

15/85

43 OF 1984

In Her Majesty's Privy Council

APPEAL IN THE SUPREME COURT  
OF MAURITIUS

BETWEEN

SOURIADEO DAMREE

APPELLANT

versus

QUEEN

RESPONDENT

**In Her Majesty's Privy Council**

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OF MAURITIUS**

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**SOURIADEO DAMREE**

**APPELLANT**

**versus**

**QUEEN**

**RESPONDENT**

Printed by SWALLOW PRINTING 16, Sir Virgile Naz Street, Port - Louis,  
Mauritius  
1984

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# RECORD of PROCEEDINGS PART I

IN THE INTERMEDIATE COURT OF MAURITIUS

POLICE v/s S. DAMREE

1

## CERTIFICATE IN CASE OF APPEAL

Before the Intermediate Criminal Court

1  
Certificate  
in case of  
Appeal.

The following is a true and exact copy of all Information, Summons, Warrant Notes, Evidence, Depositions, Declarations, Decree, Order, sworn solemnly affirmed, had, made, issued, taken, written and signed in a certain case bearing No 106 of the year one thousand nine hundred and 82 of the Criminal Cause Book of the Intermediate Court wherein one F. Duval, a police officer was the Complainant and charged one Souriadoe Damree with having committed the offences of larceny night breaking (Breach of sections 301 and 306 of cap. 195), Possession of articles obtained by means of a misdemeanour (Breach of sections 40 and 301 of cap. 195); effecting public mischief (Breach of sections 298 of cap. 195 added by section 2 of Ord. 31 of 46), in which case the Court pronounced a Conviction on the 29th day of July in the year one thousand nine hundred and 83 convicting and sentencing the said S. Damree to 8 years' Penal servitude on ct 1; 2 years' imprisonment on count. 3 and 1 year imprisonment on count. 4 with costs amounting to Rupees 150. and in default of payment thereof to undergo a further space of 15 days imprisonment and to be under police supervision for a period of 2 years.

(sd) A. IP HEE WAI

Head Clerk

2

## Reference to the Intermediate Court

In pursuance of the power and authority vested in Her Majesty's Director of Public Prosecutions, I refer the case of Police versus

SOURIADEO DAMREE alias Ministre

2  
Reference  
to  
Interme-  
diate  
Court

charged with the offences of:-

(1) Larceny Night Breaking

Breach of Sections 301 and 306 of Cap 195

(2) Possession of Articles obtained by means of a Crime

Breach of Sections 40, 301 and 306 of Cap 195

(3) Possession of Articles obtained by means of a misdemeanour

Breach of Section 40 and 301 of Cap 195

(4) Effecting Public Mischief

Breach of Section 298 of Cap 195 as added by section 2 of Ord. 31 of 46

for determination by the Intermediate Court

Chambers, this 20th day of April 1982

(sd) C. DE L. D'ARIFAT

Director of Public Prosecutions

**INFORMATION UPON OATH****CHARGES OF :-**

- (1) Larceny Night Breaking  
Breach of Sections 301 and 306 of Cap 195
- (2) Possession of Articles obtained by means of a Crime  
Breach of Sections 40, 301 and 306 of Cap 195
- (3) Possession of Articles obtained by means of a Misdemeanour-  
Breach of Sections 40 and 301 of Cap 195
- (4) Effecting Public Mischief  
Breach of Section 298 of Cap 195 as added by section 2 of  
Ord 31 of 46

3  
Information

10

**BEFORE THE INTERMEDIATE COURT**

Frederic Duval an officer of Police of Port Louis maketh Oath and saith as follows:-

That on or about the twenty second day of October in the year one thousand nine hundred and eighty one at La Baraque Road, Riviere des Anguilles, in the District of Savanne, one SOURIADEO DAMREE ALIAS MINISTRE, aged 28, hawker of goods, residing at Gros Billot, New Groxe did criminally, wilfully and with intent to defraud and by means of breaking during the night, abstract, steal, take and carry away certain articles, to wit:- 77 rolls of cloth of different colours not belonging to him the said Souriadeo Damree alias Ministre.

20

**COUNT 2**

Complainant further avers that on or about the twenty second day of October in the year one thousand nine hundred and eighty one at La Baraque Road, Riviere des Anguilles, in the district of Savanne, the said SOURIADEO DAMREE ALIAS MINISTRE, was criminally, wilfully and without sufficient excuse or justification found to have in his possession certain articles, to wit:- 77 rolls of cloth of different colours not belonging to him the said Souriadeo Damree alias Ministre which said articles had theretofore been obtained by means of a crime, to wit:- had been criminally, wilfully and with intent to defraud, by means of breaking during the night, abstracted, stolen, taken and carried away on or about the 22nd day of October 1981 at La Baraque Road, Riviere des Anguilles, to the prejudice of one Laila Polin by person unknown to the said complainant and which said articles did not belong to the said person unknown as aforesaid.

30

**COUNT 3**

Complainant further avers that on the twenty second day of October in the year one thousand nine hundred and eighty one at La Baraque Road, Riviere des Anguilles, in the District of Savanne, the said SOURIADEO DAMREE ALIAS MINISTRE was wilfully, unlawfully and without sufficient excuse or justification found to have in his possession certain articles, to wit:- four necklaces and one jersey not belonging to him the said Souriadeo Damree alias Ministre which said articles had theretofore been obtained by means of a misdemeanour, to wit:- had been wilfully, unlawfully and

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with intent to defraud, abstracted, stolen, taken and carried away on or about the twentieth day of October 1981 at Royal Road, New Grove, to the prejudice of one Satyandeo Doolub by person unknown to the said complainant and which said articles did not belong to the said person unknown as aforesaid.

COUNT 4

10 Complainant further avers that on the twenty second day of October in the year one thousand nine hundred and eighty one at line Barracks Police Station in the District of Port Louis, the said SOURIADEO DAMREE ALIAS MINISTRE did wilfully, unlawfully and knowingly make to an officer of police, to wit:- P. C. 2420 Bumma a false statement in writing concerning an imaginary offence, to wit:- at the time and place aforesaid he, the said Souriaдео Damree alias Ministre did make to P.C. 2420 Bumma a statement which was reduced in writing and signed, to the effect that Pte car no. AM 896 belonging to one Adam Atchia which he parked on 21.10.81 in his yard at Gros Billot, New Grove, had been stolen. WHEREFORE the said complainant prayeth the Court that the said accused be brought before it and dealt with according to law.

TAKEN AND SWORN

(sd) F. DUVAL

20 Before me the undersigned Magistrate, this 26th day of April in the year one thousand nine hundred and eighty two.

(sd) H. BHAGEERUTTY

Magistrate, Intermediate Court.

WITNESSES

- 1. Mrs Laila Polin, trader, residing at Chemin Cite Tyack,
- 2. Idriss Kaudeer, shopkeeper, residing at La Baraque Road, Riviere des Anguilles
- 3. Adam Atchia, taxi driver, of no. 32 Goa St. Port Louis
- 4. Satyandeo Doolub, trader of Branch Road, New Grove
- 5. PC 2507 Desmarais of Riv des Anguilles Pce Stn.
- 6. PC Durga —do—
- 30 7. PC 2031 Bhim —do—
- 8. PS 954 Duprat —do—
- 9. PC 2327 Prabhoodial —do—
- 10. PC 1592 Van Schellbeck of Curepipe CID
- 4 11. PC 2420 Bumma of Line Barracks Pce Stn
- 17.5.82 12. PS 1432 Sunnecharra of Rose Belle CID
- 13. PS 921 Hurree of Rose Belle CID

**4**

17.5.82

40 Accd present. pleads not guilty on counts 1, 2, 3 and 4. Letter from Mr Cuttaree for accd produced and filed. 6.10.82 for Trial

(sd) S. MOOSUN

(sd) Y. PITCHEN

5  
Sitting of 6 10.82  
6.10.82.

Accused absent. One Parsuramen Damree, Accd's brother puts in a letter from Dr Ramjuttun. marked Doc X.

As accused is laid up, case is put for trial to 15.12.82

All witnesses present except 3, 4 and 11. Police to warn 3, 4 11.

(sd) D. BASSET

(sd) S. MOOSUN

6  
Sitting of 15.12.82  
15.12.82

10

Accd absent represented in Court by Sila Damree, accd's sister, whofiles a medical certificate. As the medicale certificate was signed by the doctor 2 months ago the Court would wish the police to ascertain if accd is really laid up. All witnesses present and warned in Court except nos. 2, 3 and 6 absent. Police to warn them. 19.1.83 for trial.

(sd) S. MOOSUN

(sd) A. PRASAD

7  
Sitting of 19.1.83  
19.1.83.

Deposition  
of  
Insp. Duval

Before H. Moosun and Sik Yuen  
Accd present. Mr Peeroo for him

Insp Duval, for prosecution sworn and sustains charge.

Deposition  
of  
P.S. Duprat

I produce exhibits as per list marked Doc A.

P. S. 954 Duprat, pensioner of Riv. des Anguilles (Sworn-)

20

On 23.10.81 at 20.55 hrs, on 29.10.81 at 12.40 hrs at Riv. des Anguilles C.I.D. I recorded 2 statements from accd after usual warning. They were read over to him. I produce them. (Docs marked B-1 and B-2)

30

On 22.10.81 at 3.05 a.m. following a complaint, I went to Barracks road, Riv. des Anguilles near the shop of Mrs Laila Polin. I found the front door of the shop forced open. The padlock securing the door from outside were missing and inside the shop rolls of cloth and sarees were scattered over the floor. In front of the shop there was private car Toyota No. AY 965. Inside the car there were bags of rolls of linen. P. C. Durga was in the vicinity and he handed over to me the ignition key of the car. I took over charge of the car, P. C. Bhim then called on the spot with Mrs Polin. and I gave him instructions to drive the car to the back yard of Riv. des Anguilles Police Station. I searched the car in presence of Mrs Polin at the station and I secured 12 bags containing 77 rolls of cloth of different makes and colours. There were also 9 sarees and other articles., mentioned in the list of exhibits (Doc A).

The articles mentioned in Count 3 of the information were found under the rear seat of the car. The articles in Court are the very articles I found under the seat. Exhibits XIII a, b, c, d and Exh. XIV.

The exhibits produced are marked as per markings in the exhibits list. The 2 number plates of AM 895 were inside the car. The 2 other plates No. AY 965 were affixed to the car as being the real number of the car. From my enquiry it revealed that the correct no. of the car was AM 896 (Exh. XII a, b, c, d)

40



- Deposition of P.S. Duprat Cont.** The 77 rolls of linen in Court are the very rolls I found in the car. (Exh. I (1) to I (77). XN by Mr. Peeroo: I took 2 statements from accd. I was the enquiring officer I have taken a statement from Adam Atchia. An identification parade was held on 27.10.81. I was not present.
- Deposition of P. C Prathoodhial** P. C. Prathoodhial of Riv. des Anguilles Police station (SAH).  
On 4.11.81 at 11.40 a.m. at Riv. des Anguilles Police station, I recorded a statement from accd after the usual warning. It was read over to him. He signed it. I produce it. XN by Mr. Peeroo: Accd mentioned a pair of shoes in his statement. I asked accd to try them and they did not fit accd.
- 10 **Deposition of Insp. Sunnecharran** Police Inspector Sunnecharran of Mahebourg CID (SAH)  
On 23.10.81, at 21.50 at Cent Gaulettes Police station. I recorded a statement from accd after the usual warning. It was read over to him. He signed. I produce it. (dcc. B-4).  
XN by Mr. Peeroo:- Accd mentioned that his wife and sister went to the seaside. I think I took a statement from the sister of accd only but not from the wife, as I did not meet her. I have been to the place of accd several times but never met the wife. I met the sister at the place of the accd's father at Gros Billot. The sister said that she accompanied accd to the seaside but upon checking with her employer it was found that she was actually working on that day. She was working at Rose Belle in a knitwear factory. There is only day shift at that factory and only one shift. I cannot recollect whether I took a statement from accd's father. Witness refreshes his memory from the case file and adds that in fact he did not take a statement from accd's father. Accd did not tell me that the father went along at the seaside. I agree that in his statement accd mentions that he slept with his father upon coming back from the seaside. I cannot say whether it is material to find out whether accd slept with his father. I now say that there is a statement recorded from the father of accd. The father never mentioned in his statement that accd slept at his place. In fact the statement appertains only to the search carried out at his place. I did not consider it important to take a statement from the father to find out whether acc slept with him that night. Before recording accd's statement, I knew that car AM 896 was found at Riv. des Anguilles. I recorded a statement from Adam Atchia.
- 20  
30  
Re XN. Another police Officer did record a statement from the wife of accused. Case is recalled after recess.  
Accd absent. Mr Peeroo present. Warrant of arrest to issue. Accd now appears at 1.48 p.m.
- Deposition of P.S. Huree** P.S. Huree of Souillac CID (SAH). On 13.11.81 at 8.10 a.m. and 8.30 a.m. at Rose Belle CID, I recorded 2 statements from accd after the usual warning. They were read over to accd and he signed them. I produce them (docs B—5 and B—6)
- Deposition of P.C. Bumma** No E Xed  
P.C. Bumma, posted at Line Barracks Police Station, SAH  
On 22.10.81 at 15.20 hrs at Line Barracks, I recorded a declaration from accd. It was read over to accd and explained to him He then signed it. On same day at
- 40

16.40 hrs, I recorded statement from accd in connection with the declaration made. I produce a certified copy of the declaration (Doc C). The statement was read over to him and he signed it. I produce it (Doc B-7)

Xn by Mr. Peeroo

When I took the statement Mr. Geemul was present with accd. I was not the enquiry officer.

Deposition  
of  
P.S.  
Schellbeck

P. S. Schellbeck of Souillac Police (Sworn).

10

On 29. 10. 81, at 11.40 hrs, in the back yard of Souillac Police Station, I held an identification parade in which accd took part in connection with the present case. I recorded the proceedings in the diary book of Souillac Police Station. I produce a certified copy of those proceedings. Doc D read out in Court.

Xn by Mr. Peeroo

20

P. C. Desmarais came to the Police Station on the day the parade was held. Around 11.40 or 11.45 hrs, he came by bus. When he reached the Police Station all the volunteers and the accused were at the Police Station. When he came he walked in the Police Station. I did not see him coming as I was in the back yard of the Police Station. Before he came I met the other police officers who were on duty. Before I went to the back yard I met the other police officers and talked to them. My friends did not know there would be an identification parade. When the volunteers were assembled the police officers knew there would be an identification parade. I cannot say if they knew I would hold the parade. Accd was already in the Police Station before P. C. Desmarais came at the Police Station. I cannot say if the other police officers knew where was accd as the latter was kept in a separate place. There was a police officer with him. P.C. Prabhodial was with him. Accd was kept in the N.C.O. Barracks. P.C. Prabhodial was inside the barracks with the accd. P.C. Desmarais was called at 11.50 hrs, to identify accd on the parade. During the 10 minutes, P.C. Desmarais was near the telephone apparatus, i.e where the phone was kept. I cannot say if he waited there for 10 minutes. He was not walking around, he was kept near the telephone apparatus. P.C. Veerabooden kept him there. P.C. Veerabooden was alone there. I gave instructions as to P. C. Desmarais remaining alone with P.C. Veerabooden. Between 11.40 hrs and 11.50 hrs, I was in the back yard of the police station

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Re. Xd:

I said earlier that when P. C. Desmarais arrived at the Police Station, the accd and the volunteers were already there. When P. C. Desmarais arrived at the Police Station, Accd and the volunteers were at the back yard. When the accd and the volunteers were at the back yard, P. C. Desmarais, was kept at the telephone apparatus. When P. C. Desmarais was at the telephone apparatus, he could not see accd and the volunteers at the back yard.

Deposition  
of  
P. C  
Desmarais

P. C. Desmarais, of Riv. des Anguilles (Sworn).

40

On 22.10.81, at about 2. a.m I was on duty at Riv. des Anguilles Police Station and

Deposition  
of  
P. C.  
Desmarais  
Contd.

there I received certain information. Then I went to La Baraque Road, R. des Anguilles near a shop called Souvenir shop. When I reached the shop, I saw 4 persons coming out of the shop carrying rolls of linen and loading them in a car. In fact the 4 persons were coming out of Souvenir shop. They were loading car No AY 965 with those rolls of linen. The car was in front of the shop with its radiator facing the road going to Mahebourg. The shop belongs to one Mrs. Laila Polin. I was in company of P.C. Durga and Bhim My 2 friends and I rushed upon the 4 persons, they left the rolls of linen and ran away, one of them ran towards the bridge and the 3 others ran in the direction towards Mahebourg. The 4 persons threw the rolls of cloth on the road and ran away. I followed the 3 who took the road to Mahebourg. Two of them went ahead fast but the third was lagging behind. Whilst I was following them, one of the 2, who were far ahead came towards me and removed a knife from his jacket and threatened me with it, and the 3rd one who was lagging behind stated 'Ministre baize li'. he was then addressing the person with a knife. Accd now in the dock was the person who threatened me with a knife. I then shouted for help. When I shouted the 3 persons escaped. At the spot I saw the 3 accd there was much light, it was near Caltex Filling station. On 29.10.81, at 11.50 hrs, the police held an identification parade at the backyard of Souillac police station. I was asked to identify the person who threatened me with a knife. I identified that person on the parade. Accd was the person I identified on the parade. The person I identified on the parade and who threatened me with a knife was one of the persons who were removing rolls of linen from the shop. He also had linen with him. When that person said 'Ministre baize li', I consider that 'Ministre' was the name of the person who was threatening me with a knife.

Xed by Mr Peeroo

On 29. 10. 81, I was on duty at Riv. des Anguilles from 7 a.m to 5.30 p.m. The parade was held at Souillac. I reached Souillac at about 11.45 a.m, I went there by bus. I did not meet any friend at Souillac Police. There were other police officers working there. I knew them. I greeted them but did not talk to them. As soon as I reached the station, I was sent to the parade immediately.

I did not have to wait. I saw 9 persons in a row. I saw P.C Schellbeck at the parade. I did not talk to P.C. Shellbeck before the identification. P.C Shellbeck did not talk to me. It is possible that when I came to the station, I did not go straight to the backyard but wait for some time near the telephone apparatus though not for 10 minutes. I maintain I reached the police station at 11.45 hrs, I took upon myself to stay near the telephone apparatus as I knew I had to wait until called. There was no one who was there with me or watching me. Veerabooden was not with me then but could have been at the station. I could have stayed near the telephone apparatus for about 2 minutes after which I was called but I do not remember by whom. I know it is important for me to remember who called me but I do not remember who called me. It is possible P.S. Schellbeck called me.

Deposition  
of  
P. C.  
Desmarais  
Contd:

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When I was staying near the telephone apparatus. I did not know where were the volunteers. When I was called I was also told where I had to go to. I know when I was called that I had to identify a suspect in a case of larceny I did not know who I was to identify When I went on the identification parade I saw accused for the second time. I thought that the suspect would be on the parade but I did not know his name. I supposed that the suspect would be on the parade I gave a statement in the present case on 22. 10. 81. I recorded my own statement. I do not recall who was present when I recorded my statement I do not remember who witnessed my statement. I related everything in it and I have spoken the truth in it I related in it that one Idriss Kaudeer informed me that a larceny was being committed somewhere. I did not record that information in the occurrence book as it was only a request, but I recorded the request in the diary book P.C. Darga and P.C. Bhim were also at the station but were resting There were in their beds Before I left I woke them up and they came immediately. We accompanied Idriss Kaudeer to the spot and we ran to that spot but took a short cut there. I was 60 to 75 yards to the 4 persons when I first saw them. I did go near the store. The store is about 550 yds to 600 yds to the Police Station. I saw 4 persons at a distance and could not then identify them I could not identify them when they were carrying rolls of linen. I was 10 to 15 yards from them when they escaped. I did not see their faces as they then escaped. P.C. Darga stayed near the car P.C. Bhim ran after the one who ran towards the bridge and I followed the 3 others Idriss Kaudeer stayed near the car with P.C. Durga Idriss Kaudeer also ran to the spot with us when we were going to the store when we left the station I know Idriss Kaudeer, as he has a cold store at La Baraque Road At this stage late hour Case is postponed 8.3.83 for continuation Witnesses 1,2,4, 5,6,7 and 10 warned in Court. Police to warn witness no 3 Other witnesses are informed not to be in Court as they will not be required.

(sd) S. Moosun

(sd) B. Sik Yuen

8

30  
8  
Sitting  
of  
8.3.83

8.3.83 Accused absent, replaced in Court by Parsooramen Damree, the medical certificate filed by the latter shows that Accused is unfit for work only. Warrant of arrest.

Mr Peeroo for Accused.

Witnesses 1, 3, 5, 6, 7, 10 present warned in Court.

Witnesses 2, 4 to be warned by Police

Case postponed to 24.5.83 for continuation.

(sd) S. Moosun

(sd) A. Prasad

9  
Sitting of  
16.3.83

16.3.83

9

Accused arrested and appears in Chambers, he apologises and states he was in fact not well. Warrant of arrest recalled. Accused is released and warned to appear on 24.5.83.

(sd) S. Moosun

10

10  
Sitting  
of  
24.5.83

24.5.83

Accused present.

Deposition  
of  
P.C 10  
Desmarais  
Contd.

Mr Peeroo for Accused.

Insp. Roussety, sworn and sustains charge

PC Desmarais, of R. des Anguilles, sworn.

Xed (Contd)

Of the 4 persons carrying linen I could identify one of them near the filling station but not the other 3. The 4 persons were carrying linen. The spot near the store was lighted. When I reached the spot near them, the four threw down the rolls of linen, turned their back to me and ran away. There were 2 other Police officers with me on that night. One Police officer stayed near the car, the second followed one person who ran away and I followed 3 persons who took another direction. The 3 persons took the direction of La Baraque road.

20 I am positive Accused was there and I saw him there. I have not committed an error, I am positive I saw accused there. I could not catch accused as he ran quickly though he appears to be not of a strong physique. I was about 50 or 75 yards from him when I saw him for the 1st time near the store. I saw him at 10 ft from me when he was at the filling station. In fact I stated in Court that when the 4 persons were removing linen from the store I could not identify them. I saw Accused for the 1st time, and could identify him because 3 persons ran away at the same time. and Accused was among the 3 who ran away together. I could not catch Accused near the filling because he had a knife in his possession, and was coming against me with that knife. The 2 Police officers were about 150 yards from me. There were 3 persons, and the training did not teach us how to disarm 3 persons. Near the filling station one of the 3 persons called out 'Ministre baize li' and Accused who was in front rushed towards me with a knife, and so I could identify him better as there was near lights there. They were together at the filling station, but Accused was in front.

30

The 2 other could be about 15 to 20 feet in front of the Accused. I do not remember having said to the Court previously that the others were far ahead.

Re Ex

I identified Accused at the filling station, he was 10 ft from me. I saw him in front. I saw his face. There was light there. I am positive he was one of the 4 persons who were removing linen from the store.

Deposition  
of  
L. Polin

Laila Polin, trader of Tyack, Riv. des Anguilles, SAM: I am the owner of a shop

**Deposition of L. Polin Contd.** at Riv. des Anguilles. On 21.10.81 at about 6 pm I closed my shop. On 22.10.81 at about 3.50 am Police called at my place and informed me that my shop had been burglaried. I repaired on the spot. I saw the shop had been broken into and there was a car in front of my shop. In that car there were rolls of linen which had been taken from my shop. I identify the rolls of linen in Court as my property. There are 77 rolls of linen. The value of the linen is around Rs 35,000 to Rs 40,000.

**Xn by Mr Peeroo**

10 The linen are common and can be found in many other shops. There is no indentifying mark on any of the rolls of linen but I simply say that they are mine.

**No Re Exam.**

At this stage Insp. Roussety informs the Court that Witnesses nos. 3 and 4 are absent. The 2 witnesses fined Rs 100 each for non attendance. Police to warn them.

Continuation 9.30 a.m. on 22.6

(sd) S. Moosun

(sd) B. Yik Yuen

Later in Chambers

20 Witness no. 4 appears at noon in Chambers, witness states that his father was laid up and has had to have his father in hospital at Victoria. Court observes that witness should have at least given information of his position and the fine is not recalled.

Warned to appear on 22.6.83 at 9.30 p.m.

(sd) S. Moosun

(sd) B. Sik Yuen

11  
Sitting  
of  
22.6.83

11

22.6.83  
Accused present

Mr Peeroo for Accused.

**Deposition of S. Doolub** Insp. Roussety, sworn and sustains charge  
Satyendeo Doolub, trader of New Grove, SAM

30 I am owner of a shop at Royal Road, New Grove. On Monday 19.10.81 at about 7 p.m. I had closed my shop, later after dinner I went to the cinema. When I returned from the cinema in the night I noticed that the door of my shop was open. I informed the Police. Later I made an inventory and found that I had lost about 20 - 25 necklaces, jersey, T-shirts and other articles. I gave a statement to police and police showed me several articles among them, there were the 34 necklaces, and the jersey in Court. These articles in Court are mine. (Ex 13 and 4). The jersey in Court is one among many of them in my shop. The jerseys are sold everywhere in Mauritius. I identify the necklaces because on the show card holding the necklaces, I find my handwriting. The necklaces came from  
40 England and my brother brought the necklaces to Mauritius to be sold. There

Deposition of S. Doolub Contd. are no necklaces of that type in the shops in Mauritius. I have lost about Rs. 8,000 to Rs. 9,000 worth of articles. I have recovered articles of about Rs. 1,100 in value.

**Xed by Mr Peeroo:**

10 The collar of the jersey is dirty. I cannot say who used it. There is a mark of dirtiness in the collar. The jerseys of that type can be bought everywhere in Mauritius. I cannot say whether I lost the same jersey in Court but I have lost jerseys of that type and make. The necklaces are fancy jewels. I cannot say whether the fancy necklaces can be obtained in all shops of the island. My handwritings on the card are R.P. 250 i.e Retail Price Rs 250 it is the price per unit.

**No Re Ex**

Deposition of A. Atchia Adam Atchia, taxi driver of Port Louis SAM: I am owner of 3 cars. I am in charge of private car AM 896 which belongs to my brother in law. I know Accused in the name of Damree. I know Accused as a friend. He had borrowed a car from me on a few occasions. On 19.10.81 he borrowed a car from me. He borrowed car no AM 896. According to the conditions he ought to return the car to me on 21.10.81. He did not return the car on 21.10.81. On 23.10.81 Accused phoned me, and told me that the car was lost where it was parked in front of the house of his relative. He told me not to worry and he would do the needful to return the car to me. On 29.12.81 a CID officer came to see me at home and I accompanied him to Plaine Verte Police where I gave my statement. I then went to Rivière des Anguilles Police where the police showed me a car which I identified as mine. The car has another registered no. as the no. plate had been changed. The registered plate no. AM 896 was inside the car. If I had stated in my statement to Police that there was registered no. AY 965 on the car when I saw it at Rivière des Anguilles, that is the truth. From the time I lent my car of Accused to the time I got it from Police, I had not lent that car i.e. No AM 896 to anybody else than Accused. The police returned the car to me after the enquiry.

20

30

**Xn by Mr Peeroo:**

People used to borrow car no. AM 896 from me. I had lent it to other persons before I lent it to Damree, i.e. Accused. I had not taken money from the people to whom I lent the car.

**No Rex**

**Case closed for Prosecution**

**Peeroo calls evidence for defence**

**Defence**

**Souriadeo Damree, trader of New Grove, SAM**

Deposition of S. Damree  
40

I have many statements to Police and I have spoken the truth in all of them.

Xn :

Deposition  
of  
S. Damree  
Contd.

Car AM 896 which I borrowed from last witness was lost. The police showed me that car at Riviere des Anguilles Police. In that car, at the Police Station I find all the rolls of linen which had been produced in the present case. It is not true that the police saw me near the shop of Mrs Polin on the night of 22 to 23.10.81 I maintain that Police did not see carrying rolls of linen from that shop to that car as I was at home sleeping. The rolls of linen produced are not mine.

No Rex

Deposition  
of  
L. Damree

Lutchmeeparsad Damree, pensioner of Gros Billot, New Grove, SAH.

10 On 21.10.81 I stayed at home. I stayed at home at night. I never go out in the night as I always stay at home in the night. I remember what I did on the night of 22.10.81. On 22.10.81 from 9 pm to 9.30 pm I was at home. On that night Accused came home, he dined at home. He spent that night at home. We slept in the same bed as that bed could provide space for 3 to 4 persons Accused did not go out in the night in fact, no one went out in the night. Accused got up at about 7 am or 7.30 am on 23.10.81.

Xed

20 On 22.10.81 Accused was living at Port Louis and his wife was living at Port Louis with him. I gave a statement to Police on 23.10.81 at about 6.05 am or 7 am. I never said the following in my statement to Police. "Souriadeo Damree mo garçon ca. Ena 1 an qui li pe reste Port-Louis, la terre coupée et mo belle fille Souriaedeo so madame pe reste acote moi". I never said those words they are not the truth. It is not true that when Accused was living at Port Louis, his wife would be living at home and this cannot be as accused would have to provide for his wife and the wife would prepare accused's meals.

30 On that night of 22.10.81, accused slept in the same bed. The other persons slept in another room. Normally my wife and child and I slept in the bed but on that night accused used the bed and my wife and the child slept in another room. Though the bed is a big and spacious one, and if someone would get up, I would know it as the bed had springs. I have 6 sons. Accused had not a twin brother. I saw the car in which accused came, it was yellowish in colour. The prosecutor shows a spectacle case at some 3 feet and asks witness to state its colour. Witness on looking at it states is vert vert rouge, when it is in fact green and there is no trace of red on it. I maintain that Accused came at home on the night of 22.10.81 and we shared the same bed.

Case closed for defence

Mr Peeroo addresses Court and states fact it deals with facts and leaves matter in hands of Court.

22.7.83 for Jud.

40 (sd) S. Moosun

(sd) B. Sik Yuen



## 12

13  
Sitting of  
22.7.83

22.7 Accused absent warrant of arrest. 29.7 for Judg.

(sd) S. Moosun

(sd) B. Sik Yuen

Later accused appears in chambers and apologises for having been a bit late as he has difficulties to obtain easy transport. His apology is accepted, warrant recalled. Warned to appear 29.7.

(sd) S. Moosun

## 13

13  
Sitting of  
29.7.83

July 29, 1983

Accused present

**Judgment** Judgment

10 The accused is charged on 4 counts of the information. He has pleaded not guilty to the 4 counts and is defended by counsel.

The whole case for the prosecution is based on private car No AM 896 which belonged to Adam Atchia and which the latter had lent to accused on 19.10.81. According to Adam Atchia whose evidence we accept as the truth, accused ought to return the car to him on 21.10.81, but on 23.10.81, accused phoned him and told him that the car was lost when it was parked in front of the house of his (accused) relative.

20 Therefore from the evidence of witness Adam Atchia, accused was in possession of car AM 896 from 19.10.81 and this is admitted by accused himself. When we say that the whole case is based on that car, we wish to signal the salient feature of the case that the four counts have got that car running through them like a red thread. Counts 1 and 2 deal with the 77 rolls of cloth of different colours which were stolen from the shop of Mrs Laila Polin and taken to that car. The necklaces and jersey referred to in count 3 were found in the car and count 4 deals with the declaration made by accused on 22.10.81 at Line Barracks Police station about car AM 896 being stolen.

30 We have analysed the evidence adduced by the prosecution, we accept the evidence of witness Duprat to be true. In substance his evidence is to the effect that on 22.10.81 at 3.05 a.m, following a complaint he went to Barracks road, Riviere des Anguilles where was situated the shop of Mrs Laila Polin. The front door of that shop was broken open and inside the shop rolls of cloth and sarees were scattered. In front of the shop he saw a private car AY 965 inside which there were bags full of rolls of linen. PC Durga who was also in the vicinity gave him the ignition key of the car and whilst he was still there PC Bhim called on the spot in company of Mrs Polin. Later, the car was taken to Riviere des Anguilles Police station where in presence of Mrs Polin, he searched the car and found 12 bags containing 77 rolls of cloth of different makes and colours. He also found 9 sarees and all the other articles referred to in document A in the car. So we are satisfied that all the articles referred to in  
40 counts 1, 2 and 3 were found in the private car which bore No. AY 965 when it

Judgment

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20

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was stationed in front of Mrs Polin shop. We are also satisfied that the car which had the two plates bearing No. AY 965 affixed to it was in fact car AM 896, and that these 2 correct number plates were removed and that plates bearing No. AY 965 were substituted for them in order that car AM 896 would appear to be private car No. AY 965. We are satisfied from the evidence adduced by the prosecution that the car which was found and secured by the Police with all the exhibits in it was car AM 896 that is witness Adam Atchia's car which was lent to accused, who however admitted that fact in his statement DocB-3. Now we come to witness PC Desmarais on whose evidence rests the whole case for the prosecution. We have studied the demeanour of that witness; we are satisfied that he has deponed in the witness box with a remarkable firmness in spite of the strenuous cross examination he was subjected to, he has been steadfast, precise and positive throughout. We accept his evidence as true. We are satisfied therefore that acting on certain information on 22.10.81 at 2 am, he went to the shop — Souvenir Shop -- belonging to Mrs Laila Polin where he saw 4 persons coming out of it carrying rolls of linen and loading them in a car bearing No. AY 965 which was then parked in front of the shop with its radiator facing the road going to Mahebourg. PC Desmarais was in company of PC Durga and Bhim ; they rushed upon the four persons who threw the rolls of cloth on the road and ran away. One of them ran towards a bridge and the other 3 ran in the direction of the road going towards Mahebourg. PC Desmarais followed those 3 persons. He described that 2 of those 3 persons were ahead as the 3rd who was running behind was following them and that one of those 2 came towards him and removed a knife from his jacket and threatened him with it. Whilst that person was threatening PC Desmarais, the 3rd person who was behind, stated to the person who was threatening PC Desmarais 'Ministre baize li'. We are fully satisfied that that person who threatened PC Desmarais then, and was referred to as 'Ministre' is accused. Indeed, we have it from PC Desmarais that he was able to identify the accused near the Caltex Filling station which was lighted at that time. It is furthermore clear that accused is known by the nickname of 'Ministre' as is spelled out in the information.

Finally PC Desmarais was able to pick accused on an identification parade. We do not believe the father of accused when he says that on the night of the 22nd Oct, 81 accused shared his bed and could not have been involved in any larceny. We are positive that accused was among the 4 persons who were carrying linen from from Mrs L. Polin's shop to the car as described by PC Desmarais. We are also satisfied that 77 rolls of linen referred to in Count 1 belonging to witness Laila Polin were stolen from her shop.

40

We find accused guilty as charged on Count 1, Count (II) being alternative to Count I, we dismiss that count against accused.

Judgment

We are satisfied from the evidence of witness Satyendeo Doolub that the articles referred to in count 3 were stolen from his shop and were found in the car when it was secured by the police. We find accused guilty, as charged on count 3. Turning to count 4, we are satisfied that accused had given a declaration to police on 22.10.81 at Line Barracks police station as evidenced by document C. We are satisfied from the evidence adduced by the prosecution, and the circumstances in which a private car bearing faked registration no. AY 965 was used in the larceny committed from the shop of Mrs Laila Polin and in which larceny accused was involved that accused knew the statement he made to the police was false.

10

We find accused guilty as charged on count 4 also as we reject the evidence adduced by the defence as untrue and fabricated.

(sd) S. MOOSUN

(sd) B. SIK YUEN

Magistrates, Intermediate Court.

Insp. Roussety produces 11 certificates of previous convictions (docs X-1 to X-11). Accd accepts same.

We sentence accd to undergo 8 years penal servitude under count 1, 2 years imprisonment under count 3 and 1 year imprisonment under count 4 Sentences to run concurrently. Accd to pay Rs 150. costs.

20

Accd to be under police supervision for 2 years following his release from prison. Exhibits to be returned to police for disposal.

Breach of S. 301 and 306 of Cap 195

S. 40 and 301 of Cap. 195

S. 298 of Cap. 195

(sd) S. MOOSUN

(sd) B. SIK YUEN

Notice of appeal

Accd gives notice of appeal. He is required to furnish 2 sureties in the sum of Rs 10,000 each before prosecuting his appeal.

(sd) S. MOOSUN

(sd) B. SIK YEUN

14

14  
Security furnished

1.8.83. Accd has furnished the required security. Execution of judgment stayed.

(sd) S. MOOSUN

30

15

15  
Conviction

CONVICTION

IN THE INTERMEDIATE COURT OF MAURITIUS

To Wit:

Be it remembered that on the 29th day of July in the year one thousand nine hundred and 83 in the Intermediate Court Souriadoe Damree in convicted before the said Court for that he the said did commit the offences of larceny night breaking (breach of section 301 and 306 of Cap. 195).

Possession of articles obtained by means of a misdemeanour (Breach of sections 40 and 301 of Cap. 195)

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Effecting public mischief (breach of sections 298 of Cap. 195 as added by

section 2 of ord. 31/46.

And the Court adjudge the said S. Damree for his said offence to be kept in penal servitude for the space of eight years on count 1, 2 years Imprisonment on Ct. 3, 1 year imprisonment ct. 4 (Concurrent) and to be under police supervision for a period of 2 years after his release. and I also adjudge the said to pay the sum of Rs 150.— and cents for costs. and if the said sum for costs be not paid forth with, then the court adjudge the said to be imprisoned for the space of 15 days, to commence at and from the termination of his imprisonment aforesaid, unless the said sum for costs shall be sooner paid.

10 Given under my hand and seal, the day and year first abovementioned, at the Intermediate Court

(sd) S. Moosun

Presiding Magistrate

16

16  
Notice  
and  
Grounds of  
Appeal

**MAURITIUS IN THE INTERMEDIATE COURT**

In re:-

Police

versus

Souriadeo Damree of Gros Billot, New Grove

Accused

C. No. 106/82

20 **NOTICE OF APPEAL**

30 TAKE NOTICE that abovenamed accused (now appellant) electing legal domicile in the office of the undersigned Attorney at law, feeling himself aggrieved by and dissatisfied with a judgment of the above Court delivered by S. Moosun & Sik Yuen, Esq, Magistrates, on the 29th July 1983, whereby in the above case, in which the appellant was charged of the following offences: (i) Larceny night breaking (ii) possession of articles obtained by means of a crime (iii) possession of articles obtained by means of a misdemeanour, (iv) effecting public mischief, the learned Magistrates convicted the appellant of the offences charged and sentenced him (a) to undergo 8 years penal servitude under count 1, 2 years imprisonment under count III and 1 year imprisonment under count iv, the sentences to run concurrently; (b) to pay Rs 150.—as costs, and (c) to be under police supervision for two years following his release from prison, does hereby appeal to the Supreme Court of Mauritius against the said conviction & sentence in order to have the same quashed, reversed, set aside, amended or otherwise dealt with as the said Supreme Court may seem just for the following amongst other reasons, viz.

1. Because the learned Magistrates were wrong to have convicted the appellant under count I for the following reasons:

(a) there is no evidence connecting the appellant with the breaking;

40 (b) any of the four persons seen coming out of the shop carrying the linen

rolls could have committed the breaking;

(c) the serious irregularities at the identification parade and the material contradictions in the evidence of PC Desmarais and Shellbeck did not warrant the Learned Magistrates to accept as the whole truth the evidence of PC Desmarais.

- 10
2. Because the evidence adduced as to the identification of the appellant is so weak and unreliable that the Learned Magistrates should have had reasonable doubts as to such identification.
  3. Because the learned Magistrates were wrong to have convicted the appellant under count III as there is no evidence that the appellant had at any time in his possession the articles lost.
  4. Because the inference of appellant's guilt from the circumstantial evidence had other co-existing circumstances as to weaken the inference.
  5. Because, as regards Count IV, the learned Magistrates were wrong in accepting the evidence of the prosecution and rejecting the version of the appellant, in that, for the reasons given above as regards Counts I and III, the appellant was justified in reporting the loss of the car.
  - 20 6. Because the learned Magistrates were wrong to have taken into account the certificates of previous convictions as such certificates relate to two different names and there is no evidence that they are the name of one and the same person.

And for all other reasons to be given in due course.

Dated at Port Louis, this 12th day of August 1983.

(sd) C. MOUTIA

Of 48 Sir William Newton street, Port Louis

Appellant's attorney.

To/Their Honours the Magistrates of the Intermediate Court

Lodged with me this 12th day of August 1983 at 11.45 a.m

(sd) F.SOREEFAN

Clerk, Intermediate Court.

30

List of exhibits

Doc. A

**LIST OF EXHIBITS**

(C No. 106/82)

- I. Count 1 and 2 — 77 rolls of cloth of different colours and brands
- II. 1 (Borer) Terriere
- III. A pair of Chisel
- IV. 2 crowbars
- V. 9 Sarees of different designs
- VI. 2 bedcovers
- 40 VII. A dirty T/Shirt colour white
- VIII. A pair of brown leather shoes

- IX. A plastic bag containing 2 aluminium plates, a small towel, one spoon and one empty litre of Fanta
- X. A pair of woollen gloves
- XI. A bag colour black
- XII. Two identification plates No AY 965 and 2 identification plates AM 896 (Ex XII c and d)
- XIII. Count 3 -4 fancy necklaces
- XIV. One T/Shirt colour blue and white
- Date: - 15th December 1982

10

(sd) ?

Senior Prosecutor

Intermediate Court.

Statement  
of  
accused

Doc. B.1

Riv. des Anguilles Station.  
Statement of Souriado Damree  
Occupation: Hawker of goods Age 28 years  
Residing at Gros Billot, New Grove Religion Hindu

On 23.10.81 at 20.03 hours I saw the abovenamed who stated the following to me after having been given the usual warning.

20

Mo oule donne ou aine l'enquete, ou fine explique moi qui mo na pas oblige dire narien si mo pas oule, mais tout ca qui mo pou dire, ou pou marker et ca capave servi moi comme preuve.

Mo conne aine nomme Adam Atchia li habite Port Louis, la Rue Goa. Mo conne li bien, mo pas camarade avec li. Jamais li fine vine acote moi. Quand mo bisin li, mo alle guette li chez li. Mo propriétaire deux l'autos nos. R 124, A 895, tous les deux l'auto na pas roule, aine na pas aina l'assurance, li scelle, aine en panne. Mo ti besoin ene l'auto pou mo amene mo banne famille bord la mer.

20

Lundi passe date mo na pas connait (19.10.81) vers les deux heures tantot, mo fine alle chez Adam Atchia, Port Louis, mo fine dimane li ene l'auto prete, li ena ene deux l'auto, li fine prete moi l'auto no. AM 896, marque Toyota, couleur jaune. L'auto la ti ena so declaration colle lors so pare aprise. Adam Atchia fine dire moi check l'auto la, mo fine check, mo trouve tout bon. Mo ti faire aine condition verbal avec li pou retourne li l'auto la jeudi prochain le 22.10.81 vers les midi. Atchia na pas ti pou prend narien avec moi pendant qui so l'auto ti avec moi. Quand mo ti prend l'auto la avec li, na pas ti ena presque l'essence la dans. Mo fine mette ene gallon l'essence acote filling Plaine Verte, et mo fine promener dans Port Louis. Mo fine loue ene la case dans Boulevard Victoria no. 11 Plaine Verte. Mo reste ensemble avec mo femme et mo zenfant. Jeudi passe (15 10.81) mo fine amene mo femme avec mo zenfant acotemo maman New Grove. Mo ene colporteur, mo vende tricot, la toile, et ti l'article partout, partout, et mo ena patente pour 'Hawker of Goods'. Mo va

40

produire la Police mo patente et mo licence. Mo vende mo marchandise à pied et mo place zotte dans bande magasin. Mercredi le 21.10.81, vers les 10 heures grand matin, mo fine prend mo femme et mo soeur Devi qui travail «Knitwear» mo pas connaît qui cote, et mo soeur Kamla, mo fine amene zotte Choisy, bord la mer, mo ti amene sardine, pomme d'amour, et Fanta. Nous fine assize bord la mer jusqu'a 8 heures du soir, apres nous fine retourne New Grove passe par Beau Bassin, Rose Hill. Nous ti alle bord la mer dans ça l'auto AM 896. La veille (Mardi) mo tank ti plein, mo pas ti prend l'essence en route, mo ti garde mo l'auto dans mo la cour, New Grove. Mo na pas ti tire la cle contact depuis dans

10 l'auto, mo ti fine oublie, apres ça mo fine alle dormi ensemble avec mo papa, Lutchmeeparsad Damree. Mo femme ti dormi avec mo mamán. Le lendemain jeudi le 22.10.81 mo fine leve vers les 8 heures du matin mo na pas trouve mo l'auto dans la cour. Mo na pas fine faire la Police Rose Belle connaît, ni aucune corps de garde en route. Meme jour, mo fine alle acote Atchia Port Louis, vers le 9 heures. Mo na pas fine joindre li. Mo na pas fine alle station Plaine Verte pou faire la Police connaît. Mo fine prend l'auto la Port Louis, mo ti ena l'intention faire la police Port Louis connaît. Mo fine attende Atchia jusqu'a 3 heures tantot chez li, mais mo pas fine joindre li, vers troie heures et demi mo fine sonne

20 Atchia dans ene tabagie la rue Farquhar Nom tabagie la mo pas connaît, mais mo capave montré la Police propriétaire tabagie la ene mamzelle li fine dire moi na pas bizoin paye parcequi mo fine dire li qui mo na pas fine gagne la ligne. Quand mo ti alle acote Atchia, li na pas ti la, so madame aussi na pas ti la, Mo fine tappe so la porte 5 à 6 coups. Mo fine alle guette ene avocat qui appelle Geemah dans so bureau Port Louis vers les 3 heures et demie. Mo fine explique li ça qui fine passe, mo fine paye avocat la Rs 100.- pou li accompagne moi pou mo alle corp de garde Line Barracks, pou donne ene declaration, qui mo l'auto AM 896 fine perdi. Mo ti fine peur tansion propriétaire l'auto mette ene charge

30 lors moi qui mo fine vende so l'auto, la cause ça qui mo ti alle guette avocat, jusqu'a l'heure mo na pas fine joindre Atchia, mo na pas fine alle joindre li chez li pou expliqueli ça qui passe dans so l'auto, mais azordi (23.10.81) vers les 7 heures du matin, mo fine sonne Atchia depuis Port Louis et mo fine explique li par telephone ca qui fine passe. Dans telephone Atchia fine repondre moi li dire «mo na pas conne narien retourne moi mo l'auto». Mercredi soir (21.10.81) mo ti mette meme linge qui lors moi, c'est a dire ene tricot bleu, aine longue calcon bleu chemise blanc avec aine soulier la peau baize lere mo ti alle guette Atchia pou alle prend l'auto, mo ti alle par l'auto et deuxième jour mo ti alle a pied. Mo l'auto so numero A 895. Mo ti prend l'auto AM 896 prete avec Atchia parcequi mo l'auto ti ape faire moteur. Mo na pas connaît comment l'auto No.

40 AM 896 fine arrive R. des Anguilles. Lere Atchia ti prete mo l'auto ti ena ene stepnee, la cle la roue, verain, tout ca ti ensemble dans l'auto fine perdi. Mo

chauffeur depuis 8 bananee, c'est pour la premiere fois qui mo fine quitte la cle contact dans l'auto. Ou fine lire mo l'enquete, mo trouve li bon, mo na pas ena narien pou ajouter, ni pou corriger.

The above statement has been read over by me to deponent who acknowledges it to be true and correctly recorded.

Signature of recording officer : P S Duprat

Signature of maker : S. Damree

Signature of witnesses : (D C I Reesaul)

Place. date and time on 23.10.81 at 20.55 hrs.

10  
Statement  
of  
accused

Doc. B2

R des Anguilles Station

Statement of Souriado Damree

Occupation Hawker of goods

Age 28 years

Residing at Gros Billot, New Grove

Religion Hindu

On 29.10.81 at 12.30 hrs. I saw the abovenamed at Souillac Police Station who states the following to me after having been given the usual caution in creole :-

Mo oule donne ou ene l'enquete, mo oule qui ou meme prend mlo l'enquete, ou fine explique moi qui mo na pas oblige dire narien si mo pas oue, mais tout ça qui mo pou dire ou pou marquer et capave servi moi comme preuve.

20

Azordi jeudi le 29.10.81 vers les 11 heures et demie grand matin dans la cour station la Police Souillac, la police (PS Shellbeck) fine faire aine parade de plusieurs personnes (8) tout meme grandeur, aina moustache la barbe. La police la fine explique mo droit et ensuite li fine dire choisir mo place lors parade la. La police fine amene ene policier (PC 2820 Desmarais). La police (PS Shellbeck) fine dire Policier la montre qui dimoune li ti trouve qui fine casse magasin jeudi le 22.10.81. Lere la policier la fine marche et li fine montre Sergeant la moi avec so les doigts. Mo na pas fine repondre policier narien. Mo ti deboute dernier lors ça parade la. Apres ça ene dimoune encore fine vine lors parade (Idriss Kaudeer) deuxieme la fine guette li na pas fine tire moi, mo ti diboute dans meme place lors ça parade la, mo fine rentre lors la volontairement. Ou fine relire mo l'enquete, mo trouve qui li bon, mo na pas ena narien pou ajouter ni pou corriger.

30

The above statement has been read over by me to deponent who acknowledges it to be true and correctly recorded.

Signature of recording officer : P.S. Duprat

Signature of maker : S. Damree

Signature of witnesses : PC 2327

Place date and time on 29.10.81 at 12 hrs.

Statement  
of  
accused

Doc. B3

40 Riviere des Anguilles CID Station



Statement of Souriadoe Damree alias ministre

Occupation: Hawker of goods

Ages 28 years

Residing at Gros Billot, New Grove

Religion Hindu

On Wednesday 4.11.81 at 11.20 hrs. I saw the abovenamed at Riviere des Anguilles CID who stated the following to me in creole.

10 Azordi mercredi le 4.11.81 vers le une heures quinze gramatin dans la Police Riviere des Anguilles, la Police (PS Duprat) fin montre moi ene lauto couleur jaune Toyota Corona numero AY 965. Ca numeros sa lauto la li fausse numero. So vrai numero li AM 896. Sa meme lauto qui mo dire pou Missieur Atchia ca. Ca deux plaques numeros lauto la AM 896 qui la police pe montre moi la ca meme vraie numeros ca lauto la. La police pe dire moi fin gagne ca dans lauto. Mo pas capave dire comma sa deux plaques la fine vine dans lauto. La police pe montre moi ene sac plastic qui enant ene litre fanta vide, deux plats alluminium, ene cuillere, ene ti serviette de table ca pou moi. La police fin montre moi ene paire soulier couleur marron. Mo fine guette soulier la, mo fin saille li pas rente dans mo li pied. Soulier la numero 39. Moi mo servit numero 41. Ca soulier la pas pou moi ca. La police pe montre moi ene tapis couleur mauve pou lilit, ca oussi pas pou moi. La police pe montre moi ene lottle drap couleur vert avec banne raies jaune et blanc ca oussi pas pou moi. La police fine montre moi ene 20 paire legant la laine couleur rouge. Ca oussi pas pou moi. La police pe montre moi ene T-Shirt lors qui fine marque 1979 couleur bleue pale. Ca oussi pas pou moi. La police pe montre moi ene secateur couleur bleue so la manche qui mesure environs ene pied longuere, ca oussi pas pou moi. La police pe montre moi deux la pince, ene terriere ene la pince la donne a peu pres trois pieds et lautre la deux pieds. terriere la ena la manche dibois et so parti la haut peintire are couleur rouge. Tous sa la pas pou moi. La police pe montre moi ene verrin avec so baguette couleur bleu avec ene la cle la roue. ca pou proprietaire lauto monsieur Atchia. Le temps mo ti prend lauto are li, li ti donne moi ca. La police pe montre moi ene sac la peau couleur noire, ca na pas pou moi.

30 (sd) S. Damree

The above statement has been read over by me to deponent who acknowledges it to be true and correctly recorded.

Signature of recording officer: D. Prabhoodial PC 2327

Signature of maker: S. Damree

Signature of witnesses: Duprat PS 954

Place, date and time at Station on 4.11.81 and 11.40 hrs

**Doc B4**

Statement  
of  
accused

Rose Belle CID station

Statement Mr Souriadoe Damree alias Danesh and Ministre

40 Occupation Hawker of goods

Aged 28 yrs

Residing at No. 10, Boulevard Victoria, Port Louis, Religion Hindu States voluntarily on 23.X.81 at 21.00 hours at Cent Gaulettes Police Station the following after the usual warning has been administered by me in creole.

- Moi, Souriadoe Damree, no ouler donne ene lenquete la police, mo ouler qui ou sergeant (1437 Sunneelhorra) ecrire mo l'enquete. Mo fine comprend tout ce qui ou fine dire moi, qui mo pas obliger dire narien si mo pas ouler mais tout ce qui mo pou dire, ou pou prend sa en ecrit et sa capave servi comme preuve.
- Mo conne éne nommé Adam Atchia bien. Li reste avenue Goa, Port Louis. Li pas camarade avec moi, mais nous ena banne connaissance. Jamais li fine vinne acote moi. Quand mo bisin li, mo alle guette li chez li. Moi, mo ena deux l'auto No. K 124 ecque A 895, tout les deux pas bon et pas rouler. Ene la pas ena declaration li scellé et l'autre là, so frein pas bon. Mo fine bisin éne l'auto pou faire mo banne famille promener bords de mer, alors lundi passé le 19 octobre 1981 vers les deux heures tantôt, mo fine alle chez Adam Atchia, à Port Louis, mo fine dimande li so l'auto preter. Li aina éne deux l'auto. Li fine prete moi l'auto numero AM 896, éne Toyota couleur jaune. L'auto la aina so declaration coler lors para brise. Atchia fine dire moi cheque l'auto la et mone trouve tout bon. Mo pas ti faire aucaine condition en ecrit avec li mais mo ti dire li qui mo pou retourne li l'auto la jeudi le 22 octobre, c'est a dire hier, vers le midi. Atchia pas ti pour prend narien avec moi. Lere mo ti prend l'auto, pas ti aina l'essence du tout la dans, mais ti aina un peu juste pour alle lors filling. Mo prend mo l'auto la, mone alle lors filling, mone mette l'essence et mo fine promener dans Port Louis. Mo fine louer ene lacage Plaine Verte et moi ecque mo femme et zenfant reste. Depi jeudi dernier le 15 octobre 1981, mone amene mo femme ecque so zenfant a New Grove cote mo maman et mo la cage Port Louis la fermer. Mo ene colporteur, mo vendre tricot, la toile et petit l'article partout partout et mo ena mo patent hawker of goods. Mo ava produire la police mo patente ecque mo licence. Mo vendre mo banne marchandise a pieds et mo place mo banne l'articles dans banne magasin. Longtemps mo ti pe vender dans mo van. Mercredi le 21 octobre 1981, vers dix heures du matin, mo fine prend mo femme, mo soeurs Devi are Kamah, ene la dans travail dans Knitwear, mo fine amene zotte Choisi, bord de mer. Mone passe ene bon moment la bas et nous fine reste la bas meme toute la journée et nous fine retourne la cage a New Grove vers huit heures du soir (20.00 hours). Nous ti alle bord de la mer dans ca l'auto numero AM 896. La veille mo ti mette l'essence dans mo l'auto, sa mercredi la, mo pas ti mette l'essence, l'ere mo fine retourne la cage, mone garde mo l'auto dans mo la cour a New Grove et mo pas fine tire la cle contact depi dans l'auto, et mone alle dormi dans la cage ensemble avec mo papa qui appelle Lutchmeeparsad Damree. Jeudi grand matin le 22 octobre mo fine lever vers le huit heures du matin (03.00 hours) mo pas trouve l'auto la dans mo la cour. Mo pas fine faire

la police Rose Belle conner ou n'importe quelle corps de garde et mo fine alle guette Atchia cotte li a Port Louis vers les neuf heures et li pas ti lacage. Mo pas fine joindre li et mo pas fine alle corps de garde Plaine Verte, pou faire la police conner mo fine prend l'auto la Port Louis et mo ti aina l'intention faire la police Port Louis conner. Mo fine attendre li jusqu'a trois heures tantot chez li, et mo pas fine joindre li, mone telephone li aussi, depuis dans ene tabagie la, propriétaire la ène mamezelle et li fine dire moi pas bizin payer parcequi mone dire li qui mo fine gagne la ligne. Numero telephone Atchia 2-1963. Quand mo ti alle cotte Atchia, so la cage ti fermer, et personne pas ti la bas. Mone tappe

10 so la porte ene cinq six coup. Apres sa mone alle guette ene avocat, qui appelle Geemal, dans so bureau a Port Louis vers les trois heures et demi, mo fine explique li qui fine passe, mo fine paie avocat la Rs. 100 pou li accompagne moi corps de garde Line Barracks pour faire ene declaration, qui mo l'auto fine perdu. Mo fine alle guette avocat, pangard propriétaire l'auto mette ene charge lors moi qui mo fine vendre so l'auto. Jusqua lere mo pas fine joindre Atchia. Mo pas fine alle joindre li chez li, pou explique li qui fine passe avec so l'auto, mais azordi grand matin vers les sept heures, mo finesonne Atchia depuis Port Louis, et mo fine explique li tout ce qui fine passe. Atchia fine dire moi, ma pas conne narien

20 la dans ou bizin retourne moi mo l'auto. Mercredi dernier, jeudi, vendredi ecque samedi le 13, 14, 15, 16 et le 17 octobre 1981, mo ti reste a Port Louis dans mo la cage meme. Dimanche, lundi, mardi ecque mercredi le 18, 19, 20 et 21 octobre, 1981 mo fine dormi cotte mo papa a New Grove. Lundi le 19 octobre, lers mone prend l'auto AM 896 a Port Louis, mo fine roule rouler la bas meme et vers neuf heures du soir, mo fine retourne a New Grove, cotte mo papa. Mo ti garde l'auto la dans mo la cour meme et mardi grand matin, mone prend l'auto la, mone reste dans Rose Belle mem. Mercredi mone alle picnic avec mo banne famille. Dans mo l'auto ti aina 2 boles, deux plats, cuillere, pomme d'amour, oignon, piment, du sel concombre ecque mangue dans ene sac plastic 50 cs. la. Ene partie ti rentre dans box tableau. Dans box mo ti garde cocombre, litre

30 Fantà, ti aina stepney, verain dans box la. Mercredi soir le 21 octobre 1981. lers mo ti garde mo l'auto divant dans mo la cour a Gros Billot.

Moi mo pas conne narien dans banne zaffaire vol.

(sd) S. Damree

La Police fine relire mo l'enquete, li bon, mo pas aina narien pour ajouter, couper ou corriger. Mo fine donne ca par mo propre gre.

(sd) S. Damree

The above statement has been read over by me to S. Damree who acknowledges it to be true and correctly recorded.

Signature of recording officer : Sunneehurra (PS1437)

40 Signature of Maker : S. Damree

Signature of witnesses :

Place, date and time C. Gaulettes Police Station on 23.10.81 at 21.50 hrs.

Statement  
of  
accused

Doc B 5

Rose Belle CID Station

Statement of Souriadoe Damree alias Danesh alias ministre

Occupation Hawker of goods                      Age 28 yrs.

Residing at Gros Billot New Grove                      Religion Hindu

On 13.11.81 at 07.50 hours at Rose Belle CID I saw the abovenamed who stated the following to me after he has been duly cautioned in creole.

10      Moi Souriadoe Damree ouler donne aine l'enquete mo ouler qui ou sergeant Hurree ecrire tout ça qui mo pou dire, mo fine comprend qui ma pas obliger dire narien si mo pas ouler mais ou pou ecrire tout ca qui mo pou dire et ca capave servir comme preuve.

(sd) S. Damree

Azordi vendredi le 13.11.81 vers le 8 heures moins 5 du matin dans bureau CID Rose Belle la police (PS Hurree) ape montre moi aine tricot marque Bourgeon manche court a raie blanc bleu, 4 pair necklace fantaisie aina pair blanc et bleu et ape dire moi qui fine gagne ca banne l'articles la dans l'auto privée No. AM 896 a Riviere des Anguilles le 22.10.81. Ca banne l'articles la na pas pou moi ca.

20      Premiere fois mo trouve ca banne l'articles la, Mo pas connais qui maniere ca banne l'articles la fine trouve dans mo l'auto. Mo l'auto No. AM 896 la ti fine perdi depuis divant mo la porte dans la nuite 21.10.81 pou vine 22.10.81 et mo ti faire declaration pou ca.

(sd) S. Damree

La police fine lire mo l'enquete avec moi li fine dire moi qui mo capave corriger ajouter ou changer quite chose si mo pas ouler l'enquete la bon et mo fine donne ça avec mo le coeur content.

The above statement has been read over by me to S. Damree who acknowledges it to be true and correctly recorded.

30      Signature of recording officer : Hurree (PS 94)

Signature of maker : S. Damree

Signature of witnesses :

Place, date and time at Rose Belle CID on 13.11.81 at 08.10 hrs

Doc B 6

Statement  
of  
accused

Rose Belle CID Station

Statement of Souriadoe Damree alias Danesh alias ministre

Occupation Hawker of goods                      Aged 28 yrs

Residing at Gros Billot, New Grove                      Religion Hindoo

40      Further states : Le 22.10.81 vers le 4 heures 20 tantot mo ti faire aine declaration la police Line Barracks comme quoi l'auto qui mo ti prend preter avec Mr Adam

10 Atchia qui reste la rue Goa Port Louis, ti fine perdu depuis divant mo la porte a Gros Billot New Grove pendant la nuite 21.10.81 a 22.10.81 L'auto la so numero AM 896. La police ti arrette moi le 23.10.81 et deux trois jours apres la police ti amene moi Riviere des Anguilles dans la cour corp de garde ti montre moi l'auto No. AM 896, marque Toyota couleur jaune et la police ti montre moi aine quantite ballot linges. Mo pas connais qui maniere mo l'auto là fine arrive Riviere des Anguilles. Mo pas connais a cote bannes linges sortie et qui dimoune ti mette dans l'auto la. L'auto la pas fine endommager et li en bon etat. Mo satisfait qui mo fine gagne l'auto. Mo connais apres ca la Police fine retourne l'auto la Mr Adam Atchia. Mo pas connais qui dimoune ti fine coquin mo l'auto depuis dans mo la cour et ti servi li pou alle quitte li a Riviere des Anguilles. Mo pas aina doutance lors personne.

(sd) S. Damree

The above statement has been read over by me to S. Damree who acknowledges it to be true and correctly recorded.

Signature of recording officer : Hurree

Signature of maker : S. Damree

Statement of witnesses :

of accused Place, date and time at Rose Belle CID on 13.11.81 at 08.30 hrs.

20 Doc. B 7

Line Barracks Police Station

Statement of Mr Souriadeo Damree

Occupation Hawker Age 28 yrs

Residing at Gros Billot, New Grove Religion Hindu

30 The abovementioned name and address states to me (PC 2420 Bumma) in presence of his bar at law at Line Barracks Police on 22.10.81 at 16 20 hrs in creole : Mo ti prend ene l'auto numero AM 896, marque Toyota Corona, couleur jaune preter avec Mons. Adam Atchia qui habite la rue Goa, P. Louis, depuis Lundi dernier le 19.10.81 vers 02.00 hrs de l'apres midi. Hier au soir mercredi 21.10.81 mo fine parked mo l'auto dans mo la cour Gros Billot New Grove vers 08.30 hrs du soir. L'auto la pena garage. Mo ti ferme tous sa banne la porte, et la fenetre, mais mo ti blier tire la cle contact. Zordi jeudi 22.10.81 vers 07.30 hrs lere mo leve mo remarque qui l'auto la fine disparaitre. Valeur l'auto la mo pas conne parcequi l'auto la pas pou moi ca. Dans l'endroit mo bien ecque tout dimoune. Mo pas capave dire qui canne la fine faire mechanceté are mo l'auto. L'auto la mo ti suppose retourne Mons. Atchia azordi jeudi dans l'apres midi. Mo pas fine faire proprietaire conne.

(sd) S. Damree

40 The above statement has been read over by me to Mr Sooriadeo Damree who acknowledges it to be true and correctly recorded.

Signature of recording officer : Bumma PC 2420

Signature of maker : S. Damree

Signature of witnesses : ?

Place, date and time at L/Barracks on 22.10.81 at 16.40 hrs.

Extract  
Copy  
from  
Occurrence  
Book

Doc. C

Extract copy from occurrence Book of Line Barracks police station S No. for the year and time OB3753/81 on 22.10.81 at 16.12 hrs larceny of car Foreign care Rose Belle (case)

Nature of Occurrence

10 Mr Souriado Damree, 28 yrs, hawker and residing at Gros Billot, New Grove, states in presence of his bar at law Mr Geemul, care of Madun Gajadhur QC — On Monday last 19.10.81, I borrowed a car bearing No. AM 896 from Mr Adam Atchia of Goa street, Port Louis. Last night Wednesday 21.10.81 I parked the above numbered car in my yard at about 20.30 hrs. This morning 22.10.81 when I got up at about 07.30 hrs, I noticed that the car had disappeared.

Recorded by me )

Read over and ) SD.Souriado Damree

explained ) wit. PC 1461

PC 2420 Bumma )

20 Compared with the original and found a true copy

(sd) ?

CI Line Barracks

4.10.82

Certified a true copy

for Commissioner of Police

(sd) Chief Clerk

Copy from  
Diary  
Book  
re:—

Identifica-  
tion  
Parade

Doc D

Copy From Diary Book of Souillac Police Station

S. No. ref : Subject Time Thursday 29th October 1981

30 51 Identifi-12.15 Identification parade held by PS 1592 V/Schellbeck  
cation this day 29.10.81 in the back yard of Souillac Police  
parade Station in broad day light, out of view of the public

in connection with case OB1197/81 larceny night breaking. The following volunteers who are about the same height, description mode of life to the suspect formed part of the parade : No. 1 Devalingum Mauraye, 27 yrs, welder of Gris Gris road, No. 2 Eswen Tenna, 23 yrs, stone mason, of Camp Fanny, C. Grenier, No. 3 Sanjay Ramphul, 25 yrs, mechanic of B. du Cap, No. 4 Gopal Tipadoo, 27 yrs, store keeper of C. Grenier, No. 5 Rajen Rungasamy, 27 yrs, Welder of Gris Gris, Souillac, No. 6, Sanjeeve Ajodah, 20 yrs, no calling of Telfair road, Souillac No 7, Govinda Gourdan, 24 yrs, Market Inspector of Chaline street,

40

10 Souillac No 8, Bassir Mohit, 20 yrs, no calling of Church street, Souillac, suspect Souriadoe Damree, alias Ministre, who was in N. C.O Barracks, out of view of the parade, was brought in by PC 2327 Parboodoyal who has nothing to do in this case at 11.45 hrs. The suspect has been explained the purpose of the parade and his rights, he has been asked to choose a place on the parade which he did and placed himself after volunteer No.8.P.C. 2507 Desmarais who was in charged room near the telephone apparatus not in view of the parade, was brought in at 11.50 hrs by P C. 2158 Veerabuden who has nothing to do in this case. P.C. Desmarais has been explained the purpose of the parade and to walk up and down in front of the parade and to point out the person whom he saw and pursued during the nights of 21.10.81 to 22.10.81 at R. des Anguilles near the bridge. He walked in from of the parade and pointed out suspect Souriadoe Damree without hesitation saying 'limeme ca'. The suspect remained quiet.

20 The suspect has been informed that he could change his place on the parade if he wished at there is another witness, who will call on the parade. He remained in his original place. Witness Idriss Kodeer, who was in the police jeep no GM 2051 out of view of the parade parking near Souillac market, was brought in by PC 2755 Appadu who has nothing to do in this case at 11.55 hrs. The witness has been explained the purpose of the parade and he has been asked to walk up and down of the parade and to point out the person or persons whom he peeped through his glazed verandah and who was talking outside on 22.10.81 at about 01.50 hrs. He walked in front of the parade and has not been able to point at anybody saying "Mo na pas reconnaitre personne". The parade started at 11.40 hrs and ended at 12.00 hrs. The volunteers have been thanked.

(sd) P.S. 1592 C/Schellbeck

Certificate  
of  
Previous  
Conviction

DOCUMENT XI

INTERMEDIATE CRIMINAL COURT

CERTIFICATE OF PREVIOUS CONVICTION

30 THIS IS TO CERTIFY that according to criminal records kept in the Intermediate Criminal one SOORIADEO DAMREE was sentenced before this Court on the 27th day of January 1972 on a charge of Swindling to 12 months Hard Labour and to pay the costs of the case.

Cause No 507/71

The above sentence has never been quashed, amended, repealed, not set aside in any manner whatsoever.

Date 2nd June 1982

(sd) P. Ramchurn  
Head Clerk

Certificate  
of  
Previous  
Conviction

Doc. X2

Intermediate Court

CERTIFICATE OF PREVIOUS CONVICTION

THIS IS TO CERTIFY that according to criminal records kept in the Intermediate Court one Dhanes Damree was sentenced before this Court on the 14th day of Dec 1972 on charges of: 1-- Larceny, 2 forgery in a bank writing, 3-- Making use of a forged private writing, 4-- Issuing dishonoured cheque to 6 months Hard Labour and to pay the costs of the case Cause No 259/71.

10 The above sentence has never been quashed, amended repealed, not set aside in any manner whatsoever.

Date 2nd June 1982

Clerk (sd) P. Ramchurn

DOCUMENT X3

Grand Port District Court

CERTIFICATE OF PREVIOUS CONVICTION

THIS IS TO CERTIFY that according to criminal records kept in the District Court of Grand Port one SOORIADEV DAMREE was sentenced before this Court on the 29th day of December 1975 on a charge of Embezzlement to eighteen months H L + Rs 15 costs and to pay the costs of the case Cause No 4485/75

20 The above sentence has never been quashed, amended, repealed, nor set aside in any manner whatsoever.

6th May 1982

Grand Port  
District

(sd) ? District Clerk

Doc X4

G/Port Court

30 CERTIFICATE OF PREVIOUS CONVICTION

THIS IS TO CERTIFY that according to criminal records kept in the G/Port Court one Gunesh Damree was sentenced before this Court on the 30th day of Oct. 1975 on a charge of swindling to 2 yrs H. L + 10 and to pay the costs of the case + 2 yrs pol. supervision

cause no 3759/75

The above sentence has never been quashed, amended repealed, not set aside in any manner whatsoever.

Date 6/5/1952

Clerk?

40

Grand Port



Doc X5

G/Port Court

## CERTIFICATE OF PREVIOUS CONVICTION

THIS IS TO CERTIFY that according to criminal records kept in the G/Port Court Dhanesh Damree was sentenced before this Court on the 4th day of June 1975 on a charge of False and malicious denunciation in writing to 3 months H. L. Rs. 10.- and to pay the costs of the Cause No 3840/74.

The above sentence has never been quashed, amended repealed, not set aside in any manner whatsoever.

10 Date 6/5/1982

Clerk?

Grand Port

Doc X6

Grand Port Court

## CERTIFICATE OF PREVIOUS CONVICTION

THIS IS TO CERTIFY that according to criminal records kept in the G. Port Court one Dhanes Damree was sentenced before this Court on the 15th day of Feb 1971 on a charge of Embezzlement to 2 mths H. L. Rs. 5.- costs and to pay the costs of the case. Cause No 3319/70. The above sentence has never been

20 quashed, amended repealed, not set aside in any manner whatsoever.

Date 6/8/82

Clerk?

Grand Port

Doc X7

Moka Court

## CERTIFICATE OF PREVIOUS CONVICTION

THIS IS TO CERTIFY that according to criminal records kept in the Moka Court one Daneshwar Damree was sentenced before this Court on the 16th day of June 1975 on a charge of Issuing a cheque without provision to 8 months H. L. and to pay the costs of the case.

30 Cause No 2100/74.

The above sentence has never been quashed, amended repealed, not set aside in any manner whatsoever.

Date 19/8/1982

Clerk?

Moka D/Court

Doc X8

PW Rose Hill District Oourt

## CERTIFICATE OF PREVIOUS CONVICTION

THIS IS TO CERTIFY that according to criminal records kept in the District Court of Rose Hill one Sooriadev Damree was sentenced before this Court as

40

follows :

5/7/1982

Date	Cause No.	Offence	Judgment
11.7.75	2779/75	Issuing cheque w/o provision	Nine months H.L. + costs + 2 years P.S.
6.8.75	2943/75	-do-	Nine months H.L. + costs + 18 months P.S.
22.12.75	4575/75	-do-	Twelve months H.L. + costs + 2 yrs P.S.

10 Cause No

The above sentences have never been quashed, amended, repealed, nor set aside in any manner whatsoever.

Rose Hill

District

(sd) ? District Clerk

Certificate  
of  
Previous  
Conviction

Doc X 9

Port Louis District Court

CERTIFICATE OF PREVIOUS CONVICTION

20 THIS IS TO CERTIFY that according to criminal records kept in the District Court of Port Louis one Sooriadeo Damree alias Dhanees alias Ministre was sentenced before this Court as follows :

5/7/1982

Date	C No.	Charges	Judgment
3. 4.72	1831/72	Swindling	4 months H.L. + costs
27.11.75	2962/73	Swindling	18 months Hard Labour + two years P.S.
	2661/75	Swindling	- do -
26.11.75	5606/75	Swindling	Two years H.L. + 2 yrs Police Supervision

30 The above sentences have never been quashed, amended, repealed nor set aside in any manner whatsoever.

Port Louis

District

(sd) ? District Clerk

Intermediate Criminal Court

Certificate  
of  
Previous  
Conviction

Doc X 10

CERTIFICATE OF PREVIOUS CONVICTION

40 THIS IS TO CERTIFY that according to criminal records kept in the Intermediate Criminal Court one Sooriadeo Damree was sentenced before this Court on the 14th day of February 1977 on a charge of Forgery in private writing, swindling by issuing dishonoured cheque to 2 yrs H.L. and to pay the costs of the case.

Cause No. 182/76.

The above sentence has never been quashed, amended, repealed, nor set aside in any manner whatsoever.

Date 2nd June 1982

Head Clerk (sd) P. Ramchurn

**Certificate  
of  
Previous  
Conviction**

Doc. 'XII'

Intermediate Criminal Court

**CERTIFICATE OF PREVIOUS CONVICTION**

THIS IS TO CERTIFY that according to criminal records kept in the Intermediate Criminal Court one Dhaneshwar Damree alias Sooriadeo was  
10 sentenced before this Court on the 16th day of July 1975 on a charge of Swindling by issuing dishonoured cheques (6 counts) to 2 years H. L. on each Count and to pay the costs of the case Cause No 84/75.

The above sentence has never been quashed, amended repealed, not set aside in any manner whatsoever.

Date 2nd June 1982

Head Clerk (sd) P. Ramchurn

EXTRACTS IN CREOLE

<u>Page</u>	<u>Line</u>	<u>Extracts</u>
7	13	Ministre strike him
9	31	Ministre strike him
12	20-22	Sooriadeo is my son. Since one year he is living in Port Louis. «La terre Coupée» and my daughter-in-law the wife of Sooriadeo is living at my place.
14	26-27	Ministre strike him
27	13	He is the very person
10 27	23	I do not recognize anybody.

Doc. B 1 P. 19 Line 13 to p. 20 Line 9

Rivière des Anguilles Police Station

Statement of Sourideo Damree

Occupation: Hawker of goods

Age 28 years

Residing at Gros Billot, New Grove

Religion Hindu

On 23. 10. 81. at 20.03 hours I saw the abovenamed who stated the following to me after having been given the usual warning.

20 I want to make a statement, you have explained to me that I am not compelled to say anything if I do not want to, but everything that I say will be reduced in writing by you and that may be used by me as evidence by me.

30 I know one Adam Atchia he resides in Port Louis. Goa Street. I know him well. I am not his friend. He has never called at my place. When I need him, I go to see him at his place. I am the owner of two cars Nos. R 124, A 895, both cars are not in running condition, one has no insurance policy seals have been affixed to it, one is broken down. I needed a car to bring my family to the seaside. Last Monday, I do not know the date (19. 10. 81) at about two in the afternoon, I went to Adam Atchia's place, Port Louis, I asked him to lend me a car, he owns some cars. He lent me car No. AM 896, make Toyota, yellow in colour. The car had its licence pasted on its windscreen. Adam Atchia asked me to check the car, I checked and saw that everything was alright. I made a verbal condition with him that I would return him the car the following Thursday, the 22. 10. 81 at about noon. Atchia would not have charged me during the time that his car would be in my possession. When I took the car from him, there was practically no fuel. I drove the car from Atchia's place. I put in one gallon of fuel at Plaine Verte Filling Station, and I drove around in Port Louis. I rented a house at Boulevard Victoria No. 11, Plaine Verte. I live together with my wife and my child. Last Thursday (15. 10. 81) I brought my wife and my child at my mother's place in New Grove. I am a hawker of goods. I sell jumpers, cloth, and small articles here and there and I hold a licence as «Hawker of goods». I shall produce my licence and my (driving) licence to the Police. I sell my articles on foot and I dis-

- pose of my goods in shops. On Wednesday the 21. 10. 81, at about ten in the morning, I took my wife and my sister Devi who works at a «Knitwear» (factory) I do not know where, and my sister Kamla, and brought them to Choisy, at the seaside. I bought sardines, tomatoes and Fanta. We sat down at the seaside until eight in the evening, after we returned to New Grove passing through Beau Basin, Rose Hill. We went to the seaside in the car AM 895. On the eve (Tuesday) my petrol tank was full, I did not refuel on the way. I placed my car in my yard, New Grove. I did not remove the ignition key from the car. I forget to do so, afterwards I went to sleep together with my father, Lutchmeparsad Damree. My wife slept along with my mother. On the next day Thursday the 22. 10. 81 I rose up at about eight in the morning I did not see my car in the yard. I did not notify Rose Belle Police Station, nor any other Police Station along the way. On the same day I went to Atchia's place in Port Louis, at about nine. I did not meet him. I did not go to Plaine Verte Police Station to inform the Police. I took that car in Port Louis, I intended to notify Port Louis Police. I waited for Atchia until three in the afternoon at his place, but I did not meet him, at about half past three I telephoned to Atchia from a tobacconist at Farquhar Street. I do not know the name of the tobacconist shop, but I can show to the Police the owner of the tobacconist shop she is a young lady and she told me not to pay because I told her that I had not obtained the communication. When I went to Atchia's place, he was not in, his wife as well. I knocked at his door five or six times. I went to contact a barrister named Geemah in his office in Port Louis at about half past three. I explained to him what had happened, I paid him Rs. 100. to accompany me to Line Barracks Police Station to make a statement that my car AM 896 was lost. I was afraid lest the owner of the car would accuse me of having sold his car, it is for that reason that I contacted a barrister, up to now I have not met Atchia, I have not called on him at his place to explain to him what had happened to his car, but to-day (23. 10. 81) at about seven in the morning, I made a phone call to Atchia from Port Louis and I explained to him through the telephone what had happened. On the telephone Atchia answered me saying «I don't know anything about this return my car to me». On Wednesday night (21. 10. 81) I was wearing the same clothes as now, i.e. a blue jumper, a pair of trousers blue in colour, a white shirt, a pair of beige leather shoes when I called on Atchia for the car, I went by car and on the second day I went on foot.
- My car's number is A 895. I borrowed car AM 896 from Atchia because my car was undergoing engine repairs. I do not know how car AM 896 came to be in Rivière des Anguilles. When Atchia lent the car to me, it had a spare wheel, a wheel spanner, a jack, all these were in the car and were lost. I am a driver since 8 years, it is for the first time that I left the ignition key in a car.
- 40 You have read my statement, I acknowledge that it is correct, I have nothing to add or correct.

The above statement has been read over by me to deponent who acknowledges it to be true and correctly recorded.

Signature of recording officer: P. Sgt. Duprat

Signature of maker: S. Damree

Signature of witnesses: D. C. I. Reesaut

Name and rank of recording officer: P. Sgt. 954

Place, date and time on 23.10.81 at 20.55 hrs

Doc. B 2 P. 20 Line 10 to Line 38

Rivière des Anguilles Police Station

10 Statement of Souriadeo Damree

Occupation: Hawker of goods

Age 28 years

Residing at Gros Billot, New Grove

Religion Hindu

On 29. 10. 81 at 12.30 hrs, I saw the abovenamed at Souillac Police Station who states the following to me after having been given the usual caution in creole:

I want to make a statement, I want that you write down my statement, you have explained to me that I am not compelled to say anything if I don't want but all that I say you shall put down in writing and may be used by me as evidence.

20 This day Wednesday the 29. 10. 81 at about 11.30 in the forenoon in the yard of Souillac Police Station, the police (P. Sgt. Schellbeck) lined up a parade of several persons (8) all of the same height, with whiskers and beard. The policeman explained me of my rights and afterwards he asked me to choose my place on the parade. The policeman brought in a policeman (P C 2820 Desmarais).

The policeman (P. Sgt. Schellbeck) asked the policeman to show the person he had seen that had broken into the shop on Wednesday the 22. 10. 81. Thereupon the policeman started to walk around and he pointed me out to the Sergeant. I did not answer anything to the policeman. I was standing last on that parade. Afterwards another person came to the parade (Idriss Kaudeer) the second one observed he did not single me out, I was standing at the same place on that parade, I took part in it voluntarily.

30 You have read over my statement, I acknowledge it to be correct, I have nothing to add or correct.

The above statement has been read over by me to deponent who acknowledges it to be true and correctly recorded.

Signature of recording officer (sd.)

Signature of maker: S. Damree

Signature of witness P. C 2327

Name and rank of recording officer:

Place, date and time on 29. 10. 81 at 12 hrs

Doc. B 3 P. 20 Line 39 to P. 21 Line 36

Rivière des Anguilles C I D Station

Statement of Souriado Damree alias Ministre

Occupation Hawker of goods Aged 28 years

Residing at Gros Billot, New Grove Religion Hindu

On Wednesday 4. 11. 81 at 11.20 hrs, I saw the abovenamed at Rivière des Anguilles C I D who stated the following to me in creole.

10 To-day Wednesday 4. 11. 81 at about fifteen past eleven in the forenoon at Rivière des Anguilles Police Station, the Police (P S Duprat) showed to me a yellow Toyota Corora car number AY 965. That car's number plate is a fake. It's true number plate is AM 896. It is the very car that I said belonged to Mr. Atchia. The two car number plates AM 896 which are being shown to me by the Police are the true number plates of that car. The Police is telling me that these have been obtained in the car. I cannot say how these two plates have been inside the car. The Police is showing to me a plastic bag, which contains an empty Fanta litre, two aluminium plates, one spoon, a small towel for the table, all these belong to me. The Police has shown to me a pair of brown shoes. I have looked at the shoes, I have tried them, they are too small to fit me. The shoes are size 39. I wear size 41. These shoes are not mine. The Police is showing to me a purple bed cover, this also is not mine. The Police is showing to me another bed cloth green in colour with yellow and white stripes, this also is not mine. The Police has shown to me a pair of red woollen gloves. These also are not mine. The Police is showing to me a T shirt on which is written 1979, pale blue in colour. This also does not belong to me. The Police is showing to me a pair of pruning-scissors blue in colour its handle measuring about one foot long, this also does not belong to me. The Police is showing to me two crow-bars, one drill, one of the crow-bars is about three feet long and the other two feet, the drill has a wooden handle and its upper part is painted in red.

30 All these do not belong to me. The Police is showing to me a jack with its ring blue in colour together with a wheel spanner, these belong to the car owner Mr. Atchia. When I took the car from him he gave me them. The Police is showing to me a black leather bag, it does not belong to me.  
sd. S. Damree.

The above statement has been read over by me to the deponent who acknowledges it to be true and correctly recorded.

Signature of recording officer: D. Prabhoodial PC 2327

Signature of maker: S. Damree

Signature of witness: Duprat P Sgt. 954

Name and rank of recording officer: D. Prabhoodial P C 2327

40 Place, date and time at Station on 4. 11. 81 at 11.40 hrs

Doc. B 4 P. 21 Line 37 to p. 24 Line 2

Rose Belle C I D Station

Statement Mr. Souriadoe Damree alias Danesh and Ministre

Occupation Hawker of goods Age 28 years

Residing at No. 10, Boulevard Victoria, Port Louis Religion Hindu

States voluntarily on 23.10.81 at 21.00 hours at Cent Gaulettes Police Station the following after the usual warning has been administered by me in creole.

10 I Sooriadoe Damree, I want to make a statement to the Police, I want that you sergeant (1437 Sunneinorra) take it down in writing. I have understood all you have told me, that I am not compelled to say anything if I do not want to but all that I will say you will take it down in writing and that may be used as evidence.

I know well one Adam Atchia. He resides at Goa Avenue, Port Louis, he is not a friend to me but we have acquaintances. He has never called at my place. When I need him, I go and find him at his place. I am the owner of two cars No. K 124 and A 895, both are out of order and not running. One has no licence, it is under seals and the brakes of the other are not good. I needed a car to bring my relatives for a drive to the seaside, so last Monday the 19th. of October, 1981 at about two in the afternoon, I went to Adam Atchia's place in Port Louis, I asked him to borrow me his car.

20 He has a few cars. He lent me car No. AM 895, a yellow Toyota. The car has its vehicle licence pasted on the windscreen. Atchia asked me to check the car and I saw that everything was alright. I did not make any written conditions with him but I told him that I would return the car on Thursday the 22 October, i.e. yesterday at about noon. Atchia would not have charged me. When I took the car, there was no fuel at all, but there was just enough to reach the Filling Station. I took the car, I went to the Filling Station, I put in fuel and I drove about in Port Louis. I have rented a house in Plaine Verte and I live in it with my wife and child. Since Thursday last the 15th. October, 1981 I have brought my wife and child to New Grove at my mother's place and my house in Port Louis is closed.

30 I am a hawker of goods, I sell jumpers, cloth and small articles here and there and I hold a licence of Hawker of Goods.

I shall produce to the Police my licence and my (driving) licence. I sell my articles on foot and I dispose of my articles in shops. Long ago I was selling in my van. On Wednesday the 21st. of October, 1981 at about ten in the morning, I took my wife, my sisters Devi and Kamah, one work in a Knitwear Factory, I brought them to Choisy, at the seaside. We spent a nice time there and we stayed there all day and we returned home at New Grove at about eight in the evening (20.00 hours). We went to the seaside in the car No. AM 896. On the eve I refuelled the car on that Wednesday I did not refuel the car, when I returned home, I parked the car

40 in my yard at New Grove and I did not remove the ignition key from it and I



went to sleep in the house with my father who is named Lutchmeeparsad Damree. On Thursday morning the 22nd of October I rose up at about eight in the morning (8.00 hours) I did not see the car in my yard. I did not notify Rose Belle Police Station or any other Police Station and I went to meet Atchia at his place in Port Louis at about nine and he was not at home. I did not meet him and I did not go to Plaine Verte Police Station to inform them I took the car in Port Louis and I had the intention to inform Port Louis Police. I waited for him until three in the afternoon at his place and I did not meet him, I also phoned him from a tobacconist at Farquhar Street, I can show the tobacconist shop to the Police, the owner is a young lady and she asked me not to pay because I told her I had not obtained communication. Atchia's telephone number 2-1963. When I went to Atchia's place, his house was closed, and nobody was there. I knocked at his door five or six times. Then I went to meet a barrister, named Geemal, in his office in Port Louis at about half past three, I related to him what had happened, I paid him Rs. 100 to accompany me to Line Barracks Police Station to give a statement that my car was lost. I have gone to meet a barrister lest the owner of the car accuse me that I had sold his car. Up to now, I have not met Atchia. I have not been to meet him at his place to explain to him what had happened. With his car but this morning at about 7.00 I rang to Atchia from Port-Louis and I have explained to him all that had happened.

Atchia told me that he did not know anything about all this I had to return him his car. Last Wednesday, Thursday, Friday and Saturday the 13th, 14th, 15th 16th and 17th, October, 1981 I stayed in Port Louis at my place. On Sunday, Monday, Tuesday and Wednesday the 18th, 19th, 20th and 21st October 1981, I slept at my father's place in New Grove. On Monday the 19th day of October when I took car AM 896 in Port Louis, I drove around there and at about nine in the evening I returned to New Grove, at my father's place.

I parked the car in my own yard and on Tuesday morning, I took the car, I remained in Rose Belle. On Wednesday I went picnicking with my relatives. In my car there were two bowls, two plates; a spoon, tomato, onion, chillies, salt, cucumber and mango in a plastic bag which worth 50 cents. Part of it went into the space below the dash board. In the boot I place cucumber, the Fanta litre, there was also the spare wheel and jack in the boot.

On Wednesday night the 21st. of October, 1981 when I parked my car in front in my yard at Gros Billot. I know nothing about the case of larceny.)

Sd. S. Damree.

The Police has read over my statement, it is correct, I have nothing to add, strike out or correct. I have given it of my own free will.

Sd. S. Damree.

40 The above statement has been read over by me to S. Damree who acknowledges it to be true and correctly recorded.

Signature of recording officer: Sd. Sunneechurra (PS 1437)

Signature of maker: S. Damree

Signature of witness: ?

Name and rank of recording officer: Sunneechurra (PS 1437)

Place, date and time Cent Gaulettes Police Station on 23.10.81 at 21.50 hrs

Doc. B 5 P. 24 Line 3 to Line 33

Rose Belle C I D Station

Statement of Souriado Damree alias Danesh alias Ministre

Occupation: Hawker of goods Aged 28 years

10 Residing at Gros Billot, New Grove Religion Hindu

On 13.11.81 at 07.50 hours at Rose Belle CID, I saw the abovenamed who states the following to me after he had been duly cautioned in creole.

I, Souriado Damree want to make a statement I want that you sergeant Hurree take down all that I shall say, I have understood that I am not compelled to say anything if I don't want to but you are going to write down all that I say and this may be adduced as evidence. Sd. S. Damree

20 This day, Friday the 13.11.81 at about five to eight in the morning in the Rose Belle CID office (PS Hurree) is showing to me a jumper make Bourgeon with short sleeves with white blue stripes, 4 pairs of fancy necklaces, there is a white and blue pair and it is being told to me that those articles have been obtained in private car No. AM 896 at Rivière des Anguilles on 22.10.81. Those articles do not belong to me. It is for the first time that I see them. I do not know how these articles have been found in my car. My car No. AM 896 was lost from in front of my door during the night of 21.10.81 to 22.10.81 and I gave a statement to that effect.

Sd. S. Damree

The Police has read my statement to me it has told me that I can correct add or change something if I want the statement is correct and I have given it of my own free will.

30 The above statement has been read over by me to S. Damree who acknowledges it to be true and correctly recorded.

Signature of recording officer: Hurree

Signature of maker: S. Damree

Signature of witness ?

Name and rank of recording officer: Hurree PS 94

Place, date and time at Rose Belle CID on 13. 11. 81 at 08.10 hrs.

Doc. B 6 P. 24<sup>\*</sup> Line 34 to p. 25 Line 19

Rose Belle C I D Station

Statement of Souriadoe Damree alias Danesh alias Ministre

Occupation: Hawker of goods Age 28 years

Residing at Gros Billot, New Grove Religion Hindu

10 Further states: On the 22.10.81 at about 4.20 p.m, I gave a statement at Line Barracks Police Station to the effect that the car I had borrowed from Mr. Adam Atchia who lives at Goa Street, Port Louis, was lost in front of my door at Gros Billot, New Grove during the night of 21.10.81 to 22.10.81. The car's number is AM 896. The Police arrested me on 23.10.81 and two or three days after the Police took me to the yard of Rivière des Anguilles Police Station and showed me car No. AM 896, make Toyota, yellowish in colour and the Police showed to me a lot of bales of cloth. I do not know how my car has happened to be at Rivière des Anguilles. I do not know from where come the cloth and who placed it in the car. The car had not been damaged and it was in good state. I am satisfied that I have obtained the car. I know that afterwards the Police has returned the car to Mr. Adam Atchia. I do not know who stole the car in my yard and had used it and left it at Rivière des Anguilles. I doubt nobody.

sd. S. Damree.

20 The above statement has been read over by me to S. Damree who acknowledges it to be true and correctly recorded.

Signature of recording officer: Hurree

Signature of maker: S. Damree

Signature of witness ?

Name and rank of recording officer: Hurree

Place, date and time at Rose Belle CID on 13. 11. 81 at 08.30 hrs.

Doc. B 7 P. 25 Line 20 to p. 26 Line 4

Line Barracks Police Station

Statement of Mr. Souriadoe Damree

30 Occupation: Hawker of goods Age 28 years

Residing at Gros Billot, New Grove Religion Hindu

The abovementioned name and address states to me (PC 2420 Bumma) in presence of his Bar-at Law at Line Barracks on 22.10.81 at 16.20 hrs in creole:

40 I took a car number AM896, make Toyota Corona, colour yellow, on loan from Mr. Adam Atchia who lives at Goa Street, Port Louis, since Monday last the 19.10.81 at about 2 p.m. Yesterday night Wednesday 21.10.81 I parked my car in my yard at Gros Billot, New Grove at about 8.30 p.m. The car has no garage. I closed all its doors and windows but I forgot to remove the ignition key. To day Thursday the 22.10.81 at about 7.30 when I woke up I realised that the car had disappeared. I do not know the value of the car because it does not belong to me. I am on good

terms with everybody in the vicinity. I cannot say who did mischief concerning my car. I was supposed to return the car to Mr. Atchia to-day Thursday in the afternoon. I have not notified the owner.

Sd. S. Damree

The above statement has been read over by me to Mr. Sooriadeo Damree who acknowledges it to be true and correctly recorded.

Signature of recording officer: Bumma

Signature of maker: S. Damree

Signature of witness: ?

10 Name and rank of recording officer: Bumma P C 2420

Place, date and time at Line Barracks on 22. 10. 81 at 16.40 hrs

# **PART II**

## **PROCEEDINGS IN THE SUPREME COURT**

**(Appellate Court)**

**S. Damree**

**v/s**

**The Queen**

**Appellant**

**Respondent**

IN THE SUPREME COURT OF MAURITIUS

In re:-

Souriadeo Damree, of Gros Billot, New Grove.

Appellant

v/s

The Queen

RespondentNotice and  
grounds  
of appealNOTICE OF APPEAL

To His Honour the Master &amp; Registrar of the above Court.

10

Take notice that the abovenamed appellant electing his legal domicile in the office of the undersigned attorney-at-law, feeling himself aggrieved by and dissatisfied with a judgment of the Intermediate Court delivered by S. Moosun & B. Sik Yuen, Esqs, Magistrates, on the 29th July 1983, whereby in a case then pending before the Intermediate Court (C. No. 106/82), in which the appellant was charged of the following offences: (i) larceny night breaking; (ii) possession of articles obtained by means of a crime; (iii) possession of articles obtained by means of a misdemeanour; (iv) effecting public mischief, the learned Magistrates convicted the appellant of the offences charged and sentenced him (a) to under go 8 years penal servitude under count I, 2 years imprisonment under count (iii)

20

1 year imprisonment under count (iv), the sentences to run concurrently; (b) to pay Rs 150.- as costs, and (c) to be under police supervision for two years following his release from prison, does hereby appeal to the Supreme Court of Mauritius against the said conviction & sentence in order to have the same quashed, reversed, set aside, amended or otherwise dealt with as to the said Supreme Court may seem just for the following amongst other reasons, viz:

1. Because the learned Magistrates were wrong to have convicted the appellant under count I for the following reasons:

30

(a) there is no evidence connecting the appellant with the breaking; (b) any of the four persons seen coming out of the shop carrying the linen rolls could have committed the breaking; (c) the serious irregularities at the identification parade and the material contradictions in the evidence of P. C. Desmarais and Schellbeck did not warrant the learned Magistrates to accept as the whole truth the evidence of P. C. Desmarais.

2. Because the evidence adduced as to the identification of the appellant is so weak and unreliable that the learned Magistrates should have had reasonable doubts as to such identification.

3. Because the learned Magistrates were wrong to have convicted the appellant under count III as there is no evidence that the appellant had at any time in his possession the articles lost.

40

4. Because the inference of appellant's guilt from the circumstantial evidence

had other co-existing circumstances as to weaken the inference.

5. Because, as regards count IV, the learned Magistrates were wrong in accepting the evidence of the prosecution and rejecting the version of the appellant, in that, for the reasons given above as regards counts I and III, the appellant was justified in reporting the loss of the car.

6. Because the learned Magistrates were wrong to have taken into account the certificates of previous convictions as such certificates relate to two different names and there is no evidence that they are the names of one and the same person.

10 And for all other reasons to be given in due course.

Dated at Port Louis, this 16th day of August 1983.

(sd) C. Moutia

Of 48 Sir William Newton street, Port Louis.

Appellant's attorney.

**RETURN**

20 The foregoing Notice of Appeal was duly served by me, the undersigned Usher upon His Honour, The Master & Registrar, Supreme Court, by leaving a true and certified copy thereof with Mr. V. KOOLUMUTH, Senior Court officer found at his office situate at the Registry Supreme Court Buildings, Jules Koenig St, Port Louis.

On Tuesday the 16th day of August, 1983.

(sd) Fangoo

Usher, Supreme Court.

**2**

**JUDGE'S ORDER**

2  
Jude's  
Order

Upon hearing Mr. C. Moutia Attorney for the said Appellant, and upon reading the affidavit of the said attorney sworn on 16.8.83 and registered in Reg A 443 No 359;

30 Let the said Affidavit be filed, and this Appeal be set down on the Cause List of «Appeal from Convictions of District Magistrates» and called Pro Forma on the 21st day of November, 1983 thereupon to be fixed for hearing.

Chambers, this 19th day of August 1983.

J. Forget

Judge

**3**

3  
Minutes  
of  
21.11.83.

On Monday the 21st day of November 1983.

Before The Honourable Sir C. I. Moollan, Chief Justice.

S.C.R. No. 4261

S. Damree v. Queen.

40

S. Moorba replaces Sir H. Walter, of Counsel, for Appellant.

I. Rajahballee, of Counsel, for Respondent  
To 13th February, 1984—Merits.

(O. A. KHODADIN)

for Master & Registrar

4  
Minutes  
of  
13.2.1984

4

On Monday 13th February, 1984  
Before Hon. V. Glover, Senior Puisne Judge  
and Hon. E. Leung Shing, Judge

10 4261 — S. Damree v. The Queen

Sir Harold Walter appears for appellant.

I. Rajahballee appears for respondent.

Sir H. Walter:

The whole case rests on the identification of appellant whether the identification was the result of a properly conducted identification parade, and whether P C Desmarais had such powers of observation as to be able to pick up appellant on the parade after having a fleeting glance of him, a week before.

20 Ground 1 : If prosecution evidence is accepted, there is evidence of the exit of the 4 persons from the shop-however there is no evidence of any breaking by appellant. Submits that any of the four persons could have committed the breaking of shop—they were only seen carrying rolls of linen.

Refers to the evidence of Schellebeck and to that of Desmarais, and points out the contradictions in their evidence, specially as regards Desmarais being near the telephone board for 10 minutes.

Submits that the guidelines regarding holding of identification parade have not been followed, which renders it irregular.

Submits that either of Schellebeck or Desmarais is not telling the truth, and their evidence cannot be turned precise, positive and straightforward.

30 In evidence, Desmarais said when he first saw appellant (together with others) he was some 50—70 yards away, and therefore he could only have a fleeting glance as appellant and others were running away. Desmarais further said he did not know the name of appellant though, in evidence, he said he heard appellant being addressed as «Ministre». It was a week later that he picked appellant in the parade.

Quotes: Parboonath V. Q. J. No. 84 of 1982 and submits there is a risk of mistaken identity.

In spite of the fact that Desmarais picked appellant in the parade, he does not say that he was one of the four persons he saw.

40 Also points out that Kaudeer who could not pick anyone in the parade was not called to depone in Court.



Ground 2 : Corroborative evidence was not called as there were glaring doubts of identification of appellant.

Quotes: Lalkan v. Q. 1912 M. R. p. 51

Ground 3 : States that anybody of the 4 persons could have put the articles in the car the presence of the pair of shoes in the car lends colour to the possibility of somebody else having put the articles in the car.

There is no actual possession proved, but only a constructive possession, if we accept that appellant was in charge of the car; but there is evidence that the car was lost; another person could have been in control of the articles.

10 Quotes: Nandosing v. R. 1905 MR 1

Ground 4 : Has already been covered.

Ground 5 : All throughout, appellant gave a defence of mistaken identity. Draws Court's attention to the different statements taken from him by different officers at different times, and states appellant stuck to his defence. Magistrate was wrong to find defence fabricated and untrue.

Ground 6 : Refers to the certificates of previous convictions, draws special attention to the different names appearing thereon and the dates of conviction. States there is something cloudy in all this, which he has not been able to clear up.

20 Rajahballee: All certificates produced had been put to appellant and he accepted each and everyone of them.

Grounds 1-5 : Raise only one short issue that of identification.

The 4 persons were seen leaving a shop they ran in the same direction the inference to be drawn is that they were not acting independently. If appellant was at the spot of the incident, then he had not lost the car and was certainly in possession of articles.

No one knows what Kaudeer would have said in Court. There is no evidence that he recognised appellant at the time of offence, and as he did not indentify him at the parade, no corroborative evidence was available.

30 As regards the contradiction in evidence of Schellebeck and Desmarais, he states, that can be explained by the fact that the former was at the back yard conducting the parade and the latter in the front part of the station building, they could not possibly know what was happening. Submits there is nothing sinister in their evidence to render the identification parade irregular.

It has been proved that the number plate of the car had been changed States that if the car was stolen, there was no need to change the number plate. The only person having a reason to do so would be the owner, and as appellant had control of the car, the necessary inference to be drawn, is that appellant was present at the locus.

Quotes: Parboonath case at p. 7

Cours reserves judgment.

40 sd. V. Koolomuth  
for Master and Registrar.

5  
Minutes  
of  
27.2.84

On Monday the 27th day of February 1984  
Before The Hon. V. Glover, Ag. Chief Justice

4261 - S. Damree v. Queen

Sir R. Jeewoolall replaces Sir H. Walter, of counsel for appellant.

I. Rajahballee, of counsel of respondent.

His Lordship reads out the judgment of the Court (Hon. Ag. Chief Justice and Hon. E. Leung Shing, Ag. Judge), filed of record, dismissing the appeal with costs.

sd. O. A. Khodadin

10 for Master and Registrar

RECORD NO. 4261

IN THE SUPREME COURT OF MAURITIUS

In the matter of:

S. Damree

Appellant

v.

The Queen

Respondent

6  
Judgment

JUDGMENT

20 On the 22nd October 1981 at 2 a.m., on receiving information from a Mr. Kaudeer, P. C. Desmarais left Rivière des Anguilles Police Station and ran to La Earaque Road near a shop, accompanied by Mr. Kaudeer and Police Officers Durga and Bhim. There he saw 4 persons coming out of the shop carrying rolls of linen and loading them into a car bearing registration plates marked AY 965. One of the four ran towards a bridge and the three others ran along the road leading to Mahébourg. P. C. Durga and Mr. Kaudeer stayed near the car, while P. C. Bhim ran towards the bridge. P. C. Desmarais chased the three men: one of them turned back and came towards him, took out a knife and threatened him at a spot near a Filling Station where there was plenty of light. He shouted for help from the others and the three men ran away. He felt sure he could identify his aggressor and he 30 eventually picked him out on an identification parade. That person is the appellant. The three other alleged thieves were not identified.

The car was searched and, apart from 77 rolls of cloth which had been taken from the shop, the police found necklaces and a jersey underneath the rear seat.

The shop owner said that she had closed her shop at 6 p.m. the day before and the evidence showed that it had been broken into.

The owner of another shop at New Grove deponed to say that the necklaces and jersey had been stolen from his premises on the 19th of October.

40 Another witness deponed to say that, on the 19th October, he had lent his car No. AM 896 to the appellant for two days. Four days later the appellant phoned to say that the car had been stolen. It was established in evidence that this

was the very car found near the shop at La Baraque Road and that its number plates had been changed.

On the 22nd October the appellant reported to the police at Port Louis that the borrowed car had been stolen on the 21st October from his yard at New Grove.

The appellant was thereafter charged before the Intermediate Court with (a) larceny by means of breaking at night of the 77 rolls of cloth, with an alternative count of possession (b) possession of stolen property in respect of the necklaces and jersey and (c) effecting public mischief with regard to the report of the alleged loss of the car. He pleaded not guilty and was defended by Counsel, thereby setting up an alibi for the night of the 21st October and maintaining that the car had been stolen. The Magistrates, in a considered judgment, found him guilty on three counts, and consequently dismissed the alternative count of possession. Certificates relating to eleven previous convictions were then put in and the appellant accepted them as being correct. He was sentenced to eight years' penal servitude on the first count and to lesser terms of imprisonment on the two other counts.

His conviction is challenged on the following grounds: 101

1. Because the learned Magistrates were wrong to have convicted the appellant under count I for the following reasons:

(a) there is no evidence connecting the appellant with the breaking; (b) any of the four persons seen coming out of the shop carrying the linen rolls could have committed the breaking; (c) the serious irregularities at the identification parade and the material contradictions in the evidence of P. C. Desmarais and Schellbeck did not warrant the learned Magistrates to accept as the whole truth the evidence of P. C. Desmarais.

2. Because the evidence adduced as to the identification of the appellant is so weak and unreliable that the learned Magistrates should have had reasonable doubts as to such identification.

3. Because the learned Magistrates were wrong to have convicted the appellant under count III as there is no evidence that the appellant had at any time in his possession the articles lost.

4. Because the inference of appellant's guilt from the circumstantial evidence had other co-existing circumstances as to weaken the inference.

5. Because, as regards count IV, the learned Magistrates were wrong in accepting the evidence of the prosecution and rejecting the version of the appellant, in that, for the reasons given above as regards counts I and III, the appellant was justified in reporting the loss of the car.

6. Because the learned Magistrates were wrong to have taken into account the certificates of previous convictions as such certificates relate to two different names and there is no evidence that they are the names of one and the same person.

10 In one way or another, as rightly observed by learned Counsel for the respondent, grounds 1 to 5 must stand or fall on the issue of identification. If the Magistrates had reliable evidence on which they could find, as they did, that the appellant (a) was acting «de concert» with the three other persons in removing articles from a shop into which they had obviously recently broken and (b) was exercising control over the car, which he had not returned to the owner and whose number plates had been changed, and over its contents, and if it cannot be shown that they have erred in their appreciation of the evidence or otherwise misdirected themselves, then clearly they had no option but to find him guilty as they did.

Learned Counsel for the appellant has, in his argument, said everything that could be thought of by way of criticism against the evidence and the conclusions drawn by the learned Magistrates. We have given due consideration to his arguments and looked at the evidence with care, but find no cause for interfering with the judgment.

Ground 6 of course has no merit whatsoever, since the appellant admitted that they all referred to him.

The appeal is accordingly dismissed with costs.

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V. J. P. Glover  
Ag. Chief Justice

E. Leung Shing  
Ag. Judge

27th February 1894

**PART III**

**PROCEEDINGS IN THE SUPREME COURT  
OF MAURITIUS**

**S. Damree**

**Applicant**

**v/s**

**The Queen**

**Respondent**

**Leave to Apply to Privy Council.**

IN THE SUPREME COURT OF MAURITIUS

In the matter of:—

S. Damree. Appellant (now Applicant)

v

The Queen. RespondentMotion  
PaperMOTION PAPER

10 Counsel is instructed to move this Honourable Court for an order (1) granting appellant (now applicant) leave to appeal to Her Majesty the Queen in Privy Council against the judgment of the Supreme Court of Mauritius on 27th February 1984, on the appeal of the appellant against his conviction on 29th July, 1983, passed by Messrs S. Moosun and B. Sik Yuen of the Intermediate Court of Mauritius by which judgment the appellant was found guilty on 3 Counts: Count 1, that of larceny Night Breaking; Count 3, Possession of Articles obtained by means of a misdemeanour and Count 4 : Effecting public mischief and was sentenced to undergo eight years penal servitude under Count 1, 2 years imprisonment under Count 3 and 1 year under Count 4, (sentences to be concurrent) and to pay Rs. 150. as costs and to be under police supervision for 2 years following his release from prison and (2) Granting stay of execution of the judgment until his appeal be disposed of finally. (And this for the reasons fully set forth in the annexed affidavit.)

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Under all legal reservations.

Dated at Port-Louis, this 13th day of March, 1984.

sd. G. Baguant.

of Desforges street, P. Louis. Appellant's Attorney

sd. J. Panglose rep S. Moorba.

(now Applicant's)of Desforges street, P. Louis Appellant's CounselIN THE SUPREME COURT OF MAURITIUSApplicant's  
affidavit  
30AFFIDAVIT OF APPLICANT

I, Souriado Damree, a merchant of New Grove Branch Road, Gros Billot.

MAKE SOLEMN AFFIRMATION AS A HINDU AND SAY:

1. That I am the applicant in the above matter.

2. That I was prosecuted before the Intermediate Court of Mauritius for Larceny Night Breaking (Count I), Possession of Articles obtained by means of a Crime (Count II), Possession of Articles obtained by misdemeanour (Count III) and effecting Public Mischief (Count IV). I pleaded not guilty to the charges. I was found guilty on the first and last two counts and was sentenced to undergo 8 years penal servitude under Count 1, 2 years imprisonment under count 3 and 8 years ~~penal servitude~~ <sup>imprisonment</sup> under Count 4, sentences running concurrently and to pay Rs. 150. as costs and to be under police supervision for 2 years following my

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release from prison.

3. That I lodged an appeal before the Supreme Court of Mauritius against the said judgment.

4. That my appeal before the Supreme Court was dismissed with costs on 27th February 1984.

5. That I am aggrieved by and dissatisfied with the judgment of the Supreme Court delivered on the 27th February 1984 and I am desirous of appealing against the judgment.

10 I am advised that the judgment of the Supreme Court is wrong in several particulars.

6. That I intend to appeal against the judgment of the Supreme Court of Mauritius to Her Majesty in Council.

7. That I am advised that I have a right to appeal against the said judgment under section 70 (A) of the Court Ordinance as amended by Courts «Amendment» Act No. 17 of 1980 for the reasons that:—

(i) Because the learned Magistrates were wrong to have convicted the appellant under count I for the following reasons:-

(a) There is no evidence connecting the appellant with the breaking.

20 (b) Any of the four persons seen coming out of the shop carrying the linen rolls could have committed the breaking;

(c) The serious irregularities at the identification parade and the material contradictions in the evidence of P C Desmarais and Schellbeck did not warrant the learned Magistrates to accept as the whole truth the evidence of P C Desmarais.

(ii) Because the evidence adduced as to the identification of the appellant is so weak and unreliable that the learned Magistrates should have had reasonable doubts as to such identification.

30 (iii) Because the learned Magistrates were wrong to have convicted the appellant under count III as there is no evidence that the appellant had at any time in his possession the articles lost.

(iv) Because the inference of the appellant's guilt from the circumstantial evidence had other co-existing circumstances as to weaken the inference.

(v) Because, as regards count IV the learned Magistrates were wrong in accepting the evidence of the prosecution and rejecting the version of the appellant, in that for the reasons given above as regards count I and count III the appellant was justified in reporting the loss of the car.

40 (vi) Because the Learned Magistrates were wrong to have taken into account the certificates of previous conviction as such certificates relate to two different names

and there is no evidence that they are the names of one and the same person.

(vii) There is insufficient evidence on record to indicate common design in a concerted action.

(viii) The judgment does not discriminate as regards appellant's part in the case if as being an accomplice or a co-author.

(ix) The evidence on record does not necessarily lead to an inference of guilt on the part of the accused of the offence charged in the 'Information'.

10 (x) The principles of presumption of innocence as it is co-related to the burden of proof in a criminal case has not been considered conjunctively with the legal conferment of the benefit of the doubt upon the accused party.

(xi) That I therefore pray for an order (i) granting me leave to appeal in the matter to Her Majesty in Council and (ii) granting stay of execution of judgment until my appeal be disposed of finally.

9. That I pray accordingly.

Solemnly affirmed by the abovenamed deponent)  
at Chambers, Supreme Court House, Port- Louis).

(sd) Souriadoe  
Damree

this 13th of March, 1984)

Before me,

(sd) A. Stephen  
Chief Registrar, S. Court.

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Drawn up by me,

Interpreted by me.

(sd) G. Baguant

(sd) A. Stephen

Attorney-at-Law.

Chief Registrar, S. Court

13. 3. 84

Minutes  
of  
19.3.84

On Monday 19th March, 1984  
Before Hon. Sir C. I. Moollan, Chief Justice  
and  
Hon. E. Leung Shing, Ag. Judge.

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30 J. Panglose replaces S. Moorba, of counsel for applicant and moves in terms of the motion paper, he files together with a notice of motion and an affidavit in support thereof.

His Lordship remarks that the motion paper does not mention that the Supreme Court dismissed an appeal against the said judgment of the Intermediate Court.

D. Dabee appears for respondent and states that there is no objection to the motion.

Court reserves judgment.

sd. V. Koolomuth

for Master and Registrar.



Judgment IN THE SUPREME COURT OF MAURITIUS

In the matter of:

S. Damree

Applicant

v.

The Queen

Respondent

JUDGMENT

10 We grant the applicant leave to appeal against the judgment delivered by the Supreme Court on the 27th February, 1984, on the appeal against his conviction on the 29th July, 1983, by the Intermediate Court whereby he was found guilty on 3 counts: Count 1, that of Larceny Night Breaking; Count 3 Possession of articles obtained by means of misdemeanour and Count 4 Effecting public mischief and was sentenced to undergo eight years penal servitude under Count 1; 2 years imprisonment under Count 3 and 1 year under Count 4. (sentences to be concurrent) and to pay Rs. 150. as costs and to be under Police supervision for 2 years following his release from prison, upon condition--

20 (1) that the applicant shall, within six weeks from the date of this order, enter into good and sufficient security to the satisfaction of the Master and Registrar in the sum of Rs. 10,000. for the due prosecution of the appeal and the payment of all such costs as may become payable by the applicant in the event of his not obtaining an order granting him final leave to appeal, or of the appeal being dismissed for non-prosecution, or of the Judicial Committee of the Privy Council ordering the applicant to pay the costs of the appeal (as the case may be);

(2) that the said applicant shall procure the preparation of the record and despatch thereof to England within 90 days from this day.

sd. C. I. Moollan. Chief Justice.

sd. E. J. Leung Sing, Acting Judge.

22nd March, 1984