

17/81

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

No 13 of 1981

ON APPEAL FROM THE COURT OF CRIMINAL APPEAL

IN THE STATE OF TRINIDAD AND TOBAGO

B E T W E E N :-

DENNIS FLETCHER

Appellant

AND

THE STATE

Respondent

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CASE FOR THE APPELLANT

Record

1. This is an appeal by special leave granted 27th March 1980 from a judgment of the Court of Criminal Appeal of Trinidad and Tobago (Sir Isaac

Hyatali C J, Corbin and Scott J J A) dated 15th July 1977 dismissing the Appellant's appeal against his conviction at the Port of Spain Assizes before Braithwaite J and the jury on the 3rd June 1976 for murder, in respect of which he was sentenced to death.

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2. The principal issues which arise on this appeal are: -

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(i) Whether the Learned Trial Judge erred in failing to hold a trial within a trial or otherwise exercise or consider the exercise of his discretion to exclude evidence with regard to the confession statement of the Appellant which he alleged to have been obtained by deception; involving primarily the question of whether a Defence case that a signature to a statement was involuntary amounts to a case

(a) that the statement was involuntary, requiring a trial within a trial as to admissibility or

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(b) that the statement was not made at all, such that the matter was properly left only to the jury. And further whether the Learned Trial Judge erred in failing to exercise or consider the exercise of a discretion to exclude the evidence

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(ii) Whether the Learned Trial Judge misdirected the jury as to what was required upon a joint venture to render others than the actual murderer guilty of murder and/or what intention was required to be proved in the case of each individual Defendant.

3. The Appellant and two others, Peter Chandree and Lincoln Noreiga were tried before Braithwaite

J and a jury between 17th May and 3rd June 1976 upon an indictment containing one count, namely that acting together with one Rudy John on 24th May 1974 at Tabaouite Road, Rio Claro in the county of Nariva they murdered Andrew Britto

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4. The case for The State was that :-

(i) On the 24th May 1974 at about 9.15 - 9.30 a.m., the Appellant together with Chandree, Noreiga and John, took part in a robbery at the pay station, Tabaouite Road, Rio Claro of some 24 thousand dollars from one Shah, a pay master attached to the Ministry of Finance, in the course of which one Corporal Britto, one of two armed escorts of the said Shah was shot and killed by Rudy John. The State alleged that Chandree, who was unarmed, mingled with those awaiting payment and upon the arrival of the pay master gave a pre-arranged signal to the Apellant, Noreiga and John, all of whom were armed. When Corporal Britto made a move as if to draw his gun he was shot by John, first in the abdomen and subsequently in the head. At the time when the killing was taking place, the Appellant was standing by the door of the pay office assisting Noreiga in obtaining the money stolen in the robbery holding a loaded shotgun. After the money had been taken, Chandree drove John, Noreiga and the Appellant away from the scene in the Pay Master's car

P P 9-16,
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(ii) On the 25th June 1974 Chandree was arrested by Corporal Russell and taken to the C I D Office in San Fernando, where he was detained

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(iii) On the 10th September 1974 the Appellant, who

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had been seriously injured in a gun attack upon him on 24th August 1974 such that he was admitted to San Fernando Hospital, was arrested at that hospital by P C Logan and taken to the C I D Office, where he was detained, and where he made a statement under caution to Assistant

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Superintendent Clarke (Exhibit AC/3) which he said was correct and signed and which was witnessed by Inspector Franklyn (who was not called as a witness at the trial). Assistant Superintendent

P P 51-4

10 Clarke said that a Justice of the Peace, one Arnold Premdass who had since died, and whose deposition was not admitted at the trial, asked the Appellant if he had given the Police a statement (there is no record of what reply if any was given by the Appellant). Assistant Superintendent Clarke gave evidence that he did not threaten the Appellant or induce him by any means to give the statement.

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20 (iv) On the 11th September 1974 Police Inspector King held an identification parade at which the State witnesses, Stephenson and Puckoon Dookie identified the Appellant, and Assistant Superintendent Clarke thereafter formally charged the Appellant.

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(v) On the 11th September 1974 Noreiga was arrested by Seargent McMillan and taken to the C I D Office in Siparia where he was detained.

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5. The State called 22 witnesses. During the evidence of one Paul Premdass, the son of the deceased Justice of the Peace, objection was taken by Counsel for the Appellant as to the admissibility of the deposition of the deceased upon the ground that it went "to the very root of the matter as to

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whether the accused signed the statement". The issue raised by the Appellant in subsequent cross-examination of the Police Officers and in his statement from the dock was that he was induced to sign the statement AC/3 by deception. It is not apparent from the record how much if any of this case was or would have been disclosed by Counsel for the Appellant in argument upon the question of the admissibility of the deposition of the said Arnold Premdass, but it is submitted that the issue would then have been apparent to the Learned Trial Judge. During the State's case the Appellant's confession statement (Exhibit AC/3) was read to the court, no objection to it being taken by the Defence, minus the first 13 lines of the statement.

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6. Chandree made a statement from the dock and called one witness P P 40-2
P P 42-3

7. Assistant Superintendent Clarke was then recalled by the Court P 43

20 8. The Appellant made a statement from the dock, his case being ;- P P 43-5

(i) that he knew nothing and had not been present at or played any part in the robbery or the killing of Corporal Britto.

(ii) that he had been seriously injured by gunshots in an attack upon him on 24th August 1974 and was admitted to hospital, although he did not understand it to be a hospital. "Everything seemed to be a dream. I could not have eaten the meals which they used to give me. All that time I received or was receiving injections. Then one day a gentleman whom I had known for sometime took

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me over to a place which I was told was the C I D (San Fernando). I was then being taken into a room which had some boxes. I was then being told to make myself comfortable on one of the boxes. At this time I was feeling very weak. Then after some men in plain clothes whom I believe were Police, they then started to fill around the room opening the boxes and taking out papers. They left, closed the door. I was left alone. Some time afterwards A S P Bobb came into that room. He asked me how I was feeling. I told him that I was not feeling well at all. He then told me to cool it and that everything is going to be alright because they were going to help me. He then told me that a gentleman have to speak to me and whenever he come, you are going to tell him about the incident which took place at Premier Consolidated Oil Field Gate" (being the said recent assault upon him). He was questioned about the murder of a policeman whom he was later told was Andrew Britto and said that he knew nothing about any such killing. Assistant Superintendant Clarke "then told me alright "you just sign these documents and everything is going to be alright because he don't want to go any further with what they were talking about - these crimes". He told me that these documents which we have fixed is concerning the incident where I got shot. He then told me don't be afraid. Everything is going to be alright - alright. I then signed my name. He then told me that I am going to be a witness for the Crown." The Appellant's case was that he had been induced into signing the confession statement

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AC/3 by the representation that it was a prosecution witness statement relating to the recent incident in which he had been the victim.

9. Noreiga then gave evidence and called a witness.

P P 45-7

10. The Learned Trial Judge summed up the case to the jury, who convicted the Appellant, Chandree and Noreiga of murder.

P P 57-120

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10 11. The Appellant respectfully submits that the Learned Trial Judge erred in failing to hold a trial within a trial as to the admissibility of the confession statement AC/3 or otherwise exercising or considering the exercise of his discretion to exclude it. It is clear that the confession statement was of crucial importance.

The evidence of the State witnesses Stephenson and Puckoon Dookie, which was the only other evidence against the Appellant, was wholly discredited, as is clear from the way in which the Learned Trial

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20 The Learned Trial Judge dealt with it in his summing up. The Learned Trial Judge accepted and emphasized the importance of the confession statement AC/3, to such an extent that he rightly directed the jury that "The Crown has no other evidence at all in this case but these statements" (referring to the confession statements of the three Defendants).

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12 The Appellant respectfully submits that:-

(i) It is clear that when the Defence is that a confession statement was made but was not voluntary, there should be a trial within a trial.

30 (ii) There is clear English Authority that where the Defence is simply that the statement was not made, there should not be a trial within a trial;

although there is some authority that the Judge should be satisfied that there is evidence for the jury that the statement was made (per Devlin J in R -V- Roberts 1953 2 AER 340 at 344H; contrast the obiter dictum of Shaw J in R -V- Robson and Harris 1972 1WLR 651 at 654 B).

The question in this case where a statement is said to have been signed as a result of deception, is, into which category does such a statement fall and what are the consequences so far as the need for a trial within a trial.

- 10 13. The Appellant's case was that he signed the confession statement AC/3 as a result of deception. The Appellant respectfully submits that the issue was before the Learned Trial Judge before the statement was admitted. But in any event the Learned Trial Judge concluded and subsequently directed the jury that the issue was solely whether the Defendant made a statement at all, such that a trial within a trial was not called for, and the Court of Appeal expressly upheld the Learned Trial Judge. The Appellant respectfully submits that the issue is and was one of voluntariness and consequently of admissibility:-
- (i) Once a Defendant signs a confession statement he adopts it as his statement and/or it stands as his confession statement. It cannot make a difference in the Appellant's submission whether a Defendant is compelled or deceived into writing out a statement on the one hand or into putting a signature to what someone else has written on the other. The question is thus in both cases whether he has made a voluntary statement. It is
- P P 60. 61, 62
- P P 137-8
- P P 136-7

respectfully submitted that the Court of Appeal Judgment in this regard is based upon an incorrect analysis. The Learned Chief Justice spoke of a Defendant being forced or deceived into accepting or adopting as "true and correct" a confessional statement which he did not make, which he then concluded to be self-contradictory. It is however respectfully submitted that it is not a question of a Defendant adopting such a statement as "true and correct" but adopting the statement as his statement. By signing the statement the Defendant has adopted or made the statement and if as a result of threats or deception then he has done so involuntarily. The Appellant respectfully refers to the provision for signature of a confession statement in the Judge's Rules (IV)(e)) for its significance with regard to adoption or ratification of the statement. The Appellant further refers to part of the judgment of Crane J A in the case of The State -V- Gobin and Griffiths in the Court of Appeal of Guyana (Crim APP No. 62 and 86 of 1975 at page 10):-

"What has again been obviously done above is the making of a semantic distinction between a case where the prosecution induces by force the signing of a prepared statement made by Sgt. Ranji (i e by someone other than the accused) and the inducing by force a statement made by the accused himself. In the one case, the Trial Judge is of opinion it is a pure question of fact for the jury to decide and does not entitle him to a ruling on its voluntariness at a trial within a trial. In the other case, however, since the inducement by

beating operated upon the accused to make or sign his own confession, that fact would entitle him to a ruling on voluntariness. For my part, I consider the above distinction is wholly unwarranted because in both cases, i e whether Sgt Ranji prepared the statement and beat the accused to sign it or whether the accused was saying the statement was not his because Ranji beat him to make and sign it, the Trial Judge was concerned with the matter of voluntariness vel non, and each would call for a ruling thereon."

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(ii) In the alternative, the Appellant would respectfully submit that at the least there is an issue as to voluntariness, even if the primary question is one of fact, such that the Learned Trial Judge ought to have held a trial within a trial (see PerLuckhoo P. in R -V- Watson 1975 14J L R at 33H - 34B). It is submitted that the best indication of this is that the Learned Trial Judge was driven into the error, repeated continuously throughout his summing up, of leaving voluntariness to the jury, which was accepted to be incorrect by the Court of Appeal. The Appellant makes no specific complaint of that, but merely points it out as the consequence of the Learned Trial Judge not having held a trial within a trial when he ought to have done, and submits that the fact that the Learned Trial Judge himself accepted that voluntariness was in issue is the best evidence that there was indeed an issue of voluntariness.

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It is accordingly submitted that there should have been a trial within a trial either because whether or not the Appellant was deceived into signing the

confession statement, and thereby making it, is a question of voluntariness not of fact, or at any rate because there is an issue of voluntariness.

14. It is submitted that there is no clear judicial authority in the United Kingdom. There is an apparent conflict of opinion in the West Indian Courts. The Appellant draws support for his proposition from Harper -V- The State 1970 16W I R 353 and The State -V- Gobin and Griffith (Grim app No. 62 nd 86 of 1975) in the Court of Appeal of Guyana, and R -V- Watson (1975 14 J L R 20) in the Court of Appeal of Jamaica; and the contrary proposition appears from the cases of R -V- Charles 1961 3 W I R 534 and R -V- Farley 1961 4 W I R 63 in the West Indian Federal Court, in Williams -V- Ramdeo and Ramdeo 1966 10 W I R 397 and Herrera and Dookeran -V- Rex 1966 11 W L R 1 in the Trinidad Court of Appeal, and State -V- Fowler 1970 16 W L R 452 and State -V- Ramsingh 1973 20 W I R 139 in the Guyana Court of Appeal.

15. In the alternative it is submitted that the Trial Judge had a discretion to exclude the statement AC/3 which he failed to consider and/or to exercise on the ground of oppression and/or that the evidence was obtained by trickery, as to which he ought to have held a trial within a trial.

R -V- Middleton 1975 QB 191 at 198

R -V- Roberts 1970 Crim LR 464

R -V- Stewart 1972 56C A R 272

16 The Learned Trial Judge directed the jury :-

(i) "If a number of people set out to commit an offence, like armed robbery, and in the course of

the commission of that robbery a person is killed, as Cpl. Britto was, our law in Trinidad says, as I see it, that all of them are guilty of that murder. It does not make any difference which one pulled the trigger, which one drove away the getaway car, which one entered and stole the twenty thousand dollars, and which one kept the shotgun on the pay master, they are all, in our law in Trinidad, equally guilty of murder."

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(ii) "What he is telling you in this statement" (Exhibit AC/3) " - if you accept that to be the truth - he was a party to the murder of Corporal Britto and you find that again on the robbery, without any further evidence in this case, you are at liberty to convict him of the offence of murder."

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(iii)"If you give the full value to the statements, the full face value, you will have no other alternative but to convict the accused of the charge for which they have been indicted ."

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(iv) "Now the next point is this, members of the jury, bear in mind what I tell you about the law relating to this kind of murder. If you find there is evidence of what is called in the law a common design or purpose on the part of these three accused together with another person to carry out a robbery and to use arms in order to perpetrate that robbery, and in the course of that robbery which was planned by all of them, as in this case Corporal Britto was killed, they are all guilty of murder. It does not make any difference whether the man who shot Corporal Britto is here with us or not, and the evidence is that he is not

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here with us. You follow what I mean."

17 In the premises the Learned Trial Judge gave no direction as to the necessary conditions for conviction of murder in the case of a joint venture and/or led the jury to believe that it was sufficient for a conviction of the Appellant for murder if he intended to take part in a robbery and to use arms in order to perpetrate that robbery, and gave no direction as to manslaughter at all, nor as to the jury having to be satisfied as to what was intended by the Appellant with regard to the use of the firearms, namely whether they were to be used to kill or cause grievous bodily harm, or merely to frighten. It is submitted that:-

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(i) The scope of the common design should have been left to the jury as to what was the intention of each Defendant, merely to frighten or to cause grievous bodily harm or kill.

20 (ii) The Learned Trial Judge ought to have left the verdict of manslaughter to the jury.

R -V Lovesey

R -V- Peterson 1970 1QB 352

18. The Appellant accordingly submits that the direction of the Learned Trial Judge was wrong in law and further that the judgement of the Court of Criminal Appeal was wrong in law and should be set aside and that this appeal should be allowed and the Appellant's conviction for murder be quashed for the following among other reasons:-

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REASONS

(i) Because the Learned Trial Judge erred in law

in failing to consider the question of the admissibility of the confession statement made by the Appellant

(ii) Because the Learned Trial Judge and/or the Court of Appeal erred in law in concluding that the question of whether the Appellant was induced to sign the confession statement by deception was one of fact for the jury and not one of voluntariness and admissibility.

10 (iii) Because the Learned Trial Judge erred in law in failing to direct a trial within a trial upon the admissibility of the confession statement and/or otherwise consider the exercise or exercising his discretion to exclude the same.

(iv) Because the Court of Appeal erred in law in failing to quash the conviction of the Appellant on the grounds aforesaid

20 (v) Because the Learned Trial Judge erred in his directions to the jury in that he failed to direct them that they must consider the intention of each Defendant and directed them that if they took part in the robbery then they were guilty of murder and failed to leave the verdict of manslaughter to the jury.

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