GN 38,1955

No.22 of 1955

IN THE PRIVY COUNCIL

ON APPEAL

FROM THE COURT OF CRIMINAL APPEAL OF BRITISH GUIANA

B E T W E E N:-

KARAMAT ... Appellant

-and-

THE QUEEN ... Respondent

CASE FOR THE RESPONDENT

RECORD

1. This is an appeal from an order, dated the 24th February, 1955, of the Court of Criminal Appeal of British Guiana (Bell, C.J., Boland and Stoby, JJ.), dismissing an appeal from a judgment, dated 16th September, 1954, of the Supreme Court of British Guiana (Hughes, J., and a jury), whereby the Appellant was convicted of murder and was sentenced to death. p.230. p.226

2. The indictment charged the Appellant and five other persons with the murder of one Haniff Jhuman on the 27th September, 1953. The other five accused were all acquitted at the trial. pp. 1 - 2

3. The following sections of the Criminal Law (Procedure) Ordinance (Laws of British Guiana,1930, Cap.18) are relevant to this appeal :-

> 2. In this Ordinance, unless the context otherwise requires -
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> 'The Court' means the Supreme Court acting in the exercise of its criminal jurisdiction;
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> x x x x x x x x x x x x x x x x x x x x x x x
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> 17. Subject to the provisions of this Ordinance and of any other statute for the time being in force, the practice and procedure of the Court shall be, as nearly as possible, the same as

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the practice and procedure for the time being in force in criminal causes and matters in the High Court of Justice and the courts of assize created by commission of oyer and terminer and of gaol delivery in England.

x x x x x x x x

44. (1) Where in any case it is made to appear to the Court or a 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, person, 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 the Judge seeming proper.

(2) 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.

x x x x x x x x

47. Subject to the provisions of this Ordinance and of any other statute for the time being in force, the practice and procedure relating to juries on the trial of indictable offences shall be as nearly as possible in accordance with the practice and procedure in the like case of the courts in England mentioned in section seventeen of this Ordinance.

4. The five persons accused with the Appellant were three brothers of his, his father (Subadar) and another relation. Subadar owned the Broomhall Estate. This estate adjoined the Carlton Hall Estate which belonged to Jhuman, Haniff Jhuman's father. The two estates were separated by a shallow trench, bordered on either side by a dam (the area is shown on the plan). Cattle straying from Jhuman's land had damaged Subabar's crops on a number of occasions and had been impounded by Subadar's men. In consequence of this ill feeling had sprung up between the two of them. In the twenty-four hours preceding the shooting of Haniff Jhuman there had been a number of incidents in which the Appellant had been involved.

5. The evidence against the Appellant of the events of the 27th September 1953 was to the following effect :-

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Between 5.0 and 6.0 a.m. there was an altercation in the Appellant's cowpen, and a fight developed between the Appellant and his three brothers on the one side and on the other side Haniff Jhuman, his mother (Batulan) and some of their retainers. The Appellant, so one of his brothers said, "Let we go for the gun and shoot them", and the four of them ran off northward along the Broomhall Estate dam. As the Appellant approached the railway line he shouted to Saffie Mohammed (the fifth accused) to bring him the gun and ran off towards him in a north easterly direction. Saffie Mohammed gave the Appellant a single-barrelled shot gun and the two of them ran along the road towards the west. On the road they met a man named Bhagwandin who tried to stop the Appellant from going back down the dam. The Appellant said he was going to shoot Haniff Jhuman, and threatened to shoot Bhagwandin if he did not go away. The Appellant and Saffie Mohammed then went down the Broomhall Estate dam. As they crossed the railway line they met the rural constable named Katriah, who tried unsuccessfully to prevent the Appellant from going any further. The Appellant said again that he was going to shoot Haniff Jhuman. Accompanied by the other five accused, the Appellant continued down the dam. A party including Haniff Jhuman was coming towards them and when the two parties were about twenty-five yards apart the Appellant said again that he was going to shoot. Haniff Jhuman. Batulan, who was in the other party, said "Before you shoot my son, shoot me". The Appellant then raised the gun, and shot first Batulan and then Haniff Jhuman, both of whom, died at once.

p.68,l.17-p.69,l.6; p.57,l.26-p.58,l.30. p.42,l.31-p.43,l.8; p.126,ll. 21-34, p.98,l.29-p.99,l.9; p.115,ll. 11-24 p.99,ll. 12-37 p.115.ll. 28-49 p.127.ll. 6-14 pp.81,ll. 1-36. p.127,ll.21-26 p.10,l,7-p.11.l.11; p.43,l.38-p.44,l.24 p.58.l.41-p.59,l.35 p.69,l.31-p.70,l.14 p.87,ll, 23-51

6. A statement made by the Appellant while in custody was also given in evidence by the Crown. Counsel for the Appellant objected to its admissibility, and evidence of the circumstances in which it was made was heard in the absence of the jury. Sergeant Tappin said the Appellant had made the statement to him freely and voluntarily after being cautioned. Sub-Inspector Carmichael had, he said, been present all the time and had signed the statement as a witness. The Appellant said he had made the statement because Sergeant Tappin had ill treated him and told him that he had got to make a statement. The learned Judge preferred Sergeant Tappin's evidence. He said that the facts that the statement purported to be witnessed by Carmichael and the certificate stated that Carmichael had been present supported Sergeant Tappin's evidence. He therefore admitted the statement. In it the Appellant said

p.21-26 p.254

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that he had been attacked in the calf pen by Haniff Jhuman, Batulan and some of their retainers. They had beaten him and Batulan had said she was going to kill him. He had run home and brought a gun with two cartridges. He had been going back to milk the cow again when the same party had rushed at him again and he had fired the gun.

pp.101-103, 261-262

7. The trial had begun on the 10th August 1954. On the 31st August, when fourteen out of the seventeen witnesses for the Crown had given their evidence, all Counsel asked the Judge that there should be a visit to the "locus in quo". Counsel for the appellant, however, submitted that at the view only fixed points should be indicated, and witnesses who had already given evidence should not be allowed to show the points at which they said they had been at any particular moment. The Learned Judge rejected this suggestion, and said it was for the Jury to decide on the points they would like to have indicated, fixed or otherwise. The view took place on the 1st September, and was attended by the Judge, the jury, Counsel and nine witnesses (all of whom had already given evidence), as well as policemen and Court officials. Both on the way to the scene of the shooting and on the way back the jury was shown certain places mentioned in the evidence, but the important part of the view was the inspection of the scene of the shooting. The land was waterlogged and swampy at the time, so that after leaving the road the party was split up into groups, some of them walking along the dam and wading through the water and others going in small boats. Jurymen, Counsel and witnesses were mixed together at this stage, but there is no evidence that any improper conversation took place. The witnesses pointed out both fixed points and the places in which they said they had stood at various times, and some of them also described their movements. Questions were put to the witnesses by the learned Judge at the suggestion of the jurymen and Counsel, but Counsel for the Appellant refused to take any part in this. According to the learned Judge's recollection, when each witness had indicated what was required of him he was made to withdraw, apart from the witnesses who had not yet made their indications, and both the witnesses who were waiting and those who had made their indications were made to face away from the scene. As the party was returning to the road they paused at the railway line to notice certain features, and it is possible that at this point the onlookers may have spoken in the presence of the jury. No impropriety, however, is suggested. On the following day the witnesses who had attended the view were recalled in Court and gave evidence,

pp.263-264 267,11.19-23

pp.264-265

pp.265-266

p.263,11.19-29

p.268

p.266,11. 33-34

pp.108-113

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subject to cross-examination, of what they had pointed out at the view. Counsel for the Appellant refused to cross-examine the witnesses on this occasion.

8. The Appellant gave evidence in his own defence. pp.135-143
He described the dispute between the Subadar and pp.135-137
Jhuman families, and the incidents on the day preceding the shooting. He said that on the morning of the
27th September he went with his three brothers to milk p.137,11,9-51
cows between 4.30 and 5.0 a.m. While they were milking
the cows he saw Haniff Jhuman, Batulan and their party
on the Broomhill dam, looking "very serious". Batulan
said she was going to kill him and started to cuff him.
She was armed with a knife. The rest of the party
joined in the attack on him, but eventually he made
his escape northward along the dam, feeling pain from
the blows he had got. When he got to the road he met p.138,11.1-23
Saffie Mohammed and told him to bring the gun. He
wanted the gun, he said, to protect his brothers and
to look after the calves. Saffie Mohammed gave him the
gun with two cartridges. He said he did not meet any-
one on the road. When he met Katriah at the railway p.138,11.24-37
Katriah said that he and Saffie Mohammed had better go
and loose the calf. He had no struggle with Katriah.
He and Saffie Mohammed went on down the dam,and met p.138,1.38-p.139,
Haniff Jhuman, Batulan and their party. Haniff 1.15.
Jhuman told him he couldn't milk the cow there any
more and Batulan said "Shoot the bitch". Thereupon
Haniff Jhuman took out a revolver and the Appellant
shot at him at once. Haniff Jhuman and Batulan both
fell. He said that from the time he ran away from p.139,11.48-50
the pen until he fired the shot he continued to feel
pain and passion. The other five accused merely made pp.147-151
statements from the dock.

9. Mr.Justice Hughes began his charge to the jury by pp.152-180
telling them of the general principles of law applying
to them and the particular matters of law arising in
this case. In this part of his charge he told the pp.161-162
jury that they must not allow anything said by one
accused to weigh against another, unless it was said
in the presence of another accused and that other by
his words or his conduct accepted it. Apart from
that, they must not allow anything said not on oath to
weigh against the accused person. The learned Judge
also told the jury the law relating to provocation. pp.169-171
He gave them a proper definition of provocation such
as can reduce homicide from murder to manslaughter, p.169,1.43-p.
and told them that no provocation however great could 170,1.21
reduce the offence to manslaughter if there was evi-
dence to show express malice. If they believed the
evidence that the Appellant said he was going to shoot
Haniff Jhuman, and if they thought that showed express
malice, no amount of provocation could excuse the
killing. Having dealt with these matters and other
matters of law the learned Judge discussed the pp.180-200

evidence generally and the criticisms of it made by the defence. In this part of his charge the learned Judge referred again to the Appellant's statement and told the jury to take it into account only if they found that it was made voluntarily. He then said "It is a matter of importance, gentlemen, to decide about these statements. If you find that 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 it into consideration and give it what weight you think it deserves". He went on to point out that none of the statements by the accused persons mentioned the use by Haniff Jhuman of a revolver. If they found no reference to the revolver in "the statement" they might come to the conclusion that no revolver had in fact been used at all. The learned Judge finally went through the evidence against each of the accused persons individually.

p.185,l.28-p.186, l.14.

p;186,ll.19-39

pp.200-224

p.226

10. The jury found the Appellant guilty of murder, and acquitted all the other accused. The Appellant was sentenced to death.

pp.226-230

11. The Appellant appealed to the Court of Criminal Appeal. His Notice of Appeal, dated 24th September, 1954, contained many grounds of appeal, of which only five are now maintained. Those five are :-

(1) The learned Judge misdirected himself in allowing the witnesses for the prosecution to be present in the company of the Jury and to give unsworn evidence to the Jury at a view of the 'locus in quo';

(2) The learned Judge misdirected himself in improperly admitting certain evidence not given on oath when deciding whether the statement made by the accused was a voluntary statement,and accordingly misdirected himself in admitting the said statement;

(3) The learned Judge misdirected the Jury in informing them that they might make certain conclusions unfavourable to the defence of the Appellant from the fact that the written statements given by the accused persons other than him made no mention of the use by the deceased of a revolver or the taking of the revolver by the witness Henry Bacchus;

(4) The learned Judge misdirected the Jury on the law relating to the defence of provocation,

and as a result the defence of provocation was not properly left to the Jury;

(5) The Learned Judge wrongfully admitted evidence of a threat alleged to have been made by the Appellant against Batulan.

12. The appeal was argued on the 9th and 10th December, 1954, and judgment was given on the 24th February, 1955. The Court dealt first with the objection to the procedure at the view. They set out Section 44 of the Criminal Law (Procedure) Ordinance and referred to a number of English decisions dealing with the conduct of views. They said that even if only physical features were pointed out, it was necessary for someone to identify them. There must be many cases in which it would be helpful to the jury for a witness to show the spot at which he had stood, or the spot at which an incident had taken place, or the spot at which he had seen some other person, or to give some demonstration. A certain amount of questioning might be inevitable, but the Court could see no objection to this if the questions were confined to those which the Judge thought relevant, if no unauthorised person was allowed to take part, and the questioning took place in the presence and hearing of the Judge, the jury and the prisoner or his Counsel. It was essential that the witnesses concerned should subsequently give evidence in Court of what was said and done at the view and should be subject to cross examination. It might be that a witness who had already given evidence might vary his testimony as the result of a view, but this went to weight of evidence and not to admissibility. There did not appear to have been any substantial departure from these principles. It had been said that the Appellant's statement should not have been admitted. The procedure adopted for dealing with the objection to the statement had not been challenged, but Counsel for the Appellant had criticised the Judge's view that the certificate on the statement supported Sergeant Tappin's evidence that Sub-Inspector Carmichael had been present. Counsel had argued that Carmichael might have signed without being present. The short answer to this was that the Judge had found that the Sergeant's evidence about the taking of the statement was to be preferred to that of the Appellant. It had been submitted that the learned Judge had been wrong in telling the jury that if there was evidence of express malice no amount of provocation could reduce the offence to manslaughter. This direction however was amply supported by authority. There had been evidence that the Appellant had repeated his threat to shoot Haniff Jhuman immediately before he fired, and this evidence, if accepted, excluded any defence of provocation based

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on Haniff Jhuman's alleged use of a revolver. The Court then discussed the submission that the learned Judge had led the jury to believe that they could take into consideration against the Appellant the absence from the statements of the other accused persons of any mention of a revolver. If the Learned Judge had given such an idea to the jury this, the Court said, would certainly have been a misdirection. However, it had often been said that a summing-up should be regarded as a whole, and on a consideration of the whole of this summing-up the Court thought the jury had not been misled about the proper use to be made of the statements. The Court was satisfied that the jury accepted the evidence for the Crown in preference to that of the Appellant, and they must have thought that if Haniff Jhuman had in fact had a revolver the Appellant would have said so in his statement. The final ground of appeal was based on the admission of evidence by a man called Inniss, that he had heard the Appellant when on the road say, "Them people come over in mah pen and beat mah rass up, and the woman kick me, but she nah go live for come ah road". This was admissible, for it showed the Appellant's intention to do violence not only to Batulan but also to the whole of "them people". The learned Judge had put carefully to the jury every point in favour of the Appellant and the jury could not reasonably have done anything but convict the Appellant. Accordingly, the appeal was dismissed.

pp.249-250

13. The Respondent respectfully submits that under Section 44 of the Criminal Law (Procedure) Ordinance, a jury is entitled to have pointed out to them on a view not only the places occupied by fixed objects, but "any place", including the place at which witnesses saw things or did things. The purpose of a view is to enable the jury to follow the evidence and rightly to understand it, and it is therefore essential that such places should be pointed out and questions should be put to witnesses at the view. The Respondent submits that such questioning, when carried out, as it was in this case, by the judge, is open to no objection. It is also permissible for demonstrations or tests to form part of a view, and there can be no objection to a description by a witness before the jury of the movements which he made. No objection can be based on the fact that the view took place after much of the evidence had been given, since a jury can derive no help from a view until they have heard the evidence and know of the points under elucidation. There is no evidence that at the

view any improper contact took place between the jurymen and other people. The view did not involve any risk greater than that which occurs when a jury, as is now permissible, separates for the night. On the occasion of this view the jury was all the time under the control of the Court. The Respondent respectfully submits that the procedure adopted on the view was open to no objection.

14. With respect to the admission of the Appellant's statement, the Respondent respectfully adopts and relies upon the reasoning of the Court of Criminal Appeal.

15. The Respondent respectfully submits that the learned Judge did not misdirect the jury as to the proper use of the statements made by the accused persons. In the opening section of his charge, he directed the jury clearly that a statement by one accused was not evidence against another unless adopted by that other. He told the jury repeatedly that they must consider the case against each accused separately. The Respondent therefore submits that the Court of Criminal Appeal was right in holding that the charge as a whole did not mislead the jury. The Respondent further submits that in the passage to which objection is taken the learned Judge was saying only that in the case of each accused person the absence from that person's statement of any mention of the revolver would be significant. This is shown by the learned Judge's use of the word "statement" in the singular.

16. The Respondent respectfully submits that the Court of Criminal Appeal was right in rejecting the other points raised on behalf of the Appellant. As to provocation, there was evidence of repeated statements by the Appellant of his intention to shoot Haniff Jhuman continuing right up to the moment of the killing. If the jury accepted this evidence, they were bound to hold that the Appellant had a fixed intention to do what he did, which would exclude any possibility of his having been deprived of control by provocation. As to the evidence of Inniss, the Respondent submits that this was admissible both for the reason given by the Court of Criminal Appeal and because it was part of the "res gestae".

17. The Respondent respectfully submits that the conviction of the Appellant was right and this appeal ought to be dismissed, for the following (amongst other)

R E A S O N S

(1) Because at a visit by a jury to a 'locus in quo' it is permissible for witnesses to

indicate the positions which they occupied at different times, to describe their movements and to answer questions put to them by the Judge:

(2) Because the visit by the jury to the 'locus in quo' was properly conducted in every respect:

(3) Because the Appellant's statement, being freely and voluntarily made, was rightly admitted,in evidence:

(4) Because the learned Judge rightly directed the jury on all relevant rules of law and on their application to the facts of the case:

(5) Because of the other reasons contained in the Judgment of the Court of Criminal Appeal.

J.G.Le QUESNE.

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	-and-	
THE QUEEN	...	Respondent

CASE FOR THE RESPONDENT

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