

GNS. ^{PC} 1.2

38,1955

UNIVERSITY OF LONDON
W.C.1
25 OCT 1956
INSTITUTE OF ADVANCED
LEGAL STUDIES

44828

IN THE PRIVY COUNCIL.

ON APPEAL

FROM THE COURT OF CRIMINAL APPEAL.

IN THE SUPREME COURT OF BRITISH GUIANA.

BETWEEN -

KARAMAT Appellant.

- and -

THE QUEEN Respondent.

CASE FOR THE APPELLANT

Record.

10 1. This is an appeal by special leave from the judgment of the Court of Criminal Appeal in the Supreme Court of British Guiana (Bell C.J., Boland and Stoby JJ.) dated the 24th day of February 1955 dismissing the Appellant's appeal from his conviction on a charge of murder before the Honourable Mr. Justice Hughes and a Jury at the Criminal Sessions for the County of Demerara on the 16th day of September 1954. p.230 p.226

20 2. The trial before Mr. Justice Hughes and the Jury commenced on the 10th day of August 1954 and the Appellant was jointly indicted and jointly tried with five other persons for the murder of Haniff Jhuman on the 27th day of September 1953. The other five accused were referred to at the trial as number 2 accused Subrattie, number 3 accused Ali Husain, number 4 accused Hoosanie, number 5 accused Saffie Mohamed and number 6 accused Subadar. All six of the accused pleaded not guilty to the charge and on the 16th day of September 1954 the Jury returned verdicts of not guilty against each of the five accused other than the p.226

Appellant. Upon his conviction the Appellant was sentenced to death.

3. Section 44 of the Criminal Law (Procedure, Ordinance Chapter 18 of the Laws of British Guiana is as follows:-

"44(i) Where in any case it is made to appear to the Court or Judge that it would be in the interests of justice that the jury who are to try or are trying the issue in the case should have a view of any place, persons, or thing connected with the case, the Court or Judge may direct that view to be had in the manner and upon the terms and conditions, to the Court or Judge seeming proper. 10

(ii) When a view is directed to be had the Court or Judge shall give any directions seeming requisite for the purpose of preventing undue communication with the jurors: provided that no breach of any of these directions shall affect the validity of the proceedings unless the Court otherwise orders." 20

4. The principal questions involved in the appeal are as to the effect of the statutory provisions in respect of a view of the locus in quo by the jury quoted above, and in particular as to whether there had been a disregard of the forms of legal process or a subversion of the very foundations of justice in the manner in which the jury made their view of the locus in quo in this case, and whether the learned trial Judge so misdirected himself on the admissibility of the written statement made by the accused and of a threat alleged to have been made by the Appellant and further so misdirected the jury on the law relating to provocation and on the admissibility in evidence against the Appellant of the written statements given by the other accused that there had been a violation of the principles of natural justice and that a substantial and grave injustice had been done to the Appellant. 30

5. The following facts were proved and admitted at 40 the trial:-

p.36 (1) The Appellant was the son of number 6
1.10 - accused Subadar. Three of the remaining accused,
1.14. namely accused number 2 Subrattie, accused number 3

Ali Husain and accused number 4 Hoosanie, were the brothers of the Appellant. Accused number 5 Saffie Mohamed was also a relative of the Appellant.

(2) Accused number 6 Subadar owned an estate known as the Broomhall Estate which was adjacent to another estate known as the Carlton Hall Estate which was owned by the father of the deceased man, Haniff Jhuman. p.36 1.1-1.6.

10 (3) There had been disputes between the Appellant and his family and the deceased, Haniff Jhuman, and his family which had arisen because of a number of instances of cattle trespass upon the Broomhall Estate by cattle belonging to the family of the deceased, Haniff Jhuman. p.37 1.19-p.38 1.10.

(4) These disputes between the families had led to fights between members of the families on the 26th September 1953 and at about 6 a.m. on the morning of the 27th September 1953, the day upon which Haniff Jhuman was killed. p.38 1.22-1.44.

20

(5) The fight which took place in the early morning of the 27th September 1953 was one in which the deceased Haniff Jhuman, his mother Batulan and other servants of the father of Haniff Jhuman were engaged with the Appellant and his three brothers, namely accused numbers 2, 3 and 4. This fight had arisen when Haniff Jhuman, his mother and his father's servants went to the cow pen on Broomhall Estate, where the Appellant and his brothers were milking cows, for the express purpose of assaulting the Appellant and his brothers. p.72 1.18-p.73 1.4.

30

(6) The Appellant and his brothers were injured by the blows they received in this fight. The Appellant obtained from number 5 accused Saffie Mohamed a twelve bore, single barrelled shot gun and two cartridges. The shot gun and the cartridges belonged to the Appellant's brother number four accused Hoosanie.

40 (7) The Appellant then returned to the dam between the Broomhall Estate and the Carlton Hall Estate on a route which would have taken him back

to the cowpen where the fight had taken place a short time before.

p.69 1.6- (8) On the dam the Appellant met the deceased
p.70 1.12 Haniff Jhuman, his mother Batulan and his brother
Abdool Esuf Jhuman. The Appellant fired two shots
from the shot gun and Haniff Jhuman and Batulan died
from shot wounds then received.

p.20 1.31- (9) The Appellant was arrested later that
1.38 same morning together with four of the other five 10
accused at the house of the Appellant's father and
he was then taken in custody to Mahaica Police
Station.

6. The evidence for the prosecution differed in
material facts from that given later by the Appellant,
by the five other accused and by the witnesses for
the Defence. The Prosecution called nine witnesses
who gave direct evidence of the acts of the Appellant
and the other five accused at the time of and imme- 20
diately before the actual shooting. These witnesses
p.9,p.42 were Bibi Kariman the wife of the deceased, Henry
p.57 Bacchus her brother and an employee of the deceased's
p.86 p.114 father, Henry Bradshaw, James Cleveland and Jeremiah
Inniss, all three of whom were employees or former
p.68 employees of the deceased's father, Abdool Esuf
p.79,p.98 Jhuman, Alfred Katriah, Mahadea Bhagwandin and Moti
p.126 Singh. Their evidence given at the trial differed
in many instances both from the evidence given by
the same persons in the depositions before the exam- 30
ining Magistrate and also from the evidence given by
the other eye witnesses. The differences and in-
consistencies were, of course, relied upon in the
defence of the six accused to show that the evidence
of these prosecution witnesses was not to be relied
upon. The general substance of their evidence was
that the Appellant on disengaging himself from the
p.115 1.18 fight early that morning had asked for a gun to shoot
one or some of the deceased's family. Accused
number 5 Saffie Mohamed had then gone to the house
of accused number 4 Hoosanie and brought out that 40
brother's twelve bore, single barrelled shot gun.
The Appellant and accused number 5 Saffie Mohamed
had then walked along the public road where they were
met by the witness Bhagwandin. The Appellant said
p.99.1.14 to Bhagwandin "I go shoot Haniff rass". The Appell-

ant inserted one cartridge into the shot gun and pointed it threateningly at Bhagwandin. The other four accused then joined the Appellant and accused number 5 and the group made their way along the dam between the Broomhall and Carlton Hall Estates.

10 Katriahmet them and tried on two occasions, both of which were unsuccessful, to take the gun away from the Appellant. The six accused walked along the dam, passed over the railway line and continued until they met the deceased Haniff Jhuman, his wife, his mother Batulan, his brother Abdool Esuf Jhuman and the witnesses Henry Bacchus and Henry Bradshaw all coming in a group along the dam from the opposite direction. The Appellant then said "Haniff, I am going to shoot your rass". The Appellant's father, accused number 6, said "Shoot dem rass, me got money, me going take them Luckhoo". Accused number 5 Saffie Mohamed said to the Appellant "Bengal give me the gun, if you 20 frightened to shoot, you will see how I will flatten them". The Appellant then shot and killed the deceased's mother Batulan, reloaded the shot gun and fired at the deceased Haniff Jhuman who died immediately from the multiple wounds he received on the chest and face.

p.81 1.16
- 1.31.

p.10 1.41

7. The prosecution also relied upon the evidence of Sergeant Lawrence Tappin who arrested all six accused and took a written statement from the Appellant on the 27th September 1953 whilst the Appellant 30 was in custody at Mahaica Police Station. Defence Counsel on behalf of the Appellant objected to the admissibility of this statement on the ground that it was not made voluntarily. Evidence was heard in the absence of the jury as to whether it was made voluntarily or not and both Sgt. Tappin and the Appellant gave evidence on this issue. The material part of the Appellant's evidence on this issue was as follows:-

p.21 1.32
- 1.37

40 "During the morning a P.C. came and took me into the guard room. Sgt. Tappin was in the guard room; he told me 'You got to give me a statement.' I refused to give him a statement - he told one of the policemen, 'Bring the handcuff rass and handcuff am'; the handcuff was brought and I was handcuffed. He pushed me on the chair to sit down and said, 'You

p.25 1.10

got to give me a statement now.' I then gave a statement and told the Sergeant about the revolver. He said 'You blasted lie, you must tell the Judge.' The statement was not read over to me."

After hearing the evidence the trial Judge admitted the statement in evidence saying

p.26 1.24 "Held that statement be admitted in evidence as I hold that the evidence of Sgt. Tappin as to the circumstances in which the statement was taken is to be believed in preference to the evidence of the accused Karamat, both as to whether the statement was free and voluntary and as to the administering of the caution to the accused by Sgt. Tappin. One matter on which the evidence of Sgt. Tappin and the accused is in conflict is as regards the presence of Sub-Inspector Carmichael the fact that the statement is stated to be witnessed by Sub-Inspector Carmichael and that the certificate states that Sub-Inspector Carmichael was present may be regarded as supporting evidence of Sgt. Tappin on the point regarding the continued presence of Sub-Inspector during the taking of the statement." 10 20

Sub-Inspector Carmichael did not give evidence at the trial, nor did any expert witness testify as to whether the signature on the statement was the signature of Sub-Inspector Carmichael. Sgt. Tappin had certainly given evidence that Sub-Inspector Carmichael was present throughout the taking of the statement, but Counsel for the prosecution only sought to call Sub-Inspector Carmichael after the Appellant had given evidence. Counsel for the Appellant objected to the calling of the Sub-Inspector at that stage and he was not called. 30

p.24 1.11
- 1.14

p.26 1.1
- 1.14

8. The written statement made by the Appellant on the 27th September 1953 and admitted in evidence by the trial Judge as aforesaid as Exhibit J was in the following terms:-

p.254

"This morning, Sunday 27th September 1953 about 7 o'clock I had been in the calf pen at Broomhall milking cow, in a sudden me see Haniff, Batulan, Bradshaw, Baby Boy and Scholes, Batulan

collar me and then Baby Boy and Haniff started to beat me with cuff and some run with stick, Bradshaw choke me, Batulan said he kill somebody and she gwine kill me too, and she chased all ah we, me Hoosanie Edun and Ali Hussain from the calf pen and beat ah we, and I run home and bring Hoosanie gun from his home with two cartridges and I been going back to milk cow again and Haniff, 10 Baby Boy and his mother Batulan rushed me again, and Haniff said 'No mother's so and so can't go milk no cow today' and they rushed me and me fire the load: that is all."

9. Between the 10th August 1954 and the 1st September 1954 all the prosecution witnesses save for Jeremiah Inniss, Sgt. Hines and Moti Singh had given their evidence in the trial and been examined, cross-examined and re-examined. After having given their 20 evidence the witnesses had remained in Court and so been able to hear the evidence given by later witnesses. As has been previously mentioned the statements by the prosecution witnesses who had been called to give evidence before the 1st September 1954 differed in many vital and material respects both from the evidence of the other prosecution witnesses and from the statements they had made in their depositions before the examining magistrate. On the 31st August 1954 all the counsel engaged in the case invited the 30 learned trial Judge to allow the jury to make a visit to the locus in quo as provided by Section 44 of the Criminal Law (Procedure) Ordinance. The Appellant's counsel submitted to the trial Judge that none of the witnesses who had already given evidence should be permitted at the view of the locus in quo and that the view should be restricted to the inspection of fixed points. The learned trial Judge overruled this submission and held that it should be left to the jury to decide which places they wished to see and which 40 witnesses they wished to have present. After the Judge's ruling, the Appellant's counsel indicated that he would take no part in the proceedings at the locus or in cross-examining any witnesses on any matter arising out of the visit. The jury asked for seven witnesses to be there, namely, Sgt. Tappin, Henry Bradshaw, Cleveland James, Esuf Jhuman, Alfred Katriah, Bibi Kariman and Henry Bacchus. The prosecution requested the attendance of two other witnesses,

p.101 1.11
- 1.13

p.102 1.20
- 1.21

p.102 1.22
- 1.23

namely, Mohamed Haniff and Bhagwandin. The Judge gave leave for all these nine witnesses to attend at the view.

Supple-
mental
Record
p.263
et seq.

10. The view took place on the 1st September 1954 and was in fact a view of some thirteen places which had been decided upon by the trial Judge. At 9 a.m. on the 1st September 1954 the jury assembled in the Court Room and the Marshall and Police Constables were sworn to keep the jury. The Jury then travelled from point to point over a total distance of about sixty miles in several small hired cars driven by professional chauffeurs. The learned Judge, Counsel, the Clerk and other Court officials travelled in separate cars and the nine prosecution witnesses were taken in a police van. The Appellant and the other accused persons were not present throughout the whole of the proceedings on that day though no request had been made by counsel for the Appellant that he, the Appellant, should be present. On each of the occasions when the jury left the cars to view a particular place or places pointed out to them by a prosecution witness or witnesses, no adequate precautions were taken to ensure that all the members of the jury were present and certainly the Clerk did not read out the names of the jurors and check their presence. On every occasion when they halted for a view one or more of the prosecution witnesses would point out particular places which had been mentioned in his or their evidence previously. This would usually be in the presence and hearing of the other prosecution witnesses. It is uncertain as to whether all the jurors saw each of the places which were pointed out. The jurors were not allowed to ask any questions of the prosecution witnesses save through the learned Judge and Counsel were placed in the same position.

10

20

30

p.264 l.
10 - 1.18

p.264 l.
24 - 1.26

11. The view of the scene of the shooting was a distance of approximately 1½ miles from the public road. The dams between the Carlton Hall and Broomhall Estates were badly swamped and accordingly the jurors and prosecution witnesses split up into small straggling groups both going to and from the scene of the shooting. No effort was made to ensure that the jurors and prosecution witnesses were kept apart. In one of the boats, which were used to transport some of the party, counsel for accuseds numbers 3

40

p.265 l.
25 - 1.46

and 4 travelled together with the foreman of the jury and Bibi Kariman, the widow of the deceased. There was conversation between the foreman and Bibi Kariman, as also between the jurors and witnesses who walked to the scene of the shooting. At the scene of the shooting there was again no roll call by the Clerk and whether the jurors were all present is a matter for speculation. Six of the witnesses for the pro-

10 secution demonstrated the material parts of their evidence relating to the scene of the shooting. The witnesses were at a distance of between 20 and 50 yards from the spot where Sgt. Tappin indicated with two pieces of wood the position where he found the two dead bodies. The witnesses could see what was being demonstrated even though they could not hear what was being said by the other witnesses whilst making their demonstrations or in answer to questions from the Judge. No record was kept of

20 all that was said by the prosecution witnesses at this or other places that were viewed and no oath was taken by any witness at the time nor was anyone reminded of the oath which he had previously taken in Court. One witness, Henry Bradshaw, completely altered his evidence as to where the shooting had taken place for whereas in evidence he had stated that Batulan and Haniff were shot at a spot about 50 rods from Subadar's cowpen in which the fight

30 had taken place that morning, yet at the view he gave evidence which accorded with the evidence of the other prosecution witnesses and which placed the scene of the shooting about 1,200 yards from where he had said in evidence that it had taken place. Other witnesses removed slight inconsistencies which had appeared in their evidence such as to the position of the respective parties and of Bibi Kariman at the time of the shooting. Whilst the jurors were being taken to the view at the dam and on their return journey back to the public road

40 they were in the presence of a number of strangers who handled the canoes or who were merely bystanders and no provision was made to prevent communication between the jurors and these third parties, although the learned Judge and counsel knew of no instances of such communication. The demonstration by the prosecution witnesses to the jurors at the actual scene where it was alleged to have taken place, was

p.63 1.26
- 1.32

p.266 1.25
- 1.36

much more graphic and impressive than the testimony previously given by these witnesses and must have had very considerable weight attached to it by the jurors. Complaint is made on behalf of the Appellant that these proceedings were wholly irregular and prejudicial to his defence and were not cured by being the usual practice of the Courts in the Colony or by recalling the prosecutions witnesses on the following day so that on being resworn they could say which points they had indicated at the view and be subjected to cross-examination.

p.108 -
p.113

10

12. After the view the prosecution witness Jeremiah Inniss gave evidence and the material part of his testimony was :-

p.115 1.33
- 1.38

"I went back and met accused number 1 and told him to go back with this gun. I said, 'this is trouble, go back with this gun'. He said, 'them people come over in man pen and beat man rass up, and the woman kick me, but she nah go live fo come ah road."

20

No objection was taken by Counsel for the Appellant when this evidence was given in chief but complaint was made of its admissibility and its use by the learned Judge in his summing up to the jury when the Appellant's case was argued before the Court of Criminal Appeal. The statement was alleged by Jeremiah Inniss to have been made before the Appellant went down to the dam where the shooting took place and must have been several minutes before the shooting took place, having regard to the distance between the scene of the shooting and the public road where this was said and the incidents which the witness said followed this statement by the Appellant.

p.249 1.25
- p.250 1.22

30

p.34 1.19
- 1.29

13. In the course of cross-examination, Sgt. Tappin stated that the father of the dead man possessed a double barrelled shot gun and that the dead man had been convicted of being in unlawful possession of a revolver and ammunition. Mohamed Jhuman, the father of the dead man, admitted in cross-examination that he had a double barrelled shot gun, that his wife, Batulan, had been convicted of injuring a person by a blow of an axe and that

p.34 1.30
- 1.34
p.39 1.44
p.39 1.41
- 1.43

40

the dead man had been convicted not only of being in unlawful possession of a revolver and ammunition, but also of discharging the firearm at another person.

p.40 l.3
- 1.12

14. The Appellant elected to give evidence on oath and the material part of his evidence was:-

10 "Those ten cattle were caught about 6.30 a.m.; p.136 l.24
and all six accused started to drive them to
Mahaica Pound. Jhuman came out of his yard
with a quacoo stick. Batulan came out with a
prospecting knife. Jhuman stopped the cow
saying 'ah you can't carry these cow to the
pound muderation got to pass'. We still in-
sisted on driving; none of the animals ran
into Jhuman's yard. Henry Bacchus came and
held Jhuman and Henry Bacchus's wife held Batu-
lan. After the animals had been driven past
20 Jhuman's house I, accused numbers 3, 4 and 6
turned back. Jhuman was then at his gate and
he said to us, 'one, one day me ah go kill all
you'. I did not accompany the animals to the
pound. Later that morning I saw accused
number 2 and spoke to him. Later that day
accused numbers 2 and 5 left Broomhall about
11.00 a.m. in a truck.

30 On the Saturday evening I went to bed
early, about 7-8 p.m. I woke about 2 a.m.
and went to my rice field to see if cattle
were there. I saw Katriah's bull in my rice;
I had impounded that bull 'a couple days' be-
fore. I had a torch - I drove the bull out
towards my home, - it had rope round its neck;
no pole at end of rope. Katriah came up with
stick and torch - quarrelled with him and told
him I would carry the bull to the pound; he
raised the stick to strike me and I left the
bull and ran away. I had impounded Katriah's
40 animals on many occasions before; also Butts'
sheep. Katriah and I were not on good terms.

After running from Katriah I went back
home; got up 4.50-5.00 a.m. and went to milk
cows, with accused numbers 2, 3 and 4, at the
backdam about 450 rods from the road. Each of

us had two pieces of rope and a milk can. I had no weapon of any kind with me nor had any of the other accused. I did not expect any fight or trouble aback when I left home. We reached the pen and up to then saw none of the Jhumans; on the west side of the pen is a wire separating Broomhall and Carlton Hall. We drove in the cows into the wire fence, tied four calves with rope - tied the cows' with the other piece of rope; we milked four cows. We milked another four cows. We were about two rods east of our west boundary. While milking I heard the voice of Haniff Jhuman saying, 'where is Saffie's mother's scunt'. I peeped and say Haniff, Batulan, Baby Boy, Bradshaw and Scholes - they were inside our wire pen on Broomhall dam. I saw Harry Persaud on the Carlton Hall side about two rods from the wire with a double barrelled gun; it looked like Jhuman's gun. The persons in the pen looked 'very serious'. When Haniff asked, 'where Saffie, etc....', accused number 4 said, 'Saffie been a wedding house last night and he must be drunk, he nah come this morning'. Batulan said, 'You Bengal, I want you too, you carry me sheep ah pound, me chop and kill Frenchman and me go kill you too'. As she spoke I raised up and she then collared me and started to cuff me. I saw a knife in her bosom. While Batulan was cuffing me Bradshaw choked me; Haniff cuffed me. Baby Boy said, 'loose am and give me' and he collared me and cuffed me and I left; I did not slip on anything. Baby Boy sat on my belly and cuffed me. Batulan kicked me five or six times on my hip saying, 'take this you bitch, kill all ah you, one, one'.

Accused numbers 2, 3 and 4 then came towards me: Haniff, Bradshaw, Batulan and Scholes attacked them. At that time I was on the ground with Baby Boy on top of me. I 'canted' Baby Boy and escaped and ran along Broomhall dam, north. I was feeling pain from the blows I had got. I ran until I got on the Railway line. I then went east along the line to the '50 rod dam', and then ran along that dam towards the road. The first person I saw was accused number 5 who was on the

public road. I was about 10 rods from the road, on the dam. Accused number 5 was opposite the dam. I told accused number 5 to bring the gun. I wanted the gun to go and protect my brothers and to look after the calves. If calves left tied cows would butt them and kill them. Accused number 5 brought the gun from house of accused number 4; he handed me the gun about two rods from the public road on the '50 rod dam'. I did not go on to the public road nor into my house. After handing the gun to me I broke the gun and accused number 5 gave me two cartridges. I put one of the cartridges in the gun to protect myself in case they raised gun to shoot me. Accused number 5 and I walked on the 50 rod dam, I was in front; we walked until we reached the line and then along the line to Broomhall west side line dam. I had no incident with anyone on the public road. Bhagwandin or anyone else. I did not walk on the public road.

I saw Katriah, accused numbers 6 and 2 coming from the back dam along the Broomhall dam. I spoke to accused number 2 - I was then at the junction of the dam and the line and accused number 2 was about two rods south of me. I said to accused number 2, 'what happen man' he said, 'ah we get beat and ah we get away'. I asked where are accused numbers 3 and 4 and accused number 2 said, 'dem get away' Katriah said to me, 'you and Saffie better go loose dem cow cald'. Katriah said they were going to the Police Station. Accused number 5 and I walked south, I was going to loose the calves. Katriah, accused numbers 6 and 2 walked east along the Railway line. Katriah had no fight with me, or struggle for the gun. About ten rods past the Railway line, I saw three persons coming on Carlton Hall dam - I could not recognise them. They were about 70 rods away. When I got about 20-25 rods from them I recognised them to be Batulan, Haniff and Baby Boy. I did not see either Scholes, Bradshaw, Bibi Kariman or Henry Bacchus - saw nobody cross the trench. It was not my intention to have any say with Batulan, etc. I was going straight to the calves. As soon as I got about three rods from them they

stopped, facing me. Batulan was to the north, facing me, Haniff was south of Batulan, almost touching her and Baby Boy was behind Haniff (witness demonstrates positions). Haniff said, 'where you mother's scunt a go'. I said, 'me ah go back to milk cow'. Haniff's hand was in his right trousers pocket. Haniff said, 'no mother's scunt can't milk cow at this place no more'. Batulan said, 'shoot the bitch'; as soon as Batulan said that - I had my gun in my hands. Batulan and Haniff moved forward. Haniff took out a revolver and as soon as I saw the revolver I raised my gun and shot at Haniff. Before I fired the shot, Baby Boy turned to the west and ran to the edge of the Carlton Hall dam. When I fired Haniff fell and Batulan fell to the other side. I then walked about 2½ rods south and I fired a next load up in the air because I did not see the rest of the party and I thought they might attack me. After Haniff fell the revolver fell out his hand. I then walked back going to the road-side (north). I then saw Bibi Kariman in front followed by Henry Bacchus, running south; they passed me and went to where the bodies were; neither of them touched the bodies Bacchus picked up the revolver. I was already 10-15 rods from the bodies when Bibi Kariman and Bacchus passed me. I go to the line, along it to the '50 rod dam' and then on the public road and then to my father's house."

10

20

30

15. The Appellant called witnesses in support of his defence and after his defence was closed the other five accused elected to make statements from the dock. Each of the other five accused had made a written statement to the police after they had been arrested on the 27th September 1953 and these were put in evidence, as Exhibits H.K.L.M. and N. In their statements from the dock accused numbers 3, 4 and 6 stated that they were not present at the time of the shooting and that they were not accessories before the fact. The other two accused, number 2 accused Subrattie and number 5 accused Saffie Mohamed made statements that they were present at the time of the shooting.

40

p253 -
p.258.
p.149,p.150
p.151

16. The material part of the statement of number 2 accused Subrattie was:-

10 "The Sunday morning about 5 o'clock we went to our calf pen at Broomhall, I see Haniff, Baby Boy, Batulan, Bradshaw and Scholes and they start to beat all ah we in at we calf pen. Accused number 1 was the first to run then accused number 3, then accused number 4 and I run behind. p.148 l.12

20 Between the line and the gate of Broomhall, western side, accused number 1 met me, Katriah and accused number 6. Accused number 1 asked me, 'where dem boy' and I said, 'dem boy get away' and asked if I loosed the cow calf them which had been tied. I said to accused number 1 'all ah we get beat up, we ain't get a chance'. Katriah said that accused number 1 and accused number 5 better loose them cow calf and accused numbers 1 and 5 started to walk along the dam. When they went about ten rods I tell Katriah that I want some house milk that I am going back too and I started to walk. I was about ten rods behind accused number 1 and when accused number 1 go to pass I see Haniff pull out a revolver, to shoot accused number 1 and accused number 1 fired one load - as soon as he fired the load I run back to catch the line. When the second load fire I had almost catch the line. I didn't tell accused number 1 to fire any load on anybody. I did not expect to see Haniff with a revolver until he pull out a revolver to shoot accused number 1. I did not spoke to accused number 1 to fire any load on anybody. I was walking back to go to my calf pen when the story happen. I am innocent. That's all".

30

17. The statement made by number 5 accused, Saffie Mohamed, was in the following terms:-

40 "On Saturday night I was opposite my gap - Scholes pelt me with a big stick and hit me with a stick; he ran away and returned back with Batulan; she hit me with a stick and I slap her. p.150 l.33

On Sunday morning I did not go aback. While I was on the public road, I saw accused number 1 running - he shouted to me, 'Saffie, bring the gun'. I did not know what he wanted it for. I got to house of accused number 4 and bring the gun with two cartridges. I give them to accused number 1 in his yard. When I finished give them I asked him, 'what happen man'; he tell me the Jhumans beat up the boy ah back dam and he escape. 10
 I go along the middle walk dam with him. On the Railway line we meet Edun (accused number 2), Katriah and accused number 6. Accused number 1 asked where is accused numbers 3 and 4 and accused number 2 said that they had got away. Accused number 1 asked accused number 2 if they had loosed the cow calf. Accused number 2 said, 'no'. Katriah said better you and Saffie go and loose the cow calf - on we say we met Batulan, Haniff Jhuman and Baby Boy, Haniff said, 'where 20
 the mother's scunt you ah go'. Batulan said, 'shoot the bitch dem'. Haniff draw the revolver and accused number 1 fired a load. Baby Boy was running away. Accused number 1 walked a little further and he fired a next load in the air. I never told accused number 1 to give me the gun if he was afraid. I never told accused number 1 to fire. I never told no one nothing about 'spade up'. When I gave accused number 1 the gun I did not know why he want it for. We 30
 did not walk along the road. I did not see Bhagwandin, Jeremiah Inniss and Mottee Singh that morning. I did not see Scholes or Bradshaw that morning. I did not see Scholes or Bradshaw that morning. After the shooting I see Bibi Kariman and Henry Bacchus coming up and Henry Bacchus picked up the revolver. I am innocent of this story."

18. In his summing up to the jury the learned Judge on more than one occasion drew the attention of the jurors to what was the crucial question of fact in the case, namely as to whether the deceased, Haniff Jhuman, had a revolver upon his person at the time of his death. Thus on one occasion he said:- 40

and on that to no little extent must depend your verdict."

19. In his summing up the learned trial Judge dealt with the relevance of the written statements which had been taken from all the accused including the Appellant on the question as to whether the revolver was present. He said:-

10 "It is a matter of importance, gentlemen, to decide about those statements, if you find they were not properly taken that the accused were not cautioned or that the statements were forced out of one or all of the accused, you are to disregard them completely. If, however, you find that the statement in any case is a voluntary one, you may properly take into consideration and give it what weight you think it deserves. The importance of that is that in the statements, there is no reference by any of the accused persons, including number one
20 accused, of the use by Haniff of a revolver or of the taking of the revolver by Henry Bacchus. So if you think it is a voluntary statement giving an account of what took place, it might lead you to a certain conclusion. It is entirely a matter of fact for you. p.186 l.19

30 If you find no reference had been made to the revolver in the statement you may feel it is a reasonable conclusion that no revolver had in fact been used in this incident at all. Having regard to its importance you may feel reference would have been made to it in the statement. But gentlemen it is a matter of fact for you to decide: first whether the statement was voluntary, if it was not, then you must disregard it and do not let it weigh against any one of the accused persons. If you find
40 it was voluntary and properly taken well then you will give it its full weight and draw such conclusions as you think may properly be drawn from the absence from that statement, of certain matters which have subsequently been mentioned. If you do not think it was properly taken and that there was the use of any force or that the

accused persons were coerced or if you think there was any inducement or pressure on them to give it, disregard the statement completely, pay no attention to it."

20. Later in his summing up the learned trial Judge said in respect of the evidence of Jeremiah Inniss:-

p.202 1.25

"Then there is Inniss, the man with the 'magic eyes' who says he told the number 1 accused: 'this is trouble, go back with this gun'. The number 1 accused said to him: 'them people come over in my pen and beat man rass up and the woman kick me, but she no go live fo come ah road'. Inniss said that is what number 1 accused said, and that he, Inniss and Katriah tried to make a 'grab' at the gun from number 1 accused."

10

21. The learned trial Judge in his summing up also dealt with the question of provocation and express malice in the following language:-

20

p.165 1.2

"Malice may be of two kinds. It may be either express or implied. Express malice is where a person by some overt act makes it clear what his intention is, perhaps like lying in wait in a dark alley along which it is known a person is likely to pass and pouncing out and doing him to death. If there is evidence of that a jury will no doubt reasonably say that there was malice aforethought; that there was express malice. Sometimes you get express malice by expression where a man says 'the next time I get hold of 'A' I am going to kill him'. That is where you have direct evidence either by action or words from which you can say 'I am satisfied that that man had malice aforethought; he premeditated this'."

30

p.169 1.43

"On this allegation of provocation the prosecution has put forward that there is insufficient or no evidence of provocation of the required nature on which it may be said that the number 1 accused Karamat, who is the

40

10 one concerned in this particular aspect of the matter, was provoked to the degree required by law, but I should at this stage, gentlemen, bring to your attention one aspect of the matter which is of importance and which you must bear in mind and that is, that no amount of provocation whatever, however great the provocation may be, can justify or extenuate the offence of killing if there is evidence to show the existence of express malice.

20 If the evidence satisfies you that malice existed, if you accept what some of the witnesses have said that the number 1 accused Karamet had said he was going to shoot Haniff's so and so, if you believe that, and if you believe that the proper inference or conclusion to be drawn from that is that there was express malice, that he was going to do this, no amount of provocation whatever can excuse his killing. In other words, provocation is disposed of, as it were, if you find that there was express malice; and there is evidence which you may feel in this case, if you accept it, indicates the existence of express malice, but that will arise at a later stage."

30 22. It is the Appellant's contention that the jury was left with a reasonable doubt as to whether the prosecution witnesses who spoke as to the actual shooting were telling the truth. The Appellant will contend that it was by reason of the irregularities in the view and of the Judge's admission of inadmissible evidence and misdirections to the jury as set out in the foregoing paragraphs that he was deprived of a fair trial and was convicted of the offence.

23. The Court of Criminal Appeal rejected the submission of Counsel for the Appellant on all the points raised in this appeal and in the penultimate paragraph of the judgment said:-

40 "On a consideration of the whole of the facts including the significant omission by the Appellant in his statement to the police that Haniff had a revolver, we have come to the conclusion that even if there was a mis-

direction in relation to the use of the statements made by the other accused to the police, reference to which we have made above, the only reasonable and proper verdict would have been one of guilty of murder and consequently this would be a fit case to invoke the proviso to Section 6 of the Ordinance to sustain the conviction. To use the words of the proviso 'there was no miscarriage of justice, or at all events no substantial miscarriage of justice'."

It is the Appellant's contention that the learned Court misdirected itself in holding that the only reasonable and proper verdict would have been one of guilty, so entitling them to invoke the proviso to Section 6 of the Ordinance. Section 6(i) of the Ordinance to establish a Court of Criminal Appeal No.29 of 1950 is in the following terms:-

"The Court of Criminal Appeal on any appeal against conviction shall allow the appeal if they think that the verdict of the jury 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:

Provided that the Court of Criminal Appeal may, notwithstanding that they are of the opinion that the point raised in the appeal might be decided in favour of the Appellant, dismiss the appeal if they are of the opinion that no substantial miscarriage of justice has actually occurred."

24. The Appellant accordingly humbly submits that this appeal should be allowed and the verdict of the jury at the Criminal Sessions in the County of Demerara should be quashed and a verdict of not guilty be entered for the following (among other)

REASONS.

1. Because Section 44 of the Criminal Law (Procedure) Ordinance does not enlarge the Judge's powers in directing a view of the locus in quo beyond the powers which he has by the Common Law of England.
- 10 2. Because the view that took place allowed nine prosecution witnesses, who had already given evidence and been examined-in-chief, cross-examined and re-examined and then remained in court and so heard the evidence of subsequent prosecution witnesses, to give further evidence both orally and by conduct before the jury at the request of the jury and of the prosecution.
3. Because at the view evidence was given by the prosecution witnesses which was not on oath.
4. Because at the view evidence was given by the prosecution witnesses in the absence of the
20 Appellant.
5. Because at the view no proper steps were taken to ensure that all members of the jury were present when evidence was given by the prosecution witnesses.
6. Because at the view no proper steps were taken to prevent casual and unauthorised communications being made to the jurors by the witnesses for the prosecution or by strangers present at the time.
- 30 7. Because at the view the prosecution witnesses were all present whilst one or more of their number was giving a demonstration, answering questions or making statements and therefore were able to see and comprehend the evidence of those with them whether or not they were always in a position to hear what was being said.
8. Because at the view Counsel for the Appellant was not permitted by the Judge to put question

directly to the prosecution witnesses but was invited to put any questions through the learned Judge.

9. Because the nature of the view, the statements and demonstrations of the nine prosecution witnesses at the view were beyond the limits set by the law on any authorised view of the locus in quo.
10. Because the learned Judge acted upon inadmissible evidence when he admitted the written statement made by the Appellant and therefore should not have admitted the statement. 10
11. Because the evidence of a threat alleged to have been made by the Appellant to kill a person other than Haniff Jhuman was inadmissible.
12. Because the learned Judge wrongfully directed the jury that they should consider this inadmissible evidence of a threat by the Appellant to kill Batulan. 20
13. Because the learned Judge misdirected the jury in informing them that the written statements given by the accused persons other than the Appellant were admissible in evidence against the Appellant.
14. Because the learned Judge misdirected the jury on the law relating to express malice and provocation whereby the Appellant's defence of provocation was not properly left to the jury. 30
15. Because the proviso to Section 6 of the Ordinance to establish a Court of Criminal Appeal should not have been applied by the Court of Criminal Appeal because on the facts the Court could not have been satisfied that no substantial miscarriage of justice had occurred and that the Appellant must have been convicted of the offence.

J. LLOYD-ELEY.

IN THE PRIVY COUNCIL

ON APPEAL

FROM THE COURT OF CRIMINAL APPEAL
IN THE SUPREME COURT OF BRITISH
GUIANA.

BETWEEN -

K A R A M A T Appellant.

- and -

T H E Q U E E N . Respondent.

CASE FOR THE APPELLANT.

HY. S.L. POLAK & CO.,
20/21, Tooks Court,
Cursitor Street,
London, E.C.4.

Solicitors for the Appellant.