8, 1957

No. 25 of 1956

IN THE PRIVY COUNCIL

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ON APPEAL
FROM THE COURT OF CRIMINAL APPEAL OF BRITISH GUIANA

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BETWEEN

(1) TAMESHWAR and
(2) SEOKUMAR ..... Appellants

and

THE QUEEN ... Respondent

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# CASE FOR THE RESPONDENT

RECORD.

1. This is an appeal from a judgment, dated the 4th April, 1956, of the Court of Criminal Appeal of British Guiana (Holder, C.J. and Phillips, J., Stoby, J. dissenting), dismissing an appeal from a judgment, dated the 17th February, 1955, of the Supreme Court of British Guiana (Miller, Ag.J. and a jury), whereby the Appellants were convicted of robbery with aggravation and were each sentenced to ten years' penal servitude and six strokes by flogging. pp.43-61 p.40

2. The indictment charged the Appellants with Robbery with aggravation, contrary to section 222(c) of the Criminal Law (Offences) Ordinance. The particulars of the offence were that the two Appellants, on the 25th February, 1954, being armed with a cutlass and a gun, together robbed Sherry Browne of $13,129.68 and one bag. p.1

3. The following sections of the Criminal Law (Procedure) Ordinance (Laws of British Guiana, 1953, cap.11) are relevant to this appeal:-

> 2. In this Ordinance, unless the context otherwise requires -

RECORD.

'the Court' means the Supreme Court acting in the exercise of its criminal jurisdiction;

.....

16. Subject to the provisions of this Ordinance and of any other statute for the time being in force, the practice and procedure of the Court shall be, as nearly as possible, the same as the practice and procedure for the time being in force in criminal causes and matters in the High Court of Justice and the courts of assize created by commission of oyer and terminer and of gaol delivery in England.

.....

45. (1) Where in any case it is made to appear to the Court or a judge that it will be for the interests of justice that the jury who are to try or are trying the issue in the cause should have a view of any place, person, or thing connected with the cause, the Court or judge may direct that view to be had in the manner, and upon the terms and conditions, to the Court or judge seeming proper.

(2) When a view is directed to be had, the Court or judge shall give any directions seeming requisite for the purpose of preventing undue communication with the jurors: Provided that no breach of any of those directions shall affect the validity of the proceedings, unless the Court otherwise orders.

.....

48. Subject to the provisions of this Ordinance and of any other statute for the time being in force, the practice and procedure relating to juries on the trial of indictable offences shall be as nearly as possible in accordance with the practice and procedure in the like case of the courts in England mentioned in section 16 of this Ordinance.

pp.6-9

4. The evidence of the events of the 25th February, 1954 was that about 7.0 a.m. Sherry Browne, a postal apprentice, was going on his

bicycle to the Nigg Post Office from the Albion Police Station, carrying a Post Office bag containing $13,129.68. Whilst travelling on the public road he was attacked and robbed of the bag and contents by two men, whom he identified as the Appellants, the first Appellant being armed with a gun and the second Appellant with a cutlass. The Appellants ran off and, although they were chased, escaped. Three other witnesses saw the first Appellant running away with the bag, and of these three two saw that he was also carrying a gun. Three witnesses (in addition to Sherry Browne) saw the second Appellant running away, and one of these three saw that he was carrying a cutlass.

5. Statements by both the Appellants were given in evidence. That of the first Appellant set up an alibi. The second Appellant made two statements, of which the first set up an alibi. In his second statement he retrated this story, and said he had been present at the robbery. When he reached the spot he saw the first Appellant, armed with a cutlass, who had told him to wait, 'that money ah come'. He had waited, and had seen the first Appellant attack the postman with the cutlass and steal the bag. When the first Appellant ran away, he (the second Appellant) had, he said, got frightened, and had run away behind him. p.64 p.66 p.65

6. The first Appellant made a statement from the dock, in which he said that his statement to the police had been true. He called one witness to support the alibi. The second Appellant also made a statement from the dock, in which he said that his first statement to the police had been true and he had made the second statement as a result of threats and ill treatment by certain police officers. He called one witness to support his alibi. p.33 p.34

7. The trial had begun on the 8th February, 1955. On the 14th February, 1955, after the case for both the Appellants had been closed, the jury asked to be allowed to visit the 'locus in quo', together with five of the witnesses for the Crown. The view duly took place on the 15th February. The jury was accompanied by the Registrar, the Marshal, counsel for the Crown and for the Appellants, the five witnesses for the Crown, one witness for the defence and a number of police officers. Before the party left, the learned Judge warned the jury not to have any communication or engage in any discussion or argument. On the following day, one of the police p.37 l.30 p.38 l.1

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officers who had attended the view gave
p.38 evidence of the places which the witnesses had pointed out. Counsel for both Appellants then said they did not want any of the other witnesses who had attended the view to be recalled. Accordingly, the addresses to the jury then followed.

8. The learned Judge charged the jury on
p.40 the 17th February. The jury convicted both Appellants by eleven voices to one, and each Appellant was sentenced to ten years' penal servitude and six strokes by flogging.

9. Both Appellants appealed to the Court of Criminal Appeal. The notice of application for leave to appeal, dated the 26th February, 1955, made complaint of a number of matters, but the only ground of appeal now relevant is an additional ground
p.42 taken by leave at the hearing of the appeals. This ground alleged that the jury's visit to the 'locus' had been conducted in an illegal or improper way, because:

(i) The jurors had not at all times been kept apart from the witnesses;

(ii) the witnesses, in answer to questions, had made demonstrations and statements not on oath in the presence of the jury;

(iii) the learned Judge had been absent.

10. The appeals came on before Holder, C.J., Stoby and Phillips, JJ. on the 28th October, 1955. The case of Karamat v. R. (1956), A.C. 256 was then pending before the Judicial Committee of the Privy Council, and, on the application of counsel for the Appellants, the hearing of these appeals was postponed until that case should have been decided. The appeals were subsequently heard on the 21st December, 1955 and the 11th February, 1956, and judgment was given on the 4th April, 1956.

pp.43-55 11. Holder, C.J. and Phillips, J., in a joint judgment, first discussed matters which do not now arise, and then dealt with the ground of appeal concerning the view. Counsel for the
p.50 Appellants had argued that the absence of the Judge from the view was an irregularity, which,

even though there was no other irregularity at the view, made the proceedings a nullity. The learned Judges agreed that it was eminently desirable that the Judge should attend a view, but his absence was not by itself a ground for nullifying the trial, if precautions had been taken to prevent the jurors from receiving communications or being subjected to influence There was nothing in the record to suggest that the Appellants had not had a fair trial and there had been no suggestion of impropriety on anybody's part, except the Judge's absence from the view. There had been no irregularity going to the root of a fair and proper trial. Accordingly, the appeals were dismissed.

12. Stoby, J. dissented. He said a view could take place in the absence of the Judge, provided no questions were asked of the jury and they communicated with nobody; the Judge had to be present if the jury were to ask questions and witnesses to give demonstrations. What took place at a view was, the learned Judge said, part of the trial, and evidence could not be received in the Judge's absence. p.55 l.40-p.61 l.20

13. The Respondent respectfully submits that in British Guiana a view may properly be had by a jury unaccompanied by the Judge. The Criminal Law (Procedure) Ordinance, s.45, so far from providing that the Judge must be present at a view, is so framed as to contemplate that he may not be. The purpose of a view, which is to enable the jury to understand and weigh the oral evidence, can be equally well achieved in the presence or absence of the Judge. Any point arising out of the view on which either side may wish to rely can be put to the witnesses when they are recalled in court after the view has been had.

14. The Appellants did not contend in the courts below that there had been at the view any failure to control the jury or any improper communication between jurors and other persons. There is no evidence that any such irregularity occurred.

15. Even if the having of the view by the jury unaccompanied by the learned Judge did amount to an irregularity, in the circumstances

of this case that irregularity, in the Respondent's respectful submission, did not lead to any miscarriage of justice such as would justify the quashing of the convictions of the Appellants.

16. The respondent respectfully submits that the judgment of the Court of Criminal Appeal of British Guiana was right, and this appeal ought to be dismissed, for the following (amongst other) 10

R E A S O N S

1. BECAUSE the law of British Guiana does not oblige a judge to accompany a jury upon a view:

2. BECAUSE at the view had on the 15th February, 1955 no irregularity occurred:

3. BECAUSE the Appellants have suffered no miscarriage of justice.

J.G. LE QUESNE

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B E T W E E N

(1) TAMESHWAR and
(2) SEOKUMAR — Appellants

and

T H E  Q U E E N — Respondent

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C A S E  FOR THE RESPONDENT

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