

17/81

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL
ON APPEAL FROM THE COURT OF CRIMINAL APPEAL IN
THE STATE OF TRINIDAD AND TOBAGO

B E T W E E N :

No. 8 of 1981

PETER CHANDREE

Appellant

and

THE STATE

Respondent

No. 13 of 1981

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DENNIS FLETCHER

Appellant

and

THE STATE

Respondent

No. 9 of 1981

LINCOLN NOREIGA

Appellant

and

THE STATE

Respondent

CASE FOR THE
APPELLANT
PETER CHANDREE

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Record

1. This is an Appeal by special leave granted on 27th March 1980 from a judgment of the Court of Appeal of Trinidad and Tobago (Sir Isaac Hyatuli (J.) Corbin and Scott (JA) dated 15th July 1977 which dismissed an Appeal by the Appellant against his conviction on 3rd June 1976 in the High Court of Justice for Trinidad and Tobago (the Hon. Mr. Justice Braithwaite and jury) for murder in respect of which he was sentenced to death.

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pp.123-138

p.118-9

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2. The Appellant was tried upon an indictment containing a single count for murder alleging he together with Dennis Fletcher and Lincoln Noreiga "on the 24th day of May 1974 at Tabaquite Road, Rio

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Claro in the County of Nariva acting together with one Rudy John murdered Andrew Britto."

3. The Appellant and his two co-defendants pleaded not guilty. All three were convicted and the Appellant and the co-defendant Fletcher were sentenced to death and the co-defendant Noreiga was sentenced to be detained at the State's pleasure.

4. The principal issues which arise in this
10 appeal are:-

(i) whether an allegation that a confession statement has been fabricated and that the Appellant's signatures endorsed thereon have been obtained by acts and/or threats of violence raises an issue of voluntariness requiring to be determined upon the voir dire;

(ii) Where such an allegation is made what
20 direction the judge should give the jury concerning the weight to be attached to such a statement where it is put before the jury;

(iii) Whether the doctrine of constructive malice still applies to the law of murder in Trinidad and Tobago.

5. The trial took place between the 17th May and the 3rd June 1976 before Braithwaite J. and a jury.

6. The case for the state was as follows:-

(i) On 24th May 1974 an armed robbery took
30 place at the Pay Station situated in Tabaquite Road, Rio Claro.

(ii) The raid was carried out by the Appellant, his co-defendants Fletcher and Noreiga and

Rudy John.

(iii) All these men except the Appellant were armed with guns. The Appellant was unarmed.

(iv) The Appellant mixed with the people waiting at the Pay Station to be paid and upon the arrival of the paymaster Corporal Andrew Britto, his armed escort, the Appellant gave a prearranged signal to the other three men who were waiting nearby and the raid began.

10 (v) Rudy John shot Corporal Britto in the abdomen thereby killing him, and Fletcher and Noreiga seized the money brought by the paymaster.

(vi) All four robbers then escaped in the paymaster's car which they subsequently abandoned.

(vii) On the 25th June 1974 the Appellant was arrested at his home in Fyzabad by Corporal Russell and other officers of the Flying Squad. He was told the arrest was in connection with the murder of Corporal Britto. He was cautioned and taken to the C.I.D. office in San Fernando.

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(viii) On the 26th June 1974 the Appellant spoke to Corporal Baksh and after explaining that he was very afraid of "those fellows" meaning, presumably, his co-defendants and Rudy John, he confessed his part in the robbery, namely that about a week before the robbery Rudy John told him of a plan to rob the pay station, that the Appellant was to mingle with the people awaiting payment and to give a signal. At some time when

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Rudy John was explaining the plan he had with him a double barrelled gun. According to Corporal Baksh, the Appellant continued by describing the raid; how, after he gave the signal the other three men arrived and Rudy John shot Corporal Britto. After the money was seized by Fletcher they all left in a car driven by the Appellant. The Appellant explained that he only received \$ 200.00.

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(ix) Later that morning Inspector Richards arrived, and in the presence of Corporal Baksh the Appellant dictated to Inspector Richards a statement relating the events of the robbery and admitting his part in it. The Appellant signed the statement as correct and this was witnessed by Corporal Baksh.

pp.49-51

(x) Later that day, the Appellant was taken to the office of a Justice of Peace, Rehamut Khan, where in the presence of Inspector Richards and Corporal Baksh Rehamut Khan read the statement over to the Appellant and confirmed that the statement was made voluntarily and appended a certificate to that effect to the statement.

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(xi) On 27th June 1974 an identification parade was held and the Appellant was picked out as being involved in the robbery by three witnesses namely, Arjoon (who did not give evidence at the trial) Lionel Stephenson and Puchoon Dookie. Inspector Murrain who organised the identification parade gave evidence that Arjoon told him that the Appellant was present at the killing of

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Corporal Britto.

(xii) On the 10th September 1974 Fletcher was arrested at San Fernando Hospital and taken to the C.I.D. office where he was detained.

(xiii) On 11th September Noreiga was arrested at his home in Fyzabad and taken to the C.I.D. office in Siparia where he was detained.

(xiv) Subsequently to their respective arrests Fletcher and Noreiga made statements under caution and were also put on identification parades where they were identified by various witnesses.

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7.(i) The case for the Appellant was that he did not make an oral confession to Corporal Baksh. After his arrest he was taken to San Fernando C.I.D. where he was handcuffed, each hand being attached to separate boxes. He was asked if he knew about certain crimes and on denying all knowledge he was burnt with a lighted cigarette on the left side of his mouth. He was beaten throughout the night of 25th to 26th June 1974. pp.40-42

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(ii) He was further beaten by Corporal Baksh and others on the morning of 26th June 1974 in order to get him to sign two pieces of yellow paper.

(iii) The Appellant said he would sign if the beating stopped. The beating did stop and the Appellant signed the papers. The Appellant was told to copy a declaration from a book. This he did and he signed this also.

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(iv) A little while after the papers were signed

a Justice of the Peace and one of the men who had been involved in beating the Appellant the night before came into the room and the Justice of the Peace asked him if the signatures on the papers, now referred to as the statement were his, to which he replied affirmatively. Then in reply to a question about the statement the Appellant denied giving it. The Appellant showed the Justice of the Peace his injuries including the burn to the left side of his mouth and all over his body where he had been beaten. The Justice of the Peace then wrote something on the statement which the Appellant did not see.

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(v) Subsequently the Appellant was placed in a dark room and on 27th June, the following day, he showed his wounds to a fellow prisoner, Michael Lewis.

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(vi) The Appellant denied knowing anything about the murder of Corporal Britto and stated that he did not know where he was at the time the murder took place.

8. In support of his case the Appellant made a statement from the dock and he called Michael Lewis. pp.40-42
pp.42-43

9. Fletcher made a statement from the dock.

10. Noreiga gave evidence upon oath and also called Michael Lewis in support of his case.

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11. The learned judge summed the case up to the jury in the course of which he directed them

(i) That the statements under caution if given their full weight were sufficient for the jury p.61

to convict each defendant without considering any other evidence; p.79

(ii) That the Appellant's case was that he did not make the statement under caution attributed to him at all but that his signature was obtained by violence, in which case the questions of admissibility did not arise.

(iii) That it was for the jury and not the judge to determine whether the Appellant made the statement, whether he signed it voluntarily and what weight to give it. p. 62

(iv) That having received the evidence of Inspector Murrain about the identification parade including the identification by Arjoon that it was a matter for the jury what weight they accorded this evidence. pp.93-95

(v) That the Appellant made a very serious allegation that Mr. Khan, the Justice of Peace, as an officer of the Supreme Court, was involved in a conspiracy with the police to get the Appellant into trouble and to lie to the court. p.104

(vi) That if the jury found that the Appellant had participated in the robbery, he must therefore be guilty of murder. pp.62,81 pp.99-100

12. On 3rd June 1976 the Appellant, together with Fletcher and Noreiga, was convicted of murder. pp.118,122

13. The Appellant appealed against his conviction to the Court of Appeal of Trinidad and Tobago on various grounds, his Appeal being dismissed in a judgment delivered by Sir Isaac Hyatali, CJ on 15th July 1977.

14. The Court of Appeal held as follows:

(i) that the learned trial judge had erred in leaving to the jury the question of whether the confession was voluntary, and that if it was involuntary they should disregard it; p.126

(ii) that this misdirection was unduly favourable to the Appellant; (127)

(iii) that whenever an accused alleges that a confessional statement purporting to be his was in fact a fabrication, it is immaterial for the purposes under consideration (namely whether there should be a voir dire as to voluntariness) that he alleges in addition that he was forced to append his signature to it. p.136

(iv) that the need for a voir dire is confined to determine whether a statement was made voluntarily and that an allegation that the statement was not made by the accused must be left to the jury alone to determine, even where there is additionally an allegation that the Appellant's signature was appended to the statement under duress... p.137

15. The issue of the admissibility of Inspector Murrain's evidence of Arjoon's identification of the Appellant was not raised before the learned trial judge nor before the Court of Appeal.

16. No point was taken before the Court of Appeal on the learned trial judge's comment relating to the Appellant's implied allegation that the Justice of the Peace, Rehamut Khan, must be engaged in a conspiracy with the police to get the Appellant into trouble; namely that the learned trial judge failed to direct the jury that

Rehamut Khan was not on trial and that a verdict of not guilty did not imply that Rehamut Khan was guilty of a criminal conspiracy with the police.

17. The Court of Appeal do not have raised before it the question of whether constructive malice applies in the law of murder in Trinidad and Tobago.

18. Thus no ruling was made in relation to the above three issues, nevertheless the Appellant
10 respectfully invites the Judicial so to do.

19. The Appellant respectfully submits that the Court of Appeal erred in the third and fourth rulings referred to above and that the Appellant thereby suffered injustice.

20. On 27th March 1980 the Judicial Committee of
the Privy Council granted the Appellant special leave
in forma pauperis to appeal against the judgment of the
Court of Appeal of Trinidad and Tobago.

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21. The Appellant respectfully submits that the
20 judgment is wrong in substance and ought to be reversed
and that this appeal ought to be allowed for the
following (among other)

REASONS

(1) BECAUSE the Appellant was prejudiced by the learned trial judge's failure to determine upon the voir dire the admissibility in evidence of the Appellant's statement under caution.

(2) BECAUSE the learned trial judge misdirected the jury that had the Appellant been forced, as
30 alleged, to sign the said statement, no issue
as to voluntariness arose and that the question

of whether the Appellant was so forced was for the jury alone to determine.

- (3) BECAUSE the learned trial judge failed to exclude evidence of the identification of the Appellant by Arjoon which was inadmissible.
- (4) BECAUSE the learned judge failed to remind the jury that a verdict of not guilty did not imply that the Justice of Peace, Rehamut Khan, was guilty of a criminal conspiracy.
- (5) BECAUSE the learned trial judge misdirected the jury that if a number of persons set out to commit an offence, such as armed robbery, and in the course of the commission of that offence a person is killed, all are guilty of murder.
- (6) BECAUSE the Appellant was prejudiced by the learned trial judge's failure to leave the issue of manslaughter to the jury.

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BARBARA CALVERT

DEREK ZEITLIN

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CASE FOR THE APPELLANT
PETER CHANDREE

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