

IN THE PRIVY COUNCIL

No. 26 of 1978

14/79

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O N A P P E A L  
FROM THE COURT OF APPEAL OF TRINIDAD AND  
TOBAGO

---

B E T W E E N :

ROBBY GRANSAUL and  
WINSTON FERREIRA

Appellants

- and -

THE QUEEN

Respondent

---

RECORD OF PROCEEDINGS

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SIMONS, MUIRHEAD & ALLAN  
40 Bedford Street  
London WC2E 9EN

CHARLES RUSSELL & CO  
Hale Court  
Lincoln's Inn  
London WC2A 3UL

Solicitors for the Appellants      Solicitors for the Respondent



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In the High  
Court of Justice  
Trinidad and  
Tobago

County of Caroni, murdered Harold Maharaj,

SECOND COUNT

STATEMENT OF OFFENCE

No. 1

Indictment

ROBBERY WITH AGGRAVATION, contrary to  
Section 24 (1) of the Larceny Ordinance  
Chapter 4 No. 11.

PARTICULARS OF OFFENCE

WINSTON FERREIRA and ROBBY GRANSAUL, on  
the 27th day of August, 1973, at Cunupia  
in the County of Caroni being armed with two  
(2) offensive weapons to wit, two (2)  
revolvers, together robbed Samlal Raghbir  
of Three Hundred Dollars (\$300.00) in cash.

10

THIRD COUNT

STATEMENT OF OFFENCE

POSSESSION OF FIREARMS, contrary to Section  
6(1) of the Firearms Act No. 44 of 1970

PARTICULARS OF OFFENCE

WINSTON FERREIRA and ROBBY GRANSAUL, on the  
27th day of August, 1973, at Cunupia in  
the County of Caroni, not being the holders  
of Firearm User's Licences with respect to  
such firearms had in their possession  
firearms, to wit, two (2) revolvers.

20

FOURTH COUNT

STATEMENT OF OFFENCE

POSSESSION OF FIREARMS WITH INTENT TO  
ENDANGER LIFE, contrary to Section 12 (1)  
of the Firearms Act No. 44 of 1970.

PARTICULARS OF OFFENCE

30

WINSTON FERREIRA and ROBBY GRANSAUL, on the  
27th day of August, 1973, at Cunupia in  
the County of Caroni, had in their possession  
firearms, to wit, two (2) revolvers, with  
intent by means thereof to endanger life.

FIFTH COUNT

STATEMENT OF OFFENCE

MAKING USE OF FIREARMS IN FURTHERANCE OF THE COMMISSION OF AN OFFENCE, contrary to Section 13(1) of the Firearms Act No. 44 of 1970.

In the High Court  
of Justice  
Trinidad and  
Tobago

No. 1

Indictment

PARTICULARS OF OFFENCE

WINSTON FERREIRA and ROBBY GRANSAUL, on the 27th day of August, 1973, at Cunupia in the County of Caroni, made use of firearms, to wit, two (2) revolvers, in furtherance of the commission of an offence, to wit, robbery.

10

B. Basil Pitt,  
Attorney General.

NO. 2

No. 2

TRINIDAD AND TOBAGO

Proceedings

IN THE HIGH COURT OF JUSTICE

20th February  
1975

No. 146/74

REGINA

v

1. WINSTON FERREIRA

2. ROBBY GRANSAUL

FOR

MURDER AND ROBBERY

Before the Honourable

Mr. Justice K.C. McMillan

NOTES OF EVIDENCE

G. Stewart for Crown.

V. De Lima and Mrs. Francis for No. 1  
Instructed by Kelshall & Co.

20

In the High Court of Justice  
Trinidad and Tobago

A. Lawrence for No. 2. Instructed  
by Mrs. Morean.

Indictment severed at request of Crown.

No 2 No objection.

Proceedings Counts 1 and 2 proceeded with.

20th February 1975 Plea thereon by each - Not Guilty.

Jurors called and sworn:

1. (18) Anthony Gomes
2. (44) Jose Salazar
3. (36) Leslie Pereira 10
4. (1) Clyde Abdulla
5. (21) Trevor Hastic
6. (24) Ian Huggins
7. (39) Balchand Ramlogan - challenged  
by No 2
8. (12) Victor Cappin
9. (38) Ramjit Ramdial - challenged by  
No 1
10. (7) Winifred Bowen
11. (27) Ramkissoon Kalicharan - challenged 20  
by No 1
12. (40) Harold Ramlogan
13. (47) Neal White
14. (2) Aleong Affat
15. (15) Gregory Dumas

Foreman : Anthony Gomes

Prisoners put on charge.

Prosecution  
Evidence

NO. 3

EVIDENCE OF DAVID EDWARD

No. 3

DAVID EDWARD on oath 30

David Edward

Examination

Member of Medical Board and  
Pathologist, Port of Spain General  
Hospital.

At 12.30 p.m. on 28th August, 1973  
I performed post mortem examination on  
body of male moderately nourished - adult.  
Body identified to me by Lutchman Maharaj  
as his son Harold Maharaj - P.C. Valley  
present.

Deceased appeared to have died approximately 20 - 30 hours before my examination. He was 5ft. 7 ins. and clad in light blue shirt, black stained with circular vent 2/16 inch situated 1 inch above left breast pocket; also a sleeveless vest bloodstained, and also a black stain on left side which appeared like powder marking from a firearm.

In the High  
Court of Justice  
Trinidad and  
Tobago

No. 3

David Edward

Examination  
(continued)

20th February  
1975

10 I found following injuries :-

1. Circular bullet entrance wound 2/16 inch in diameter situated over front of left chest 1 inch below the anterior axillary fold (indicates). It showed an abrasion colour. No singeing or blackening of the area immediately around the wound. Depth of wound was directed horizontally and downwards 12 inches deep towards the right having penetrated through the left 1st intercostal space, left lung and heart, the right lung and having made vents through them and a bullet was found lodged under the muscles of right side of back of chest having penetrated into 3rd right inter space at the back. Left chest cavity contained 1,250 cc blood and right chest cavity 650 cc blood. There was a fracture of the right 3rd rib in back wound showed ecchymosis (clotted blood - indicating occurrence during life). Age of wound - within last 24 hours of life.

20

30

Other organs normal and showed evidence of acute haemorrhage. I am of opinion death caused by shock and haemorrhage due to rents on heart and lungs as a result of firearm injury to front of left chest. I handed bullet found in body to P.C. Valley.

This is the bullet - admitted and marked "D.K.1". No objection. In my opinion rent in shirt caused by bullet.

Cross-Examined

Cross-Examined

CROSS-EXAMINED DE LIMA: In my opinion the assailant faced front of deceased at time the firearm discharged, but this is on

In the High  
Court of Justice  
Trinidad and  
Tobago

assumption that a right-handed person  
discharged firearm.

Cross-Examination by Lawrence declined:

No. 3

Re-examination by Stewart declined:

David Edward

TO COURT: Blackening of shirt and  
vest indicates that firearm discharged at  
close range - within 2 feet.

Examination  
(continued)

20th February  
1975

NO. 4

EVIDENCE OF LUTCHMAN MAHARAJ

No. 4

LUTCHMAN MAHARAJ on oath:

10

Lutchman  
Maharaj

Pensioner and live at St. Julien,  
Princess Town. Had son Harold Maharaj now  
dead. On 27th August, 1973 Lewis  
spending holiday with me but left home to go  
to work about 6.00 a.m. About 3.00 p.m.  
I received message and as a result went to  
mortuary, Port of Spain, General Hospital.  
There I saw his dead body. On 28th  
August, 1973 I identified body to Dr.  
Edward who performed post mortem  
examination. Body thereafter handed to me  
and I buried it. He was about 40 years.

20

Examination

Cross-examination declined - De Lima:

Cross-examination declined - Lawrence:

No. 5

NO. 5

Freddie  
Williams

EVIDENCE OF FREDDIE WILLIAMS

FREDDIE WILLIAMS on oath:

Corporal of Police 6273 and official  
Police Photographer. Recall 27th August,  
1973 when I went to Southern Main Road,  
Warrenville, Cunupia where I met Inspector

30

Examination

Griffith on whose instruction I took a photograph of a scene on Southern Main Road. I developed negative and made prints. This is photo. Tendered and marked F.W.1. Camera facing South East. There is parlour in ground floor of building shown.

In the High  
Court of Justice  
Trinidad and Tobago  
Prosecution Evidence  
No. 5  
Freddie Williams  
Examination  
(continued)  
20th February 1975

10 CROSS-EXAMINED - DE LIMA: In photo can be seen a counter in parlour and open door - tree in front door is a paw-paw tree. It is between the door and van.

CROSS-EXAMINATION BY LAWRENCE declined

TO STEWART WITH LEAVE: There is a walk way leading from the parlour entrance to road. Looking at picture paw-paw tree is to right of walk and does not obstruct it. Width of pathway is about 6 or 7 feet wide - gravel.

20 Van is parked immediately right of pathway and one has clear passage into parlour. There is a gravel verge at side of road and van was parked almost completely on gravel verge.

On either side of entrance path is a hedge not as thick on right of pathway (behind van) as on right.

TO DE LIMA: If we walked straight from parlour to road one would then have to turn left to van.

30 TO LAWRENCE : Left wheels of van are at extreme edge of road.

NO. 6

EVIDENCE OF CECIL BECKLES

CECIL BECKLES on oath :

No. 6  
Cecil Beckles  
Examination

In the High  
Court of Justice  
Trinidad and  
Tobago

No. 6

Cecil Beckles  
Examination

Corporal of Police 4743 and police  
armourer for 18 years, police training  
college. I have in 18 years examined,  
tested, stripped and re-assembled  
firearms and ammunition of various  
descriptions including revolvers.

On 28th August, 1973 P.C. Balkaran  
handed me a spent bullet for my  
examination. It was in a phial D.E.1. as  
that bullet which I found to be a .22  
firearm. I returned it to Inspector  
Griffith.

10

CROSS-EXAMINATION DECLINED - DE LIMA:

CROSS-EXAMINATION DECLINED - LAWRENCE:

No. 7

Aphzal Balkaran  
Examination

NO 7.

EVIDENCE OF APHZAL BALKARAN

APHZAL BALKARAN on oath:

P.C. 6584 of Cunupia Police Station.  
On 28th August, 1973 I went to mortuary  
of Port of Spain General Hospital with  
P.C. Valley. There P.C. Valley handed me  
a phial with bullet and told me something.  
I gave it to Corporal Beckles. Police  
Armourer at St. James Barracks.

20

D.E.1. is phial with bullet.

CROSS-EXAMINATION DECLINED - DE LIMA:

CROSS-EXAMINATION DECLINED -- LAWRENCE:

Adjourned 20th February  
1975.

Resumed :

30

Accused and Jury Present :

NO. 8.EVIDENCE OF SAMLAL RAGHUBAIRSAMLAL RAGHUBAIR on oath:

Live Munroe Road, Cunupia and  
Salesman Allum's Distributing Centre.  
I sell cigarettes wholesale. I use van  
with driver.

10 On 27th August, 1973 I was so employed.  
Driver of van was Harold Maharaj now deceased.  
I used TR-549. About 1.30 p.m. we were in  
Warrenville and went to Rasheedan Khan's Cafe  
to sell cigarettes. This is on Southern Main  
Road Warrenville. Bowen parked van in front  
of parlour - (small van) facing North i.e.  
Port of Spain.

20 I got out of van and entered Cafe  
leaving Maharaj in van. I received an order  
for cigarettes from Rasheedan Khan in parlour.  
Her daughter was present. Having received  
order I went to van, took out the  
cigarettes and returned to parlour. Harold  
Maharaj was still sitting behind steering  
wheel.

I gave cigarettes to Mr. Khan and she  
paid me and I started checking the money.  
While so doing I heard a shot i.e. explosion  
like discharge of firearm - I turned around  
and saw two men by the van - one on either  
side.

30 The one on left side of van came running  
into the cafe. The vehicle was parked on the  
right hand shoulder of the road. The man  
entered the parlour and pointed two  
revolvers - one in each hand (demonstrates  
hold up position) at me and said, "Raise your  
f.....hands." I raised hands above head.  
I was afraid. He then rested gun in his  
right hand and the other gun in his left  
and put his right hand in my left shirt pocket  
40 and took out the proceeds of day's sales.  
I had therein about \$300.00. He then went  
out towards the van and he and the other man  
ran up the road - North i.e. same direction  
van facing. Shown F.W.1.

In the High  
Court of Justiti  
Trinidad and  
Tobago

No. 8

Samlal  
Raghubair

Examination

21st February  
1975

In the High Court of Justice Trinidad and Tobago

Prosecution Evidence

No. 8

Samlal Raghubair

Examination (continued)

21st February 1975

This shows parlour with van facing North. This was position of vehicle at time of incident.

I went to van and saw Maharaj bleeding through mouth and nose.

I stopped passing vehicle and went to Cunupia Police Station and made a report. I returned to scene with Police officers.

I usually carry a .38 revolver when out on sales for protection. On 27th August, 1973 I had it but left it in pocket of van when I entered parlour. When I returned to van after incident it was not there. I had left it on the left panel pocket.

10

On 30th August, 1973 I attended an Identification Parade at Chaguanas Police Station but identified no one.

CROSS-EXAMINED - DE LIMA: I am certain I remember everything that happened. I have said all that was said and done that day.

20

It was sound of shot that made me turn around and look at van.

I now admit that on hearing shot I heard someone immediately after saying : "don't leave the parlour."

Q. Is it true that before you heard shot one of the two men, the one nearer to you, asked you for cigarette?

30

A. I did not hear that

I did not say O.K. pal I am bringing it.

CROSS-EXAMINED - LAWRENCE: No one asked me for cigarettes and I gave none to anybody. I only

sold Mrs. Khan. I was in front counter facing inside parlour talking to Mrs. Khan behind the counter. Her daughter was there then, she went upstairs to get money to pay me and came back and I was paid and was checking money when I heard shot. She was in cafe with her mother then.

In the High Court of Justice Trinidad and Tobago

Prosecution Evidence

No. 8

Samlal Raghubair

Cross-Examination (continued)

21st February 1975

10

Having heard shot I heard someone say, "Don't leave parlour." I then turned around and saw the fellow who had been on left side leave left side and shouting, "Don't leave parlour", and he was running into that parlour I turned before he said don't leave. He had two guns pointing at me. I was in front counter and Mrs. Khan and her daughter behind me.

To Court:

I had not seen either of the two men before in my life.

20

Re-examination declined:

To Court:

When I saw driver bleeding in vehicle he was still sitting behind steering wheel - vehicle was right hand drive.

Recess to accommodate Jurors:

Resumption:

Both accused and Jury present:

NO. 9

No. 9

RASHEEDAN KHAN on oath:

Rasheedan Khan

30

Parlour keeper of Warrenville, Cunupia. I live in premises which is situate in Southern Main Road.

Examination

21st February 1975

Yasmin Khan is one of my daughters.

About 1.30 p.m. on 27th August, 1973 I was in parlour with Yasmin. A cigarette van came to the parlour and stopped in front and the salesman came out. There were two men in the van. The salesman (indicating Raghubair) and another. Raghubair came out. I ordered cigarettes. He returned to the van

In the High  
Court of Justice  
Trinidad and  
Tobago

Prosecution  
Evidence

No. 9

Rasheedan Khan

Examination  
(continued)

21st February  
1975

and I spoke to my daughter and she went upstairs for my money. The salesman came with cigarettes and my daughter returned with the money. My daughter and I were checking the money when I heard a shout. "Raise your fucking hand."

I had already handed the money to the salesman when I heard the voice.

I kept watching the van and I saw Robby Gransaul, my neighbour (No. 2 accused) and a strange fellow by the van. One on each side of van. Robby was on left side of van and the other on right side holding the van driver's hand.

Driver's hand was resting on window of door (demonstrates) and the strange man held that hand like this (demonstrates by holding right forearm down with his right hand). I was then about 25 feet (short distance) away from van. I have known accused since he was a baby. He is my next door neighbour. I then saw Robby shoot the driver. Robby was still on left side of van. He then entered the parlour with two guns one in each hand. Raghubair, my daughter and I were in parlour. He then told the salesman, "Raise you f.....hand." Salesman raised his two hands above head. Robby then put the gun in his left hand and in his right hand with the other gun and put his left hand in salesman's pocket and he ran outside to van and then he and the strange man ran towards Caroni, i.e. direction van was facing. Shown F.W.1. That shows photo of my premises with parlour downstairs and van outside.

Robby lives in house about 10 - 15 ft. from me and left of me when facing my premises from the street.

When Robby and the fellow ran I went to van and saw the driver sitting behind steering wheel bleeding from nose and mouth.

10

20

30

40

I know Robby Gransaul also as "Greenfig".

In the High Court of Justice Trinidad and Tobago

---

On 30th August, 1973 I went to Chaguanas Police Station and attended an identification parade.

Prosecution Evidence

I was nervous and identified no one and I was still afraid - fright in me still.

No. 9

Rasheedan Khan Examination

10

CROSS-EXAMINED - DE LIMA : My daughter was standing next to me behind the counter and the salesman was on other side in front of counter.

Cross-Examination

I can't remember whether anyone said, "don't leave parlour."

No one had any conversation as far as I know with the salesman and I did not hear anyone ask him for cigarettes.

Counter is just a little wider than bar table (which is estimated at 1 foot).

20

I don't remember salesman saying, "O.K. Pal, I am bringing it."

It was not the shot that attracted my attention. I heard voice just saying, "Raise your hands", and I saw Robby shoot after. When I heard voice I had already put the money on counter for the salesman. It was not while my daughter and I were checking money.

30

TO COURT: When shot discharged salesman was taking up the money from the counter.

CROSS-EXAMINED - LAWRENCE: I don't recall anything unusual happening at my home on 22nd February 1975.

Robby Gransaul has two brothers, Ulric and Bunny. I heard and read that Ulric, not Bunny was supposed to have been

In the High  
Court of Justice  
Trinidad and  
Tobago

Prosecution  
Evidence

No. 9

Rasheedan Khan

Cross-Examination  
(continued)

21st February  
1975

shot by police in Laventille and after that day plenty police and soldiers came to their house, but this was after he was buried. I only know the police came there once. I can't say how many police and soldiers went there. I did not see them with guns and I was not frighten. I did nothing. I don't know Bunny was arrested by Police on 27th July, 1973.

10

Not true that because of repeated visits by police to the Gransauls home I am anxious to get rid of No. 2 accused. I have eight children living with me and one abroad at school. I am not afraid for my children. I had already checked and handed money to salesman and he was checking it when I hear voice saying, "Raise your f.....hand." He was checking money on counter. The driver raised one hand the other hand was being held by the strange fellow.

20

I really can't remember whether anyone said, "Don't leave the parlour" or anyone asking the salesman for any cigarettes inside the parlour. If I was paying attention and someone said it I may have heard it. But I was not paying any attention except to what I was doing and then I heard voice saying, "Raise hands", and saw Robby on left side of van. Van has two doors - one on each side. The door on left was not open - neither door was opened. I continued watching and saw when driver was shot. It was after that Robby entered parlour and robbed salesman and both Robby and other man ran. Up to this neither door of van was open. I just saw the driver ran away and paid no attention to them. I went to the driver. I never saw anyone open any door of van as if to take anything. There is a gravel verge to road in front of my parlour. The van was parked on that verge in front of the parlour - right of opposite the counter as it were. Quite sure.

30

40

Shown F.W.1. The van is in front of my parlour in that picture. That's where it was on 27th August, 1973 just like that. It was possible for me to see both sides of van from where I was inside the parlour. I was able to see Robby above the van.

In the High  
Court of Justice  
Trinidad and  
Tobago

Prosecution  
Evidence

No. 9

Rasheedan Khan

Cross-  
Examination  
(continued)

21st February  
1975

10 Van usually comes on a Tuesday but that Tuesday was a holiday and it came on Monday 27th August, 1973.

I have referred to No. 2 both here and at Preliminary Enquiry as my neighbour.

I only heard one shot fire. He had a revolver and I saw he shoot at driver.

Salesman raised hands when Robby Gransaul said from inside the parlour, "Raise your hands." This was second time I heard command - raise hands.

20 TO COURT: On first occasion I recognise voice as that of Robby Gransaul.

I know Bunny was also arrested.

I only saw police once i.e. after death of Ulric. Police never came to me apart from in connection with this case.

Re-Examination declined:

TO DE LIMA: I only saw the strange fellow rest his hand on driver's right forearm. I did not see him do anything else or say anything.

30 TO COURT: When I heard Robbie's voice saying raise your hand I look and see the two of them - the strange fellow already had his hand on driver's forearm. After that I see Robby shoot.

TO LAWRENCE: There was a time when Robby was in orphanage but he has been living home for sometime now - I can't say if it's six months prior to 27th August, 1973.

In the High  
Court of Justice  
Trinidad and  
Tobago

NO. 10

EVIDENCE OF YASMIN KHAN

YASMIN KHAN on oath:

Prosecution  
Evidence

Daughter of Rasheedan Khan and live  
with her at Warrenville. Age 18.

No. 10

Yasmin Khan

Mother carries on parlour and on  
premises.

Examination

21st February  
1975

On Monday 27th August, 1973 at 1.30  
p.m. I was in parlour with mother. Du  
Maurier cigarette van came up and stopped  
in front of the parlour. A medium van. 10  
I observed two men in van. The salesman  
(Raghubair) came out and entered parlour.  
The driver remained in van. Mother  
ordered cigarettes and sent me upstairs  
for money. I went and got it and returned  
to parlour and was counting it. Then  
I heard a voice outside saying, "Raise  
your fucking hands." I looked out  
towards van. I saw two young men - one  
was Robby Gransaul (No. 2). I did not  
know the other man then but it is No. 1  
accused. Robby was on left hand side of  
van and No. 1 was on right hand side.  
Robby had two revolvers in his hand  
pointing inside the van through the left  
window. No. 1 was holding the driver's  
hand. Driver had his right hand on  
window (like this) and No. 1 held it  
like this (demonstrates). Driver was 20  
sitting behind steering wheel. witness  
demonstrates in same fashion as mother  
I then heard explosion like gun shot.  
Then Robby rushed into the parlour with  
two revolvers one in each hand. The other  
man remained standing by van. Robby  
told salesman raise his fucking hand.  
Salesman raised hands (demonstrates).  
Robby pushed his hand in salesman pocket,  
before that he put the gun in right hand 30  
and his left hand with other one and  
then put his right hand in salesman's  
shirt pocket and took out something  
and ran into the parlour and he and  
the other man ran North on the road.

Have known Robby since I was a child.  
He lives right next door. I know him to  
be older than I am.

I had seen No. 1 before 1.30 p.m. - twice before about 11.00 a.m. and then about 11.15 a.m. I was washing in the garage and they were passing on the road. F.W.1. is photo of our house and van. That's where van was parked. The road curves in front our premises. Robby lives right on left side of our house looking at photo.

In the High  
Court of Justice  
Trinidad and  
Tobago

Prosecution  
Evidence

No. 10

Yasmin Khan

Examination  
(continued)

21st February  
1975

10 Van is parked in front of parlour.  
Garage can be seen behind van.

When I saw accused No. 1 about 11.00a.m. he was with No. 2 Robby. Lawrence - objects prejudicial and irrelevant, overruled relevant/.

When I saw them at 11.00 a.m. they were on the road going in the Chaguanas direction and at 11.15 going in opposite direction i.e. direction of Robby's home.

20 After incident they ran and I came out to the van. I noticed driver bleeding from his mouth and nose. He was Indian man.

On 20th August, 1973 I went to Chaguanas Police Station and attended an identification parade. I pointed out No. 1 as the person with Robby at time of incident. Accused said nothing.

Cross-Examined

Cross-  
Examination

30 CROSS-EXAMINED - DE LIMA: Apart from seeing accused No. 1 with his hand on driver I saw him do nothing else.

40 He was resting his left hand on right arm of driver when I looked out. Before I heard shot I did not notice No. 1 turn away from the van. I remember that at Preliminary Enquiry I said the other man turned towards parlour and asked salesman for a cigarette. The salesman was in parlour. The salesman said, "O.K. pal, I am bringing it." That happened. Then

In the High  
Court of Justice  
Trinidad and  
Tobago

Prosecution  
Evidence

No. 10

Yasmin Khan

Cross-  
Examination  
(continued)

21st February  
1975

suddenly I heard a shot and Robby rushed into the parlour. I had forgotten this when giving evidence in chief.

CROSS-EXAMINED - LAWRENCE: I have sisters living at home and brothers. Some are younger than I am. I never saw police at the Gransaul's home before this incident. I never saw any one with guns and cars even in plain clothes go there. I have known No. 2 since I was about 8 or 9. When he used to come from the orphanage and play by us.

10

Not true I have been scared about police going frequently by the Gransaul's and that is not when I was giving evidence against No.2.

I know his brother Bunny was arrested. His brother Ulric is dead.

Q. Do you know he was shot by police at Laventille.

20

TO COURT: I was not present when he died.

Question disallowed.

I was in parlour on 27th August, 1973. I could see van from parlour. I may have said in Magistrate's Court a small van but don't recall. Van was parked in front of parlour as shown in F.W.1.

TO COURT: There is a gravel path to parlour from road. Facing building post with pepsi sign is to right of pathway. Pathway is about 5 to 6ft. wide - estimate distance. Van was completely in front of driveway blocking the pathway and this is what that picture purports to show.

30

I was present up to time police came and no one moved the van.

Adjourned 21st February 1975:

40

Resumed:

Both accused and Jury present:

YASMIN KHAN resworn:

CROSS-EXAMINATION LAWRENCE continued:  
Van was parked right opposite entrance.  
There is a glass case on counter of parlour  
- one.

10

Counter is about 12 ft. (estimates distance). Glass case is only about 5 ft. wide. (Estimates distance). It is shown in S.W.1. It is to one side of entrance. I did not see left side door of van being opened or open at any stage. I could see piece of inside of left door from where I was.

After I heard shot I did not hear sound of door closing. Left door was never opened. I heard no struggle between chauffeur and anyone. I accept that if there was a small struggle inside van I would not be able to see.

20

RE-EXAMINATION - STEWART declined:

TO COURT: At no time I saw anyone inside vehicle other than driver sitting behind steering wheel. Neither of the two men I saw around van entered vehicle.

In the High  
Court of Justice  
Trinidad and  
Tobago

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Prosecution  
Evidence

No. 10

Yasmin Khan

Cross-  
Examination  
(continued)

22nd February  
1975

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NO. 11

FURTHER EVIDENCE OF SAMLAL RAGHUBAIR

SAMLAL RAGHUBAIR recalled and sworn:

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Van used on the 27th August, 1973 - TR-549. It is outside court. [Court views vehicle from balcony. Both accused requested to stand, one on either side of vehicle.

[Resumption - both accused and jury present]

Witness continuing :

That is the vehicle around which the

No. 11

Samlal  
Raghubair

Re-called

22nd February  
1975

In the High Court of Justice Trinidad and Tobago

two accused were requested to stand. The hood level of van was shoulder high in comparison with both accused. Van TR-549 - S.R.1.

Prosecution Evidence

CROSS-EXAMINATION - DE LIMA declined:

No. 11

Samlal Raghubair

Recalled

22nd February 1975

Cross-Examined

Cross-Examination

CROSS-EXAMINED - LAWRENCE I had pistol in left panel pocket. It has a lid but it was not locked. The left window glass was down as appears in photo.

10

RE-EXAMINATION declined:

No. 12

NO. 12

Hollister Lewis

EVIDENCE OF HOLLISTER LEWIS

Examination

HOLLISTER LEWIS on oath:

Live Southern Main Road, Cunupia. Tailor. On 27th August, 1973 lived in a room rented for No. 2 - Robby Gransaul, accused at Southern Main Road, Warrenville. It was the front room of house. I was there that day alone. I saw accused No. 1 that day around 9.30a.m. He came to the premises. He said, "Man" to me. I said all right. I knew him before for about two years as Winston Ferreira. He had on a mauve shirt and dark colour pants. He went straight to Robby Gransaul's room. Robby was in his room then. They remained inside for a while, then both came to front gallery.

20

Door was open.

Robby asked me for a cigarette. I gave him two. They each took one and smoked. I was cooking my lunch. They remained in gallery for a while and then went out to road walking in Chaguanas direction.

In the High Court of Justice Trinidad and Tobago

Prosecution Evidence

No. 12

Hollister Lewis

Examination (continued)

22nd February 1975

10

Mr. Khan is our neighbour. They would have had to pass in front of her place going to Chaguanas direction. Sometime after Nos. 1 and 2 returned and sat in gallery. It was about half an hour after they had left. I left home at about midday and left both of them in Robby's room. Winston was still dressed in same clothes he had on earlier.

20

I went to Marshall Trace in Chaguanas direction. While there I heard something and as a result returned home and saw a lot of people and police around. I spoke with police.

Lawrence excused.

On 30th August, 1973 I attended an identification parade at Chaguanas Police Station. Identified Winston Ferreira as the man who was with Robby Gransaul on 27th August, 1973.

30

About 2 years prior to 27th August, 1973 Winston and No. 2 accused had an argument over a girl. No ill feeling resulted thereafter.

CROSS-EXAMINED DE LIMA also holding for Lawrence declined:

NO. 13

No. 13

EVIDENCE OF SAFFIRAN MOHAMMED

Saffiran Mohammed

SAFFIRAN MOHAMMED on oath:

Examination

Housewife, live Warrenville, Cunupia. On 27th August, 1973 about 1.30 p.m. I was in my yard washing when I saw Robby

22nd February 1975

In the High Court of Justice Trinidad and Tobago

Prosecution Evidence

No. 13

Saffiran Mohammed

Examination (continued)

22nd February 1975

Gransaul No. 2 accused with another fellow. They were sitting in his gallery. I live next house to Robby. He is between my house and Mrs. Rasheedan Khan. They then left gallery and came to Southern Main Road and not too long after I heard gunshot I came out to the road and I see Robby and the next guy running past my house towards Canoni way. The other fellow had on a lilac shirt and a dark pants. I knew Robby since he was a child - did not know the other man.

10

Lawrence returns:

I saw the cigarette van in front of Rasheedan's House and I ran to it and saw the driver, an Indian man behind the steering wheel bleeding through his mouth. Rasheedan Khan was bawling and crying.

20

CROSS-EXAMINATION - DE LIMA declined:

CROSS-EXAMINATION - LAWRENCE declined:

No. 14

Anselm Hall

Examination

22nd February 1975

NO. 14

EVIDENCE OF ANSEIM HALL

ANSEIM HALL on oath:

Police Inspector, Chaguanas Police Station. At 4.30 p.m. on 30th August, 1973 I conducted Identification Parade in closed room at C.I.D. office, Chaguanas - 8 men on parade. I lined them up and then caused No. 1 accused to be brought from a locked room to my room. On entering room the door was again closed. I told him of report in connection with this case and that persons will be called to see if they could identify any of the witnesses. I told him he could make request and change his clothes. He made no requests and said he would remain as he was. I told him he could take up any position in line. He took up No. 4 position in line.

30

40

I summoned Rasheedan Khan to room. When she entered I asked her to repeat what she told police and then asked her to look along line and see if she could identify anyone. She did not identify anyone. I sent her out. Yasmin Khan was remanded. Before she entered room I gave accused No 1 same options of requests - changing clothes and positions. He chose to remain where he was. Yasmin Khan entered. I asked her to repeat what she told police. I then asked her to look along line and see if she could recognize any of the persons.

10

She looked along line and touched No. 1 accused and said he is one of them. He said nothing. I sent her out and repeated the process. Accused made no requests and I summoned Hollister Lewis. I continued with procedure and asked him to look along line and see if he saw person in company with Gransaul to identify him. He identified No. 1 and left room.

20

When he left No. 1 accused said I know this man he wanted to fight me some time ago.

I repeated procedure - accused made no requests and remained in same position. I called in Samlal Raghubair. He said he did not see anyone. I sent him out.

30

All men were of similar description to accused. I dismissed parade and handed accused No. 1 to Inspector Griffith.

CROSS-EXAMINATION DE LIMA declined:

CROSS-EXAMINATION LAWRENCE declined:

NO. 15

EVIDENCE OF LUCIEN VILLAFANA

LUCIEN VILLAFANA on oath:

Police Sergeant 5371. C.I.D. Port of Spain. On Thursday 13th December, 1973 about 7.30 p.m. I went to Nelson Street,

40

In the High Court of Justice Trinidad and Tobago

Prosecution Evidence

No. 14

Anselm Hall

Examination (continued)

22nd February 1975

No. 15

Lucien VillaFana

Examination

22nd February 1975

In the High  
Court of Justice  
Trinidad and  
Tobago

Prosecution  
Evidence

No. 15

Lucien Villafana

Examination  
(continued)

22nd February  
1975

Port of Spain with party of police. At  
corner of Duncan and Nelson Street I  
took up position in Planning and  
Housing yard where I could see across  
Duncan Street. A Police car drove  
up near to where I saw some young  
men sitting on a kerb wall on Duncan  
Street. As car stopped near men the  
men got up and scattered. I  
recognised Robert Gransaul No. 2. He  
ran towards me. As he got near to  
me I stepped in front of him with other  
police - identified myself and held  
him and told him he was wanted by  
police on a warrant for murder and  
cautioned him. I put him in police  
car and took him to Headquarters  
arriving there about 7.45 p.m. There  
I spoke to the accused who said he  
was feeling hungry. I purchased  
two sandwiches and some juice for  
him which he had.

10

20

I then told him that report was  
made at Cunupia Police Station on  
Monday 27th August, 1973 about 1.30 -  
2.00 p.m. - that the driver of a Du  
Maurier Cigarette van was shot dead  
by two men, that Inspector Griffith  
of Chaguanas made enquiry and was in  
possession of the warrant. After  
he was finished eating he said he  
would like to tell me what happened.  
I again cautioned him and he said he  
wanted to give statement in writing.  
He made statement which I recorded at  
his request. I did not force,  
threaten or beat him to give  
statement and no inducement held out -  
voluntary statement. After recording  
it I gave it to him and he read it  
and appended certificate from a form  
I gave him with a copy of Judge's Rules.  
After statement completed I informed  
accused No. 2 that I would be calling  
a Justice of the Peace to have  
statement certified. He told me O.K.

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I phoned in his presence and  
contacted Mr. Aziz Ali, Justice of the  
Peace who subsequently arrived and in

presence of accused told Mr. Ali that accused had given me statement in writing. Mr. Ali spoke to accused who told him he had given the statement voluntarily. Mr. Ali gave accused statement to read. He did so and Mr. Ali asked him if he was beaten, he said no and appended his certificate in presence of accused. This is statement. Tendered - admitted and marked L.V.1. No objection.

In the High  
Court of Justice  
Trinidad and  
Tobago

Prosecution  
Evidence

No. 15

Lucien Villafana

Examination  
(continued)

22nd February  
1975

CROSS-EXAMINATION DE LIMA declined:

CROSS-EXAMINATION LAWRENCE declined:

NO. 16

No. 16

EVIDENCE OF SARSTON GRIFFITH

Sarston Griffith

SARSTON GRIFFITH on oath:

Examination

Police Inspector attached Chaguanas Police Station. On 27th August 1973 about 2.00 p.m. I received phone message from Cunupia Police Station and went to Southern Main Road to Cunupia (Warrenville). There I saw a Du Maurier cigarette van TR-549 parked off road and East side facing North and in front of Mrs. Rasheedan Khan's parlour. In van I saw dead body of East Indian man slumped in front seat behind steering wheel. Body clad in blue shirt 'jac', dark pants and black shoes. There was a small hole in shirt near left breast. I opened shirt and saw small wound near left breast. I summoned Dr. Rahaman, D.M.O. who came and ordered removal of body to mortuary of Port of Spain General Hospital. Body despatched in care of P.C. Valley. Later I called Cpl. Williams, Photographer who took photograph of scene in my presence. I interviewed persons and as a result of information went in search of No. 2 Robby Gransaul and a young negro man. Next day I saw P.C. Valley who handed me a post mortem report and as a result

22nd February  
1975

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In the High  
Court of Justice  
Trinidad and  
Tobago

Prosecution  
Evidence

No. 16

Sarston Griffith

Examination  
(continued)

22nd February  
1975

obtained warrant for the arrest of No. 2. On 28th August, 1973 I went to Laventille in search of Winston Ferreira No. 1 accused. I did not find him but spoke with Besson Street Police and gave certain instructions. On night of 29th August, 1973 about 7.30 p.m. P.C. Edwards of Besson Street brought accused Ferreira to me at Chaguanas. I identified myself and told him I was making enquiry into the death of Harold Maharaj who was shot and killed in Du Maurier Cigarette van at Cunupia on 27th August, 1973 etc.etc. and he was upset. He said I don't know what you taking to me about but that day I was at Piarco, and washing my brother-in-law's car and he gave me a dollar.

10

I asked if he had spoken to his brother-in-law, he said no he did not but brother-in-law had sent him money by a man he did not know. I told him he would be put on identification parade and persons would be called to see if they could identify him as man seen with Gransaul on day Maharaj killed and running away from van with Gransaul.

20

A parade was held on 30th August, 1973 and subsequently accused was handed over to me.

30

I cautioned and charged him with offence of murder. He said nothing. On 13th December, 1973 about 9.30 p.m. I received phone call from C.I.D. Port of Spain and went there. I met Sergeant Villafana and No. 2 Gransaul. Villafana handed me a statement purporting to come from accused. I told accused I had warrant for his arrest and took him to Chaguanas where I was stationed and executed warrant on him and cautioned him. He said he gave a statement already. I charged him with murder. This is warrant. Tendered - admitted and marked S.G.1. During enquiry Cpl. Beckles handed me a phial with a .22 slug D.E.1.

40

CROSS-EXAMINATION - DE LIMA: I did not ascertain No. 1's age at time I charged him. I still don't know his age. I would say he is about 18 or 19 now. When he was brought to me he was under arrest. I did consider he was a suspect then. I did not consider it necessary then to caution him as I did not know him. When I ultimately cautioned him it was in respect of charge preferred.

10

In the High Court of Justice Trinidad and Tobago

Prosecution Evidence

No. 16

Sarston Griffith

Cross-Examination

22nd February 1975

CROSS-EXAMINATION - LAWRENCE declined:

CASE FOR CROWN CLOSED

De Lima wishes to submit no case - Jury sent out.

NO. 17

SUBMISSION

No. 17

Submission

DE LIMA submits:

No. 1 should not be called upon to answer murder. Crown must establish an abettor and to do so there must be evidence -

20

(a) he was present in pursuance of agreement that particular crime, murder, be committed or

(b) he gave assistance and encouragement.

Clarkson and Ors. v. Regina 1971 3 A.E.R. 344. Crown must lead evidence that No. 1 was principal in 2nd degree.

30

Regina v. Johnson 10 W.I.R. 359  
Accused not liable merely because he is present and does nothing to prevent crime.

In the High  
Court of Justice  
Trinidad and  
Tobago

Prosecution  
Evidence

Submission  
(continued)

22nd February  
1975

Regina v. Allen 1963 2 A.E.R. 897  
Only evidence against No. 1 is that he  
rested hand on deceased at one time  
but does nothing thereafter except turn  
around and ask salesman for a cigarette,  
at which stage shot fired.

Submission applicable to both  
offences.

STEWART FOR CROWN:

Not disputing propositions of law 10  
but facts here disclose active steps:

Regina v. Coney 1882 8 Q.B.D. 534  
at 537. Acts done by which Jury can  
infer aider and abettor.

No. 1 present. Voice - raised  
hands and two men on either side of  
two door - van-driver alone inside.

Both Mrs. Khan and her daughter  
say so and not challenged.

Response to that was driver only 20  
able to put up one hand because No.1 was  
holding right hand of driver. He remains  
there while No. 2 enters parlour and  
then when salesman robbed both flee.

COURT:

Evidence acting in concert for  
both crimes. Certainly acting together  
in a holdup which is robbery which  
involves violence in which homicide  
follows and will direct Jury accordingly. 30  
Submission overruled.

Jury recalled.

Both accused called on.

No. 1 Elects to give unsworn  
statement from dock.

NO. 18

STATEMENT OF NO. 1 (FERREIRA)

In the High  
Court of Justice  
Trinidad and  
Tobago

Defence  
Evidence

No. 18

Statement of  
No. 1

22nd February  
1975

10 It is true I was there standing by the  
van. I asked the driver for a cigarette.  
He told me to ask the salesman in the shop.  
I turned and asked the salesman for a  
cigarette. He said, "O.K. pal, I am bringing  
it just now." I heard a shot - when I  
realise what was taking place I got in a  
state of shock and I ran away from the scene.  
I am sorry that is all.

CASE FOR NO. 1 CLOSED.

No. 2 elects to give statement from  
dock.

NO. 19

UNSWORN STATEMENT OF ROBBY GRANSAUL

No. 19

Robby Gransaul

22nd February  
1975

20 I really want to hold up the driver and  
while holding him up and thing he trapped my  
hand in the van pocket and unfortunately a  
shot went off and he got shot. Then after I  
came out from in the van and I took the  
money from the next fellow and ran up the  
road. I don't know the other accused.  
That's all.

LAWRENCE - CASE FOR NO. 2 CLOSED.

Adjourned Monday 24th February 1973:

Both accused and jury present.

Counsel agree that Lawrence will  
address first.

30 LAWRENCE addresses.

DE LIMA addresses.

STEWART addresses.

In the High  
Court of Justice  
Trinidad and  
Tobago

10.45 - Court sums up  
12.04 - Jury retire  
1.43 - Jury return

Both accused present.

Defence Evidence

Verdict

Count 1	-	No. 1	-	Guilty
		No. 2	-	Guilty
Count 2	-	No. 1	-	Guilty
		No. 2	-	Guilty

No. 20

NO. 20

10

Robert Gransaul

STATEMENT OF ROBERT GRANSAUL

13th December  
1973

Name : ROBERT GRANSAUL  
Sex : Male  
Age : 22 years  
Occupation : Unemployed  
Address : No fixed place

Investigating Officer taking Statement :  
No. 5371 Sgt. Villafana.

Others present: No. 7304 Constable  
Callender.

20

Date: 13/12/73  
Time commenced : 8.25 p.m.  
Place: C.I.D. Office, P.O.S.

I Robert Gransaul wish to make a statement. I want someone to write down what I say I have been told that I need not say anything unless I wish to do so but whatever I say may be given in evidence.

Sgd. Robert Gransaul 13th December  
1973

Sgd. Melville Baird, Mag. County  
Caroni, Couva. 14.3.74.

30

Well Sir I had two other brothers one got killed sometime ago in Laventille in Port of Spain and the other one right now in the prison awaiting trial. My parents are dead and they left a house for us

on the Southern Main Road, Warrenville, Cunupia. I was staying in that house and my two brothers used to come and look for me. Sometime in the month of August 1973 a man came to my home and tell me that he just came out from jail he tell me that his name is Jinks and he saw my brother at the prison and Jinks asked me what ah doing to help my brother, I tell him well ah really can't do anything to help him but I will go and see him. Jinks left me and he went away. On Monday 27th August 1973 about 9.00 a.m. I was at home and Jinks came to my home and was talking with me he asked me what going on and I say ah cool he asked me what ah doing to help my brother ah tell him nothing, he asked me if ah ent know of any scene, and ah tell him it have a cigarette van does come up the road and let we go and hold it up. I had with me .22 automatic pistol, other fellars came in the house and start to lime. Around 1.30 p.m. we see the cigarette van and stop by the parlour the boys that was liming with us had already gone. I and Jinks left the house and went to the van, the van had the driver and a next one in front with him, the both of them Indians, ah see a little fellar was passing, I pelt a small stone at the little fellar and play as if I was running behind him and I run to the van, the driver was sitting behind the steering wheel and the other man had gone inside the parlour. Jinks stand up on we bridge watching the fellar that went inside the parlour. I pointed my pistol at the driver and tell him to hand over all the money. He tell me he en't have no money, I start to search up the van. In the van pocket I see ah pistol and ah raff it, the driver kick me hand inside the van pocket and me hand get trap - the both of us start to struggle at the same time ah trying to pull out me hand from inside the van pocket my pistol went off and shoot the driver, the driver let me go, and ah see he bow his head, I then take the pistol from the van pocket an ah went to the other

In the High  
Court of Justice  
Trinidad and  
Tobago

Defence Evidence

No. 20

Statement of  
Robert Gransaul

13th December  
1973

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In the High  
Court of Justice  
Trinidad and  
Tobago

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Defence Evidence

No. 20

Statement of  
Robert Gransaul  
(continued)

13th December  
1973

man in the parlour and ah tell him to hand over the money he had money in his hand and he gave it to me, notes and silver, ah then run towards Jinks and tell him ah shoot the driver and ah feel he dead, I started to run and Jinks run behind me. We run up to Kelly Village, Caroni and Jinks asked me for one of the guns, ah tell him that ah keeping mine and ah giving him the one that ah take from the van on a condition that whenever ah want it I will take it back, ah give it to him and he went away. I went Arouca and later checked the money and see it was \$84.00. From then on ah start to move from Arouca to Port of Spain and never went back to my home at Cunupia. Since then I en't see Jinks but ah hear that the Police hold him.

10

20

Sgd. Robert Gransaul  
13th December, 1973.

I have read the above statement and I have been told that I can correct, alter or add anything I wish. This statement is true. I have made it of my own free will.

Sgd. Robert Gransaul  
13th December 1973

30

End at 9.15 p.m.

This statement was read by Robert Gransaul to me and he told me that no one made any promises to him nor did any one used any force to get this statement

Sgd. S.M. Aziz,  
Justice of the Peace.

13/12/73 - 10.00 p.m.

40

NO. 21

SUMMING-UP

REGINA

vs

WINSTON FERREIRA

&

ROBBY GRANSAUL

FOR

In the High  
Court of Justice  
Trinidad and  
Tobago

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No. 21

Summing up

24th February  
1975

10

1. MURDER
2. ROBBERY WITH AGGRAVATION

SUMMING UP BEFORE THE HON. MR. JUSTICE KESTER  
MCMILLAN AT THE PORT OF SPAIN ASSIZES ON THE  
24TH FEBRUARY, 1975.

20

Mr. Foreman and Members of the Jury, it appears from the evidence in this case, and you may have little doubt about it, that Harold Maharaj was shot on the 27th day of August, 1973 whilst sitting in a van on the Southern Main Road outside the premises of Mrs. Rasheedan Khan, shot in the chest, from which injury, and the opinion of the Doctor who performed the post-mortem, he died.

30

The two accused, Winston Ferreira and Robby Gransaul, were seen by witnesses in the immediate vicinity of that vehicle, and in particular Robby Gransaul was seen to have at least one firearm by one person, and two firearms by others in his possession at the time Maharaj was shot, and consequently they are now charged before you on this indictment in the first count of which alleges murder.

It is also apparent from the evidence, and indeed what Gransaul said to you, and he made a statement from the dock, that about the time the shot was discharged from a .22 firearm which he held in his hand he was in the act of removing from that vehicle another firearm which was

In the High  
Court of Justice  
Trinidad and  
Tobago

No. 21

Summing Up  
(continued)

24th February  
1975

there in the pocket thereof, from the left hand side of the front panel we are told, and immediately thereafter there proceeded into the premises of Mrs. Khan where, in his own words, he proceeded to rob Samlal Raghubair, who was the salesman operating in that vehicle; and consequently, there is a second count alleging that these two persons did rob Samlal Raghubair with aggravation. And so you are also charged to enquire not only into the offence of murder but into the offence of robbery with aggravation.

10

In the discharge of that function, Members of the Jury, you will determine what witnesses you believe to be witnesses of truth, which are not, you will determine what evidence of theirs you believe to be true; you will give such weight as you think fit to the evidence you accept as true, and come to conclusions of fact based on the evidence you accept as true. In the discharge of that function, Members of the Jury, you are, as I am wont to say your complete masters, circumscribed only by the oath you have taken, the evidence you have heard in this case, your own consciences and the dictates of justice. Justice favours no one and requires that you give to each his due; to the Crown or, if you will, the community in which you live, by returning a verdict of guilty if on the evidence you are satisfied that either of them is guilty of an offence, and to them by returning a verdict of not guilty if you are not so satisfied of their guilt.

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30

Now, Members of the Jury, you will appreciate that I have told you that you are confined only by your oath, your consciences, the dictates of justice and the evidence, and let me now specify the evidence, because inevitable in a case such as this where someone is killed, where it is being suggested to you that it has been by an accident, and where indeed the age of the accused - both of them - has been put forward to you that you will probably have feelings of sympathy,

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sympathy for the persons who died, his relatives in particular who remain to bear the agony of his death, and the accused who are now on this most serious of all charges.

In the High  
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Trinidad and  
Tobago

No. 21

Let me tell you first of all, consequences of your verdict are not for you, and you are in duty bound to accept the law as I shall give it in due course.

Summing Up  
(continued)

24th February  
1975

10 Secondly, feelings of sympathy must play no part in your deliberation. You may have them, you cannot as human beings avoid having them; but you must arrive at your verdict in the cold calculated light of the evidence and the facts that you deduce therefrom. And so it is for that reason you are told that you are circumscribed by your oath, so that you will ignore all matters that are irrelevant to the issues and confine yourself  
20 solely to such evidence as is relevant and arrive at a verdict based thereon.

In dealing with the evidence therefore, of the witnesses, you are the persons whose responsibility it is to decide what you make of them and their evidence. I may, in reviewing the evidence make comments about them and their evidence. Remember, however that whilst I am entitled so to do, yours is  
30 the function of determining as I said what you make of them and their evidence, and you are therefore free and feel free to disregard any such comment of mine and come as you ought to your own independent conclusion. You may, however, accept any comments of mine in that regard, but if you do, let it not be because I sit here in the capacity of Judge, for whom it comes to the witnesses and their evidence, and the facts that you deduce from the case, you are the  
40 Judges. So that, if you subscribe to any comment I make about the witnesses and their evidence, let it be because you, after your own independent analysis feel sure in your mind and come to the conclusion that this is the only view which the situation warrants and not because I sit here and make them. When it comes to the law, however, you will take your directions from me and with those directions you are  
50 bound. As I have indicated before, you will

In the High  
Court of Justice  
Trinidad and  
Tobago

No. 21

Summing Up  
(continued)

24th February  
1975

take the law as I give it, apply it to the facts as you in your wisdom find them and see whether or not you are satisfied of the guilt of any of these Accused on the indictment before you.

Now, Members of the Jury, let me at once remind you that every accused person who comes before you charged with an offence is presumed in law to be innocent, a presumption which prevails throughout the length and breadth of every case, and one might say even now, until it is discharged by evidence which satisfies you of his guilt; and the burden of proving guilt is cast fairly and squarely on the shoulders of the Prosecution. The Prosecution alleges and the Prosecution must prove.

10

An accused person is not required to prove his innocence, indeed he could come here and remain perfectly silent, as I told them when I called upon them for a defence, and ask you to say that the Crown's case was not sufficient to convict. Let that serve to emphasize to you the fact that it is the Prosecution that must establish guilt, and to establish guilt or prove guilt, the Crown must lead evidence of such a nature and quality that first of all impresses you that it comes from witnesses who speak the truth and leaves you feeling sure in your minds of the guilt of the accused; no less a standard will suffice. I repeat, that you must be satisfied by evidence which leaves you feeling sure in your minds of the guilt of the accused.

20

30

Now what that means, Members of the Jury, might perhaps best be clarified by putting in perspective the effect of the presumption of innocence that prevails in favour of the accused, and the burden or obligation on the Crown of proving guilt to the extent that you will be sure of it in your mind, and I would put it this way; if after hearing all the evidence in this case that came from the witness stand and the statement of each accused from the dock, you are not satisfied of their

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guilt, you are left with any foundation for doubting the substance of the Crown's case, both on the facts or in any element which goes to constitute any of these offences, then the Crown would have failed to discharge the burden on it of proving guilt, and each accused would be entitled to be acquitted. It would be otherwise of course, if you are satisfied to the extent that you are sure of their guilt by the evidence you have heard in this case.

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What then is the evidence on which the Crown relies? First of all I shall deal with it in this manner. I shall group what I conceive to be the eye-witness account of the evidence, the scientific evidence in which I shall include the Doctor and the police armourer, for his is a science in a sense, and then the rest of the police witnesses, and I shall deal first with Samlal Raghubair, who you will remember told you that on the 27th of August as was his want, he being a salesman operating in a van, went to Mrs. Khan's premises at about 1.30 p.m. The van was driven by Maharaj. The van was parked off the right hand side of the road outside of Mrs. Khan's premises, and he went inside and the driver remained sitting behind the steering wheel. He told you he went in, negotiated his business and received an order from Mrs. Khan, returned to the van, took out the cigarettes, went back in. Meanwhile, Mrs. Khan told you that she had sent her daughter upstairs for money, not having sufficient at her business premises downstairs, and the daughter returned, the money was counted she said, and Raghubair told you as he was in the act of counting his money he heard a shot at which he turned and saw two men whom he does not purport to recognize and whom he said he did not know before, standing one on either side of that vehicle; the one on the left, he said, came running into the cafe or whatever it is; the man had two revolvers which he pointed, and he showed you. You have seen the photograph of that parlour and

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you can imagine the situation of the salesman in front of that counter, Mrs. Khan and her daughter behind it. He turned and there is a man pointing two guns at him, and he demonstrated; and according to him the man said: "Raise your hands", and I shall not necessarily use the epithet that was used in this case, and with that he said he was afraid, and he raised his hands above his head and the man then took one gun in his right hand, placed it with the other in his left, and proceeded to put his hand in Raghubair's pocket and relieved him of his day's sale which he said amounted to approximately \$300.00. The man then went out towards the van and then he and the other man whom you were told remained by the right side of the van then proceeded to run along that main road in the same direction in which the van was facing.

Members of the Jury, he was cross-examined, first of all as to when and where he saw what, and if he heard anything in particular. He was asked by Mr. de Lima, Counsel for the first accused whether he heard anybody saying "Don't leave the parlour." At first he said he did not recall it, then he said he remembered hearing that. And he was asked if he heard anyone asking him for a cigarette before he heard the shot. He said no, and in particular that he did not say "O.K. pal he was bringing it."

He was cross-examined by Mr. Lawrence, Counsel for the second accused, and his answer was in effect that he heard the shot, that he was in the cafe, two women were in the cafe, Mrs. Khan and her daughter, that he turned having heard the shot and he heard someone saying, "Don't leave the parlour" and subsequently he says it was then he turned and he saw the other fellow who had been on the left side of the van leave the left side and shouted, "don't leave the parlour" and he was running into the parlour, he had two guns. "He took the money out of my pocket and then ran." Now, Members of the Jury, you may have little doubt that money was taken from his pocket, and I don't think that there is much to

concern yourself about the cross-examination except as to whether or not anyone did ask him for a cigarette. He said he did not hear that. It is a matter for you whether you believe him or not.

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10           Rasheedan Khan and her daughter  
both took you a step further, and they  
told you that they just heard someone say  
"raise your hand" and they looked out and  
saw two men and both of them identified  
the one on the left as Robby Gransaul,  
the second accused Mrs. Khan said she  
had already handed over the money and that  
the other man was a strange fellow. The  
driver, she said, had his right arm  
resting on the door window, and you have  
seen the picture of the van, it was a  
20           two-door van, one on the left and one on  
the right, and he had his right arm on  
the right door and the strange man she said  
held his arm like this - and she rested  
her right arm on her left forearm and  
demonstrated the manner in which the hand  
was being held, and you will recall Yasmin  
Khan her daughter did a similar thing.  
They were then behind the counter - and  
you heard from Mrs. Khan that she then  
saw Robby Gransaul, the second accused  
30           whom you recall she said was her  
neighbour, shoot the driver, and she was  
asked to demonstrate. She said he  
pointed the gun inside the window and she  
heard the shot, and she then described  
how Gransaul ran into the parlour and  
took the money from the salesman's pocket.

40           She was asked if she could see, she  
said yes she could see, and you may have  
little doubt from what was directed to her  
in cross-examination that she did see,  
and was correct about the person she saw,  
because both accused in turn have told you  
that they were precisely where she said  
she saw the two of them - Gransaul on the  
left door and the other accused said he  
had gone by the right door to ask for the  
cigarette. You can have little doubt  
now that Mrs. Khan and her daughter did in fact

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see. When asked under cross-examination, "could you see inside if there was a struggle or not?", she said, "Well I could not say."

Now Members of the Jury, would you or would you not accept that as an honest answer? You may well think it is. The driver is in the car, if another man is standing up in a position where Ferreira was standing by the drivers right arm and, indeed Raghubair is somewhere in front of her and between her and the car; and Yasmin Khan described an almost identical situation as her mother except that she said she didn't see him with the two guns but she saw him with a gun afterwards or with two guns. She said she did not see any fighting, there was none, no one was by any door, nothing went on out there and it is a matter for you whether you believe her or not.

Now, Members of the Jury, both of them were cross-examined about whether police had gone next door and about people, or whether some relation of this accused was killed by police and was a guerilla, and all sorts of matters which, Members of the Jury, bears little relation to the case. But you may have little doubt that it was being thrown into this case, not only as a red herring across the trail, but as eye-wash. Whether Robby's brother was shot by the police - you have no evidence about it - or whether he was a guerrilla is unimportant, and has no bearing on this case, and that Mrs. Khan and her daughter might have been afraid because the police went next door is totally irrelevant because of what Gransaul himself has told you, and so I will ignore that. Indeed, I will just refer to that part of Yasmin Khan's evidence in cross-examination when she was asked whether she had not said to the Magistrate that the other person whom she purported to identify as the first accused did not come to the van face the shop and ask for a cigarette. She said at first no,

then she said "I now remember, after he had put his arm on the forearm of the driver, he then turned, asked the salesman who was in the parlour for a cigarette and the salesman said, "O.K. Pal, I am bringing it," and it was at that stage the firearm was discharged and Robby rushed into the parlour.

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10 Now Members of the Jury, that is what she said, and I can only tell you that is what she said. You have only her Mother's evidence. The mother said she heard no such thing and according to her what happened was that she heard this car and, looked up, saw the person who now you can have no doubt in your mind must be Winston Ferreira placing his hand on the driver's arm and No. 2 accused was through the window as it were with two firearms and  
20 the shot went off. And all of these witnesses have told you that subsequently Gransaul ran out from the parlour towards the vehicle and then he and the other man - whom I think you have no doubt now is the No. 1 accused - who ran off. It is a matter for you what you make of Mrs. Khan and her daughter.

30 Members of the Jury, you heard the police were called in and they thereafter proceeded to make inquiries; but before I deal with the evidence of the police, among the witnesses they interviewed presumably was Saffiram Mohammed and Hollister Lewis, and Hollister Lewis told you that he lived on the same building as Robby Gransaul though in a different room - he was indeed Gransaul's tenant - and on that day at about 9.30  
40 in the morning he said someone whom he subsequently identified as Ferreira passed, he was wearing a mauve shirt and a dark coloured pair of pants and went into Gransaul's room, where Gransaul was. They remained inside for a while, they came out to the gallery in front of his room and he described that. He said Robby Gransaul asked him for a cigarette, he gave him two. He said each accused had one, they remained in

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the gallery for a while and then they went into the road walking in the Chaguanas direction, that is past Mrs. Khan's premises which you hear is right next door, and they both returned some time after and sat in the gallery. About half an hour later he said, about midday, he left the premises and went out and both of those accused were still on those premises and later he heard something, he came back, saw a lot of police and subsequently on the 30th identified Winston Ferreira as the man whom he had seen with Gransaul that day.

10

He was not cross-examined, Members of the Jury, and one of the effects of not cross-examining an accused, unless perhaps there is something to suggest that his evidence is not being accepted and in this case you may well believe as I did that there is none, is that that evidence of Hollister Lewis is accepted; and the same would apply to Saffiram Mohammed who said that she had seen Robby Gransaul with another man on the premises and that shortly after the two of them left which was about 1.30 or thereabout, she heard a shot and she came out to the road and she saw Robby Gransaul and the man running down the road, the fellow had on a lilac shirt - which you know is perhaps a shade of mauve - and a dark coloured pants and they were running towards Caroni.

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30

Now she did not purport to identify that person, but if you believe also that the man had on a lilac shirt and dark pants, it is evidence on which you could come to the same conclusion that the man she saw with Gransaul is the same person Lewis purports to identify as Winston Ferreira.

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Now Members of the Jury, I go to the evidence of the police, and you have the evidence of Inspector Sarston Griffith who told you that in consequence of a report made at the Station at about 2 o'clock he went on the scene and saw the body of

an indian man slumped over the wheel of this van TR 549, or slumped in front the steering wheel, and he described how he was clad in a shirt jac. He noticed a small hole in the shirt near the left breast, he opened it and saw a small wound near the left breast. The District Medical Officer of the District was summoned and the body was removed to the Mortuary of the Port of Spain General Hospital where a post-mortem was performed by Dr. David Edwards around 12.30 on the 28th. Dr. Edwards told you in his view, death occurred some twenty to thirty hours prior to his examination, the body was identified as that of Harold Maharaj by one Lutchman Maharaj, that he found a circular bullet entrance wound about two sixteenths of an inch in diameter situated over the left front chest, and one inch below the anterior axillary fold, and he indicated the front of his chest, on his left side, and not on the side of the chest. It showed an abrasion colour. There was no singeing or blackening of the area immediately around the wound, but he did describe that there was blackening of the shirt and of the vest the deceased wore.

He said the wound was directed horizontally and downwards 12" deep having gone through the left first intercostal space, through the left lung, the heart, the right lung, and there, lodged under the muscles of the right side of the back of the chest, was a bullet. The exact position was given; he said it penetrated into the third right intercostal space at the back. And, Members of the Jury, you have some idea of the human frame - he indicated with his hands as best he could, the ribs, first, second, third, fourth and fifth and so on and the spaces between the first and second ribs there is a space and between the second and third and fourth would be another space, and you may bear in mind that this person was five feet seven inches. You may have some distance - the vertical distance between the first space and the third

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space and so you might understand the Doctor when he says the wound was directed horizontally and downwards traversing internally from the left front to the right back. He says the other organs were normal. Death in his opinion was caused by shock and haemorrhage due to rents in the heart and lung as a result of a firearm injury or bullet. The bullet he extracted was handed to the police, the police passed it to the Armourer, the Armourer has told you it was a .22 bullet a bullet which was spent.

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In the Doctor's opinion, when he was cross-examined, the assailant faced the front of the deceased at the time the firearm was discharged. Members of the Jury, he said that was assuming the man was right handed and used his right hand to discharge the firearm.

20

Members of the Jury, one of the things you will have to determine is whether, if the bullet entered the rent of the chest on the left side and went horizontally and downwards across the body and came out or was lodged in the right back, whether it was not travelling as it were diagonally across the body or not, and whether the bullet would have been discharged from in front of him, as in the Doctor's opinion, or from the side.

30

Now the evidence in this case that you have - and you have no evidence to the contrary - is that Maharaj was sitting behind the steering wheel and Gransaul was on the left door when that firearm was discharged, and whilst you cannot discard the Doctor's evidence in so far as it is based on pure medical science, and so far as his code of ethics is concerned, you are entitled to say to yourself, well that is the Doctor's opinion as to the course of the bullet, but you are entitled to use the evidence you have and which he did not, and to come to your own conclusions as to why that bullet traversed, what you may conceive to be,

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diagonally and downward through the man's body.

His final opinion was that the blackening of the shirt and breast indicated that the firearm was discharged at close range within two feet.

10 Well, you may have some idea of a motor vehicle, a van and some body at or near the window either just inside or with his hand on or just outside, discharging a firearm with a man sitting at the driver's seat, that is on the opposite side of the seat, and you may decide whether or not that is about two feet or just under two feet, if he has his hand with the gun slightly inside the door way. And bear in mind when I say this that the accused Gransaul himself said this, when he stretched what would be his hand inside  
20 that van to pick up a revolver that he had seen in there - and you may ask yourself whether or not when Mrs. Khan said she saw Gransaul with two firearms and then heard a shot, whether or not that shot was discharged when that man's hand was wedged in the pocket or whether it was that he had two firearms in his hand.

30 Now, Members of the Jury, I will leave the Doctor's evidence. It established that the deceased met his death as a result of a gun shot, and of that I am sure, on the facts in this case, the evidence you will have little doubt. The next thing is the police having been on the scene. Inspector Griffith makes enquiries, he told you what he saw, where he saw Harold Maharaj behind that steering wheel and he as it were was handed a  
40 post-mortem report and he then went and obtained a warrant for the arrest of Gransaul who, you know, was known by Mrs. Khan and her daughter, and he says on the 28th he went in the Laventille area in search of Winston Ferreira, the No. 1 accused. He did not find him. He spoke

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with the Besson Street police, gave certain instructions. On the night of the 29th you heard that the police as it were came upon some young men in Laventille, and so Gransaul was apprehended, he subsequently gave a statement; with that I will deal shortly.

Inspector Griffith went on to say that Ferreira was brought to him at Chaguanas on the 29th and after speaking to him and telling him of the death of Maharaj and of the shooting incident at Cunupia outside Mrs. Khan's premises, the accused Ferreira told him he did not know what he was talking about, that he Ferreira was at Fiarco that day and washed his brother-in-law's car and for this he was paid a dollar, and he was asked if he had spoken to his brother-in-law, he promptly alleged to have said no, he did not, but his brother-in-law sent a dollar by somebody else.

10

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Well, Members of the Jury, if that was said to the police, you may have little doubt that it was not the truth, for Ferreira now comes here and says to you in this Court that he was there outside Mrs. Khan's premises at the time. He subsequently was put on an identification parade and identified by Hollister Lewis as being the man who was with Robby Gransaul early that morning, by Yasmin Khan as the man who went to the driver's door and put his hand on the driver's arm when Gransaul was on the other side and had given the command, "raise your hand," according to Mrs. Khan because she recognised his voice

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Now Members of the Jury, I don't wish to go into any detail further in the police evidence, you heard the accused Gransaul when he was cautioned and gave a statement - that was in December that he was arrested and he gave a statement, and I'll refer to that:

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"Well Sir, I had two brothers,  
one got killed sometime ago in  
Laventille and the other one  
right now in the Prison

50

waiting trial." His parents were dead, he came from Canupia. He was staying in the house with his two brothers and sometime in the month of August a man come to his home and told him that his name is "Jinx," asked him what he was doing to help his brother and he said he didn't know, he can't do anything. He went away, he came back on the 27th of August about 9 o'clock and they spoke, again Jinx asked him what he was going to do, he said 'play it cool', he told him about the cigarette van that comes up the road and he said, 'Let we go and hold it up.' He said he had a .22 automatic pistol. He said there were two other fellows with him in the house but they had already gone. "At about 1.30 we see the cigarette van stopped by the parlour," he and Jinx left the house and the van driver had a next one in front with him, both indians. He said a little boy was passing, he throw a stone to distract the person and after that the little boy went. The driver was sitting behind the steering wheel and the other man had gone inside the parlour.

This is precisely what we understand is the Crown's case so far.

"Jinx stood up by the bridge watching the fellow and then went inside the parlour. I pointed my pistol at the driver and told him to hand over all the money. He tell me he don't have no money, I start to search up the van and in the pocket I see a pistol and I raff it. The driver kicked me hand inside the van pocket and me hand got trapped, both of us start to struggle and the same time trying to pull out my hand from inside the van pocket my pistol went off and shoot the driver, the driver let go and I see

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he bow his head, I then took pistol from the van", and then he described how he went into the parlour and extracted the money from Raghubair's pocket, then he ran away towards Caroni, and then he described about Jinx asking him for the gun and what he tell him and that he checked the money, it was \$84.00.

10

Now Members of the Jury, I have gone into his statement in some detail. You may think it is unnecessary having regard to what he said here, this accused, when he gave his statement from the dock, because you were being told among other things by him, that there was an accidental shooting, and (ii) when he made his statement he said, almost you may think as an afterthought, at the end of his statement, "I don't know the other accused," and the reason for referring to this statement is this: it describes a man going to him at about 9.30, it describes a man going out with him at about 1.30 p.m. and you have evidence of Hollister Lewis and Saffiram Mohammed of a similar incident, and both of them told you a man was dressed in a lilac shirt, one said a mauve shirt and dark pants and the other said lilac, and Hollister Lewis said that the other man was Winston Ferreira.

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30

Do you believe Gransaul: "I do not know the other accused?" Do you have any doubt in your mind that if anyone went to Gransaul that day it is Winston Ferreira, and if that is so, there is absolutely not one word of truth when he says to you in the dock now of accused No. 1 "I do not know him", and if that is so, what else of his do you believe? That is the significance of referring to this statement because there is nothing in that statement that can be used as evidence against Winston Ferreira, and it would be most improper for you to assume that anything in it is evidence against him.

40

Inevitably you might come to the conclusion that if he was the man there then he is Jinx, but the fact that it says first of all that he said to Jinx, "let me go and hold it up", that it is no evidence against Ferreira and it would be improper for you to use it as such.

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10 I repeat, I drew your attention to that statement only because you have to determine how much of what Gransaul told you from the dock you would accept as true or whether you reject it, and it would seem to me that using that statement in so far as it concerns Gransaul and Gransaul alone, you can have no doubt that when Gransaul says "I don't know Ferreira" that that is far removed from the truth, if you accept Hollister Lewis and Saffiram Mohammed - and I remind you that they were  
20 not cross-examined at all. Now Members of the Jury, it is on that evidence at this stage that the Crown asks you to say that both accused are guilty of murder and both are guilty of robbery with aggravation.

30 First of all, the Crown is asking you to say there was a joint enterprise, because in point of fact one party is supposed to have shot - let me use that term however in its neutral sense - one man carried a firearm from which the missile is supposed to have been ejected, and you may have little doubt in this case that it came from the firearm carried by Gransaul for the single reason that Raghubair says that the gun he had in his vehicle was a .38 automatic and the missile found in the body of the deceased was a .22, so there can be no mistake about it, the firearm that went off is a .22 automatic and the  
40 only person we know had a .22 automatic was Gransaul, he told you so, and he is the only person who went into the parlour and robbed Raghubair, to use his own words. So the case for the Crown is premised on an acting together, and you will have to find that this was so to convict the second accused. But before we get to that, let me deal with the count of murder.

50 First, murder as you know occurs where

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a person of sound memory and discretion unlawfully killeth any reasonable creature in being and under the Queen's peace with malice afore-thought express or implied the death following within a year and a day.

Now, Members of the Jury, for the purposes of this case I shall rid you of the legal jargon and tell you simply this; that if a sane man takes a firearm and deliberately shoots another person, killing him, he is guilty of murder and in particular, in this case, if you believe Gransaul and are satisfied that Gransaul went there, attempted at that stage to steal in circumstances which amounted to robbery, because he used a firearm, loaded firearm, and you have evidence that these words "raise your hands"; were used and you remember Mrs. Khan saying of the driver, "Well he could only raise one hand, the other hand was being held by the other man", and if you believe he deliberately shot Maharaj, that would amount to murder. For the law is very clear that murder is committed where one person who is sane kills another human being with the intention of killing him, an intention which is either expressed or implied; and where a man takes a loaded firearm, tells a man raise your hands and fires it in the course of stealing another firearm, (shoots him) then you can imply that he had the intention to kill.

But more than that, Members of the Jury, a person who uses violent measures in the commission of a felony involving personal violence, and robbery is a felony involving violence and the use of a firearm in those circumstances is a violent measure, does so at his own risk and is guilty of murder if those violent measures result even inadvertently in the death of a victim. So that when Gransaul tells you when he took up the firearm which was

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10 in the pocket of the van and the driver  
locked his hand or trapped his hand in  
the pocket, the gun accidentally went  
off, even if you were tempted to believe  
that, and I have grave doubts as to  
whether in the light of the evidence of  
Mrs. Khan or her daughter that at the  
time had two guns in his hand pointing  
inside the van, I doubt very much if you  
will have believed him when he says his  
hand was trapped in the pocket and it  
went off, and even if you were tempted  
to believe that, the fact that his gun  
accidentally went off when Maharaj the  
driver was, in Gransaul's own words,  
"attempting to rescue it", or even if  
his hand accidentally stuck in the pocket  
because he was not looking carefully and  
the gun may have lodged itself as he tried  
20 to pull it out, whatever the reason, the  
mere fact that he was using a loaded  
firearm in committing what was then robbery  
and death inadvertently ensued because the  
gun went off, the result is murder, and  
that is what he told you he did when he  
made his statement from the dock. And in  
this case, Members of the Jury, however  
odd you may think the law is, the only  
verdict you can return in this case in  
30 respect of Gransaul is guilty of murder.

He told you he then went in and  
robbed, and in the circumstances he  
described he had two guns with him at  
that stage and he robbed Raghubair and then  
he said it was \$84.00 and Radhubair says  
about \$300.00. If you believe he took  
money from Raghubair with a gun in his hand  
in the circumstances which he himself  
described, he also committed robbery, which  
40 is nothing more than the felonious taking  
of money or goods of any value from the  
person of another or in his presence by  
violence or against his will by putting in  
fear, and in this case you heard Mr.  
Raghubair's hands were in the air because  
there was one gun at that stage pointed at  
him, and you can have little doubt that  
robbery with aggravation was in fact  
committed as a firearm was used. On the  
50 law, murder was committed from the lips  
of the accused and robbery with aggravation  
was committed from his lips. The question

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would be how does Mr. Winston Ferreira  
fit into this?

Well, Members of the Jury, the Crown invites you to say he was a party to it, not because of anything in that statement, but because on the evidence he was there with Gransaul in the day in Gransaul's house, that they went out together, they came back, they went out again, and at the time of this incident Gransaul is on the left side of that vehicle Winston Ferreira is on the right hand side, they are both there on the evidence, Gransaul at the left door window and Ferreira at the right door window. There is a command, Mrs. Khan says, and so does her daughter, "raise your hands!" in not such polite language, and the driver, according to Mrs. Khan, raises only his left hand. Why? Because at that stage Winston Ferreira puts his hand on the driver's right arm which was on the window and then she saw Gransaul pointing the two guns and then she heard the shot. That is what the daughter says at first, also, and subsequently that the accused Ferreira turned around and called to the salesman Raghubair in the shop for some cigarettes which Raghubair said he did not hear. It is a matter for you, but Raghubair at that stage is concerned with checking the money and you may well think that if that man is concerned with checking money for cigarettes that he had sold he is not really paying too much attention outside. Indeed, he said, when he heard a shot he turned around.

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Now, it is a matter for you if you believe he is being honest about this or not. He didn't speak then of seeing anybody putting his hand on the driver's arm, but the daughter says like her mother, there was the command which the mother says came from Gransaul, there was Ferreira, on the evidence, with his hand on the right arm of the driver. Did he hold his arm or not? If there was that command, Members of the Jury, do you believe if people inside the parlour are hearing it that Mr. Winston Ferreira

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is going to stand up there and hold the driver's arm and ask him for cigarettes, which is what he told you he was doing? Or whether he would take off in a fright? Of course you may say yes, he is a friend of the accused but he did not agree or go and take part. If that is how you feel about it, fine. Clearly there is evidence that he knew the accused. He was with him, he went there. He did come here and tell you, "O.K., "I was with the accused," what he says in effect was "it is true, I was there standing by the van, I asked the driver," and he leaves you completely in the dark about that.

In the High  
Court of Justice  
Trinidad and  
Tobago

No. 21

Summing Up  
(continued)

24th February  
1975

This is the man whom you were reminded by Counsel for the Crown told the police he was not there at all. Counsel for the Crown says now that he has been identified as being there he comes and he says "I was there standing by the van. I asked the driver for a cigarette, he told me to ask the salesman in the shop, I turned and I asked the salesman for a cigarette, he said, O.K. pal, I am bringing it just now; immediately I heard a shot. When I realised what was taking place, I got in a state of shock and I ran away from the scene." On the evidence for the Crown, when does he run? After Gransaul has effected what we might call the second robbery, extracting money from Raghubair's pocket. That is the only evidence you have and it has not been suggested otherwise. The Prosecution's evidence is Gransaul having done his business in the van goes around into the parlour, says raise your hand, and this man does not move until Gransaul literally rejoins him by the parlour and the both ran down the road.

Now, Members of the Jury, if this is what you believe happened, and that he was an innocent man standing up there just asking casually for a cigarette, even though he knew his friend was going to stage a hold up, then acquit him. If you have any

In the High  
Court of Justice  
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No. 21

Summing Up  
(continued)

24th February  
1975

doubt about that you will have to acquit him, because you must be satisfied that is not so. So it is only if you reject the innocence of his presence there as it were, if you reject that, as being false, you will go back and determine what you make of the evidence, what you make of his being there; what you make of his putting his hand on the driver's arm; was it for the purpose of restraining him from moving across to the left side to rescue the firearm or whatever Gransaul may have raided from the pocket of the van, and even if you believe thereafter he may have turned around, remember the evidence was that two guns were in Gransaul's hands when a shot was heard.

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Indeed, Miss Khan said she saw him with two guns pointing in the window. If the accused had turned around after having rested his hand on the Driver's arm so that his back is now to Gransaul, he may not know what Gransaul may be doing behind. Are you satisfied? The Crown suggests to you that it was in the course of the crime of robbery which you must deduce from the circumstances, that is having been satisfied that Gransaul has got the gun from the van, he now turns around to attract the other fellow's attention to put him off the scene, as it were.

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Well Members of the Jury, it is a matter for you. You cannot convict Ferreira unless you believe they went out there to effect a robbery, and a robbery with a firearm. Members of the Jury, that means rejecting his innocent presence there. But rejecting his innocent presence does not mean automatic guilt. You will have to re-examine the case for the Crown and see whether you are satisfied on the totality of the evidence that you will deduce from the circumstances that he knew Gransaul was going to rob, that he went there with him intending to assist and did in fact assist by, at any rate, holding down the driver's arm or going there with the purpose of making him look to the right

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while Gransaul rifles the left pocket.

Now, if that is what you believe on the evidence to be the case, that the accused Ferreira knew Gransaul was going to rob and he went there to assist him knowing that, then the law is: where several persons are engaged in a common design and another is killed, whether intentionally or unintentionally by the act of the one done in prosecution of a common design, the others are guilty of murder if the common design was to commit a felony involving violence. And as I have told you, robbery is a felony of violence. And if that was the common design between them, and if that is what you are satisfied about, then not only is Gransaul guilty of murder, but Ferreira is guilty of murder as well, and also guilty of robbery with aggravation. If you are not satisfied that there was a common plan, then he is not guilty of anything at all.

MR. DE LIMA: would my Lord tell the Jury that the statement of Gransaul from the dock is no evidence against Ferreira?

Mr. Foreman, Members of the Jury, Counsel for the accused is right as he told you earlier and perhaps I did not stress it, I stressed the statement to the police. But now the unsworn statement of Gransaul from the dock is no evidence against Ferreira. I was concerned to point out when I was dealing with Gransaul's statement to the police in so far as it concerns Gransaul, for the purpose of the case against Gransaul and, likewise, the statement of Gransaul from the dock which in fact repeated what he had told you in his statement to the police, except that he did not mention Jinx, is not any evidence against Ferreira, and the object of Counsel in asking me to draw it to your attention in no uncertain terms is because I did make an observation about the accused Gransaul in his statement from the dock saying that he did not know Winston Ferreira. I did it for the purpose of asking you to determine in the light of his statement to the police, and the evidence of the woman Saffiram Mohammed, or whatever her name was, you can have no doubt in so far as Gransaul is concerned that the person with him was

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No. 21

Summing Up  
(continued)

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In the High  
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No. 21

Summing Up  
(continued)

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1975

Ferreira, and in so far as she and Lewis also are concerned, that Ferreira was the man they saw with Gransaul that day. In the light of that, I asked you, do you believe Gransaul when he says from the dock, "I don't know Ferreira?" But the fact that he said he doesn't know Ferreira makes it appear to be an arrant untruth. It is a matter for you. That must not be transported to Mr. Ferreira. The only evidence against him is first of all, he was seen there in the manner in which the witnesses for the Crown described, against the manner in which he said he was; the evidence of Inspector Griffith that when he first saw him on the 29th August and told him about this report of murder and so on, the accused Ferreira said "I was at Piarco washing my brother-in-law's car." (That would be an alibi if he was there) and then when he was asked in effect, could you support it? did your brother-in-law see you? The reply was: "My brother-in-law didn't see me, he send the money by some other man whom I don't know." In other words, don't ask me to find him; that is if you believe that was said. And the purpose of introducing that evidence is to show the accused Ferreira made one statement on another occasion and then comes here and tells you something else, and what you are being asked by State Counsel, is that in those circumstances you ought not to believe Ferreira. It is a matter for you, but you will not take anything in the statement of Gransaul, and in anything from Gransaul's statement from the dock in which to pin guilt on Ferreira. It must be brought home by the other evidence alone and that can only be done if you reject what Ferreira says in effect: "I was an innocent person there, even though you may believe that I knew Gransaul and I was at his house before."

Even though you must be satisfied in your minds that he was present, Members of the Jury, you have got to be satisfied that he was not an innocent bystander, as it were, a man who had just gone there to ask for cigarettes. The

10 Crown says to you that that is not the reason. It is a matter for you, Members of the Jury, what you believe. I don't wish to discuss it again. I repeat, you cannot convict him unless you reject that defence - that his presence there was innocent. If you do, you have evidence from which you may, you need not make the inference that he was there acting in concert with the other accused. Whether you do or not is a matter for you entirely, but if you do, having regard to the law, they are both equally guilty of murder and of robbery with aggravation, and the consequence of that verdict are not for you.

Mr. De Lima, Mr. Lawrence, Mr. Stewart - is there anything else? (No.)

20 Then, Mr. Foreman and Members of the Jury, will you now please consider your verdict.

In the High Court of Justice  
Trinidad and Tobago

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No. 21

Summing Up  
(continued)

24th February  
1975

NO. 22

VERDICT AND SENTENCE

No. 1 Accused

1st Count: Guilty  
2nd Count: Guilty

No. 2 Accused

1st Count: Guilty  
2nd Count: Guilty

No. 22

Verdict and Sentence

24th February  
1975

PRISONERS CALLED UPON.

30 HIS LORDSHIP: Mr. Stewart is anything known against either accused?

MR. STEWART: M'Lord, only one conviction recorded against Gransaul. 6th November 1968 - Larceny from the person - sentenced to 4 years at the Youth Training Centre, Port of Spain Magistrates Court.

HIS LORDSHIP: Is that so?

PRISONER: Yes, Sir.

In the High  
Court of Justice  
Trinidad and  
Tobago

No. 22

Verdict and  
Sentence  
(continued)

24th February  
1975

HIS LORDSHIP: Ferreira and Gransaul, you have both been found guilty by the Jury. As I told them, that you Gransaul, and the law as it stands, committed from your own lips are guilty of not only Robbery with Aggravation, but Murder.

You Ferreira, the Jury have found you guilty, and as far as I am concerned, on the law that is a correct verdict, but bear in mind the matter which was under consideration of the Jury, I have no doubt that you were the Jinx in this whole case and had it not been for you, Gransaul may well not have been in the dock on this occasion. So that in my condemnation of Gransaul for the Act perpetrated, I think it either no less equally and perhaps even more forcibly in your case. But the only person in Gransaul's statement who, for the purpose of sentence, I know somebody had come and so instigated him to do something to release his brother, I have no doubt that instigator was you. You perhaps now are sorry for what was done, but the law is of such I need only admit that as in so far as the second count is concerned, since I may not within the consecutive months sentence you since I do not know what might happen elsewhere, let me say now that in terms of the second count you are each sentenced to 15 years hard labour. I have now however, to pass sentence on you in respect to the first count, and now I shall pass that sentence which the law prescribes that I must.

NO. 2 ACCUSED: Sir, in this sentence I beg you to take into consideration the circumstances which led me to commit the crime, I hope that you.....

HIS LORDSHIP: That in no way would alter the sentence I would pass on the second count. As I said once before, I repeat now, since you refer

to the circumstances that have motivated you into committing what is said to be committed from your own lips...there is an attitude prevailing at the moment where people wish to do their own thing regardless of the consequences of the law. The Court must frown upon it, and in frowning upon it say that it is the duty of the people not to take the law into their own hands, but to conform thereof until it is altered. The sentence of 15 years will stand.

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THE SENTENCE OF DEATH WAS PASSED ON EACH ACCUSED.

In the High Court of Justice Trinidad and Tobago

No. 22

Verdict and Sentence (continued)

24th February 1975

NO. 23

JUDGMENT

TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

Crim. App.  
Nos. 13 & 15 of 1975

ROBBY GRANSAUL  
And  
WINSTON FERREIRA

20

V.

R E G I N A

Coram: Sir Isaac E. Hyatali, C.J.  
C.E. Phillips, J.A.  
M.A. Corbin, J.A.

July 25, 1975

A. Lawrence - for the first appellant.  
Mrs. L. Francis and  
Mr. V. de Lima - for the second appellant.  
A. Warner, Q.C. and  
E. Prescott - for the respondent

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JUDGMENT

In the Court of Appeal of Trinidad and Tobago

No. 23

Judgment

25th July 1975

In the Court of  
Appeal of  
Trinidad and  
Tobago

No. 23

Judgment (continued)

25th July 1975

Delivered by Sir Isaac E. Hyatali, C.J.:

Bobby Gransaul and Winston Ferreira were convicted at the Port of Spain Assizes on 24 February 1975 of the murder of Harold Maharaj and of robbery with aggravation. Their appeals to this Court however were pursued only against their convictions for murder and not against their convictions for robbery with aggravation. The case for the Crown against Gransaul was that he deliberately shot and killed the deceased in the course of executing a plan to rob 'a cigarette van' of which the deceased was the driver; and against Ferreira that he was present, at the scene and actively assisted Gransaul in executing that plan.

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In a statement made to the police and admitted in evidence without objection at his trial, Gransaul confessed that he went to the van, pointed a .22 automatic pistol at the deceased as he sat in the driver's seat and commanded him to hand over all the money he had. The deceased said he had none, whereupon Gransaul began to search the van. In the pocket of the van he discovered a pistol (which turned out to be a .38 revolver) and as he seized it, the deceased 'kicked' and trapped Gransaul's hand inside the pocket of the van. A struggle ensued between them and as Gransaul fought to wrest his hand from the pocket of the van his automatic pistol went off and shot the deceased. At his trial he did not give evidence on oath but made a statement from the dock confirming that he really went to 'hold up' the deceased. While doing so the deceased trapped his hand in the pocket of the van and unfortunately a shot went off and caught the deceased.

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The witnesses for the Crown did not in their evidence on oath support the contention of Gransaul that his automatic pistol went off accidentally or unintentionally as he struggled to retrieve his trapped hand from the pocket of the van. On the contrary, it was the positive evidence of Yasmin Khan that she saw Gransaul with two revolvers in his hand pointing inside the van before the

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deceased was shot. That evidence, if believed, negated Gransaul's story about a struggle over the .38 revolver after his hand was trapped in the pocket of the van.

In the Court  
of Appeal of  
Trinidad and  
Tobago

No. 23

Judgment  
(continued)

25th July 1975

10           However that may be, it was the principal contention of Mr. Lawrence for the appellant Gransaul, that the learned judge was wrong in law in omitting to direct the jury that a verdict of man-

20           slaughter was open to them if they believed that Gransaul's gun went off accidentally and unintentionally in the course of the struggle which he described both in his confession and in his unsworn statement from the dock. It was a remarkable submission and pursued with much tenacity but it is sufficient to say that it was completely devoid of substance. It is

30           clearly the law of this country which this Court has enunciated and confirmed repeatedly (and by which the learned judge guided himself in directing the jury) that a person who uses violent measures in the commission of a felony involving personal violence does so at his own risk and is guilty of murder if these measures result even inadvertently in the death of his victim; and that for this purpose, the use of a loaded firearm in order to frighten the victim into submission is a violent measure. It is only necessary to refer in this connexion to R. v. Ramserran (1974) 17 W.I.R. 41. The

40           conduct and activities of Gransaul on his own admission fell squarely within those principles of law and the submission made to the contrary must accordingly be rejected.

40           On behalf of Ferreira the complaint was that he was wrongly deprived of his right to have the issue of manslaughter left to the jury. The evidence for the Crown implicating him in the commission of the crime of murder was to the effect that he held the arm of the deceased which was

In the Court  
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No. 23

Judgment  
(continued)

25th July 1975

resting on the window of the right door of the van when the shot which killed the deceased was fired. In his unsworn and untested statement from the dock which, it may be observed, was inconsistent with the alibi he sought to set up when he was first interviewed by the police, he admitted he was at the scene of the crime but was not a party to what Gransaul did or was attempting to do. His statement was to this effect -

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"It is true I was standing by the van. I asked the driver for a cigarette. He told me to ask the salesman in the shop. I hurried and asked the salesman for a cigarette. He said 'O.K. pal. I am bringing it just now.' I heard a shot - when I realise what was taking place I got in a state of shock and I ran away from the scene. I am sorry that is all."

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What Ferreira was clearly setting up was that he was an innocent bystander when the shooting took place and that he was therefore not particeps criminis in the crime of murder for which he was convicted. The learned judge directed the jury on this issue in terms which were not challenged or criticized; and quite rightly, in our view, because he directed the jury correctly and clearly that to convict Ferreira they must be satisfied (1) that he was not an innocent bystander and (2) that the evidence for the Crown satisfied them that he assisted Gransaul in the execution of his plan to rob.

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Counsel conceded that Ferreira's unsworn statement from the dock raised no issue as to his intent in relation to the crime of murder but he submitted that on the evidence for the Crown it was

possible to say that Ferreira was a party to the use by Gransaul of his pistol to threaten but not to shoot the deceased for the purpose of effecting the robbery in question. On the footing that it was possible to say so counsel argued that the issue of manslaughter should have been left to the jury. In support of that proposition he quoted the case of R. v. Larkin (1943) 1 All E.R. 217 and a passage from Smith & Hogan, Criminal Law, 3rd Edn. 103.

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No. 23

Judgment  
(continued)

25th July 1975

In our opinion however no such issue was raised by or arose on the evidence of the Crown. The evidence in support of the case for the Crown was that at the time when Gransaul shot the deceased from the left window of the van, Ferreira was holding the arm of the deceased while it was resting on the right window of the van. One would have to resort to sheer speculation to hold that it is possible on that evidence to say that Ferreira was a party to the use of the pistol by Gransaul to threaten and not to shoot.

Another criticism advanced was that the learned judge in dealing with common design omitted to direct the jury on the questions whether Ferreira knew that Gransaul had a gun and whether Ferreira was a party to the use of it to effect the robbery. It is a sufficient answer to this criticism in our view to quote the relevant directions of the learned judge which are as follows:

"You cannot convict Ferreira unless you believe they went out there to effect a robbery, and a robbery with a firearm. Members of the Jury, that means rejecting his innocent presence there. But rejecting his innocent presence does not mean automatic guilt. You will have to re-examine the case for the Crown and see whether you are satisfied on the totality of the evidence that you will deduce from the circumstances that he

In the Court  
of Appeal of  
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No. 23

Judgment  
(continued)

25th July 1975

knew Gransaul was going to rob, that he went there with him intending to assist and did in fact assist by, at any rate, holding down the driver's arm or going there with the purpose of making him look to the right while Gransaul rifles the left pocket.

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Now, if that is what you believe on the evidence to be the case, that the accused Ferreira knew Gransaul was going to rob and he went there to assist him knowing that, then the law is; where several persons are engaged in a common design and another is killed, whether intentionally or unintentionally by the act of the one done in prosecution of a common design, the others are guilty of murder if the common design was to commit a felony involving violence. And as I have told you, robbery is a felony of violence. And if that was the common design between them, and if that is what you are satisfied about, then not only is Gransaul guilty of murder, but Ferreira is guilty of murder as well."

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For these reasons we do not agree that the learned judge erred in not leaving manslaughter to the jury. The appeals of both Gransaul and Ferreira are accordingly dismissed.

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Isaac E. Hyatali  
Chief Justice

C.E. Phillips  
Justice of Appeal

M.A. Corbin  
Justice of Appeal

NO. 24ORDER GRANTING SPECIAL  
LEAVE TO APPEAL IN FORMA  
PAUPERIS

AT THE COUNCIL CHAMBER WHITEHALL

The 21st day of March 1978

BY THE RIGHT HONOURABLE THE LORDS OF THE  
JUDICIAL COMMITTEE OF THE PRIVY COUNCILIn the Privy  
Council

No. 24

Order granting  
Special Leave  
to Appeal in  
forma pauperis  
to the Judicial  
Committee of  
the Privy  
Council

10           Whereas by virtue of the Trinidad and  
Tobago Appeals to Judicial Committee Order  
1976 there was referred unto this Committee  
the humble Petitioners of (1) Bobby  
Gransaul and (2) Winston Ferreira in the  
matter of Appeals from the Court of Appeal  
of Trinidad and Tobago between the  
Petitioners and Her Majesty the Queen  
Respondent setting forth that the Petitioners  
pray for special leave to appeal in forma  
pauperis from a Judgment of the Court of  
20           Appeal of Trinidad and Tobago dated the  
25th July 1975 dismissing the Appeals of the  
Petitioners against their convictions at the  
Port of Spain Assizes of murder: And  
Humbly praying the Judicial Committee of  
the Privy Council to grant the Petitioners  
special leave to appeal in forma pauperis  
against the Judgment of the Court of  
Appeal of Trinidad and Tobago dated the  
25th July 1975 and for further relief:

30           THE LORDS OF THE COMMITTEE in  
obedience to the said Order have taken the  
humble Petitions into consideration and  
having heard Counsel in support thereof  
and in opposition thereto Their Lordships  
do grant special leave to the Petitioners  
to enter and prosecute their Appeals in  
forma pauperis against the Judgment of  
the Court of Appeal of Trinidad and Tobago  
dated the 25th July 1975 but do limit the  
40           Appeals to the following issues raised in  
the Petitions of the 1st and 2nd Petitioners  
namely (1) that the trial Judge erred in  
law in directing the jury that, as the crime  
of robbery was by definition a crime of  
violence, if death ensued in the course of  
the robbery, even if inadvertently, those

In the Privy  
Council

No. 24

Order granting  
special leave to  
Appeal in  
forma pauperis  
to the Judicial  
Committee of  
the Privy  
Council.

who were party to the robbery were guilty of murder (2) that the Petitioners being charged on indictment with both capital and non-capital offences, namely those of murder and robbery, when the Jury Ordinance Chapter 4 No. 2 Section 16 requires that the offences should be tried separately, the Judge erred in law in allowing both counts to be tried together and (3) that the trial Judge did not consider whether the evidence in respect of the alleged robbery was admissible in respect of the allegation of murder, and did not exercise his discretion to decide whether the evidential value of proof that, after the alleged murder, the 1st Petitioner committed a separate robbery against a man other than the deceased outweighed the undoubted and overwhelming prejudicial effect of such proof and also the following issue raised in the Petition of the 1st Petitioner namely that the trial Judge failed to direct the jury that the onus of proof lay on the Prosecution to prove malice aforethought by the 1st Petitioner and failed to deal with the defence of accident raised by him.

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AND THEIR LORDSHIPS do further order that the proper officer of the said Court of Appeal be directed to transmit to the Registrar of the Privy Council without delay an authenticated copy of the Record proper to be laid before the Judicial Committee on the hearing of the Appeals.

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E. R. MILLS  
Registrar of the Privy Council.

IN THE PRIVY COUNCIL No. 26 of 1978

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O N A P P E A L  
FROM THE COURT OF APPEAL OF  
TRINIDAD AND TOBAGO

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B E T W E E N :

ROBBY GRANSAUL and  
WINSTON FERREIRA Appellants

- and -

THE QUEEN Respondent

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RECORD OF PROCEEDINGS

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SIMONS, MUIRHEAD & ALLAN,  
40 Bedford Street,  
London WC2E 9EN

Solicitors for the Appellants

CHARLES RUSSELL & CO.,  
Hale Court,  
Lincoln's Inn,  
London, WC2A 3UL

Solicitors for the Respondent