Privy Council Appeal No. 24 of 1980

Seeraj Ajodha – – – – – – – – *Appellant*

v.

The State – – – – – – – – – *Respondent*

Privy Council Appeal No. 8 of 1981

Peter Chandree – – – – – – – – *Appellant*

v.

The State – – – – – – – – – *Respondent*

Privy Council Appeal No. 13 of 1981

Dennis Fletcher – – – – – – – – *Appellant*

v.

The State – – – – – – – – – *Respondent*

Privy Council Appeal No. 9 of 1981

Lincoln Noreiga – – – – – – – – *Appellant*

v.

The State – – – – – – – – – *Respondent*

FROM

THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

REASONS FOR DECISION OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 1ST APRIL 1981.

Present at the Hearing:

LORD KEITH OF KINKEL
LORD SIMON OF GLAISDALE
LORD BRIDGE OF HARWICH
SIR WILLIAM DOUGLAS

[*Delivered by* LORD BRIDGE OF HARWICH]

These four appellants were each tried and convicted of murder. Ajodha, Chandree and Fletcher were sentenced to death. Noreiga, being under 18 years of age at the date of the offence, was ordered to be detained during Her Majesty's (now the State's) pleasure. Ajodha was tried before McMillan J. at the San Fernando Assizes in January 1975. Chandree, Fletcher and Noreiga were jointly tried before Braithwaite J. at the Port of Spain Assizes in May and June 1976. There was no connection between the two trials save that the same point of law arose in both and affected each of the four appellants. All four appealed against their convictions to the Court of Appeal of Trinidad and Tobago. The appeals of Chandree, Fletcher and Noreiga were dismissed on 15th July 1977, that of Ajodha on 18th July 1977. Special leave to appeal to the Judicial Committee of the Privy Council was granted to Ajodha, Chandree and Fletcher on 27th March 1980 and to Noreiga on 27th November 1980. By consent of the parties their Lordships heard the appeals together on 2nd, 3rd, 4th and 5th March and announced at the conclusion of the arguments their decision that in

each case the appeal would be allowed, the conviction quashed and a verdict of acquittal entered for reasons to be given later. This judgment sets out the reasons for their Lordships' decision.

The appellant Ajodha was tried jointly with one Tahaloo on an indictment charging both with counts of murder, robbery and rape. The case for the prosecution was that a man named Gosine, the murder victim, and his girl friend, Angela Dowlath, were, on 9th January 1973, sitting in a parked van when they were set upon by two masked men, both armed. Gosine ran away, pursued by one of the masked men, who caught up with him and inflicted on him injuries from which he died. Meanwhile the other masked man robbed and raped Angela Dowlath. Before he had completed the act of intercourse, Gosine's assailant rejoined him and they left together.

The only evidence relied on by the prosecution connecting Ajodha and Tahaloo with these crimes were signed confession statements which it was alleged that each had made to police officers investigating the matter.

The purported statement of Ajodha is a document signed by him in four places. The first two signatures are appended to acknowledgments in two different forms, at the beginning of the document, that he had been duly cautioned; then follows the substance of the statement signed at the foot and finally the familiar caption:

> "I have read the above statement and I have been told that I can correct, alter or add anything I wish. This statement is true. I have made it of my own free will."

followed by a further signature. The prosecution alleged that the caption was in Ajodha's handwriting. This was disputed by the defence but the signatures were accepted as being the appellant's. The case for the appellant as presented both in cross-examination and in his own evidence was that he was in no way responsible for the contents of the statement, that it had been previously prepared by the police, that he had had no opportunity to read it, but that he had been forced to sign it by being beaten by the police and threatened with further beatings if he did not do so.

In the event Ajodha was convicted of murder and acquitted of robbery and rape; Tahaloo was acquitted of murder and convicted of robbery and rape.

The case for the prosecution against Chandree, Fletcher and Noreiga was that they were three of four men who on 24th May 1974 robbed one Shah, a paymaster of the Ministry of Finance, of $24,000. Three of the robbers were armed with shot guns, Shah was escorted by two armed police officers, and in the course of the robbery one of the police officers, Corporal Britto, was shot dead by one of the robbers.

In this case there was some evidence of identification of each of the appellants as one of the robbers but the way in which this was reviewed by the learned judge in summing up strongly suggests that he was inviting the jury to treat the evidence as unreliable. Here again the corner-stone of the prosecution's case against each appellant was a written and signed confession statement, supplemented in Chandree's case by a prior oral confession to the like effect. The form of the written statement in each case was similar to that which has been described in the case of Ajodha in that each embodied two initial signatures acknowledging the caution, a signature to the substance of the statement and a signature to the concluding caption.

The case for the defence of all three appellants was conducted on the footing that they were not the authors of the confession statements they had signed and in Chandree's case that he had not made the oral confession

attributed to him. The case for Chandree and Noreiga was that they had been forced by violence and threats of further violence to sign the statements in ignorance of their contents. The case for Fletcher was that he had been tricked into signing his statement, having been falsely led by police officers to believe that it was a statement of the evidence he could give for the prosecution in connection with an incident in which he himself had been wounded and which was wholly unrelated to the incident in which Corporal Britto was killed. These defence allegations were made clear in cross-examination of the prosecution witnesses concerned. Chandree and Fletcher did not give evidence but made unsworn statements from the dock in support of what had been put by counsel on their behalf. Noreiga gave evidence on oath to the like effect.

The primary question for their Lordships' decision in these appeals can be stated in its simplest form as follows: when the prosecution proposes to tender in evidence a written statement of confession signed by the accused and the accused denies that he is the author of the statement but admits that the signature or signatures on the document are his and claims that they were obtained from him by threat or inducement, does this raise a queston of law for decision by the judge as to the admissibility of the statement? This question has provoked the keenest judicial controversy in a number of Caribbean appellate courts and a great amount of erudition has been devoted to the lengthy judgments which have been written answering the main question in one way or the other and expressing different shades of opinion on a number of related questions. Their Lordships propose to refer to what seem to be the main cases in the development of the controversy and to cite from these so far as necessary to indicate in broad outline the rival contentions, but hope they will be acquitted of disrespect if they do not examine the authorities in great detail since it appears to them that neither the principles to be applied in this field nor the results of their application to any one of a number of commonly encountered situations, including that under immediate consideration, are seriously in doubt. Their Lordships find some confirmation of this opinion in the circumstance that counsel for the respondent did not feel able to advance any argument in support of the view which commended itself to the Court of Appeal of Trinidad and Tobago.

The first important decision is that of the Court of Appeal of Trinidad and Tobago (Wooding, C.J., McShine and Fraser, JJ.A.) in *Williams* v *Ramdeo and Ramdeo* (1966) 10 W.I.R. 397. The nature of the issue and the Court's decision sufficiently appear from the following passage from the judgment of the Court delivered by Fraser J.A. at page 398:—

> "In the course of his evidence Cpl. Williams tendered the written statement allegedly given by Harrilal. His counsel objected to its admission on the ground that it was not given voluntarily but was obtained by force and threats. Accordingly, the magistrate proceeded to hear evidence as regards the taking of the statement. It turned out, however, that Harrilal was alleging, not that he had given the statement under duress, but that he had been beaten into signing a piece of paper and that he had in fact given no statement at all. Immediately after hearing the evidence the magistrate rejected the statement and refused to allow it in. He then continued the trial at the end of which, as we have said, he acquitted Harrilal.
>
> In view of the course we propose, we refrain from commenting on Harrilal's defence. We content ourselves with saying that the magistrate was wrong in refusing the admission of the statement into evidence and that he thereby rejected legal evidence substantially affecting the merits

of the case. In our judgment, a clear distinction falls to be drawn between an objection that a statement made by a person charged with an offence was not made voluntarily and an allegation that he never made any statement at all. In the case of an objection that a statement was not made voluntarily, a judge sitting with a jury or a magistrate sitting without one must hear the relevant evidence and on it decide whether or not to admit the statement: if admitted, it will then have to be weighed along with the rest of the evidence in order to find whether the person charged is guilty or not. In the case of an allegation by the person charged that he made no statement at all, the statement must be admitted and the allegation will fall to be considered along with the rest of the evidence in the case and a verdict must be reached after consideration of the whole."

Presumably the signature which the defendant Harrilal Ramdeo alleged he was beaten into giving was annexed to the written statement tendered by the prosecution. It does not clearly appear from the report whether the " piece of paper " was, according to the defendant, blank when signed and subsequently completed by the police or whether it already had the statement on it and the defendant was saying that he was beaten into signing it unread. This distinction, however, makes no difference to the principle applicable.

In *Herrera and Dookeran v. R.* (1966) 11 W.I.R. 1, the Court of Appeal of Trinidad and Tobago similarly constituted as in the case of *Ramdeo* (*supra*), followed their own earlier decision in holding that no issue arose as to the admissibility of a written statement made by Dookeran. The statement was challenged on the ground that Dookeran had been beaten and then tricked into copying in his own handwriting a document handed to him by the police and signed it as a statement of his own. Wooding C. J., delivering the judgment of the Court, said at page 5:—

" Further, we agree with the learned judge that the issue raised did not go to the admissibility of the statement but rather to its acceptability as being genuine. In effect, Dookeran was alleging that he never gave the police a statement, he merely copied a document as they required him to do. On the other hand, Inspector George was saying that the statement was Dookeran's, so much so that he actually wrote it himself. That issue, the judge quite rightly held, was not for him but for the jury to resolve."

The next relevant decision was that of the Court of Appeal of Guyana (Bollers, C. (Ag.), Persaud, C.J. (Ag.) and Cummings, J.A.) in *Harper v. The State* (1970) 16 W.I.R. 353. The nature of the decision sufficiently appears from the headnote:—

" The appellant was charged with uttering a forged order for the payment of money. During the course of the trial, he objected to the admission in evidence of a statement alleged to have been made by him on the ground that he had been induced to do so. Upon the issue being tried at the *voir dire*, the appellant in his evidence said that the statement was not his, that what was written therein had never occurred, that he had only signed it because of an inducement held out to him. The judge refrained from determining the issue of voluntariness, and instead left it to the jury to determine whether or not the accused had in fact made the statement.

HELD (Persaud, C.J. (Ag.) dissenting): that it was the duty of the judge, having tried the issue on the *voir dire* to have ruled whether the statement was a free and voluntary one, and if he had found it to be free and voluntary, to have admitted it into evidence, and then left it to the jury to say what weight should be attached to it."

It does not appear that the decisions of the Court of Appeal of Trinidad and Tobago in *Ramdeo* (*supra*) and *Herrera* (*supra*) were cited to the Court. Bollers, C. (Ag.) said at page 355:—

> " In my view the judge misinterpreted the evidence of the appellant on the issue and misunderstood what the appellant was saying. The appellant was admitting that he had signed the statement, and in my view where an accused person admits that he has signed a statement, it must follow that he is adopting what is written, but in those circumstances what the accused person would be saying is that although he signed the statement, it was not a free and voluntary statement because he had been induced to sign it because of the promise made to him."

Persaud, C.J. (Ag.) said in his dissenting judgment at page 358:—

> " My understanding of the appellant's evidence on the *voir dire*, even though he did say that he did not make the statement of his own free will, was that the statement was not his, that he had merely signed it and that he had done so because of the inducement. He was not, in my opinion, saying that he had made the statement but that he did so because of the inducement—a clear distinction which, in my opinion, must be borne in mind, because upon that distinction rests the duty of the judge. The authorities are clear that if an appellant is challenging the voluntariness of a statement, that issue must be tried by the judge on a *voir dire*, but if he is alleging that he did not make the statement, then that is a question of fact which must be left with the jury. With great respect I cannot understand the appellant to have been saying that by affixing his signature to the statement he was accepting the authorship of the contents thereof; indeed, he was contending for the contrary, and no amount of verbal refinement can lead me to any other view."

Shortly after the decision in *Harper's* case (*supra*) the same issue arose for decision by a differently constituted Court of Appeal of Guyana (Luckhoo, C., Bollers, C.J. and Cummings, J.A.), in *The State v. Fowler* (1970) 16 W.I.R. 452. Again the accused had challenged the admissibility of a written statement incriminating him on the ground that his signature on the document had been improperly obtained but had said in effect, on the *voir dire*, that he was not the author of the contents of the statement, whereupon the trial judge had declined to rule on admissibility and had left the issue to the jury. The majority of the Court (Cummings, J.A. dissenting) approved the course taken by the judge and upheld the conviction.

Bollers, C.J. (as he had now become) said at page 462:—

> " The question therefore now in the present appeal is whether the appellant's evidence on the *voir dire* is to be interpreted as meaning that he was objecting to the admissibility of the statement on the ground that it was not a free and voluntary statement, in which case it would be an issue for the judge to try, or whether he was objecting to the admission of the statement on the ground that it was not his statement, in which case that issue would be for the jury. For my part, I find the circumstances of this case indistinguishable from the Trinidad cases of *Herrera and Dookeran v. R.* (*supra*) and *Williams v. Ramdeo and Ramdeo* (*supra*)."

He later sought to distinguish his own earlier opinion as expressed in the passage cited above from *Harper's* case (*supra*) and added at page 465:—

> " I need hardly say that an accused person cannot raise a double-barrelled attack on a statement on the grounds that (a) it is not free and voluntary, and (b) it is not made by him, for, as Persaud, J.A. in the

Harper appeal (*supra*) pointed out, it would be most illogical for him to say, if the order is reversed: ' I made the statement but I did so under an inducement or a threat, but if it is found that there is no inducement or threat, then I say I did not make the statement. ' ".

Cummings, J.A. said in his dissenting judgment at page 471:—

> " I am unable to appreciate the difference between adopting a statement under duress and dictating or writing it under duress. The issue of voluntariness is involved in all three operations, and once that issue is raised, the onus is on the prosecution to show that whether by dictation, express writing by the accused, or adoption by signature of the accused, the statement was voluntary."

The identical issue arose yet again for decision by the Court of Appeal of Guyana in *The State* v. *Dhannie Ramsingh* (1973) 20 W.I.R. 138. Five judges sat (Luckhoo, C., Bollers, C.J., Persaud, Cummings and Crane, JJ.A.), no doubt intending that the question should be resolved once and for all. As the headnote indicates, it was held by a majority (Cummings and Crane JJ.A. dissenting) that an accused person is not entitled to raise on the *voir dire* both the question of the voluntariness of his statement, and the question of fact whether or not he had made the statement; that " once it becomes apparent that an accused person is in truth raising the latter issue it becomes a matter of fact for the jury to determine ".

It is pertinent to observe that at the date when the present appellant Ajodha was tried the decisions referred to above must have appeared both to the trial judge and to all counsel involved to have settled the law in the sense that Ajodha's version of the circumstances in which his disputed statement came into existence gave rise to no issue for decision by the judge as to its admissibility but only to an issue of fact for decision by the jury. The same was almost certainly thought to be the position when Chandree, Fletcher and Noreiga were tried, for although the judgments of the Court of Appeal of Guyana in *The State* v. *Gobin and Griffith* (1976) 23 W.I.R. 256 were delivered on 31st March 1976, they were not reported until much later and this decision is unlikely to have been known to practitioners in Trinidad and Tobago in May and June 1976.

In *Gobin's* case (*supra*) the Court of Appeal of Guyana again sat a full Court of five (Haynes, C., Bollers, C.J., Crane, R.H. Luckhoo and Jhappan JJ.A.) to review their own earlier decisions in *Fowler* (*supra*) and *Ramsingh* (*supra*). It appears from an editorial note to the report that these cases had caused difficulties in practice. Moreover, since those decisions, the House of Lords had given its decision in *D.P.P.* v. *Ping Lin* [1976] A.C. 574. The upshot of *Gobin's* case (*supra*) was that the Court of Appeal of Guyana by a majority of four to one (Bollers, C.J. dissenting) overruled its own earlier decisions in the cases of *Fowler* (*supra*) and *Ramsingh* (*supra*). The judgments are extremely long—they cover 59 pages in the report—and the reasoning of the four judges in the majority is not the same. Their Lordships will content themselves with quoting two sentences from the leading judgment of Haynes, C. which seem to them best to epitomise the main ground of the decision. The learned Chancellor said at page 278:—

> " If the confession of an accused in writing must be voluntary, then the signature that makes it his must be voluntary also. For, when the prosecution puts in a signed statement, what they seek to rely on is not the words of oral confession spoken to the recording policeman; it is what is adopted as true and correct ' in black-and-white ' by the signature."

When the appeals of Chandree, Fletcher and Noreiga reached the Court of Appeal of Trinidad and Tobago, the decision of the Court of Appeal of Guyana in *Gobin's* case (*supra*) was relied on as the basis of an invitation to the Court to overrule its own earlier decisions in the cases of *Ramdeo* (*supra*) and *Herrera* (*supra*). The Court declined this invitation, not, as it might have done, on the principle of *stare decisis*, but on the basis of reasoned argument that the earlier decisions were to be preferred to the latest decision of the Court of Appeal of Guyana. Especially since counsel, as mentioned earlier, did not feel able to support the Court of Appeal's reasoning, it seems to their Lordships right to quote in full the main passage from the careful judgment of the Court, delivered by Sir Isaac Hyatali, C.J. He said at pages 135 and 136 of the Record:—

> " It is clear to us, that the controversy which has developed in the Courts of the West Indies and Guyana, is not one over the principles governing the admissibility of confessions, since all the Courts agree and rightly so, that whenever an issue is raised as to whether or not an accused made a confession voluntarily, it is the duty of the trial judge to determine that issue on the *voir dire*. The essential point of the controversy poses the question whether an issue of voluntariness is raised when an accused alleges that he was beaten and forced to append his signature to a statement which he alleges he did not make. It is, in our judgment, a pure question of the interpretation of the objection made.
>
> If the true and correct answer to that question is in the affirmative then the decision in *Gobin's* case (*supra*) cannot, in our judgment, be faulted. It is otherwise however, if the answer is in the negative, because if voluntariness is not in issue for the reason that the prosecution's evidence in support of it is not challenged or contested, then there is nothing for the trial judge to determine on the *voir dire*.
>
> With the utmost respect to the Court of Appeal of Guyana, we find ourselves unable to agree with the proposition that the allegation of an accused that he was forced to append his signature to a confessional statement which he did not make, is tantamount to an allegation that *he was forced to accept as true and correct* a confessional statement which he did not make. That proposition, in our judgment, is self-contradictory. It is founded, if we may say so with respect, on a strained and illogical construction of the objection which cannot be justified. It is of vital importance to note, that an objection in the terms under reference, does not allege that the accused by duress was *forced to say* what is contained in the statement, and further, that by duress he *was forced to append his signature* to what he was *forced to say* in the statement; but rather he was forced by duress to sign a statement containing facts which were fabricated and of which he is not the author. Accordingly, if his allegations are true, his mind did not go with his signature on the statement nor his signature with its contents. In contemplation of law therefore he did not sign the statement nor accept its contents as his. In other words, 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 that he alleges in addition that he was forced to append his signature to it.
>
> The two situations referred to are, in our judgment, fundamentally different from each other. Indeed the first is the antithesis of the second and vice versa. In the first example, the accused was forced to confess and in fact did so; but in the second he never did. This fundamental difference, it seems to us, was not sufficiently appreciated by

> the Guyana Court of Appeal in *Gobin's* case (*supra*). The instant case clearly falls within the second example, and we are therefore unable to agree that the objection under reference, raised the issue of the voluntariness of Chandree's confession. In our judgment, the interpretation placed on the objections made in *Williams* v. *Ramdeo and Ramdeo* (*supra*), *Dookeran and Herrera* v. *R.* (*supra*) and *Ramsingh* v. *The State* (*supra*) was correct, and the conclusions at which the respective Courts arrived in consequence thereof in those cases, were clearly right."

Three days later, in dismissing the appeal of Ajodha, the Court simply followed its own earlier decision.

A sound starting point for the consideration of any question of the admissibility of confessions is the dictum of Lord Sumner, giving the judgment of this Board in *Ibrahim* v. *Rex* [1914] A.C. 599, at page 609, as follows:—

> " It has long been established as a positive rule of English criminal law, that no statement by an accused is admissible in evidence against him unless it is shewn by the prosecution to have been a voluntary statement, in the sense that it has not been obtained from him either by fear of prejudice or hope of advantage exercised or held out by a person in authority ".

As Lord Hailsham of St. Marylebone pointed out in *D.P.P.* v. *Ping Lin* (*supra*, at page 597) the word " exercised " in this passage is probably a misreading for " excited ".

Given this deeply entrenched and quite unequivocal principle it seems to their Lordships clear beyond argument that, if the prosecution tender in evidence a statement in writing signed in one or more places by the accused, they are relying on the signature as the acknowledgment and authentication by the accused of the statement as his own, and that from this it must follow that, if the voluntary character of the signature is challenged, this inevitably puts in issue the voluntary character of the statement itself.

The fallacy, in their Lordships' respectful opinion, which underlies the reasoning of the judgments in the cases considered above which have arrived at a contrary conclusion, is to suppose that a challenge by an accused person to a statement tendered in evidence against him on the ground that he never made it and a challenge on the ground that the statement was not voluntary are mutually exclusive, so as to force upon the judge a choice between leaving an issue of fact to the jury and deciding an issue of admissibility himself. In all cases where the accused denies authorship of the contents of a written statement but complains that the signature or signatures on the document which he admits to be his own were improperly obtained from him by threat or inducement, he is challenging the prosecution's evidence on both grounds and there is nothing in the least illogical or inconsistent in his doing so.

It has to be remembered that the rule requiring the judge to be satisfied that an incriminating statement by the accused was given voluntarily before deciding that it is admissible in evidence is anomalous in that it puts the judge in a position where he must make his own findings of fact and thus creates an inevitable overlap between the fact-finding functions of judge and jury. In a simple case, where the sole issue is whether the statement, admittedly made by the accused, was voluntary or not, it is a commonplace that the judge first decides that issue himself, having heard evidence on the

voir dire, normally in the absence of the jury. If he rules in favour of admissibility, the jury will then normally hear exactly the same evidence and decide essentially the same issue albeit not as a test of admissibility but as a criterion of the weight and value, if any, of the statement as evidence of the guilt of the accused.

In the case presently under consideration, where the accused denies authorship of the statement but admits signing it under duress, the overlap of functions is more complex. Hearing evidence on the *voir dire*, the judge will of necessity examine all the circumstances and form his own view of how the statement came to be written and signed. In practice the issue as to authorship and that as to whether the signature was voluntary are likely to be inseparably linked. One can hardly envisage a case where a judge might decide that an accused was not responsible for the contents of the statement but had signed it voluntarily. A purist might say that, in considering the issue of authorship, the judge was usurping the function of the jury; but if it is necessary to consider the issue of authorship before the judge can be satisfied that the statement was signed voluntarily, there is in truth no usurpation but only a discharge by the judge of his necessary function in deciding the question of admissibility. If the judge rules the statement to have been signed voluntarily and therefore admissible, in this, as in the simple case, the issues both as to authorship and as to the manner in which the signature was obtained will again have to be canvassed before and left for consideration by the jury.

In the instant appeals there can be no doubt that the case presented in cross-examination on behalf of the accused and what was said by the accused either in evidence or in a statement from the dock in the case of the appellants, Ajodha, Chandree and Noreiga raised in each case an issue as to the voluntariness of their signatures and thus of their statements, on the simple ground that they were beaten into signing. Fletcher's case was slightly different in that he was claiming that his signatures to what in fact was a confession statement were obtained by the fraudulent misrepresentation that he was signing a document of entirely a different character. But it is conceded by counsel for the respondent, as their Lordships think quite rightly, that this equally raises an issue as to whether this statement was the voluntary statement of the accused and therefore goes to admissibility.

The arguments before their Lordships, like the lengthy judgments in the two Guyana cases of *Ramsingh* (*supra*) and *Gobin* (*supra*), ranged over a wide variety of situations in which a question may arise as to the respective functions of judge and jury in relation to incriminating statements tendered in evidence by the prosecution. It may be helpful if their Lordships indicate their understanding of the principles applicable by considering how the question should be resolved in four typical situations most likely to be encountered in practice.

1. The accused admits making the statement (orally or in writing) but raises the issue that it was not voluntary. This is a simple case where the judge must rule on admissibility and, if he admits the evidence of the statement, leave to the jury all questions as to its value and weight.

2. The accused, as in each of the instant appeals, denies authorship of the written statement but claims that he signed it involuntarily. Again, for the reasons explained, the judge must rule on admissibility, and, if he admits the statement, leave all issues of fact as to the circumstances of the making and signing of the statement for the jury to consider and evaluate.

3. The evidence tendered or proposed to be tendered by the prosecution itself indicates that the circumstances in which the statement was taken could arguably lead to the conclusion that the statement was obtained by fear of prejudice or hope of advantage excited or held out by a person in authority. In this case, irrespective of any challenge to the prosecution evidence by the defence, it will be for the judge to rule, assuming the prosecution evidence to be true, whether it proves the statement to have been made voluntarily.

4. On the face of the evidence tendered or proposed to be tendered by the prosecution, there is no material capable of suggesting that the statement was other than voluntary. The defence is an absolute denial of the prosecution evidence. For example, if the prosecution rely upon oral statements, the defence case is simply that the interview never took place or that the incriminating answers were never given; in the case of a written statement, the defence case is that it is a forgery. In this situation no issue as to voluntariness can arise and hence no question of admissibility falls for the judge's decision. The issue of fact whether or not the statement was made by the accused is purely for the jury. In so far as the dissenting judgment of Crane J. A. in *Ramsingh* (*supra*), the concurring judgments of Crane and Luckhoo JJ. A. in *Gobin* (*supra*) and the judgment of the Court of Appeal of Jamaica in *R.* v. *Glenroy Watson* (1975) 24 W.I.R. 367 are at variance with the propositions set forth in this paragraph, their Lordships are respectfully unable to agree with them.

Counsel for the respondent invited the Board to uphold the convictions of the present appellants on the sole ground that no formal objection to the admissibility of the confession statements was taken by defending counsel in any of the four cases. Their Lordships are satisfied that it would be quite wrong to accede to this invitation. Even if, in the normal case, a point of law is only open to an appellant if the point has been duly taken in the court of first instance, the almost irresistible inference here is that the only reason why no formal objection to admissibility was taken at either of these trials was because judge and counsel all supposed, rightly as matters stood, that, if any such objection had been taken, the Court would have been bound by authority to overrule it. Thus, in the event, each of these four appellants has been deprived, through no significant fault of his own or his advisers, of the all-important safeguard of a judge's ruling as to the admissibility of the central—in Ajodha's case the only—evidence relied on by the prosecution against him. This was, in their Lordships' view, an injustice of such a substantial character, especially in a capital case, that no appellant should be disentitled to rely on it on the narrow technical ground that his advisers omitted what would have been, in the circumstances, the pure formality of taking the point in order to keep it open on appeal.

As in relation to the substantive law governing the admissibility of confession statements, so also in relation to the proper procedure to be adopted at a jury trial in various circumstances in which a question as to admissibility may arise, the argument before their Lordships ranged over a wide field. Their Lordships would certainly not attempt to lay down an exhaustive code of procedure intended to cover every contingency, but here again it may be helpful to practitioners in some jurisdictions where difficulties seem to have been encountered, if they indicate their understanding of the appropriate procedure in a number of not uncommon situations.

1. In the normal situation which arises at the vast majority of trials where the admissibility of a confession statement is to be challenged, defending counsel will notify prosecuting counsel that an objection

to admissibility is to be raised, prosecuting counsel will not mention the statement in his opening to the jury, and at the appropriate time the judge will conduct a trial on the *voir dire* to decide on the admissibility of the statement; this will normally be in the absence of the jury, but only at the request or with the consent of the defence: *R. v. Anderson* (1929) 21 Cr. App. R. 178.

2. Though the case for the defence raises an issue as to the voluntariness of a statement in accordance with the principles indicated earlier in this judgment, defending counsel may for tactical reasons prefer that the evidence bearing on that issue be heard before the jury, with a single cross-examination of the witnesses on both sides, even though this means that the jury hear the impugned statement whether admissible or not. If the defence adopts this tactic, it will be open to defending counsel to submit at the close of the evidence that, if the judge doubts the voluntariness of the statement, he should direct the jury to disregard it, or, if the statement is essential to sustain the prosecution case, direct an acquittal. Even in the absence of such a submission, if the judge himself forms the view that the voluntariness of the statement is in doubt, he should take the like action *proprio motu.*

3. It may sometimes happen that the accused himself will raise for the first time when giving evidence an issue as to the voluntariness of a statement already put in evidence by the prosecution. Here it will be a matter in the discretion of the trial judge whether to require relevant prosecution witnesses to be recalled for further cross-examination. If he does so, the issue of voluntariness should be dealt with in the same manner as indicated in paragraph 2 above.

4. Particular difficulties may arise in the trial of an unrepresented defendant, when the judge must, of course, be especially vigilant to ensure a fair trial. No rules can be laid down, but it may be prudent, if the judge has any reason to suppose that the voluntary character of a statement proposed to be put in evidence by the prosecution is likely to be in issue, that he should speak to the defendant before the trial begins and explain his rights in the matter.

A further ground of appeal was raised on behalf of Ajodha that he was prejudiced by the joinder of the counts of robbery and rape with the count of murder. Section 16 of the Jury Ordinance of Trinidad and Tobago requires trials for murder or treason to be by a jury of twelve, and those for lesser offences by a jury of nine. It is settled that a trial before a jury of twelve of an indictment in which counts for lesser offences are misjoined with a count for murder invalidates any conviction of the lesser offences, but not the conviction for murder: *Gransaul and Ferreira v. The Queen* (1978), an unreported decision of this Board (Judgment No. 14/1978). It was conceded in the instant case by Mrs. Calvert Q.C. for Ajodha that the evidence relevant to the counts of robbery and rape was relevant and admissible also on the count of murder and could properly have been led even if the lesser charges had been omitted from the indictment. Their Lordships respectfully agree with the Court of Appeal that in these circumstances there was no prejudice.

Their Lordships were invited by the respondent, if minded to allow the appeals, to remit them to the Court of Appeal of Trinidad and Tobago to enable that Court to consider whether to order new trials, as it has power to do under Section 6(2) of the Criminal Appeal Ordinance. Their Lordships

were satisfied that it would be inappropriate to order new trials in cases in which so long a time has elapsed since the commission of the alleged offences, *scilicet* over eight years in Ajodha's case and nearly seven years in the case of the other three appellants.

It was for these reasons that their Lordships decided to allow the appeals in the terms of the order indicated in the first paragraph of this judgment.

In the Privy Council

SEERAJ AJODHA

PETER CHANDREE

DENNIS FLETCHER

LINCOLN NOREIGA

v.

THE STATE

DELIVERED BY

LORD BRIDGE OF HARWICH

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