14/79

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL No.26 of 1978

ON APPEAL

FROM THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

BETWEEN:

ROBBY GRANSAUL and WINSTON FERREIRA — Appellants

- AND -

THE QUEEN — Respondent

CASE FOR THE RESPONDENT

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1. This is an appeal by special leave in forma pauperis from a Judgment of the Court of Appeal of Trinidad and Tobago (Sir Isaac Hyatali, C.J., Phillips and Corbin J.J.A.) dated the 25th July, 1975 which dismissed the Appellants' appeals against their conviction of murder and sentence of death at the Port of Spain Assizes (McMillan, J. and a jury of twelve) on the 24th February, 1975. pp.59-64 pp.57-59

2. The Appellants were charged in an indictment containing five counts, the first two counts being material for the purposes of this appeal. The first count charged both the Appellants that on the 27th August 1973 they murdered one Harold Maharaj. The second count charged both Appellants with robbery with aggravation in that on the same day they together being armed with two revolvers robbed one Samlal Raghubir of $300,00 in cash. pp.1-2 p.1 l.20 -p.2 l.1 p.2 ll.2-13

3. After a trial lasting 4 days between the 20th and 24th February 1975, both Appellants were convicted on both counts. On the first count both Appellants were sentenced to a term of 15 years' imprisonment with hard labour. The Appellants' appeals to the Court of Appeal of Trinidad and Tobago related solely to their conviction of murder and sentence of death on the first count. Neither Appellant appealed to the Court of Appeal in relation to their conviction of robbery with aggravation on the second count nor to relation to the sentences of imprisonment. pp.3-59 p.59 p.58 ll.32 - 34 p.60 ll.6 - 11

4. This appeal is limited by the Order granting special leave to appeal in forma pauperis to three issues, in pp.65-66

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relation to both Appellants and one issue in relation to the First Appellant, namely:-

p.65 l.42 p.66 l.2 (1) Whether the trial Judge erred in law in directing the jury that as the crime of robbery was by definition a crime of violence, if death ensued in the course of the robbery as a result of the use of violent measures, even if inadvertently, those who were parties to the robbery were guilty of murder ("the first issue") - the first issue arises in the context of the law of Trinidad and Tobago which includes the common law doctrine of constructive malice as the English Homicide Act, 1957 does not apply there;

p.66 l1.2 -10 (2) Whether the trial judge erred in law in allowing murder and robbery with aggravation to be tried together ("the second issue") having regard to the provisions of S.16 of the Jury Ordinance Cap.4 No. 2 which reads as follows:-

"16. (1) On trials on indictment for murder and treason, twelve jurors shall form the array, and subject to the provisions of subsection (3) hereof the trial shall proceed before such jurors, and the unanimous verdict of such jurors shall be necessary for the conviction of acquittal of any person so indicted.

(2) The array of jurors for the trial of any case, civil or criminal, except on indictment for murder or treason, shall be of nine jurors and no more.

(3) Where in the course of a criminal trial any member of the jury dies or is discharged by the Court through illness or other sufficient cause, the jury shall nevertheless, so long as the number of its members is not reduced by more than one, be considered as remaining for all the purposes of that trial properly constituted, and the trial shall proceed and a verdict may be given accordingly. Where one juror has died or has been discharged as aforesaid the verdict of eleven jurors in a trial for murder or treason, or of eight jurors in a trial for any other offence, shall be deemed to be an unanimous verdict of the jury."

(3) Whether the trial Judge should have considered the p.66 l1.10 - 21 question of the admissibility of the evidence of the robbery on the charge of murder and exercised his discretion to decide whether to exclude such evidence on the basis that it probative value was outweighed by its prejudicial effect ("the third issue").

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(4) Whether, in relation to the First Appellant alone, the trial Judge should have directed the jury that the onus of proof lay on the prosecution to prove malice aforethought by the First Appellant and whether the trial Judge should have left the defence of accident to be considered by the jury ("the fourth issue"). p.66 ll.22-28

5. On the 20th February, 1975, at the Port of Spain Assizes before McMillan, J., a jury of twelve were sworn and the two Appellants were put in their charge. No application was made for a separate trial of any count or counts in the indictment. The prosecution called material effect to the following effect:- p.4

(a) David Edward, Member of the Medical Board and Pathologist, said that he performed a post mortem examination upon the deceased, duly identified to him, on the 28th August, 1973 at 12.30 p.m. The deceased appeared to have died approximately 20 - 30 hours earlier. The light blue shirt he was wearing was stained black with a 2/16" circular vent situated 1" above the left breast pocket: the deceased's sleeveless vest also had a black stain on the left side which appeared like powder marking from a firearm. There was a circular bullet entrance wound 2/16" in diameter into the deceased's body situated over the front of the left chest 1" below the enterior axillary fold. There was no singeing or blackening of the area immediately around the wound. The wound was 12" deep and directed horixontally and downwards towards the right penetrating the left first intercostal space, left lung and heart and the right lung, a bullet being found lodged under the muscles of the right side of the back of the chest and having penetrated into the third right inter space at the back. There was blood in the right and left chest cavities. The wound was within 24 hours old. Death was caused by shock and haemorrhage due to rents on heart and lungs as a result of the firearm injry to the front of the left chest. In cross-examination, the witness said that assuming the assailant who discharged the firearm was right-handed he faced the front of the deceased at the time of firing. The blackening of the shirt and vest indicated that the firearm was discharged at close range, within two feet.

p.4 l.30 - p.6 l.7
p.4 ll.34 - end
p.5 ll.1-3
p.5 ll.4-9
p.5 ll.11 - 14
p.5 ll.15 - 17
p.5 ll.17 -26
p.5 ll. 26 - 28
p.5 ll.34 - 37
p.5 l.43 -p.6 l.2
p.6 ll.5-7

(b) Samlal Raghubair said that his occupation was selling cigarettes wholesale and that he used a van with a driver. On the 27th August, 1973 he had been so employed, the driver of the van being Harold Maharaj, the deceased. At about 1.30 p.m.

pp.9-11
p.9 ll.4-6
p.9 ll.7-10

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they went in the van to Mrs. Rasheedan Khan's Cafe, on Southern Main Road, Warrenville to sell cigarettes there. When the van had been parked in front of the parlour, facing North towards Port of Spain, the witness got out of the van and entered the Cafe leaving the deceased in the van. He received an order for cigarettes from Mrs. Rasheedan Khan in the parlour, her daughter being present. He went back to the van, took out the cigarettes for the order, the deceased was still sitting behind the steering wheel, and returned to the parlour. He handed over the cigarettes, was paid for them, started checking the money and then heard a shot. He turned round and saw two me by the van, one on either side of it. The man on the left side of the van ran into the cafe, and pointed two revolvers at the witness and said, "Raise your fucking hands". Having rested the gun in his right hand, he put that hand into the witness's shirt pocket and took out about $300.00, the proceeds of the day's sales. The man then went out towards the van: he and the other man ran up the road towards Port of Spain, i.e. North, in the direction the van was facing. The witness went to the van and saw the deceased bleeding from the mouth and nose. The witness said that he normally carried .38 revolver which on that day had been in the left panel pocket: it had gone when he returned to the van after the incident. When he saw the deceased bleeding he was still sitting behind the steering wheel of the vehicle which was right-hand drive. The witness was recalled and identified the cigarette van. The van was viewed by the Court with the Accused standing one on each side thereof. The hood level of the van was shoulder high in comparison with both Accused.

p.9 ll.10 - 12
p.9 ll.13 - 17
p.9 ll.17 - 19
p.9 ll.19 - 23
p.9 ll.24 - 26
p.9 ll.27 - 29
p.9 ll.30 - 36
p.9 ll. 36 - 41
p.9 ll.41 - end
p.10 ll.4 - 5
p.10 ll. 10-16
p.11 ll. 22-24
p.19 l.26 - p.20 l.4

(c) Rasheedan Khan said she was a parlour keeper, with premises in Southern Main Road, at Warrenville. Yasmin Khan was one of her daughters. At about 1.30 p.m. on the 27th August, 1973, she was in the parlour with her daughter Yasmin when a cigarette van stopped in front of the parlour: there were two men in the van. Raghubair, the salesman, came into the parlour. The witness ordered cigarettes. The salesman returned to the van. The salesman came back with the cigarettes. Yasmin and she were checking the money for the cigarettes when the witness heard a shout, "Raise your fucking hands". She then saw the First Appellant (second Accused) whom she knew well and a man not known to her: the First Appellant was on the left side of the van and the strange man was on the right-hand side of the van, holding down the driver's right forearm on the window of the door with his right hand. The First Appellant then shot the driver and entered the parlour with two guns one in each hand. He told the salesman,

pp.11-15
p.11 ll. 30-32
p.11 l.33
p.11 ll. 34-38
p.11 l.39 - p.12 l. 3
p.12 ll.4 - 7
p.12 ll. 10 - 13
p.12 ll. 13-20
p.12 ll. 24-30

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"Raise your fucking hand". The salesman raised his hands and the First Appellant put his left hand into the salesman's pocket and ran outside to the van. Then he and the strange man ran towards Caroni, the direction the van was facing. In cross-examination, the witness said when she first heard the voice outside saying, "Raise your fucking hands", she saw the driver raise only one hand, the other hand being held by the strange man. It was after the First Appellant had entered the parlour and robbed the salesman that both the First Appellant and the other man ran. It was possible to see both sides of the van: the witness was able to see the First Appellant above the van. She heard the command, "Raise your hands" twice: the second time was in the parlour when the salesman raised his hands. The witness only saw the strange man rest his hand on the driver's right forearm: she did not see him do anything else or say anything. When the witness heard the First Appellant's voice, which she recognised, saying raise your hand she looked and saw the two men, the strange man already having his hand on the driver's forearm: after that she saw the First Appellant shoot.

p.12 11.30 - 35
p.12 11.35 - 37
p.14 11.16 - 22
p.14 11.36 - 38
p.15 11.4 - 7
p.15 11.26 - 29
p.15 11.30 - 34

(d) Yasmin Khan said she was the daughter of Rasheedan Khan. On the 27th August, 1973 at 1.30 p.m. she was in the parlour at Warrenville with her mother. She saw a Du Maurier cigareete van arrive and stop in front of the parlour. She saw two men in the van. The salesman came into the parlour; her mother ordered cigarettes and sent the witness upstairs for some money. The witness fetched some money, returned to the parlour and was counting the money when she heard a voice outside saying, "Raise your fucking hands". She looked out towards the van. She saw two young men: one she knew was Robby Gransaul, the Second Accused (First Appellant), the other she did not know but identified him as the First Accused (Second Appellant). The First Appellant, Gransaul, was on the left side of the van and the Second Appellant was on the right-hand side. The First Appellant had two revolvers in his hand pointing inside the van through the left window. The Second Appellant was holding the driver's hand (witness demonstrated). The driver was sitting behind the steering wheel. The witness then heard an explosion like a gun shot. The First Appellant then rushed into the parlour with two revolvers one in each hand. The Second Appellant remained by the van. The First Appellant told the salesman to 'raise his fucking hand' and the salesman raised his hands. The First Appellant took something from the salesman's shirt pocket. The First Appellant and the other man then ran towards the North. The witness had seen the Second Appellant twice earlier that day at about 11.00 a.m. and 11.15 a.m.: he was with the First Appellant. After the incident at 1.30 p.m. they ran and the witness saw the driver bleeding from his

pp.16-19
p.16 11.4-7
p.16 11.8-11
p.16 11.12-16
p.16 11.16-19
p.16 11.19-23
p.16 11.23-24
p.16 11.25-27
p.16 11.28-33
p.16 1.34
p.16 11.35-36
p.16 11.36-37
p.16 11.37-38
p.16 11.39-43
p.16 11.44-45
p.17 11.1-3, 11-12 & 15-19
p.17 11.20-22

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p.17 ll. 24-28 nose and mouth. On the 20th August, 1973, the witness went to Chaguanas Police Station and identified the Second Appellant in an identification parade as the person with the First Appellant at the time of the incident.

p.17 ll. 30-34 In cross-examination, the witness said that she saw the Second Appellant do nothing else but rest his left hand on the right arm of the driver: she did not notice the Second Appellant turn away from the van before she heard the shot.

p.17 ll. 34-36 The witness remembered that at the Preliminary Enquiry she had said that the Second Appellant turned towards the parlour and asked the sales man for a cigarette and the salesman who was in the parlour had said, "O.K. pal, I am bringing it". The witness said that that did happen but she had forgotten it when giving evidence-in-chief.

p.17 l.36 - p.18 l.3

p.19 ll. 23-24 She did not see the left door of the van being opened at any stage: she heard no struggle between the driver and anyone. Neither man entered the van.

p.19 ll. 23-24

pp.20-21 (e) Hollister Lewis said that he was a tailor living on Southern Main Road. On the 27th August, 1973, the witness lived in a room rented for the First Appellant at Southern Main Road, Warrenville. At about 9.30 a.m. the Second Appellant arrived there and went to the First Appellant's room. They remained there for a while. The witness gave both Appellants a cigarette.

p.20 ll. 15-19

p.20 ll. 20-27

p.21 ll. 2-7 The witness was cooking his lunch. The Appellants went out walking in the Chaguanas direction and towards "Mr" (Sic) Khan's place. They returned half an hour later. The witness left at about midday, both the Appellants being in the First Appellant's room. On the 30th August, 1973 the witness identified the Second Appellant at Chaguanas Police Station in an identification parade as the man with the First Appellant on the 27th August, 1973.

p.21 ll. 12-13

p.21 ll. 13-14

p.21 ll. 23-27

pp.21-22 (f) Saffiran Mohammed said she was a housewife living in Warrenville, next-door to the First Appellant. On the 27th August, 1973, she saw the First Appellant and another fellow sitting in the First Appellant's gallery. The witness said they left the gallery and not too long after she heard a gunshot. She went out to the road and saw the First Appellant and the other man running past her house.

p.21 l.37 - p.22 l. 3

p.22 ll.5 - 7

p.22 ll.7 - 10

p.22 l.24 - p.23 l. 34 (g) Anselm Hall, Police inspector, gave evidence of the identification parade held at Chaguanas Police Station on the 30th August, 1973.

pp.23-25 (h) Lucien Villafana, Police Sergeant, said that on the 13th December, 1973, at about 7.30 p.m. in Nelson Street, Port of Spain with a party of police he

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arrested the First Appellant. The witness described how the First Appellant gave a voluntary written statement which was admitted in evidence without objection, marked L.V.1. In the statement L.V.1. the First Appellant described how he lived in Southern Main Road, Warrenwille. On the 27th August, 1973, a main named Jinks whom he had met once before came to his house and the First Appellant told him of a cigarette van which came up the road and "let we go and hold it up". The First Appellant had a .22 automatic pistol. At about 1.30 p.m. the First Appellant and Jinks went to the van and saw two men inside it. When they reached the van the driver was behind the steering wheel and the other man had gone inside the parlour. The statement continues:-

p.23 l.39 - p.24 l.16
p.24 l.23 - 46
Exhibit L.V.1. pp.30 - 32
p.25 l.9-11
p.30 l.35 - p.31 l.2
p.31 l. 4-12
p.31 l.12-23
p.31 l.24-29
p.31 l.33-35

"I pointed my pistol at the driver and tell him to hand over all the money. He tell me he en't have no money, I start to search up the van. in the van pocket I see ah pistol and ah raff it, the driver kick me hand inside the van pocket and me hand get trap - the both of us start to struggle at the same time ah trying to pull out me hand from inside the van pocket my pistol went off and shoot the driver, the driver let me go, and ah see he bow his head, I then take the pistol from the van pocket and ah went to the other man in the parlour and ah tell him to hand over the money he had money in his hand and he gave it to me, notes and silver, ah then run towards Jinks and tell him ah shoot the driver and ah feel he head, I started to run and Jinks run behind me ....."

p.31 l.38 p.32 l.7

(i) Sarston Griffith, Police Inspector, went to the scene of the incident on the 27th August, 1973, at about 2.00 p.m. He described how a Du Maurier cigarette van was parked off the road in Southern Main Road on the East side facing North in front of Mrs. Rasheedan Khan's parlour, the deceased's dead body being slumped in the front seat behind the steering wheel. On the 29th August, 1973, at about 7.30 p.m. the witness saw the Second Appellant who denied knowing anything about the shooting incident on the 27th August, and said that he was at Piarco on that day, washing his brother-in-law's car. On the 30th August, 1973, the Second Appellant was put on an identification parade. When charged with murder, he said nothing.

pp.25-27
p.25 l.17-20
p.25 l.21-26
p.26 l.6-19
p.26 l.29-33

6. Counsel for the Second Appellant in the absence of the Jury submitted that there was no case to answer on the charge of murder. The Court rejected the submission and stated that there was evidence that the two Accused were acting in concert in respect of both murder and robbery.

pp.27-28
p.28 l.26-31

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p.29 p.29 ll. 3-11 p.29 ll. 17-24

7. Both Appellants elected to make statements from the dock. The First Accused (the Second Appellant) said that he was an innocent bystander who was not guilty of any offence but simply ran away after the shot in a state of shock. The Second Accused (the First Appellant) said that he had wanted to rob the driver of the van: while holding him up. the driver trapped the First Appellant's hand in the van pocket "and unfortunately a shot went off and he got shot". The First Defendant said that he then took money from "the next fellow" and ran up the road. He denied knowing the Second Appellant.

pp.33-37 p.36 ll. 6-37 p.37 l.13 - p.49 l. 24 p.49 ll. 25-49

8. The trial Judge (McMillan, J.) summed up to the jury. After directions concerning the burden and standard of proof, the trial Judge summarised the evidence called by the prosecution and said that the case against the Accused was put on the basis of a joint enterprise and that the Jury would have to find that the Accused acted together before the Second Appellant could be convicted. In directing the Jury on the charge of murder, the trial Judge said, inter alia:-

p.50 ll. 27-37

"..... the law is very clear that murder is committed where one person who is sane kills another human being with the intention of killing him, an intention which is either expressed or implied; and where a man takes a loaded firearm, tells a man raise your hands and fires it in the course of stealing another firearm, (shoots him) then you can imply that he had the intention to kill".

p.50 ll. 39-48

"..... a person who uses violent measures in the commission of a felony involving personal violence, and robbery is a felony involving violence and the use of a firearm in those circumstances is a violent measure, does so at his own risk and is guilty of murder if those violent measures result even inadvertently in the death of a victim."

p.50 l.48 -p.51 l.5 & p.51 ll. 20-24

"..... when Gransaul tells you when he took up the firearm which was in the pocket of the van and the driver locked his hand or trapped his hand in the pocket, the gun accidentally went off, even if you were tempted to believe that .... the mere fact that he was using a loaded firearm in committing what was then robbery and death inadvertently ensued because the gun went off, the result is murder ...."

p.51 ll. 27 - 30

"In this case ..... however odd you may think the law is, the only verdict you can return in this case in respect of Gransaul is guilty of murder."

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"On the law, murder was committed from the lips of the accused and robbery with aggravation was committed from his lips. The question would be how does Mr. Winston Ferreira fit into this?" — p.50 ll.49 - end

9. The trial Judge devoted the remainder of the summing-up to a consideration of the position of the Second Appellant. No issue arises out of that part of the Summing-up of this appeal. — pp.52-57

10. The Jury returned verdicts of guilty against both Appellants in respect of both murder (count 1) and robbery with aggravation (count 2). Both Appellants were sentenced to death on Count 1 and fifteen years' imprisonment with hard labour on Count 2. — p.57 ll.24-27; p.59 ll.13-14; p.58 ll.32-34

11. Both Appellants appealed to the Court of Appeal and their appeals were heard before Sir Isaac Hyatali, C.J., Phillips and Corbin JJ.A., judgment being given on the 25th July, 1975 dismissing both appeals. The Appellants appealed only against their conviction and sentence on count 1. — p.59; pp.60-64; p.60 ll.6-8

12. The Judgment of the Court of Appeal was delivered by Sir Isaac Hyatali, C.J. After stating that the Appellants did not appeal against their convictions of robbery with aggravation, the learned Chief Justice summarised the case for the Crown and said that the principal contention made on behalf of the First Appellant was that the trial Judge was wrong in law in omitting to direct the Jury that a verdict of manslaughter was open to them if they believed that Gransaul's gun went off accidentally and unintentionally in the course of the struggle with the driver. In rejecting the submission the learned Chief Justice said that it was the law of Trinidad and Tobago that a person who used violent measures in the commission of a felony involving personal violence did so at his own risk and was guilty of murder if those measures resulted even inadvertently in the death of his victim. He referred to the case of R. v. Ramserran (1970) 17 W.I.R. 41. The conduct and activities of Gransaul on his own admission fell squarely within those principles of law. The learned Chief Justice then considered certain criticisms of the Summing-up in relation to the Second Appellant, none of which arises directly for consideration in this appeal. — pp.60 - 64; p.60 ll.6-11; p.60 l.11 - p.61 l.5; p.61 ll.6-16; p.61 ll.16-32; p.61 ll.34-39; p.61 l.40-p.64

13. On the 21st March, 1978, the Appellants were granted special leave to appeal in forma pauperis to the Judicial Committee of the Privy Council against the said Judgment of the Court of Appeal limited to the issues set out therein and summarised in paragraph 4 hereof. — pp.65-66

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14. The Respondent respectfully submits that this appeal should be dismissed. As to the first and fourth issues (set out in paragraph 4 hereof) it is respectfully submitted that the trial Judge correctly directed the jury in the terms set out in paragraph 8 hereof. It is respectfully submitted that the trial Judge dealt properly with the question of constructive malice in directing the jury. In Trinidad and Tobago the common law unaffected by the passing in England of the Homicide Act, 1957 applies with the result, it is submitted, that a person is guilty of murder (irrespective of whether he intended to kill or cause grievous bodily harm) if he uses violent measures including the threatening use of a loaded firearm, in the commission of a felony involving personal violence, if those violent measures result even inadvertently in the death of the victim. The principal decided cases are D.P.P. v. Beard (1920) A.C.479, R v. Betts & Ridley (1930) 22 Cr. App. R. 148, R v. Stone (1937) 53 T.L.R. 1046 and R v. Jarmain (1946) K.B.74. Accordingly, it is respectfully submitted that the trial Judge correctly directed the jury as to onus of proof and malice aforethought and properly withdrew the defence of accident from the jury.

15. As to the second issue, it is respectfully submitted that the Jury Ordinance while making no specific provision for the trial of murder and treason together with other criminal offences does not make it unlawful for such offences to be tried together in Trinidad and Tobago: it simply meas that in such a trial there would have to be twelve jurors. The Respondent will refer to the provisions of the Criminal Procedure Ordinance Cap. 4 No. 3 SS. 13 and 14 which so far as material read as follows:-

"13 .... (2) Notwithstanding any rule of law or practice, an indictment shall, subject to the provisions of this Ordinance, not be open to objection in respect of its form or contents, if it is framed in accordance with the rules under this Ordinance.

(3) Subject to the provisions of the rules under this Ordinance, charges for more than one felony or for more than one misdemeanour, and charges for both felonies and misdemeanours, may be joined in the same indictment.

14 .... (3) Where, before trial, or at any stage of a trial, the Court is of opinion that a person accused may be prejudiced or embarrassed in his defence by reason of being charged with more than one offence in the same indictment, or that for any other reason it is desirable to direct that the person should be tried separately for any one or more offences charged in an indictment, the Court may order a separate trial of any count or counts of such indictment."

In this case, the offences of murder and robbery with aggravation were connected together and formed one entire transaction, being all part of the same incident, It is therefore respectfully submitted that the two offences were properly tried together. No application for separate trials of the two offences was made; it is submitted that any such application would have been bound to fail.

16. If, contrary to the Respondent's submissions, the effect of the Jury Ordinance is to make it unlawful for murder and treason to be tried together with other criminal offences, then the Respondent makes four further submissions. First, it is respectfully submitted that there being no appeal against the convictions of robbery with aggravation the Appellants should not be permitted now to raise an alleged irregularity based on the number of jurors in the trial of the robbery with aggravation charges for the sole purpose of seeking to undermine the convictions of murder. Secondly, the effect of any irregularity in connection with the trial of the robbery with aggregation charges had no effect upon the trial for murder which was a perfectly legal and valid trial. Thirdly, it is respectfully submitted that the evidence of the robbery with aggravation was admissible and bound to be admitted in the trial for murder. Fourthly the Respondents respectfully submit that the Appellants have suffered no miscarriage of justice in relation to the trial for murder and that the conduct of that trial was not affected by any matter arising out of any irregularity in the number of jurors in the trial of the robbery with aggravation charges.

17. As to the third issue, it is respectfully submitted that the trial Judge would not have been bound to exercise his discretion in relation to the admissibility of the evidence of the robbery, assuming the trial to have been for murder alone. Upon the same assumption, it is respectfully submitted that any application to exclude the evidence of the robbery would have been bound to fail as there are good cogent grounds for admitting such evidence and no proper grounds for excluding the same. It is respectfully submitted that the grounds for admitting the evidence of robbery are, first, that the murder and the robbery are all part and parcel of the same incident or transaction, secondly, that the Second Appellant remaining in the vicinity of the van and then running away together with the First Appellant only after the robbery is evidence that the Appellants were acting in concert in respect of the whole transaction or incident and thirdly, that the evidence of the whole

incident or transaction tended to show guilty knowledge and intent on the part of the Second Appellant.

18. The Respondent respectfully submits that the Appeal should be dismissed and the Judgment of the Court of Appeal in Trinidad and Tobago should be affirmed for the following among other,

R E A S O N S

1. BECAUSE the trial Judge correctly directed the jury as to the effect of the common law doctrine of constructive malice applicable in Trinidad and Tobago.

2. BECAUSE the trial Judge was right in directing the jury in the terms set out in paragraph 8 of this Case.

3. BECAUSE murder and treason may be tried together with other criminal offences in accordance with the provisions of the Jury Ordinance and the Criminal Procedure Ordinance.

4. BECAUSE whether or not any irregularity arose under the Jury Ordinance the evidence of the robbery in the circumstances was admissible and bound to be properly admitted on the charge of murder.

5. BECAUSE if, contrary to the Respondent's submissions, any irregularity arose under the Jury Ordinance the trial for murder was a perfectly legal and valid trial and the Appellants have suffered no miscarriage of justice in relation to any such irregularity.

6. BECAUSE the trial Judge properly withdrew the question of accident from the jury.

7. BECAUSE of the other reasons set out in the Judgment of the Court of Appeal.

STUART N. McKINNON

23rd November, 1978

No. 26 of 1978

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