

THE STATE v RAMESH MONIRAM

RULING

October 14<sup>th</sup> 2013

The State applied to lead the evidence of two witnesses not led at the Preliminary Inquiry, who, they submitted are being called solely to rebut allegations raised by the Accused that he was hospitalized due to beatings by the police, who beat him to sign a caution statement.

The Defence opposed the application in that this evidence takes the Accused by surprise and that this evidence was available to the State during the conduct of the Preliminary Inquiry.

The evidence is in its nature, additional evidence with a specific purpose of rebuttal. In other words it is clear that the evidence is not of a material nature directed towards establishing the guilt of the Accused.

The State has made this application before the close of its case, that is, before the defence's case.

The depositions do not reveal that the Accused was saying he was hospitalized because of a police beating him on January 14<sup>th</sup> 2010, the day that he signed the caution statement; it was simply asked there, if the witnesses (Watson and Fraser) were aware that the Accused was hospitalized, no time or date specified, to which the witnesses responded in the negative and no further questions on the issue were put.

Allegations of police misconduct are very serious allegations and the State in the interest of justice and fairness ought to be allowed to respond to such allegations with evidence, especially where specific suggestions are made.

In this trial not only were the witnesses, Watson and Fraser told that the Accused was beaten and as a result had to be hospitalized; even Dr. Singh was asked questions pertaining to this scenario. I fail to see how the Accused could be taken by surprise. This is not an instance where the State now produces an eyewitness. This is a case where the State is saying, your allegations against the State's witnesses are false and we can prove it.

The interest of justice does not require to look only at the interest of the Accused but also of the State and the people they represent.

Finally, it is always within the Court's discretion to allow evidence of this nature, it being born in the common law.

Having regard to the timing of the application, the nature of the evidence sought to be adduced and the reason the State propounds for now leading this evidence, the Court finds it fair in all the circumstances to grant the State's application.

This, I believe, is a case that falls squarely in the special circumstances exception envisaged in R v McKain [1994] 47 WIR 290 @ 298.