*Privy Council Appeal No.* 22 *of* 1955

**Karamat** - - - - - - - - - - *Appellant*

*v.*

**The Queen** - - - - - - - - - - - *Respondent*

FROM

## THE SUPREME COURT OF BRITISH GUIANA

## REASONS FOR REPORT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 14TH DECEMBER, 1955

*Present at the Hearing:*

LORD GODDARD (LORD CHIEF JUSTICE)
LORD TUCKER
LORD SOMERVELL OF HARROW

[*Delivered by* LORD GODDARD]

This was an appeal by special leave from a judgment of the Court of Criminal Appeal in British Guiana dismissing the appellant's appeal against a conviction for murder after a trial before Hughes J. and a jury which their Lordships were told had lasted some 14 days. At the close of the argument their Lordships announced that they would humbly advise Her Majesty to dismiss the appeal and now give their reasons for the advice which they tendered.

The appellant was indicted with five other persons, all of whom were acquitted, for the murder of Haniff Jhuman who occupied land which adjoined that on which the appellant and members of his family and other relations lived and farmed. There had been frequent disputes between the occupants of the two estates arising out of cattle trespass and undoubtedly there was much ill-feeling between them. There were a series of events and quarrels during the 26th and the early part of the 27th September, 1953, and after a fight in the morning of the latter day it was alleged by the Crown that the appellant obtained a twelve bore gun and two cartridges. Later in the day when the deceased man with others approached a cow pen the appellant who was engaged in milking shot at Haniff and killed him and also shot at and killed the latter's mother. The appellant's defence in the main was that he shot in self defence, while the others who were indicted with him, rested their case on an alibi, contending they were not present when the shooting took place. The case involved the calling of a large number of witnesses, many if not all of them other than the police were, as is evident from the transcript of their evidence, illiterate and of low intelligence with a very poor command of the English language, a class no doubt with whom the judges in the Colony are quite accustomed to deal in their Courts. It is unnecessary for their Lordships to deal with the evidence in any detail because the case before the Board was in substance confined to one matter relating to a view which took place during the hearing. Suffice it to say that not only were there numerous witnesses but a good deal depended on the locality of the crime and where the various witnesses were at the times to which they spoke in their evidence. During the course of the trial and before the case for the prosecution was finally closed, all counsel concerned applied to the judge to direct a view of the locality. It is quite clear from the record for what purpose a view was desired and the reason why the learned judge granted the application.

It was so that the witnesses might indicate to the jury the positions at which they alleged they were at the material times and the direction from which others approached the scene of the shooting and to test the opportunity afforded for identification. The Criminal Law (Procedure) Ordinance of British Guiana provides that the judge if he considers it to be in the interest of justice may direct that the jury have a view of any place person or thing connected with the case upon the terms and conditions which seem to him proper. It is also provided that the practice and procedure in criminal trials including the practice and procedure relating to juries should conform as nearly as possible to that which obtains in England. When counsel applied for a view counsel for the present appellant and counsel appearing for two of the other prisoners submitted that none of the witnesses who had already given evidence should be allowed to attend the view or to indicate any of the points referred to in their evidence. Counsel for two other of the prisoners did not join in this objection and it was disallowed by the learned judge. He asked the jury to indicate which of the witnesses they desired to attend and indicate positions and stated that counsel would have full opportunity to recall and cross-examine any witness on any matter arising from the view. The jury did intimate the witnesses whom they desired should be present and the learned judge said that the defence might wish some of their witnesses to attend to point out particular places though they had not yet been called. He gave no direction that they were to attend ; he only gave permission for them to do so if the defence desired it. Thereupon the appellant's counsel declined to take any part in the view or to cross-examine any of the witnesses who attended and he informed the Court that his client would not attend. The learned counsel did himself go to the view as the appellant's representative but took no active part in the proceedings there nor did he subsequently cross-examine any of the witnesses when they were recalled after the view was held.

The first submission on behalf of the appellant is that a " view " ceases to be a view and is not authorised by the Ordinance if witnesses attend and indicate places by pointing or by words. Their Lordships do not accept this submission. In their opinion the learned judge was perfectly right in deciding that witnesses who had given evidence could attend at the view. In fact there was every reason why they should, and it was just those witnesses from whom the jury would desire to get ocular demonstration of their positions at the material times. It would or at least might enable the jury to understand the evidence they had given. As the Chief Justice pointed out in giving the judgment of the Court of Criminal Appeal the average witness in the Colony is not as capable of giving intelligible descriptions of places as generally speaking are witnesses in the English Courts. As already pointed out these witnesses were illiterate and no doubt would have difficulty in explaining themselves and probably considerable difficulty in following a plan, a difficulty often experienced with witnesses in this country if in a humble station of life. To have held a view in their absence would have destroyed its whole value for it would not have demonstrated to the jury just what they wanted to know. If a view were ordered at some stage of a criminal trial in England, their Lordships are of opinion that it would be no objection to a witness attending and taking part that he had already given evidence. It might well be that it was for that very reason that a view would be valuable. For instance the evidence of a police constable or other witness who might testify that he was keeping watch on a certain place and saw an incident might be challenged on the ground that from the place where he was concealed he could not possibly have seen what he said he had. It might be of the utmost value then to let the jury see the place with the witness in the position to which he had spoken ; he might well be able to demonstrate that while a shorter man would not have been able to see the incident or a taller man might have been exposed to view, he could though concealed have seen what he said he did. If a witness at the view put himself in a position different to that which he had described in his previous evidence that would naturally

expose him both to cross-examination and comment but as the Court of Criminal Appeal observed this would go to the weight but not to the admissibility of his evidence. In *R.* v. *Martin and Webb* L.R. 1 C.C.R. 378 a view was directed and two constables went to it to point out where they stood when observing the acts complained of. The Court did not quash the conviction but would not go into the question of whether questions were asked of the witnesses in the absence of the judge and the prisoners, as there had been no inquiry into this below. Their Lordships are of opinion that witnesses who had already given evidence took part in the view in the sense of placing themselves in the positions in which they said they had been at the material times or indicating the positions of others and that this was unobjectionable. That ground of appeal therefore fails.

It is now necessary to deal with what took place at the view. When giving special leave to appeal their Lordships asked to be supplied with an agreed statement of what took place at the view and one prepared by the respective Counsel engaged has been before them. A marshal and constables having been sworn to keep the jury they were taken in motor cars to the scene of the shooting where they were joined by the judge, counsel and Court officers. At their destination the jury were checked by the marshal and were also checked at any other place where they stopped during the day. Any juror who wanted to ask a question put it through the judge and the witness gave a demonstration as the answer, and counsel were invited by the judge to ask questions through him but no cross-examination was allowed. Owing to the nature of the locality at some points small boats had to be used to cross or get along trenches and cuts and at some points it was inevitable that jurors, counsel and witnesses got into the same boat or had to walk together along a dam but no witnesses were then asked to show anything. It seems that on one occasion a juror and a witness were in the same boat as one of the counsel for some of the accused who has stated that there was no conversation relating to the case. It is to be specially noticed that the learned judge was present the whole time so that he could observe and control the proceedings. That a view is part of the evidence is in their Lordships' opinion clear. It is in substitution for or supplemental to plans, photographs and the like. In such a view as took place here and the purpose for which it was held there can in their Lordships' opinion be no objection to the judge asking a witness to place himself at a particular spot which he has mentioned in his evidence or to show to the jury the place where someone else stood or the direction from which someone came. There is nothing to show that any more than this took place. The Chief Justice in the Court of Criminal Appeal observed that in the Colony views are far more frequent than in England, for the reasons that have been mentioned above, and the learned judges of that Court who are doubtless thoroughly accustomed to this procedure saw nothing wrong in it nor does this Board. So long as the witnesses taking part are recalled to be cross-examined if desired their Lordships are unable to see that the accused person is in any way prejudiced but they would observe that it is essential that every effort should be made to see that the witnesses make no communication to the jury except to give a demonstration. In *R.* v. *Martin & Webb* (*supra*) it is clear from the report that neither the judge nor the prisoner attended the view which was held after the summing-up. The Court said there was no irregularity in allowing such a view though such precautions as may seem to the Court necessary ought to be taken to secure that the jury should not improperly receive evidence out of Court. Here everything was done in the presence of the judge who throughout was in control of the proceedings. It was eminently desirable that he should be present and it is possible that had he not been a different result would have followed. It was however strenuously argued before this Board that as the accused was not present this is a fatal objection. A short answer to this point was made by Mr. Le Quesne for the Crown who pointed out that under the Criminal Procedure Ordinance it is competent for the Court to allow the accused to be absent during a part of the trial. The holding of a

view is an incident in and therefore part of the trial and as the Court, on being informed that the accused did not desire to attend, did not insist on his presence this is equivalent to allowing him to be absent. But in addition to this their Lordships desire to say that if an accused person declines to attend a view which the Court thinks desirable in the interests of justice he cannot afterwards raise the objection that his absence of itself made the view illegal and a ground for quashing the conviction if one follows, though he could of course object if any evidence were given outside the scope of the view as ordered. He had the opportunity of attending and declined it. Their Lordships would further observe that the absence of the accused was not made a ground of appeal to the Court of Criminal Appeal and does not appear to have been raised at all in that Court.

One further ground of appeal was raised before the Board ; it was said that there was misdirection by the learned judge in that he did not point out or at least sufficiently stress to the jury that the unsworn statements of the various accused persons were only evidence against the maker of the statement and not against the others. Their Lordships have considered the various passages in the summing-up to which their attention was directed and are satisfied that there is no substance in this objection and for the same reasons as were given by the Court of Criminal Appeal.

On all grounds therefore this appeal failed.

(39580) Wt 8064—69 100 2/56 D.L.

**In the Privy Council**

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**KARAMAT**

*v.*

**THE QUEEN**

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DELIVERED BY LORD GODDARD

Printed by HER MAJESTY'S STATIONERY OFFICE PRESS.
DRURY LANE, W.C.2.

1956