

Walli Mohammad and another - - - - - Appellants

v.

The King - - - - - Respondent

FROM

THE SUPREME COURT OF FIJI

REASONS FOR THE REPORT OF THE LORDS OF THE JUDICIAL  
COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE  
28TH JULY, 1948

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*Present at the Hearing :*

LORD PORTER  
LORD OAKSEY  
LORD MORTON OF HENRYTON  
LORD MACDERMOTT

[*Delivered by LORD PORTER*]

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In this case their Lordships have already stated that they would humbly advise His Majesty that the verdict of murder recorded against the two appellants could not stand and that they should be acquitted of the charge made against them. At the same time their Lordships indicated their intention to set out the grounds for tendering such advice. In fulfilment of which promise they now give their reasons.

The two appellants were jointly accused of murdering one Lachmi Prasad on the 8th September, 1945. Undoubtedly Lachmi Prasad was murdered on that day, but the only direct evidence adduced by the prosecution against the prisoners was that contained in six statements made to the police by Walli Mohammad and six separate statements made by Ali. The statements were taken between the 9th and the 19th September and in those made by himself each of the accused gave contradictory accounts of his movements on the evening and night of the 8th and 9th September. Each began by denying any knowledge of the events leading to the crime or of the crime itself, but each at a later stage though denying any participation in it, admitted his own presence when it was committed and implicated his fellow prisoner amongst others. Both expressed their repugnance to the violent act, their horror at its commission, and its unexpectedness. Neither however went into the witness box or made any statement from the dock except a denial of his participation in the murder and the case against the prisoners therefore rests upon the evidence contained in and inferences to be drawn from their several statements. It has to be borne in mind that the statements of each of the accused men to the police are inadmissible against his fellow prisoner. Accordingly the question for their Lordships' determination is whether a deduction of guilt can legitimately be drawn in the case of either of the accused from the contents of his own statements.

Two further circumstances must be referred to:—

(1) The prosecution produced three statements alleged to have been made to the police officers in charge of the case, one by Bhagwan Devi who had been living with Walli Mohammad for some four or five years though not married to him, one by her father Ramsumar and one by his son Ramsaran. Each of these statements would, if they had been admissible

in evidence, have been favourable to Walli and unfavourable to Ali Mohammed.

All three of the persons concerned, however, when called as witnesses, denied having made or understood the statements attributed to them and further denied the matters therein alleged and both in the Magistrate's Court and in the High Court said they were untrue. These three statements were therefore inadmissible whether in favour of or against either of the prisoners and the prosecution's case, therefore, against each man depends solely upon his own individual statements and any deductions which can be drawn from them.

Walli Mohammad's first two statements merely asserted that he knew nothing of the crime. In the third, however, he admitted being present when Lachmi Prasad was killed, but alleged that he personally had nothing to do with it and implicated three persons, viz., one Shiu Sharan son of Panchu, one Bishun Deo, and his fellow accused. In the fourth he gave a different account of the events, made Shiu Sharan strike the fatal blow, but implicated the same three persons and Ramsumar.

He gave as the reason for the murder that the victim was friendly with Ramsumar's two daughters and that the other three whom he mentioned also had friendship with the two girls.

His fifth statement gave a still different account of the events, accused Ramsumar of striking and killing Lachmi Prasad, said that Ramsumar, Bishun Deo, and he himself alone were present and repeated that he had neither known of or taken part in the murder but had run away immediately after he saw it take place. He added that he had kept silence because he was threatened by Ramsumar.

The sixth statement repeated the accusation against Ramsumar and Bishun Deo and again denied that he himself had taken any part in the killing.

Ali's first two statements, like Walli's, contain a denial of any knowledge of or participation in the crime. The third, which appears to have been made after Walli's fourth, alleges an unsuccessful attempt by Walli to persuade Ali to give false evidence in Walli's favour to the effect that both of them were inadvertently present at Lachmi's murder, but had nothing to do with it and that Ramsumar, Bishun Deo and Shiu Sharan were the real perpetrators of the crime.

The fourth was made some five days after Walli's sixth and in it Ali again denied his presence at or participation in the murder and further denied that he made any statement or confession to Ramsumar or Ramsaran.

His fifth statement, of which the sixth is merely a reaffirmation, suggests that all the persons hitherto mentioned, including Walli, Ramsaran, Dayaram another son of Ramsumar, and presumably Ali, had joined in a conspiracy to steal motor tyres and that after proceeding in a lorry in order to carry out their alleged plan they had got out of the lorry ostensibly to go to the spot where the tyres were kept but, while still on the way on foot, Walli struck Lachmi with a cane knife. The statement also implicates Ramsaran and Dayaram and possibly Bishun Deo but denies any previous knowledge of and any participation in the commission of the crime by Ali himself. Ali concludes his statement by an allegation that there was blood on Dayaram's and Walli's clothing and that they arranged that Walli should burn it and says that Walli gave as a reason for the murder that Lachmi had put his brother in gaol, had burnt his father-in-law's house and been after his own wife.

For the allegation that clothing had been burnt by Walli evidence was adduced from one or two witnesses that Walli was seen ploughing his land on a Sunday morning and that some material which might or might not be burnt clothing was afterwards found there. This evidence was quite inconclusive and no reliance can be placed upon it. The effect of the evidence contained in the statements of each of the accused is that the murder might have been committed by one or more of some five other persons including his fellow prisoner, but not by himself.

In order to exculpate all except the two accused men the Crown called all those whose participation was suggested by either of the prisoners to deny any knowledge of the crime. Some at any rate of these persons were corroborated in their alibi and all were believed by the learned judge who tried the case and by his assessors.

The representatives of the Crown therefore urge that each of the accused has now admitted his presence on the occasion when the murder took place and that the commission of the crime has been brought home to them since the participation of all those, who are said by the prisoners to have taken part in the act, has been eliminated. The prosecution add that if the accused men were not guilty why did they give so large a number of contradictory accounts of what took place and why did they not go into the witness box to give the true account and exculpate themselves.

As the learned judge put it in the concluding words of his summing up: "You will no doubt ask yourselves whether it is conceivable that these two persons, if they had been innocent, would have made all the contradictory statements they have done, and you will also ask yourselves the question whether it is conceivable that these two persons, if innocent, would not have taken the opportunity which they have had of either giving a statement from the dock or going into the witness box and giving evidence.

Does not that imply—is it not a fair inference—that they did not make a statement and they did not give evidence because they were afraid of making matters worse?"

No doubt it is legitimate for a judge to point out to a jury or to assessors, and himself to take into consideration, the fact that a prisoner neither gave evidence nor made a statement to the Court which was trying him and equally legitimate to call attention to the fact that he gave a number of contradictory accounts of his movements and of his knowledge of the facts, but before any decisive emphasis can be laid upon these circumstances it is necessary that there should be some evidence of the accused man's participation in the crime charged against him.

It is true that the circumstances of the present case give grounds for suspicion, but suspicion is not proof.

As their Lordships have pointed out and as was recognised by the learned judge who tried the case, the statements of each prisoner are evidence against himself only and are inadmissible against his fellow accused. Consequently the only safe method of testing the strength of the case for the prosecution is to take each man's case separately, neglect the evidence of the other and ask whether the conflicting and inconsistent nature of the matters alleged and persons implicated combined with the admission that the accused man was himself present is enough to justify a verdict against him.

In their Lordships' view it is insufficient for the purpose.

Even if the evidence of all those whom each of the prisoners accused of the murder be accepted in full, it is still possible that each is sheltering a third person, and in any case, even if it be possible that one of the two prisoners is guilty, there are no circumstances from which could be deduced which of the two is the guilty one. Moreover though proof of motive is not essential, it is a material consideration, and in the present instance there is, as the learned judge has pointed out, no satisfactory evidence of motive against either of the accused—against Ali none at all; against Walli only his own admission that at one time he had had a grudge against the dead man because his brother had been arrested for being in possession of arms and Lachmi Prasad was rumoured to have been the informant. But that event had taken place some time earlier and all the evidence established that the dead man and both the accused had been living in amity for a considerable period of years. Their Lordships do not think it legitimate to speculate as to possible but unproved motives.

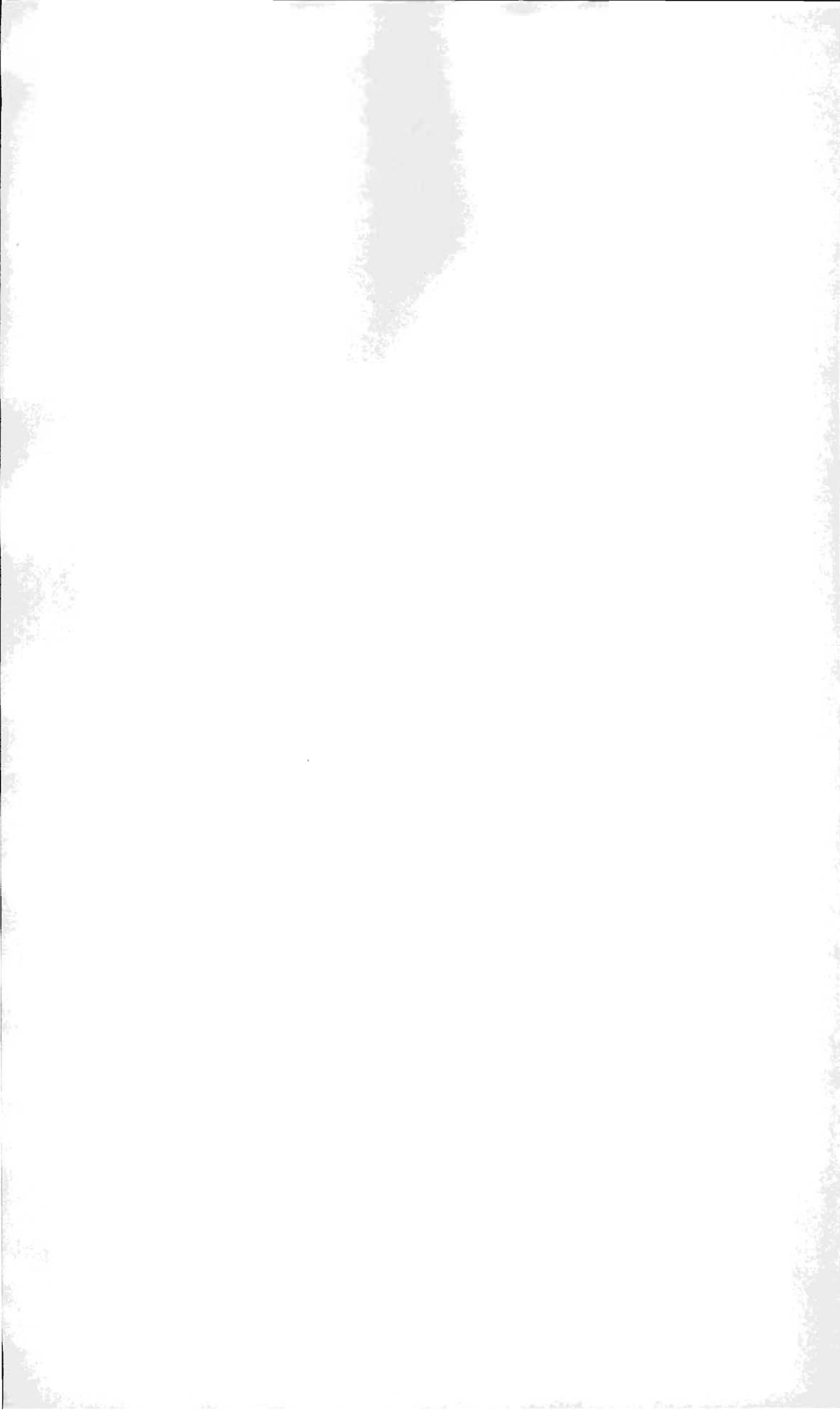
The difficulty in all cases where two persons are accused of a crime and where the evidence against one is inadmissible against the other is that however carefully assessors or a jury are directed and however firmly a judge may steel his mind against being influenced against one by the evidence admissible only against the other, nevertheless the mind may inadvertently be affected by the disclosures made by one of the accused to the detriment of the other.

That danger is to be seen in the present case when the learned judge in a careful and accurate summing up to the assessors stresses, it is true, the fact that the evidence or statements of one accused are only evidence against him, yet states that the case for the prosecution is that the two accused either alone or with others formed a common intention to murder Lachmi Prasad and did murder him. He goes on to point out that in that case it would not matter who struck the fatal blow. In terms this direction is accurate but it suggests a conspiracy culminating in murder and may well tend to lead to a failure sufficiently to keep in mind the warning as to the limited amount of evidence admissible against each prisoner.

Similarly the learned Chief Justice in a short judgment states categorically "There seems, however, to be no doubt but that the two accused, probably in conjunction with other persons, had determined to kill the deceased and that the murder was the result of a pre-arranged plan."

These observations again suggest a conspiracy, which was not charged or proved, and are not qualified by any consideration of the limitation in the evidence admissible against each of the prisoners.

In their Lordships' view it would be unsafe to convict either of the accused men on the only evidence available to implicate him and they have accordingly humbly advised His Majesty that the two prisoners should be acquitted and discharged.



In the Privy Council

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v.

THE KING

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DELIVERED BY LORD PORTER

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