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IN THE PRIVY COUNCIL

No. 22 of 1955

ON APPEAL FROM THE SUPREME COURT OF
BRITISH GUIANA

(COURT OF CRIMINAL APPEAL)

B E T W E E N : K A R A M A T ... Appellant

- and -

THE QUEEN ... Respondent

RECORD OF PROCEEDINGS

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IN THE PRIVY COUNCIL

No. 22 of 1955

ON APPEAL FROM THE SUPREME COURT OF BRITISH GUIANA(COURT OF CRIMINAL APPEAL)UNIVERSITY OF LONDON
W.C.1

25 OCT 1956

B E T W E E N : K A R A M A T ...Appellant
INSTITUTE OF ADVANCED
LEGAL STUDIES

- and -

44827

THE QUEEN ...

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| "LL" | Pellets |
| "MM" | Book of Receipts |
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IN THE PRIVY COUNCIL

No. 22 of 1955 --

ON APPEAL FROM THE SUPREME COURT OF BRITISH GUIANA

(COURT OF CRIMINAL APPEAL)

B E T W E E N : K A R A M A T .. Appellant

- and -

THE QUEEN ... Respondent

RECORD OF PROCEEDINGS

IN THE SUPREME COURT OF BRITISH GUIANA

(CRIMINAL JURISDICTION)

10

No. 1

In the
Supreme Court

INDICTMENT

No. 1

THE QUEEN

Indictment.

against

- 1. Karamat
- 2. Subrattie
- 3. Ali Husain
- 4. Hoosanie
- 5. Saffie Mohamed
- 6. Subadar

20

IN THE SUPREME COURT OF BRITISH GUIANA

(Criminal Jurisdiction)

County of Demerara.

PRESENTMENT OF HER MAJESTY'S ATTORNEY-GENERAL FOR
THE SAID COLONY.

Karamat, Subrattie, Ali Husain, Hoosanie,
Saffie Mohamed and Subadar are charged with the
following offence:

In the
Supreme Court

Statement of Offence.

No. 1.

Murder, contrary to section 100 of the Criminal
Law (Offences) Ordinance, Chapter 17.

Indictment -
continued

Particulars of Offence.

Karamat, Subrattie, Ali Husain, Hoosanie,
Saffie Mohamed and Subadar on the twenty-seventh
day of September in the year of Our Lord one
thousand nine hundred and fifty-three in the
county aforesaid murdered Haniff Jhunan.

F.W. HOLDER
Attorney General.

10

No. 2.

No. 2.

Opening Objec-
tions by
Defence.
10th August
1954.

OPENING OBJECTIONS
BY DEFENCE

MURDER - Contrary to Section 100 of Chapter 17.
(Haniff Juman).

A.M. Edun (Crown Prosecutor) for Crown.

Charge is read and before plea, C.L.Luckhoo states
that he appears for accused No.1 and Accused No. 6
and wishes to move to quash the indictment.

20

Lionel A. Luckhoo (instructed by Miss E.A.Luckhoo)
states that he appears for accused No. 2 (called
Edun) and accused No. 5; he too wishes to move the
Court.

E.V. Luckhoo for accused No. 3 and accused No. 4
and he too desires to join in the motion.

No comment by Crown Prosecutor.

Jurors withdrawn.

Lloyd Luckhoo: Moves that indictment be quashed as

committal for trial was bad and is likely to result in prejudice and embarrassment to the accused. Reason is that accused were charged before Magistrate with Murder of two persons which would be two distinct charges or offences.

In the
Supreme Court

No. 2.

Evidence in depositions as to death of Batulan also refers to p.16 of depositions. Medical evidence. Where he took his objection.

Opening objections by
Defence.

10th August

1954 -

continued

10 Prosecution was given opportunity at Preliminary Enquiry to consult with law officers but, after such consultation, elected to continue.

If a deposition of a witness is put in it may contain inadmissible evidence.

Cap. 18 Sec. 51, Sec. 88 (2), Sec. 89; Fifth Schedule rule 3, Sec. 92; Sec. 93 (3) Sec. 101 (1); Sec. 102.

Sec. 88 (2): where indictments quashed due to irregularities at Preliminary Enquiry.

Henry Elliott - 1 Cr. App. R. p. 15 (at p. 16)

20 R. v. Olive - (1942) 2 All. E.R. p. 494.

R. v. Ballysingh Cr. App. R. p. 28.

R. v. Jones - 1918 1 K.B.D. p. 416 (no other count in an indictment for murder).

Wharmby and others - 31 Cr. App. Reps. p. 174.

Wm. Sharrock and others - 32 Cr. App. Rep. p. 124.

Grant and others - 30 Cr. App. Reps. p. 199

Mc Donnell - 20 Cr. App. Rep. 163

(Two Offences)

30 Lionel Luckhoo: adopts submissions of Mr. Lloyd Luckhoo.

Sec. 102 (1) of Cap. 18 - "States an offence not triable by the Court" - Sec. 86 - refers to charge at Preliminary Enquiry. Committals for trial "for the offence charged against him".

In no circumstances can a person be charged with killing more than one person, in the same charge.

In the
Supreme Court

No. 2.

Opening objec-
tions by
Defence.
10th August
1954 -
continued.

E.V. Luckhoo: joins in motion of Lloyd and Lionel
Luckhoo.

Crown has separated the charge - i.e. two
indictments.

Crown Prosecutor :

R. v. Davis - 26 Cr. App. Rep. p.95 (at p.98).

Cap. 18 Sec. 57 (2)

" 18 Sec. 60 - 65.

Once the Magistrate has complied with provis-
ions regarding the taking of the evidence then the 10
committal is not bad.

Reg. v. Norfolk Quarter Sessions

Ex parte Brunson - 1953; 1 All E.R. p. 346
(at p. 348).

Reg. v. Chin Co. of London Quarter Sessions
ex parte Downes 1953 - 2 All E.R. p. 750 (at
p. 751).

Lloyd Luckhoo:

Adjourned at 11.30 to 1.15 p.m.

Lloyd Luckhoo: Sec. 57(2) of Cap. 18; replies on 20
Sec. 88 (2) of Cap. 18.

Lionel Luckhoo:

Sec. 57 (1))
Sec. 62 (1)) of Cap. 18
Sec. 68)
Sec. 102)

E.V. Luckhoo:

Adjourned at 1.55 p.m. to 9.00 a.m. to-morrow
(11.8.54).

11th August,
1954.

WEDNESDAY, 11th August, 1954.

30

Written decision delivered on motion to quash
indictment. No order made.

PLEA: Not guilty all accused.

In the
Supreme Court

No. 2.

JURY: Joseph Masson (12); Seonarine Misir (14);
Sultan Ali Khan (8); Harry Rose (23); Frederick
O'Neil (15); Albert Peroune (16); Eric Glyn
Williams (30); Lionel Marques (11); Abdul Wahid
(29); Trotwood Stoll Fitzpatrick (6); William
Albert Mc Donald (13); Heerah Sawh (25); Nelson
Spooner (26); Joseph Brown (2); Emanuel Vincent
D'Ornellas (5); Edgar Henry (9); Prince Edward
Pile (19); Thomas Glasgow (7); Burchell Bowman
(1); Benjamin Augustus Petric (18); Carlos Almon
Vieira (28); Victor King (10); Yeaman Prashad
(20); Walter Cooblall (3); Edward Ryan (24);
Harrichand Ramdas (21); John Frederick Tjon-A-
Yong (27); Boney Kemraj Persaud (17); Juddunauth
(22); Cecil Dalton (4).

Opening Objec-
tions by
Defence.
11th August,
1954 -
continued.

The panel of jurors is not exhausted by reason
of the twenty-one peremptory challenges.

The Crown Prosecutor refers to Sec. 39 of Cap.
18 but states that he would like an adjournment to
1.00 p.m. today to enable him to give the matter
further consideration. Counsel for the accused
join in this request. The nine jurors in the box
are sworn.

Adjourned at 10.50 a.m. to 1.00 p.m. today.

Crown Prosecutor refers to Sec. 39 of Cap. 18 and
submits it is the appropriate provision.

Archbold p. 185-6 where procedure is not the
same as that provided here.

Makes request referred to in second line of
Sec. 39() of Cap. 18 and says that Sec. 39(2) may
be invoked as jurors from another panel are now
present in Court.

Lloyd Luckhoo: Sec. 39 of Cap. 18 is not applica-
ble in this case. A full jury has appeared in this
case - refers to Sec. 30 of Cap. 18.

"Jury" in line one should read panel. Sec.37
of Cap. 18.

"Appear" in 9th line of Sec.37(1) of Cap. 18.

Archbold - 32nd Edn. p. 180 - 181 "The proper
course, where panel is exhausted"

In the
Supreme Court

No. 2.

Opening Objec-
tions by
Defence.
11th August,
1954 -
continued.

Refers to Sec. 4 of Cap. 17.

Lionel Luckhoo: "Appear" is the material word -
right of peremptory challenge was first introduced
here in 1948.

Crown Prosecutor: "full jury" in second line of
para. 332 at p. 185 of Archbold - "full jury" also
used in Sec. 39.

"jury" must be distinguished from "panel".

Adjourned at 2.35 p.m. to 9.00 a.m. tomorrow
(12.8.54)

10

12th August,
1954.

Thursday, 12th August, 1954.

Written decision, on submissions made yester-
day, is delivered.

(Procedure set forth at page 186 of Archbold,
33rd Edn. is now followed).

JURY: Seonarine Misir (14); Sultan Ali Khan (8);
Frederick O'Neil (15); Albert Peroune (16); Eric
Glyn Williams (30); Lionel Marques (11); Trotwood
Stoll Fitzpatrick (6); Heerah Sawh (25); Emanuel
D'Ornellas (5); Carlos Almon Vieira (28); Walter
Crotlall (3) and Boney Kemraj Persaud (17).

20

Jury sworn.

FOREMAN: Boney Kemraj Persaud (17).

No. 3.

No. 3.

Opening Address
by Prosecution,
12th August,
1954.

OPENING ADDRESS BY PROSECUTION

Crown Prosecutor opens.

Presumption of innocence. Onus on Crown.
Accused not required to prove innocence.

Facts for jury: law from Judge. Crown must prove.

Death of deceased as result of voluntary acts
of accused with malice aforethought. Accused No.1
to No.4 are sons of accused No.6. Accused No.5 is
a relative and resides in house of accused No.6.

30

Accused No.6 owns Broomhall estate, Carlton Hall estate is to the south they are between Mahaica and Mahaicony.

In the
Supreme Court

No. 3.

Jhuman is owner of Carlton Hall Estate and is father of Haniff Juman and husband of Batulan.

Opening Address
by Prosecution,
12th August,
1954 -
continued.

Shallow trench N-S, divides estates - also dam N-S, on each side of trench.

10 Accused No.6 has rice, cattle, etc. same on Carlton Hall Estate. Jhuman has a cowpen and so had accused No. 6.

On 26th September, 1953, cattle of Jhuman taken by accused - complaint made and then argument and then report to station in presence of two of accused. Later on incident when Batulan alleged to have been struck by accused and complaint lodged at Station.

20 On 27th September, Jhuman, etc, went aback to milk cows; same time accused No.1 to No.4 also went aback. Jhuman etc, came over to accused's cowpen and an incident took place. Jhuman accused accused No.1 of being the cause of Batulan being struck; a fight took place. Accused did not get the best of it. Four accused disengaged themselves and ran towards the Public Road. Accused No. 1 shouted "hand me the gun let me shoot them". He "burst" across the rice field and shouted "give me the gun, etc...." Accused No.5 went to Accused No.4 house and brought out gun and Accused No.1 and 5 went along Public Road: met by Bhagwandin who 30 tried to dissuade him. Accused No.1 inserted one cartridge and threatened Bhagwandin. Accused No. 1 and 5 continued and met Accused No. 6 with a R.C. (Katriah). R.C. told them to make report at Police Station. R.C. tried to take away gun (twice) but did not succeed. Husband of Haniff spoke to them, but they continued walking. Accused No. 1 came, with others present, and said he would shoot Jhuman. Batulan laughed, "before you shoot me son, shoot me". Accused No. 5 said, "shoot them, if you 40 frighten, etc. etc. ...". Accused No. 1 fired and something happened. Accused No. 1 reloaded and fired at Jhuman, who fell and expired.

Bibi Kariman, wife of Haniff.

Doctor examined Haniff Jhuman and gives findings. Accused No. 1 - 6 taken to Station; statements made by accused.

In the
Supreme Court

No. 3.

Opening Address
by Prosecution,
12th August,
1954 -
continued.

Consider cases against each accused.

Comment intent - every act done in furtherance of that common intent is the act of all. Gives instance - robbery with deadly weapon - if one kills, all guilty of murder; but if intention only to frighten and one goes to unexpected length of shooting then he only is guilty of murder.

Must be common design.

Prosecution
Evidence.

No. 4.

10

EVIDENCE OF HAROLD ANTHONY HING CHEONG

No. 4.

H.A.H. Cheong.
Examination.

I am a Sworn Land Surveyor attached to Lands and Mines Department.

On Monday, 26th October, 1953, I went to a side-line dam between Carlton Hall and Broomhall, Mahaica, with Sgt. Tappin. I made a survey of the dam and picked out certain spots shown to me by Sgt. Tappin. I made a plan and on it showed spots pointed out by Sgt. Tappin and lettered them from A. to K. This is the plan - admitted and marked Ex. "A". I made four copies, all signed by me, and these are three of them. On the plan are marked the letters A. to K. - there is a scale of distances on the plan from which it is possible to tell the distance between any given points, in both rods and feet. The inset is an enlargement of the area enclosing the points F., G., H., I.

Ex. "A"

20

Cross-
Examination
by Lloyd
Luckhoo.

Cross-examined by Lloyd Luckhoo:

Sgt. Tappin did not tell me what the spots represented. I was merely shown spots.

30

There are other dams within the area covered by the plan but they are not surveyed.

One of the spots indicated by a letter on the plan represents a house: two other spots each represent a cow-pen. All the other letters represent merely points and no particular object.

From A. to B. is 557 ft. or 46.4 rods
 " B. to C. is 591 ft. or 449.25 rods
 " C. to D. is 775 ft. or 64.6 rods
 " D. to E. is 597 ft. or 49.8 rods
 " E. to F. is 592 ft. or 49.3 rods
 " F. to J. is 4,248 ft. or 354. 0 rods
 " J. to K. is 265 ft. or 22.1 rods

In the
Supreme Court

Prosecution
Evidence.

No. 4.

H.A.H. Cheong.

10 I did not note the distances between F. and G. and
 H. and I. as these are comparatively close
 together and I can now scale them off.

Cross-
Examination by
Lloyd Luckhoo -
continued.

F. to G. is 47 ft. or 3.9 rods
 F. to H. is 40 ft. or 3.3 rods
 F. to I. is 41 ft. or 3.5 rods
 G. to H. is 26 ft.
 G. to I. is 22 ft.
 H. to I. is 5 ft.

Cross-examined by Lionel Luckhoo:

20 Sgt. Tappin pointed out all the spots. There
 were two chairmen with two other persons to whom I
 paid no attention and who offered no comment.

Cross-
Examination by
Lionel Luckhoo
Q.C.

No question by E.V. Luckhoo.

Re-examination:

Re-Examination

Points J. and K. indicate cow-pens.

(No question by jury).

No. 5.

No. 5.

EVIDENCE OF BIBI KARIMAN

Bibi Kariman
Examination.

30 Also called Elaine. Wife of Haniff Jhuman,
 deceased; we were legally married. We lived
 together, up to the date of his death, at Carlton
 Hall. Our house was about fifteen rods from the
 Public Road and across a trench west of the Carlton

In the
Supreme Court

Prosecution
Evidence.

No. 5.

Hall dam. The railway line is to the south of our house and about 140 yards away from it. One has to cross the railway line to get to Jhuman's cow-pen. Jhuman is my father-in-law and Batulan was my mother-in-law.

Adjourned at 11.25 a.m. to 1.00 p.m.

Bibi Kariman.
Examination -
continued.

On 27th September, 1953, about 6.00 a.m. I was at home. About 6.30 a.m. I was on my platform, sitting, and I saw accused No.5 going on Broomhall dam towards the road; he said he was going for a gun "to shoot Haniff rass" - he was running along the dam. I went on to Carlton Hall dam which is separated from Broomhall dam by a shallow trench in which is a wire fence; these two dams run parallel to each other. I went on the Carlton Hall dam and looked for my husband, Haniff Jhuman. I saw him with his mother (Batulan) and his brother (Baby Boy or Abdul Jhuman) coming from the backdam on Carlton Hall dam. I started to run towards them. While going I saw accused 6 and accused 3 (called Hassa) accused 4, 1 and 2 (whom I know as Edun), on the Railway Line dam. I passed these five accused and went to the backdam. Before reaching my husband I looked back and saw accused No. 1 (Bengal) and accused No. 5. Accused No.1 had a gun and accused No.5 had a stick; they were coming in my direction, south along the dam. Accused 6, 3, 4 and 2 were behind accused No.1 and 5. We had passed each other, going in opposite directions. When I first saw my husband he was on the far side of the Railway Line and the accused were in the middle of the railway line.

When I reached my husband, I spoke to him and he, Batulan, Baby Boy and I started to walk along the dam towards our home. We walked about five to ten rods (from witness stand to veranda rail) and reached up to accused No. 1 (Bengal) accused No. 2 (Edun), Accused Nos. 3, 4, 5 and 6.

Accused No.1 pointed the gun at the upper part of my husband's body - they were then one rod apart and accused No.1 said to Haniff, "Haniff, I going to shoot your rass". Haniff laughed and said, "Bengal, you can't shoot me". Batulan said to accused No. 1, "don't worry to shoot my son, shoot me". Accused No. 6 said, "shoot dem rass, me got money me going take dem Luckhoo". Accused No.5 said, "Bengal, give me the gun, if you frighten to shoot, you will see how I will flatten them".

10

20

30

40

Accused No. 1 pointed the gun to my mother-in-law (Batulan) and he 'shoot her' and she fell. I was behind her and I walked to the front and saw blood on my husband's (Haniff's) face. Accused No.1 broke the gun and took out the empty cartridge, took a cartridge from his trousers pocket, loaded the gun, closed it and 'shoot Haniff'. I heard the noises as each shot was fired. My husband fell. Before the second "load" went off, Haniff's brother, Baby Boy was near to him and Haniff told him to run.

In the
Supreme Court

Prosecution
Evidence.

No. 5.

Bibi Kariman
Examination
continued.

(Mr. Luckhoo (Lloyd) objects to the admission of the evidence indicated at A. on p.27 of depositions and asks that jury withdraw while the matter is gone into).

Jury withdraw.

LLOYD LUCKHOO:

Passage referred to is not part of the res gestae: even if it is part of res gestae; it has no putative value with respect to offence charge and is a prejudicial effect.

Cross-
Examination
by Lloyd
Luckhoo.

LIONEL LUCKHOO:

It must be relevant to the issue and it is submitted that it is not. It is subsequent to shooting of Haniff and do not refer to shooting of either Haniff or Batulan.

Cross-
Examination
by Lionel
Luckhoo Q.C.

E.V. LUCKHOO:

Associates himself with submissions but does not join with Lloyd Luckhoo that the two shootings are so inextricably mixed that they may not be separated as far as the evidence is concerned.

Cross-
Examination
by E.V.
Luckhoo.

Refers to "A" on p. 28 of depositions which, if true, would show that there was an appreciable interval of time.

CROWN PROSECUTOR:

Re-Examination

It is admissible as part of res gestae: p. 52 of Phipson, 8th Edn.

To rebut possible defence of accident and in such case time element does not matter.

In the
Supreme Court

Prosecution
Evidence.

No. 5.

Bibi Kariman.
Re-examination
- continued.

LLOYD LUCKHOO:

On ground that evidence is admissible to meet defence of accident. I state that defence is not one of accident.

Refers to R. v. Badingfield - Archbold 33rd Edn. p. 393.

E.V. LUCKHOO:

Indorses above submissions.

Ruled that evidence is not admissible.

Jury return.

10

I know all six accused for about nine years. I have not had any quarrel with any of them.

Cross-
Examination
by Lloyd
Luckhoo.

Cross-examined by Lloyd Luckhoo:

I was there when this took place. Not correct that I hear a gun-shot and then went to the scene.

I went to the Hospital about a week after this happened. I spent about a week there and it was about a week after that I gave a statement to the Police. That was only statement to Police.

I can read and write. Can't remember what school I went to: I went to Enmore School. Can't remember what age I left school or how long I was at School. I am now 25 years old.

20

I did not go to the Station that day. About 2 days before I went to Hospital a policeman came to me for a statement but I could not give him one as I was in bed. After coming from Hospital, they came to me for a statement. I had not then discussed the matter with others as to what they had told the Police.

30

Mohamed Jhuman is my father-in-law; don't know that he is very influential on East Coast. He has plenty cattle, hundreds; he plants rice; uses tractors.

I don't know if Subadar plants rice at Broom Hall. I see rice planted on Broom Hall but don't know if it is Subadar's (accused No. 6). Can't remember seeing any of the accused working rice during the last eight years.

Jhuman and his son were not on bad terms with the Subadar family. I would have known. Don't know that several times last year Subadar impounded Jhuman's cows for damaging his rice cultivation. Don't know of claims for damage of \$700, \$500 and \$150. Do not know that notices were sent by Ronald Luckhoo and by you (Lloyd Luckhoo) on behalf of Subadar to Jhuman. Nobody told me that the Luckhoos used to work for Subadar.

In the
Supreme Court

Prosecution
Evidence.

No. 5.

Bibi Kariman.

Cross-
Examination
by Lloyd
Luckhoo -
continued.

10 Subadar was there on that morning. I do not know that on Saturday, 26th September, accused No. 2 and 5 had taken eight head of Jhuman's cattle to the Pound. I am now hearing this for the first time.

BY THE COURT:

Haniff and I did not live in the same house as Mohamed Jhuman and his family.

Adjourned at 3.30 p.m. to 9.00 a.m. to-morrow (13.8.54).

20 FRIDAY, 13th AUGUST, 1954.

Cross-examination by Lloyd Luckhoo (continues):

On Saturday, 26th September, in the morning, I did not see Jhuman and Batulan come out on the road; did not see Henry Bacchus hold Jhuman and Bacchus' wife hold Batulan. Did not hear Jhuman threatening "killing" if the cows were taken to Station. My husband, Haniff, did not come down to steps. I know that Haniff got a "jook" on his foot from a bit of wood on the Tuesday, not the Saturday.

30 I know of no case of impounding of Jhuman's cattle by Subadar family last year or at any other time.

Do not know of any sheep being impounded by Accused No. 1 and 5 during the week preceding Sunday, 27th September, 1953, or at any time.

I was at home on Saturday morning, 26th September, 1953. I heard no noise on that morning.

Did not hear that accused No. 2 and 6 went to the Station at Cove & John, to report the incident

In the
Supreme Court

Prosecution
Evidence

No. 5.
Bibi Kariman.

Cross-
Examination
by Lloyd
Luckhoo -
continued.

about the cattle on Saturday evening, 26th September.

Know Cleveland James also called Scholes; in September, 1953, he worked with my father-in-law (Jhuman) and used to "stop" couple days at my father-in-law. He was staying with him on 26th and 27th September.

On Saturday, 26th September, I left home about 4 p.m. Up to now I have heard nothing about any "scrambling" between accused No. 5, Batulan and Scholes on Saturday, 26th, in the evening. 10

I am hearing for the first time of Batulan complaining about being boxed by accused No.5 or of any report to the Station about it.

My husband had a lorry, No. XLA 138. I did not travel to Kitty with my husband on that lorry on 26th September. We went to Buxton; on the lorry were only my husband and me. He was driving. Left home 4.00 p.m. and drove to Buxton, stopping at Drill to collect wood. We spent about two hours at Buxton on the seawall, after discharging the wood. We then went to Enmore, only my husband and me, to see my mother. From Enmore back home, arriving about 10.00 p.m. We did not take Bradshaw back in the lorry that night. Left Buxton about 7.00 p.m. Don't know whether Bradshaw lives at Kitty. 20

Haniff does not "like gun and revolver". I know that he has never had a licence for a firearm; never heard that Haniff was charged for discharging a firearm at Willie Pollard. I think I know Willie Pollard (called Coffin). Know of no "court story" between Haniff and Coffin. Do not know of Haniff ever charged for pointing gun at accused No. 6. 30

Abdoel Esuf Jhuman (Baby Boy) is younger brother of Haniff.

Don't know that Haniff and Baby Boy were charged for being in possession of a gun and a revolver without a licence. I know of no instance where Haniff has been charged with any offence concerning a firearm of any kind; same thing applies to Baby Boy. 40

Never heard about Batulan being charged for chopping a Syrian pedlar.

I have not heard about a story at the cowpen aback on that Sunday morning (27th September) before the shooting, involving Batulan, Haniff, Baby Boy, Bradshaw, Scholes (on one hand) and accused Nos. 1 to 4 (on the other hand).

There is a dam fifty rods east of the Broomhall west side line dam (i.e. the one immediately next to the Carlton Hall dam). That dam runs from the railway line to the Public Road. (N - S).

In the
Supreme Court

Prosecution
Evidence.

No. 5.

Bibi Kariman.

10 Not correct that I came on the scene after hearing at my home, the sound of the gunshot.

The distance from where my husband fell to the railway line is about 60 yards more than the distance from my home to the railway line.

Cross-
Examination
by Lloyd
Luckhoo -
continued.

I ran all the way from my home until I reach Haniff (who was then with Batulan and Baby Boy nobody else was in their company) they were then walking towards me. On my way to Haniff I met the accused except accused No. 5 on the railway line. I saw the accused (except No. 5) on the railway line as soon as I got on the dam after coming from my house; they were standing on the line. When I reached the railway line the accused were still standing on the line, except accused Nos. 1 and 5. Accused No. 1 was then about 18 feet from the others on the "slant of the line" - the others were between the two lines. I did not speak to any of the accused nor did any of them speak to me; they were between the line, but still on the dam. 20 Accused No. 1 was not on the dam but on the "road-side slant" of the railway line. When I looked back and saw accused No. 1 with the gun and accused No. 5 with a stick, I was then from here to the Kidman Building away from Haniff. Accused No. 1 was then from here to the rail on the west veranda of the Court away from me and he was about from here to the west door of this Court from the south side of the railway line. He was then running slowly.

40 Accused No. 1 had no gun when I saw him on the "slant of the line" on my way to Haniff. Did not look back to see where accused No. 1 was when I reached Haniff. Haniff made no effort to run nor did any member of my family.

Batulan was facing east when shot at by No. 1 accused she was then about one rod away from accused No. 1. Accused No. 1 was a little north of east; facing Batulan, when he fired the gun at

In the
Supreme Court

Prosecution
Evidence

No. 5.

Bibi Kariman,

Cross-
Examination
by Lloyd
Luckhoo -
continued.

her (demonstration is given in Court) - (witness is asked whether she did not give the position of accused No. 1 as south-east at the Preliminary Enquiry) (a demonstration is again given, placing the Marshal, representing accused No. 1, in a south-east position in relation to Mr. Lloyd Luckhoo (representing Batulan) and the witness says that she thinks that the position now demonstrated is the correct one - i.e. with accused No. 1 to the south-east of Batulan). Witness demonstrates the position of -

10

- (a) Haniff, i.e. to the south-west of Batulan and about four feet from her;
- (b) "Baby Boy", to the right (or south-west) of Haniff and about two feet from him.
- (c) Herself, i.e. behind (or north-west) Batulan and about four feet from her.

I did not get any of the shots from the gun.

I did say at Preliminary Enquiry that Haniff was one foot from Batulan. I would not doubt that I said that Haniff was north of Batulan. What I am saying in this Court is right.

20

I did tell the Magistrate that Baby Boy was to the north (or roadside) of Haniff.

About one minute passed between the first and second shots.

When the second shot was fired I was about $\frac{3}{4}$ rod from Haniff and in front of him, slightly north of east (demonstrates) (Court tests witness as to interval of time between shots and this proves, by actual timing, to be about five seconds).

30

Haniff remained in the same spot between the first and second shots. Haniff told Baby Boy to run and he started to run before the second shot. He had moved about $\frac{1}{2}$ rod. I can't remember telling the Magistrate that Haniff, Baby Boy and I remained in the same position until the second shot was fired. I told him I had changed my position between the first and second shot.

Adjourned at 11.25 a.m. to 1.00 p.m.

40

Up to the time of the second shot the persons I saw present were - accused No. 1 to 6, Haniff, Batulan and Baby Boy; after the second shot the first person to come up was Henry Bacchus - he left and went away. It is not correct that I arrived just a little ahead of Henry Bacchus. I did not see Henry Bacchus pick up a revolver from the ground and take it away.

In the
Supreme Court

Prosecution
Evidence

No. 5.

Bibi Kariman

Cross-
Examination
by Lloyd
Luckhoo -
continued.

Cross-examination by Lionel Luckhoo:

Cross-
Examination
by Lionel
Luckhoo Q.C.

10 It was because I had heard Saffie (Accused No. 5) use the words that I went along the dam to Haniff - there was no other reason for me to go along dam. Accused No. 5 did run along the dam going north that morning.

Jhumans and Subadars living quite well together.

20 From my house I can see quite clearly along the dam. I saw accused No. 5 coming from the train line side, running. He was just about to pass my house when I first saw him. No ill-feeling between accused No. 5 and me. Thought it strange seeing him running along the dam. I did not speak to him.

Accused No. 5 turned and watched me and then used the words. I thought he was making fun. He shouted loudly. I did not see anyone on the road. When accused No. 5 passed he turned to his right on to the public road. I was on the dam when I saw them turn on to the road.

30 When I passed the accused on the train line I did not say anything to them. They were talking loudly and I then ceased to think it was a joke. "Though, I thought it was a joke I can't tell what is in a man's mind;" the best thing was to go and tell my husband.

I did not say at Preliminary Enquiry that I saw Haniff and the accused together at one spot when I ran up to them.

40 I may have told the Magistrate that it took me about ten seconds to run from the time I began running to the time I reached the five accused and my husband.

In the
Supreme Court

Prosecution
Evidence.

No. 5.

Bibi Kariman.

Cross-
Examination
by Lionel
Luckhoo Q.C.
- continued.

I have not left out anything from what actually took place. On Saturday, 26th September, I got up 6 to 6.30 a.m., my husband left the house about 10.00 a.m. and went to Drill to load wood. I did not go with him. My husband's regular work was to transport wood in the lorry. Haniff usually goes to milk cows around 6.00 a.m. "but mostly on Sundays".

The milkers for my father were - Scholes, Harry Persaud, Kamoo, Dukoo, (not Baal, who is Kamoo's son; not Clinton Robertson). Haniff has his own cows and goes down nearly every morning to milk. Haniff left alone on that Sunday morning (27th) - he took only a milk bucket, about 10 pints. I was awake when he left. He did not take a revolver. I have never seen him with one. I have never seen a revolver.

10

On that Sunday (27th) Batulan called out to me when passing my house: after Haniff, about half an hour after. Batulan was with Baby Boy. She did not ask about Haniff, she asked about the little child.

20

I gave no statement before going to the hospital; did not say anything even to the family.

Cross-
Examination
by E. V.
Luckhoo.

Cross-examined by E.V. Luckhoo:

Have never known my husband to use a firearm of any kind; never seen any in Haniff's house or in my father-in-law's house. I visit my father-in-law's house from time to time.

Never been to Mahaica Court at any time when Haniff charged with any offence. Married about 9 years up to 27th September, 1953. Haniff and I got on well during these 9 years.

30

Don't know if my husband had any "story" with Coffin (Willie Pollard); know nothing about my husband discharging a firearm at Coffin.

I know of no occasion on which Haniff had to appear before a Magistrate.

I was in Court when Henry Bacchus gave evidence at Preliminary Enquiry.

40

I did not say at Preliminary Enquiry that accused No.1 "put a cartridge in it which he already

had in his hand" (p. 29 of depositions). I told the Magistrate accused No. 1 took a cartridge from his trousers pocket.

Have not spoken to Baby Boy about what happened. Haniff never told me to run. (Refers to "A" on p. 31 of depositions).

Re-examination:

10 When the first shot was fired the Subardars were on Broomhall dam; they were together; there was nobody else with them.

20 Before the first shot was fired my husband had nothing in his hand - can't remember if he had a bucket in his hand. He did not have a revolver or gun or any firearm. Batulan had nothing in her hand. I had nothing in my hand. Baby Boy had nothing in his hand. There is a clear view from the Railway Line to the Public Road. Hoosanie's (accused No. 4) house can be seen from the Railway Line and, I think, from my house. It is a clear pasture from the Railway line to Hoosanie's house.

In the
Supreme Court

Prosecution
Evidence.

No. 5

Bibi Kariman

Cross-
Examination by
E.V. Luckhoo -
continued.

Re-Examination

No. 6.

EVIDENCE OF LAWRENCE TAPPIN

Sgt. of Police No. 3500, stationed at Mahaica Police Station and so stationed in September, 1953. I was N.C.O. in charge.

30 Saturday, 26th September, 1953, Mohamed Jhuman came to the Station. (Know all accused from January 1951). When Jhuman came, accused Nos. 2 and 5 were there - in their hearing Jhuman reported that they, Accused Nos. 2 and 5 were passing with cattle and one of the cattle went into his yard and he (Jhuman) prevented them from going into his yard after it and accused No. 5 who had a stick threatened to beat him. Accused No. 2 and accused No. 5 denied having threatened Jhuman and I warned accused No. 2, No. 5 and Jhuman that they should behave themselves.

No. 6.

Lawrence
Tappin.

Examination.

In the
Supreme Court

Prosecution
Evidence

No. 6.

Lawrence
Tappin.
Examination -
continued.

Next day, Sunday (27th) Abdool Jhuman came to Station about 6.50 a.m. (he is called Baby Boy) - he was bleeding from his back and from his hand - he made a report to me, and as a result I went to Carlton Hall, east side line dam, next to Broomhall side line dam. I reached there, by car, about 7.15 a.m. I took L/cpl. Callendar and P.C.s Zeno and Bunyan with me. I went south along the dam for 120 rods from the Public Road, over the railway line. I saw there the dead bodies of Haniff Jhuman and Batulan, both of whom I knew well; their heads were 6ft. 2ins. apart. Haniff was on his back and his head to the south-east; Batulan was on her back and her head was to the north-west.

10

There were bloodstains and gunshot wounds on his chest and neck and face - he was dressed in a greenish pants and white shirt. Near the head of Batulan I found two pieces of cartridge wadding - these are the ones (admitted and marked "E.1" and "E.2") - I took possession of them. I crossed a wire fence onto Broomhall dam where I found two cartridge cases - these are the ones (admitted and marked "F.1" and "F.2"). One cartridge was 29 feet north-east of the head of Batulan and the other 28 feet south-east of the head of Haniff Jhuman: the cases were 28 feet apart. I placed L/cpl. Callendar in charge of both bodies and with Zeno and Bunyan, I went to the house of accused No. 6 which is about 49-50 rods east of the junction of the dam and public road; his house is on north-side of Public road. In the house, I met accused No. 1, 2, 3, 4 and 6 sitting in the drawing room. I spoke to all of them, telling them that I had received information that they all took part in the killing of Haniff Jhuman - I cautioned them. Accused No. 6 said, "me nah been; me nah know nutten; me nah ah go ah no Station". The other accused said nothing. I handed those five accused over to P.C.s Zeno and Bunyan. At the south-western corner of the house I saw a single-barrelled shot gun- this is it - admitted and marked Ex."G".

20

30

40

"E.1"
"E.2"

"F.1"
"F.2"

Ex. "G"

I examined the gun, the barrel. I discovered that it had been recently used in discharging cartridges. I broke the gun and looked through the barrel, it was black. I put my finger inside the barrel and when I pulled out my finger, powder marks remained on my finger. I am the owner of a shot gun and have been using rifles for 34 years. I smelled the barrel and it smelled of powder. This is a 12 bore gun which would use 12 bore cartridges. Exs. F.1 and F.2 are shells of 12 bore cartridges. Wadding like E.1 and E.2 would be on top of the cartridge before it is fired. Shooting is my

50

In the
Supreme Court

Prosecution
Evidence

No. 6.

Lawrence
Tappin.
Examination -
continued.

10 hobby and that is why I have a shot gun. Ex. "G" is in working order. We all left the house of No. 6 accused; it was about 8.45 or 9.00 a.m. I instructed the P.C.s to take the accused to the Station and I went to De Kenderen Public road, about one mile east of the No. 6 accused's house; there I met accused No. 5 who was coming towards me on a bicycle. I stopped him and told him I had received information that he had taken part in the killing of Haniff Jhuman. I cautioned him and he said nothing. I took him to the Police Station. At the Station I told accused No. 6 that he is arrested for the murder of Haniff Jhuman. I cautioned him - he made a statement which I took down in writing, read it over to him, he said it was true and correct and affixed his mark in the presence of witnesses.

20 Lionel Luckhoo asks that the two cartridge cases (Ex. "F.1" and "F.2") and the gun (Ex. "G") be released to Inspector Garmichael so that the cartridge cases may be photographed and the gun may be tested and examined, such test and examination to include, if necessary, firing the gun.

No objection by Crown Prosecutor. Ordered accordingly.

H.J. HUGHES

Adjourned at 3.30 p.m. to 9.00 a.m. on Monday, 16th instant.

MONDAY, 16th August, 1954.

Evidence of Lawrence Tappin (continued)

30 This is the statement of accused No.6 (admitted and marked Ex. "H").

Ex. "H"

I spoke to accused No.1 at the Charge Room, and told him that he is arrested for the murder of Haniff Jhuman and I cautioned him after which he made a statement which I reduced to writing, read it over to him, he said it was true and correct and signed it. This is the statement.

Lloyd Luckhoo objects to admission of this statement and asks that jury withdraw.

40 Jury withdraws.

In the
Supreme Court

Lloyd Luckhoo: statement is not (1) free and voluntary and (2) no caution administered to accused No.1.

Prosecution
Evidence

Questions to witness:

No. 6.

Lawrence
Tappin.
Examination -
continued.

I have been in the Police Force about 36 years, and taking statements nearly all that period. Hundreds of cases in which I have arrested the accused and then charged him. Usually I caution an accused on arrest and then caution him upon being charged: these are the only two occasions when it is usual to caution an accused.

10

Met accused Nos. 1 - 4 and No. 6 between 8.45 and 9.00 a.m. on 27th September at house of accused No.6. Technically, I arrested accused No.1 at house of accused No.6. When I took him from the house to the Station, I considered him under arrest. I did not re-arrest him at the Station. The charge was written by me sometime after midday and read over to accused, say, between noon and 4.00 p.m. The time of charge would be noted in the Prisoners' Charge Book. I can check on it. (Witness refers to Station Occurrence Book). The prisoners were taken from the lock-up at 3.20 p.m. on the 27th September and the charge under Section 100 of Chapter 17 was read to them.

20

I returned to the Station at 9.20 a.m. with accused no. 5 - the other accused reached there at 8.15 a.m. according to the entry in this Occurrence Book. All the accused remained in the Magistrate's Court room until after they had all made their statements and then they were put in the lock-up. They were not brought from the lock-up for the statements to be taken; some requested to see the Government Medical Officer, after their statements, and those were sent to the doctor, and others placed in lock-up. I will not be sure on the point that those who wished to see the doctor were not taken from the lock-up.

30

At the house I cautioned them all together - I told them that it had been reported to me they had all taken part in the killing of Batulan and Haniff Jhuman, who I had left lying at Carlton Hall east side line dam. I told them "you all are not obliged to say anything unless you all wish to do so but whatever you all say will be taken down in writing and may be used as evidence". The only person who spoke was accused No. 6. It is true that I used those words of caution. Accused No.1

40

did not say a single word. He did not say that Haniff had a revolver. I did not tell accused No. 1 that he is a damn liar and that he "shoot them to be birds" and to tell that to the judge.

I did not bring the accused out for taking statements one by one because I felt I might more easily get a statement from them that way. I did not bring them out in any particular order.

10 The statement of accused No.6 was completed at 11.05 a.m.

20 Accused No. 1 was brought to the Guard Room in the absence of the other accused about 3 to 4 minutes after accused No.6 had finished his statement. At the Guard Room I said to accused No. 1, "you are arrested for the murder of Haniff Jhuman and Batulan, you are not obliged to say anything unless you wish to do so but whatever you do say will be taken down in writing and may be used as evidence". At the time the charge was read to all of them I said to them "you all are charged for the murder of Batulan and Haniff Jhuman after having heard this charge read to you all you all are not obliged to say anything in answer to this charge but if you do, whatever you all do say will be taken down in writing and may be used as evidence." Accused No. 1 said nothing.

30 Between the time of the caution at house of Accused No. 6 and the time I sent for accused No.1 at about 11.08 a.m. I received no request from him that he wished to make a statement. I was not anxious to get statements from accused if possible.

When I called accused No.1 into the Charge Room at about 11.08 a.m. I did not then intend to make out or prepare the charge against them though I had made up my mind to charge him.

40 I sent for accused No.1 at 11.08 a.m. because I know that every citizen has a right to know with what offence he is charged and I wanted to tell him what was the charge against him and to caution him. I had no other reason for cautioning him.

At the house of accused No.6 I had not mentioned about arrest and murder and that is the difference between what I told them at the house and what I told accused No.1 at the Station.

It is usual for me to begin the caution with the words "you are arrested for".

In the
Supreme Court

Prosecution
Evidence

No. 6.

Lawrence
Tappin.
Examination -
continued.

In the
Supreme Court

Prosecution
Evidence

No. 6.

Lawrence
Tappin.
Examination -
continued.

When accused No.1 was brought into the Guard Room I did not cause a pair of handcuffs to be put on him. I did not call for a pair of handcuffs. I did not tell him that he must give a statement. I did not chuck him on a chair. I put him to sit on a chair in front of my desk. He did not then mention about any revolver.

By Crown Prosecutor:

I in no way threatened accused No.1 or made any promise to him or induced him to make a statement. I used no force whatever. Sub-Inspector Carmichael was in the Charge Room while I was taking the statement, throughout the time; he signed as a witness. Accused No.1 signed the statement himself. I have seen his signature several times before in the Pound Book and this is his usual signature. I read the statement over to him before he signed - he initialled it in one place where a word is scratched out. At the house I had not made up my mind to charge them. Before taking the statement from accused No.1 I had made up my mind to charge him. I had more information at 11.08 a.m. than at 8.45 a.m. that day. It took 20 - 25 minutes to take the statement.

10

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Cross-
Examination
by Lloyd
Luckhoo.

Lloyd Luckhoo (with leave):

After accused No.6 had said he was not going to the Station then he and accused No.1 were handcuffed at house of accused No.6. I did not mention at the house that they were under arrest.

If a man is taken from his house to be taken to the Station, he is entitled to know for what offence he is being seized.

30

I did read over the statement to accused No.1.

No. 7

Evidence on
Objection to
taking
Statement.

No. 7.

EVIDENCE OF KARAMAT ON OBJECTION TO
TAKING STATEMENT.

KARAMAT sworn states:

Karamat.
Examination.

On the morning of 27th September, 1953, Sgt. Tappin met me at the house of Subadar (accused

In the
Supreme Court

Evidence on
Objection to
taking
Statement.

No. 7.

Karamat.
Examination -
continued.

No. 6); all of the accused, except accused No. 5, were there. He said, "all you shoot Haniff Jhuman and Batulan like bird". I told Sgt. Tappin that Haniff took out a revolver to shoot me - Sgt. Tappin said, "you blasted lie, you must tell the Judge". He then handcuffed accused No. 6 and 2 telling them, "you all are arrested and charged for the offence of the murder of Batulan and Jhuman. He gave instructions for us to be taken to the Mahaica Police Station. At the Station I was put in the lock-up. 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"; handcuff was brought and I was handcuffed. He pushed me on the chair to sit down and said, "you got to give me a statement now". I then gave a statement and told the Sgt. about the revolver. He said "you blasted lie you must tell the Judge". The statement was not read over to me.

By Crown Prosecutor:

Cross-
Examination

The Sgt. forced me into making the statement - he was writing as I spoke to him. I signed the statement and this is my signature and my initial "K" at the side. In my statement I told him about a knife which Batulan had - the statement is otherwise what I told him. I also told the Sgt. that Harry had a double-barrelled gun at the calf pen and where the incident took place Scholes had the double-barrelled gun. I knew for the first time at the Preliminary Enquiry that these things had been omitted from the statement. I instructed Counsel about the revolver, gun and knife before the Preliminary Enquiry.

Sub-Inspector Carmichael was not present while the statement was being taken - he came for a newspaper and went out again. I did not see either Sgt. Tappin or Sub-Inspector Carmichael sign the statement.

The handcuffs were taken off for me to sign the statement and then put on again. There was a "red skin" policeman present in the Guard Room throughout the taking of the statement.

That is all the evidence in support of the objection.

In the
Supreme Court

Evidence on
Objection to
taking
statement

No. 7.

Karamat

Crown Prosecutor states that he wishes to call Sub-Inspector Carmichael - Lloyd Luckhoo objects on the ground that the proper time to call that witness would have been after Sgt. Tappin and before accused No.1 gave evidence as the onus is on the Crown to establish the admissibility of the statement and should be permitted to call Sub-Inspector Carmichael only where in the course of the evidence of accused No.1 some matter arose ex improviso which the Crown could not reasonably be expected to foresee - he refers to para.347 at p. 192 of 33rd Edn. of Archbold and to the general principle that the onus is on the Crown to prove that the statement is admissible.

10

Crown Prosecutor states that even if Mr. Luckhoo is correct, the reference by accused No.1 to the fact that Sub-Inspector Carmichael only came in for a newspaper and went out again is material on which he would be entitled to call rebutting evidence in the form of Sub-Inspector Carmichael.

20

Adjourned at 11.26 a.m. to 1.00 p.m.

Jury withdraws.

Held that statement may 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 Carmichael during the taking of the statement.

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Jury returns.

No. 8.

EVIDENCE OF LAWRENCE TAPPIN (recalled)

In the
Supreme Court

Prosecution
Evidence

No. 8.

This is the statement I took from accused No. 1 (admitted and marked Exhibit "J").

I then spoke to accused No.4. I told him that he is arrested for the murder of Haniff Jhuman and Batulan. I cautioned him and he made a statement which I reduced to writing I read it over to him, he said it was true and correct and signed it.

Lawrence
Tappin
(Recalled)
Examination.

10 (E.V. Luckhoo states that in view of the Court's ruling regarding the admissibility of the statement of accused No.1 he will not object to this statement being admitted in evidence).

This is the statement (admitted and marked Ex. "K".)

Ex. "K"

20 I spoke to accused No.2 and told him that he is arrested for the murder of Haniff Jhuman and Batulan. I cautioned him after which he made a statement which I reduced into writing. I read it over to him, he said it was true and correct and signed it. This is the statement. (No objection by L.A. Luckhoo). (Admitted and marked Ex. "L").

Ex. "L"

30 I then spoke to accused No.3 and told him that he is arrested for the murder of Haniff Jhuman and Batulan. I cautioned him and he made a statement which I took down in writing. I read it over to him, he said it was true and correct and signed it - this is the statement. (E.V. Luckhoo states as in the case of the statement of accused No. 4). (Admitted and marked Ex. "M").

Ex. "M"

I then spoke to accused No. 5; I told him that he is arrested for the murder of Batulan and Haniff Jhuman. I cautioned him; he made a statement which I reduced to writing I read it over to him - he said it was true and correct and signed it. This is the statement (No objection by L.A.Luckhoo) (Admitted and marked Ex. "N".)

Ex. "N"

40 On 28th September, 1953, I visited the cow-pen of accused No.6 and the cowpen of Mohamed Jhuman. I made a search and found nothing in the nature of sticks, firearms or weapons. I returned to the Station and on that I read the charge to all the accused. I did not read the charge on 27th as

In the
Supreme Court

Prosecution
Evidence

No. 8.

Lawrence
Tappin
(Recalled)
Examination -
continued.

Ex. "A"

stated earlier in any evidence, I again cautioned them and they made no further statement.

On Monday, 26th October, 1953, I went to Carlton Hall with Mr. Cheong, Government Land Surveyor and pointed out certain spots to him along the Public Road and along the Broom Hall dam. The spots I pointed out are represented by A. to Q. on this plan, Exhibit "A"

"A" represents the house of accused No. 4.

"B" is a spot on Broomhall middle walk dam which joins the Public Road and was indicated to me by R.C. Katriah.

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"C" is a spot on the Broomhall Public Road pointed out to me by Bhagwandin.

"D" is a spot on Broomhall west side line dam pointed out to me by R.C. Katriah.

"E" is a spot pointed out to me by R.C. Katriah

"H") are the spots where I found the two dead "I") bodies on Carlton Hall east side line dam.

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"F") spots on Broomhall west side line dam "G") where I found the two cartridge cases.

"J" is cowpen of accused No. 6.

"K" is cowpen of Mohamed Jhuman.

Cross-
Examination
by Lloyd
Luckhoo

Cross-examined by Lloyd Luckhoo:

The distance between the spots at which the Broomhall east side line dam and the Broomhall middle walk dam join the Public Road is about fifty rods.

30

Distance from C. to A. is about 95 rods.

Bhagwandin pointed out spot C to me on 27th September, a little before I went to house of accused No. 6 - about 8.40 a.m.

D. and E. are on the Broomhall east side line dam. They were pointed out to me by Katriah at about 8.35 a.m. on 27th September. I put no mark on those spots. When I went back on 26th October,

I "averaged" where the spots were - had not taken any measurements. I put two marks (buried a piece of wood) at F. and G. when I found the two cartridge cases.

I did not put any mark where I found the bodies.

The Subadars impounded Jhuman's cattle once that I know of last year and that was on 26th September.

10 I am not partial to the Jhuman family.

I did say as at "A" on p.25 of depositions, but I have since checked on my Pound Book and found that the Subadars impounded Jhuman's cattle, in 1953, only on 26th September.

I checked the Pound Book the day after giving evidence before the Magistrate and again last week end, after this Court was adjourned.

This is the Pound Book (admitted and marked Ex. "R").

20 I said 3 or 4 times before the Magistrate because I know that the Subadars always carry cattle to the Station to be impounded. I was guessing at the time.

Accused No.1 and accused No.4 complained to me that Jhuman's cattle were doing big damage to their rice cultivation - this was some days before 27th September.

30 Jhuman never reported to me on 26th that the animals had been illegally impounded. Accused No.5 (not accused No.2) denied threatening Jhuman. Accused Nos.2 and 5 never told me that Batulan and Mohamed Jhuman had threatened them and tried to prevent them from bringing the animals to the Station if they had made such a report it should be recorded in the Report Book. On that morning of 26th September, Accused Nos. 2 and 5 made no allegation to me regarding Jhuman - they came about 7.45 a.m. It is not correct that accused Nos. 2 and 5 were making their report so loudly that I threatened to chase them out and charge 40 them with disorderly behaviour. At the station Jhuman did not, in my presence, say that he would kill accused Nos. 2 and 5. Jhuman was annoyed - he was in a temper.

In the
Supreme Court

Prosecution
Evidence

No. 8.

Lawrence
Tappin
(Recalled)
Cross-
Examination
by Lloyd
Luckhoo -
continued.

Ex. "R"

In the
Supreme Court

Prosecution
Evidence

No. 8.

Lawrence
Tappin
(Recalled)
Cross-
Examination
by Lloyd
Luckhoo -
continued.

Ex. "S"
"T"

I have seen statements that accused Nos.2 and 6 gave at Cove and John on that very day (26th) - these are the two statements that I saw - (put in and marked Ex. "S" - statement of accused No.2) and "T" - (statement of accused No. 6). They were taken by P.C. Foo with whose handwriting I am acquainted. (Both Lionel Luckhoo and E. V. Luckhoo apply that these two statements be admitted. Crown Prosecutor does not oppose admission of these statements).

10

(Statement is read by Lloyd Luckhoo to witness).

Mahaica Police Station is about 8 miles nearer to the house of accused than Cove and John is to the house of the accused.

Point C. on plan is about 4 miles from the Mahaica Police Station and the nearest away is by the Public Road.

When a report is made at the Station, the first entry is made in the Diary and it would record the time at which the report is made. (Witness refreshes his memory from Diary).

20

The first report was made by Bhagwandin at 6.55 a.m. and his report is - "there is a brawl at Broomhall with some people". Next report is 7.00 a.m. by Abdool Jhuman (Baby Boy). I did not see him arrive.

Adjourned at 3.25 p.m. to 9.00 a.m. to-morrow.

TUESDAY, 17th AUGUST, 1954.

Ex. "U"

This is the Pound Book from June, 1951, to 27th July, 1953, (admitted and marked Exhibit "U"). I checked only Exhibit "U" after the Preliminary Enquiry. Yesterday I thought you were referring to the month of September, 1953, and not the year 1953, in connection with number of impoundings of Jhuman's cattle by Subadar family.

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Exhibit "U" shows the following:-

28th May, 1952: 9 sheep impounded by accused No.1 belonging to K. Ramlall.

9th June, 1952: Accused No.1 impounded 5 sheep belonging to Bahadeo;

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| | | | |
|----------------|-------------------|---|---|
| | 17th June, 1952: | Accused No.1 impounded 7 sheep - 4 belonging to Goorahoo and 3 belonging to Kisson Ramlall; | In the Supreme Court <hr/> |
| | 8th Oct., 1952: | Accused No. 2 impounded 31 cows taken out by A.Farinha, 25 for Mohamed Jhuman; 1 for Percival; 1 for Ivan; 3 for Farinha and 1 for Ramcooma. | Prosecution Evidence <hr/> |
| 10 | do. | Accused No.1 impounded 4 cows taken out by Thomas for Piara. | No. 8. Lawrence Tappin (Recalled) Cross- examination by Lloyd Luckhoo - continued. |
| | 28th Octr. 1952: | Accused No. 1 impounded 17 cows, all taken out by and belonging to Matura. | |
| | 19th March,1953: | Accused No. 4 impounded 4 steers owned and taken out by Mooniram. | |
| 20 | 31st May, 1953: | Accused No. 6 impounded 1 heifer, 1 bull, 1 steer; 2 belonging to Harricharran and 1 to Hamilton; | |
| | 4th June, 1953: | Accused No. 4 impounded 16 cows taken out by Jhuman | |
| | 18th June, 1953: | Accused No. 1 impounded 5 sheep taken out and belonging to Butts. | |
| 30 | 4th July, 1953: | Accused No. 2 impounded 6 cows, 6 ewes - 3 of the cows belonged to Goorsammy; 2 to Azeez; 1 Rayapen, 5 of the ewes to Rayapen and 1 to Mahadeo. | |
| In Exhibit "R" | | | |
| 40 | 19th August,1953: | Accused No. 4 impounded 14 cows, 1 belonging to Basdeo, 1 to Prettypaul, 1 to Subdeo Persaud, 1 to Mahookhan. 1 taken out by accused No.5 for Isaac Mohamed, 7 taken out by Tynol Khan for himself. | |

In the
Supreme Court

Prosecution
Evidence

No. 8.

Lawrence
Tappin
(Recalled)
Cross-
Examination
by Lloyd
Luckhoo -
continued.

22nd Sept. 1953: Accused No.1 impounded 11 sheep - 8 belonging to Sahadeo, 3 by a person whose name cannot be made out.

23rd Sept. 1953: Accused No. 1 impounded 21 cows - 1 belonging to Gangareah, 1 to Hughes, 1 taken out by Roopan for Alfred Katriah, 1 to Alex. Cummings, 17 to Roopan.

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26th Sept. 1953: Accused No. 2 impounded 7 cows - 5 belonging to Jhuman, 1 to Ghanee, 1 to Sukwah.

On 27th September, 1953, the rice on Broomhall had been "very much" damaged by cows.

Have been in the Force over 36 years: taken hundred of statements. My usual practice is to arrest a person, tell them what they are arrested for and then caution them. When I charge a person, I read the charge to them and then caution them. The caution in each case would be the same - the usual words of caution are:

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"You are not obliged to say anything unless you wish to do so but whatever you do say, will be taken down in writing and may be used as evidence."

Except something arises a person would not be again cautioned between the time of arrest and the time of being charged - sometimes a person would volunteer to give a statement and then they would be cautioned.

30

On 27th September, 1953, at about 8.45 a.m. I met the accused, except No.5, at the house of accused No.6 and told them that I had received information that they all took part in the killing of Haniff Jhuman - I sent them to the Station and technically they were under arrest as "their liberty was restrained". I did not arrest them at house of No.6 accused, but I considered them to be under arrest as "their liberty was restrained". In the usual course one lays one's hand on the prisoner and says, "I am arresting you for so and so offence" but this was not done in this case. I did not tell the accused at the house of accused No. 6 that they were under arrest. Person who is being taken to the Station is entitled to know whether he is under arrest or not; where a person

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is requested to come to the Station he is not under arrest. Two of the accused (No.6 accused and I think accused No.5) were hand-cuffed at house of accused No.6 to be taken to the Station. This was done because opposition was shown by accused No. 6. Man is entitled not to go to the Station unless he is under arrest. I told accused No.6, "you got to go to the Station" but I did not say "you are under arrest".

In the
Supreme Court

Prosecution
Evidence

No. 8.

10 From the time I gave instructions that the accused, except No.5 were to be taken to the Station, I considered that they were under arrest. I did not re-arrest them at the Station. I do not deny telling the Mag. as at "A" on p. 24 of depositions.

Lawrence
Tappin
(Recalled)
Cross-
Examination by
Lloyd Luckhoo -
continued.

20 At the Station the accused were brought one by one to the Guard Room at about 11 a.m. on 27th Sept.; I did not do so with the object of trying to force them to make statements. They were brought from the Court Room and not from the lock-up, to the Guard Room.

30 Accused No.1 was brought to Guard Room shortly after accused No.6. Accused No.1 had not requested to see me to make a statement. I told him that he is arrested for the murder of Batulan, and Haniff Jhuman and I cautioned him. I called him to the Guard Room because I had received more information and I wanted to tell him the offence for which he had been seized. I had then made up my mind to charge him. I did not write the charge and read it to him until the next day. I did not tell him that he had to make a statement; he was not handcuffed in the Guard Room and chucked on a chair. Accused No.1 did not mention about Batulan with a knife, nor that Harry Persaud had a double-barrelled gun at the cowpen (as no gun was mentioned) nor that Harry Persaud had handed that gun to Scholes, nor that Haniff had a revolver at the dam. He did not mention about the revolver at the house of Accused No. 6. I did read the statement over to accused No. 1.

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I did not send anyone to search at the cowpen on 27th September, I went myself the next day, leaving Station at 8.15 a.m. I did not see any calves dead in Subadar's cowpen and did not tell accused so.

The two pieces of wadding may in fact be one piece - one being a "flake" from the other.

I did say at Preliminary Enquiry it was a sixteen bore gun but I made a mistake.

In the
Supreme Court

Prosecution
Evidence

No. 8.

Lawrence
Tappin
(Recalled)
Cross-
Examination
by Lionel
Luckhoo Q.C.

Cross-examined by Lionel Luckhoo:

Took over Mahaica Station on 16th December, 1950. Cannot say if the Jhuman family is influential in the District - he is a man of wealth - he owns Carlton Hall Estate, a large number of cattle, rice lands and a rice mill. I never visit Jhuman's home - visit his rice mill to purchase chicken feed - never visited his home officially or otherwise. Never purchased milk from him.

When Baby Boy (Abdool Jhuman) came to the Station I was called and when I went I saw him and his father (Mohamed Jhuman) and Alfred Farinha; Henry Bacchus was not there then. I left the Station on 27th September at 7.10 a.m.

10

We have a Gun licence Register at Mahaica. There are a lot of people who have guns that are not registered and persons use a gun for which they hold no licence.

Ex. "v"

This is the Register of Firearms kept at Mahaica Police Station (Admitted and marked Exhibit "v"). Jhuman of Carlton Hall is registered as the owner of a 12-bore shotgun and his firearm licence for 1954 is 38,405, dated 15th Jan., 1954. Gun was registered in 1949. There was a licence for 1953. No member of the Jhuman family, except Mohamed Jhuman, is registered as the owner of, or licensed to use, a firearm. Cleveland James' (called Scholes) name is not in this Book nor is Harry Persaud.

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I know that Baby Boy and Haniff Jhuman were charged with the possession of a firearm (revolver) and ammunition, without a licence; they were both convicted. That revolver was registered in the name of Leung Man-Shing of Belmonte, Mahaica. It had been reported stolen before I went to Mahaica Station; Baby Boy and Haniff were fined. I know "Coffin" I have no knowledge of Haniff being charged with discharging a firearm at "Coffin" and do not know of Haniff being charged with pointing a gun at accused No. 6.

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(No cross-examination by E.V. Luckhoo).

Re-examination Re-examination:

Accused No.4 is registered as the owner of a firearm - registered in 1949; took out last licence

on 9th February, 1953. It is a 12 bore, single-barrel shot gun, Ivor Johnston Ex. "G" is a single-barrel, 12 bore shot gun, No. 20,651 which is the number of the gun registered in the name of accused No.4 that number is on the lock, the apron and on the stock. The entry is on page 18, entry 4, of exhibit "V".

This is the Station Diary (admitted and marked Exhibit "W").

In the
Supreme Court
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Prosecution
Evidence
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No. 8.

Lawrence
Tappin
(Recalled)
Re-
Examination -
continued.

Ex. "W".

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When I took the statement from accused No. 1 I used no threat or force against him. The statement was given freely and voluntarily. Sub-Inspector Carmichael was present when that statement was taken, so was P.C. 5351 Bunyan and other P.C.s. I held no promise to accused No.1 or to any other accused.

By the Jury:

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When I took the statement from accused No. 1 he appeared to be normal; he was not excited; the same thing applies to accused No.6, he was normal and "quite cool". I did not observe any external injury on any of the accused. Accused Nos. 1 and 5 and another accused complained to me of having been beaten and I sent them to the G.M.O. to be examined.

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No. 9.

No. 9.

EVIDENCE OF MOHAMED JHUMAN

Mohamed
Jhuman
Examination.

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I am the Proprietor of Carlton Hall Estate in County of Demerara. I live there. Have owned Carlton Hall for 8 - 9 years. East of my estate is Broomhall Estate owned by Subadar (accused No. 6). I have three children - two boys and one girl - Haniff and Abdool are the boys; my wife's name is Batulan.

My house is on the north (on seaside) of the road and is about 80 to 85 to the west of the point at which the Carlton Hall east side line dam joins the Public Road.

In the
Supreme Court

Prosecution
Evidence

No. 9.

Mohamed
Jhuman.
Examination -
continued.

I have a rice mill at Belmonte. There are two cowpens on my estate and there are two cowpens belonging to Subadar on his estate - the cowpens belonging to Subadar and to me, which are the nearer to the road, are about fifty rods apart; the other two are about 18 rods apart.

During September, 1953, I had about 300 head of cattle. I have rice cultivation on my estate, near the railway line - about 30 acres.

I have known all the accused for about 14 years. Accused Nos. 1 to 4 are the sons of accused No. 6; I only saw accused No. 5 there for about a year; he lives in Subadar's house.

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Adjourned at 11.25 a.m. to 1.00 p.m.

On Saturday, 26th September, 1953, at about 6 - 7 a.m., I was on the platform of my house and saw the six accused catch some cows at the water-side - they were bringing them along the Public Road and one of the cows ran into my yard. I came on to the road and asked them where they were taking the cows, they were my cows. They each had a stick. Accused No. 5 raised his stick to hit me, I "hailed off" and they went off with the cows. About two hours after I went to the Mahaica Police Station and made a report to Sgt. Tappin. Accused Nos. 2 and 5 were present when I made the report to the Sgt. I told the Sgt. that I had that morning seen the accused catch the cows at the water-side and bring them to the Station and that accused No. 5 had raised a stick to burst my head and that I had just "hailed off" and they had carried the cows away. Neither accused No. 2 nor 5 said anything. The Sgt. said that we all must try to live better.

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Later that day my wife came to me at my mill and told me something; it was almost dusk then.

On 27th September, 1953, I was at my rice mill (about 5 or 6 miles from my home); about 7 to 8 a.m. my son, Abdool Jhuman came to me - he was washed in blood; we spoke. I got a car and with Farinha and my son, I went to Mahaica Police Station and made a report. I then went home and then to Carlton Hall dam where I saw my son and wife lying dead. I went to Dr. James, G.M.O. and saw him "open them" (wife and son). I identified the bodies. I buried them the next day at Carlton

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Hall; a P.C. was present. I know Bradshaw Cleveland James and Harry; during September, Bradshaw was employed by me to look after the Combine and Tractor. James was employed to milk cows, also Harry.

In the
Supreme Court

Prosecution
Evidence

No. 9.

Mohamed
Jhuman.
Examination -
continued.

Subadar lives about 175 rods from me on the same side, going in the direction of Mahaicony. Accused No.1 lives on the opposite side of the road, about 70 rods from Subadar, and west of him. Accused No.2 lives about 10 - 15 rods from accused No.1, on same side of road. Accused No. 3 lives near to accused No. 1. Accused No. 4 lives a good way from accused No.1 and near to Broomhall estate dam.

Up to Saturday 26th September, 1953, I was on good terms with the Subadar family, before the incident with the cows.

Cross-examined by Lloyd Luckhoo:

Cross-
Examination
by Lloyd
Luckhoo.

I also own sheep, donkeys, horses. I am not a rich man. I am independent. I have not got plenty influence in the district. On that Saturday, 26th, I was annoyed. I did not make plans to beat the Subadar boys next day. My fence was cut two or three times last year and before that I did not suspect anybody until one night about two weeks before 26th September, when I met the six accused grazing some of my cattle in their rice which had been burnt down. I believed then that they had driven the cattle from my place to theirs. They told me they would summon me for damages. The accused said that it was the black people from High Dam who had opened the gate and let the cattle in. I told them that me and the black people don't live bad and they would not do that. It was on the incident of the 26th September which made me feel that the Subadars had been responsible for all the previous cutting of my wire. I made a report to the Sgt. on the morning following the night on which I had seen the Subadars grazing my cattle on their land. I showed the Sgt. the spot. On a few occasions before that I had reported to the Sgt. about my wire being cut. I did not call the Subadar's name. Last year there was rice on Carlton Hall, between the railway line and the road. I got no rice because it burnt down because of the weather I do not know that two days before the "night story" the Subadars complained to my cowminder that 8 of my cattle had gone into their

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In the
Supreme Court

Prosecution
Evidence

No. 9.

Mohamed
Jhuman.
Cross-
Examination
by Lloyd
Luckhoo -
continued.

land. I can neither read nor write. Last year I gave Ronald Luckhoo, Barrister-at-law, about \$75 - \$80: in payment of damages by my cattle to the Subadars' rice. I gave a "good" for the money.

I know nothing about a claim for damages for \$700: made through Barrister, Ronald Luckhoo. I can't remember getting any claim from Mr. Lloyd Luckhoo for \$507: in respect of that same "night story" - if they got it at home they did not show it to me.

10

My son Abdool can read; he lives with me.

I was at home on Thursday, 24th and Friday, 25th September, 1953. I went to the mill about 11.00 a.m. on Saturday, 26th September. After returning home from the mill on Sunday, 27th, I stayed there for 4 or 5 days.

Registered letters are brought by a postman and someone signs for it. I did not say at Preliminary Enquiry as at "A" on pp. 35 - 36 of depositions. I do not know that the Subadars have three cowpens.

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Cross-
Examination
by Lionel
Luckhoo
Q.C.

Cross-examined by Lionel Luckhoo:

On morning of 26th September, I came on to the road alone. I had no quacoo stick with me. My wife was in the kitchen at the time; she takes an interest in my affairs. I did not call out to her. I did not see Henry Bacchus at all that morning. I later met him at the mill. My wife did not go on the road. I did not stop the cows; I said, "where you all taking the cows?" one had already gone in- to the yard. I did not say "the cows can't go to the pound today, murderation got to pass". Batulan did not come out with a prospecting knife, she did not say, "if they want to fight, let we fight". Bacchus did not hold me nor did Bacchus' wife hold Batulan. At the Station I did not say to accused Nos. 2 and 5 that I would kill them. That night (Saturday) my wife complained to me that accused No. 5 had beaten her and I took her to the Mahaica Station and made a report.

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When I was coming back from Mahaica Station I met Haniff at the market gate, in a lorry; it was about dusk. I did not tell him accused No. 5 had beaten my wife - she told him I did not tell Haniff then "boy you should dead because a man beat your mother and you never do anything", nor "if

you can't beat them, get two, three man let them wait for them at the cowpen in the morning and beat them proper". It was in the Station yard and not at the market gate that I met Haniff after I had made the report. I did not say anything to Haniff; the lorry was at the side of the road pointing "Berbice way". The lorry left before I left the Station yard. For about 3 - 4 weeks before Sunday, 27th September, Bradshaw had been working "steady" for me; he had been working off and on for 3 years before that; during those 3 or 4 weeks before 27th, he would sometimes (very seldom) stay at Carlton Hall, sometimes at the mill; week-ends and sometimes in the week he would go to his home in Kitty. On Saturday, 26th September, Bradshaw worked with me at the Rice Mill; he looked after the "rice" engine; he left the mill at 4.00 p.m.

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I have to keep books in connection with my business; my book-keeper is Indad Bacchus.

Baby Boy keeps the book in which entries are made regarding the Combine and Tractor and in which Bradshaw's name would appear. That book is kept at home and is there now. Bradshaw's pay is \$2.00 a day and 15 acres of rice field; he is paid at the end of each week. I pay him week-ends on Saturday. On Saturday, 26th September, Bradshaw received \$8.00 and I "balance" him \$2.00 - he does not sign any book as receipt. The names in the book beside Bradshaw are - Sukdeo of Mahaica Creek; Sahadeo of Mahaica Creek.

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It is an exercise book - can't say if it is in ink or pencil. I have seen Baby Boy write in the book but cannot say if he used pen or pencil.

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Know Cleveland James (or Scholes). He was working with me in September, 1953, and had been doing so for two months before that; he was milking the cows. He sleeps at my home. We treat him like a good servant; he was loyal to me. He was paid \$6.00 a week "and find"

My wife was a sickly woman - she was charged with hitting a Frenchman (or Syrian) on the hand with an axe - she had to pay fine and compensation.

I have a double-barrelled gun at my home. Bibi Kariman is my daughter-in-law. We get on well; she has seen the gun at my home. I never allowed

In the
Supreme Court

Prosecution
Evidence

No. 9.

Mohamed
Jhuman.
Cross-
Examination
by Lionel
Luckhoo Q.C. -
continued.

In the
Supreme Court

Haniff or Baby Boy to use the gun but I do not doubt that they did so.

Prosecution
Evidence

No. 9.

Mohamed
Jhuman.
Cross-
Examination
by Lionel
Luckhoo Q.C. -
continued.

I never knew Haniff was charged in connection with a revolver. I know about Baby Boy. Haniff was charged with shooting a gun at "Coffin"; he was convicted but he did not do it, I did. The Corporal charged Haniff to spite him. I did not give evidence. It was about 1950 I told the Corporal I had done it but he said he had proof it was Haniff. I did not tell Haniff's lawyer I had done it. It was Coffin and others but the others ran away. Never seen Baby Boy in my house with a revolver. On the Sunday morning, 27th, when Baby Boy came to the mill he left Farinha (and perhaps Farinha's boy) in the car; the mill is about 200 rods from the Station.

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I have not got a revolver and don't know how to use one; never used one. Never asked anyone to get a revolver for me nor spoke to anyone about getting one.

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Cross-
Examination
by E.V.
Luckhoo.

Cross-examined by E.V. Luckhoo:

I have never been charged with possessing a firearm without a licence. My gun was used in the "Coffin" incident; it was licensed at the time, in my name. Cannot remember if Haniff was also charged at same time as other charge with using that gun when without a licence to do so.

I know that Haniff and Baby Boy were charged with being in possession of a revolver without a licence. The Police caught Haniff with my gun at the roadside and Baby Boy with the revolver and ammunition. They were both fined.

30

Adjourned at 3.25 p.m. to 9.00 a.m. to-morrow (18/8/54).

WEDNESDAY, 18th August, 1954.

Cross-examined by E.V. Luckhoo (continued):

Sometimes Haniff's wife (Bibi Kariman) used to go to Court when the charges against her husband were being tried; she should know about them.

On Saturday, 26th September, in the morning there was no noise on the public road. I did not

40

see Bibi Kariman on the platform of her house at the time of incident with the cattle on Saturday, 26th. Henry Bacchus lives 20 - 25 rods from me. I did not tell him about what had happened on the road with the cattle.

On Saturday, 26th September, I saw the accused taking the cattle from the waterside on Broomhall Estate, their own land.

10 I was annoyed about the complaint my wife made to me on the night of Saturday, 26th, about being assaulted by accused No. 5. She told me about 6.30 to 7.00 p.m., dusk. She came in Farinha's car and we left in the same car and went to the Station. From there, about 7.30 - 8.00 p.m. I went with her in the car as far as the market and I then returned to the Mill and the car went on in direction of my home.

20 Farinha used to work for me up to about one year ago, buying cattle on commission and buying padi.

Haniff left the Station in his lorry "a couple minutes" before I left in Farinha's car.

At no time did Haniff speak to me or I to him in the Station yard on the Saturday night.

Haniff spoke to some strange people on the gallery Station.

Haniff and his mother spoke to each other on the station gallery; I did not hear what was said.

30 I did not tell Haniff about his mother being assaulted by accused No. 5.

Not correct that Bradshaw got \$3.00 a day "with find" and 5 acres of rice land, rent free.

Henry Bacchus works with me - he looks after cows and sometimes he works at the mill. I pay him \$8.00 a week and six acres of rice land.

40 Bradshaw stayed at the mill on Saturday night (26th) so did I - He left at about 2.30 a.m. on Sunday - I was awake and he reported to me he was going to his family and then for milk at Carlton Hall.

Sometimes Katriah works for me, repairing milk cans.

In the
Supreme Court

Prosecution
Evidence

No. 9.

Mohamed
Jhuman.
Cross-
Examination by
E.V. Luckhoo -
continued.

In the
Supreme Court

Prosecution
Evidence

No. 9.

Mohamed Jhuman
Cross-
Examination by
E.V. Luckhoo -
continued.

Jeremiah Innis stopped working for me about 2 or 3 years ago. Before that he worked for me for 2 to 3 years. Through Bhagwandin I bought a "Combine" from J.P. Santos some time ago - I have known him for about one year.

I have never charged any of the accused with illegally impounding my animals or cutting my wire.

By Lionel Luckhoo (with leave).

Cross-
Examination
by Lionel
Luckhoo Q.C.
(with leave)

This is the book to which I referred yesterday and which I was asked to bring today, dealing with wages of Bradshaw - (Admitted and marked Exhibit "X").

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Ex. "X"

About "a couple months" ago six children were playing with the book and two leaves came out from the middle. I did not see the sheets in the children's hands.

Ex. "Y"

This is another book relating to wages for 1952 - (Admitted and marked Exhibit "Y").

(No re-examination).

No Questions by the jury.

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No.10.

No. 10.

Henry Bacchus.
Examination.

EVIDENCE OF HENRY BACCHUS.

I live at Pln. Carlton Hall, 25 rods west of Mohamed Jhuman and on same side of road. Bibi Kariman is my sister; Mohamed Jhuman is no family to me; his son, Haniff, was married to Bibi Kariman. I work with Mohamed Jhuman as an engineer; was working with him in September, 1953. I know the six accused - have known them for about four years.

30

On 27th September, 1953, Sunday, between 6.30 and 7.00 a.m., I was going south along Broomhall dam (the one adjoining Carlton Hall dam); before I

reached the railway line I saw Bengal (accused No. 1) coming towards me on the same dam; he was running. As soon as he crossed the railway line he left the dam and ran through the rice field on his right. He had not yet reached me; when he was about 20 - 25 rods from me, in the rice field, he shouted, "Saffie, Saffie, hand me the gun quick, let me kill Haniff". I looked on Carlton Hall dam and saw Haniff, Datulan, Cleveland James, Bradshaw. I started to run - I had been walking very fast. Before I got to the Railway line, I saw accused Nos. 2, 3, 4 and 6 and Katriah; accused No. 6 and Katriah were behind the others, who were running. Accused No. 6 and Katriah were not running; all were coming in a northerly direction. Katriah had a gun on his shoulder. I said to the Subadars "what happen man?" they were together and I did not ask anyone in particular. Accused No. 2 answered, "what happen? let Bengal come with the gun quickly, you going to see what happen" - I continued running. At that time I was going down the south side of the railway embankment and Haniff and others were about 30 rods south of me on Carlton Hall dam; that is about from the witness box to the concrete wall on the eastern side of the green on the east of this building.

I continued running; as I got nearer to the Jhumans I observed that my sister, Bibi Kariman and Baby Boy were there also; they were all walking in a northern direction. I crossed on to Carlton Hall dam and ran harder still because of what I had heard accused No. 2 say. I shouted to Haniff and others. Before I reached up to them I saw Bradshaw and James leave the dam, cross over a trench on the west of the dam and went on to the pasture. I got up to Haniff and others and I spoke to Haniff and pushed him into the trench on the west of the dam. He got into the trench - he came out of the trench and then I observed accused No. 1 on Broomhall dam; he had a single-barrelled shot gun. I also noticed accused Nos. 2, 3, 4, 5 and 6. Accused No. 5 came in front of accused No. 1 and he (accused No. 5) said, "If you frighten to shoot, give me the gun and let me shoot" then said to accused No. 5 "Move man". Accused No. 1 then said, "Haniff today is the last day you will live, stand up and take it". Haniff at the time was standing on Carlton Hall dam, facing east, towards the Subadars.

In the
Supreme Court

Prosecution
Evidence

No. 10.

Henry Bacchus.
Examination -
continued.

In the
Supreme Court

Prosecution
Evidence

No.10.

Henry Bacchus.
Examination -
continued,

Haniff Jhuman had nothing in his hand; no revolver, shot gun or any firearm. Accused No.6 then said, "shoot all of them, don't left none; we got money we can take dem Luckhoo". Batulan, Haniff's mother, then came in front of Haniff; Batulan said, "before you shoot me son, shoot me". Batulan had nothing in her hand - no gun, cutlass or stick. Accused No.1 then fired the gun at Batulan and she dropped. I looked at Haniff and saw he was bleeding from his face, he was staggering. I then shouted to accused No.1, "Oh God! don't fire any more load, Bengal", he then said to me, "shut your rass, don't run, if you run I will shoot you". Accused No.1 broke the gun, took out something from the gun; he held the gun with his left hand, shoved his hand in his right trousers pocket - he then load the gun with cartridge, he then fired the load at Haniff. I forgot to mention that after the first load was fired Haniff told Baby Boy to run. Baby Boy had no gun, stick or anything else. Before the second load was fired Baby Boy was in the trench on the west side trying to get on the other side. After the second load Haniff Jhuman dropped.

10

20

I went up and looked at Batulan and Haniff and saw that they were bleeding and were dead. At the time the two loads were fired those present were, Accused Nos. 1, 2, 3, 4, 5 and 6.

At the time the first load was fired accused No.1 was about 24 feet from Batulan (distance indicated from witness stand to back of jury box). Accused No.5 was about 2 feet to the right of accused No.1; accused No.4 was behind accused No. 1 about a foot or two away; the other accused: accused No. 3 and 6 were on the right of accused No. 5, very near to them. Accused No.2 was between accused Nos. 6 and 3. I can't remember if they changed positions between the first and second shots - they were moving. At the time the second shot was fired they were in about the same position. Before the firing of the second shot none of the accused tried to stop accused No.1 from firing. At the time of the second shot all the accused were facing west, towards us. Nobody else was with the accused at the time of the shooting. Katriah was not there at the time of the shooting. I cannot tell where he was. The distance between accused No.1 and Haniff when the second shot was fired was about the same 24 feet - there was not much movement about.

30

40

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From the spot where this took place I could see clear around for about 100 rods except to the

south where there was a coconut walk about 25 rods away.

Saw nobody but accused No.1 with a gun at the time of the firing of the two "loads" - nobody else fired any gun. After the second shot all the accused walked north along Broomhall dam, together.

10 I left my sister there and went along Carlton Hall dam to the public road and then to Farinha's garage. Before reaching the garage I met Baby Boy coming out from another dam on Carlton Hall, about 75 to 100 rods from the junction of the dam along which I had come and the Public Road, to the west of it. I met him at the dam, about one rod from the Public Road. Baby Boy was bleeding from his neck, his hands and his back. Farinha, his son, Baby Boy and I went in Farinha's car to Jhuman's rice mill at Mahaica and from there, Jhuman went with us to Mahaica Police Station.

Cross-examination by Lloyd Luckhoo:

20 It is not correct that I ran up after hearing the discharge of the gun and arrived after everything was over.

It is not correct that I removed a revolver from the side of Haniff and that is why I left so quickly.

I left Bibi Kariman on the scene, alone, after the shooting.

I am 38 years old. I am a milkman as well as an engineer; not a regular milkman.

30 Worked as Engineer at Enmore for 12 years; was working as engineer with Jhuman at his mill at Belmonte at time of this incident. My salary that week was \$8.00, no "find". I was paid \$2.00 a week whenever I go to milk cows whether I milked 3, 4, 5 or 6 days. During the seven days ending Sunday, 27th September, I milked 4 or 5 days. I milked the Saturday (26th) the Friday (25th), Thursday (24th) can't remember the Wednesday, Tuesday and Monday. On the Saturday (26th) I went to milk 40 5.30 to 6.00 a.m. which is the usual time for going to milk. I returned from milking about 7.30 a.m. on 26th.

In the
Supreme Court

Prosecution
Evidence

No.10.

Henry Bacchus.
Examination -
continued.

Cross-
Examination
by Lloyd
Luckhoo.

In the
Supreme Court

The shooting took place about 6.30 to 6.45 a.m. on 27th. I was on my way to milk cows.

Prosecution
Evidence

My wife's name is Hamidan. I live about 75 - 100 rods west of Carlton Hall east side line dam and on north of road.

No.10.

Henry Bacchus.
Cross-
Examination by
Lloyd Luckhoo
- continued.

I have never heard of accused catching Jhuman's cows on Saturday, 26th September; not correct that I had to restrain Jhuman on that morning to prevent him getting into contact with the accused. Know nothing about Jhuman saying "murderation going to happen here" not correct that my wife had to hold on to Batulan (on morning of 26th). I know nothing about that story.

10

On 26th, after getting home at 7.30 a.m., I took my coffee, got dressed and went to Mahaica rice mill getting there about 8.15 a.m. saw Jhuman at the mill about 11.00 to 11.20 a.m. - he came after I did; he told me nothing about any incident on that morning.

Bradshaw was at the mill on that Saturday - can't remember who got there first. I left the mill about 4.30 p.m. went home - I "do believe" I left Bradshaw there. I had worked the whole week at the mill, for \$8.00; that Saturday afternoon I got \$2.00 for the milking. Can't remember how many days Bradshaw worked at the mill that week.

20

I can't say for how long the mill closed down after the funeral but it was not more than a week; when it opened again I turned out to work. Can't remember if Bradshaw did or when next I saw him at work at the mill.

30

I was at home on 26th (Saturday). I don't know if there was any fight between Batulan and accused No. 5 on that night; hearing it for the first time now.

On 27th I was going to milk cows in Jhuman's cowpen I walked along Broomhall dam as it has a better surface: swamps on Carlton Hall dam.

While I was going south along the Broomhall dam I did not see accused No. 5 on the Carlton Hall dam nor did I see Bibi Kariman going ahead of me.

40

I was about 25 rods north of the railway line when I first saw Bengal on the railway line coming towards me (from here to the flowers in the middle

of the lawn). I was about 10 rods from the line when accused No.1 shouted, "Saffie, Saffie, etc..." Accused No.1 was then in the rice field about 20 rods from me and behind me and to my left (witness indicates). I turned around when accused No. 1 shouted but I did not see accused No. 5 - had a clear view.

In the
Supreme Court

Prosecution
Evidence

No.10.

10 I had seen the Jhumans on Carlton Hall dam before accused No.1 shouted; I was about 15 rods north of the line when I first saw the Jhuman's and about one rod on south of line when I saw the accused. (Now says) I saw the accused when I was 2 rods north of line and one rod south of it when I "came up to them".

Henry Bacchus.
Cross-
Examination by
Lloyd Luckhoo
- continued.

When I said to the accused, "what happen?" I was just coming down the slope leading from the line. The Jhumans were then 25 to 30 rods away.

20 When I reached up to the Jhumans we were then about 29 rods from the line. They were shot just where I met them.

I was about 2 rods from the Jhumans when I saw Cleveland James and Bradshaw run away from the dam into the pasture they had all been in a group before those two ran.

Bibi Kariman was with the Jhumans before James and Bradshaw ran away.

My sister, Bibi Kariman, was there before Bengal (accused No. 1) came back with the gun.

30 I did tell the Magistrate that accused No. 6 had said, "shoot all of them ...take them Luckhoo".

Adjourned at 5.28 p.m. to 9.00 a.m. tomorrow (19.8.54).

THURSDAY, 19th August, 1954.

Cross-examined by Lloyd Luckhoo (continued)

Only Cleveland James and Bradshaw ran away from the Jhuman party.

I don't know Harry Persaud, but I know "Harry" who worked with Jhuman as a cowminder. I think I

In the
Supreme Court

Prosecution
Evidence

No.10.

Henry Bacchus.
Cross-
Examination by
Lloyd Luckhoo
- continued.

saw him on Carlton Hall dam after the shooting, when I was coming out to the Public Road, but I can't remember what part of the dam - he was, I think, alone. I am not certain whether he was standing or in what direction he was going - did not speak to him.

Can't remember telling the Magistrate as "A" on p. 37 of depositions.

(Witness is asked to demonstrate the positions of Batulan, Haniff, Baby Boy, Bibi Kariman and himself at the time the first shot was fired).

10

Haniff was immediately behind and very close up to Batulan; Baby Boy was fifteen inches to the right of and in a line with Haniff.

Bibi Kariman was to the right (or south) of Batulan, and about two feet from her.

I was fifteen feet to the left (or north) of Batulan.

Accused No.1 was at that time about 24 feet from Batulan and in a position about 30° north of east.

20

At the time of second shot:

Baby Boy was in the trench, trying to cross it, about 30° south of west, behind Haniff and a little more than one rod away.

Bibi Kariman was near to me and I was in the same position as when the first shot was fired; I held her hand.

At the time of the second shot Bengal (accused No.1) was in about the same position as when the first shot was fired.

30

About three minutes after the second shot I left the scene, alone; I both walked and ran and I fell.

In the car Farinha and his son were in front and Baby Boy and I were behind and we all drove to the rice mill and then with Mohamed Jhuman, to the Mahaica Police Station.

I don't know of any bad feeling between Jhumans and Subadars - don't know about impounding of

Jhuman's cows by Subadar or complaints of damage to rice. Have been working with Jhuman for nearly 3 years up to the present. Have been living at Carlton Hall for somewhat less than 4 years.

I am still working with Jhuman; my salary varies from \$8.00 to \$12.00; I do not still milk cows as my finger got crushed "a little after" the death and I was in Hospital.

10 (Witness states that signature on deposition is his - deposition is read to jury - marks Ex."Z").

Cross-examined by Lionel Luckhoo:

I don't think I stopped between the time of leaving home and seeing accused No.1 on 27th September; can't remember carrying on a conversation with anyone before seeing accused No.1. I was not hurrying when going to milk.

I don't remember speaking to or seeing Jeremiah Innis on that morning before seeing accused No.1.

20 I know Motoe Singh as "Finey" - can't remember seeing him that morning before I saw accused No. 1. I can't remember whether anyone was with me at the time I was going south along the dam to milk, and saw accused No.1 on that morning. (Refers to "B" on p.37 of depositions). I do not think anyone was with me.

30 I did not know that Bradshaw was aback that morning when I left home. Scholes "is supposed to be" there every morning. I did not know that Batulan would be there that morning. Baby Boy does not milk cows. Haniff was supposed to be there.

The only two I would have expected to find aback that morning would have been Scholes and Haniff.

I did not tell anyone, before I went on the dam, that Batulan, Bradshaw, Baby Boy and Haniff would be aback that morning; I did not tell this to Inniss. After the second shot accused No.4 called on the other accused, "let we go away now" and they all left.

40 I did not hear either Scholes or Bradshaw speak to any of the accused on the dam that morning.

In the
Supreme Court

Prosecution
Evidence

No.10.

Henry Bacchus.
Cross-
Examination by
Lloyd Luckhoo
- continued.

Cross-
Examination by
Lionel Luckhoo
Q.C.

In the
Supreme Court

I did not hear Batulan say anything other than what I have already stated.

Prosecution
Evidence

I did not call to either Scholes or Bradshaw after the second shot; can't remember seeing Scholes again for that day. If I had seen Scholes later that morning I would have spoken to him (I have just answered that I would not have spoken to him). I did not see Scholes in Farinha's yard that morning when I went there with Baby Boy.

No.10.

Henry Bacchus.
Cross-
Examination by
Lionel Luckhoo
Q.C. -
continued.

I did not speak to Katriah on the dam that morning, because I was trying to save Haniff's life and there was no time - I was hustling.

10

When I met Baby Boy he was running from the west Broomhall dam - he first spoke to me and said, "Buddy, I got shot" and spoke as though he was giving me some news. I told him let's go to the doctor.

I told everybody to run (Haniff, etc.)

The only words Bibi Kariman spoke after the incident was, "Bengal, you killed Haniff". It was not a question by Bibi and I did not say it was at the Preliminary Enquiry (p.44 of depositions). Bibi Kariman asked me, "Buddy, Haniff dead?" and I said, "No, he isn't dead" - I did not sprinkle water on Haniff or touch him. (The interval between the second shot and the departure of this witness is tested according to the witness' estimate and proved to be 12 seconds).

20

When I met Baby Boy (on the way to Farinha's) he did not ask me how were Batulan and Haniff.

30

Cross-
Examination by
E.V. Luckhoo.

Cross-examined by E.V. Luckhoo:

The name of wife of accused No.3 is Muniram and she is sister to my wife. I did not tell Muniram that Sunday morning that they gone aback to beat the boys. Accused No. 3 lives east of the junction of the Broomhall west side line dam and the Public Road and about 50 rods from that junction. I did not go past that junction, going east, on that morning. I did not see the wife of accused No.3 that morning.

40

I had no idea whatever that anything would happen aback that morning. There was no reason for me to mention Bradshaw's name before I saw Bengal (accused No. 1). I did not go to Mohamed Jhuman's house on the Saturday night (26th). I got

homr about 5.00 - 5.30 p.m. and did not leave home until next morning to go and milk. Nobody visited me that night nor did I get any messages. My wife was not away from the house between 7.00 and 8.00 that night (Saturday); my wife's name is Hamidan. We buy our goods from Georgetown. She has been out on other nights (including Saturdays) to buy sweet drinks but she did not go out that Saturday night (26th).

In the
Supreme Court

Prosecution
Evidence

No.10.

Henry Bacchus.
Cross-
Examination by
E.V. Luckhoo -
continued.

10 Adjourned at 11.26 a.m. to 1.00 p.m.

What I said at Preliminary Enquiry that I have seen a real revolver many times, is true; black colour, 10 - 12 inches long. On each occasion that I have seen a revolver it has been a black one, 10 - 12 inches long; different revolvers - I have seen a revolver about "two times", it might be more. I think I can remember seeing Sgt. Tappin with a revolver on 27th September, 1953, and seeing the Police "with revolver" at Enmore Estate at the time of the shooting. Never seen a real revolver other than in the hand of a policeman. (Refers to "A" on p. 40 of depositions). I do not know that Haniff shoots and I have never seen him shoot. I have moved about very closely with Haniff for over three years - I have slept at his house several times. Do not know that Haniff was once charged with discharging a loaded firearm in 1950, April I think I was at Enmore but I might have been at Carlton Hall.

20

30 Do not know that Baby Boy was charged for being in possession of a revolver in July 1952. I live very well with the Jhuman family.

I have never attended Mahaica Court when Haniff was charged for any offence. I did not engage the services of Mr. Ronald Luckhoo when Haniff was charged with discharging the loaded firearm.

If I did not have to go to milk on that morning (27th) I would have been resting at home.

40

Jhuman's regular cowminders were - Kaymon (not Clinton Robinson). I have seen Clinton Robinson milking his own cows in Jhuman's pen; Scholes, Dukhoo, Harry, Ivan Bourne, (not Ball, son of Kaymon).

I had a twelve-pint bucket, not a saucepan; cannot tell what happened to it or what I did with it.

In the
Supreme Court

Prosecution
Evidence

No. 10.

I met plenty people on the Carlton Hall dam on my way out after the incident - cannot recall the name of any of these; first person I spoke to was Baby Boy. I crossed from the Broomhall dam to the Carlton Hall dam when I was about 10 rods from the Jhumans - the wire at that point had dropped. The water in the trench into which I pushed Haniff was about one foot deep.

Henry Bacchus.
Cross-
Examination by
E.V. Luckhoo -
continued.

I spoke to Bibi Kariman between the first and second shots and she answered me.

10

I am positive I saw accused No.3 there - he was about 8 feet from accused No.1. Accused No.4 was about 4 feet from accused No.1 when first shot fired.

No re-examination.

No question by jury.

No. 11.

No. 11.

James Beckles.
Examination.

EVIDENCE OF JAMES BECKLES

Detective Constable No. 5164 attached to the Photographic Department, C.I.D. of Georgetown.

20

On Sunday, 27th September, 1953, I received certain instructions and went to Carlton Hall Estate, East Coast, Demerara, to the Carlton Hall dam. I got there about 9.30 a.m. I saw the dead bodies of a male and female East Indian. I took photographs of the two bodies; I took four photographs; from the negatives I made enlargements - these are the negatives.

Jury withdraws.

(Lionel Luckhoo objects to admission of the photographs on the ground that (1) those photos have little or no evidential value but are highly prejudicial (2) they are not contact prints, taken from the negative. (Lloyd and E.V. Luckhoo associate themselves with the above submissions).)

30

Crown Prosecutor:

I do not propose to tender the one of Batulan only (Ex. "C.2"); the other three photographs have got some evidential value, though they have some prejudicial value.

10 Held that as far as the case has gone there is insufficient ground for saying that the balance of evidential and prejudicial value is such that the photos may be admitted. The Crown may, however, seek permission to admit these photos if, as the trial proceeds, it is found that the evidential value of the photos is increased to such an extent that they may properly be admitted.

(No further questions of this witness by anyone).

Jury returns.

No. 12.

EVIDENCE OF ERIC CALLENDER.

20 Corporal of Police No. 4315, stationed at Wales. In September, 1953, I was stationed at Mahaica Police Station.

30 On Sunday, 27th September, 1953, at about 7.00 a.m. I went to Carlton Hall, East Coast, Demerara, to the Estate of Mohamed Jhuman, to a spot 600 yards south of the Public Road, on the Carlton Hall east side line dam. I was with Sgt. Tappin, P.C.s Zeno and Bunyan. I there saw the dead bodies of Haniff Jhuman and Batulan, his mother. Haniff Jhuman had gunshot wounds in the head, chest - he was bleeding. I searched the body of Haniff and took charge of both bodies.

I took the body of Haniff to the Mortuary at Mahaicony where the body was identified by Mohamed Jhuman. I later witnessed a post mortem examination performed by Dr. L.H. James, G.M.O. I later handed over the body to Mohamed Jhuman for burial. On the following day at about 11.00 a.m. I witnessed the burial of Haniff at Carlton Hall and marked

In the
Supreme Court

Prosecution
Evidence

No. 11.

James Beckles.
Examination -
continued.

No. 12.

Eric Callender.
Examination.

In the
Supreme Court

Prosecution
Evidence

No. 12.

the grave. I took the clothing of Haniff Jhuman this is it - singlet, shirt, trousers and hat. The shirt has small holes which appear to be made by shots from a shot gun - all garments appear to have blood stains (admitted and marked Ex. "Q").

Cross-examined by Lionel Luckhoo:

Eric Callender.
Examination -
continued.

Ex. "Q"

Cross-
Examination by
Lionel Luckhoo
Q.C.

At that time both Carlton Hall and Broomhall dams were good walking dams - the Carlton Hall dam was in fairly good order. I did not walk along the Broomhall dam.

10

No re-examination and no question by jury.

No. 13.

Mohamed Haniff
Examination.

No. 13.

EVIDENCE OF MOHAMED HANIFF.

I am a rice farmer and I live at Clonbrook, East Coast, Demerara. I know all the accused for about 8 years. Last year, 26th September, a Saturday, about 2.00 p.m. I saw accused Nos. 2 and 6 in Belfield, East Coast, Demerara. Cove and John is nearer Georgetown than Belfield is. Accused Nos. 2 and 6 were walking on the Public Road going in the direction of Georgetown. I was riding a bicycle going in the opposite direction. When I met them, accused No. 2 was in front of No. 6. I stopped and spoke to accused No. 6 in Hindustani - the translation being "how time". He replied in Hindustani - what he said, in English, was "seam" (what) 'tory shoot am rass one, one". He continued walking - he did not call any names. I did not know where he was going. I continued on my journey. The next day (27th) about 9.00 a.m. I heard something and I went to Carlton Hall where I spoke to Corporal Callendar who was fetching the "dead people" to the Public Road. I gave a statement to the Police that very Sunday afternoon, at my home, to a plain clothes policeman. Cannot remember what time I gave the statement.

10

20

Adjourned at 3.00 p.m. to Monday, 23rd instant at 9.00 a.m.

MONDAY, 23rd August, 1954.

Cross-examined by Lloyd Luckhoo:

I don't know what is to-day's date but I know it is August.

I own a few head of cattle; keep them at Pln. Hope. I have never kept cattle at Carlton Hall. I have family at Clonbrook - don't know if they have ever kept cattle at Carlton Hall. I live well with my family. I "born and grow" at Clonbrook. None of my family is related to Batulan. I am not a friend of Jhuman. I know Jhuman - have known him for 8 or 9 years - know him "just ordinary".

I was at Clonbrook when I heard that Batulan and Haniff Jhuman were dead. It was about 9.00 a.m. and I left for Carlton Hall on my bicycle as soon as I heard; distance is about 12 miles; did not stop on the way. I was just preparing to go aback when I heard. Had known Batulan and Haniff for about 9 years. I left immediately because I knew Batulan and Haniff. I rode back on my bicycle from Carlton Hall the same Sunday. I went by car to the funeral on Monday. I went to the house, on both the Sunday and Monday. I returned home after the funeral - shortly after but can't remember how long after.

I know the entrance to the Cove and John Police Station. A concrete arch. I had passed the entrance when I met accused Nos. 2 and 6. It was about 245 rods on the Berbice side of the entrance - it was to the east of Mr. Rico Reece's house that I met them and about 75 rods from it. Accused Nos. 2 and 6 were walking when I met them - it was about 2.00 p.m. or "a little more later". I had left Bachelor's Adventure at about 1.30 p.m and had not stopped until I met accused Nos.2 and 6. I dismounted to talk to accused Nos.2 and 6.

I did not say as at "A" on p. 104 of depositions. I said it is 175 rods from Belfield west to Cove and John entrance.

By Court:

I can neither read nor write (witness is tested as to his ability to tell the time).

You (Mr. Lloyd Luckhoo) did ask me at the Preliminary Enquiry how far east of the Cove and John

In the
Supreme Court

Prosecution
Evidence

No. 13.

Mohamed Haniff
Cross-
Examination by
Lloyd Luckhoo.

In the
Supreme Court

Prosecution
Evidence

No. 13.

Mohamed Haniff
Cross-
Examination by
Lloyd Luckhoo
- continued.

entrance I had met accused No. 2 and No. 6 and I told you it was 175 rods.

At Preliminary Enquiry I said that what I said to accused Nos. 2 and 6 in Hindustani meant "Wha ah do" or "how times". When accused No. 6 told me ".... shoot am rass one one". I did not ask him anything; who he is going to shoot or anything like that.

Cross-examined by Lionel Luckhoo:

Cross-
Examination
by Lionel
Luckhoo Q.C.

I did not understand what accused No. 6 meant when he used those words. As soon as I heard about the shooting I remembered what accused No. 6 had said. I returned for Carlton Hall between 3 and 4 p.m. on the Saturday. I had not seen any of the family on the Sunday. I did not go to Jhuman's house on the Sunday (but see cross-examination by Lloyd Luckhoo); did not go to anyone's house between the time of leaving Clonbrook and the time of my return. I had taken salts that morning. I begged bananas at Mahaica - no call of nature on the way.

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Cross-
Examination
by E.V.
Luckhoo.

Cross-examined by E.V. Luckhoo:

The distance from the entrance to Cove and John to Belfield west is 175 rods; the point at which I met accused Nos. 2 and 6 is 75 rods from Belfield west, going in an easterly direction.

Nobody was nearby when accused Nos. 2 and 6 and I spoke; they both stopped when we spoke. I had not yet had my midday meal; I had none on that day.

30

Bachelor's Adventure is 3 or 4 miles from where I met accused Nos. 2 and 6. On that Saturday I left home about 9.00 a.m.

From Belfield to my house is about 2 miles.

I went to Lilliah, a rice miller, at Bachelor's Adventure, for some money he owed me; he was not there. When I arrived and I waited for his return. He had a rest before he paid me.

Lilliah paid me \$111.00 in cash and two bags

of rice which he kept for me. I think I signed a receipt. I do not think I signed a receipt or any book.

I did say at Preliminary Enquiry that Lilliah paid me \$100.00.

The money he paid me was for the 1952 "big crop".

10 I have only given evidence in Magistrate's Court in cases for damages in which I was personally concerned.

(Lloyd Luckhoo asks that witness's deposition be put in - put in and marked Ex. "AA".)

No re-examination and no question by Jury.

No. 14.

EVIDENCE OF HENRY BRADSHAW

20 Live at 67 Public Road, Kitty, East Coast, Demerara. I am a motor mechanic. During September, 1953, I was working with Mohamed Jhuman fixing the tractor and combine. I first worked for Jhuman about 11 years before that. I started working steadily for him about one year before September, 1953. I knew Batulan and Jhuman for about 15 years before September, 1953; knew both sons since about 1937. Know all the accused and have known them for about 5 years.

30 On 27th September, 1953, at about 6.30 a.m. I went at the back of Carlton Hall to Jhuman cowpen which is about 130 rods or more along the dam, going south. I went alone. About 10 rods from the pen I saw Scholes, milking - also Kaymoo, milking. I heard some talking at a spot at which I had already passed and I retraced my steps for about 5 rods to see who it was. I saw accused No.4 and Haniff Jhuman. Accused No.4 was milking and Haniff was standing "side of him" - they were on Broomhall dam. I heard accused No.4 tell Haniff, "Man, I don't know what happen, I was not there" Haniff

In the
Supreme Court

Prosecution
Evidence

No. 13.

Mohamed Haniff
Cross-
Examination by
E.V. Luckhoo -
continued.

Ex. "AA"

No. 14.

Henry Bradshaw.
Examination.

In the
Supreme Court

Prosecution
Evidence

No. 14.

Henry Bradshaw.
Examination -
continued.

again questioned No.4 saying, "why Saffie strike his (Haniff's) mother?" Accused No.4 again said he didn't know he wasn't there. At that time, I heard Batulan's voice on Broomhall dam, south of where I was. I looked and saw Batulan who was about 3 rods away from accused No. 4. Batulan said, "Bengal, you caused me to get knocked last night". Bengal had been milking and was out of sight when Batulan spoke, then they started to fight. I then saw accused Nos. 2 and 3 in the pen about one rod east of Batulan and Bengal. I tried to reach to Batulan and Bengal to separate them; before I reached to them they stopped fighting. I then saw Baby Boy come from the south part of Broomhall dam and he and Bengal (accused No.1) started to fight. I went and separated them.

10

Adjourned at 11.30 a.m. to 1.00 p.m.

After I had separated them. The fight took place in the cowpen. Accused Nos.3, 2 and 4 left the cowpen and I heard a voice say, "let's go for the gun". The voice came from outside the pen and it was one of the three (accused Nos. 3, 2 or 4) who used those words; they were then about two rods from the cowpen. Bengal said, as he was leaving the cowpen, that he was going for the gun and he would "shoot them out". They all ran north on Broomhall dam. They had nothing at all in their hands. During the fight between Batulan and Bengal and between Bengal and Baby Boy none of them had anything in their hand, no stick or anything.

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30

Batulan, Haniff, Baby Boy and I came across to Carlton Hall dam and we all walked north along Carlton Hall dam. Scholes came up about 10 minutes after we had started walking. Henry Bacchus' sister (Bibi Kariman) came up from north before Scholes got up to us - after Scholes got up to us then Henry Bacchus came up to us, from north. When Bibi Kariman came she spoke to Haniff and then to Batulan. When Bacchus came up he spoke to Haniff. I then crossed the trench on the west of the dam and Scholes crossed it after me. The Subadar family, that is the six accused, came up. Accused No.1 had a gun and No.5 had a stick (with the skin peeled off). Batulan and the others in her party had nothing in their hands, no gun, cutlass or stick. I was about 18 - 20 rods (distance indicated and estimated at 50 yards) away from Bengal (accused No. 1) when I said to him, "Bengal, if you use that gun

40

you going to get into trouble" he said, "all of you is going to shoot this morning." I walked north on the west side of the dam and he walked south on the Broomhall Dam. I stood up behind the gooseberry tree. Bengal walked straight up to Batulan, Haniff and Baby Boy - he (accused No. 1) and the other accused who were close behind him were on the Broomhall dam and Batulan and others were on the Carlton Hall dam - the two parties were opposite each other. Bengal said to Haniff, "I am going to shoot you this morning". Haniff said, "why you going to shoot me for, me ain't do you nothing". Batulan got in front of Haniff and started to beg Bengal. She said, "I am begging you not to shoot Haniff, before you shoot Haniff, shoot me". Bengal, who was holding the gun "up", then lowered it. Accused No.5 then came up to Bengal and said to him "give me the gun if you can't shoot and let me shoot their rass". Before doing this he (accused No.5) dropped the stick which he had. Accused No.6 then shouted to Bengal "shoot everybody, workmen and everybody". Bengal raised the gun in position and the gun went off the same time; before this Bengal had pushed aside accused No.5 who had gone up to him and said, "give me gun if you can't shoot ...". After the gun went off I heard Batulan say, "like pepper burst in my eyes" and she fell down. I then saw Haniff staggering. I saw Bengal break the gun. I ran off west about one rod and then stood up and looked to where they were. I saw Bengal raise the gun and point it about to Haniff's chest and I heard the explosion from the gun and Haniff went down and Baby Boy went down also; he (Baby Boy) was over the trench and just climbing up on the side of the dam into the rice field.

The time between the first and second shots was about 5 seconds. After the second shot I again heard the words, "shoot everybody, workmen and all" but I cannot say who used those words. I ran off west. I saw Baby Boy in the coconut walk and he was bleeding.

Cross-examined by Lloyd Luckhoo:

I am 56 years old. I am a fairly strong fellow, physically. I plough, cut rice, pull wood with tractors, repair any machine.

Have been working with Jhuman on and off since 1942 and more regularly during the last 3 years. Jhuman has some times been very kind to me and I sometimes count him "like family."

In the
Supreme Court

Prosecution
Evidence

No. 14.

Henry Bradshaw.
Examination -
continued.

In the
Supreme Court

Prosecution
Evidence

No. 14.

Henry Bradshaw.
Cross-
Examination
by Lloyd
Luckhoo -
continued.

Jhuman used to pay me \$2.00 a day "and find" and 15 acres of rice land. I could work only 5, so I gave the other 10 to someone else and told him to pay the rent to Jhuman. After Jhuman got the truck, about October, 1953, I began to drive that truck and he then started to pay me \$3.00 a day "and find" and 5 acres of land. I have sometimes slept at Jhuman's house; the country people have that habit. Everybody called Batulan "Auntie" and so did I. Have been living at Kitty for the last 4 or 5 years - the house belongs to my wife and she lives in it. When I am working at the Jhumans factory, "mostly I sleep there". Sometimes I come home during the week. I usually come down on Sunday morning, sometimes on Saturday night. I had been working on the tractor and combine for 2 or 3 weeks before 27th September, 1953. On that date the work was not finished. I had worked for Jhuman for 6 days during that week ending 26th September, 1953. On 27th September, 1953, the work on the Combine and Tractor had not been finished. I completed it the following week and the week after that I went into the creek to help cut Jhuman's rice and took the tractor and combine with me.

10

20

Ex. "BB"

This is a diary in which I record my movements (admitted and marked "BB").

Cannot remember if I went to Kitty during the week commencing 27th September, 1953.

Indalji is Jhuman's book-keeper and I do not think Ex. "X" is the book in which he makes his entries.

30

I was paid about 4.00 p.m. on Saturday, 26th September. I got \$10.00 and balance of \$2.00 remained which I got on the following Monday from Baby Boy. I went to Mahaica Village about 6.00 p.m. on 26th September, and returned to the factory about 10.00 p.m. when I met Mohamed Jhuman and the watchman. I slept there until about 2.30 to 3.00 a.m. Jhuman and the watchman also slept at the factory. When I got back to the factory at 10.00 p.m. Jhuman asked me if I had heard what had happened. I said yes, I had heard they had a fighting up at Carlton Hall. I had heard about an incident between Batulan and Saffie (accused No.5). I did not go to Kitty on Saturday, 26th September, and Haniff and his wife did not come there for me. I did not go to the Carlton Hall dam on the Sunday (27th) to beat up the Subadars, and not especially accused No. 5.

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(Jury is asked to inspect "29th" on page indicated in Ex. "BB".)

In the
Supreme Court

Adjourned at 3.00 p.m. to 9.00 a.m. tomorrow (24/8/54)

Prosecution
Evidence

TUESDAY, 24th August, 1954.

No. 14.

I started work on the tractor and combine long before 15th September, 1953. There is no entry in "BB" showing that I did work on the tractor and combine before 15th September. I wrote the entry regarding starting work on tractor and combine as a memo. That statement may be a mistake or it may be true, I can't remember if I did begin that work on 15th September.

Henry Bradshaw.
Cross-
Examination by
Lloyd Luckhoo -
continued.

I do not see what looks like "5" under the "9" of "29th" in Ex. "BB".

(Witness is asked to write "23" on a sheet of paper - he does so and this is put in evidence and marked Ex. "CC".)

Ex. "CC"

Cannot say if Batulan is a "hasty" woman or a strong woman. I think I said as at "A" on p.64 of depositions - that was the "Small Court" - what I have said here is the truth.

On Sunday, 27th September, 1953, I awoke around 2.00 to 2.30 a.m. (at the mill at Mahaica). I then went to the Mahaica village to visit my family. I called to them spent about two hours with them talking - left them about 4.00 a.m. and went to the stelling at Mahaica Creek where I had a fishing line; spent about 10 minutes there and then went back to the factory for about 5 minutes and then left for Carlton Hall at "some minutes to 5" on a bicycle. Carlton Hall is about 6 miles from Mahaica. I went to Carlton Hall to get some milk, that was the only reason for my journey. Plenty milk comes from the Mahaica Creek - that is where the milk for the factory comes from, not from Carlton Hall. I took a $\frac{1}{2}$ gallon bottle to fetch the milk. I think it is a Cola Tonic bottle from D'Aguiar. When I reached Carlton Hall I called in at Jhuman's house and left my bicycle there - I saw one man there the Jhuman family had gone. Dukhoo told me "Auntie" had gone aback to look after the calves. He told me Baby Boy had also gone. I asked Dukhoo "where Auntie". I know nothing about a pre-arranged plan to go aback and beat up the Subadars. I walked aback alone -

In the
Supreme Court

Prosecution
Evidence

No. 14.

Henry Bradshaw.
Cross-
Examination by
Lloyd Luckhoo
- continued.

passed Haniff Jhuman's house but did not call out to him. Can't remember seeing anyone at his house. I walked along the Carlton Hall dam until I reached Jhuman's second cowpen where I saw Scholes and Kaymoo milking. On the way I saw the Jhuman family ahead of me on the dam. I was then on the Public Road. I had already left my bicycle at Jhuman's. I saw Batulan and Haniff, and ahead of them somebody looking like Baby Boy; they were about 100 rods in front. Did not see the Subadars at that time. From the time I started walking on the dam I did not see anybody else on either dam. On reaching Subadar's pen before Jhuman's - they are about 18 rods apart. Did not notice anybody in Subadar's pen when passing; did not look. Did not speak to either Scholes or Kaymoo.

10

Hoosaine (accused No.4) told Haniff that the boy who had struck his (Haniff's) mother had not come aback. When Batulan used the words, "Bengal, its you cause me to get knock last night", she sounded vex; she was about two feet from him when she used those words. When the fight started between Batulan and Bengal, Hoosanie (accused No.4) said, "Advantage". Batulan did not say, "you Bengal, ah good one too, me come to kill all you Subadar picknie all you can't milk cow at this pen no more".

20

I would not say Bengal was getting the worst of the fight. After exchanging blows Batulan grabbed Bengal's shirt front. I did say as at "A" on p.62 of depositions.

30

Baby Boy did not join in the fight with Batulan and Bengal. I did not join in the fight and choke Bengal. Both Bengal and Baby Boy were on the ground; Bengal below, Baby Boy above. Batulan was then in the pen - she was not kicking Bengal. Haniff was fighting with Edun (accused No.2), Hoosanie (accused No.4) and Hassa (accused No. 3). Batulan joined in that fight; Baby Boy did not join in that fight.

"A" on pp. 58 - 9 of depositions is wrong.

40

"A" on p.60 of depositions is wrong.

Refers also to "A" on p. 63 of depositions.

Scholes did not come up to the scene of the fight.

I know "Harry" called "Bir". I saw him there long after the fighting was over.

The fighting lasted about 15 minutes.

I did not see Harry at the time I saw Scholes and Kaymoo.

10 Harry was not walking with me when I was walking along the dam coming from south to north; saw him when I was crossing the trench. I had walked about 30 rods or more from the scene of the fight when I saw Harry. Harry was not standing on the dam with a double-barrelled gun while the fight was taking place. I cannot remember saying as at "B" on p. 58 of depositions. It could be true. If it is recorded I will admit I said it.

"B" on page 59 of depositions. I can't remember telling the Magistrate that.

Scholes and I walked from aback together.

"B" on p. 52 of depositions. I am certain Eileen (Bibi Kariman) reached there before Henry Bacchus - not as recorded in depositions.

20 Can't remember telling the Magistrate "Henry Bacchus came running first" or "He was ahead of his sister for about 25 rods and she was walking."

Scholes crossed the trench with me. After the shooting I ran about two miles.

I do not know that Haniff walks with a revolver.

I crossed into the Carlton Hall pasture 35 to 40 rods from the Subadars' cowpen in which the fight had taken place; at that time the Jhumans were south of me, about 18 rods away, standing.

30 The spot at which Batulan and Haniff fell was about 2 rods north of the spot at which they were when I crossed into the pasture.

I crossed over to the pasture as soon as Bibi Kariman reached us.

I can't remember if I told the Magistrate that Haniff said, "why you going to shoot me for, me ain't do you nothing."

The words, "shoot everybody, workmen ..." were used before either shot was fired.

In the
Supreme Court

Prosecution
Evidence

No. 14.

Henry Bradshaw.
Cross-
Examination by
Lloyd Luckhoo
- continued.

In the
Supreme Court

It may be that I told the Magistrate as at "C" on pp. 59 and 60 of depositions.

Prosecution
Evidence

The words, "shoot everybody ..." were used repeatedly. I cannot remember referring at Preliminary Enquiry to the use of those words only once.

No. 14.

Henry Bradshaw.
Cross-
Examination by
Lloyd Luckhoo
- continued.

I did say as at "A" on p.61 of depositions. I did tell the Magistrate that accused No. 1 shoved aside accused No. 5, saying, "move off", before he (accused No.1) fired the first shot.

10

I cannot remember saying at Preliminary Enquiry about 30 seconds elapsed between the two shots.

Ex. "DD"

(Lloyd Luckhoo asks that deposition of witness be put in evidence - admitted and marked Ex. "DD").

Adjourned at 11.23 a.m. to 1.00 p.m.

Cross-
Examination by
Lionel Luckhoo
Q.C.

Cross-examined by Lionel Luckhoo:

When I went aback on that Sunday I intended to go alone; made no arrangements to go with anyone. I expected to meet members of the Jhuman family aback after I had been told in the yard by Dukhoo that they had gone aback. I did not intend to ask any of them to accompany me. I had only the bottle with me. I did not intend to milk the cow myself. I can't milk cows. Jhuman's milkmen were going to do the milking. I used to have milk given to me - not at the factory but at Jhuman's house. I would have to go aback to get the quantity I wanted. I could have got a smaller quantity at Jhuman's house. I had used that bottle before, about three times and on each occasion had to go aback to get the milk I can't remember any of the three previous occasions on which I went aback with that bottle.

20

30

I can't remember if I worked on Sunday, 20th September; worked on Monday 21st, Tuesday 22nd, Wednesday 23rd, Thursday 24th, Friday 25th and Saturday 26th.

I was getting the $\frac{1}{2}$ gallon of milk for my family, not for myself; similarly on three previous occasions.

40

Can't remember the last time I came down to Kitty before 27th September. Cannot remember where I slept on Friday 25th or on Thursday 24th - it could have been Kitty.

My mother lives about a mile from the factory at Mahaica; my brother and sister also live at Mahaica. I sometimes sleep with them.

At the factory I sometimes sleep on padi bags or hammock.

10 On Saturday, 26th September, I slept in Jhuman's house at the factory, in the compound. Only Jhuman also slept there that night. I slept on a counter in the office and Jhuman slept on a bed on the other side of the partition.

On that Saturday I had my usual hours of sleep; went to sleep between 9 and 10 p.m.

20 On Saturday, 26th, Jhuman was at the factory from about 9 a.m. I did not see Haniff at all on Saturday 26th, nor did I see Bibi Kariman. No member of the Jhuman family was present when I heard on the Saturday night at the rumshop that Batulan had been beaten.

30 When I saw the accused approaching with a gun I became afraid; Scholes and I crossed the trench together, to get out of the range of the gun. Scholes went behind another tree, about one rod from the tree behind which I was. I was to the south of Scholes. I told Scholes let us cross the trench and go away. The shots could have reached the tree where I was. I did not want the accused to know where I was. I spoke to accused No. 1 before I got to the tree; I was in the "clear open". Scholes at first did not agree that we should go away but when they said, "let we shoot the black men dem first" he decided to go.

As to "C" on p.63 of depositions, it was 5 and not 15 minutes. The Magistrate read over my deposition to me. I did not correct anything.

40 Did tell the Magistrate as at "D" on p. 59 of depositions.

The gooseberry tree was about 8 feet high.

I heard Haniff ask Accused No.4, "where is Saffie, I hear he knock my mother last night".

In the
Supreme Court

Prosecution
Evidence

No. 14.

Henry Bradshaw.
Cross-
Examination by
Lionel Luckhoo
Q.C. - continued

In the
Supreme Court

Haniff did not appear vexed when he said those words.

Prosecution
Evidence

No. 14.

Did not say as at "C" on p.62 of depositions.
(Witness is asked to write - "start to work combine on 21st September on 23rd went to Kitty" and does so. Admitted and marked Ex, "EE").

Henry Bradshaw.
Cross-
Examination by
Lionel Luckhoo.
Q.C. -
continued.

In "29th" in Ex. "BB" it appears that "2" has been written over "2" and "9" over "3".

Ex. "EE"

Cross-examined by E.V. Luckhoo:

Cross-
Examination by
E.V. Luckhoo

I heard about the impounding of the cattle about midday on the same Saturday (26th). When Jhuman came to the factory he did not tell me what had happened. 10

I cannot remember whether it was 4.00 p.m. or 6.30 p.m. that I left the factory on Saturday 26th. I think it was about 4.30 p.m.

I went into the rumshop about 7.00 p.m. on 26th I returned there about 7.30 p.m. the rumshop is about 50 rods from the factory. At the rumshop was Kayser, Bengie from Supply and others. 20

It was about 9 - 10 p.m. at the rumshop that I heard that Saffie had struck Batulan. I told Jhuman at 4.30 p.m. on 26th that I was going out. I think I told him I would be coming back. When I got back I said to Jhuman, "I return, uncle". He asked me if I heard what had happened. I said "no" and then "by the way I hear somebody knock Batulan top-side". I went to bed after that. I put on my sleeping clothes. Jhuman told me his wife had made a report at the Police Station. 30

I intended to get up at 2 to 2.30 a.m. to go to my mother. When I got up I called Jhuman and told him I am going out and I am going for the milk; he did not come out to me.

In Ex. "BB" I made a mistake; it should be "6 days" not "7 days".

I drove in Haniff's lorry for the first time on Sunday night, 27th.

I did not see Haniff's lorry stop at the rum-shop on the Saturday night (26th). I passed by the Police Station about 7.15 p.m. on the Saturday and passed back about 7.30 p.m. I went to another rum-shop; cannot remember seeing a lorry at the Station at that time. Can't remember seeing Jhuman at the Station. Get on well with my wife; the milk was for my family at Kitty; there was a possibility that I might have taken it personally; I might have sent it by car. I was expecting to go to Kitty on that Sunday (27th). I know the milkers employed by Jhuman - Kaymoo, Ball and Dukhoo.

10

It is usual to milk at both pens of Jhuman. The pens are about 180 rods apart. Milking was not going on at the first Jhuman pen on that Sunday; had there been milking at that pen I would have collected my milk there and gone away.

I know that Jhuman has a 12 bore gun, double barrel gun. I have seen it being carried many times by Jhuman only. Never seen Scholes with that gun or with any other gun. Never seen Haniff with a gun or a revolver; Harry Persaud never had a gun on Carlton Hall dam that Sunday nor did Scholes.

20

I first saw accused No.1 and other accused coming south towards us when they were two to three hundred rods away first saw the gun in the hands of accused No.1 when they were 100 rods away. I tried to get Haniff and others to leave and go away but they would not listen to me because Schules said "the gun is not a good gun, we can dodge it". Scholes was unwilling that the party should get away and go west in the pasture.

30

After running away I ended up at Glacier's Lust.

I saw Katriah with a gun; he was about 100 rods to the north of me on the Carlton Hall dam when I first saw him.

I was about 20 rods north-west of Batulan when the first shot was fired.

Re-examined:

40

I had no gun with me at any time that day. When accused No.4 said, "uncle Bradsh you see advantage" he was speaking to me; all the Subadars call me "Uncle Bradsh". I have had no "story", court or otherwise, with the Subadars. About 25 minutes to

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Supreme Court

Prosecution
Evidence

No. 14.

Henry Bradshaw.
Cross-
Examination by
E.V. Luckhoo -
continued.

Re-
Examination.

In the
Supreme Court

half an hour elapsed between the time I saw accused Nos. 1, 2, 3, 4, leave the cowpen and the time they returned to the Jhumans.

Prosecution
Evidence

When accused Nos.1 to 4 left the cowpen (before the shooting) they had no guns or sticks.

No. 14.

Henry Bradshaw.
Re-Examination
- continued.

No question by jury.

Adjourned at 3.21 p.m. to 9.00 a.m. tomorrow (25.8.54)

No. 15.

Abdool Esuf
Jhuman.
Examination.

No. 15.

EVIDENCE OF ABDOOL ESUF JHUMAN

Mohamed Jhuman is my father. Batulan was my mother; Haniff Jhuman was my brother. I live at Carlton Hall in my father's house. 10

During September, 1953, I used to stay at my father's rice mill. I am not married. I am also called "Baby Boy". I manage my father's rice mill at Mahaica and was doing so in September, 1953. Bibi Kariman is my sister-in-law.

I know all the accused for about 8 years; they live at Pln. Broomhall. On 27th September, 1953, I left my father's house at about 6 a.m. for the cowpen on the Carlton Hall east side line dam which is about 400 rods from the Public Road, across the railway line. My mother, Batulan, was with me. On our way, between my father's two cowpens and about 20 rods from Subadar's second cowpen, I heard a noise, i.e. the voice of my brother Haniff Jhuman; on hearing his voice I ran towards him and saw accused Nos. 1, 2, 3, 4 and my brother. They were fighting between the Carlton Hall and Broomhall dams near to Subadar's cowpen. On my mother's arrival she grabbed accused No.1 and told him he was the cause of her getting licks the Saturday night from Saffie Mohamed (accused No.5). I went to separate the two of them and in trying to do so I fell on top of accused No.1; "surprisingly" I saw Henry Bradshaw who took me off accused No. 1; 20 30

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Supreme Court

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Evidence

No. 15.

Abdool Esuf
Jhuman.
Examination -
continued.

two of the accused (I cannot remember which) spoke
- they said, "I tell you all to bring the gun or
the cutlass' and you all did not hear me". Accused
No.2 said, "let's go for it" and the four accused
(1 - 4) left, running in a northerly direction to-
wards the public road. My mother, Bradshaw, Haniff
Jhuman and I then went from between the two dams
(where the fight had taken place) to the Carlton
Hall dam and we started to walk towards the Public
Road. After walking about 120 rods northwards I
10 met Clinton Robertson and he spoke to us. This was
at our first calf pen. We continued walking (leav-
ing Robertson at the calf pen) for about 40 rods
when I saw six persons coming on the Broomhall
dam, they were 40 - 50 rods away at the time, com-
ing in a southerly direction towards us. We stood
up on our dam when they were about 20 rods away I
recognised they were the six accused. Accused No.
1 had a gun and accused No.5 had a stick. Accused
20 No.1 was in front. I saw another person on the
Broomhall dam but I could not recognise who he was;
he was about 40 rods behind the accused and was go-
ing east on the parapet of the trench.

After I had seen the six persons and before I
recognised them to be the six accused, Henry Bacchus
and Bibi Kariman joined us on the dam; they came
from north towards us on the Carlton Hall dam.
Henry Bacchus spoke to Haniff and I saw him push
Haniff. Cleveland James then joined us. I believe
30 he came before Henry Bacchus and Bibi Kariman - he
came from south along Carlton Hall dam. The six
accused came up and while they were on the Broom-
hall dam, accused no.1 told Haniff, "Haniff me go
shoot you" and when he said so, Cleveland James and
Bradshaw went away. They crossed the west trench
of Carlton Hall dam. Haniff said to accused No. 1
"what you going to shoot me for?" Accused No. 5
moved up close to accused No.1 and said to him,
"if you can't shoot man, give me the gun". Accused
40 No.6 then said, "shoot them man, ah we got money,
we going take dem Luckhoo". Accused No. 1 then
pointed the gun at Haniff, he pulled the trigger,
the gun went off and my mother fell; before this
my mother said to accused No.1, "nah shoot me son,
before you shoot me son, shoot me". I was not
looking at her, my attention was taken up with
accused.

After my mother fell Haniff was staggering,
bleeding from his lips and head. At the time
50 accused No. 1 fired that shot accused No. 5 was
about one foot away from him and the other accused
were about 3 or 4 feet away.

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Prosecution
Evidence

No. 15.

Abdool Esuf
Jhuman.
Examination -
continued.

After the first shot accused No.1 broke the gun, took the spent cartridge from the barrel, pushed his hand in his trousers pocket, took out another cartridge, put it in the gun - my brother (Haniff) told me to run and I ran and jumped in the trench. When I was coming out of the trench, on to the Carlton Hall pasture, I saw accused No. 1 at my brother and he fired and I heard the gun go off. My brother fell and I got shots on the back of my head, three shots on my back, one on my right hand and one on my left thigh. I staggered. I was bleeding. I started to run, west.

10

The gun accused No. 1 had was a single barrel, 12 bore gun, resembling Exhibit "G".

The spent cartridge which accused No. 1 took from the gun was of a reddish colour and as was the one he took from his pocket - they resemble Exhibits "F.1" and "F.2".

While I was running I met Henry Bradshaw on the western dam of Carlton Hall about 100 rods from where I started to run.

20

I continued running on the dam on the west of Carlton Hall; when I reached about 10 rods from the Public Road and about 20 rods from Farinha's garage, I met Henry Bacchus for the second time. I went with Henry Bacchus to Farinha's garage and from there by car to my father's rice mill and from there, with my father to the Police Station at Mahaica and then to Public Hospital, Georgetown where I was treated by a doctor, and sent away. The practice is for the milk to be brought from the cowpen to the roadside where it is measured and delivered to the Government milk lorry.

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Cross-
Examination
by Lloyd
Luckhoo.

Cross-examined by Lloyd Luckhoo:

I am 19 years old. I attended Stanleyville Methodist School (Primary) until the 6th Standard. I was then enrolled as a student at the Guianese School (Secondary) at 47 Robb Street, Bourda, where I spent two years and took my Senior Cambridge Examination, but was not successful. I remained in the school until January, 1953.

40

I started managing the factory (Rice) in January 1953, and saw to it that proper books were kept relating to employees.

I am not conscious of the fact that the evidence I have given here differs materially from what I said at the Preliminary Enquiry. I am not conscious of any variation. My evidence was read over to me and I was asked to make any corrections but there was no need to do so and I signed. I have not seen the evidence of any other witness in this Court or at Preliminary Enquiry nor have I been told what any witness has said here or at Preliminary Enquiry. The name of the factory book-keeper is Indadj Bacchus. I inspect the books. I also keep books relating to wages.

10

I was served with a notice to produce books relating to wages and employment of Henry Bradshaw during September, October and November, 1953. I did not search for any because I do not know of any such books. I have not spoken to Indadj Bacchus because I know there are no such books (Witness is asked by Court to bring to-morrow all books relating to payment of employees at the factory).

20

Ex. "X" has been written by me. It extends from March to December, 1953, and has been written up "week-endly" as a record of wages paid to Bradshaw, Sookdeo Persaud and Sahadeo Persaud. It would be a full record of Bradshaw's work during that period. I keep this book (Ex. "X") at my home, not at the factory. I copy into this book what is written on the slip of paper which Bradshaw brings to me.

30

Since 19th December, 1953, Bradshaw has not worked for me or my father.

During the week ending 26th September, some nights I slept at the factory and some nights at home; slept more nights at the factory. Usually I sleep 2 or 3 nights at home and 4 or 5 nights at the factory.

40

Do not know whether Bradshaw slept, from 20th to 26th September, at the factory. I cannot remember. Bradshaw was employed on job work at that time - in September 1953, he repaired tractor and combine, the job took 6 - 7 days.

Don't know where Bradshaw slept on Saturday 26th.

I know that, before 26th September, a notice was served concerning damages. I read my father's letters - the amount was about \$70:00. I don't

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No. 15.

Abdool Esuf
Jhuman.
Cross-
examination by
Lloyd Luckhoo -
continued.

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Evidence

No. 15.

Abdool Esuf
Jhuman.
Cross-
Examination
by Lloyd
Luckhoo -
continued.

Ex. "FF"

know about the letter from Ronald Luckhoo for \$700;00. Cannot remember a notice being received about 24th - 26th September, 1953, for \$507;00 damages. (Witness is shown copy of letter). I cannot remember receiving the original of this letter (tendered for identification - marked Ex. "FF".)

Don't know of any other allegations by Subadars of trespass by my father's cattle.

I went on that Sunday (27th) because one calf was sick. 10

On Friday, 25th September, I slept at the factory; my father or mother told me about the impounding of the animals on Saturday 26th - heard it in the afternoon. My father was annoyed. I know of the incident of accused No.5 hitting my mother; my father and mother were annoyed. I know of no plan to go aback and beat the Subadars.

On morning of 27th September, Haniff left before I did. I saw him in his yard; did not speak to him. I knew he had gone aback and I expected I would meet him at the pen. The sick calf was at the second pen - near to the Subadars' pen. 20

The noise which I have referred to which I heard when 20 rods from the Subadars' pen sounded as though it came from Subadars' pen. Batulan was with me. I ran about 20 rods after hearing the noise; my mother came behind me. The fight between Haniff and accused Nos. 1 to 4 was on the Carlton Hall side of the wire between the two dams. Haniff was "holding his own" against the four accused; up to that time I had not seen Bradshaw, Scholes or Harry Persaud. I did not see Harry Persaud at all that morning. 30

I slipped and fell on top of accused No.1 on the Carlton Hall side of the wire between the dams; all the fighting I saw was on the Carlton Hall side of the wire. I slipped on cow dung when I fell on top of accused No.1. I did not see Batulan fall.

I did not have a chance to fight Bengal (accused No.1) did not give him one blow; did not see Batulan kick accused No.1 nor Bradshaw choke accused No. 1. 40

I cannot remember saying as at "A" on p.47 of depositions.

Did not say as at "B" on p. 47 of depositions nor as at "C" on same page.

I cannot remember telling the Magistrate about my slipping and getting on top of Haniff or about my mother being in a fight with accused No. 1 or about any fight.

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Adjourned at 11.30 a.m. to 1.00 p.m.

"Not conscious" of having told the Magistrate as at "D" on p.47 of depositions.

Abdool Esuf
Jhuman.
Cross-
Examination by
Lloyd Luckhoo
- continued.

Don't remember saying as at "A" on p.50 of depositions.

10 Did not see my mother with a knife at the cowpen nor Haniff Jhuman with a revolver. I know what a revolver looks like.

20 I first saw Cleveland James when we were standing at the place where the gun went off. At that time Bacchus, Bibi Kariman, Bradshaw, Batulan, Haniff, Cleveland James and I were at that spot. When I first saw Cleveland James in our company; the Subadars were about 30 rods away. The spot at which the gun was fired was about 280 rods north from where I had slipped and got on top of accused No. 1; it was from that former spot that Cleveland James and Bradshaw crossed when accused No. 1 had almost reached the spot where the gun was fired - 8 - 10 rods away. Bradshaw came the 280 rods with us.

Can't remember saying as at "E" on p. 47 of depositions, or as at "F" on same page.

I did not say to the Magistrate as at "B" on p.50 of depositions.

30 When I first saw the Subadars coming south Henry Bacchus and Bibi Kariman were in our company, so was Bradshaw.

I cannot remember saying to the Magistrate as at "A" on p.51 of depositions, or as at "B" on same page, or as at "C" on same page.

What I am saying now is the true story.

Your suggestion that when the Subadars were coming up only my mother, Haniff and I were together, is wrong.

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No. 15.

Abdool Esuf
Jhuman.
Cross-
Examination by
Lloyd Luckhoo
- continued.

Henry Bacchus came about 10 rods ahead of Bibi Kariman; he was walking fast. Bibi Kariman was walking. Both Bacchus and Bibi Kariman spoke to Haniff.

Batulan did not say to Haniff, "shoot the bitch, what you frighten for, me chop Frenchman". Haniff did not say, "no mother's cunt going to milk no cow today". We were not daring Karamat (accused No.1) and others to pass and go to where the calves were tied. Haniff did not take a revolver from his pocket. It is not correct that accused No.1 fired one shot which got Batulan and Haniff and some of the shots got me also. 10

The second shot was not fired in the air.

When the first shot was fired accused No. 1 was 25 feet from Batulan who was facing north-east; Haniff facing same direction and he was on the left of and close to Batulan. I was about one foot behind Haniff and facing north-east. Bibi Kariman was about 2 feet south-west of Batulan and about 5 feet from me. Bacchus was to the right of and close to Bibi Kariman both of them were facing east. I was not running away the time of the first shot. 20

At the time the first shot was fired accused No.1 was about 25 feet away (witness indicates position, i.e. just this side of the north-east corner of the north door in the east of this Court room).

I got all my injuries when my back was to Karamat (accused No.1) while running away I looked back once and then saw when accused No.1 aimed the gun - when I heard the second shot I was facing west. 30

I did not say to the Magistrate as at "A" on p.54 of depositions.

I did say as at "A" on p.49 of depositions.

I had to run 140 - 150 rods north along the west dam of Carlton Hall to get to the public road.

Bacchus asked me, near the public road whether I got shots too and I told him "Yes buddy, I got shots too". I did not ask him about Batulan or Haniff. We waited 5 or 10 minutes for Farinha to get his car. We spent about 5 minutes at the factory and then to the Station. 40

Cross-examined by Lionel Luckhoo:

Income Tax is paid on the earnings of the factory and it is necessary to know earnings and expenses.

Exhibits "X" and "Y" are the only two books which I write up myself; they are never handed to the book-keeper nor does he know of their existence. The book-keeper has a Wages book and I shall bring it to-morrow.

10 I have never seen the tractor or the combine at the factory - the tractor was repaired in the yard at Carlton Hall, not at the factory.

I do not get receipts for payments for wages.

Only one bed at the factory, in the office.

I have never known Bradshaw sleep at Carlton Hall but he may have done so.

20 On Friday, 25th September, I slept at the factory and occupied the bed. On Saturday, 26th my father came to the factory about 10.00 a.m., alone. Either my father or my mother told me about the incident on Saturday morning with the cattle. They told me no person other than my father was on the road at the time. We have not got a quaco stick in our home - never seen one. Before I left the factory on the Saturday evening my father told me to go in the backdam on the following morning; the last time I had been in the backdam was the preceding Wednesday.

30 I do not know much about cows - went from school to factory; cowminders and other members of the family know more about cattle than I do. On the Wednesday my father had given me a bottle of "AA" for the calf and I had it with me on that Sunday morning but did not reach the pen on that day. Neither Batulan nor I stopped at Haniff's house nor called out on the Sunday morning.

40 The only fight I know of at the back was between Haniff and accused Nos.1 to 4. Batulan only grabbed accused No.1, it was not a fight, no blows exchanged.

It is not true to say that all that took place was that one of the accused pushed Haniff (refers to "C" on p.47 of depositions).

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Abdool Esuf
Jhuman.
Cross-
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Lionel Luckhoo
Q.C.

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The fight between Haniff and accused Nos. 1 to 4 lasted 5 or 6 minutes. I only did anything when my mother grabbed accused No. 1. I was standing up watching for 5 or 6 minutes; in my view Haniff was even getting the better of it.

I cannot remember if the cows were tied up in Subadar's pen.

Abdool Esuf
Jhuman.
Cross-
Examination by
Lionel Luckhoo
Q.C. -
continued.

After the fight the four accused went straight on to the Broomhall dam and went away.

If calves are left tied up they will be attacked and killed by the bigger animals and therefore must be let loose.

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I did not expect to see Bradshaw aback that morning. I call him "Mr. Bradshaw" not "Uncle Bradsh".

Two of the accused said "let's go for it", but I cannot say which two.

When accused No. 1 came up with the gun if I had thought that he was going to use it I would have run away. I told my mother and Haniff to run before the first shot because I feared trouble. I did not then turn and run.

20

When I started to run I did not see either Bradshaw or Scholes.

I met Bradshaw about 140 rods from the public road on the west dam of Carlton hall. I came on to the public road ahead of him. I told him I had got shots.

Accused No. 5 was not 3 - 4 rods behind accused No. 1 - he was 3 - 4 feet behind him. Accused No. 2 was not about 9 or 10 rods behind accused No. 1; he was about one foot behind accused No. 5.

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Ex. "GG" (Counsel asks that deposition of witness be admitted and marked Ex. "GG".)

Adjourned at 3.30 p.m. to 9.00 a.m. tomorrow 26th August, 1954.

THURSDAY 26th AUGUST, 1954.

Cross-examined by E.V. Luckhoo:

I have found no book kept by my book-keeper which is foolscap size and with hard cover. I did not go home last night and so could not search for the books myself; my father went home. The Wages books are exercise books - not hard covered.

Exhibit "Y" does not appear to have been freshly made up.

10 Bradshaw did not work at the factory on Saturday, 26th September, I know that he worked at Carlton Hall on that date.

I worked the whole day at the factory on Saturday 26th from 7.00 a.m. to 4.00 p.m. Henry Bacchus came to the factory on Saturday, 26th, during the morning and left about 4.00 p.m.

I went to Carlton Hall about 4.30 - 5.00 p.m. on 26th; did not meet Bradshaw at Carlton Hall then.

20 From daylight on Saturday 26th I did not see Bradshaw until aback on Sunday, 27th.

I believe I saw Bradshaw at the factory on Friday 25th; did not see him at Carlton Hall on that day.

30 On Saturday 26th, at about 10.00 p.m. I was at home at Carlton Hall; I did not hear nor see Haniff's lorry that night. I cannot remember seeing Jeremiah Innis that Saturday night. I saw Cleveland James that night at about 5.30 p.m. I am not certain whether he went to the Station that night - going to the Station. I was sitting in front with the driver; two persons were in the back seat one of whom was my mother - the other may have been Cleveland James. That "other person" went back with us to Carlton Hall.

40 Kaymoo, Dukhoo and Ball were milking at my father's first pen on that Sunday morning (27th). I stopped and spoke to them. The sick calf was at the second pen; there were 20 - 25 calves in the second pen.

The land immediately to the west of the wire

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Jhuman.
Cross-
Examination
by E. V.
Luckhoo.

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Evidence

No. 15.

Abdool Esuf
Jhuman.
Cross-
Examination
by E. V.
Luckhoo -
continued.

between the two dams is, for a width of about one rod, company land and that adjoins the Carlton Hall dam.

(Witness demonstrates how he was holding accused No.1 when he (witness) slipped and got on top of accused No.1).

Immediately after Haniff told me to run, I ran.

As regards "C" on p.50 of depositions, the distance is, not 75 rods, but 140 rods.

I have seen Haniff with the barrel of a shot-gun; never seen him with a revolver or with a complete gun. Don't know if he was charged with discharging a firearm at Coffin. I heard so after giving my evidence at Preliminary Enquiry in this case. 10

I was charged for possessing a revolver - colour of the barrel of Ex. "G" - it was about 10" long; it was not loaded when I was found with it nor did I have ammunition at the time. The Police took the revolver from me on the public road at Mahaica. I had three shot-gun cartridges on me. I have never seen Haniff use my father's gun. I had taken the three cartridges from my home. Haniff had the barrel and I had the stock and the apron of the gun. It was at that time that the Police found the revolver in my possession. I was cycling. About 2½ miles from Mahaica a fellow gave me the revolver to give to someone; don't know the fellow's name but had seen him before but never spoken to him - my brother was not with me at the time. I do not know the name of the man to whom I was to give the revolver; he mentioned the name but I did not know the man. The man asked me to give the parcel (containing the revolver) to my father the man to whom he was sending it would call for it. 20 30

Ex. "HH"

This is one of the Wages books which I brought this morning (admitted and marked Ex. "HH"). The item for week ending 26th September, 1953, under "H. Bacchus" is the Henry Bacchus now in Court. It shows that he worked for 3 days - Tuesday, Wednesday and Friday; he did not work at the factory on Saturday. 40

Accused No.3 was about 9 feet behind accused No.1 when the first shot was fired and accused No.4 was by the side of accused No.3. Accused No.4 was not about 20 rods from accused No.1 when first shot fired.

No re-examination.

No question by jury.

By Lloyd Luckhoo (with leave):

Subadar was there - he had not gone towards his home.

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No. 15.

Abdool Esuf
Jhuman.
Cross-
Examination by
Lloyd Luckhoo
(with leave).

No. 16.

EVIDENCE OF ALFRED KATRIAH

No. 16.

Alfred Katriah.
Examination.

10 I am a rice farmer. I am a Rural Constable, have been one for about four years. Live at Fairfield, East Coast Demerara which is about 100 rods east of where the Carlton Hall and Broomhall dams join the public road; have to pass Subadar's house to get to my house when going east. I know the six accused for about six years.

20 Know Mohamed Jhuman and his sons for about 5 years. On Sunday, 27th September, 1953, I met accused No.6 about 50 rods from the public road on the Fairfield dam which is about 25 rods west of my house; before that he had come to my house about 6.00 a.m. and asked me to lend him my boat and I agreed; he went away. Accused No. 4's wife came to my house and spoke to me and I went to accused No.6 on the Fairfield dam; he said he wanted me to go down aback to where his pen is. I asked him why he wanted me to go and he said on "that dam" (Broomhall dam by Carlton Hall dam) that Haniff and 'nuff' people walk and go down the dam". I asked him where these people were going and he said he doesn't know if they are going to beat his picknie at the pen. I asked him (accused No. 6) what they are going to beat his children for and he said, "last night they been got fight a road". I asked him if he was sure they were going to beat his picknie - he said he 'nah know'. I told him Haniff and others must be going and milk their cows - he said he 'nah know'. I said to him "study you

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In the
Supreme Court

Prosecution
Evidence

No. 16.

Alfred Katriah.
Examination -
continued.

head good, if you still want me to go"; he replied; "yes man, you dey constable, if any fight fo make they go see you and they go frighten" I said "all right" and told him I was already ready to go and shoot pigeons at De Kenderen backdam. I went home; took off my pyjamas, put on my clothes, took up my gun, a single-barrel, 12 bore; came on to the Fairfield dam where accused No.6 was. There is a middle walk dam about 50 rods west of the Fairfield dam. I asked accused No.6 which side we must walk to get to his pen and I told him which-ever side he want to walk, let us walk. I suggested we walk south on the Fairfield dam and then take the cross dam to "catch his pen" he said "all right" and we walked on that dam going south; the cross dam was about one mile from where we were, across the Railway line. When we reached the Railway line accused Mo.6 suggested we walk along the Railway line to Broomhall dam. I told him we had already made arrangements to walk straight on - he said "all right, let's go". When we reached about 100 rods from the Railway line accused No. 6 said to me "Man, me mind no right, let we go across and catch me dam by Carlton Hall way."

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Adjourned at 11.30 a.m. to 1.15 p.m.

We then turned and walked west through a coconut field, on a reef. After going about 75 rods west I heard a noise - it was a voice, can't tell if it was a man's or woman's voice - the sound of the voice came from south of where we were. I told Subadar I had heard the noise, let's walk quickly - we did so. When we reached about 6 rods from the Broomhall side line dam I saw Accused Nos.4,3, 1 and 2 running on the Broomhall dam in a northerly direction. Accused No.1 was in front - they were about 6 feet apart. I shouted out "what's wrong"; the Railway line was to the north of them. Accused No.4 answered Haniff and Bradshaw proper beat them up at their pen and they going for gun to shoot them. I told them no, "you can't do that". All could hear me. I told them let us go to Mahaica, get a car and report the matter to the Police. One of the four said, "nah worry with the man" and they started running in same direction. Accused No.6 and I crossed the trench and got on to Broomhall dam and we continued walking in the same direction they had run, north; the Railway line was then about 100 rods ahead of us. When accused No. 6 and I got about 2 rods from the Railway line, I saw someone coming with a gun going

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west on the public road. I crossed the Railway line and after I had walked on the dam for about 15 rods I saw accused No.1 coming with a gun towards me, on the dam - single barrel gun like Ex. "G". Accused Nos. 2, 4 and 5 were behind No.1, accused No.5 had a stick. Those four accused were trotting accused No. 5 was a little way behind them. I did not see accused No. 3 at that time. When accused No.6 and I got to the Railway line accused No.6 remained there.

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I said to accused No.1, "Man, where you going with this gun"; accused No.1 said he is going to shoot Haniff and Bradshaw rass - he spokeloud. I told him he could not pass with that gun and I stopped all of them on the dam. I had my gun with me. Accused No.1 tried to pass me and I tried to "make a catch" on his gun but I did not manage it and he passed me; the four of them (accused Nos. 1, 2, 4 and 5) passed me and continued running. I continued begging them saying, "this is a wrong thing al you do, study you head good". I was near to them. I continued behind them until I crossed over the Railway line and for about 10 rods on the other side of the line. I tried to make a grabble at the gun of accused No.1 - accused No.2 was behind me and said to me "nah trouble he man". Accused No.1 swung round and the barrel of the gun got right up to me and I held it. Accused No.1 held the stock and jerked the gun from me; he pointed the barrel at me and said, "Man, nah humbug hear nah he looked to me "serious"; he swung around and started to run again in same direction, south on Broomhall dam. I told them I was going to report them, that they go shoot people. Accused No.1 said that he do what he like that nobody got no business with he. I looked straight ahead and saw a crowd of people on Carlton Hall dam. I could not recognise them, they were about 50 rods away (from witness stand to house on east of Court with "spire" on roof). When I got to the Railway line, while following four of the accused, I saw accused No. 6 on the Railway line; he followed the four accused. When the Subadars were 6 or 8 rods from me I shouted at the top of my voice - the people in the crowd could have heard me, "al you run, Bengal go ah shoot ah you". When I shouted I notice Bradshaw and two others cross the trench into Carlton Hall rice field. I turned back and then I heard a voice behind me. I turned to go towards the road - before I reached the Railway line I heard a "load" (discharge of gun) behind me, to the south. I jumped into the trench on the east of Broomhall dam

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In the
Supreme Court

Prosecution
Evidence

No. 16.

Alfred Katriah.
Examination -
continued.

In the
Supreme Court

Prosecution
Evidence

No. 16.

Alfred Katriah.
Examination -
continued.

as I got afraid. Before I crossed the trench to go east I heard "a next" report of a gun from the same direction. I continued across the rice field. I did not fire my gun; I went home, changed my wet clothes, quickly and went on my bicycle to the Postal Agency at De Kenderen which is about 600 rods east of where I live. I made a telephone call to Asst. Supt. Fitt. I paid for the call, 18¢. While at the Agency, accused Nos. 3 and 5 came there and accused No. 3 spoke to Mr. Nelson, who is in charge of the Agency. Accused No. 3 told Mr. Nelson, "let me ring up Mr. Luckhoo". Accused No. 5 could hear what accused No. 3 told Nelson. I went home.

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Cross-
Examination
by Lloyd
Luckhoo.

Cross-examined by Lloyd Luckhoo:

Accused No. 1 has impounded my animals on several occasions during the past few years. I was pleased. If I said at Preliminary Enquiry that accused No. 1 impounded my bull on Friday, 25th September, 1953, it is correct. I met accused No. 1 in his rice field on Saturday, 26th September, 1953, and he told me my bull was damaging his rice. I doubted it. I have two bulls. On Saturday, 26th, I was driving one of my bulls behind the house of accused No. 1 on the Savannah, not rice field, on Broomhall land. It was late in the night, cannot say if it was before midnight. Accused No. 1 shone a torch and said, "Man, where you go with this bull". I told him the bull had pulled out the stick and got away; he said, "the bull must be go in the rice field and eat me rice". I said, "No, it just get away". Accused No. 1 did not say, "this bull must go to pound". We had a "slight little argument". I did take the stick to lick accused No. 1. The stick was about 4 feet long and the rope 4 - 5 feet.

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I have a nephew called Butts and accused No. 1 has often impounded Butts' sheep.

In September, 1953, Jhuman had rice planted on Carlton Hall, near the Railway line.

My house is 50 rods south along the Fairfield west side line dam and 25 rods to the east of it.

40

Accused No. 6 said, "Nuff people ah go with Haniff", he seemed worried.

I agree I told the Magistrate as at "A" on p. 88 of depositions.

I had five cartridges with me. I have a "side bag" but did not have it with me; don't always take it; cartridges in shirt pocket.

In the
Supreme Court

When accused No.6 and I turned off to the west into the coconut field we were about 225 rods from the south cross dam which would have brought us out direct by the pen.

Prosecution
Evidence

No. 16.

Accused No.1 was not about 50 rods ahead of the other accused.

Alfred Katriah.
Cross-
Examination by
Lloyd Luckhoo
- continued.

10 I did not run ahead of accused No.6 when I heard the noise.

When we were walking west accused No.6 was 10 - 12 rods in front of me. I walked steady to the Railway line. When I was 2 rods south of the Railway line I saw a man with a gun about 2 rods east of the junction of the dam and the public road. When I was 15 rods north of the railway line accused No.1 was about 10 rods north of me.

20 If I had not seen accused No.1 with the gun on the dam I would have gone home.

I was not south of the Railway line when I saw accused No.1 with the gun. I am sure accused No. 1 came along the Broomhall west side line dam and not the middle walk dam.

Did not hear accused No.1 ask the other accused if they had loosed the "cow calves" nor accused No.2 tell accused No.1 that they did not get a chance. I did not tell accused No.1 to go ahead and loose the calves they "can't do him nothing".

30 The point at which I jumped into the trench was about 8 rods south of the railway line. I then walked across the rice field for about 75 rods - it was "big rice" some as high as my shoulder. I walked across the middle walk trench on my way home; it is 2 rods wide; the water reached up to my waist. I have walked across that trench many times - it is not deeper than my height - did not have to swim across.

40 I held the barrel of the gun of accused No. 1 with my left hand.

There were about 12 persons in the crowd that I saw fifty rods away.

In the
Supreme Court

Prosecution
Evidence

No. 16.

The spot where I saw the crowd was about half way between the Railway line and the spot at which accused No.6 and I had come onto the dam.

Adjourned at 3.30 p.m. to 9.00 a.m. tomorrow (27.8.54).

Alfred Katriah. FRIDAY, 27th AUGUST, 1954.

Cross-

Examination by
Lloyd Luckhoo
- continued.

(Lionel Luckhoo states that he is holding the papers of E.V. Luckhoo; he intimates that at the close of the case for the Crown, he will ask that jury visit the locus in quo).

10

Cross-

Examination
by Lionel
Luckhoo Q.C.

Cross-examined by Lionel Luckhoo:

The dam is a clear dam. Nobody passed accused No.6 and me when we were going north; we walked, not ran, to the Railway line from the point at which we came onto the dam.

I can give no reason why I did not turn south on the dam to Subadar's pen.

Accused No. 2 was near to accused No.1, about 6 feet, when the latter was 10 rods north of me. No.4 accused was 3 feet behind No.2; No. 5 was about 2 rods behind No. 4.

20

After accused No.1 and other accused had passed me going south I walked behind them as far as the Railway line and then ran for about 10 rods and caught up with accused No.1.

I have been to Jhuman's house several times; I am not very friendly with them.

Two of my daughters are Doris and Mena, 18 and 16 years respectively. Accused No. 5 never made a report to me about these two stealing coconuts. I believe accused No. 5 came once to my house but can't remember when.

30

Doris and Mena go to Subadar's coconut walk to collect shells which they put in a bag: never heard about any story of them stealing coconuts; they were never stopped from collecting shells.

I have a cake shop on Broomhall - Fairfield dam.

Know "Da Da" - Bhagwandin's son; no complaint in his presence by accused No.5 about my daughters stealing coconuts.

I warned my daughters several times they must collect shells only and not coconuts; can't remember if one warning was in September, 1953.

I repair milk cans for both Jhuman and Subadar.

Only one year did I cut rice for Jhuman. I am not on visiting terms with the Jhumans.

10 I drink beer but not rum. Never had beer at Jhuman's house.

I did not arrest accused No.1 when I saw him with the gun; nobody was there to call on for assistance. If I shouted hard from the Railway line my voice could be heard on the public road.

When I turned to go north (after holding the gun of accused No.1) I did not believe there would be any shooting incident.

20 Don't know of anyone with an unlicensed gun; I was charged for being late in taking out my licence.

I can swim a little; don't know if I get out of my depth if I would be able to save myself.

Cross-examined by E.V. Luckhoo:

Sometimes I drive my bull across the trench, south of the Railway line. I cross it when throwing my cast net.

30 Accused No.4 did tell me they were going for a gun. Know the wife of accused No. 3; she made no report to me that the Jhumans were going to beat "the boys".

Did not know anybody had been hurt when I went to telephone.

On the way to telephone I met several persons - spoke to Miss Blair - knew several of those persons.

By Lloyd Luckhoo (through the Court)

I did not see accused No.6 running or trotting at any time on that day.

In the
Supreme Court

Prosecution
Evidence

No. 16.

Alfred Katriah.
Cross-
Examination by
Lionel
Luckhoo Q.C. -
continued.

Cross-
Examination by
E.V. Luckhoo.

In the
Supreme Court

Re-examination:

Prosecution
Evidence

Been to school up to Fourth Standard - can write name and read a little. At page 9 of Ex. "R" I do not see my signature in the column headed "Signature of Claimant".

No. 16.

I do not know if Bradshaw or either of the two persons who I saw crossing the trench, came back on the scene.

Alfred Katriah.
Re-Examination.

By Lionel Luckhoo (through the Court):

86

My brand is WM. I know Roopan (also called Lindebergh) - perhaps he took an animal out of pound for me. I can't remember.

10

By Jury:

If my cast net "fastens" at the bottom of the trench I have to go in and clear it.

No. 17.

No. 17.

Cleveland James.
Examination.

EVIDENCE OF CLEVELAND JAMES

I am also called Scholes. I am a cowminder working for Mohamed Jhuman. I had worked with him for 10 - 11 months up to 27th September, 1953, and lived in his house at Carlton Hall. Knew Batulan and Haniff and know Baby Boy, Henry Bacchus and Bibi Kariman. I knew the Subadars before the Jhumans - I have known the Subadars (except accused No.5) for many years; got to know accused No. 5 last year.

20

On 27th September, 1953, I went aback to milk cows about 600 rods from Jhuman's house; left the house about 5.00 a.m. and, after driving cows to the pen, reached pen at 6.00 a.m. - that is, the last pen, farthest aback.

30

When I started to milk I heard a noise to the east; Harry Persaud was also milking, we had left the house together and I was carrying a 6 gallon

can and milk bucket; he had a 3 gallon can and milk bucket; he had no gun or stick nor had I. The noise I heard was people quarrelling - I left the milking and went to the place where I heard the noise on Carlton Hall dam; there I met Batulan, Bradshaw, Haniff and Baby Boy. I saw the Subadars over at their dam (that is, accused Nos. 1, 2, 3, and 4) about 3 or 4 rods from the Jhumans. I heard accused No.3 say, "man me been a tell al you foo bring the cutlass this morning, let we go for the gun"; accused No.4 also repeated the same words. Accused Nos. 1 to 4 ran away to the north on the Broomhall dam.

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20

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50

I spoke to Bradshaw and all of us started to walk north on the Carlton Hall dam. After we had walked 400 rods from the last pen I saw Bibi Kariman and Henry Bacchus coming towards us; she was about 10 rods ahead of Bacchus. Bibi Kariman said something and because of what she said Bradshaw and I crossed the trench on the west side of the dam. I went behind a coconut tree with gooseberry bushes around; it was adjoining the trench.

I saw accused Nos. 1, 2, 3, 4, 5 and 6 coming (accused No.1 was in front) on the Broomhall dam; when they were about 40 rods away I saw Alfred Katriah; he held the gun that Bengal (accused No. 1) had and they had scrambling. Bengal pulled away the gun from Katriah and they all continued south on the dam; they came about 3 to 4 rods from the Jhumans. Subadars on Broomhall dam and Jhumans on Carlton Hall dam. Accused No. 1 raised the gun and said, "Haniff me going shoot you"; Batulan was to the right of Haniff and she said, "don't shoot my son, shoot me". Accused No.5 then came nearer to accused No.1 and said, "if you can't shoot give me the gun". Accused No.6 then said, "shoot am rass, shoot am rass, money dey me go hire Luckhoo". Accused No.1 then raised the gun and pulled the trigger and Batulan fell on the ground; Haniff was bleeding from his forehead. Haniff turned to Baby Boy and said, "run Buddy". Baby Boy then ran into the trench. Bengal then broke the gun, took out the shell and put in another cartridge which he had taken from his pocket; he aimed at Haniff's chest, pulled the trigger and fired, "the next load" and Haniff fell. Accused Nos. 2, 3 and 4 then said, "put one load pon the black man dem"; I got afraid and I started to run across the pasture.

Accused No.1 was pointing the gun at Haniff's chest when he fired the second shot - not pointing gun in the air.

In the
Supreme Court

Prosecution
Evidence

No. 17.

Cleveland James
Examination -
continued.

In the
Supreme Court

When the second shot was fired Baby Boy was in the trench. The trench had 4 - 5 inches of water at that time.

Prosecution
Evidence

When the shooting took place the Subadars were near each other.

No. 17.

Adjourned at 11.22 a.m. to 1.00 p.m.

Cleveland James.
Examination -
continued.

Cross-examined by Lloyd Luckhoo:

Cross-
Examination by
Lloyd Luckhoo.

I am about 21 - 22 years old. Cannot remember up to what standard I reached in school.

Jhuman was a good employer; I never saw a gun in Jhuman's house. I accompanied Jhuman shooting aback, pigeons; never had a shot with the gun. Never been at the top flat of Jhuman's house. 10

Harry Persaud used to sleep with me at the "bottom flat" of Jhuman's house.

Harry Persaud and I left the house together on Sunday morning (27th) he did not have a gun.

I heard about the impounding on Saturday morning.

On the Saturday night (26th) I had been to buy rations and on my way accused No.5 'rushed to knock me". Batulan was not there at the time; there was an incident between Batulan and accused No.5 on the Saturday night. I went to the Police Station that night, in Farinha's car with Batulan, the driver and Esuf Jhuman (Baby Boy) - driver was Farinha sons; stopped at Rice Factory at Belmonte. Baby Boy told his father what had happened and he (Baby Boy) did not come back but I believe Mohamed Jhuman came in the car. We went to Station; reached about 7.30 p.m. I did not see Haniff at the Station or up to the time I reached back home. 20 30

Haniff's truck usually stays in his yard. I did not see the truck that night; nor did I see Haniff or his wife. I call Bradshaw "Big Brads". I had seen Bradshaw at Carlton Hall on the Friday (25th) repairing the combine and tractor in the yard; he started to repair it in the said week.

I know of no arrangement to beat the Subadars on the Sunday morning. 40

The distance from the road to the last pen is about 500 rods.

Only Harry Persaud and I were milking when I heard the noise.

Before I heard the noise I had seen accused Nos. 1 to 4 milking at their pen. From where I was in my pen I could see accused Nos. 1 to 4 in their pen.

10 I had not seen Bradshaw, Batulan, Haniff or Baby Boy before I heard the noise. I had expected to see Batulan and Baby Boy or Mohamed Jhuman on that morning.

After hearing the noise I finished milking the cow I was milking before going - the noise still continued. (Witness is timed as he estimates the time between hearing the noise and the time he stopped milking and this is 3 mins. 15 secs.)

20 When I got up from milking I could, from where I was, see the Jhumans and the Subadars, about 25 rods away. I left to see what was happening. I spoke to Persaud and he replied. I did not tell Persaud that I had seen the Jhumans and I did not ask him to come with me.

I saw no fight between any of the Subadars and Jhumans this is the first time I am hearing there was a fight that morning. Did not see any of the Jhumans or Bradshaw cross over to the Subadar dam.

I did not take part in any fight; did not come to grips with accused No. 2.

30 Did not see Persaud with a gun. Did not chase any of the accused that morning.

Neither Bradshaw nor the Jhumans told me there had been a fight. Don't know why the four accused ran away. Bradshaw was six feet from me when we both crossed the trench.

Bradshaw and I (and Batulan, Haniff and Baby Boy) had walked north about 400 rods before Bradshaw and I went into the trench; we went into the trench about 75 rods south of the Railway line.

40 I never handle a gun "since I born".

I was at the point where I crossed the trench when I saw Dacchus and Bibi Kariman; she was about 25 rods north of me.

In the
Supreme Court

Prosecution
Evidence

No. 17.

Cleveland James.
Cross-
Examination by
Lloyd Luckhoo -
continued.

In the
Supreme Court

Prosecution
Evidence

No. 17.

Cleveland James.
Cross-
Examination by
Lloyd Luckhoo -
continued.

At the time I crossed the trench I could see the six accused. First saw the six accused coming when I was at the point at which I crossed the trench, they were all then about 75 rods away on the Railway line.

It was because of what Bibi Kariman said to the Jhumans that caused me to cross the trench.

What Bibi Kariman said to the Jhumans was shouted by her when she was 25 rods away. I had not seen Katriah until after I crossed the trench; saw him while I was behind the coconut tree; saw Katriah and accused No.1 scrambling for the gun 40 rods away; cannot remember seeing Katriah with a gun.

10

(Witness demonstrates how Katriah "scrambled" the gun accused No.1 had). I saw only one gun.

There were gooseberry bushes on two sides of the coconut tree.

The Subadars "ran and walked" up to the Jhumans.

20

I could have told the Magistrate as at "A" on p. 76.

When the Subadars came up to the Jhumans the latter were still at the same spot as when I crossed the trench.

Did say as at "A" on p.75 of depositions.

I had already crossed the trench when I first saw the six accused, on the Railway line.

Cannot remember saying as at "B" on p. 76 of depositions; it would not be true if I said so. I did not tell the Magistrate as at "B" on p. 76 of depositions.

30

Can't remember telling the Magistrate as at "D" on p.76 of depositions; if I did say so it would not be true.

From the time Bradshaw crossed the trench I did not see him again.

When I started running from the tree Baby Boy was in the trench - I next saw him at High Dam, in Farinha's yard. Two or three minutes after I got to Farinha's Baby Boy came up.

40

About 4 to 5 minutes elapsed between the two shots.

When the first shot was fired Batulan was facing north-east with Haniff on her left (on west of her) and close to her (about one foot) and Baby Boy was on Haniff's left and close to him, all facing north-east. Bengal (accused No.1) was 3 to 4 rods away when first shot fired. Bibi Kariman and Bacchus were south of Batulan but I can't say how far away or how close they were to each other.

10

Cannot remember saying as at "D" on p. 76 of depositions.

The coconut tree was 3 to 4 rods north-west of Batulan.

I did not tell the Magistrate as at "A" on p. 81 of depositions.

At Preliminary Enquiry I said what I have said in this Court and not as at "A" on p. 73 of depositions.

20

I did not use the words quoted at p.80 of depositions.

Bengal took the second cartridge from his trousers pocket. I did not say as at "B" on p. 81 of depositions (shirt pocket). I showed at Preliminary Enquiry where accused No. 1 took the cartridge from.

30

Two weeks before 27th September Jhuman and I saw Jhuman's cows in Subadar's rice field. Accused Nos. 1 to 4 were there also accused No. 5. The Subadar said to Jhuman "your cows are in our rice field, we have tried to drive them out and they won't come out". Jhuman said that whatever damage the cows has done he will pay.

Adjourned at 3.25 p.m. to 9.00 a.m. on Monday 30th instant.

MONDAY 30th AUGUST, 1954.

Cross-examination by Lloyd Luckhoo continued.

(Deposition of witness put in - Ex. "FF").

In the
Supreme Court

Prosecution
Evidence

No. 17.

Cleveland James.
Cross-
Examination by
Lloyd Luckhoo -
continued.

Ex. "FF"

In the
Supreme Court

Cross-examined by Lionel Luckhoo:

Prosecution
Evidence.

No. 17.

Friday gone was first time I ever held a gun; never asked Jhuman to let me have a shot. I don't know how to "break" a gun or how to aim. (Witness is asked to demonstrate how he would hold the gun when using it to shoot).

Cleveland James.
Cross-
Examination by
Lionel Luckhoo
Q.Q.

I do not know Sewar of Broomhall; he was not present when I drove the cows out of Subadar's about two weeks before 27th September.

I did not shoot an alligator which had got entangled in Sewar's fish net. 10

On Saturday, 26th September, I was going out to the shop to buy things for Batulan; the incident happened about 7.00 p.m. on my way from the shop. I had the rations on my head; no story with accused No. 5 before this. Bibi Kariman was there - Henry Bacchus' wife was there. I do not know why accused No. 5 rushed me; he raised the stick to hit me and I rushed him and took it away. Accused No. 1 then took the stick from me and gave it to accused No. 5; I started to run away and then turned back to accused No. 5 and took the stick from him and threw it in the trench. I neither got nor gave any lashes. This was near Subadar's house. I did not tell accused No. 5 as at "A" on p. 79 of depositions. I did not pick up a burnt brick, give him a lash and then run away. I did leave the ration basket behind this; this was after Batulan had been hit. Accused No. 5 went into his yard, got a shovel stick and lashed Batulan and then I ran. Batulan had nothing in her hand when she came up. 'Georgie' towed her (Batulan) on a cycle to where I was. When Batulan went to put her hand on the box accused No. 5 hit her with the stick and she left the box and went to the Station. Batulan did not hit accused and he did not then slap her. I gave a statement at the Station that night; can't say how long I stayed at the Station; went to Station in car with Batulan. 20 30 40

On the Sunday morning (27th) I tied the calf before starting to milk. I milked about three cows that morning - about 11 - 12 pints of milk.

I had not finished all the milking. I got up and went before Harry Persaud; he came with us when we were walking north on the dam. I saw no

fighting between Jhumans and Subadars. The reason why I did not go back to the pen to resume milking was because I wanted to show the Jhumans the cattle on the estate.

Probably I left the calf tied up; did not go back for the milk or the cans.

I was in charge of about 35 head of calves - I count them every day.

10 Baby Boy sleeps in the upper flat of Jhuman's house. I knew he was going aback that morning - did not see him before I left. I call Jhuman "Uncle" - so does everyone.

When I see a gun I am afraid; as soon as I saw accused No.1 with gun I got afraid.

Did not say as at "C" on p.81 of depositions.

Cannot remember seeing Henry Bacchus at Farinha's yard. I did not go in the car with Baby Boy, from Farinha.

Cross-examined by E.V. Luckhoo:

20 I do not know when the Subadars started to work Broomhall Estate.

In 1945 I was at Bartica with my Aunt working. Spent one month in Bartica Hospital in 1946 and then back to work at Bartica and then in 1947 went to work at Mahaicony and then worked in pin seine - worked in the Lamaha Conservancy from 1950 to 1952 under Azeez Hussain as a labourer.

When I asked Jhuman for a job in 1952 was first time I met him.

30 Know Jeremiah Innis for a number of years; he was working at "Burma"; he did not introduce me to Jhuman.

Accused Nos. 3 and 4 used the words at "B" on p.73 they spoke separately; nobody else used those words. I cannot remember if I told the Magistrate that it was accused Nos. 2 and 3 who used those words. I did tell the Magistrate it was accused Nos. 3 and 4 (refers to p.73). I did not say as at "B" on p.75 of depositions.

In the
Supreme Court

Prosecution
Evidence

No. 17.

Cleveland James.
Cross-
Examination by
Lionel Luckhoo
Q.C. -continued

Cross-
Examination by
E.V. Luckhoo.

In the
Supreme Court

Prosecution
Evidence

No. 17.

Cleveland James.
Cross-
Examination by
E.V. Luckhoo -
continued.

I did not see a lorry parked outside the Station yard on the Saturday night (26th). Knew Haniff's lorry. Did not see Haniff for the whole of that Saturday night.

I saw Bradshaw working on the combine at Carlton Hall on Friday, 25th, and on 24th (Thursday).

I did not see Henry Bacchus on Saturday 26th.

I have been to Haniff's house but never eaten there.

I saw accused No. 1 break the gun after the first shot; he then took an empty shell from the gun and threw the shell on the ground and then put in a cartridge in the gun.

10

I did not see Batulan, Haniff, Bradshaw or Baby Boy on the Broomhall dam on Sunday, 27th, nor in Subadar's cowpen. I never went on the Broomhall dam on that Sunday morning nor into Subadar's pen. I never took part in nor saw any fight that Sunday morning. The Carlton Hall dam was wet in places that morning; rain did not fall on that Sunday or on the day before.

20

I saw Henry Bacchus on the dam about 35 rods from where I was and Bibi Kariman was in front of him.

Can't remember if, before Bradshaw and I crossed the trench, he suggested that we should do so. I cannot remember telling Bradshaw that the gun is not good and we can dodge the shots.

Adjourned at 11.30 a.m. to 1.00 p.m.

Re-
examination.

Re-examination:

30

On the Saturday (26th) when I went to Fairfield to get the rations, Jhuman's daughter "Nars" went with me; she was buying the rations for Jhuman. The incident took place after I had bought the ration; the first one I met was accused No. 5 who rushed at me and said, "all you who working with Jhuman play bad man but me going to cool you" - he was then alone, he had a stick. After I took away the stick, accused No. 1 came up on a bicycle and held on to the stick. This took place opposite Subadar's gap. After I had thrown

40

away the stick "Georgie" came "towing" Batulan on a bicycle. Accused No.5 lashed Batulan with the shovel stick; accused No.4 came from his yard on to the road and said, "Boy, ah you bring a gun deh" and he said other words in "coolie" which I did not understand.

In the
Supreme Court

Prosecution
Evidence

No. 17.

Cleveland James.
Re-examination
- continued.

10 (E.V. Luckhoo objects to this evidence as it does not arise out of the cross-examination and Lloyd Luckhoo objects to the evidence regarding what accused No.1 did on this occasion as reference to accused No.1 arose in the cross-examination by Lionel Luckhoo and not by him. Court holds that as this incident is one on which defence appears to be relying for showing the feeling existing between the parties prior to the morning of 27th September, and as reference has been made to it by the defence that the Court gives leave for it to be asked).

20 After accused No.4 said what he did, I ran away. Batulan left walking, we made a report at the Mahaica Police Station between 7.00 and 8.00 p.m.

I made a statement about the Sunday incident on the same day it happened about 10.00 or 11.00 a.m.

By E.V. Luckhoo (with leave):

Cross-
Examination by
E.V. Luckhoo
(with leave)

I have been charged three times by the Police - (1) riding bicycle without bell (2) riding bicycle without brakes and (3) without bell - all at one time, after I came from Bartica.

Never been charged for indecent language.

30 Never been charged for larceny of a breakfast carrier nor for larceny of a cast net, flashlight, knife and bag on 9th March, 1951.

My father's name is not Andrew James; my mother's name is Evelyn Castello. I have not got a brother called Winston James.

40 I was born at De Hoop, Mahaica. Don't know Mr. Fitzpatrick, the Magistrate; never been fined \$5.00 by him for indecent language. I was not arrested on 11th December, 1949 for non-payment of fine. I have never been to prison; did not do the alternative of imprisonment for non-payment.

Never ordered to sign bond, \$26.00 for larceny of breakfast carrier nor ordered to report to

In the
Supreme Court

Probation Officer fortnightly, not ordered to sign Bond \$26.00 for larceny of cast net, etc.

Prosecution
Evidence

The bicycle case was before Mr. Mungal Singh at Mahaica; that is the only time I have ever been before the Magistrate.

No. 17.

(No question by Jury).

Cleveland James.
Cross-
Examination by
E.V. Luckhoo
(with leave) -
continued.

No.17A.

No. 17A.

Lambert Harold
James.
Examination.

EVIDENCE OF LAMBERT HAROLD JAMES

I am a Registered Medical Practitioner,
Government Medical Officer attached to Mahaicony
Medical District.

10

On Sunday, 27th September, 1953, I performed a post mortem examination on an East Indian man by name of Haniff Jhuman. He was identified by his father Mohamed Jhuman in presence of P.C.Callender.

On external examination -

- (1) body well nourished.
- (2) blood from nostrils, mouth, neck and chest.
- (3) several small circular black marks on the face, neck, shoulders, chest and arms - these were "gun powder marks and from pellets"
- (4) multiple bloody holes in the chest; these were shot holes from the discharge of a firearm.

20

Internally -

- (1) the chest cavity contained much blood;
- (2) multiple punctures of the pleura, i.e. lining of chest;
- (3) lungs - multiple punctures in both lungs;
- (4) five slugs were removed from the left lung and three from the right lung -

30

these were handed over to the Police. I put them in this bottle (admitted and marked Exhibit "O").

- (5) heart - two punctures through the left ventricle one slug was removed from inside the left ventricle (or chamber) of the heart.

In the
Supreme Court

Prosecution
Evidence

No. 17A

In my opinion death was due to

- (1) shock and haemorrhage;
10 (2) punctured heart;
(3) punctured lungs,

Lambert Harold
James.
Examination -
continued.

Ex. "O"

as the result of a discharged firearm.

On the same day I saw accused Nos. 1, 5 and 4.

I examined accused No.1 and recorded nothing seen; he said he had received a strike on right side of chest and face. I did not see any external injury.

20 Also examined accused No.5 on same day (27th) - saw three abrasions on the left side over the thorax. These could have been caused by a blunt object, such as a stick or a brick.

Also examined accused No.4 on same day and saw no sign of external injury; he said he had received a blow on the left upper back.

Cross-examined by Lloyd Luckhoo:

Examined accused No.1 at 4.55 p.m.; one of the others at 5.00 p.m. and the other at 5.05 p.m.

Cross-
Examination by
Lloyd Luckhoo.

30 Persons may be involved in a fight, receive blows and yet show no external injury. If the blow was received 10 hours before examination the signs might have come up or might have disappeared. Clothing may prevent external marks being seen.

A boxer may receive severe punishment and yet show no external sign of injury.

If the rupture is deep down there may be no external visible sign of the injury.

In the
Supreme Court

Prosecution
Evidence

No. 17A

Accused No.1 complained of tenderness on right side of chest. I found it to be tender. He complained of tenderness on right side of face and I similarly found it to be tender.

Cross-examined by Lionel Luckhoo:

Lambert Harold
James.
Cross-
Examination by
Lloyd Luckhoo
- continued.

I have been practising for 18 years; in charge of Hospitals and Districts and daily examine persons who suffer injuries from blows. My observation today arise from my experience. I have come across cases where a person has died as a result of blows but I have found no external injury.

10

Cross-
Examination by
Lionel Luckhoo
Q.C.

It is possible by feeling with the fingers, apart from a patient's re-action, to tell the degree of sensitivity.

Cross-
Examination by
E.V. Luckhoo.

Cross-examined by E.V. Luckhoo:

I was satisfied that there was tenderness on the left upper back of accused No. 4.

I have known of a case where a person has died as a result of a blow on the head without there being any external injury.

20

By the Court:

There were only nine pellets in the body.

No. 18.

No. 18.

Mahadeo
Bhagwandin.
Examination.

EVIDENCE OF MAHADEO BHAGWANDIN

I am a motor mechanic. Live at Cape Clair, East Coast, Demerara. Employed as salesman by J.P. Santos & Co., and was so employed in September 1953.

On 27th September, 1953, about 6.00 a.m. (a Sunday) I was going to the Base at Atkinson in a

30

motor car with others. My son, Sahadeo, was driving; we were going in the direction of Georgetown. When we got by Broomhall I saw a man coming out of a yard on the left of the road (as we were coming) with a gun. That man was accused No. 5. As the car was about to pass accused No. 5 handed the gun to another man who is accused No. 1 whom I had seen before. I heard accused No. 5 shout, "Shoot" and then hand the gun to accused No. 1. We passed and stopped at a dam (running north to south) about 60 rods from where I had seen accused Nos. 5 and 1.

In the
Supreme Court

Prosecution
Evidence

No. 18.

Mahadeo
Bhagwandin.
Examination -
continued.

I got out of the car and saw accused No. 1 coming along the road. I asked him, "boy where you going with that gun". He said, "I go shoot Haniff rass". I said to him, "don't worry to go and shoot, you going to get yourself into trouble"; he stood up and I was going up to him and he said, "man don't come near to me"; he broke the gun. He had two cartridges in his hand; he put one in the gun and closed it and the other in his shirt pocket. They were red cartridges. I would not be certain they are like these now shown to me, Exhibits "F.1 and F.2". I said to accused No. 1, "boy you stupid, go back home"; he then held the gun in this position (witness demonstrates) and said, "man don't come near me". I said, "boy go back home, you will get yourself in trouble"; he replied, "I don't care, we got estate and money we going to fight law". I said to him, "I haven't got money and estate so you can go along and shoot if you want". At the same time No. 5 came running from the back (that is from the east) on the road. Accused No. 5 said to accused No. 1, "man don't worry with him, you go down, the first man you must shoot is Haniff". I then drove off and made a report to the Police at Mahaica Police Station. The gun was a single barrel gun resembling exhibit "G".

I had not seen Mohamed Jhuman or any member of the family before this took place. I knew Mohamed Jhuman before the incident I have described.

Before driving off I saw accused No. 3 coming along the dam in a northerly direction. He was about 7 or 8 rods from me. I did not hear anything said by accused No. 3 I can't remember if he said anything - there were other people on the dam, shouting.

In the
Supreme Court

Prosecution
Evidence

No. 18.

Mahadeo
Bhagwandin.
Cross-
Examination by
Lloyd Luckhoo

Cross-examined by Lloyd Luckhoo:

It was after I had completed my conversation with accused No.1 and after he had loaded his gun that I saw accused No.5 coming from the east.

When I first saw accused No.5 running towards the car he was then 8 - 9 rods away.

I left home at about 5.00 or 5.30 a.m. Cape Clair is about 5 miles east of Mahaicony Police Station. Mahaicony is 38 miles from Georgerown; Fairfield is about 32 miles from Georgetown. 10

I had stopped at Mahaicony near the Police Station at "Benny's" place which is 18 - 20 rods from the Station; left Mahaicony at about 6 or 6.15 a.m.

Did not stop between Mahaicony and Fairfield.

When I left Mahaicony there were 7 or 8 of us in my car which is a Singer, 14 H.P. The persons in the car were, myself, my sons Sahadeo and Kemraj, Benny Persaud, a fellow I know by the name of "Sonny", another son of mine called Dinan and another fellow whose name I do know, who is a relative of Benny Persaud of Esau and Jacob. 20

Mahaica is 12 miles from Mahaicony. It is 25 miles from Georgetown to the Base. We going on a picnic to the Base.

The double journey from my home to the Base would be about 136 miles. From Mahaicony to De Kinderen we drove at 30 - 35 miles per hour and at De Kinderen we slowed down to 15 - 20 miles per hour to wait for a car coming behind with Benny's other brother, also going on the picnic. There were slight showers that morning not much dust on the road. When we stopped at Carlton Hall the other car came up; it is a Vauxhall Velox, new model in the "PA" series of registration numbers. 30

If I had not slowed up to wait for the other car I would have passed Fairfield at about 30 - 35 miles per hour.

I would say I stopped at the dam for 15 or 20 minutes. I did not hear any gun go off. About two minutes after I stopped the other car came up and stopped a rod or a rod and a half in front of me. 40

Rampersaud (brother of Benny) was the driver of the other car in which were my mother, a daughter of mine; Benny's wife and Rampersaud's wife and either one or two of Benny's children.

Adjourned at 3.30 p.m. to 9.00 a.m. tomorrow (31.8.54).

In the
Supreme Court

Prosecution
Evidence

No. 18.

Mahadeo
Bhagwandin.
Cross-
Examination by
Lloyd Luckhoo
- continued.

No. 19.

PROCEEDINGS re VIEW

No. 19.

Proceedings
re View.
31st August,
1954.

TUESDAY, 31st August, 1954.

10 IN CHAMBERS:

All counsel request that the locus in quo be visited to-morrow (1st September) and this request is granted.

20 Each of the defence counsel submits that the witnesses who have given evidence should not be permitted at the view of the locus in quo, to indicate the points at which they claim to have been when any incident relevant to this case took place or the point at which any such incident took place. To permit the witnesses to do so would, it is submitted, afford them an opportunity of reconstructing or altering their evidence given in Court in the light of evidence given by other witnesses. The view of the locus, it is further submitted, should be restricted to indication of fixed points.

30 On this submission I hold that as the findings of fact are for the jury it must be left to them to decide what points or places at the scene, whether fixed or otherwise, they wish indicated including points at which a witness claims to have been at any material time or at which it is claimed any object was at any such time. It is intimated that counsel will have full opportunity for recall and cross-examination of any witness in connection with any matter arising from the view of

In the
Supreme Court

Prosecution
Evidence

No. 19.

Proceedings
re view.
31st August,
1954 -
continued.

the locus. Mr. Lloyd Luckhoo refers to Section 44 of Chapter 18 and to pp. 196 - 7 of Archbold 33rd Edition and submits that procedure is irregular and not provided for by Section 44 of Chapter 18 or any other section for witnesses to attend at locus and while not being on oath to be permitted to show spots or give demonstrations or otherwise give evidence. Lionel Luckhoo associates himself with this submission. E.V. Luckhoo does not join in this submission subject to no communication between witnesses at view. The position is explained to the jury who withdraw to consider what witnesses, if any, they desire to be present at the view for the purpose of indicating points or places about which they have given evidence. (Read over and accepted by Counsel).

10

Jury returns.

Foreman states that they desire the following witnesses to be present at the view:

Sgt. Tappin, Bradshaw, Cleveland James, Esuf Jhuman, Katriah, Bibi Kariman and Henry Bacchus.

20

Crown Prosecutor states that he wishes witnesses Mohamed Haniff and Bhagwandin to be present.

Lionel Luckhoo submits that neither the Crown Prosecutor nor defence counsel should be permitted to request the presence of a particular witness as it is for the jury to decide what witnesses they require.

It is pointed out by me that the jury have not yet heard the defence and therefore it may be that defence wishes one or more of their witnesses to indicate a particular place or point.

30

None of the defence counsel wishes any witness added to those specified by the jury.

Points or places to be viewed:

Entrance to Cove and John Station where Mohamed Haniff alleges he met accused No.6 et al.

Mahaica Police Station.

Jhuman's Rice Factory.

Junction of Carlton Hall and Broomhall dams with the road.

40

House of Haniff Jhuman.

Railway line - cowpen, etc.

Proceed east along Railway line and then join public road via Fairfield dam.

House of Katriah; then west to houses of the accused.

Lloyd Luckhoo wishes added -

The house of Mohamed Jhuman; middle walk dam at Pln. Broomhall (known as "50 rod dam").

10 Middle walk trench south of Railway line High dam.

Home of Farinha.

Lionel Luckhoo -

House of Rico Reece.

E.V. Luckhoo -

Bridge east of Broomhall dam known as Fairfield bridge.

In the
Supreme Court

Prosecution
Evidence

No. 19.

Proceedings
re View.
31st August,
1954 -
continued.

No. 20.

No. 20.

EVIDENCE OF MAHADEO BHAGWANDIN
(continued)

Mahadeo
Bhagwandin
(continued)
Cross-
Examination by
Lloyd Luckhoo.

20 Cross-examination by Lloyd Luckhoo (continues):

Not correct that when I arrived the incident of the shooting had already taken place.

After the incident Benny started ahead of me. I drove to Mahaica Station without stopping on the way at about 30 - 35 miles per hour.

I showed Sgt. Tappin the spot at which I stopped my car - "C" on the plan (Ex. "A") is that spot.

30 The point at which I saw the man come out of a yard is slightly east of the halfway point between

In the
Supreme Court

Prosecution
Evidence

No. 20.

Mahadeo
Bhagwandin
(continued)
Cross-
Examination by
Lloyd Luckhoo
- continued.

the Fairfield dam and the Broomhall west side line dam. If Broomhall is 100 rods wide then the point I have just mentioned would be about 40 rods west of Fairfield dam.

The man handed the gun to accused No.1 on the south side of the road opposite the yard from which the man had come; this took place as I was passing in the car.

When I first saw accused No.5 coming out the yard with the gun I was just crossing the bridge east of the Fairfield dam.

10

I heard the shout of "shoot" once. I also afterwards heard someone else say "shoot"; it sounded like a woman - I did not see that other person; could not tell from which direction it came but I had passed accused No.5 and gone about 3 - 5 rods (estimated as the distance between the east and west walks of this Court room).

In the Magistrate's Court I did say about accused No.5 using the word "shoot" and about the woman shouting "shoot". My evidence was read over to me by the Magistrate and I listened to what he read.

20

Adjourned at 11.30 a.m. to 1.00 p.m.

I have not seen any of the newspapers today.

(Refers to "A" on p.65 and "A" on p.68 of depositions). I did tell the Magistrate that.

I can remember telling the Magistrate it was accused No.5 who shouted "shoot" when I was telling him about accused No.5 bringing out the gun.

30

I remember giving the evidence at "B" and "A" on p.65 of depositions.

After passing accused No.5 and No.1 I travelled about 25 rods. I said about 60 rods yesterday but I now say 25 rods now that I know the distance from Fairfield to Broomhall dams.

I instructed the driver to stop because I had seen the gun and heard the shout and seen people (or a crowd) there.

When passing accused Nos. 5 and 1 we were travelling at 10 - 15 miles per hour in top gear. I do not doubt telling the Magistrate as at "B" on p. 68.

I did not see anybody stop the car. I was the only person who got out of that car. I do not deny saying as at "C" on p. 65. I did not see accused Nos. 2, 4 and 6 on that day. I did not see accused No. 5 when I drove off (for the Station).

In the
Supreme Court

Prosecution
Evidence

No. 20.

Mahadeo
Bhagwandin
(continued)
Cross-
Examination by
Lloyd Luckhoo
- continued.

10 When I drove off accused No. 1 was going across the trench on to the dam - that was the last point I saw him. There were some people coming out along the dam but I cannot say how far down the dam they were; can't say who they were or how many.

Cross-examined by Lionel Luckhoo:

Cross-
Examination
by Lionel
Luckhoo Q.C.

20 When I stopped my car I saw "Jeremiah" a black fellow on the road, nearby; he was the only one on the road that I knew. I spoke to Jeremiah before I left and I think it was after I had spoken to accused Nos. 1 and 5.

I cannot remember him speaking to me before I spoke to accused Nos. 1 and 5. I cannot remember what Jeremiah (Inniss) said to me or what I said to him; he made a remark and I replied. I do not remember ever having spoken to accused Nos. 1, 3, 4 or 5 before that day. I may have spoken to accused No. 2. I did not know any of them by name.

30 I know Mohamed Jhuman; did not know Baby Boy before the incident. I knew Haniff Jhuman before by seeing him driving the lorry and by being told that is Mohamed Jhuman's son.

My headquarters are at J.P. Santos in Georgetown. Never known Haniff's lorry stop at the store. I knew the Jhumans lived in that area.

When I stopped the car at Carlton Hall then I knew that the "Haniff" referred to was Haniff Jhuman. When travelling it did strike me that it would be a good thing to send and tell Jhuman at the mill.

40 At the time I knew where the Jhuman's house is and had to pass it on way to Georgetown and when

In the
Supreme Court

Prosecution
Evidence

No. 20.

Mahadeo
Bhagwandin
(continued)
Cross-
Examination
by Lionel
Luckhoo Q.C.
- continued.

passing it I was conscious of the fact I was passing Jhuman's house; did not stop at Jhuman's house.

Know Jhuman's rice mill; did not stop there.

Cannot remember anybody else taking part in the conversation between accused Nos.1 and 5 and me.

When I got out and came to the back of the car accused No.1 was about 7 - 8 rods away; did not see accused No.5 then; it was after I had finished speaking to accused No.1 that I saw accused No.5.

10

When I saw accused No.1 he was walking towards me.

I get a commission on the sale of tractors. Jhuman never purchased a tractor through me; I did not make the sale. It was bought from J.P.Santos. I was not at the time considering him as a prospective purchaser of a tractor; he already had one.

I did not know Mottee Singh before the incident (called into Court).

20

I was at "Burma" on the Malaicony-Abary Scheme - did not know him (Mottee Singh) there.

I told of all the conversations that took place on that road.

Benny Persaud was near enough to hear the conversations.

Cross-
Examination by
E.V. Luckhoo.

Cross-examined by E.V. Luckhoo:

I have known Jeremiah Inniss for a few years. I do not know whether he has ever worked with Mohamed Jhuman.

30

If I said as at "A" on p.66 of depositions it would be true. I knew accused Nos. 1 to 4 as the sons of Subadar.

I have been to the Magistrate's Court before I actually gave evidence in this matter; on one such occasion I spoke to Mohamed Jhuman. There is no great friendliness between Jhuman and me.

I have never seen the accused being taken from the lock-up at Mahaica Station.

40

On one occasion I travelled on the train from Mahaica to Georgetown and sat on the seat across the gangway of the train from accused Nos.1 and 2. On that occasion I went up to Mahaica by "hire car" arriving about 8.30 a.m. P.C. Bunyan was one of the two P.C.s in charge of the accused. I had an arrangement with the car to wait for me until 12 noon on that day. I do not remember if any evidence was led on that day. The train left Mahaica about 4 - 4.30 p.m. I did not meet the accused in the Court yard. I did not go up and point to accused No.2 and say, "I talk to this boy like tea not to go with the gun". It is not true that P.C. Bunyan said to me, "not the boy with the black pants shoot" (referring to accused No.2) "it's the one with the white shirt shoot" (referring to accused No.1). I cannot remember if accused No.2 had on, on that occasion at Mahaica Court, a black trousers and accused No.1 a white shirt". I did not follow the accused on the Railway Station. Cannot say if I arrived at the Station before or after the accused. I only saw them in the train. It was not a crowded train. I bought a third class ticket but can't tell whether it was second or third class as one cannot tell the difference between the two classes. I do not travel often by train - by car or land rover. Cannot remember when last I travelled by train before that occasion. I did not sit on the same seat as P.C. Bunyan, cannot remember who sat next to me. Would not doubt I spoke to P.C. Bunyan and he spoke to me.

Adjourned at 2.30 p.m. to 9.00 a.m. on Thursday, 2nd September - (to-morrow the locus in quo will be visited).

In the
Supreme Court

Prosecution
Evidence

No. 20.

Mahadeo
Bhagwandin
(continued)
Cross-
Examination by
E.V. Luckhoo
- continued.

No. 21.

Visit to locus in quo. - (See Supplemental
Record Page 262)

No. 21.

Visit to locus
in quo.
1st September,
1954.

WEDNESDAY, 1st September, 1954.

In the
Supreme Court

No. 22.

EVIDENCE OF MOHAMED HANIFF (re-called)

Prosecution
Evidence

THURSDAY, 2nd September, 1954.

No. 22.

Mohamed Haniff
(recalled)
Examination.

Yesterday, 1st September, I was present when the Court and Jury visit certain places referred to and I then indicated (1) the entrance to Cove and John Police Station and the Police Station; (2) Mr. Rico Reece's house; (3) the spot at which I met accused Nos. 2 and 6.

(Jury reminded that Mr. Lloyd Luckhoo asked that they note west and east boundaries of Belfield). 10

(Mr. Lloyd Luckhoo states that in view of the objection which he has taken previously regarding the view of the locus in quo he declines to cross-examine this or any subsequent witness on any matter arising out of the view yesterday).

(Mr. Lionel Luckhoo states that he joins with Mr. Lloyd Luckhoo regarding cross-examination).

Cross-
Examination by
E.V. Luckhoo.

Cross-examined by E.V. Luckhoo:

20

The spot I indicated was opposite a coconut tree on south side of the road. That spot is about 75 rods east of the west boundary of Belfield and about 25 rods from the east boundary of Belfield.

No.23.

No. 23.

Henry Bradshaw
(recalled)
Examination.

EVIDENCE OF HENRY BRADSHAW (re-called)

Yesterday, 1st September, when Court and Jury visited scene I indicated (1) spot at which I crossed the trench and the distance of about 15 rods that I walked west after the crossing of the trench; and (2) the gooseberry trees and a spot 10 rods north of those trees and 10 rods west of the wire fence; (3) the distance I was from the gooseberry trees. 30

Cross-examined by E.V. Luckhoo:

The coconut tree and the gooseberry trees were almost up against a wire which is immediately west of the trench on the west of the dam.

In the
Supreme Court

Prosecution
Evidence

No. 23.

Henry Bradshaw.
(recalled)
Cross-
Examination by
E.V. Luckhoo.

No. 24.

EVIDENCE OF CLEVELAND JAMES (re-called)

No. 24.

Cleveland James
(recalled)
Examination.

10 I was present when the scene was visited and I indicated the spot at which I crossed the trench and the tree behind which I was at a distance of 3 or 4 rods from the tree north of it and holding the wire. In my presence the jury were ask to note by Counsel for Nos. 3 and 4 accused that (1) the nearest coconut tree to the one which I have mentioned was south of the spot at which I indicated I crossed the trench; and (2) the gooseberry trees surrounding the coconut tree north of the spot at which I crossed.

Cross-examined by E.V. Luckhoo:

20 The wire to which I have referred is the one adjoining the trench on the west of the Carlton Hall dam and the one near to the coconut tree north of the spot at which I crossed.

Cross-
Examination by
E.V. Luckhoo.

No. 25.

EVIDENCE OF BIBI KARIMAN (re-called)

No. 25.

Bibi Kariman
(recalled)
Examination.

30 Yesterday when the scene was visited I indicated the spot at which Henry Bacchus was when I first saw him and the position in which I was when I first saw him. I also indicated the platform of my house and the dam along which I saw Saffie going on that morning.

In the
Supreme Court

No. 26.

EVIDENCE OF HENRY BACCHUS (re-called)

Prosecution
Evidence

No. 26.

Yesterday when the scene was visited I indicated where I was when I first saw my sister Bibi Kariman and where she was when I first saw her.

Henry Bacchus.
(recalled)
Examination.

No. 27.

No. 27.

EVIDENCE OF ESUF JHUMAN (re-called)

Esuf Jhuman
(recalled)
Examination.

Yesterday when the scene was visited I indicated the spot at which I received the injuries about which I have given evidence; and the spot at which I saw Batulan fall; also the spot at which I crossed the trench on the west of the Carlton Hall dam.

10

No. 28.

No. 28.

EVIDENCE OF KATRIAH (re-called)

Katriah
(recalled)
Examination.

Yesterday when the scene was visited I indicated the spot at which No.6 accused and I came on to the Broomhall dam; the spot at which I left the Broomhall dam to go east. I also indicated the direction in which the cowpen was to the south along Carlton Hall dam. I also walked across the trench going east as well as the trench. I crossed to get on to the Railway line. I indicated also my house; the spot on the Fairfield dam on which I met Subadar and my cake shop.

20

By Jury:

The water in the trench was higher yesterday than when I crossed the trench on 27th September, 1953 - about six inches higher.

By E.V. Luckhoo:

I do not know if the trench is deeper further south.

In the
Supreme Court

Prosecution
Evidence

No. 28.

Katriah
(recalled).
Cross-
Examination by
E.V. Luckhoo.

No. 29.

EVIDENCE OF MAHADEO BHAGWANDIN (re-called)

Mahadeo
Bhagwandin
(recalled).
Examination.

10 I was present when Court and Jury visited scene and I indicated my position on the road at the time I saw a man coming from the third house on the west of the Fairfield dam and south of the road; also the point at which I saw the gun handed over. I indicated the place at which I stopped the car and at which I spoke to accused. No. 1 and where the other car stopped; the course taken by No.1 in crossing the trench to go on to the dam.

No. 30.

EVIDENCE OF LAWRENCE TAPPIN (re-called)

Lawrence Tappin
(recalled)
Examination.

20 I was present when the Court and Jury visited the locus in quo yesterday. At Mahaica Police Station I indicated the lock-ups, charge room and gallery and Court room. The jury were asked by defence counsel to note (1) the outlook from the gallery; (2) the Railway Station and entrance to it; (3) the 26 mile pole.

I indicated Jhuman's Rice Mill and the office and adjoining portion with bed. The jury were asked to note width and length of counter in office. I

In the
Supreme Court

Prosecution
Evidence

No. 30.

Lawrence Tappin
(recalled)
Examination -
continued.

measured it and found it to be 7 feet 5 inches long by 1 foot 7½ wide; there was a cupboard on the wall in the office to which the jury's attention was directed.

At the junction of the Carlton Hall and Broomhall dams with the public road, the jury were asked by defence counsel to note the view looking south towards the railway line. I indicated Haniff Jhuman's house. Jury asked to observe distance from road to railway line. I indicated Pins. Broomhall and Carlton Hall.

10

Indicated the positions in which I found the two bodies, the two cartridge cases and the wadding. The jury were asked by defence counsel to observe from that point, the Railway line and the road.

I measured from a spot on the dam opposite a coconut tree to another spot south on the dam - the distance 81 feet; I also measured from a spot further north (indicated by Henry Bacchus) to the spot on the dam opposite the coconut tree and the distance was 67 feet. I indicated the direction in which the cowpen was, further south.

20

I indicated the west boundary of Pln. Carlton Hall, the middle walk dam, the Fairfield west side line dam and Broomhall east side line dam; the houses of accused Nos. 1, 3, 4, 2 and 6. Jury were asked by defence counsel to note the koker bridge east of the Fairfield dam.

Indicated where the middle walk dam joins the road north of the Railway line; also Farinha's house and High dam. Jury were asked to note position of the 31 mile pole.

30

Cross-
examination by
E.V. Luckhoo.

Cross-examined by E.V. Luckhoo:

The order of the houses of the accused going from east to west is: accused No.4 which is 8 to 9 rods from house of accused No.3; house of accused No.1 is about same distance from accused No. 3; then accused No.2 whose house is 6 or 7 rods from house of accused No.1. House of accused No.4 is about 20 rods west of the junction of the Fairfield dam with the public road.

40

The middle walk dam (Broomhall) is about 18 feet west of house of accused No. 1.

By Jury:

The dams were dry except for a "cut" 24 - 30 feet wide and 8 or 9 feet south of the public road on the Carlton Hall dam north of the Railway line.

The body of Batulan was on its back with face turned slightly to the east, head towards north-west and feet south-east. Body of Haniff was on its back, face looking slightly east, head south-east, feet north-west.

In the
Supreme Court

Prosecution
Evidence

No. 30.

Lawrence Tappin
(recalled
continued)

10

No. 31.

No. 31.

EVIDENCE OF MAHADEO BHAGWANDIN (recalled
continued)

Mahadeo
Bhagwandin
(recalled
continued)

Cross-examined by E.V. Luckhoo:

Cross-
Examination by
E.V. Luckhoo.

I gave evidence at Preliminary Enquiry in February, 1954. The Police never came to me after 15th December in connection with anything that you have put to me regarding what it is alleged happened between the accused and me at the Station and in the train.

20 I usually travel by car or Land Rover. That was the only time I travelled by car in connection with this case.

If I had kept the car up to 4.00 p.m. I would have expected the Police to pay for it; it was the same day that the Police re-imbursed me the amount I had paid for the car. I had to go to the Post Office for my money - got no receipt from the chauffeur. I signed a receipt at Post Office on that day.

30 Accused No.1 crossed the trench with the gun at a point 5 or 6 rods east of the junction of the Broomhall dam with the public road; the width of trench up to the wire is about 30 feet. Cannot say whether accused No.1 went over or under the wire or how far beyond the wire he went - he was travelling in a south-westerly direction.

In the
Supreme Court

Prosecution
Evidence

No. 31.

Mahadeo
Bhagwandin.
(recalled)
Re-
Examination.

Re-examination:

I have no spite against accused No.1 or any of the accused or any interest on either side -- no "story" with any of the accused.

I made a statement to the Police on, I think, the 28th September, at Mahaica Police Station -- made the report on the preceding day.

(Lionel Luckhoo objects to question regarding the making of a statement by this witness as it does not arise from cross-examination; held that as it has been suggested to the witness that what he is saying is wholly untrue that it is relevant and permissible to ask him whether he made a statement to the Police and if so, when he did so -- the statement itself is of course not admissible).

10

I signed and dated the statement -- the date is the 28th September, 1953.

By Jury:

On 27th September, the trench which accused No.1 crossed with the gun had no water though it might have been "a little soft".

20

Cross-
Examination by
E.V. Luckhoo
(with leave)

By E.V. Luckhoo: (with leave).

The date is not written in the same ink as my signature; the date is in my handwriting.

Adjourned at 11.30 a.m. to 1.00 p.m.

No. 32.

Jeremiah
Inniss.
Examination.

No. 32.

EVIDENCE OF JEREMIAH INNIS

I am an engineer. Live at Rebecca's Lust, High dam, East Coast, Demerara.

30

Before 27th September, 1953, I knew Jhumans for many years; the same thing applies to the

Subadars except that I knew Saffie (accused No. 5) for six months before 27th September, 1953.

Rebecca's Lust is west of Carlton Hall - a dam divides the two places.

On Sunday, 27th September, 1953, about 6.00 a.m. I came from Fairfield to Carlton Hall. I called for Baby Boy at Jhuman's house, from the Road. I did not see him. Somebody told me something. I rode back east on my bicycle and met Henry Bacchus going from the road to Broomhall dam. We spoke. While speaking to him I saw somebody running north on Broomhall dam; could not recognise who it was then but as he came nearer, about 160 rods away, south of the Railway line, I saw that it was accused No.1. I was then on the road. Henry Bacchus left and went south along the dam. When accused No.1 reached the Railway line he shouted, "Bring the gun" - he ran through the rice field and went into a house near the "50 rod dam" near the road. I saw accused No.5 on the public road about 25 rods east of me; he ran to house of accused No. 4 and came out with a gun which he handed to accused No. 1 on the road. Accused No.1 started to run on the road towards where I was. Accused No.5 turned back and went into yard of accused No.1. Prince was in his (Prince's) yard, said something. I am not sure if Bengal could hear what he said. I shouted. A car was coming from east, I saw it before accused No.1 reached me - he was 20 - 25 rods from me and the car was then about 70 rods from me. I raised my arm and the car stopped. I spoke to Bhagwandin who was in the car. Knew him before. Bhagwandin did not come out then. I went back and met accused No.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". Bhagwandin came up and said, "go back with this gun, this ah trouble" and continued begging him to go back with the gun. Accused No.1 said he nah go back. Accused No.5 came up with a stick and said, "ah you nah stop the man, let he go" Accused No.2 was standing on the Broomhall dam, about 12 rods away. Accused No.1 broke the gun, put in a cartridge and said, "nobody nah stop me". Bhagwandin went closer up to accused No.1 and spoke to him; (I lifted my bicycle and went to north side of the road). I did not hear what was said. Accused Nos.1, 5, 4 and 2 went down the dam. When I saw accused No.2 on the dam, accused No.4 was with him; accused No.2 said,

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Jeremiah Inniss
Examination -
continued.

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Examination -
continued.

"bring the gun, ah you nah stop am". These four accused met accused No.6 on the Railway line - I was on the road. I saw Katriah also on the line. The five accused and Katriah went over the gate which is about $1\frac{1}{2}$ rods south of the line. Katriah made a "grabble" at the gun. They pushed one another - all of them (including Katriah) went further south. Katriah made "a next grabble" at the gun - they pushed one another again. Katriah was left standing and the accused, except accused No.3, 10 went south. I noticed people coming north on Carlton Hall dam; these people stopped. Two persons from Carlton Hall dam went across a trench and the accused were still going down. When the accused (except accused No.3) got nearly opposite to the people on the Carlton Hall dam, they stopped. I heard a "load" fired off (i.e. gun shot). Mrs. Jhuman fell, I recognised her; I saw Baby Boy run across the trench and I heard "another load fired off" and Haniff Jhuman fell down. Bradshaw, Cleveland James and Baby Boy ran in the pasture. Accused No.1 ran out on the Railway line and waited until the other accused came and met him on the line and they all came to the road; before they reached the road, accused Nos. 1, 2 and 4 went east across the pasture - they were then 16 rods from the road. Accused Nos. 6 and 5 came towards me on the road and accused No.5 hollared, "ah you go spade the tiger rass up". When accused No. 6 reached the road he said, "Bengal shoot am de tiger" and he passed me and went to his home. I went down the dam, with a boy, to where I had heard the firing. I saw Haniff and Batulan, dead. I remained there until plenty people came, including the Police (Sgt. Tappin and others). 20 30

Cross-
Examination by
Lloyd Luckhoo.

Cross-examined by Lloyd Luckhoo:

I was born at Rebecca's Lust. I am 39 years of age.

I have worked with Jhuman as an engineer from 1946 to 1950; he has always treated me well; not like one of the family. When accused Nos.5 and 6 passed me I was standing on the road opposite the Broomhall dam. I had not, up to that time, been on to the dam for the morning. 40

The houses of the accused, going east to west are, accused No. 4, 3, 1 (and west of the 50 rod dam) accused No. 2.

I slept at Fairfield on Saturday (26th). On that morning (27th) I was going for money from Baby Boy. I got it at the enquiry at Belfield, after giving evidence. It was \$10.00 he owed me and that is what he paid me. I had done his engine the first week in August.

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Jeremiah Innis
Cross-
Examination by
Lloyd Luckhoo
- continued.

I was waiting for Baby Boy and would have waited until 10.00 a.m. I did not think of waiting under his house.

10 I got no answer from Jhuman's house that morning when I called out - Balkarran spoke to me on the road. Jhuman's house is about 14 rods from the road. Balkarran was coming from east with bags on shoulder.

My evidence at Preliminary Enquiry was read over to me and I signed.

Did not say as at "A" on p. 96 of depositions.

20 I stopped to talk to Bacchus and would have gone back to Fairfield if I had not met him. My house is about 16 rods east of the Fairfield bridge. I had passed Bacchus on the road on my way to Jhuman's but did not speak to him.

The conversation between Henry Bacchus and me took place on the public road. I asked him "Where Baby Boy?" he said, "Baby Boy, gone down aback". He said, "you ain't get the thing yet?" and I told him "no"; that was all the conversation.

30 It was while speaking to Henry Bacchus that I saw someone running along the Broomhall dam. I recognised that it was accused No.1 when he was about 150 rods away. From road to Railway line is about 70 rods.

Can't remember saying as at "A" on p. 98 of depositions.

I went aback yesterday when the scene was visited.

Accused No.1 was the first of the accused I saw on that morning.

40 I first saw Bibi Kariman that morning after the shooting; I met her north of the Railway line when I was going down the dam after the shooting; she was about 12 rods north of the line.

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Accused No.1 was about 120 rods from me when Bacchus began to walk down the dam; accused No.1 was alone.

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When accused No.1 reached the Railway line Bacchus was then 10 rods north of the Railway line. Accused No.1 shouted, "bring the gun", when he was on the line - there was land breeze.

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Jeremiah Innis
Cross-
Examination by
Lloyd Luckhoo
- continued.

The house into which accused No.1 went was his own house; he went up the back steps and went into the house.

10

I first saw accused No.5 sitting by Subadar's gate when I was passing going west to Jhuman's house. When I next saw him he was between the house of accused No.2 and Prince's house (which is about 10 rods west of house of accused No.2), on the road. He was in that position when accused No.1 shouted from the line "bring the gun". When accused No.1 went into his house, accused No.5 was still in the house of accused No.4 to which he had gone after accused No.1 shouted bring the gun. Accused No.5 got to the house of accused No. 4 before accused No.1 reached his own house.

20

Accused No.5 came out of the house of accused No.4 with the gun, came along the road, and handed the gun to accused No.1 on the road.

Accused No.1 was about half-way between the middle walk dam and Broomhall dam when I shouted to him.

The car was about to pass accused No. 1 when I raised my arm to stop it. Accused No.1 was then about 20 rods from me. I may have told the Magistrate as at "B" on P.98 of depositions.

30

I estimate 20 rods to be from here to the empty lot on the east of the road, adjoining the Court-house green.

Accused No.1 did not walk along the middle walk dam when returning with the gun.

When accused No.1 reached to the junction where I was, accused No.5 was just coming out of the yard of accused No.1. After accused No.5 had given the gun to accused No.1, accused No.5 went into the yard of accused No.1.

40

At no time did I see accused No.5 go into or come out of yard of accused No.1 with a gun.

Accused No.1 walked on the parapet alongside of the wire, to get from the road on to the dam.

Accused Nos. 1 and 5 went about 12 rods down the dam and then they met accused Nos.2 and 4 and all four walked down together. I could see accused Nos. 1, 2, 4 and 5 while the car was still there.

I can't remember telling Magistrate accused No.2 said, "bring the gun, ah you nah stop am".

10 I did tell the Magistrate that Baby Boy, Bradshaw and Cleveland James ran in the pasture.

Refers to "A" on p. 86 and "A" on p.88 of depositions: "Bengal shoot" was all accused No. 6 said.

Adjourned at 3.27 p.m. to 9.00 a.m. to-morrow (3rd September, 1954).

FRIDAY, 3rd SEPTEMBER, 1954.

20 Henry Bacchus did not tell me whether Bradshaw was aback that morning; the only person he said was aback was Baby Boy. Balkarran had told me that Batulan, Bradshaw and Baby Boy had gone aback; he did not say if they had gone together. Nobody told me about Haniff or Scholes being aback. Bacchus did not tell me as at "A" on p.100 of depositions.

I am not deliberately changing my evidence. I did not tell the Magistrate that accused No.1 said, "she nah go live foh come ah road."

I did say as at "B" on p.99 of depositions.

30 Accused No.1 ran east along the Railway line and about 5 rods from the junction of the line and the middle walk dam he went into the rice field, over the "line wire" and then on to the middle walk dam at a point about 4 rods from the line and then he ran along the dam until he got to his yard.

I did not tell the Magistrate that I saw accused No.1 go into his house.

When accused Nos.1, 2, 4 and 5 joined accused No.6 on the line, Katriah was "a couple feet" south of the line (between the gate and the line). After

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Cross-
Examination by
Lloyd Luckhoo
- continued.

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they had gone over the gate Katriah made a grabble at the gun - that was the first "grabble" I had seen Katriah make. He was then about $3\frac{1}{2}$ to $4\frac{1}{2}$ rods south of the line.

At no time that morning did I see Katriah on the Broomhall or Carlton Hall dams north of the line.

Jeremiah Innis
Cross-
Examination by
Lloyd Luckhoo
- continued.

When Katriah made the "grabble" somebody pushed him aside. Accused No.1 and the other accused were on the Railway line when I first saw people on the Carlton Hall dam. I saw about seven people on the Carlton Hall dam, all walking north; they were about 70 rods from the line. The persons on the Carlton Hall dam were about 60 rods from the line when the first shot was fired. These persons were about 150 rods from me when I could make out who they were. I recognised Bradshaw after he had gone into the rice field. Scholes when he was going across the trench, Baby Boy, Batulan, Henry Bacchus, Haniff Jhuman on the dam, lower down south about 10 rods, I saw Clinton Robinson. 10

I did not see anybody hiding behind a tree.

When the persons were running from the Carlton Hall dam after the second shot Scholes was about 4 rods west of Bradshaw. Baby Boy was about 12 rods south of Bradshaw - they were all running in almost the same direction.

Cross-
Examination by
Lionel Luckhoo
Q.C.

Cross-examined by Lionel Luckhoo:

I started to walk along the dam about 8 minutes after the second shot. I walked on the Broomhall dam up to the line and then I crossed on to the Carlton Hall dam. 30

I did not see anybody pick up anything from the ground. The whole dam was "in people" when Sgt. Tappin came. I did not see him pick up anything from the dam.

From 1950 I worked for Jhuman on Sundays and holidays.

During the first year I worked for Jhuman I slept at the factory. 40

Got to know Scholes about 2 years ago. I used to see him about the district in 1952.

I came down from my work at the Rice Scheme about 8.00 p.m. on Saturday, 26th September; had to pass Jhuman's house on my way home - they don't pay money at night.

That was the first time I was going to ask for the money that was owing.

Bacchus had a saucepan with him; he told me "like something happen aback"; he did not say Bradshaw and others had gone aback.

10 When the gun was handed to Bengal, Henry Bacchus was about 150 rods away on the dam and he was then running.

I did not at any stage shout and give warning.

After Bradshaw crossed the trench he stopped about 12 - 16 rods west of the dam or maybe, as said at Preliminary Enquiry, 16 - 20 rods. Scholes went about 24 rods from the Carlton Hall dam.

20 After the shooting, Henry Bacchus spent about three minutes at the spot and then ran north along Carlton Hall dam. I was then at the junction of the road and the dam. I started to come down the Broomhall dam and met him (he was on the Carlton Hall dam) about 2 rods from the road.

Did not tell the Magistrate as at "A" on p.102.

Harry did not come out with Bacchus.

Did not see Harry during the shooting; he did not pass me on the dam.

I did not see accused either pushing or pulling each other.

30 Accused No.1 climbed over the gate south of the line on Broomhall dam; can't remember how the others got past the gate.

Accused No.1 was running all the time when coming for the gun.

Cross-examined by E.V. Luckhoo:

Don't know if my name has been entered in Jhuman's wages book.

I worked 3 days and a night for the \$10.00 -

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Jeremiah Innis
Cross-
Examination by
Lionel Luckhoo
Q.C. - continued

Cross-
Examination by
E.V. Luckhoo

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Jeremiah Innis
Cross-
Examination by
E.V. Luckhoo -
continued.

the book-keeper knew about it. I would expect my name to be in the wages book during first week of August, 1953.

I did not say as at "B" on p.100 of depositions.

People usually assemble at the Fairfield bridge for a chat; was not standing by that bridge between 6 and 7 on that Sunday morning.

I did not meet accused No.3 in front of his house on that Sunday morning; he came along the dam and met me at the junction of the Broomhall west dam and the public road. 10

I did not tell accused No.3 that I was by the Fairfield bridge when I saw accused Nos. 1 and 5 going aback; I never inquired from him why they were going aback.

After I spoke to accused No.3 I saw him go towards his house.

The tractor and combine is repaired at the Carlton Hall house, not at the factory.

I had never spoken to Bhagwandin before that day (27th September). I know his car well. We had regularly said "howdy" to each other. 20

Accused No.1 broke the gun before Bhagwandin came but Bhagwandin was there when accused No. 1 put the cartridge in the gun. I only saw one cartridge and that was the one accused No.1 put in the gun.

Cannot remember telling the Magistrate as at "B" on p.97 of depositions. Can't remember telling the Magistrate as at "B" on p.102; what he has there recorded is not so. 30

About five minutes elapsed between the second shot and the time accused No.6 said "bengal shoot"; he said these words in presence of Mottee Singh.

Accused Nos.1, 2 and 4 left the dam and went into the rice field on the east of the dam at a point 20 rods from me and about 50 rods from the Railway line. The water in the trench reached them below the knee.

When I saw Henry Bacchus coming and after the second shot he was alone. Bibi Kariman came out afterwards. 40

I think Henry Bacchus was one rod south of Batulan and Haniff before the first shot; he remained there until the second "load" went off; Bibi Kariman was by the side of Henry Bacchus and I think she remained there until after the second load.

(Asks that deposition be put in - admitted and marked Exhibit "KK").

Adjourned at 11.26 a.m. to 1.15 p.m.

10 By E.V. Luckhoo (with leave):

I knew, before 27th September, that Jhuman had a gun. I told the Magistrate that I had heard, not that I knew, that Esuf and Haniff, sons of Jhuman, used to use that gun. I heard from Farinha that they were charged in connection with the gun. I have never seen them with a gun.

I know Ernest Sahoye. I can't remember seeing him on the public road between 6 and 7 a.m. on 27th September, 1953.

20 Re-examined:

Accused No.5 handed only the gun to accused No.1.

30 Accused No.3 came along the dam and met me on the public road, a little before the shooting. I said to him, "Bengal coming with the gun". I told him to take the gun from accused No.1; before this he said, "me and nobody nah got story"; he said that Haniff and them got story and "me nah take it way". Accused No.3 then walked in the direction of his home. I did not see him later.

By Jury:

Witness indicates the points of the compass.
Jury withdraws.

40 Crown proposes to lead additional evidence contained in the statement of Sgt. 5150 Hinds. Defence counsel object on the ground that these tests were carried out by the Police at the request of the defence and therefore it should be left to the defence to decide whether or not the evidence will be led.

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Cross-
Examination by
E.V. Luckhoo -
continued.
Ex. "KK"

Further Cross-
Examination by
E.V. Luckhoo
(with leave).

Re-
Examination.

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Jeremiah Innis
(Continued)

Crown Prosecutor:

Submits that in view of the fact that in the course of the evidence it has been suggested by the defence that the second shot was discharged into the air and having regard to the doctor's evidence as to the number of pellets extracted from the body of Haniff Jhuman it is necessary that this evidence is brought forward with a view to meeting the allegation that the second shot was fired into the air.

10

Mr. Lloyd Luckhoo: does not object to the evidence of Hinds provided it is restricted to the matter relating to the number of pellets contained in the type of cartridge in question.

Mr. Lionel Luckhoo, Q.C.: objects to that evidence on the ground that it is irrelevant.

Mr. E.V. Luckhoo: does not object to that evidence (i.e. regarding the number of pellets) provided that the Crown does not seek to amplify it after cross-examination of the witness.

20

Held - that notice having been duly served (on 20th August) on the accused the evidence regarding the number of pellets in a similar cartridge may properly be lead.

Jury returns.

No. 33.

Ivan Hinds.
Examination.

No. 33.

EVIDENCE OF IVAN HINDS

I am Detective Sergeant No. 5150 attached to the C.I.D. Brickdam. I have had a course on Fire-arm Identification from the Institute of Applied Science of Chicago.

30

On Friday, 13th August, 1954, I was given this gun, Exhibit "G" and exhibits "F.1" and "F.2".

Exhibits "F.1" and "F.2" are the shells of 12 gauge cartridges, Eley make.

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These are the cases of two 12 gauge cartridges, Eley make which I fired from Exhibit "G" into a bullet trap. I collected 18 pellets from the trap after firing both cartridges into the trap; these are the pellets (admitted and marked Exhibit "LL").

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No. 33.

10 The size of pellets in the cartridge I fired were "SG" which is marked on the wadding farthest from the percussion cap.

Ivan Hinds.
Examination -
continued.

(Crown Prosecutor states that he does not wish to pursue the matter further).

Ex. "LL"

(No cross-examination by defence and no question by Jury).

Crown Prosecutor states he is considering whether or not he will lead evidence of the next (and last witness) for the Crown; as it is now 2.45 p.m. and the jury have requested that today we adjourn at 3.00 p.m. the adjournment is now taken.

20 Adjourned at 2.45 p.m. to 9.00 a.m. on Monday, 6th September.

MONDAY, 6th SEPTEMBER, 1954.

Lloyd Luckhoo asks for recall of Esuf Jhuman regarding the signature on the receipt for the registered letter claiming damages to which reference has been made earlier in the case.

No. 34.

No. 34.

EVIDENCE OF ESUF JHUMAN (re-called)

Esuf Jhuman
(recalled)

By Lloyd Luckhoo:

30 I see this receipt, No. 93895 in the Book of Receipts and the signature on it is "C. James". I do not know that signature. The date is either 25th or 26th September, 1953. (Book admitted and marked Ex. "MM").

Cross-
Examination by
Lloyd Luckhoo.

Ex. "MM"

In September, 1953, there was only one person by the name of Cleveland James living in our house.

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Supreme Court

No. 35.

EVIDENCE OF CLEVELAND JAMES (re-called)

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Evidence

No. 35.

Cleveland James
(recalled)
Examination.

The signature of this slip No. 93895 is mine. I remember receiving that letter and I gave it to Mrs. Jhuman (Batulan) at the time I received it.

Crown Prosecutor states that he does not propose to call the last witness (Mottee Singh) on the back of the indictment but he is available if required. He states further that if the defence desire that he (the Crown Prosecutor) should examine this witness he will do so. 10

Mr. E.V. Luckhoo states that he desires that this witness be called and, following what the Crown Prosecutor has said, that he be examined by the Crown Prosecutor so that the defence may have an opportunity of cross-examination.

No. 36.

No. 36.

Moti Singh
Examination.

EVIDENCE OF MOTI SINGH.

Also called Cyril. I am an engineer and work at Mr. Davis' Rice Mill and live at Pln. Bath, De Kinderen, East Coast, Demerara. 20

On Sunday, 27th September, 1953, about 6.00 - 6.30 a.m. I was going to High dam. I was on the public road going east to west. I met Jerry Innis opposite Broomhall dam, he was standing. Not too far from Innis I met Henry Bacchus - about 25 feet from Innis. While speaking to Innis I saw accused No.1 running on the Broomhall dam from south to north. When he got up to Railway line he ran across the pasture and shouted "Bring the gun come". 30
Accused No.5 was on the road about 25 rods east of me; he ran (accused No.5) ran into house of accused No.4 and came out with a gun which he handed to accused No.1 who was then on the road. Accused No.5 then went to yard of accused No.1 and came back with a stick. I saw a car coming from the east; Innis stopped the car - it stopped. Bacchus

had started to go down the Broomhall dam before I heard accused No.1 shout for the gun.

After the car stopped I saw accused Nos. 2, 4 and 6 about 20 rods south of the Railway line - they were walking north on Broomhall dam.

The car stopped about one rod east of Inniss and me. Bhagwandin came out of the car and spoke to accused No.1 saying "boy go back; the thing wey you doing is trouble; go home back". Accused No.1 then had the gun. Bhagwandin walked up to accused No.1 who stepped back, put a cartridge in the gun, locked it and said, "not one foot move further" Bhagwandin turned back and got in the car. Accused No.1 then went along Broomhall dam with the gun, followed by accused No.5 with a stick which was about 4 feet long and about 2 inches in diameter. While accused No.5 was going along the dam he said, "they can't pass here". The other accused (Nos. 2, 3, 4 and 6) came over (north) of the line and met accused Nos. 1 and 5 about 5 rods north of the line. Katriah met them up and tried to take the gun from Bengal (accused No.1); all the accused were together at the time. All the six accused then went south of the line, so did Katriah who again tried to take the gun from accused No.1. The accused then went "right down aback". Accused No. 3 left the other accused and came along the dam on to the public road.

After Katriah had made the second attempt to get the gun he left the accused and walked through the rice field going east.

The accused (except accused No.3) continued going south and then I heard a "load" fired and then I heard "a next one". After I heard the first load Haniff fell to the ground. The second load fired and I saw Baby Boy running across the pasture.

I left and went up to Fairfield bridge; there I saw accused No.5 riding a bicycle towards the east. I asked him, "boy what happen at the back" and he said, "better carry the spade and spade up the tiger". The other accused walked out from the dam - accused Nos. 2, 4 and 1 walked through the pasture to the public road and accused No.6 walked on the dam to the public road and went to his house; then accused Nos. 2, 4 and 1 went to house of accused No. 6.

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Moti Singh.
Examination -
continued.

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No. 36

Moti Singh.
Cross-
Examination
by Lloyd
Luckhoo.

Cross-examined by Lloyd Luckhoo:

I was not on the Fairfield bridge when the "load" was fired. I had not met and spoken to Inniss by the Fairfield bridge. I walked along the Fairfield dam to go and see the bodies.

I stayed on the Fairfield bridge for about $\frac{1}{2}$ an hour before going to see the bodies. When accused No.6 came on to the public road and went to his house, I was on the Fairfield bridge. Accused No.6 came along the west side line dam. 10

That morning I was going for money from Martin Farinha - I was riding a bicycle.

Inniss had a bicycle and he was standing opposite the Broomhall dam on the public road when I met him. Inniss told me that Baby Boy had gone down aback and he (Baby Boy) had some money for him. Inniss asked me to wait for him until Baby Boy came out - I agreed. I was not worrying to get my money from Farinha any more.

While Inniss and I were talking I first saw Henry Bacchus about 25 feet away. Bacchus did not speak to either of us and we did not speak to him. 20

Accused No.1 ran about 10 rods east along the line and then ran across the rice field on to the "50 rod dam" about 2 rods south of his house. Accused No. 1 used the words, "Bring the gun come" when he was on the line before turning in to the rice field.

Can't remember telling the Magistrate as at "A" on p. 91 of depositions. 30

When accused No.1 used the words accused No.5 was half way between where I was and the middle walk (or "50 rod" dam).

When I first saw the car it was about 100 rods east of me and accused No.1 already had the gun in his hand. Can't remember saying 150 rods at Preliminary Enquiry ("A" on p.92 of depositions).

Can't remember saying as at "A" on p.93.

I cannot tell if Katriah had anything in his hand; I did not see a gun in his hand. Katriah tried to take gun of accused No.1 with two hands. 40

The spot at which I was standing was about 90 rods west of the house of accused No. 4.

I did not say as at "A" on p.94 of depositions.

Did not include accused No.6 as at "B" on p.92 of depositions.

I did mention about Haniff and Baby Boy before the Magistrate. Bhagwandin's car stopped before loads were fired. (Deposition put in).

Adjourned at 11.20 a.m. to 1.00 p.m.

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Supreme Court

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Evidence

No. 36.

Moti Singh.
Cross-
Examination by
Lloyd Luckhoo
- continued.

10 Cross-examined by Lionel Luckhoo:

I did not tell the Magistrate I was walking; I said I was riding ("B" on p.91 of depositions). I was coming from west to east (now says east to west) I made a mistake. I had not yet been to Farinha.

Cross-
Examination by
Lionel Luckhoo
Q.C.

20 I did not see accused No.5 before jumping off the bicycle. I did not see accused No.5 come along the Broomhall dam. At the Fairfield bridge, after the shots, I gave my bicycle to my uncle, John Ramsammy. There were about 24 people on the Fairfield bridge after the shooting. I did not see them there when going east.

The gun had not yet been handed to accused No.1 when I saw accused Nos.2, 3, 4 and 6 south of the Railway line when the gun was handed to accused No.1 the accused were about 10 rods south of the line.

30 When the conversation between Bhagwandin and accused No.1 took place the accused (Nos.2,3,4 and 6) were on the line and would not be able to hear the conversation.

I have given the full conversation between accused No.1 and Bhagwandin.

I did tell the Magistrate, accused No. 5 had said, "no one can pass here".

When I first saw Katriah he was south of the Railway line coming north with the accused.

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Moti Singh.
Cross-
Examination by
Lionel Luckhoo
Q.C.- continued

Katriah walked through the pasture south of the line after leaving the accused; he was in the pasture when I heard the first shot - he would have gone about 50 rods if he were walking normally.

Jerry Inniss did not come with me to the Fairfield bridge after the shooting.

Another car, besides Bhagwandin's, stopped shortly after Bhagwandin. I had not spoken to Bhagwandin before and did not speak to him on that Sunday and have not spoken to him since - except "good morning".

10

I was not friendly with Bhagwandin. Did not tell the Magistrate as at "B" on p.93.

When accused No.5 passed me I had already given my bicycle to my uncle; it was after this that I saw accused No.6 come out on the road.

Cross-
Examination by
E.V. Luckhoo

Cross-examined by E.V. Luckhoo:

I had been at the Fairfield bridge for about 20 minutes when accused No.5 passed me on his bicycle and about 15 minutes later I saw accused No.6 come on to the road.

20

Never saw Katriah riding a bicycle that morning. Two or three hours after I had seen him go into the rice field I saw him at the scene.

I have known Inniss for a number of years - live 200 rods apart.

Don't know accused No.2 had given evidence against my brother. Have a brother, Bissoon; he was charged with assaulting Haniff Khan - don't know what happened to the case.

30

Don't know that accused No.3 had made a report that my uncle John had branded his calf; did not say as at "B" on p. 94.

Don't know if my brother and Veersammy were charged for assaulting accused No. 2.

Did not see Bhagwandin at the funeral. I did not speak to any of the persons on the Fairfield bridge.

"C" at p.92 of depositions is not correct.

Accused No.3 left the Railway line and came on the public road after accused Nos.1 and 5 reached the other accused. Accused No.3 sat on gate of accused No.1 about 14 feet from the road. Did not say as at "D" on p.92 of depositions.

As accused No.3 sat on the gate I heard the first "load".

10 Accused No.1 had another cartridge besides the one he put in the gun - he put it in his shirt pocket.

No re-examination.

No question by Jury.

(Statement of each accused at Preliminary Enquiry put in).

In the
Supreme Court

Prosecution
Evidence

No. 36.

Moti Singh.
Cross-
Examination by
E.V. Luckhoo -
continued.

CASE FOR CROWN CONCLUDED

No. 37.

COURT PROCEEDINGS

No. 37.

Court
Proceedings.
6th September,
1954.

Accused No.1 elects to give evidence on oath:

20 Lionel Luckhoo states that he wishes to make submission on behalf of accused No. 2;

No case to go to jury in case of accused No.2. On Crown's case accused No.2 is present at shooting but

(a) he is on his own dam; going in direction of the cowpen where he had been milking earlier that morning;

(b) he was not armed;

30 (c) no evidence of words prior to the firing which would indicate the intent to aid or encourage which must be shown.

In the
Supreme Court

No. 37.

Court
Proceedings,
6th September,
1954 -
continued.

At the incident prior to the shooting there are three accused involved, not including accused No.2.

There must be -

- (1) common purpose;
- (2) intent to aid or encourage in respect of the particular crime;
- (3) an actual aiding or readiness to aid. Did he take a part in the actual perpetration of the crime. Hals. Vol. 9 pp. 28 - 33. Not acting in concert.

10

Accused No.2 had been aback that morning doing something, milking, which he had the right to do.

Mere scintilla not enough.

Crown Prosecutor:

There is a sufficient case to go to jury.

Common purpose may be gathered from conduct - one of the accused said, "I tell you let us bring cutlass or gun", "let us go for it now". Accused No.2 could hear and did then go; those words coupled with the exodus of the accused (four) including accused No.2, to the Railway line - shout by accused No.1 "bring the gun" when accused No. 2 in vicinity - a gun was brought; as soon as gun was brought there was a return by accused including accused No.2. Accused No.1 said in presence of accused No.2; "I will shoot you Haniff". Shot was actually fired. At the time certain of the accused, including accused No.2, were returning with the gun, accused No.1 said, "shoot Haniff" (according to Bibi Kariman). Accused No. 2 was present when second shot fired.

20

30

Accused No. 2 could be also an accessory before the fact - refers to Secs. 26 and 27 of Cap. 17.

Lionel Luckhoo:

If a person is present he cannot be an accessory before the fact - Archbold - 33rd Edn. p.1500-01. Submission accepted.

Ruled that case against accused No.2 is to go to jury as it is a question of fact for the jury to determine whether accused No.2 acting in concert.

40

E.V. Luckhoo:

In view of the Court's ruling, I will not make submission on behalf of accused No.4, but I submit that the case of accused No.3 should be withdrawn from Jury.

In the
Supreme Court

No. 37.

Court
Proceedings,
6th September,
1954 -
continued.

10

Assuming that accused No.3 did say, "I tell all you let us bring the cutlass ..."; accused No.1 had already run away. Some evidence is that accused No.3 did not return. Accused No.3 said, "me and nobody got story" he went to his house.

Crown Prosecutor:

Even if accused No.3 was not present at the shooting he may be an accessory before the fact.

Henry Bacchus and Kariman and others place accused No.3 on the scene.

Accused No.3 was at the cowpen when words used, "let us go for the gun"; after these words he went with them north to Railway line and could hear shout for gun.

20

E.V. Luckhoo: Replies.

R. v. Saffie Chan and others about January 1953. As time is now 3.25 p.m. ruling will be given to-morrow morning.

Adjourned at 3.25 p.m. to 9.15 a.m. tomorrow.

TUESDAY, 7th SEPTEMBER, 1954.

Ruled that case against accused No.3 is to go to Jury.

In the
Supreme Court

No. 38.

Defence
Evidence

EVIDENCE OF HENRY ELCOCK

No. 38.

Henry Elcock.
Examination-
in-Chief.

I am Sub-Inspector of Police attached to Criminal Record Office, C.I.D., Georgetown. I produce the "Conviction Report Book" which contains details relating to one Cleveland James at p. 128. Two photographs, a front view and a side view are pasted on to the page. Photographs are pasted on only in cases of persons who go to prison.

The Criminal Report No. of that prisoner is 10
225/128:

Age in 1949 - 17 years

Born at De Hoop, Mahaica.

Father's name - Andrew James

Mother's " - Evelyn Castillo

At that time address given as 134 Middle Street,
Georgetown.

Brother - Winston James.

Three convictions noted -

- (1) indecent language: convicted 16.7.49; 20
fined \$5.00 or 14 days; arrested on 11th
December, 1949 and discharged on 24.12.49.
- (2) larceny of a breakfast carrier; convicted
20.11.50 - placed on a bond \$26.00 for 6
months and to report to Probation Officer
fortnightly;
- (3) Larceny of cast-net, flashlight, knife and
bag on 9.7.51 - placed on bond \$26.00 for
6 months - charge was indictable but
dealt with summarily. 30

All three charges were dealt with by Magistrate
Fitzpatrick at Georgetown.

Particulars as to age, etc. are obtained from
the prisoner on his first conviction.

Photographs would be taken on occasion of
first imprisonment.

Ex. "UU"

(Record put in evidence - Exhibit "UU").

No. 39.

EVIDENCE OF KARAMATIn the
Supreme CourtDefence
Evidence

No. 39.

I am 23 years of age. I am the fourth and youngest son of accused No.6 who is 65 years old. I am married and have one child, two years old.

Karamat.
Examination-
in-Chief.

10 In September, 1953, I lived in my own house on Pln. Broomhall, East Coast, Demerara; that house is south of the public road at the north and to the east of the middle walk dam. House of accused No. 4 is about 40 rods east of me.

I have lived in that house for about 3 years before September, 1953. My father bought Broomhall about 1945 and the Luckhoo firm of lawyers looked after the legal side. Since then that firm (and Mr. Ronald Luckhoo) have done our legal business.

20 In September, 1953, accused No.4 had a gun - that gun is Exhibit "G" - he had had it for over 10 years; he kept it at his house. Before September, 1953, I had been using the gun for about 2 years, to shoot birds, alligators, camoodies - there is a lot of shooting up there.

I did not have any licence for a gun: almost everybody in the county uses a gun without a licence.

I have seen Haniff Jhuman use a gun and a revolver.

30 In September, 1953, the Subadar family and the Jhuman family were on bad terms; had been for about three years before. The cause of the "bad terms" was that cattle belonging to Jhuman used to damage our rice. At first we warned Jhuman; he did not take precautions to prevent the trespass; he kept hundreds of head of cattle on his estate - his wire was in bad condition. We took his animals to the pound on several occasions. I mostly did the impounding. Jhuman was annoyed.

Since 1952 Jhuman gave a "Good" for cow damage and the settlement of \$70:- was in respect of that.

40 The first big damage was in June last year. It was damage to seed plants; notice was sent to Jhuman for \$700:-. No settlement was made. The next big damage was in, I think, August, about 3 to

In the
Supreme Court

4 weeks before 27th September; that was to rice
of accused No. 2.

Defence
Evidence

A notice was sent for \$507:- in respect of
that damage.

No. 39.

Karamat.
Examination-
in-Chief -
continued.

Batulan was a hasty woman, temper, quarrelsome,
like to make fight. She often carried a knife in
her bosom. I have seen her take it from her bosom
to clean fish and cut mangoes. She kept the knife
in a "leather sack".

Haniff Jhuman was hasty - he was charged with 10
discharging a firearm at one Coffin. I was at
Court.

I have seen Baby Boy shooting at the back dam,
also Scholes (Cleveland James).

On Saturday, 26th September, 1953, 10 head of
cattle were caught in my father's rice field north
of the Railway line - it was big rice, taller than
I. It was due for reaping the first week in Octo-
ber. We also had rice south of the railway line
up to the coconut walk. 20

Jhuman had no rice between the railway line
and the road. He had cattle there. No rice south
of the railway line.

Those 10 cattle were caught about 6.30 a.m.;
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 insisted on driving; none of 30
the animals ran into Jhuman's yard. Henry Bacchus
came and held Jhuman and Henry Bacchus's wife held
Batulan. After the animals had been driven past
Jhuman's house I, accused Nos. 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 No.2 and spoke to him.
Later that day accused Nos. 2 and 5 left Broomhall
about 11.00 a.m. in a truck. 40

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" before. 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 a 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 animals on many occasions before; also Butts' sheep. Katriah and I were not on good terms.

In the
Supreme Court

Defence
Evidence

No. 39.

10 After running from Katriah I went back home; got up 4.30 - 5.00 a.m. and went to milk cows, with accused Nos. 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 pen is a wire separating Broomhall and Carlton Hall. We drove in the cows into the wire fence, tied four calves
20 with rope - tied the cows' with the other piece of rope; we milked four cows. We milked another four cows. We were about 2 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 saw 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 2 rods from the wire with a double barrelled gun; it looked like Jhuman's
30 gun. The persons in the pen looked "very serious". When Haniff asked, "where Saffie, etc...", accused No.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 an pound, me chop and kill Frenchmen 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.
40 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".

Karamat.
Examination-
in-Chief -
continued.

50 Accused Nos. 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

In the
Supreme Court

Defence
Evidence

No. 39.

Karamat.
Examination-
in-Chief -
continued.

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 No.5 who was on the public road. I was about 10 rods from the road, on the dam. Accused No.5 was opposite the dam. I told accused No.5 to bring the gun. I wanted the gun to go and protect my brothers and to look after the calves. If calves are left tied cows would butt them and kill them. Accused No.5 brought the gun from house of accused No.4; he handed me the gun about 2 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 No.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 No.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.

10

20

I saw Katriah, accused Nos.6 and 2 coming from the back dam along the Broomhall dam. I spoke to accused No.2 - I was then at the junction of the dam and the line and accused No.2 was about 2 rods south of me. I said to accused No.2, "what happen man" he said, "ah we get beat and ah we get away". I asked where are accused Nos. 3 and 4 and accused No.2 said, "dem get away" Katriah said to me, "you and Saffie better go loose dem cow calf". Katriah said they were going to the Police Station. Accused No. 5 and I walked south, I was going to loose the calves. Katriah, accused Nos.6 and 2 walked east along the Railway line. Katriah had no fight with me, or struggle, for the gun. About 10 rods past the Railway line, I saw three persons coming on Carlton Hall dam - I could not recognize 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

30

40

50

In the
Supreme Court

Defence
Evidence

No. 39.

Karamat.
Examination-
in-Chief -
continued.

10 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 $2\frac{1}{2}$ 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 re-
volver fell out his hand. I then walked back go-
ing 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
20 picked up the revolver. I was already 10 -15 rods
from the bodies when Bibi Kariman and Bacchus
passed me. I got to the line, along it to the "50
rod dam" and then on the public road and then to my
father's house.

30 After I reached my father's house, Sgt. Tappin
and two other police came; in the house were ac-
cused Nos. 2, 3, 4 and 6. Sgt. Tappin said, "you
shoot up the people them like a bird" and I told
him that Haniff took out a revolver to shoot: He
said "you blasted lie man you must tell the judge".
He said, "I arrest all of you" that we were res-
ponsible for the death of Haniff and Batulan.
Accused Nos. 6 and 2 were hand-cuffed. We were
sent to the Station and placed in the lock-up.

Sgt. Tappin used no words of caution at the
house of accused No. 6.

40 About half an hour after I had been placed in
the lock-up a P.C. came and took me to the Guard
Room. Sgt. Tappin said, "you got to give me a
statement". I told him I "nah give no statement".
He did not caution me. He told the P.C. to bring
the hand-cuffs and I was hand-cuffed; he pushed me
on a chair and said, "you got to give me a state-
ment now". I gave a short statement. At the
charge room I also told him about the revolver. The
statement was not read over to me. I first knew
what that statement contained at the "small court".

50 When I was running away from the pen I felt
pain and passion: up to the time I fired the shot
I still had pain and I still had passion.

Adjourned at 11.25 a.m. to 1.00 p.m.

In the
Supreme Court

Defence
Evidence

No. 39.

Karamat.
Cross-
Examination by
Lionel Luckhoo
Q.C.

By Lionel Luckhoo:

Nobody told me to fire the gun. I fired because Haniff took out the revolver. Neither accused No.2 nor No.5 encouraged me to use the weapon. I did not feel that the presence of accused No. 5 gave me courage to fire. Accused No.2 was not by my side. Not true that accused No.5 said to me, "if you don't want to shoot give me the gun". Accused No.5 had no conversation with me about the gun. Accused No.6 was not there with me; accused No.2 was a distance away. I saw him when I turned to go back up north. He was 10 - 15 rods away walking fast.

10

Cross-
Examination by
E.V. Luckhoo.

By E.V. Luckhoo:

Before I ran away from the cowpen nobody told me about bringing a gun; heard no one say anything about a cutlass. When I spoke to Katriah on the Broomhall dam neither accused No.3 nor accused No.4 was present.

The next time I saw accused Nos.3 and 4, after I ran away from the cowpen was at the house of accused No.6. They did not in any way assist or encourage me in anything I did that morning. At no time that morning did I cross over on to the Carlton Hall dam nor did I see any of my brothers (accused Nos. 2, 3 and 4) cross over on to the Carlton Hall dam; there was no fight on the Carlton Hall dam that morning.

20

Cross-
Examination
(Crown)

Cross-examined by Crown Prosecutor:

The last occasion on which I had fired that gun was about two months before 27th September, around July, shooting birds. I killed about 6 "long legs". Between the time I used the gun in July and the 27th September, I had not seen any of my brothers use it. Accused No.4 had used it on previous occasions. I knew that the gun was in working condition on 27th September before I fired it.

30

I do not keep any cartridges at my house. When I go shooting I use cartridges of accused No. 4.

40

Know Jeremiah Inniss and Mottee Singh but not Bhagwandin.

Had no story with Bhagwandin, before this incident; know of no reason why he should tell lies against me.

I did not put the other cartridge in my pocket. I carried it in my hand all the time, also when I fired the gun.

Neither Henry Bacchus nor his wife said anything to us on the morning of 26th September.

10 I knew wife of accused No.3 before that day; she is the sis of Bacchus' wife.

I have had no quarrel with Sgt. Tappin.

This is my signature on Ex. "J" and my initial at the side of it.

Sgt. Tappin did not record in the statement that I told him that Harry Persaud had a gun and Batulan a knife and Haniff a revolver.

I did tell the Sgt. what is in Ex. "J".

I also told the Sgt. at the time of the shot that Batulan had kicked.

20 I gave the statement about 9.30 a.m. and not 11.25 a.m. as recorded.

I also told the Sgt. that Haniff pulled out a revolver.

I have stated all that I told the Sgt. about the revolver.

I also told the Sgt. that Bacchus picked up the revolver.

30 It is about a mile from the cowpen to my house. I was both running and walking from the pen until I got the gun.

While going along the 50 rod dam, from the cowpen I decided that I must get the gun - not before that. I was running from the cowpen to save my life. It was not because of my pain and passion that I had gone for the gun. I decided to get the gun to protect my brothers.

When going south with the gun, I met accused Nos. 2 and 6 and Katriah.

40 After meeting accused No.2 (and No.6) and having been told by accused No.2 that accused Nos. 3 and 4 had "got away", I was not going to protect my brothers, only to attend to the calves.

In the
Supreme Court

Defence
Evidence

No. 39.

Karamat.
Cross-
Examination
(Crown) -
continued.

In the
Supreme Court

Defence
Evidence

No. 39.

Karamat.
Cross-
Examination
(Crown) -
continued.

Batulan, Haniff and Baby Boy did not come on to Broomhall dam while I had the gun.

I had seen Haniff use the revolver on two occasions.

The revolver is 8 - 10 inches long: I did not know at the cowpen that Haniff had the revolver. The revolver is heavy.

When I got up to Batulan, accused No.5 was 3 - 4 rods coming behind me: when I stood up, accused No.5 stood up too.

10

I did not see Bradshaw at that time - I looked around did not see Scholes or Harry Persaud.

The one load killed the two persons.

I told the Sgt. that I fired a load - did not tell him I fired another in the air.

I fired "straight upon them". Baby Boy was in the line of the gun range.

Whenever the gun is broken the extractor ejects the shell.

I did not return to the cowpen.

20

I walked about $2\frac{1}{2}$ rods after re-loading the gun and then fired the second shot. (about from witness stand to clock).

My reason for walking $2\frac{1}{2}$ rods south was to move off from where the people got shot.

The nearest coconut tree to me, south-west of the Carlton Hall dam, or reef was about 20 - 25 rods away. I could look all round to see if any one was there - nearest place where anyone could have been hiding was from here to about 30 feet this side of the concrete wall on the east of the Court house green.

30

Not true that Batulan came in front of Haniff before I fired.

I did not report what Jhuman said about, "one, one day me go kill all you".

Re-examination:

In the
Supreme Court

Defence
Evidence

No. 39.

Karamat.
Re-
Examination -
continued.

10 On 15th December, 1953, I saw Bhagwandin at the Mahaica Court; when Bhagwandin was coming down the steps he pointed to accused No.2 - two policemen were with Bhagwandin - Bhagwandin said to the P.C. pointing to accused No.2 "me speak to him like tea about not carrying the gun". The P.C. said, "not that one" he pointed to me and said, "it's this one carry the gun". Bhagwandin travelled on the train with us and sat opposite to me and was looking at me. I made a report to a Sgt. at Brickdam that night. The Sgt. took the report in writing and read it over to the P.C. who was present and he signed as having been made in his presence.

By Court:

Bacchus put the revolver in his trousers pocket after picking it up.

20 (Witness demonstrates how Haniff was holding the revolver when he (witness) fired the shot).

By Jury:

I told accused No.5 look Bacchus picking up the revolver; I told my father and others at home about Haniff having the revolver.

No. 40.

No. 40.

EVIDENCE OF GEORGE ALBERT.

George Albert.
Examination.

30 Sgt. of Police. In September, 1953, I was N.C.O. in charge of Cove and John Station, East Coast, Demerara. On Saturday, 26th September, 1953, accused Nos. 2 and 6 came to the Station, between 11.30 and 12 midday. They requested to Superintendent Fitt - they were sent over to his quarters in the same compound. Mr. Fitt gave me instructions on the telephone and I carried them out. I caused a statement to be taken from each accused; these are the statements which were taken by P.C.5090 Foo.

In the
Supreme Court

Defence
Evidence

No. 40.

George Albert.
Examination -
continued.

The first statement was concluded at 2.30 p.m. - statement of accused No.2. The other (accused No. 5) concluded at 3.00 p.m. They were at the Station from time of arrival until the statements were taken; they left about half an hour after the second statement was taken; the statements were sent to Mr. Fitt on the next day.

By Lionel Luckhoo:

Cross-
Examination by
Lionel Luckhoo
Q.C.

Not certain if accused Nos. 2 and 6 came by car.

10

Adjourned at 3.16 p.m. to 9.00 a.m. tomorrow (8th September, 1954).

WEDNESDAY, 8th SEPTEMBER, 1954.

No. 41.

No. 41.

Seenarine
Tiwari.
Examination.

EVIDENCE OF SEENARINE TIWARI.

Ex. "FF"

I am a messenger employed by Luckhoo and Luckhoo and in the course of my duties I post letters and I have the letter book containing entries for September, 1953. I posted a letter to Mr. Jhuman of Carlton Hall on 24th September, 1953 - registered post. The registration slip is dated 24th September, 1953, and this copy of the letter bears the same date. I attached it to the copy of the letter. Only one letter I posted to Mr. Jhuman in September 1953. (admitted and marked "FF").

20

No. 42.

EVIDENCE OF ALBERT CRITCHLOW.In the
Supreme CourtDefence
Evidence

No. 42

Albert
Critchlow.
Examination.

Ex. "VV"

10 I am Town Constable No.126. I produce a certified copy of the case jacket of a case brought by me against Cleveland James. This morning in the presence of S.I. Washington I identified the person Cleveland James (Crown witness Cleveland James is now identified by this witness). The case was disposed of on 16th July, 1949 - defendant fined \$5.00 or 14 days - charge was indecent language. (Admitted and marked Ex. "VV").

No. 43.

EVIDENCE OF PERCY KIRWIN MOE.

No. 43.

Percy Kirwin
Moe.
Examination.

20 I am S.I. of Police. On 15th December, 1953, I was Sgt. of Police attached to Brickdam Station, Georgetown; at 6.45 p.m. on that day they were brought from Mahaica Station under escort of P.C.s Bunyan and Conyers. At about 7.15 p.m. accused No. 1 spoke to me so did accused No.2 they made a report against those two P.C.s. At the time those P.C.s were absent - on their return from the kitchen I made the two accused repeat their report. I recorded it in this Police Diary in presence of those two P.C.s. On the completion I signed it and so did those two P.C.s as witnesses. Book admitted - Exhibit "WW".

Ex. "WW"

No. 44.

EVIDENCE OF NAZIM BAKSH.

No. 44.

Nazim Baksh.
Examination.

30 Live at Helena No.2, Mahaica. On the Saturday before the Sunday on which Batulan got killed, I was at Camacho's Rumshop which is opposite the Police Station. It was between 7 and 8 p.m.

In the
Supreme Court

Defence
Evidence

No. 44.

Nazim Baksh.
Examination
- continued.

While coming out of the rumshop, I saw a crowd at the Station bridge. I heard the voice of Jhuman, father of Haniff (Jhuman identified); he spoke loudly - Haniff Jhuman was present. "Man, ah you nah nobody, ah you like dog - people beat all you mother and all you can't do nothing. If all you nah able beat them carry some man and beat them. I don't know my work". Later that night I went to Leung's Spirit Shop which is at Belmonte, passed the market; I left there between 10 and 11 p.m. When I came out I saw a lorry XLA 138 - I know Haniff Jhuman used to drive that lorry; it was by the "swing" of market, stationary, there were three persons in the lorry - Bradshaw, Haniff and another black man whom I did not know.

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(Bradshaw identified).

Cross-
Examination.

Cross-examined by Crown Prosecutor:

I went to Camacho's rumshop about 6 and left about 8 p.m. Most rumshops at Mahaica are "open at the back" after closing hours.

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I am a cattle dealer; buy and sell.

I can't remember what drink I had first; I drink rum every day.

Did not see Sgt. Tappin there that night.

I did not see any truck or lorry stopped in front of the Station.

I know Haniff's wife. The three men were in the front of the lorry - no woman.

The lorry was stationary on the bend of the road, on the left, facing the Mahaica bridge.

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Bradshaw was sitting behind the wheel - the door of the lorry was open.

I came to about 12 feet from the side of the lorry.

It was because of the rum I had had to drink that I did not walk straight and went nearer the lorry.

I do not know the number of any lorry besides Haniff's.

I did not look at the number of the lorry that night. The lorry was empty.

I gave statement to the lawyer since in October last year.

(At request of jury witness identifies Bibi Kariman).

By Lloyd Luckhoo: (through the Court)

I have seen both Haniff and Bradshaw driving the lorry.

In the
Supreme Court

Defence
Evidence

No. 44.

Nazim Baksh.
Cross-
Examination -
continued.

Cross-
Examination by
Lloyd Luckhoo.

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CASE FOR ACCUSED No. 1

No. 45.

STATEMENT OF SUBRATTIE (from dock)

No. 45.

Statement of
Subrattie
(from dock).

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On Saturday morning, I see Jhuman cow grazing in our rice field - we started to carry them to Mahaica Pound. As we meet facing Jhuman gate Jhuman come out with a quacoo stick on the public road - he said, "them cow can't go ah pound today - murderation got to pass". We continued driving the cow and he was in front stopping them - Batulan ran with a prospecting knife. At that time Henry Bacchus held Jhuman and Henry Bacchus' wife held Batulan. Batulan said "if all you want to fight, let ah we fight". When we catch High Dam accused Nos. 1, 3 and 4 turned back and me and Saffie carry the cow to Mahaica Pound. I told Sgt. Tappin to take my report that Jhuman come out ah road and stop the cow dem and Batulan ran with a prospecting knife. Sgt. Tappin said he was not going to take no report against Jhuman. He paid me my money for the pound fee and told me to come out of the Station.

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Came back to Broomhall and told my father that Sgt. Tappin would not take any report and he said

In the
Supreme Court

No. 45.

Statement of
Subrattie
(from dock) -
continued.

the best thing let we go to Cove and John and make a report to the Inspector Fitt; my father and I came to Cove and John by car. I reached Cove and John about 11.30 a.m. and told the Sgt. to take my report and then he rang for Mr. Fitt and later on the Sgt. got some instructions from Mr. Fitt and then the Sgt. told Police Foo to take the report. We left the Station about 3.30 to 4.00 p.m. We walk through the Cove and John dam to catch the Railway line and come to Belfield Station. On that day I did not see Mohamed Haniff at all. I got the train and came home. 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 No.1 was the first to run then accused No. 3, then accused No.4 and I run behind.

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Between the line and the gate of Broomhall, western side, accused No.1 met me, Katriah and accused No.6. Accused No.1 asked me, "where dem boy" and I said, "dem boy get away" and he asked if I loosed the cow calf them which had been tied. I said to accused No.1 "all ah we get beat up, we ain't get a chance". Katriah said that accused No. 1 and accused No.5 better loose them cow calf and accused Nos.1 and 5 started to walk along the dam. When they went about 10 rods I tell Katriah that I want some house milk that I am going back too and I started to walk. I was about 10 rods behind accused No.1 and when accused No.1 go to pass I see Haniff pull out a revolver, to shoot accused No.1 and accused No.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 No.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 No.1. I did not spoke to accused No.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.

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CASE FOR ACCUSED No. 2.

No. 46.

STATEMENT OF ALI HUSSAIN (from dock)In the
Supreme Court

No. 46.

Statement of
Ali Hussain
(from dock).

10 Saturday morning me and my brothers were going to milk cow; we see some cows belonging for Mohamed Jhuman in the rice field and we take them on to the road to the pound. When we meet facing Jhuman's house he come out with a quacoo stick and say, "this cow can't go ah pound today, murderation got to pass". Batulan ran with a prospecting knife and Henry Bacchus held on to Jhuman and Henry Bacchus' wife hold on to Batulan. Batulan said, "loose them, if they want to fight, let ah we fight". Just as we pass High dam accused No.1, myself, accused Nos. 4 and 6 turned back. Jhuman was by his iron gate and said, "one one day we must kill ah you" and we continued our way to Broomhall backdam.

20 Sunday morning me and my three brothers went to the Broomhall backdam to milk cows in ah we own cowpen. I see Haniff Jhuman, Batulan, Baby Boy, Mr. Bradshaw and Scholes came over at the cow pen. Haniff use some words about Saffie's mother's so and so - then accused No. 4 told Haniff that accused No.5 was not here this morning. Batulan then went to accused No.1 and start to beat him and all of them start to beat the boy and then we all ran to the assistance of my brother and then they attack "foo we people" and accused No.1 get to escape from the beating and then I get a chance to
30 escape too from the beating and I run on the side line dam straight on to the road about a few rods to catch my house. I saw Jerry Inniss and Mottee Singh was coming and Inniss and Mottee Singh met me opposite my gap then Jerry said that he see accused No.1 gone on the middle walk dam with a gun then I tell him that the Jhuman family go ah we calf pen and beat up ah we and I tell I ain't going nowhere. I am going home, because I meet to my
40 house already. I did not use any word about any cutlass any gun or any threat. I barely try to safe my life to get away to my house - in my house I hear a load discharge and after a few seconds I hear a next "load" fired. I am innocent of the charge.

CASE FOR ACCUSED No. 3.

In the
Supreme Court

No. 47.

STATEMENT OF HOOSANIE (from dock).

No. 47.

Statement of
Hoosanie
(from dock).

On Sunday, about 4.30 - 5.00 in the morning me and me three brothers went a back dam to milk my father's cows, 450 rods from the public road. When we start I notice Haniff, Batulan, Baby Boy, Bradshaw and Scholes come over inside the pen - Haniff said where is Saffie's mother's so and so - I told him that Saffie went to a wedding house last night and he drink rum and is drunk - he is not coming to work this morning. Batulan went up to accused No.1 and said, "you Bengal, you Bengal, you are a good one too, you does carry my sheep to the pound". She collared him and started to beat him and all of them, Bradshaw, Haniff, Baby Boy. We run to assist because when the boy fall he said, "oh God, a dead". They then turn on us and start to beat us and accused No.1 was the first to run. I then said to Bradshaw, "Oh Uncle Bradshaw, this is a legal advantage to beat ah we in ah we own calf pen". Accused No. 3 then ran - I get a spare chance and I run too - while running I never met my father nor Katriah. I never told Katriah that me ah go for gun to shoot anybody and I never tell him that Bradshaw and Haniff beat me because I never meet him. When I dey far I hear a load discharge. I never tell accused No.1 to go shoot and I never know who give me the gun and I am innocent of this charge.

CASE FOR ACCUSED No. 4.

No. 48.

No. 48.

STATEMENT OF SAFFIE MOHAMED (from dock).

Statement of
Saffie
Mohamed
(from dock).

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

On Sunday morning I did not go aback. While I was on the public road, I saw accused No.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 No.4 and bring the gun with two cartridges. I give them to accused No.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. I go along the middle walk dam with him. On the Railway line we meet Edun (accused No.2), Katriah and accused No.6. Accused No.1 asked where is accused Nos.3 and 4 and accused No. 2 said that they had got away. Accused No. 1 asked accused No.2 if they had loosed the cow calf. Accused No.2 said, "no". Katriah said better you and Saffie go and loose the cow calf - on we way we met Batulan, Haniff Jhuman and Baby Boy, Haniff said, "where the mother's scunt you ah go". Batulan said, "shoot the bitch dem". Haniff draw the revolver and accused No.1 fired a load. Baby Boy was running away. Accused No.1 walked a little further and he fired a next load in the air. I never told accused No.1 to give me the gun if he was afraid. I never told accused No.1 to fire. I never told no one nothing about "spade up". When I gave accused No.1 the gun I did not know why he want it for. We 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. 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.

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CASE FOR ACCUSED No. 5.

No. 49.

STATEMENT OF SUBADAR (from dock).

Me come back dam - me and Katriah, all two. That time we come on the line ah we meet Bengal - Katriah tell Bengal to go and loose calf - me hear that. Katriah went along the line and I went along the line to the 50 rod dam and we go straight house. Me nah tell nobody "give am fire" - me nah tell them me got money to hire Luckhoo.

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CASE FOR ACCUSED No. 6.

In the
Supreme Court

No. 48.

Statement of
Saffie Mohamed
(from dock) -
continued.

No. 49.

Statement of
Subadar
(from dock).

In the
Supreme Court.

No.50.

SUMMING-UP OF MR. JUSTICE HUGHES

No.50.

Gentlemen of the jury.

Summing Up.

Mr. Justice
Hughes.

16th September,
1954.

This trial started thirty-seven days ago and for twenty-six days of that period you have given your undivided attention to matters relating to these proceedings. You have listened to the evidence and you have visited the scene and other relevant points to which reference has been made in the course of the trial. You have, of course, at times had to withdraw while legal submissions were being made. You have listened, too, to the addresses of three counsel for the six accused persons and to the address of the Crown Prosecutor and we have now arrived at the stage where it is my duty to sum up to you; that is to say, I must give you directions in law not only regarding the principles which are of general application - that is to say, which apply in every criminal trial - but also as to those matters of law which relate specifically to the charge which is under consideration.

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It is my duty, too, in summing up to you, to direct your attention, in an endeavour to help you in your deliberations, to certain parts of the evidence - not, of course, to all of it in detail because then you would be here for a very much longer time indeed. So we now come to the summing-up which, as you know, will be followed by your deliberations.

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The first matters to which I desire to direct your attention are those principles of law which you must at all times have in the forefront of your minds. Those are principles which apply in every criminal trial. You must have them before you in your deliberations and you must be guided by them.

The first of those principles to which I must direct your attention is what is known as the presumption of innocence in favour of an accused person. An accused person - and when I say an accused person you will understand that it relates to each and everyone of the accused - is presumed to be innocent and the burden of proving his guilt rests throughout the trial, from the commencement to the very end, on the Crown. It is the Crown who have brought these six accused persons before

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you on this charge and it is the burden and duty of the Crown to establish to your satisfaction beyond a reasonable doubt that they are guilty. None of the accused is under any obligation whatever to satisfy you that he is innocent. The Crown must satisfy you that he is guilty.

In the
Supreme Court.

No. 50.

Summing Up.

Mr. Justice
Hughes.

16th September,
1954 -
continued.

10 You must not on any account convict merely because you think the defence is weak. You may convict only on your acceptance as true of the material allegations which the Crown makes in this case. You must not convict on any weakness in the defence but only on the strength of the Crown's case. When I say the strength of the Crown's case, gentlemen, you must not misunderstand me and think I mean that in your deliberations you must have regard only to what has been laid before you at the instance of the Crown, that is to say, that in determining whether any of the accused is guilty you will look only to the evidence which has come from the mouths of the Crown witnesses or to the exhibits which have been tendered at the instance of the Crown. That is not so. In arriving at your finding and in determining whether or not the Crown has discharged its burden you must look to the evidence as a whole; that is to say, all the evidence, both that which has proceeded from the mouths of the Crown witnesses or has been placed before you by the Crown, and the evidence led by the defence. You look at all the evidence as a whole and on that you determine whether or not the Crown has discharged the burden placed upon it of proving beyond a reasonable doubt the guilt of any of the accused persons. The fact that you may not believe the evidence of any particular accused is no ground for saying that he is guilty. You can only say that he is guilty if, on examination of all the evidence, you feel satisfied beyond a reasonable doubt that the necessary elements which the law requires must be proved have in fact been established by the evidence which you accept as true.

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So that, gentlemen, is the first principle which you must at all times bear in mind - the presumption of innocence in favour of an accused person and the duty of the Crown, which never shifts, to prove the guilt of the accused.

The next principle is that you must give an accused the benefit of any reasonable doubt which you may entertain. Reference has been made earlier in these proceedings to that principle. If in the

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Supreme Court.

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Summing-Up.

Mr. Justice
Hughes.

16th September,
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continued.

course of your deliberations you find yourselves in a state of reasonable doubt it is on every occasion your duty to resolve that doubt in a manner favourable to the accused.

That principle holds good not only when you examine the evidence and you find yourselves in a state of reasonable doubt on any particular aspect of the matter - in such a case you must resolve that doubt in a manner favourable to the accused - but it holds good up to the very end. If after you have made up your minds as to what are the true facts of this case - the facts on which you feel you can safely act - and you have applied the law to those facts, if at that stage you find yourselves in a state of reasonable doubt as to whether an accused person is guilty or not it would be your duty to acquit him, because the standard of proof required in a criminal matter is proof beyond a reasonable doubt. I shall explain to you what is a reasonable doubt. So bear that principle in mind: on every occasion where you entertain a reasonable doubt give the benefit of that doubt to the accused person.

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Reasonable doubt, gentlemen, is one which would cause you to take a particular line of action in matters of importance in your everyday affairs. If you, as businessmen or in your domestic life, are called upon to make a decision in a matter which is of importance to you - not in any trivial matter but in a matter which is of importance to you - and the outcome of it will materially affect you, you will naturally consider all aspects of that matter carefully and having been satisfied beyond a reasonable doubt you will then decide what is the proper course of action to be taken. That standard which you would demand in matters of importance in your own affairs, is the same standard which you must apply in a criminal case.

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The law does not say that you may not convict unless you are satisfied beyond any doubt whatever. The standard is not that of absolute certainty. It is the standard of proof beyond reasonable doubt. You must examine the evidence and ask yourselves are you sure that any of the accused is guilty? If your conscience and your reason tell you "yes, on the evidence which I believe to be true and on the law as it has been given to me, my conscience and my reason tell me that an accused person is guilty", then, gentlemen, it is your duty to convict.

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If on the other hand, after similar examination of the evidence, you either are satisfied that an accused person is not guilty or you are in a state of reasonable doubt as to whether he is guilty or not, it would be your duty to acquit.

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Supreme Court.

No.50.

The standard really is that of moral certainty. So long as your conscience and your reason guide you, point to a certain direction, then you may be satisfied if they point to guilt that the necessary standard has been attained. But if your conscience and your reason are disturbed, if there are matters about which you are not sure, then the Crown has failed in its duty of proving guilt beyond a reasonable doubt.

Summing-Up.

Mr. Justice
Hughes.

16th September,
1954 -
continued.

So it is your duty, gentlemen, to regard the evidence and make sure that it satisfies you so that you feel sure in giving your verdict. Before you convict you must be sure and must be satisfied that the prosecution has established the guilt of the accused. That, gentlemen, is the standard of proof - proof beyond a reasonable doubt. The same standard which you would demand in matters of importance in your everyday affairs. Not absolute certainty, because there are few matters in life about which we can be absolutely certain. You must not be disturbed by such doubts as would affect a man who can never really make up his mind on any matter at all. It is not that type of doubt that you must overcome. It is the same type of doubt which would cause you to pause in your own everyday matters of importance before making a decision. In other words, it is the state of moral certainty. Let your conscience and your reason be your guide. If you follow them, then you cannot go wrong.

Now, gentlemen, I must again direct your attention to the fact, and it is one you have heard from me ad nauseam, you have heard me repeat it time and time and time again, that you must not on any account take into your consideration any matter other than what has been placed before you in the course of this trial. If it happens that you have read or heard anything relating to any of the accused or to this case before, put that completely out of your minds and concentrate your attention solely on the evidence which has been placed before you. You will remember that in the course of the oath which was administered to you, you were told "now harken to the evidence". That is all that you must do - harken to the evidence that has been led

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Mr. Justice
Hughes.

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continued.

before you. Do not pay any attention whatever to any outside matter. I need not stress that further because, as you know, I have referred to it so very many times before in the course of the trial.

You, gentlemen, are the judges of fact. The facts are exclusively for you. It is your province to examine the evidence and discard what you find to be untrue or what you regard as inaccurate or incorrect and accept and act upon only what you believe to be true. If in the course of my remarks to you I appear to indicate that I take a particular view of the evidence, whatever it may be, you are quite entitled to disregard that. It is not for me to tell you what to believe on the evidence or what view to take or what conclusions to draw. That is exclusively for you and if I happen to express a view and you accept it, well, then, it coincides with your own view and you make it your own; but do not necessarily act on anything that I say regarding the evidence. That, gentlemen, is for you and it is exclusively your function, and in discharging that function as judges of fact, as I have said you will, of course, disregard whatever you find is untrue. You will similarly disregard whatever you consider is incorrect or inaccurate because it is not every matter which is not the truth which is necessarily a falsehood, because as you know persons may say things desiring to be quite truthful and helpful but due to, perhaps, a faulty recollection they may give an account which is not strictly accurate. In such a case it would be unfair to such a person - I am not thinking of any particular witness in this case - to brand him as one who has said an untruth. It is merely that he has not been able to recollect accurately the details of what he is recounting and for that reason he has strayed from the truth. But those matters you will disregard.

The Crown prosecutor has made reference to one matter in that connection. He has said that two persons may see the same incident and when afterwards they are called upon to state what they have seen - what has taken place - you may get variations in the accounts given by them, not because they wish to deceive. They may be both perfectly honest but each mind has not been able to retain with the same degree of accuracy all the details of the particular incident.

So, in determining the facts you will take into

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account whether differences in the evidence, contradictions and inconsistencies, are the outcome of wilful falsehood or whether they are the outcome of a faulty recollection or the inability of the particular person to retain in his memory accurately the details of what he seeks to recount to you. That is an important aspect of the matter, gentlemen, and one which, no doubt, you will be called upon to consider not infrequently in examining the evidence of the several witnesses. I say that because the defence has to no little extent sought to establish, by directing attention to a number of contradictions - that is to say, differences between what a witness is recorded as having said in the deposition before the Magistrate and what he has said here and differences in the account of the same incident given by different witnesses - that such a witness is untruthful.

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It is for you in determining the truth or falsity of what a witness says in the particular connection to make up your minds whether those differences are the outcome of wilful falsehood or merely are the outcome of the frailty of the human mind. It is important from this aspect, because, as counsel for the defence have quite rightly pointed out, if in examining a witness' evidence you are satisfied that what he has said in a particular respect is false you will approach the rest of his evidence with more caution than you would otherwise do.

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I must tell you too, that as judges of fact it is not the case that if you find that a witness has in one respect said something which is untrue that you must necessarily cast aside all his evidence. That is not so. You may, as judges of fact, accept a part of what a witness says and reject a part. That has been mentioned before and perhaps I should just say one more word on it in an endeavour to assist you. Assume that three persons are seen breaking out of a building; one of the witnesses called says quite definitely that he identifies two of those persons but refuses to or gives evidence which is contrary to other evidence relating to the third person. His evidence regarding those two is in keeping with other evidence in that connection but his evidence as regards the third person is quite contrary to the other evidence regarding that third person. If it is shown afterwards that that third person is perhaps the brother of the witness you may naturally feel that this witness has said

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continued.

quite truthfully what he has seen regarding these two persons but he has deliberately withheld what he knows about the third person, the reason being that he is his brother, and he misguidedly seeks to protect him by saying what is false. In such a case a jury would no doubt accept the evidence of that witness regarding those two because he has spoken the truth but nevertheless, having regard to the evidence of the other witnesses as regards the third person, they would reject his evidence on that. I mention that merely to show that in dealing with a witness you may reject a part and accept another part of his evidence and act upon it. That is entirely fact for you to determine what you do accept and what you do reject.

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Perhaps in passing I might just in this connection refer to one matter which the Crown prosecutor has mentioned in the course of his address. In referring to the large number of contradictions and inconsistencies to which attention has been directed by the defence, he has said the defence asks you not to believe these witnesses or some of them because there is this number of inconsistencies. He says on the other hand if each witness had come forward and given an exactly parallel account of what had taken place you would immediately become suspicious and say "these people have put their heads together; they have learnt this story parrot fashion and they are reciting it before me and I do not believe they are really speaking the truth". Well, that is the type of approach, gentlemen. Ask yourselves precisely of what significance are the contradictions, the inconsistencies and the differences in the evidence. Do they show their falsehood? if so, then examine the remainder of the evidence of that witness closely and see whether it is worthy of credit or not.

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In determining whether a witness is speaking the truth or not you know, as men of the world, what standards you are to employ. In some cases the demeanour of a witness - the manner in which he gives his evidence - is significant. It is possible sometimes for a person, observing how a witness gives his evidence, to form an opinion as to whether that witness is truthful or not. I am not saying that it is an infallible guide and that the demeanour necessarily indicates conclusively whether he is truthful or not, but sometimes it is possible by a witness' demeanour to form an opinion and you can use that as one of the matters guiding you in

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whether you are to accept or reject his evidence.

Another matter which will no doubt arise quite frequently in your deliberations as regards acceptance or rejection of parts of the evidence is the existence or otherwise of a motive, because you must remember that there are people who are wicked enough, because they bear ill will or for some other reason, to come into a court of law and after taking the oath to say what is untrue. So it is for you to ask yourselves whether a motive does in fact exist and whether the existence of such motive has in any way influenced the evidence given by that witness.

Gentlemen, the existence of a motive and the giving of false evidence are by no means synonymous. An honest man, whatever his feelings may be, whether for or against a particular person, is going to speak the truth. There is no question about that; but you have to take into account those who are influenced by motive and allow a motive to colour the evidence which they give. That, I tell you, is of importance in this case because the defence has on many occasions put forward that some of the witnesses for the Crown have said what is untrue because there exists a motive for their so doing. Counsel for numbers 2 and 5 referred to it as the "Jhuman influence"; that that influence of Jhuman is so strong that persons will come forward and say what is untrue in the belief that it is what he would wish them to say; or, on the other hand, it may be the type of motive which has its origin in ill will.

It has been suggested to you that the witness Alfred Katriah, for example, has varied his evidence, that he has departed from the truth because of his friction with number 1 accused Karamat over the impounding of the bull. You will remember that. It is for you to say whether, first of all, that incident about the impounding took place - and there seems to be no reason why you should not accept it. Secondly, if it did take place, has it engendered in Katriah any ill will; and thirdly, if it has engendered any ill will has that ill will found an outlet in what Katriah has had to say in the sense that it has caused him to change his evidence and to depart from the truth. That is the type of matter, gentlemen, that you have to consider in examining the evidence and making up your minds as to whether a witness has spoken the truth or not.

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continued.

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Hughes.

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continued.

In your deliberations you are not restricted only to the spoken word of the witnesses or to the exhibits, or to what you have seen when you visited the locus in quo. You may, as judges of fact, draw conclusions from facts which have been established to your satisfaction. Where you are satisfied that a particular set of circumstances exists you are quite entitled to draw such conclusions as you feel reasonably follow from that particular set of circumstances, but they must be, of course, reasonable conclusions. You must on no account speculate, or guess, or conjecture. You must not, as it were, take leaps in the dark, to borrow the expressions of one of the counsel. Any conclusion, any finding, which you arrive at must be one which is reasonable and based on the evidence which you accept. In that connection I will tell you that if you are satisfied of the existence of a certain set of circumstances and from that set of circumstances two conclusions may be drawn with equal reason, then you must draw that conclusion which is favourable to the accused person. That is merely an extension of the principle which I have already mentioned of giving the accused the benefit of the reasonable doubt.

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If you say "I find that this set of circumstances has been established and from that flows either this conclusion or another conclusion" - it may be one and equally it may be the other - if this is the case then you must draw the conclusion which is favourable to the accused. That is, where two or more conclusions may be drawn with equal reason draw that which is favourable to the accused.

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Do not, however, think I am telling you that if two conclusions may be drawn, one of them is highly probable and the other one is remotely possible, that you must draw the one which is remotely possible merely because it happens to be favourable to the accused. That is not so. It is where you are in reasonable doubt; it might be this or it might be the other one. Well, give the accused the benefit of the doubt in those circumstances.

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Gentlemen, the evidence of the accused must be gauged by precisely the same standards as you gauge the evidence of any other witness. You must not on any account approach his evidence in a different light merely because he stands before you charged with an offence. All the principles, all the

standards and all the tests which you apply in determining the truth or falsity of what a witness has said apply equally to the accused persons. Not because a man is charged before you must you approach what he has had to say in any different light from that in which you would approach the evidence of any other witness.

10 As I have endeavoured to point out to you, gentlemen, the facts are entirely for you. They are exclusively within your province, but it is my function to give you directions on law and you must accept those directions and you must act upon them. You must consider the evidence and the charge against each of the six accused separately. You must not, because the six of them are charged jointly, as it were lump them together and, because you find that one is guilty say, "well, he is charged with him and I am going to find him guilty too".

20 You must examine the evidence in relation to each accused person separately and ask yourselves whether the evidence satisfies you beyond a reasonable doubt of the guilt of each accused separately. You must consider the case against each one separately and make up your minds in regard to each one individually and separately. Do not, as I say, lump them together merely because they happen to stand before you charged together. Consider the case against each one separately. That has been referred to earlier and I bring it back to your attention. Consider the case against each accused separately.

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Gentlemen, it is the case that you must not allow to operate in your minds against any accused anything that may be said either by someone else or by one of his co-accused either in his presence or in his absence. Anything said by another accused or by another person either in the presence or in the absence of any accused person cannot be taken as evidence against him: subject to this qualification that if something is said in the presence of an accused person, if either by his words or by his conduct he accepts it either in whole or in part, well, then, in such circumstances you can take it into account. But you must not allow to weigh against an accused anything said either in his absence or in his presence, that is not on oath, of course. The first accused (Karamat) has given evidence on oath and anything that he has said which you may find either favourable or unfavourable to any of the accused you may properly take into account either against himself or against any of the

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other accused. But only in such circumstances - only in the case of the number 1 accused. You must bear that in mind because it is of importance. You must not allow to weigh against an accused person matters which have been said not on oath.

You must not, of course, gentlemen, be influenced in any way by prejudice. You must not be influenced by sympathy. It is, of course, a very tragic matter that Haniff Jhuman has been swept into eternity, but it is no less tragic that these six persons find themselves here on this charge. You are not concerned with sympathy. You are concerned with facts and with law. Consider the facts, arrive at your finding, apply the law as I shall give it to you to those facts and having done so give your verdict fearlessly and fairly. Be fair to the accused but be no less fair to the Crown. This is not a contest between the two. If the accused are not guilty acquit them. If you have a reasonable doubt as to whether they are guilty acquit them by all means; but if the evidence satisfies you that any of them is guilty well, it is no less your duty to convict them. You must follow the path along which your conscience and your reason lead you and do your duty however stern that duty may be.

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If you find any of the accused not guilty, or if you have a doubt as to his guilt, do not hesitate to acquit him. And equally, if you are satisfied beyond a reasonable doubt of his guilt likewise do not hesitate to convict.

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This, I think, gentlemen, is a convenient point at which to mention one matter which I usually mention at the conclusion of my summing-up. If in the course of your deliberations you are not clear as to the directions which I have given you in law, or if you have a hazy recollection as to what the evidence of a particular witness is, Mr. Foreman, you must not for a moment hesitate to ask that the jury should be brought back into court and I shall, as far as lies in my power, either give you such further directions as you may need or as far as possible refresh your memory from my notes as to the evidence, because it would be most unsatisfactory for you to arrive at a finding, whatever it may be, either on an inaccurate understanding or an incomplete understanding of the law, or on a hazy recollection of the evidence. So bear that in mind. If you say "I am not sure whether he said this", if I can help you, come back and I shall do what I can

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because you must be fully apprised of the law and must have a clear recollection of the evidence as it has been given.

So much, then, gentlemen, for the general principles which you must at all times have in your minds in considering this matter. I pass now to those aspects of the law which apply particularly in this case.

10 Six accused, as you have heard, are charged with the offence of murder: that is, that the six of them, on the twenty-seventh day of September, in the year 1953, in the County of Demerara murdered Haniff Jhuman.

It is necessary that I should, in the first place, tell you what in law constitutes the offence of murder. Quite obviously, unless you know what that is you can never give a finding.

20 Murder is where a person of sound memory and discretion unlawfully kills a reasonable creature in being and under the Queen's peace with malice aforethought express or implied.

That is the accepted definition of the offence of murder and I shall try to reduce it to its component parts so that you may understand what elements have to be proved in order to establish the charge of murder.

30 The first is "where a person of sound memory and discretion". That gives you no difficulty whatever because it would be a defence to a charge of murder, or any charge, that the person charged is not of sound memory and discretion, in other words, a defence of insanity. Well, there has been not even the remotest suggestion of that in this case and it would be a matter, of course, of defence, so you can take it that that element presents no difficulty; that any of the accused are persons not of sound memory and discretion - that any of them is otherwise. Their insanity would be a matter to be put forward by the defence, so do not
40 disturb your minds about that element that the person must be of sound memory and discretion.

Now, the next element is that the killing must be unlawful, because it is not every killing that is unlawful. Quite obviously, if a man is in the course of cutting a log of wood and there is someone

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standing nearby and the head of the axe which he is using flies off and kills that person his act - what he was doing - had directly brought about the death of that person but it could never be said that the killing was unlawful; in other words, that he is criminally responsible for what has happened. That is accident pure and simple and one of the elements of which you must be satisfied in a charge of murder is that the killing was unlawful. I said before that all the elements must be established but this is the one which calls for close examination so I shall pass over that for the moment and give you the other elements.

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You must be satisfied that the person alleged to have been killed was a creature in being and under the Queen's peace. That too, gentlemen, should present no difficulty. There has been no suggestion that Haniff Jhuman was other than a creature in being. That would arise sometimes in infanticide and matters like that, but in this case you need not disturb yourselves. You must be satisfied, however, as to whether Haniff Jhuman was or was not a creature in being and, similarly, as to whether he was or was not under the Queen's peace. That would be the case where perhaps it is an alien enemy. In times of war persons are shot but it is not because the person doing the shooting has killed someone deliberately it can be said that he is guilty of murder because the person killed may be an alien enemy; in other words, someone who is not under the Queen's peace and not entitled to the protection which the law gives to such persons. So though you must be satisfied about these they should not present any difficulty: that the person killed, Haniff Jhuman, if you find he was killed, was a creature in being and that he was under the Queen's peace.

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You must be satisfied, too, before you may return a verdict of guilty of murder that the killing was done with malice aforethought either express or implied. Aforethought does not necessarily mean premeditated. It does not mean that the person doing the killing, over a period of time, has nurtured this malice in his breast. That is not so. What it does mean is that malice must precede the killing; in other words, that there must have been in the mind of the person doing it the intention to kill, and that intention must have existed before - not necessarily for any long time before - the actual killing took place. So you must be satisfied that there was malice aforethought; in other words,

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malice preceded the killing.

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".

Or you may have implied malice - that is, where the law says that in certain circumstances you may imply that malice existed. But it is the case, gentlemen, that you must be satisfied before you may return a verdict of guilty of murder that malice did exist, and after your examination of all the evidence and you have drawn such conclusions as you feel may reasonably be drawn, if you are satisfied either that malice did not exist or you are left in a state of reasonable doubt as to whether malice existed or not, it would be your duty to acquit of murder because malice is a necessary ingredient of the charge of murder.

The Crown, as I understand the case - it has not been put forward in so many words - is alleging that in the case of the number 1 accused Karamat there was express malice; that before the shooting he gave clear indication, if you accept the evidence for the Crown in that connection, of what he intended to go and do.

I shall read to you, gentlemen, a short passage which puts this matter of implied malice, I think, quite clearly and of course much better than I could ever hope to do it. It is headed Implied Malice: "In many cases, where no malice is expressed or openly indicated, the law will imply it from a deliberate cruel act committed by one person against another. It may be implied where death occurs as the result of a voluntary act of the prisoner which was intentional and unprovoked."

We will come to the question of provocation

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presently. In other words, if you are satisfied from the evidence that death resulted from the voluntary act of the prisoner - and as I say it is a matter of fact for you that it was otherwise than a voluntary act - which was intentional, that is to say not accidental, and which was unprovoked - if the evidence satisfies you that it was a voluntary act, that it was intentional and that it was unprovoked, then the law says you may imply, even though there has been no outward manifestation of it, that malice existed.

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The passage goes on "When evidence of death and malice has been given (and this is a question for the jury) the prisoner is entitled to show by evidence or examination of the circumstances adduced by the prosecution that the act on his part which caused death was either unintentional or provoked. If the jury are either satisfied with his explanation or, upon a review of all the evidence in the case, are left in reasonable doubt whether (even if the explanation of the prisoner is not accepted) the act was unintentional or provoked, the prisoner is entitled to be acquitted of murder. If the jury are left in reasonable doubt whether the act was unintentional, that is to say, a pure accident without criminal negligence, the verdict should be not guilty." (That is where there is pure accident; a case similar to the accident of the axe which I mentioned).

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The passage continues ... "If they are left in reasonable doubt whether the act was perpetrated under the impulse of provocation, the verdict should be guilty of manslaughter."

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In other words, if you find that the other elements of the charge of murder are present but you are either satisfied that there was no malice or you are in a state of reasonable doubt as to whether there was or was not malice, your proper verdict will be one of guilty of manslaughter.

The passage concludes ... "In cases of implied malice the homicide (that is the killing) is often committed in the presence of others, who may prove it, if not, it must be proved by circumstantial evidence."

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So much then, gentlemen, for malice which may be of two kinds: either express or implied; that is to say, by either words or actions where you feel

you can reasonably say that from what this man has said - I am not referring particularly to any of the accused - or from what he had done or from the manner in which he has done it that malice existed; in other words, that he had this intention and that the intention preceded the actual act which resulted in death. But I tell you that you cannot convict of murder unless you are satisfied beyond a reasonable doubt that there is evidence of the existence of malice on the part of the accused.

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I now go back, gentlemen, to the other elements of the definition of murder to which I referred earlier and that is "unlawfully kills".

A person is guilty of murder if he "unlawfully kills" ... A killing is not unlawful, as I have told you, if it is the direct outcome of accident. A killing is not unlawful if it is done in self-defence which, I think, is the main defence. I do not want to put the defences in degrees necessarily, but it is one of the defences, shall we say, in this particular matter. A killing would not be unlawful if it is done in self-defence which is a complete answer to the charge, and if a person is charged with murder and the evidence goes to show that he was acting in self-defence, he is not held criminally responsible.

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A man is entitled to defend himself. He has not got to stand up and wait until his assailant does him to death or does him some grievous bodily harm. He is entitled to defend himself, but in defending himself, if in so doing he kills his assailant, it amounts to self-defence only if the circumstances are such that it was necessary for him to kill his assailant either to protect his own life (which is what is alleged in this case) - I need not go into any other aspects of it because it is not alleged that the number 1 accused Karamat fired the shot, which he admits doing, other than to save himself - or to save himself from grievous bodily hurt at the hands of his assailant. He must show that he killed to save himself either from immediate death or from receiving grievous bodily harm at the hands of his assailant. In those circumstances if a person shows "it was either my life or his and I took his" or "the circumstances were such that had I not taken his life I had reasonable ground for apprehending that my life was in danger or I might have received grievous bodily hurt at his hands", if the evidence satisfies you that this is

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the case well, then, the defence of self-defence has been established.

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It is also the case that a person may kill another only as a last resort. If there is an avenue of escape open to him he must avail himself of that avenue; but if, of course, the fierceness of the assault is so great that he cannot, as it were, do anything but kill his assailant then, of course, he is not called upon either to retreat or to do anything else, if the fierceness of the assault is so great. But bear in mind that if self-defence is established it is a complete answer to the charge.

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There is one passage which I want to read to you and which puts it much better than what I have just told you. "To show that it was homicide in self-defence it must appear that the party killing had retreated either as far as he could, by reason of some wall, ditch or other impediment, or as far as the fierceness of the assault would permit him; for the assault may have been so fierce as not to allow him to yield a step ..."

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(Which is what the defence is alleging in this case. He said this revolver was there and if he did not shoot when he did he would have been shot). Well, it is for you to say whether a reasonable man would reasonably apprehend that his life was in danger, or that he would have received grievous bodily hurt at the hands of the deceased, Haniff Jhuman.

The passage continues ... "For the assault may have been so fierce as not to allow him to yield a step without manifest danger of his life, or enormous bodily harm; and then, in his defence, if there is no other way of saving his own life he may kill his assailant instantly."

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So, gentlemen, that is the position as regards self-defence. I trust I have made it clear that if circumstances are such that a person reasonably apprehends, has good ground for apprehending, either his immediate destruction or enormous bodily hurt to himself, he may thereupon kill his assailant. If you find that those are the circumstances in this case well, then, your proper verdict will be one of not guilty of murder because self-defence is a complete answer to the charge and your verdict, I say, will be one of not guilty, if you find that self-defence has been established. In that connection

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it is obvious that one of the principal points for consideration is whether or not on that morning Haniff Jhuman did have a revolver and whether or not he did draw it. That, however will come up later when we are dealing with the facts.

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10 Now, as regards provocation. If you find that provocation does exist the effect of that is not the same as self-defence because provocation is not a complete answer to the charge; it is merely a partial defence. Where provocation is established on a charge of murder and you find that the other elements are present, except malice, then your proper verdict will be one of guilty of manslaughter. Provocation has the effect only of reducing the charge from murder to manslaughter.

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20 As regards provocation if the evidence goes to show that the provocation offered to the person charged was of such a nature that it would cause a reasonable man to lose his power of self-control and that person through transport of passion killed the other person, if the provocation was of such a nature, then the law says that the fact that he lost his power of self-control of course negatives the ability to form an intention to kill and for that reason the intention cannot exist and therefore, that element of malice or intent was not present and the proper verdict will be one of guilty of manslaughter, if you find that there was provocation of that nature, such as to cause a person to
30 lose his power of self-control and through transport of passion to kill the person whom he is charged with killing.

40 The difference between murder and manslaughter is simply that in murder you must be satisfied that malice exists, whereas in manslaughter there is no malice. Murder is the unlawful killing with malice either express or implied, and manslaughter is the unlawful killing - as manslaughter quite obviously is - without malice. If the other elements are present, including malice, it is murder. If the other elements are there but malice is missing then it is manslaughter.

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 one concerned in this particular aspect of the matter, was provoked to the degree

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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.

If the evidence satisfies you that malice existed, if you accept what some of the witnesses have said that the number 1 accused Karamat 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.

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This is the most recent definition of provocation and which may be of help to you. It reads: "Provocation is some act or series of acts done by the deceased to the accused which would cause in any reasonable person and actually cause in the accused, a sudden and temporary loss of self-control, rendering the accused so subject to passion as to make him for the moment not master of his mind."

In applying that the gauge must be what would be the effect on a reasonable person; not on the accused himself, the particular accused that you are considering. You must consider the effect on a reasonable man; not one who is highly excitable, or one who is unduly phlegmatic; a reasonable creature: what would be the effect of the provocation, if you find that there was provocation, on a reasonable person.

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No provocation whatever can render homicide justifiable, or even excusable; but provocation may reduce the offence to manslaughter. If a man kills another suddenly, without any, or indeed, without a considerable provocation, malice may be implied and the homicide amount to murder, but if the provocation were great, and such as must have greatly excited him, the killing is manslaughter only. The test to be applied is whether the provocation was sufficient to deprive a reasonable

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man of his self-control, not whether it was sufficient to deprive of his self-control the particular person charged; that is to say. a person afflicted with want of mental balance or defective self-control.

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10 This passage is also important "In considering, however, whether the killing upon provocation amounts to murder or manslaughter, the instrument with which the homicide was effected must also be taken into consideration; for if it were effected with a deadly weapon. the provocation must be great indeed to reduce the offence to one of manslaughter, if with a weapon or other means not likely or intended to produce death, a less degree of provocation will be sufficient, in fact, the mode of resentment must bear a reasonable proportion to the provocation, to reduce the offence to manslaughter."

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20 In other words, they must correspond. If a person perhaps raises his hand to assault some other one it cannot be said that that other person would be justified in taking a sharp instrument and severing that person's hand merely because he apprehended an assault of that nature; but if the person had raised some dangerous weapon and that other person then defended himself, in that way. it may be said that the degree of provocation bore a reasonable proportion to the mode of resentment. So bear that in mind; that in considering provocation the instrument must also be taken into account. If it is 30 a deadly instrument you must have very great provocation indeed, but if, of course, it is a lesser thing, a light stick, or a fist - there are numerous examples given - different considerations apply and the lesser the degree of provocation required.

There are in this case three possible verdicts: first, a verdict of not guilty of any offence at all; secondly, a verdict of guilty of manslaughter; and thirdly, a verdict of guilty of murder.

40 The first verdict, which is not guilty of any offence, would arise if the evidence satisfies you that all of the necessary elements which go to make up the offence of murder have not been established; or if the Crown has failed to satisfy you that, or if you are in reasonable doubt as to whether, all such elements have been proved. I am assuming in my remarks in this connection that you will find that there was a killing; that Haniff Jhuman met

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his death as a result of the act of the number 1 accused Karamat, because he himself does not deny that this is so. He said, "as I raised my gun and I fired Haniff Jhuman fell"; but if you are satisfied that self-defence, as I have explained to you, has been established well, then, he is not guilty of any offence at all. Accident has not been put forward. He does not say it was an accident, so if self-defence has been established then you will not find him guilty of any offence at all.

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If as regards a verdict of manslaughter you find that he did kill him, that the killing was unlawful, but you find that there was provocation which would cause a reasonable man to lose his power of self-control and through the transport of passion he killed him, then in those circumstances your proper verdict will be one of manslaughter.

I would mention here too, and I think it was a matter to which counsel for numbers 1 and 6 accused made reference, that if you find number 1 accused was justified in using some force; in other words, if you find that he did see this revolver but there was no real reason for him to apprehend that immediate death would befall him ... perhaps this is a better way to put it ... if you find that he used more force than was reasonably necessary in the circumstances; that he was justified in using some force by reason of the presence of this revolver but that he used more force, he went beyond what he should have done; that though he was justified in using some force he went beyond what was reasonable, well, in those circumstances your proper verdict will be one of manslaughter. But again I say it is for you to say whether you believe that that revolver was present or not and on that to no little extent must depend on your verdict.

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The third verdict - guilty of murder - would be if you find that Haniff Jhuman died as a result of the voluntary act of the number 1 accused Karamat, that such an act was both intentional and unprovoked, and that there was malice existing; in other words, if you are satisfied that all the elements have been fulfilled.

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What I have been saying to you, gentlemen, will perhaps become a little clearer when we go through the evidence. I do not want you to think that I am going to take you through it at great length because you have had the advantage of listening to

four very helpful addresses which, I am sure, have been of the greatest assistance to you and which have relieved me of a great part of the burden as far as going into the facts is concerned, because the evidence has been gone through with, if I may use the expression, a fine-toothed comb and everything has been laid before you as far as the evidence is concerned. Nevertheless, I will have to refer to the evidence, to some extent at any rate.

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10 Now, gentlemen, as regards the other aspects of the law in so far as the other accused - that is to say, numbers 2 to 6 - are concerned. I have told you what murder is. I have told you in what circumstances the offence of murder is excused - that is to say, where the killing is excused - and I have told you the circumstances in which the offence of murder is reduced to manslaughter. Well, those apply principally to the first accused who is the person that is alleged to have fired the shot which
20 killed Haniff Jhuman, and the allegation of the Crown, as I understand it, is that the number 1 accused Karamat is the principal felon; that is, that he is the one who actually did the act which the Crown alleges constitutes the offence of murder. The Crown also alleges that the accused persons who were present at the scene of the shooting are what is known in law as principals in the second degree, and, of course, if they were present and are in fact
30 principals in the second degree they are equally liable with the number 1 accused, if you find that they are principals in the second degree.

Some of the witnesses for the Crown tell you that all the accused were present when the shooting took place. There are some of the Crown witnesses, I think three in number, whose evidence is to the effect that the number 3 accused was not there at the time. That is a matter to be resolved by you. The defence says the only person actually there at the time was the number 1 accused, and the others
40 gave their several positions to which I shall refer later on, but the Crown alleges that all six of them were present so, naturally, you must be told in what circumstances criminal responsibility will attach to them if you find that they were present. I do not want you to think that I am telling you that they were or that they were not. That is fact for you to determine, but I must tell you what is the law in the event of your finding that all or any of them was present.

50 I will just repeat, very shortly, what I have

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in fact said before as I have a note of it here. Before the first accused may be convicted of murder the evidence must satisfy you first, that Haniff Jhuman was killed as a result of the voluntary act of his; that there was no provocation offered to the number 1 accused of such a nature as would cause him to lose his power of self-control; that he was not acting in self-defence and that there was malice on the part of the accused, whether such malice was express or implied.

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As regards the other accused, gentlemen, the position is this: you may not convict any of the other accused persons unless the evidence satisfies you that such other accused which you happen to be considering, because you will consider each one individually, was present at the time of the shooting, aiding and abetting the person whom the Crown alleges is the principal felon, that is, the number 1 accused Karamat.

The Crown does not allege that any of the other accused took any part in the actual perpetration of the crime. The Crown does allege that all or some of them were present at the time of the shooting. But, gentlemen, mere presence there is not sufficient.

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If you find that any of the accused, though he was present, took no part in the commission of the crime, if you find that a crime was committed, and you also find that he was not acting in concert with the number 1 accused at the time of the shooting, you may not convict him merely because he did not endeavour to prevent the offence being committed, or to apprehend the number 1 accused after the commission of the offence, if you find an offence has been committed. So, the mere finding that he was present at the time of the shooting is not by itself sufficient for you to say he took any part in it, nor that he was, as I shall explain to you presently, aiding and abetting the number 1 accused which is what the Crown alleges.

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Before you may convict you must find not only that the particular accused whom you are considering was present but you must find that there was a common purpose or a common design at the time the offence was committed; that is, an intent to aid or encourage the number 1 accused and either an actual aiding or encouraging; that he actually aided him or encouraged him, or there was a readiness to aid or encourage the number 1 accused, if required.

So bear that in mind, gentlemen, as it is very important. If you find that an accused person was present at the time of the shooting and that there was a common purpose, a common design, a community of purpose - call it what you will - at the time the offence was committed; an intent to aid or encourage the number 1 accused, and either an actual aiding or encouraging, or a readiness to aid or encourage the number 1 accused if the occasion arose, then you may convict.

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I must tell you what would in law constitute an aiding and abetting because it may not be a term which readily has a particular meaning to you. A person, in law is present aiding and abetting if, with the intention of giving assistance, he is near enough to give it, should the occasion arise. Remember, he must be near enough to enable him to give assistance, if necessary.

The questions, therefore, that you must ask yourselves as regards any of the accused who you may find was at the scene of the shooting are these. First, was he near enough to give assistance, if required? Secondly, was there at the time of the shooting a community of purpose with the number 1 accused, or a knowledge of what the number 1 accused proposed to do and an intention to aid and encourage the number 1 accused? (That he was there; he was near enough to help if the occasion arose; that there was a community of purpose between himself and the number 1 accused - that is, that he had the intention to aid him and encourage him - and not only did he have that intention, but that there was an actual aiding or encouraging, if you find that there was some act - not in this particular case, but if someone perhaps says "here, take this knife and stab him with it" or something like that, that would be an actual aiding or encouraging). If you find that there was an actual aiding or encouraging (and I do not think the Crown is suggesting that there was actual physical aid), or that there was a readiness to aid or encourage the number 1 accused; if you find that any of the accused was there, near enough to help, if necessary, with the intention of helping, a community of purpose, that there was an intention to aid and encourage, that he either actually aided or encouraged or that he was ready to do so if necessary, then you may convict.

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You can only arrive at whether there is a readiness on the part of a man to do a particular

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thing by inference, unless there is some direct evidence as to something he has said, because it is not possible by direct evidence to prove what is going on in a man's mind and for that reason in many instances it must be inferred. In some instances the Crown is alleging here that what the accused themselves have said indicates the readiness on their part to aid or encourage. Those are matters of fact for you to consider and I shall refer to them when I deal with the particular parts of the evidence, but you must be satisfied not only of the presence but of the community of purpose and the actual aiding or encouraging or a readiness so to do.

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If the answer to those questions, gentlemen, which I have put to you is in the affirmative; if it is "yes, I find that he was present and near enough to give assistance if required; that there was at the time of the shooting" - I am repeating them because they are very important - "A community of purpose between the number 1 accused and the particular accused whom I happen to be considering; that there was present an intent to aid and encourage the number 1 accused, that there was an actual aiding and encouraging, or that there was a readiness to aid or encourage"; if the answer to all these is "yes", then you may properly convict, assuming, of course, that you find that the crime was committed. It is based on that. If you find that the crime has been committed, and if you find that the evidence satisfies you that the answer to those questions is "yes", then your proper verdict would be to convict.

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That, I hope, gentlemen, makes clear what is the position as regards not only the number 1 accused but as regards any of the accused who you are satisfied was present at the shooting (and I use the word "present" in the sense in which I have explained it - that is, present and near enough to give aid and assistance if the occasion warrants it).

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So that is the position as regards any of the accused who you may find was present in the sense in which I have described it. I do not know what your conclusions are going to be. I do not know who you will find was present at the time of the shooting or who was not present, so I must attempt to give you the law to meet whatever your findings may be. To show its application also, should you

find that one or more of the accused persons were not present at the shooting (and when I say present you must understand it in the sense in which I use it - present and near enough to give aid and assistance should the occasion arise).

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As regards any accused who you find was not present; that is to say, those who were not near enough to give assistance should the occasion arise - I use the word "assistance" and I stress it and you must pardon my repetition because it is of importance - as regards any person who was not present, that is, too far removed to give assistance should the occasion have arisen, the principle which you must apply to any such person is this: if you find that such accused person - and I use the words of the principal Section - counselled, procured, or commanded the number 1 accused Karamat to commit the murder on Haniff Jhuman - if you find that the evidence satisfies you that he did commit the murder - but at the time of the murder - if you find, again; that there was a murder - that that particular accused was so far away that the number 1 accused Karamat could not be encouraged by the hope of any immediate help or assistance from that other accused person, then you may convict, but not otherwise.

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I shall tell you that again. If you find that that accused person, not the number 1 accused, either counselled, procured or commanded the number 1 accused to commit murder on Haniff Jhuman but at the time of the murder - time of the shooting that is - that that accused who you are considering - not the number 1 accused - was so far away that the number 1 accused could not be encouraged by any hope of any immediate help from him, then you may convict him, but not otherwise. It is only if you find the number 1 accused could not be helped by him; immediately helped by him.

Let us call the particular accused "A", for example, to refer to any one of the five accused from numbers 2 to 6. If you find that "A" was too far removed, at the time of the shooting, from the number 1 accused Karamat, too far removed for Karamat to expect any immediate aid or assistance from him, but nevertheless, "A" either counselled, procured or commanded Karamat to commit that offence of murder, then you may convict him.

I should perhaps go a stage further and tell

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you what may be regarded as counselling, or procur-
ing, or commanding a person.

You must be satisfied that there was some
degree of incitement on the part of "A"; "A" being
anyone of the five accused from numbers 2 to 6 and
one who was removed from the scene of the shooting.
You must be satisfied that there was some incite-
ment of the number 1 accused by that particular
accused to commit the offence charged; that there
was some degree of incitement. There must be some
active proceeding on the part of that particular
accused. Some incitement may be by showing an
express liking, approbation or assent to the felon-
ious design of the number 1 accused to murder Haniff
Jhuman.

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If the evidence satisfies you that anyone of
the accused from numbers 2 to 6 was not present at
the shooting, but that there was on his part in-
citement of the number 1 accused either by showing
an express liking, approbation or assent to what he
knew the number 1 accused proposed to do; that is,
to murder Haniff Jhuman, well, then, you may say
that person is what we call in law an accessory be-
fore the fact; and if the evidence satisfies you
that those conditions have been fulfilled, then your
verdict regarding him can properly be one of guilty
of murder.

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So, remember, I have endeavoured to deal with
any of the accused who you may find was present with
the number 1 accused at the time of the shooting.
I have told you the conditions which must be ful-
filled before you may convict. If you find those
have been established convict by all means and if
as regards anyone of those conditions you either
have a reasonable doubt or you are not satisfied,
then you must acquit.

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Secondly, the legal position as regards any of
those accused (numbers 2 to 6) who was not near
enough to give the number 1 accused the hope of
immediate assistance is this: you must find that
there was actually some degree of incitement on his
part, and I have endeavoured to tell you what may
constitute incitement. I should tell you, too, in
connection with the matter with which I am now
dealing as regards those who were not present at the
scene, that a mere concealment of what the number 1
accused intended to do (if you find that he had pre-
meditated it, that he had intended it, that he had

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manifested what he (the number 1 accused) was going to do) is not sufficient; nor is a tacit acquiescence sufficient. You must be satisfied that there was some active proceeding or direct incitement on the part of that absent accused person; some direct incitement either by words or by action. But if he merely knows about it and merely conceals what he knows to be the plan, or if he is indifferent, or gives his tacit consent and says "yes, go ahead" or words to that effect, that would not be sufficient. You must be satisfied that either by some action or some words he actively incited him in what he knew to be the felonious intention of the number 1 accused.

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I trust, gentlemen, I have made myself clear. If, of course, you find that the shooting of Haniff Jhuman by the number 1 accused (and there is no doubt about it that he did shoot: the question is whether in doing so he committed an unlawful act or not; whether he is criminally responsible, that is what you have to consider). If you find that in shooting him the shooting was sudden and unpremeditated then you must acquit any of the accused who was absent in the sense that I have explained. Similarly, if you find the accused guilty of manslaughter well, then, any of the accused who was present in the sense that I have explained must be acquitted.

There is perhaps one other matter, gentlemen, as regards the first category of accused (not the number 1 accused): those who the Crown alleges were present aiding and abetting; in other words, that they were there either actually helping or ready to help. Perhaps the point would be made a bit clearer by giving you an illustration. If a duel takes place between two persons and one of them is killed, quite obviously the person who kills the other is guilty of murder. But it is also the case that those persons who were present at the duel, if they sustain the combatants - the two persons fighting the duel - either by advice or assistance, or if they go to the ground for the purpose of encouraging and furthering the conflict, they are principals in the second degree and may be convicted along with the principal felon. I quote that merely as an illustration in the hope that you will more readily understand what the position is.

Two persons agree to fight a duel, one runs his sword and kills the other; the one who kills him is guilty of murder. Those who have gone there to

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the ground where the duel takes place, if for the purpose of encouraging the conflict, are deemed to be principals in the second degree and may be convicted of murder.

I pass now, gentlemen, to the evidence itself and, quite obviously I think, that evidence may be dealt with conveniently as to the events which took place before the morning of Sunday, 27th September last year and those which took place on that particular date. It is correct to say, I think, that the greater part of the evidence, certainly as far as the cross-examination was concerned, related to events which actually preceded the morning of the twenty-seventh, or rather, which preceded the actual shooting, because there was quite a lot of evidence and cross-examination directed to what took place at the cowpen that morning before the shooting. So it would be convenient, I think, to start by referring to the relationship which, it is claimed, existed between the Jhuman family and the Subidar family.

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You have it in evidence that Mohamed Jhuman is the owner of Carlton Hall estate and that Subadar is the owner of the adjoining estate to the east of Carlton Hall - Broom Hall estate; that Subidar grows rice and, it is alleged, so does Jhuman. It is claimed that on several occasions the cattle owned by Jhuman have damaged the cultivation of Subidar; that on more than one occasion claims have been made by Subidar against Jhuman, and on some occasions by his lawyer, some of which, it is claimed, have gone unanswered. So you can have little doubt that there have been these impoundings and these claims for damages against Jhuman.

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You have had evidence of a "good" being given for some \$75:00 or \$80:00 in respect of damage; you have had evidence of letters written to Jhuman regarding damages. Some of them he acknowledges receiving and others he denies receiving, and it is claimed that that is one of the matters which have put Jhuman and his family in the frame of mind which culminated in this incident of Sunday, 27th September; that after these repeated impoundings and claims for damages, of having to pay money, Jhuman was angered by what had taken place.

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As regards that aspect of it the Crown Prosecutor said the defence asks you to say that because of these claims for damages by Subidar against

Jhuman, that Jhuman was very annoyed indeed and very angry; but he asks you to take the view that Subidar might quite easily be equally angry because he was the person who had in fact suffered the damage. Those claims had in some instances gone unanswered and he says that probably Subidar found that galling; in other words, it was annoying.

10 That is a question of fact for you, gentlemen. If you think that that back ground of trespass and claims for trespass; letters being written, some acknowledged, some not acknowledged; if you think that it is of importance you will consider it and put it in its proper setting. I just bring it back to your minds so that in your deliberations you will recollect that reference has been made to this question of the relationship arising, in part, from the acts of trespass and the claims made in support thereof.

20 The next incident which I think calls for mention is what it is alleged took place on the morning of Saturday, 26th September - the day preceding this Sunday. It is claimed by the defence that ten head of cattle belonging to Jhuman were taken in Subidar's rice field; that they were being taken along to the pound by the accused persons, and that when they were passing Jhuman's gate Jhuman came out with a quakoo stick - some of you may know what that is - and used certain words that the animals were not going to the pound and that "murderation got to pass", that he was assisted by his wife Batulan who had a prospecting knife and but for the intervention of Henry Bacchus who restrained Mohnamed Jhuman, and Bacchus' wife who, it is alleged, also restrained Batulan the matter might have ended very seriously. However, it is alleged by the defence that that is what took place; that they managed to get by the Jhuman domain and after they had gone some little distance down two of the accused continued on to the station with the animals and the others turned back eastward along that road. 40 That is one version of that incident.

Jhuman's version is that he saw these cattle being impounded at what he says is the waterside; in other words, they were not in fact doing damage: they were being taken at the waterside which he says should not have been done, and as they were being taken past his house one of them ran into his yard; that he endeavoured to prevent the accused from going to retrieve that animal and that a dispute took

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place. He denies that he had any stick. He says his wife was not there; she was in the kitchen, and that they eventually went on their way; and he denies quite strenuously that he used the words attributed to him that "you can't carry these cows to the pound - murderation got to pass."

Jhuman tells you that he went on to the station and made a report of what had taken place that morning and that two of the accused (I think I am right in saying the number 2 and number 5) were there and that they denied they had threatened to beat him. Jhuman reported to Sergeant Tappin that the accused had threatened to beat him and numbers 2 and 5 accused denied it, and Sergeant Tappin says that he then warned the three of them - Jhuman, the number 2 and number 5 accused.

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But that particular incident does not end there because the numbers 2 and 5 accused allege that Sergeant Tappin refused to take their report saying that he would take no report against Jhuman, and that consequent on such refusal number 2 and number 6 accused went that very Saturday afternoon to Cove and John Police Station for the purpose of reporting, apparently, not only the refusal of Sergeant Tappin to take the report but also the incident itself. You have evidence as to that and arising out of that is the suggestion put forward by the defence that Sergeant Tappin's action on that occasion is indicative of strong bias on his part in favour of the Jhuman family, and that is one of the matters to which reference has been made in connection with the statements which are alleged to have been given by the six accused persons to Sergeant Tappin - his failure or refusal to include, according to what the accused say, what they told him took place on the Sunday morning. But there it is, the numbers 2 and 6 accused went to the Cove and John Police Station on that Saturday afternoon to report that matter.

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Still dealing particularly with the relations existing between the Jhumans and the Subidars, the next incident to which one must refer is what took place on the Saturday night. You will remember that it is claimed by the witness Cleveland James (or Scholes) that on that night he went to get rations and he was attacked by the number 5 accused, that he took the stick from him and that the number 1 accused then came on the scene and eventually Cleveland James got the stick back and threw it

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away; that following that incident Batulan then came, being brought on a bicycle, and that there was an incident on that Saturday night between Batulan and the number 5 accused - and Scholes has given you evidence of what he says took place.

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One contradiction which you may think worthy of note is that the number 5 accused has said to you, if I may say so correctly, in his statement from the dock that he slapped Batulan on that Saturday night, but Scholes, I think, says he is not aware of any slap having been given by the number 5 accused to Batulan. So there you have one difference.

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The next incident in point of time which, though not directly related to the relationship between the Jhumans and the Subidars, may conveniently be dealt with here, is the incident somewhere shortly after midnight regarding Katriah's bull. You will remember that the incident between the number 1 accused and Katriah, which is alleged to have taken place in the early hours of the morning of the twenty-seventh; I also refer to the fact that the sheep belonging to Butts who, I believe, is the nephew of Katriah have been impounded by the number 1 accused. These incidents are put forward and you are asked to say that they provide ground on which it is reasonable to infer that there is ill will existing on the part of Katriah towards the number 1 accused and that the evidence which he has given is not wholly correct, that he has varied it in order to give vent to that ill will.

There is other evidence which the defence claims indicates the existence of ill will or partiality - ill will by the witnesses towards the Subidars or partiality for the Jhumans. Several of the Crown witnesses, it is the case, are employees of Jhuman. Scholes, you have heard, is a man who at the time was working for Jhuman. He was there engaged in looking after the cattle and in milking them. The other witnesses - Henry Bradshaw was working also with Jhuman, and Jeremiah Inniss who is claimed to be favourable disposed to, or to be biased in favour of, the Jhuman family; and, of course, as regards the one more closely connected with them, that is to say Bibi Kariman, who, as you will remember, was married to the deceased Haniff Jhuman; that Mohamed Jhuman himself is biased because of these previous impoundings and other friction; that Henry Bacchus is also an employee of

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Jhuman; that Esuf Jhuman, the son, by reason of his relationship and possibly of the pre-existing friction, it is alleged that he, too, is not speaking the truth.

I mention those aspects, gentlemen, more or less as what I may call background matters which the defence puts forward as showing you the manner in which this case is presented; not only ill will between the Jhumans and the Subidars generally, but the disposition on the part of many of the Crown witnesses which is regarded as being favourable to the Jhuman faction.

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This, gentlemen, may be, before passing on to the more detailed part of the evidence, a convenient point at which we might take the adjournment. I have got through the major part of it. I know that you have been subjected to a long and trying time because the evidence has been exhaustively - I do not say exhaustingly - dealt with by counsel and that, to a great extent, has reduced my burden because I do not propose to go into any real detail as regards that. What I do intend to do in the hope of assisting you as best I can is, as it were, just to deal with each of the accused separately so that you will know what is the evidence - all the evidence - relating to a particular accused. I feel if I went through witness by witness you will then have to sort out from each witness what is the evidence relating to each particular accused person.

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So, it is my intention, when we resume, as it were to give you what is the evidence relating to each accused and, of course, the submissions of counsel for them as to why that evidence should not be accepted, or parts of it which may be accepted and the view to be taken of it. I think I can be of greater assistance to you as far as the evidence is concerned by dealing with each accused person separately, and that I shall do on the resumption this afternoon.

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Gentlemen, the summing-up having started I am afraid you must retire to the jury room, but before you do so I must say that I have given you directions on the law to which, at the moment, I do not see that I will have to add anything, but I will, at a later stage, relate the evidence itself particularly to the principles which I have given you. I would still suggest, however, that you refrain at this stage from forming any definite conclusions.

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Wait until the case has been finally left to you; until you have heard all there is to be said. You have heard what is to be said by the Crown and by the defence; wait until you have heard all that I have to say. I trust I shall not keep you very much longer and then the matter will be left to you. So retire, but do not begin crystallizing your opinions yet, as a later stage will be the proper time. We will now adjourn until 1 o'clock.

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10 Gentlemen of the jury, there is one matter
which, I think, I may deal with at this stage and
that is the taking of the statement by the Police
from the six accused persons. The statements have
been tendered and are available to you. You have
in evidence from Sgt. Tappin the manner in which
they were taken. He says that on the morning of
the 27th September each of the six accused was
brought to the Charge Room from the lock-up and that
after each of them had been cautioned, each made a
20 voluntary statement which he tells you he took down
in writing and read over to them, that each said
that his statement was true and correct and that
each signed his name. The defence on the other
hand puts forward that those statements were not
voluntary but were forced from the accused persons.
Sgt. Tappin was cross-examined by each of the de-
fence Counsel in that connection.

30 Number one accused in his evidence has told
you the manner in which his statement was taken.
He says that at about half an hour after his arrival
at the Station, he was brought from the lock-up to
the Charge Room and he was told by Sgt. Tappin that
he had to give a statement. He said he told the
Sergeant that he was not giving any statement and
he was then handcuffed by Sgt. Tappin who pushed
him and told him "you got to give a statement". He
says he then gave a short statement. He also stated
that in his statement he referred to several matters
40 which are not included in the statement, the most
important of these being of course in connection
with the revolver which he says was used by Haniff
Jhuman. The other matters I need not go into in
detail.

That is his account of how his statement was
taken. None of the other accused in their state-
ments from the dock has referred to the manner in
which the statement was taken, but you have as far
as the first accused is concerned his account of
the statement and the manner in which it was taken.

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I am not referring to the details of the statement at this stage, that will come later.

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It is for you gentlemen, to consider whether on the evidence before you you can say that the statement was a voluntary one or whether you feel that the accused were forced into making them and that they are not voluntary. If you find that any statement was made voluntarily then you may attach such weight as you feel it deserves in each case. If, on the other hand, you feel it was not voluntary or that force was used to get it out of any of the accused, well then, you will discard it because the law requires that a statement must be made voluntarily before it may be used against an accused. Sgt. Tappin says that he cautioned the accused but the first accused denies this and says further that the statement was not read over to him, that the first time he knew of its contents was in the lower Court. 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 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. 10 20 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 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 40 50

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.

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10 I propose now, gentlemen, to deal, not at great length, with the evidence of the several witnesses. I shall deal with it in the light of the criticisms of the evidence of each witness and the submissions made by defence Counsel as regards the evidence of each witness. I propose to do that because it seems to me not only a shorter way but a no less effective way of bringing to your minds what the witnesses have said. I say, and it is a compliment, that the cross-examination was so thorough that no material aspect of it was left untouched by defence Counsel. I will remind you of what has been said in relation to each of the accused persons before, at the time of and after the alleged shooting so that you will have the evidence relating to each accused in one body. Following on that, I will deal with the defence relating to each accused. I will deal with the evidence as a whole and try to give the evidence regarding each accused and his defence. I think that is the best way I can help you as far as the evidence is concerned.

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30 The first witness you will remember was the Surveyor whose plan is in evidence and may be of some assistance to you. If you have need of it you have only to ask that it be made available to you. I need say no more about the Surveyor. I regard it as a very good plan. I think it is the first time I have seen a plan in which is given actual distances between the points indicated. It has gone further, and has given the distances in rods as well as in feet which is helpful.

40 I will deal now with Bibi Kariman. As regards her evidence she said she saw number five accused, whose name is Saffie Mohamed, running north along the Broomhall dam saying he was going to shoot. Now, the defence has asked you to take the view that that cannot be so because the first accused could not have got there at the same time as he did because he would have to cover a distance of some 330 yards, in addition to which the evidence points to the fact that number five accused did not go back that morning before the shooting. In that connection, you are asked to take the view that possibly he may have started to go south along the

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dam but did not necessarily go aback. The defence suggests that it was the discharge of the gun that caused Bibi Kariman to leave her house and that she arrived at the scene after the incident and therefore she cannot really speak as to what actually took place. Further that she says she did not see Henry Bacchus until after the second shot. The defence asks how can you accept Bacchus' story that he was there if you are also to accept what Bibi Kariman said that she did not see him until after the second shot.

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Again gentlemen of the jury, your attention has been directed to the fact that Bibi Kariman stated that at the time of the shooting she was about four feet behind Batulan yet still she did not get any injury from any of the shots. Another criticism of her evidence is that at the Preliminary Enquiry she said she did not move after the first shot, but in this Court she says that she did so, she moved a matter of about 18 feet to the north east. That is a contradiction of her evidence to which your attention has been directed. There is, too, her evidence regarding the positions of the persons on the Carlton Hall dam at the time of the shooting. It is not my intention gentlemen to give you those in detail, one reason being that repeated reference has been made to that and secondly you have had the advantage of seeing a very accurate and very helpful demonstration laid before you by Counsel for numbers one and six. Therefore it seems to me that there is no necessity to repeat to you in detail what the witnesses have said as to the positions.

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However, if you consider that the details of the positions given by witnesses for the Crown are material and if in your deliberations you wish to know what any particular witness or all the witnesses who spoke in that connection have said, as I told you before, Mr. Foreman, you may ask that the jury be brought back and your memory will be refreshed. I do not think it necessary; I do not think it will be particularly helpful, but if you do want to know what has been said in that connection do not hesitate for a moment to come back and I will give full particulars as to the positions given by the various witnesses. I will tell you that as far as Bibi Kariman is concerned she is the only witness for the Crown who tells you that number one accused was south-east of the persons on the Broomhall dam at the time of the shooting. The other witnesses who

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have given evidence - Scholes, "Baby Boy", Henry Bacchus, those are the witnesses who stated that at the time of the firing number one accused was north-east of the persons on the Broomhall dam. The point which was stressed by Counsel for numbers two and five accused was that if you find on the evidence that Bibi Kariman was not present, on the scene, at the time of the shooting, then not only is she lying but also the other witnesses who said that she was there are also lying. That is a matter which should certainly cause you to hesitate and examine more closely the rest of the evidence of those witnesses. You have to consider whether Bibi Kariman was or was not there not only from the point of view of her own evidence but from the point of view of the other witnesses who say she was there.

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Again, Bibi Kariman stated that she did not see Scholes or Bradslaw at the time of the shooting. It is for you to consider what is the significance of that fact that she said she did not see them, whether it is possible that they were there and yet still she did not see them. I think I have already dealt with the question of the direction from which Bibi Kariman said the shot was fired. So much for Bibi Kariman and the criticisms and submissions made by the defence in relation to her evidence.

The next witness was Sgt. Tappin. It has been said by the defence that numbers 2 and 5 accused made or attempted to make a report that the Jhumans were using force against them on the Saturday morning with respect to the impounding of the Jhumans' cattle and that Sgt. Tappin chased them out of the Station. You are asked to say, if you find it is so, and it is a question of fact for you - to take the view that there was some bias on the part of Sgt. Tappin. That might lead you to believe that he had in fact, as claimed by the defence, omitted parts of the statements made by the accused after the shooting incident. So you have to consider that incident on the morning of Saturday, whether he chased them away or whether as he said, he told them "I warn you to behave yourselves". Following upon that you have the statement at the Cove and John Police Station made by numbers 2 and 6 accused, they are exhibits and are available to you.

Still dealing with Sgt. Tappin, you are asked to consider whether Sgt. Tappin had in fact cautioned the first accused before the statement was taken. The first accused said that the statement was not

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read over to him, Sgt. Tappin said it was; again you have it put forward by the defence that Sgt. Tappin is partial. It has been put forward that it is unlikely that the Sgt. would in fact caution the number one accused or any of the accused men, between the time of their arrest and the time that they were charged. Counsel for numbers one and six accused puts to him that the accused were not cautioned at the time of their arrest. You are asked to take the view that the fact that the accused were brought to the charge room between the time of the arrest and the time when they were charged is an unusual procedure and in those circumstances, you are asked to say that it is unlikely that any caution was in fact administered and that the statement was in fact forced out of number one accused.

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Finally, as regards Sgt. Tappin, it is said that he was told about the revolver at the time the Police went to number six accused's house and that he replied saying "you blasted lie, you shoot the people like birds". You are asked to take the view that this reluctance or refusal of Sgt. Tappin to take any report made by the Subadar family - I think I am correct in saying that there is no allegation by the defence that there is any ill-will or ill-feeling between Sgt. Tappin and the Subadar family - is based more on partiality towards the Jhumans than antagonism for the Subadar family. Those are matters put forward for your consideration; it is for you to consider whether the evidence substantiates them or not. That is a matter of fact; I will leave them before you so that when you deliberate you may consider them.

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Next is Mohamed Jhuman, father of Haniff Jhuman. As regards his evidence, you are asked to take the view that he did not plant any rice at Carlton Hall at that time; that he was callous about wiring his plantation with the result that his stock had trespassed and did damage to the property of the Subadars; and that his attitude is that 'might is right'. In other words that he is a man of independent means and that 'might is right' is his attitude. You have had the opportunity of seeing him in the witness-box and listening to his evidence. It is a question of fact for you to consider whether by observation or on the evidence which he has given or on the evidence as a whole he is that type of man.

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Again it was pointed out that at the Preliminary Enquiry Jhuman said that he knew about this claim by Subadar for \$700:00, but in this Court he denies having received any such claim. And there is that letter, registered, for the claim of \$500:00 which was received and signed for by Cleveland James also called "Scoles"; Jhuman denies knowledge of that letter. It is for you to say whether you think it likely that his servant will receive a registered letter for him and not pass it on to him.

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So much then for Mohamed Jhuman.

We now come to Henry Bacchus. At the Preliminary Enquiry, Bacchus is recorded as saying, before he left to go aback, to Inniss "like something happen aback". If that is so, it might point to the fact that Bacchus was not in fact there when the shooting took place. It was put forward that Bacchus was well aware the Jhumans had planned to beat the Subadars. Bacchus gave the positions in which, he says, the persons were on the Carlton Hall dam at the time of the shooting. What I have said in that connection already, regarding those positions, equally applies here. Your attention has been directed to the fact that he, Bacchus, places Bibi Kariman in the line of fire of the first shot yet she got no injury. There was evidence of Bibi Kariman holding his hand as she stood next to him. Counsel for numbers 2 and 5 accused described his behaviour as "very strange". Counsel had referred to Bacchus removing from the scene so shortly after, a matter of some 12 seconds. The suggestion of the defence is that the reason why Bacchus left so hastily is because he had taken the revolver and he wanted to make away with it as quickly as he could; and that though he passed several people on the dam; he did not speak to any of them. Is that likely, asks defence Counsel.

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It is a question of fact for you to consider whether his hasty departure was brought about by the removal by him of the revolver or whether having seen what had taken place with respect to those dead bodies he thought "the sooner I make a report about this matter the better for all parties concerned" and he left there and then. It is entirely a matter of fact for you gentlemen and a matter which you must resolve. You will remember that the first accused in his evidence did say he saw Henry Bacchus pick up a revolver. The defence asks you to take the view that Bacchus went there after

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the shooting and now attempts to reconstruct what took place and that the different positions given by the witnesses for the Crown lends support to what the defence is alleging. You are asked to take the view that on the evidence only three persons were present at the time of the shooting - Batulan, Haniff and Baby Boy. If Bacchus were present on the scene and you feel it is reasonable to believe that his presence there was known to Baby Boy, would you not expect - I am putting to you what the defence is - that the first question Baby Boy would ask Bacchus would be "what has happened; guns have been fire, I left my mother and brother there, what has happened to them?" The fact that he does not ask that, the defence asks you to say, points to the fact that he (Bacchus) was not there and that Baby Boy, when he met Bacchus, spoke as if he was giving him information by saying "buddy I get shot". If Bacchus were there and had made a hasty get-away as it were, would you not expect him to be aware of the fact that Baby Boy had in fact been shot. It is a matter for you to consider, that points one way or the other. There is the fact that Bacchus denies meeting or speaking to Inniss on the morning whereas Inniss in his evidence says he did meet and speak to Bacchus on the morning in question. 10

One final point about Bacchus. You will remember that Counsel for the defence, when we visited the locus, asked that Bacchus place number three accused at the spot where he said he saw number three on the scene and Bacchus did so. There is evidence that accused number 3 was not on the scene. If you believe he was not there well then Bacchus, in placing the accused in that particular spot is not speaking the truth. 30

The next witness, gentlemen, is Mohamed Haniff. You will remember that his evidence was that on the Saturday afternoon he met numbers two and six accused - the old man Subadar to whom he said "how times" and Subadar replies "same story shoot dem rass one one" or words to that effect. That is an extraordinary bit of evidence which, if fabricated, can, as far as I can see, serve no purpose to the Crown, but if they did fabricate such story, they must have gone to a great deal of trouble for no cause whatever. Well, it is a matter for you to decide, gentlemen. It has been strongly challenged by the defence on the ground that numbers two and six claim that they travelled by car to the Cove and John Police Station and that during their time 40 50

there they were in the Station. Haniff Jhuman said it was two o'clock.

I may mention in that connection that the statement of time, distance, etc., by some of these witnesses may not always be reliable. Further, there is evidence that numbers two and six at that time were in the Station. There again, it is a matter for you to decide whether Mohamed Haniff did meet these two accused - numbers two and six - and whether the conversation did take place. I must warn you against any conjecture or speculation which might link that alleged remark of Subadar, number six accused, "same story, shooting dem rass one one" with any event which took place on the following day.

We now come to the witness Bradshaw. You heard it said that he was brought from Kitty on the Saturday night for the purpose of engaging in this unlawful enterprise on the Sunday morning. The defence maintains strongly that he was. You have heard the evidence of the trip made by Mohamed Jhuman's truck on the Saturday night. You also heard the evidence of Nazim Baksh, a witness for the defence, who tells you that he saw this truck not far from the Mahaica bridge and in it he saw Bradshaw and another person; sitting behind the wheel was Bradshaw. You are asked to consider that and ask yourselves whether it goes to support, if you believe the allegation, that Bradshaw was brought from Georgetown. You are also asked to say whether Baksh, coming from the rum shop, would not have had to take a rather devious course in order to get sufficiently close to this truck to see who was inside of it. Is it reasonable to think that he did not see who was inside because he had been drinking rum? it is a matter for you to consider, gentlemen. He gave evidence of what he heard the Jhumans say. The defence puts forward that Bradshaw was brought from Kitty that night; reference was made to the books kept showing how long he took to repair the tractor and combine. His own notebook was exhibited, you have that before you and the books that were kept by "Baby Boy", if they can be called books at all. You are asked to say that the entries in these books point to the fact that he had finished working. Your attention was particularly referred to the entry 23 where it would appear some change had been made to make it 29.

You have also heard that he was working at the

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Jhumans' factory up to 4 o'clock. He tells you that he got up in the early hours of the morning and went to see his mother for about 2 hours and then went fishing in the Mahaica Creek. Then he tells you about his going to the cow pen for the purpose of getting milk for his family. In that connection you are asked to say whether he did go there to get milk or whether he was one of the party who went there intent on beating the Subadars. You will remember his saying that as he got to the first pen there was no milking there and that is why he found himself at the last pen where this fighting, which preceded the shooting of Haniff, took place. Baby Boy, on the other hand, said there was milking at the first pen. If that is so gentlemen why then did Henry Bradshaw go there to the further point. It is a matter of some importance, gentlemen. On that evidence it is for you to decide whether he was or was not brought from Kitty.

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Bradshaw said that Bibi Kariman came up before Bacchus. But your attention has been directed to the evidence at the Preliminary Enquiry where it was stated that Bacchus came first. That is one of those contradictions to which your attention has been drawn and you asked: "Can you believe such evidence?" Is it a genuine mistake or is it the case that after a lapse of time he does not remember. Another aspect, too, is that on an occasion like that - one may call it "in the agony of excitement" - is it likely that a person can retain all the details and the positions of the other persons and the order in which they came and went? (In Civil Law there is what is known as "the agony of collision"). You are asked whether that is not an aspect to be taken into account in resolving the evidence.

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A matter that has been repeatedly referred to by the defence is that Bradshaw said he walked 35 to 40 rods from the cow pen to where the shooting took place. But it has been pointed out that the pen is something like three quarters of a mile from where the shooting took place - something like ten times the distance indicated by him. He has stated, too, in fairness to the witness, when asked the distance from the public road to the cow pen at the back he gave it as 130 rods: that may go to show that he is no accurate judge of distance and that he tends to underestimate considerably the actual distance. He gave the position in which he was

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hiding, having crossed the trench, as 10 rods to the north of the scene and 10 rods west of the Carlton Hall dam.

Next, as far as Bradshaw is concerned, is his stopping at the first pen; and I have dealt with that already. I have also dealt with the diary and the change made in it. That gentlemen, is all I need say about Bradshaw.

10 Next is the witness Baby Boy or Yusuf Jhuman. You remember under cross-examination he gave his version of the cow pen incident and the fighting that took place there which was not in keeping with the other evidence. At the Preliminary Enquiry he did not say anything about the fighting except that one of the accused pushed Haniff. He is recorded as saying at the Preliminary Enquiry that "nothing happened between me and them before I left." Whereas here it is said that he slipped on some cow dung and fell on top of number one accused. "Surprisingly" Bradshaw was there, he said, and took him off. 20 Again he is recorded as saying at the Preliminary Enquiry "I did not look back after the first shot", whereas here he tells you that he saw what the first accused did, that he re-loaded the gun and fired. There again you have a contradiction or inconsistency which it is your task to resolve. He gave you the positions of the various persons on the Carlton Hall dam at the time of the shooting.

30 While dealing with this witness, Baby Boy, I will remind you of what I said earlier in the proceedings regarding the contention of the defence as far as the time element is concerned, that Henry Bacchus was not there and that he went on the scene after the occurrence took place and got the revolver. So much, gentlemen, for the time being about Baby Boy's evidence.

40 We now come to the witness Alfred Katriah. The points regarding his evidence are these: he made no attempt to arrest number one accused, despite the fact that he (Katriah) was a rural constable, when he saw him with the gun. He stated that, after the first shot was fired, he got away as far as possible; that the course he took was through the rice field in the course of which he crossed three trenches. The impounding of his cattle by number one accused, you are asked to say, tended to make him act in a manner not favourable to the accused persons. It is a matter for your gentlemen, whether there is or

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there is not any substance in that, having seen Katriah himself in the witness-box.

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He tells you about the incident of his daughter's collection of coconut shells - a matter which I must bring to your attention because it was referred to. You can arrive at your finding only on what you believe are true facts. There is no evidence that his daughters stole coconuts; but he warned them to collect coconut shells and not coconuts.

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Again, if he were going home, as he states he was, would you expect him to go about 10 rods north of the railway line or is it more likely that he would have gone east along the railway line and then on to the Fairfield dam. Lastly, if he had in fact seen what he said he saw of this shooting, would he not have gone straight away to make a report, instead of going to change his wet clothes and then going to make a report.

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Then there is "Scholes" or Cleveland James, an employee of the Jhumans. Your attention has been directed to the fact that after the fight he left and walked north and did not return to the milking in which he was engaged at the time. Is that a satisfactory explanation or is it not? He says too that after he had crossed the trench he did not see Bradshaw again. He tells you his version of what happened at the cow pen: that he did not see any fighting that morning but he continued his milking. He denied being charged and fined in connection with certain offences. He also denied having gone to prison. The evidence there: of the person who arrested him and there is also the record, including his photograph. If you are satisfied that he is lying in this connection, as I think you must be, remember what I told you, do not necessarily discard all he has told you merely because he has lied in that respect. He gave you his version of the positions on the dam at the time of the shooting. You will remember he placed himself as holding on to the wire, north of the dam, which you saw by the coconut tree. The defence puts forward the view that neither "Scoles" nor Bradshaw was present when this incident took place.

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The last matter to which your attention has been directed so far as "Scoles" is concerned is that at the Preliminary Enquiry he is recorded as saying that numbers two and three accused used the words "I tell al you to bring the cutlass this

morning - let we go for the gun". Here he says it was numbers three and four accused who said so. There is a contradiction gentlemen, and it is for you to attach to it what importance you think fit. That is all I wish to say about James.

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10 You have the medical testimony regarding the injuries suffered by Haniff Jhuman: several small circular gun powder marks. There were multiple bloody holes in the chest. These were shot holes, the doctor said, from the discharge of a fire-arm. Internally, there were punctures of the pleura and five slugs were removed from the left lung. There were also two punctures through the left ventricle and death was due, the doctor said, to shock and haemorrhage, puncture of the heart and puncture of the lungs, as a result of the discharge of a fire-arm.

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20 On the same day, the doctor said, he examined numbers one and five accused and also number 4 accused and he recorded nothing seen from a blow number one accused said he received on the right side of the face. He also examined number five accused on the same day - September 27 and saw three abrasions on the left side of the thorax. These could have been caused the doctor said, by a stick or brick. He also examined number four on the same day but he saw no sign of external injury. Number four accused said he had received a blow on the left upper back.

30 The doctor said that a person involved in a fight may receive several injuries and yet show no external marks, particularly in the case of a boxer. That evidence is there, gentlemen, and is fresh in your minds. The first accused complained of tenderness about the right side of his face and the doctor said he found it to be so. So much for the doctor's evidence, gentlemen, I do not think there is any necessity for me to refer further to his evidence.

40 We come to the last three witnesses, gentlemen, Bhagwandin, Inniss and Motee Singh. Bhagwandin said he is a travelling salesman for mechanical equipment and that Jhuman was a potential customer of his. Do you think that he has, for that reason, come into Court and committed perjury? That is a matter for you to consider. There is also the matter of the date and time at which he is recorded as having made a report to the Police - 6.55 a.m.

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on September 27 - regarding "a brawl at Broomhall with some people". But Baby Boy is also recorded as having made a report to the Police at 7 a.m. - that the shooting had taken place. If Bhagwandin travelled to the Station before the shooting had taken place is it likely that he and Baby Boy would arrive there within so short a time of each other? He has given you an approximate speed at which he was travelling. Baby Boy is said to have taken a car from Farinha's place; you saw that place on the High Dam. Baby Boy went from there to the Mahaica Police Station; having regard to what had happened you may wish to compare the possible speeds of the car in which Bhagwandin was travelling and that in which Baby Boy went to the Station. From the fact that Bhagwandin reported that there was only a brawl you are asked to say that whatever he saw was after the shooting had taken place. Bhagwandin's evidence is that number five accused came out of number one accused's yard with the gun, but the other evidence is that it was from number four accused's house. Again he said here that it was number five accused and a woman who said "shoot" whereas at the Preliminary Enquiry he said a woman said "shoot". If he did hear these shouts of "shoot" you are asked to consider "why did he not stop immediately?" why did he afterwards travel all that distance? 10 20

What I am doing gentlemen, you will realise, is putting before you all the aspects which have been put forward by the defence in relation to the witnesses for the Crown; in so doing you get not only the view of such evidence that the defence is asking you to take, but what the witnesses have said. 30

The defence asks you to say whether you would not expect Bhagwandin to have stopped at Thuman's house or at the factory and tell them what he had heard, if it is true that he heard the number one accused threaten to "shoot Haniff's rass", instead of going to the Police Station. Then there is that other incident where it is alleged that he (Bhagwandin) was coming from the Mahaica Police Station and he pointed out the wrong man and said "I talk to him like tea". The constable asked whether that was the man who shot, pointing to number one accused when he came down to Brickdam not long after the report was made and the Sub-Inspector took the statement down. That statement is in evidence, gentlemen, and you can have it if you wish. You may feel that the fact he did report it goes to show 40 50

that some incident must have taken place, that he did speak to number one accused not to go with the gun and tried to prevail over him from going to do what he proposed.

10 Finally, gentlemen, if you believe that number one accused, after getting the gun, went along the middle walk dam and not along the road, then that will destroy the evidence of Bhagwandin who said he met him at the junction of the road and the Broom hall dam (as other witnesses have told you he did).

20 Inniss is the next witness with whom I shall deal. He is the man who has been described as having "magic eyes and ears" in connection with the things he has said he saw and heard at great distances. You have had the advantage of visiting the scene and it is for you to say whether you think he could in fact have seen and heard what he has said he saw and heard at that distance. There has been contradiction in Inniss' evidence and your attention has been directed to it. At the Preliminary Enquiry he said someone in Jhuman's house told him something but here he said he went there and called but got no answer. When asked to account for how he heard what he said he heard, he said that "land breeze" was blowing the sound towards him.

30 Your attention has been directed to the route it is alleged number one accused took after getting the gun. Bhagwandin gave one version. Inniss gave another and Motee Singh gave another.

40 Finally, gentlemen, there is the evidence of Motee Singh. At the Preliminary Enquiry he is recorded as saying that the car was 150 rods away when the gun was handed by number 5 accused to number 1 accused. That is in contradiction of what Bhagwandin has said. In this court Motee Singh has reduced to 100 rods the distance at which the car was. At the Preliminary Enquiry Singh said he was walking, here he said he was on a bicycle. He said he agreed to wait with Inniss, that he was not going to worry to collect his money. At the Preliminary Enquiry he said he was on the road about 40 rods east of the junction of the Broomhall dam at the time he saw what he has described. Here, he places himself at the junction. Again, the defence suggests that he, Motee Singh, was at the Fairfield bridge.

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In this Court he said that numbers 1, 2 and 4 accused were the ones who walked across the pasture and that number 6 accused was on the dam. At the Preliminary Enquiry he is recorded as including number 6 accused as one of those who walked through the pasture. He tells you that he went after this incident to the Fairfield bridge, but does not tell anyone what he had seen. The defence asks you to take the view that he was in fact at Fairfield bridge and therefore it is not strange that he did not tell anyone what had happened because he did not in fact see what had happened. He said too that he saw Katriah in the pasture at the time of the first shot. Katriah told you that the first shot caused him to go into the pasture. Lastly, Motee Singh placed number three accused, at that time, somewhere near his (number three accused's) house and quotes him (No. 3 accused) as saying that he was not going anywhere, he was going home. There is that bit of evidence as to whether No. 3 accused was or was not at the scene. And that, gentlemen, is the end of the evidence of the Crown witnesses and also the end of the submissions made regarding their evidence by defence counsel. 10 20

What I propose to do now is give you, in very brief form, the defence relating to each of the accused, separately. In other words, the defence as it affects each accused either immediately before or at the time of the shooting, because it is your task to decide on that evidence, and in the light of the other evidence whether or not you accept the submissions put forward by the defence. In considering this evidence you will be able to say whether what the defence has put forward causes you to reject or accept, in whole or in part, what any of those witnesses has said. 30

First of all there is No.1 accused. Now the first witness, Bibi Kariman, says that the first accused pointed the gun at Haniff, who was then about one rod away, and said "Haniff I am going to shoot you rass". That is what she has said No. 1 accused said. Haniff replied "Bengal why you going shoot me". Then Batulan said: "don't worry to shoot my son, shoot me". That is Bibi Karriman's version of what took place. She says also that after the first shot Batulan fell and the accused broke the gun, took out the empty cartridge, loaded the gun and shot Haniff who then fell. That is the evidence given by Bibi Kariman. 40

Next there is Henry Bacchus. He says that No.1 accused was 20 - 25 rods from him when he (No. 1 accused) shouted "Saffie, hand me the gun quick let me kill Haniff". No.5 accused said, according to Bacchus, "if you frighten to shoot give me the gun". The first accused then said "move man" and followed this up by saying: "Haniff, today is the last day you will live, stand up and take it". Then he Bacchus, shouted to No.1 accused: "Oh God don't fire any more load Bengal" and No. 1 accused said: "shut your rass, don't run, if you run, I will shoot you". That is the essence of what Bacchus has said.

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As far as Bradshaw's evidence is concerned, he said that as they were leaving the cow pen, No. 1 accused said he was going for the gun and that he would "shoot them out". He, Bradshaw, was about 50 rods away when he said to Bengal: "if you use that gun you are going to get into trouble"; and that No. 1 accused said "all of you is going to shoot this morning". No. 1 accused then walked up to Batulan and Haniff and said "Haniff I am going to shoot you this morning". Haniff asked: "why you going to shoot me, I ain't do nothing". Then Batulan got in front of Haniff and No. 1 accused lowered the gun. No. 5 accused then came up and he, Bradshaw, saw No. 1 accused raise the gun and point it to Haniff's chest. He heard an explosion and Haniff went down.

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Baby Boy's evidence - still dealing with No.1 accused - is that No. 1 accused came up and said: "Haniff me go shoot you". Haniff said "What you going to shoot me for". No. 5 accused moved up and then No. 6 accused said something and then No.1 accused pointed the gun at Haniff and shot him. That is what Baby Boy says.

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As regards Katriah, what he says about the No. 1 accused is: I said to No. 1 accused, "man where are you going with this gun". No. 1 accused replied saying "I am going to shoot Haniff and Bradshaw rass." That is what Katriah said.

If you believe all this, it should materially affect the elements of the charge which I have already indicated. If you believe the evidence that No.1 accused said that he was going to shoot, well then, if you regard that as an expression of malice no amount of provocation will avail. Katriah's evidence was that he was making attempts to "grapple" the gun from No.1 accused who said "na trouble me man" and went away. So much for Katriah's evidence.

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Then Cleveland James says No.1 accused raised the gun and said "Haniff, me go shoot you". He says he heard No.1 accused use those words. It is for you to say whether he did hear them or not.

Then there is the evidence of Bhagwandin who says that as the car was about to pass he saw No.5 accused hand the gun to No.1 accused. Then he, Bhagwandin, asked No.1 accused: "boy where are you going to with that gun" and No.1 accused said "I go shoot Haniff's rass". That is what Bhagwandin said that No.1 accused said. If you believe it, you may feel that it is an irresistible conclusion that it is an expression of malice and that that was his intention in going there. When he, Bhagwandin, was going up to No.1 accused, No.1 accused, Bhagwandin says, broke the gun and put one of the cartridges in it. Then further on in his version of this incident he said: "I told him "boy go back home, you will get in trouble"". The first accused replied saying: "I don't care, we get estate and money, we going to fight the law". Bhagwandin said he told No.1 accused: "I haven't got money and estate you can go along and shoot if you want". So much for Bhagwandin.

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

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Finally, Mottee Singh said that Bhagwandin had stopped the car, came out of it and as he (Bhagwandin) walked up to No.1 accused he stepped back, put a cartridge in the gun "locked" it and said: "not one foot more further". Bhagwandin then turned back and went into the car.

Now gentlemen, that is the evidence, the outlines of it, which the witnesses for the Crown have given. I will now refer to the statements which the first accused is alleged to have made. If you feel it was a voluntary statement that was properly taken, you may accept it as such and act upon it. If, on the other hand, you feel it was one forced from him as I have explained, well then, ignore it completely. That is a matter of fact for you

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gentlemen. The statement is not a lengthy one: here it is: "This morning Sunday 27th September, 1953, about 7 o'clock I been in the calf pen at Broom Hall milking cow, in a sudden me see Haniff, Batulan, Bradshaw, Baby boy and Scrollles, 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 the cow again and Haniff, 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".

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That is the statement, gentlemen, which the accused gave to the Police, it is a matter of fact for you to decide whether you accept it as a voluntary one or not. It is an important point - whether you regard it as voluntary or not. The accused submitted himself to cross-examination and gave quite lengthy evidence. He tells you where he lives - I shall give you what appear to be the salient features of his evidence - about 40 rods west of his brother's house - accused No.4. He said his father bought Broom Hall estate about the year 1945 and the Luckhoos - the firm of lawyers - looked after the legal side. You will remember the evidence that No.6 accused is stated to have said "we got money, we can take dem Luckhoos. The defence has asked you to take the view that that bit of evidence has been inserted because it was known that that very firm used to work for the Subadars.

Continuing his evidence, No.1 accused said that No.4 accused had a gun for over 10 years and he, Karamat, had been using it for over two years to shoot alligators, camoodis, etc. He tells you that he has seen Haniff use a gun and a revolver. The evidence is that he had been prosecuted and charged for the use of these articles. He says that the Subadar family and the Jhumans were on bad terms in September 1953 and that they had been so for 3 years before that and that the cause of such bad feeling between them was due to damage to the rice by cattle belonging to the Jhumans. The wire between the two plantations was in bad condition; that on several occasions the Jhumans' cattle were impounded by them and that he (Karamat) did most of the impounding and

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that Jhuman was annoyed about it. In 1952, Jhuman gave a "good" for cow damage and the settlement of \$70:00 was in respect of that. The first big damage was in June last year, notice was sent to Jhuman for \$700:00 but no settlement was made. The next big damage was, he thought, in August -- three or four weeks before September 27th. After inspection, a notice was sent for \$507:00 in respect of that damage.

Batulan, he said, was a hasty woman; one who liked to make a fight and she used to carry a knife in her bosom. He says that Haniff Jhuman was also a hasty man; that he was charged with discharging firearm and that he, No.1 accused, was in Court at the time when he was so charged.

No.1 accused continues that on Saturday, September 26, 10 head of cattle were caught in his father's rice field, it was big tall rice. Jhuman had no rice on the Carlton Hall plantation. At about 6.30 a.m. all six accused started to drive the cattle to the Mahaica Pound when Jhuman came out of his yard with a quacoo stick; Batulan came out with a prospecting knife and Jhuman stopped the cows saying: "all you can't carry these to the pound, murderation got to pass". They insisted on carrying the cattle and Bacchus tried to restrain Jhuman and Bacchus' wife tried to restrain Batulan. Jhuman was then at his gate and he said to us: "one, one day me ah go kill all you".

On the Saturday evening, he went to bed about 7 to 8 Karamat said, and awoke about 2 a.m. and went to his rice field and saw Katriah's bull in his rice. He had impounded that bull a "couple" of days before, No.1 accused said. Katriah came out with a stick and a torch and they quarrelled. He said he told Katriah he would carry the bull to the pound and Katriah raised the stick to strike him but he ran away. Katriah and he were not on good terms. After the incident he went back at about 4.30 to 5.00 a.m. and went to milk cows along with accused Nos. 2, 3 and 4 at the backdam. They had two pieces of rope and a milk can. They drove the cows into the wire fence and milked four of them. While milking another four cows, Karamat said, he heard the voice of Haniff Jhuman saying "where is Saffie's mother's so and so". I peeped and saw Haniff, Batulan, Baby Boy and Scholes inside our wire pen. I saw Harry Persaud on the Carlton Hall dam with a double barrelled gun. The persons in

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the pen looked very serious. When Haniff asked: "Where Saffie", etc., No.4 accused said Saffie been at a wedding house last night and he must be drunk. Batulan then said "you Bengal I want too, you carry me sheep ah pound, me chop and kill Frenchman and me go kill you too". 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 fell, I did not slip on anything. Baby Boy sat on my belly and cuffed me. Batulan kicked me five or six times saying "take this you bitch you kill allah you one one". Nos. 2, 3 and 4 accused then came towards me, then 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 north along the Broomhall dam. I was feeling pain from the blows. I ran until I got on the railway line; I then went east along the line to the 50 rod dam and then along that dam towards the road. The first person I saw was No.5 accused who was on the public road. I was about 10 rods from the road on the dam. No.5 accused was opposite the dam. I told him to bring the gun. I wanted the gun to go and protect my brothers and to look after the calves. No.5 accused brought the gun and handed it to me. I did not go onto the public road nor into my house. I broke the gun and No.5 accused gave me two cartridges. I put one of these in the gun to protect myself in case they raised any gun to shoot me. No.5 accused and I walked on the 50 rod dam, I was in front and we walked until we reached the line and then along the line of the Broomhall west side line dam. I had no incident with anyone on the public road. I saw Katriah, No.6 accused and No.2 accused coming from the backdam along the Broomhall dam. I spoke to No.2 accused. I was then at the junction of the dam and the line and No.2 accused was about 2 rods south of me. I said to him "what happen man" he said "ah we get beat and ah we get away". I asked where are Nos.3 and 4 accused and No.2 accused said "dem get away". Katriah said to me "you and Saffie better go loose dem cow calf". Katriah said they were going to the Police Station. No.5 accused and I walked south. I was going to loose the calves. Katriah, No.6 accused and No.2 accused walked east along the railway line. Katriah had no fight or struggle with me for the gun. I saw three persons coming on the Carlton Hall dam but I could not recognise whom they were. When I got

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about 20 - 25 rods away from them I recognised them to be Batulan, Haniff and Baby Boy, I did not see either "Scholes", Bradshaw, Bibi Kariman or Henry Bacchus, I saw nobody cross the trench. It was not my intention to have any say with Batulan, or the others. 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. Haniff said "where you mother's 'so and so' going?" Haniff's hand was in his right trouser pocket and he said "no mother 'so and so' can't milk cow at this place no more". Batulan then said "shoot the bitch". As soon as Batulan said that - I had my gun in my hand - 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".

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You will remember the Crown Prosecutor asked you to consider the positions of the bodies found on the dam and ask yourselves whether it seemed likely that they were both standing in the positions stated by No.1 accused at the time of the incident.

No.1 accused continued: "I then walked about $2\frac{1}{2}$ 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. I then walked back going to the road-side. I then saw Bibi Kariman, in front, followed by Henry Bacchus, running south. They passed me and went to where the bodies were. Bacchus picked up the revolver. I got to the line, walked along it to the 50 rod dam and then on to the public road and then to my father's house."

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"After I reached my father's house, Sgt. Tappin and two other police came in the house in which were accused Nos. 2, 3, 4 and 6. Sgt. Tappin said "you shoot up the people them like a bird". I told him that Haniff took out a revolver and attempted to shoot me, and he said "you blasted lie man, you must tell the Judge. I arrest all of you". Nos. 6 and 2 accused were handcuffed and we were sent to the station and placed in the lock up. Sgt. Tappin used no words of caution at the home of No. 6 accused. About half an hour after I had been placed in the lock up a police came and took me to the Guard Room. Sgt. Tappin said "you got to give me a statement".

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I told him "I nah give no statement" - he did not caution me; he told the policeman to bring the handcuffs and I was handcuffed. He pushed me on a chair and said "you got to give me a statement now". I gave a short statement. At the charge room I also told him of the revolver. The statement was not read over to me, I first knew what that statement contained at the "Small Court".

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10 "When I was running away from the pen I felt pain and passion: up to the time I fired the shot I still had pain and I still had passion".

That, gentlemen, concludes the evidence given by No.1 accused.

20 In answer to Counsel for Nos.2 and 5 accused, No.1 accused said nobody told him to fire the gun. "I fired because Haniff took up a revolver. Neither No.2 accused nor No.5 accused encouraged me to use the weapon". No.1 accused said that he did not feel that the presence of No.5 accused gave him courage to fire: that No.2 accused was not by his side and that No.5 accused never said "if you don't want to shoot, give me the gun; that he was not assisted or encouraged by any of the accused persons to discharge the gun at Haniff or in anything he did that morning. You have it under cross-examination by the Crown Prosecutor that No.1 accused said he had no "story" with Bhagwandin before this incident. Nor did he have any quarrel with Sgt. Tappin who he said did not caution him before taking a statement

30 from him. He has related to you, gentlemen, the incident at the cowpen and it is a matter for you whether you think there has been provocation sufficient to cause a reasonable man to lose his self-control. It does not appear that the allegation is that the provocation of No.1 accused at the cowpen resulted in the shooting. He said he was running away and then decided to get the gun to protect his brothers.

40 After the meeting Nos.6 and 2 accused and having been told that Nos.3 and 4 had got away who then was he going to protect; he said too, that he was going to attend to the calves. He describes the revolver, which he says Haniff had, as being 8 to 10 inches long and heavy.

He denies that Batulan came in front of Haniff before he fired the shot and he has directed your attention to Jhuman saying "one, one ah going kill

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"all you". He also told you of the incident at the Mahaica Court when Bhagwandin, in company with a policeman, pointed to No.2 accused saying that he (No.2 accused) was carrying the gun but the constable pointing to him (No.1 accused) and said, "this one did carry the gun". He also told you of the incident when Bhagwandin travelled on the train and sat opposite to him and of the report to the Sergeant at Brickdam. And that gentlemen, is the survey of the evidence given by No.1 accused in this Court. 10

Gentlemen, as far as the number 1 accused is concerned, and he, quite obviously, is the longest of the lot, I have given you the evidence of the witnesses and the relevant parts of the evidence as to that particular incident, before and at the shooting. I have given you the statement alleged to have been made by him, if you believe that it may properly be taken into account, and I have given you the evidence which he has given in this Court. It is for you to say on all that evidence whether you are satisfied that this charge of murder has been established or not. I have explained to you what constitutes the offence of murder: if you believe that no revolver was there; that there was no question of his shooting in self-defence; and if you believe, too, that there was no provocation of such a nature as would cause a reasonable man to lose his power of self-control, and that he did not in fact lose his power of self-control. 20 30

If you feel that possibly the incident which took place at the cowpen might have been sufficient to cause a reasonable man to lose his power of self-control you have to consider the distance which he travelled, after receiving such provocation as you find he received, and whether that was a sufficient interval of time for his passion to subside.

As regards when he was going south on the Jam with the gun - ignoring for a moment the question of the revolver - you have it in evidence, and I have just read to you, what Haniff Jhuman is alleged to have said and what Batulan is alleged to have said. Those are words only and (if you believe there was no revolver) I will read to you a passage which is relevant in that connection. 40

The passage is as follows: "In no case can words alone, save in circumstances of a most extreme and exceptional character, reduce killing from

murder to manslaughter, and when words alone are relied on as extenuation, it is the duty of the Judge to consider whether they are of this violently provocative character, and if he is satisfied that they cannot reasonably be so regarded, to direct the jury accordingly".

10 The number 1 accused has stated in his evidence at the very end of his evidence in this Court, that when he fired the shot he was still suffering from pain and passion. He says, "I still had pain and I still had passion".

20 It is for you to make up your minds what took place at the cowpen and for you to say whether that would be sufficient to cause a reasonable man to lose his power of self-control. But even so, you must ask yourselves whether the interval of time, and what he did between that, would not enable his reason to interpose and therefore remove the suggestion that he, at the time of firing the shot, was subject to a transport of passion and did lose his power of self-control, because, as I have told you, the reason why provocation has the effect of reducing the charge from murder to manslaughter - it is not a complete answer: it is a partial answer - is that if a person has lost his power of self-control he is deemed to be incapable of forming an intention to kill and the formation of an intention to kill is a necessary ingredient of the charge of murder.

30 On that question of provocation I will just refer you to these bits of the evidence which will assist you: "That the accused had said that he wanted the gun to protect his brothers and to look after the calves". He does not say "I had lost my self-control and I did not know what I was doing". He says: "I put a cartridge in the gun to protect myself in case they raised the gun to shoot me".

40 He says that at the railway line Katriah told him "you better go on and loose these cows" and that he was going to loose the cows, and that it was not his intention to have any say with Batulan or any of that crowd who had been at the cowpen. That seems to me, if you accept it - it comes from him - to remove any question that this shot was fired as a result of any provocation. He says "I was going there to my cows". He himself says that when spoken to by Haniff he (the number 1 accused) was going south on the Broom Hall dam and they said

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"where your so and so going". He said "me a go
aback to milk cows". He does not say "you and
Batulan beat me".

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It is a matter for you, gentlemen. I am de-
liberately not taking from you the question of
provocation because the accused has said at the
conclusion of his evidence "I was still suffering
from pain and passion" and I am putting to you
these aspects of the matter which, no doubt, will
guide you in determining whether there is any ground
for saying that at the time the shooting took place
this man had lost his self control as the result of
provocation at the cowpen.

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In answer to one of the counsel for the accused,
he (the number 1 accused) said "I fired because
Haniff took out a revolver". In other words, he
says 'my defence is that this man took out a revol-
ver and I fired to protect myself; to save my own
life'. He does not say 'and because I had lost my
power of self-control'.

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In cross-examination by the Crown Prosecutor
he said "it was not because of passion and pain
that I went to get the gun. I went to protect my
brothers".

There is, too, the fact that his counsel has
put forward that it may be a combination; that the
earlier provocation and what was said to him, as-
suming that no revolver figures in this incident -
what took place at the cowpen and the incident on
the dam when the number 1 accused was going south -
that the combination of the two might be sufficient
to cause a reasonable man to lose his power of self-
control.

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But you will remember I have told you that a
matter to be considered very carefully is the nature
of the weapon used, and where a deadly weapon is
used the provocation must be extremely great for it
to have the effect of reducing the offence. I say
extremely great and I use the word extremely delib-
erately; that the provocation must be extremely
great where a deadly weapon is used, as in this
case, for it to have the effect of reducing the of-
fence from that of murder to manslaughter.

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There is this passage about "time for cooling"
to which I have already referred. In provocation,
such as would cause a reasonable man to lose his

power of self-control, if there intervenes, before he does the act, a sufficient time for him to cool, then it is deemed in law not to be provocation.

I will just read this passage. It is headed "Time for Cooling".

10 In all cases, to reduce homicide upon provocation to manslaughter, it is essential that the battery, wounding, etc., should have been inflicted immediately upon the provocation being given;" (and the word immediately is in italics): "for if there is a sufficient cooling time for passion to subside and reason to interpose, and the person so provoked afterwards kills the other, this is deliberate revenge and not heat of blood, and accordingly amounts to murder".

20 Gentlemen, I have considered this matter as regards provocation and I have got the right, if I see fit, to say "no, you are not to consider that aspect of it at all". But in the light of what is stated to have taken place at the cowpen and what the number 1 accused has said took place on the dam when he was going south after he got the gun - because defence counsel has sought to connect these two in some way - I will leave to you the question of whether or not there was provocation of a nature which I have described to you, and which would have the effect of reducing the offence from murder to manslaughter.

30 In that connection I have endeavoured to direct your attention to what appear to be the relevant features: what he himself has said in that connection was his reason for going south and the fact that words alone are not sufficient. (Do not worry about the revolver which affects the question of self-defence and may to some extent, if you believe it was used, affect the question of provocation). You will consider the interval which elapsed between the cowpen incident and this other one, and consider
40 whether or not there was provocation.

If you feel that the provocation, as I have described it to you, in that unlikely event, is sufficient, if you feel so, then you would be justified in those circumstances in saying this offence is reduced from murder to manslaughter. But on the evidence as I see it - I am leaving it to you and it is a matter for you, gentlemen - I cannot see on

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the accused's own story, what he himself says, that the reason he gave for the assault and the reason he gave for taking the gun originally tend to show that there was in fact a loss of self-control or sufficient provocation; but he has stated it at the end and that is the reason why I am leaving it to you.

If you find that there is no provocation to reduce it, if you find that there was no revolver, and no call for self-defence at all well, quite clearly, the other elements that I told you about should present no difficulty - there is no question that Haniff Jhuman died as a result of the act of the number 1 accused - and in those circumstances there could be only one verdict you can return and that would be one of murder. If you feel that the necessary provocation existed, manslaughter would be the verdict. If you feel that a revolver was used and a reasonable man would be in fear of imminent death or grievous bodily harm well, then, the defence of self-defence has been made out.

So you must examine the evidence carefully as regards whether you find that Haniff Jhuman did or did not have a revolver. It is a matter of fact for you but as I see it, gentlemen, your verdict must depend to no little extent on your finding as regards the presence or otherwise of that revolver, and that finding must, in turn, depend to some extent on whether you believe that the statement made by the number 1 accused to the police was a voluntary one and he was there setting forth his version. Of course, if that was so and he did not mention the revolver, as I have already indicated, you may feel that it is some ground for saying that there could not have been a revolver, because if there had been and the number 1 accused says he shot him to protect his brothers he was going to say "if I did not shoot him he would have shot me".

I have endeavoured, gentlemen, as far as the number 1 accused is concerned, to put all the relevant facts as I see them, before you. I will pass on now. He is, quite obviously, the longest one. The evidence of the others is much shorter and I have already given you the law as it affects them.

As far as the number 2 accused is concerned the first witness to whom I shall refer is Henry Bacchus. He says he saw, before he got to the railway line, numbers 2, 3, 4 and 6 accused and Katriah.

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"Number 6 accused and Katriah were behind the others who were running. They were all coming north. I said 'what happen man?' Number 2 answered 'what happen? Let Bengal come with the gun quickly, you going to see what happen'."

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That was before the shooting. If you accept that evidence in the light of what I told you is the law, whether you believe he was on the scene or whether he was one who was removed some distance away, that would show whether the necessary intent existed on his part .

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Then there is Mohamed Haniff. I do not know that he carries us much further.

There is Bradshaw who says ... "I saw Baby Boy come from the south part of Broom Hall dam and he and the number 1 accused started to fight." (That was in the cowpen). "I separated them. Numbers 2, 3 and 4 left the cowpen and I heard a voice say 'let us go for the gun'. It was one of those three."

Well, that may be some evidence as to any intention on the part of any of them as to the knowledge of the use to which the gun might be put later. That is the only part of Bradshaw's evidence to which it seems necessary to refer.

Then there is Katriah. He says that when he tried to hold on to the number 1 accused's gun the number 2 accused was behind him (Katriah) and said "nah trouble ho, man". Now, if you believe that the number 2 accused did say that when Katriah was apparently trying to get the gun away, you may regard it as some evidence, or you may not, as indicating the intention, or willingness, or readiness on the part of the number 2 accused.

Then, finally, there is Scholes or Cleveland James who said that numbers 2, 3 and 4 accused had said, "put one load pon the black man dem" and he says "I got afraid and I started to run across the pasture". That is what Cleveland James says he heard numbers 2, 3 and 4 accused saying.

Inniss says ... "When I saw the number 2 accused on the dam the number 4 accused was with him. The number 4 accused met number 6 accused on the railway line. I was on the road".

Gentlemen, an important matter which you must

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resolve and make up your minds about is whether, at the time when the number 1 accused was going north, he had in fact left his brothers (numbers 2, 3 and 4 accused) at the cowpen, or whether you believe the evidence which indicates, or is to the effect, that the four of them were together because you will remember that the number 1 accused has stated that his reason for getting the gun was to go back and protect his brothers. Well, if the four of them were together, as Katriah and others say, there seems to be no necessity to get a gun when they were with him and were in fact going towards their home with him. So it is important to decide the order in which they left the cowpen or whether when the number 1 accused left to get the gun, he was aware that his brothers were no longer in any danger. That is a matter for you to consider. 10

The number 2 accused's statement to the police made on that same Sunday morning I will read in full. He says: "This morning, Sunday 27th September, 1953, myself and me three brothers Ali Hussain, Karamat and Hoosanie been in ah we calf pen at Broom Hall ah milk ah we cows. Whilst milking cow me see Haniff, Baby Boy, Batulan, Bradshaw and Scrolls come over the wire where ah we ah milk cow. Haniff ask where Saffie mother's scunt. Ah we said Saffie na come and milk cow. Baby boy and his mother walk up to Bengal and said you ah play bad man, and Batulan fire two cuffs on Bengal. Baby boy and Bengal catch hold and them two fall ah ground, and when ah we go fo part Haniff start to fight ah we this. Bengal run away from the pen and they still got ah we this ah fight ah we this. Stand little long ah we this too run, me run straight ah home. That is all." 20 30

He does not give any reference to the actual shooting incident at all, not even to hearing the report of the gun.

His evidence here is that on the Saturday morning they were taking the animals to the pound. Jhuman said 'them cow can't go ah pound today - murderation got to pass'. Jhuman had a quakoo stick, Batulan had a prospecting knife; that Henry Bacchus restrained Jhuman and Henry Bacchus's wife restrained Batulan. Batulan said 'if all you want to fight let ah we fight'. That was the Saturday morning. Saffie and himself carried the cows on to the Mahaica pound. 40

"Sergeant Tappin said he was not going to take

no report against Jhuman. He paid me my money for the pound fee and told me to come out of the station. I told my father that Sergeant Tappin would not take any report and he said the best thing let we go to Cove and John and make a report. We went to Cove and John; reach there about 11.30 a.m.....

"We left the station about 3.30 to 4 p.m. We walk through the Cove and John dam to catch the railway line and come to Belfield Station. On that day I did not see Mohamed Haniff at all. I got the train and came home.

"The Sunday morning about 5 o'clock we went to our calf pen at Broom Hall. I see Haniff, Baby Boy, Batulan, Bradshaw and Scholes and they start to beat all ah we in ah we calf pen. Number 1 accused was the first to run, then number 3 accused, then number 4 accused and I run behind. Between the line and the gate of Broom Hall, western side, number 1 accused met me, Katriah and number 6 accused. Number 1 accused asked me 'where dem boy' and I said 'Jem boy get way' and he asked if I loosed the cow calf them which had been tied. I said to the number 1 accused 'all ah we get beat up; we aint get a chance' Katriah said that number 1 and number 5 accused better loose them cow calf and number 1 and number 5 started to walk along the dam. When they were 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 number 1 accused and when number 1 accused go to pass I see Haniff pull out a revolver to shoot number 1 accused and number 1 accused fire 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 number 1 accused to fire any load on anybody. I did not expect to see Haniff with a revolver until he pull out a revolver to shoot the number 1 accused. I did not spoke to number 1 accused 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".

So that, gentlemen, is the evidence of the Crown as it relates to the number 2 accused Sub-rattle and his statement to the police, and his evidence in this court, on that evidence as a whole you must ask yourselves, I suggest, the first question: where do you find that the number 2 accused was at the time of this incident? and - if you find that murder was committed, that this felony was

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committed - then, having determined his position you will remember what I told you: whether he was near enough to render assistance if required, or whether he was far away. Apply those principles according to where you find he was and if you find there is evidence - I think at the conclusion I will refer to this briefly again - arrive at your verdict accordingly.

As regards the number 3 accused Ali Hussain the evidence in relation to him is much shorter than the others. First of all there is Bradshaw who says that number 3 accused was among those when they said "let us go for the gun". He did not know which one precisely but it was in his hearing that one of them said "let us go for the gun". 10

Then it was Katriah who, you will remember, says: "When number 6 accused and I got about two rods from the railway line I saw someone on the road coming with a gun. I crossed the railway line and walked...." and so on. "Numbers 2, 4 and 5 accused were behind number 1. Number 5 had a stick". 20

The importance of that evidence is that he (Katriah) does not include number 3 accused as being among the persons who were on the dam at that time.

Then there is Scholes who says that it was number 3 accused who said 'man me been ah tell all you to bring the cutlass this morning: let we go for the gun', and that number 4 accused repeated the same words. Finally, he says that the number 3 accused was one of those who said 'put one load pon the black man dem'. 30

That is the evidence as it directly affects number 3 accused Ali Hussain. His statement to the police which I shall read in full is as follows:-
"This morning, Sunday 27th September, 1953, whilst me, Hoosanie, Edun and Bengal been at the back at Broom Hall milking cows, me see Batulan, Haniff, Baby Boy, Bradshaw and Scrolls. This five walk over the wire. When they come Batulan asked where Saffie. Me tell them Saffie drink rum and he drunk ah house and he aint come fo milk this morning, and they said Bengal is the man and Batulan, Haniff and Baby Boy hold him and start to cuff him up. All ah we jump and part them and Bengal run and get away and Bradshaw and Baby Boy started to beat them boy this, and Haniff and Batulan also beat, and me run and get away and left them fighting. Me go straight 40

home. Me aint stopped anywhere. When I was in me house me hear the gun fire off".

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Supreme Court.

10 So the number 3 accused in his statement to the police, if you accept it, places himself in the house when the gun was fired and it is the case that there is other evidence to which I have already referred that the number 3 accused was not at the scene. Of course, they are the witnesses In- nis and Motee Singh. You will remember them.
20 There was evidence from which you may think it reasonable to infer that the number 3 accused was not there. On the other hand Bibi Kariman and some others all place him at the scene where the shooting took place. It is for you to determine whether he was there or not.

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continued.

20 What he has said in this court I think is best to read right through to you, which is probably just as fast as picking out the marked portions. This is number 3 accused's statement from the dock in this court

30 "Saturday morning me and my brothers were going to milk cow. We see some cows belonging to Mohamed Jhuman in the rice field and we take them on to the road to the pound. When we meet facing Jhuman's house he come out with a quakoo stick and say 'this cow can't go ah pound today: murderation got to pass'. Batulan ran with a prospecting knife and Henry Bacchus hold on to Jhuman and Henry Bacchus' wife hold on to Batulan. Batulan said 'loose them, if they want to fight let ah we fight'. Just as we pass High Dam number 1 accused, myself, number 4 and number 6 accused turned back, Jhuman was by his iron gate and said 'one one day we must kill ah you' and we continued our way to Brook Hall back dam.

40 "Sunday morning me and my three brothers went to the Broom Hall backdam to milk cows in ah we own cowpen. I see Haniff Jhuman, Batulan, Baby Boy, Mr. Bradshaw and Scoles come over at we cowpen. Haniff use some words about Saffie mother's so and so, then number 4 accused told Haniff that number 5 accused was not here this morning. Batulan then went to number 1 accused and start to beat him and all of them start to beat the boy and then we all ran to the assistance of my brother and then they attack "foo we people" and number 1 accused get to escape from the beating and then I get a chance to escape too from the beating and I run on the sideline

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continued.

dam straight on to the road. About a few rods to catch my house I saw Jerry Inniss and Motee Singh was coming and Inniss and Motee Singh met me opposite my gap. Then Jerry said that he see number 1 accused gone on the middle walk dam with a gun. Then I tell him that the Jhuman family go ah we calf pen and beat up ah we and I tell I ain't going nowhere. I am going home because I meet to my house already. I did not use any word about any cutlass, any gun or any threat. I barely try to save my life to get away to my house. In my house I hear a load discharge and after a few seconds I hear a next load fired. I am innocent of the charge".

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There then, gentlemen, is the evidence of the Crown relating to number 3 accused, the statement to the police, if you accept it, and his statement in this Court. What I said regarding the number 2 accused applies to him. Decide where he was; where the evidence satisfies you he was at the relevant time and ask yourselves, as regards the conditions which must be satisfied before he may be convicted, whether the evidence satisfies you as to them.

20

Now, number 4 accused, Hoosanie. The evidence in relation to him is, first of all, the evidence of Bradshaw that number 4 accused was one of the three or was with the three who used the words "let us go for the gun".

Then there is the evidence of Alfred Katriah in relation to him and he says "I shouted out 'what's wrong' and number 4 accused said Haniff and Bradshaw proper beat them up at their pen and they going for gun to shoot them".

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That is what Katriah says number 4 accused told him. If you believe that you will take it into account and see whether it indicates, having decided where he was, that this evidence in conjunction with any other evidence that you take into your consideration goes to fulfil the requirements which would make him either, if he was at the scene and within distance that he could give assistance a principal in the second degree, or, if he was removed from the scene, whether it would make him an accessory before the fact.

40

Then also as regards number 4 accused there is Cleveland James or Scholes who says that number 4 accused was one of those who repeated the words "let me go for the gun" and he was the last of the three

who said "put one load pon the black man dem". That was before he (Scholes) started to run across the field.

Number 4 accused's statement to the police I shall read in full. It is not very lengthy.

10 "This morning, Sunday 27th September, 1953, I been to milk cow at me father Subidar place at Broom Hall. When me, Karamat, Subrattie called Edun and Ali Hussain loosed four calves ah we see Haniff, Baby Boy, Batulan, Bradshaw and Scholes and they come over ah the wire and they asked for Saffie. Ah we tell am Saffie na come because he been ah wedding last night and he drunk. The lady and the five ah them searched between all them cow for Saffie and the lady said you Bengal you ah one to, and she go right up and hold Bengal, and Baby Boy pelt couple cuff pon the boy and tumble am pon the ground and they started to fight, and Bradshaw and Haniff hold me, and me two brother Ali Hussain and 20 Subrattie run and come and they loose Bengal and he run straight a house. He left ah we this. After they lick ah we this ah we also left ah run. Scholes run behind ah we for about fifty rods. Me run fo come ah house. When me nearly meet ah house me see Bengal burst across the rice with a gun. Me na been there when the shooting start. Me been ah run fo go but me na been meet."

30 That is the number 4 accused's account. From the dock in this court he says ... "On Sunday about 4.30 - 5 in the morning me and my three brothers went ah backdam to milk my father's cows, 450 rods from the public road. When we start I notice Haniff, Batulan, Baby Boy, Bradshaw and Scholes come over inside the pen. Haniff said where is Saffie mother's so and so. I told him that Saffie went to a wedding house last night and he drink rum and is drunk; he is not coming to work this morning. Batulan went up to number 1 accused and said 'you Bengal, you Bengal, you are a good one too, you does 40 carry my sheep to the pound'. She collared him and started to beat him and all of them, Bradshaw, Haniff, Baby Boy. We run to assist because when the boy fall he said 'Oh God, ah dead'. They then turn on us and start to beat us and number 1 accused was the first to run. I then said to Bradshaw 'ow Uncle Bradshaw, this is a legal advantage to beat ah we in ah we own calf pen'. Number 3 accused then ran. I get a spare chance and I run, too. While running I never meet my father neither Katriah.

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continued.

I never told Katriah that me ah go for gun to shoot anybody and I never tell him that Bradshaw and Han-iff beat me because I never meet him. When I dey far I hear a load discharge. I never tell number 1 accused to go shoot and I never know who give him the gun and I am innocent of this charge".

So then, gentlemen, that is the evidence in relation to number 4 accused Hoosanie.

With regard to number 5 accused Saffio Mohamed, first of all there is the evidence of Bibi Kariman who tells you that she saw him going north on Broom Hall dam running and he said he was going for gun to shoot. That has been dealt with extensively. So you have Bibi Kariman telling you that number 5 accused said he was going for the gun for this purpose. If you believe that, you know in what way to apply it as affecting his knowledge of what was going to take place and so forth.

Next is Henry Bacchus who, as regards number 5 accused, says - and this was actually at the scene -

"Number 5 accused came in front of number 1 accused and said 'if you frighten to shoot give me the gun and let me shoot'. Number 1 accused then said to number 5 'move man'."

Well, you will consider, if you believe number 5 accused was there and he did do that, whether that makes him a principal in the second degree as being one either actually aiding or encouraging, according to the conditions I have already explained to you.

Bradshaw says as regards number 5 accused "Number 5 accused then came up to number 1 at the scene and said 'give me the gun if you can't shoot and let me shoot their rass'."

That is what Bradshaw says and Baby Boy says similarly "Number 5 accused moved up to number 1 accused and said 'if you can't shoot man give me the gun'."

That is what Baby Boy says. Katriah says ... "Number 1 accused tried to pass and I made a catch on his gun and he passed. So did numbers 2, 4 and 5 accused and they continued running." I continued begging them saying 'this is a wrong thing ah you do'. I continued behind them over the railway line

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and ten rods over the other side. I tried to make a grabble at number 1 accused's gun".

Then Cleveland James says about number 5 accused "Number 5 accused then came nearer to number 1 accused and said 'if you can't shoot give me the gun'."

10 Much the same evidence as far as number 5 accused is concerned. Then there is Bhagwandin who tells you about number 5 accused ... "I heard number 5 accused shout 'shoot' and then hand the gun to number 1 accused".

Well, you will remember I have already drawn your attention to that. He said first it was a woman who shouted and then it was a man. He tells you ... "At the same time number 5 accused came running from the back (that is, from the east) on the road. Number 5 said to number 1 'man, don't worry with him, you go down; the first man you must shoot is Haniff'."

20 There again, if you believe that number 5 accused did say that, ask yourselves whether it amounts to an incitement. That is what Bhagwandin says.

30 Inniss says that number 1 accused said 'he nah go back". Then Bhagwandin came up and said "Go back with this gun, this ah trouble' and continued begging him to go back with the gun. Number 1 accused said he nah go back. Number 5 accused came up with a stick and said 'ah you nah stop em, let he go'."

Ask yourselves whether number 5 accused did or did not say that and if he did say it, what is the significance of it.

Inniss again says ... "Numbers 6 and 5 accused came towards me on the road and number 5 hollered 'ah you go spade the tiger rass up'."

That is what Inniss said number 5 accused said.

40 Finally, Motee Singh, who says "Number 1 accused then went along Broom Hall dam with the gun, followed by number 5 accused with a stick which was about 4 feet long and 2 inches in diameter. While number 5 accused was going along the dam he said 'they can't pass here'."

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Supreme Court.

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Summing-Up.

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continued.

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continued.

That is what Motee Singh tells you number 5 accused said. He says ... "I left and went up to Fairfield bridge. There I saw number 3 accused riding a bicycle towards the east. I asked him 'Boy, what happen at the back' and he said 'better carry the spade and spade up the tiger'."

That is what he says number 5 accused said.

Now, the statement of Saffie Mohamed to the police is shorter than the others and I will read it in full.

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"Last Saturday night around eight to half-past eight I was standing at Subidar's gate and Scholes, I hear him telling Bengal that he is going to beat me when he come near to the date. I asked him why is the reason he going to beat me. He said me got too much passion and me like fight. We started to quarrel and he take a burnt brick on the road and he knock me pon me side and he picked up a stick and knock me on me left hand. After then he run away and me go home and sleep and I don't know no-thing more."

20

So his statement to the police relates only to that Saturday night incident, if you believe that it was a voluntary statement.

His evidence here - the statement from the dock - is as follows :-

"On Saturday night I was opposite my gap. Scholes pelt me with a big brick and hit me with a stick. He ran away and returned back with Batulan. She hit me with a stick and I slap her.

30

"On Sunday morning I did not go aback. While I was on the public road I saw number 1 accused running. He shouted to me 'Saffie, bring the gun'. I did not know what he wanted it for. I go to number 4 accused's house and bring the gun with two cartridges. I give them to number 1 accused 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. I go along the middle walk dam with him. On the railway line we meet Edun (number 2 accused), Katriah and number 6 accused. Number 1 accused asked where is number 3 and number 4 and number 2 accused said that they had got away. Number 1 asked number 2 if they had loosed the cow calf. Number 2 said 'no'. Katriah

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said better you and Saffie go and loose the cow calf. On we way we met Batulan, Haniff Jhuman and Baby Boy. Haniff said 'where the mother's cun you ah go'. Batulan said 'shoot the bitch dem'. Haniff draw the revolver and number 1 accused fired a load. Baby Boy was running away. Number 1 accused walked a little further and he fired a next load in the air. I never told number 1 accused to give me the gun if he was afraid. I never told number 1 accused to fire. I never told no one nothing about 'spade up'. When I gave number 1 accused the gun I did not know why he want it for. We did not walk along the road. I did not see Bhagwandin, Jeremiah Inniss or Motee Singh 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." So much for number 5 accused, gentlemen.

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20

Finally, the number 6 accused, Subidar. Bibi Kariman tells you that when Batulan said 'don't worry to shoot me son, shoot me', number 6 accused said, "shoot them rass, me got money; me going take them Luckhoo". That is what Bibi Kariman tells you number 6 accused said.

30

Henry Bacchus says as regards number 6 accused that after number 1 accused had said "Haniff, today is the last day you will live, stand up and take it", that Haniff had nothing in his hand. Number 6 accused said "shoot all of them, don't left none. We got money we can take dem Luckhoo". That is what Bacchus says number 6 accused said.

40

Well, if that places him on the scene and he did use those words, apply the principles which I have given you. If you think they are untrue and made up well, then, equally you know what course you are to follow. You will remember that Mohamed Haniff said that he met him (number 6 accused) at that coconut tree which you saw and he said "same story, shoot them rass one one".

Bradshaw says that number 6 accused said - first I will give you the context "Number 1 accused lowered the gun. Number 5 accused then came up and said 'give me the gun if you can't shoot and let me shoot their rass'. Number 6 accused said 'shoot everybody, workmen and everybody".

That is what Bradshaw tells you number 6 accused said on that occasion.

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continued.

Then Baby Boy says that number 6 accused, after number 5 accused had said "if you can't shoot, etc., etc.," said, "shoot them man, ah we got money, we going take dom Luckhoo". That is what Baby Boy says.

Then Scholes or Cleveland James says that number 6 accused said "shoot am rass, shoot am rass, money deh me go hire Luckhoo".

Finally Inniss says that number 6 accused, on the road - this was after the incident - I think at the Fairfield bridge if I am not mistaken, said ... 10
"Bengal shoot the tiger", and he passed me and went to his home. I went down the dam and so forth".

The statement of number 6 accused Subidar to the police is short and I will read it to you. So also is his statement in this Court.

This is his statement to the police ... "This morning, Sunday 27th September, 1953, past six o'clock me go at Katriah at Fairfield fo beg boat to fetch me rice near the house corner. Katriah give me boat and tell me me must not broke am. Me then go house and me old lady give me coffee. Me just go fo drink coffee and me hear noise over railway line. Me stand up just by me iron gate. Me na go no where. People run come and said Bengal, meaning my son Karamat, knock Haniff. Me never tell them fo shoot. After the story Hoosanie, Subrattie and Bengal come ah me house. Bengal bring gun in he hand. Me na know nothing more". He says in the dock here

"Me come backdam - me and Katriah, all two. That time we come on the line ah we meet Bengal. Katriah tell Bengal to go and loose calf. Me hear that. Katriah went along the line and I went along the line to the fifty-rod dam and we go straight house. Me na tell nobody 'give am fire'. Me na tell them me got money to hire Luckhoo". That is his statement in the dock. 20

Gentlemen, I have endeavoured to help you, as best I can, in this very lengthy matter. It has been necessary for me to occupy some time in both explaining to you the relevant law on the matter and in dealing with the evidence. I will remind you of what I said earlier in my summing up that if in the course of your deliberations you are uncertain, or have not quite clearly understood anything that I have told you in relation to the law, you 40

10 may return and I shall endeavour to clarify anything which may be causing you any worry. Likewise, if as regards the evidence there is any aspect of it which you consider is material and of which you should know precisely what was said on any matter and which has not been covered in my summing-up, similarly come back and from my notes I will endeavour to refresh your memory because it is very necessary that you must have a clear understanding of what the law is in this matter and a clear collection of the relevant evidence in this case.

20 Your task now is to make up your minds, each one of you, as to what are the true facts of this case. Having made up your minds what are the true facts, you apply to those facts the law as I have given it to you and having done that, you ask yourselves whether the facts satisfy you that the requirements which go to make up the offence of murder or the offence of manslaughter have been fulfilled and return your verdicts accordingly.

30 At the outset I told you do not hesitate, if you are satisfied beyond reasonable doubt of the guilt of any of the accused, to convict, and similarly, do not hesitate, if you are satisfied of the innocence of any of the accused, or if you have any reasonable doubt as to whether they are guilty or not, to acquit them. Your duty is a very solemn one. It has been a long case and it is an important case. You have listened with undivided attention and now you go to deliberate and to make up your minds on the evidence, and to decide what your verdict shall be in the case of each one of these accused.

40 I stress again that you must deal with each accused separately. Examine the evidence in respect of each separately. That is why I endeavoured to put the evidence in relation to each one as far as it directly affects him. Examine the evidence in relation to each one separately. Make up your minds as regards each one separately because at a later stage you will be asked your verdict in relation to each one of the accused separately. So deal with each one separately.

As I told you at the beginning of my summing-up gentlemen, let your conscience be your guide. Examine the evidence and what your conscience and your reason tell you is the proper verdict return it accordingly. Now, will you please consider your verdict, gentlemen?

In the
Supreme Court.

No. 50.

Summing-Up.

Mr. Justice
Hughes.

16th September,
1954 -
continued.

In the
Supreme Court.

No. 51.

VERDICT and SENTENCE

No.51.

Thursday 16th September 1954.

Verdict and
Sentence.

VERDICT:-

16th September,
1954.

| | | |
|----------------|---|-------------------|
| Karamat | - | Guilty of Murder. |
| Subrattie | - | Not guilty. |
| Ali Husain | - | Not guilty. |
| Hoosanie | - | Not guilty. |
| Saffie Mohamed | - | Not guilty. |
| Subadar | - | Not guilty. |

10

Accused Nos. 2, 3, 4, 5 and 6 discharged.
Sentence of death passed on Karamat.

H.J.HUGHES,
16th September, 1954.

In the Court of
Criminal Appeal

No.52.

NOTICE OF APPEAL

No.52.

IN THE SUPREME COURT OF BRITISH GUIANA
COURT OF CRIMINAL APPEAL

Notice of
Appeal.

KARAMAT v. THE QUEEN

24th September,
1954.

I, Karamat, also called Bengal, having been convicted of the offence of the murder of Haniff Jhuman, contrary to section 100 of the Criminal Law (Offences) Ordinance, Chapter 17, and being now a condemned person in the Georgetown Goal, do hereby give you notice of appeal against my conviction (particulars of which hereinafter appear) to the Court of Criminal Appeal on questions of law, that is to say:-

20

1. Whether during the trial the learned trial Judge did not err in permitting the Jury not only to view the places and things connected with the cause, but also to listen to the unsworn statements and witness the demonstrations of various witnesses for the Crown who had already given evidence on oath at the trial, and many of whom had thereafter sat in Court and heard the evidence of the others.

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10 These witnesses, that is to say, Mohamed Haniff, Henry Bradshaw, Cleveland James, Bibi Khariman, Henry Bacchus, Abdool Essuf Jhuman, Alfred Katriah, and Sergeant No. 3500 Tappin, were permitted in effect to review vital portions of their evidence, and to describe their positions and movements and to point out spots and places where they claimed to be and to go at certain times, although there was no opportunity for Counsel to cross-examine the said witnesses on the spot.

The above-mentioned procedure amounted to the taking of unsworn testimony outside of the Court and in a manner not provided for by law. The fact that the witnesses were re-called in Court on the following day to repeat what had taken place on the day before did not cure the irregularity.

20 The procedure relating to the visit to the locus was irregular and illegal and went beyond the provisions prescribed by law and allowed by section 44 of the Criminal Law (Procedure) Ordinance, Chapter 18.

The learned trial Judge permitted this irregular, illegal and highly prejudicial procedure despite the objection taken by Counsel for the Appellant who did not consent to take any part in the irregular proceedings.

30 2. (a) Whether the learned trial Judge did not err in allowing to be admitted the evidence given by the witness Jeremiah Innis to the following effect "them people come over in man pen and beat man rass up, and the woman kick me, but she not going to live for come ah road": and whether the learned trial Judge did not err in directing the Jury on that evidence:

(b) Whether the learned trial Judge did not err in directing the Jury as he did on the evidence contained in 2(a) above assuming the same to be admissible in law:

40 (c) Whether the learned trial Judge did not err in failing to direct the Jury that the said witness, Jeremiah Innis, did not give the evidence in 2(a) at the preliminary enquiry.

3. Whether the learned trial Judge did not err in not directing or in not adequately directing the Jury that they should disregard the statement,

In the Court of
Criminal Appeal

No.52.

Notice of
Appeal.

24th September,
1954 -
continued.

In the Court of
Criminal Appeal

No.52.

Notice of
Appeal.

24th September,
1954 -
continued.

exhibit "J" made by the Appellant if they were in a reasonable doubt as to whether the statement was free and voluntary or whether the Appellant was properly cautioned or whether the statement did contain what the Appellant told Sergeant Tappin.

4. Whether the trial Judge did not err in holding that the statement, exhibit "J", alleged to have been made by the Appellant was admissible in evidence: and whether the learned trial Judge did not apply wrong principles in reaching that conclusion. 10

5. Whether the learned trial Judge did not err in not specifically or adequately directing the Jury that the separate statements in writing made by the six accused, that is to say exhibits "H", "J", "K", "L", "M" and "N", must only be used in considering the case against the particular accused who made the statement: but that anything contained in any statement made by an accused in the absence of another accused, if in favour of the latter, could be considered in the favour of that other accused in the consideration of the case against him. 20

6. Whether the learned trial Judge did not err in directing the Jury on the law relating to "self-defence", and its applicability to the present case.

7. Whether the learned trial Judge did not err in directing the Jury on the law relating to the reduction of the offence from "murder" to "manslaughter" and its applicability to the present case.

8. Whether the learned trial Judge did not err in directing the Jury on the aspect of the law relating to "provocation" and as to the portions of the evidence which might properly be considered as providing evidence of "provocation". 30

9. Whether the learned trial Judge did not misdirect or fail to direct the Jury on all the general principles on law applicable to the present case.

10. Whether the learned trial Judge did not err in directing the Jury that if there was evidence of express malice then no amount of provocation would avail the Appellant. 40

11. Whether the learned trial Judge did not err in directing the Jury that their finding must depend to no little extent on whether they accepted that there was a revolver or not.

12. Whether the learned trial Judge did not err in failing to direct the Jury as to the effect on the case for the prosecution if they were to find that one or more of the alleged eye witnesses were not present at the time and place of the shooting.

In the Court of
Criminal Appeal

No.52.

10 13. Whether the learned trial Judge did not err in failing to direct the Jury as to how, if they were to find that the Jhuman family and others set out deliberately to attack the Subadar family, and did attack and beat the Appellant and others on the morning of 27th September, 1953, then in what manner they should approach the consideration of the subsequent incident relating to the shooting.

Notice of
Appeal.

24th September,
1954 -
continued.

14. Whether the learned trial Judge erred in not directing or in not adequately directing the Jury as to the manner in which they should consider the evidence if they were to find that one discharge of the gun fired by the Appellant resulted in the death of both Haniff Jhuman and Batulan.

20 15. Whether the learned trial Judge erred in not analysing the relevant evidence for the prosecution and the defence in a composite picture, in order to guide and assist the Jury on their findings of fact on crucial and important points.

30 16. Whether the learned trial Judge erred in not directing or adequately directing the Jury as to their proper approach of the consideration of the evidence of those witnesses whose depositions were tendered and whose versions differed substantially at the trial from what they had said at the preliminary enquiry.

40 17. Whether the learned trial Judge erred in not directing the Jury that if they were to reject or were in a reasonable doubt as to the truth of the relevant evidence led to incriminate accused Nos. 2, 3, 4, 5 and 6, and if they therefore decided to acquit Nos. 2, 3, 4, 5 and 6, then such findings of fact in favour of Nos. 2, 3, 4, 5 and 6 would materially affect their consideration of the witnesses who testified against accused Nos. 2, 3, 4, 5 and 6, insofar as their evidence related to and sought to incriminate the Appellant.

18. (a) The Learned trial Judge erred in admitting under re-examination the evidence of Cleveland James relating to an incident which occurred on the night of Saturday the 26th September, 1955, in which

In the Court of Criminal Appeal. the witness sought to introduce the Appellant and accused No.4 as being present and taking part in the incident, although no questions had been asked by Counsel for the Appellant on this matter in cross-examination.

No.52.

Notice of Appeal.

24th September, 1954 - continued.

(b) The learned trial Judge erred in not directing or in not adequately directing the Jury on the evidence in 18(a) especially as the Appellant, who gave evidence on oath, was not cross-examined on this incident.

10

19. The learned trial Judge erred in not directing or in not adequately directing the Jury on all the relevant and material points in the case for the prosecution and the case for the defence.

KARAMAT
Appellant.

DATED this 24th day of September, 1954.

No.53.

Order Dismissing Appeal.

24th September 1954.

No.53.

ORDER DISMISSING APPEAL

IN THE SUPREME COURT OF BRITISH GUIANA
COURT OF CRIMINAL APPEAL

20

KARAMAT ... Appellant

- v -

THE QUEEN ... Respondent

BEFORE BELL, C.J., BOLAND AND STOPY JJ:

DATED THE 24th day of FEBRUARY, 1955.

ENTERED THE 24th day of FEBRUARY, 1955.

UPON HEARING the Notice of Appeal filed on the 25th day of September, 1954, from the conviction of the above-named Appellant dated the 16th day of September, 1954, on Indictment No.15028, at the June Criminal Sessions for the County of Demerara AND UPON HEARING Counsel for the Appellant AND the Solicitor-General of Counsel for the Respondent IT IS ORDERED that this Appeal be dismissed and that the said conviction be affirmed.

BY THE COURT.
R.S.PERSAUD,
Registrar.

No. 54.

In the Court of
Criminal AppealJUDGMENT.1954: No.29 - DemeraraNo.54.IN THE SUPREME COURT OF BRITISH GUIANACOURT OF CRIMINAL APPEALKARIMAT Appellant

against

THE QUEEN Respondent

Judgment.

24th February,
1955.Before: BELL, C.J., BOLAND and STOBY, JJ.

10 1954: December 9, 10.

1955: February 24.

C.Lloyd Luckhoo with E.V.Luckhoo for appellant.

G.M.Farnum, Solicitor-General, with A.M.Edun, Crown
Counsel (acting) for Respondent.JUDGMENT:

20 The Appellant was sentenced to death following upon a verdict returned by a jury who found him guilty of having murdered one Haniff Jhuman on the 27th September, 1953. The evidence at the trial established that Haniff Jhuman died from injuries received as a result of the discharge of a gun by the Appellant. In the indictment five other men were charged jointly with the Appellant with the murder of Haniff Jhuman. The case for the prosecution was that those five others were present on the scene at the time of the shooting by the Appellant and were acting in concert with him. The jury returned a verdict of not guilty against those five other persons but found the Appellant alone guilty

30 as stated above.

40 In the course of the trial evidence was led by the prosecution that at the same incident of the shooting at which Haniff Jhuman got his fatal injuries, Batulan, Haniff Jhuman's mother, also was shot dead by the Appellant. Very properly the indictment in the case under appeal was limited to a charge with respect to one murder only, that of Haniff Jhuman; and quite rightly no objection was taken against the admission of evidence relating to Batulan's death as such evidence was clearly admissible as being part of the res gestae of Haniff Jhuman's murder. A reference to Batulan's death is here made by the Court in this judgment only because, while not challenging the admissibility of

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the evidence relating to the circumstances of the incident in which both Batulan and Haniff Jhuman met their death, Counsel for the Appellant impugns the admission of a bit of evidence, and the trial Judge's direction thereon, which a witness gave of a threat to kill Batulan alleged to have been uttered by the Appellant, not at the site of the shooting, but at another spot and prior to the incident of the shooting.

At the hearing of this appeal several of the grounds of appeal filed in the record were abandoned, namely the last five lines of ground 5, the whole of grounds 6, 8, 9, 11, 12, 13, 15, 17, 18 and 19. Of the remaining grounds of appeal grounds 14 and 16 were only faintly argued and in our opinion contain no merit. The grounds really relied on by Counsel for the Appellant fall under seven heads which we enumerate hereunder though not in the order in which they appear on the record. Counsel contended that the conviction should be set aside because of -

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(1) Irregularities prejudicial to the Appellant which had occurred when the jury in the course of the trial were taken to view the site.

(2) Failure of the Judge to tell the jury that Jeremiah Inniss did not say at the Preliminary Inquiry that Appellant said "But she (referring to Batulan) not going to live for come ah road" whereas he gave that evidence at the trial.

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(3) An alleged omission by the trial Judge to explain to the jury that although it was for him to decide whether the statement by the Appellant, Ex.J., was admissible as being free and voluntary it was for them to decide what weight was to be attached to it.

(4) That the statement of the Appellant, Ex.J., was wrongly admitted in evidence.

(5) Misdirection in the summing-up on the law as regards provocation.

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(6) Misdirection in law in the summing-up as to the applicability against the Appellant of statements made to the police by the other accused in the absence of the Appellant.

and (7) (as already mentioned) the wrongful admission of evidence of a threat alleged to have been uttered by the Appellant to kill Batulan.

We propose to deal in turn with the above grounds seriatim.

As regards (1) - the visit to the site. The ground of appeal challenging the validity of what took place at the view reads as follows:-

10 "The witnesses Mohamed Haniff, Henry Bradshaw, Cleveland James, Bibi Khariman, Henry Bacchus, Abdool Essuf Jhuman, Alfred Katriah and Sergeant No.3500 Tappin were permitted to review vital portions of their evidence and to describe positions and movements and to point out spots and places where they claimed to be and to go at certain times, although there was no opportunity to cross-examine the said witnesses on the spot."

20 As we note from perusal of the record the view of the locus was during the course of the evidence which was being led for the prosecution and after several witnesses had already testified. All Counsel had approached the trial Judge in his chambers and made a request that the locus be visited; but each of the defence Counsel submitted "that witnesses should not be permitted at the view to indicate points at which a witness claims to have been when any incident relevant to this case took place or the point at which any such incident took place. To permit the witnesses to do so would, it was submitted, "afford them an opportunity of reconstructing or altering their evidence given in Court. The view of the Court of the locus should be restricted to the indication of fixed points".

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40 The learned trial Judge granted the request to view the locus but overruled the above-mentioned submission declaring that "it was for the jury to decide what points or places at the scene they wish indicated including points at which a witness claims to be at any material time, or at which it is claimed any object was at any such time". The Judge further intimated that Counsel would have full opportunity for recall and cross-examination of any witness in connection with any matter arising from the view of the locus.

The jury having indicated what witnesses they

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wished to be present at the view, it was arranged what particular places should be viewed. All Counsel for the defence were invited to bring any defence witnesses they wished to indicate points at the locus which were intended to be referred to in the evidence for the defence but none of them availed himself of the opportunity to do so.

Mr. Lloyd Luckhoo, Counsel for the Appellant, who also appeared for Appellant at the trial, has told this Court the Appellant was not present at the visit to the locus in quo because he, Mr. Luckhoo, informed the Judge that he did not wish the Appellant to be present but Counsel himself accompanied the Judge and jury to the view as Appellant's representative. Adhering to his submission that the pointing out by witnesses of various points, save and except fixed places like houses and roads, was irregular and unlawful, Mr. Lloyd Luckhoo on behalf of the Appellant made no request at the locus to have features pointed out by witnesses. It should be mentioned that Mr. E.V. Luckhoo, Counsel for one of the other five accused, stated to the Judge that he did not associate himself with Mr. Lloyd Luckhoo's submission, "subject to there being no communication between witnesses at the view".

The view duly took place and Counsel for the Appellant has informed this Court that it was the trial Judge who asked the questions at the locus in some instances at the request of the jury. On the resumption of the trial in Court each witness who had been taken to the locus in quo at the request of the jury was recalled and stated in evidence what he or she had pointed out at the locus in quo. Counsel for the defence were then given the opportunity to cross-examine each witness, but Counsel for the Appellant declined to do so in view of the objection which he had earlier taken regarding the way in which the visit to the locus in quo should be conducted.

The submission of Mr. Lloyd Luckhoo, Counsel for the Appellant on this ground of appeal may be summarised as follows:

The authority in this Colony for allowing a visit to a locus in quo is statutory namely section 44 of the Criminal Law (Procedure) Ordinance (Chapter 18 of the Revised Laws). In view of the express provisions of Section 44 there is no room for Section 17 of that

Ordinance to operate so as to permit of the introduction into the Colony of any practice and procedure in England relating to visits to a locus in quo. Section 44 must be strictly construed and on such strict construction it only sanctions the witness identifying some object or thing, e.g. a tree, a house, mentioned in the evidence but it does not sanction any witness describing or pointing out the position at the locus in quo which had been occupied by himself or any other person at the time of the alleged crime or describing or pointing out at the locus in quo what he or any other person did there at the time of the alleged crime. The section does not authorise either Judge or jury to question any witness at the locus in quo. In the case under appeal the witnesses who visited the locus in quo, the presence of whom at the scene of the alleged murder was disputed, made the visit after they had been cross-examined and had had the opportunity to sit in Court and listen to the evidence of other witnesses. One witness made a major reconstruction of his evidence after his visit to the locus in quo. There were serious discrepancies in the evidence given in Court before the visit to the locus in quo the effect of which may have been destroyed by the irregularities which it is alleged took place at the visit to the locus in quo. A visit to the locus in quo should not be used as an opportunity to seal up holes in the evidence of a witness. If witnesses are given the opportunity at the locus in quo to "synchronise" their testimony then the benefit of admissions made by them under cross-examination before the visit may be lost. If a witness is permitted to indicate at the locus where he claims to have been when any relevant incident took place or the spot where it took place, then the jury improperly obtain a more vivid and dramatic impression than would be conveyed by the witnesses' mere description in Court. What took place at the locus in quo was equivalent to the giving of unsworn evidence. The fact that the Judge does not invariably visit the locus in quo with the jury and that accused need not be present indicates that what takes place at the locus should be of a strictly limited nature. What took place at the visit went beyond what is sanctioned by Section 44 of Chapter 18, was highly irregular and was prejudicial to the

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Appellant. The subsequent oral testimony in Court by the witnesses who repeated what was said at the view, would not cure what was done unlawfully at the view, even though defence Counsel were given the opportunity in Court to cross-examine the witnesses on that testimony.

Section 44 of the Criminal Law (Procedure) Ordinance, Chapter 18 reads as follows :-

"44. (1) Where in any case it is made to appear to the Court or a judge that it will be for the interests of justice that the jury who are to try or are trying the issue in the cause should have a view of any place, person, or thing connected with the cause, 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.

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"(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:

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"Provided that no breach of any of those directions shall affect the validity of the proceedings, unless the Court otherwise orders".

We have been unable to find any enactment passed in England by Parliament similar to section 44 of Chapter 18 and consequently we have found no decision of the Courts of the United Kingdom which can be invoked as authority for the proper construction to be put upon section 44, but the power to view is a Common Law Power exercised for centuries in England and supplemented by statute, namely, sections 23 and 24 of the Juries Act 1825 (6 Geo. 4, Chap. 50) which enable some members of the jury to view places out of Court before trial. The power to grant a view during trial is the Common Law power and the position is set forth in Archbold 33rd Edition (1954) at page 196 :-

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"It is competent for the judge to permit the jury to view the locus in quo at any time during the trial, if it is within the County of the trial (R. v. Whalley, 2 C. and K.376), and even after his summing-up, but he should take precautions not to allow improper communications being made to them at the view. (R. v. Martin, L.R. 1 C.C.R.387)."

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In England the practice of viewing the locus in quo is not as freely followed as it is in this Colony where the average witness is not as capable of giving an intelligible description of places, as generally speaking are witnesses in the English Courts with the result that there seem to be but few decided cases on the matter of viewing the locus in quo. We have only been able to trace the following cases, namely, R. v. Martin and Webb (1872) 12 Cox 2 C.C. 204; 41 L.J.M.C. 113; R. v. Whalley (1847) 2 C. and K. 376; London General Omnibus Co., Ltd., v. Lovell (1901) 1 Ch. 135; Senevirante v. R. (1936) 3 All E.R. 36; Goold v. Evans (1951) 2 T.L.R. 1189. In London General Omnibus Co., Ltd., v. Lovell, Lord Alverstone, C.J., stated that he always understood that a view is "for the purpose of enabling the tribunal to understand the questions that are raised, to follow the evidence and to apply the evidence." In R. v. Martin and Webb, 12 Cox C.C.204, the jury, at their request, were taken to see the locus in quo (a urinal where an alleged act of indecent exposure had taken place) after the summing-up of the Judge. The head-notes to the case reads as follows :-

"Upon the trial of an indictment of indecent exposure in a urinal a Court of Quarter Sessions may allow the jury to have a view of the locus in quo after the summing-up of the judge.

"But it is indiscreet to allow the witnesses to accompany the jury in the absence of the prisoner or his advocate, or the presiding judge".

"Quaere, whether if the facts have been examined into by the Court, and are properly stated on the record, the Court can order a venire de novo where the witnesses accompany the jury, and are asked by them to point out the precise spot where they stood and saw what they had stated they saw.

"But if the case sent up to the Court merely states that the Court below "has been informed" that the circumstances specially set forth took place, this Court will not act upon such statement."

In R. v. Whalley (1847) a case of rape, the jury were permitted to visit the locus in quo escorted by

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bailiffs and a party of the sheriffs' javelin-men. The procedure followed is interesting as showing that someone must point out to the jury the particular places mentioned in the evidence. The under-sheriff having knowledge of the locality was appointed to show the places referred to by the witnesses, and took the plans produced for the prosecution and the defence to assist in the view. It should be noted that the oath administered to the under-sheriffs bound them to do nothing but to point out the place in which the offence charged is alleged to have been committed and not to speak to the jury touching the offence; and the oath to the bailiffs bound them not to allow anyone to speak to the jury concerning the offence charged except the persons sworn and appointed as showers and not themselves to speak to the jury.

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In Senevirante v. R., a case from Ceylon, one of the grounds of appeal was that the statutory procedure for holding of a view had not been followed. This is what the Judicial Committee had to say on the point -

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"..... The Criminal Procedure Code (No. 15 of 1898) s.238 provides for a view by the jury and lays down definite and strict conditions for its conduct. The Evidence Ordinance, s.165 provides for the judge asking questions at any time of any witness. The proceedings on June 8, 1934, seem to have been a combination of a view and a further hearing with the introduction of some features permitted by neither procedure, such as the performance of an experiment with chloroform by a Dr. Pieris, who does not appear to have been sworn as a witness, the judge and the foreman of the jury being present with Dr. Pieris in a room and the rest of the jury being somewhere else. The jurors seem also to have been divided for the purpose of other experiments in sight and sound and to have been asked questions as to the impressions produced on their senses. Their Lordships have no desire to limit the proper exercise of discretion or to say that no view by a jury can include inspection or demonstration of relevant sounds or smells, but they feel bound to record their view that there were features in the proceedings of June 8 which were irregular in themselves and unnecessary for the administration of justice. Their Lordships do not find it necessary to

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"consider whether any injustice resulted in this particular case (the conviction was quashed on other grounds) but they regard proceedings so conducted as tending in the words used in Ibrahim's case at p.615 "to divert the due and orderly administration of the law into a new course, which may be drawn into an evil precedent in future"."

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10 It is to be noted that in Senevirante's case it is clear that there were grave irregularities at the view which is not the case in the present appeal. Moreover while criticising these irregularities the Judicial Committee expressly stated that they "have no desire to limit the proper exercise of discretion or to say that no view by a jury can include an inspection or demonstration of relevant sounds or smells".

20 In many cases all that would be required at the locus in quo to enable the jury in the words of Alverstone, L.C.J., in London General Omnibus Company v. Lovell (1901) 1 Ch. 135 "to understand the questions that are being raised, to follow the evidence, and to apply the evidence" would be for the jury to look at the physical features, e.g., the buildings, paths, trees, etc., etc. But even in that case it is obvious that someone must identify those features to the jury which can only be adequately done by his speaking to them for it will hardly be contended that he must be restricted to making his identification by dumb pantomime. The obvious person to make that identification would be the particular witness who has mentioned those physical features in his evidence but where, as in R. v. Whalley, an officer of the Court is familiar with the locality we can see no objection to his being appointed by the Judge to act as shower "upon the terms and conditions to the Court or Judge seeming proper" to cite the words of Section 44 of Chapter 18. We assume that one of the conditions would be that the shower should take an oath, as in R. v. Whalley, to restrict his activities at the locus in quo solely to describing the relevant features at the locus in quo. He should, of course, give evidence of what he did at the view. There must, however, be many cases in which it would be helpful to the jury and "for the interests of justice" that a witness should, to give merely a few examples, be asked to indicate or point out at the locus in quo the spot at which he claims to have been when any incident relevant to the case took place or the spot at which such incident took

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place; or to indicate or point out the spot at which he saw some other person at a material time or to demonstrate the feasibility or otherwise of something which is said to have been done at the locus in quo at some material time; or to conduct some other demonstration, experiment or test. We can see no valid reason why any of the things of which we have just spoken may not properly be done at a view of the locus in quo subject to what we have to say hereafter.

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A certain amount of questioning and answering would be unavoidable in carrying out the matters of which we have spoken but we can see no objection to that provided that no more questions are asked than in the opinion of the Judge are strictly necessary and relevant; that no unauthorised person be permitted to ask or answer questions; that all questions and answers be asked and answered and all tests, experiments and demonstrations be made in the presence and hearing of the Judge, all members of the jury, the prisoner (if present) and/or his Counsel.

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It is of course essential that where there has been such questioning of witnesses at the locus in quo and the holding of tests, experiments or demonstrations on return to Court the witnesses concerned should be called or recalled to give evidence as to what was said and done at the locus in quo and that ample opportunity be given to cross-examine them. In that way there will be no departure from the basic principles of our law that there must be nothing whatever in the conduct of the proceedings which might be calculated to give rise to the impression that the accused has been judged on anything other than the evidence which has been brought forward against him in open hearing in his presence and before the full Court. It may well be, of course, that witness who has already given evidence may vary or amplify his testimony as a result of a visit to the locus in quo or may alter it to make it accord with the testimony of some other witness. None of those things, in our view, go to the admissibility of his evidence though they clearly go to its weight and could properly be the subject of comment by Counsel for the opposite party and of the trial Judge. It would, of course, be wrong for the Judge to direct a view of the locus in quo for the sole purpose of enabling the prosecution to "seal up holes in the evidence of a witness" to quote the words of Counsel for the Appellant.

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We are sure the Judge had no such object in mind in the present case, and it must not be overlooked that the suggestion to visit the locus in quo came from Counsel for the defence.

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10 We may add that we think that a view of the locus can be considered as being no different in principle from looking at a photograph of the locus when admitted in evidence as an exhibit, except that a photograph is brought into Court where it is exhibited by the photographer who testifies as a witness as to its being a photograph taken by him of the particular site. Instead of a photograph being brought into Court for inspection by those whose duty it is to give a decision on the issue before the Court - be it a Judge or a jury - the Judge or the jury, whichever has to make the decision elects to go to the actual site.

20 In support of this opinion we would quote the words of Denning, L.J., in Goold v. Evans (1951) 2 T.L.R. 1189 at p.1191 -

30 "..... a view is part of the evidence, just as much as an exhibit. It is real evidence. The tribunal sees the real thing instead of having a drawing or a photograph of it. But, even if a view is not evidence, the same principles apply. The Judge must make his view in the presence of both parties, or, at any rate, each party must be given an opportunity of being present. The only exception is when a Judge goes by himself to see some public place, such as the site of a road accident, with neither party present.

40 "The usual procedure at a view is that nothing is said by either party unless the Judge asks for an explanation or demonstration. Usually, both parties behave so fairly that there is no dispute. But if there be a dispute as to the explanation or demonstration, there is only one way of resolving it, and that is by taking evidence and letting witnesses be cross-examined on it".

As there would not seem to have been any substantial departure in the present case from the principles we have set forth above, we are of the opinion that this first ground of appeal must fail.

The submission regarding the failure of the trial Judge to stress that Jeremiah Inniss had in

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his evidence at the trial enlarged on what he said at the preliminary inquiry can be dealt with shortly.

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As will be seen from the record at page 157, the Judge in his summing-up said:

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"The defence has to no little extent sought to establish, by directing attention to a number of contradictions, that is to say, differences between what a witness is recorded as having said in the deposition before the magistrate and what he has said here and differences in the account of the account of the same incident given by different witnesses - that such a witness is untruthful." 10

Again at 199 the Judge said:-

"Inniss is the next witness with whom I shall deal There has been contradiction in Inniss' evidence and your attention has been directed to it. At the Preliminary Inquiry he said someone in Jhuman's house told him something but here he said he went there and called but got no answer". 20

The above passages show that while all the discrepancies were not repeated to the jury, their attention was directed to the fact that his evidence differed. Moreover it ought not to be overlooked that the three defence Counsel between them spent seven days in addressing the jury and as indicated in the summing-up had dwelt on those discrepancies. During the trial the depositions of several witnesses including Inniss' were admitted and read to the jury. The jury could hardly have failed to notice the discrepancies between the evidence given by a witness at the trial and that which he had given at the Preliminary Inquiry. They must have appreciated from the Judge's directions which appear on page 157 of the Record that they had to assess the value of a witness' evidence in the light of such discrepancies after having duly considered the materiality of the discrepancy and the intelligence of the witness. 30 40

The ground which we have set out above as number three in this judgment is based, it would seem, on the decision of the Court of Criminal Appeal in R. v. Murray (1951) 34 Cr. App. R.203. In that case it was explained that the weight and value of

a confession remained matters for the jury, and where a Judge after hearing evidence in the absence of the jury has ruled that a confession is admissible, defending Counsel has still a right, in the presence of the jury, again to cross-examine witnesses who have given evidence in their absence on the circumstances in which the confession was made and, where the prisoner had been cross-examined on the confession, to re-examine him on its circumstances.

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The witness who tendered the Appellant's statement was Sergeant Tappin. He was fully cross-examined in the absence of the jury and again in their presence. It was put to him by Counsel for the Appellant, in the presence of the jury, that he forced the Appellant to make a statement by threats and physical violence and did not read over the statement which was eventually made. The Appellant, when he testified before the jury gave his version of how the statement was taken. The Judge correctly directed the jury on the manner in which they should approach the statements tendered by the Crown. He reminded them at page 185 that Sergeant Tappin had said that the statement was free and voluntary while the Appellant had said that it was not, as he was handcuffed and compelled to give it. He then continued at page 186: "It is for you gentlemen to consider whether on the evidence before you you can say that the statement was a voluntary one or whether you feel that the accused were forced into making them and they are not voluntary". The Judge also told them to discard it if they found it was not voluntary, or that it was forced from him.

We think the direction was a very clear one and there was no infringement of the principles enunciated in R. v. Murray (supra).

It was said that the Judge ought not to have admitted the statement Ex. J. in evidence. The correctness of the procedure adopted at the trial is not challenged. The jury withdrew, Sergeant Tappin was cross-examined and the Appellant gave evidence on the issue in dispute and was cross-examined. The Judge then ruled that the evidence of Sergeant Tappin as to the circumstances in which the statement was taken was to be believed in preference to the evidence of the accused Karamat. The statement was then admitted by the Judge in what we think to have been a proper exercise of his discretion.

Counsel attacks the Judge's reasoning that the

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certificate by Sub-Inspector Carmichael on the statement tended to support the Sergeant's evidence regarding the presence of Carmichael at the material time. The Appellant said Carmichael was not present. Carmichael was not called as a witness on the issue. Counsel's contention is that Carmichael may have signed without being present or without being continually present and the Judge misdirected himself in treating the certificate as truthful.

The short answer to that is that the Judge expressed his preference for Tappin's evidence rather than the Appellant's. We see no reason for thinking that the Judge's acceptance of Tappin's statement that Carmichael was present throughout the taking of the statement depended upon the certificate signed by Carmichael. And we would point out that the Judge expressly stated that Tappin's evidence as to the circumstances in which the statement was taken was to be believed in preference to the Appellant.

We turn to consider the alleged misdirection by the trial Judge as regards provocation. It was submitted that the trial Judge had erred in directing the jury that if there was evidence of express malice then no amount of provocation would avail the Appellant to reduce the killing to the lesser offence of manslaughter. It is the following direction in the summing-up on which Counsel bases his submission. The learned trial Judge, as appears on page 170 of the Record said :-

"If the evidence satisfies you that malice existed, if you accept what some of the witnesses have said that the number (1) accused Karamat 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 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".

This direction by the learned trial Judge that the existence of express malice nullifies a plea of provocation is fully supported by authority. Archbold 33rd Edition at p.929, citing as authority R.

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v. Mason, Fost. 132, states: "No provocation, however great, will extenuate or justify homicide where there is evidence of express malice". The trial Judge at page 165 of his summing-up defines for the benefit of the jury what is express malice. He said: "express malice is where a person by some overt act makes it clear what his intention is" Counsel for the Appellant in his submissions would seem to have limited the reference by the trial Judge to the threat alleged to have been uttered by the Appellant "that he was going to shoot Haniff's so and so" to mean the threat uttered by Appellant as testified by the witness Bhagwandin when Appellant, armed with the gun, was on his way to where he expected to find Haniff but not yet in sight of Haniff. Counsel contended that Appellant might well have abandoned the idea of killing Haniff before he came up to him thus not having any express malice at the time of the shooting. But the evidence of Bibi Kariman at page 10 of the Record and Henry Bacchus at pages 43-44 of the Record was that Appellant repeated the same threat to shoot Haniff immediately before he fired at Haniff, and that this had caused Haniff's mother, Batulan, to interpose herself between Haniff and Appellant. If the jury accepted this bit of evidence given by Bibi Kariman and Henry Bacchus then there would be express malice which would exclude any defence of provocation based on Appellant's allegation that Haniff attempted to use a revolver.

Accordingly we reject the submission of Counsel for the Appellant on this point.

We now proceed to deal with the submission that the defence of the Appellant was prejudicially affected by an error made by the Judge in his directions to the jury when he was referring to the statements made to the Police by other accused in the absence of the Appellant. The submission is that the Judge led the jury to believe that they could take into consideration as against the Appellant these statements of the other accused in determining whether at the time Appellant fired the gun the deceased was armed with a revolver. Admittedly that fact was of importance on the question whether the Appellant fired the gun in self-defence or, if not justifiably in self-defence, whether it would support a plea of a degree of provocation which induced him mistakenly to believe that he could then in self-defence shoot at the deceased. The Appellant in his defence elected to give evidence on oath

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continued.

and in describing what happened at the site of the shooting Appellant testified that he saw the deceased with his right hand in his pocket, and that after the deceased had uttered a threat that no one would "milk cow at this place no more", the mother Batulan said "shoot the bitch!" Appellant in his evidence continued: "I then had my gun in my hand. Batulan and Haniff moved forward. Haniff took out a revolver and as soon as I saw the revolver I raised my hand and shot at Haniff". But in a statement given to the police on the 27th September, 1953, which was admitted in evidence as Exhibit J. after objections to its admission had been overruled, Appellant in describing what happened said nothing about Haniff having a revolver, although he did say in that statement, as in his evidence before the Court, that Haniff had uttered a threat that "no one would milk a cow that day and they rushed me and me fired a load". The defence of each of the other five accused was a denial of being present at the shooting. Each in his statement given to the police in the absence of the other accused and in his unsworn statement from the dock put forward this defence of an alibi and consistently with his story of not being at the site of the shooting none of them, we consider, could be expected to say that there was a revolver at the site. However as against these five others the evidence for the prosecution was that they were all present at the site with Appellant. Now this is what the Judge said about statements by the several accused to the police when summarising for the jury the evidence against the Appellant as appears on page 186 of the Record :-

"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, how- "ever, 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 "accused (i.e. Karamat) 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 vol- "untary statement giving an account of what took "place, it might lead you to a certain conclu- "sion. It is entirely a matter of fact for you.

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"If you find that no reference has 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".

In the Court of
Criminal Appeal

No.54.

Judgment.

24th February,
1955 -
continued.

10 The second paragraph of the above quotation must have been understood as referring only to the statement given by the Appellant himself; the omission in Appellant's own statement of a reference to the revolver would quite rightly be a matter which the jury could consider as against the Appellant when determining whether Haniff had a revolver, because appellant had stated in his evidence before the Court that Haniff had taken out a revolver from his pocket. The possession of a revolver by Haniff was a matter of vital importance in Appellant's defence and it was a matter for comment that Appellant did not speak of the revolver in his statement to the police. But when the Judge drew the jury's attention to the absence of a reference to a revolver at the site in the statements given by the other accused in the absence of the Appellant, it is difficult to see how the jury could make use of any such omission in the statements of the other accused even as against those other accused, as each of these five other accused throughout had set up an alibi. And certainly we would hold that it would be a misdirection if the jury were induced by the Judge to understand that he was then directing them that as against the Appellant the absence of a reference to the revolver in the statements of the other accused, if given voluntarily by them and in the absence of the Appellant, was something tending to establish that there was no revolver held by Haniff. However, as has been often said in this Court following decisions by the Court of Criminal Appeal in England, even if there be passages extracted from the summing-up which by themselves would amount to misdirection by the Judge, that is not sufficient ground for setting aside a conviction on the ground of misdirection. The summing-up should be looked at as a whole so as to determine whether the jury could reasonably be said to have been misled. We note from what appears on p.161 of the Record that the learned Judge earlier in his summing-up referred to the fact that statements were given by the several accused to the police and he took particular care to give the jury proper directions as to the use they were to make of statements made by one

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In the Court of
Criminal Appeal

accused in the absence of the others. This is what
the Judge said :-

No.54.

Judgment.

24th February,
1955 -
continued.

"Gentlemen, it is the case that you must not
"allow to operate in your minds against any ac-
"cused anything that may be said either by some-
"one else or by one of his co-accused, either
"in his presence or in his absence. Anything
"said by another accused or by another person
"either in the presence or in the absence of 10
"any accused person cannot be taken as evidence
"against him: subject to this qualification
"that if something is said in the presence of
"an accused person, if either by his words or
"by his conduct he accepts it either in whole
"or in part, well, then, in such circumstances
"you can take it into account. But you must
"not allow to weigh against an accused any-
"thing said either in his absence or in his
"presence, that is not on oath, of course. The
"first accused (Karamat) has given evidence on 20
"oath and anything that he has said which you
"may find either favourable or unfavourable to
"any of the accused you may properly take into
"account either against himself or against any
"of the other accused. But only in such cir-
"cumstances - only in the case of the number 1
"accused (Karamat). You must bear that in
"mind because it is of importance. You must
"not allow to weigh against an accused person
"matters which have been said not on oath". 30

Counsel for Appellant has pressed upon us that
this was lengthy summing-up - the typescript occu-
pies 108 pages of foolscap, that is from pages 216
to 324 of the Record - and that the general direc-
tions given by the Judge about the use of state-
ments made by one accused in the absence of another
which appear on page 161 were not unlikely to have
been nullified by what he said later as appears on
page 187 when dealing more particularly with the
statements themselves in relation to the important 40
question of whether or not Haniff, the deceased,
took out a revolver before he was shot. We have
carefully considered that submission but would
point out that in the closing words of the summing-
up the Judge repeatedly warned the jury that they
must deal with the case against each accused sep-
arately.

"I stress again", said the Judge, "that you
"must deal with each accused separately.

"Examine the evidence in respect of each separately. That is why I endeavoured to put the evidence in relation to each one as far as it directly affects him. Examine the evidence in relation to each one separately. Make up your minds as regards each one separately because at a later stage you will be asked your verdict in relation to each one of the accused separately. So deal with each one separately".

In the Court of
Criminal Appeal

No.54.

Judgment.

24th February,
1955 -
continued.

10 We are of the opinion that in all the circumstances the jury were not misled as to the manner in which they should consider either the unsworn statements made by the other accused to the police or the unsworn statements made by the same other accused from the dock. The jury, must, we think, have found that there was no revolver in the hands of the deceased contrary to what the Appellant had asked them in his evidence to believe. We feel satisfied that they accepted the evidence of the witnesses for the prosecution in preference to that of the Appellant who himself, they must have thought, would have mentioned in his statement to the police, if true, a fact so vitally important in his defence.

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And lastly we turn to deal with the point sought to be made that evidence relating to a certain threat alleged to be made by Appellant to the effect that he would kill Batulan was wrongly admitted. This bit of evidence was given by a witness Jeremiah Inniss. Inniss said that he had heard Appellant shout "Bring the gun" and he saw when one of the other five accused - a man named Saffie Mohamed - went into a house and bringing out a gun hand it to the Appellant who started to run along the road. As Appellant was crossing a railway line he was spoken to by Bhagwandin but he went on with the gun ignoring the entreaties of Inniss and a person called Katriah that he should go back with the gun. He was heard to say "Them people come over in man pen and beat man rass up, and the woman kick me, but she nah go live fa come ah road".

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40 Inniss saw there were people coming along the Carlton Hall Jam and he soon recognised them to be the Jhumans including the deceased Haniff and his mother Batulan. Inniss heard a "load fired off" and he saw Batulan fall. Then he heard "another load fired off" and Haniff Jhuman fell. Where the shots were fired was a distance estimated by Inniss to be about 60 rods or 720 feet from the railway line - that is something less than one-eighth of a mile from the railway line.

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In the Court of
Criminal Appeal

No. 54.

Judgment.

24th February,
1955 -
continued.

The whole of what was said by Appellant including this remark about Batulan not going to live to come on the road was, in our view, clearly admissible. Appellant was going towards where he knew or expected he would find the Jhumans and, armed with the gun, he was, according to Inniss, evincing by his conduct and words an intention to do violence not only to Batulan but the whole of "them people" amongst whom was the deceased Haniff. This statement by Appellant as testified by Jeremiah Inniss disclosed a feeling of resentment against the Jhumans including Haniff for their having come into his pen and beaten him ("come in man pen and beat man rass"). This evidence of the state of mind of the Appellant at a time prior to his shooting Haniff is, we are of opinion, admissible.

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Counsel for the Appellant cited to us Sureynauth v. The King, L.R.B.G. (1951) but according to the facts of that case there were two distinct and separate incidents with an interval of about twenty-nine (29) minutes and there was no nexus between the two.

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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 misdirection 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".

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Having given full consideration to all the grounds of appeal that were advanced by Counsel for the Appellant, we have come to the conclusion that the appeal must fail. The learned trial Judge in his long and exhaustive summing-up carefully put to the jury for their consideration every aspect in favour of the Appellant, and the jury could not reasonably have returned any other verdict than that of guilty of murder against the Appellant.

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Accordingly the appeal is dismissed.

No. 55.

In the Privy
Council

ORDER IN COUNCIL GRANTING SPECIAL LEAVE TO APPEAL

AT THE COURT AT BUCKINGHAM PALACE

No.55.

L.S.

The 21st day of June, 1955.

Order in
Council
granting
Special Leave
to Appeal.

PRESENT

THE QUEEN'S MOST EXCELLENT MAJESTY

21st June 1955.

LORD PRESIDENT
MR. SECRETARY LLOYD-GEORGE
MR. SANDYS
10 SIR WALTER MONCKTON

MR. LOW
MR. NUTTING
MR. BROOKE
MR. TURTON

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 7th day of June 1955 in the words following, viz:-

20 "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 Karamat in the matter of an Appeal from the Court of Criminal Appeal in the Supreme Court of British Guiana between the Petitioner and Your Majesty Respondent setting forth that the Petitioner prays for special leave to appeal from the Judgment of the Court of Criminal Appeal dated the 24th February 1955 dismissing his Appeal from a conviction upon 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 for which offence the Petitioner was sentenced to death: that the Petitioner was 30 jointly indicted and jointly tried together with five other persons for the murder of Haniff Jhunan on the 27th day of September 1953: that all the accused pleaded not guilty and the Jury returned a verdict of not guilty against each of the five accused other than the Petitioner: And humbly praying Your Majesty in Council to grant the Petitioner special leave to appeal from the Judgment of the Court of Criminal Appeal in the Supreme Court of British Guiana dated the 24th 40 day of February 1955 and for further or other relief:

"THE LORDS OF THE COMMITTEE in obedience to

In the Privy
Council

No.55.

Order in
Council
granting
Special Leave
to Appeal.

21st June 1955
- continued.

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 Court of Criminal Appeal in the Supreme Court of British Guiana dated the 24th day of February 1955:

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"AND Their Lordships do further report to Your Majesty that the authenticated copy 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".

101

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 British Guiana 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.

Exhibit "H".

STATEMENT OF SUBIDAR

POLICE STATION MAHAICA.

27th September, 1953

SUBIDAR after having been duly cautioned by Sgt. 3500 Tappin states :-

10 This morning Sunday 27th September, 1953, past 6 o'clock me go ah Katriah ah Fairfield fo beg boat to fetch me rice near the house corner, Katriah give me boat and tell me me must not broke am, me then go house, and me old lady give me coffee, me just go fo drink coffee and me hear noise, over railway line, me stand up just by me iron gate me na go nowhere, people run came and said Bengal, (meaning my son Karamat), knock Haniff, me never tell them fo shoot, after the story Hoosanie, Subrattie and Bengal come ah me house, Bengal bring gun in he hand, me na know nothing more.

20 (Sgd.) - SUBIDAR his
X
mark.

Witnesses:

1. E. Liverpool P.C.5015
2. D. Foo P.C.5090

30 TAKEN BY ME at MAHAICA POLICE STATION at 11.05 a.m. on the 27.9.53, it was read over to SUBIDAR who said it is true and correct in the presence of S.I. Carmichael, Consts.5015 Liverpool and 5090 Foo and he touch the pen and affixed his mark.

O. Carmichael S.I. 4248. L.A.Tappin Sgt. 3500

Exhibits

Exhibit "J".

Statement of
Karamat.

Exhibit "J".

STATEMENT OF KARAMAT.

POLICE STATION MAHAICA

27th September, 1953.

KARAMAT called BENGAL after having been duly cau-
tioned by Sgt. 3500 Tappin states :-

This morning Sunday 27th September, 1953, about
 7 o'clock I been in the calf pen at Broom Hall milk-
 ing cow, in a sudden me see Haniff, Batulan, Brad-
 shaw, Baby Boy and Scroles, Batulan collar me and 10
 then Baby Boy and Haniff started to beat me with
 cuff and some run with stick, Bradshaw choke me,
 Batulan said he kill some body and she gwine kill
 me too, and she chased all ah we, me Hoosainie 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
 the cow again and Haniff, 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 20
 me and me fire the load: that is all.

(Sgd.) - KARAMAT.

TAKEN BY ME at Mahaica Police Station at 11.25
a.m. on the 27th September, 1953, it was read over
to Karamat in the presence of S.I. Carmichael and
Const. 5351 Bunyan, he said it is true and correct
and he signed same.

L.A.Tappin Sgt. 3500.

Witness:

1. O. Carmichael S.I. 4248.

Exhibit "K".STATEMENT OF HOOSANIE

POLICE STATION MAHAICA

27th September, 1953.

Exhibits

Exhibit "K".

Statement of
Hoosanie.

HOOSANIE after having been duly cautioned by Sgt.
3500 Tappin states :-

10 This morning Sunday 27th September, 1953, I
been to milk cow ah me father Subidar place ah
Broomhall when me, Karamat, Subrattie called Edun,
and Ali Hussain loosed four calves, ah we see Haniff,
Baby Boy, Batulan, Bradshaw and Scrolls and they
come over ah the wire and they ask fo Saffie, ah we
tell am Saffie na come because he been ah Wedding
last night and he drunk, the lady and the five ah
them searched between all them cow, for Saffie and
the lady said you Bengal you ah one too, and she
go right up and hold Bengal, and Baby Boy pelt
couple cuff pon the boy and tumble am pon the ground,
20 and they started to fight and Bradshaw and Haniff
hold me, and me two brother Ali Hussain and Subrat-
tie run and come and they loose Bengal and he run
straight ah house, he left ah we this, after they
lick ah we this, ah we also left ah run, Scrolls
run behind ah we for about 50 rods, me run fo come
ah house, when we nearly meet ah house me see Ben-
gal burst across the rice with a gun, me na been
there when the shooting start, me been ah run fo go
but me na been meet.

(Sgd.) - HOOSANIE.

30 ~~TAKEN BY ME~~ at Mahaica Police Station at 11.45
a.m. on the 27.9.53 in the presence of S.I. Car-
michael it was read over to Hoosanie who said it is
true and correct and signed same.

L.A.Tappin, Sgt.3500.

Witness:-

O.Carmichael S.I.4248.

Exhibits

Exhibit "L".

Statement of
Subrattie.

Exhibit "L".

STATEMENT OF SUBRATTIE

POLICE STATION MAHAICA

27th September, 1953.

SUBRATTIE called EDUN after having been duly cautioned states:-

This morning Sunday 27th September, 1953, myself and me three brothers Ali Hussain, Karamat and Hoosanie been in ah we calf pen at Broom Hall ah milk ah we cows. Whilst milking cow me see Haniff, Baby Boy, Batulan, Bradshaw and Scrolls come over the wire where ah we ah milk cow, Haniff ask where Saffie mothers scunt, ah we said Saffie ne come and milk cow, Baby Boy and his mother walk up to Bengal and said you ah play bad man. and Batulan fire two cuffs on Bengal, Baby Boy and Bengal catch hold, and them two fall ah ground, and when ah we go fo part, Haniff start to fight ah we this, Bengal run away from the pen and they still got ah we this ah this ah fight ah we this, stand little long ah we this to run, me run straight ah home that is all. 10 20

Sgd. - SUBRATTIE.

TAKEN BY ME at Mahaica Police Station at 12.05 p.m. on the 27.9.53 it was read over to Subrattie in the presence of S.I. Carmichael. Subrattie said it is true and correct and he signed same.

L.A.Tappin Sgt. 3500.

Witness:

1. O. Carmichael, S.I. 4248.

Exhibit "M"

STATEMENT of ALI HOOSAIN

POLICE STATION MAHAICA

27th September, 1953.

ALI HOOSAIN after having been duly cautioned by
Sergeant 3500 Tappin states :-

10 This morning Sunday 27th September, 1953,
whilst me, Hoosanie, Edun, and Bengal been at the
back at Broom Hall milking cows. me see Batulan,
Haniff, Baby Boy, Bradshaw and Scrolls, this five
walk over the wire, when they come Batulan asked
where Saffie, me tell them Saffie drink rum and he
drunk ah house and he aint come fo milk this morn-
ing, and they said Bengal is the man and Batulan,
Haniff and Baby Boy hold him and start to cuff him
up, all ah we jump and part them, and Bengal run
and get away and Bradshaw and Baby Boy started to
beat them boy this and Haniff and Batulan also beat,
20 and me run and get away and left them fighting, me
go straight home me aint stoppèd any where, when I
was in me house me hear the gun fire off.

Sgd. - ALI HUSAIN.

TAKEN BY ME at Mahaica Police Station at 1 p.m.
on the 27.9.53 it was read over to Ali Hussain who
said it is true and correct and he signed same.

L.A.Tappin Sgt. 3500.

Witness:

1. O. Carmichael, S.I. 4248.

Exhibits

Exhibit "M".

Statement of
Ali Hoosain.

Exhibits

Exhibit "N".

Exhibit "N".

STATEMENT of SAFFIE MOHAMED

Statement of
Saffie
Mohamed.

POLICE STATION MAHAICA

27th September, 1953.

SAFFIE MOHAMED after having been duly cautioned by
Sgt. 3500 Tappin states :-

Last night Saturday around 8 to half past 8, I was standing by Subijar's gate, and Scrolls I hear him telling Bengal that he going to beat me when he come near to the gate, I asked him why is the reason he going to beat me, he said me got too much passion and me like fight. We started to quarrel and he take a burnt brick on the road and he knock me pon me side and he picked up a stick and knock me on me left hand, after then he run away and me go home and sleep I don't know nothing more.

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Sgd. - SAFFIE MOHAMED.

TAKEN BY ME at Mahaica Police Station at 1.25 p.m. on the 27.9.53 it was read over to Saffie Mohamed who said it is true and correct and signed same.

L.A.Tappin, Sgt. 3500.

27.9.53.

Exhibit "s"STATEMENT of EDUN SUBADAR

COVE & JOHN POLICE STATION,

26th September, 1955

Exhibits

Exhibit "s".

Statement of
Edun Subadar.EDUN SUBADAR states :-

10 I am a farmer, and I live at Pln. Broomhall,
E.C.D., which is owned by my father Subidar. On
Saturday, the 26th day of September 1955, about
6.30 a.m. I went to Broomhall Estate back to milk
my cows. I saw 7 heads of cattle grazing in my
rice field. Saffie, Hoosanie, Hasanally, Karamat
and I rounded up the cows with the intention of
bringing them to the pound. We chased them, and
took them to Carlton Hall Public Road. As we
reached opposite to Jhuman's house Jhuman came out
with a piece of Quakoo stick, and stopped the cows
on the Public Road. Jhuman said, "The cow can't
20 go ah pound today murderation got to pass hey."
Jhuman then held on to a stick, which Saffie had in
his hand; Hoosanie, Hasanally, Karamat and I tried
to chase along the cows, and Jhuman continued fol-
lowing us. His wife Batulan came out a prospect-
ing knife, and said, "if they want to fight, leh we
fight." One Henry of Carlton Hall held on to
Jhuman, and we drove along the cows to Mahaica Po-
lice Station. Some of the cows are all dark brown
cows. Five of the cows belong to Jhuman. I told
Sgt. Tappin that I brought the cows to be impounded,
and he impounded them. I then reported to him,
30 that Jhuman was trying to release the cows from me,
when I was bringing them to the station, and he
said, "Go home man, me nah want no report". My
father Subidar and I then came to Cove & John Police
Station where I reported the matter, and gave this
statement.

(Sgd.) EDUN SUBADAR

TAKEN BY ME at 2.30 p.m. on the 26.9.55; I read
same over to Edun Subadar, and he said it is true
and correct and signed his name.

Exhibits

Exhibit "T"

Statement of
Subadar.Exhibit "T"STATEMENT of SUBADAR

COVE & JOHN POLICE STATION.

26th September, 1953.

SUBADAR states :-

I am the owner of Pln. Broomhall, F.C.O., and I live on the said estate. Juman is the owner of Pln. Carlton Hall, which is neighbouring to me. Jhuman and I are on friendly terms. I always report to Jhuman that his cows are damaging my son's rice field. Jhuman never reported to me, that people are cutting his wire-fence, and allowing his cows to go into my estate. On Saturday, the 26th day of September, 1953, about 6.30 a.m. I was at home, when I saw Saffie, Hoosanie, Hasanally, Karamat, and Edun bringing out some from Broomhall Estate to Carlton Hall Public Road. I left home, and ran to where the cows were. I saw Jhuman running out his yard with a piece of Quakoo stick, and went in front of the cows on the public road, Jhuman said, "Them cow can't go ah pound today, murderation go happen hey." He then took the stick, and stopped the cows. Edun told Jhuman that the cows damaged his rice, and he was taking them to the pound. The men chased the cows, while Jhuman tried to stop them. One Henry Bacchus, who is employed by Jhuman held on to Jhuman. Jhuman's wife Batulan came out with a prospecting knife, and told Jhuman, if they wanted to fight, he must fight, Henry Bacchus still continued holding on to Jhuman and the men succeeded in chasing the cows away. Jhuman and Batulan went home, and I also went home. When my son Edun returned home, he told me that Sgt. Tappin refused to take his report, so I brought him to Cove & John Police Station, and I reported the matter. I afterwards give this statement.

(Sgd.) - SUBADAR

his
X
mark.

Witnesses to Mark:-

- (1) R.C. Bansi
- (2) D. Foo P.C.5090.

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TAKEN BY ME at 3.00 p.m. on the 26.9.53; I read same over to Subadar, and he said it is true and correct, and made his mark in my presence and that of R.C.Bansi.

D. Foo P.C.5090.

SUPPLEMENTAL RECORD

No. 1.

COMMENTS OF MR. JUSTICE HUGHES ON AGREED
STATEMENT RE VISIT TO LOCUS IN QUO.

In the
Supreme Court

Supplemental
Record.

No. 1.

Judges' Chambers,
Georgetown,
British Guiana.

13th September, 1955

Comments of Mr.
Justice Hughes
on Agreed
Statement re
visit to locus
in quo dated
13th September
1955.

Sir,

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Karamat v. The Queen

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With reference to your letter of the 8th June, 1955, on the above subject I have the honour to inform you that Counsel who appeared for the appellant at the trial and Counsel who appeared for the Crown at the trial have provided an agreed account of what took place at the visit to the locus in quo. My only comments regarding that account are in relation to paragraph 14 on page 5: First, it has not been made clear that after each witness had indicated what was required of him such witness was made to withdraw to a spot no less distant from the scene than the spot from which he had come when called to the scene. The spot from which a witness was called and the spot to which he withdrew were on opposite sides of the scene. Secondly, it is my quite clear recollection that the witnesses were made to face a direction away from the scene before they were called to, and after they withdrew from, the scene.

30

I do not consider these comments of mine to be of sufficient moment to warrant disagreement with the agreed account and accordingly I have, as requested in the final paragraph of your letter, asked the Registrar to transmit the account to you as a supplemental record in the proceedings.

I am, Sir,
Your obedient servant,
Sgd. HUGHES,
Trial Judge.

40

The Registrar of the Privy Council,
Privy Council Office,
Downing Street,
LONDON, S.W.1.

In the
Supreme Court.

No. 2.

Supplemental
Record.

AGREED STATEMENT re VISIT BY JURY TO
LOCUS IN QUO ON 1st SEPTEMBER 1954.

No. 2.

Agreed Statement
re Visit by Jury
to Locus in Quo
on 1st September
1954, dated 9th
September 1955.

IN THE SUPREME COURT OF BRITISH GUIANA

B E T W E E N :- KARAMAT ... Petitioner

- and -

THE QUEEN ... Respondent

STATEMENT RE VISIT TO LOCUS IN QUO ON 1ST SEPTEMBER,
1954, FOLLOWING UPON DIRECTIONS GIVEN BY THE
JUDICIAL COMMITTEE OF THE PRIVY COUNCIL ON 7th JUNE,
1955.

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1. During the course of the trial on the 31st August, 1954, Defence Counsel and Counsel for the Crown requested a visit to the locus in quo but Defence Counsel submitted that the witnesses who had already given evidence should not be permitted to be present at the view of the locus in quo to indicate the points at which they claimed to have been when any incident relevant to this case took place or the point at which any such incident took place. It was submitted that to permit the witnesses to do so would afford them an opportunity of reconstructing or altering their evidence given in Court in the light of evidence given by other witnesses. It was further submitted that the view of the locus should be restricted to indications of fixed points.

20

The learned trial Judge, however, held that as the findings of fact were for the Jury it must be left to them to decide what points or places at the scene, whether fixed or otherwise, they would like to be indicated including points at which a

30

witness claimed to have been at any material time or at which it was claimed any person or object was at any such time.

10 Upon this ruling being given Counsel for the Petitioner (Mr. Lloyd Luckhoo) drew the Judge's attention to section 44 of Chapter 18 of the Laws of British Guiana and submitted that the procedure as proposed was irregular and not provided for by section 44 of Chapter 18 or any other section for witnesses to attend at the locus and while not being on oath to be permitted to show spots or give demonstrations or otherwise give evidence. The said Counsel thereafter took no part at the proceedings at the locus and upon witnesses being recalled after the visit to the locus stated that in view of the objection which he had taken previously regarding the view of the locus in quo he declined to cross examine any witness on any matter arising out of the visit.

20 2. The Jury requested the following witnesses to attend:

1. Sergeant Tappin.
2. Henry Bradshaw.
3. Cleveland James.
4. Eusuf Jhuman.
5. Alfred Katriah.
6. Bibi Kariman.
7. Henry Bacchus.

30 The Crown Prosecutor requested the attendance of the witnesses Mohamed Haniff and Bhagwandin.

3. The Court was adjourned at 2.30 p.m. on Tuesday 31st August, 1954 to 9 a.m. on Thursday 2nd September, 1954, in order that the visit to the locus be made on Wednesday the 1st September, 1954.

40 4. The Court did not sit on Wednesday the 1st September, 1954, but the Jury were checked in the Court Room at 9 a.m. prior to setting out for the locus and the Marshal and Police constables were sworn to keep the Jury.

5. The Petitioner and the other accused persons were not taken to the locus. Their Counsel did not desire that they should be taken.

6. The Jury were taken from the precincts of

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the Court in several small hired cars (mostly Morris Minors) hired from Bookers Garage and driven by professional chauffeurs. The visit lasted about 7 hours and the travel by car to and from the locus covered a distance of about 60 miles.

The Judge, Counsel, Clerk and other Court Officials also travelled in separate cars from the Jury and the witnesses required were taken in a Police van.

7. The vehicles travelled along the public road until they reached the entrance of Cove and John Police Station about 17 miles from Georgetown, and then the first stop was made. At this point and at all subsequent stages at which the party stopped the Jury were checked by the clerk counting or appearing to count the Jury (not aloud) or the foreman appearing to do likewise or a general question being put by the clerk "Are you all here".

10

Any Juror wishing to ask a question did so through the foreman who in turn put the question to the Judge and the Judge asked the question and the witness gave and/or demonstrated the answer and the clerk appeared to make a note at the time. Counsel was not allowed to cross examine witnesses but was similarly invited to ask questions through the Judge. Mr. Lloyd Luckhoo, Counsel for the Petitioner, declined to do so, having intimated to the trial Judge in Chambers on the day before that he considered the proposed procedure irregular.

20

8. Mohamed Haniff showed the entrance to the Cove and John Police Station referred to in his evidence.

30

9. The vehicles then went about 1 mile further to Belfield where Mohamed Haniff pointed to one Rico Reece's house and the spot where he said he met two of the accused.

The vehicles then travelled about 8 miles further to the Mahaica Police Station where Sergeant Tappin pointed out the lock-ups, charge room and gallery, and Court room.

40

Counsel for Ali Hussain and Hoosanie (two of the accused) asked that:

- (1) The Railway Station and its entrance;
- (2) The view from this gallery of the Police Station, and
- (3) The 26 mile pole, be noted.

The vehicles then travelled about one-half mile further to Jhuman's rice factory and office at Mahaica, and here Sergeant Tappin pointed out Jhuman's rice mill and office and measured the counter in the office at the request of Counsel for Ali Hoosain and Hoosanie.

The vehicles then travelled about 5 miles further to the junction of the public road with the Carlton Hall and Broomhall dams.

10 10. On arrival at the Carlton Hall and Broomhall dams Sergeant Tappin pointed out these dams and the Jury were asked to observe the persons standing on the railway line (which they were a little later to cross) with a view to determining whether persons at that distance could be identified.

20 The cars were parked and left on the roadway which runs east to west and the party then left the public road for the spot on the Carlton Hall dam, south of the public road and approximately $1\frac{1}{2}$ miles therefrom, where the bodies were found. (The railway line is about $\frac{3}{4}$ mile south of the public road).

11. There were some deep cuts in the Carlton Hall and Broomhall dams and because of heavy rains the said dams were badly swamped in parts and in a sodden condition in other parts with the result that the party could not travel in one body but had to be split up in groups.

30 12. A number of small boats (about 15-20 feet long and $2\frac{1}{2}$ feet wide at its widest point) poled by unknown labourers along a trench adjoining the dams transported some of the witnesses, Jurymen, trial Judge, Counsel and Court Officials. A number of witnesses and Jurymen walked along the dam and waded through the water at the points where the dam was covered by water or cut. Some of these persons wore long boots and others rolled up their trousers, removed their normal footwear, and walked
40 barefooted. The distance traversed from the road to the furthest point aback was about $1\frac{1}{2}$ miles.

Under these conditions it happened that jurymen, Counsel and witnesses mixed together in the boats as did those who walked on the dam, but at this stage no witnesses were asked to show or do anything.

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Mr. E.V. Luckhoo Counsel for two of the accused distinctly recollects that in his boat the foreman of the Jury and Bibi Kariman a witness for the Prosecution were quite close together and that there was conversation in the boats and among those who walked along the dam but Counsel is not aware of any improper conversation or the mentioning of anything pertaining to the case. Counsel for the Crown is not in a position to confirm or deny Mr. E.V. Luckhoo's specific recollection.

10

13. The party gathered together at a spot on the dam (about $1\frac{1}{2}$ miles from the public road).

14. The witnesses for the Prosecution were placed at a spot in the opinion of Counsel for the Crown 50 yards and in the opinion of Counsel for the Defence 20 yards south of the spot where Sergeant Tappin demonstrated with two pieces of wood the position in which he found the dead bodies. It was possible for the other witnesses to have seen what was being done but not to have heard what was being said. The dam in that vicinity was open, straight and unencumbered by bush and there was not anything on the dam to prevent each witness from seeing what was being done.

20

15. Henry Bradshaw showed a spot about 20 - 30 feet from the spot where Tappin said he had found the bodies. He said that he had crossed the trench at this spot just before the gun was discharged and traced by demonstrations and words the route he took after crossing the trench. Counsel for the Appellant recalls that Bradshaw actually crossed the trench in demonstrating but Counsel for the Crown is unable to confirm or deny.

30

He (Bradshaw) pointed to gooseberry trees and a spot 10 rods north of those trees and showed the distance he was from the gooseberry trees.

16. Cleveland James showed at what point he crossed the trench and where he stood and witnessed the occurrence. He showed how he held the wire west of the dam and where he was in relation to a certain tree.

40

17. Bibi Kariman pointed out the platform of her house and the Broomhall dam along which she said she saw Saffie running. She also pointed out where she was when she first saw Henry Bacchus and where he was.

18. Henry Bacchus showed where he was when he first saw Bibi Kariman and where she was at that time.

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19. Eusuf Jhuman showed where he was standing in relation to Batulan when he said he received shots and he described the route which he took across the trench on to the Carlton Hall dam.

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20. Katriah described his movements relating to:

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10. (a) the spot where he and No.6 accused crossed to get on to the Broomhall dam.

(b) the point at which he left the Broomhall dam to go east (after travelling a distance north along the dam). He in fact actually crossed the trench (which had water) in demonstration at this point. Counsel for the Crown recollects that this crossing was at the request of Mr. E.V. Luckhoo for the accused Ali Hoosain and Hoosaine. Mr. E.V. Luckhoo cannot confirm or deny this.

20 (c) this witness also waded across the trench to get on to the railway line at the spot where he claimed to have done so on the day of the shooting, and

(d) he showed two fixed points not in dispute - his house and the direction of the cow-pen.

30 21. The above witnesses who spoke and demonstrated as above stated had all completed their testimonies before the 1st September, 1954. As soon as each was finished testifying he or she was allowed to sit on a bench in Court and could then hear the testimony of each subsequent witness. This practice obtains in this colony.

40 22. From the spot shown by Sergeant Tappin where the bodies were found the party went back to the railway line where again there were some local bystanders. There was a pause for some minutes at the railway line to count a number of telegraph poles equally spaced west of the dam and estimate the distance between two poles so as to calculate the width of Carlton Hall Estate. During the time this was being done the bystanders were standing where the Jury were on the railway line and could have spoken in the presence of the Jury, but it is not suggested that any impropriety occurred.

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23. From the railway line the party proceeded east along the railway line - across the Broomhall Estate until they reached between Broomhall and Fairfield and then north along the eastern Broomhall dam to the public road. The party then walked west along the public road until the original point was reached where the party had previously gone unto the Carlton Hall dam.

24. On the public road Mahadeo Bhagwandin showed where he was on the road at the time he saw a man coming from the third house on the west of the Fairfield dam and south of the road. He also showed the point where he saw the gun handed over and the place where he stopped the car and at which the other car stopped. Then he showed the course taken by the Petitioner in crossing the trench to go to the dam. Sergeant Tappin pointed out the houses of five of the accused.

10

25. After this the party got into their respective cars and journeyed west for a short distance when they came out again and were shown one Farinha's house and High dam, the western boundary of Carlton Hall.

20

26. There was then another stop at the Mahaica Police Station when the Judge, Counsel, Jury and Court Officials had luncheon together in a room at the station. After that the party proceeded to Georgetown.

27. The time spent on the public road at Carlton Hall - Broomhall and on the aforesaid dams was about three hours. The party left Georgetown about 9 a.m. and returned about 4 p.m.

30

Sgd. C. LLOYD LUCKHOO

Sgd. EDWARD V. LUCKHOO

Counsel for Appellant.

Sgd. AMINEEN M. EDUN

Crown Counsel.

Dated this ninth day
of September, 1955.

No. 22 of 1955

IN THE PRIVY COUNCIL

ON APPEAL FROM THE SUPREME COURT
OF BRITISH GUIANA

(COURT OF CRIMINAL APPEAL)

B E T W E E N :

K A R A M A T ... Appellant

- and -

THE QUEEN ... Respondent

RECORD OF PROCEEDINGS

Hy. S.L. POLAK & CO.,
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Cursitor Street, E.C.4.
Solicitors for the Appellant.

CHARLES RUSSELL & CO.,
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Solicitors for the Respondent.