

Judgment
8, 1957

PC GN5.G.2

IN THE PRIVY COUNCIL

No.25 of 1956

ON APPEAL
FROM THE COURT OF CRIMINAL APPEAL
IN THE SUPREME COURT OF BRITISH GUIANA

B E T W E E N:

(1) TAMESHWAR

(2) SEOKUMAR ... Appellants

- and -

THE QUEEN ... Respondent

RECORD OF PROCEEDINGS

DRUCES & ATTLEE,
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Appellants Solicitors.

CHARLES RUSSELL & CO.,
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Respondent's Solicitors.

i.

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1.

IN THE PRIVY COUNCIL

No.25 of 1956

ON APPEAL
FROM THE COURT OF CRIMINAL APPEAL
IN THE SUPREME COURT OF BRITISH GUIANA

B E T W E E N:

(1) TAMESHWAR
(2) SEOKUMAR ... Appellants
- and -
THE QUEEN Respondent

10

RECORD OF PROCEEDINGS

No. 1.

INDICTMENT

IN THE SUPREME COURT OF BRITISH GUIANA

(Criminal Jurisdiction)

County of Berbice

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

Tameshwar and Seokumar are charged with the follow-
ing offence:-

20

STATEMENT OF OFFENCE

Robbery with aggravation, contrary to section 222
(c) of the Criminal Law (Offences) Ordinance,
Chapter 17.

PARTICULARS OF OFFENCE

30

Tameshwar and Seokumar on the twenty-fifth day of
February, in the year of our Lord One thousand nine
hundred and fifty-four, in the county aforesaid,
being armed with a cutlass and a gun together robbed
Sherry Brown of thirteen thousand one hundred and
twenty-nine dollars and sixty-eight cents, and one
bag.

G. M. FARNUM,

Acting Attorney-General.

In the
Supreme Court
of British
Guiana

No. 1.

Indictment.

25th February,
1954.

In the
Supreme Court
of British
Guiana.

No. 2.

EVIDENCE OF AMOS AUGUSTUS MOORE.

AMOS AUGUSTUS MOORE:

No. 2.
Amos Augustus
Moore.
8th February,
1955.
Examination.

I am Postmaster at Bourda. In February, 1954, I was the Postmaster in charge at Nigg Post Office. I had been there for 4 years and about 10 months. I received cash from the Public from day to day. We do not bank. The money is remitted to New Amsterdam Post Office every day. The money is sent in cash in a bag. In the afternoon the cash is lodged with the police for safe keeping. It is lodged at Albion. The money is checked by me and re-checked by my assistant in the presence of the officer taking the money to the Station. It is then enclosed in a red bag and sealed with a lead key. That is then enclosed in a green bag which is sealed with red sealing wax. A pro forma receipt is made out and handed to the apprentice into a bag. It is put in a letter-carrier's bag and it is taken to the Police Station with receipt. A document is signed by the N.C.O. or constable receiving. That receipt comes back to me. The receipt is kept in the office safe. The following morning I send for the bag. The receipt is handed to the Postal apprentice. Deliver receipt give a receipt for the bag and bring back the cash. On Wednesday 24th February, 1954, about 4.45 p.m. I adopted the usual procedure. I counted cash in the presence of Saunders and Sherry Brown. It was \$13,129.68 cents in \$20: \$10: \$5: and some silver current money of the Colony. It was placed in a red bag, sealed with a seal, and placed in a green bag and sealed with red sealing wax. The bag was sent by Postal Apprentice Brown. I got back the usual receipt signed from the Police Station and I kept it at the Post Office in a safe. The next morning I sent at 7 a.m. for the cash. I gave the receipt to Postal Apprentice Brown. He left. About 7.15 a.m. an East Indian man came and told me something. I ran out to the Public road and I saw postal apprentice Brown about 200 yards from the Post Office bridge. I called him. He told me something. Some people were on the road by the Post Office Bridge. They said something. I looked south. I saw two men running along the western parapet of a trench and eastern side of the Post Office. No part of the money has been recovered.

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The money is the property of the Postmaster-General entrusted to Brown to bring from the station to the Nigg Post Office. The men running appeared to be East Indians. Brown tied the letter-carrier's delivery bag with a strap to be slung over the shoulder to fetch the bag of money. The bag is valued about \$3. The other bags about \$5, and the property of the Postmaster-General.

In the
Supreme Court
of British
Guiana.

No. 2.

Amos Augustus
Moore.
28th February 1955
Examination -
continued.

Cross-examined by Mr. B. O. Adams:

10 Brown was at the Nigg Post Office for less than a year. It is a non-pensionable position. I checked in the presence of Saunders and Sherry Brown. It is customary to deposit such large sums; it was month end. During the month \$2,000, \$500, \$800, \$10,000; the deposit at month end depends on when I receive the large sum of money. The date varies. It is about $\frac{1}{2}$ mile from the Post Office to the Police Station. There are a good many houses along the public road. There may be a hundred houses more or less. There are about 20 houses on the north side within that area. East Indians get up early in the morning. I do not think any Africans lived there then. I think some live there now. I would say 5 a.m. early. The persons were about 20 yards from the Post Office. There were about a dozen persons waiting for a conveyance to Springlands. I saw him start to ride to me. I did not watch him. I next saw him at my side. The men appeared to be East Indians.

Cross-
examination by
Mr. B. O. Adams.

30 Cross-examined by Mr. E. W. Adams:

40 The distance I saw them would be from the Court to Davson's Store. As soon as I got on the road I called Saunders. Saunders, Profit, Austin and an estate letter-carrier were in the office at the time. They were Post Office Officials. I called Saunders after I saw the two men running in a southerly direction. I called Saunders after Brown. Brown may have been present when Saunders came up to me. I cannot remember if he left Brown and I standing there. One had a reddish shirt. Saunders crossed the trench on the road. The trench was dry. It was the south side of the road.

Cross-
examination by
Mr. E. W. Adams.

In the
Supreme Court
of British
Guiana.

No. 2.

Amos Augustus
Moore.

8th February
1955.

Re-Examination.

Re-examined:

The people were on the north side of the Public road. They were standing. I do not remember seeing people running from the south side. A crowd gathered there later. I am not mistaken that there were two persons running.

By Jury:

One Postal Assistant lived at Nigg. I could see 440 yards. The men were bare-headed. One man wore a red shirt.

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No. 3.

Alvyn Saunders.

8th February
1955.

Examination.

No. 3.

EVIDENCE BY ALVYN SAUNDERS

ALVYN SAUNDERS sworn states:

I am Postal and Telegraph Clerk at Nigg P.O. In February, I was at Nigg Post Office. I lived then at Rose Hall about a mile away. On the 24th February 1954 I worked about 5 p.m. Before leaving I assisted Postmaster Moore and Sherry Brown. We counted \$13,129.68 cents. It was made up in currency notes. There was silver. I cannot remember the Postmaster counted, tied it up and placed it in a bag which was sealed and placed in another bag and that was placed in a delivery bag. Brown was instructed to take it to Albion Police Station. He always does that. He had been doing that for months. I was in office about 6.45 a.m. the following day. Brown was sent for the money about 7 or little after 7 in the morning. About 7.20 a.m. an East Indian man came in the Office and said something. The Postmaster ran out and then shouted at me. I went out and learnt something. I looked south and I saw a man running on a dam East of the Post Office. The man was running south. I ran after the man. He was wearing a red shirt and brownish pants. It was a shirt like this (identified) "A". Pants like this "B" for identification. The man had brownish bag like a Post Office delivery bag over his shoulder like the one Brown had. He had something like a gun in the other hand. I did not recognise him. He

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looked like an East Indian. I saw a man - East Indian come from the west dam and go to eastern side and started to run behind the other man. He had on a white shirt and short pants. This looks like pants, Exhibit "C" for identification. No.2 accused was the one from the west dam who joined other and began to run. I ran after them. They got away from me after a certain point. The following day 26th February, I went to Albion Police Station at an identification parade held by Asst. Supt. of Police McLeod. There were about 8 East Indians including one looking like a Dougla. I identified and picked out No.2 accused as the one who came from west dam to the other.

Cross-examined by Mr. B.O. Adams: Declined.

Cross-examined by Mr. E.W. Adams:

The dam is eastern to trench. That is the one I travelled on. The dam is rough and uneven. It is not so bad. There was not much bush on the dam. They were of varying heights and complexions. I asked for them to turn around. I picked out No. 2 accused when he turned around. I recognised him by his build. I looked at him first from the front and then I asked the whole parade to turn around. I then touched No. 2 accused by the back. I am in good health. I was last ill in 1932. I am 49 years. I read with glasses. Two others were running with me. Yangasammy was with me. He is about 24 years old. He is the estate letter-carrier. One Austin was the other. He is about 18 years. They were at the back of me. I did not see Browne on the road when I came out of the Post Office. I crossed a dry trench with a little water. I jumped over it. It is about 12 feet wide. I was not at the Station on the night of the 25th. I went to the Station on the 26th about 10 a.m. for the first time. I identified about five minutes after I arrived at the Station. I had come from the Post Office. I looked back as I ran on more than one occasion. I was looking at the men as I ran.

Re-examined:

I did not know any of the accused before. I was looking at the men as I ran. They disappeared behind a house.

By Jury:

I saw the face of Accused No.2. I was satisfied he was the person.

In the
Supreme Court
of British
Guiana.

No. 3.

Alvyn Saunders.
8th February,
1955.

Examination -
continued.

Cross-
Examination by
Mr. E.W. Adams.

Re-examination.

In the
Supreme Court
of British
Guiana.

No. 4.

EVIDENCE OF SHERRY BROWNE

SHERRY BROWNE:

No. 4.
Sherry Browne.
8th February,
1955.
Examination.

I am a Postal Apprentice and I am now at Reliance Post Office. In February 1954 I was working at Nigg. Mr. Moore was the P.M. and Alwyn Saunders was then Postal Clerk. On Wednesday 24th February, 1954, about 4 p.m. I was at the Post Office. I sealed a bag with cash over \$13,000. I saw the Postmaster and Mr. Saunders checking the money. The money was put in a Post Office bag which was sealed, and placed in another bag which was also sealed. Those bags were placed in a letter carrier's bag. I left with the bag to lodge the cash at the Albion Police Station. I did so. I took a slip and Sergt. Adams received the cash from me. (Called and identified). He signed the slip and handed it to me. I gave the bag to the Sergeant. I gave the slip to the Postmaster. I was then living at Fyrish Road and about a mile from Nigg. The next morning I went to work about 6.55. I took the slip from the Postmaster and went to Albion Police Station riding a cycle. I uplifted the sealed bag from the Sergeant, signed the Police diary as receiving the cash. This is it Exhibit "B" P.520. I see my signature. I signed for a sealed cash bag. I put the bag in a letter carrying bag. I had it slung over my shoulder and went towards the Post Office. I had taken cash like that before. I was cycling along the road towards the Police. About 120 yards from the Post Office, I saw two East Indian men. They are the accused. I had not known them before. I was approaching a bridge. I saw them leave the bridge as if to cross the road. I was on the edge of the northern side. Accused No.1 was in front. I swerved to avoid a collision. It was to the right. As I did so Accused No.1 jumped and held to the body of the bag I had on my shoulder. He was tugging and I fell off my cycle. He had a gun. He kept on tugging. I was afraid after I saw the gun. He made a forceful tug and got the bag from me. I was off the bicycle. He held the gun with the left hand pointing towards me with the other hand. No.2 Accused was near to me with a cutlass like Exhibit "E" for identification. He held it in a raised position. I was very afraid

and nervous. Accused No. 1 ran as he got the bag from me. He ran from the road across the bridge into an open yard on the southern side of the road. Accused No. 2 started to run in the same direction. I shouted for help. Accused No. 1 had a reddish shirt and long khaki pants. Exhibits "A" and "B". Accused No. 2 had a white shirt and short blue duck pants, Exhibit "C". A car came up and I spoke to the driver and he drove off towards the Post Office. I picked up my cycle and went towards the Post Office. I spoke to the Postmaster Mr. Moore on the road and told him what happened. I went to the Station; the following day I attended an identification parade. There were 8 East Indian men and I identified in the presence of Police Officers the two accused as the persons who robbed me. I did not permit anyone to take the bag from me. Nigg is in the County of Berbice.

In the
Supreme Court
of British
Guiana.

No. 4.
Sherry Browne.
8th February
1955.

Examination -
continued.

Cross-examined by Mr. B.O. Adams for both accused:

Cross-
Examination.

20 I am now at Reliance. I left Nigg in May of last year to go to Mahaicony and then to Fort Wellington and from there to Reliance. I am 19 years old. I had been at Nigg for about 9-10 months, when the incident occurred. I was not the only one who took money to the Post Office. I was doing that for the week. I did not do it for the month. I did not help to check the money. The amount was placed on the slip. The date of taking would vary. On that Wednesday 24th February, 30 1954, I was not alone when I went to the Police Station. Robert Profit was with me. He lives at Fyrish. I knew I had to return the next morning to collect the money. I knew I had to return around 7 o'clock for the bag. A passer-by could only see the letter-carrier's bag. The area is well populated. The car came up about 3-5 minutes after the incident. The car came up and I was standing at the same spot where the incident occurred. I learnt their names at the identifica- 40 tion room. McLeod told me the names after I had picked them out. I made no attempt to chase after the men. I did not see anyone chase after the men. I did not see Saunders chase after the men. I did not see the men for that day after they disappeared. There were bushes about 20-30 yards from the public road where they disappeared from me. I went to the Postmaster. I started to ride. Then I came off the cycle and walked up to the Postmaster,

In the
Supreme Court
of British
Guiana.

No. 4.

Sherry Browne.
8th February,
1955.

Cross-
Examination --
continued.

and spoke to him. The men had already gone. I did not call at any of the houses. I took about half minute for the man to get away the bag. I fell away from the bicycle which is a gent's one. I was away from the bicycle. I made an attempt to pick up my bicycle which was in the middle of the road. The men had disappeared by the time I picked up the bicycle. It happened very fast. I did not hear the report of any gun. I was not cut by any cutlass. I was attacked from my left side. I was holding the bicycle handle with my right hand. The bag was taken away while I was on the ground. Both my hands were free. I was on the ground and off the bicycle when I saw the gun. The tugging was going on. I did not see the gun when the man first attacked me. The gun was about 4 feet long. It looked heavy. His hand was about the trigger. The man did not fall down at any time. I was about 20 yards from the men when I first saw them. I did not then see a gun in anybody's hand. I do not know where the gun came from. I was afraid and so I did not run after. I said to the Magistrate the injury was - - - after I picked up my cycle the men had disappeared behind the bushes. The strap was thick canvas. I saw people when I went up to the Postmaster. No damage was done to my bicycle. I went about 11 o'clock on the Friday to the station. I stayed about five minutes. I was transferred to Mahai- cony at my own request. Besides McLeod there were about 2 or 3 police officers. I cannot re- member if only one red shirt was worn on the parade. The police officers were standing. I cannot re- member if Mr. McLeod was standing or sitting. From left to right No.1 accused was No.4. No.2 accused was No.7. I was not in league with the men who robbed me. The accused are the two men. I saw their faces. 10 20 30

Re-examination. Re-examined:

I went to the station soon after and I made a report. I had made a report to the P.M. Only Mr. McLeod spoke to me at the parade. I was not aided in any way to identify. I only touched the two accused. 40

By the Jury:

I was nervy and I could not continue to ride. The P.M. did not signal me. I did not shout. I was very afraid.

By Mr. Adams through Court:

I was with the P.M. about 1 - 2 minutes in conversation before I went to the station. I rode to the station after speaking to him. I shouted for help after the accused got the bag and was running away.

In the
Supreme Court
of British
Guiana.

No. 4.
Sherry Browne.
8th February,
1955.
Re-examination.
Continued.

No. 5.

EVIDENCE OF JHANGEER BACCHUS

JHANGEER BACCHUS.

No. 5.
Jhangeer
Bacchus.
8th February
Examination.

10 I am a labourer. I live at Albion Estate, Courantyne. I know the accused for a long time since they were boys. No.1 lives as my neighbour. The Nigg story was a Thursday in February, 1954. I was home a Thursday morning about 6.45 a.m. No.2 known as June went to No.1. He was asleep. He said to wake him. No.2 had a white shirt and blue pants. I went away to the hospital. Later that day I heard something.

Cross-examined by Mr. Adams:

Cross-
Examination.

20 The factory bell was ringing for 6.45 a.m. I reached the hospital about 7 o'clock. I did not see anyone pass me. No. 1's house is about 600 yards to the driving road. The driving road is about a mile to the public road.

By Jury:

No. 2 was walking when he went to No. 1.

No. 6.

EVIDENCE OF JUNO MADRAY.

JUNO MADRAY:

I drive engine and I live at Albion Estate, Courantyne, and I know the accused. We all live

No. 6.
Juno Madray.
9th February,
1955.
Examination.

In the Supreme Court of British Guiana.

No. 6.

Juno Madray.
9th February, 1955.

Examination - continued.

in the estate. I have seen them grow up. I heard about the Nigg affair. It was last year. One morning I saw No. 2 going to the latrine at 6.15. We live in the same range. About 6.30 I saw No.1 riding a bicycle. It was a gent's cycle like one in Court. Asked for the loan. He said he was going to the hospital. Tom was calling for June but I heard no answer. That same day I heard something.

Cross-examined by Mr. B.O. Adams for No.1.

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Cross-Examination by Mr. B.O. Adams.

About 10 persons will have to use that one. Many persons use the latrine. I saw No. 1 (Tom) on street. I leave home at 6.45 for work. I saw Tom about 6.30 a.m. I did not see them with anything.

Cross-examined by Mr. E.W. Adams for No.2. - Declined.

Re-examination.

Re-examined:

I said in cross-examination 6.45 I went to work.

20

By Jury:

We live one place and we are on speaking terms.

By Mr. B.O. Adams through Court:

I am a mile to Public Road. I live about 100 rods from the driving road.

No. 7.

Ramnaraine Latcham.

9th February, 1955.

Examination.

No. 7.

EVIDENCE OF RAMNARAIN LATCHAM

RAMNARAIN LATCHAM:

I am a labourer. I know both accused since I was small. I had no quarrel. I remember a Thursday in February 1954. I was home about 6 a.m. I saw No.1 riding a bicycle. I was with Madray. I saw No.2 going to latrine with white shirt. Madray asked No.1 for his cycle. Said going hospital. This cycle was like "L" tendered for identification.

30

Cross-examined by Mr. B.O. Adams for No. 1:

I did not hear No. 1 call out to No. 2. It was about 6.30 a.m. to 7 a.m. I did not see No.1 with anything in his hands. I did not go that day to the Police Station. I went on the Friday. A policeman carried me. It was about 2 p.m. My house was searched. The Police told me I had to go to the station. I was asked to give a statement and then I was sent home.

In the
Supreme Court
of British
Guiana.

No. 7.
Ramaraine
Latcham.
9th February,
1955.
Cross-
Examination by
Mr. B.O. Adams.

10 Cross-examined by Mr. E.W. Adams:

Lots of people live along the driving road. My house was searched the day before I was taken to the station.

Cross-
Examination by
Mr. E.W. Adams.

Re-examined:

There is another road which leads to the Nigg Post Office apart from the driving road.

Re-examination.

By Jury:

20 The other road is shorter and is called short path. My house to Nigg Post Office is about a mile. There is a third road called Guava bush which is about the same distance as short path.

No. 8.

EVIDENCE OF RAMJIT

RAMJIT:

30 I am a cow minder and employed by Albion Estate. I live in the Estate. I know both accused. On 25th February, 1954 about 6.30 a.m. before that time I went to Order Bridge. I saw the accused about 6.30 coming out on the driving road. No. 2 was towing No. 1 on a bicycle. No. 1 had a khaki long pants and a red shirt. No. 2 had white shirt and blue pants (short). No. 1 said to me good cow boy. I did not see them again. I did not see them with anything in their hand.

No. 8.
Ramjit.
9th February,
1955.
Examination.

In the
Supreme Court
of British
Guiana.

No. 8.
Ramjit.
9th February,
1955.
Cross-
Examination by
Mr. B.O. Adams.

Cross-examined by Mr. B.O. Adams:

I did not see any gun or cutlass. Today is 9th. I do not go regular. Many people were at the order bridge. There were about 30 - 40 persons. Ball, Sen (drivers) Shirie and others. Other persons passed on bicycles. I was never held up in any gun story. I was charged years ago for disorderly. I gave evidence about 14 years a case in Supreme Court with Seenauth. I am not regular in Court.

10

Cross-examined by Mr. E.W. Adams:

Cross-
Examination by
Mr. E.W. Adams.

I am not lying against the accused. I never carried strays to the pound. I have no authorise paper.

Re-examined:

Re-examination.

I have no story with accused. I never went to Court with them.

No. 9.

Joel Haynes.
9th February,
1955.
Examination.

No. 9.

EVIDENCE OF JOEL HAYNES.

JOEL HAYNES sworn states:

I am P.C.4992 at Kakwani. In February 1954, I was at Albion. On 25th February 1954 I went to Albion in connection with the report made in this matter. About 5.50 p.m. I was near to the residence of the No.1 accused. Saw him coming from the factory. I told him of the report of the robbery and I arrested and cautioned him. He said he did not know anything about it as he was away from 6 a.m. with Sonny Juman working at St. John from 6 a.m. They had travelled by boat. And he was then returning home. I arrested him and took him to Albion Police Station. He was wearing khaki shirt and khaki long pants. I had not seen him the morning.

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Cross-examination by Mr.B.O.Adams for No.1:

Declined.

Cross-examination by Mr. E.W. Adams: - Declined.

No.10.

EVIDENCE OF AHAMAD BAKSH

In the
Supreme Court
of British
Guiana.

AHAMAD BAKSH sworn states:

10 I am called Sonny Juman. I have rice lands at St. John at the back of Albion Estate. I know the accused for a long time. On 25th February, 1954 I went to my rice field. I left home about 5.45 a.m. by boat. My uncle and others were with me. No.1 came and asked what I was doing. It was about 5.45. He said he wanted a drop to go to the rice field. I told him to wait. I do not know if he travelled in the boat. In afternoon about 4.45 p.m. I saw No.1 coming from the back dam. Khaki drill shirt and pants.

No.10.

Ahamad Baksh.

9th February,
1955.

Examination.

Cross-examined by Mr. B.O. Adams:

20 My rice lands are about 5 - 7 miles. No.1 has rice fields about 500 rods from me. I give him and several other persons drops before. In the afternoon I picked him up from the Albion Crown dam. It was about 3 - 4 miles away. I came 3 - 4 fields from where I had to stop. I went for the cows in the savannah. My uncle took charge of the donkey after me. The koker bridge is 3 fields from hospital going to back dam. In afternoon Tom shouted for me. I made a given time. It would take me about 3 minutes to get to bridge.

Cross-
Examination by
Mr. B.O. Adams

Cross-examined by Mr. E.W. Adams:

I know Ramjit - cow minder for estate.

Cross-
examination by
Mr. E.W. Adams.

Re-examined:

30 Baba or Mohamed Ishack is my uncle. I left home at 5.45. I am one cottage from No.1 accused.

Re-examination.

By Jury:

I loosed rope to pass under bridge. I am in front the donkey steady.

In the
Supreme Court
of British
Guiana.

No.11.

EVIDENCE OF PRABHULALLPRABHULALL sworn states:

No.11.
Prabhulall
9th February,
1955.
Examination.

I am detective Constable No.5277 at Albion Police Station. In February, 1954 I was at the same Station. On 27th February 1954 I obtained a Search Warrant Exhibit "M" is it. I executed it on the house of Ghansam Jagmohan Singh the brother of No.1 accused. I found a gent's Raleigh Cycle put in now and marked "L". I showed it the same day to No.1 accused and he claimed it as his property.

10

Cross-examined by Mr. B.O. Adams:

Cross-
Examination by
Mr. B.O. Adams.

No.1 accused was charged and in custody when the search was made at his brother's house. I found no notes, postal mail bags, guns or cartridges. I made one search, I made a search at the homes of both accused. I found nothing. I did not search the home of anyone else. I was at the identification parade. I remember Rustin Khan. He picked out No.2 accused. He picked out someone other than the two accused. He picked out one Monan Chan and not No.1. No.2 wore a red shirt at the parade.

20

Cross-examined by Mr. E.W. Adams:

Cross-
Examination by
Mr. E.W. Adams.

Since February, I have not personally executed any further warrant in this matter. There is one step to the second flat where the parade was held. Relatives were there the night the accused were arrested. I did not see the accused the Thursday night. I saw the No.2 accused with this shirt put in and marked "O". I see some stains on it. I would not say they are similar to blood stains. It was some time after the parade. That was on the 26th. I did not see him on 27th bleeding from lip. (No.2 accused).

30

Re-examined:

Re-examination.

I did not communicate with anyone inside or outside to aid them in the identification. The parade was in a closed room. I did not beat any of the accused.

40

By Jury:

The shirt Exhibit "O" belongs to Constable Nestor. I do not know who washed the shirt.

No.12.

EVIDENCE OF MOHAMED ISLAM KHANMOHAMED ISLAM KHAN SWORN states:

10 I am 12 years old. I go to School and I am in standard VI and I am a Boy Scout. I go to Albion C.M. School and I live at home with my parents. I know Nigg Post Office. I live about 200 rods from the Post Office going south. I know Belvedere Dam. On 25th February, 1954, I went to gather some cow dung on the Nigg Post Office Dam. I saw someone coming from North (Nigg Post Office side) going towards the back dam. I saw one person wearing a red towel shirt and long khaki pants like these now shown - Exhibits "A" and "B" and had a Post Office bag on his left shoulder and he had a gun in right hand. The person was running. It was an East Indian man. It was No. 1 accused. I saw another man running on Nigg dam. He was running also south. He had a cutlass in his right hand. He had a white shirt and short pants. Cannot remember the colour. No.2 shouted wait me dey man. Me weary run. The other said run and cross over the trench, look dem man ah come. He crossed the trench. No.1 took off his long pants and told No.2 pick it up and run. He did so and ran. I did not worry to look. I later saw 4 postmen running south also. One was Mr. Saunders (identified). I spoke to him. The next day I went to Albion Police Station about 11 a.m. I was asked to pick out the men I saw running. I went and picked out one. I picked out two, he was No.2.

Cross-examined by Mr. B.O. Adams:

40 No one suggested I should wear my Boy Scout's Uniform. I paid no attention to the man who went in the doctor bush. I wrote the date on the 26th February. I wrote both days. I threw the paper away around October last year. I saw him in the room. I did not pick out No.1. I stood up at the parade. No.2 had a kerchief over his face which fell off. I cannot remember if I spoke of two men having kerchiefs. I picked out Manahar as being the one on the Belvedere Dam. He was 15 rods from me when I first saw him. I last saw him near a house about 100 rods away. The one on the Nigg dam was about 9-10 rods. I last saw him about 100 rods. I had not seen the men before that day. I had seen No.2 before that day in Topo's cake shop.

Deposition of witness put and marked Ex. "P".

In the
Supreme Court
of British
Guiana.

No.12.

Mohamed Islam
Khan.9th February,
1955.

Examination.

Cross-
Examination by
Mr. B.O. Adams.

In the
Supreme Court
of British
Guiana.

No.12.

Mohamed Islam
Khan.

9th February,
1955.

Examination by
Mr. E.W. Adams.

10th February,
1955.

Cross-
examination by
Mr. E.S. Adams
continued.

Cross-examined by Mr. E.W. Adams:

I did not tell the Judge of the falling of the kerchief. I remember I gave evidence one morning. The other man passed about 8 - 9 rods. I got some cow dung that morning. I was on the Nigg dam. I cannot give the distance. My home is on Belvedere dam about 200 rods from the Public Road. I think I was westwards from my home. I paid no attention if they had hats or caps.

There is a reef near to my house. There are cows there. I left home about 7.10 a.m. I cannot remember when I left home for school. I saw Mr. Saunders about 2 - 3 minutes. I cannot remember if I told the Magistrate five minutes. I cannot remember how long I spent on the dam. The nearest rice field is about 12 rods from the house. There were cows in the rice field during February last year. The rice field had water but not the reef. The man crossed a trench. I did not take height to see how far the water met him. I had to get south for a while and then crossed a bridge to get to the other side. I passed near to the first rice field.

10

20

No.13.

Randolph Nestor.

10th February,
1955.

Examination.

No.13.

EVIDENCE OF RANDOLPH NESTOR.

RANDOLPH NESTOR Sworn states:

I am P.C. at Albion Police Station. In February last year I was stationed there. On 25th February, 1954, I was investigating a report in connection with this matter. About 3 p.m. I went in search of No.2 accused. I found him about 9.30 p.m. in the vicinity of his house. He was coming from east towards his house. I knew him before. I arrested him. I told him it was alleged that he and No.1 had robbed Sherry Browne. I cautioned him. He said nothing. I took him to Albion Police Station. He was wearing a short blue pants Exhibit "C" now put in. I took it off and a maroon coloured shirt Exhibit "A". I took them and had them kept in my custody at the Station.

30

40

Cross-examination by Mr. B.O. Adams:

The driving road is about a mile. The distance from the entrance to the driving road to the scene is about half mile. The distance from the main entrance to house of No.2 is about a mile. I do not know where No.1 lives. Public Road to Belvedere dam is about a mile.

In the
Supreme Court
of British
Guiana.

No.13.

Randolph Nestor.
10th February,
1955.
Examination by
Mr. B.O. Adams.

Cross-examined by Mr. E.W. Adams:

10 I said to No.2 he was not obliged to say anything unless he wished to do so, but whatever he had to say I would take it down in writing. These shirts and pants are popular around the countryside. It is an agricultural district. See Exhibit "O" which is my shirt. The shirt was taken from No.2 when he arrived at the station the same night of the 25th February. I give him my shirt the same night. I was not at the identification parade.

Cross-
Examination by
Mr, E.W. Adams.

Re-examined:

20 The shirt was not as dirty as it is. It was an old shirt. It was in about the same condition. It was stained like it is when I gave him. I never got back my shirt. Exhibit "O".

Re-examination.

Re-examined by Mr. E.W. Adams through Court:

It was torn as it is. Exhibit "O". I cannot remember if the stain I now see on the pocket was there when I gave it to the accused. I had last worn the shirt about 4 - 5 months.

No.14.

No.14.

EVIDENCE OF HANIFF BASALAT

30 HANIFF BASALAT sworn states:

I am a barber and I live at Guava Bush - Belvedere Section. My house is on the Belvedere Dam and about $\frac{3}{4}$ mile south from the road. On 25th February, 1954. Taking my tea about 7.30 to 8 a.m.

Haniff Basalat.
10th February,
1955.
Examination.

In the
Supreme Court
of British
Guiana.

No.14.

Haniff Basalat.
10th February,
1955.

Examination -
continued.

Cross-
Examination by
Mr. B.O. Adams.

I saw a boy running to the south. It was No. 2. I know him about 10 years. I asked him if he was going shooting. He made no reply but kept on running. I saw a next boy about 40 rods in front. He had a double barrel gun and a side bag. I did not know who the man was. I was handed a cutlass by my son. This cutlass was given to me. I gave it to the Police about $\frac{3}{4}$ hour.

Counsel for No.1 objects to cutlass as Exhibit in the case. Objection over-ruled. "E" (cutlass) 10

Cross-examined by Mr. B.O. Adams:

I know No. 1 accused for about nine years.

Cross-examined by Mr. E.W. Adams:

Cross-
Examination by
Mr. E.W. Adams.

I did not see the face of this man. He was running south. I recognised him by his back. The man did not answer me. He resembled June. He did not speak to me. I went on and had my tea. My house is near to a rice field. It is next to one.

Re-examined:

Re-examination.

I called out June where you going. He kept running. I have no row against No. 2 accused. 20

By Jury:

I have cut the hair of June many times.

No.15.

No.15.

James
Robertson.

10th February,
1955.

Examination.

EVIDENCE OF JAMES ROBERTSON.

JAMES ROBERTSON sworn states:

I am Corporal No.4466 at Detective Office New Amsterdam. On 25th February, 1954, about 7.30 I left the station for Nigg. I went walking along Belvedere Dam to Nigg back dam. I met Basalat (identified). He gave me Exhibit "E" and told me something. It was after 9 a.m. I took the cutlass to Albion Police Station. About 10 p.m. that night I was at Albion Police Station. No. 2 accused came to Station by Constable Nestor. I showed

him Exhibit "E" and asked if he knew it. He said no. I said it was given to me and it was said he dropped it on Belvedere dam that morning. I told him also there was a robbery that morning on the Nigg Road when the Postman was robbed and from description given by persons fits him. He said he knew nothing of any robbery. That very night I took him and No.1 accused to Detective Office, New Amsterdam, for safe keeping. On 26th (next day) around 7.20 a.m. No.2 accused told me he knew nothing of the robbery but he would tell me all he knew. I cautioned him. He gave me a statement which I took down in writing in his own words. It was read over to him and he said it was true and correct and affixed his mark to it. This is it. Exhibit "N".

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Cross-examined by Mr. B.O. Adams: Declined.

Cross-examined by Mr. E.W. Adams:

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I did not caution him the night. I did not grill him. He was not free to leave that night.

No.16.

EVIDENCE OF DAVID ADAMS.

DAVID ADAMS sworn states:

I am Sergeant of Police 4612 and the N.C.O. in charge of Albion Police Station. I was so in charge in February, 1954. I usually every evening receive cash from the Nigg Post Office for safe-keeping. On 24th February, 1954, around 4.30 p.m. I received one sealed canvas bag sealed with Nigg Post Office Seal from Sherry Browne, Post Office Apprentice of the said Post Office. I found the seal intact and I placed it in the Station Chest. I locked the safe and kept the key in my possession. On 25th February about 7.15 a.m. Browne came to uplift the said bag. I delivered the bag to him with seal intact. I caused an entry to be made in the Station Diary and it was signed by Sherry Browne. It was written and signed in my presence. Exhibit "B" is it. I delivered the sealed P.O. bag to him. He placed it in a larger bag which he

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40

In the
Supreme Court
of British
Guiana.

No.15.

James
Robertson.
10th February,
1955.
Examination -
continued.

Cross-
Examination by
Mr. E.W. Adams.

No.16.

David Adams.
10th February,
1955.
Examination.

In the
Supreme Court
of British
Guiana.

No.16.

David Adams.

10th February,
1955.

Examination -
continued.

slung over his shoulder and he left the station about 7.25 a.m. I later had a telephone message from Amos Augustus Moore of Nigg. As a result I left with a party of men in a motor car. On my way I met Sherry Browne on the road coming west to Albion Police Station. I stopped the car spoke to him and instructed him to go to the Station. I went towards Nigg Post Office. Opposite the office I met Postmaster Moore and Assistant Superintendent of Police McLeod. I went in a pasture south of Nigg Public road. Later about 6 p.m. the No.1 accused was brought to the Station. I told him of the report of robbery made to me and I cautioned him. He volunteered to make a statement. Constable Van Vieldt took down the statement in writing in his own words and in my presence. It was read over to him. He said it was true and correct and signed it. This is it put in and marked "F". About 10 p.m. I saw No. 2 accused I told him of the report and I cautioned him. He made no statement. They were sent to New Amsterdam as there was no accommodation. On 26th February, 1954, about 11 a.m. I was present in the recreation room of the station. An identification parade with McLeod in charge. I was present. On 27th February about 9.30 a.m. I was at my desk. The two accused were in the guard room and Corporal Robertson and L.C. Beram Singh and Constable Prabhulall. No.2 came to my table and said "Sergeant me want tell you the truth." I immediately cautioned him and called to the policemen present to listen to what No.2 accused had to say. I took down the statement in writing. It was read over to him and he said it was true and correct and I wrote his name "Seecomar his mark". L/C Beramsingh told me No.2 could sign his name. He had previously applied for a brand and he had signed his brand application form. No.2 was present. I told No.2 if he could sign his name it was right for him to sign his name. He signed his name. This is the statement. 10
20
30
40

Mr. E.W. Adams objects to statement.

Jury made to retire at 1.30 p.m.

Mr. E.W. Adams objects to the statement on the following grounds:-

(1) It was not a voluntary statement.

- (2) It was not made by the second named accused.
- (3) He was forced to sign his name.

Not proper to be called on to sign his name as it detracts from the voluntary nature of the statement.

SERGEANT ADAMS examined by Crown Counsel:

10 I did not beat the accused compelling him to make the statement. I did not threaten him in any way. It was in the open guard room. I did not induce him to make the statement, hold out any promise or reward or intimidate him. He put his signature in two places in the statement and initialed these places. No.1 was present and in his hearing. The bag was not found or any money recovered. They sat away from each other at Albion Station but could have conversed with each other.

Cross-examined by Mr. E.W. Adams:

20 It was taken on the morning of the 27th February, 1954 about 10 a.m. in the charge room of the station. The second named accused was already charged on the 26th. No.2 on the night of the 26th. Was at Tarlogie Police Station. He was charged and on remand. He came and said he wanted to tell me something. We did not take him to the recreation room and take off his clothes. A cord was not tied around his penis. We did not strike his hand away when he tried to hold it.

30 Prabulall did not tell him if he did not sign he would pull his so and so out. He did make the statement. He made corrections which he made me change. I pointed out where he had to sign. I said if it was not correct, i.e. with respect to the alteration, he must initial it. I know from the first statement he did not sign and so after he gave the statement I wrote his name and his mark. The accused read the statement and I read it over to him also.

40 Re-examined:

He drew my attention to certain parts. I corrected them and he initialed. He told me to score out 'Seocomar his mark' and he initialed it.

In the
Supreme Court
of British
Guiana.

No.16.

David Adams
10th February,
1955.
Examination -
continued.

Cross-
Examination by
Mr. E.W. Adams.

Re-examination.

In the
Supreme Court
of British
Guiana.

No.17.

EVIDENCE OF JAMES ROBERTSON (recalled)

JAMES ROBERTSON sworn states:

No.17.
James
Robertson -
recalled
10th February,
1955.
Examination.

I am Corporal of Police. I was present about 10 a.m. at the charge room on the 27th February, 1954. Constable Prabhulall was there and Sergeant Adams, Corporal Beramsingh, Nos. 1 and 2 accused. No.2 spoke to Sergeant Adams. He said he would tell the truth. The Sergeant cautioned him. The Sergeant called on those of us present to listen to what the accused was about to say. The Sergeant took his statement, was read over to him and he said it was true and correct. The Sergeant was about to sign his name but I/Cpl. Beramsingh said he could sign his name. The accused did so. This is the statement which is marked "G". No one beat the accused, induced him or threatened him or held out any promise to him. I did not cuff him or beat him. I did not see a cord tied round his penis.

10

20

Cross-examined by Mr. E.W. Adams:

Cross-
Examination by
Mr. E.W. Adams.

I did not come up after the statement. I was then making inquiries. Accused No. 2 was on the eastern side of the guard room. I do not know if they were taken to the recreation room. I was not called up after the statement was taken. I did not see him bleeding at any time from his upper lip. I was at the identification parade. People were coming in and out of the guard room on other business. Prabhulall was next to me. We were both sitting on a bench. I signed and went off to a table. I was there throughout the whole statement. I could not say who wrote the two "ss" on the statement. I see a third "s". I could not say who wrote it. I cannot remember who scratched out "morning" in the statement. The Sergeant said to him write your name after the Corporal said he could write his name.

30

No. 18.

EVIDENCE OF PRABHULALL (recalled)

PRABHULALL sworn states:

I am P.C. I was present at Albion on 27th when a statement was taken from No. 2 Accused. I did not hold any cord that was tying his penis. I was present throughout. He was not induced to make any statement. I did not beat the accused.

Cross-examined by Mr. E.W. Adams:

10 I did not hold a cord to his penis. I do not know why the accused should say so. The statement is an important one. I did not sign. The N.C.O. signed. Corporal Robertson was present in the guard room before the statement was made. The Sergeant called to listen what the accused was going to say. He said he wanted to tell the truth. The Sergeant then cautioned him. I do not know when the Ss were put on. I was present all the time. The Sergeant told the accused to touch the pen.

20 Case for Crown on Statement.

No.19.

EVIDENCE OF SEOKUMAR (accused)

SEOKUMAR called June sworn states:

30 I see my signature on the statement. Sergeant Adams, Corporal Beramsingh and Prabhulall took me upstairs in the parade room. They asked me about the money. They told me to strip off my clothes. I did not want to. They forced me and slapped me. Beramsingh brought a piece of cord and give to Prabhulall. He made a knot and put it over my penis. Sergeant Adams was slapping me in my face and hand. They drew the knot. Sergeant Adams brought a paper and told me to sign it. I said I did not know what was in the paper. They forced me to sign it. The Sergeant said if I could not sign let me put my mark, while putting my mark Beramsingh said in a brand application I signed my name. They said if I did not sign my name they will pull off my penis. I got frighten and I signed the paper
40 they gave me. I never told them what is in the paper. I was given the shirt Exhibit "O". My mouth was bleeding. That is the blood on the shirt.

In the
Supreme Court
of British
Guiana.

No.18.
Prabhulall -
recalled
10th February,
1955.
Examination.

Cross-
Examination by
Mr. E.W. Adams.

No.19.

Seokumar
(accused)
10th February,
1955.
Examination.

In the
Supreme Court
of British
Guiana.

No.19.

Seokumar.
10th February,
1955.
Cross-
Examination.

Cross-examined by Mr. Edun:

I put my name in two places, and "S" them in three places. I cannot read but I sign my name. Corporal Beramsingh told Sergeant Adams I could sign my name. I heard that I signed my name after they pulled the cord. I was feeling the pain. The skin was bruised. After they pulled the cord I felt pain. I cannot write quickly. They pulled the cord tight. It was a Saturday. It was bruised on Monday. I was at the Albion Court. I was before the Magistrate. I did not say anything to him. I did not see any of my family. The Monday I was brought to the New Amsterdam Prison. I was not locked up together with No.1 accused. I did not speak to him at the Police Station.

10

(Mr. Edun says he has authority to support his contention that although the accused denies giving the statement, he could be questioned as to whether anything contained in the statement proposed to be put is correct or not).

20

I did not ask at the station to see any officer. I not ask any one to see a doctor. The doctor came and he signed a paper and went away.

11th February,
1955.

Cross-
Examination -
continued.

SEOKUMAR: cross-examination contd.

(Mr. Edun supports contention by referring to 33rd Edition of Archbold 413 R. v. Hammond 28 C.A.R. 84).

I cannot remember any part of the statement. I never made a statement about not knowing where the bag was hidden. I did not make any such statement. No doctor told me to take off my clothes.

30

Re-examined: Declined.

Objection over-ruled - Statement admitted.

Exhibit "G".

No. 20.

EVIDENCE OF DAVID ADAMS (recalled)

DAVID ADAMS: (Evidence in chief continued) This is the statement EXHIBIT "G" read.

Cross-examined by Mr. B.O. Adams:

I charged No.1 accused about 3 p.m. on 26th February. Both were charged together. They were charged before the statement. No. 1 accused was brought in about 3 p.m. He gave his statement between then and 10 p.m. I first got to hear of the robbery from Postmaster Moore. On the way I met Sherry Browne who made a report also to me. He told me about what happened. I informed Mr. McLeod by telephone what I had heard. Sergeant Butts, was in charge of the Station. I took from Browne a description of the men. I gave that personally to Mr. McLeod. I made my report about 7.35 p.m. I met Sherry Browne a few minutes after. I do not know if the police visited the house of a number of suspects. It is not correct that and I am not aware of the Whim Police questioning a number of persons other than accused between 7.35 a.m. and 10 a.m. I do not know of Sergeant Butts making any such report. The police did not to my knowledge visit the homes of Boop, Masrodeen, Samaroo, and people around Port Mourant, Joe Boy, Mohamed, If Butts made such a report it should be recorded. I was in charge of the investigations. If such a report was made at Albion it should be in the Albion Station Diary.

(Mr. Edun objects to the whole Station Diary being put in. Contends that only one page and entry there has been put in. I would know who is brought in for investigation.)

I do not know of Sonny Juman, Ramdeholl Mohabir, Baba. I would deny they were questioned. The six men could have been investigated without my knowledge. I cannot recollect Islam Khan picking out some one other than No.1 accused. I know the faces of the men who gave chase. No rifles or bags were found throughout the investigation. It is about 25 - 30 rods from the P.O. to where the incident occurred. It had then only about three houses. Now there are several as the result of a scheme. I was in the parade room but at the door to receive persons.

In the
Supreme Court
of British
Guiana.

No.20.
David Adams
(recalled)
11th February,
1955.
Examination.
Cross-
Examination by
Mr. B.O. Adams.

In the
Supreme Court
of British
Guiana.

No.20.

David Adams
(recalled)

11th February,
1955.

Cross-
Examination by
Mr. E.W. Adams.

Cross-examined by Mr. E.W. Adams:

Three witnesses were brought in to the parade. There was an identification made out. I would deny more than 3 persons were brought in to the parade. Manahar was not a suspect. He was at the parade. Juman was in the parade. He was not one of the suspects. Mohabir has a gun for which he has a licence. There were no other suspects other than the two accused. They were taken to New Amsterdam on 25th and returned to Albion on the 26th February. The accused were not in the guard room where Sherry Browne came and a joke was made before the identification parade. I do not know the relations of the accused. One of the accused had a reddish shirt. He was not the only person with a reddish shirt on the parade. I saw Exhibit "O" when it was put on the accused. I was not rough to No.2 accused. I and others did not "go to work" with No.2 accused in the recreation room. I did not see him bleeding at any time. He was not stripped and beaten. The entire statement is in my handwriting. Food was not withheld from the accused. On the Saturday I never got a telephone call from Georgetown complaining about ill-treatment of the accused. I was in Court on the Monday at Albion. Bail was opposed. I know Etwaria a witness in this case. Yangasammy was not called in the parade.

10

20

Re-examined:

Re-examination.

There were eight persons on the parade. Only two suspects were on the parade and they were the two accused.

30

Mr. Edun through Court:

The accused signed the statement in two places. He made his initials in three places. Adjourned 14th February, 1955.

DAVID ADAMS re-called at the request of Counsel for 1st named accused:

14th February,
1955.

Further Cross-
Examination by
Mr. B.O. Adams

Cross-examined by Mr. B.O. Adams:

I have the general custody of all books in the station. I see entry dated 10.15 a.m. P. 521 on 28th February, 1954. The N.C.O. referred to would be Sergeant Butts. It is in the handwriting of Sergeant Butts. I am seeing it for the first time.

40

(Mr. Adams asks that book with the particular entry be tendered. Crown Counsel objects. Objection upheld. Entry not admitted.)

I see entry at No.23 dated 10.45 a.m. on 25th February, 1954. I did not see it. I do not know of one Ramsundar being detained. I did not see the entry before today. I did not write it. I see 8.30 p.m. at entry No.64. I did not see that entry. I do not know of the men mentioned being detained.

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(Objection. Objection up-held.)

I returned from duty at 10.10 from an entry in the Diary. I do not write in the diary. When the Statement "G" was taken Corporal Robertson and Constable Prabhulall were present. I cannot remember if anyone else was present. I gave a copy of the statement to No.1 accused. He said nothing.

Cross-examined by Mr. E.W. Adams: Declined.

Re-examined:

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Entries 23 and 64 were written respectively by Constable Elcock who is in the Rupununi. No. 64 seems to be written by Constable Prabhulall.

In the Supreme Court of British Guiana.

No.20.

David Adams (recalled)

14th February, 1955.

Further Cross-Examination by Mr. B.O. Adams continued.

Re-examination.

No.21.

EVIDENCE OF WILLIAM BUTTS

WILLIAM BUTTS sworn states:

I am Sub-Inspector of Police. I am now at Cove and John Police Station. During February, 1954, I was in charge of Whim Police Station. On 25th February 1954, about 7.30 - 8 a.m. A.S.F. McLeod told me something. I was at Whim. As a result I left for Albion Police Station. On the way to Albion I checked up on Boop called Tarzan, Masrudeen, Mohamed Esau, Reaz, Samaroo called Bottle Boy, that was at Port Mourant. I did not see Sherry Browne. I did not know him before. Called in Court. I went to Albion and made the

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No.21.

William Butts.

14th February, 1955.

Examination.

In the
Supreme Court
of British
Guiana.

No.21.
William Butts.
14th February,
1955.

Examination -
continued.

Cross-
Examination by
Mr. E.W. Adams.

entry No. 20 in the Station diary. It is in my handwriting. Page 521 at 10.15 a.m. Put in and marked "Q". I saw the persons between 9 - 9.15 a.m. at their homes. I did not see Sergeant Adams at the Station. I see entry 23 of the 25th February 1954. I did not make it. I see entry No.64. It is not my handwriting. I do not know whose it is.

Cross-examined by Mr. B.O. Adams: Declined.

Cross-examined by Mr. E.W. Adams:

I did not give evidence before. I was summoned over the week-end.

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No.22.

Etwaria.
14th February,
1955.

Examination.

No.22.

EVIDENCE OF ETWARIA.

ETWARIA:

I do farming work. I am married and live with my mother at Guava Bush. I know Nigg Post Office. I remember one Thursday morning in last year after 8 o'clock. I was looking after my father's cows on the Belvedere Dam. I know Accused 1. Knew him about 4 years before. I saw Tameshwar running with a bag hanging on his shoulder running for backdam. He had a gun in his hand. I ask him Boy wah worry. Told me to shut my mouth - a few minutes after I saw one Armogan.

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Cross-examined by Mr. B.O. Adams:

Cross-
Examination by
Mr. B.O. Adams.

I was married about 4 years under Hindu rites. I was married at Albion. I went to Skeldon after marriage. I lived there for 2 years and then we separated. Rampersaud is my father's name. A Constable lives in the house with us. His name is Ramroop. He is my uncle. I am 18 years old. I gave evidence for Ramroop after his story. I lived at Skeldon where I gave evidence in Ramroop's case. I lived with my aunt. I was there for about three weeks. After that I returned home to my mother. I cannot remember when I got married. It was the month of February: I do not know the month we are

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in now. I do not know when Xmas falls. Today is Monday. I went to the Belvedere dam about 8 a.m. I was on the dam about 4 minutes. I have been in the box about 2 minutes now (actual time about 25 minutes). I saw Saunders and another boy running behind Accused 1, that was not long after. I know him working at the water mill. I did not want to marry him and he refused me because of my character.

In the
Supreme Court
of British
Guiana.

No.22.
Etwaria.
14th February 1955.
Cross-examination by Mr.
B.O. Adams
continued.

10 Cross-examined by Mr. E.W. Adams:

I live near to the Belvedere dam. I was walking on the dam going home. The cow had broken its foot. It is near to the rice field. The rice field was dry at the time. I know P.C. Prabhulall.

Cross-examination by
Mr. E.W. Adams.

By Jury:

He was near when he passed. Points from witness box to bar table as the distance.

No.23.

No.23.

EVIDENCE OF JUNOR ARMOGAN.

20 JUNOR ARMOGAN:

I am a carpenter at Albion. I live at Guava Bush. It was Thursday 25th February, 1954. I was on the bridge at Guava Bush working. I saw Accused 1 running with a bag over his shoulder. I had known him about 2 years. He had on a dirty colour shorts and dirty colour shirt. He was running towards back dam side. As soon as he went to pass the bridge he turned to me and said don't talk. Soon after I saw the Postmaster running the same side. I am sure it was No.1 accused.

Junor Armogan.
14th February,
1955.
Examination.

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Cross-examined by Mr. B.O. Adams:

I sometimes ride a cycle. It is February, 1955. I was never in a collision with Accused 1 with my cycle and his cart and he refunded me compensation I have had no story with him. I was working on the bridge. Six of us worked on the

Cross-
Examination by
Mr. B.O. Adams.

In the
Supreme Court
of British
Guiana.

No.23.

Junor Armogan.
14th February 1955.
Cross-
Examination
continued.

bridge. Mana was not working on the bridge. He is related to Rural Constable Ramroop. It was about 7 o'clock. I have no clock at home. I can read the clock a little. I went walking to work. It took me about five minutes to walk from my home to the bridge, where I was working. The estate tolls a bell at quarter to eleven.

Cross-examined by Mr. E.W. Adams:

Cross-
Examination by
Mr. E.W. Adams.

I never applied for a R.C.staff. I am not thinking of it. I have known Etwaria very well.

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No.24.

Prabhulall
(recalled)

14th February,
1955.
Examination.

No.24.

EVIDENCE OF PRABHULALL (recalled)

PRABHULALL re-called by Crown:

I see the Station diary for Albion. I see entry No.64 on page 527. It is not my handwriting. It is that of Constable No.5133 Persaud.

Cross-examined by Mr. E.W. Adams:

Cross-
Examination by
Mr. E.W. Adams.

I cannot remember seeing it before. P.C.Persaud is my brother. I saw entry No.70 before. I did not speak to Sergeant Adams.

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No.25.

Dereck McLeod.
14th. February,
1955.

Examination.

No.25.

EVIDENCE OF DERECK McLEOD.

DERECK McLEOD:

I am Assistant Superintendent of Police. In February, 1954, I was stationed at Whim and officer in charge of Albion Police Station. On Thursday February 25th, 1954, received a report as a result I went to Nigg Post Office. I was told something and I went down a dam on the east side of the Post

Office running south. Constables Raper and Nestor were with me. About $\frac{1}{2}$ mile from the public road. I saw them and Raper took them. I found a pair of khaki trousers (H) this cap, 2 cartridges in the trousers in one of pockets. J1 and J2 cartridges. (Objection to tendering of articles on the ground not sufficient connection and irrelevant objection not sustained.) One is 16 bore and the other 20 bore which is adapted to be used in a 16 gauge gun. Both can be used in a 16 gauge shot gun. I went back to Station with Exhibits B, H and J1 and J2. The cartridges could be used in double barrelled guns. On 26th February, 1954 about 11.05 a.m. I had an identification parade at Albion Station. There were eight including the two accused. Three witnesses namely Sherry Browne, Alvin Saunders and Islam Khan were called. I was in charge of the parade. Sherry Browne identified both accused in my presence, Saunders identified Accused 2. Khan identified No.2. I am not certain about another. It was not a positive identification. A gun and cutlass are very dangerous weapons. I wrote up the identification form put in and marked Exhibit "K". None of the witnesses were aided in their identification. It was not possible for any other person to see in the room. Everything was done in order.

Cross-examined by Mr. B.O. Adams:

Sherry Browne arrived first for the identification. About 20 minutes later Alvin Saunders arrived. The last witness about 10-15 minutes after the second witness had left. I did not see Browne arrive at the Station. I do not know when the other witness arrived at the station. The tallest man was about 5 ft. 7 ins. and the smallest about 5 ft. in the parade. Accused 2 was the only man with a red shirt in the parade. There was no changing of the men on the parade. Profit and Yangasammy were not called in. None of the witnesses said anything during the parade.

Cross-examined by Mr. E.W. Adams:

I did not know how the witnesses got to the station. There is a house as you enter the Guava Bush dam. It is about a mile from the public road. There is a water mill. The distance from the house to the mill is about $\frac{1}{2}$ mile - $\frac{3}{4}$ mile. We

In the
Supreme Court
of British
Guiana.

No.25.

Dereck McLeod.

14th February,
1955.

Examination -
continued.

Cross-
Examination by
Mr. B.O. Adams.

Cross-
Examination by
Mr. E.W. Adams.

In the
Supreme Court
of British
Guiana.

No.25.

Dereck McLeod.

14th February,
1955.

Cross-
Examination by
Mr. E.W. Adam.
continued.

crossed over a bridge on the north - south dam. I
thought so, but we did not cross over the bridge.
I would not be sure if it is the only bridge. The
bridge is about 200 - 300 yards from the water mill.
I did not on that day bring anyone to the station
for enquiries.

That night two men were taken in the station.

Adjournment taken 11.35 a.m.

Return 1.05 p.m.

I do not know of any failure to identify any- 10
one by Profit and Yangasammy.

Re-examined:

Re-examination.

Three persons were asked to identify the sus-
pects and no other person. No.1 accused was No.7
on the parade. No.2 accused was No.4 on the par-
ade.

No.26.

Ganesh Persaud.

14th February,
1955.

Examination.

No.26.

EVIDENCE OF GANESH PERSAUD

GANESH PERSAUD:

I am P.C. at Albion Police Station. I was 20
there in February 1954. I see entry 64 on 25th
February, 1954 at 8.30 p.m. It is my handwriting
I made that entry. Entry put in and marked "R".
The page is 527.

Case for Crown closed at 1.15 p.m.

No.27.

Judge's Note.

14th February,
1955.

No.27.

JUDGE'S NOTE

The accused Tameshwar says he does not wish
to go into the box to give evidence but would make
a statement from the dock.

No. 28.

STATEMENT BY TAMESHWAR.

10 I am 20 years old. I am innocent of the act. I did not rob Sherry Browne. The statement I gave the Police is true and correct, but I guessed the time because I had no clock. At the identification parade Mohamed Islam Khan did not pick me out. He picked out Ramdeholl Monhar. At the last trial in November Islam Khan told the judge he saw two
 20 masked men whose face was covered with handkerchiefs. At this trial for the first time, he said only one man had kerchief on his face and it had dropped. I never worked at the Post Office and I never know if the Post Office money is sent to the Police Station. Armogan and I are not friends. He was riding his bicycle one day and he came in collision with my cart. He wanted compensation but I refused him. Etwaria and I are not friends. She wanted to marry me. I refused her. She is lying
 40 on me. On 25th February, 1954 I was at my mother's rice field working. At Albion Police Station I was threatened by the Police and I was struck on my mouth by Prabhulall. I am innocent.

No.29.

EVIDENCE OF JOHN WESLEY RAMAOJOHN WESLEY RAMAO:

30 I am an Assistant Sworn Clerk at the Deeds Registry. In November, 1954 at the trial of this present case I acted as Clerk of Court to Mr. Justice Hughes who made notes of the evidence. I have been subpoenaed to produce. The notes are not available to me. They are the Judges personal notes. Mohamed Islam Khan gave evidence. I heard him give evidence about two men running on the day of the alleged robbery. I have a recollection of the Judge asking if two men wearing anything over their face. I cannot remember if he said he demonstrated with respect to one or both of the accused; but
 40 I remember him saying a kerchief was tied below the eyes, but I can't say if that was in respect of one or both accused. I took no notes. I cannot remember if he said anything about kerchief dropping.

No cross-examination.

In the
 Supreme Court
 of British
 Guiana.

No.28.

Statement by
Tameshwar.14th February,
1955.

No.29.

John Wesley
Ramao.14th February,
1955.

Examination.

In the
Supreme Court
of British
Guiana.

No. 30.

JUDGE'S NOTE.

No.30.
Judge's Note.
14th February,
1955.

ARMOGAN NAIKEN: Not present. Counsel says last saw him on Thursday and Friday last. Says will have him in the morning at 9 a.m. That being his last witness; the accused Seokumar says he will not give evidence on oath but will make a statement from the dock.

No.31.

No.31.

Statement by
Seokumar.

STATEMENT BY SEOKUMAR.

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14th February,
1955.

I am about 21 years of age. Thursday about eight o'clock in the afternoon whilst going to my home two policemen came to me - one named Nestor and asked for my name. I told him June. He said the Sergeant wanted me at the Station, I asked why. He said the Sergeant will tell me when I got to the Station. When I got to the guard room Sergeant Adams and Prabhulall take me in the Court room. Prabhulall tell me that Tom made a statement against me that me rob Post Office money. I said I know nothing about anyone. Sergeant Adams start to clap me behind my neck. Prabhulall lashed me across my back with a balata whip. Prabhulall slapped me on my lip and cut me. I was brought to Central Station in New Amsterdam. On the morning Corporal Robertson say he want a statement from me. I gave him a statement.

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This is true and correct statement.

I was taken to Reliance Station. From there I was brought back to Albion Station. While I was with Tom in the guard room, the post boy came in. Sergeant Adams asked if he knew the two boys. Sergeant Adams said is the two boys who rob the Post Office. They started to laugh after a time I was taken upstairs to a parade. I was put first in the line to stand up. Prabhulall stood up opposite me. Sergeant Adams stood up opposite Tom. The Post boy came in and picked me out. A next little boy came in and touched me. Saunders came in and made us all turn around, and said he could

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In the
Supreme Court
of British
Guiana.

No.31.

Statement by
Seokumar -
14th February,
1955.
continued.

pick me out by the neck. After that Sergeant Adams said I have to make a statement about the money. I said I know nothing about any money. Late in the afternoon I was taken to Tailogie Station. Sergeant Adams said boy you know this a place where people nah live near the station. You have to tell me something about this money so we going to beat you. I said I know nothing about any money. He held me and pushed me in the lock up, pulled out the cot and blanket and I was left there till in the morning. I was brought back to Albion Station the next morning. Sergeant Adams, Beramsingh and Prabhulall carried me upstairs. Prabhulall asked if I was not willing to say anything about the money. I said I know nothing about the money. He started to slap me, made me strip off my clothes. Beramsingh brought a cord and tied it around my penis. Prabhulall held one side of the cord while Beramsingh held the other. Sergeant Adams brought a piece of paper with some writing and told me to sign the paper. I said I could not read and I did not know what was on the paper and I cannot sign the paper. He told the constable if I would not sign to let them pull off my penis. They started to pull the cord. I got frighten and started to tremble. Sergeant Adams told me to let me put my mark. While putting my mark, Beramsingh said if I knew to sign my name, I have to sign otherwise they will kill me. They showed me where to sign my name. I did so and they loosed out the cord and made me put on my clothes. The place where my lip bin cut that is the blood on the shirt they gave me to wear.

Through mistake my wife wash the shirt. I never made no statement that me and Tom rob Post Office. Me and Tom never contract no business. Me and Tom never met up for the day. Me first statement I made is true and correct statement. I am the father of five children. Me and Tom no friend and company. I left my house about 10 o'clock to go on road. Bassalat never cut my hair. I am innocent over this charge. That is all.

In the
Supreme Court
of British
Guiana.

No. 32.

EVIDENCE OF HECTOR APEDOO

HECTOR APEDOO:

No.32.
Hector Apedoo.
14th February,
1955.
Examination.

I live at Albion Estate in the Nigger Yard on the western side. You pass the hospital to get my section. I know No.2 accused. He lived near to me in the yard. I live at the back of him. On my way to latrine, I have to pass the range of Accused 2. I heard something about No.2 accused the day after. It was about 6 a.m., the Thursday. I went to the latrine around 7.30 a.m. and returned at 7.45 a.m. I saw No.2 accused when I was going to latrine in his hammock. I saw him when I was returning from the latrine. I went home.

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Cross-examined by Mr. Edun:

Cross-
Examination.

I cannot remember the day 25th February last year. I remember a Thursday. Two weeks after the robbery he came and asked me to give evidence. I never gave a statement to the Police or to the lawyer. Before November he asked me to give evidence. He did not tell me the day he wanted me to talk about. He told me I saw him in his hammock that morning and I must give evidence. The next day I heard he had been taken to the station. I never went to the station told anyone I saw him in his hammock. I know Rammarine his brother. Doris his wife is not related to me. I did not work for that week. I cannot remember when I went to the latrine last Friday. I have been many times in the morning. I can't remember if it was falling when I saw him in his hammock when I was going to the latrine. I have seen him several times in his hammock in the morning. I see him at all hours. I do not see him every morning. A range separates No.1 and No.2 accused. I know them well. I have never seen them talking together. No.1 accused has a gent's cycle. I do not know if No.1 accused has a red shirt. I am no relative of No.2 accused.

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By Jury:

I did not hear of the incident the same night.

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CASE FOR 2nd ACCUSED

No. 33.

EVIDENCE OF ARMOGAN NAIKEN.

ARMOGAN NAIKEN called No.1 accused:

10 I live at Albion. I cut and load. I remember one day in last year. It was February and a Thursday. It was about 6.30 - 7.00 a.m. I was going to the savanah. I was going to see my cow while travelling I saw a boat being pulled by a donkey. I was on the Albion dam. No. 1 accused was in the boat Baba was there. George Cooblal, Dadou and many others. Sonny Juman was driving the donkey. I have known Tom for a long time. I am not mistaken. Some days later I heard of a Post Office robbery. It was the last part of the month.

Cross-examined by Mr. Edun:

20 I was going to the back. I asked for a lift Dadool was steering the boat. The boat did not pass a bridge while I was there. About 16 - 17 people were in the boat. Tom was wearing khaki shirt and pants. It was about 6.30 - 7.00 a.m. The boat passed me and went on. I averaged the time. I did not see when the boat started. I did not work for that week. Tom and I are school mates.

CASE FOR BOTH ACCUSED.

No. 34.

JUDGE'S NOTES

30 Request by jury to visit locus. Arranged for 9 a.m. on 15th February, 1955.

Request that witnesses Mohamed Islam Khan, Sherry Browne, Etwaria, Junor Armogan, Bassalat to see living quarters of the accused.

Tuesday 15th February, 1955.

Jury checked. Accused present. Superintendent Moss and Mr. A. M. Edun, Crown Counsel being

In the Supreme Court of British Guiana.

No.33.

Armogan Naiken.
14th February, 1955.
Examination.

Cross-Examination by Mr. Edun.

No.34.

Judge's Notes.

11th February, 1955.

15th February, 1955.

In the Supreme Court of British Guiana.

No.34.

Judge's Notes - continued.

16th February, 1955.

also present. Warning given jury not to have any communication or engage in any discussion or argument. Directions that accused be also taken to locus. Both counsel inform the Court that they will also be visiting the locus. Jury leave with Registrar, Marshal, Counsel and Police Officers.

Wednesday 16th February, 1955.

Crown Counsel asks to re-call certain witnesses who pointed out spots to jury.

No.33.

David Adams (recalled)

16th February, 1955.

Examination.

No.35.

EVIDENCE OF DAVID ADAMS (recalled)

DAVID ADAMS:

I was present yesterday throughout the time when the jury visited the locus. The accused were present throughout along with Counsel for the second accused. I was present when Sherry Browne indicated the spot he said he was robbed, then the bridge he said he saw the two accused standing. I pointed out Nigg Post Office, the Nigg dam and the Belvedere Dam. I was present when Mohamed Khan pointed out the spot he said he was standing when he said he saw two men running south. I was present when Bassalat pointed spot he said he saw No. 2 accused. When Etwaria pointed out house. She said she lived at the time. The route she took to the back of the house, then where she was standing when she said she saw No.1 accused going south. I was present when Junor Armogan showed bridge he was standing when he saw No.1 accused. I was present too when Hector Apadoo showed where Nos.1 and 2 accused were living, and where he was living the communal latrine that Apadoo had used. Junor Madray showed where he was living. Naikan indicated the koker south of the estate. I indicated house Jaghar Bacchus lived.

Cross-examined by Mr. B.O. Adams: Declined.

Cross-examined by Mr. E.W. Adams:

Cross-Examination by Mr. E.W. Adams.

I indicated nothing to the Jury at Albion Station yesterday during the luncheon adjournment. I did not indicate the lavatory and water tank to the Jury. No one did.

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No. 36.

EVIDENCE OF SHERRY BROWNE (recalled)

SHERRY BROWNE:

Offered for Cross-examination by accused -
Declined.

In the
Supreme Court
of British
Guiana.

No.36.
Sherry Browne
(recalled)
16th February,
1955.

No. 37.

JUDGE'S NOTE.

Counsel for both accused say they do not wish
any other witness to be re-called.

No.37.
Judge's Note.
16th February,
1955.

10 Mr. B.O. Adams for No. 1 accused begins ad-
dress to the jury at 9.28 a.m.

If No.1 accused at rice field at St.John. End
of Matter. Cannot be at two places at same time.
Sherry Browne accomplice. If had anything to do
with it - no robbery.

(2) Witnesses for Crown have lied hopelessly.
Butts pouncing down on several persons.
McLeod found pair of long pants about one
mile from Public road.

20 1.05 p.m. Mr. B. O. Adams resumes and continues
address to Jury.

Re Sergeant Adams. Butts making check up on
way to Albion and Sergeant not knowing.

Pair of trousers found by A.S.P. McLeod not
connected in any way.

Concludes address at 2.15 p.m.

Mr. E.W. Adams: begins address on behalf of the
second named accused.

30 No one brought to refute alibi of accused of
movement known to police since 26th February from
the statement he gave.

In the
Supreme Court
of British
Guiana.

Evidence of prosecution and identification of
accused.

Thursday 17th February, 1955.

No.37.

Mr. E.W. Adams continues his address to Jury.
Concludes address at 9.55 a.m.

Judge's Note
- continued.
17th February,
1955.

Mr. Edun for the Crown begins reply.
Concludes reply at 11.10 a.m.

Adjournment taken.

Begins summing-up to jury at 1 p.m. Concludes
at 2.55 p.m.

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Jury retires. Return into Court at 5 p.m.

Verdict:- Found guilty in proportion of 11 - 1.

SPEECHES IN MITIGATION

Mr. B.O. Adams addresses in mitigation. Age.
No actual physical injury to Sherry Browne.

Mr. E.W. Adams addresses (i) 21 years married
and father of 5 children.

No acts of violence.

Sentence:- Each accused sentenced to 10 years
Penal Servitude and each to receive in addition 6
strokes, by flogging.

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In the Court
of Criminal
Appeal.

No.38.

NOTICE OF APPEAL. By Tameshwar

TO THE REGISTRAR OF THE COURT OF CRIMINAL APPEAL.

No.38.

Notice of
Appeal by
Tameshwar.

26th February,
1955.

I, TAMESHWAR, having been convicted of the
offence of Robbery with aggravation, contrary to
section 222(c) of the Criminal Law (Offences) Or-
dinance, Chapter 17, and now being a prisoner in
Her Majesty's Prisons, New Amsterdam, in the County
of Berbice and Colony of British Guiana and being
desirous of appealing against my said conviction
do hereby give you notice that I hereby apply to
the Court of Criminal Appeal for leave to appeal

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41.

against my said conviction on the grounds herein-
after set forth.

TAMESHWAR
Appellant (Defendant)

Dated this 26th day of February, 1955.

D.A. Simpson,
for Assistant Superintendent of Prisons.
26.2.1955.

In the Court
of Criminal
Appeal.

No.38.

Notice of
Appeal by
Tameshwar -
26th February,
1955
continued.

No.39.

NOTICE OF APPEAL by SEOKUMAR

TO THE REGISTRAR OF THE COURT OF CRIMINAL APPEAL:

I, SEOKUMAR, having been convicted of the of-
fence of Robbery with aggravation, contrary to sec-
tion 222(c) of the Criminal Law (Offences) Ordi-
nance, Chapter 17, and now being a prisoner in Her
Majesty's Prisons, New Amsterdam, in the County of
Berbice and colony of British Guiana, and being
desirous of appealing against my said conviction do
hereby give you notice that I hereby apply to the
Court of Criminal Appeal for leave to appeal against
my said conviction on the grounds hereinafter set
forth.

SEOKUMAR
Appellant (Defendant)

Dated at Berbice,
this 26th day of February, 1955.

D.A. Simpson,
for Assistant Superintendent of Prisons.
26.2.55.

No.39.

Notice of
Appeal by
Seokumar.

26th February,
1955.

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In the Court
of Criminal
Appeal.

No. 40.

SUPPLEMENTAL GROUNDS OF APPEAL

To:- The Registrar of the Court of Criminal Appeal,
- and -

No.40.

To:- The Solicitor-General.

Supplemental
Grounds of
Appeal.

24th October,
1955.

It is my intention as Counsel on behalf of the Appellant to apply to the Court of Criminal Appeal for leave to amend the grounds of application for leave to appeal by the addition of the following ground :-

10

(15) The visit of the jury to the locus in quo, as recorded at pages 48, 49 and 50 of the notes of evidence, was conducted in an improper and/or illegal manner because

(a) the jurors were not at all times kept apart and separate from the witnesses,

(b) the witnesses, in answer to questions put to them, demonstrated and made statements not on oath in the presence of the jury and

20

(c) the learned trial judge was absent during the jury's visit to the locus in quo

B.O. Adams
Counsel for the Appellants
of Lot 215, South Street, Lacytown,
Georgetown, Demerara;

Georgetown,
this 24th October, 1955.

30

No. 41.

JUDGMENT.Before HOLDER, C.J., STOBY and PHILLIPS, JJ.

1955: October 28; December 21.

1956: February 11; April 4.

(a) HOLDER, C.J. and PHILLIPS J.

10 The appellants were indicted on a charge of robbery with aggravation contrary to section 222(c) of the Criminal Law (Offences) Ordinance, Chapter 17, and on the 17th February, 1955, they were both convicted on the said charge and each sentenced to ten years penal servitude and ordered each to receive six strokes. Against this conviction the Appellants applied for leave to appeal under section 5(c) of the Criminal Appeal Ordinance, 1950. Fourteen grounds of appeal were submitted.

20 At the hearing of the appeal on the 28th October, 1955, Counsel for the Appellants sought and obtained leave of the Court to file an additional ground of appeal as follows :-

"The visit of the jury to the locus in quo, as recorded in pages 48, 49 and 50 of the notes of evidence, was conducted in an improper and/or illegal manner because

- 30 (a) the jurors were not at all times kept apart and separate from the witnesses,
- (b) the witnesses, in answer to questions put to them, demonstrated and made statements not on oath in the presence of the jury and
- (c) the learned trial judge was absent during the jury's visit to the locus in quo."

Counsel at the same time requested the Court to adjourn the hearing in view of the fact that an appeal - Karamat v. The Queen - was being heard by the Judicial Committee of the Privy Council in which one of the grounds of appeal was similar to that in respect of which he applied for and was granted leave to file. In the circumstances the

In the Court
of Criminal
Appeal.

No.41.

Judgment

(a) Holder C.J.
and Phillips J.

4th April, 1956.

In the Court
of Criminal
Appeal.

No.41.

Judgment.

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and Phillips J.

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Court granted a postponement. The appeal of Karamat v. The Queen was dismissed by the Privy Council on the 13th December. This appeal was accordingly refixed to be argued on the 21st December.

Counsel then informed the Court that he did not propose to argue all the grounds of appeal. He argued three grounds of appeal mentioned hereunder and referred to the fourth ground in his submission under ground three; he abandoned the others.

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Counsel contended that -

1. Inadmissible evidence was wrongly admitted and wrongly treated by the learned trial Judge when he admitted the following exhibits, "E" (cutlass), "L" (gent's Raleigh cycle), "H" (Khaki trousers), "J1" and "J2" (cartridges).

2. The learned trial Judge failed to direct the jury that the case of each accused must be considered separately.

3. The defence of the accused was not adequately put by the learned trial Judge to the jury and in particular the cross-examination of the various witnesses which tended to their discredit and the evidence as elicited in cross-examination in support of the defence.

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4. The learned trial Judge misdirected the Jury in regard to the evidence of Etwaria when he directed the jury not to consider the evidence of the witness Etwaria and her friendship with the police in considering the truth or otherwise of their evidence.

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The case for the prosecution was that at 7 a.m. on the 25th February, 1954, one Sherry Browne, a Postal Apprentice was proceeding on his cycle to the Nigg Post Office from the Albion Police Station in the County of Berbice, with 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 later identified as the two Appellants. The Appellant Tameshwar was armed with a gun and the other Appellant with a cutlass. The men were chased but escaped. Whilst they were escaping however they were seen

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running away from the scene by witnesses who identified them.

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The defence of each Appellant was an alibi. The Appellant Tameshwar's defence was that at the time of the robbery he was working in his rice field aback of Plantation Albion and was never on the Nigg Public Road. The Appellant Seokumar said that he at the time of the robbery was at his home and was never at that hour on the Nigg Public Road.

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10 With regard to the first ground, Counsel for the Appellants argued that the Exhibit "E" (the cutlass) should not have been admitted as there was insufficient evidence connecting it with the accused, in other words it should not have been admitted - on the ground of relevancy; that the jury might have felt that this cutlass was the cutlass used by one or other of the accused and from that therefore draw the improper inference that they were guilty of robbery with aggravation; that the visible evidence tended to influence the minds of the jury prejudicially; that secondly there was nothing to connect the cycle with the case except that it belonged to the first-named Appellant; that this visual evidence might have exercised a strong influence on the minds of the jury; and thirdly that there was no evidence that the cap and trousers picked up on the dam with two cartridges in the pockets belonged to the first-named Appellant.

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30 In our opinion the evidence was relevant. Before the jury addressed their minds to the issue of whether the Appellants were the men who had robbed Sherry Browne, they had to decide whether Sherry Browne had in fact been robbed. His evidence was that the men who robbed him were wearing certain clothes and armed with a cutlass and a gun and they took a certain route after relieving him of Government's property. Clothing similar to that described by him was found on the route taken by the assailants and cartridges found in the pocket of the trousers. True that the garments were not proved to belong to the Appellants and true that no one had traversed the path immediately before the robbery to establish that the garments must have been deposited after the robbery, but that affected the weight of the evidence and not its admissibility. It was not an unreasonable inference that these garments etc. were dropped by

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the robbers in their flight. Similarly, the cycle admittedly owned by one of the Appellants was produced to prove that he did possess a cycle and therefore could not say that the witnesses who saw him riding were untruthful as he was unable to ride.

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With respect to the second ground of appeal Counsel argued that the learned trial Judge failed to direct the jury that the case of each accused must be considered separately; that the nearest the Judge came to direct the jury on this point is when he told them that the statements of either accused was not evidence against the other accused; that with that exception the Judge did not direct the jury that each accused must be considered separately and that the jury may convict one accused and acquit the other if they so thought fit. This non-direction or omission to direct, Counsel urged, was not a matter of mere academic interest but was of great practical importance in this case as the defences were different in so far as the places where the accused were alleged to have been at the time of the robbery and the trial Judge put the cases of the accused together for all purposes in his summing-up to the jury.

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At pages 89 - 90 with respect to the first-named Appellant the trial Judge said:

"The defence of the accused is an alibi. That means that they were somewhere else at the time when the crime was committed. If you believe the first-named accused, the story that he told you from the dock, and if you believe the testimony of this witness who has been called in support of his story, that at that time of the morning he was in this boat going away, he certainly could not have been on the Nigg road and he certainly could not have taken part in the perpetration of this crime. The defence is an alibi. The accused says: "I was not there." He told you where he was and he called a witness to support him. You will consider his story as given from the dock and you will consider the story of the supporting witness and say whether you believe them or not. If you believe them, the No.1 accused is not guilty of this crime."

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The trial Judge then proceeded (page 90) to deal with the case of the second-named Appellant and concluded thus:

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10 "So, gentlemen, you have Seokumar's story and then you have this witness of his. If you believe his story and if you believe his supporting witness there again, like the No. 1 accused, his alibi is established and he could not have been on that Nigg public road to have committed this crime. You are the judges of the facts and you have to consider whether you accept them as witnesses of truth.

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Well, gentlemen, that is the story, as I see it, with respect to both accused. I have dealt with each one separately and independently."

It is only a misreading and a misconception of the summing-up which could result in such an argument.

20 With regard to Ground 3 Counsel contended that the Judge ought to put the main aspects of the defence and argued that the defence of alibi was not adequately put; that he would not say that everything in the Defendant's case must be put to the jury minutely, that the Judge must deal with the defence exhaustively, but the Judge slurred over these parts of the cross-examination which were helpful or favourable to the accused and then Counsel proceeded to give illustrations of this proposition.

30 For instance in the case of the witness Etwaria who swore that she had seen the first-named Appellant running away from the scene with a gun but in cross-examination had denied that she had spoken falsely (as was suggested) and denied that her reason for giving the testimony she gave was because she had wished to marry the first-named Appellant but that he had refused to consent and enter into matrimony with her because of her bad character.

40 This Counsel alleged was not recalled to the attention of the jury.

In our view this is not a matter of any great significance. The jury had seen the demeanour of

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the witness, had heard her testimony and had every opportunity of assessing her credibility.

He contended that another important aspect of the case was whether there was a robbery at all i.e. whether Sherry Browne was an accomplice. While the Judge did mention that aspect without going into detail he brushed it aside and did not put to the jury the circumstances whereby he could be regarded as an accomplice.

In our view the trial Judge could not have been more explicit on this aspect of the case. This is what the trial Judge said at p. 72 of the record: 10

"If you can find it possible on the evidence to take the view that Sherry Browne is not an innocent person as he asks you to believe, that he is in this link-up and that he is part and parcel of it, having knowledge and information that he was carrying this money, and that he gave assistance to the robbers to take the money, and if you can find it possible on the evidence to take the view that he is an accomplice, that would be an end of the case for the Crown because there would be no robbery. If he gave his aid and if he was in this link-up and was there giving his assistance that would be an end of the case for the Crown, if you regard Sherry Browne as an accomplice. That is my direction to you. There would be no robbery, as the parting with this money would not be a parting against his will." 20 30

Counsel for the defence then referred to the second statement taken by the Police from the second accused and submitted that this statement was not dealt with by the trial Judge. He referred to p. 94 where the trial Judge dealt with this statement as if it amounted to a confession, but it is to the contrary a denial of guilt; that the second accused was exculpating himself at the expense of the first accused; that the Judge had put emphasis on the wrong place and this was a misdirection; that it is not easy to realise that this statement is not a confession of guilt but an exculpation. 40

The trial Judge did not tell the jury that the

statement amounted to a confession but that the second-named Appellant by his statement had put himself on the "spot" i.e., had put himself on the scene.

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10 In general terms Counsel's argument was that the defence was not put in the same adequate manner as was done in respect of the prosecution's case; that it is a well known proposition of law that the defence must be as clearly put as the case for the prosecution; that in putting the case for the defence there were certain aspects with regard to the question of identification which had been elicited in cross-examination and which were not put to the jury; that while the question of identification was a matter of fact for the jury, yet in determining this question those points which emerged in cross-examination should have been put clearly to the jury.

20 The Lord Chief Justice in the case of Ronald Ernest Meredith and others (1943) 29 Cr.App.R.40, said at p.45:

30 "We are satisfied on the whole that the jury were not given an opportunity of saying whether they accepted the statement of the Defendants and that this vitiated the summing-up, can any criticism fairly be made. It is true that the summing-up as a whole leans, if that is the right expression, against the Appellants. But a direction in a criminal Court cannot always maintain the precise balance which I suppose in theory people sometimes think a direction to a jury should preserve. It is within the experience of all of us that a learned Judge finds it necessary, because the facts compel him, to direct the jury in such a way as to indicate to them his opinion, having told them that they are judges of fact. It is impossible to quash a conviction because a summing-up is adverse to a particular defendant. The only question is whether the case for the defence was fairly put before the jury."

40 With this statement we are in entire agreement. In our view the defence in this case was fairly and adequately put to the jury.

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Counsel for the Appellants next submitted that there was a view of the locus in quo by the jury directed by the Judge in pursuance of section 45 of the Criminal Law (Procedure) Ordinance, Chapter 11, but that the trial Judge did not himself attend this view. He contended that the absence of the Judge from the view was in itself an irregularity which vitiated the trial. He further submitted that even though there was no irregularity at the view other than the fact that the view was conducted by the Clerk of the Court in the absence of the Judge that this was a circumstance which together with the fact that the Judge was absent during a part of the trial (and the view is part of the trial) rendered the proceedings abortive and a nullity. No agreed statement of the facts in connection with the view of the locus was filed nor was any in the circumstances requested by the Court. Counsel for the Appellants accepted the record as accurate. The Judge's notes relating to the view are:

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"Request that witnesses Mohamed Islam Khan, Sherry Browne, Etwaria, Junor Armogan, Bassalat to see living quarters of the accused.

Tuesday 15th February, 1955

Jury checked. Accused present. Supt. Moss and Mr. A.M. Edun, Crown Counsel being also present. Warning given jury not to have any communication or engage in any discussion or argument. Directions that accused be also taken to locus. Both Counsel inform the Court that they will also be visiting the locus. Jury leave with Registrar, Marshal, Counsel and Police Officers;

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Wednesday 16th February, 1955:

Crown Counsel asks to recall certain witnesses who pointed out spots to jury.

DAVID ADAMS:

I was present yesterday throughout the time when the jury visited the locus. The accused were present throughout along with Counsel for the second accused. I was present when Sherry Browne indicated the spot

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"he said he was robbed, then the bridge he said he saw the two accused standing. I pointed out Nigg Post Office, the Nigg dam and the Belvedere Dam. I was present when Mohammed Khan pointed out the spot he said he was standing when he said he saw two men running south. I was present when Bassalat pointed spot he said he saw No. 2 accused. When Etwaria pointed out house she said she lived at the time. The route she took to the back of the house, then where she was standing when she said she saw No.1 accused going south. I was present when Junor Ar-mogan showed bridge he was standing when he saw No.1 accused. I was present too when Hector Apadoo showed where Nos. 1 and 2 ac-cused were living, and where he was living the communal latrine that Apadoo had used. Junor Madray showed where he was living. Naikan indicated the koker south of the es-tate. I indicated house Jaghar Bacchus lived.

Cross-examined by Mr. B.O. Adams: Declined.

Cross-examined by Mr. E.W. Adams:

I indicated nothing to the Jury at Al-bion station yesterday during the luncheon adjournment. I did not indicate the lava-tory and water tank to the jury. No one did.

SHERRY BROWNE:

Offered for cross-examination by ac-cused. Declined.

Counsel for both accused say they do not wish any other witness to be recalled."

In support of his contention Counsel referred to several passages in the judgment of Lord Goddard, C.J., in the appeal of Karamat v. The Queen (1956) 2 W.L.R. p. 412 and urged that as a view is part of the evidence and as the demonstrations to the jury were given in the absence of the Judge, evi-dence was thereby received outside of a properly constituted court and was therefore an irregular-ity and accordingly the conviction should be quashed. He further submitted that the question

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of a venire de novo was not a proper method of dealing with the appeal if it was accepted that there were irregularities.

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The Acting Solicitor General argued that the distinction drawn by Counsel between the jury merely "viewing" on the one hand and on the other obtaining demonstrations in addition to "viewing" was not tenable in law: he pointed out that the attention of the Privy Council was directed to a view of the locus in the absence of the Judge; that the Privy Council contemplated a situation where there was a view in the absence of the Judge and all that they have said in Karamat's case in that regard was obiter as in fact the Judge was present and that if the Judge is present and no irregularity occurs then the conviction would stand. He further argued that the Privy Council have said that it is eminently desirable that the Judge should be present but they have stopped at the point of deciding that Martin's case is wrong; that nowhere does the Privy Council say that the absence of the Judge vitiates the trial where there have been demonstrations without anything more or indications properly made to the jury for the purpose of the view. Finally he submitted that in Karamat's case the Judge was present but the Privy Council does not say that if the Judge were absent and demonstrations were given to the jury that would have been ground for holding that an irregularity had taken place which would justify quashing the conviction. 10 20 30

We agree that it is eminently desirable that a Judge should attend a view as stated in Karamat's case; this ensures the proper conduct of the view and avoid irregularities or removes the possibility of irregularities occurring.

It does not however follow that in the absence of a Judge irregularities are bound to occur.

The purpose of a view is to enable the jury to get a clear picture of points and spots and land-marks and the general topography of the area of which they may sometimes obtain a hazy and inaccurate picture merely through the medium of plans and photographs. Distances given by witnesses may be approximate; descriptions of places may be inaccurate and fail to convey to the jury the 40

correct relationship of objects referred to in the evidence and so a view of the locus in quo may often dispel from the minds of the jury misconceptions arising from evidence given. The absence of a Judge from a view which he has directed to be had is not by itself a ground for nullifying the trial; provided that there are adequate safeguards to prevent members of the jury being spoken to or receiving communications or being subjected to the exercise of influence. The law jealously guards the office and functions of the jury and seeks to ensure that nothing improper occurs which may be prejudicial to the accused.

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The important point is to ensure that no irregularity takes place which clearly would detract from the due and proper administration of the law and strike at the root of a fair trial.

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We have seen nothing on the record nor heard any submission which would lead us to infer that in this regard the Appellants did not have a fair and proper trial.

On the facts of this case there has been no suggestion of impropriety on the part of the jury or witnesses or anybody else or any irregularity apart from the absence of the Judge at the view and the Assistant Sworn Clerk's conducting the view in the Judge's absence at his direction.

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The Judge's Clerk is an officer of the Court and is usually a Sworn Clerk or an Assistant Sworn Clerk whose duties under the provisions of the Supreme Court Ordinance, Chapter 7, Section 17, are to perform those duties in connection with the Court and with judicial business which the Registrar, subject to the approval of the Court, assigns to him. The Sworn Clerk authorised by the Court has power to administer oaths and take affidavits and to take solemn affirmations or declarations in lieu of oaths.

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The Marshal of the Court is also an officer of the Court whose duties among others is to be in attendance on the Court and to take the jury in charge when sworn.

The Sworn Clerk and Marshal in the absence of the Judge have charge of the jury by virtue of

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their office and under the directions of the Judge. These officers are experienced officers of the Court. It was never suggested that they performed their duties improperly. Ample opportunity was given if such were the case for such an allegation to have been made and an investigation carried out at the trial.

In R. v. Furlong, 34 C.A.R. p.79. the Lord Chief Justice said at p.82:

"We are quite satisfied that the Judge's Clerk did not enter the jury room. Even if he had, we do not think that that would have been in itself an irregularity, because the Court always has power to allow somebody to make a communication to the jury, if it is a communication proper to be made, and if it is made by the direction of the Court. Everyone knows that the oath that is given to a jury bailiff is that he "shall suffer no person to speak to them nor speak to them (himself) unless it be to ask whether they are agreed upon a verdict, without leave of the Court". That has been the jury bailiff's oath, I should think, for at least 100 years or perhaps longer, though it was altered at one time because the jury bailiff used to be sworn to keep the jury without light, food, or water." 10 20

He further said at p. 84:

"It is impossible to say that every irregularity is a ground for quashing a conviction. It may and not infrequently does, happen that something is done in the course of a trial which is not strictly in accordance with recognised procedure. If that is so, the Court must consider whether or not it is an irregularity which goes to the root of the case." 30

When the Court resumed David Adams a Sergeant of Police who was a witness at the trial and who was present at the view was recalled and gave evidence as to what occurred there and opportunity was given to Counsel for the Appellants to cross-examine him. This was declined by Counsel for one of the accused while the other Counsel availed 40

himself of the opportunity, as is seen from the record to cross-examine him. Sherry Browne the chief witness for the Crown was also recalled and presented for cross-examination. Other witnesses for the Crown were available for cross-examination but both Counsel for the accused intimated to the Court that they did not wish any other witness to be recalled. Had the witnesses not been recalled and offered for cross-examination in this case the result might have been otherwise.

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We conclude that had there been any irregularity Counsel for the accused or for the Crown would have brought this to the attention of the Judge.

We have accordingly come to the conclusion that the absence of the Judge who has directed a view is by itself not necessarily fatal. Where however there is such absence and irregularities are established or there appear to be circumstances and incidents from which it may be inferred that irregularities occurred or were likely to occur of a nature prejudicial to the fair trial of the accused, the trial would have been irregular and the conviction could not be allowed to stand. In our view no such irregularities occurred in this case as would warrant our holding that this trial was irregular. We are of the opinion that the mere conduct of the view by the Assistant Sworn Clerk, an Officer of the Court, acting under the direction of the Judge, is not an irregularity of a nature that goes to the root of a fair and proper trial. In the circumstances we feel that the Appellants received a fair and impartial trial and we cannot say that justice was not seen to be done.

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This ground of appeal fails.

The appeals are dismissed and the convictions and sentences affirmed. In view of the delay which has taken place sentences will run from the date of convictions and not from the date when the appeals are dismissed.

(b) STOBY, J.

Section 3(6) of the Criminal Appeal Ordinance, Chapter 8, states that -

"Unless the Court directs to the contrary in

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cases where, in the opinion of the Court, the question is a question of law on which it would be convenient that separate judgments should be pronounced by the members of the Court, the judgment of the Court shall be pronounced by the President of the Court, or such other member of the Court hearing the case as the President of the Court directs, and no judgment with respect to the determination of any question shall be separately pronounced by any other member of the Court."

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In this appeal a question of law of some importance has been argued and as the conclusion to which I have come differs from that of the majority of the Court I sought and obtained the consent of My Lord the President of the Court to deliver a separate judgment in respect of the ground of appeal where the divergence of views occurs.

It is common ground that at the trial of the Appellants before a Judge and jury at the Berbice Criminal Assizes, the jury requested a view of the locus in quo. The Judge acceded to the Jury's request and directed a view. The note he made is as follows:

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"Request by jury to visit locus. Arranged for 9 a.m. on 15th February, 1955.

Request that witnesses Mohamed Islam Khan, Sherry Browne, Etwaria, Junor Armogan, Bassalat to see living quarters of the accused."

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It is not in dispute that the Judge did not go to the locality, but accompanying the jury were Counsel for the prosecution and for the defence, the Clerk of Court, the Marshal and the five witnesses required by the jury.

On return to the Court David Adams was recalled as a witness and gave evidence of what took place at the locus in quo. He was cross-examined by Counsel for one of the accused. Another witness Sherry Browne who had given important evidence was recalled for cross-examination. He was not cross-examined. Each Counsel for each of the accused then intimated that it was unnecessary to recall the other witnesses with the result that no other

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witness who had attended the view was recalled.

Counsel for the Appellants relying on Karamat v. The Queen (1956) 2 W.L.R. 412 submitted that where anything was said or done by a witness at the view the Judge's presence was essential and the absence of the Judge was an irregularity which must result in the conviction being quashed.

10 The Acting Solicitor General's submission was that Karamat's case decided that the presence of the Judge was desirable but not necessary and as two witnesses were recalled and the others were not required by the defence it was clear that no irregularity was being complained of. He stressed that the case of Reg. v. Martin and Webb (1872) L.R. 1 C.C.R. 378 in which the jury and two witnesses visited the locus after the summing-up without the Judge was mentioned in Karamat's case and not overruled.

20 As the case of Karamat is the latest authority with regard to a view by the jury and as Counsel for the Appellants as well as Counsel for the respondent relied on it in support of their respective propositions an analysis of the case is necessary.

In Karamat's case the point which was taken was that whatever may have been the common law practice the authority for a view by the jury was to be found in the Criminal Law (Procedure) Ordinance, Chapter 11, section 45(1) and (2) which is:

30 "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.

40 (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

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directions shall affect the validity of the proceedings, unless the Court otherwise orders."

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It was contended that the section did not permit demonstrations by witnesses but that they had to content themselves by pointing out fixed objects.

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The Judicial Committee of the Privy Council did not place such a limited interpretation on the section and held that it was unobjectionable if witnesses attended the view and indicated where they or others had been at the material time. That being the decision of the Privy Council then whatever doubts may hitherto have existed concerning the propriety of making demonstrations at the locus such doubts have been resolved and it is now finally settled that on a visit to the locus witnesses need not confine themselves to pointing out fixed objects but may indicate where they were standing and make such demonstrations as may be requested of them.

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After deciding that issue the Privy Council went on to examine what took place at the view in order to determine whether despite the legal authority for demonstrations by witnesses there nevertheless were in the circumstances of that case irregularities which vitiated the trial. In the result it was held that no irregularities took place.

The Solicitor General relied on the following passage in the speech of Lord Goddard as supporting the argument that the Judge need not attend the view:

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"In Reg. v. Martin & Webb (supra) it is clear from the report that neither the judge nor the prisoner attended the view which was held after the summing-up. The Court said there was no irregularity in allowing such a view, though such precautions as may seem to the Court necessary ought to be taken to secure that the jury should not improperly receive evidence out of court. Here everything was done in the presence of the judge, who throughout was in control of the proceedings. It was eminently desirable that he should be present, and it is possible that, had he not been, a different result would have followed."

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In Reg. v. Martin & Webb (supra) where the jury had a view in the absence of the Judge two questions were reserved for the Court of Crown Cases Reserved -

1. Whether there was a mistrial by reason of the view having been permitted after the summing-up, and

10 2. Whether there was a mistrial by reason of the jury having at such view put some questions to the witnesses which were not heard by the judge or the prisoners.

Bovell, C.J., delivering the judgment of the Court said:

20 "The first objection made to the conviction in this case is, that the jury were permitted to view the urinal, in which the offence was alleged to have been committed, after the summing-up of the learned judge. We are unanimously of opinion that there was no irregularity in allowing such a view. It is always entirely in the discretion of the Court to allow a view or not; though such precautions, as may seem to the Court necessary, ought to be taken to secure that the jury shall not improperly receive evidence out of court.

30 As to the second point, the alleged reception of evidence by the jury in the absence of the judge and of the prisoners, it does not appear that any examination into the facts was made in the court below. And in the absence of such examination, it is impossible for this Court to reverse the conviction on the ground of a mere statement of what the learned judge was informed, which may be a mere rumour without any foundation.

40 "If such an examination into the facts had been made in the Court below, and it had been found that the irregularity alleged had taken place, a very serious question would then have arisen."

Having regard to the decision in Martin's case it seems to me that Lord Goddard was citing Martin's

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case as authority for the decision to which the Board had come which was that what took place at the view in Karamat's case did not prejudice him in any way and that the question of whether an accused person is prejudiced by what takes place at a view may be a deciding factor.

From Martin and Karamat the law may be stated thus:

1. The jury can be permitted to have a view in the absence of the Judge provided no questions are asked and they communicate with no one.

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2. The jury can ask questions and witnesses may place themselves in positions they were at the material time provided the judge is present.

This second aspect which I have stated emerges from the judgment in Karamat's case. Lord Goddard there said: "That a view is part of the evidence is clear." And later: "The holding of a view is an incident in and therefore part of the trial."

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Once it is conceded that what takes place at the view is part of the trial, a clerk of Court cannot question the jury or if he does the answers must be recorded. Nor is it necessary to recall the witnesses who have demonstrated at the view as the demonstration is evidence and in substitution of a photograph or plan. But a photograph or plan cannot be tendered in the absence of the Judge and if it is material the judge should look at it so as to deal with it if necessary in his summing-up.

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That Counsel for the prisoners did not wish to cross-examine Sherry Browne or to have three of the five witnesses recalled certainly shows that they were not complaining of any irregularity. The state of the law in British Guiana at the time of that trial must not be overlooked. In Hassan Mahamed v. The Queen (C.C.A. No. 17 of 1954) the Court of Criminal Appeal (Boland, C.J. (acting), Stoby and Phillips, J.J.) had held that the absence of the Judge on a visit to the locus was not an irregularity. Delivering the judgment of the Court I said:

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"No case has been cited to us, and we know of

"none, whereby it is essential for the Judge to accompany the jury to the locus in quo."

In the Court
of Criminal
Appeal.

... ..

"What took place was that the jury visited the locus in order to appreciate what the witnesses had said and the Judge, in his summing-up, reminded the jury that, having visited the scene, it would assist them in appreciating the evidence which had been given by the witnesses. We can see nothing wrong in that procedure."

No.41.

Judgment.

(b) Stoby J.
(dissenting)

4th April 1956

- continued.

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It was my opinion at the time that a view was not part of the trial and consequently once the Jury were not allowed to communicate with anyone except to ask questions of the witnesses through the Clerk, the Judge's absence did not matter as whatever was said at the locus had to be repeated in Court. Counsel could, at the time, not have founded any objection on the Judge's absence as that decision of the Court of Criminal Appeal was against him. For many years the practice existed. Many Judges in the past did not accompany the jury and no complaint was ever made no doubt because it was never regarded as part of the trial.

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Since Karamat's case the view that a visit to the locus is not part of the trial is found to be erroneous and the contention that evidence cannot be received in the Judge's absence is in my opinion sound. I would quash the convictions.

No.42.

In the
Privy Council.

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ORDER IN COUNCIL GRANTING SPECIAL LEAVE TO APPEAL.

AT THE COURT AT BUCKINGHAM PALACE

No.42.

The 9th day of October, 1956.

PRESENT

Order in
Council
granting
Special leave
to Appeal.

THE QUEEN'S MOST EXCELLENT MAJESTY

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 2nd day of October 1956 in the

9th October,
1956.

In the
Privy Council

words following, viz.:-

No.42.

Order in
Council
granting
Special leave
to Appeal.

9th October,
1956 -
continued.

"WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of Tam-eshwar and Seokumar in the matter of an Appeal from the Court of Criminal Appeal in the Supreme Court of British Guiana between the Petitioners Appellants and Your Majesty Respondent setting forth: that the Petitioners were jointly indicted and jointly tried for the offence of robbing one Sherry Brown of \$13,129.68 and one bag on the 25th day of February 1954 whilst they were armed with a cutlass and a gun: that the Petitioners were first tried in November 1954 when the jury were unable to agree and they were retried before Miller J. and a jury in the Court of the Berbice Criminal Assizes of the Supreme Court of British Guiana: that at the conclusion of the evidence for the defence at the request of the jury a visit to the locus in quo was ordered by the Court and this took place in the presence of the Petitioners Counsel the Marshall police officers and five prosecution witnesses but in the absence of the Judge: that on the 17th February 1955 the Petitioners were found guilty and convicted of robbery with aggravation contrary to Section 222(c) of the Criminal Law (Offences) Ordinance Chapter 17 and sentenced to ten years' penal servitude and to receive six strokes: that the Petitioners appealed to the Court of Criminal Appeal in the Supreme Court of British Guiana and that Court on the 4th April 1956 Stoby J. dissenting dismissed the Appeal: And humbly praying Your Majesty in Council to grant the Petitioners special leave to appeal in forma pauperis against the Judgment of the Court of Criminal Appeal in the Supreme Court of British Guiana dated the 4th day of April 1956 and for such further other Order as to Your Majesty in Council may seem fit:

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"THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and in opposition thereto Their Lordships do this day agree humbly to report to

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Your Majesty as their opinion that leave ought to be granted to the Petitioners to enter and prosecute their Appeal in forma pauperis against the Judgment of the Court of Criminal Appeal in the Supreme Court of British Guiana dated the 4th day of April 1956:

In the
Privy Council

No.42.

Order in
Council
granting
Special leave
to Appeal.

9th October,
1956 -
continued.

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"AND THEIR LORDSHIPS do further report to Your Majesty that the authenticated copy under seal of the Record produced upon the hearing of the Petition ought to be accepted as the Record proper to be laid before Your Majesty on the hearing of the Appeal."

HER MAJESTY having taken the said Report into consideration was pleased by and with the advice of Her Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

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Whereof the Governor or Officer administering the Government of the Colony of British Guiana for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

W. G. AGNEW.

G. - STATEMENT OF SEOKUMARExhibits

Ex. "G"
M. A. Charles
Magistrate
22.5.54.

Albion Police Station,
Corentyne.
27th February, 1954.

"G"
Statement of
Seokumar.

27th February,
1954.

10 Seokumar called "June" having been cautioned
states:

20 Sergeant, me want tell you the truth, the
statement me make before is not true and me go
now tell you the truth. Thursday 25th ah Febru-
ary about half-past six in the morning, me left
home ah estate fa go ah rice mill, when me been ah
walk on Nigg Public Road, me see Tameshwar called
Tom standing up pon Nigg Public Road, he stop me
and tell me that he must wait, he, that money ah
come. Tameshwar had a cutlass in his hand and he
30 was wearing one red shirt and one Khaki long pants
at the time.

30 About half-past seven the same morning me see
one black man Postman ah ride one bicycle coming
to awee, the Postman bin get one brownish bag sling
round he shoulder, when the Postman bin near wee,
Tameshwar rushed he with the cutlass and take away
the bag wha bin deh round he shoulder, the Postman
start fa shout "Look the boy gone with me bag,
look the boy gone with the bag". Tameshwar ran
across a board from the public road into the Sava-
nah at Nigg and go pon the Post Office dam and ran
to the backdam side. Me get frighten and me run
pon Nigg dam behind Tameshwar, when me bin ah run
me see people. Ah run behind Tameshwar and meself
and them been ah shouting "Hold he, hold he". Me
ran in Guava bush towards Skeldon Side and Tamesh-
war ran straight to backdam side by the canefields.
Me na know weh he hide the bag wha he take away
from the Postman.

Witnesses:

1. J.A. Robertson Cpl. 4466
2. S. Beramsingh L/Cpl. 4560.

Exhibits

"G"
Statement of
Seokumar.
27th February,
1954 -
continued.

TAKEN BY ME at Albion Police Station at 10 a.m., on 27th February 1954 and read over to Seokumar who said it was true and correct and signed his name in the presence of L/cpl. 4560 Beramsingh, Const. 5277 Prabhulall and myself also Cpl. 4466 Robertson.

David Adams, Sgt. 4612.
27.2.54.

"N"

N. - STATEMENT OF SEOKUMAR.

Statement of
Seokumar.
26th February,
1954.

Ex. "N"
M. A. Charles
Magistrate
2.6.54.

Detective Office,
New Amsterdam,
Berbice.
26th February, 1954

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7.20 a.m.

Seocoomar also called June having been duly cautioned states:

Yesterday morning Thursday about six to half past six o'clock me get up from bed, me go to the latrine, when me come back me tek tea, then me sit down in me Hammock, then me picknee begin to cry and me get up from the Hammock and me go in the house and lift up the picknee, when he stop cry he fall to sleep, and me stay home until ten o'clock, then me left home and go to Hampshire Rice Mill, and me meet Jack the man who ah run the mill, me ask um for some Rice he tell me, ah must go back, and same time Looknauth from Guava Bush who is me friend come and tell me leh the two awe go and walk a Rose Hall, me agree, and the two awe left the Rice Mill dah time was about half past ten o'clock, we go to Rose Hall, we reach them about 11 o'clock when we reach lil before the Theatre awe meet Tarzan, he is Lobknauth friend, he live at Anchor Ville, awe talk lil bit, then Tarzan talk awe buy rum and drink, Tarzan buy a big bottle Rum from Rose Hall, then awe walk from Rose Hall and go to Anchor Ville at Tarzan House and drink, we meet Tarzan wife and he sister home, when we done drink, awe walk to the Public Road, same time a motor been a pass, Tarzan stop the car he and the chauffeur is friend, the car not big but he whole three at the back and the chauffeur

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in front, the chauffeur got a rum shop at Bloomfield and he carry we deh and all four awe go in the Rum shop and drink when we done drink at the Rum shop, the chauffeur and all awe go in the car, and he drop me at me house at Pln. Albion, that time was about eight to half past eight o'clock in the night, when me go and call pon me wife, a Police come up and ask me, me name, me tell um June, he tell me he want me to the Station. When me go to the Station the Sergeant tell me that me and Thom robbed the Postman and run away wit the Post bag with the money and people see the two awe when we bin a run away. Me tell um, me do not know anything about the money. The same clothes wah the Police meet me wearing last night Thursday, is the very clothes me left home with yesterday morning. For the whole of yesterday Thursday me nah meet Thom no wher at all. Awe two nah mek no bargain to go nowhere, me nah run through Guava Bush, me nah throw away no cutlass, me got one cutlass and he deh home. Between six o'clock and ten o'clock yesterday morning Thursday, I bin at my home, I did not leave home before then.

Exhibits

"N"

Statement of
Seekumar.26th February,
1954 -

continued.

Seecoomar called June
his
x
mark.

Witness to mark:

1. Ovid Andrews Const. 4972.

TAKEN BY ME at Albion Police Station at 8 a.m. on 26.2.54 and read over to Seecoomar called June who said it is true and correct and affix his mark in the presence of Const. 4972 Andrews and myself.

James A. Robertson,
Cpl.4466

26.2.54.

ExhibitsP. - DEPOSITIONS OF MOHAMED ISLAM KHAN

"p"

Depositions of
Mohamed Islam
Khan.

2nd June, 1954.

Exhibit "P"

The deponent Mohamed Islam Khan said on his oath (b) as follows: (c) I am 10 years old and I attended Albion Canadian Mission School. I live at Kline Bush, Albion with my mother Bibi Angelina Khan and my father Man Man Raghubar. Our house is near to Belvedere rice field about 200 rods south of the Post Office. On Thursday, the 25th February, 1954 at about 7.10 a.m. - I left home to gather cow-down. I went from Belvedere Dam to Nigg dam. While I was there I saw one man go to Doctor Bush. About 4 minutes later I saw No. 1 accused running along Belvedere dam with a Post Office bag over his shoulder and a gun in his hand in the direction of the backdam while No. 2 accused was running behind No. 1 accused on Nigg dam with a cutlass like Exhibit E, in his hand. No. 2 accused crossed a trench about 8 rods away from me and he went to Belvedere Dam following No. 1 accused. I did not know either accused before that day. No. 1 accused was wearing a red towel shirt similar to Exhibit A, and a pair of khaki long pants similar to Exhibit B. I don't remember if No. 1 accused was wearing a hat. No. 2 accused was wearing a white shirt and a pair of short pants. Before No. 2 accused had crossed the trench to go to Belvedere dam he said to No. 1 accused "Wait me na man; mo weary run" and No. 1 accused replied "Cross over the trench quick, them people a come" No. 1 accused took off his pants and dropped it and he told No. 2 accused to pick it up. No. 2 accused picked up the pants and continued running behind No. 1 accused. Shortly after I saw Mr. Saunders and other men chasing behind both accused. I saw Thomas Austin at Belvedere Dam and I told him what I saw. On the 26th of February, 1954 at 11.05 a.m. - I attended an identification parade at Albion Police Station and I picked out No. 2 accused as one of the men I saw running away. No. 2 accused did not say anything when I picked him out. I did not pick out No. 1 accused.

Cross-examined by Mr. Jhappan:

Where I saw the accused running had bush. There was bush about 30 rods south of the accused when I saw them. No. 2 accused did pick up No. 1

accused pants but I did not see him drop it. Mr. Saunders came up about 5 minutes after the accused passed me. I did not see any policeman pass the dam that day.

Re-examined by Sub-Inspector Britton:

I did not remain on the dam all the time. I went home after speaking to Mr. Saunders.

Mohamed Islam Khan.

10 TAKEN BY ME In the presence of the accused and read over to the above-named witness who declared the same to be correct and signed it at the Court at Whim this 2nd day of June, 1954, the accused the witness and I being all present together at the time of reading and signing hereof and the accused having had full opportunity of cross-examining the witness.

M.A.Charles
Magistrate.

Corentyne Judicial District.

Exhibits

"P"

Depositions of
Mohamed Islam
Khan.

2nd June, 1954
- continued.

ON APPEAL
FROM THE COURT OF CRIMINAL APPEAL
IN THE SUPREME COURT OF BRITISH GUIANA

B E T W E E N:

(1) TAMESHWAR
(2) SEOKUMAR ... Appellants
 - and -
THE QUEEN ... Respondent

RECORD OF PROCEEDINGS

DRUCES & ATTLEE,
82, King William Street,
E.C.4.
Appellants Solicitors.

CHARLES RUSSELL & CO.,
37, Norfolk Street,
Strand,
W.C.2.
Respondent's Solicitors.