

~~ATT. GZ.~~

16, 1962

IN THE PRIVY COUNCIL

No. 18 of 1961

ON APPEAL
FROM THE FIJI COURT OF APPEAL

B E T W E E N

RAM BALI Appellant

- and -

THE QUEEN Respondent

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
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LONDON, W.C.1.

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IN THE PRIVY COUNCILNo. 18 of 1961

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ON APPEAL

FROM THE FIJI COURT OF APPEAL

B E T W E E N

RAM BALI Appellant

-- and --

THE QUEEN Respondent

RECORD OF PROCEEDINGS

No. 1

In the
Supreme Court
of Fiji

No. 1

10

INFORMATION

THE QUEEN v. RAM BALI s/o LUDUR)
AND ISHAQ ALI s/o ALI HUSSEIN,)
IN THE SUPREME COURT OF FIJI AT)
THE SESSIONS TO BE HOLDEN AT)
LAUTOKA ON THE 24TH DAY OF MAY,)
1960.)

No. 6 of 1960

Information.
5th May, 1960.

INFORMATION BY THE ATTORNEY-GENERAL

Ram Bali s/o Ludur and Ishaq Ali s/o Ali Hussein
are charged with the following offences:-

20

FIRST COUNT
STATEMENT OF OFFENCE

ATTEMPTED MURDER: contrary to section 239(a) of
the Penal Code.

PARTICULARS OF OFFENCE

Ram Bali s/o Ludur and Ishaq Ali s/o Ali Hussein,
on the 28th day of December, 1959, at Vitogo,
Lautoka in the Western Division attempted to murder
Subramani Pillay s/o Annamalalaia Pillay.

30

SECOND COUNT
STATEMENT OF OFFENCE

ATTEMPTED MURDER: contrary to section 239(a) of
the Penal Code.

In the
Supreme Court
of Fiji

No. 1

Information.
5th May, 1960
- continued.

PARTICULARS OF OFFENCE

Ram Bali s/o Ludur and Ishaq Ali s/o Ali Hussein,
on the 28th day of December, 1959, at Vitogo,
Lautoka, in the Western Division attempted to murder
Muthu Sami Pillay s/o Subarmani Pillay.

THIRD COUNT
STATEMENT OF OFFENCE

ATTEMPTED MURDER: Contrary to section 239(a) of
the Penal Code.

PARTICULARS OF OFFENCE

10

Ram Bali s/o Ludur and Ishaq Ali s/o Ali Hussein,
on the 28th day of December, 1959, at Vitogo,
Lautoka, in the Western Division, attempted to murder
Dharma Reddy s/o Mun Samy Reddy.

DATED the 5th day of May, 1960.

(Sgd.) JUSTIN LEWIS.
Solicitor-General.

No. 2

Court Notes.
24th May, 1960.

No. 2

COURT NOTES

IN THE SUPREME COURT OF FIJI

20

Criminal Jurisdiction

No. 6 of 1960

THE QUEEN	}	1st Count: ATTEMPTED
v.		MURDER Contrary to Section 239(a) of the Penal Code
1. RAM BALI	}	2nd Count: Ditto
2. ISHAQ ALI		3rd Count: Ditto

TUESDAY, 24th May, 1960, at 10.00 a.m.

Both accused present in custody.

K.A. Stuart for the Crown.

Mr. Koya (Sen.) for the first and second accused.

30

INFORMATION READ:

Interpreter
Mr. Nur Ali.

PLEA:

1st Accused :

1st Count	-	Not Guilty
2nd Count	-	Not Guilty
3rd Count	-	Not Guilty

2nd Accused :

1st Count	-	Not Guilty
2nd Count	-	Not Guilty
3rd Count	-	Not Guilty

In the
Supreme Court
of Fiji

No. 2

Court Notes.
24th May, 1960
- continued.

10 Case to stand down to later in Session - it
will be taken fourth in the list.

Both accused remanded in custody.

24.5.60

Hammett J.

LAUTOKA SESSIONS

First day of hearing.

21st June, 1960.

Before the Honourable Mr. Justice Hammett.

TUESDAY the 21st June, 1960 at 2.00 p.m.

Both accused present in custody.

E.A. Stuart for the Crown.

20 S.M. Koya for the Defence.

Assessors sworn :

1. C.P. O'Dowd s/Bible
2. J. Kharag Grant s/Bible (Indian)
3. Ilaisa Kurumavua s/Bible.

Information read and other duties briefly
explained to the assessors.

STUART opens for the Crown :

30 Outlines the 3 counts in the charge and
briefly the evidence in support disclosed by the
depositions.



In the
Supreme Court
of Fiji

PROSECUTION EVIDENCE

No. 3

Prosecution
Evidence

No. 3

EVIDENCE OF RAMA MUDALIAR

1ST W/P

RAMA MUDALIAR (m) s/Ramayan, Police Photographer,
stationed at Lautoka - in English.

Rama Mudaliar.
Examination.

On 11th January, 1960, I took some photographs at Vitogo at about midday on the instructions of Sub. Inspector Shiu Narayan. I produce the untouched negatives of these photographs. Tendered 7 negatives. No objection. Admitted collectively. Exhibit "A".

10

I made enlarged prints of these negatives. This is a set of them in a book. Tendered. No objection. Admitted Exhibit "B". (Photographs numbered B1 -- B6 -- in the book -- B1 is a panorama photo made up of two photographs joined.)

Exhibit B1 shows a group of houses on the right. They belong to Subramani Pillay at Vitogo. They are shown in detail in Photo B2.

20

I took Photo B1 standing on Vitogo Road looking towards Ba and the Ba Gap with my back to Lautoka. The main Vitogo Road runs across the photo, in the foreground parallel with the base of the photograph.

The road at the left leading to the back leads to Subramani Pillay's compound and houses this way (witness shows on photo). The Kings Road would be off the left of the photograph. The road on the bottom left of the photo goes inland. Photo B2 shows the group of houses belonging to Subramani Pillay. 4 houses are shown.

30

Photo B3 shows the same houses as in B2 taken from the rear. B4 shows a close up of the house on the extreme left of B2. B5 shows the door of the second house from the right in Photo B2. This door is shown at the front of the house in Photo B2. Photo B6 shows a close up of the door and house on the extreme right of B2. That door faces the front and the same direction as the door shown in Photo B5. It is behind the foliage in B2.

40

Cross-examination:

The two doors in Exhibit B5 and 6 face in the direction of Lautoka. The door in Photo B4 faces the Vitogo Road. There is sugar tramline on the far side of the road to Vitogo shown in Photo B1 - it runs parallel to it. At the back of Subramani's house is a river that is called the Vitogo River - it cannot be seen in this Photo B1.

Re-examination:

10 The door in Photo B4 is behind the tree foliage in front of the wood and iron house in Photo B2.
21.6.60 Hammett J.

In the
Supreme Court
of Fiji

Prosecution
Evidence

No. 3

Rama Mudaliar.

Cross-
examination.

Re-examination.

No. 4

No. 4

EVIDENCE OF SAPT RISHI

Sapt Rishi.

Examination.

2ND W/P.

Stuart indicates he is calling this witness out of his normal order in order that he can be released to return to Ba on duty.

20 SAPT RISHI (m) s/Ramayan, Det. Cpl. of Police
No.588, stationed at Ba - in English.

I know the date of the shooting at Subramani's house at Vitogo in this case. It was 28th December, 1959.

30 At 11.30 a.m. on 28th December, 1959 I saw the accused, Ishak Ali - the second accused identified - at Tuvu which is thirteen or fourteen miles from Lautoka on the King's Road towards Ba. I was in a bus coming to Lautoka from Ba. The second accused got into the bus and came and sat down beside me. I spoke to him. We spoke to one another. He said that he was staying at Tavua and that when he was at Tavua some two men who were staying at the house of a relative of Bal Krishna want to shoot him, so he had gone to Sigatoka. Bal Krishna is the son of Subramani Pillay of Vitogo.

I got off the bus at Vitogo and the accused stayed in it when it went on to Lautoka. The time then would have been about 10 or 5 to 12 noon.

In the
Supreme Court
of Fiji

Prosecution
Evidence

No. 4

Sapt Rishi.

Cross-
examination.

Cross-examination:

Q. Did he not say he was now staying at Tavua?
A. Yes, that's right. No, he didn't say he was thinking of going to Sigatoka but that he had gone to Sigatoka. There was no possibility of mistake in what he said.

Q. But since he said I am now staying at Tavua and that he had gone to Sigatoka - isn't that contradictory? A. No.

Q. Didn't you make a mistake - didn't he say he was going to go to Sigatoka - not that he had gone?
A. No he didn't say that.

10

He was simply on the bus - he didn't tell me where he was going that day. He said he had gone to Sigatoka some time before.

Two or three days after the Vitogo incident in this case I myself sent in a written report of this incident to the Police.

I know second accused personally and I knew that Vitogo was his real home. It was not until the accused told me then that he had gone away that I knew he had left Vitogo.

20

No Re-examination.

21.6.60.

Hammett J.

No. 5

No. 5

Subramaniam
Pillay.

Examination.

EVIDENCE OF SUBRAMANIAM PILLAY

3RD W/P
SUBRAMANIAM PILLAY (m) s/o Annamalai Pillay,
s/Ramayan, residing at Vitogo, Farmer - in Hindi.

I do not understand Hindi well - I usually speak in Tamil. I am 76 years old.

30

Court to witness: Just see how you can manage in Hindi and if you need help in Tamil please say so.

Witness indicates he thinks he can speak in Hindi.

WITNESS (Cont'd):

I went to farm in Vitogo in March, 1930. I

live on a piece of land which is a C.S.R. block. There are four houses on this land and a small kitchen. One is an old iron house. Two houses have thatched roofs and flattened out drum sides and one house with a thatched roof and bamboo plaited sides.

My four sons live with me in my compound.

10 I recognise my houses in this photograph (Exhibit B2). The iron house on the left is mine - where I stay. My sons live in the other houses there. Bal Subramani lives in that house - (points to the left hand house of the three thatched roof houses in B2.)

Muthusami Pillay lives in the next house - the middle one.

Muthu Kumar Sami Pillay lives in the house on the right in B.2.

Last year there was a shooting at my house - it was on 28th December, 1959.

20 The shooting occurred at about 9.00 o'clock at night. I was entering up a book inside my own house at the time and then I came outside to urinate. I saw the flash of a torch near the drain close to Budhu Prasad's house - which was about six chains away. I spoke to my son Bal Subramani who was inside his house and went inside my house and closed the door from inside. Then my dog barked. He was outside my house - there were four dogs there. I closed my book and put it away because I thought
30 someone was approaching. Directly in front of my door near the drain the dogs started to bark very loudly. The drain is about five or six paces from my door and to the right of my door. I opened my door and flashed my torch where I could see another torch being flashed and there I saw five men, three of whom had guns - they were on the other side of the drain. I didn't recognise any of these men. I saw their guns and got frightened and rushed in-
40 doors and closed the door. Just as I closed the door they started to fire. They did not hit me at that stage. I didn't count but I would say four or five shots were fired. I was inside the house. The firing ceased for a short while - then I called out to my wife's brother, Murgessar, and I flashed a torch and as I did I saw Ram Bali had the gun in his hand ready to fire and just then he did fire. That is Ram Bali - (witness points to first accused) I have known him ever since I have settled there. I don't know how old he is. He must be aged about
50 25 or 30.

In the
Supreme Court
of Fiji

Prosecution
Evidence

No. 5

Subramaniam
Pillay.

Examination
- continued.

In the
Supreme Court
of Fiji

Prosecution
Evidence

No. 5

Subramaniam
Billay.

Examination
- continued.

Murgessar was inside his house about five chains away from where I was - not in my compound - there is sugar cane between our houses.

Q. Then what happened? A. He fired and the shot hit the door and it ricocheted and hit me. It was Ram Bali who fired at me. I was hit on my chest up here (witness points to his left upper chest). I was shot there and the shot came out of the centre of my chest.

I was flashing my torch and he fired at the torch. That is my torch - it got marked by the shot. Tendered. No objection. Admitted Exhibit "C". This is the mark.

10

(Shown Court, Counsel and Assessors).

I recognise it as my torch by these other dents on the rim. These dents were made by those shots.

When the shot hit me, I closed the door and sat down inside my house. I then heard further sounds of gun fire - how many I don't know.

I stayed in my house for about an hour and then a van arrived. I heard it and opened the door and I saw it was the Police Van. The Police came and looked around and then took me to the hospital about an hour after I was shot at. I am guessing the time when I said the shooting took place at 9.00 p.m. that night.

20

Cross-
examination.

Cross-examination.

The door of my house faces the Vitogo Road.

Q. Where were you standing the second time you flashed your torch - just show us on Photo B4?

30

A. It is a double door, the part on the left was shut and that on the right - as you look at it was open. The torch would have been about there. (Witness indicates a level about on line with white circle on wall in Photo B4).

Yes, I did the same the first time I flashed the torch too.

Q. How long did you have the torch flashed on the first time? A. As long as it would take to flash the torch on and spot them and get inside and close the door. It was just then they started firing.

40

No, I wasn't outside the door - I was in the doorway - the door was partly opened and I peeped round it - the right door as you face Photo B4. The

left or other door was shut. I flashed my torch and called out to my dog, "Catch 'em" and put my head up and looked and spotted them and then shut my door.

In the
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of Fiji

Q. And all these three men shot at you? A. Yes.

Prosecution
Evidence

I would say that four or five shots were fired.

No. 5

Q. How do you know there were five people?

A. Because there were three with guns and two standing aside.

Subramaniam
Pillay.

10 Q. What area were these five people occupying?

A. They were so far away from me - (indicates a distance of about 10 paces) the other side of the drain. They were standing quite close to each other - side by side. They were all in a row.

Cross-
examination
- continued.

20 Yes, I just flashed my torch and I shut my door - I told my dog to catch them and as I closed my door the firing started. Yes, I say I saw five men and three of them with guns with one flash of my torch. Each one had the gun pointed towards my house. I would say they were over five paces away from me - Yes - as far as from here to the dock approximately.

No, I didn't notice their clothes and the first time I couldn't identify them either.

30 Q. And the firing went on for about 8 minutes you say? A. About 5 minutes but I am guessing the time. Yes, then there was a silence for about 5 minutes. I didn't notice that night whether any

shots actually came inside the house but the next day when I got home I found that some shots had gone through the roofing iron and the side of the house. No, no shots went right through the door. The door was hit when I flashed the torch later and saw Ram Bali and he fired. - then the door was hit.

40 Q. Where? A. There were a number of pellets around the area - witness shows on Exhibit B4. When I saw Ram Bali when I flashed my torch the second time he was standing in the same place as I had seen the five men standing the first time. Yes I was very frightened when the first shot was fired - in fact I was very frightened when I saw the gun.

Yes, I was still frightened when I flashed the torch the second time. I opened the door enough to put my head through to have a look and I held my torch down

In the
Supreme Court
of Fiji

Prosecution
Evidence

No. 5

Subramaniam
Pillay.

Cross-
examination
- continued.

low like this (witness demonstrates). I used my right hand for the torch, I didn't keep the torch on long - just as I did the first time.

Q. Did you notice the first accused's clothes that time? A. He had no shirt on - just black shorts - shorts not trousers.

Q. You were able to notice his trousers were black and not brown or white? A. Yes.

My door is one inch thick - it has boards at the back too - brace pieces.

10

No, the shots didn't pass through the wood of the door but ricocheted off the door and on to me and the torch light. Yes, at that time only my head and torch were showing outside the door. No, I don't say the shots went through the wood of the door.

Q. Did you put your chest out at any time that night during the shooting? A. No not while the firing was on. There was only one dent caused by that shooting on the torch (Exhibit C) - that is it (shown - it is on the rim holding the glass)

20

(Cross-examination not concluded)

Hearing adjourned at 4.45 p.m. to 8.45 a.m. on 22nd June, 1960.

Accused remanded in custody.

21.6.60.

Hammett J,

SECOND DAY:

Wednesday, 22nd June, 1960 at 8.45 a.m.

Both accused present in custody.

Assessors present.

Stuart for the Crown.

S.M. Koya for the Defence.

30

Prosecution (Cont'd).

3RD W/P (Cont'd)

Cross-examination (Cont'd):

Q. You remember telling Counsel for the Crown yesterday that the marks on the torch by which you identified it were caused by the shooting? A. Only one mark was caused to the torch by the shooting.

When I was asked how it was I could recognise it as my torch yesterday I said I recognised it by the mark made by a shot and also these other two marks.

40

Q. So you did not say that the shots made these two other marks? A. No I specifically pointed out one dent as a result of the shooting - and also pointed out the other dents by which I recognised it as my torch. Yes, I remember saying that I saw those five men in a line. I could not say how long that line was - the men were standing fairly close together. Yes, they were all men. They were not small children.

In the
Supreme Court
of Fiji

Prosecution
Evidence

No. 5

10 Immediately after the first volley of shots the dogs stopped barking.

Subramaniam
Pillay.

There are two windows in my house - one on each side. Yes, there is one window on the side of the house near the drain.

Cross-
examination
- continued.

Q. Why did you go to the same door to look out if you were frightened? Why did you not go to the window? A. Because I had seen the men in front of the house - not at the side of the house by the window.

20 Q. But why go to the door where you had had shots fired at you? A. It wouldn't have been a proper thing for me to do to go to the window and look at the side or the back of the house when I knew the men were at the front of the house.

It is only a small window and I could only look out at the side. There was no need or business for me to look at the side when I knew the men were in front of my house. I didn't think of any need to look through the window.

30 Q. Could you have seen the place where these people were standing by looking through your window? A. If I had looked through that window I would have been shot straight through my face.

If I looked through the window I would have been exposed from here to here (witness indicates upper part of his body) - but by looking round the door I only exposed a small part of my head at a time.

40 Q. So you considered all these dangers after the first shooting? A. At that time I stood still - I didn't think of anything at all.

Q. Are you related to Gopal Reddy - deceased?
A. Not a close relation - quite a distant relation.

In the
Supreme Court
of Fiji

Prosecution
Evidence

No. 5

Subramaniam
Pillay.

Cross-
examination
- continued.

Q. What relation would that be? A. He would be an in law to me through the marriage of my son. His sister's daughter is married to my son Bal Subramani.

Q. You are not on good terms with the first accused Ram Bali are you? A. I am not on enmity terms with anyone in Vitogo - I am not at enmity with Ram Bali.

Q. Ram Bali lives 20 or 30 chains from your house doesn't he? A. Yes -- about 20 chains along the road.

No, we were not on visiting terms prior to the shooting.

Q. Was he on good terms with your son? A. Whether they were friendly or on bad terms I don't know.

Q. You don't know of the trouble in Vitogo? A. Whenever there is trouble there I don't go in to it - I don't make enquiries about it and I know nothing about it.

An hour after the shooting the Police arrived. I do not know the ranks of Policemen - all I know is that a Policeman is a Policeman by his uniform.

Q. You are telling lies. A. I am not telling lies.

It is true that I used to run the Crown Theatre in Lautoka - that was for one year between 1940 and 1941. I come to Lautoka when I have business there - then I return home again.

Q. I put it to you you have known Inspector Walli Mohammed for a number of years: A. I have heard Walli Mohammed is an Inspector of Police but I have not spoken to him and I don't go in to all that business. The only person I know in the Police Force is Sarju - who came to take my statement.

Q. You mean to say you did talk to a Policeman that night? A. That night one Indian Policeman and one European Policeman spoke to me - at that time I was injured and I was feeling giddy and not well. No, I have heard of Inspector Walli Mohammed, but even so, if he and others were brought before me I wouldn't know which one was Inspector Walli.

Q. Do you remember in January last attending a meeting in Kisan Sangh Hall in Lautoka at which Superintendent Beatt and other Police Officers were present and you were present also? A. I remember

10

20

30

40

there was such a meeting but I was not present at it.

Q. Would it be true that you were not satisfied with the investigations made by the Police?

STUART: I must object to the whole line of this cross examination. I submit it is not relevant whether this witness was satisfied or dissatisfied with the Police investigations.

10 KOYA indicates that his defence will be that this witness brought pressure to bear upon the Police to charge these accused.

COURT: I still find it difficult to follow the direct relevance of this but on your assurance Mr. Koya that this cross-examination is relevant I will allow you to proceed.

WITNESS (Cont'd):

(Last question is repeated)

I was quite happy with the investigations made by the Police.

20 Q. Did you make, either yourself or by others, complaints to the superior officer of Inspector Walli Mohammed about his conduct of investigations into this case - you or your lawyer? A. I made no such complaint and if my lawyer did I know nothing about it. Yes, I remember Gopal Reddy being killed.

Q. Did you suspect anyone in that case?

30 STUART: I really must object to this question. Gopal Reddy died or was killed about 10 years ago - what has that got to do with this case. The only really relevant matter appears to me to be whether this witness did or did not make a complaint to the Police naming the accused right away, after the shooting - if that is what my learned friend is leading up to why does he not get on to the point right away if he wishes. I think Gopal Reddy's death has nothing whatever to do with this case and I object to this question as being irrelevant.

40 KOYA: The defence is attempting to prove that there is a grudge on the part of this witness and other members of his family against the first accused because they believe he killed Gopal Reddy - we maintain there is tension between the family of this witness and his sons and the brothers of Gopal Reddy on the one hand and Ram Bali and his family on the other hand.

In the
Supreme Court
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Prosecution
Evidence

No. 5

Subramaniam
Pillay.

Cross-
examination
- continued.

In the
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Prosecution
Evidence

No. 5

Subramaniam
Pillay.

Cross-
examination
- continued.

I intend to call evidence of this later to show grounds for disbelieving the witnesses for the prosecution but I cannot do that unless I first put my case to these witnesses.

COURT: I think this is a rather strange way of putting your defence to the witness so as to open up the way for the defence to call evidence on the matter. Is it not usual to put your defence openly to the Crown witnesses when cross examining them Mr. Koya? On what you say however I am of the opinion that the evidence of ill feeling between this witness and his family and the first accused can be and probably is quite relevant. I must therefore overrule the objection to the questions.

10

WITNESS (Cont'd):

Question is repeated.

I know nothing about that matter. I did not suspect anyone.

Q. Do you know of your own knowledge whether your sons or Gopal Reddy's family are blaming the first accused for the killing of Gopal Reddy?

20

A. I don't know that.

Q. You have never discussed that with any members of your family? A. I was at Sabeto when he died - I came back three days later and I did not go to his house. I didn't discuss it.

Q. It was in November, 1953 wasn't it? A. I don't know when it was - it was a long time ago.

Q. You were living at Vitogo then weren't you at that time? A. Yes, I was living there but whether I was at home or away that night I really couldn't now say.

30

Q. Now that night you handed your torch to the Police didn't you? A. No, it was the following week on the next Monday - that I handed my torch and clothing to Sarju the Policeman.

Q. Why didn't you give them to the Police on the night of the shooting? A. They didn't ask for it and I didn't give it to them.

Q. I put it to you that after Gopal Reddy's killing you and your family bore a grudge against the first accused and have told lies against them in this case for that reason. A. The person who is making such a statement is telling lies - I have no such thought in my mind.

40

Q. I put it to you that you know Inspector Walli Mohammed and you are telling lies today?

A. I am not telling lies. I remember giving evidence in the Court below in this matter. Yes, I was asked to identify the first accused Ram Bali.

Q. And you just vaguely looked in the direction of the dock and paused for a while - about five seconds before you identified him. Do you remember that?

10 A. The interpreter used a Hindustani word which I paused to try and understand what that word meant - that is why I hesitated - then I pointed out the accused.

Q. So you hesitated because you didn't know if he was sitting in Court? A. I was asked if Ram Bali was inside the Court - then I was asked - 'Is he here?' and I straight away answered, 'Yes he is here'.

20 Q. And you pointed out the accused? A. Yes, when I was asked I pointed to him and said, 'There he is sitting'.

Q. Did you hesitate for a short while? - for about five seconds. A. Well no - not for five seconds - only just a minute or two - then I pointed him out.

COURT: Do you mean a "moment or two"? and not a "minute or two"?

WITNESS; I just hesitated as long as it took for the interpreter to repeat 'Is he here?'

30 I pointed out the accused after a momentary hesitation because I didn't quite understand a Hindi word used by the Court Interpreter. Yes, I was asked twice and I answered twice.

Q. I put it to you that before identifying the accused in the Court below there was a distinct pause of about five seconds. A. No.

Q. Do you not use glasses? A. No.

Q. Never? A. Never.

Q. Not even for reading? A. No.

40 Q. And but for the torchlight you would not have recognised Ram Bali? A. That is so - I always keep a torch. I didn't know that since November, 1959 the first accused had been living away from Vitogo.

In the
Supreme Court
of Fiji

Prosecution
Evidence

No. 5

Subramaniam
Pillay.

Cross-
examination
- continued.

In the
Supreme Court
of Fiji

Prosecution
Evidence

No. 5

Subramaniam
Pillay.

Cross-
examination
- continued.

Re-examination.

Q. Who is this man? (Pointing to second accused).
A. He used to live there at Vitogo and to cut cane there - His name is Isak. I don't know if second accused stayed in Lautoka or Tavua but I didn't see him anywhere else. The last time I saw him he was cutting cane in Vitogo - I don't know where he went after that. No, I didn't see my son Mathu Sami Pillay outside his house when I went out to relieve myself that night. The first shot fired that night was fired at my house.

I called out to Margessar that night because I felt that if I called out to my sons they would be shot at.

10

Q. So you knew they were going to shoot that night?
A. Yes, they had come to do the shooting - they were not going to pick and choose.

Re-examination:

Yes I said three of these five men had guns.

Q. And you said that all of them fired at your house?
A. Yes.

Q. Did you see the flash of the guns as they fired?
A. No, when the gun was fired and I heard the report I was inside my house and I had just shut my door. Yes, in my examination in chief I said I had known Ram Bali a very long time. I got to know him a year after I went to Vitogo to live in 1930 and I have known him ever since.

20

When I shone my torch on these five men that night I just flashed it on them like this - (witness points as with a touch) - I just flashed my torch and saw these five men. I saw three of them had guns so I called out to my dogs "Catch them" and then went quickly indoors and shut the door.

30

22.6.60.

Hammett J.

STUART: I would like to interpose the medical evidence now so that the medical witness now waiting can be released.

No. 6

EVIDENCE OF INDUMATI SINBA

4TH W/P.

INDUMATI SINBA (f) s/Bible, Assistant Medical
Officer - stationed at Lautoka Government Hospital
- in English.

In the
Supreme Court
of Fiji

Prosecution
Evidence

No. 6

Indumati Sinba.
Examination.

I qualified in December, 1957, as an Assistant
Medical Practitioner. I have only had experience
in Fiji where I have served in hospitals since 1957.

10 On 28th December, 1959 I examined Subramani
Pillay at 11.30 p.m. That is the man (3rd W/P
identified) at Lautoka Hospital. He had a small
wound about 1/16th of an inch of diameter on the
left side of the chest, about three inches on the
left side of the sternum. There was no other wound.
There was a slight tenderness around the wound. It
was a penetrating wound. In my opinion this wound
was caused by a small penetrating object such as a
gunshot. There found to be a small object in the
20 wound the next day but I did not take the X-Ray
photograph. It was not removed. The wound was
only skin deep.

The pellet appeared to have come straight at
him. It was not a serious wound. At the same time
I saw Subramani's son, Muthu Sami - That is the man.
(Man from outside Court comes in and is identified).
I examined him too.

30 There were about 11 different wounds about $\frac{1}{8}$
to 1/16th in diameter scattered over the lateral or
outer side of the left thigh - and at the back -
extending down to the left knee.

These were all penetrating wounds too and were
also in my opinion gun shot wounds. Some of these
wounds were quite deep.

Close of Examination in Chief.

TO COURT: There was only an entry wound on
Subramani's chest. There was no exit wound.

Cross-examination:

Cross-
examination.

40 Q. Assuming a shot came from a distance of about 10
paces would you expect such a wound to result?
A. I would expect he was wounded at a greater dis-
tance. I have not had any previous experience of
examining people injured from gun shot wounds.. The
entry wounds of Muthu Sami were from the left hand
side.

No Re-examination.

In the
Supreme Court
of Fiji

Prosecution
Evidence

No. 6

Indumati Sinba.

- continued.

COURT to Koya: You have treated the witness as a ballistic expert in your first question, and I doubt if you could say she is.

KOYA: That is so.

COURT: But I wish to know nevertheless if her opinion - since she has given it - would have been the same if she had been asked the wound likely to be inflicted at that distance by an indirect or ricocheted shot.

WITNESS: I gave my opinion on the basis that the wound was caused by a direct shot. I would find it difficult to express any opinion on it if the wound was caused by a ricocheted shot.

10

Question by Koya arising from Court's questions.

It appeared that the direction of the shot came from the front.

Stuart asks leave to put a further question.

COURT: What is it?

STUART: I wish to know if this witness could express an opinion as to whether this was a wound caused by a direct shot or a ricocheted shot.

20

COURT: But this witness has already said that this is the first case of gun shot wounds she has examined.

Court hears Counsel.

COURT: I am afraid I cannot agree to that question being put.

Koya indicates to Court that he does not rely on the evidence of this witness as a ballistic expert and agrees that her opinion as to the distance at which the shot was fired is inadmissible as she is not an expert.

30

STUART: The next medical witness was here but has been called away to attend to an emergency case and will not be available for an hour.

No. 7

EVIDENCE OF MUTHU KUMAR SAMI PILLAY

5TH W/P

MUTHU KUMAR SAMI PILLAY (m) s/o Subramaniam Pillay
s/Ramayan, Residing at Vitogo - Tramline Worker -
in Hindi.

In the
Supreme Court
of Fiji

Prosecution
Evidence

No. 7

Muthu Kumar
Sami Pillay.

Examination.

10

The third w/p is my father. I live in a
separate house in the same compound as him. That
is my house - witness points to house on extreme
right of Exhibit B2.

On 28th December, 1959 there was some shoot-
ing at our houses. I was inside my house at the
time. I heard the report of a gun at about 9.00
p.m. I heard a total of 8 gunshots altogether.

Brief recess at 11.15 a.m.

On resumption at 11.25 a.m.

Accused, Counsel and Assessors.

20

STUART: Dr. Williams has just returned. He is in
rather great demand. Could I ask that his evidence
be interposed at this stage so that he can be re-
leased?

KOYA: No objection.

COURT: Very well then.

5th W/P stands down.

22.6.60

Hammett J.

No. 8

EVIDENCE OF HOWARD NICHOLSON WILLIAMS

6TH W/P

HOWARD NICHOLSON WILLIAMS (m) s/Bible, Registered
Medical Practitioner - stationed at Lautoka Govern-
ment Hospital - in English.

No. 8

Howard
Nicholson
Williams.

Examination.

30

I am M.B. and B.S. of Durham University - I
qualified in 1956.

I worked in hospital in U.K. for 21 months -
and since then I have been in the Medical Service
in Fiji.

In the
Supreme Court
of Fiji

Prosecution
Evidence

No. 8

Howard
Nicholson
Williams

Examination
- continued.

Cross-
examination

On 7th January, 1960, I examined Dharma Reddy (m) f/n Munsamy Reddy. I found a mark just above the left knee. In my opinion this mark could have been caused by a shot gun pellet. It had practically healed at the time. I had it X-rayed - there was no shot to be seen in the patient.

In my opinion that wound was at least a week old - it is difficult to be more definite than that. It was a minor injury.

I carried out my examination at 3.50 p.m.

10

Cross-examination:

I have examined gun shot wounds before. In the majority of cases it is possible to tell the direction from which a gun shot came.

Q. Would a wound $\frac{1}{8}$ " to $\frac{1}{16}$ " be likely to be caused to a man's chest if a gun was discharged at a distance of about so far - (indicates about 10 paces)

A. Yes, if the main charge passed outside his body and this was a single isolated shot.

COURT: Are you talking of a direct or a ricocheted shot Mr. Koya?

20

KOYA: Well to be a direct shot first then.

COURT: Are you not treating this witness as a ballistics expert? Is his opinion really admissible - Is this a medical matter or medical opinion?

KOYA: I will leave it. I must concede it is not really a medical matter.

COURT: Had you considered asking witness if he is in fact an expert, from personal use, in the use of shot guns? He might be qualified to give an opinion on that basis.

30

KOYA to witness:

Q. Have you any experience in the use of shot guns?

A. Not very much.

KOYA: I will leave the witness.

No re-examination.

22.6.60

Hammett J.

No. 9

EVIDENCE of MUTHU KUMAR SANI PILLAY
(Recalled)

In the
Supreme Court
of Fiji

5TH W/P. (Cont'd)

Prosecution
Evidence

Examination in Chief (Cont'd)

No. 9

Q. Now how did these shots come -- altogether or what? A. The 8 shots were fired at intervals sometimes short and sometimes longer. When the first shot was fired I was inside my house.

Muthu Kumar
Sani Pillay
(Recalled).

10 I opened the door of my house and stood to one side and flashed a torch outside towards the drain.

Examination.

Q. Why towards the drain. A. Because the sound of the shots came from that direction.

I saw Isak Ali. I have known him for a long time - 5 or 6 years - he has lived in the same settlement and cut cane there. He was by himself. He was standing on the far side of the drain. He was about a chain away from me. As I flashed the torch at him and saw him and switched the torch off a shot was fired at my direction which hit the door. It came from the direction in which he was standing. When that shot was fired I closed the door and stood still inside the house.

20

When the firing stopped for a while. Then I yelled out "Someone is here". There were one or two more shots towards the end - these came about 3 minutes after I had gone inside my house. The door of my house that I referred to is behind the plant in Photo B2 - it is on that side and faces in the same direction as the door of the next house.

30

I flashed my torch to this area - (witness shows on Photo B2 - witness indicates a position in front of a point about midway between his own house and the next house - towards the long grass and near the coconut trees in Exhibit B2). The point where I flashed my torch was between my house and my father's house. When I flashed my torch there I saw Isak Ali there.

40 Exhibit B6 is a photo of the door of my house. There are marks of shot on this door. (witness points them out). They were caused by the shot at my house that night. I was not wounded myself that night. Only one shot was fired at my house that

In the
Supreme Court
of Fiji

Prosecution
Evidence

No. 9

Mithu Kumar
Sani Pillay
(Recalled).

Examination
- continued.

Cross-
examination.

night. The other shots I heard that night came from the same direction. That is Isak Ali - (witness points to the second accused). When I flashed my torch I saw the second accused. I didn't see anyone else at the time in my compound. I didn't see anything in the second accused's hand when I saw him.

Cross-examination:

In the lower court you said you saw another person with second accused when you shone your torchlight didn't you? A. At a glance it appeared as if there was another person but I am not sure - I can't definitely state if there was or not.

10

Q. But today you have said you didn't see anyone else haven't you? A. Yes.

Q. And as soon as I remind you of what you said in the lower court you said there was someone else there? Don't you? A. Yes.

Q. In the lower court you said, "I flashed my torch and saw the second accused and another person with him but you could not recognise him" didn't you? A. I said I couldn't be sure if there was another person there or not.

20

Q. You did not say what I read out? A. No. I said it looked like the form of a human person but I couldn't make it out definitely.

KOYA asks for the witness's deposition in court below to be put in - it is shown him and he identifies his signature.

Put in Exhibit "D" Read.

COURT to Assessors: You may accept or reject what this witness says in his evidence before you - you must not however substitute for it what he said on a previous occasion. You may only use that as one means of deciding whether to believe or disbelieve his evidence now.

30

WITNESS (cont'd)

I shone my torch and I saw another form. I cannot say it was another man or not. I flashed my torch and saw accused.

Q. Did you say in the lower court that you saw another man or not? Answer Yes or No. A. No.

40

KOYA asks that the place where witness says he saw second accused be marked.

COURT asks witness to mark the position on Exhibit B2 with a cross and he does so - in ink.

Cross-examination (cont'd)

This spot would be slightly at an angle towards the right - not directly opposite my house but at an angle of about 45 degrees. Yes, it would be opposite the door of Bal Subramani's house - the third house from the right in Exhibit B2.

10

Q. And I suppose you could see what second accused was wearing that night? A. I did. He was wearing shorts - khaki-ish in colour - no not black. He was not wearing a shirt. I didn't see anything on him from the waist up. I saw he had nothing in his hands. He was standing as far from me as that W.C. is from the witness box (about 20 - 25 yards).

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of Fiji

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Evidence

No. 9

Muthu Kumar
Sani Pillay
(Recalled).

Examination
- continued.

Cross-
examination.

Q. Was there an interval after the first lot of shots were fired? A. No, not a decided interval - it was just the normal interval between shots.

20

Q. Was there an interval of 5 minutes between the firing of the first lot of shots? A. No, but I didn't have a timepiece and I didn't time the actual firing. Yes, I was frightened.

Q. Why did you open your door and flash your torch light in their direction then? A. I was frightened but I wanted to know in what direction and who was firing these shots - that is why I opened my door. Yes, I made a statement to the Police on this matter on 29th December, 1959.

30

Q. And didn't you then say you saw two men outside the house? A. That is because I was sure of one person and the other person appeared to me to be in the form of a person and so I said "Two persons".

Q. Now I want to read to you your statement to the Police, just have a look at it and see if you recognise it. A. Yes, that is my statement.

Statement read by Koya to witness - as it is read witness agrees with it sentence by sentence until it comes towards the top of second page - then

40

WITNESS: No, I did not tell the Police that I was standing outside my house when the first shot, in

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Evidence

No. 9

Nuthu Kumar
Sani Pillay
(Recalled).

Cross-
examination.
- continued.

the direction of the tin house was fired - I was inside my house when that shot was fired. It is not right that I saw where the second was fired - I was inside my house at the time. "How could I say that?" I had told the Police long before I made this statement that I had recognised Ishak, the second accused. I agree I told the Police that second accused was wearing clothes which appeared to be khaki - I agree I told the Police the physique of the man - he is a big man - the Police asked me about this.

10

Q. Did you then say the other man was wearing khaki clothes? A. No, I did not.

Q. And that he was a thin dark looking boy who often rides in Bechu's car? A. No.

Q. And that he was known to you as Latchmi Narayan? A. No.

Q. And that he is also called "Chief"? A. No.

Q. And that he was a smaller man than Ishak?
A. I said I saw something that resembled a person next to Ishak and that that person was smaller than Ishak. I agree I said I saw no one else. I did not say I saw two men but one man and an object that looked like a man.

20

I did not say that more shots were fired and that I then closed my door. I closed my door at the time of the first shot - I was already inside my house.

I agree I said I opened the door a little later, to let the sound out and that I then yelled out to raise the alarm.

30

I deny I said "then more shots were fired" - I said "then one more shot was fired".

I agree I said that 8 shots were fired and that I didn't come out of my house or see my father and brother were injured until the Police arrived.

I deny I told the Police that I recognised Latchmi Narayan and that I was sure he was the man.

Statement put in Exhibit "E" (It has been read - Court again warns the assessors not to substitute it for the evidence of this witness).

40

WITNESS (cont'd)

I opened my door twice that night during the shooting. Once after 2 or 3 shots had been fired and the second occasion when I opened it just a

little to call out. Yes, I then opened it when the Police came in their Land Rover. I only flashed my torch once that night - that was when the shots were fired.

My first statement to the Police was made at 11.15 a.m. on 29.12.59. I made another statement to the Police on 5th January 1960 at about 4.00 p.m. Yes, this is my statement. (Witness identifies a statement handed him)

10 I agree that statement was read over to me and I agreed it was correct and signed it. Sgt. Shiu Narayan took it.

(Statement marked "F" for identification)

I deny I told the Police then that I flashed my torch twice during the shooting - I did flash my torch once when the dogs were barking and once during the firing of the shots.

KOYA asks that the statement be put in.

Court adjourns at 1.00 to 2.15 p.m.

20 22.5.60. Hammett J.

On resumption at 2.15 p.m.
Accused, assessors and Counsel.

Cross-examination (Cont'd)

(Koya now takes the witness through the statement he has asked to be put in in evidence sentence by sentence.)

WITNESS:

30 I did say I saw two persons but that I only recognised one. I said I recognised one man Ishak - I did not say I recognised the other.

Q. Did you say you recognised Latchmi Narayan?

A. I was a bit excited and worried and perhaps I did mention the name of Latchmi Narayan.

Yes, I agree that statement was made 7 days after the shooting. I say I was still excited then. The name Latchmi Narayan slipped out.

Q. But you said you were quite sure of it and you recognised him. A. Because of the condition of my mind I said that.

40 Ishak was wearing khaki shorts - the other person whom I saw at a glance appeared to be wearing

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Evidence

No. 9

Muthu Kumar
Sani Pillay
(Recalled).

Cross-
examination
- continued.

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Supreme Court
of Fiji

Prosecution
Evidence

No. 9

Muthu Kumar
Sani Pillay
(Recalled).

Cross-
examination
- continued.

black shorts - I can't say that what is recorded in my statement is wrong. Perhaps I made a mistake then. The first person I saw did not have a shirt on. I said there was nothing in the hands of the first person.

Statement is put in in evidence as Exhibit "F".

Cross-examination (Cont'd)

Yes, when I shone my torch I saw a torch in the direction of my father's house. It would either have been from his house or from my younger brother's house. No, I didn't see anyone then. 10

Q. Was that torch shone in the direction of the drain near your father's house? A. Yes. I didn't see the person flashing the other torch but I did when I moved my torch see Ishak the second accused. I also saw another form which seemed to me to be the form of a person but that was all. No, I didn't see anyone else. The place where second accused was standing was nearer to my father's house than to mine. 20

Q. How close to your father's house? A. Round about 16 or 17 paces I should say.

Q. As close as from the witness box to the dock? A. No from here to about the corner of the Court over there.

At the time I saw him - the second accused - he did not have anything in his hand. The first shot was fired when I was inside my house - it would have been the 3rd and 4th shots by the time I shone my torch. 30

Q. Did you see Ram Bali then? A. No, I saw the second accused only. I didn't hear anything from my father's house when I flashed my torch then. It would be true that I did go to the Police Station in January to see if I could identify Latchmi Narayan at an identification parade but I could not identify him.

Q. That was on 23rd January 1960 wasn't it? A. Yes.

Q. And until then it was your story that Latchmi Narayan was with the second accused wasn't it? 40 A. Yes.

I came to know later, that Latchmi Narayan - who is also known as "Chief" was in fact in the identification parade on 23.1.60.

Q. Why did you mention Latchmi Narayan's name to the Police? A. I was very frightened at the time and I made a mistake in mentioning his name to the Police - it was just a slip of the tongue. Yes, I knew he came from Tuvu. Yes, I knew Ram Bali had been staying at Tuvu since early that month of December.

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Evidence

No. 9

Q. And you knew Ram Bali had been staying in Bechu's house at Tuvu? A. Yes.

10 Q. Is there any trouble between yourself and Ishak?
A. No.

Muthu Kumar
Sani Pillay
(Recalled).

Nor between myself and first accused.

Cross-
examination
- continued.

Q. Why should second accused come to your house and do this shooting? A. I can't give any reason.

There is trouble between two factions - There are my brothers and others on one side and Ram Bali and others on the other side but I am absolutely out of all that. I live separately and I have no trouble with them.

20 I know Inspector Walli Mohammed. I was not present at a meeting in Lautoka between Superintendent Beat, Inspector Walli Mohammed and others at the Kisan Sangh Hall - I heard of that meeting but I was not present at it.

Q. I put it to you that since Gopal Reddy's death you and your family have held a grudge against Ram Bali? A. No Sir.

Q. Do you remember Ram Bali being assaulted some time last year with a cane knife? A. Yes.

30 Yes, second accused was working in the cane fields at Vitogo then.

I wasn't there and so I do not know if second accused helped first accused to hospital. I agree that I consider second accused to be on first accused's side in the trouble with my brothers.

Q. I put it to you that you are implicating second accused because he is on first accused's side in this faction and that you are telling lies?

A. No.

40 Re-examination:

Re-examination.

I made my first statement to the Police on 29th December, 1959. The events of this shooting were then fresh in my memory. Yes, the statement was read back to me.

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No. 9

Muthu Kumar
Sani Pillay
(Recalled).

Re-examination
- continued.

Q. Why did you allow the reference to Latchmi Narayan in that statement to go unchallenged?
A. It didn't occur to me at the time. Yes, I made a further statement on the 5th January. I agree Latchmi Narayan's name was again mentioned in that statement.

Q. Was that particular statement referring to Latchmi Narayan true or not? A. It was not true.

Q. Why did you make it then? A. It wasn't deliberate - it was a slip of the tongue. I made those slips of the tongue because I was very excited.

10

Q. You said you made a mistake in naming him - what do you mean by that? It is open to two constructions - one that you were lying and one that you mistook the identity of that man. A. Yes.

Q. Well which is it?

WITNESS: May I have the question again please?

COURT: I do not think the witness should be led on this matter.

STUART: I will leave the witness.

20

22.6.60

Hammett J.

No. 10

No. 10

Muthu Sami
Pillay.

Examination.

EVIDENCE of MUTHU SAMI PILLAY

7TH W/P
MUTHU SAMI PILLAY (m) s/o Subramaniam Pillay s/
Ramayan - Residing at Vitogo, Farmer, in Hindi.
(This is the man identified by A.M.O. Simba the 4th
W/P)

I am a brother of the 5th W/P Muthu Kumar Sami Pillay. Subramaniam Pillay is my father. I live in the same compound as my father. This is my house - (witness points to second house from the right in Exhibit B2).

30

On 28th December, 1959, there was some shooting in our compound at about 9.00 p.m. When it began I was inside my house. Dharma Reddy and a lad aged 16 Subramani were in there with me. Dharma Reddy is my sister's husband. Subramani is my maternal uncle's son.

After having a meal that evening Dharma Reddy, Subramani and I went into my house to sleep. We were sitting down and chatting for quite some time after our meal. Before going to sleep, I wanted to go outside to urinate. When I got to the door of my house, it was still shut, I heard my dogs bark furiously and then I heard a gun shot. Just one.

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Q. From which direction? A. Westwards.

No. 10

10 Q. Just show on Exhibit B2. A. From here -
(points to position in front and to the left slightly of witness's house as he would be when he stood at his front door). The sound was more from the direction of my father's house than of my brother's house.

Muthu Sami
Pillay.

Examination
- continued.

20 I opened the door sufficient to allow my head and shoulders to go through and I put my head and shoulders through and my right arm and I flashed a torchlight. When I flashed my torch I saw the second accused - Ishak (witness points to second accused) I saw he had a gun in his hand. He was at a spot on the far side of the drain there within the beam of my light. He was so far away from me (pointing to Court door) - about 15 to 20 paces. There were 5 or 6 others with him whom I could not recognise. I know the second accused. He used to live in our settlement and cut cane with us. I have known him for 2 or 3 years. He had a bare top - from the waist up - (indicated) but he was wearing blackish shorts.

30 When I saw the second accused, I got very excited. I turned my torch out and as I turned towards my right in order to shut the door I was shot in the left leg. The shot came from the direction where I had seen second accused. I didn't see the actual flash of a gun. I only surmise it was from second accused because I saw a gun in his hand. I didn't see anything in the hands of the other men.

40 I spoke to the people inside my house. When I heard further shots I lay flat on the ground - the floor of the house - face down. I had left the door open about 6 inches. There were more shots fired but not at my house - only one was fired at my house. I did not go out of my house until the Police arrived. The shooting took place at about 9.00 p.m. I place the time at 9.00 p.m. as a result of what Dharma Reddy said to me. He had a watch. I found out later that he was wounded also. There were 2 or 3 minutes between the first and second shots.

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Prosecution
Evidence

No. 10

Muthu Sami
Pillay.

Cross-
examination.

Cross-examination:

At the time I was shot the door was open a little.

Q. When you were shot you were outside the house with the door shut. A. No.

Q. Are you quite sure? A. Yes.

Q. Which was the first shot fired that night in your father's compound? A. The one fired in the direction of my father's house.

Q. Not the one that hit you in the leg? A. No. 10

Q. Are you quite sure about that? A. Quite sure.

Q. In the lower court you said you were injured by the first shot that night didn't you? A. That was the second shot - not the first shot. I didn't say that in the lower court. I am sure. I was hit by the second shot not the first shot which was fired at about 9.00 p.m. Two shots were fired then one after the other. I did not say in the lower court that the first shot was fired sharp at 9.00 p.m. 20

KOYA asks for depositions to be put in.

COURT: Are there no more questions arising on it?

KOYA: One or two.

COURT: I suggest you put them all and then the depositions could go in and be read.

Crossexamination (Cont'd)

Q. How long was it between the first and the last shots that were fired? A. An hour and a half. That includes a ten minute interval in the firing.

Q. So you say the firing ended at about 10.30 p.m.? A. Yes Sir - it started round about 9.00 p.m. and including the 10 minute silence it went on until about 10.30 p.m. 30

Q. Why did you go outside the house when the first shot had been fired? A. I did not go outside after the first shot was fired - I just opened the door and peeped out to see who was doing the shooting.

Witness's deposition in court below is put in Exhibit "G" and read - after witness has identified his signature.

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(Court reminds assessors not to substitute this for witness's evidence on lines of previous warning.)

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10 I did not go out and look in the direction of the drain. I did not at any time go and look in the direction of the drain. I didn't go outside my house that night during the shooting.

Muthu Sami
Pillay.

Q. Before or after? A. No.

Cross-
examination.
- continued.

Q. The shot fired at your house - did it go through your door or not? A. I have not noticed.

Q. How did you receive that injury then?

20 A. I shone my torch out of the door and I saw second accused and a gun in his hand. The door was partly opened - As I turned round like this (witness demonstrates) to shut the door the gun was fired and I was hit through the opening of the door. I had only opened it about 6 inches - just sufficient to allow my head and shoulders to go through.

All the injuries were here, on the left side, at the side.

30 Q. Did you notice if the 5 or 6 people you saw were women or children or men? A. Men - but I couldn't recognise any of them. They were standing on the left of Ishak Ali - the second accused. They were in a close group but slightly scattered - in an area so big - (indicates an area in Court about 7 or 8 paces across and 5 or 6 deep). I didn't see a torch flashed from my father's house at the time I was shot nor from any other house.

I did not see my father go out of his house before the shooting.

Q. Would it be true that your father sometimes uses glasses to read? A. He did previously but not now - that was 4 or 5 years ago. He has not used glasses for 4 or 5 years.

40 Q. Would you agree that you and your father and family belong to one faction in Vitogo and Ram Bali to another faction there? A. I don't know that.

Q. Your brother Bal Subramani is directly in it, isn't he? A. I don't know. I'm not in it.

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Supreme Court
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Prosecution
Evidence

No. 10

Muthu Sami
Pillay.

Cross-
examination
- continued

There is no enmity between myself and Ram Bali. I am not on bad terms with the second accused or anyone else.

Q. Why should second accused come to your house that night and do this shooting then? A. I can't give you any reason - there is no enmity between us.

I did not attend any meeting in the Kisan Sangh Hall in Lautoka where Police Officers were present over this matter.

I did not find out that night if any shots had been fired at Bal Subramani's house. I saw no signs of any shots on the door of that house (third from right in Exhibit B2). During December last the second accused was cutting sugar at Vitogo with a gang of cane cutters. I was in that gang cutting cane with him. I saw him cutting cane there last in Vitogo a week after this shooting. He came to collect his pay, Yes, that would be in January last.

10

Q. Are you quite sure of that? A. Yes. No mistake I am sure.

20

Q. I put it to you that from October, 1959 onwards he did not live in Vitogo but had moved to Tavua. A. He did not go to Tavua until a week after this shooting. From October, 1959 up to January 1960 the second accused was cutting cane in Vitogo. I don't remember when first accused was cut with a cane knife last year. I was in the gang that day but I did not actually see who hit him with a knife.

Q. I put it to you you are fabricating this story about the second accused? A. It is true.

30

Re-examination. Re-examination:

Yes, I gave my deposition in the Magistrates Court in this case on 15th February last. Yes, that was over four months ago.

Q. Can you say whether or not you might be mistaken in your identification of the second accused that night? A. No mistake - it was Ishak.

Q. You are quite definite on that? A. Yes.

22. 6. 60.

Hammett J.

40

TO COURT: My father wore glasses for a long time prior to the time 4 or 5 years ago when he stopped wearing them.

TO KOYA: I can remember it from when I was a child - he only wore them for reading.

No further questions arising out of Court's question.

No. 11

EVIDENCE OF DHARMA REDDYIn the
Supreme Court
of Fiji

8TH W/P

DHARMA REDDY (m) s/o Munsami Reddy s/Ramayan.
Residing at Vuniasi, Nadi, Farmer, - in Hindi.Prosecution
Evidence

No. 11

Dharma Reddy.

Examination.

I am related to the last witness. On 28th December, 1959 I was at his house when there was some shooting. I was injured by a shot on my left leg - just above the knee. At the time I was inside the house. We were lying on the floor. There were 3 of us there - Muthu Sami Pillay, Subramani and I.

Q. Why were you on the floor? A. For fright. We heard shots being fired. I didn't actually see any shots being fired. The sound of gun firing came from across the drain near the house. I heard one shot before the shot that hit me. Only one shot hit our house. Muthu Sami was injured by the shot that evening. At the time he was inside the house - the same shot hit me and him. This shooting took place at about 9.00 p.m. I am just guessing the time. After the shooting I remained lying on the ground until the Police came. I did look at my watch that night but because of the perturbed condition of my mind I couldn't fix the time. The firing was all over in about 10 minutes.

Close of examination in chief.

Hearing adjourned at 4.45 p.m. to 8.45 a.m. on 23.6.60.

22.6.60

Hammett J.

THIRD DAY

Thursday 23rd June, 1960, at 8.45 a.m.

Both Accused present in custody.

Assessors present.

Stuart for the Crown.

S.M. Koya for the Defence.

8TH W/P (Cont'd)

Cross-examination:Cross-
examination.

You said you were lying on the floor when you were hit? A. It is a long time ago and I wouldn't like to be too sure. It is true I said I was lying on the floor when I was hit. What I do remember is that I was lying on the floor when 3 or 4 shots were fired. I was not in fact on the floor

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Evidence

No. 11

Dharma Reddy.

Cross-
examination
-- continued.

when I was hit. Muthu Sami Pillay was inside the house when I was hit. The door was closed.

Q. Completely closed? A. I don't remember clearly whether it was absolutely shut. He was just ahead of me - right close to me.

Q. What was he doing then? A. He opened the door and flashed the torch and just as he was shutting the door there was a shot and he was hit. That door opens inward. I couldn't say if the extent to which it was opened was six inches. Yes, his body was behind the door. 10

Q. And the left side of his body? Immediately before the shooting? A. Yes. After flashing the torch he pushed the door. Before going to bed that night Muthu Sami Pillay came out of the house - this was just prior to the shooting. He had been outside and had just come inside and then he was shot. That was 2 or 3 minutes before the shooting. I don't remember whether I heard shots fired whilst M.S. Pillay was outside the house. When he returned, he pushed the door but I don't know whether he shut it or not. Just as he had pushed the door and turned he was fired at. 20

Q. So he was outside the door before the shooting -- then he returned and pushed the door and as he did so the shot fired? A. Yes.

I saw him whilst he was outside the house - he had his torch with him. Dogs were barking and he was flashing his torch light. After he came inside the house he again flashed his torch. Yes, I looked at my watch after all the firing had finished - the time then was 9.00 p.m. Yes, there were two lots of shooting there that night. The interval between those groups of firing was one minute. The whole firing continued for 10 minutes - then it stopped - then one last shot was fired about 1 minute later. 30

My clock was working all right that night. Yes, I heard the dogs bark before the shooting began. They barked about 6 or 7 minutes before the first shot was fired. When the shot that hit me was fired I was just behind him. I was also behind him when he shone his torch outside. I don't remember very well whether I heard any noise from Subramanian's house that night. I was there when the Police came. I know Inspector now A.S.P. Walli Mohammed. I told him that night that I had been shot. 40

Q. What time was that? A. I don't know.

I don't remember Muthu Sami Pillay asking me to look at my watch after the shooting that night.

Close of Cross-examination.

TO COURT: The Police arrived 1½ to 2 hours after the last shot was fired. When M.S. Pillay went outside the house just before the shooting he went there to relieve himself. He only went about 2 paces out of the house.

10 No questions by Koya arising out of Court's questions.

No re-examination.

23.6.60

Hamnett J.

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Prosecution
Evidence

No. 11

Dharma Reddy.

Cross-
examination
- continued.

No. 12

No. 12

EVIDENCE OF ATMARAM MAHARAJ

Atmaram
Maharaj.

Examination.

9TH W/P

ATMARAM MAHARAJ (m) s/o Ram Chandar Maharaj, s/
Ramayan, residing at Vitogo, Farmer - in Hindustani.

10 I remember that night about 6 months ago when there was some shooting at Subramaniam Pillay's house. It was 28th December, 1959.

20 I heard the gun shot that night. It would have been at about 9.00 p.m. At the time I was at the C.S.R. Lines at Vitogo at the house of Lalla. These lines are about 25 to 30 chains from Subramaniam Pillay's house. The shots I heard came from the direction of his house. When I heard the first shot I thought it came from the direction of my house and so I went and opened the door in the direction of my house - my house was 4 or 5 chains away from Lalla's house but in the opposite direction from that of S. Pillay's house. Then Lalla opened the door that opens in the direction of Subramaniam's house and called me to his side and said something. I saw the flash of guns - I saw 5 flashes - it appeared to me as if it was right at Subramaniam's house. After 8 shots had been fired I heard Subramaniam call out to Margessar and I heard the woman folk crying out and weeping. I spoke to Lalla and we
30 conversed together and we then left his house to go to Subramaniam's house.

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of Fiji

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Evidence

No. 12

Atmaram
Maharaj.

Examination
- continued.

We followed a track between the sugar cane fields - through the sugar cane - not along the tram line. That track leads direct to Ram Sewak's house if you turn right at the track that crosses it. Just as we were about to turn the corner Lalla saw the flash of a torch and drew my attention to it. We then hid in the guava bush there.

Q. Why? A. Because there were a few people approaching us along the same track. The guava bush was only 2 or 3 paces away from the track. When I first saw their torch light we were 15 to 18 paces from them at the outside. The people coming towards us came opposite us and as they reached those cross-roads flashed their torch and it was then that I saw there were four of them. The first man I recognised. He had a gun in his right hand. Behind him was another man who had a gun in his left hand and a torch in his right. The third man had a gun in his right hand.

10

Q. You say you recognised one man - who was that?

20

A. Ram Bali - he was the first man. I didn't recognise any of the others.

Q. Now you said you saw four men I believe?

A. The fourth man, I did not see properly - he was the fourth in the row of four men walking one behind the other.

These men were coming from the tramline towards the river. Subramaniam's house was in the direction of these tramlines. The track these men took would take them past Ram Sewak's house.

30

After they had passed me I ran back home.

Q. Why? A. I was frightened.

Close of examination-in-chief.

TO COURT: The direction from which these men came could have come from the direction of Subramaniam's house or the tramlines.

That is Ram Bali - (witness points to first accused). I have known him ever since I was a child. I am now 25 years of age.

Cross-
examination.

Cross-examination:

40

Yes, I thought that shooting was a serious matter.

Q. Why didn't you go to the Police that night - straight away? A. I was going to Subramaniam's house.

Q. You are an ex-constable - why didn't you go to the Police straight away? A. I thought it better to go to Subramaniam's house, not to the Police first, to see what had happened. I went to Subramaniam's house later that night at about midnight - I first went home and then I went back to Subramaniam's house - I went to see if anyone had been injured.

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10 Q. You could have gone to the tramlines and then to the Police Station couldn't you? A. I could have done so but I was very frightened.

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Maharaj.

Q. Ram Bali was no friend of yours then was he?
A. He never has been my friend.

Cross-
examination
- continued.

Q. A few weeks before there had been shooting at S.P. Sharma's house hadn't there? A. Yes.

Q. And your brother Vishnu was injured I understand?
A. Yes.

Q. Did you then help in reporting the matter to the Police?

20 COURT: Please make your question a little clearer.

Q. Did you come and report that matter to the Police the same night? A. No, that night I was not at home - I was at Vakabuli. I did not see Inspector Walli Mohammed at Subramaniam's house that night. He was not there then. A Fijian P.C. was there. I was not frightened then. I was not frightened of being shot at.

30 Q. What were you frightened of? A. I was frightened of Ram Bali and that if I gave evidence he would come and shoot me.

Q. Are you suggesting that if you had told the Police about this Ram Bali would come to know of it and would come and shoot you? A. Yes I am.

Q. And how would Ram Bali come to know of it?
A. He would during the investigations and as I live in the same place at Vitogo, I was afraid he would come and try to kill me too.

40 Q. But why not tell the Police privately that night?
A. That night there was only one policeman there and I couldn't summon up enough courage to tell him about it.

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Maharaj.

Cross-
examination
- continued.

Q. Why didn't you tell Inspector Walli Mohammed the next day? A. I was there at Subramaniam's house until 6.00 a.m. the next morning - up till then I didn't see Inspector Walli Mohammed. I did not tell Subramaniam Pillay and the people who had been shot that night that I had seen Ram Bali - I did however tell my brothers that night, Satdeo and Vishnu Deo.

Q. Why did you not tell Subramaniam? A. Because I did not want to tell anyone.

Q. Why? A. For the reason I have already told you - I was very frightened and I couldn't pluck up enough courage to tell them then. 10

I was in the Police Force for 3 years. I spent most of that time in Suva. I left the Police Force at the end of 1955 and since then I have been living at Vitogo and working on my farm apart from short periods when I have lived and worked in Lautoka.

Q. Don't you belong to the faction that is against Ram Bali? A. What me?

Q. Yes you. A. No. 20

Q. You swear on oath you do not belong to the faction that is against Ram Bali? A. I do not belong to any gang. Yes, I remember when Ram Bali was assaulted last year.

Q. At that time was there a feud going on in Vitogo or not? A. Yes.

Q. Would it be true that you, your brother Vishnu, and Sukh Deo grew beards until Ram Bali was assaulted last year? A. No, not at that time. I had previously on several occasions grown a beard. I had one that grew right down to my navel, near my waist. I did not come to town the day after this shooting at Subramaniam's house. 30

Q. Did you see the Police Van the next day?

STUART objects to the question.

COURT: It seems that the defence is challenging the witness's testimony and credibility on account of his delay in reporting this matter. They are entitled to do so and this question is to some extent relevant but I do wish you would come to your point Mr. Koya a little quicker. 40

KOYA: Very well my Lord I will ask him.

Q. to witness:

When did you first make your report to the Police? A. When Sgt. Shiu Narayan came to me one Wednesday afternoon - I don't remember the date.

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Q. Would it be 7th January, 1960? A. I don't remember the date - I remember I met Sgt. Shiu Narayan on the Wednesday and I gave my statement to him the next day.

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10 (Court records that Stuart hands Koya this witness's statement so that he can see the date when he puts these questions about the date to the witness)

Atmaram
Maharaj.

Cross-
examination
- continued.

WITNESS (cont'd)

No, I was not at any meeting in Kisan Sangh Hall with the Police about this matter.

20 Q. Were you not frightened when you made your statement to Sgt. Shiu Narayan? A. I made that statement after the Superintendent of Police in this area, Mr. Beatt had promised us that he would give us some Policemen in Vitogo.

Q. But were you not frightened? A. No, not then, because of Superintendent Beatt's promise.

Q. So Superintendent Beatt saw you on the Thursday - the 7th January? A. Yes.

I had seen Sgt. Shiu Narayan the previous day.

30 Q. And you had told him the previous day about what you knew. A. He questioned me and from his questions he clearly knew and someone had told him what I knew and so I told him. I was not frightened then because I had not made any statement in writing. It was only on Sgt. Shiu Narayan's promise that Superintendent Beatt would meet me the next morning that I agreed to tell him what I knew.

Q. Did you think of coming to Inspector Walli Mohammed or Superintendent Beatt and telling them that you had some vital information for them and that if they would give you Police protection you would disclose it? A. No.

Q. Why not?

40 STUART: I really must object to such a question. He can ask him why he did not do something but to ask him why he did not think of doing something surely is going too far.

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Atmaram
Maharaj.

Cross-
examination
- continued.

Q. Why did you not go and tell the Police that?
A. I didn't think of it.

Q. But you knew this was a serious matter didn't you?
A. Yes, but Vitogo is such a place that if you say something out of place you are likely to be shot at. Lalla is the son of my uncle's former wife - not a proper wife - a defacto wife. Yes, we are good friends and we go about together.

On 13.2.60 when Lalla and I were together there was some shooting at my house.

10

Q. And immediately after the shooting you went to the Police and reported the matter?
A. No, my brother went.

Q. And the Police came to your house and you made a statement that night?
A. They came to my house that night but I didn't make my statement until the next morning.

Q. But you told them what you knew that night?
A. Yes.

Q. And did you then make allegations that your cousin Prem Chand Singh had fired shots at your house?

20

STUART objects on the ground that the question is irrelevant. I object to this witness being interrogated on a matter which happened after the incident into which we are now enquiring. I do not know how my learned friend obtained the information on which he is now cross-examining but that case may well still be under inquiry by the Police and I consider it to be most undesirable that he should be cross-examined upon it as a matter of public policy.

30

KOYA: I am entitled to prove that this witness is not worthy of credit. I am seeking to prove that this witness made a statement to the Police accusing that Prem Chand Singh had fired shots at his house - that man was charged and when the Attorney General saw the papers he didn't believe this witness and so there was no committal for trial.

COURT: Really Mr. Koya - do you propose to call the Attorney-General to give evidence on this?

KOYA: No My Lord, but I am entitled to show that this witness is not worthy of belief and that in another case he has given evidence which the Attorney-General did not consider was worthy of belief and filed a Nolle Prosequi.

40

COURT: You know perfectly well that the filing of a Nolle Prosequi does not necessarily mean that the evidence of any particular witness has not been believed - it might mean that but it means merely that the Crown does not intend to prosecute a person - and no reason at all is disclosed on a Nolle Prosequi.

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COURT: I rule that the last question is inadmissible as being irrelevant.

Atmaram
Maharaj.

10 KOYA: Q. Is it not more than a mere coincidence that in another shooting you were again with Lalla?

Cross-
examination
- continued.

COURT: I cannot allow that question. Next question please.

KOYA: Q. Do you and Lalla usually go out together at night time? A. In that period Lalla's wife had developed T.B. and I used to be very much together with him. His wife was in hospital and I used to keep him company as he was alone.

20 Q. You used to go out with him at night? A. No, not out, but we were sometimes together at his house and sometimes at mine.

No, not out, but at our homes his or mine - there was no particular reason for going out or not going out.

When I heard someone call out to Margessar I did not hear anyone in particular call out. It may have been Subramaniam but I do not know if it was him or not.

30 Q. Didn't you say that you heard Subramaniam call out to Margessar? A. If I said so, that was a mistake. What I meant was that the voice that called out came from Subramaniam's house - I do not know whose voice it was.

Yes, I heard that voice after 8 shots had been fired.

Q. Are you suggesting that if someone calls out at Subramaniam's house you can hear it at the C.S.R. Lines at Vitogo? A. At night yes - everything carries at night - the dogs were not barking then.

40 Q. You didn't say that you heard that in the Lower Court? A. I don't remember. If I had been asked I would have said it - if I didn't say it, it would have been because I wasn't asked.

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Atmaram
Maharaj.

Cross-
examination
- continued.

Yes, I also heard weeping. I heard one more shot after I heard someone call out for Margessar.

The time between the first and last shots would have been no more than about 8 - 10 minutes. In the middle there was a short interval of about 4 to 6 minutes. That is included in the total period of 8 to 10 minutes. Lalla and I had gone about 8 to 10 paces before the last shot was fired.

It was about 4 or 5 minutes later that we met the first accused and those other three men at the cross-roads. The guava tree or bush where we hid is a few paces off the track at that corner.

10

Q. And when you saw these men were they on the track which goes directly from the tramline past Ram Sewak's house and down to the river? A. Yes.

Yes, I know Isak Ali - Yes, I know him quite well. We have cut cane together.

Q. Did you see him as one of these four men? A. I can't say whether he was there or not. Yes, I took careful notice of these men.

20

Q. And Isak was not one of them? A. It is possible that he was. I could not see the last man very well. It is possible that he was the last man. They had gone to about one chain from Ram Sewak's house when we left our place of hiding.

The other side of that river is the Drasa settlement.

On the other side of the river from Ram Sewak's house is a track that goes to Drasa Training Farm and goes on to the main road.

30

Karim's house is there - close to the track from the river. Yes, further on is the house of Khan Chand. There are no other houses.

I saw these people at about a quarter or twenty past nine that night.

I deny that I am telling the Court a complete fabrication. I am telling the Court what I saw and it is up to the Court whether I am believed or not.

I have nothing against Ram Bali.

Q. Why then should you be afraid of him? A. Before I saw Ram Bali that night I had nothing to fear him for. Since I saw him there that night I have cause to fear him.

40

There are no other reasons for me fearing him.

Re-examination:

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Q. It was suggested to you that you belonged to an anti Ram Bali faction? A. Yes.

Prosecution
Evidence

Q. Is there in fact such a faction? A. Yes, there are two factions there. Yes, an anti Ram Bali faction and a pro Ram Bali faction.

No. 12

Q. And is Ram Bali a principal in the pro Ram Bali faction.

Atmaram
Maharaj.

COURT: Is this relevant?

Re-examination.

10 STUART: I submit it is.

COURT: It seems to me to be leading to purely prejudicial evidence which is not admissible. I cannot allow the question.

Q. Now you were asked about this statement of yours to the Police on 7th January. You said you made it after you had seen Superintendent Beatt? A. Yes.

Q. And after he had promised to give you Police protection in Vitogo? A. Yes.

20 Q. And what connection has that got with your statement?

COURT: As far as I recollect this witness has already said - and perhaps you will correct me Mr. Koya if I am not correct - that he was frightened to make his statement to the Police because of what he feared Ram Bali would do to him, before he received these assurances of Police protection.

KOYA: That is so my Lord.

30 COURT: Well then the assessors may accept or reject that explanation - what is the object of this further question Mr. Stuart? I do not want it put and then find the witness comes out with a long reply which may contain all sorts of irrelevances and perhaps inadmissible statements concerning either of the accused. I am not at all sure this question should be put to the witness.

STUART: Very well my Lord.

WITNESS (Cont'd)

40 I told the Police about hearing someone call out from Subramaniam's house to Magessar although I did not say it in the Court below.

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No. 12

Atmaram
Maharaj.

Re-examination
- continued.

KOYA: I must object. My cross-examination was only about the witness's deposition not to his statement to the Police.

COURT: But as I understand it, you have suggested in Cross-examination that because this witness did not mention this matter in his depositions in the court below he should not now be believed on the matter?

KOYA: That is so.

COURT: Then I think it is open to the prosecution to ask the witness whether he had told the Police about it before he gave evidence in the lower Court. The statement to the Police could of course be put in.

10

KOYA: I shall object to that being done.

COURT: Next question please Mr. Stuart.

Re-examination (cont'd)

Yes, I am an ex constable and I can read a plan.

Stuart indicates he is going to put in a plan.

COURT: I do not like a plan going in in Re-examination and if it does I would allow further cross-examination if necessary. It should have gone in in evidence in chief if at all.

20

STUART: I will leave it and get Sgt. Shiu Narayan to put it in.

Close of Re-examination.

2nd Assessor asks if witness can be asked how Ram Bali was dressed when he saw him coming along that track.

Question is put to witness by Court.

30

WITNESS: He had on black shorts and he was bare from the waist up.

Court allows Counsel to ask questions arising out of assessor's question.

No questions arising.

23.6.60

Hamnett J.

No. 13

EVIDENCE OF LALLAIn the
Supreme Court
of Fiji

10TH W/P

LALLA (m) s/o Bajrangi s/Ramayan, residing at
Vitogo. Labourer for C.S.R. - in Hindi.Prosecution
Evidence

No. 13

I am not a relative of the last witness.

Lalla.

Examination.

10

I recollect the 28th December, 1959, when there was some shooting at Subramaniam Pillay's house. I heard the shots. At that time I was at my house in the C.S.R. Lines in Vitogo. My house is about 25 chains from Subramaniam Pillay's house. Atmaram, the last witness was with me. When I heard the shots I opened the door of my house - there are two doors - Atmaram opened the one nearest the kitchen and I opened the one opposite that one.

Shots were being fired at Subramaniam Pillay's house. By "at" I mean that the shots were being fired near his house and in its general direction not "into" his house.

20

I could see the flash of guns being fired. I saw 5 flashes. It was 9.00 p.m. I fixed the time at 9.00 p.m. because of the sound of the "lali" - the drum - of the Fijian school at Drasa which is beaten at 9.00 p.m. every night. Four to six beats had been sounded when the shots were fired - before I opened the door.

I called out to Atmaram and stood there as the firing continued. Eight shots were fired within a space of 2 to 3 minutes.

30

After the guns were fired we heard someone call out "Murgessar" - and the sound of women yelling. I think it was Subramaniam Pillay's voice I heard.

Q. Isn't 25 chains a long way for a voice to carry?
A. Well I am just guessing the distance - it might be closer even.

40

After hearing this voice I spoke to Atmaram. We closed and locked the doors of my house and we left it. After we had gone 10 or 11 paces we heard the last shot.

We were going towards Subramaniam Pillay's house then. There are various tracks one could follow to his house from mine. We took the track that you meet 2 chains from my house. We went along that track towards Subramaniam Pillay's house where three other tracks join - a place where 4 tracks meet.

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Prosecution
Evidence

No. 13

Ialla.

Examination
- continued.

These tracks take you from the Government Road towards the river.

At that junction, as we turned the corner I saw the flash of a torch about 15 to 17 paces away. We stepped backwards a little and sat down. We did this because we didn't know who was approaching. I heard the sound of people approaching. When these people came to the point in the road just opposite where we were, the torch was flashed again and I saw there were four persons.

10

The first one was Ram Bali. He was walking along in the lead and he had a gun in his right hand. The other people I did not recognise. These people were all in one line led by Ram Bali. The man behind Ram Bali had a gun in his left hand and a gun in his right hand. He flashed the torch. The beam was quite bright and we were sitting close by and from the light from the torch beam I recognised Ram Bali.

That is Ram Bali - (first accused identified). I have known him since I was a lad. I am now 32 years of age. Yes, I have known him for up to 20 years.

20

The third man had a gun in his right hand. The fourth man did not have anything in his hand.

These people were about 2 to 3 paces behind each other. I saw that Ram Bali was dressed in black shorts but did not wear anything from the waist up. All the others wore blackish clothes. None of them were wearing shirts. These people were coming from the direction of Subramanian's house. They passed us and I saw them go into the direction of Ram Sewak's house - that track passes Ram Sewak's house and then goes down to the river.

30

Q. What about the direction of the other tracks at that junction? A. One goes from the junction down to the river, past Ram Sewak's house - one goes to the C.S.R. Lines, one goes down to the river too and the last one goes to the tramline and the Government Road. We came on the track from the C.S.R. Line. The track along which we saw the four men come is the one that comes from the Government Road and the C.S.R. tramline right across - down to the river. They were coming from the direction of the tramline.

40

After seeing these people pass, I ran towards my house with Atmaram Maharaj.

Q. Why did you not go on to Subramanian Pillay's house as you had intended? A. Because having seen these people with guns we were afraid they might start firing again. We saw these people pass about 8 or 10 minutes after we had left our house.

50

Cross-examination:

The 8 shots at Subramaniam's house took about 3 or 5 minutes. Yes there was an interval then and then a final shot was fired after a lapse of 4 or 5 minutes.

Q. When did you first tell the Police about this?

A. It was about 4 or 5 days later. There was no one at my house that night when we returned to it.

10 Q. Were there people gathered round it? A. We went back to Atmaram's house from the place where we had seen these men - we took the road to my house but turned off to his house on the way. Yes, when we reached there we met some people. There was Vishnu, Sattu, Kamal and one or two others. The other two were relatives of Atmaram - Yes I think they were a man and a woman.

I don't know their names.

20 Q. Why didn't you go to the Police Station that night? A. I was so frightened that I had decided not to tell anyone what I had seen that night.

Q. Frightened of what? A. Of what I had seen. There had been shots fired and then we had seen these men coming along with guns. I was frightened that if I told anyone what I had seen I too would be shot. I was frightened by what had happened at Subramaniam's house that night.

Q. Is that why you didn't tell the Police until 5 or 6 days later? A. Yes.

30 Q. But you knew that Inspector Walli Mohammed was investigating this case at Vitogo? A. Yes, I knew that. Yes, at about midnight on the night of the shooting I went to Subramaniam's house with Atmaram. there were a lot of people there then. I saw a policeman there then.

Yes, I saw Muthu Kumar Sami Pillay there - I did not see Subramaniam Pillay or Munsami Pillay there. Dharma Reddy was not there.

Yes, I asked what had happened and who was injured.

40 Q. Did you tell anyone there what you had seen at the cross roads? A. I told Muthu Kumar Sami Pillay that in this shooting I could assist the Police - at that time the Fijian policeman was there. I did not actually tell anyone what I had seen.

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Lalla.

Cross-
examination.

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of Fiji

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Lalla.

Cross-
examination
- continued.

I don't know whether the Fijian P.C. heard me or not.

I stayed there until the morning. I didn't see any policemen save the Fijian P.C. before I left. Yes, I know how important it is to report a matter of this nature to the Police at once.

Q. And so until the Police came to see you you didn't go to the Police and tell them what you knew?

A. The Police did not come to me - I went to the Police. I do not remember the date I went to the Police. 10

Q. You remember there was something about this matter with Police Officers in the Kisan Sangh Hall at Lautoka? A. No.

I am not on friendly nor on bad terms with Ram Bali.

Q. Would it be true that there is a feud going on in Vitogo between two factions? A. I don't belong to any faction - I don't know about a feud. I live about 4 or 5 chains from Atmaram. Shiu Prasad Sharma's house is a few chains further on. 20

Q. A few weeks before the shooting at Subramaniam Pillay's house there was shooting at Shiu Prasad Sharma's house - wasn't there? A. I was at Lautoka that night. I came to hear of it later. I have lived a considerable time in Vitogo.

(Cross-examination not concluded)

Hearing adjourned at 1.00 to 2.15 p.m.
23.6.60. Hammett J.

On Resumption at 2.15 p.m.
Accused, Counsel and Assessors.

10TH W/P (Cont'd)

Cross-examination (Cont'd)

Lautoka Police Station is about 6 miles from my house. I often come to Lautoka. I have never had any trouble with first accused.

Q. Never? A. Never.

Q. Has he ever assaulted you? A. No.

I am registered as Lalla but I am also known as Govind. 40

Q. Do you remember giving evidence in that witness box in 1954 in the Supreme Court? A. Yes, in the Supreme Court here.

Q. And that was a case against Ram Bali arising out of Gopal Reddy's case? A. Yes.

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of Fiji

Q. And do you remember saying then that Ram Bali had offered you \$10 to shoot Gopal Reddy? A. Yes.

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Evidence

Q. And do you remember being asked when this took place and you said "Two or three months before Gopal Reddy's death"? A. Yes.

No. 13

10 Q. And you were asked if you had reported that to the Police and you said "No"? A. No I don't remember that.

Lalla.
Cross-
examination
- continued.

Q. You did say that didn't you then? A. I did not.

Q. And when asked why you had not reported it you said, "I was frightened. I am a poor man and a weak man"? A. Yes, I did say that.

Q. And you then said, "Ram Bali is a strong man and a bad man" - Do you remember that? A. I did not say that.

20 Q. And you were asked in what respect he was a bad man, and you said that once he had hit you? A. I did not say that.

Q. You appreciate the serious nature of the oath and of telling lies in Court? A. I know it is a serious matter.

Q. You still deny that you said he was a bad man because he had hit you once? A. I said that one time he had threatened to hit me.

Q. So you now concede there was some trouble between you and Ram Bali? A. No trouble between us.

30 Q. No ill feeling between you? A. No.

Q. Never? A. Never.

Q. Were you ever frightened of him? A. A lot of people are frightened of him. Yes, he is stronger than I am and I have to be frightened of him.

Q. So would that be the reason why you did not tell the Police about this matter for 5 or 6 days after the shooting at Subramaniam's place? A. Not on account of fear but because I am alone and I have no one to support or assist me.

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Lalla.

Cross-
examination
- continued.

Q. So you say that at no times you were on unfriendly terms with Ram Bali? A. We lived in the same settlement and at no times was I on good terms with him nor was I on bad terms or unfriendly terms with him.

Q. I put it to you that your replies to me that you did not say at the previous trial that Ram Bali once hit you are lies? A. Ram Bali never assaulted me.

Q. And your denial that you do not know anything about this feud and these factions in Vitogo is also a lie? A. I am not telling lies. 10

The tramline I talked about in my evidence is one that runs parallel to the Government Road at Vitogo.

Yes, I had a good look at all those 4 people.

Q. Did you see the accused Isak there? A. No.

None of the people I saw was wearing any clothes above their waists.

Q. Why didn't you think of going to Subramaniam's house when you saw all the men going off towards the river? A. Because I saw 3 persons with guns and 1 without a gun and their appearance looked threatening I thought they might begin firing their guns somewhere else so I changed my mind and went back to where I came from. 20

Q. Perhaps you didn't think it important to tell the Police at once? A. No I didn't.

Yes I did say I thought it was Subramaniam's whose voice I heard call out "Margessar"

Yes, I am prepared to say definitely it was Subramaniam Pillay's voice. 30

Q. And the "yelling out" was by the women's voices? A. Yes.

Q. Don't you think the distance from your house to Subramaniam's house is more than 20 chains?

A. It might be over or might be less.

Q. Could it be 40 chains? A. I can't say.

Q. Did you say that in the lower court? A. Yes.

Q. Also that you heard the yelling of women?

A. I said I heard the voice and the women crying. 40

Q. You gave your evidence in February this year - it is possible you have forgotten what you then said? A. No I did say that.

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Q. You can take my word for it - you didn't say it - it is not recorded - Perhaps you forgot about it? A. No I did say it in the lower court. Yes I remember my deposition being read out in the lower court. The interpreter read that back to me and I heard him and I signed my deposition.

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10 KOYA asks for the witness's deposition to be put in - witness identifies his signature on it. Put in and read. Exhibit "H".

Lalla.

Cross-
examination
- continued.

Cross-examination (cont'd)

Q. You didn't say in the court below that you recognised the first accused because a torch was flashed as he passed you did you? A. I did say I recognised him because of the flash of the torch.

Q. That is not true - either you are completely mistaken or you are telling lies. A. No.

20 Q. In the court below you gave the time as about 9.00 p.m. and perhaps a little afterwards? A. No I said 9.00 p.m.

Q. Did you say you heard the Drasa farm drum beating? A. Yes I said that.

Re-examination:

Yes, I gave my evidence in the lower court four months ago.

Re-examination.

30 I gave my statement to the Police on the same day as Atmaram - I do not know for sure if that was 7th January.

Q. You were asked about evidence you gave in this Court in 1954? A. Yes.

Q. Since then have you had any quarrels with Ram Bali? A. No.

23.6.60.

Hammett J.

No. 14

In the
Supreme Court
of Fiji

EVIDENCE OF MUNSAMI REDDY

Prosecution
Evidence

11TH W/P

MUNSAMI REDDY (m) s/o Changa Reddy, s/Ramayan.
Residing at Drasa - farmer and bull dozer driver -
in Hindi.

No. 14

Munsami Reddy.
Examination.

Yes, I remember this shooting in Vitogo - It was some time ago now. I think it was 28th December, 1959.

On the night of that shooting I had gone to check on my animals which I had tethered in my land alongside the road leading to Drasa Training Farm. This is near the Vitogo River which is about 15 chains away. The road runs alongside my land and the track there leads right across the river to Vitogo. 10

It would have been about 8.00 p.m. I went to my land. I found that one horse had broken its rope and had strayed into someone else's land. I searched for it and after some time I found my horse. I then began to catch the horse. As I did so a car went along the Drasa Road. It stopped at the junction on the right - I couldn't tell what sort of a car or vehicle. I thought it was a car because of the sound of the door banging - it was 7 or 8 chains away from me when it stopped. 20

A little time afterwards I caught my horse and rode it. After I had gone about 1 chain my horse shied. I dismounted and then I saw three persons walking abreast. One of them had something in a bag. 30

Q. What sort of a bag? A. I couldn't really say - I only had a quick look - it was a sack.

Q. Did you recognise any of them? A. Well it was dark and I didn't have a very good look at them - I had my suspicions - I only recognised one of the men slightly.

Q. Who was the one you recognised? A. It looked like Ram Bali.

Q. Who is he? A. That is him - (pointing at first accused) 40

Q. Was it Ram Bali or not? A. It was the same as Ram Bali.

Q. Well was it him or not? A. It was dark and it looked to me like Ram Bali.

I have known Ram Bali for a long time over 15 or 20 years.

STUART asks leave to treat the witness as being hostile on the ground that he had previously made a different statement in the lower court and to the Police.

10 COURT: I see nothing hostile in this witness's manner or his evidence but I think it is open to you to remind him of the previous occasion to which you refer without leading him.

STUART:

Q. Isn't your evidence somewhat different from what it was in the Magistrate's Court? A. That was a long time ago, I cannot remember exactly what I then said.

STUART again asks for leave to treat this witness as hostile on the grounds of two previous inconsistent statements.

20 COURT: I have already indicated my views, if you really wish to pursue the matter further I would like to hear you in the absence of the assessors.

STUART indicates he wishes to address the Court further and more fully.

Assessors retire.

30 STUART: Previously on two occasions to the Police and to the lower court this witness said he definitely identified the first accused - Ram Bali - and now he is attempting to depart from that testimony. I submit that on this contradiction I should draw the attention of the Court to the matter and show the statement. I rely on R. V. Fraser & Warren 1956 C.A.R., 160.

40 This witness definitely identified the first accused to the Police and in the court below and now he declined to do so. I maintain I am entitled to cross examine the witness on the matter. Prosecution refers Court to deposition of witness in court below - Marked I for identification - and to witness's statement to the Police - which is shown to the witness and identified by him - and which is marked J for identification.

I ask leave to cross-examine the witness.

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Munsami Reddy.

Examination
- continued.

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Evidence

No. 14

Munsami Reddy
Examination
- continued.

KOYA: I submit that prosecution is quite right to draw attention of the Court to the statement of the witness to the Police and his deposition but I must point out that the witness has not completely denied his previous statement that he recognised Ram Bali - he merely now says that he is not sure about it - it is a contradiction but not a flat contradiction of his previous statement.

COURT: I shall not grant leave to the Crown to treat this witness as hostile.

10

Assessors return.

Examination in Chief (Cont'd)

One of these three men was carrying a sack.

Q. Which man? A. It was not Ram Bali - it was one of the men I didn't know.

Interpreter says witness has added something.

COURT: Then please interpret it.

INTERPRETER: He said, "The reason why I say I thought it was Ram Bali was because I have known him for a number of years."

20

WITNESS (Cont'd)

Q. How was he holding the sack? A. Over his right shoulder.

Q. How close to these men were you when you saw them? A. I saw them at a distance of about 1 chain and then we came towards each other and passed at a distance of about 1 or 2 paces. They were going in the direction of Vitogo. The track they were on would lead them straight to Vitogo. That track goes across the river. There are no houses there - there is one house on the right but I do not know who lives there.

30

I didn't notice if the men were carrying anything - I only noticed one man in particular because I have known him for such a long time.

Q. Who was that? A. Ram Bali.

Q. Which Ram Bali was that? A. That man - pointing to first accused. They had on dirtyish looking clothes.

One man - I think it was the one I said was

40

Ram Bali had on blackish pants and a blackish singlet but I gave my statement such a long time ago that I could not be certain if it was him or one of the others.

Yes, I know where Subramaniam Pillay lives - the place where I saw these men was 40 chains or over from there.

10 The track across the river there can be passed on foot. In dry weather there is only 6 inches of water there. At the outside there is only 18 inches of water except during times of heavy floods. At that time cars could cross that stream.

Cross-examination:

Q. Why do you remember this was 28th December 1959?
A. I remember it was 28.12.59 because I was informed that that was the date of the shooting at Vitogo.

20 Q. But you could have seen these people there on 28.11.59? A. I fix it as 28.12.59 because there was a lot of talk that day about the shooting at Vitogo.

Q. But if you don't fix it by the day of the shooting would you otherwise fix the date? A. If I were to blot the shooting out of my mind I would have nothing to fix the date by and I wouldn't know on which date it was.

Q. So if you were told the shooting took place on 29.12.59 you would have said you saw these men on 29.12.59? A. Yes, that is possible.

30 Q. So if that shooting was said to take place on any date in December you would say you saw those people that night? A. Yes - I'm a farmer - I don't worry about dates and days - I only fix things by reference to extraordinary things and events. This shooting in Vitogo was an extraordinary thing and everyone in Vitogo knew about it - that is how I am able to fix the date.

40 Q. When did you hear about this shooting?
A. On the next morning. Yes, I went to Vitogo to Subramaniam Pillay's house that day - Yes the day after the shooting.

Q. Did you see any Police Officers there?
A. There were none there when I went there but some time later - the same day - a Police van arrived and called someone and then went away.

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Munsami Reddy.

Examination
- continued.

Cross-
examination.

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No. 14

Munsami Reddy.

Cross-
examination
- continued.

Q. Did you tell the Police you had seen three people one of whom appeared to be Ram Bali near there the night before? A. No -- when I saw the way things were happening and how this shooting had been taking place I got very frightened and so I didn't tell the Police what I had seen. The following day I told a friend of mine what I had seen the previous night. I told him he could use this information as he thought fit but he must keep my name out of this as I was a poor man and I was very frightened.

10

Q. So you did not tell the Police: A. No.

Q. Did you give a statement to the Police? A. Yes, after I had seen the Superintendent of Police and he told me not to be frightened -- about a week after I did make a statement to the Police.

Q. When you saw these people were they on the path that goes to the river or to the Drasa Training Farm? A. On the track that leads to the river and then on to Vitogo. My land is on the right of the road as you face Drasa Training Farm -- it is right alongside that road, but if you are going from the Kings Road towards the farm it would be on the left.

20

Q. How far off the Drasa Road on the track towards the river had these three men gone when you saw them? A. About 7 or 8 chains.

Q. In the direction of Vitogo? A. Yes.

I was searching for my horse. Yes I had been along that track to catch my horse. I was on it when these three men went past me. Yes, it was a very dark night.

30

Q. You didn't have a very good look at these people? A. I couldn't look at all three of them as my attention was divided.

Q. And for that reason you are not certain if it was the first accused? A. It looked to me like Ram Bali as we had been staying together for so long. Yes, Ram Bali and I are on speaking terms. Yes, we used to exchange greetings. No, we didn't exchange greetings that night.

40

Q. Because you were not sure it was Ram Bali? A. It appeared to me that it was Ram Bali.

Q. But you didn't speak to him did you? A. It is an Indian custom Sir that when you meet people going out at night you should not speak to them -- it is a bad omen particularly so if you are going out fishing.

Q. So people do go along this track to the Vitogo River to go fishing? A. Yes.

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Q. You have seen them? A. Many times.

Q. Have you seen people like this before?
A. Yes - in groups of 3 and of 4.

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Q. Are you prepared to say that it is possible that you are mistaken and that you merely thought it was Ram Bali, A. Yes, it is possible.

No. 14

Munsami Reddy.

10 Q. Is there any reason other than that you were frightened - that made you not tell the Police what you knew? A. No, it was only that I was very frightened - I work outside at night sometimes and I was very frightened. I am related to Subramaniam I didn't tell them what I had seen.

Cross-
examination
- continued.

Q. Why not? A. Because if I had, my life would have been in danger as they would have told everyone about it.

20 Q. What about this friend you did tell. A. Well he broke our confidence. I can usually hear the Drasa Drum beat. No they don't beat it at 7.00 p.m. - they beat it at 6.00 a.m. 6.30 a.m. and 7.00 a.m. In the evening they beat it at 9.00 p.m. That is bed time.

I didn't hear the drums beat that night.

30 I would say it was after 8.00 p.m. when I met these people because I had left home after 8.00. It could have been about 8.00 or 8.30 p.m. but I am not sure of the exact time. The shortest route to Subramaniam's house from there would be under a mile but a more devious track would be a mile.

Q. I put it to you you don't remember who it was you saw that night? A. I saw three people and I think I recognised one. The reason for my recognition is that I have known Ram Bali for such a long time.

Q. And I put it to you that if you had recognised him you would have told the Police at once and it is not true you were too frightened to do so.

A. No, I have to think of myself and I was too frightened to tell the Police.

40 Q. Are you frightened now of Ram Bali? A. Yes, very frightened. I am frightened every time I see him.

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Prosecution
Evidence

No. 14

Munsami Reddy.

Cross-
examination
- continued.

Q. Why are you frightened of him? A. I am frightened because he is notorious for hitting and beating people and I am frightened he will beat me.

Q. But if he beat you you could tell the Police couldn't you? A. I wouldn't tell the Police unless I had absolute proof so that they would lock him up. I have a house with a hole in one end where a dog could get in and walk out of the other end. When I am in a condition like that I have to be very careful what I say.

10

Q. You couldn't come and tell the Police in confidence what you had seen? A. No, I couldn't get up enough courage to do that - I don't want to get mixed up in any trouble like that.

Q. Would the position be this - that when you made your statement to the Police you were quite sure the man you saw that night was Ram Bali? A. Yes.

Q. And when you gave evidence in the lower court you were sure it was Ram Bali you saw? A. Yes.

Q. And you did that because his name was being mentioned by all and sundry in connection with this shooting? A. That is possible but what a person hears is different from what a person sees.

20

Q. And now today when you look back to December, 1959 you are not sure it was Ram Bali? A. Yes.

Re-examination. Re-examination:

I did not think these men were going fishing when I saw them - I was frightened when I saw them.

Q. Why? A. Because Ram Bali is a well-known character.

30

COURT: I cannot prevent the Defence, if they wish, bringing out evidence of the accused's character. I have already indicated to Mr. Koya my doubts on the wisdom of this. I am not however going to allow the Crown to adduce evidence of character at this stage and I want to have as little reference to it as possible unless the accused's character is definitely put in issue - the first accused is not to be judged on anything save by evidence relevant to the present charge.

40

STUART: I will leave that matter there then.

Re-examination (cont'd)

Q. The following morning when you went to Subramanian's house did you go along that same track you have mentioned? A. Yes.

Yes, that is the same track on which I saw these three men. It was after 8.00 p.m. when I went out that night to check up on my horse. I think I made my statement to the Police on 7th January. These are my signatures - this is my statement to the Police (witness identifies the statement previously marked "J" for identification - the statement is not read and is not put in in evidence).

10

KOYA says he has no objection to this statement being put in in evidence.

COURT: I do not know what else is in this statement and it does not appear to me to be necessary or material that the contents of this statement go in. It seems to be necessary merely to show that the witness confirms he did make a statement to the Police - since that was denied at one stage.

20

KOYA: I am content to leave it at that.

23.6.60. Hammett J.

KOYA asks leave to peruse this statement marked "J" for identification.

COURT: I have no objection - but perhaps it would be better if a copy is made available to you.

Hearing adjourned at 5.15 p.m. to 8.45 a.m. on 24.6.60.

23.6.60. Hammett J.

30

No. 15

COURT NOTES

FOURTH DAY:
Friday, 24th June, 1960 at 8.45 a.m.

Both accused present in custody.
Assessors present
Stuart for the Crown
S.H. Koya for the Defence.

KOYA: I have a point to raise which I would like

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Prosecution
Evidence

No. 14

Munsami Reddy.

Re-examination
- continued.

No. 15

Court Notes.

24th June, 1960.

In the
Supreme Court
of Fiji

No. 15

Court Notes.

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- continued.

to raise in the absence of the assessors in case I mention matters that they should not hear.

COURT: Very well.

Assessors withdraw.

KOYA: I must apologise for not raising this matter yesterday but I wish to refer to a matter of evidence which came out yesterday in re-examination of 11th W/P Munsami Reddy.

In re-examination prosecution asked the witness "Why?" when he said that he was frightened when he saw these three men. The witness then replied, "Because Ram Bali is a wellknown character".

10

I submit this was highly prejudicial to defence and goes beyond a mere matter of identification.

I refer to Archbold's 34th Edition p.376 para. 1015.

Refers also to para.1016, Thompson v. D.P.P. 13 C.A.R. 61.

I submit that this evidence brought out in re-examination does not fall within any one of the exceptions mentioned in Archbold.

20

This witness volunteered that he was frightened of Ram Bali. When prosecution - as he was entitled to - asked "Why?" this witness volunteered, "Because he is a wellknown character" - It was not the fault of the prosecution but it is prejudicial to first accused.

It may be said that the evidence refers to identification as well i.e. to show that he knew it was Ram Bali because he was frightened of him but it also is prejudicial.

30

In these circumstances I ask that the reply of the witness, "Because Ram Bali is a well known character" be expunged from the record.

COURT: Is that the full extent of your application?

KOYA reflects.

I would also ask that the words of the witness just before "When I saw them I was frightened" also be expunged from the record.

COURT: Is that the full extent of your application?

40

KOYA: Yes my Lord, I can't ask for more.

COURT: During the course of this trial I have on a number of occasions drawn your attention Mr. Koya

to my view, that I doubted the wisdom of your deliberate reference in many of your own questions to several of witnesses in cross-examination to the previous history of the accused. I fully appreciate that the defence is entitled to take whatever lines it chooses within the bounds of propriety in its defence. It appears to me that you have deliberately disclosed to the assessors and the Court that the accused was previously charged with an offence arising out of the death of Gopal Reddy and is a member of a faction in a feud at Vitogo.

10

As far as I am aware you have not put the first accused's character in issue and when the prosecution yesterday appeared to be about to ask the 11th W/P questions as to character I stopped him. That was immediately after the 11th W/P volunteered the statement in reply to a question "Because Ram Bali is a well known character." That statement taken alone is not necessarily prejudicial but if it had been probed or pursued prejudicial evidence might well have come out.

20

As you will recollect I stopped the prosecution asking any further questions on that subject at once and I did speak to the assessors on the matter.

You will doubtless deal with this matter in your address to the assessors and I certainly will. If you wish you may ask the assessors to disregard this reply but I do not think I can, nor would such a course make any difference, actually change the record by expunging the specific words of the witness you have referred to.

30

STUART is asked if he wishes to be heard.

STUART: I was in some doubt yesterday whether the defence by its cross-examination was actually putting the first accused's character in issue. I accept the ruling that this is not so.

I certainly did not intend when I asked the witness yesterday why he was frightened to raise any issue of character. I was solely concerned with the issue of identity.

40

COURT: Do you mean you had hoped the witness would say that he was frightened because he had in fact recognised Ram Bali whom he feared?

STUART: That is so.

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COURT: That is what I felt at the time was the object of your question.

KOYA: Perhaps it would be proper for me at this stage to disclose that I may in my defence put the character of the accused in issue. I do not wish to commit myself at this stage but I may do so.

Assessors return.

COURT to assessors:

The matter which has been raised is a little complicated but I will deal with matter and direct you upon it in my summing up - in order to save time now I would like to carry on hearing the witnesses without further delay.

10

Prosecution
Evidence

No. 16

Subramani.

Examination.

Prosecution continued.

No. 16

EVIDENCE OF SUBRAMANI

12TH W/P

SUBRAMANI (m) s/o Murgan s/Ramayan, residing at Lautoka - unemployed - in Hindi.

In December last I was a taxi driver working for "Holden Cabs" at Lautoka.

20

We kept a record of trips we made. The procedure was that when we left the stand we told the clerk and he recorded the time of departure - when we returned we told the clerk the journey we had made and he recorded what we told him. I recognise the document as the record made by our clerk (Document is marked "K" for identification)

KOYA: I object to this witness seeing this record - it is made by somebody else. I submit it is hearsay and not admissible.

30

COURT: But this is not going in in evidence - according to the witness this is a contemporaneous record made by a clerk - surely he is entitled to refresh his memory from such a record.

KOYA: I submit no.

COURT: Please let me have your authorities.

KOYA: I refer to Archbold 34th Edition p.529 para. 1382. There is no evidence that this witness saw this document before.

40

COURT: I think perhaps you are right there - let the witness be asked about that first.

WITNESS: Yes, I used to see these records the same day they were made to see if they were correct.

COURT: Perhaps that makes the position clearer Mr. Koya?

KOYA: That is so - I have no objection now to the witness refreshing his memory.

COURT: Thank you for raising the point.

10 WITNESS (cont'd)

I remember taking a run on 28th December 1959. At 6.40 p.m. I went to Lawaki - near Saweni. At 9.05 p.m. I went to Matawalu past Drasa going towards Ba. It is on the main King's Road.

I returned at 9.35 p.m.

During the course of that journey I saw Bechu's car. Bechu lives at Tuvu. That is Bechu (witness identifies a man brought in from outside Court). His car is a black Standard 10 saloon model.

20 It was being driven by his son, Bechu's son, whose name I do not know. I saw that man drive the car up to Court this morning. That is the man (A man answering to the name Hari Krishna appears and is identified).

I saw that man drive that car from the Drasa Fama Road on to the main road, on which I was travelling.

30 I was then travelling back from Matawalu to Lautoka and that car crossed the road in front of me and went off in the direction of Ba. He was the width of this Court away from me and there was very nearly an accident - that is how I remember the incident. I nearly hit him as he swung across the road in front of me. Both cars had their lights on. There were some passengers in the car driven by Bechu's son but I didn't recognise them. There were 2 or 3 passengers - I couldn't definitely say.

The time then was about 9.20 p.m.

I returned from there straight to Lautoka.

40 Cross-examination

Q. Didn't you say in your examination in chief that you saw Bechu's car on your way to Matawalu?

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No. 16

Subramani.

Examination
- continued.

Cross-
examination.

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Evidence

No. 16

Subramani.
Cross-
examination
- continued.

COURT: Not according to my record Mr. Koya - he said he saw it during the course of the journey to and from Matuwalu.

KOYA: I will leave the point.

WITNESS: There would have been an accident if I had not stopped. No, I didn't report the matter to the Police at once.

Q. Why not? A. Because there was not an actual accident.

Q. But there might have been an accident. Why didn't you report it? A. There have been many similar incidents that I have not reported. 10

Q. When did you tell the Police about this?
A. I did not report the matter to the Police - I told the clerk who keeps our records and then he told the Police and they came and questioned me about the matter.

Q. When was that? A. I can't recollect that. It was a long time ago.

Q. How can you remember this incident and when it happened then? A. By refreshing my memory from this trip sheet. 20

Q. But that doesn't have a note of this incident with Bechu's car does it? A. No, that is so but when the Police questioned me about this matter they already had this sheet (H.F.I. "K") in their possession - that is how I remember it.

Q. But it is possible you have seen Bechu's car on other journeys isn't it? A. That cannot be so - the incident that happened this night so impressed itself on my mind that I told the clerk of the near accident I had had. 30

Q. Did you do any jobs the previous day?
A. I can't say now unless I look at the job card for that date.

Q. But the clerk didn't record that you saw Bechu's car that night did he. How is it you can remember it? A. Because, as I have already told you, the near accident I had that night impressed the incident on my memory. 40

Q. But how did you know it was 28.12.59?

A. Because that is the date on the card and this card was taken possession of by the Police.

Q. But supposing it had been some other card.

A. Then I wouldn't have been able to fix the date.

Q. So you agree you might have seen this car on some other date and not on the 28.12.59 definitely?

A. I fixed that date because this card was taken possession of by the Police and it shows that on 28.12.59 I did this trip to Matawalu. If the Police had got another card which showed I did this trip on another day then I would have said the incident happened on that other day.

10

Q. Can you remember how many other trips you took to Matawalu at night in December last. A. No.

Q. More than one? A. Yes.

Q. How many? A. I can't say - it varies so much. Sometimes I made three trips a night to Matawalu and then sometimes none for several days.

20

Q. So if anyone asked you about 13 or 14 days after December the date on which you took this trip you wouldn't be able to remember the date on which you made the trip without reference to the card?

A. No.

Q. So you wouldn't be able to say the date you saw the car about 12 or 13 days after you saw it?

A. No.

There is a trip recorded by me on this card that I did take a trip to Matawalu and by reference to this card I can say that it was on 28.12.59 that I saw Bechu's car.

30

Q. But how can you remember it was that night?

A. As I have already said the fact of the near accident and the fact that I reported the matter to our clerk impressed the matter on my memory and by referring to this card I can say that that happened on 28.12.59.

Q. But your conversation with the clerk is not recorded there. Why do you place so much importance in that? A. Whenever a job is done it is recorded on a card and this card was with the Police.

40

I agree that it was on 12th January, 1960 that I actually made my statement to the police - I had not had time to go there for several days prior to

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Evidence

No. 16

Subramani.

Cross-
examination
- continued.

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Evidence

No. 16

Subramani.

Cross-
examination
- continued.

12.1.60 because I was so busy, although I had been asked to go, to make my statement.

It is quite true that I would not have been able to recollect the date when I saw Bechu's car unless I had been able to refresh my memory by reference to this card.

Q. Do you agree it is possible that that is a card for the wrong date? A. With very great reluctance I will agree that it is possible.

Q. So it is a possibility that a few days before 28.12.59 you saw Bechu's car? A. Yes, as I have already said. 10

It was at normal speed that this car approached me - if it had been at a high speed a car of that size would have capsized on taking the turn.

Q. Is there not a possibility that you made a mistake in recognising the car or the driver? A. No possibility of a mistake. I am definite that it was that vehicle.

KOYA to Court: I intend to attack the character of this witness. 20

COURT: You do appreciate the effect of this?

KOYA: Oh yes Sir, I am now putting the accused's character in issue.

Q. to witness: How many times have you been convicted and sent to jail? A. Twice - Once for Assault.

Q. Not assault but wounding? A. Yes Sir but it was a long time ago - I was only 17 then.

Q. That was Chanchal Singh of Luvu? A. Yes. My brother and I were both sentenced to 9 months imprisonment for that. The second was a charge against Sabramani - I was not the right Subramani but I was sent to jail. The charge, I do not remember. 30

Q. Was it not robbery? A. No I think it was criminal trespass. I think the sentence was 12 months.

Q. Was it not for robbery at the house of an Indian at Phlugers Hill in Lautoka? A. No, I think it was criminal trespass but I maintain I was the wrong Subramani. 40

Yes, I maintain I was wrongly convicted - That was about 15 years ago. I am now 36 years of age - the two convictions were about the same time.

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10 Q. Anything recently? A. Both Ranga and I were bound over over some trouble - we are neighbours and we had been fighting and quarrelling and we were both bound over. Ranga is my neighbour - we live about a chain apart. I agree I have had a number of traffic offences but no others. I am not related to Subramaniam Pillay nor to Gopal Reddy.

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Evidence

No. 16

Subramani.

A normal run from Matawalu to Lautoka takes about 7 or 8 minutes. I made a number of stops on the way out on that journey on 28.12.59. that night. You could make the journey in 7 to 8 minutes - I think you could do that journey in 5 minutes if you tried. I think the journey to Lautoka would be more like 10 minutes rather than 7 or 8 minutes.

Cross-
examination
- continued.

20 Q. So you couldn't say what time you saw this car on the journey? A. Well since I left here at 9.05 p.m. and it would, because of my stops have taken about 15 minutes to get there - I must have seen this car at 9.20 p.m. approximately.

Q. So it might have been as late as 9.30 p.m.
A. Well it might be.

Re-examination:

Re-examination.

These convictions of mine were about 15 or 16 years ago. My quarrel with Ranga was about 2 years ago.

30 TO COURT: I have no doubt in my mind at all that this thing happened on 28.12.59 and that this is the correct card for that trip to Matawalu.

COURT TO COUNSEL:

If there is any doubt on this matter it could be resolved by this witness studying all the other cards for the date in December and January prior to his statement to the Police. Has this been done?

KOYA: Well Sir, I have some of the cards here - I got them from the owner. I can't find any that will help in this case.

40 STUART: The prosecution knew nothing about this.

COURT: Very well gentlemen. I will leave it.

Koya has no further questions to put to the witness.

Hearing adjourned at 11.00 a.m. for brief recess.
24.6.60.

Hammett J.

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No. 17

EVIDENCE OF MOHAMMED HANIF

Prosecution
Evidence

13TH W/P

MOHAMMED HANIF (m) s/o Abdul Razah, s/Koran, residing at Nadi - Taxi Driver - In Hindi.

No. 17

Mohammed Hanif.

Examination.

I was driving Jadunandan's taxi at the end of last year. I'm sorry Sir I don't know the real name of the owner - he is commonly known as "Dan" not Jagunandan. It was No.8550. I drove that vehicle between November, 1959 and January 1960.

10

Yes, I learned of some shooting at Subramaniam's house at Vitogo.

Q. Now the date of that shooting was on 28.12.59. I want you to tell the Court what you were doing on the night of 28.12.59. A. I was driving. I drove from Nadi to Ba - to Nailaga at Ba. These were Fijians. I left at about 8.00 p.m.

On my way back from Nailaga I did not have any passengers. I returned towards Nadi. In Lautoka I got some passengers. I took them into Ba Town and left them there and came back,

20

Q. Did you pick up any passengers between Nailaga and Lautoka? A. No. I didn't go anywhere else that night.

STUART: This witness has made a contradictory statement to the Police and on the authority of Frazer's case I draw to the attention of Your Lordship.

Statement is handed to Court by prosecution (Marked "L" for identification only)

30

COURT: I think you should draw the attention of the witness to the contradiction to which you refer and to the date of this statement and ask if he can recollect making this statement to the Police.

Examination in chief (Cont'd)

Q. Do you remember making a statement to the Police on 25th January 1960? A. Yes, but I couldn't remember what I then said.

Q. Just have a look at this statement - is that your signature on it? A. (Witness is handed statement marked "L" for identification) A. Yes, that is my statement. No I cannot read it.

40

COURT: If the witness could read he would be entitled to refresh his memory as to what he had then signed as his statement. Since he cannot read it - it may be read over to him out of the hearing of the assessors.

(The Court Interpreter reads the statement quietly to the witness out of hearing of the assessors and myself but in the Court)

WITNESS (cont'd)

10 Yes, I have heard and understood what is in this statement. (Marked for identification "L")

Q. You recollect the circumstances under which that statement was made? A. Yes.

Q. And what you say now is different from what you have told the Police isn't it? A. Yes.

Q. Would you please cast your mind back and say whether you wish to vary anything you have said in your evidence. A. Yes.

20 Q. Well what do you wish to say? A. The first trip I did was from Nadi to Ba - on my way back to Nadi, when I reached Lautoka I picked up another passenger and took him to Ba. Then I returned from Ba to Nadi. I did no further runs around this area that night.

What I told the Police was not true. What I am saying in evidence is the truth.

30 STUART: In these circumstances I ask leave to cross-examine the witness on the ground that he has made a previous statement contradictory to his evidence and he is thus an adverse witness.

KOYA: I can only say that if the witness has made a statement to the Police in contradiction to his evidence in Court I feel the Crown are entitled to cross-examine him as being hostile.

COURT to STUART: Very well you may cross-examine him.

I agree that this is my statement to the Police - Put in - no objection - admitted Exhibit "L" - Read.

40 (Court to assessors : You must constantly remember that you may not substitute a statement of a witness to the Police for what he says in evidence.)

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No. 17

Mohammed Hanif.
Examination.
- continued.

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Evidence

No. 17

Mohammed Hanif.

Examination
- continued.

WITNESS (Cont'd)

Q. Now in this statement to the Police did you say that a man stopped you near Bechu's store at Tuvu)
A. No.

Q. Is it true that he stopped you and said he wanted to go to Tavua? A. No.

It is not true that I told him I would charge him £3 to go to Tavua or that he agreed to pay it or that I drove him to Tavua nor that I dropped him there.

10

I agree I did subsequently attend an identification parade at Lautoka Police Station, Yes, Sub. Inspector Shiu Narayan may have been there. Yes, Supdt. Beatt was present at that identification parade.

Yes, I agree Sub. Inspector Shiu Narayan told me the purpose of this parade. I agree it was for me to pick out a man.

Q. Which man? A. The person whom I had taken from Lautoka that night.

20

Q. And you did pick him out did you not?
A. I said he was similar to the man.

Q. And was it not the second accused you pointed out?
A. No.

Q. Not him, it was a man like him?

COURT to witness:

I do not wish you to be under any feeling that the prosecution or I am bringing any pressure upon you to give any evidence in particular in this case. It is however my duty and it is only fair to you to be told it, that I am recording your evidence. If, as appears to be the case, you have made contradictory statement to the Police, I have no doubt that after this case is over my record of these proceedings will be studied by the authorities. If they feel you have deliberately given false evidence on oath it is possible that you may be prosecuted for perjury - Is that clear to you?

30

WITNESS: Yes.

Evidence in Chief (Cont'd)

40

Q. Is it not a fact that you picked the second accused, Ishak Ali, as the person you drove to Tavua that night at this identification parade on 25th

January, 1960? A. No. The person I picked out was a person similar to Ishak.

Q. And didn't you then say "I am sure of him"?

A. No, I touched him and said, It is like him.

Q. Look carefully at the second accused now.

Witness does so.

Q. Is he not the man you picked out at that identification parade? A. Yes, and I said the person was something like him.

10 Q. And he is something like the man you drove from Tuvu to Tavua that night? A. No, he resembled the person I drove from Lautoka that night.

Q. Why then did you tell the Police that you drove him from Tuvu to Tavua? A. I said I drove him from Lautoka not Tuvu.

Q. And why did you tell the Police you picked him up from Bechu's store. A. I didn't say anything of the sort.

Cross examination by Koya:

20 No, I do not know Subramaniam Pillay. I know Govind Reddy and Narayan Reddy. Yes they come from Vitogo. I am married to Buli's daughter at Vitogo.

Q. You know Ishak - the second accused well don't you? A. No, not well - I have seen him now and then.

I knew his name and that he lived at Vitogo.

Q. Before the Police saw you - did anyone from Vitogo area see you? A. No.

Q. Such as Govind Reddy or Narayan Reddy? A. No.

30 No re-examination.

24.6.60.

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Mohammed Hanif.

Examination
- continued.

Cross-
examination.

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No. 18

EVIDENCE OF WALLI MOHAMMED

Prosecution
Evidence

14TH W/P

WALLI MOHAMMED (m) s/Ramayam, Assistant Superintendent
of Police - stationed at Lautoka - in English.

No.18

Wali Mohammed.

Examination.

On 28th December, 1959 I received a complaint about this shooting at about 10.00 p.m. it was at 10.04 p.m. I went to Vitogo to the house of Subramaniam - I arrived there at 10.45 p.m.

I saw Muthu Kumar Sami, the son of Subramaniam Pillay and I inspected the houses in the compound. It was dark and so I couldn't make a thorough investigation then. 10

I posted a constable there to see that nothing was disturbed and I returned to Lautoka after speaking with Subramaniam Pillay.

I made contact with Tavua Police Station and then went to Lautoka Hospital where I saw Subramaniam Pillay.

I then went to Tuvu where I saw the first accused, Ram Bali. Tuvu is on the Ba side of the Ba Gap and is about 10 miles from Lautoka - It is a 20 minutes drive from Lautoka - 15 to 20 minutes. It would take about 10 minutes to drive to Tuvu from Vitogo - or less than 10 minutes - it would take about 8 to 10 minutes. 20

At Tuvu where I arrived at 11.53 p.m. I first saw Bechu, and then the first accused, Ram Bali who was then living at Bechu's house.

I asked first accused if he had been out that night. He said he had not left Bechu's place. He said he was with a man called Baiju, Ram Khelawan, Baburam Jagai and another man named Ram Bali and that Bechu was also at the store. They were, he said, all drinking grog until 11.00 p.m. By "grog" he meant "yaqona". 30

He said he had been drinking grog all that evening at Bechu's store where he had been living.

I checked on Bechu, Ram Khelawan, Baiju.

No one else was present when I spoke to Ram Bali, 40
the first accused.

I sent for the Ram Bali, to whom the first accused had referred who lives about a chain away and I questioned him as well. After making inquiries, I left and called at one Ram Narayan's and then I returned to Lautoka.

The following morning at daybreak I went to Subramaniam Pillay's house. I went to the cane field on the other side of the creek - about 12 to 14 paces away from Subramaniam's house.

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No. 18

10 Q. Creek? Is that what has been referred to as a dam by some and as a drain by others? A. Yes My Lord - it is near the house. There I found 8 empty shot gun cartridge shells. This is the place - witness shows on Photo B2 - (the area is the front of house identified by Subramaniam Pillay as his own house).

Wali Mohammed.

Examination
- continued.

What I have called a creek is really a drain there - it is about 5 feet deep and about 3 or 4 paces wide.

I found these cartridges alongside the cane near this drain.

These are the cartridges I found. Tendered. No objection - (8 cartridges admitted Exhibit "M")

20 All of these cartridges are 12 gauge and all at that time smelt as if they had recently been discharged. They all looked like fresh cartridges.

I also found there an empty sack - it was folded. This is the sack - I identify it by the name in Hindi on it "Kapil". Tendered. No objection. Admitted Exhibit "N" - I found this on the ground in the same place as I found the cartridges - to one side.

30 I also saw footmarks there - near the cartridges - there appeared to be the footmarks of more than one person - the footmarks led to the cane field in the direction of Vitogo Road.

Q. Now a plan has been made - please look at it.

STUART: I will call the maker to put it in later.

COURT: Is it really necessary at this late stage? Surely if we were to have a plan put in should it not have gone in earlier than this. Do you really want this plan in now?

STUART: I would like it to go in.

40 COURT: Very well - witness can refer to it - it must be marked "O" for identification.

Q. Assuming that group of houses is the group of houses of Subramaniam Pillay - please show where the footprints you referred to were. A. They

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Wali Mohammed.
Examination
- continued.

were at the point marked (1) on this plan. They ran along about 4 chains towards the tramline on the right of the plan - in the cane and then they crossed the creek to open land which lies between the areas of cane marked (15) and (16).

They then went for 6 or 7 chains in the open field to a point about 1 chain N.W. of the road there which runs N.E. to S.W.

The last of these footprints were about a chain from the road at a position almost between that road and house marked No. (5).

10

This is the course the tracks took.

(Witness shows on Plan marked 0)

The line of the tracks took on an oval shape and ran round towards the back of the houses.

I discontinued my investigations on 4th January and handed the papers over to Sgt. Shiu Narayan - now Sub. Inspector.

Hearing adjourned at 1.00 to 2.15 p.m.

Accused in custody.

20

24.6.60

Hammett J.

On resumption at 2.15 p.m.
Accused, Assessors and Counsel.

14TH W/P (Cont'd)

On 29th December, 1959, I examined the doors of the houses in Subramaniam Pillay's compound. Exhibit B4 shows Subramaniam Pillay's house. The two areas marked by a white circle on that house show bullet marks - there were holes in the iron - fresh holes there - and these I took to be bullet holes.

30

There were also a number of marks on the door and on the right of the door on the tin wall which looked like shot gun pellet marks. I do not recall if there were any actual holes made by pellets but there were fresh marks which looked as if they could have been made by pellets from a shot gun. In my opinion they were definitely the spread of shot made by shot gun pellets.

The walls of this house were made with beaten out 44 gallon drums - or cement drums - of a fairly thick gauge.

40

The spread of shots on the door looked as if they had been made by shot gun pellets.

Exhibit B5 is a photo of the door of Subramaniam's son's house. There were pellet marks on the bamboo plaited walls seen here and I also saw them inside the bure. The pellets penetrated right through the bamboo seen in Exhibit B5. These were all fresh holes. I cannot recollect whether I saw any pellet marks on the actual door.

10 Photograph B6 shows the door of the last house on the right in Photo B2. There were shot gun pellet marks - fresh ones - on this door but as far as I recollect none went right through the wood of the door, I do not recollect seeing any marks on the walls.

Cross-examination:

In B4, there are 2 doors shown. I don't remember seeing any marks of shot gun pellets on the right hand door near the white mark at the top.

These doors open inwards.

20 Q. Who was the first man to come to the Police and report this shooting? A. It was Warda Reddy s/o Narayan Reddy of Drasa. Yes, Narayan Reddy was the father of Gopal Reddy who was murdered in November, 1953. Warda Reddy lives about $\frac{1}{2}$ mile from Subramanian Pillay's house, on the other side of the Vitogo River. I do not know if anyone came with him. I was at home when the report was made in the Police Station.

30 I know a man named Atmaram - Yes I also know Lalla alias Govind. I saw them that morning at day-break at Subramaniam Pillay's house. That would have been at about 7.00 a.m. I did not speak to them. They came there whilst I was there. Yes they saw me.

I don't remember seeing them again that day.

40 No I didn't go past the C.S.R. Lines there. I know now who Munsamy Reddy is. That is the man (11th W/P identified). I saw him on the road that morning when I was checking the footprints running near the road. He came from the direction of Drasa. I was not in uniform. I was in plain clothes. I did not speak to him and he did not speak to me. The police van was then at Subramaniam Pillay's house. There were no uniformed constables with me at the time.

I saw him later at Subramaniam Pillay's house at a time the police van was there.

I know Subramaniam Pillay well.

In the
Supreme Court
of Fiji

Prosecution
Evidence

No. 18

Wali Mohammed.

Examination
- continued.

Cross-
examination.

In the
Supreme Court
of Fiji

Prosecution
Evidence

No. 18

Wali Mohammed.

Cross-
examination
- continued.

I have lived in Lautoka since I was a small child but I have been away on duty at times. I have spent most of my life here.

Q. Subramaniam Pillay says he does not know you by name. What do you say to that? A. Well that may be so, but if he was referred to me by using the name "Nambiar" he would know me. We do know each other and we greet each other at times. My father is "Nambiar" and he knows him. I am not known by any other name than Walli Mohammed. 10

Yes, I saw the first accused at Tuvu that night. I was accompanied by P.C. Jai Raj and A.S.P. Walker. Yes, I wanted to know the first accused's movements from 7.00 p.m. that evening onwards.

After questioning Bechu first - first accused was in bed at the time - I then spoke to Ram Bali - and I then spoke to another Ram Bali there - That is the man (witness identifies a man who comes into Court from outside).

I do not remember interviewing Baiju and Ram Khelewan myself that night - I think the constable with me did so. Yes, Bechu's car was checked - it is a Standard 8 I think. 20

Q. Did you find it cold or hot? A. I myself didn't touch the car. P.C. Jai Raj did see it.

I have known the first accused for quite a while.

Q. Would it be true that in 1954 he was charged with murder of Gopal Reddy and convicted and later acquitted on appeal? A. In 1953 that was - yes. 30

Q. And last year a number of people were brought before the Court to be bound over by the Magistrate and one of them was the first accused? A. Yes - in fact that happened twice last year and he was bound over on each occasion.

Q. And he was bound over voluntarily? A. On one occasion he came to me with a summons and he agreed to be bound over.

Q. You remember he had trouble with Bola Subramani in 1949 or so? A. Well I have heard of that. 40

Q. Do you agree that there are two factions in Vitogo and that there is a feud going on there?
A. Yes Sir.

Q. And would I be correct in saying that the anti Ram Bali faction includes Gopal Reddy's family?

A. Yes Sir.

In the
Supreme Court
of Fiji

Q. And Subramaniam Pillay and his sons? A. His sons are against him but I don't know about Subramaniam Pillay himself.

Prosecution
Evidence

Q. Atmaram? A. Yes Sir.

No. 18

Q. Lalla alias Govind? A. Yes Sir.

Wali Mohammed.

Q. Vishnu Deo? A. Yes Sir.

Cross-
examination
- continued.

10 Q. Ram Jibodh Singh? A. Yes Sir.

In December 1958 there was a shooting at Ram Jibodh Singh's house - he was shot at and his house was all burned down.

Q. And 10 months later Ram Bali was wounded by one Sukh Deo? A. Yes Sir - I prosecuted him and he was convicted.

There was no prosecution in the complaint about R.J. Singh's house.

20 In November and December, 1959 R.J. Singh by his Counsel issued a private prosecution against the first accused and Vishnu Deo for a charge of murder.

Q. And this took place after a man was convicted of assaulting Ram Bali didn't it? A. That is right Sir.

Q. And in that preliminary inquiry the first accused was committed for trial on a charge of murder, in November, 1959. A. Yes, that is right, but it was Attempted Murder.

30 Q. And after he was committed for trial he was released on bail? A. He was Sir.

Q. And on 28th December, 1959, when you saw him at Fuvu he was still on bail whilst awaiting trial on a charge of attempted murder? A. Yes that is eight.

40 Yes in January 1960 the Attorney General filed a Nolle Prosequi in that charge of attempted murder against Ram Bali. Yes, between 1st and 4th January - on 2nd January 1960 I think there was a meeting at the Kisan Sangh Hall in Lautoka at which I was present with Superintendent Beatt and about 20 - 30

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Prosecution
Evidence

No. 18

Wali Mohammed.

Cross-
examination
- continued.

people from Vitogo attended. I didn't know there was going to be this meeting when I went there.

Q. And two solicitors were there to represent Subramaniam Pillay and his sons? A. I don't know if they both were representing them. All I do know is that Mr. Manikam Pillay was the spokesman - I do not know who he represented.

Mr. D.S. Sharma was the other solicitor there. I saw Bola Subramani - the son of Subramaniam Pillay there. I do not remember seeing any of the other members of the family there. Bola Subramani lives in the house next to Subramaniam Pillay in his compound.

10

STUART objects this evidence as being irrelevant.

COURT: I must confess I don't know where this is all getting to.

KOYA: It is all relevant to my case.

KOYA: I am trying to make out that the whole of this prosecution has been brought about as a result of pressure brought to bear upon Police by Subramaniam Pillay and his family and it is not a normal police or Crown prosecution.

20

COURT: Very well then - put that to the witness in a more direct form.

Q. Would it not be true that that meeting was held to get you taken off the investigation of this case and another man brought in?

STUART: I ask that this question be put much more clearly - the witness is entitled to know more clearly what is being suggested to him.

30

WITNESS to Court:

I understand the question but I do not know if any pressure was brought on anyone - No pressure was brought to bear upon me by Subramaniam or his family to prosecute these accused persons.

Q. Didn't Mr. M. Pillay make a complaint on behalf of S. Pillay and his sons about you? A. Not to my knowledge - As far as I am aware Mr. Pillay merely said he spoke on behalf of the people of Vitogo and wanted thorough inquiry to be made in every case of shooting out there because there were so many of them coming on.

40

Q. Was a request made that someone else should investigate this case instead of you?

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STUART: This is nothing more nor less than an attack on the character of this witness and is not material to the issues in this case. I most strongly object to the tone adopted by Mr. Koya. My witness is being attacked and has no means of defending his character under these insinuations.

Prosecution
Evidence

No, 18

10 COURT: I understand your case to be Mr. Koya that the complainant in this case, Subramaniam Pillay and his sons have brought unfair and biased pressure on the Police to prosecute your clients. You have attempted to support that by your cross-examination of this witness and I think you have gone quite far enough. I have allowed you every latitude and I think the matter should end there. You have heard this witness's replies.

Wali Mohammed.

Cross-
examination
- continued.

KOYA insists that he pursue his line of cross-examination.

20 COURT: Please ask your next question.

Q. Was there not a meeting between yourself and Mr. Beatt and the people of Vitogo about this?

COURT: Please ask your next question.

Q. And was the first accused's alibi discussed between yourself, Mr. Beatt the Superintendent of Police, the two solicitors there and the people of Vitogo.

COURT: What relevance has that got Mr. Koya? Supposing it was discussed - is that material?

30 KOYA: I am trying to show that it was only after the accused's alibi was disclosed that these other witnesses for the prosecution came forward with their statements.

COURT: That is an entirely different matter and I think that is quite a proper line for you to take.

40 Q. is put to the witness. A. As far as I recollect there was some talk about the second accused and Mr. Beatt did say that investigation showed that the second accused had been seen at Tavua on the night of this shooting. I cannot recollect if anything was said about the first accused - Mr. Beatt was conversing with Mr. Pillay.

In the
Supreme Court
of Fiji

Prosecution
Evidence

Wali Mohammed.

Cross-
examination
- continued.

Q. Now you have mentioned first accused's antecedents. Has the first accused ever been convicted of any offence as far as you know? A. Apart from being bound over in Lautoka and Ba I do not know of any conviction.

Q. What about the second accused? A. No conviction as far as I know. The footprints went at first towards the tramline and then across the creek at the drain and then into the open. Towards the end, as the footprints died out I could only see one set of footprints - they died off as they came to hard ground. 10

Yes, the distance from the house of Subramaniam Pillay to the C.S.R. Lines would be about 40 chains but I am not too sure.

Yes, I went to Ram Bali's permanent house at Vitogo that night before I went to Tuvu where I found him.

The cartridges were found in an area of about 3 paces across. 20

Q. In Subramaniam's house were there any holes that looked like a hole made by a rifle bullet?

A. Yes, these two holes made there looked to me to be rifle bullets but I couldn't be sure.

There were no bullet or shot gun marks on the house next to Subramaniam Pillay's house. Yes Bal Subramani was there that night when I went to the scene.

Re-examination. Re-examination:

At Ram Bali's house at Vitogo I found his wife and Harif, the first accused's brother in law. I saw no one else there. Where I saw the last of these tracks they were at the end of the rough shape of a horse shoe and petered out whilst leading in the general direction of the cross tracks or cross roads here. (Witness indicates top left hand corner of plan - marked "0" for identification). 30

24.6.60

Hammett J.

TO COURT: I say that Atmaram and Lalla are in the anti Ram Bali faction because they are not on speaking terms with Ram Bali. Lalla gave evidence against Ram Bali when he was charged with the murder of Gopal Reddy. Atmaram was with the man who cut first accused with a knife but was not charged and it would be unfair to blame him for it, but Ram Bali and he are not on speaking terms. 40

No questions by Counsel arising out of Court's questions.

No. 19

EVIDENCE OF SHIU NARAYANIn the
Supreme Court
of Fiji

15TH W/P

SHIU NARAYAN (n) s/Ramayan, Det. Sub. Inspector of
Police, stationed at Suva - in English.Prosecution
Evidence

No. 19

Shiu Narayan.

Examination.

10 I investigated this case and arrived from Suva
on 4th January, 1960. I first went to Subramaniam
Pillay's house at Vitogo on 5th January, 1960. I
made a plan of the area. This is it. (Plan marked
"O" put in. No objection and admitted Exhibit "O").

I marked the plan with numbers to show the
various positions.

Mark No. 1 was a point pointed out to me by
A.S.P. Walli Mohammed.

No. 2 is Subramaniam Pillay's house.

No. 3 is Bola Subramani's bure.

No. 4 is Muthu Sami's bure.

No. 5 is Muthu Kumar Sami's bure.

20 No. 6 is a point pointed out to me by Bola
Subramani's wife.

No. 7 is the drain - about 12 feet wide between
No. 1 and 2 on plan.

No. 8 is a position pointed out to me by At-
maram and Lalla.

9 is Ram Sewak Singh's house.

10 is Vitogo River or Drasa River.

11 is Budhu's house.

12 is Murgessar's house.

13 is first accused's house.

30 14 is Vitogo Government Road.

15 is Kupsamy's sugar cane field.

16 is small ratoon cane of Subramaniam

17 is a track which leads to road 14 off
the top of the plan from point 8 on the plan.

The distance from Point No. 1 to Point No. 8
on the plan is 33 chains and 20 yards measured by
tape along the dotted line from No. 1 towards road
14 and then across drain to space between fields 15
and 16 and curving round to join the road leading

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Prosecution
Evidence

No. 19

Shiu Narayan.

Examination
- continued.

to Point 8 and up to Point 8. It took me 8 minutes to walk from Point 1 to Point 8 by that route.

There were no footprints there at the time - I followed A.S.P. Walli Mohammed's directions as to where to measure. I walked at a fast walking pace.

I also measured from Point 8 to the C.S.R. Vitogo lines - it was 26 chains and 4 yards and it took me $6\frac{1}{2}$ minutes to walk there as far as Lalla's house.

The distance from Point 8 to River No. 10 would be about 12 chains approximately but I didn't measure this distance. There is a crossing of the river there - you go through it - on the other side is a track running alongside Drasa Training Farm leading up to the Government road. That Government Road leads from the King's Road to Vakabuli Village. From the river by the track to the Drasa Training Road would be about 35 chains - from there to the King's Road would be a further 9 to 10 chains. 10

From Point No. 1 to Tuvu I clocked the time taken on a journey. 20

From Point 1 to 8 took 7 minutes.

From No. 8 to the Drasa Training Farm Road took 9 minutes.

From there in a Landrover to the track that leads to Bechu's house at Tuvu took 13 minutes.

The total journey took 29 minutes.

Q. Now originally you said that from Point 1 to Point 8 took 8 minutes? A. Yes, that was walking fast - and it took 7 minutes running - not very fast but at a jog trot. 30

From Point 8 on I walked - not ran - and it took 9 minutes up to Drasa Training Farm Road.

Point No. 8 is the position shown me by Atmaram and Lalla. This is a junction of 3 tracks - (witness shows on the plan in fact 4 tracks at the junction but explains that one of them extends from one side of the junction to the other and so he only counts that as one track)

At the Point 8 there are guava trees and bushes and grass about 3 to 4 feet high at the place shown me by Atmaram and Lalla. The point they showed me was a yard or two off the track - there were guava trees and grass about 3 or 4 feet high there. Right at the corner of the junction. The road that leads 40

to the tramline there is about 14 feet wide - Road 17 is about 9 or 10 feet wide.

The track down to the river is 10 feet wide down to Ram Sewak's house - then there is a path about 1½ feet wide.

10 On 14.1.60 I fired 9 shots at these houses from point 1 in Plan "O" and I then ran from there past No. 8 and 10 on Plan "O" as far as Drasa Training Farm Road and then went by car to Tuvu. I fired the shots in 5 minutes and the journey took 29 minutes.

On 16.1.60 I arrested, charged and cautioned the first accused. He refused to make a statement.

On 18.1.60 I arrested, charged and cautioned the second accused who also declined to make a further statement and said that he had already made one to the Police.

Cross-examination:

20 From Point (2) to the tramline on Plan "O" would be about 8 chains. I didn't measure that distance.

From there to C.S.R. Lines at Vitogo would be about 20 to 25 chains.

Q. Would it not be more like 40 chains? A. Well it could be - say 35 chains - 40.

You can get from C.S.R. Lines at Vitogo to Subramaniam's house by following the C.S.R. Line and then the track on either side of the drain.

30 The track to the river passes within a yard or two of Ram Sewak's house.

That track leads to Drasa Training Farm. One Karim lives in a house close to that road and further up on the right hand side lives Kanjan - there are no other houses on that track.

I think from the junction of the track and the Drasa Farm Road to the King's Road would perhaps be over 10 chains.

Gopal Reddy's houses are on the Drasa side of the river.

40 When I made my shooting experiment I didn't shoot into the houses - I shot into the air.

As far as I can recollect there were pellet marks on both doors shown at front of house in Exhibit B4. Yes there were pellet marks on those doors.

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Prosecution
Evidence

No. 19

Shiu Narayan.

Examination
- continued.

Cross-
examination.

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Supreme Court
of Fiji

Prosecution
Evidence

No. 19

Shiu Narayan.
Cross-
examination
- continued.

I think it was on 7th January 1960 that Atmaram and Lalla pointed out this point No. 8 on Plan "O" to me.

Q. Is this the place where they said they saw the accused and three others with a gun? A. No, this is the place where they said they were hiding.

They said they were hiding and they saw the first accused and three others go by with guns.

No Re-examination.

24.6.60

Hammett J.

10

Hearing adjourned at 5.25 p.m. to 8.45 a.m. on 27th June, 1960.

Accused in custody.

24.6.60

Hammett J.

Before the Honourable Mr. Justice Hammett
Wednesday the 29th June, 1960 at 11.30 a.m.

Accused present in custody
Assessors present
Stuart for the Crown
Koya for the Defence

20

(Court records that hearing has been stood over for 2 days owing to the unavoidable absence, with leave of Koya for Defence)

Koya asks for leave to recall Subramani Pillay to demonstrate how he was standing when he was shot - He points out that the verandah doors of the Court appear to be very similar to the doors of Subramanian Pillay's own house and he could conveniently give a demonstration.

Prosecution no objection.

30

COURT: Very well I have no objections.

No. 20

No. 20

Jai Raj.

EVIDENCE of JAI RAJ

Examination.

16th Witness for Prosecution
JAI RAJ (m) Sworn on Ramayan. Det. Constable.
Stationed at Lautoka in English.

On 29.12.59 I went to compound of Subramani

Pillay at Vitogo with A.S.P. Walli Mohammed at about 7.00 a.m. I found some shot gun cartridges pellets.

There were 16 pellets and 5 cartridge wads in the compound - on the ground in front of the three bures - (shown in Exhibit B2) - they were not all in one place. Inside the house of Muthu Sami Pillay - (witness indicates 2nd house from the right in Exhibit B2) - I found 26 pellets. I found 43 pellets and 2 wads close to the house of Subramaniam Pillay - (last house on left of Exhibit B2) - all were just in front of the house and just touching it. I took possession of these pellets. These are them - I put them in separate envelopes and tendered them in evidence in the lower court. Witness tenders 5 envelopes - unopened: No objection - Admitted collectively P - and to be numbered P1 - 5. I was with A.S.P. Walli Mohammed when he found some empty cartridge cases - they were about the width of this Court away from Subramaniam Pillay's house (about 15 paces) - I did not check the exact distance. The same day I went to see the 1st accused at Tuvu at the house of Bechu. I called 1st accused outside the house. I asked the accused if he knew anything.

Q. Just tell in your own words what you said to the 1st accused right from the beginning?

A. I called him outside the house. He knows me and that I am a Police Constable. I told him I was investigating a case of shooting at Vitogo during the night and I asked him if he knew anything about it. He replied "I do not know anything about it". I asked him where he was during the night. He replied that he was at the house of Bechu at Tuvu. I asked him where he was during the day of 28.12.59 and he replied that he was in Lautoka town during the day with Mohammed Isak - witness identifies the 2nd accused as Mohammed Isak and that he returned to Tuvu in the afternoon by car. He said he got off at Tuvu and Mohammed Isak went away to Tavua.

He added further that whilst he was at T.R. Gopal's shop, Bishun Deo and Drilo had seen him. I asked him if he could make a statement and he said Yes. I then recorded a statement in English. I read it back to him and he agreed it was correct and signed it.

After I completed recording it the 1st accused made a further statement which I recorded after the first statement - He made this 2nd Statement on his own volition and without my asking him any questions. I read it over to the accused and he then signed this additional part. This is the accused's statement. Tendered - No objections. Admitted Exhibit Q. Read by an officer of the Court.

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Supreme Court
of Fiji

Prosecution
Evidence

No. 20

Jai Raj.

Examination
- continued.

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Supreme Court
of Fiji

Prosecution
Evidence

No. 20

Jai Raj.

Cross-
examination.

Cross-examination:

At about midnight on 28.12.59 I went to the house of Bechu at Tuvu with A.S.P. Walli Mohammed. I heard A.S.P. Walli Mohammed call out to Bechu and later to the 1st accused. I did not take 1st accused's statement then - I took it in the afternoon of 29.12.59.

Q. Can you show in Photo B2 where you found those cartridge cases near Subramani Pillay's house?

A. Yes. (witness does so - he shows a position near the nearest palm tree to the house on extreme left of Exhibit B2) There is a drain there. The cartridges were outside the drain in the cane. They were not on the house side of the drain. 10

On the night of 28.12.59 I was with A.S.P. Walli Mohammed when he went to Subramaniam Pillay's compound. Yes I saw Bola Subramani there - yes I also saw Muthu Sami Pillay and M.S. Kumar Pillay there - also Dharma Reddy.

Q. Did you see any one else there? A. Well I saw Subramaniam Pillay and many women from the houses there. I do not remember if Murgessar was there. 20

Q. Where about did you find the pellets in 2nd bure from right in Exhibit 2.? A. All about the house - scattered - some were just inside the door.

Re-examination.

Re-examination:

The drain that is in Photo B2 is in fact hidden by this grass (witness shows) and so you cannot in fact see it.

No. 21

Prem Krishna.

Examination.

No. 21

30

EVIDENCE OF PREM KRISHNA

17th Witness for Prosecution.

PREM KRISHNA (m) Sworn on Ramayan, Police Cpl. No. 448, Stationed at Suva - in English.

On 28.12.59 I was stationed at Tavua. At 6.45 p.m. I left the Police Station Tavua to go to Korovou to the house of Silar Sahib. I reached that house at 7.05 p.m. I saw the 2nd accused in that house and I asked him where the man Silar Sahib was. Later that night I went to look for 2nd accused. 40

This was at 11.35 p.m. I went to the same house and I saw 2nd accused there. I asked the 2nd accused if he could give an account of his movements since 6.00 p.m. He asked me what it was all about. I told him there was some shooting at Vitogo. He replied "Why should I make a statement if anything happens at Vitogo?" I asked him to accompany me to the Land Rover - the Police transport - and he agreed to do so. I spoke on the Police wireless to Mr. Walli Mohammed from the Landrover. This would have been at 11.45 p.m. approx. Then accused agreed to make a statement since he heard Mr. Walli Mohammed say that he had been seen at Lautoka. He made his statement in Hindi and I recorded it in English - I read it back to him and he agreed it was correct. I had read it back in Hindustani - and he appeared to understand it and signed it. It was then 12.00 midnight. This is it. Tendered - no objection - admitted Exhibit R and read by an officer of the Court.

10

20

30

The accused and Silar Saheb live in houses in the same compound. On my second visit to the 2nd accused's house I parked the Landrover 2 or 3 chains from the 2nd accused's house. As I walked to the house the dogs began barking and 2nd accused came out of the house. 2nd accused was wearing khaki shorts without shirt. He looked normal. His hair was combed. Apart from rubbing his eyes there was nothing to indicate he had been sleeping or in bed before I called there.

TO COURT: The house of Silar Saheb is on the Rakiraki side of Tavua - it is further away from Ba than Tavua - about $2\frac{1}{2}$ miles further away. It is a distance of 34 or 35 miles from Vitogo to Tavua - along the main King's Road. It would take about 1 hour or a little more to go by transport from Vitogo to Korovou.

Cross-examination:

40

I have not myself travelled from Vitogo to Korovou at any time. At Korovou there is a road that goes to Nadarivatu. Silar Saheb's house would be on the hill on the left of that road. There is a track leading from the Nadarivatu Road to that house. That is where the cemetery is. I had completed taking Silar Saheb's statement at 7.45 p.m. on 28.12.59.

Q. Did not you come to the main road with Silar Saheb at 8.00 p.m.? A. No. I went to the main

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Evidence

No. 21

Prem Krishna.

Examination
- continued.

Cross-
examination.

In the
Supreme Court
of Fiji

Prosecution
Evidence

No. 21

Prem Krishna.
Cross-
examination
- continued.

road and he followed on horse back and that was at 7.30 p.m. - I completed taking the statement there by 7.45 p.m. and then I went off in the Landrover to the police station.

Q. In the lower court you said you brought him to the main Road? A. Well I did not bring him - I walked and he was on his horse with a child - I don't know if I said I brought him or not. I took Silar Saheb's statement in the Landrover on the Nadarivatu Road - I was stopped near a house at the side of the road about 2 chains from the track leading to Silar Saheb's house. 10

Q. Would you agree you last saw Silar Saheb at 8.00 p.m.? A. No it was 7.45 p.m. - I know that because as soon as I had taken Silar Saheb's statement I drove off.

It is true I had seen the 2nd accused and questioned him about his movements on previous occasions when there had been reports of shootings at Vitogo.

Q. Are you suggesting that there were no signs of sleep? A. I couldn't say. 20

I saw Silar Saheb on the 2nd occasion that night but I did not speak to him. That is Silar Saheb (man from outside Court is identified by witness). I had seen 2nd accused first on 12.12.59 and he was then living at Silar Saheb's house.

No Re-examination.

29.6.60. Sgd. C.J. Hammett J.

Hearing adjourned at 1.00 to 2.15 p.m.
Sgd. C.J. Hammett J. 30

29.6.60

On Resumption at 2.15 p.m.
Accused, Assessors and Counsel present.

No. 22

Subramaniam
Pillay
(Recalled)
Examination.

No. 22

EVIDENCE OF SUBRAMANIAM PILLAY (Recalled)

3rd Witness for Prosecution recalled by Defence, with leave for further cross-examination.

KOYA: Just using those two doors of the Court please demonstrate how you shone your torch through the door that night when shots were fired at you. 40

Witness demonstrates.

Neither counsel nor assessors have any questions as he demonstrates. (The demonstration shows that the witness slightly opened the right hand door of the house as you face it and peered round the opening to the witnesses right exposing fully the front of his face and partially his body). Witness returns to the witness box.

No further question to witness in witness box in cross-examination.

In the
Supreme Court
of Fiji

Prosecution
Evidence

No. 22

Subramaniam
Pillay
(Recalled)
Examination
- continued.

10 29.6.60 Sgd. C.J. Hammett J.

No. 23

EVIDENCE OF MUNSAHI REDDY (Recalled)

No. 23

11th Witness for Prosecution
(Munsami Reddy) recalled by Court (Reminded that he is still on oath)

Munsami Reddy
(Recalled).

Examination.

Q. BY COURT: You remember being asked questions by Mr. Koya about your statement to the police and your evidence in the lower court? A. Yes.

20 Q. Did you tell the police untruths in your statement to them? A. No - the absolute truth Sir.

Q. What about to the Magistrate in the Court below?
A. That too was the truth Sir.

To Counsel arising out of Court's questions

To Koya -

Q. What about your evidence in Court here?
A. That was the truth too Sir.

30 Q. Now listen to what I am saying - I asked you if when you saw those 3 men one of them was Ram Bali - that is what you told the police. That you were sure it was Ram Bali and you answered 'Yes'?
A. Yes.

Q. And then I asked you "And when you gave evidence in the lower court you were sure it was Ram Bali" - and you answered 'yes'. A. Yes.

Q. And then I asked you 'And now today when you look back to December, 1959 you are not sure it was Ram Bali and you said 'yes'. A. Yes.

In the
Supreme Court
of Fiji

Prosecution
Evidence

No. 23

Munsami Reddy
(Recalled).

Examination
- continued.

Re-examination.

Q. And that is the position today is it not? You are not certain that that man you saw was Ram Bali?
A. For this reason it is some time since then - time has elapsed but when I gave that statement to the police things were fresh in my mind.

Re-examination by Stuart:-

Q. Do I understand you are now saying that you are not sure if it was Ram Bali then because it was such a long time ago that you saw him? A. Yes.

Q. Whereas you are now saying that when you made your statement to the police in which you said you definitely did recognise him, the matter was clear and fresh in your mind - is that what you have just now said in answer to Mr. Koya? A. Yes, that is so.

10

29.6.60

Sgd. C.J. Hammett.

Stuart: That is the Case for the Prosecution.

COURT: Neither of the accused gave evidence or made a statement in the lower court.

KOYA: That is so my Lord.

20

C.P.C. Section 289 complied with.

1st accused:- I wish to give evidence.

2nd accused:- I wish to give evidence.

KOYA: I shall be calling witnesses on behalf of both the accused.

KOYA opens for Defence briefly

1. Defence of each accused is an alibi.

1st accused at house of Bechu at Tuvu

2nd accused at house of Silar Saheb at Korovou at the material time.

30

2. Defence will prove that accused could not have done this shooting.

DEFENCE EVIDENCE

No. 24

EVIDENCE OF RAM BALI

1st Witness for Defence (the 1st accused)
RAM BALI (m) s/o Ludur Sworn on Ramayan. Residing
 at Vitogo - Farmer - In Hindi.

In the
 Supreme Court
 of Fiji

Defence
 Evidence

No. 24

I am 32 years old.

Ram Bali.

Q. Have you been convicted of any offence and sent
 to jail? A. Yes.

Examination.

10 Q. For assaulting Bola Subramaniam Pillay?
 A. Yes.

Q. When? A. In 1949.

Q. and last year I think you were bound over to
 keep the peace in Vitogo? A. Yes.

A fair number of other people were also bound
 over at the same time.

Q. And were you bound over in Ba for another offence
 some time ago? A. Yes - but that was in 1941 or
 1942.

20 Q. And in 1954 you and one Jalim Singh were charged
 with killing Gopal Reddy and convicted? A. Yes.

Q. And that conviction of murder was set aside on
 appeal I believe? A. Yes.

Q. And in November, 1959 you were prosecuted on a
 charge of attempted murder in a private prosecution?
 A. Yes.

Q. And you were committed for trial but a Nolle
 Prosequi was entered by the Attorney General and
 you were released? A. Yes.

30 Q. Now apart from these matters can you recollect
 any other offence you have committed? A. I
 can't think of any others Sir.

In November, 1959 I was released on bail on
 the charge of attempted murder brought by Jibodh
 Singh privately. I think it was on 21st November,
 1959. After that I stayed for 2 days at the house
 of Abdul Razak at Tawakubu - in Lautoka beyond the
 Golf Links. Then I went to the house of Bechu at
 Tuvu to stay. I did not come to Vitogo to cultivate

In the
Supreme Court
of Fiji

Defence
Evidence

No. 24

Ram Bali.

Examination
- continued.

my farm. I remember the night A.S.P. Walli Mohammed called to see me at Bechu's house.

Q. Now where were you that evening from 7.00 p.m. onwards? A. In Bechu's yard, drinking, No, I was in the yard but I did not drink. That evening I had my meal at 6.30 p.m. Bechu was there at that time. Bechu's son Hari Krishna was there too. After our meal we went outside and sat in a shed.

Q. Who was there? A. Hari Krishna and I went first and Bechu followed a little later.

10

Whilst we were there Babu Ram, Ram Khelawan Sirdar, Baiju, Jagai and Ram Bali came. They came one after the other - not together. I cannot remember the order in which they came. Then it was decided we should have some yaqona. Babu Ram mixed the yaqona and we were all conversing. I, Jagai, Ram Khelawan Sirdar, Baiju and Babu Ram were all drinking yaqona.

Q. Earlier I asked you about what you did and you said you were in the yard I think? A. Yes - I said I was in the yard drinking yaqona but I corrected myself because the drinking took place afterwards.

20

Q. How long did these visitors stay drinking yaqona that night? A. From 7.00 to 11.00 p.m.

Afterwards they went away to their respective homes - they all live in the Tuvu area. Yes, I know Bechu's car. It is a small black Standard car. I saw it there whilst we drank yaqona. This car was not taken out of Bechu's yard at any time during this period.

30

I would say that A.S.P. Walli Mohammed arrived there at close on midnight.

I went to bed almost straight away soon after the others left. Bechu was sleeping in the same room as me. I talked to A.S.P. Walli Mohammed that night after Bechu woke me up. I answered all the questions he asked me. P.C. Jai Raj and A.S.P. Walker were with A.S.P. Walli Mohammed.

After seeing me they stayed a fairly long time making inquiries. The next day P.C. Jai Raj came again in the afternoon. He asked me questions and I answered them and then he recorded my statement. Yes, he wrote it in two parts.

40

Gopal's store in Lautoka is at the corner of

Namoli Avenue. I saw Mohammed Yasin from Vitogo there that day. I also saw the second accused, Isak, There. I spoke to him. I returned to Tuvu that day at about 1.00 p.m. In Vitogo there are two factions and a considerable amount of feud between them.

In the
Supreme Court
of Fiji

Defence
Evidence

No. 24

Q. Do Drilo No. 1, Kamal Singh and Bissun Singh come from Vitogo? A. Yes Sir. They are my enemies - we are not on talking terms.

Ram Bali.

Examination
- continued.

10 Subramaniam Pillay and his sons are my enemies.

Lalla and Atmaram Maharaj - they too are enemies of mine.

Gopal Reddy's family and Govind Reddy are well known to me. I regard them all as my enemies.

Last year I was wounded by a cane knife by one Sukh Deo - in the day time during the cane cutting season. Mohammed Isak - the second accused - took me to hospital on that occasion. This would have been in October, 1959.

20 I returned to live in Vitogo after that. Ishak was not cutting cane then. He went to Tavua to live the day after I returned to Vitogo from Hospital.

The second accused and I are good friends.

That night at Tuvu I was wearing a white sleeveless singlet and shorts of white background and red stripes running down.

My house in Vitogo is not very far from Subramaniam Pillay's house there.

30 Q. Is what Subramaniam Pillay said in Court true or not? A. He is telling absolute lies.

Q. What about Lalla and Atmaram Maharaj?
A. Absolute lies.

Q. What about Munsami Reddy? A. He too is telling lies.

Close of examination in chief.

Hearing adjourned to 9.00 a.m. on 30.6.60.

Accused remanded in custody.

29.6.60.

Hammett J.

In the
Supreme Court
of Fiji

Thursday, 30th June, 1960 at 9.a.m.
Both accused present in custody.
Assessors present
Stuart for the Crown.
Koya for the Defence.

Defence
Evidence

No. 24

Ram Bali.

Examination
- continued.

1ST W/D (Cont'd)

Koya asks to put a few more questions to 1st
W/D in examination in chief.

Examination in Chief cont'd.

Q. This is a list of your previous convictions - I
want you to listen whilst it is read out to you and
say if this is correct. 10

(A list is read out to witness - list is marked
"B" for identification).

A. I cannot recall the second offence but since it
is recorded it must be true. All the rest are true.

The assault conviction in this list is the
occasion I assaulted Bal Subramani.

Q. And in addition to these offences last year you
were brought up before the Magistrate and bound over
I believe. A. Yes, that is true. 20

KOYA: That is all I wished to ask the witness My
Lord.

Cross-
examination.

Cross-examination:

Q. You now say you assaulted Bola Subramani in 1952
and not 1949? A. Yes, I am now definite it was
1952. I know that Subramaniam Pillay and his sons
are my enemies.

Q. Does that include all his sons? A. Well be-
cause I am not on speaking terms with one of his
sons I regard them all as my enemies. These two
factions that exist in Vitogo came about in 1954
and since then we are neither on speaking nor visit-
ing terms. We have had no fights or physical in-
juries. 30

Q. Do you suggest they are trying to do you an in-
jury? A. It is possible they might be willing
to do me an injury?

Q. And I suppose it is possible that you would be
willing to do them injury? A. No, if I wanted 40

to do them injury I would not have been willing to be bound over.

In the
Supreme Court
of Fiji

Q. Now you have given the names of the people on the opposite side of the faction - who are the names of the people on the other faction?

Defence
Evidence

A. Well there is myself, Isak and Benim Madho.

Q. No one else? A. No.

No. 24

Q. What about Bechu? A. No, he is neutral.

Ram Bali.

10 Q. And his son Hari Krishna? A. He is on neither side.

Cross-
examination
- continued.

Q. So on the one hand you have

(1) Yourself

(2) Isak

(3) Benim Madho?

A. Yes.

Q. And on the other side you have Subramaniam Pillay and all his family

Lalla

Atmaram

20 Gopal Reddy's relatives and family.

A. Yes, and all their cousins and some Fijians.

Q. Vishnu Deo? A. Yes.

Q. Drilo? A. Yes.

Q. Kamal Singh? A. Yes - His father is Shiu Karan Singh.

Q. And Sukh Deo? A. Yes.

Q. And all the relatives of these people too?

30 A. Those I have named would comprise the total number of the people comprising the other side of the faction at Vitogo.

It was Ram Jibodh I was charged with trying to kill last November.

Q. Is he a member of the faction opposing you?

A. Yes. He gets Fijians to assist the other faction.

Q. To whom is he related? A. To none of the others.

Q. So that adds Ram Jibodh to the list - are there any others opposing you? A. Sath Deo and Vishnu Deo.

In the
Supreme Court
of Fiji

Defence
Evidence

No. 24

Ram Bali.

Cross-
examination
- continued.

Q. And Lalla? A. No he is neutral.

Q. Any more? A. I think not.

Q. So it is a case of you three people against all the rest of these people? A. Yes that is so.

This feud has been in force since Gopal Reddy's death in 1954 but since then even more so.

Q. And since then there have been constant shootings in Vitogo haven't there? A. None from 1954 to last year but the gunfire started last year. I do not have a gun. I have never fired a gun in my life. I have never handled one. I have seen one in the hands of others. My home is not far from Subramanian Pillay's house. I left home when I was charged with attempting to murder Ram Jibodh - I can't recall the date - I think it was last November. I go to my house there about every two weeks in a car and see my children and then come away.

10

Q. Why did you leave your home? A. Well I was on bail and Bechu was my guarantor. I thought that if someone started a fight with me Bechu might lose his bail. Bechu is not related with me. I get on very well with him and I have business transactions with him. I borrowed money from him to build a house. Whilst I am away from my home I employ a man from Nausori to look after my farm. My wife and three children live in my house at Vitogo and I have one girl at school at Ba.

20

I cannot recollect the date on which I began to live at Bechu's house.

On the day of the shooting at Subramanian's house I went to Lautoka in the day time. I arrived back at Bechu's house at about 1.00 p.m. I travelled in a Hillman car - the driver was a young Indian man whose name I do not know.

30

Q. Were you alone? A. No.

Q. Who was with you? A. The driver and the second accused.

Q. What did you do when you returned to Bechu's house at 1.00 p.m.? A. Oh, I just lounged around - I did a bit of reading and I just did nothing in particular. I was in Bechu's house attached to the store. There is a shelter there. Yes, that is the same shelter where we drank yaqona that evening. Bechu and Hari Krishna, his son, were there on and

40

off. There were customers in and out of the store but no one in the shed with me.

Q. How long were you there? A. Until about 5.00 p.m.

10 At about 5.00 p.m. I went to Sarava in the car with Bechu and Hari Krishna. At Sarava we parked the car opposite Chettu's place. Bechu went up to speak with him and I remained in the car with Hari Krishna. Then we went on up the hill and turned the car and returned to Bechu's store at about 6.30 p.m.

Then I had a wash and the three of us had our meal. Bechu has no small children living with him and his store - they are not there - His wife is there - she is a sickly woman.

After having our food we washed and took benches and chairs and sat inside the shed I have mentioned. It was then about 6.50 p.m.

20 Round about 7.00 p.m. Babu Ram, Ram Khelawan, Baiju, Jagai and Ram Bali came - not together but one after the other. I cannot recollect who came first. They all live close by and I know them.

I have known Bechu ever since I married Ram Bali's sister - I separated from that woman 10 or 12 years ago. I married her when I was 17. I have known Bechu for 15 to 20 years. I left that woman about 3 years after I married her.

30 Q. You are related to Bechu aren't you? A. Well - pause - yes - through my past marriage. Yes Baiju and Jagai are Bechu's brothers. Yes, I agree Ram Bali is Bechu's brother in law.

Q. What about the others, aren't they related to Bechu as well? A. Well I don't know about Ram Khelawan and Babu Ram. No, Ram Khelawan is not Baiju's son.

Babu Ram brought yaqona there at a few minutes after 7.00 p.m.

40 No one else was in the shed. Bechu's wife and daughter in law were indoors but not in the shed. I do not recollect anyone coming there.

Q. Did Ishak not come? A. Who?

Q. The second accused? A. No Sir.

I did not go out at all that evening. Hari Krishna did not go out at all that evening.

In the
Supreme Court
of Fiji

Defence
Evidence

No. 24

Ram Bali.

Cross-
examination
- continued.

In the
Supreme Court
of Fiji

Defence
Evidence

No. 24

Ram Bali.

Cross-
examination
- continued.

Q. Did you know Munsami Reddy? A. Not very well. I know he lives near Drasa School. Yes, I know him by sight.

Q. Do you know him to speak to? A. No, never.

Q. Never? A. Well not since 1954.

Q. Is he an enemy of yours? A. Well he is related to Gopal Reddy's family and so he could be regarded as an enemy. I didn't know him at all prior to 1954.

Q. So you have never spoken to him in your life? A. No Sir. 10

Q. What cause would he have of being frightened of you? A. I can't say.

I know Subramani, the taxi driver, who came here and gave evidence in this case. I have known him for 4 or 5 years.

Q. Is he an enemy of yours? A. No, we have no trouble.

My enmity with Lalla and Atmaram dates back to the death of Gopal Reddy. Yes, I say that Lalla and Atmaram and Subramaniam Pillay and his sons and Munsami Reddy have been my enemies since 1954 - since the death of Gopal Reddy. I don't know how Munsami Reddy is related to Gopal Reddy. 20

Q. Have you had any trouble with Munsami Reddy since 1954? A. Well - (witness gives a long explanation)

Question is repeated. A. No.

I have had trouble with Lalla since 1954.

Q. What trouble? A. Well he gave evidence against me in 1954. 30

Q. But what trouble since 1954? A. None since 1954.

Q. Atmaram? - Any trouble since 1954 with him? A. When Sukh Deo hit me with a knife Atmaram instigated it - and he used to stay with Sukh Deo.

Q. What do you mean that Atmaram instigated it?

A. Well I inferred that.

Q. Why? A. Well immediately before I was hit with the knife by Sukh Deo, Atmaram had given him a file to sharpen the knife and so I inferred he instigated it.

Q. So because Atmaram lent his file to Sukh Deo you assume he must have instigated him cutting you with a cane knife? A. Yes.

In the
Supreme Court
of Fiji

Defence
Evidence

No. 24

Ram Bali.

Cross-
examination
- continued.

10 I have had no trouble with Subramaniam Pillay since 1954.

Q. What about Bola Subramani - any trouble with him? A. Yes once. About a month after I was hit with the knife, about 12 or 13 people charged on my house at about 7.30 p.m. one night and I got into a car and went off to Lautoka. He was with those people with Muthu Sami Pillay. I had no other trouble with him or M.S. Pillay. I have had no trouble with M.K. Sami. The last time I was at Subramaniam Pillay's house was previous to 3rd December, 1953. I have known second accused for 2 or 3 years.

20

Q. Since the death of Gopal Reddy in fact?

A. Yes.

Yes, second accused and I are very friendly now. I didn't see Yasin again that day after I saw him at T.R. Gopal's store.

Q. What did you usually do in the evenings at Bechu's place? A. Just sit around and if anyone came we would drink yaqona and if not I would read or go to sleep. I used to go to bed at any time between 8 or 12 o'clock.

30

Q. Was it a regular thing for people to come in and drink yaqona with you there? A. Yes - just the neighbours.

Yes, Bechu's brothers came there quite frequently to drink yaqona - yes also Ram Khelawan - Babu Ram did not come so frequently because he lives further away.

In the
Supreme Court
of Fiji

Defence
Evidence

No. 24

Ram Bali.

Cross-
examination
- continued.

Babu Ram lives over a mile away

I can't say who left first that night - they all left and we all dispersed at the same time. We dispersed because it was getting late and we had finished the grog.

The main topic of conversation that night was the damage done to Ram Khelawan's property by cattle - apart from that it was general talk about farming and so on. No, we didn't talk about the shootings at Vitogo.

Q. Have you ever gone out at night when you have been staying at Bechu's? A. Well I have been to Ba to my brother's place.

Q. How many times? A. Only once. I have only been out once when I was staying at Bechu's place, at night, and that was this one occasion I went to Ba and stayed with my brothers.

Q. And on that one occasion did you go by Bechu's car? A. No, I went in the bus.

Q. When was that? A. I don't remember.

Q. How long before 28.12.59? A. I think it was 2 weeks before Christmas. Yes, I stayed overnight and returned the following day.

Q. Whilst you were at Bechu's did he go out in his car at night? A. No.

Q. Not once? A. I didn't see him go out once at night either in his car or in any other way.

Q. What about Hari Krishna - did he go out at night? A. Only when someone was in distress or trouble and he had to go to the hospital - otherwise no - pregnant women and so on.

Q. And how many times did that happen whilst you were staying there? A. I think twice.

Q. And on each occasion I think you said there were pregnant women to take to hospital. A. Well I didn't really know - neighbours came to him and he merely said he was going to the hospital.

10

20

30

Q. Who were these neighbours who came to him on these two occasions? A. I don't recollect who they were. They were men. I think it only happened twice. I can't name either of the men concerned. No Sir, I don't know why they wanted to go to hospital.

In the
Supreme Court
of Fiji

Defence
Evidence

No. 24

10 Q. Then how do you know they did go to the hospital at all? A. Because each time I heard that they wanted to go to hospital. Whether they were merely visiting the hospital or not I don't know.

Ram Bali.

Q. And didn't you see these people at the time? A. Well, I didn't take any particular notice. Bechu and I slept in the same room. We have always slept in the same room since I have been at the house.

Cross-
examination
- continued.

The Police came at about midnight on 28.12.59 and the neighbours had left at about 11.00 p.m. Hari Krishnan was wearing shorts and a shirt - I couldn't tell the colour. I can't tell you what Bechu was wearing.

20 I haven't seen anyone else drive Bechu's car save Hari Krishna. He did not drive the car out that night.

Q. Can you explain why Subramani saw Hari Krishna driving that car at the Drasa turn off that night? A. He is telling lies. Hari Krishna didn't go anywhere that night.

Q. Did you not go with him along the Drasa Road that evening? A. No.

30 Q. And get off at the road that leads to Vitogo? A. No.

Q. Where Munsamy Reddy saw you? A. No.

Q. And then went on to Subramaniam Pillay's house with second accused. A. No.

Q. And then return past Ram Sewak's house across the Ford? A. No.

In the
Supreme Court
of Fiji

Defence
Evidence

No. 24

Ram Bali.
Re-examination.

Re-examination:

The Police came to Bechu's house at midnight. I first came to know of the shooting at Subramaniam Pillay's house that evening when I was told by A.S.P. Walli Mohammed.

My brother and my family live in Vitogo. They are naturally on my side of the feud.

Q. And Beni Madho? A. Yes.

Q. And Isak's family would be on his side?

A. That is possible but he has no brothers or relatives in Vitogo. 10

His wife comes from Tavua. He has one uncle who lives about 4 miles away - his house at Vitogo which is 40 chains from my house at Vitogo.

My arm, whilst I was at Bechu's place, used to hurt and I could not use it.

I had employed the man from Nausory since the month before I was assaulted. He used to come visiting me.

Q. It was November 23rd or 24th that you first went to Bechu's place I believe. 20

A. Round about then but I can't swear to it.

30.6.60

Hamnett J.

No. 25.

EVIDENCE OF ISHAK ALI

2ND W/D - (the second accused)
ISHAK ALI (m) s/o Ali Hussein, s/Koran, residing
 at Korovou, Tavua - Labourer - in Hindi.

In the
 Supreme Court
 of Fiji

Defence
 Evidence.

No.25

Ishak Ali.

Examination.

I am also known as Mohammed Isak.

10 I remember the evening of 28th December, 1959
 when Cpl. Prem Krishna came to the house at 7.05
 p.m. At that time Sheik Silar was not there. Cpl.
 Prem Krishna left after speaking to me.

Sheik Silar or Silar Sahib returned later that
 evening - about an hour later. I was sitting in
 the yard listening to the radio. That is him (Si-
 lar Sahib - identified). He is my wife's grand-
 father. He had his bath. I then had my meal with
 him at about 9.00 p.m.

20 Bhikram Ali is a son-in-law of Silar Sahib
 and he lives in the same compound. He did not
 have a meal with us. It took us 8 or 10 minutes
 to eat our food.

After our meal Silar Sahib and I and my wife
 and his wife sat chatting. No one else was with
 us.

That night I slept in my house in that com-
 pound. I went to bed at about 10.00 p.m. Silar
 Sahib went to bed about 10 or 15 before 10.00 p.m.
 His house is near mine.

30 At about midnight Cpl. Prem Krishna again
 called at our house. I conversed with him first
 inside the compound and then down near his Land-
 rover. I gave my statement to Cpl. Prem Krishna
 near the Landrover.

I first came to learn of this shooting at
 Subramanian Pillay's house when I was arrested.
 That would have been on 17th or 18th January, 1960
 when Surju arrested me. By "Surju" I mean Sgt.
 Shiu Narayan.

40 Q. Did you come to know when Prem Krishna took
 your statement down by the Landrover on 28th De-
 cember, 1959 why he was taking it. A. The Police
 mentioned a shooting at Vitogo but no name was
 mentioned at whose house this was. When Cpl. Prem
 Krishna came to my house the second time I was
 asleep.

In the
Supreme Court
of Fiji

Defence
Evidence.

No.25

Ishak Ali.

Examination
- continued.

On 28.12.59 I came to Lautoka. I met Cpl. Sapt Rishi at the bus service near Tuvu Indian School. I was under a tree near the school at the time. He was inside the bus when I boarded it. Then I spoke to him. In my conversation with him I told him that I hoped to go away to Sigatoka. I told him where I was then living.

I got off the bus in Lautoka town.

There I met Mohammed Yasin near U.M. Ramjan's timber yard. The next store to that timber yard is Ram Roop's and then T.R. Gopal's. I also met Mr. Ram Bali - the first accused. I met no one else.

I returned to Korovou that day. I left Lautoka at about 12.30 p.m. in a Tavua car driven by Munnu s/o Latchman. Ram Bali travelled with me. No one else. Ram Bali got out at Tuvu. The car then took me as far as Tavua and I went to Korovou in Hassan Nair's car. I got off near Korovou Cemetery and I then walked to my house.

I did not go anywhere that night after 7.00 p.m.

I have been living in Silar Saheb's house at Tavua since about October, 1959. Between October and December, 1959 the Police had seen me there - Cpl. Prem Krishna was the policeman.

I lived in Vitogo in 1951 and 1952. Between 1952 and 1959 I left Vitogo to live away. This would have been in 1952 or 1953. I returned to Vitogo to live in 1956 - at the end of 1956. I have known Ram Bali since I returned to Vitogo in 1956 - I am on friendly terms with him.

I am not on friendly terms with Subramaniam Pillay and his sons.

Q. Since when? A. We were not on very friendly terms but since the knife assault on Ram Bali we are on terms of enmity. I left Vitogo to live in Korovou last year to save myself from all the trouble that was brewing there.

Q. Have you ever been convicted of any criminal offence? A. No. No, I have not been bound over.

Cross-
Examination.

Cross-Examination:

I went to Korovou to avoid the trouble at Vitogo.

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30

40

Q. But you had had no trouble at Vitogo had you?
 A. I had helped Ram Bali to hospital when he was hit with a knife and since then I was being kept an eye on.

Q. By whom? A. Subramaniam Pillay's son, Vishnu Deo, Atmaram, Sukhdeo.

Q. And Lalla? A. No.

Q. Did they assault you? A. No. But they sent me messages.

10 Q. Who did? A. I heard a message from them that they were planning to fix me up too.

Q. From whom did you get that message? A. From Subramaniam Pillay's son.

Q. Who? A. Bola Subramani, Muthu Sami and also Atmaram.

Q. But who brought you the message? A. Young lads.

Q. What were their names? A. I received various such messages.

20 Q. But who gave you these messages? A. I cannot remember now.

Q. How many did you receive? A. About 6 or 7 messages and the people who sent the messages used to glare at me.

Q. Now which ones glared at you?
 A. Bola Subramani and Atmaram.

Q. Who else? A. I can't remember.

Q. And how many times did Atmaram glare at you?
 A. Many times.

30 Q. And Bola Subramani? A. Many times.

The messages I got came from Bola Subramani and also Atmaram - sometimes separately and sometimes together. These messages came to me from the time Ram Bali was assaulted until I left Vitogo in October, 1959.

I cannot remember the identity of any one person who brought me these messages.

40 I left Tavua at 7.00 or 7.30 a.m. on 28.12.59. I walked from Morovou to Tavua and then I went from Tavua to Ba in Babu Ram's taxi. I didn't have to pay for that taxi - I paid the bus fare. I got into the Ba-Lautoka bus at Ba at 9.30 a.m. I got

In the
 Supreme Court
 of Fiji

Defence
 Evidence.

No.25.

Ishak Ali.

Cross-
 Examination
 - continued.

In the
Supreme Court
of Fiji

Defence
Evidence.

No. 25.

Ishak Ali.

Cross-
Examination
- continued.

off at Tuvua as I wanted to get into touch with Deo Verma. That would have been about 10.00 or 10.30 a.m. He was not there. I went to his house which is 7 or 8 chains from Bechu's store.

Q. Did you go to Bechu's store? A. No.

Q. Didn't you call in to see your friend Ram Bali who lived there? A. No. I walked towards Ba and got under the shade of the tree.

Q. Just near Bechu's store I believe?

A. A little way away. 7 or 8 chains from it. When I gave my statement to the Police I may have missed out some things.

10

Q. You didn't tell them about your visit to Tuvua did you? A. It is possible - the statement was given in a rush.

Q. Why did you tell the Police that when you returned from Lautoka to Ba that you were the only one in the car? A. Perhaps I didn't understand them properly.

Q. To the Police you said you were in Munna Latchman's car and that from Lautoka to Ba you were alone in the car didn't you? A. Yes.

20

Q. Who was in fact in the car with you?

A. Ram Bali. It is possible that he asked me whether I was alone or not. I gave my statement in a hurry.

Q. Why did you forget to tell the Police that you went to Tuvua that morning and returned with Ram Bali to Tuvua later in the same taxi?

A. It was night time and I must have forgotten. I had been to bed that night. Yes I use hair cream regularly.

30

Q. I suggest to you that you had not been to bed that night when Cpl. Prem Krishna called at your house at midnight. A. I had - I had been in a deep sleep.

Q. And that if you had been asleep your hair would have been ruffled? A. I had been asleep. The dogs had woken me up. Cpl. Prem Krishna told me there had been a shooting at Vitogo and he wanted me to make a statement. No one told me and I did not ask anyone who had been shot at at Vitogo.

40

Q. Did you see Ram Bali between 28.12.59 and 18.1.60 when you were arrested? A. No. I did not go to Bechu's house in that period.

Q. Have you ever been to Bechu's house? A. No.

Q. Or his store? A. No.

Q. Never? A. No. I didn't know Bechu until I was detained in the jail at Lautoka on 18.1.60 in this case.

Q. Not at all? A. No.

Q. Did you ever know Hari Krishna, his son?
A. No.

10 Q. Have you ever ridden in his car? A. No.
I only came to know Hari Krishna was Bechu's son on 18.1.60.

20 Q. You have known Ram Bali since 1956 and have been on very friendly terms with him? A. Not what one would call thick friends. I didn't see Ram Bali at all anywhere between 28.12.59 and 18.1.60. I did leave Tavua in that period - once - I came as far as Ba - to Babari Ban - towards the hills. No I didn't come to Lautoka between 28.12.59 and 18.1.60. No. I didn't come to see my lawyer in that time.

Q. What about Jaswant - does he still owe you the money? A. I don't know.

Q. You don't know? A. Well he might have paid my lawyer but I don't know.

Before the assault on Ram Bali last year I was on friendly terms with Subramaniam Pillay - we were not on visiting terms. The same would be the case with his sons. Yes, the ill-feeling between us arose as a result of the assault on Ram Bali.

30 It is not true that on 28.12.59 I went with Ram Bali to their house to shoot them up to get my own back.

To Court: I do not know Munsami Reddy. Lalla and I are on bad terms. Atmaram and Lalla have been on bad terms with me since Ram Bali was assaulted. That was 4 or 5 months before December last.

Re-Examination:

40 When Cpl. Prem Krishma came to the house I saw him in the beam of light from the Police van. There was no light at the house at the time.

30.6.60. Hammett, J.

Hearing adjourned at 12.55 p.m. to 2.15 p.m.

30.6.60. Hammett, J.

On Resumption at 2.15 p.m.
Accused, Assessors and Counsel.

In the
Supreme Court
of Fiji

Defence
Evidence.

No. 25.

Ishak Ali.

Cross-
Examination
- continued.

Re-Examination.

In the
Supreme Court
of Fiji

No. 26.

EVIDENCE OF SILAR SAHEB

Defence
Evidence.

3RD W/D.

SILAR SAHEB (m) s/o Imam Saheb S/Koran, residing
at Tavua, - cane farmer - in Hindi.

No. 26.

Silar Saheb.
Examination.

I am 63 years old or perhaps over. My grand-
child is married to second accused. I remember the
evening Cpl. Prem Krishna took a statement from me
at Korovou, Tavua. I was at Mohammed's house when
he came. I returned to my house in the Police Land
Rover about 10 or 15 minutes later. When I ar-
rived home I found my old woman, second accused,
second accused's wife and small children. My son
in law, B. Ali, was there also.

10

I went for my bath and then returned to my
house. I listened to the radio and then we had
our food. Second accused and I ate our meal to-
gether. Afterwards we listened to radio and dis-
cussed work for following day with second accused.
Then Isak went into his house and I went into mine
- it was then time to go to bed. It was about
10.00 p.m. - I had to get up again in the night
when I heard a voice calling from the direction of
the gate and the dogs barked. I went outside and
I saw second accused going towards the gate where
the Police van was standing.

20

Second accused didn't go anywhere between the
time we ate our food and I went to bed.

Cross-
Examination.

Cross-Examination:

Q. Had Ishak been out that day? A. Yes - to
Lautoka. He left at about 8.00 or 9.00 a.m. and
returned about 4.00 or 4.30 p.m. - that is when I
saw him at home next.

30

I didn't know what the Police Cpl. wanted
second accused for. I didn't ask second accused.

Q. Do you now know what the Police Cpl. wanted?
A. What now?

Q. Yes now. A. What is the question?

Question is repeated.

A. Yes I know now.

40

Q. When did you find out? A. When Isak was
arrested. Bhikram Ali was at my house that
night when I returned home. He stayed there until

a little before 10.00 p.m. He is my son-in-law. About the same as second accused. Second accused and Bhikram Ali are friendly. Yes, I am sure Bhikram was there all that evening. We ate our meal at 9.00 p.m. Bhikram was present but did not eat with us.

10 Q. Now Ishak Ali said that there was no one else with you all that evening - and Bhikram Ali was not there. Has he made a mistake? A. I don't know about that. Bhikram Ali was there. They were both there. I deny that second accused went out that night.

Re-Examination:

Second accused didn't give me any reason for wanting to stay with me and I didn't ask him. He had stayed with me once before and I thought he was short of money and wanted to stay with me for that reason.

30.6.60.

Hammett, J.

20 Koya: That is the only witness called on behalf of the second accused. I will now call the witness for the first accused.

No. 27.

EVIDENCE OF RAM KHELAWAN.

4TH W/D.

RAM KHELAWAN (m) s/o Jaganath S/Ramayan, residing at Tuvua - Farmer - in Hindi.

30 I remember in December, 1959, giving a statement to the Police in Tuvua. It was on a Tuesday. It was 29th December, 1959.

40 On the previous day, the 28th December, 1959, I went to Bechu's store. I arrived there at 7.00 p.m. approximately. Baiju went with me. I saw Ram Bali - two Ram Balis - Bechu, Hari Krishna, Jagai and Babu Ram there when I got there. That is one of the Ram Balis - indicates first accused - the other Ram Bali is outside. I said something to Bechu and sat down. I said, "We might as well have some yaqona" - Then Babu Ram got some yaqona and we sat there and drank it and discussed the

In the
Supreme Court
of Fiji

Defence
Evidence.

No. 26.

Silar Saheb.

Cross-
Examination
- continued.

Re-Examination.

No. 27.

Ram Khelawan.

Examination.

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Supreme Court
of Fiji

Defence
Evidence.

No. 27.

Ram Khelawan.

Examination
- continued.

Cross-
Examination.

new sugar cane contract and this quota business. I stayed there until 11.00 p.m.

In that period the first accused did not go away anywhere.

Hari Krishna, Bechu's son, was there that evening when I arrived. He was there when I left. He did not go away anywhere whilst I was there.

Yes, I know Bechu's car - small black Standard car. I saw that car at the house that evening.

It was not taken out by anyone during the time I was there that evening. 10

I fixed the time of my arrival and departure by looking at my watch. I live about 35 to 40 chains from Bechu's house.

Cross-Examination:

I walked to Bechu's house that night. Yes, I am related to Bechu. He is my maternal uncle. I had gone there that night to report to Bechu, who is the leader of the gang there, that damage had been done for the fifth time to my crops by cattle. I am a regular visitor to Bechu's place - about twice and some times three times a week to make purchases and in addition I always call in when I see people there. I have only known first accused since he went to live with Bechu. I had never seen him before. He had lived with Bechu ever since Bechu went bail for him - that would have been about 2 weeks before 28th December, 1959. In this period I had been up there once or twice and seen Ram Bali. On these occasions once Bechu, Ram Bali and Hari Krishna were there alone - but on the second time there were others there. 20 30

Babu Ram is not a relative of mine or Bechu's. I don't know why he was there that night. He left with me that night. We all left together.

I do not know second accused. Today is the first time I have seen him.

I am a Sirdar for Tuvua Portable Line gang and Lorry Transport Gang. All the people there that night were members of my gang. 40

Q. Bechu too? A. Yes. He too is a planter.

No one else called at Bechu's place that night whilst I was there. We spoke about the new sugar cane quota.

Q. Did the people there discuss your cattle trespass? A. No - they didn't discuss it. I told

Bechu about it as soon as I got there and he said he would look into it but it was not discussed by or with the other people there.

I told Bechu about it in front of the others but none of them discussed it.

First accused did not go out anywhere with anyone whilst I was there. He did not go out with Hari Krishnan in Bechu's car before 11.00 p.m. We sat near the door so that you could see the store.

10 No one came to the store that night whilst I was there.

Close of Cross-Examination.

To Court: Yes, I am a regular but not too frequent visitor of Bechu's. I go there regularly like I did that evening and sit there and chat and drink yaqona. The gathering that evening there was the usual sort of gathering and meeting we have there - there was nothing unusual about it at all.

Re-Examination:

20 I had previously reported the owner of the animal which had damaged my crops to Bechu and the damage had been stopped. I had previously sat there drinking yaqona with a lot of people at Bechu's.

Q. And was Ram Bali there on that occasion?

A. No.

Q. On how many occasions had you drunk yaqona with Ram Bali at Bechu's house? A. As far as I can recollect once only - and that was on that night.

30 I remember the date of this occasion because the Police had been to me and taken a statement.

30.6.60.

Hammett, J.

Koya asks that hearing be adjourned to 4th July, 1960 to enable him to attend a conference called by H.E. tomorrow.

Hearing adjourned to 4th July, 1960 at 9.00 a.m.

30.6.60.

Hammett, J.

Monday 4th July, 1960 at 9.00 a.m.

40 Both accused present in custody.

Assessors present.

Stuart for the Crown.

Koya for the Defence.

In the
Supreme Court
of Fiji

Defence
Evidence.

No. 27.

Ram Khelawan.

Cross-
Examination
- continued.

Re-Examination.

In the
Supreme Court
of Fiji

No. 28.

EVIDENCE OF CHIMMANBHAI APPALBHAI PATEL

Defence
Evidence.

5TH W/D.

CHIMMANBHAI APPALBHAI PATEL (m) s/o Appalbhahi Patel
S/Ramayan, residing at Lautoka - Company Director
- in English.

No. 28.

Chimmanbhahi
Appalbhahi Patel.

On Wednesday 29th June, 1960, I went to Sub-
ramaniam Pillay's house accompanied by you and
Inspector Raman. On arrival there we spoke to Mr.
Pillay and took his permission to inspect the door
of his house. That is the door (door in Photo B4
identified).

10

Examination.

Q. What was the wood used in the door?

A. Six by one T. and G.

I saw the inside of the door. There were no
marks piercing through the inside of the door. The
next day on the Thursday I carried out some experi-
ments with a gun at the Lautoka Rubbish Dump. There
were present Mr. Caldwell A.S.P. Abdul Samat Ali,
Razak and you - indicating Mr. Koya -
I used Mohammed Raja's gun.

20

Q. Did you carry out some experiments?

A. Yes - with planks.

Q. What is this? A. This is the first door I
shot at.

(Planks of wood in rough shape of door iden-
tified by witness)

Koya asks that the five mock doors he has in Court
used in those experiments be put in in evidence.

Stuart: No objection.

30

Court: I will call them "Doors" for convenience
although they appear to be merely wood made up in
rough shape of small doors or panels.

First door put in - Admitted Exhibit T.1.

Witness (Cont'd)

This door was placed up against a tree and
marked 1. I shot at it from a distance of 18 feet
from an angle of 45 degrees. This is a result of
the shooting. (Hole in door shown). I produce the
five empty cartridge shot cases I used. Tendered.
Admitted Collectively Exhibit "U".

40

This is the second door I shot at - Admitted
Exhibit "T2". I shot at it at a distance of 30

feet from an angle of 45 degrees. At this distance some of the pellets of the shot pierced the door and some did not. This is the third door I shot at. Tendered Exhibit "T3". I shot at this door at a distance of 14 yards - or 42 feet - at the same angle. This is the mark it made with the pellets. This is a chip of wood that fell out of a knot hole.

In the
Supreme Court
of Fiji

Defence
Evidence.

No. 28.

Chimmanbhai
Appalbhahi Patel.

Examination
- continued.

10 Koya: I do not ask that that go in. Some pellets went through the door and some did not. These are the marks made on the inside of the door.

This is the fourth door I shot at. Tendered T.4. I shot at this door at a distance of 18 yards or 54 feet from an angle of 45 degrees. Some of the pellets from this shot went through the door and some did not.

20 This is the fifth door I shot at. Tendered "T.5". I shot at this door at a distance of 8 yards or 24 feet in a direct line. Both the shot and the pellets went through the door. Not all the pellets went through the door - only some did. The door was leaning against a very heavy duty 44 gallon drum at the time which was very heavily dented.

The timber used in these doors is "Six by one T and G".

The gauge of the gun I used was a 12 gauge shot gun. The doors were initialled by Mr. Caldwell A.S.P. at the time. On each door some of the pellets went through.

30 Cross-Examination:

Cross-
Examination.

On each of these doors there were some pellets which did not go through the door. The chip that fell out of the door I showed was from a knot hole.

I agree that there are two sorts of barrel on a shot gun. Yes there are choked barrels and unchoked barrels. The gun I used had a choked barrel. In every case I used a choked barrel.

Q. Have you ever shot with an unchoked barrel?

A. Yes.

40 Q. Can you explain the difference between a choked and an unchoked barrel? A. No.

Q. Do you know what difference there would be between a shot fired with a choked barrel and one fired with an unchoked barrel? A. No I could

In the
Supreme Court
of Fiji

Defence
Evidence.

No. 28.

Chimmanbhai
Appalbhai Patel.

Cross-
Examination
- continued.

not say the difference in the effect of a shot fired with a choked barrel or an unchoked barrel.

I agree that there might be a vast difference between the results of a shot fired by a choked barrel and an unchoked barrel. I couldn't say if there would be any difference or not.

Q. I suggest to you that with a choked barrel there is a greater concentration of shot?

A. I couldn't say.

Close of Cross-Examination.

10

Court to Koya:

Was there any particular purpose in calling this witness to give evidence? Is he put forward as an expert witness?

Koya: No my Lord, he is not brought as an expert witness at all - anyone could have given this evidence.

No Re-Examination.

4.7.60.

Hammett, J.

No. 29.

Bechu.

Examination.

No. 29.

20

EVIDENCE OF BECHU

6TH W/D.

BECHU (m) s/o Udit S/Ramayan - residing at Tuvu - Storekeeper - in Hindi.

I am 60 years of age. I have lived at Tuvu for 30 years.

Some time last year - in November, 1959, first accused came to live with me.

On night of 28th December, 1959 I remember Mr. Walli Mohammed A.S.P. calling at my house. At 7.00 p.m. I was at home. My son Hari Krishna was there too. Ram Bali was there too.

30

We had our meal at 7.00 p.m.

After that I came outside and sat in the shed. Ram Bali did likewise - also Hari Krishna.

This shed is at the front of my store at the side.

Jagai came to the store that night. He is my brother. Babu Ram also came there. Also Ram Bali number two. After them came Baiju and Ram Khelawan. Yes, Ram Khelawan was my nephew. I had a conversation with Ram Khelawan. Babu Ram made yaqona. These people stayed there until 11.00 p.m. - by then they all dispersed. Then Hari Krishna went to his room and I went to mine with Ram Bali. About an hour later I woke up. The Police came there. Inspector Walli Mohammed spoke to us - he also spoke to Ram Bali. Police did not take my statement.

10

20

I told them my car had not been used that night after 6.30 p.m. I could hear them speaking with Ram Bali. Neither Ram Bali, nor Hari Krishna, nor I went anywhere that night - no one took my car anywhere that night. The next day I gave a statement to the Police about who was at my house from 7.00 p.m. to 11.00 p.m. the previous night. Ram Bali, the first accused, has business dealings with me and I am on friendly terms with him.

Cross-Examination:

Ram Bali is not related to me now. I agree he used to be related to me - He was my son in law's brother in law. Yes, he married a woman who is related to me. That was 20 years ago.

Q. And you have been friendly with him ever since?

A. Yes.

30

Q. In fact very friendly? A. Yes, as I am towards many others. His business dealings with me were the loan by me to him of money - I also gave him goods from my store and building materials for building his house.

I lent Ram Bali money on the security of his land after the Gopal Reddy case. No, I didn't lend him money for that case but to pay his debts. No, he doesn't owe me money for goods but only for the iron and timber I supplied to him on credit in 1958 or 1959. He still owes me about £108.

40

I don't know if Ram Bali is a person of substance or not. He has land and a house and he owes me money - that's all I know.

I stood bail for Ram Bali in November last in the case about Ram Jibodh. I then took him to live with me. I did so because I had stood bail.

In the
Supreme Court
of Fiji

Defence
Evidence.

No. 29.

Bechu.

Examination
- continued.

Cross-
Examination.

(1958)

In the
Supreme Court
of Fiji

Defence
Evidence.

No. 29.

Bechu.

Cross-
Examination
- continued.

for him and I didn't want anyone to get him into trouble and perhaps frame a case against him which might mean I would lose my bail and he would be in trouble.

Yes, I wanted to be so close to him that he slept in my bedroom.

Q. Did you pay his fees in this case?

A. No fees have been paid yet.

Q. Did you guarantee them? A. No.

I have known Isak since the time he was arrested. That was the first time I had ever seen him.

10

No, he didn't come to my house or my store on 28th December, 1959.

No, he didn't come there on the night of the 28th December, 1959.

It all depends when I close my store - between 8.00 or 9.00 p.m. or even later if there is anyone there. Usually we close the store fairly early and then go to bed.

Q. It is usual for people in the country to close up and go to bed early isn't it? A. Sometimes we stay up later.

20

Q. What time did you close the store on the night of the Babu Ram shooting?

Koya objects.

Court: I take it you mean on this night?

Stuart: No, I was referring to another night.

Court: I don't know which night that is nor do the Assessors and it has nothing to do with this particular case.

30

Cross-Examination (Contd.)

Q. Well, what time did you close your store on the night of this shooting? A. When I went to bed at 11.00 p.m. I close my store when people go away. Jagai and Baiju who were there that night are my brothers. Ram Khelawan is my nephew. The other Ram Bali is my son in law. Babu Ram is no relation of mine. He was the only person present that night who was not related to me.

Q. What was he doing there that night?

40

A. He just came to the store and stayed there.

Q. How long have you known Babu Ram?

A. About 15 or 16 years.

He lives about 40 chains away and is a customer of mine. We are on speaking terms. He used to owe me money but does not now. He paid me off just recently. He keeps a yearly account with me. Yes, he has had a yearly credit account with me for the past 15 or 16 years. He sits down and drinks yaqona at my shop every time he comes there - he comes regularly but not too frequently, sometimes once or twice a week sometimes more often and sometimes less.

10

All these people are farmers who live near me.

Q. What was it that kept you up to 11.00 p.m. that night - you all being farmers? A. Those that were drinking yaqona were interested in that and the others in the new C.S.R. quota for sugar cane and contract. The new contract had been a subject for conversation ever since it had been made known.

20

Q. When was it first made known? A. I don't know the month.

Q. June or July 1959 was it not? A. Yes.

Q. Well what was it that in December 1959 kept all these farmers up so late on 28th December, 1959?

A. Well they were drinking yaqona. This meeting was not by appointment. They just drifted in.

Q. So they just happened to drift in and be present on the very night that it is alleged Ram Bali was out shooting Subramaniam Pillay?

30

A. Yes.

Q. Can you explain how your car was seen at Drasa that night at about 9.30 p.m.? A. Subramani is telling lies. I have had no trouble against him but I know he belongs to the faction against Ram Bali. I know Mumsami Reddy. I have heard he is also a relative of Subramani.

Q. Which faction do you belong to Bechu?

A. No ones.

40

Q. Not to Ram Bali's faction? A. No.

Q. How many people are in the pro Ram Bali faction? A. I don't know that.

I don't know how many people are in the anti Ram Bali faction. I do not know who the people

In the
Supreme Court
of Fiji

Defence
Evidence.

No. 29.

Bechu.

Cross-
Examination
- continued.

In the
Supreme Court
of Fiji

Defence
Evidence.

No. 29.

Bechu.

Cross-
Examination
- continued.

are who are in the anti Ram Bali faction. I don't know who Munsami Reddy is related to.

Q. Was there any other subject for conversation at this gathering on 28th December, 1959?

A. No.

Ram Khelawan told me something about his cattle but this was not discussed. He told me about the cattle as soon as he came in at about 7.00 p.m.

First Jagai and Babu Ram came - they came one after the other - Jagai was first - then Babu Ram - a few minutes later - Jagai arrived some time after 7.00 p.m. Then Ram Bali came - then Baiju and Ram Khelawan came together.

10

Q. It seems strange and I wonder if you can explain how all those people your relatives - happened to come practically together that night?

A. Jagai and Babu Ram came for tobacco - Ram Bali saw them and he too came. Ram Khelawan came with his cattle report - they each came on their own business and Baiju just came with Ram Khelawan. Jagai was last at my store yesterday. He was also there on Saturday. He also came one evening last week. He stayed 1 or 2 hours and went away.

20

Baiju, Ram Khelawan, Ram Bali and Babu Ram did not come with him. Baiju was last at my store about two months ago. The other people were not with him.

All these people who were there at my store on 28th December, 1959, have never since been all together there - that is excluding the accused. No they have never again all been there at night together.

30

Re-Examination.

Re-Examination:

These people have all been at my store since 28th December, 1959 but not together. There is no other store in Tuvu. The next store is Raju's store near Drasa on the Lautoka side and Chimibhai at Tawarai.

Q. When you have referred to Ram Bali in your Cross Examination coming to your store you mean your son in law don't you. A. Yes.

40

I borrowed money from Mr. Stuart's firm to pay to Ram Bali. I saw second accused first at Nata-bua Jail.

4.7.60.

Hammett, J.

No. 30.

EVIDENCE OF BABU RAM.

7TH W/D.

BABU RAM (m) s/o Ghirahu S/Ramaya, residing at Tuvu - Farmer - in Hindustani.

In the
Supreme Court
of Fiji

Defence
Evidence.

No. 30.

Babu Ram.

Examination.

I remember giving a statement to the Police in Tuvu - I think it was on 26th December, 1959.

10 Q. Would it not be correct to say that it was on Tuesday 29th December, 1959. A Yes, I think that is right.

On the night before I went to Bechu's store to buy some cigarettes I went there alone. In the store I saw Bechu, his son Krishna and Ram Bali.

Q. Which Ram Bali? A. Ram Bali of Vitogo - that is him. (Points to first accused) I got my cigarettes and just as I came out, Ram Khelawan and Baiju go there. Ram Khelawan reported something to Bechu.

20 At that time Jagai and two Ram Balis, Ram Khelawan and Baiju were there.

Q. When did they get there? A. They were all there then.

Baiju and Ram Khelawan were not there when I got to the store - they got there afterwards.

Q. Ram Bali No.2, when did he get there?

A. Who is he?

Q. He is Bechu's son in law. A. Ram Bali was there when I got there. Then yaqona was made.

30 Q. What time did this party, which was there, disperse? A. At about 11.00 p.m.

From the time of my arrival until I left I did not see this Ram Bali leave the store. In that time I did not see Bechu leave, nor Hari Krishna.

Q. Did you see Bechu's car being taken away?

A. No.

The yaqona was being drunk in the shed near the store.

No policeman saw me that night after I went home.

40 Afterwards the Police asked me questions.

Q. About what? A. (Long pause) - about the yaqona drinking the previous night.

In the
Supreme Court
of Fiji

Defence
Evidence.

No. 30.

Babu Ram.
- continued.

Cross-
Examination.

Cross-Examination:

Q. When did you learn of the shooting at Subramaniam Pillay's that night? A. Which Subramaniam Pillay?

Q. Do you know Subramaniam Pillay? A. Well, there is one at Tuvu.

Q. Was there any shooting there that night?
A. No.

Q. Well how long after the shooting at Subramaniam Pillay's house that night did you learn about it? 10

Koya objects to the question which pre-supposes witness knew there was a shooting at Subramaniam Pillay's house.

Court: Perhaps you will reframe the question Mr. Stuart.

Q. by Stuart: How long have you been here outside the Court waiting to give evidence?

A. Ever since this case started.

Q. And you know what it is all about? A. Yes. 20

Q. Well what is it all about? A. Ram Bali says he wasn't where he was supposed to have been.

Q. And what is Ram Bali supposed to have done?

A. It is alleged he fired guns at Bola's house.

Q. Bola Subramani? A. I don't know.

Q. But you know it was at Subramaniam Pillay's house? A. Yes.

Q. And Bola is his son? A. I don't know very well.

Q. Well when did you first learn about that shooting? A. When I went to the store and I was told I would have to give a statement at the Solicitor's office and I would have to give evidence in Court. Yes, that was after I had made a statement to the Police - I don't know how long later. 30

Q. Was it one week, 2 weeks or what?

A. I can't say.

Q. Was it before the hearing in the Lower Court?

A. Yes. 40

Q. That was on 15th February 1960 - how long before that did you know about it?

A. (Witness does not reply)

Question is repeated

A. I can't say. I found out about this shooting after I had made my statement to the Police.

Q. Are you sure it was after you made your statement to the Police? A. Yes.

It was then that I asked the Constable what it was all about and he told me.

Q. Since 28th December, 1959, how many times have you been at Bechu's store at 11.00 p.m. at night?

10 A. I often go there in the day time.

Question is repeated.

A. Not once.

Q. Well now before 28th December, 1959 - how many times did you go to Bechu's store to see Ram Bali the first accused? A. I have never been there to see him. I had been there when he was there many times - sometimes in the day time and sometimes in the evening.

20 I live about 40 chains from Bechu's store. I am a farmer.

Q. Farmers as a general rule go to bed early don't they? A. Well sometimes late.

Q. But as a general rule early? A. Well if he is by himself yes, but if a visitor comes he sometimes stays up late.

Q. What time do you usually go to bed?

A. At any time between 7.00 and 11.00 p.m. I go to bed at 8.00 to 9.00 p.m. when I am by myself. I do not often go out at night.

30 Q. Well how often do you go out at night?

A. Where?

Q. Anywhere? A. Sometimes - when it is necessary.

Q. Well how often is that? A. I can't say - only when it is necessary.

Q. How many times have you been out since 28th December, 1959 at night? A. (Witness pauses) I don't know - when it is necessary.

Q. Often? A. No, only when it is necessary.

40 Q. And do you often stay out until 11.00 p.m.?

A. It all depends.

Q. Have you ever been out until 11.00 p.m. since 28th December, 1959? A. (Witness thinks) -

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Defence
Evidence.

No. 30.

Babu Ram.

Cross-
Examination
- continued.

In the
Supreme Court
of Fiji

Defence
Evidence.

No.30.

Babu Ram.

Cross-
Examination
- continued.

Yes once, just recently to a Ramayan recital at Moti Chand's house.

Q. Is that the only occasion you have been out since 28th December, 1959 as late as 11.00 p.m.?

A. I can't say. I don't have a timepiece.

Q. Is that the only time you can remember?

A. I can remember that time.

Question is repeated.

A. I can't remember any other occasion. Yes, I remember when Ram Bali came to live at Bechu's house. I don't remember the date. 10

Q. It was 21st November, 1959 I believe wasn't it?

A. I don't remember.

Q. Well between then and 28th December did you ever go to Bechu's store and stay there until 11.00 p.m. on any occasion? A. No. No one asked me to go there on 28th December, 1959. I went there to buy cigarettes. Ram Khelawan asked me to mix yaqona.

Q. Did anyone else mix yaqona? A. Yes, Ram Bali and I mixed it together - the Ram Bali who is Bechu's son in law. No one else mixed yaqona that night I think. 20

Q. You have a watch haven't you?

A. (Pause) - Well now I have.

Q. How long have you had it? A. I can't say. I agree it would have been for more than a year that I had had a watch.

I can't say the time I got there that night, about 7.00 p.m. - I mixed the first lot of yaqona after 15 minutes. I couldn't say when I mixed the second lot of yaqona. It would have been at about 9.00 or 9.30. 30

I mixed both lots of yaqona in the shed.

I don't know who sat on chairs, and who sat on the bench or who sat on the sacking that night.

Q. Where were you sitting? A. On the sacking. I don't remember where Bechu was sitting. I can't say who was sitting on the sacking with me.

Q. Where was the first accused sitting?

A. Either on the bench or one of the chairs. No one came to Bechu's store that night. It was open. It was open until we left. 40

Q. Did Hari Krishna stay there all the time?

A. (Pause) - Yes. I can't say where he sat.

Q. Did you look at your watch before you left?
 A. I didn't have my watch on.
 I went home at about 11.00 p.m. No one got up before then.

In the
 Supreme Court
 of Fiji

Q. No one at all? A. Well, yes to go out and urinate but not to go away for any length of time.
 I don't know what time Bechu usually closes his store at night. I go there to make purchases only.

Defence
 Evidence.

No. 30.
 Babu Ram.

10 Q. Well then you must know what time the store usually closes don't you? A. I just go there and make my purchases and come away. I don't go there and stay until he closes.

Cross-
 Examination
 - continued.

Q. Have you ever stayed there until he closes the store? A. Yes, when we sit and drink yaq-ona.

Q. Well what time does he close then? A. As long as we are there. I don't remember if Hari Krishna has ever gone out in the car at night.

20 Close of Cross-Examination.

Q. by Court: When you were asked about the number of times you were out since 28th December, 1959 as late as 11.00 p.m. you said you couldn't say because you don't have a timepiece. Later you said you have had a watch for well over a year. Why did you say you didn't have a timepiece earlier on?

A. I meant it was working and was out of order then.

30 Q. When? A. The night I went to Moti Chand's house.

No Questions by Stuart arising.

Re-Examination:

Re-Examination.

I don't use my watch regularly. I did wear it on 28th December, 1959 at Bechu's house.

Q. Did Hari Krishna go out on that night - on 28th December, 1959? A. No.

4.7.60.

Hammett, J.

In the
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No. 31.

EVIDENCE OF JAGAI

Defence
Evidence.

8TH W/D.

JAGAI (m) s/o Udit S/Ramayan - Residing at Tuvu -
Farmer - in Hindi.

No. 31.
Jagai.
Examination.

I am the younger brother of Bechu and Baiju.

Q. You remember being seen by the Police at Tuvu at Bechu's store in December, 1959? A. No. I saw the Police speaking to my brother Bechu in December one Tuesday near Bechu's store. They did not question me that day. 10

On the night before - the Monday - I went to Bechu's store at about 7.00 p.m. -- a little after or a little before. I saw Bechu, Hari Krishna and Ram Bali. I went there to buy some cigarettes. I bought them.

Whilst I was there Babu Ram, Ram Bali, Baiju came there - one after the other.

Q. When Ram Khelawan came what would the time have been? A. I didn't look at the time. He came after me. Babu Ram then the other Ram Bali then Babu Ram and then Ram Khelawan and Baiju. Ram Khelawan and Baiju came together. 20

Ram Khelawan came and spoke to Bechu. Then we all sat down and the yaqona was drunk and we talked. We sat in the shed beside the store. We all dispersed at close on 11.00 p.m. From when I arrived until when I left all these people were there in the shed near Bechu's store.

Q. Whilst you were there did Bechu go away from the shed? A. No. 30

Q. Or Ram Bali? A. No.

Q. Or Hari Krishna? A. No.

Q. Was Bechu's car taken away and driven anywhere that night? A. No.

Q. The times you have given - are they exact or are you guessing? A. They are the approximate times.

Q. You have a watch? A. Yes.

Q. Did you have it that night? A. No, that particular night my watch was out of order. 40

I looked at Ram Khelawan's watch and it was after 10.30 p.m. when we left.

Q. Have you given the exact order these people came in that night or is that merely your guess?

A. No that is the exact order in which they came there that night.

Cross-Examination:

Babu Ram and Ram Bali mixed the yaqona that night - not the first accused. He lives close by and seeing the people gathered there he joined them.

10 Q. What were these people all gathered there for?
A. Well I and Babu Ram came to buy cigarettes. Ram Khelawan and Baiju came to tell Bechu something about cattle.

I am quite positive that the order in which these people arrived was first - I arrived second - Babu Ram third - Ram Bali fourth - Ram Khelawan and Baiju together.

20 Q. Well Ram Bali the accused made a statement to the Police the next day that Ram Khelawan and Baiju came first, then Babu Ram, then Jagai and another Ram Bali came - that is that you were last to arrive. What do you say to that? A. That is not correct.

Q. You are quite sure you are right and Ram Bali is wrong on this point? A. As far as I think - I am right. I live about 10 chains away from Bechu. I live there all the time. I have lived there since 1953.

30 The accused came to live at Bechu's in November, 1959. Yes I think it would have been 21st November, 1959.

Q. How often between then and 28th December, 1959 did you go to Bechu's at night to drink yaqona?

A. Twice only I think.

Q. How long did you stay on those occasions?

A. For about an hour from 7.30 or 8.00 to about 8.30 or 9.00 p.m.

Babu Ram wasn't there on those occasions - nor Baiju. I can't be sure if Ram Khelawan was there or not. The accused was there and also Bechu - Yes, Hari Krishna too.

Q. Did Ram Bali - the son in law of Bechu come across then? A. I think not.

Q. Well what was it that made you all stay until

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Defence
Evidence.

No. 31.

Jagai.

Examination
- continued.

Cross-
Examination.

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Defence
Evidence.

No. 31.
Jagai.

Cross-
Examination
- continued.

11.00 p.m. on this particular night? A. Well a number of us got together and we were drinking yaqona and we discussed the new C.S.R. contract with the farmers.

Q. But that was a new thing - it had been going on for 4 or 5 months or more then hadn't it?

A. Yes - but that was coupled with the C.S.R. papers about our quotas which we had received a few days previously.

I am a farmer. I go out at night when it is necessary and to attend Ramayan recitals. 10

I think 28th December, 1959 was in the middle of the cane cutting season. I don't cut cane myself. Babu Ram cuts cane. Ram Khelawan does - Baiju's son cuts cane but I don't know about Baiju. Yes, he works in the cane gangs. I do not. I have a unit to work for me. Neither Bechu nor Hari Krishna cut cane. Ram Bali is a member of the cane cutting gang.

Yes there were three members of cane cutting gangs there at least. I can't say if they had been working that day or not. I have no car or means of transport. Yes, that means I do not go out at night very much. When I do go out at night it is to go to Ramayan readings. 20

I have not been out drinking yaqona at night as late as 11.00 p.m. ever since 28th December, 1959.

Q. And have all these people ever been at the store with you drinking yaqona on any night? 30

A. No. I have never seen first accused go out at night since he has been living at Bechu's store.

Yes, I go to Bechu's store frequently and I am on good terms with him. I do not go there every night - I go once or twice a week but usually in the daytime.

Re-Examination.

Re-Examination:

Q. You said that as far as you think you are right about the order in which people came there that night. What do you mean by that? A. Well as far as I can recollect I think I am right but he made his statement when it was fresh in his memory. 40

4.7.60.

Hamnett, J.

Hearing adjourned at 1.00 to 2.15 p.m.
4.7.60. Hammett, J.

On resumption at 2.15 p.m.
Accused, Counsel and Assessors.

In the
Supreme Court
of Fiji

Defence
Evidence.

No. 31.
Jagai.

No. 32.

EVIDENCE OF HARI KRISHNA.

No. 32.
Hari Krishna.

Examination.

9TH W/D

HARI KRISHNA (m) s/o Bechu S/Ramayan - residing at
Tuvu - Store Worker - in Hindi.

10 I remember 29th December, 1959 - I gave a
statement to the Police.

On the evening of 28th December, 1959 - the
Monday at about 7.00 p.m. I was sitting down after
our evening meal - in the shed attached to the
store.

Q. Was your father Bechu there? A. Yes. Ram
Bali, the first accused was also there. That even-
ing Jagai, Babu Ram, another Ram Bali, Baiju and
Ram Khelawan came to the store.

20 They came one after the other.

Ram Khelawan came and spoke to my father -
then he asked Babu Ram to mix some yaqona. It was
made and drunk. These people from outside left at
about 11.00 p.m.

Q. Between 7.00 p.m. and 11.00 p.m. that night
did you go anywhere? A. No.

Q. Did you go in your black car anywhere? A. No.

Q. Did your father Bechu go anywhere? A. No.

Q. Did Ram Bali, the accused go anywhere? A. No.

30 Q. Did you go anywhere the afternoon of the same
day? A. I went out in the evening. I went
towards Ba. I returned at about 6.00 p.m. from
Sarava. My father Bechu and Ram Bali the accused
were with me.

Yaqona was made twice that night.

The next day the Police saw me and asked me
if I had been out anywhere the previous evening
after 7.00 p.m.

In the
Supreme Court
of Fiji

Defence
Evidence.

No. 32.

Hari Krishna.
- continued.

Cross-
Examination.

Cross-Examination:

Q. Do you know Subramani f/n Murgan? A. Well I know a taxi driver named Subramani.

Q. The one who gave evidence in this case?

A. Yes, I know him.

Yes, I saw him outside the Court. I have known him for a long time. No, I am not on bad terms with him. I had not been anywhere that day before I went to Sarava. First accused came to Tuvu that day. He returned at noon. I didn't see how he came.

10

I do not know Ishak, second accused. I may have seen him before in Tuvu but I do not know him. I don't know if I have ever seen him before. We close our store at 8.00 or 9.00 p.m. - no fixed time - sometimes later. If we have nothing to do we close up at 8.00 or 8.30 p.m.

Q. So 8.00 or 8.30 p.m. would be your usual closing time in the evening? A. Yes - unless someone turns up. Then if someone makes a purchase and wants we stay open. Sometimes this happens. We didn't close on 28th December, 1959 until 11.00 p.m.

20

Q. Have you ever kept the shop open as late as that since 28th December, 1959? A. (Pause) No, not as late as that since then but we have stayed open until 9.00 or 9.30.

Q. After Ram Bali came to stay with you did you keep the store open to 11.00 p.m. as a usual rule?

A. No, not until 11.00 p.m. After Ram Bali came the store was sometimes kept open late.

30

Q. What for? A. To enter up my account books.

Q. Why should that have happened specially after Ram Bali came? A. No that happened before.

After Ram Bali came the store was sometimes kept open late to enter my accounts or when someone stayed. There has been no additional book-keeping work since Ram Bali came. There have not been more people coming to the store and staying late since Ram Bali came there than before.

40

Q. For your store to stay open to 11.00 p.m. is most extraordinary isn't it? A. Yes - it is sometimes only. It is not true that on 28th December, 1959 I was out at night in my car - nor on 27th December, 1959.

Q. What about 26th December, 1959? A. No.

Q. What about 29th December, 1959? A. No -
it was previous to that.

Q. When did you go out in your car at night?
A. In January, 1960.

Q. Which date? A. Mid January.

Q. Where did you go? A. To the hospital.

Q. Did you go out in your car at night between
21st November, 1959 and 28th December, 1959?

10 A. Yes - I came to the hospital twice.

Q. When would that have been? A. In the
first week in January.

Q. So your answer to my question really is that
between 21st November, 1959 and 28th December, 1959
you didn't go out in your car at night?

A. I went to the hospital twice.

Q. When? A. It would have been in mid January.

Q. Now Hari Krishna - you are an educated man -
you actually understand English don't you?

20 A. Not very well.

Q. And you know that "mid January" does not fall
between 21st November, 1959 and 28th December, 1959
don't you? A. I went to the hospital twice in
that period. I don't remember the first time I
went. I don't remember whether it was in November
or not.

On the first occasion I brought Velappan's
wife to the Hospital - I don't remember which date
that was - nor which month it was. Velappan lives
30 20 or 30 chains from us.

On the second occasion I took the same man's
daughter in law, who was about to be confined, to
the hospital. I don't remember the date this was.

I brought Velappan's wife back from the hos-
pital the same night.

On each occasion I went straight to the hos-
pital and straight back home again.

Before that I had also taken other people on
emergency trips to the hospital - on several oc-
casions. No one else drives my father's car ex-
cept me.

Q. Can you explain how Subramani saw your car on
28th December, 1959? A. He is telling lies.

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Hari Krishna.

Cross-
Examination
- continued.

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No. 32.

Hari Krishna.

Cross-
Examination
- continued.

Q. And he says he saw you driving it too?

A. I did not go out.

Q. He says he saw you just before 9.30 p.m. on 28th December, 1959 turning out of the Drasa Road.

Can you explain that? A. He is telling lies.

Q. Can you suggest why he should tell lies about this? A. It is possible that he is against Ram Bali.

Q. He is against Ram Bali? A. Yes.

I do not know how long he has been against Ram Bali. I only know he has been against Ram Bali because of what Ram Bali said to me. Ram Bali told me Subramani was against him.

10

Q. When? A. It happened like this - (witness is stopped)

Q. When did he tell you? A. In January, 1960, about 2 to 2½ weeks before he was arrested. I do not know if Subramani is an enemy of Ram Bali or not.

Q. Why do you say Subramani is against Ram Bali?

A. Well he has spread false rumours about him. This is what Ram Bali told me - not what I know myself.

20

Q. When did he start spreading these false rumours about Ram Bali? A. Ram Bali would know that - I don't. I got to know of these rumours when Ram Bali told me.

Q. And what were these rumours that Ram Bali told you about? A. He didn't tell me.

Q. Didn't you ask him? A. No.

30

Q. Didn't you ask him what rumours that wicked man was spreading? A. No.

Q. Well it is only fair to tell you that Ram Bali said that Subramani was not an enemy of his - What have you to say about that? A. Well Ram Bali would know about that. I don't know.

I have not known Munsamy Reddy before he came to Court. I didn't know him previously.

Yes, Ram Bali was pretty friendly with me before he came to stay with us. He had been to our house but I had not been to his.

40

Q. He is a relative of yours isn't he? A. No.

Q. Not a relative? A. No.

Q. Not even by marriage? A. No.

Q. Do you know or do you not know that he was related to you by marriage? A. I was informed that he was related to us by marriage. I have dropped Ram Bali near Vitogo on my way to Tuvu but only in the daytime. I used to bring Ram Bali in our car sometimes when he was staying with us. I had never taken Ram Bali out in the car before he came to stay with us. I agree I had been to his house, with my father.

10

I run the store for my father.

I agree I came to Court when the case concerning the assault on Ram Bali was heard. I just came to listen to that case with others from the Tuvu settlement.

Q. You brought Ram Khelawan to Court in your car didn't you too? A. I don't remember who came.

Q. Why did you come? A. Just to listen.

20

Q. Why? A. For no particular reason.

Q. And why did your friends from Tuvu come too?

A. I don't know. They all came to listen to the proceedings.

Q. And you say you don't know who these people were? A. Yes.

Q. How many were there? A. I don't remember.

Q. And when Ram Bali was in trouble over Ram Jabodh - did you come and listen to that case too?

A. Yes.

30

Q. With your father? A. He might have been.

Q. It is your father we are talking about.

A. I don't remember. No, I didn't bring anyone from the Tuvu settlement.

Q. Well who did come with you? A. Well either I came alone or else my father came with me.

Q. Well surely you can remember that? A. No I can't remember. I deny I used to bring Ram Bali with me. I deny I came to hear the proceedings in the lower court in this case.

40

Q. Are you friendly with Subramaniam Pillay?

A. I don't even know him. I don't know if my father knows him. I agree I found out who he was in this case. I agree I had seen him before but

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No. 32.

Hari Krishna.

Cross-
Examination
- continued.

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Evidence.

No. 32.

Hari Krishna.

Cross-
Examination
- continued.

I did not know him by name. I don't know at what time the second bowl of yaqona was mixed on 28th December, 1959. It would have been about one hour before 11.00 p.m.

I cannot remember who came first to our shop that evening. I can't recollect the order in which they came. I agree that Ram Bali - the other one not the accused - is my brother in law. He lives about 13 chains from us.

These people were in the shed when I arrived. 10

Q. Why did he come? A. He didn't say. He just arrived and then went away. He just saw some people there and came.

Q. Why do you say that? A. It is just my guess.

Q. So you do not know why he came? A. No he didn't give any reason. He came straight into the shed. I didn't serve Babu Ram or Jagai in the store - my father did - I don't know if they bought anything or not.

Close of Cross-Examination. 20

To Court: I have never been down that road to Drasa Farm near Vitogo at night. I have never driven out of it at night on to the Kings Road. I have only been there once and that was in the day-time.

Re-Examination.

Re-Examination:

The only time I went down that road to Drasa was a long time ago when I went to a funeral.

Yes, I remember saying that Ram Bali, the accused, had spoken to me about Subramani the taxi driver. I had driven Ram Bali to Lautoka about two weeks before his arrest on 16th January. Ram Bali pointed some people out to me at the taxi stand. They were Atma, Vishnu and a few other people talking to Subramani, the taxi driver, at the taxi stand. 30

Yes this would have been opposite the Police Station. It was then that he said something to me about Subramani. I brought someone from Vellapan's house to the hospital some time in January - I don't quite know who it was. That would have been before Ram Bali's arrest. I only recollect taking anyone to hospital twice whilst Ram Bali was staying with us. 40

4.7.60.

Hammett, J.

Koya: That is the case for the Defence.

COURT NOTES

In the
Supreme Court
of Fiji

No. 33.

Court Notes.

4th July, 1960.

10 Stuart: I ask for leave to call evidence in rebuttal to explain the different results produced by a 12 gauge shot gun with a choked barrel and one with an unchoked barrel. The witness called by the Defence indicated that there were such things as a choked barrel and an unchoked barrel but did not know the difference produced by a choked barrel and an unchoked barrel.

I have a witness who is not an expert in ballistics but who has carried out tests with a choked and an unchoked barrel and he can testify as to the different results produced by such barrels.

20 Court: The witness you propose to call is not an expert. From Photograph B4 it appears that two holes were caused by gunfire in the wall of S.P'S house - those walls were of tin - does the evidence of C.A.Patel really make much difference in this case as the gun which fired the shots has not been produced and so no one knows if it had a choked or unchoked barrel?

Stuart: Perhaps not but I feel there should be before the Court evidence of the comparative difference in the results of a shot fired from a choked and an unchoked barrel.

30 Koya: I concede that perhaps my learned friend has been caught by surprise but I do not think the hiatus can be covered by anything save the results of an experiment carried out by a shot gun with an unchoked barrel - I feel an expert on ballistics should be called on the matter.

40 Stuart: As far as I know there is no such thing as a ballistics expert in Fiji. All I can do is to call a Police Officer who can say from his own personal experience what is the difference between a choked barrel and an unchoked barrel and what is the practical difference in the results of equal shots fired from those different barrels at equal ranges.

Koya: Indicates he will object to such evidence being given unless the witness is an expert.

In the
Supreme Court
of Fiji

No. 33.

Court Notes.

4th July, 1960
- continued.

Court: Since the weapon used is not known and there is no evidence as to whether it had a choked or unchoked barrel, I do not see very much point in this evidence being given.

Stuart: I am in the Court's hands - I do not wish to prolong the trial unnecessarily.

Court: Very well then I shall not allow yet another inexpert shotgun user to give evidence.

Hearing adjourned for addresses at 9.00 a.m.
on 5th July, 1960.

10

4.7.60.

Hammett, J.

No. 34.

Address of
Counsel for
the Defence.

5th July, 1960.

No. 34.

ADDRESS OF COUNSEL FOR THE DEFENCE

Tuesday the 5th July, 1960 at 9.00 a.m.

Both accused present in custody
Assessors present
Stuart for the Crown
Koya for the Defence.

ADDRESSES

Koya for Defence

20

1. Case is one largely of fact - very little law involved.

2. Charge is against two persons of attempted murder - but witnesses say there were more than two persons - conspiracy is suggested by witnesses but is not charged.

3. Reviews evidence of Subramaniam Pillay.

He says he saw 5 men - 3 of them had guns - 4 or 5 shots were fired. Pellet marks on door and wall. A.S.P. Walli Mohammed says there were 2 bullet marks also. If these 4 or 5 shots were fired then, as said by Subramaniam Pillay, he would have been seriously injured or killed.

30

He was shot at and retired inside frightened. Is it likely he would, as he said he did, go back to the same door to look out? Would he not have gone to the window - not to the door again?

He shone his torch out and then says he saw Ram Bali the first accused.

No evidence of effect of this torch - a simple 3 cell torch. But for the torch he would not have recognised anyone. Range indicated by S. Pillay was from witness box to dock (say 7/8 paces) but empty cartridge cases were found 13 to 20 paces away. If shotgun fired at distance of 7 or 8 paces then much greater damage would have been done - possible serious injury to S. Pillay or else he would now be dead.

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10 If assailants further away then torch light would not have reached assailants to enable him to recognise them.

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Was the intention to kill or to frighten or to injure? If to kill then he would have been killed. Prosecution must prove intention to kill - nothing more or less.

What about Bola Subramani? Why did S. Pillay call to Murgessar and not to Bola Subramani.

20 Why did no one from Subramani's house go to the Police and report? Why did a relative of Gopal Reddy - Warda Reddy - report matter to Police - Is this not a suspicious factor.

Why did Subramaniam Pillay say he did not know Inspector Walli Mohammed?

Why did he deny that he had used glasses - He was not truthful over this in view of his son's evidence later.

30 Why did he equivocate about knowing about this feud at Vitogo between Ram Bali and those against him?

What about the discrepancies as to how he recognised his torch? He says the dents on it were made by pellet shots and later said only one was made by the shot.

Submits the centre of the shot was on the door.

Refers to experiments made by C.A. Patel - there is no proof of the nature of the gun used - whether a rifle or a shotgun - no evidence of whether it had choked or unchoked barrels.

40 No one can now say what the difference is between a choked and an unchoked gun - it must be assumed that there is a difference but what is it? I submit that the proof of experiments I had carried out prove that the prosecution case is inconclusive and speculative. You cannot now theorise

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on what gun may have been used -- what about the strength of that torch.

I submit on Subramaniam Pillay's evidence the case for Crown is very thin indeed.

I submit that if Defence gun experiments are inconclusive, so is the case for the prosecution.

4. Now the evidence of Muthu Kumar Sami.

He says he saw second accused and someone else with him - then he said he only saw a form which looked like a man BUT -- to the Police he said Latchmi Narayan was present -- twice he said this.

10

To Magistrate he said he saw another man but didn't recognise him and later here he said this was a slip of the tongue.

I submit M.K.S. Pillay was telling deliberate lies and should not be believed.

He said he also used a torch to identify his assailant.

If a son of Subramaniam Pillay should be present at the time of the shooting -- and telling lies about all this -- what does it suggest? Why should he tell a completely different story from Subramaniam Pillay.

20

5. Evidence of Muthu Sami Pillay.

He was injured in the shooting. He also says he used a torch. He says the first shot hit his leg in the lower court - but in this court he gave a different account.

This evidence goes not only to the credibility of this witness -- but why did this witness tell lies? Why did he say he did and then he did not look in the direction of the drain.

30

This witness said time of the shooting was about 9.00 p.m. but in court below he said "Sharp at 9.00 p.m.". He said shooting lasted from 9.00 to 10.30 p.m. -- but all other witnesses said it only lasted about 10 minutes.

Dharma Reddy said that after shooting finished "I looked at my watch and it was 9.00 p.m."

40

At what time did this shooting take place? And how long did it last. Submits there is grave doubt about this.

6. Deals with case of second accused as far as time is concerned - if shooting took $1\frac{1}{2}$ hours then he could not possibly have got to Vitogo from Korovou and back in time.

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7. Recognition of second accused

Submits one witness said that everyone was lying on floor of M.S.Pillay's house when they were injured. How could he have seen second accused by a torch if he was lying on the floor?

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10 8. Dharma Reddy's evidence.

He said M. Sami went outside to relieve himself: He said shooting lasted 10 minutes and he had a watch.

He had a hit on his knee - is it true - was he on the floor - was he standing? What is his evidence worth?

20 9. From 28/12/59 to 6/2/60 Police had no more evidence than that of Subramani Pillay, Muthu Sami Pillay, Muthu Kumar Sami Pillay. Suddenly after such a long interval all these new witnesses appear. By then the second accused's alibi had been disclosed at this meeting with the Police. Had first accused's alibi been discussed too?

30 Then on 4.1.60 Sgt. Shiu Narayan took over this case and all these witnesses turn up to add to case for Prosecution, Atma, Lalla, Mumsami Reddy and Subramani. Why? I feel I must criticize Police on this in doing my duty to the accused. Is it not a reasonable thing to infer that as a result all this latter evidence has been made up? As a result of all this chatter about the accused's defence.

10. I submit the whole of the case for the prosecution is based and supported by prejudice against the accused and nothing more.

This is like mob rule and the people of Vitogo have usurped the functions of this Court and the Judge and you, gentlemen assessors.

40 In the light of that background you have all this extra evidence.

11. Lalla: Did he appear to you to be a witness of truth.

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Discrepancies in his evidence - Reviews witness's evidence in lower court and in this court.

Submit it is all so contradictory and suspect and should not be believed.

He says he and Atma did not see A.S.P. Walli Mohammed at Subramani Pillay's house - but this is contradicted by A.S.P. Walli Mohammed.

Why did they lie on this point?

Lalla said he knew nothing about there being two feuds and factions in Vitogo - he denied it. Why? He must be lying.

10

A.S.P. Walli Mohammed puts Lalla and Atma as members of the anti Ram Balli faction.

Lalla attributed his conduct to fear - is that acceptable?

12. Atmara and Lalla: Is it not strange that after first accused was in custody in February 1960, they said they had been present at a further shooting in Vitogo?

I submit that Lalla and Atma are nothing more nor less than professional witnesses.

20

Would Atma have withheld the vital information he had about Ram Bali - a man who is supposed to be a notorious character of whom everyone is frightened - if it was true?

Submits both these witnesses were liars and should not be believed. Details all the discrepancies in their evidence and that of others.

13. Munsami Reddy: The most curious witness.

I submit he was trying to please both the Prosecution and the Defence.

30

What can you do with a witness like that?

Either he saw Ram Bali or he didn't - he would not commit himself.

Submit his evidence should be treated with great reserve.

Koya reads his note of what witness said extensively.

We can only take what Mumsami Reddy said in Court and not what he said to the Police or to the lower Court.

40

Why did Munsami Reddy not tell the Police what he had seen at once. I submit he is prejudiced and was telling lies about first accused and he is trying to get a conviction against first accused at all costs.

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14. Subramani - the taxi driver.

Could you identify the driver of a car in the circumstances described by the witness?

? Recognise the car ? Recognise the driver.

10 Perhaps he only assumed it was Hari Krishna?
Perhaps he was mistaken in car he saw?

Why did he not report matter to Police if he really thought there was nearly a serious accident?

From 28/12/59 to 12/1/60 when he made his statement to the Police did not Subramani come to know about this shooting and Ram Bali's name was mentioned in connection with it? Is his story not an afterthought? He may have learned Ram Bali might be relying on Hari Krishna's evidence for his alibi.

20

Might it not have been some other day? Of course Hari Krishna denies it could have been any other day but you must consider it independent of Hari Krishna's evidence.

Consider his previous criminal record - a long time ago but not a witness to be believed - he only came to Court to help Subramaniam Pillay.

I submit if truthful he would have gone to Police earlier.

30 15. A.S.P. Walli Mohammed's evidence.

Why was there a meeting at the Kisan Sangh Hall.

Second accused's alibi was discussed there.

Was there not pressure put on Police to press the case against the accused? I submit that the whole case for prosecution is tainted by prejudice and bias, nothing more and nothing less.

Reviews the evidence of A.S.P. Walli Mohammed and the investigations made by the Police that night at Bechu's house.

40 No evidence that car had been used that night.

16. Sgt. Shiu Narayan's evidence reviewed.

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Describes locality. Who would leave a car there whilst they went to shoot someone up? Whole story is absurd and not reasonable.

Considering all the evidence for prosecution there is still a doubt - in every witness's testimony. I submit there is some doubt as to who shot at those houses that night.

17. Defence is an alibi.

A. First accused's alibi

Disclosed at first available opportunity. 10

All witnesses gave evidence of where first accused was that night - not by torch light but in a shed.

Submits that because not Cross-examined about differences between evidence and statement to Police you must assume there were no differences. This strengthens nature of their evidence. All present, except the other Ram Bali, have given corroborative evidence.

B. Second accused's alibi. 20

Prosecution say second accused was at Tuvua up to 7.05 p.m.

If shooting at 9.00 p.m. then second accused had one hour and 55 minutes to go to the shooting and do it and return home afterwards.

(Court queries the accuracy of these calculations but does not interrupt Counsel)

Did second accused do this?

Would second accused do this just after Police had been to his house? 30

Second accused has given evidence about his movements that day.

Cpl. Prem Krishna called on him at 11.35 p.m. and he was still there at his home at Tavua.

Evidence of Silar Saheb corroborates second accused's alibi.

Only discrepancy between Silar Saheb and Ishak's evidence is as to presence of Bhikram after the evening meal. The Police should have been blamed for this for failing to make better enquiries at the time. You can't blame Ishak or Silar Saheb. 40

Silar Saheb an old man and undoubtedly second accused's relative - but did he seem to be telling the truth?

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18. Defence Summarised

- (a) Disregard Subramaniam Pillay's evidence.
- (b) Muthu Sami Pillay }
Muthu Kumar Sami Pillay } All to be
Dharma Reddy } disbelieved.
- (c) Evidence collected after 4.1.60 - I submit that for all the reasons I have given should not be believed. Lalla and Attaram are clearly professional witnesses.
- (d) Absence of any motive in this case by prosecution witnesses - Defence do admit existence of two factions which would explain this but prosecution do not suggest any motive.
- (e) Case for prosecution itself raises a doubt, and defence entitled to benefit of that doubt.
- (f) Defence of alibi.
- (g) Submits total of evidence amounts to no more than suspicion.

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Close at 12.00 noon.

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STUART IN REPLY FOR CROWN

1. Outlines the charge.
2. There is no doubt shots were fired at these houses and no doubt that the three people mentioned in the charge were wounded.

A person who shoots a gun at a house or persons in these circumstances can only I think intend to kill or be reckless whether or not he kills - in either case this is attempted murder.

No evidence that wounds actually suffered would cause death.

Real issue for determination is "Did the first

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and second accused fire instruments which caused these wounds?"

3. Case against first accused.

Prosecution depends on -

1. Identification by Subramaniam Pillay
2. " by Atmaram
3. " by Lalla
4. " by Munsami Reddy
5. " by Subramani of Hari.

Krishna in Bechu's car at the time first accused says he was with Hari Krishna at Bechu's house. First accused replies - I wasn't there - was at Bechu's house at Tuvu.

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4. Evidence as to time and place.

Many witnesses inconclusive but some times and places can be fixed.

Lalla said he heard Drasa Training Farm lalli beat after first shot and before last shot fired.

Munsami Reddy said Lalli beats at 9.00 p.m.

Dharma Reddy said shooting was at 9.00 p.m.

I suggest shooting took place at 9.00 p.m. approximately - say within 10 minutes either way.

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Subramani the taxi driver - left at 9.05 and returned at 9.35 - record made at the time by an independent person.

Report to Police at 10.04 p.m.

Place - 3 houses were attacked and suffered damage by gunfire.

Empty cartridges found a distance of about 15 paces from the house of Subramaniam Pillay (witness box to edge of court verandah)

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If you accept that evidence you must disregard Subramaniam Pillay's evidence that gun was fired at the closer range he thought and the one sided experiments carried out by Defence.

5. Evidence against first accused as to identity

At the scene - by Subramaniam Pillay - he identified him but only momentarily. He was shot at.

He is 76 years of age.

He must have been in a dither. Would he be able to reason and think coolly at the time? Would

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he not be likely to do all the wrong things at the wrong times. You saw his demonstration however and he poked as little of his head as he could, apparently, around the door when he shone his torch.

He says he recognised only one person - out of 5 - Ram Bali. He had known him for a long time.

10 The point for you gentlemen is to consider and decide "Do we believe Subramaniam Pillay when he said he identified Ram Bali by the light of his torch?"

Ill feeling yes - but not very recent cause for it.

6. Evidence of Lalla and Atmaram.

It took 6½ minutes normal walking to get from Lalla's house to Subramaniam Pillay's house. Nothing impossible or inherently unlikely in their evidence and story.

Do you believe them?

20 It must be clear that Lalla and Atmaram do have a grudge against first accused - but is that sufficient to make them tell lies about him. If it were a lie why is there nothing in the story that is unlikely or improbable. If it is a lie - it is a superlatively clever lie - a really superlative lie - I suggest that that story is not a superlative lie but a story that bears the hall-mark of truth.

30 If however it was not a lie the evidence of Lalla, Atmaram, Munsami and Subramani do all tie up with the times and places mentioned by each other - I suggest their evidence bears the hall-mark of truth.

7. Evidence of Munsami Reddy reviewed.

Called by prosecution and yet willing to hedge and dodge on the issue of identification.

He says he was frightened "because Ram Bali is a well-known person"

40 Reads out passages of the evidence - submits that it was Ram Bali that Munsami saw that evening and that the time was about 8.30 p.m.

This time fits in with the other times about which we are certain. Submits this witness should be believed.

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8. Evidence of Subramani the taxi driver.

Reviews his evidence.

Submits that the more he was Cross-examined the more he became certain of his facts. He only admitted that he could possibly be mistaken as to the date but he did not agree he was mistaken and he ended up by saying he was certain about the date.

I submit that it is morally certain and as sure as anything is sure that on 28.12.59 at about 9.20 p.m. Subramani saw Bechu's car driven by Hari Krishna crossed his bows coming out of the Drasa turn off.

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On this it means that part at least of the alibi of first accused was fabricated and that every witness supporting it has deliberately helped to fabricate a false alibi. Why?

9. Reviews defence and evidence for defence.

1st Accused's alibi:

Ram Bali put forward Ram Khelawar's cattle complaint was the main topic of conversation that evening. None of the others agree. Does this not suggest that Ram Bali heard it raised before he left and assumed they had continued discussing it after he left.

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Is not the whole story of these relatives sitting up late together like this - a thing they had never done before or since - to 11.00 p.m. in a week day very strange?

I submit first accused's alibi is a tissue of lies from beginning to end.

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2nd Accused's alibi:

Muthu Kumar Sami's identification not very authentic. He gave explanations about his identification of another man also.

This discrepancy was such as to make it possibly desirable and necessary to disregard his evidence.

Then Muthu Sami Pillay - he only identified second accused. If the enmity you have heard about operated on the mind of this witness why did he not identify first accused as well? - identified second accused by a beam of a torch.

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Discrepancies do in certain circumstances tend to suggest the essential truth of two or three people's stories - whereas if all their stories had been absolutely identical you would be entitled to regard them as incredible.

Ishak says he was at Tavua. Seen by Police Cpl. at 7.05 p.m. and 11.45 p.m. i.e., a gap of 4½ hours. Tavua to Vitogo is a journey of a little over an hour by car. It was therefore possible for second accused to have taken part in this shooting and then returned home again by 11.45 p.m.

Reviews second accused's alibi.

Statement to the Police is contradicted in important matters by first accused. Why did second accused say he returned alone in taxi and not with first accused that afternoon as said by Ram Bali.

Can Silar Saheb be believed about second accused's alibi? Silar Saheb says Bhikram was there - second accused says he was not.

I submit this shows the whole falsity of second accused's alibi - He was not there himself at all and so he made this mistake.

Close at 1.10 p.m.

Court to Stuart: What evidence of an intent to murder Dharma Reddy on the third count is there?

Stuart: I must concede there is none but I submit there is evidence of a wounding P.C. Sect. 256. and an alternative conviction for that would lie irrespective of the intent.

Court: Very well, I will consider that.

Hearing adjourned at 1.15 p.m. to 9.30 on 6th July, 1960.

5.7.60.

(Sgd.) Hammett, J.

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R E G I N A

v.

RAM BALISUMMING UP

It is now my duty to sum up. On matters of law it is my duty to direct you and you must accept those directions. On matters of fact however you must form your own opinions. If therefore during the course of my summing up I express any opinion on matters of fact or on the credibility of the witnesses you may accept or reject those views as you think fit. I am entitled to express my opinions on such matters but you are not bound to accept them. 10

When I finish summing up I shall adjourn the Court so that you can retire and discuss the case amongst yourselves. When you have each reached your own opinions the Court will re-assemble and you will each be asked to state in open Court whether in your opinion each of the accused is guilty or not guilty on each count. Your opinions need not be the same - there is no need for you to be unanimous in your opinions. What is asked of you is that you each should voice your own individual honest and fearless opinion. I am not bound by law by your opinions but they will carry great weight with me when I then retire to write my judgment. 20 30

The two accused are both charged, jointly, on each of three counts of attempted murder contrary to Section 239(a) of the Penal Code arising out of one shooting incident at Vitogo on the night of the 28th December, 1959.

On the first count they are charged with attempting to murder Subarmani Pillay; on the second count with attempting to murder Muthu Sami Pillay and on the third count with attempting to murder Dharma Reddy. 40

I wish first to deal with the law concerning joint offences which are contained in Sections 21 and 22 of the Penal Code. The material part of Section 21 reads :-

"When an offence is committed each of the following persons is deemed to have taken part in committing the offence and to be guilty of the offence and may be charged with actually committing it, that is to say -

- 10 (a) Every person who actually does the act which constitutes the offence
and
(b) Every person who aids or abets another person in committing the offence."

To give an example. If a person "A" shoots at a man with the intention of killing him and he is assisted by another person "B" who knowing "A's" intention, keeps watch for him and shines a torch for him or perhaps hands him the loaded gun, "B" is as equally guilty as "A" of attempting to murder the person shot at, although "B" did not in fact fire the gun. Further "B" may be charged with the actual offence although he did in fact only aid "A" in committing it.

The next point to remember is this - when two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another and in the prosecution of such purpose an offence is committed of such a nature that its commission was a probable consequence of the prosecution of such purpose, each of them is deemed to have committed the offence and may be charged with actually committing it.

The term "Attempt to murder" as the marginal note of Section 239 of the Penal Code puts it, is for technical legal reasons with which it is not necessary to worry you, to some extent misleading. The material part of the section itself is what really concerns us and this reads :-

- 40 "Any person who attempts unlawfully to cause the death of another is guilty of a felony etc. "

The definition of an "attempt", in law is laid down by Section 408 of the Penal Code. To prove that the accused attempted unlawfully to cause the death of Subramani Pillay - on the first count -

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the similar considerations do of course apply to the persons on the second and third counts each of which you must consider separately - the Crown must establish the following matters -

Firstly: There must be proof of an intention to cause the death of Subramani Pillay;

Secondly: There must be proof of a beginning to put this intention into execution by means adopted to its fulfilment;

and

Thirdly: There must be proof that the accused manifested their intention by some overt act.

If therefore you came to the conclusion that the first accused discharged a shot gun at short range at Subramani Pillay you would be entitled to infer from that that he intended to kill him. You must however consider what the intention was before assuming it was an intention to kill. Again, this evidence would be proof of both the beginning to put the intention into execution and of the necessary overt act. If you also came to the conclusion that the second accused was present at the time, aiding and abetting the first accused, or in such circumstances that you came to the conclusion that he had a common intention with the first accused, then although it was the first accused who fired the shot at Subramani Pillay, the second accused would be equally as guilty on the first count as the first accused, and as equally guilty as if he himself had fired the shot. (Similar considerations apply to the second and third counts.)

What I wish to make clear however, gentlemen, is this. Although it is open to you to draw these inferences if you reach the conclusions I have indicated it is not necessary that you should do so. You must consider the whole of the evidence before doing so. Furthermore, you must consider the case for and against each accused quite separately and independently - it is never a case of them "sinking or swimming together". Each man's case must be considered separately.

Now as to the onus of proof. In this as in every criminal trial the onus of proof rests on the Crown to prove the guilt of the accused beyond reasonable doubt. If after considering the evidence as a whole you are left in reasonable

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doubt as to the guilt of the accused it is your duty to express the opinion that he is not guilty. It is only if you are satisfied of the guilt of an accused beyond reasonable doubt that you are entitled to express the opinion that he is guilty.

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In deciding which of the witnesses you believe and which of the evidence you accept you must be guided by the same standards of prudence and judgment that you exercise in any matter of importance to you in your day to day lives and experiences with your fellow men. You must exercise in this matter a robust commonsense.

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In this connection you will have to consider what importance to attach to discrepancies between both what one witness has said in evidence before you, and in their statements to the Police, or in their depositions before the Magistrate at the hearing of the preliminary inquiry which led to the accused being committed for trial. You must also consider the discrepancies in a witness's own evidence and those which arise when comparing the evidence of one witness with another witness.

In this matter again you must exercise prudence and a robust commonsense.

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It is open to Counsel and in fact it is his duty to draw your attention to such discrepancies and this has been done in this case in considerable detail. After considering all that has been said about them though, it is for you to decide what weight you will attach to them.

This is a problem which is continually arising in the Courts in criminal cases - it is not new or unusual. You may well have had personal experiences of how two eye witnesses of the same event, even a short time after it has occurred, do not always agree upon exactly what happened or the sequence of dramatic events which occur with rapidity or in surprising or frightening circumstances.

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If in fact there were no discrepancies at all between what several witnesses have said you might indeed have good cause to consider whether their evidence has not been carefully prepared and rehearsed before they come to Court.

It has been said in this Court by Counsel in despair, "What are the witnesses to say?" If there are any discrepancies in their evidence they are all accused of being liars and if there are no

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discrepancies they are all accused of having carefully rehearsed their evidence and therefore liars also and in both cases all are unworthy of credit".

What you must do gentlemen, is to consider the discrepancies you have heard and to which your attention has been drawn and decide whether they are of such major importance as to make you unwilling to accept the evidence of the witness as worthy of any belief - or whether they are of such a nature as to make you consider the evidence of the witness should be treated with particular reserve and possibly only accepted if corroborated by that of another witness - or whether the discrepancies are of such a comparatively minor character as you might either expect or such as tends to confirm your belief that the witness is truthful and is trying to tell the truth. In other words you must look out for and try to distinguish between deliberate untruths and innocent or understandable mistakes. You are also entitled to consider what has prompted the witness to give such evidence. 10

In no case however may you substitute for what a witness has said before you in the witness box anything he has said on previous occasions elsewhere. 20

There is one final matter I wish to deal with before we come to the evidence in this case and that is the question of the accused's characters. You will recall that at one stage during the hearing you withdrew from the Court so that I could hear Counsel in your absence. When you returned I told you I would speak to you about the matter in my summing up and this is what it was all about. 30

In a criminal trial the Crown are not permitted to bring out any evidence of or to comment upon the character of the accused save in a very limited number of cases. It is, of course, open to the Defence, if they so wish, to bring out evidence of the accused's character. If the defence put the accused's character in issue then it is all right - but the Crown may not do so. The reason for this is simple - it is that the accused must be judged solely on the evidence concerning the specific offence with which he is charged and not on the basis of his past record. His fair trial might be prejudiced if reference is made to his past by the Crown. But even where, as in this case, the defence has deliberately put the characters of both 40

the accused in issue, they must still not be judged on their past but only on the evidence relevant to these specific charges. In other words because an accused person has previous convictions for assault and has previously been convicted of murder and then acquitted on appeal and has been subsequently charged with attempted murder and may be a man who some people may hold to be a man of bad character, does not mean that he is more likely to be guilty of the present offence charged. Do not therefore allow yourselves to be prejudiced against the accused on account of past character or previous convictions.

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There is, however, at least one aspect in respect of which the first accused's character or record can be considered when you consider the evidence of the witnesses for the prosecution and that is this. Some of the witnesses for the prosecution - and I have in mind Munsami Reddy, Atmaram and Lalla in particular - have indicated that the reason why they did not go at once to the Police to tell them what they have told us in the witness box was that they were afraid. It is clear that for a number of years there has been a feud at Vitogo between one faction that is "pro Ram Bali" and one faction that is "anti Ram Bali".

A witness who turns up some time after an event has taken place and tells a story which implicates an accused should not be given very much credence unless his delay in telling the Police what he knows is accounted for. Munsami Reddy in particular has said he never intended to tell the Police what he knew and that it was only because the Police came to him and questioned him that he told them. Normally, gentlemen, as a matter of prudence, I would have suggested that his evidence should either be totally disregarded or else treated with the greatest possible caution and not acted upon unless corroborated, unless you were convinced he had a bona fide reason for this delay and I think that is what you must do in this case.

He has said that it was fear, and fear of the first accused, that was the reason for him not going to the Police with his story at once.

In considering whether or not you accept this explanation by Munsami Reddy you are perfectly entitled to consider the accused's record. In deciding whether or not you accept Munsami Reddy's evidence, and the weight you should attach to it, the

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evidence of the accused's record is relevant - but that is the only instance in which it is relevant as far as the case for the Crown against the first accused is concerned.

Now the case for the Crown, in brief outline, is this - Subramani Pillay and his sons and their families live in an isolated group of four houses at Vitogo surrounded by cane fields. Vitogo is a farming district off the King's Road between Lautoka and Ba. On the night of 28th December, 1959, at about 9.00 p.m. a number of men came to these houses with guns. Subramani Pillay was fired at, and injured, at the door of his house. Muthu Sami Pillay, his son, was fired at at the door of his house and the same shot injured Dharma Reddy who did not appear but who was inside the house at the time. A total of eight or nine shots were fired into their houses in all.

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Subramani Pillay recognized the first accused, Ram Bali, by the light of his torch as the person who fired at him.

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Muthu Sami Pillay recognized the second accused Isak Ali among the men who fired at him. His brother, Muthu Kumar Sami Pillay, who lived in the next house, also recognized the second accused Ishak Ali among the men at the time the shots were fired.

Atmaram and Lalla, who were in the house of Lalla, in the vicinity, heard the sound of shots and decided to come to the scene. On the way they saw and heard people approaching them and hid on the side of the track they were following through the cane fields. They saw four men, the first of whom was carrying a gun coming from the direction of Subramani's compound. They recognized the first man as Ram Bali, the first accused. These men were going towards the river across which lies Drasa Farm and the road that leads to the main King's Road.

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The Defence of each of the accused is an alibi. The first accused maintains that on the night of the 28th December he was at the house of one Bechu who is a farmer and storekeeper at Tuvu - which is about a 30 minute journey by car and foot along the King's Road and Drasa Farm Road from Vitogo in the direction of Ba. He says he did not leave Bechu's store that evening or night at all but was sitting there drinking yaqona and conversing with relatives and friends the whole of the time.

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Amongst the people there with him was Bechu's son Hari Krishna. The first accused was found at Bechu's house by the Police when they went there at about 11.30 p.m. on 28th December immediately they began their investigations into this shooting. The first accused's alibi is supported by all but two of those persons with whom he says he was at the material time.

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10 The second accused maintains that on the night of the 28th December, he was at the house of his wife's grandfather at Korovou, near Tavua, which is a distance of about 35 miles and a little over an hour's journey by car from Vitogo. He denies he left his house that evening and his evidence is supported by that of Silar Saheb, his wife's grandfather. His alibi is to some extent supported by the evidence of Police Corporal Prem Krishna who saw the second accused at Silar Saheb's house at Korovu at 7.05 p.m. when he went there to see Silar Saheb on an altogether different matter. He said he left, after speaking to Silar Saheb at 7.45 p.m. At 11.45 p.m. that night he again called at Silar Saheb's house to get a statement from the accused concerning his movements that evening and he found the second accused there.

30 In rebuttal of the defence of the first accused of an alibi the Crown has called and relies upon, the evidence of two witnesses, in addition to that of Subramani Pillay, Atmaram and Lalla. They were Munsami Reddy and Subramani - a taxi driver who is not related to Subramani Pillay. Munsami Reddy has related how at about 8.30 p.m. on the night of the 28th December, 1959 he heard a car stop on the road near Drasa Farm at Vitogo. A short time afterwards he saw three men walking along the track leading down to the river, across which is the compound of Subramani Pillay. He says that one of these men looked to him like Ram Bali the first accused. He said he only recognized one of them slightly and this was Ram Bali the first accused. There can be no doubt that this witness was not willing to say that he is now sure that this man was Ram Bali although he has stated clearly that when the matter was fresh in his mind and he made his statement to the Police he was sure.

40 Subramani has told how on the night of the 28th December, 1959, at about 9.20 p.m. he was returning to Lautoka on the King's Road in his taxi,

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when a car suddenly swung out in front of him from the road near Drasa Farm at Vitogo. He had to stop to avoid an accident. He says he recognised the car as the small black Standard Saloon car belonging to Bechu, the storekeeper at Tuvu, and the driver, Hari Krishna, the son of Bechu. He said that inside that car were two or three passengers whom he did not recognize. Ram Bali has said he was with Hari Krishna and others all the evening and that Hari Krishna did not go out in this car that night.

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As I have already told you, the onus of proof rests on the prosecution, but if the Defence set up proves conclusively to your satisfaction that the accused were elsewhere at the actual time the offence was committed, the accused are entitled to be acquitted and there would be no need for you to consider further the evidence of the actual shooting. It might therefore be convenient first to consider the evidence of the accused's alibis in greater detail.

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The first accused has called the following people to give evidence to support his alibi, in addition to his own testimony:

1. Ram Khelawal
2. Bechu
3. Babu Ram
4. Jagai
5. Hari Krishna

You have heard them all and seen them as they gave their testimony, which must be so fresh in your memory that I do not think any useful purpose would be served in going through it all again. One thing that must of course be considered by you is that fact that there is evidence that all these witnesses save Babu Ram are relatives of Bechu and that Ram Bali himself is related to Bechu. In deciding the weight that should be attached to their evidence you should consider the extent to which their evidence may or may not be independent or reliable in view of these relationships. This also is of course a factor you must consider when dealing with the evidence of the witnesses for the Prosecution. The evidence of all these witnesses does appear to tally and to corroborate that of the first accused save as to the main topic of conversation that evening. Nevertheless, in view of the evidence to the contrary given by other witnesses it is fairly obvious that some of the

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witnesses for the Prosecution or the Defence have told deliberate untruths as to the whereabouts of Ram Bali that night and so you must consider whether it is possible or likely that all these defence witnesses have deliberately given false evidence concerning the first accused's alibi. The Crown has drawn attention to the fact that all the witnesses who support Ram Bali's alibi were relatives of Bechu save Babu Ram who appears to be a very old associate of his - it is of interest to note that it was Babu Ram, the only person not related to the others, who mixed the yagona with the other Ram Bali and you may have thought he was on as close terms to Bechu as any of the others. Further it is suggested it was a most extraordinary coincidence that there should be this gathering of relatives, on a week day sitting up to 11.00 p.m. on this particular night when at no time before or since had they had a similar gathering. Many of these witnesses appeared to agree that it was not usual for them - being country folk - to sit up so late at night unless it was necessary to do so and none of them suggested that there was any particular necessity to do so that night. The prosecution asks you to hold that it was more than a mere coincidence that they sat up on this particular night and that that night it is alleged that Ram Bali was seen at Vitogo taking part in this shooting. It has been suggested that this was a carefully prepared alibi thought out and planned in advance.

Since it seems clear that there are in fact two factions in Vitogo who are at enmity, it is not at all unlikely that if Ram Bali and members of his faction had decided to go to Subramani Pillay's house to stage this shooting that night, some thought would have been given to the defence of a false alibi in case the persons doing the firing should later be prosecuted. In this event you may consider it would be more likely to be relatives and close friends who would be relied upon than strangers or more independent persons from outside that group.

In considering the evidence for the Crown in rebuttal of the first accused's alibi there are a number of factors you should consider. It has been suggested that neither Subramaniam Pillay, nor either of his two sons, nor Atmaram, nor Lalla nor Munsami Reddy actually saw the first accused, but have with Subramani the taxi driver all given false evidence on the matter. It may well occur to you

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that it is significant that none of them have given exactly the same account of the incident as far as the identity of the assailants is concerned. It may seem to you to be unlikely that each one of these witnesses has independently of all the others decided to give false evidence. If their evidence is all deliberately false, as is suggested by the Defence, would it not seem more likely that they would have discussed the matter between themselves? In this event it appears to me to be a matter that needs consideration that there are so many distinguishing things about their evidence. For example - if Subramaniam Pillay had determined falsely to accuse and to place the blame for the shooting on the first accused does it not seem curious that two of his own sons - who say they were eye-witnesses did not say they saw or recognized the first accused but recognized the second accused although all of them agree there were more than one person present. If the evidence of Subramaniam Pillay, and his two sons Muthu Sami Pillay and Muthu Kumar Sami Pillay, and Atmaram and Lalla is given deliberately falsely how is it that of them all three of them said they recognized the first accused and no one else and two of them did not recognize him but identified the second accused? Again, Munsami Reddy said he saw three men but only thought he recognized one - if his evidence is deliberately given falsely why did he not say he had recognized both accused? Why was he not so definite in his recognition of the first accused at this trial as he was in his statement to the Police if he has come to Court deliberately to give false evidence against the first accused. Again, if Subramani, the taxi driver, has given false evidence deliberately to implicate the accused, how is it that he said he only recognized the car and the driver and did not recognize the passengers? Is not this rather a strange way to give evidence if in fact there was a pre-arranged deliberate plan to give false evidence against the accused? This is one of those instances where you must consider whether the discrepancies and differences in the evidence of the witnesses is an indication of the falsity or the truth of their testimony.

As far as the evidence of Subramani is concerned you will recall that he said he distinctly remembered the place and time of the incident and recognized the car and its driver, as Bechu's son. He says the incident was impressed on his mind

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firstly because there would have been an accident had he not stopped and that he spoke of the matter to the clerk at his garage on his return there and that the Police later came to him and questioned him about it. He identified the date of the incident by refreshing his memory by reference to his job sheet for that particular day. It was suggested to him that he was wrong in the date of the incident and that he had made a mistake - he did however insist that he was not mistaken. In cross-examination he said that he would with reluctance admit of the possibility of a mistake but appeared to be sure in his own mind that there had in fact been no mistake. From the evidence of Hari Krishna it is clear that he denies he has ever at any date driven Bechu's car as described by Subramani the taxi driver. If he had driven it to Drasa Farm on some other date with which Subramani might have confused this incident would not Hari Krishna have said so? It seems therefore that you will have to rule out the possibility of a mistake in the date. If you do that it is clear that Subramani is either telling deliberate falsehoods or the truth. He is not related to anyone in this case and Ram Bali himself said he had no enmity with him and Hari Krishna said he had no enmity with him. Why should Subramani tell untruths on this matter? How was he to know that Hari Krishna was not on his lawful occasions at the time? How was he to know at that time that his evidence indirectly implicates Ram Bali. He was thereafter cross-examined as to his character. I think you will probably agree that this was an indication that the defence considered that because he had been convicted twice some 15 years previously he was a man whose word should not be accepted. If you do not believe - as apparently the defence did not - that he has made a mistake you must consider whether he has, as is now suggested, deliberately given false testimony. If so, why is it that he did not identify the passengers in this car? If the complainants to the Police went to all the trouble of getting Subramani along to give false evidence would it not surprise you that he did not identify either the first or second accused? I personally do not think the fact that Subramani did have two convictions when he could have been no more than a youth - some 15 - 17 years ago, is alone and of itself, very good grounds for saying that he is necessarily not to be believed now. You heard him

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and saw him as he gave his evidence - did he appear to you to be telling lies deliberately? Did he appear to be mistaken or in any doubt? or did he appear to you to be a witness of truth?

Then there is the evidence of Munsami Reddy. You will recall that he said that one person of the three he saw on the road that night at Drasa Farm going in the direction of Subramani's house he thought he recognized. He said it looked like the first accused, whom he has known for a number of years and of whom he is frightened and he thought it was him. He said he was too frightened to go to the Police and tell them or to tell Subramani Pillay to whom he is related for fear of being involved in this case and because he is frightened of the first accused.

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The first thing you must consider about his evidence, in view of the delay that elapsed before he made his statement to the Police, is whether you accept or reject the reason he gave for this delay. You have seen the first accused in this Court. He is quite a powerful looking man. He has admitted to having been charged with the most serious of offences involving violence. Although he was once convicted of murder he was acquitted on appeal but would not this alone cause some local people to view him with some awe. Munsamy Reddy is a slight man and a much more elderly person - not very strongly built and from his appearance and demeanour in this Court very quietly spoken and somewhat reserved or shy. He says he was and is frightened of the first accused. Do not consider this to the prejudice of the accused but consider solely whether or not you believe Munsami Reddy had reason to feel frightened of the first accused. Do you believe him when he said he was frightened of him or was this just an excuse. If you do believe him then you may consider his reason for not reporting to the Police what he had seen, as soon as possible, to be acceptable to you.

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You have heard read out what Munsamy Reddy said to the Police and to the Court below and he has said that that was the truth. In this Court however, he did not say categorically that it was the first accused he saw that night. The furthest he would go was to say that he only recognized slightly one of the men on the track to Vitogo at about 8.30 p.m. He was asked who was the one he recognized and he said it looked like Ram Bali the

first accused whom he has known for 15 years or so. In spite of being questioned by both Crown and the Defence he stuck to his story that he thought it was Ram Bali, or it looked like Ram Bali or it appeared to him that it was Ram Bali. The final question and answer in his original cross-examination were -

Q. And now today when you look back to December, 1959, you are not sure it was Ram Bali?

10 A. Yes.

You have heard and seen Munsamy Reddy as he gave his evidence and you must decide whether you accept it or not but you must not substitute for it, what he has said on other occasions.

20 It is my opinion, which you may accept or reject, that Subramani the taxi driver was one of the few independent witnesses in this case. There is no evidence that he is related to either of the factions we have heard of and he impressed me as he gave his evidence, in spite of his old record, as being a truthful witness and his evidence appeared to me to have the ring of truth about it.

30 If you do accept the evidence of Subramani the taxi driver it is clear that Hari Krishna did leave Bechu's house that evening in Bechu's car and went to the Drasa Farm Road near Vitogo where Munsami Reddy saw a man whom, he says, he thinks was the first accused. In those circumstances the relatives and friends of the first accused who have supported his alibi and who did not impress me very favourably as they gave their evidence would appear to have done so falsely and quite deliberately falsely to have denied that Hari Krishna left Bechu's house in his car that evening.

In those circumstances you should reject the first accused's alibi.

40 The second accused's alibi is that he lives at Korovou near Tavua - about 35 minutes from Vitogo and that on 28th December, 1959 at 7.05 p.m. he was seen there by Cpl. Prem Krishna. Cpl. Prem Krishna was at or near his house, in Silar Saheb's compound, until 7.45 p.m. and there is no evidence that the second accused left before then. The evidence of the shooting at Vitogo appears to indicate that it took place at about 9.00 p.m. There is evidence that it would take a little over an hour to go by road from the second accused's house at Korovou,

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Tavua, to Vitogo - if he had to stop at Bechu's house to pick up the first accused - as the case for the Crown would appear to be - and then walk from Drasa Training Farm Road to Vitogo it would appear to require the best part of one and a half hours to reach Subramaniam Pillay's house where the shooting occurred. One and a half hours from 7.45 p.m. would take up to 9.15 p.m. but these times are not necessarily exactly accurate.

Silar Saheb has given evidence that the whole of that evening the second accused was at home with him and when Cpl. Prem Krishna reached there at 11.35 p.m. both the second accused and Silar Saheb were there. 10

It would appear that there might just have been time - by only a very narrow margin - for the second accused to have left Korovou and to have taken part in this shooting by 9.00 p.m.

You have heard and seen Silar Saheb. There is one major discrepancy between his evidence and that of the second accused as to the presence with them and their women folk of Bhikram after their evening meal. Again Silar Saheb is a relative of the second accused. 20

Silar Saheb is an elderly man and he certainly made a much more favourable impression upon me as he gave his evidence than the other witnesses for the defence. That of course is again a matter of my opinion which you may accept or reject. You have heard him and seen him as he gave his evidence and it is for you to decide whether you believe him or not. The only other witness whose evidence you should consider in this respect is Muthu Sami Pillay, since the prosecution has intimated - and correctly in my opinion - that little or no reliance should be placed in the evidence of Muthu Kumar Sami Pillay in view of the major discrepancies between his evidence and his statement to the Police. 30

Muthu Sami Pillay said he definitely recognized second accused by the light of his torch during the shooting. 40

You must bear in mind the time factor, and the evidence of the second accused, Silar Saheb and Muthu Sami Pillay.

If after considering that evidence as a whole you do accept the second accused's alibi you should

express the opinion that he is not guilty and there is no need to consider further the evidence against him concerning the actual shooting. If however you do not accept the evidence in support of the second accused's alibi you should go on to consider the evidence of the actual shooting.

The evidence of the actual shooting at Subramaniam Pillay's compound is not very full.

10 The defence has insisted that the evidence of the witnesses for the prosecution on this matter is false and is put forward as a fabrication against the first and second accused out of sheer prejudice and malice and fear because of the long standing feud between what has been called the "Pro Ram Bali" and the "Anti Ram Bali" factions.

20 Whilst the defence has not gone so far as to suggest that the whole shooting incident was bogus and manufactured and that Subramaniam Pillay and his sons or their friends fired those shots themselves and fabricated the whole incident you must first consider that possibility, if only to reject it. Since three people were actually injured by shot I do not think you will have any doubts in rejecting such a suggestion as untenable.

30 You will therefore I think proceed on the premise that some person or persons did come to the scene that night and fire those shots at those houses with aggressive intent. Subramaniam Pillay says he recognized the first accused, Ram Bali as one of those persons and Muthu Sami Pillay says he recognized the second accused as another of them.

Either they were telling the truth - in which event the first and second accused are guilty - or else they were not telling the truth. If they were not telling the truth there are three possibilities to consider :-

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- (1) They did not recognize their assailants at all; or
 - (2) They think that they did recognize them and have by a bona fide mistake identified the accused; or
 - (3) They did recognize them and have deliberately falsely accused the first and second accused.

I think you will agree that the last possibility is so unlikely - since Subramani himself

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was actually wounded and would be most unlikely deliberately to shield the name of the person who wounded him if he knew it.

Therefore they either did not recognize their assailants at all or else they have made a bona fide mistake in their identifications.

It is the contention of the defence that Subramaniam Pillay and Muthu Sami Pillay did not recognize their assailants at all and have deliberately falsely accused the first and second accused because of their animosity towards them arising out of the feud between the pro Ram Bali faction and the anti Ram Bali faction at Vitogo. 10

It is obvious that this is a possibility that must be most seriously considered. As was pointed out by both Counsel, there is no duty on the Crown to prove a motive for a crime but it is clear that hatred and enmity are powerful motives that might well have caused the accused to fire these shots as well as to cause Subramaniam Pillay and his son to blame the two accused for them if they had not recognized their assailants. 20

On the other hand, if Subramaniam had not recognized his assailant and had decided deliberately falsely to accuse the first accused, would you not have thought it likely that he would have ensured his sons joined with him in his false accusation?

I do not intend to take you all through the testimony of these two witnesses again - you have had pointed out to you at great length the discrepancies in their testimony and it is for you to decide whether you believe them to be witnesses of truth or not. You saw and heard them in the witness box. Subramaniam Pillay, a man aged 75 of simple dignity gave his evidence clearly and appeared on the face of it, to me to be a witness of truth but there were a number of features in his evidence which were not altogether satisfactory and which you will have to consider carefully. For example, he said he had never worn glasses and yet his son said that he had worn glasses for reading until about four or five years ago. I see no reason why his son should say this if it were not true. Why did Subramaniam assert he had never worn glasses? Was it forgetfulness? I doubt it. Was it a matter of vanity? Was it to avoid any suggestion that he could not see properly? Again I do not understand why he said he did not know 30 40

A.S.P. Walli Mohammed when it seems that in fact he did know him, from the evidence of A.S.P. Walli Mohammed. On the other hand he did refer to Sgt. Shiu Narayan as "Surju" - did he perhaps know Walli Mohammed by the name of "Nambiar" as A.S.P. Walli Mohammed said? He said that it might well be that Subramaniam Pillay did not know him by name. Whatever the truth may be I did not understand what advantage was to be gained by Subramanian falsely denying knowing A.S.P. Walli Mohammed.

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My own view on this, is that although I felt that both Subramaniam Pillay and his son Muthu Sami Pillay were telling the truth on the matter of identification of the two accused, there were certain features in their evidence which would make me hesitate to accept their testimony without reserve unless it were corroborated in some material way. That is my view, gentlemen, but you must make up your own minds on this.

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Some measure of corroboration of the evidence of Subramaniam Pillay is to be found in the evidence of Atmaram and Lalla, if you accept it.

Here again, you have been addressed at considerable length on the reasons why the Defence ask you to reject their testimony. Many of these are matters which you must consider very carefully but it is for you to decide whether or not you do accept or reject the evidence of these two witnesses. Their story does not sound inherently improbable and it does tie up with the evidence of both Subramani the taxi driver and Munsamy Reddy if you accept that. Do you believe the reason for their delay in informing the Police what they say they had seen? Atmaram said he was frightened to tell the Police for fear of what might happen to him. Here again you have the same fear that Munsamy Reddy voiced. It seems that there have been a number of shooting incidents in the Vitogo area which is some way away from a township and the aid of the Police. I personally could quite well understand these two being too frightened to go that night in the dark the six miles odd to the Police Station at Lautoka to report the matter. One would have thought that the next day they could have made a report but Atmaram said quite openly it seemed to me that he was afraid to do so. It may well be that you will believe him - there certainly has been an atmosphere of fear discernible throughout the case. Munsamy Reddy certainly appeared frightened as he gave his evidence.

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One of the matters you should bear in mind when considering whether to accept or reject the evidence of Lalla and Atmaram is this. Both of them say they recognized the first accused with the men coming away from the direction of Subramanian Pillay's compound after the shooting that night. Atmaram knew the second accused well. He did not recognize him amongst these men. If as the Defence suggests, Atmaram and Lalla did not see these men at all and their evidence is fabricated does it not seem strange that they did not say they saw both the first and second accused amongst them? or that one saw one and one the other? If the testimony of Lalla and Atmaram were concocted and fabricated after the event - as is suggested by the defence - and was not held back by fear as Atmaram maintains - is it not rather extraordinary that their stories were not fabricated to greater effect? I find this so difficult to understand that I personally feel it is a very strong point indeed against the suggestion of the Defence.

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You must consider also that if Lalla and Atmaram were witnesses of truth how it was that they did not recognize the second accused. If he were there surely they would have seen him. To this extent therefore the evidence of Lalla and Atmaram if believed serves to corroborate the evidence of Subramanian Pillay that the first accused was one of the people who fired at his house and serves also to corroborate the defence of the second accused that the second accused was not there.

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There is evidence, if you accept it that would entitle you to hold that the first accused fired a shot at Subramanian Pillay as described by him. If you do accept this evidence then if you believe, as I think you probably would, that the intention was to kill him then you should express the opinion that the first accused is guilty on the first count. There is no corroboration of the evidence of Muthu Sami Pillay concerning the identity of the second accused but if you did accept his evidence that the second accused was present and fired at him with the intention of killing him then you should express the opinion that the second accused is guilty of attempted murder on the second count. If you believe both of them then you should express the opinion that both the first and the second accused are guilty on the first and second counts.

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The third count concerns Dharma Reddy who if

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the witnesses for the prosecution are to be believed was injured by the same shot that was fired at Muthu Sami Pillay. You may well consider that there is no evidence of any intention to kill Dharma Reddy. If however you are of the opinion that the second accused fired at Muthu Sami Pillay, in presence and with the aid of or acting in concert with the first accused and in the course of the firing he wounded Dharma Reddy then you will be entitled to find the first and second accused guilty on the third count of wounding Dharma Reddy - a misdemeanour under P.C. Section 256.

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You have a difficult task, gentlemen, and I ask you to be patient and think carefully before expressing your opinions. In this case a number of witnesses have spoken of having been afraid to tell the Police what they knew at once. If you believe this is a mere excuse without foundation you should give little weight indeed to their testimony. It is difficult however sitting in the security of this Court House, in a township with the Police near at hand, sometimes, to appreciate fully the feelings the people living outside a township may have - where there are no tarsealed roads - where there are no lights on the roads or on the tracks through the canefields and the countryside - and where a number of cases of shooting and violence have been heard of - and where there is little if any electric light in the houses and where dark nights are indeed very dark. If you do believe these witnesses were indeed afraid to speak then you must consider carefully their testimony before rejecting it simply on the ground that they did not go at once to the Police to make their statements.

Nevertheless whilst bearing all this in mind you must not overlook my direction to you on the onus of proof.

One final point concerning the evidence of the experiment carried out by Mr.C.A.Patel for the defence. Since he was not an expert he was unable to express any opinion on the variance between the results of a shot fired with a shot gun with a choked barrel and that fired with an unchoked barrel. One would also imagine that the age of the cartridge fired, the length of the gun barrel and the make of the gun used might possibly affect the results. In this case there is no evidence of what make of gun or type of barrel was used to fire these shots. The

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No. 36.

Summing Up.

5th July, 1960
- continued.

only evidence you have is that certain signs were found on these houses - (and even the two holes on Subramanian Pillay's house which Mr. Walli Mohammed said looked like bullet holes may not have been caused by bullets) - that shots had been fired at them. Empty cartridge cases were found a comparatively short distance away.

In my opinion, the evidence of Mr. C.A. Patel is not very helpful. It shows the results he obtained by using a particular shot gun, the make of which and the length of barrel of which were not disclosed - nor was the gun produced for us to see - with a choked barrel. The results indicate merely that with that particular gun and that particular barrel the results obtained by a direct hit by the main charge of shot on a similar door to that of Subramanian Pillay's house, at the distances stated, would be. There is no evidence for example of what with that gun even the results would have been had the gun been discharged when the aim of the firer was bad and the main charge of shot was received not directly on the door but on the metal wall immediately beside the door where the hole in the wall is marked in Exhibit B2. It appears to me therefore that you may feel that this evidence is too inconclusive for you to draw any definite conclusions from it to apply to this case.

I feel there is little further I can say which will be of assistance to you.

When you retire will you please consider the evidence carefully and formulate your opinions.

When you return I would like to know your individual opinion on the following matters.

Firstly: I wish to know whether or not you believe and accept the alibi of each accused in this case.

Secondly: I wish to know your opinion as to the guilt or otherwise of each of the accused on each of counts 1, 2 and 3.

I shall now adjourn the hearing so that you can discuss the matter amongst yourselves.

6.7.60.

Sgd. C.J.HAMMETT, J.

On resumption at 11.50 a.m.

Accused, Counsel and Assessors.

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ASSESSORS OPINIONS:

In the
Supreme Court
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No. 36.

Summing Up.

5th July, 1960
- continued.

1. (a) As to the alibi of the first accused

1st Assessor - I do not accept the first
accused's alibi.

2nd Assessor - I accept the alibi of the
first accused.

3rd Assessor - I accept it.

(b) As to the alibi of the second accused

1st Assessor - I accept it.

2nd Assessor - I also accept it.

3rd Assessor - I accept it.

2. As to the general issue.

1st Assessor - 1st Count -

1st Accused NOT GUILTY

2nd Accused NOT GUILTY

2nd Count -

1st Accused NOT GUILTY

2nd Accused NOT GUILTY

3rd Count -

1st Accused NOT GUILTY

2nd Accused NOT GUILTY

2nd Assessor - 1st Count -

1st Accused NOT GUILTY

2nd Accused NOT GUILTY

2nd Count -

1st Accused NOT GUILTY

2nd Accused NOT GUILTY

3rd Count -

1st Accused NOT GUILTY

2nd Accused NOT GUILTY

3rd Assessor - 1st Count -

1st Accused NOT GUILTY

2nd Accused NOT GUILTY

2nd Count -

1st Accused NOT GUILTY

2nd Accused NOT GUILTY

3rd Count -

1st Accused NOT GUILTY

2nd Accused NOT GUILTY

Court adjourns for judgment at 2.00 p.m.

6.7.60.

HAMMETT, J.

In the
Supreme Court
of Fiji

No. 37.

JUDGMENT

No. 37.
Judgment.
6th July, 1960.

IN THE SUPREME COURT OF FIJI
Criminal Jurisdiction
Action Number 6 of 1960

BETWEEN: R E G I N A

v.

1. RAM BALI
2. ISHAQ ALI

J U D G M E N T

10

The two accused are charged on three counts of attempted murder contrary to Section 239(a) of the Penal Code arising out of a shooting incident at Vitogo on the night of 28th December, 1959.

The case for the Prosecution is that at about 9.00 p.m. on 28th December, 1959 a number of persons came to the compound of Subramaniam Pillay at Vitogo where he lives with his sons in four houses. Shots were fired at these houses and hit the houses of Subramaniam Pillay, Muthu Kumar Sami Pillay and Muthu Sami Pillay. Subramaniam Pillay and Muthu Sami Pillay came to the doors of their respective houses and were hit by shot-gun pellets and Dharma Reddy who was inside Muthu Sami Pillay's house was wounded slightly. Subramaniam Pillay said he recognised the first accused, whom he had known well for a number of years as the person who fired at him and Muthu Sami Pillay said he recognised the second accused who fired at him.

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Atmaram and Lalla, who were in Lalla's house at the time came towards the scene on hearing the shots being fired and saw armed men coming from the direction of Subramaniam Pillay's compound. They hid in the bush beside the track and recognised the first of these men as the first accused.

30

The defence of each accused is an alibi. The first accused maintains he was at the house of Bechu, a relative, at Tuvu, a place that could be reached from the scene of the shooting in about half an hour by foot and car, all the evening of the 28th December, with relatives and friends amongst whom was Hari Krishna, Bechu's son. All but two of these have given evidence in support of the first accused's alibi, including Hari Krishna.

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The defence of the second accused is that on the night of the 28th December, 1959 he was at the house of Silar Saheb, his wife's grandfather - at Korovou, Tavua, a distance of about 35 miles from Vitogo. Cpl. Prem Krishna saw him there at 7.05 p.m. on the evening of 28th December and he did not leave the place until 7.45 p.m. Silar Saheb has given evidence supporting this alibi of the second accused that the second accused did not go out that night. I am quite satisfied it would take about one and a half hours to have travelled from Silar Saheb's house in time to have taken part in the shooting of Subramaniam Pillay's house that night.

10

In rebuttal of the alibi of the first accused the Crown has called two witnesses - the first is Munsamy Reddy who says that at about 8.30 p.m. on the evening of 28th December he heard a car stop on or near the Drasa Farm Road and then saw three men going along the track leading from Drasa Training Farm to the Vitogo River where there is a ford, and across which about a half a mile away lies the compound of Subramaniam Pillay. He says he only recognised one of these men, slightly but that man appeared like the first accused and he thought it was the first accused whom he knows well. He was not prepared to go as far as to say he was sure it was the first accused. The second witness was Subramani, a taxi-driver who stated that at about 9.20 p.m. on 28th December, 1959 he saw the car of Bechu, being driven by Bechu's son Hari Krishna from the road leading to Drasa Farm on to the Kings Road. He says he was returning to Lautoka at the time and he had to stop to avoid colliding with his car.

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I have directed myself in accordance with the terms of my summing up to the Assessors and I have given careful anxious consideration to all that has been urged by Counsel as to why the evidence of the witnesses for the prosecution should not be accepted. In particular there is the delay of Munsamy Reddy, Atmaram and Lalla, in informing the Police what they knew of this matter. In the absence of a satisfactory explanation for the delay their evidence is of extremely doubtful value. They have all said that it was fear that caused them to remain silent at first. I have given this matter considerable thought. It is obvious that a long standing feud or dispute in the Vitogo area has resulted in the rise of two factions - one has been

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Supreme Court
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- continued.

termed "Pro Ram Bali" the first accused and the other as "Anti Ram Bali", which are at enmity and people might well try to avoid becoming directly involved in such a matter. After considering the evidence as a whole I have no hesitation in accepting the explanation of these witnesses for their delay and reluctance in making statements to the Police.

As far as the alibi of the second accused is concerned, it is clear that he could only by a very narrow margin of time, if at all, have travelled from Silar Saheb's house at Korovou, Tavua to Vitogo to have taken part in the shooting. Further I was impressed by the evidence of Silar Saheb in spite of one major discrepancy from the evidence of the second accused. The Assessors have unanimously expressed their opinion that they accept the alibi of the second accused and I see no reason to differ from them. 10

As far as the alibi of the first accused is concerned I was not at all favourably impressed by the demeanour of the evidence of the witnesses called to support it. On the other hand, the evidence of Subramani, the taxi driver, who appears to me to be an independent witness and who said he saw Hari Krishna driving Bechu's car at about 9.20 p.m. that evening out of the Drasa Farm Road did impress me. I have considered the evidence of his past record, but I do not consider that alone is sufficient to destroy the value of his testimony which I accept. 20 30

I do, therefore, hold as fact that on 28th December, 1959 Hari Krishna the son of Bechu drove Bechu's car away from the direction of Drasa Farm towards Tuvu at about 9.20 p.m. I reject the evidence of the first accused and his witnesses that at that time Hari Krishna was with the first accused and others at Bechu's house, but hold he was driving this car with two or three passengers as related by Subramani. 40

The attempt of the first accused to establish that he was with Hari Krishna and others at the house of Bechu at the time of the shooting is false to the extent that I am quite satisfied that at 9.20 p.m. Hari Krishna was at Drasa Farm Road - with two or three other persons in Bechu's car. The first accused and his witnesses have all given what I am quite satisfied is false evidence, concerning the movements of Hari Krishna and Bechu's car that

evening and I do not accept their evidence concerning the first accused's alibi at all. Further the nature of this evidence makes it abundantly clear that there must have been pre-arranged planning of this matter which gives it even greater significance.

10 The divided opinion of the Assessors on this issue has caused me to consider the matter carefully, but I have no hesitation in reaching this conclusion and in accepting the evidence of Subramani the taxi driver on this issue and rejecting that of the first accused and his witnesses. I also accept the evidence of Munsamy Reddy.

20 It is now necessary to consider the evidence of Subramaniam Pillay, Atmaram and Lalla all of whom say they saw the first accused with others at or near the scene of the shooting at the material time. I have considered all that has been urged by Counsel why this evidence should be rejected. Subramaniam Pillay did, nevertheless, appear to me to be telling the truth on the issue of the identification of the first accused and I believed him. His evidence is supported by that of Lalla and Atmaram which I also accept. I do not believe that the whole of the evidence of these three witnesses has been fabricated as has been suggested by the Defence in spite of the discrepancies which appear in their testimony and the apparent inconsistencies in their conduct most of which I believe were
30 caused by their fear.

In view of the opinion of the three Assessors that the first accused is not guilty on any of these three counts I have reconsidered the evidence in this case. Since I do not accept the first accused's alibi and I do believe the evidence of Subramaniam Pillay when he said he saw and identified the first accused when the gun was fired at him and I believe the evidence of Atmaram and Lalla that after the shots were fired they saw the first accused and others coming away from the direction
40 of Subramaniam Pillay's compound, I do not feel able to accept the opinion of the Assessors on this matter. I do not feel the slightest shadow of doubt in my mind about the guilt of the first accused.

The evidence of these witnesses all supports and fits in with the evidence of Munsamy Reddy which I accept who said he saw three persons one of whom he said he did at the time slightly recognise

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No. 37.

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- continued.

as Ram Bali, the first accused, going towards Subramaniam Pillay's house shortly before the shooting and with the evidence of Subramani, the taxi driver who said that at about 9.20 p.m. i.e. shortly after the shooting when allowance is made for the time to get there, he saw Hari Krishna driving Bechu's car, with two or three persons inside it, away from the area in the direction of Bechu's house where Ram Bali was living at the time.

In these circumstances I hold that the first accused with others came to the compound of Subramaniam Pillay on the night of 28th December, 1959 at about 9.00 p.m. and fired a gun at Subramaniam Pillay who was at the door of his house at the time and slightly wounded him. The circumstances under which the gun was fired are such that I am abundantly satisfied that the first accused's intention was to kill Subramaniam Pillay. I, therefore, find the first accused guilty on the first count of attempted murder contrary to Section 239(a) of the Penal Code as charged. 10 20

On the second count I hold that the first accused was present with others when shots were fired at Muthu Sami Pillay's house at the material time when he appeared at his door, which wounded him, in such circumstances that the intention of the person firing that gun was to kill him and that the first accused was acting under a common design with that person. I, therefore, find him guilty on the second count of attempted murder contrary to Section 239(a) of the Penal Code as charged. 30

On the third count, I hold that the shot which wounded Muthu Sami Pillay also wounded Dharma Reddy who was inside the house at the time. There is no evidence of any intention to kill Dharma Reddy. I do, therefore, find the first accused not guilty of attempted murder as charged on the third count but guilty of wounding Dharma Reddy contrary to Section 256 of the Penal Code.

I find the second accused not guilty on each of counts 1, 2 and 3 and I direct that he be set at liberty. 40

(Sgd.) HAMMETT, J.

6.7.60.

WEDNESDAY 6th July, 1960 at 3.00 p.m.

Both accused present in custody.

Assessors present.

Stuart for the Crown.

Koya for the Defence.

JUDGMENT DELIVERED.

6.7.60

Hammett, J.

In the
Supreme Court
of Fiji

No. 37.

Judgment.

6th July, 1960
- continued.

No. 38.

No. 38.

ALLOCUTUS

Allocutus

6th July, 1960.

- 10 WALLI MOHAMMED (m) s/Ramayan, Asst. Supdt. of Police - Stationed at Lautoka - in English.

The accused was convicted on 12.5.52 on a charge of common assault. He has no convictions since that date.

The accused is aged about 32 - he is a cane farmer and he resides at Vitogo. He had lived there for about 10 years up to last November 1959. He has since moved to Tuvu to live, leaving his family in Vitogo.

- 20 There have been four cases of shooting reported in Vitogo since last October.

KOYA: The one conviction of assault is admitted.

Cross-Examination: The four reports of shooting recently in Vitogo do not include the present case which would make five in all.

There was also one just before 12 months ago.

I know of no convictions against the accused since 1952 apart from the fact that last year he was bound over to keep the peace.

- 30 Since the accused's arrest there have been three cases of shooting in the area nothing to do with the accused.

Re-Examination: Since the end of 1958 there have been a total of 6 cases of shooting in the Vitogo area. In these there were three deaths - all these three were murder cases.

6.7.60.

HAMMETT, J.

KOYA: I have nothing further to say My Lord.

In the
Supreme Court
of Fiji

ALLOCUTUS:-

I wish to say I have done nothing wrong and I am being wrongly convicted.

No. 38.
Allocutus.
6th July, 1960
- continued.

SENTENCE:-

There is no question of you being made a scapegoat for others. The offences of which you have been convicted are most serious ones quite apart from the other cases of shooting which have been referred to just now.

First Count - 9 years imprisonment.
Second Count - 9 years imprisonment.
Third Count - 1 year imprisonment.

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(All sentences to run concurrently)

6.7.60.

HAMMETT, J.

In the High
Court of Appeal

No. 39.

NOTICE AND GROUNDS OF APPEAL

COURT OF APPEAL RULES

NOTICE OF APPEAL OR APPLICATION FOR LEAVE TO
APPEAL AGAINST CONVICTION OR SENTENCE.

No.39.
Notice and
Grounds of
Appeal.

1st August,
1960.

TO: The Registrar of the Court of Appeal.

20

RAM BALI son of Ludur, convicted before the Supreme Court at Lautoka of the offence of attempting murder contrary to Section 239(b) of the Penal Code on the first count and of the offence of attempted murder contrary to Section 239(b) of the Penal Code on the second count and of the offence of unlawfully wounding contrary to Section 256 of the Penal Code on the third count and sentence to nine years imprisonment each on the first and second counts respectively and one year's imprisonment on the third count on the 6th day of July, 1960, and detained in H.M. Gaol at Lautoka.

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I, the above-named Appellant, hereby give you notice that I desire to appeal to the Court of Appeal against my conviction on the following grounds:

1. THAT the learned trial Judge erred in law in expressing his own opinion on matters of fact (in

particular on the question of the credibility of the witnesses) in his summing-up to the Assessors and in so doing the learned trial Judge had formed his own view in advance as to the guilt of the Appellant and thereby disabled himself from receiving the aid of the Assessors for the purpose of formulating the judgment of the Court. Consequently there has been a substantial miscarriage of justice.

In the High
Court of Appeal

No. 39.

Notice and
Grounds of
Appeal.

1st August,
1960

- continued.

10 2. THAT in any event the learned trial Judge erred in law in not taking into account the opinions expressed by the majority of the Assessors on the question of the alibi set up by the Appellant and the unanimous opinion expressed by all the Assessors that the Appellant was not guilty on all three counts with which he was charged. Consequently there has been a substantial miscarriage of justice.

20 3. THAT the case for the prosecution entirely depended on questions of fact, namely whether Subramaniam Pillay, Muthukumar Samy Pillay, Muthusamy Pillay, Dharma Reddy, Munsamy Reddy, Atmaram, Lalla, and Subramani were to be believed and after a clear direction on this point and despite the learned trial Judge's own views thereon, the majority of the Assessors accepted the alibi set up by the Appellant and all the Assessors unanimously expressed that the Appellant was not guilty on any count. In the circumstances, it was abundantly
30 clear that the Assessors had disbelieved the said prosecution witnesses and the learned trial Judge had not any cogent or good reason or reasons to depart from the opinions expressed by the Assessors.

40 4. THAT the learned trial Judge misdirected himself in law in accepting the testimony of the prosecution witness Munsamy Reddy having regard to the fact he had given an earlier statement to the Police which conflicted with his evidence in Court, the effect of which was to nullify his evidence as a whole. Consequently there has been a substantial miscarriage of justice.

5. THAT the learned trial Judge erred in law in failing to consider the evidence relating to each count separately.

6. THAT the learned trial Judge wrongfully disallowed Defence Counsel's cross-examination of the

In the High
Court of Appeal

No. 39.

Notice and
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Appeal.

1st August,
1960
- continued.

prosecution witness Assistant Superintendent of Police Wali Mohammed on matters relating to the deliberations of a meeting held at the Kisan Sangh Hall, Lautoka, on the 2nd day of January, 1960, concerning the inquiries into the alleged shooting at the house of Subramaniam Pillay on the night in question and the evidence against the Appellant at which meeting the alibi of the co-accused Ishaq Ali was discussed and when Senior Superintendent of Police Mr. Beat and the said Mr. Wali Mohammed, two Solicitors and several persons from Vitogo were present. Consequently there has been a substantial miscarriage of justice. 10

7. THAT the learned trial Judge failed to scrutinize the evidence of the prosecution witness Subramaniam Pillay and failed to take into account, inter alia, the following matters.

(a) that his evidence was entirely inconsistent with the evidence of Muthukumar Samy Pillay, Muthusamy Pillay and Dharma Reddy; 20

(b) that he gave an incredible account how five (5) people had fired shots at his house on the night in question, how he identified the Appellant as being the assailant who, after a short interval, had fired shot at this door and how he was injured by the shot allegedly fired by the Appellant.

(c) that his evidence, on material matters, was in conflict with the evidence of Constable Jairaj and also with the evidence of the Assistant Superintendent of Police Mr. Wali Mohammed. 30

(d) that he give contradictory account before the Court as to how the marks shown on his torch light (Exhibit "C") were caused.

8. THAT the learned trial Judge failed to take into account that the evidence of Muthukumar Samy Pillay (taken with the former inconsistent statements to the Police) the evidence of Muthusamy Pillay and the evidence of Dharma Reddy conflicted with each other to such an extent that there was of necessity a grave doubt on the prosecution's case as whole and therefore the Appellant was entitled to a verdict of not guilty on all counts. 40

9. THAT the learned trial Judge ought not to have accepted the evidence of Muthusamy Pillay inasmuch as he had given contradictory evidence at the Preliminary Inquiry on material matters and that his evidence conflicted with the evidence of Dharma Reddy on material matters.

In the High
Court of Appeal

No. 39.

Notice and
Grounds of
Appeal.

1st August,
1960

- continued.

10. THAT the learned trial Judge ought not to have accepted the evidence of Lalla inasmuch as he had given contradictory evidence at the Preliminary Inquiry on material matters, his evidence conflicted with the evidence of the Assistant Superintendent of Police Wali Mohammed on material matters, that he was a biased witness and that there was inexplicable delay on his part to the report the matter to the Police.

11. THAT the learned trial Judge ought not to have accepted the evidence of Atmaram inasmuch as his evidence conflicted with the evidence of the Assistant Superintendent of Police Wali Mohammed on material matters, that he was a biased witness and that there was inexplicable delay on his part to report the matter to the police.

12. THAT the learned trial Judge in any event ought not to have accepted the evidence of Munsamy Reddy for the reasons that he was a biased witness, that he was related to the complainants Subramaniam Pillay and Muthusamy Pillay, that Counsel for the Prosecution disbelieved him to such an extent that he applied to the Court for leave to cross-examine him and that there was inexplicable delay on his part to report the matter to the Police.

13. THAT the learned trial Judge ought not to have accepted the evidence of Subramani the taxi driver for the reasons inter alia that he gave an incredible account that he saw the car allegedly driven by Hari Krishna on the night of the 28th December, 1959, and that there was inexplicable delay on his part to report the matter to the Police.

14. THAT the learned trial Judge failed to take cognizance of the fact there was no evidence before the Court concerning the effectiveness or otherwise of the Torch Light (Exhibit "C") with which Subramaniam Pillay allegedly saw five (5) persons in the first instance and the Appellant on the second instance on the night in question. Consequently there has been a substantial miscarriage of justice.

In the High
Court of Appeal

No. 39.

Notice and
Grounds of
Appeal.

1st August,
1960

- continued.

15. THAT the learned trial Judge erred in law in taking judicial notice of the fact that there are no tarsealed roads in Vitogo, that there are no lights on the roads and there is little if any electric light in the house and where dark nights are very dark and holding the view that for these and other reasons people in that area are reluctant to report matters to the Police without delay concerning criminal offences committed in the said area.

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16. THAT the learned trial Judge ought not to have accepted the explanations put forward by the prosecution witnesses Atmaram, Lalla and Munsamy Reddy that because they were afraid, of the Appellant, they did not report the matter to the Police without delay.

17. THAT the learned trial Judge wrongly laid emphasis on the physical characteristics of the Appellant and wrongly accepted the view that inasmuch as the Appellant appeared to be stronger man than Munsamy Reddy, the latter of necessity was under fear and that therefore the said Munsamy Reddy had legitimate excuse for his delay in reporting the matter to the Police.

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18. THAT in dealing with the explanations put forward by prosecution witnesses Atmaram, Lalla and Munsamy Reddy as to why they did not report the matter to the Police without delay, the learned trial Judge ought not to have taken into account the previous convictions or the character of the Appellant for the reasons inter alia the said witnesses testified that they did not belong to "anti Ram Bali" faction in Vitogo and put themselves forward as independent witnesses.

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19. THAT the evidence tendered by the Defence witness Mr.C.A.Patel threw a grave doubt on the testimony of Subramaniam Pillay and the prosecution's case as a whole and that therefore the Appellant was entitled to an acquittal on all counts.

I desire to be present on the hearing of the appeal.

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DATED at Lautoka this 1st day of August, 1960.

Sgd: Ram Bali,
Appellant.

Sgd: S.M.Koya
Counsel for the Appellant.

No. 40.

ADDITIONAL GROUNDS OF APPEAL

ADDITIONAL GROUNDS OF APPEAL FILED
WITH THE LEAVE OF THE COURT DATED
28th DAY OF NOVEMBER, 1960.

In the High
Court of Appeal

No. 40.

Additional
Grounds of
Appeal.24th November,
1960.

10 20. THAT the learned trial Judge misdirected the Assessors and himself on the question of quantum of proof required by law to discharge the onus of proof to establish the Appellant's alibi. Consequently there has been a substantial miscarriage of justice.

21. THAT the learned trial Judge failed to direct the Assessors and himself that the onus of proof placed on the Appellant to establish his alibi could be discharged on the balance of probabilities. Consequently there has been a substantial miscarriage of justice.

20 22. THAT the learned trial Judge erred in law when he directed the Assessors and himself that if the 12th prosecution's witness SUBRAMANI'S evidence was accepted the Appellant's alibi should be rejected. Consequently there has been a substantial miscarriage of justice.

30 23. THAT the learned trial Judge failed to direct himself and the Assessors that the evidence in support of the Appellant's alibi could not be disregarded unless there was stronger evidence against it in view of the fact that Appellant did disclose his alibi at the first available opportunity to the Police (namely on the night of the alleged shooting) and his evidence was supported by five (5) witnesses. Consequently there has been a substantial miscarriage of justice.

40 24. THAT the learned trial Judge failed to direct himself and the Assessors that even if the Appellant's alibi was not accepted the evidence adduced by the defence and the Crown as a whole had still to be considered to determine whether or not the Crown had proved its case according to required standard of proof in Criminal cases. Consequently there has been a substantial miscarriage of justice.

25. THAT the learned trial Judge erred in law

In the High Court of Appeal

No. 40.

Additional Grounds of Appeal.

24th November, 1960

- continued.

when in his Judgment he accepted the evidence of the prosecution witnesses MUN SAMI REDDY, SUBRAMANI, ATMARAM and LALLA before dealing with or evaluating any of the evidence in support of the Appellant's alibi and when in his Judgment he made a premature finding of fact that on the night in question defence witness HARI KRISHNA (son of Bechu) drove BECHU'S car from the direction of Drasa towards Tuvu. Consequently there has been a substantial miscarriage of justice.

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DATED this 24th day of November, 1960.

Sgd: S.M. Koya

Counsel for the Appellant.

No. 41.

Judgment.

23rd December, 1960.

No. 41.

JUDGMENT.

IN THE FIJI COURT OF APPEAL
Criminal Jurisdiction
Appeal No.7 of 1960

<u>BETWEEN:</u>	RAM BALI	<u>Appellant</u>
	- and -	
	REGINA	<u>Respondent</u>

20

J U D G M E N T

The Appellant was tried, jointly with one Ishaq Ali, on three charges of attempted murder. The assessors were all of the opinion that Ishaq Ali was not guilty on all three charges and the learned Judge agreed with the assessors and acquitted him.

In regard to the Appellant, the assessors were asked, in the first place, whether they "accepted" his alibi; and the first assessor answered that he did not accept it, while the remaining two assessors accepted it. There was thus a majority opinion on the part of the assessors accepting the Appellant's alibi. But, notwithstanding the fact that one assessor did not accept the alibi, the assessors were unanimously of opinion that the

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Appellant was not guilty of any of the three charges. In his judgment, the learned Judge rejected the alibi, and held the Appellant guilty on the first two charges of attempted murder. On the third charge, he held the Appellant not guilty of attempted murder, but guilty of the crime of wounding as defined by Section 256 of the Penal Code. This third charge related to the wounding of one Dharma Reddy, while the two other charges arose out of the woundings of Subramaniam Pillay and Muthusami Pillay respectively.

In the High
Court of Appeal

No. 41.

Judgment.

23rd December,
1960

- continued.

All three offences were alleged to have been committed at about 9 p.m. on December 28th, 1959, the case for the Crown being that a number of men came at that time to the compound of Subramaniam Pillay, at Vitogo, where he lives with his sons and other persons in four houses. Some shots were fired, and Subramaniam Pillay and Muthusami Pillay were hit by shot gun pellets when they opened the doors of their houses. Dharma Reddy who was inside Muthusami Pillay's house, was wounded slightly by the shot that wounded Muthusami Pillay, and the learned Judge's reason for not convicting of attempted murder in respect of Dharma Reddy was that he found no evidence of an intention to kill that person. He was, however, satisfied that such intention had existed in regard to Subramaniam Pillay and Muthusami Pillay.

Including certain grounds added by consent at the hearing, no less than 25 grounds of appeal have been put forward, though, not unnaturally, there is a certain amount of overlapping.

In regard to some of the grounds of appeal, there is a preliminary application, under Section 17 of the Court of Appeal Ordinance, Cap.3, for leave to appeal, but decision of the question whether leave should be granted was left over until after Counsel had been heard on the merits.

Each ground of appeal has been elaborately argued, but a good many of the points that have been raised can be disposed of by some general observations.

In regard to the suggestion that the learned trial Judge erred in law in expressing opinion on matters of fact in the course of his summing up to the assessors, thus committing himself to premature

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decisions on questions of fact and disabling himself from receiving the aid of the assessors thereon, we do not deem it necessary to consider the extent to which it may be proper or permissible for a Judge to express opinions in the course of his summing up, it being sufficient to say that, in our opinion, the learned Judge did not, in the instant case, commit himself in advance to any final decisions, but left himself free to reconsider everything in the light of the opinions that might be expressed by the assessors. He had begun by directing the assessors that they were not bound by his opinions on facts, and repeatedly made it clear, as he went along, that the assessors were free to form their own opinions notwithstanding his tentative suggestions. We consider that, in this connection, the learned Judge did not at any stage go beyond reasonable and proper limits, and that his summing up as a whole represented a perfectly fair endeavour to assist the assessors in evaluating the evidence. In so far as the assessors may have rejected any particular opinion expressed or suggested by the learned Judge on the facts of the case, this did not debar him from repeating or relying on his own view in arriving at his final decision. He was not bound, as was suggested by learned Counsel, to confine himself in his judgment to new reasons that had not been put before the assessors.

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As to the contention that the learned Judge did not take into account the opinions expressed by the assessors, we see no reason for holding that he failed in this respect. He stated expressly in his judgment that, in view of the opinions of the assessors, he had reconsidered the evidence in the case, and we see no reason to doubt that he did so in fact, and find nothing, in the judgment or elsewhere, to support the suggestion that he did not, or that, in differing from the assessors' opinions, he acted without due consideration and deliberation.

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In discussing this particular matter, learned Counsel for the Appellant cited the unreported decision of this Court in Ram Lal v. The Queen (Criminal Appeal No.3 of 1958), of which copies were furnished to the Court, and he relied in particular on the following passages in that judgment:

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"In order to justify a Court in differing from the unanimous opinion of the assessors who were in a favourable position to assess the reactions of a man of the class and race they

would find the accused to be, there must be very good reasons reflected in the evidence before that Court".

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"A trial Judge would require to find very good reasons indeed, reflected in the evidence, before being justified in differing from a unanimous opinion of the assessors on such a question of fact".

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10 It will be observed that, in both of those passages, the Court was careful to limit its propositions to the particular sort of question which arose in that case, namely, the probable reactions to alleged provocation of a man of a particular class and race; and this present Court does not doubt that, on such a question, the Judge ought not to differ from a unanimous opinion of assessors unless he can find - and can find "reflected in the evidence" - very good reasons for so doing. But it would be wrong to erect this into a general proposition applicable in all cases. In general, it is enough if, as in the present case, the Judge proceeds on cogent and carefully reasoned grounds based on the evidence before him and his views as to credibility of witnesses and other relevant considerations. It was argued that the learned Judge had erred in failing to consider the evidence relating to each count separately, and learned Counsel cited in support the case of R. v. Bailey 1924 2 K.B. 300, 1924 All E.R. R.466. That case was of an entirely different character, and the position is different where, as learned Counsel agreed is true here, the whole of the evidence is relevant to all of the charges. In such circumstances the necessity for separate consideration of the various charges is limited to matters in respect of which there are differences between the charges. In the present case, after reviewing the evidence in detail, the learned Judge did, towards the close of his judgment, arrive at the point where he considered each charge separately in order to arrive at his decision on each charge, and we are of the opinion that, in following this course, the learned Judge did in fact consider each charge separately to the extent that was necessary in the circumstances of the case.

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A considerable number of the grounds of appeal have reference to the learned Judge's acceptance or rejection of the evidence of particular witnesses.

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Speaking generally, the suggestion was that he ought to have rejected the evidence of one witness after another on various grounds; and it seemed almost as if it were contended that, whenever a witness's testimony is open to some serious criticism on any account at all, a trial Judge is bound to reject his evidence entirely. The learned Judge did not in fact disregard the various grounds on which the evidence of particular witnesses was open to criticism and, without going into details, this Court is satisfied, for the reasons given by the learned Judge, that he was justified in accepting the evidence of those witnesses to the extent to which he did accept and rely on their evidence. Treating the entirety of all such objections as a single ground of appeal, the Court does not find that the learned Judge's reliance on so much of the evidence as he accepted was unreasonable, or that the views he adopted were such as could not be supported having regard to the evidence, or that there was, in this respect, any wrong decision on any question of law or any miscarriage of justice (vide Section 18 of the Court of Appeal Ordinance, Cap.3). 10

Turning now to another matter, exception was taken to the following passage in the summing up, which, in view of the learned Judge's statement in his judgment that he had directed himself in accordance with the terms of his summing up, may be regarded as incorporated in the judgment:

"It is difficult however sitting in the security of this Court House, in a township with the Police near at hand, sometimes, to appreciate fully the feelings the people living outside a township may have - where there are no tar sealed roads - where there are no lights on the roads or on the tracks through the canefields and the countryside - and where a number of cases of shooting and violence have been heard of - and where there is little if any electric light in the houses and where dark nights are indeed very dark". 30 40

The relevant ground of appeal was to the effect that the learned Judge had erred in law in taking judicial notice of such facts as are mentioned in that passage. In his argument, however, learned Counsel for the Appellant limited himself to the contention that the learned Judge had no right to take judicial notice of the way in which the feelings

of people might be affected by such circumstances in relation to the matter of giving information to the police. The court doubts whether it can fairly be said that the passage in question amounted to a finding of facts by way of judicial notice, but, in any event, does not think that the learned Judge went further than he was entitled to do. In regard to the reactions of people to such circumstances, human nature is certainly a matter of which a Court of law is entitled to take judicial notice.

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In regard to such reliance as was placed on previous convictions and the character and reputation of the Appellant, those matters were brought out by the defence, and were in no sense raised by the prosecution, and this Court is of the opinion that they were not applied by the learned Judge beyond the extent to which they were properly relevant.

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The foregoing remarks sufficiently dispose of all grounds of appeal other than ground No. 6 and certain grounds relating to the way in which the learned Judge dealt with the alibi put forward by the Appellant. These two matters are of a more serious nature and have called for careful consideration by this Court.

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The complaint in ground No. 6 is that the learned Judge wrongfully disallowed a certain question or questions put by Counsel for the defence in cross-examination of the prosecution witness. Assistant Superintendent of Police Wali Mohammed, on matters relating to the deliberations of a meeting held at the Kisan Sangh Hall in Lautoka on January 2nd, 1960.

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At that date only four clear days had elapsed since the commission of the offences alleged herein. It is set out in the ground of appeal that, at this meeting, the alibi of the second accused, Ishaq Ali was discussed, but it would seem that there may also have been some discussion of the Appellant's alibi. The meeting in question figured considerably in the cross-examination of several of the prosecution witnesses, and, in regard to them, the matter may have been relevant as going to their credit. It was only in the course of the cross-examination of Wali Mohammed that the Court interfered, and, in his argument before us, learned

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Counsel for the Appellant did not suggest that this particular matter would have any material bearing on his credit; and it was not on any such ground that he endeavoured to justify his question in the discussion of them at the trial. The meeting had no direct relevance to any issue in the case. When objection was first taken to the line that was being followed in the cross-examination of this witness, there was some discussion between Counsel and the Court in the course of which certain questions were allowed to be put to, and were answered by the witness. Learned Counsel then put the question, "Was a request made that someone else should investigate this case instead of you?" After some further discussion, the question was disallowed, as was also the next question put, namely, "Was there not a meeting between yourself and Mr. Beatt and the people of Vitogo about this?" An affirmative answer to that last question would in fact have done no more than re-affirm what had already been clearly proved and was never in dispute. Objection was taken to learned Counsel's next ensuing question, but, after discussion, he was allowed to proceed, and no further questions were disallowed. Accordingly, the only question which remained unanswered, as a result of the Judge's ruling, was the one relating to an alleged request that someone else should investigate the case instead of the witness. There is no record of anything said by learned Counsel for the Appellant in support of that particular question, but the learned Judge interpreted it as being put forward for the purpose of showing that the principal witnesses for the prosecution had brought unfair and biased pressure on the Police to prosecute the two accused, and his concluding words were to the effect that Counsel had gone quite far enough, had been allowed every latitude, and had already heard the witness's replies.

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In his argument before us, Mr. Koya, who appeared for the Appellant in both Courts, submitted that further cross-examination might have established that the Vitogo people who were present at the meeting must have told other people what was said there in regard to what the two accused were saying (that is to say, the alibis they were putting forward); and, secondly, there was the possibility that the complainants and their sympathisers might have been led to conclude that it was necessary for them to get witnesses to say that they had seen the

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two accused that night. He suggested, as was the fact, that certain witnesses had not come forward while Wali Mohammed was known to be investigating the case, but did come forward a few days after the meeting when a detective officer had been brought from Suva to take charge of the investigations. This he supported by the suggestion that some witnesses may have realised that Wali Mohammed knew too much of the situation in Vitogo "to swallow their story", and accordingly wished to have another Police officer from another area who might be more ready to do so; he suggested further that it was because of the meeting that the detective officer was brought in. In an endeavour to crystallise learned Counsel's submission, this Court made the following note, which was read over to Mr. Koya:

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"My complaint is that I was not allowed to go into the question whether, at the meeting, it was asked that another Police officer should take over the investigation. If that had been allowed, I might have been able to establish that a particular Police officer was in fact appointed to investigate this matter instead of Wali Mohammed. This would have given the opportunity to cross-examine the witnesses Atmaram, Lalla, Munsami Reddy and the taxi man (Subramani) why they preferred to give statements to one Police Officer and not the other".

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It may not be irrelevant to mention that all four of the witnesses there mentioned had already given their evidence and been cross-examined. Munsami Reddy was in fact recalled later by the Court, and learned Counsel were allowed to examine him on matters arising out of the questions put by the Court, but no further cross-examination on other topics would have been permissible then without leave of the Court, and no such leave was sought.

It is worthy of note that the grounds put forward before us in respect of the disallowed question or questions differed rather materially from anything said at the time to the learned Judge. This criticism may, perhaps, not be fatal, but seems to us to be pertinent nevertheless.

We do not deem it necessary to arrive at a

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concluded opinion as to the propriety or otherwise of the Judge's intervention. We think it not unlikely that the learned Judge may have acted quite properly in what he did. But, however that may be, learned Counsel has failed to satisfy us that it involved a miscarriage of justice, or raised any of the other grounds on which this Court is authorised, under Section 18(1) of the Court of Appeal Ordinance Cap.3, to allow an appeal. Even if we were to conclude, contrary to the view to which we are inclined, that the learned Judge had erred in this regard we are clearly of opinion that in this connection "no substantial miscarriage of justice has occurred", and that, accordingly, under the proviso to Section 18(1), the appeal should be dismissed in so far as it rests on this ground. We are quite satisfied that the admission of any rejected question and of any further questions that might naturally have arisen therefrom, would have had no effect whatever on the decision of the case.

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The remaining matter that requires to be considered is put in various ways in several of the grounds of appeal, but amounts in substance to an allegation of misdirection as to the onus of proof in respect of the alibi put forward by the Appellant. At an early stage in his summing up, the learned Judge spoke as follows :-

"Now as to the onus of proof. In this as in every criminal trial the onus of proof rests on the Crown to prove the guilt of the accused beyond reasonable doubt. If after considering the evidence as a whole you are left in reasonable doubt as to the guilt of the accused it is your duty to express the opinion that he is not guilty. It is only if you are satisfied of the guilt of an accused beyond reasonable doubt that you are entitled to express the opinion that he is guilty".

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At no stage did the learned Judge depart from or qualify this unexceptionable general direction as to the onus of proof; and it will be observed that it is so expressed as to be capable of being applied in respect of an alibi or any other matter raised by way of defence. It is, however, usual and proper, in order to avoid possible misunderstanding, for a Judge directing a jury or assessors to make some specific reference to the onus of proof in relation to an alibi. Unfortunately, the

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learned Judge did not address himself to a full formulation of the rule applicable to an alibi, and such references as he subsequently made to the matter were, to say the least, capable of being misunderstood. At one stage he said:

10 "As I have already told you, the onus of proof rests on the prosecution, but if the defence set up proves conclusively to your satisfaction that the accused were elsewhere at the actual time the offence was committed, the accused are entitled to be acquitted and there would be no need for you to consider further the evidence of the actual shooting".

20 It is technically correct to say, as the learned Judge said there, that conclusive proof of an alibi necessarily leads to acquittal. However, such a statement, standing alone, is likely to be interpreted by laymen as meaning that an alibi requires to be proved conclusively by the defence. We think it probable that the passage just quoted was intended only as a passing comment, and that the learned Judge meant to revert to the topic at a later stage in order to obviate any misunderstanding; but he did not do so, and the risk of misunderstanding was so great that, in our opinion, it is only right to regard this passage as a misdirection. When the learned Judge came to the consideration of the alibi of the second accused, he used the expression, "If after considering that evidence as a whole you do accept the second accused's alibi"; and there is once again in those words the suggestion that actual acceptance of an alibi is necessary. Finally, the learned Judge intimated to the assessors that he wished to know "whether or not you believe and accept the alibi of each accused in this case;" and two of the assessors responded by stating that they accepted the Appellant's alibi, and the other by stating that he did not accept it. The same word was used in the answers of the assessors accepting the alibi of the second accused.

40 We are forced to the conclusion that had this been a trial by jury, it may well have been necessary to quash the conviction on the ground that the jury might have understood, from the learned Judge's direction, that the evidence relating to the alibi might properly be disregarded unless the jury were

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prepared to accept it as establishing the alibi, whereas a correct direction would have been to the effect that the accused would be entitled to be acquitted if the evidence relating to the alibi raised, in the minds of the jury, a reasonable doubt as to the guilt of the accused. The position may, however, be different in the case of a trial such as this, which is conducted by a Judge with the aid of assessors whose opinions expressed to the Judge are merely advisory the actual decision resting with the Judge, who is not bound by the opinions of the assessors. In this connection, we observe in the first place that, even assuming that the assessors may have misunderstood the learned Judge's direction, the majority of them nevertheless accepted the Appellant's alibi and that the assessors who did not accept it nevertheless expressed the opinion that the Appellant was not guilty of any of the charges. In other words, the misdirection did not lead any of the assessors to hold the Appellant guilty on any charge, and did not prevent the majority of them from actually accepting his alibi. The only conceivable detriment to the Appellant arising from the misdirection lies in the fact that one - and one only - of the three assessors may perhaps have been misled into declining to "accept" the alibi. It is possible that, had a different direction been given, the acceptance of the alibi by the assessors might have been unanimous, instead of being by a majority of two to one, and the learned Judge might thus have had to consider a somewhat stronger expression of opinion on the part of the assessors in relation to the alibi. We are satisfied, however, that the learned Judge's decision would not have been influenced in any way if the dissentient assessor had accepted, instead of declining to accept, the alibi. 10 20 30

In the judgment itself, the learned Judge, in effect, incorporated his summing up in his judgment by stating, "I have directed myself in accordance with the terms of my summing up to the assessors". Mr. Koya has argued from this that it must be inferred that the learned Judge had also addressed to himself the misdirection complained of in his summing up. In other words that he had misdirected himself. However, we do not require to decide whether this is a necessary inference because the learned Judge, on a careful consideration of the evidence came emphatically to the affirmative conclusion that the alibi was false. His 40 50

judgment, in so far as it related to the alibi, did not depend in any degree whatsoever upon any question as to the burden of proof, but was governed by his unhesitating acceptance of the evidence for the prosecution in regard to the relevant facts, and by his equally unhesitating rejection of the evidence tendered in support of the alibi. He believed the one set of witnesses and disbelieved the other. Questions as to onus of proof arise where there is doubt as to the acceptance or rejection of a particular proposition, and are irrelevant where the evidence carries the mind of the tribunal to a positive conclusion in one direction or the other.

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1960

- continued.

In the present case, so far as the learned Judge's judgment is concerned, it seems to us that, even if he had misdirected himself as to the onus of proof in relation to the alibi, this would not have been a fatal error, the reason being that his conclusions on the facts were such that it never became necessary for him to direct his mind to any question as to the weight to be given to evidence that left it uncertain whether the alibi were true or false. He held that the Appellant and his witnesses had all given what he was quite satisfied was false evidence in support of the alibi, and added, "I do not accept their evidence concerning the first accused's alibi at all". He went on to accept the evidence of certain prosecution witnesses, and to reject that of the Appellant and his witnesses, and ended his discussion of the facts by saying, "I do not feel the slightest shadow of doubt in my mind about the guilt of the first accused". It is clear that, as the learned Attorney-General submitted, the Judge did not in fact fall into any error arising from any misconception as to the onus of proof.

Our conclusion is that, even if it were right to hold that the unsatisfactory direction given to the assessors should be regarded as constituting a miscarriage of justice within the meaning of section 18(1) of the Court of Appeal Ordinance, Cap.3, it is certain, in the circumstances of this case, that, in the words of the proviso to that subsection, that "no substantial miscarriage of justice has occurred".

For these reasons leave to appeal is refused where relevant, and, on matters in respect of which

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such leave is not required, the appeal is dismissed.

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We think we should make reference to the discussion which arose during this hearing as to the function of this Court in considering an appeal against the judgment of a Judge sitting with assessors. Section 246 of the Criminal Procedure Code provides that the decision of the presiding Judge with the aid of assessors on all matters arising upon the trial which in the case of a trial by jury would be left to the decision of the jurors shall have the same force and effect as the finding or verdict of a jury thereon. We think that this provision does not necessarily mean that this Court's function is exactly the same as that of the Court of Criminal Appeal in England in reviewing the verdict of a jury. It is true that this Court acts, like the English Court of Criminal Appeal under the following provision:

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"The Court of Appeal on any such appeal against conviction shall allow the appeal if they think that the verdict should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence or that the judgment of the Court before whom the Appellant was convicted should be set aside on the ground of a wrong decision of any question of law or that on any ground there was a miscarriage of justice, and in any other case shall dismiss the appeal".

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However, in regard to unreasonableness, for instance, a Court of Appeal when reviewing a Judge's judgment is in a position to follow his reasoning, and may thus be able to conclude that he has acted unreasonably, even though it might have been impossible to arrive at such a conclusion in the case of a jury's verdict. For the Court of Appeal is entitled to consider the actual findings and the reasoning of the Judge, whereas, in the case of a verdict by jury, the Court of Appeal can only speculate as to particular findings and reasonings, and must therefore uphold the verdict if there was evidence to support it.

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(Sgd.) F.B. ADAMS,
President.

193.

(Sgd.) JAMES P. TRAINOR
Judge of Appeal.

(Sgd.) R. KNOX-MAWER,
Judge of Appeal.

Read by Trainor J/A
SUVA.
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No. 42.

ORDER GRANTING SPECIAL LEAVE TO APPEAL

(L.S.)

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AT THE COURT AT BUCKINGHAM PALACE

The 26th day of May, 1961

PRESENT

THE QUEEN'S MOST EXCELLENT MAJESTY

LORD MILLS

MISS HORNSBY-SMITH

MR. SECRETARY PROFUMO

MR. BEVINS

WHEREAS there was this day read at the Board a report from the Judicial Committee of the Privy Council dated the 15th day of May, 1961 in the words following, viz:-

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"Whereas by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of Ram Bali in the matter of an Appeal from the Fiji Court of Appeal between the Petitioner and Your Majesty Respondent setting forth: that the Petitioner desires to obtain special leave to appeal to Your Majesty in Council from a Judgment of the Fiji Court of Appeal dated 23rd December 1960 dismissing the Petitioner's Appeal from a verdict and sentence dated 6th July, 1960 of the Supreme Court of Fiji whereby he was found guilty of attempting to murder one Subarmani Pillay and one Muthu Sami Pillay and guilty of wounding one Dharma Reddy: that

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In the
Privy Council

No. 42.

Order granting
Special Leave
to Appeal.

26th May, 1961.

In the
Privy Council

No.42.

Order granting
Special Leave
to Appeal.

26th May, 1961
- continued.

on the two convictions for attempted murder the Petitioner was sentenced to 9 years imprisonment on each count and on the conviction of wounding to 1 year imprisonment all the sentences to run concurrently: And humbly praying Your Majesty in Council to grant him special leave to appeal against the Judgment of the Fiji Court of Appeal dated the 23rd December 1960 and for further or other relief

"THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and in opposition thereto Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioner to enter and prosecute his Appeal against the Judgment of the Fiji Court of Appeal dated the 23rd day of December 1960:

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"AND Their Lordships do further report to Your Majesty that the authenticated copy under seal of the Record produced by the Petitioner upon the hearing of the Petition ought to be accepted (subject to any objection that may be taken thereto by the Respondent) as the Record proper to be laid before Your Majesty on the hearing of the Appeal".

HER MAJESTY having taken the said Report into consideration was pleased by and with the advice of Her Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

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Whereof the Governor or Officer administering the Government of the Colony of Fiji for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

W.G. AGNEW.

E X H I B I T S"D" - STATEMENT BY MUTHU KUMAR SAMI PILLAY

2 P/W Sworn on Ramayan in Hindi MUTHU KUMAR SAMI PILLAY s/o Subarmani Pillay of Vitogo, Tram Line Worker, C.S.R.

Exhibits

"D".

Statement by
Muthu Kumar
Sami Pillay.

15th February,
1960.

10 Live in same compound as 1 p.w. On 28.12.59 I was at home. About 2100 I heard dogs barking. About 2115 guns were being fired. Then dogs stopped barking. I opened door to see what was happening. I shone my torch and saw 2nd accused. Another person with him. Could not recognise him. As I flashed my torch on 2nd accused my door was hit by pellets. They were about 1 chain away (witness box to W.C. outside). Towards my right side when I looked out of door. (shows on plan agreed to be put in later). Opposite Bal Subramani's house.

20 Then I began to yell out. I was inside my house. I heard 8 shots. Then I yelled out, and cannot say how many more fired. I was not hurt. Bullets struck my door.

When I flashed my torch I saw nothing in 2nd accused's hand. Then shot was fired. Then police came.

XX: KOYA: Reserved.

Read over and found correct.

(Sgd.) Muthu Kumar Samy Pillay.

(Sgd.) M.J.C. Saunders,
Senior Magistrate,

15.2.60.

Exhibits

"E"

Statement by
Muthu Kumar
Samy
29th December,
1959.

"E" - STATEMENT BY MUTHU KUMAR SAMY.STATEMENT

Tuesday, 29th December, 1959.
Comm: 1115 hrs.
Comp: 1145 hrs.

No. 1741/59

Vitogo, Lautoka
Lautoka.

29th day of December, 1959.

Name: MUTHU KUMAR SAMY s/o Subarmani Pillay:
24 years.
Address: Vitogo, Lautoka.
Occupation: Labour c/- C.S.R., Lautoka.

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I did not want to give statement now because I am very much upset. Last night I was at home since about 5 p.m. After that I did not go anywhere. I had my meal at about 8.15 p.m. and sat in my own bure house. My wife was also inside, and no one else. After eating I was smoking. The door was not locked. While I was smoking at about 8.35 p.m. I heard the dogs barking very furiously towards the road. They kept on barking in and about the compound. I thought they may be barking just for something. But they barked now and then. Then I thought I better see why they were barking. I then opened the door and with my 5 cell torch light, I started to flash about. When I flashed the torch towards the road I saw nothing, so I switched off the torch, but the dogs kept on barking. After about 3 or 5 minutes while I was standing outside my door, I heard one shot fired beside the tin house from the side of the house. I did not see if any one else have opened their door or not. Immediately a second shot was fired at the bamboo wall bure. I then again flashed my torch, and another shot hit my door. Then I stretched out my left hand and head from inside the door and flashed the torch light again. I then saw two men beside the house in the cane land. One was a big strong man wearing dark clothes, and I saw his face, he was Issac from Tavua. The one who was on his side was wearing khaki clothes. He was thin dark looking boy who often rides in Bechu's car. He is known to me as Latchmi Narayan. He is also called Chief. He was smaller man than Isaac that I could see. I only saw these two men, and saw no one else.

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10 Then more shots were fired and then closed my door again. I then opened my door a very little to let out the sound and I made an alarm and yelled out. I could not hear any reply to my alarm. Then more shots were fired. I think altogether about 8 shots were fired. I only came out of the house when the police arrived, and that was the first time I saw that my father and brother were injured. I know there 2 men living here as Kapil. They are good to me and we always speak when we meet. We are in good terms. I have no emnity or dispute with any one in this settlement.

I do not know where Latchmi Narayan lives. But I made him out clearly by his face; and I sure he was the man.

(Sgd.) Muthu Kumar Samy.

(Sgd.) B. Deo D/Sgt. 445.

20 I hereby certify that I have read and explained the contents of this document to the person whose name is annexed and that such person appeared to understand its contents and approve of them.

(Sgd.) B. Deo D/Sgt. 445.

"F" - STATEMENT BY MUTHU KUMAR SAMY.

STATEMENT

Commenced at 1600 hrs.

1741/59

Taken at Bola's house
Vitogo Lautoka.

Tuesday 5th January, 1960.

30 Further to my previous statement I wish to add that on the night of 28th December, 1959 our dogs were barking continuously not now and then until the first gun shot fired when the dogs stopped barking.

When I first time before any shots were fired,

Exhibits

"E"

Statement by
Muthu Kumar
Samy

29th December,
1959

- continued.

"F"

Statement by
Muthu Kumar
Samy.

5th January,
1960.

Exhibits

"F"

Statement by
Muthu Kumar
Samy.5th January,
1960

- continued.

opened my door and flashed my torch light then at the same time I saw a torch was being flashed from the tin house in the same directions where I was flashing torch light, that is on the sugar cane side to the direction of my grandfather Kup Samy's house. In the tin house my father lives but I cannot say who was flashing the torchlight for I did not see. Then I closed my house door and at the same time the gun fire started then I blew light off.

10

When I second time opened the door whilst the shots were being fired on the direction of the tin house, I flashed my torchlight and then I recognised two men one was Ishaq and another Latchmi Narayan. It appeared to me that Ishaq was wearing a black short pants and another was wearing khaki shorts. Had there been any shirts on them I could have seen, therefore they had no shirts. I could not see any object in their hands for when I flashed the torch light and a shot was fired on me which hit the door of the house.

20

Whilst shooting was in progress I attempted to come out and see but my wife prevented me from doing so. Before the shots ceased I heard my sister Papamma who was in my father's house scream. I thought that some one has been killed, I did not go out for I was very much frightened, that I might be shot.

After I heard my sister's scream the last shot was fired and stopped. Then I heard some one talking in the next bure house in which my brother Muthu Samy lives then I called out in Madrasi Language if anyone is injured then some one replied that Muthu Samy is injured. I could not make out who replied for the speech was not clear.

30

Until the arrival of the Police I did not come out of the house at all.

Completed at 1625 hours.

(Sgd.) Muthu Kumar Samy.

"G" - STATEMENT BY MUTTU SAMI PILLAYExhibits

5 P/W Sworn on Ramayan in Hindi MUTTU SAMI PILLAY
s/o Subarmani Pillay of Vitogo, Farmer.

"G"

Statement by
Muttu Sami
Pillay.

(Undated)

10 Live in same settlement as 1 p.w. Have a separate bure. House No.4 on Exhibit "B" is my house. On 28.12.59 I was at home. My brother-in-law Dharma Reddy and my cousin Subramani also there. Sitting down after meal. Just going out to urinate and as I opened door the dogs began to bark. Across the drain from the house (shows on Exhibit "B"). I flashed torchlight in that direction and I recognised 2nd accused. About length of courthouse away from me.

At point No. 1 on sketch Exhibit "B". He was wearing shorts only. I turned and was just going to close door then I was hit in the leg by a gun bullet. I heard gun go off and I was hit in leg the same time. I had my back turned. That was the first shot that night.

20 Shot came from across the drain. I had seen a little bit of something like a gun with 2nd accused but I was frightened and closing the door. After shot I stood and looked in direction near the drain. People in house asked what had happened. I said "Bullet has been fired". Then I went inside the house. Shut the door. I heard sound of another shot so I lay flat on the floor. It came from across the drain. Other shots fired. No more at my house. My brother-in-law Dharma Reddy was also slightly injured by a pellet. I heard about 8 or 9 shots. I would say first shot was fired sharp at 2100. Dharma Reddy had a watch.

30 Shooting lasted about 8 or 9 bullets, and then a silence and more bullets fired.

I did not count the total shots. All came from same direction. I remained in house until police came. Then I was taken to hospital. On my return to house I saw marks on walls.

40 XX: KOYA: I guess time between first and second shots was 10 minutes.

Read over and found correct.

(Sgd.) Muthu.

(Sgd.) M.J.C. Saunders
Senior Magistrate.

Exhibits"H" - STATEMENT BY LALLA

"H"

Statement by
Lalla.15th February,
1960.8 P/W sworn on Ramayan in Hindi LALLA s/o Bajranji
of Vitogo, Labourer.

On 28.12.59 I and last witness came to my house at C.S.R. Line Vitogo about 2045. While there I heard sound of gun. We both came out. I have two doors in my house. One from kitchen, one from other side. 7 p.w. opened kitchen door, I opened other one. I heard gun sounds and saw flashes from direction of 1 p.w.'s house and settlement. About 8 shots. Time about 2100, perhaps a little afterwards. I called out to 7 p.w. We decided to go and have a look. We came down to a place where there is track beside cane field. I was leading. Going quite fast. Not running. Going to 1 p.w.'s house. At a cross road just as we were turning to 1 p.w.'s house we saw a torch flash. We backed up and hid under a guava bush. People walked past. 1st accused leading with a gun in his right hand. Next man had a gun in left hand and torch in right hand. Did not recognise him. 10

Third man had a gun in his right hand. Did not recognise him. Also saw a 4th man but could not see him properly. Saw them at this point (No. 8 in Exhibit "B"). They were coming from direction of 1 p.w.'s settlement and going towards river. 20

Recognised Ram Bali (1st accused) because he was in front and has lived amongst us for a long time. I can always recognise him. Dark night.

XXD: KOYA: Reserved. 30

XN: COURT: I was very much frightened because these people had guns. From there we went back to 7 p.w.'s house. Several people there. Had a discussion and finally decided to go to 1 p.w.'s house.

Read over and found correct

(Sgd.) LALLA

(Sgd.) M.J.C. SAUNDERS,
Senior Magistrate.
15.2.60.

"L" - STATEMENT BY MOHAMMED HANIFExhibitsSTATEMENT"L"

Commenced at 1320 hrs.

No. 1741/59

Statement by
Mohammed Hanif.Taken at Namaka Police Station
Nadi Province.25th January,
1960.

Monday 25th day of January, 1960.

Name: Mohammad Hanif s/o Abdul Razak age 32 years.

Address: Nawaka, Nadi.

Occupation: Driver.

10 I remember that I was driving Deo Nandan's taxi in Nadi on his request from 21st December, 1959 until the 8th January, 1960. I was only driving temporarily for Deo Nandan. The Taxi No. 8550.

20 I was driving motor car on the 28th December, 1959 I drove some Fijians from Namaka Air Port, there were 4 Fijians I don't know those Fijians nor their names. They also had some luggage. I drove them to Nailaga Village. I think it was about 7 p.m. or 7.30 p.m. when I left Namaka with the Fijians for Nailaga. I drove the Fijians straight to Nailaga. I arrived Nailaga at about some time between 8.30 and 9 p.m.

30 After dropping the Fijians at Nailaga I was driving the taxi back to Nadi alone. When I reached near a store owned by Bechu at Tuvu an Indian man emerged from a track which leads towards the store and waved his hand to stop the car. I stopped the car, I asked the man what did he want, he said that he wanted to go to Tavua, I said it was getting late and I have to go to Nadi, it was about 9.30 p.m. or so then. He said tell me the fare and take me to Tavua. I said that I will charge him £3.0.0 from there to Tavua. He agreed and gave me £3 in 3 single £ notes. I then drove this man to Tavua. I dropped this man on the Nadarivatu Road from the junction of main road passing the village. He was alone. It was about 40 10.15 p.m. when I dropped him there. He did not say anything to me. I did not ask him anything.

I did not know this man before it was the

Exhibits

"L"

Statement by
Mohammed Hanif.

25th January,
1960

- continued.

first time I saw him. I may be able to identify him if I see him again. He was stronger man than I am and tall as me. He was wearing khaki long trousers and blue shirt.

I use to hand my boss the daily earning every day almost. During that period I was earning good money due to the Christmas and New Year.

I remember this Monday night the 28th for I had done two runs one for Nailaga and another same time one from Tuvu to Tavua, and I had not done any other run as far as Tavua, during my short driving.

10

(Sgd.) M. Hanif.

I hereby certify that I have read and explained the contents of this document to the person whose name is annexed and that such person appeared to understand its contents and approve of them.

Completed at 1340 hrs.

(Sgd.) ?
D/Sgt. 298.

20

ADDITIONAL STATEMENT: Taken at Lautoka Police Station on Monday 25/1/60 at 1755 hours :-

This afternoon at Lautoka Police Station I was confronted with 12 men Indians to identify the man I drove on the night of the 28th December, 1959 from Tuvu to Tavua, I went along the line and picked up a man, whom I drove on the night of 28/12/59 from Tuvu to Tavua, and this was the same man I am sure of him.

30

Completed at 1800 hrs.

(Sgd.) M. Hanif.



"Q" - STATEMENT BY RAM BALI.ExhibitsSTATEMENT"Q"

Comm. 1415 hrs.

1741/59

Statement by
Ram Bali.Tuvu, Lautoka.
Ba.29th December,
1959.

Tuesday 29th day of December, 1959.

Name: RAM BALI s/o Ludur (age 32 years)

Address: Vitogo, Lautoka.

Occupation: Farmer.

10 Since 21/11/59 I am not staying at Vitogo
from the day I have been released on bail. Yester-
day in the morning I been to Lautoka town while I
was at the shop of T.R. Gopal. I saw Isaq come
and I asked him that why he came to Lautoka then
he replied that he came to the office of Mr.Koya
at the same time in the afternoon after 12 midday
a car from Tavua came and Isaq stopped him and my-
self and Isaq both got in to the car, only the
driver was and no one else. I came and got off
20 at Tuvu and Isaq went away to Tavua. From then I
was at the shop. In the evening at about 7.00 p.m.
while Bechu and myself were at the shop then Ram
Khelawan Sirdar and Baiju came, later Babu Ram ar-
rived after a while Jagai and another Ram Bali
came. Hari s/o Bechu was also at the shop. We
all were drinking grog until about 11.00 p.m. and
all went away and we went to sleep. Prior to this
no one left the place. The car of Bechu did not
30 go to anywhere since 7.00 p.m. I do not know any-
thing about this matter.

Completed 1425 hrs.

(Sgd.) Ram Bali.
(Sgd.) J. Raj
29.2.59.

I hereby certify that I have read and explain-
ed the contents of this document to the person
whose name is annexed and that such person appeared
to understand and approve of them.

(Sgd.) Jai Raj
29.12.59.

40

ExhibitsSTATEMENT

"Q"

Comm. 1445 hrs.

No. 1741/59

Statement by
Ram Bali.Tuvu Ba Station
Ba Province.29th December,
1959

Tuesday 29th day of December, 1959.

- continued.

Name: RAM BALI s/o Ludur (age 32 yrs.)
Address: Vitogo, Lautoka.
Occupation: Farmer.

Further to my statement I wish to add that yesterday at about 12 midday while I was at the shop of T.R. Gopal with Isaq and few others at that time Bisun Deo, Solomoni Drilo No.1 and Kamal Singh saw me at the shop. After that they went away by a car. Completed 1450 hrs.

10

(Sgd.) Ram Bali.
(Sgd.) J. Raj.

I hereby certify that I have read and explained the contents of this document to the person whose name is annexed and that such person appeared to understand and approve of them.

(Sgd.) Jai Raj.
29.12.59.

20

"R"

"R" - STATEMENT BY ISAQ ALI.Statement by
Isaq Ali.STATEMENT28th December,
1959.Comm. 2345 hrs.
Comp. 2400 hrs.

No. 1741/59

Korovou Tavua Station
Ba Province.

Monday 28th day of December, 1959.

Name: ISAQ ALI s/o Ali Hussein Age 27 years.
Address: Korovou, Tavua.
Occupation: Labourer.

30

This morning at about 7.40 a.m. I left home for Lautoka. Arrived at Tavua got Baburam's car driven by Taiyab as far as Ba. At Ba got into

Tara Singh's service driven by Narayan at about 9.30 a.m. Arrived at Lautoka at about 11 a.m. Got off from bus and went to meet one Mohammed Yasin s/o Abhu Ali of Vitogo at Ramzan's timber yard. Spoke to him for an hour about the money owed by Jaswant and I told him that I am going to see Mr. Koya and he informed me that the lawyer's office will open on 4th January.

Exhibits

"R"

Statement by
Isaq Ali.28th December,
1959

- continued.

10 While speaking saw Munnu Latchman's son passed with the car. I called out to him, he stopped. It was at about little after 1 p.m. From Lautoka to Ba I was alone in the car. From Ba two more person got in the car and we arrived at Tavua 3 p.m. From Tavua came home as far as Korovou cemetery by Hasan Nair's taxi and then walked up. After arriving home did not want anywhere. Police came to home at about 7 p.m. asking for Silar Saheb and we told him that he is at Mohammed's house and now
20 when police came I was sleeping with my wife and children.

(Sgd.) Ishak Ali.

(Sgd.) P. Krishan D/Cpl.448.

I hereby certify that I have read and explained the contents of this document to the person whose name is annexed and such person appeared to understand its contents and approve of them.

(Sgd.) P. Krishan D/Cpl.448.
