

ST. VINCENT

IN THE COURT OF APPEAL

CRIMINAL APPEALS NOS. 9 & 10 of 1978

BETWEEN

PETER DE FREITAS
AND
IAN BUTLER

Appellants

AND

THE QUEEN

Respondent

BEFORE: The Hon Sir Maurice Davis, Q.C. - Chief Justice
The Honourable Mr. Justice Peterkin
The Honourable Mr. Justice Berridge (Acting)

Appearances:

Mr. V. Cuffy for Appellant No. 1
Mr. C. Dougan for Appellant No. 2
Mr. O. Jack for Crown

1978, November 6

J U D G M E N T

DAVIS, C. J.

The judgment which I am about to deliver represents the unanimous opinion of the Court. These two appeals have been heard together by consent. At the previous sitting of the Court in May of this year, the Court had before it an appeal in which the summing-up of the learned trial judge was missing. We were told that it was either lost or stolen. Fortunately, our law provides for such an eventuality, and therefore, the Court was able to dispose of that appeal. I have not heard of any investigation which has been made into that matter, but on this occasion we are faced with a much more serious situation. The two appellants were charged jointly with another man for the offence of wounding with intent. All three men were convicted of the charge but only two have appealed. They were granted leave to appeal by a single judge, but the

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appeal was not perfected in either case because the notes of evidence were not forthcoming.

Today, we have heard evidence from one Cecelia Layno who is the Court Stenographer and she has deposed that after notices of appeal were received in the Registry, and after she had completed the typing of the summation, she endeavoured to get the judge's notebook so that she could prepare the notes of evidence. On the first occasion when she tried to get the judge's notebook the judge was busy and he told her that she would have the notebook later. When she returned the judge told her he could not find the notebook. He searched his chambers in her presence, she searched, others searched, but up to now the notebook has not been found. She has also told the Court that in her view any further search would also prove fruitless. So that we are left without the notes of evidence, and the question is, whether these two appeals can properly be determined without the notes of evidence.

Before I proceed to consider the appeals as such, and what should be done in the circumstances, I should like to say this. From the two incidents to which I have referred, it is clear that there is some person or persons who are bent upon obstructing the course of justice in this State and they must be stopped. Here again, I have not heard of any report being made to the police or of any inquiry or investigation, although it must appear to everyone concerned in the matter that this is a very serious matter indeed. I now call upon the police to institute immediately an investigation into the loss of the judge's notebook sparing the feelings of no one so that the culprit may be brought to heel.

I will now turn to the appeals. The fact that leave has been granted to both appellants is some indication that the single judge who gave leave in either case must have been satisfied that there was some merit in the grounds of appeal, at least some arguable point. Now, when one looks at the grounds of appeal in both cases, it is clear to the Court that for a just determination of the appeal the notes of evidence are absolutely

/necessary . . .

necessary. The appellant in each case has the right to have this Court look at the complete notes of evidence in order to determine the complaint which he has made in his grounds of appeal. At one time, I thought perhaps that we could order a new trial, but we have come to the conclusion that we could order a new trial only when the circumstances justify such a course, that is to say, if the interests of justice require that a new trial should be ordered. How can this Court determine whether the interests of justice require a new trial when the notes of evidence are missing? It is from the notes of evidence that we will see whether the interests of justice will be served by such an order. A similar situation arose in the case of R.v Harper, 10 W.I.R. page 85, and the Court of Appeal of Jamaica decided that they had no alternative but to order an acquittal of the appellant. It is also our view that we have no alternative but to allow the appeal in each case, set aside the conviction and sentence in each case, and to order an entry of acquittal in each case.

(Sir Maurice Davis)
CHIEF JUSTICE

(N.A. Peterkin)
JUSTICE OF APPEAL

(N.A. Berridge)
JUSTICE OF APPEAL (Acting)

IN THE COURT OF APPEAL

SAINT VINCENT:

CRIMINAL APPEAL NO. 12 of 1977

BETWEEN: CLIFTON HOYTE - Appellant/Defendant

AND

THE QUEEN - Respondent/Plaintiff

Before: The Hon. Sir Maurice Davis, Q.C. - Chief Justice
The Honourable Mr. Justice Peterkin
The Honourable Mr. Justice Bruno (Acting)

Appearances: C. Dougan for Appellant
D.P.P. for Respondent
M. Joseph with him

1978; Feb. 6, 7 & 10

J U D G M E N T

DAVIS, C.J. delivered the Judgment of the Court:

The Appellant Clifton Hoyte was on the 27th October, 1977, convicted of the murder of Carmina Howe and sentenced to death by hanging. He now appeals against his conviction on the following grounds:

1. The Learned Trial Judge was wrong in depriving the accused of his right to have the issue of manslaughter left to the jury. (R v Porritt 1961 3 AER 463)
2. The Learned Trial Judge misdirected the jury by omitting to direct them adequately or at all on (a) the Defence of Provocation and (b) Drunkenness.

/3.

3. Material irregularity in the course of the Trial. The Learned Trial Judge was wrong and must have confused the jury by taking the "Trial within a Trial" first in the absence of the jury and later in their presence.
4. The Learned Trial Judge misdirected the jury by not giving them clear and specific directions on how to treat the statement given to the police by the accused. In particular he failed to direct the jury that if they come to the conclusion that the prisoner acknowledged the truth of the whole or any part of the facts stated, they may take so much of the statement as was acknowledged to be true (but no more) into consideration as evidence in the case generally, not because the statement, standing alone, affords any evidence of the matter contained in it, but solely because of the prisoners acknowledgement of its truth; that unless they find as a fact that there was such an acknowledgement they ought to disregard the statement altogether. (R v. Norton 1910 2 KB 496; 5 Cr. App. R. 65).
5. The Learned Trial Judge misdirected the jury by not giving them adequate directions in relation to the discrepancies and inconsistencies and in particular in regard to the evidence of Everad Caesar and Noel Cyrus.
(R v. Harris 20 Cr. App. R 144;
R v. Brathwaite 15 WLR 263;
R v. Walters et al 17 WIR 9).
6. The verdict is unreasonable and cannot be supported having regard to the evidence.

The case for the prosecution depended purely on circumstantial evidence and, put briefly, the facts are as follows. It appears that the Appellant became acquainted with the deceased sometime in May, 1977, and she visited his father's house at Overland where, according to him, he had sexual relations with her on several occasions.

/On.....

On the 4th June, 1977, they met in Kingstown, and later travelled together by bus to Overland where she was seen to disembark and enter his father's house where the Appellant's sister Margaret also lived. During the journey to Overland the Deceased and the Appellant sat together in the back seat and were seen talking to each other. The bus stopped at Overland and about 1.45 p.m. at the request of the Appellant, and before continuing to travel on the bus the Appellant was heard to say to the Deceased that he would return later. According to the Conductor of the bus the Appellant travelled to Sandy Bay where he disembarked at the shop of Edmund Smith.

The Deceased spent about five minutes at Margaret's house before she was seen to leave with Everad Caesar walking in the direction of Sandy Bay. According to Caesar, on reaching Noel, a distance of about two miles from Sandy Bay, they sat on a stone by the road side and then went to lean on a coconut tree. His evidence continues,

"After we were there speaking I heard a stone drop. I looked around and a stone struck me on my left side. I looked around again and I saw the accused, also known as Big Comb and asked him what was going on. I ran to the government road and the girl was still there standing. Accused left the government road and ran inside and held on to the girl's hand. She asked him if he was crazy and he said "why all you woman is so fucking bad and whore. You mean to say the 2 of us done talk already, I tell you I would meet you half way and you tell me yes you will be coming too, so that mean you have to bring a man with you too." He watched me. He was very serious and I left and sat back down on the same stone we were sitting on. From there I

/could

'could not see them. I got up, my side was still
paining me and I went back to the shop and spoke
to Marjorie Cordice."

The evidence of Caesar is supported by that of Errol Cyrus who stated:

"I know the accused. On 4.6.77 I saw him about
1.35 p.m. at Noel on top of the hill by a Hammon
tree. He was peeping at the top of the road (wit-
ness demonstrates) in Noel direction below the road.
He lifted up a stone and flung it below the road.
It fell in the coconuts. I did not see anyone until
he pelted a second stone and then I saw Everad Caesar
come out of the Estate from the bottom side of the
road. He was with a girl. I knew her but not her
name. I saw Everad hold on to his side then he
went to sit down on a stone. Accused went to the
spot where the two people were and held on to the
girl's hand. I left and come down and heard the
accused say to the girl "why all you woman so
fucking bad? You mean to say you wrote me to come
back and I meet you and I find you with another
man?" The girl asked him "Clifton Hoyte, whats
wrong with you?" He told the girl "woman like all
you should get you mother cunt die". I turned away
and asked him "Combie whats going on?" but he never
replied. Accused is called 'Combie'."

Morjorie Cordice testified that she saw Everad Caesar at about
2.30 p.m. near to the shop of Henry Edwards at Overland sitting
under a tree. He was then alone. Icilma Roberts testified to having
seen the Deceased Carmina Howe at about 3 p.m. at Big Sands. She
was then walking alone towards Sandy Bay. Big Sands is approximately
two miles from Sandy Bay.

According to the Appellant's Common Law wife, Utilda Francois,
the Appellant returned home at about 2 p.m. on 4th June and left
about 17 minutes later dressed in a white under pants saying that
he was going to bathe. He returned home about 3 p.m. Five minutes

/later.....

later he left dressed in a white farmer brown pants but wearing no shirt. He again returned home at about 4.30 p.m. but left 15 minutes later wearing a red shirt under the white farmer brown pants. He never returned home again until about 4 a.m. on 5h June.

The witness Owen Griffith testified that he left Overland at about 3.45 p.m. for Sandy Bay, and that on his way he met the Appellant with seomeone at Big Sands. He said that the Appellant/^{who}was dressed in something like a farmer brown suit waved to him and called out, "hi brother." He passed within 15 feet of him but could only see the head of the other person who was sitting, and was unable to say whether the other person was a man or a woman. This witness also said that it takes him two hours to walk from Overland to Sandy Bay. Kell Da Souza, who knew both the Appellant and Carmina Howe before 4th June, 1977, testified that he saw them together at Big Sands at about 5 p.m. sitting on the beach. He was then on his way from Overland to Sandy Bay. The Appellant, he said, had on a white farmer brown suit but no shirt, and they were then about $\frac{1}{4}$ mile from Pepper Village.

The evidence of Linda Yorke should be allowed to speak for itself. She said:

"I know accused. On 4.6.77 I saw him by one Miss Roberts below the public road. This was in the night. I had had my dinner. I generally have it at 5.30 p.m. and after that I left for my sister's home. I met the accused with a strange girl. He had the girl on the ground kicking her up but I passed them by. I passed them by Pepper Village. When I passed back I did not see them. Next day I went to Robin Rock and saw the said strange girl but she was dead."

/In.....

In re-examination she said that she had seen the girl smoking a cigarette on her way from the mountain at about 5 p.m., and that she was then alone. Leon Rogers saw the Appellant at about 7 p.m. at Noel River. The Appellant, he said, was walking in the road towards Overland.

Rally Cato testified to having seen the Appellant at about the same time. He said this:

"I met accused about minutes to 7 p.m. at a place called "Pitt". He asked me if I saw a girl home by his father. I told him no. He asked the question the second time I told him "No." He told me he brought a girl by Edmund Smith bus by his father. I told him I did not see any girl and we went our ways."

The witness went on to say that he had again seen the Appellant at about 10.30 p.m. at the premises of one "Bouncer" in Sandy Bay where a domino match was in progress. He continued,

"He called to me and asked me where did I meet him when I was coming to Sandy Bay. His sister Eliza Hoyte and two other chaps were present when he spoke to me at "Bouncers" I told accused I met him at "Pitts". Accused said to his sister " you see I told you I went and I did not see her. His sister said don't worry what you fretting yourself for?"

Melvin Nanton saw the appellant about 7.30 p.m. at the shop of Smith where Nanton heard him say that he went to look for a girl and did not find her and when he find her he was going to put some sticks in her ass.

The dead body of Carmina Howe was discovered at Robin Rock partly clothed by Recardo Baptiste at about 7.45 a.m. on 5th June.

/Robin.....

Robin Rock is about 200 yards from Noel River, and about $\frac{1}{2}$ mile from Pitt.

A post mortem examination was performed by Dr. Naidas at about 4.20 p.m. on 5th June. He said as follows:

"There were multiple lacerated wounds - one at left parital area about 2" long extending to occipital area (at back of head).

There was another lacerated wound (i.e.) with jagged edges) at the left mastoid area (at back of ear) about 1" long.

Another lacerated wound at right parital area also about 1" long. There were 2 lacerated wounds about 1" each on the forehead.

There was another lacerated wound about $\frac{1}{2}$ " at the post-auricular area. There were contusions and haematoma at the left post auricular area. There were multiple contusions and abrasions on the neck, the anterior of the chest, on both forearms, lower abdomen, buttocks, thighs and legs.

Internal examination: On opening up the skull a fracture was noted at the frontal bone and at the left mastoid bone. There were subdural haematoma over this area of fracture. Other organs showed no significant findings.

No abrasions at the vaginal canal.

Cause of death as shown in my opinion was skull fracture with subdural haematoma.

I estimated the time of death to be 20-24 hours prior to post-mortem examination."

This witness went on to say that the several wounds could have been caused by a blunt instrument such as a stone, and that in his opinion the wounds were inflicted in quick succession while the Deceased was still alive.

The Appellant gave a voluntary statement to the Police on

/5/6/77,.....

5/6/77, and in so far as it concerned what happened on the 4th June, he said:

"I never see her from May until yesterday Saturday in Kingstown when the bus that I am working in was at the bus stand, I asked she way she going, she say up to Overland, she tell me to buy ah boil egg for her and ah buy the boil egg. I ask she for she clothes, she say she left them at Crab Hole. When we reach at the mango tree above hole we meet she standing there with a travelling bag. She jump in the bus and jump out. I asked she if she coming up to Sandy Bay, she say yes. I asked she if she want me to come back and meet she, she say "No". I came up to Sandy Bay with the bus about 2 o'clock. About 4-5 o'clock in the evening I walk from Sandy Bay to Overland to meet Carmina. On my way to Overland I meet Rally Pompey, Eardley Da Souza and a chap from Orange Hill call "Bogo". I asked them if they saw a strange "gel" in Overland they said "no" further on the way I meet a girl from Georgetown name "Alleda" about 6 o'clock coming to Sandy Bay. Around minutes after six I reach Overland I went to my father Edgar Hoyte home I meet my father Edgar, and my sisters Margaret and June Hoyte home. I asked Margaret for the stranger girl, she say the girl didn't stay, she call Everad Caesar and the two ah them leave for Sandy Bay. I asked she how early, she say the girl didn't stay, she leave the bag and she left. I told she that she not at Sandy Bay, then my father took up a light, I asked him way he going, he say he going to Sandy Bay, meself and he left Overland and come to Sandy Bay. I went by Edmund Smith shop and me father went over the road. At the time I was dressed in a white flour bag farmer brown style pants and a short sleeve redjersey with a small belt at the front. I reach at Edmund Smith shop at about 8 o'clock. Edmund Smith and some other fellas was there playing cards. The other fellas was Hanus Woods, Arton May and some more fellas. I left the shop and sit down on a wall outside. While I was on the wall a boy Hoyte "Va" tell me Edmund asking for me. I didn't go way Edmund call me I go on some stone

/and.....

and sit down near to Leslyn Nero. I then see Edmund peep out by the window of the shop and I speak with him. He tell me to go and look for a boy name "Zebra Lavia" who have some money for him. I went to Pepper Village to look for Zaba I come back and tell Edmund I didn't see "Zabd" that was about 9 to minutes pass 9 o'clock. I later had a talk about a truck with Edmund Ifil Osmont I go back in the shop and Edmund left and I stay there with Melville until he close about 11 o'clock I left in company with Hunus Woods one Chance (Clifton) and Alwyn and went by a domino match by me sister shop in the village. I remain at the domino match unto 5 o'clock in the morning, then I went home change my clothes put on a green and white jersey and long blue pants and call one Morgan who live opposite to Mr. Smith and kill a pig for him this was around minutes pass five I stay there until about 7 o'clock when the Police came and tell me that they want me at the Station and they bring me here where I am until now. While I was at the Station I saw three chaps came and tell the Police they meet Carmina dead at "Robin Rock Beach". From since the bus dropped Carmina at Overland I haven't seen her up to now. She was dressed in a black ordinary long pants, a black and white jim boots and a nylon flowered bodice. I see Everad Caesar about 4 o'clock yesterday evening at Sandy Bay before I go to Overland, but I haven't seen him again since, he was in a truck driven by Winston Da Souza of Overland.

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

(Sgd.) Clifton Hoyte"

The Appellant also gave evidence on oath at the trial. He testified as follows:

/"On.....

"On 4.6.77 I was in Kingstown on Edmund Smiths bus. I left by the said bus about 11-12 noon. Bus arrived at Overland after 2 p.m. Carmina Howe joined the bus at Crab Hole Villa and got off at Overland. I got off of the bus at Smiths shop at Sandy Bay about 3 p.m. where I live with Utilda Francois. I never saw her again that day. I took articles from the bus to Smiths shop I went home from Smiths shop and met Utilda at home. I went for a bath by bay side. I returned home at minutes to 4 p.m. Then I put on a white farmer brown pants (EC3) and went out to my sisters shop - Pearlie Hoyte - I spent about an hour there and went back home where I found Utilda.

I went to Overland to my father after 5 p.m. walking the long road. On the way I met Rally Cato and asked him if he saw a strange girl at Overland by my father home. He said no. I said the strange girl came up with Edmund Smith bus today. He said he did not see her. He was not too long coming from the Mountain.

I also met one Alida going towards Sandy Bay. I met Rogers on a motor byke. We crossed some distance away from Noel River.

I reached Overland after 6 going to 7. From Overland I went to Sandy Bay. I did not find Carmina Howe there. On the way to Sandy Bay I did not see Carmina.

I walked the long road back to Sandy Bay and got there about 8 p.m. before 8 p.m. and was sitting at Smiths shop until about 10-11 o'clock.

Later I came back with one Mamie Pope and I ordered something from the shop.

I was at one "Bouncers" that night till about 5 next morning. I got there after 10 p.m. Saturday night.

Later I saw my father that night from Bouncer. I went home, changed and went back out. I was never dressed in a short dungaree pants.

I never beat Carmina at Pepper Village. I have never seen Carmina since she came off the bus."

/Counsel.....

Counsel for the appellant argued grounds (1) and (2) together. He submitted that the evidence of Caesar and Cyrus concerning the words which the Deceased used to the Appellant and the conduct of the Deceased in turning up at Noel with Caesar after she had arranged to meet the Appellant was capable of amounting to provocation, and that the learned trial judge erred by omitting to direct the jury on this issue.

He also submitted that the evidence of the Appellant brought out in cross-examination that he had bought his own drinks was evidence from which a jury could have inferred that he might have been drunk when he committed the act.

We do not agree with either of these submissions. In our opinion even on a view of the evidence most favourable to the appellant the issue of provocation did not arise. With regard to drunkenness, quite apart from the fact that this defence was not raised at the trial, there is no evidence in our view to suggest that the mind of the Appellant was so affected by drink so as to render him incapable of forming the specific intent essential to constitute the crime of murder. Indeed, there was no evidence at all of his having consumed alcohol.

Ground 3 was abandoned by Counsel.

On ground (4), Counsel submitted that the Judge should have told the jury that the statement of the Appellant could not be used as evidence of the facts stated therein as it was not on oath, and that the Appellant in the course of his evidence had alleged that it contained certain inaccuracies. The learned trial judge in

/dealing.....

dealing with the statement directed the jury as follows:

"Well, Members of the Jury, as far as the statement is concerned you have it from the defence that it is not what he told the police. The accused signed that statement, he signed his name, he is not illiterate, he is not a fool. As a matter of interest at some stage some where along the line he was asked by Counsel for the Prosecution "did you meet Rally Cato that night" and he replied "I met Rally Cato that evening about 6.00 p.m." Well, Members of the jury, Jury, as you will agree 6.00 p.m. is really evening and not night, so he is sufficiently educated to know, as it were, the fine distinction between night and evening but the fact that he signed the statement told you that it was read over to him and he agreed that it was true and correct and he signed his name, but I repeat what I said earlier that as far as that statement is concerned seeing that it is disputed you will treat it as any other bit of evidence and give it such weight and such consideration as you think it deserves."

In our view there is no merit in this submission.

On ground (5) Counsel submitted that the Judge ought to have taken more care in explaining and putting all the discrepancies to the jury as they were important to the case of the Appellant. In particular, he referred to the discrepancies between the evidence of Caesar and that of Cyrus and pointed out to the Court that Caesar had been detained on suspicion by the Police. In dealing with the discrepancies the trial judge directed the jury as follows:

"Now Counsel has brought to your attention one or two discrepancies in the evidence of the Prosecution, to which you will have to give your consideration, but I will tell you this at the outset where you find these discrepancies, the first thing you ask yourselves is this, having seen the witnesses in the box are you satisfied that they were trying to give you a true

/account.....

account of what transpired or did you form the view that they were trying to mislead you, and if you find that they were trying to mislead you well then it is your duty to reject them - you are quite entitled to reject them - but what is most important is that when you encounter these discrepancies you must try to determine whether they are material and whether they are sufficiently material to cause the case of the Prosecution to break down."

And again,

"Among the discrepancies which come to mind are (1) the witness Caesar he said that he told the Magistrate that he returned to the shop at about 2 O'clock not half past two, but the deposition said half past two but here again, Members of the Jury, it is a matter for you I don't think it is material whether it is two or half past two but you would know. You had the had the instance of the witness Linda York who referred to some time ago saying that she saw the accused in this dungaree pants and in this red shirt - this farmer-brown suit, but it entirely a matter for you again; then you had the witness Caesar saying after this thing took place he went to the shop of Majorie Cordice and he spoke to the chap Smith and he spoke to Marjorie Cordice but Marjorie Cordice said that when he came there she didn't say anything to him and she found it strange so those are the sum total of these discrepancies."

In our view these directions were adequate. In dealing with time as given by the various witnesses, including the Appellant, the trial judge had earlier directed the jury along these lines,

"when a West Indian tells you about 2 o'clock he might mean half past twelve, he might mean half past three you see, all this is entirely a matter for you."

On ground (6) Counsel submitted that the verdict was palpably wrong and could not be supported having regard to the evidence.

/He.....

He invited the Court to exercise its powers under Section 39 of the W.I.A.S. Supreme Court (St. Vincent) Act, No. 8 of 1970, to order a new trial on the ground that the verdict is unsafe and unsatisfactory.

We do not agree. It is not in dispute that the Appellant was in the company of the Deceased at Overland at approximately 2 p.m. He admits that he saw her leave the bus in which they both travelled to Overland and go to his sister's home, and he had promised to return. He maintains that he never saw her again after they had separated at Overland. At least four witnesses, however, to whom he was known have testified to the contrary. Soon after leaving Overland he was seen by both Caesar and Cyrus at Noel when Caesar was in the company of the Deceased. On this occasion the Appellant was said to have struck Caesar with a stone and then to have addressed foul language to the Deceased. Kell Da Souza testified to having seen the Appellant with the Deceased at about 5 p.m. at Big Sand sitting on the beach. Sometime after 5.30 p.m. Linda Yorke, who was the last to see her alive, saw the Deceased with the Appellant at Pepper Village, a distance of about half a mile from Robin Rock where her dead body was found next morning. To use her own words, "he had the girl on the ground kicking her up". This part of her evidence is in keeping with the findings of Dr. Naidas who performed the autopsy. He stated that there were multiple contusions and abrasions on the neck, the anterior of the chest, on both forearms, lower abdomen, buttocks, thighs, and legs. Then at around 7 p.m. the witness Leon Rogers saw the Appellant near to

/Noel.....

Noel River, a distance of some 200 yards from Robin Rock. The Appellant was then walking alone towards Overland. At around the same time, Rally Cato testified that he saw the Appellant at Pitt, a distance of about $\frac{1}{2}$ mile from Robin Rock.

In answer to the evidence given by the witnesses who said they saw him with the Deceased after she had left the bus, the appellant said in effect I did not see her again, I was looking for her but did not find her. In answer to the evidence of Linda Yorke who stated that she saw the appellant committing acts of violence upon the deceased ~~that he~~ had the Deceased on the ground kicking her up, the appellant in effect said I did not see her again that day, I was looking for her and did not find her.

The force of suspicious circumstances is always augmented whenever an accused attempts no explanation of facts which he may reasonably be presumed to be able to explain. Circumstantial evidence to be conclusive must satisfy two prerequisites, it must not only be consistent with the guilt of the accused, but must equally be inconsistent with the guilt of anyone else. We feel that on a comprehensive view the evidence in the instant case satisfies both prerequisites, and points irresistably to one conclusion, the guilt of the appellant.

In the result, the appeal is dismissed, and the conviction and sentence affirmed.

/Sir Maurice Davis.....

(Sir Maurice Davis)
CHIEF JUSTICE

(N.A. Peterkin)
JUSTICE OF APPEAL

(W. Bruno)
JUSTICE OF APPEAL (ACTING)