GRENADA

IN THE COURT OF APPEAL

CRIMINAL APPEAL No. 15 of 1995

BETWEEN:

DONNASON KNIGHTS - Appellant

and

THE QUEEN

- Respondent

Before: The Rt. Hon. Sir Vincent Floissac - Chief Justice
The Honourable Mr. C.M. Dennis Byron - Justice of Appeal
The Honourable Mr. Satrohan Singh - Justice of Appeal

Appearances: Mr. Anselm Clouden for the Appellant
Mr. Keith Friday, DPP, Mr. Christopher Nelson Senior Crown Counsel with him for the Respondent

---

1996: July 8, 9, 10:
September 16.

JUDGMENT

SATROHAN SINGH J.A.

On August 2, 1995 the appellant was convicted by a jury before *St. Paul J* of the offence of the murder of Cherrie-Ann Matthew, a school girl about 16 years old. He was sentenced to Death. He has appealed.

THE CASE FOR THE PROSECUTION

The case advanced by the prosecution was that the appellant was the boyfriend of the deceased Cherrie-Ann. On Sunday April 11, 1993 at about 4.30 p.m., with the aid of a gun and a "big knife", he abducted her and used these words "If I can't get Cherrie-Ann I am going to kill her and kill myself. No other one can get her". Cherrie-Ann was later seen at the Grenville Police Station at 10 o'clock that night. On September 8, 1993, the deceased was on her way to Court to testify in the case against the appellant with respect to this alleged abduction. On this day, at about 9 a.m., the appellant accosted her. He had his left arm around her neck with his right hand inside his jacket. The deceased was crying and trying to go towards Grenville but the appellant was barring her

path. The deceased and the appellant then went on the Lime Kiln road into the bushes. Cherrie-Ann was not seen again. On Thursday, September 9, 1993, around minutes to 11 a.m. one Adrian Wharwood, heard Cherrie-Ann's voice coming from an abandoned house and saying at first "Oh God, Oh God, don't kill me, then "you go kill me"? He called the police. Around 11.30 a.m. on the said September 9th, 1993, one Wendy Thomas saw the appellant "running fast" from the direction of the abandoned house. The police having received Wharwood's report, went to the abandoned house around 11.27 a.m. and found Cherrie-Ann dead. Her body was still warm and she was fully clothed. There was no evidence that she was sexually assaulted but the police found three condoms which according to the forensic scientist Cheryl Priddee were positive for human spermatozoa. The fact of the finding of these condoms was not disclosed to the defence before trial. Four wounds were found on the body of the deceased and according to Dr. Rukmini Jayaram, Cherrie-Ann died from multiple injuries, laceration of the lung and massive haemorrhage. The blood group of the deceased was AB and on a knife found by the police near the appellant when he was captured there was also blood of the similar AB type. On Saturday, September 11th 1993, the appellant was captured in a house. He had three stab wounds in his left chest. The murder weapon, the knife, was found 1 - 2 feet away from his left hand.

The theory of the case for the prosecution was that the appellant, in order to prevent the deceased from testifying at the abduction trial and because of his own innate jealousy, again abducted the deceased and killed her. He then attempted to commit suicide by inflicting the three injuries on his chest. The murder weapon however did not have evidence of the appellant's blood which was tested to be ORH positive.

THE APPELLANT'S CASE

The case advanced by the appellant was that the deceased on September 8, 1993 went voluntary with him to the abandoned house. There they spent the night until about 4 o'clock in the morning when they were attacked by a masked man with a

cutlass in his hand. The appellant ran away. He went in a house. Around 5 p.m. the masked man again attacked him and that is how he received his injuries. His defence therefore is a denial of the crime.

THE APPEAL

In his appeal, the appellant challenges his conviction on issues that involve consideration by this Court of (1) the duty of disclosure on the part of the prosecution (2) the judge's directions on the requisite intent for the offence of Murder (3) the admissibility of so called prejudicial evidence (4) the admissibility of the depositions of an absent witness, the judge's directions to the jury thereon, the quality of that evidence and the method by which it was obtained (5) the propriety of the judge's directions on self-defence (6) adverse publicity.

1. NON DISCLOSURE OF EVIDENCE

On the issue of non disclosure, Mr. Clouden submits that there was a duty on the part of the prosecution and/or the forensic scientist to disclose to the defence the fact of the finding of the condoms at the murder scene and to hand over same to the defence for their own scientific investigation. Learned Counsel contends that this omission constituted a material irregularity in the course of the trial.

The law on the issue of "Disclosure" is more or less settled and not in dispute in this matter. As I understand this law, the prosecution has a duty at common law to disclose to the defence all relevant material, scientific or otherwise, which tended either to weaken or strengthen the prosecution's case or to assist or strengthen the defence case, whether or not the defence made a specific request for disclosure. This duty extends to and is also imposed on a forensic scientist who is an adviser to the prosecuting authority. "Relevant material" in this context, means material which may have some bearing on the offence charged and the surrounding circumstances of the case and which material is known to the prosecution and/or the forensic scientist. The Court of Appeal of England, in **R v Livingstone (1993) CLR 597**, says on this issue that "it was the duty of the prosecution in all cases where material, whether documentary otherwise, of relevance to the defence, came into their hands to make the defence a present of such material". It is also settled law, that failure to disclose what is known or possessed and which ought to have been disclosed, is an irregularity in the course of the trial [**See R v Warde (1992) 2 AER 577** and **R v Maguire (1992) 2 AER 433]**.

Before the jury in this matter, evidence was led to show that the dead body of Cherrie-Ann was found fully clothed, lying on a bed in an abandoned house.

Three condoms containing spermatozoa were found 14 feet away from the bed. The issue to be determined is whether these three condoms were material in the case which could have strengthened or weakened the case for the prosecution and/or assist the case for the defence. The evidence disclosed no sexual interference with the deceased, her body was found fully clothed in tights, shirt, vest and bra, with no evidence of seminal stains and the house where the condoms were found was an abandoned house. In other words, the evidence led disclosed no nexus between the condoms and crime charged. Mr. Clouden contended that had the condoms been disclosed to the defence they could have had the sperm scientifically examined in order to determine that the blood grouping may not have been that of the appellant especially having regard to the defence that it was the masked man who killed Cherrie-Ann.

It is my considered opinion, that having regard to the circumstances aforementioned which show no nexus between the condoms and the crime charged, that the condoms or the finding of the condoms could have been of no evidential value to either side. Even if the sperm showed a different blood group to that of the appellant, the per se, would not be enough to qualify them as being disclosable material. It has to be remembered that the house in question was an abandoned building open to all and sundry and that there was no sexual molestation of the deceased. For these reasons I would conclude that despite the very able arguments of Mr. Clouden on this issue this ground of appeal is without merit.

2. INTENT

On the issue of Intent, learned Counsel for the appellant contended that the judge's directions to the jury were "woefully inaccurate". Counsel argued that the judge did not tell the jury about the appellant's requisite subjective belief, about the degrees of probability and did not relate the law to the facts of the case.

In an appropriate case, a judge, in giving directions to a jury on the concept of intent in a case of murder, apart from reading to the jury the statutory definition of Intention, should explain to the jury in lawful that a lay jury could understand the meaning of the statutory definition. Involved in this explanation would be directions as to the requisite subjective belief and the degrees of probability. He should then relate this statutory definition and the explanation thereof to the facts of the case. *Sir Vincent Floissac, C.J.* in **Hazel Emmanuel v**

The Queen, Criminal Appeal No. 5 of 1989 St. Lucia, in dealing with the concept of intent gave an example of an understandable explanation of this statutory definition which I recommended in **Denis Alphonse V The Queen Criminal Appeal 1 of 1995 St. Lucia** that judges should follow. I do not propose to repeat it here.

In directing the jury, on this issue, the learned Judge said:-

> "If you are satisfied that the accused man Donnason Knights inflicted the wounds as described by Dr. Jayaram on the deceased Cherrie-Ann Matthew, the Crown must go on to prove beyond reasonable doubt so that you feel sure at the time he inflicted the wounds on Cherrie-Ann Matthew he did so with the intention to kill her. In our law there must be an intention to kill, not merely to cause harm but to kill. If on the other hand you believe that he caused the wounds to the deceased as described by the doctor but he did not intend to kill her then you may return a verdict of manslaughter and not murder because in murder there must be that intention to kill.
>
> You may ask yourselves, how are we to determine the man's intention and I tell you the intention of a man cannot be tried for the devil himself knows not the intention of any man or any woman for that matter, but you good members of the jury may determine the accused's intention from his acts, his deeds, or his words. By his behaviour you may know him."

He then read to the jury **S12 of the Criminal Code of Grenada** which defined intention. Having done that the learned Judge then explained the injuries found on the deceased to the jury as testified to by the doctor and then told the jury:- "If you believe that the accused inflicted those wounds on the deceased, did he intend to kill the deceased? That is a matter entirely for you".

From these directions it is obvious that the judge did not give an explanation to the jury of the statutory definition of intent. He therefore did not explain to the jury about the degrees of probability. However, on the issue of subjective belief, he gave the jury this direction already mentioned.

> "You good members of the jury may determine the accused's intention from his acts, his deeds, or his words. By his behaviour you may know him."

It is my considered opinion, that because of the appellant's defence that he was not the killer but that someone else was, the above direction purporting to be a direction on the appellant's subjective belief, inadequate though it may appear to be, and the omission by the judge to speak to the jury about the degrees of probability, could have had no adverse effect on the trial of the appellant and therefore there could have been no miscarriage of justice.

Mr. Clouden had argued that because of the evidence of Aldan Jones

wherein he said that the appellant when asked by him "how he manage to kill the girl" said "He did not go to kill her but she pull the cutlass", that this evidence necessitated the full directions on intent as above mentioned. The answer to this submission is to be found later in the judge's summing up when he left with the jury the issues of accident and self-defence. In leaving these issues the learned Judge's directions could not be faulted and the issues of subjective belief and degrees of probability were to a certain extent incorporated therein. For these reasons this ground of appeal also fails.

3. PREJUDICIAL EVIDENCE

From the facts already mentioned, the Judge admitted into evidence at the trial of the appellant, evidence of the alleged initial abduction of the deceased by the appellant some five months before the alleged commission of this offence. Counsel for the appellant argued against the admissibility of this evidence on grounds that it was not similar fact evidence and that its prejudicial effect far outweighed its probative value.

Our law does not allow one crime to be proved in order to raise a probability that another crime has been committed by the perpetration of the first. The existence of certain circumstances had to be recognised in which justice could not be attained at a trial without the disclosure of prior offences. However, the utmost vigilance should be maintained in restricting the number of such cases. The general rule as to the exclusion of evidence of prior offences could not be applied where the facts which constitute distinct offences are at the same time part of a transaction which is the subject of the indictment.

Just over 100 years ago, in 1894, ***Lord Herschell*** in **Her Majesty's Privy Council** in **Makin V A.G. for New South Wales (1894) A.C. 57,** in dealing with a case where evidence of similar facts were admitted said at **p. 65**:

> "It is undoubtedly not competent for the prosecution to adduce evidence tending to show that the accused has been guilty of criminal acts other than those covered by the indictment, for the purpose of leading to the conclusion that the accused is a person likely from his criminal conduct or character to have committed the offence for which he is being tried. On the other hand, the mere fact that the evidence adduced tends to show the commission of other crimes does not render it inadmissible if it be relevant to an issue before the jury, and it may be so relevant if it bears upon the question whether the acts alleged to constitute the crime charged were designed or accidental, or to rebut a defence which would be otherwise open to the accused."

In **R v Bond (1906) 2 K.B. 389 Kennedy J** said at **400**:

> "Evidence is necessarily admissible as to facts which are so closely and inextricably mixed up with the history of the guilty act itself as to form part of one chain of relevant circumstances and so could not be excluded in the presentment of the case before the jury without the evidence being thereby rendered unintelligible."

It is my considered opinion that the impugned evidence in this appeal was evidence relevant to the charge before the Court. It was evidence as to facts so closely and inextricably mixed up with the history of the guilty act itself as to form part of one chain of relevant circumstances and so could not be excluded in the presentment of the case before the jury without the evidence being thereby rendered unintelligible. It was evidence that was logically probative and was therefore admissible to show the motive for the murder of the deceased by the appellant. Obviously, an inference prejudicial to the appellant would be drawn from the evidence but such an inference cannot per se render it inadmissible. The test is whether its prejudicial effect is out of all proportion to its evidential value. In my judgment because of its highly probative value it cannot be said that its prejudicial effect outweighed its evidential value. I would therefore rule that the evidence was admissible. This ground of appeal fails.

4. THE DEPOSITION OF ALDAN JONES

Aldan Jones was a witness for the prosecution at the preliminary enquiry into this matter. At the trial, evidence was led to show that he was no longer in the jurisdiction, that he was somewhere in Canada and was there for about six (6) months. The evidence also showed that once he spoke to his brother and up to the time of the trial he had not returned to Grenada and his whereabouts in Canada were unknown. Evidence was also led to prove that he testified before the Magistrate at the Preliminary Inquiry, that full opportunity was given to Counsel for the defence to cross-examine, that he in fact was cross-examined and that he signed his deposition as being true and correct with the Magistrate also signing same. On this evidence his deposition was admitted at the trial.

The first submission of Mr. Clouden before this Court was that the depositions were improperly admitted because no effort was made to have the witness returned to personally testify. The second submission was that the evidence was highly prejudicial to the fair trial of the appellant and that it was extracted from the appellant by Aldan Jones in an unfair manner.

S198 of the **Criminal Procedure Code Cap 2 of the Laws of Grenada**

empowers a Judge to admit into evidence the depositions of a witness who testified at a preliminary inquiry. The relevant portion of this law states:

> "198.(1) A deposition taken against or for an accused person may be produced and given in evidence at his trial if it is proved, to the satisfaction of the Judge -
>
> (d) that the deponent is beyond the jurisdiction of the Court; and if
>
> (i) the deposition purports to be signed by the Magistrate before whom it purports to have been taken; and
> (ii) it is proved by the person who offers it as evidence that it was taken in the presence of the accused person or the prosecutor, as the case may be, and that he, or his counsel, had a full opportunity of cross-examining the witness; or, in cases where the deposition was taken after committal, that notice of the examination was given, as provided in this Code, to the party against whom the deposition is proposed to be given in evidence.
>
> (2) If the deposition purports to be signed as aforesaid, it will be presumed, in the absence of evidence to the contrary, to have been duly taken, read, and signed."

S198(3) Provides:

> "If it is made to appear to the judge that the witness who made the deposition may, within a reasonable time, be capable of attending to give evidence, and that the ends of justice require that the witness should be examined personally before the jury, the Court may postpone the trial on such terms as may seem proper."

Even if these statutory provisions are satisfied, in an effort at ensuring a fair trial, the common law gives the Judge a discretion to exclude the admission of the deposition. The exercise of this discretion was dealt with in **Barnes, Desquottes and Johnson v R (1989) 37 WIR 330** and followed by this Court in **Abraham v R (1992) 43 WIR 142**. In the Barnes case ***Lord Griffiths*** gave this opinion at **p.340**:-

> "In the light of these authorities their Lordships are satisfied that the discretion of a judge to ensure a fair trial includes a power to exclude the admission of a deposition. It is, however, a power that should be exercised with great restraint. The mere fact the deponent will not be available for cross-examination is obviously an insufficient ground for excluding the deposition for that is a feature common to the admission of all depositions which must have been contemplated and accepted by the legislature when it gave statutory sanction to their admission in evidence. If the courts are too ready to exclude the deposition of a deceased witness it may well place the lives of witnesses at risk, particularly in a case where only one witness has been courageous enough to give evidence against the accused or only one witness has had the opportunity to identify the accused. It

> would of course be necessary in every case to warn the jury that they have not had the benefit of hearing the evidence of the deponent tested in cross-examination and to take that into consideration when considering how far they can safely rely on the evidence in the deposition. No doubt in many cases it will be appropriate for a judge to develop this warning by pointing out particular features of the evidence and which could have been explored in cross-examination; but no rules can usefully be laid down to control the detail to which a judge should descend in the individual case. In an identification case it will in addition be necessary to give the appropriate warning of the danger of identification evidence. The deposition must of course be scrutinised by the judge to ensure that it does not contain inadmissible matters such as hearsay or matters that are prejudicial rather than probative and any such material should be excluded from the deposition before it is read to the jury.
>
> "Provided that these precautions are taken it is only in rare circumstances that it would be right to exercise the discretion to exclude the deposition. Those circumstances will arise when the judge is satisfied that it would be unsafe for the jury to rely upon the evidence in the deposition. It will be unwise to attempt to define or forecast in more particular terms the nature of such circumstances. This much however can be said: that neither the inability to cross-examine, nor the fact that the deposition contains the only evidence against the accused, nor the fact that it is identification evidence will of itself be sufficient to justify the exercise of the discretion. "It is the quality of the evidence in the deposition that is the crucial factor that should determine the exercise of the discretion. By way of example if the deposition contains evidence of identification that is so weak that a judge in the absence of corroborative evidence would withdraw the case from the jury; then, if there is no corroborative evidence, the judge should exercise his discretion to refuse to admit the deposition for it would be unsafe to allow the jury to convict upon it. But this is an extreme case and it is to be hoped that prosecutions will not generally be pursued upon such weak evidence. In a case in which the deposition contains identification evidence of reasonable quality then, even if it is the only evidence, it should be possible to protect the interests of the accused by clear directions in the summing-up and the deposition should be admitted. It is only when the judge decides that such directions cannot ensure a fair trial that the discretion should be exercised to exclude the deposition."

(See also **Scott and Another v R Barnes and Others v R 1989) 2 AER 305).** The record of appeal is silent on the issue whether the trial judge alluded to this common law discretion before he admitted the depositions into evidence. I recognise that in these circumstances we ought to presume that he did. The question then arises whether it was properly done,

Regarding therefore the first submission of Mr. Clouden, it is my view that on the evidence before the judge, it could not have appeared to the judge that the witness could have within a reasonable time been capable of attending to testify. The evidence of the witness' brother Audie Jones was that the witness having left

Grenada since January, 1995 he did not have his address. Regarding learned Counsel's second submission, I agree that the evidence of this witness would have adversely affected the case of the appellant. It was evidence that was capable of negativing the appellant's defence that he was not the killer, extracted from the appellant by a so called friend of his. However, I am also of the view that it was highly probative of the Crown's case. It was therefore relevant evidence at the trial. Given these circumstances, for it to be excluded, the judge had to be satisfied that it was obtained in a manner legally unfair to the appellant. I know of no law which says that an admission, confession or other adverse statement extracted from a defendant by a treacherous friend is inadmissible. It only becomes inadmissible if it was unfairly extracted by a person in authority. Audie Jones was no such person in authority. The evidence is that he was a friend of the appellant, albeit, a treacherous one. I would therefore hold that the evidence was legally admissible and properly admitted at the trial.

Mr. Clouden also challenged the judge's directions to the jury as to their approach in considering these depositions. There is no merit in this submission. This is how the Judge dealt with the matter:

> "You members of the jury, you have not had the benefit of hearing or seeing Aiden Jones testify before you or seeing or hearing him answer questions under cross-examination. You must take that into consideration when considering how far you can safely rely on his evidence. You as judges of facts may even care to reject his evidence if you don't believe it or have doubts about it. It is a matter entirely for you. Bear in mind that the case for the Crown is that the accused killed the deceased Cherrie-Ann with a knife. The Crown is asking you to believe that the knife now in evidence is the weapon used to kill the deceased. However, Aiden Jones in his evidence he is saying the accused told him, "I ask him how he managed to kill the girl, the accused said that he did not go to kill her but she pull the cutlass". Now if you believe the accused said those things to
> Aiden Jones what do you make of it? Is the accused saying the deceased pulled the cutlass and that cutlass accidentally caused the wound from which she died? Then if you believe that, then you have to say it is an accident and you must return a verdict of not guilty. But I pause to ask you to bear in mind the evidence of the pathologist, Dr. Jayaram. If on the other hand from that statement you believe that the deceased Cherrie-Ann pulled the cutlass to do grievous harm to the accused and the accused in self-defence used the knife and inflicted the wounds on the deceased from which she died, then again you should return a verdict of not guilty because you may say he was acting in self-defence."

The learned Judge in these directions in my view followed the guidelines in Barnes' case. He explained to the jury the quality of deposition evidence, he also pointed out certain particular features of the evidence including the

discrepancy therein between the alleged admission and the fact that the deceased was killed with a knife. He then later explained to the jury the issues of self-defence and accident. This ground of appeal fails.

5. SELF DEFENCE

There is also no merit in the submission of Mr. Clouden that the judge ought not to have left self-defence with the jury. The evidence of Aldan Jones already mentioned disclosed material from which it can be said that the issue would have arisen and the law is settled that once such material emerges, the judge is bound to leave it for the jury's consideration regardless of whether or not the defence relied on it. [See **Regina v Shampal Singh (1962) AC 188, Mancini v Director of Public Prosecutions (1941) AC 1 H.L. Rex v Hopper (1915 2 K.B. 431, Stephen Mongroo v The queen Criminal Appeal No. 3 of 1994 St. Lucia Number 14 of 1994 (unreported)]**

8. ADVERSE PUBLICITY

The final issue in this appeal concerns the possible adverse effect that certain newspaper publications might have had on the trial of the appellant. One such publication concerned criticisms made by the then Director of Public Prosecutions who prosecuted this matter, of ***Moore J*** who was not the trial Judge in this matter; and of the administration of justice generally. Another publication showed a photograph of jurors who deliberated in this matter in a friendly pose with the said Director of Public Prosecutions after the trial.

The complaint of Mr. Clouden was that because the first publication criticised the administration of justice and showed some form of purported bad or unfair treatment of the then DPP by Moore J, that the jury in this case might have been sympathetic towards the said DPP, hence the verdict of guilty of murder. At the trial Counsel had sought a postponement in order to file a constitutional motion on the issue. This was refused by the judge. The motion was subsequently filed but the appellant's trial proceeded and he was convicted without the motion being heard. The learned Judge in opting to proceed with the trial, found no basis in the application for the adjournment.

The law on this issue was dealt with by **Her Majesty's Privy Council** in **Boodram (also called Dole Chadee) v A.G. of Trinidad and Tobago February 18, 1996.** At **p.10** ***Lord Mustill*** said:

> "In expressing this conclusion their Lordships do not altogether foreclose the possibility of an application to the High Court for relief

> under the Constitution in a case of trial by media where the chance of a fair trial is obviously and totally destroyed, for there is no due process of law available in such a case to put the matter right. Thus in **Reg. v Vernelle (1984) 15 D.L.R. (4th 218** the majority of the Court of Appeal of Quebec found that in a case described as "extreme" and "exceptional" and "Unique", where the head of the Executive had by grossly extravagant comments in the National Assembly destroyed for all practical purposes the only defence advanced by the accused (**p.225**), the risk to the fair trial guaranteed by the Canadian Charter of Rights and Freedoms was so great that a permanent stay of the prosecution was the only appropriate remedy. In the event, this decision was reversed in the Supreme Court **(1988) 60 D.L.R. (4th) 385** but that the High Court of Trinidad and Tobago would have jurisdiction to act in a similar way their Lordships see no reason to doubt, the more so since concurrent remedies are expressly preserved by section **14(1)** of the Constitution. The decision of the **Board in Harrikissoon v Attorney-General Trinidad and Tobago [1980] A.C. 265** does not stand in the way of this proposition, since that was a case where there was not even arguably an infringement of the appellant's rights. Equally, however, they have no doubt that it is only in a very rare case that an application to the High Court should be entertained. The proper forum for a complaint about publicity is the trial court, where the judge can assess the circumstances which exist when the defendant is about to be given in charge of the jury, and decide whether measures such as warnings and directions to the jury, peremptory challenge and challenge for cause will enable the jury to reach its verdict with an unclouded mind, or whether exceptionally a temporary or even permanent stay of the prosecution is the only solution."

In the instant matter, I cannot see the merit in the submission of Mr. Clouden. The newspaper publications had nothing to do with this matter. In the first publication, the judge who was criticised and accused was not the trial Judge. The photographic publication was a friendly gesture on the part of certain jurors towards Mr. Wildeman, this case being the last case to be prosecuted by him in Grenada. In any event, if Mr. Clouden, experienced as he is, thought that the first publication could have created such severe damage to the fair trial of the appellant as he so vehemently argued, he had his right in law to challenge individual jurors for cause or to invite the judge to so examine the potential jurors. This he did not do. From my own point of view, having seen and read the publications, I do not regard them in any way as being capable of destroying or affecting the defence of the appellant thereby affecting his right to a fair trial. Additionally, the learned Judge directed the jury that the newspapers in Grenada "like to play Judge and Jury. They write too much. They say too much and sometimes utter nonsense". He then admonished the jurors to wipe out of their minds any extraneous matters that might affect them from delivering a true verdict in accordance with the oath they took. This final ground also fails.

CONCLUSION

For these reasons I would order that this appeal do stand dismissed and the conviction and sentence affirmed.

SATROHAN SINGH
Justice of Appeal

I concur.

SIR VINCENT FLOISSAC
Chief Justice

I concur.

C.M. DENNIS BYRON
Justice of Appeal