

# In the Privy Council.

## ON APPEAL

FROM THE SUPREME COURT OF FIJI, LAUTOKA CIRCUIT COURT.

BETWEEN

MAHADEO - - - - - *Appellant*

AND

THE KING - - - - - *Respondent.*

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## Case for the Respondent.

RECORD.

1. This is an Appeal by Special Leave granted to the Appellant to enter and prosecute this Appeal in forma pauperis against the Judgment and Sentence of the Supreme Court of Fiji (Lautoka Circuit Court) delivered on the 17th May 1934. p. 53. p. 38.

2. On the 15th, 16th and 17th May 1934 the Appellant was tried before His Honour Captain Maxwell Hendry Maxwell-Anderson, Chief Justice, assisted by four Assessors, upon an Information by the Attorney-General charging the Appellant with the murder of one Ramautar on the 18th January 1934, in the District of Ba. One Sarandas was also charged with being present, aiding and abetting and assisting the Appellant, and one Mathura with receiving, comforting, harbouring, assisting and maintaining the Appellant, well knowing that he had murdered the said Ramautar. p. 7.

3. The Appellant, Sarandas and Mathura all pleaded not guilty. After the close of the case for the Crown, Sarandas was discharged. None of the accused gave evidence, and when Counsel for the Appellant and for Mathura, and the Attorney-General had addressed the Court, the Assessors were briefly addressed by the Chief Justice. p. 38, l. 2. pp. 65 & 75.

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Respondent's Case



p. 38, l. 31. The Assessors were unanimous in expressing the opinion that the Appellant and Mathura were guilty of the offences with which they were charged, with a recommendation to mercy in the case of the Appellant on account of his age.

p. 38, l. 32. The Chief Justice agreed with this opinion, and decided that the two accused were guilty of the offences charged against them.

p. 38, l. 33. The Chief Justice holding that the Appellant should have the benefit of a doubt which had arisen as to his age, ordered the Appellant as a "young person," to be detained during His Majesty's pleasure, in accordance with the power enabling under Sections 2 and 12 of the Juvenile Offenders Ordinance Fiji No. 37 of 1932, (now replaced by Section 14 of the Children and Young Persons Ordinance Fiji No. 23 of 1935). 10

4. By the Jurors and Assessors Ordinance Fiji No. 16 of 1932 it is provided under Section 8 :—

"Whenever a criminal case shall be brought under the cognizance of the Supreme Court in which the accused or one of them or the person against whom the crime or offence shall have been committed or one of them shall be a native or a person of Asiatic origin or descent the trial shall take place before the Chief Justice with the aid of Assessors in lieu of a Jury unless the Chief Justice shall for special reasons to be recorded in the Minutes of the Court think fit otherwise to order and upon every such trial the decision of the Chief Justice with the aid of such assessors on all matters arising thereupon which in the case of a trial by jury would be left to the decision of the jurors shall have the same force and effect as the finding or verdict of a jury thereon." 20

Under Section 9 :—

"Where a trial is held with aid of assessors the Chief Justice shall elect from the persons summoned to act as assessors two or more persons to assist him in such trial and in capital cases not less than four." 30

Section 29 of the Criminal Procedure Ordinance Fiji No. 6 of 1875 provides that :—

"In a trial before the Court with the aid of assessors the opinion of each assessor shall be given orally and shall be recorded in writing by the Court but the decision shall be vested exclusively in the Judge."

By the interpretation section, Section 2 of the Juvenile Offenders Ordinance Fiji No. 37 of 1932 "Young person" means "a person who is twelve years of age or upwards and under the age of sixteen years." "Age" means "in the absence of positive evidence as to age the apparent age."

Section 12 of the last-named Ordinance provides that:—

10 "Sentence of death shall not be pronounced or recorded  
 " against a child or young person but in lieu thereof the court  
 " shall sentence the child or young person to be detained during  
 " His Majesty's pleasure and if so sentenced he shall notwith-  
 " standing anything in the other provisions of this Ordinance be  
 " liable to be detained in such place and under such conditions as  
 " the Governor may direct and whilst so detained shall be deemed  
 " to be in legal custody."

5. The evidence for the Prosecution rested mainly on the evidence of one Sukraj, which was to the effect that he, the Appellant, Sarandas and a boy called Ramautar of about the age of 12 or 13 years, went at about 5 o'clock on the morning of the 18th January 1934 to work in a certain field belonging to Mathura, who is the step-father of the Appellant. After the four had been working in the field for some hours some obscene badinage took place between Sarandas and the boy Ramautar. This took the form of personal abuse of each other until Sarandas went over to Ramautar. A struggle then ensued, and Sarandas forced Ramautar to the ground. At that, Ramautar became angry and got hold of Sarandas' legs, while Sarandas endeavoured to get away from him. The Appellant and the said Sukraj watched the struggle from some little way off. The Appellant told Sukraj to go and separate them, but he refused to go, saying that he was in a different position to that of the Appellant who was the step-son of Mathura, by whom he and the others were employed.

pp. 22 *et seq.*  
 p. 23,  
 ll. 13 *et seq.*  
 p. 23, l. 20.  
 p. 23, l. 24.

30 According to the evidence of Sukraj, the Appellant then went over to separate Sarandas and Ramautar, and having freed Sarandas, got hold of Ramautar's throat while the latter was on the ground.

p. 23,  
 ll. 34 *et seq.*

40 After a short time, the Appellant called out to Sukraj and Sarandas to "come and see what has happened to Ramautar." Sukraj and Sarandas who were then about one chain (66 feet) away, thereupon walked up to the scene of the struggle, and according to the evidence of Sukraj, the Appellant's hands were on Ramautar's throat until he and Sarandas came up to them: Sukraj said that he then saw what he described as Ramautar "quivering and fluttering," and explained that by "fluttering" he meant that "his hands and feet were shaking." This fluttering, he said, went on for three minutes and then life became extinct.

p. 23,  
 ll. 41 *et seq.*  
 p. 23, l. 48.

p. 24, l. 1. The Appellant then said : " What is to be done with him," and later suggested tying a *sulu* round the neck of the dead boy and leaving him under a *saijhan* tree which stood some little way off. This was done.

p. 24, l. 12 et seq. Sukraj then went back to Mathura's house and about a quarter of an hour afterwards was followed by the Appellant and Sarandas. At the house they found Mathura's wife and one Munessar and his wife Ghisiawani, who appear to have been the adoptive parents of the deceased boy. The Appellant then stated in the hearing of the above-named persons that Ramautar had hanged himself. The Appellant went away to fetch his step-father (Mathura) from a neighbouring house, and on returning with him, called Sukraj and Sarandas aside, when they were questioned by Mathura. Mathura having heard the story told them not to say anything to anyone, and that he was going to make a report. Later, on his way home from Mathura's house Sukraj met Mathura who told him that he had reported to the police that the boy was lost and said : " Come let us hide the body somewhere." In this Sukraj said he at first refused to assist, but Mathura threatened to assault him and implicate him ; and then Sukraj accordingly agreed to help, and later met Mathura and the Appellant, when the three of them went to where the body lay under the *saijhan* tree, put the body in a sack, tied it up with the *sulu*, and carried it into the bush. They left the body and the sack on a hill, under a *balawa* tree, and went home.

p. 25, l. 7 et seq. Next day, when Sukraj went to work, Mathura said : " The boy has been lost. You people look for him " ; and consequently Sarandas, Sukraj, the Appellant and Mathura made a pretence of searching for the dead boy. Mathura told Sukraj not to say anything to anyone, as he had reported that the boy went out with the horses and was lost.

p. 27, l. 2. In cross-examination Sukraj admitted telling the police that he did not know where Ramautar was, but repeated that he did this because he was afraid of Mathura and the Appellant, and what accusation they might make against him. He further admitted making a statement to the police saying that Ramautar had hanged himself. He explained that he did not tell the truth because the Appellant told him not to do so.

Document No. 1, page 1. p. 27, l. 31 et seq. p. 27, l. 17. p. 31, l. 25-32. 6. A witness Kalpi called on behalf of the Crown confirmed Sukrajs evidence as to the four youths' going off in the morning towards the cane-field, and said he saw them all at work in Mathura's cane-field at about 9 o'clock a.m.

p. 29, l. 31 et seq. p. 34, l. 20 et seq. 7. The adopted father and mother of the dead boy supported Sukraj's evidence as to the return, in the order deposed to by Sukraj, of himself, Sarandas and the Appellant to Mathura's house, and as to the story told by the Appellant that Ramautar had hanged himself.

Three other witnesses Mahabir, Parag and Dukhi testified to having seen Ramautar lying dead under the *saijahn* tree on the evening of the 18th January 1934.

8. Evidence was given by Sub-Inspector Probert as to the finding of a number of bones, thirty-six in all, near a *balawa* tree on a stony hill which had been pointed out to him by the Appellant as the place to which Ramautar's body had been taken. p. 12, ll. 31 to 42.

10 Medical evidence was called by the Crown as to these bones and some others which had been found. Dr. Harper, the District Medical Officer at Lautoka, gave it as his opinion that the bones which he examined were those of a young person of under 15 years of age, but that it was impossible owing to the condition of the bones to express any opinion as to the sex or as to the cause of death. pp. 8, 9 and 10.

In answer to questions put by Counsel for the Appellant and Mathura as to a rib that had been fractured, the Doctor was unable to say whether such fracture had occurred before or after death.

20 9. In the course of the trial Police Officers produced three statements made by Sarandas (Exhibits "C" "G" and "J") and three statements by the Appellant (Exhibits "E" "H" and "K") and a statement made by Mathura (Exhibit "F") all of which statements were read in Court. The statements made by the Appellant confirmed the evidence of Sukraj in respect to Ramautar, Sarandas, Sukraj and himself working in the field weeding cane on the day in question, that a quarrel and struggle had taken place between Sarandas and Ramautar and that he had caught hold of Sarandas and pushed him away. He however in his first statement (Exhibit "E") stated that Ramautar then left them, and that later Sukraj went towards his home and that he and Sarandas returned along the track to look for Ramautar. He went on to describe how he and Sarandas found Ramautar hanging dead from a *saijahn* tree. pp. 77, 86 and 89. pp. 80, 88 and 91. p. 83.

30 His statement further confirmed the evidence of Sukraj that he and Sarandas returned to Mathura's house later than Sukraj, that he told his Mother and the adoptive parents of the dead boy that Ramautar had hanged himself, that he went to fetch his step-father Mathura, that a conversation took place between Sukraj and his step-father, and that he, his step father and Sukraj disposed of the body. In his later statement (Exhibit "H") he altered his story and attributed the death of Ramautar to the effect of a stone thrown by Sarandas which hit the boy on the forehead. He however in substance repeated his story as to the disposal of the body. The third statement (Exhibit "K") made by the Appellant 40 merely expressed the wish to consult his solicitor before making any further statement. p. 88. p. 91.

10. Before and in the course of the trial Counsel for the accused demanded that there should be produced certain statements made to the police by the witness Sukraj. It having transpired that such statements existed the same were handed to the Chief Justice in order that he should rule as to whether the Crown should hand copies of them to the Defence. After perusing the documents His Honour ruled that the Defence was not entitled as of right to see them, and accordingly they were not put in evidence or handed to the Defence.

11. In the Petition of the Appellant asking for Special Leave to Appeal against his conviction and sentence, the Appellant relied on six 10 points which in his submission showed that the proceedings in the Supreme Court departed from the essentials of a fair trial. They are as set out in Paragraph 18 of the said Petition, as follows :—

“(A) Suppression of the contradictory statements of Sukraj  
“ made on the 14th and 15th February 1934 respectively (paras.  
“ 7-10).

“(B) Undue and officious hampering of Your Petitioner’s  
“ Counsel in their cross-examination of Sukraj (paras. 11-12).

“(C) Refusal of the Court to hear Counsel on the whole case  
“ for the Defence (para. 14). 20

“(D) Failure of the Chief Justice to stop the Attorney-  
“ General’s references to Sarandas’ statements as matters which  
“ could be taken into account as evidence against Your Petitioner  
“ and the erroneous view enunciated in the said Attorney-  
“ General’s address regarding the onus of proof, corroboration and  
“ the exclusion of manslaughter as a relevant alternative to  
“ murder (para. 15).

“(E) The Chief Justice’s assurance that he would give effect  
“ to any recommendation to mercy the assessors might like to  
“ make (para. 16 and Appendix B). 30

“ The effect of (C) (D) and (E) has been in Your Petitioner’s  
“ submission to vitiate the assessors’ findings so utterly that it  
“ cannot be predicated of the trial that it fulfilled the statutory  
“ requirement of having been held with their aid.

“(F) Mis-direction by the Chief Justice of himself and the  
“ assessors on the question of corroboration (para. 16 and  
“ Appendix B).”

12. It is respectfully submitted on behalf of the Respondent with regard to the first point (A) that there was no duty cast upon the police

or the Crown to give access to the Defence to statements obtained by them in the course of investigations, whether the persons who made such statements were or were not subsequently called by the Crown as witnesses at the trial, more especially as the statements formed no part of the case for the Prosecution.

It is further submitted that in any event no prejudice can be said to have resulted to the Appellant by reason of the non-access of the Defence to such statements, as it was clear from the evidence of Sukraj himself that he had made statements which he admitted were untrue and which con-  
10 tradicted in certain material respects the evidence he was giving on oath, and which statements he explained he had made because he was afraid of Mathura and the Appellant and that they would implicate him in the matter of the death of Ramautar.

13. With regard to the second point (B) it is submitted that there is a complete absence of any evidence to show that there was any undue or officious hampering of the Appellant's Counsel in his cross-examination of Sukraj. No specific illustration is given showing in what way it is alleged that the Appellant's Counsel was hampered or how it is suggested the Appellant's case was prejudiced thereby.

20 14. With regard to the third point (c) it is now alleged that by some arrangement made between Counsel for the Appellant and Counsel for Mathura, of which arrangement the Court was not informed, Counsel for Mathura was specially to deal with arguments in support of the proposition that the Appellant was not guilty of murder. While it is respectfully conceded that Counsel for Mathura was entitled to deal with that aspect of the Case as part of the Defence of Mathura, it is submitted that it is not open to the Appellant to complain in this respect, when the Court had not been informed of the arrangement come to between Counsel, and when  
30 it was open to his Counsel to have explained the position to the Court and to have claimed the right to address the Court and supplement any omission from his speech in this respect. That the right of Counsel for Mathura to adduce arguments to show that the Appellant had not committed murder was put forward as essential for the Defence of Mathura, as distinct from that of the Appellant, is shown by the 7th paragraph of the Affidavit of Nathaniel Stuart Chalmers sworn on the 5th October 1935  
and again in the 10th paragraph of the Affidavit of Phillip Rice sworn on the 21st October 1935. p. 55. p. 58.

40 15. With regard to the fourth and sixth points (D) and (F) insofar as the Attorney General enunciated erroneous views as to the onus of proof; and said that Sarandas' statements were evidence against the other defendants and corroborated the evidence of Sukraj; and that

manslaughter should be excluded as a relevant alternative to murder ; and in that it is alleged by the Appellant that the Chief Justice misdirected himself and the Assessors on the question of corroboration, it is submitted that the Appellant was in no way prejudiced by the Arguments put forward by the Attorney General or by his statements as to the law, as the Chief Justice ruled that the statements made by Sarandas were not evidence against the Appellant or Mathura and were not corroborative of the evidence given by Sukraj.

It is further submitted that the few comments which the Chief Justice himself said that he made for the assistance of the Assessors reveal 10 no misunderstanding or misapplication of the law applicable to the case.

There was, it is submitted no duty in law cast upon the Chief Justice to sum up or to direct the Assessors on either fact or law. Further, the question of the Appellant's innocence or guilt was in law dependent upon the decision of the Judge alone, who in his uncontrolled discretion gives such weight to the individual opinions of the Assessors as he thinks proper.

16. As to the fifth point (E), insofar as it may be intended to suggest that the Chief Justice's remarks were made to induce the Assessors to express opinions which they otherwise would not have expressed, it is respectfully submitted that such a suggestion is entirely unwarranted and 20 could not from the very nature of the circumstances, the decision of guilty or not guilty being in the Judge alone, have in any way adversely affected the Appellant.

17. It is submitted that the Appeal should be dismissed and that the Judgment and sentence passed upon the Appellant by the Supreme Court should be affirmed for the following among other

### REASONS.

- (1) BECAUSE there was sufficient evidence to support the conviction of the Appellant for murder.
- (2) BECAUSE no injustice of a serious or a substantial 30 character has occurred either by a disregard of the proper forms of legal process or by a violation of principle such as amounts to a denial of justice.

KENELM PREEDY.



In the Privy Council.

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ON APPEAL  
*From the Supreme Court of Fiji,  
Lautoka Circuit Court.*

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BETWEEN  
MAHADEO - - - *Appellant*  
AND  
THE KING - - - *Respondent.*

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**Case for the Respondent.**

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