

Jewellery to be returned
to City Loan Association.

In the High
Court

No. 2

Journal
Entries
30th October
1970
continued

PARTICULARS OF CONVICTIONS

No. 3

Particulars of Convictions
26th October 1970

C.R. - 4-9-9

FULL PARTICULARS OF CONVICTION OF PRISONER SAM SOONDAR

Offence of which prisoner was actually found guilty	Sentence and Place of Trial	Date of Conviction	Present at Conviction
Alias Samsounder Ramcharan			
1. Indecent Assault	12 Strokes Port of Spain	1.11.34	1886 Cpl. King (Complt.) S.S. DeGrasse 1315
2. Unlawful Possession of Jewellery	3 mths.H.L. at P.O.S. Mag.Court	24.11.67	4578 Sgt. ARISTAS
Appealed against (2) Appeal heard on 9.2.68 and conviction upheld			
Discharge from gaol on 8/4/68			

Wilson Ag. Insp.
Keeper of the Register of Person
convicted of Crime

26/10/70

MINUTES OF HEARING

In the High Court

No. 4

Minutes of
Hearing
12th, 13th
14th and
30th October
1970

TRINIDAD AND TOBAGO

IN THE SUPREME COURT OF TRINIDAD AND TOBAGO

No. 19/70

PRESENT: The Hon. Mr. Justice C. Achong on the
12th, 13th, 14th and 30th days of
October, 1970

OUR SOVEREIGN LADY THE QUEEN

Against

SAMSOONDAR RAMCHARAN

For

1. Storebreaking and Larceny
2. Receiving Stolen Goods

Mr. T. Guerra of Counsel for the Crown.

Mr. M. Sinanan Q.C. and

Mr. S. Permanand of Counsel for the accused

The Cause was called on the accused was placed
at the Bar - the Act of Indictment was read aloud
by the Registrar, to which the accused pleaded
Not Guilty - Mr. Guerra joined issue for the
Crown - the following Jurors were called and sworn:
Joseph Tappin (Foreman), Sydney Bossierre, Aldwyn
Gerald, Arthur Reyside, Calvin Mookram, Louise
Roebuck, Allan Kirton, Rudolph Reney and Cyril
Kellawan.

Ramnath Poliah was challenged by the Crown.

Salley Marquez and Cyril Whittier were challenged
by the Defence.

Mr. Guerra stated the Case for the Prosecution, and
in support thereof called the following Witnesses:
Albasosa Martinez, Christiana Davis, Brenda Julien,
Louis Lucien, Lawrence Hospedales, Betty Dalton,

In the High
Court

No. 4

Minutes of
Hearing
12th, 13th
14th and
30th October
1970
continued

Joseph King, Elsie Belfast, Cynthia Jerome, Sybil Dyer, Florence Flemming, Horace Durham, Sylvia Jordan, Patrick Huggins Chan, Althea Forde, Levi Hoyte, Darling Ramkissoon, Lloyd York, Linda Jennings, Sgt. Sorzano Arietas, Insp. Alic Heller, Ursula Tulley.

At this stage Mr. Guerra informed the Court that there were other witnesses whom the Crown did not propose to call, but that they were available if needed by the Defence. Mr. Permanand indicated that the Defence did not need the witnesses.

10

CASE FOR THE CROWN CLOSED

The accused when informed of the three courses of defence open to him elected to give evidence on oath. He called three witnesses viz: Richard De Freitas, Joe Ragoonanan, Laloopai Gorhndhai.

CASE FOR THE DEFENCE CLOSED

Mr. Permanand addressed the Jury.

Mr. Guerra replied.

His Lordship the Judge then summed up the evidence and stated the case to the Jury whereupon the Jury having retired from 11.50 a.m. to 12.25 p.m. returned a verdict of Not Guilty on the first count and one of Guilty on the Second Count.

20

The prisoner having been called upon by the Registrar to state if he had anything to offer why judgment should not be awarded against him declared he had not, whereupon Mr. Sinanan was heard in mitigation.

His Lordship thereupon remanded the prisoner on bail to the 30th day of October, 1970, for sentence pending a Probationer Officer's report.

30

On the 30th October, 1970, the Cause was again called - the accused was placed at the Bar and His Lordship pronounced the following order: That the prisoner for his said offence do forfeit and pay the sum of one thousand five hundred dollars (\$1,500.00) fine within two (2) weeks. In default of his paying the fine that he be imprisoned in the Royal Gaol for

7.

the term of eighteen (18) months and that he be there kept to Hard Labour during the whole of the said term of his imprisonment; and further that he do enter into his own recognizance in the sum of one thousand dollars (\$1000.00) to keep the peace and be of good behaviour for twelve (12) months. In default of his signing the bond that he be imprisoned in the Royal Gaol for the term of six (6) months and that he be there kept to Hard Labour during the whole of the said term of his imprisonment.

10

In the High Court

No. 4

Minutes of Hearing
12th, 13th,
14th and
30th October
1970
continued

Dated this 30th day of October, 1970.

Wendy-Sandra Punnett.
Ag. Assistant Registrar.

NO. 5

PARTICULARS OF TRIAL

TRINIDAD AND TOBAGO

Criminal Form II
IN THE HIGH COURT OF JUSTICE

Appeal No.

R. v.

SAMSOONDAR RAMCHARAN For

1. Storebreaking & Larceny 2. Receiving Stolen Goods

PARTICULARS OF TRIAL

- (1) Where tried? 1st Assize Court, Port of Spain.
- (2) When tried? On the 12th, 13th, 14th and 30th days of October, 1970
- (3) Name of Judge who tried? The Hon. Mr. Justice C. Achong

20

30

No. 5

Particulars of Trial
30th October
1970

In the High
Court

No. 5
Particulars
of Trial
30th October
1970
continued

(4) Verdict of Jury? 1st Count - Not Guilty.
2. Guilty.

(5) Sentence, and any orders made consequent
thereon? Fine \$1,500.00 or 18 months H.L.

Own Bond in \$1000.00 t.kp and b.o.g.b. for 12 months.
In default 6 months H.L. O.P. \$500.00 today
T.A. 2 weeks.

(a) Restitution of property.

(b) Orders referred to in Section 2.

(6) Copy of the list of exhibits directed by these 10
Rules to be kept by the proper officer of the Court
of Trial attached to proceedings.

(7) Whether a Certificate under Section 5(b) was
given? No

(8) Name and address of the Prosecutor? State names
of Counsel and/or Solicitor for prosecution, and
address of Solicitor Mr. T. Guerra

(9) Whether Appellant was defended by Counsel and
Solicitor privately or by Counsel at request of
Court? Give name of Counsel and/or Solicitor for 20
Appellant and address of Solicitor Mr. M. Sinanan

(10) Name and address of Shorthand Writer?
Mr. C. Eversley

(11) Whether Appellant bailed before trial if so in
what amount and whether with sureties, if so in
what amount? B.W.S. \$20,000.00

Dated this 30th day of October 1970.

R. Lewis
Officer of the Court Trial

NO. 6

CASE STATED

IN THE SUPREME COURT OF TRINIDAD AND TOBAGO
(CRIMINAL)
HOLDEN AT PORT-OF-SPAIN.

No. 87 of 1968

THE QUEEN

v.

SAMSOONDAR RAMCHARAN

In the High
Court

No. 6

Case Stated
10th
November
1970

10

This matter came up for trial before me during the October assizes and the accused was convicted by a jury of the offence of receiving.

20

I was told by Counsel in a plea for leniency made in his behalf that the accused was 51 years old - he looked much older - was not enjoying good health and had two previous convictions recorded against him, one for indecent assault in 1934 when he was a boy of 15, for which he was whipped, and the other for unlawful possession which arose out of and followed from a search carried out by the Police at his premises which resulted in the charges on which he appeared before me. It may be pertinent to point out that this last conviction was recorded after the commission of the offence resulting in his present conviction.

30

I remanded the accused for sentence to October 30th and asked for a Probation Officer's report on him, this being the only means available to local Courts in obtaining any information as to the antecedents and background of a convicted person. This report, hereto attached together with a number of testimonials and a medical certificate to the effect that the accused is suffering from diabetes and hypertension, I considered to be a favourable one.

There then fell to be considered the question of sentence. It is trite to state here that this is a matter which has caused and is causing much concern to members of the judiciary in a

In the High Court

No. 6

Case Stated
10th
November
1970
continued

number of countries at the present time and here I may quote from a lecture on "Suspended Sentences" by Sultana Saeed, Ph. D., lecturer in English Law at the University of London published in Vol. 23 of Current Legal Problems 1970 at p. 71:

"No doubt criminal law and punishment have changed, and with an enlightened understanding of human nature and the criminal's behaviour pattern, there is an increasing tendency towards leniency, a more humane approach towards the offenders, which rightly causes serious concern in the courts, and amongst the general public. Whichever line we take on punishment and treatment, we have to remember that we cannot transport our criminals nor can we lock them away for good. A convicted person will have to take his place in the society again. Therefore, with rehabilitation in view, more and more research is being done into the causes of anti-social behaviour, and the response of the criminal both to the custodial and non-custodial types of punishment and treatment." 10 20

It is clear that the offence of which the prisoner was convicted is a felony, but having regard to all the circumstances of this case and in particular the antecedents and health of the prisoner I found myself disposed to leniency and the question which then arose for consideration was: should the sentence to be imposed be custodial or otherwise? And if otherwise, what form should it take? 30

On consulting the 34th edition of Archbold's Criminal Law and Practice one finds in para. 661 a statement to the effect that at Common Law a fine was rarely if ever imposed in cases of treason or felony. This seemed to me to imply an inherent power at Common Law in the High Courts to impose fines in such cases. When, therefore, the prisoner appeared before me for sentence on October 30th I imposed a fine of \$1500 or twelve months with hard labour. He was also ordered to enter into his own recognisance in the sum of \$1000 to be of good behaviour for twelve months. 40

It has since been drawn to my attention that there is no power in the High Court of Trinidad and Tobago

to order a convicted person to pay a fine in case of felony and that the sentence I passed was invalid.

In the High Court

No. 6

Case Stated
10th
November
1970
continued

10

I may point out that I have since had the opportunity of consulting the 23rd edition of Archbold's and there I note the same statement set out above with respect to fines in cases of treason and felony, but with the qualification that such power was replaced by forfeiture and attainder, which were themselves abolished by the Forfeiture Act of 1870. Further research appears to attribute the earlier replacement to the Criminal Law Act of 1827 or even earlier legislation. If that is so, it would then appear in that 1848 the High Court in England had been deprived by statute of the power to impose fines in cases of treason and felony.

20

In view of the foregoing I wish to refer this matter by way of case stated for the consideration of the Court of Appeal in accordance with the provision of the Supreme Court of Judicature Act, 12 of 1960, s. 60.

Sgd/Carlton E. Achong

Judge.

10th November 1970

NO. 6(a)

PROBATION OFFICER'S REPORT

TRINIDAD AND TOBAGO PROBATION SERVICE
MINISTRY OF HOME AFFAIRS

No. 6(a)

Probation
Officer's
Report
28th October
1970

30

PROBATION OFFICER'S REPORT
(Certified)

- Name: Samsounder Ramcharan Age: 51 years
Religion: Hindu Date of Birth 24.8.19.
Registered at Ecclesville,
Rio Claro.

In the High
Court

No. 6(a)

Probation
Officer's
Report
28th October
1970

Address: 210, Laventille Road, Port of Spain.

Mother's Name at Time of Birth: Sookia

2. Nature of Offence: Receiving stolen goods.
3. Date: Between 14.10.67 and 16.10.67.
4. Police Station: C.I.D. Port of Spain.
Complainant: #3957 Sgt. Alic Heller Court: P.O.S.
First Assizes Hon. Mr. Justice Achong
5. Remanded From: 14.10.70 To: 30.10.70.
Bail/Custody: Bail Others Charged: None
6. Circumstance of Offence: Found Guilty. Following 10
a report that the Building and Loans Association
was broken into and jewellery and cash were
missing. Complainant carried out investigations
and on 5th November, 1967 he executed a search
warrant at the home of accused where a quantity
of jewellery was seized. Sometime later the
jewellery was displayed and identified by several
persons who had pawned items at the Building and
Loan Association. This charge was preferred
against the Accused as a result. 20
7. Previous Convictions: (1) Accused admits one
previous offence - Indecent Assault when he was
a teenager. He received twelve (12) strokes
with the tamarind rod on 1st November, 1934.
(2) On 24th November, 1967 at Port-of-Spain
Magistrate's Court on a charge of Unlawful poss-
ession of jewellery - three (3) months Hard
Labour.
8. School: Rio Claro C.M. Education Attainment: Std. 30
1V Leaving age: 10 years.

School Report: Accused is not known by present
Staff.
9. Employment Record: (1) At present - Jeweller and
Supplier of jewellery to several city firms on a
wholesale basis. (2) Papers boy for five years.
(3) Pedlar for seven (7) years. (4) Pipe-fitter
for two and a half (2½) years.
10. Health: Appears physically healthy, but is under
medical care as a mild diabetic with hypertension.

11. Home Conditions: Self owned two (2) bedroom concrete structure with kitchen, gallery and living cum dining room. Occupied by a family of two (2). It is comfortably furnished and water and electricity are in supply. There is a workshop and jewellery-shop adjoining.

In the High Court

No. 6(a)

Probation Officer's Report
28th October 1970
continued

12. Mother's Name: Sookia Address: Deceased 1919
Father's Name: Ramcharan Address: Deceased 1938

Guardian's Name: Address:

10 Relatives: Dassie Ramcharan, 47 years - Wife.

14. Life History:

Born out of wedlock, Accused Samsoundar Ramcharan is the first of six (6) siblings of Sookia by Ramcharan. Ecclesville in Rio Clara, is his birth place, where he spent his initial ten (10) years.

20 Sookia, mother of Accused was a Trinidadian by birth. She earned as a gardener before she succumbed to death because of typhoid fever when Accused was ten years old.

Accused father, Ramcharan was a Trinidadian of East Indian Stock. Like Accused mother, he worked as a gardener and afterwards a barber before he died accused was in his late adolescence.

Accused attended the Rio Claro C.M. School where he attained Std IV before leaving prematurely at the age of twelve (12). He appears to be of average intelligence.

30 Owing to an attack of typhoid fever which deprived Accused mother of her life. Accused his brothers and sister was hospitalized for about (3) months. On their discharge from the institution Accused father migrated with his family to Port of Spain and took up residence at No. 45 George Street. At this time Accused father earned as a barber.

Three years later, Accused father lived with a reputed wife, Soomaria of San Fernando

In the High
Court

No. 6(a)

Probation
Officer's
Report
28th October
1970
continued

but this lasted about four (4) years and when Accused father died, she departed the scene. Accused then took up parental responsibility in the home.

In 1937 Accused exchanged marital vows with his present wife Dassie Ragoonanan but this marriage was not registered until May 26th, 1958. Dassie was born at Warren Street, St. Augustine but she spent her formative years in St. James. She is forty-seven (47) years old and assists her husband in the jewellery trade.

10

A jeweller by occupation, Accused has been thus employed for the past twenty-eight (28) years. He started on his own and is now skilled in this craft. He supplied various business firms Y. De Lima, Maraj Brothers and others with jewellery and is the employer of five (5) young lads in his establishment.

A Hindu by religious persuasion, Accused participation in devotional exercise is occasional. Accused is a non-smoker but drinks in moderation. He does not hold membership in any Social Group or Cultural Organization. Cinema going assumes a prominent place in his leisure time activities.

20

Accused is a mild diabetic with hypertension and has been under medical care since 1968. This was stated in a Medical Document.

Police records revealed that Accused has two (2) previous convictions viz. On 1st November, 1934 on a charge of indecent assault, he was given (12) strokes with the tamarind rod. On 24th November, 1967 at Port of Spain Magistrate's Court he was ordered to serve three (3) months Hard Labour on a charge of unlawful possession of jewellery.

30

15. General Summary and Recommendations:

Accused Samsoundar Ramcharan, fifty-one (51) years old was found guilty and stands convicted on a charge of receiving stolen goods to the extent of \$130,000.00. His criminal record revealed: (1) Indecent Assault on 1st November,

40

1934 twelve (12) strokes with the tamarind rod.
 (2) On 24th November, 1967 Port of Spain
 Magistrate's Court - Unlawful Possession of
 Jewellery - Three (3) months Hard Labour.

In the High
 Court

No. 6(a)

Probation
 Officer's
 Report
 28th October
 1970
 continued

10

Social investigations disclosed that
 Accused early circumstances in life were rather
 unfortunate as he suffered the loss of both
 parents while young, thus from early age, he
 sought to correct social and economic
 insecurity by sustained industry and dint of
 toil. From an ordinary unskilled labourer
 and newspaper boy he has worked his way to a
 well recognised skilled Jeweller well known
 to prominent business men in the City.

His family life has been integrated and
 his wife has been loyal, faithful and part and
 parcel of his occupation, in which she is also
 skilled.

20

Accused is self-employed and he stated
 that he makes a profit of about \$600. per month,
 after defraying all expenses including payment
 of wages to five (5) employees not including
 his wife who is really a partner in his
 business.

30

Accused has engaged good business relation-
 ship in every day dealings with prominent
 jewellery firms in the city during the past
 years. Since this pending charge however he
 has suffered great loss as several firms have
 severed business ties with him.

This matter which has been pending since
 November, 1967 has brought great stress and
 strain on Accused physical and mental life
 notwithstanding great loss of patronage and
 social stigmatization.

His serving of a three (3) months term
 of imprisonment for a similar offence committed
 around the same time in 1967 has since made
 him realise the serious attendant consequences.

40

Accused at this stage of his life would
 do anything within his powers to redeem himself
 if given opportunity to do so, having had the
 bitter experience of punishment by incarceration.

Sgd/ Lloyd Bisnath, 28/10/70.
 Probation Officer (1).

In the High Court

NO. 6(b)

MEDICAL CERTIFICATE OF
DR. LANCELOT R. MASSIAH

No. 6(b)

Medical Certificate of Dr.L.R. Massiah
17th October 1970

42 Western Main Road,
St. James,
Port of Spain.
17th October, 1970.

TO WHOM IT MAY CONCERN

Re: Samsoundar Ramcharan

This certifies that Mr. Samsoundar Ramcharan has been under my Medical Care since 1968. He is a mild Diabetic with Hypertension. His health can be assessed as fair.

10

Lancelot R. Massiah.

No. 6(c)

Testimonial, Councillor Eden Rahim
7th February 1968

NO. 6(c)

TESTIMONIAL, COUNCILLOR EDEN RAHIM

Arima Borough Council,
Town Clerk's Officer,
Town Hall,
ARIMA.

7th February, 1968.

20

TO WHOM IT MAY CONCERN

This is to certify that I have known Mr. Samsoundar Ramcharan, for about twenty (20) years.

I have always known him to be a man of good character, honest, reliable and respectable. He has always impressed me as trustworthy and responsible person.

It is with pleasure, therefore, that I give this recommendation as testimony of the above.

30

Councillor Eden Rahim
Deputy Mayor.
ARIMA BOROUGH COUNCIL.

17.

NO. 6(d)

TESTIMONIAL, Y. de LIMA & CO. LTD.

Y. DE LIMA & CO. LTD.

8th February, 1968.

TO WHOM IT MAY CONCERN

10 This is to certify that we have been dealing with Mr. Samsouudar Ramcharan as a supplier of Filigree Jewellery for seven (7) years. During this time our Business relations have always been satisfactory.

Recent events have caused us to suspend dealings with him.

Yours faithfully,

Y. DE LIMA & COMPANY LIMITED.

E. Medina

Director - Secretary.

In the High
Court

No. 6(d)

Testimonial,
Y. de Lima
& Co. Ltd.
8th February
1968.

In the High
Court

NO. 6(e)

TESTIMONIAL, EMAMALI'S GIFT SHOPPE

No. 6(e)

EMAMALI'S GIFT SHOPPE

Testimonial,
Emamali's
Gift Shoppe
15th October
1970

137, Tragarete Road,
Port of Spain,
Trinidad, W.I.

15th October, 1970.

TO WHOM IT MAY CONCERN

This is to certify that the bearer Mr. Samsoundar
Ramcharan - jeweller of 210 Laventille Road, Port of Spain has been supplying us with Silver Filigree
for the past eight years and up to this date happens to be our main source of supply for this item
which is essential for the trade. 10

We tried on several occasions to secure these
items from other local jewellers but in most cases
their work had to be rejected since it was not up
to the standard as that of Mr. Ramcharan.

On diverse occasions large sums of money had
been given by us to Mr. Ramcharran as advances on
work to be supplied for which he had always lived
up to the expected honesty in quality and workman-
ship of the Silver Filigree supplied. 20

Emamali's Gift Shoppe.

Sgd/ ? ?

19.

NO. 6(f)

TESTIMONIAL, M. CHAN

BOYZIE - TRADING AS THE B.G. JEWELLERY STORE
JEWELLERS AND PAWNBROKERS

22 Queen Street,
Port of Spain.

16th October, 1970.

TO WHOM IT MAY CONCERN

10 This is to certify that I have known Mr.
Samsondar Ramcharan of No. 210 Laventille Road,
East Dry River, Port of Spain, for the past
fifteen (15) years.

He has always proven to be a man of good
character, honest, and respectable, and also of
sober habit.

I therefore without any hesitation recommend
him as testimony of the above.

THE B.G. JEWELLERY STORE

M. CHAN.

PROPRIETOR.

16.10.70.

In the High
Court

No. 6(f)

Testimonial,
M. Chan
16th October
1970

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In the High Court

NO. 6(g)

TESTIMONIAL, PORT OF SPAIN HINDU MANDIR

No. 6(g)

Testimonial,
Port of Spain
Hindu Mandir
20th October
1970

PORT OF SPAIN HINDU MANDIR

20th October, 1970.

Dear Sir,

Mr. Samsoundar Ramcharan has been a member of our Temple from the time of its inception in 1962. From that time to now he has attended services regularly and I have found him to be a most God Fearing Man.

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Mr. Samsoundar has always showed a willingness to work for the betterment of others even at personal sacrifice. Mr. Ramcharan is one of the few members whom I can personally recommend to any one as a man of outstanding principles.

Port of Spain Hindue Mandir
2B Ethel St. St. James.

Sgd/ ? ?

No. 6(h)

NO. 6(h)

TESTIMONIAL, SYDNEY M. MOHAMMED

Testimonial,
Sydney M.
Mohammed
24th October
1970

MERCY DRUG STORE

October, 24th 1970.

Mr. Samsoundar Ramcharan whom not living far from my Drug Store has been known to me over Twenty years, and during that period I have found him to of a very refined character, honest and hard working.

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I, with pleasure give him this recommendation.

SYDNEY M. MOHAMMED.
Proprietor
Above named Drug Store.

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NO. 7JUDGMENTIn the Court
of AppealNo. 7Judgment
19th November
1970

November 19, 1970.

Coram:	Sir Arthur McShine,	O.J.
	C.E.G. Phillips,	J.A.
	H.A. Fraser,	J.A.

Crim. App.
No. 72 of 1970IN A CASE STATED RE:R. V. SAMSOONDAR RAMCHARAN

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Judgment delivered by The Chief Justice:

In this case the court has a serious and perhaps painful duty to perform. This matter arises by way of "case stated" and is governed by the provisions of sec. 60, 61, and 62 of the Supreme Court of Judicature Act, No. 12 of 1962. Samsoondar Ramcharan was charged before a judge and jury at the October Assizes on an indictment containing two counts. The first was that he sometime between the 14th and 16th days of October, 1967, at Port of Spain broke and entered the store of City and Loan Association and stole therefrom a quantity of jewellery valued at \$128,000 and \$2,000 in cash the property of the said City and Loan Association. The second count in that indictment related to the offence of receiving stolen goods and was stated therein to be contrary to the Larceny Ordinance Ch. 4 No. 11 sec. 34, and it complained that the said Samsoondar Ramcharan did receive on the days mentioned therein and quoted above, a quantity of jewellery the property of City and Loan Association knowing the same to have been stolen.

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His trial took place on the 12th, 13th and 14th days of October, 1970, before Achong, J. when on the 14th October he was convicted of the offence of receiving the property knowing the same to have been stolen. On application, so that the antecedents of this person might be known or more better made known to the judge, the judge in the exercise of the powers contained in sec. 50 of the Criminal Procedure Ordinance Ch. 4 No. 3, postponed the case to

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In the Court
of Appeal

No. 7

Judgment
19th November
1970
continued

October 30 for sentence.

On that October 30 Samsoundar returned before the Judge and there was presented to the court a Probation Officer's Report and a number of testimonials purporting to speak of the hitherto good character of Samsoundar Ramcharan. In all the circumstances, the judge arrived at the conclusion that a fine of \$1,500 and a personal bond to be of good behaviour would meet the justice of this case. Since then the judge has thought somewhat differently of the situation, and that is to say, the competence, whether or not a fine could be imposed upon a conviction of felony. The judge in his "case stated" suggests that he had looked at a passage of the learning in the 34th Edition of Archbold (para. 661) where it is said that "at Common Law a fine is rarely if ever imposed on conviction of treason or felony." Having seen that expression he felt that in the statement 'a fine was rarely if ever' there was an implicit power to impose a fine, and this is what he said in his "case stated"; "that statement seemed to me to imply an inherent power at Common Law in the High Courts to impose fines in such cases."

In the first place it has not been contested today but that receiving in the circumstances of this indictment is a felony. The major offence to which this is subordinate or ancillary is store-breaking and larceny which is obviously a felony. The first count in the indictment is quite clearly a felony; the thieves who broke and entered the store of City and Loan Association and stole jewellery therefrom quite clearly committed a felony, so receiving such articles is also a felony. The mistake the judge has made in the first place is to think that this was an offence at Common Law. But in our country this is not so and the indictment herein does give reference to the statutory offence of receiving, and the count in the indictment here was that this offence of receiving was committed contrary to the provisions of sec. 34 of the Larceny Ordinance Ch. 4 No. 11, and that should have in the first place guided the learned judge to a right approach to sentencing in this matter, when he could not possibly have imposed a fine even though he may have thought a fine possible in a case of felony at Common law. But besides this, for a long time in

England itself there had been no power to fine for felony. The judge on further research in this matter has said this; and I think it sufficiently states the position. This is what he says: "I have since had the opportunity of consulting the 23rd Edition of Archbold's" - we have that before us - "and there I note the same statement set out above with respect to fines in cases of treason and felony, but with the qualification that such power was replaced by forfeiture and attainder which were themselves abolished by the Forfeiture Act of 1870. Further research appears to attribute the earlier replacement to the Criminal Law Act of 1827 and even earlier legislation. If that is so it would then appear that in 1848 the High Court in England had been deprived by Statute of the power to impose fines in cases of treason and felony."

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19th November
1970
continued

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We agree with that entirely; that long before 1848 the power to impose a fine for felony had been taken off the Statute Books and it had been replaced by forfeiture and attainder which of themselves were abolished by Act 33 Victoria. So therefore even if he thought at Common Law he had the power, long ago the courts had been deprived of such power in England, since 1870. And again 1848; it is fair to mention that because of the general application of Acts before 1848 it became part of the law. But here we have the Larceny Ordinance which came into force in this country in 1919. Besides that, larceny with its ancillary offence of receiving by the Larceny Act in England of 1861 became a statutory offence and there was no power to impose a fine for any such statutory offence as the felony of larceny. But this was remedied in 1948 by the Criminal Justice Act 1948 and there for the first time the courts' power so to speak was restored, of course that is in England, to fine for felony.

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A cursory glance at the paragraph in Archbold's from which this learning was taken, viz:- "though fines were rarely if ever imposed for felony" would have indicated to the reader the cases ought to be looked at, and we have the case of R. v. Markwick (1953) 37 C.A.R. 125 before us. It is a very important case, and one will see that that was a case where a member of a

In the Court
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No. 7

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1970
continued

golf club was found paying a fee of 3/6 in part with a marked 2/6 piece. There had been thefts from the clothing of members in the changing room and for the purpose of trying to trap the thief marked coins were placed in the trousers pocket of a member. After Markwick had played a round of golf he paid the fee in part with one of the marked (2/6) coins. Obviously by that token he was traced as the thief. The Recorder fined him the sum of £500 and he appealed on the question of penalty and the Court of Appeal said this: "The Recorder passed a sentence which was about as wrong in principle as any sentence could be, and not merely because of the amount. The appellant had thrown suspicion on fellow members as well as the servants of the club." The court went on to say this: "Before the Criminal Justice Act, 1948, it would have been impossible for the Recorder to have imposed a fine." Here I pause for a minute, and I think the real difficulty in this case stems from the fact that this case was not known to the learned judge, or it was not drawn to his attention, or he overlooked it. A check upon this case as it was cited in Archobold's would have made it clear that only where there was statutory provision for a fine could it be imposed; the judge would then not have misdirected himself and place such emphasis or importance on the expression that "a fine was rarely if ever imposed in cases of felony"

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To continue then with the passage from the case of Markwick. The Lord Chief Justice in England went on to say: "Except in cases of manslaughter the court had no power to impose a fine on conviction on indictment of felony, though magistrates could do so in some cases on summary conviction, where such offences as larceny and receiving had been made Summary Conviction Offences." Thus Magistrates would have the power given by statutes themselves and nowhere else is the power derived to impose fines. Continuing again: "That restriction had often been found hampering, and the position was altered by Parliament." That is by the Criminal Justice Act of 1948. "When the change was first mooted, it was, to my knowledge," continued the Lord Chief Justice, "opposed by a very high authority on the ground that it would give persons of means an opportunity of buying themselves out of being sent to prison, and therefore one has to take great care that there should be no suggestion that there was one law for the rich

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and one for the poor." This is as positive and as clear as anybody could report the situation here. In this matter it was not a question of a wrong exercise of a discretion. The judge had no power, so where the trial judge had no power whatever to impose a fine for the statutory felony and offence of receiving he was absolutely wrong in law to have done so, and thereby acted without jurisdiction.

In the Court
of Appeal

No. 7

Judgment
19th November
1970
continued

10 The further question arises in this case, and it is what would in the circumstances of this case be the appropriate punishment to mete out to Samsondar Ramcharan. Sentence is always a difficult problem and as this court has often said before it does not necessarily mean because a person has no previous conviction or one recorded a long time ago the court could not sentence to peremptory imprisonment. In the circumstances of this case having regard to the law as I propounded it with respect to a fine we are of the view that

20 a term of imprisonment is the only appropriate punishment in this case. Had the judge power to impose a fine we would consider in the circumstances of this case that to do so would as in Markwick's case be most inappropriate i.e. to impose a fine. One must consider the gravity of the case in the circumstances under which the offence has been committed, because the case is exceptional in many ways. It is exceptional in the fact that here is a man carrying on the

30 business of a jeweller, a very large quantity of jewellery is stolen from a competitor, if I may call City and Loan Association such, \$128,000 worth of jewellery. What is recovered of this is only \$1,000 worth of jewellery. This case perhaps comes quite close to what is said about buying oneself out of prison and making it appear, according to part of the Lord Chief Justice's statement, that there is one law for the rich and another for the poor.

40 Now, this is a bad case, there is no doubt whatever about it. The Probation Officer's Report speaks of this gentleman earning a net \$600 a month after paying his five employees, and thus he is not living a hand-to-mouth existence. Quite clearly he is carrying on a substantial business, he supplies jewellery to large firms and there is no dire need to accept or buy and receive stolen goods

In the Court
of Appeal

No. 7

Judgment
19th November
1970
continued

to this extent. Besides this, because of the very nature of the business he carries on when stolen jewellery is brought to him in no time at all it can be melted and fashioned into different articles which could never be traced. That is the factor in this case which tends to aggravate the offence. In this matter the accused person has had one previous conviction, but even if he had no previous conviction we think that this case merits a sentence that will deter all persons however engaged in the business of a jeweller to refrain from this illegal operation of receiving goods that can be converted at once and made impossible for the owner to be able to trace them. It can also be added that the City and Loan Association has in pledge a number of articles and they are put to the necessity of refunding or making some compensation to those persons who pledged their jewellery with the Association and are not able to get it back because of the improper activities of this accused person. This must occasion them some loss. 10 20

In the circumstances the only punishment that can be meted out is one of imprisonment. A bond is most inappropriate in the circumstances of this case. We have given this some anxious consideration, not merely this morning but for the several days past, in anticipation of being here this morning. We are of the view that the only appropriate sentence that may be passed on this accused person, Samsondar Ramcharan, is one of five years imprisonment with hard labour. The order of the learned judge is set aside, any fine the accused may so far have paid will be refunded to him. The order as to the return of the jewellery remains. 30

Mr. Mitra Sinanan, Q.C., and Mr. S. Permanand appeared for the accused.

Mr. Y. Jamadar, Senior Crown Counsel, appeared for the Crown.

ORDER GRANTING SPECIAL LEAVE TO APPEAL
TO HER MAJESTY IN COUNCIL

No. 8

AT THE COURT AT BUCKINGHAM PALACE

The 28th day of July 1971

Present

THE QUEEN'S MOST EXCELLENT MAJESTY

Lord President	Chancellor of the Exchequer.
Lord Eccles	Sir Seewoosagur Ramgoolam
Mr. Noble	Lord Kilbrandon
Mr. Godber	

Order
granting
Special
Leave to
Appeal to
Her Majesty
in Council
28th July
1971

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WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 21st day of June 1971 in the words following viz:-

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"Whereas by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of Samsondar Ramcharan in the matter of an Appeal from the Court of Appeal of Trinidad and Tobago between the Petitioner and Your Majesty Respondent setting forth that the Petitioner prays for special leave to appeal from the Judgment of the Court of Appeal of Trinidad and Tobago dated the 19th November 1970 which upon a Case Stated set aside the Order of the Supreme Court whereby the Petitioner was fined \$1,500 on his conviction of receiving stolen goods and substituted a sentence of five years imprisonment with hard labour: And humbly praying Your Majesty in Council to grant him special leave to appeal from the Judgment of the Court of Appeal of Trinidad and Tobago dated the 19th November 1970 and for further or other relief:

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"The Lords of the Committee in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel on behalf of the Respondent Their Lordships do

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In the Privy
Council

No. 8

Order
granting
Special
Leave to
Appeal to
Her Majesty
in Council
28th July
1971
continued

this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioner to enter and prosecute his Appeal against the Judgment of the Court of Appeal of Trinidad and Tobago dated the 19th November 1970:

"And Their Lordships do further report to Your Majesty that the authenticated copy of the Record produced by the Petitioner upon the hearing of the Petition ought to be accepted (subject to any objection that may be taken thereto by the Respondent) as the Record proper to be laid before Your Majesty on the hearing of the Appeal."

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HER MAJESTY having taken the said Report into consideration was pleased by and with the advice of Her Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

Whereof the Governor-General or Officer administering the Government of Trinidad and Tobago for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

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W. G. AGNEW.

IN THE PRIVY COUNCIL

No. 18 of 1971

ON APPEAL
FROM THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

B E T W E E N :

SAMSOONDAR RAMCHARAN

Appellant

- and -

THE QUEEN

Respondent

RECORD OF PROCEEDINGS

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