

Judgment
3 1958

IN THE PRIVY COUNCIL

No. 26 of 1957

ON APPEAL FROM THE SUPREME COURT

OF BRITISH GUIANA

COURT OF CRIMINAL APPEAL

B E T W E E N : MOHAMED FIAZ BAKSH Appellant

- and -

THE QUEEN ... Respondent

RECORD OF PROCEEDINGS

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

B E T W E E N:

MOHAMED FIAZ BAKSH Appellant

- v -

THE QUEEN Respondent

RECORD OF PROCEEDINGS

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IN THE PRIVY COUNCIL

No.26 of 1957

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

BETWEEN: MOHAMED FIAZ BAKSH ... Appellant
 - and -
 THE QUEEN ... Respondent

RECORD OF PROCEEDINGS

No.1.

In the
Supreme Court
of British
Guiana.

10

INDICTMENT

THE QUEEN
against

- 1. Mohamed Fiaz Baksh
- 2. Nabi Baksh.

No. 1.
Indictment.
19th November
1956.

In the Supreme Court of British Guiana, (Criminal Jurisdiction).

County of Demerara.

Presentment of Her Majesty's Attorney-General for the said Colony.

20 Mohamed Fiaz Baksh and Nabi Baksh are charged with the following offence:-

Statement of Offence

Murder, contrary to Section 100 of the Criminal Law (Offences) Ordinance, Chapter 10.

Particulars of Offence.

Mohamed Fiaz Baksh and Nabi Baksh, on the twelfth day of June, in the year of Our Lord One thousand nine hundred and fifty-six, in the County aforesaid, murdered Mohamed Saffie.

C. Wylie

Attorney-General.

In the
Supreme Court
of British
Guiana.

EVIDENCE OF DESMOND MONTAGUE EDGHILL

DESMOND MONTAGUE EDGHILL sworn:-

Prosecution
Evidence.

No. 2.

Desmond
Montague
Edghill.
19th November
1956.

Examination.

I am a Sworn Land Surveyor residing at 7 Second Avenue, Subryanville, Demerara. On 27th June, 1956, and 5th July, 1956, I went to Clonbrook, E.C.D. and made a survey. I was accompanied by Sgt. Chee-a-Tow on both occasions. I was shown certain spots by various persons namely Sgt. Chee-a-Tow, Bibi Miriam, Mohamed Haniff, Rookmin, Edmund Richard Carbon, Shira Baksh, Nisha Azeez, Ivan Gooding, Sherifan Baksh and Mohamed Nazir.

10

I made a plan of the areas and marked the spots shown to me. I produce three copies of the plan; an original and two copies certified by me.

Mr. Lloyd Luckhoo objects to the plan being admitted in evidence for the reason that on the plan are certain markings A, B, C, D, E, F, G, X, Y, Z. Some of the letters refer to fixed objects in existence. The objection refers to such matters as may be contained in points as pointed out by persons some of whom are witnesses and some of whom are not witnesses and especially to points which are indicative of places where witnesses allege certain things may have happened or persons may have been seen or may have walked.

20

There is a route set out in a red line on the plan - would be a flagrant violation of the hearsay rule. If the plan is prepared to show the fixed objects there would be no objection. The plan as it is prepared does not present a true picture. The way in which the witness has stated how he obtained the information offends the hearsay rule.

30

Mr. E.V. Luckhoo associates himself with the objection. Mr. Edun asks that the plan be marked for identity "M". Further examination deferred.

EVIDENCE OF EUSTACE WILLIAMS

EUSTACE WILLIAMS sworn:-

Sgt. of Police stationed at Brickdam, Georgetown. I am Police photographer.

10 On 12/6/56, I received certain instructions and went to Clonbrook E.C.D. where I saw Sub-Inspector Butts and others. I took certain photographs from certain positions. I developed the negatives and made enlargements from them. I produce the negatives. In Ev. XI - 13. I produce the enlarged prints I made from the negatives. In Ev. XI - 13.

I did not interfere with the reproduction of the enlarged prints from the negatives. I also made copies of the enlargements which I now produce. ZI - 13; AAI - 15.

Exhibit Y1 shows the northern view of the kitchen with the open door.

20 Exhibit Y2 shows photograph from kitchen door looking south and inside the kitchen. I was north of the door.

Exhibit Y3 shows deceased lying on the ground. I was inside the kitchen with the lens of the camera in a northerly direction.

Exhibit Y4 is a close-up photograph showing chest of deceased.

Exhibit Y5 shows a step from the living room to the kitchen where I saw deceased lying.

30 Exhibit Y6 shows the fireside of the kitchen which is on the south side of the kitchen.

Exhibit Y7 shows an area of the southern wall of the kitchen. A portion of the bamboo wall has perforations.

Exhibit Y8 shows the south side of the kitchen. This photograph taken from the outside with lens of the camera facing north.

In the
Supreme Court
of British
Guiana.

Prosecution
Evidence.

No. 3.

Eustace
Williams.

19th November,
1956.

Examination.

In the
Supreme Court
of British
Guiana.

Prosecution
Evidence.

No. 3.

Eustace
Williams.

19th November,
1956.

Examination -
continued.

Cross-
Examination
by
E.V. Luckhoo.

Exhibit Y9 shows an area of the southern wall of kitchen with small holes.

Exhibit Y10 shows a glass window on the southern side of the house.

Exhibit Y11 shows the house of the deceased with the thatched roof of the kitchen.

Exhibit Y12 shows a photograph taken from the south side of the kitchen and lens of camera pointing south.

Exhibit Y13 shows the house, the lens of the camera facing north.

10

These photographs taken between 9.30 a.m. and 12 mid-day on the 12th June, 1956.

Cross-examination by E.V. Luckhoo

A portion of the southern wall of kitchen had not been removed in my presence. I recognise the bamboo now in the court. It is the type of material used for walls of the kitchen. They were stuck closely to each other.

A part of the step leading from room to kitchen is shown in Y3. The whole step is shown in Y5. The kitchen from my recollection is 7 feet by 9 feet. The step would be on the eastern side facing west about midway between the northern and southern wall about 3 feet 6 from the northern and southern wall.

20

The fireside is south of the kitchen and extending about $\frac{3}{4}$ of the wall going from west to east. In Y6 the spoon is stuck in the southern wall by the south eastern corner. The spoon is about 3 feet from the corner where southern wall meets eastern wall. The steps come about 1/3rd into the kitchen that is the bottom of the steps would be about 3 feet from the eastern wall.

30

Photo Y7 is taken inside the kitchen. The part of the spoon appearing in Y7 is the same spoon in Y6. The fireside is about 1 foot raised from the ground. It is about 3 ft. 6 ins. from top of fireside to top of spoon. Top of spoon is 4 ft. 6 ins. from the ground. From top of spoon to damaged portion of wall is between 18 ins. and 22 ins.

40

If a line were drawn from the damaged portion parallel to the eastern wall it would fall in line with the bottom of the step. Just above the damaged portion of the wall the bamboos are packed closely together.

Y7 shows the damaged portion inside whilst Y9 shows the damaged portion outside. I count about 13 holes in Y9. What appears to be blood is on the third and fourth treader of step.

10 There is a piece of cloth on one of the treaders. It looks like the cloth used by East Indian women to tie their hair. I did not see any blood on the ground. In Y6 there are tawahs. No sign of any fire on the fireside.

Cross-examination by Lloyd Luckhoo:-

20 The portions of bamboo in court were not removed when I was at the home. Ex. Y1 was taken with lens of camera facing south as also in Ex. Y2. In Ex. Y5 the lens of camera would be facing east. The blood at the time appeared to be fresh. Ex. Y6 is inside of the kitchen facing south.

The spoon is about 16 to 18 inches long. The area of the damaged portion would be 1 ft. 10 ins. by 1 ft. 6 ins. in height; that is the area of the holes.

If a person is standing up against the bamboos he would see much better than if he was some distance away.

30 Re-examination:-

Ex. Y9 shows damaged portion of wall outside the kitchen in which there are about 13 holes. I was south looking north when that photograph was taken by me. The door of the kitchen on the northern side is shown in Y9. There is a bag shown hanging in Y8 which is also shown in Y9. As shown in Y8 if a person looks through the opening where the bag is hanging the steps will be seen on the eastern side of that opening.

In the
Supreme Court
of British
Guiana.

Prosecution
Evidence.

No. 3.

Eustace
Williams.

19th November,
1956.

Cross-
Examination by
E.V. Luckhoo -
continued.

Cross-
Examination by
Lloyd Luckhoo.

Re-examination.

In the
Supreme Court
of British
Guiana.

No. 4.

EVIDENCE OF MOHAMED HANIFF

MOHAMED HANIFF sworn:-

Prosecution
Evidence.

No. 4.
Mohamed Haniff.
19th November,
1956.

Examination.

I live at Clonbrook, East Bank Demerara. In June 1956, I was living in Clonbrook at my brother-in-law's place. He was Mohamed Saffie now deceased. He was married to my sister named Bebe Mariam. I always come from Herstelling and stay with them at Clonbrook. My sister Bebe Mariam and her husband used to live together in one house at Clonbrook. The house had three attachments. There is a board house in front, a bush kitchen at the back of the house and then a bush house attached to the kitchen. The front of the board house faces the east. 10

There is a trench in front of the house running north to south. There is another trench on the south side of the house. I look at Yll. It shows the board house in which Mohamed Nazir lives. The trash house at the back is the house in which the deceased used to live. The deceased used to sell provisions and greens in Georgetown. 20

At about 3 in the morning the boat would be loaded with the articles and taken to the bus stand. The goods would be taken out and put in the bus. The trench running north to south would be used to transport the goods by boat.

I was at Clonbrook on the day 11/6/56. I slept in the board house of Mohamed Nazir. On 12/6/56 I got awake about 3 a.m. I got up. Nazir, his wife, Saffie and his wife also got up. I went to Saffie's house and help him carry the greens to the boat in the trench in front of the house. I help load up the greens and provisions. I then went back to the board house of Nazir and help him take out his goods too. When we finish load the boat, Nazir went away in the boat with his wife and Bebe Miriam. I went back home with Saffie in front of me. I went upstairs in the board house and Saffie went in the trash house. I sat down on my bed smoking a cigarette and waiting on Nazir's return. Before Nazir could return I heard the load fire from a gun. I heard only one load fire. It sounded as if from the kitchen. I then heard a voice that sounded like the voice of Saffie. I went to the window 30 40

with a flash light in my hand. I went to the northern window. (Witness faces east and points to the south as the window through which he looked).

10 I turned on the light and fixed it on the east to West trench, as I heard a noise in the water. I saw two men crossing over the trench at the back of the house in the southerly direction. The back of the men was facing me. So I did not recognise them. They ran to the rice field dam and then
20 came opposite the window. I was then able to make them out. I shouted I made them out to be Mohamed Fiaz Baksh and Jacob also called Nabi Baksh, the two accused.

They were then about 3 rods from me. I shouted: "Alright Fiaz and Jacob no use run any more I see you already". I saw a gun in Fiaz right hand. Jacob had nothing. Both men turned and looked at me. They then jumped over the fence and ran away to the back dam side. I watched them. I
20 then stand for a while and heard a voice.

I ran downstairs and went to Mohamed Saffie kitchen where I saw Nazir. I also saw Mohamed Saffie lying with his face on his hands and he was on the step leading into the kitchen. His head was on the house flooring and his feet in the kitchen. He was over the step. Nazir spoke to me. I saw Saffie bleeding from wounds to his chest. I ran outside and shouted. Nazir and I
30 lifted Saffie from the step and placed him on his back in the kitchen as shown in Ex.Y1, Y2, Y3, Y4.

The police also handle the body. I saw Saffie's stomach had plenty shot holes and he was bleeding from them. When we put him down he was groaning but he soon finished groaning. The Police came later that morning. Saffie's mother came. Ex. K is my torchlight. It was working at the time. It had in 3 batteries and a bulb. The police took it from me.

Adjourned - Resumed 20.11.56.

40 MOHAMED HANIFF sworn continues:-

Cross-examination by E.V. Luckhoo:

My home is not at Clonbrook. I was at Clonbrook for a little holiday. My home is at Herstelling on the East Bank. I have a family. I was

In the Supreme Court of British Guiana.

Prosecution Evidence.

No. 4.
Mohamed Haniff.
19th November, 1956.

Examination - continued.

20th November, 1956.

Cross- Examination by E.V. Luckhoo.

In the
Supreme Court
of British
Guiana.

Prosecution
Evidence.

No. 4.

Mohamed Haniff.

20th November,
1956.

Cross-
Examination by
E.V. Luckhoo -
continued.

born at East Bank and lived all my life there. When I am at East Bank I work at Providence Estate working at backdam, or with the bull cart.

My sister was married to Saffie. I do not know who married them. I was not present at the wedding. I did not go to the wedding. I do not know when they were married. My sister never sent to tell me. I live well with my sister. It is not true that my sister only took up with Saffie last year. They have been living together for two to three years. I got to know Saffie through my sister. I cannot remember when first I went to Clonbrook. I did not go up to Clonbrook last year. I also went up the year before that is in 1954.

10

In last year I went up during the first part of the year and spent couple weeks there. I did not go there in 1953. I had been in Clonbrook about 3 weeks before the shooting took place. I am still in Clonbrook. I am now living and working there. I am no longer living at the Bank. I have not taken over my family.

20

My sister goes to market with greens on Tuesdays and Saturdays. She buys greens and sell. The greens are taken in large baskets to market. I am not in a position to say how many baskets of greens my sister took to market that morning. Perhaps she took about 4 or 5 baskets. I can't tell how many baskets of greens Alli also called Nazir had. She had borah, ochro, and a couple bunches of bananas.

Alli only had some pepper and some borahs. The greens are bought during the day and transported in the early hours of the morning. Alli had one basket of borah and half a basket of pepper. All went in one boat. There were Saffie and his wife and Alli and his wife. I got up and assisted them. I was not sleeping when the shooting took place. I cannot tell how many baskets I took to the boat. I saw them go off in the boat and then I went upstairs. I stay in the east part of the house.

30

There is a window to the south. That is the window I looked through and through which I was able to recognise the two accused. I point out the window in photograph Y11 - window now marked Y11A.

40

I sleep on a cot. I know Mr. Edghill the Land

Surveyor. I did not tell Mr. Edghill the Land Surveyor that I was sleeping until I was awakened by the sound of a gun. I never spoke to him at all. I had no conversation with him at any time. The policeman spoke to me and I replied to him.

I do not know one Alfred Allen. (Alfred Allen brought into Court). I have never seen that man before. I know where Bee Hive is. It is to the east of Clonbrook. I do not know one Jerry.

10 After the boat left, I saw Saffie go into his house. He walked in front of me. He had to pass through the kitchen to get to his house. I saw him go into his house. It was then about 4 or 4.30 a.m. I do not know how long it took to load the boat. I now say it took about 5 minutes. It was not 3.15 a.m. when Saffie returned to his house. I washed my face before I started to load the boat. As soon as we finished loading the boat Saffie went to his house. I have never accompanied the boat
20 to the bus-stop.

When my sister goes out to sell then Saffie and I make tea at the fireside. We make roti on the tawah. That was done in the kitchen where the body was found. We usually make tea about 5 to half past five. Whenever we load the boat we never go back to sleep. That night jokes passed between Saffie and I. He was in the kitchen downstairs and I was upstairs in my room. I was seated on my bed. I went to bed about 9 p.m. and got up at
30 3 a.m.

I smoked one cigarette in my room after loading the boat. I am unable to say how long after I got upstairs that I heard the gun fire. I was upstairs a good time before the gun fire. I was not sleeping. Saffie and I had been speaking all the time. Just before the gun fire I had spoken to Saffie and he to me. I was speaking from my bed where I was seated upstairs and he was speaking from the place where he sleeps downstairs. I did
40 not know that Saffie had left where he sleeps and had gone to the kitchen. I did not hear the boat return. I never knew when Alli came back with the boat but I heard a knocking. I am in the habit of waiting for Alli. I now say I knew when Alli came back. The load was fired from the gun before Alli came back.

In the
Supreme Court
of British
Guiana.

Prosecution
Evidence.

No. 4.

Mohamed Haniff.

20th November,
1956.

Cross-
Examination by
E.V. Luckhoo -
continued.

In the
Supreme Court
of British
Guiana.

Prosecution
Evidence.

No. 4.

Mohamed Haniff.
20th November,
1956.

Cross-
Examination by
E.V. Luckhoo -
continued.

Up to the time before the load fire I did not hear the boat come back. After the load was fired I did not shout to Saffie. After the load was fired I heard Alli's voice. After I shouted to the two accused I heard Alli's voice. Two minutes after the load was fired I heard Alli's voice. I heard Alli's voice more than once. I heard it the second time quickly following upon the first time.

No one wakes me up on the morning that I do not have to load the boat. I get up 3 o'clock every morning. Everybody in the house get up at 3 a.m. Only Saffie and his wife sleep downstairs. The mother sleep in the hall close to me. She also got up at 3 a.m. She also get up at 3 each morning. She is an old lady. I spoke to her after the boat left. She was not joining in the jokes between Saffie and myself. She did not go down with me after I heard the gun. 10

My torchlight was on a table close to my bed. As soon as I heard the gun I got my torch light and went to the window and put on the torchlight at once. It was still dark when I went to the window. As soon as I put on the torchlight I saw the two men crossing the trench. I kept following the men with my torchlight. I played it on them as they were moving. When I first put the light on them I did not recognise them. They had their backs to me and were going away from me. I would not have been able to see their faces if they had kept on that course, but they had to change their course as there was a ricefield through which they would have to go and then get to backdam. 20 30

When I first saw the two men they were south-west of me and facing the backdam - whilst they were crossing the trench. After they crossed the trench they turned to the east and walked in an easterly direction. I shouted to them. Mohamed Fiaz Baksh then turned his face towards me and I recognised him. There is a wire running east to west. When he turned to me he had not crossed the wire yet. He was not running. He was walking. I shouted: "Alright Fiaz and Jacob you need not run I see you all". I have never in my life spoken to Fiaz Baksh. I do not know if he knows me. On the 11/6/56 I did not know the names of the neighbours living close to Saffie. I watched the two accused go about ten rods off. I went downstairs after that. I never asked the old lady to go with 40

me to the kitchen. She was lying down on her bed on the floor when I was at the window with the torchlight.

10 I met Alli in the kitchen. I did not tell him what I had seen when I met him in the kitchen. I do not know who went to call the relatives. Some relatives live to the north east. I did not go to call any of the relatives. I saw Alli run off but I do not know where he went. I did say in the Magistrates Court that "I did not speak to Alli before he ran off to call the relatives of the deceased, nor did he speak to me."

Plenty persons came after the alarm was given. At that time I was a stranger to the place and did not know the names of the neighbours that came.

20 I went to the kitchen about 5.30 a.m. I did not expect to find Saffie lying down on the step. Alli and I lifted him up then we made an alarm. It was rice planting time. Young rice plants have to be protected from ducks and pigs. Sometimes people are forced to shoot ducks and pigs to protect their rice plants.

30 No fire in the kitchen and no tea had been prepared when I got to the kitchen. Alli and I were the first persons to get to the deceased. When I got there I saw Saffie against the steps and then I shouted: "Oh God Saffie dead". He was not dead in fact. When I put him to lie down on the floor he died and then I shouted Oh God Saffie dead. I did not shout Oh God Saffie dead when I saw him on the step. I spoke in the presence of the neighbours about Saffie. Plenty persons came. I do not know if Allen and Jerry were among those that came. I never said that: "I was asleep and never heard any gun". I never said that: "Alli had sent me down to see if Saffie had got on with the cooking".

40 It was not that way that I discovered Saffie. I never called out to the deceased after I heard his voice. I never heard Alli say that when he was coming back he heard a gun but did not know what it was so he went upstairs to lie down and after that he sent me downstairs.

Cross-examination by Lloyd Luckhoo:

My home is still Horstelling. It is not my own

In the
Supreme Court
of British
Guiana.

Prosecution
Evidence.

No. 4.
Mohamed Haniff.
20th November,
1956.

Cross-
Examination by
E.V. Luckhoo -
continued.

Cross-
Examination by
Lloyd Luckhoo.

In the
Supreme Court
of British
Guiana.

Prosecution
Evidence.

No. 4.

Mohamed Haniff.
20th November,
1956.

Cross-
Examination by
Lloyd Luckhoo
- continued.

house. It is my father's house. My father and mother live there. There are two daughters. One is married. I am not married. I am not at Clonbrook to keep in touch with this case. I had made up my mind to live there before the shooting. Even if there had been no shooting I would have stayed there.

About 3 to 4 months before the shooting I decided to live at Clonbrook as I make a better living there. Holiday pass me up there. I had a farm at Herstelling. I had two beds of provision. My father's land. My father takes the money. I help my father cultivate the farm. It is not my farm. I used to visit Clonbrook for a day or two. They were short visits. 10

Now Year's day I was in Clonbrook. I went there from Old Year's Day. I spent two days there. I stopped at East Bank for about 3 months then I returned to Clonbrook for 2 days. After that I returned to East Bank for a month and returned to Clonbrook where I spent one week. I did not tell the police that I was asleep when I was awakened by the sound of a gun. I never told anyone that I was asleep and the gun shot woke me up. 20

Alli, his wife, two children (Bebe, a girl and a boy) and myself in one house whilst Saffie and his wife in the trash house. I am a light sleeper. I went to bed at 9 p.m. and got awake at 3 a.m. Did not wake up before. I went and washed my face. Then the boat was loaded and left at once. I can't tell if the boat left at 3.15 a.m. It took us about $\frac{1}{4}$ hour to load the boat. 30

The bus usually blow at 3 o'clock it did blow around 3 a.m. that morning. That bus stop is about 150 rods from the home. It is a pole boat. It takes about half an hour for the boat to be taken to the bus stop and to return home. Sometimes the boat comes back at 3.45 a.m. at other times a little later. It would not then be time for the household to take tea. Jury warned. Adjourned. Resumed. Jury call over. 40

MOHAMED HANIFF still on oath continues:

I know Abdul Majeed now shown to me in Court. I did not see him in court this morning. I did not

see him leave the court on two or three occasions this morning. I do not understand the meaning of the word "recognise" used to me by Mr.E.V.Luckhoo. You have not asked me about recognise.

10 I have not remained in Clonbrook so as to watch the progress of the case. I had made up my mind to live in Clonbrook so that it was incorrect when I said to Mr. E.V. Luckhoo that I went there on a visit in June. I did not say at the Magistrate's Court that my first visit to Clonbrook was on the occasion of the marriage of my sister Bebe Miriam to the deceased 5 or 6 years ago and then three or four times after.

My sister had been married to Saffie more than 6 years ago. I cannot tell how many years. I do not know how long they have been married. I have never waited outside the house for the return of the boat.

20 Saffie walked by the side of the board house then through the kitchen to his room by climbing up the steps from kitchen to his room. A bag partition separates my kitchen from Saffie's living quarters. After the boat leaves it is usual for me to rest my back on the bed. On no occasion do I go to sleep. As soon as the boat left Saffie went to his living quarters and I went to mine. As soon as I reached my cot I lit a cigarette to take a smoke. I had smoked about half of the cigarette when I heard the discharge of a shot.

30 When I looked out from the window I saw the dam. The men ran on the dam after they crossed the trench. They passed in front of the window where I was. If they ran west of the dam they would run away from the house whilst running east would take them past the house. The ricefield had in young plants.

40 I did tell the Magistrate in the lower Court about the men walking along the dam. Fiaz Baksh turned his face towards me but Nabi Baksh did not turn his face to me. Saffie's mother was awake. She was awake when I went to the window. She did not get up when the load went off. She is deaf. She could see me going to the window. She did not get up nor did she speak to me. I did not speak to her when I was at the window nor when I was going downstairs. She only went downstairs after

In the
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Guiana.

Prosecution
Evidence.

No. 4.

Mohamed Haniff.
20th November,
1956.

Cross-
Examination by
Lloyd Luckhoo
- continued.

In the
Supreme Court
of British
Guiana.

Prosecution
Evidence.

No. 4.

Mohamed Haniff.
20th November,
1956.

Cross-
Examination by
Lloyd Luckhoo.
continued.

the alarm was given that Saffie was dead. I did not go down to help make the tea. I went down because of the shot.

Saffie would not have to call me to help make the tea. I go of my own accord. Even if anything had not happened around that time was the time I usually go down to help make the tea. A short time elapsed between the hearing of the load and my visit to the kitchen. Alli left after we saw that Saffie was dead. I did not go to the Police Station. Abdul Majeed is a relative of the deceased. I do not know if Majeed went to the station to make the report.

10

The police came first and then a good time after their arrival Majeed came on the scene. I did not tell the Magistrate that I saw Majeed at 6 a.m. that morning. I saw him about mid-day time. Majeed was not very active that morning. Majeed lives a shorter distance from the house than from the house to the bus stop. I do not know my first or nearest neighbour nor the second nor the third.

20

By Jury.

BY THE FOREMAN:

Are you acquainted with both accused?

Answer: I am acquainted with both accused.

By Foreman: For how long?

Answer: From three to four weeks before this incident.

Re-examination

Re-examination:

I do not know when my sister married Saffie. She had been married at East Bank before she took up with Saffie. I went to that wedding. She married Mohamed Jammal. That was long ago. She left Jammal but I did not know where she went. I can't remember how long ago she took up with Saffie but it was after she left Jammal. I only know that she was with Saffie when they came on a visit to East Bank. The visit before this incident was on a Moslem holiday. I made my decision to stay before the shooting.

30

I do not know the meaning of the word deceased.

The window through which I looked was towards the rice-bed side. There is no rice-bed on the public road which is on the north. The trench runs straight towards the koker. That trench is a side line.

10 This north to south trench runs pass the house and towards the backdam. It would take you far aback. There is a dam at the west side of the trench. There is another side line trench straight out to Ann's Grove Road. The dam would take you out to Ann's Grove Road.

The Surveyor Mr. Edghill was with some policemen when he was shown certain things in the area. I had no conversation with Mr. Edghill nor did I have any conversation with anyone in his presence.

By Leave:

20 I first shone the torch in the trench and I saw the persons walking out the trench. I saw nothing else. During the time I saw them coming up I saw Fiaz Baksh with a gun. I also saw the light from another torch shining on the accused it appeared to have been operated from downstairs I did not know who was shining that torch.

Cross-examination by Mr. E.V. Luckhoo (allowed):-

I saw the gun for the first time when Fiaz Baksh was on the dam. I did not see it when he was crossing the trench which was about 11 yards away. I only saw the gun when he came opposite to me.

30 I saw the next light shine for the first time when the accused were opposite me.

Cross-examination Lloyd Luckhoo (allowed):-

I have never been to the Ann's Grove side line dam. I do not know if the side line dam meets another cross dam.

In the
Supreme Court
of British
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Prosecution
Evidence.

No. 4.

Mohamed Haniff.
20th November,
1956.

Re-examination
continued.

By Leave.

Cross-
Examination by
E.V. Luckhoo.

Cross-
Examination by
Lloyd Luckhoo.

In the
Supreme Court
of British
Guiana.

No. 5.

EVIDENCE OF MOHAMED NAZIR

MOHAMED NAZIR sworn:-

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Evidence.

No. 5.

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1956.

I am also called Alli. My wife is Shahayda. We live together at Clonbrook. My house faces east. There is a kitchen to the west of the house. Another house is attached to my kitchen. Mohamed Saffie (deceased) and his wife lived there. There is a kitchen attached to Saffie's house. Ex. Y11 is a picture of my house.

10

Examination.

My mother Somaria and my two children live with my wife and myself. Mohamed Haniff stays in the house. He is my brother-in-law. My mother does not hear so good. I remember the day Saffie got shot.

I went to bed the Monday night and got awake about 3 a.m. I started to pack up goods to catch the bus. We packed up the goods in baskets then put the baskets in the boat that was in the trench. The boat was in front of the house in the trench running north to south. Myself, my wife and Mohamed Saffie's wife went in the boat and I carried them with the goods to the road. Mohamed Saffie Haniff and my mother were left at home. The trench leads to the public road. I discharged the load near to the bus and I came away in the boat.

20

As soon as I reach to the spot where I usually tie the boat I heard a gun shot. I came out the boat and ran underneath my house. I heard a scrambling in the water in the small trench at the side of my house. I stood underneath the house and saw Fiaz Baksh and Nabi Baksh crossing the little trench. They then started to run east. I heard Mohamed Haniff shout to them. They could have heard what Haniff shout.

30

Haniff said: "Alright Fiaz and Jacob, don't run a see you." When he shouted they made a swing to turn back. They jumped over the wire and ran away. When they came in front of me I turned my torchlight on them whilst they were on the small dam and opposite to me.

40

I saw Fiaz Baksh with a gun. I observed the gun when he was climbing from the small trench to the dam. I saw a torchlight shining from a window

upstairs. The men swung to the house side and jumped over the wire. They got on a small dam and went backjam side. I went to Mohamed Saffie's kitchen. I saw Mohamed Saffie on the kitchen step lying face downwards. He was on top of the step with his head resting on the floor of the house. His feet were hanging down over the step. I shouted and Haniff came. I was the first person to get to the kitchen and Haniff was the second. I tried to lift Mohamed Saffie and Haniff helped me. We lifted him and put him on the floor of the kitchen and on his back.

Y1 - 3 shows the position in which we placed Saffie. I saw gunshot wounds on his chest. After we placed Saffie in a good position he groaned and died. I left the place and started to run and holler. I ran to my brother Amin. I made a report to him. I came back to my home and saw people gathering up.

Majeed lives close to my brother. I remained at home until the police came. Adjourned.

Resumed:

MOHAMED NAZIR sworn continues:

On that night I had a torchlight. The Police Department took it from me. This is my torchlight Ex. L.

Cross-examination by E.V. Luckhoo:

It was not because I was trying to remember a story yesterday why I was hesitant. I do not always keep my head down when I am answering questions. I know Louis Viera. (Louis Viera called into Court). That is the gentleman I know as Louis Viera. I know him a good time. I can't say how many years. He lives at Clonbrook. I have nothing against him. I do not know if he has anything against me.

I know Lochan. (Lochan called into Court). That is the gentleman I know as Lochan. I have known him for a good time. I have nothing against him and I do not know if he has anything against me,

After Saffie was found dead in the kitchen members of the household started crying. My mother

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Evidence.

No. 5.

Mohamed Nazir.
20th November,
1956.

Examination -
continued.

Cross-
Examination by
E.V. Luckhoo.

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Cross-
Examination by
E.V. Luckhoo -
continued.

and I were crying too. I can't say when Louis Viera and Lochan came into the yard. I saw plenty persons come into the yard and I do not remember who was the first person to come in the yard. I did not check up who came in the yard. I cannot recall the name of one person who came into the yard. The people were anxious to know what happen that cause the crying. I told them that Saffie get shot. They wanted to know how he got shot. I never told Lochan and Louis Viera anything. I never talked to any direct person. I only said Fiaz Baksh and Nabi Baksh shot Saffie. I told the people that I saw Fiaz and Jacob running away after the gunfire. I never told Louis Viera and Lochan that I did not know who shot Saffie. 10

I did not tell Louis Viera and Lochan that when I was coming back in the boat I heard the gun fire by the truck line dam. I did not continue to tell them that I did not pay any attention to that but went upstairs to my room. I did not tell them that I woke up Haniff to see if Saffie finish making tea. I did not tell them that when Haniff went to the kitchen he made the alarm that Saffie was shot dead. 20

All the people did not come at once. They were coming from time to time. I did not have time to tell the people as they came in what happen. Nobody ask questions. I shouted once what happen and I had no time after that to tell them anything. I answered no questions. I answered no one. 30

The people did not ask me anything and I told them nothing. I know Alfred Allen. (Alfred Allen called into court). He lives at Bee Hive. That is the man I know as Alfred Allen. There is no bad feelings between us. I can't say if he came into the yard that morning. Alfred Allen and I had no talk. People live on the same hand of the dam that I live. The people who live to the west of me are about 4 or 5 lots away. There is a street to the west of my house running north to south. If I allowed people to do so they could walk on the dam through my yard and catch the street. 40

One Lillman is my closest neighbour to the north of me. We are not on good terms with that neighbour Lilman. Charlie is further north of Lilman. I can't remember who are north of Charlie. I now say that Arjune and Mangra are neighbours of

Charlie. I am on good terms with Charlie, Arjune, and Mangra. I think they came to the yard that morning but I really did not check.

10 I really can't say how long Mohamed Haniff was at the yard before this story happen. He had come to spend a little time with my mother. I can't say if he came to spend a little holiday. He was not working up that side when he came. Until now he is not working. He is still there in the house with me. I told him to stay as his brother is dead.

I know that Haniff is from Herstelling. I do not know if he has a farm there. I have not asked him about it. I can't remember when Saffie got married. I know that Saffie was married to Bebe Miriam. I can't remember what year he got married. I don't know if Haniff came to the wedding.

20 Saffie does not get up as soon as 5.30 a.m. to make tea. I born and grow up in the house. I do not remember how many months Saffie was living there. He was there for about one year.

I did not go to the wedding. He did not tell me so. I cannot say when he got married. He brought Bebe Miriam to the house when I was there and that was about one year ago.

I cannot say what time he prepares tea in the morning. He has his own house. Saffie and I got on well together.

30 I take tea in the mornings. My wife prepares tea. Sometimes I do it. On other occasions we make tea together.

We get up very late in the mornings. I get up about 6 o'clock. Sometimes half past five. I do not know what time Saffie used to get up. I have never seen him in his kitchen when I go to make my tea.

Haniff does get up to help my brother make tea. I can't say about what time he gets up. He gets up when "day clean" that is about 6 a.m.

40 Load is taken to market twice a week. It is taken on any two days. Have no fixed days. That morning I had about two baskets. Saffie's wife had about two or three baskets. There were about

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Cross-
Examination by
E.V. Luckhoo -
continued.

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Cross-
Examination by
E.V. Luckhoo -
continued.

four or five baskets. Myself, Saffie, Saffie's wife, my wife and Haniff assisted in taking the baskets to the boat.

I do not usually sleep after I take load to the bus stop and return because it is late already and I wouldn't have time to rest.

Sometimes when I finish from loading at the bus stop I return to bed and rest. I never sleep that time.

I know the truck line dam. I have never before in my life heard a gun go off, as I get to the truck line dam after loading my greens on the bus. 10

The truck line dam is about 100 rods from my home.

I have no clock. The bus blows at 3 o'clock a.m. I have never before in my life heard a gun fire day or night. I do not know if people shoot pigs and ducks. Since I have been living there I have never heard of anyone shooting ducks and pigs.

I left my two children sleeping when I left to take my green to the bus stop. I also left my mother sleeping. I left shortly after three that morning. One child sleeps with my mother and the other sleeps with me. I saw the child that sleeps with me after the thing done. I saw my mother after I shouted. I passed no one that is I saw no one on my way back from the bus stop. 20

I would be afraid if on the return journey after unloading my greens I should hear a gun fire off a distance away. I was just about to tie the boat when I heard the gun fire. I jumped out the boat. I was afraid. My boat can be seen in Ex. 11 and that is where I usually tie up my boat. After I jumped out the boat I would meet the front step first. 30

As I jumped out of the boat and ran to the house I heard noise in the water when I was under the house. The scrambling I heard in the water was when I got under the house. Before I got under the house I met my front step first. I did not go up the front step. 40

I gave evidence in the Magistrate's Court. It was read over to me and I said it was true and correct and signed it. I did say in the Magistrate's

Court that "when I first saw the accused they had already crossed the trench and they then ran 'back dam side'."

I did say in the Magistrate's Court "The two men began to run and I heard Haniff shout: 'Alright all you no run, me see ah you'." I did say I shouted "oh God me brother get shoot".

10 When I looked at my brother I did shout: "Oh God Saffie dead". I am related to Abdul Majeed. I went to call him some time after the discovery. He is from the Corentyne. I know Haniff gave evidence yesterday. I was outside in the gallery and Majeed was in Court. Majeed never spoke to me whilst Haniff giving evidence. I did see him come out of court once. He never talked to me. He walked to the southern end of the gallery and passed me then went downstairs. I did not see him come back. I do not know if he came back in the court hall. When I called Majeed that morning I stood up outside his house and call. I never spoke to him. I was questioned about what I told Majeed. I remember you asked me in Magistrate's Court what I told Majeed when I went to his house. The answer was: "I told Majeed that Saffie had been shot and I returned".

20

30 It is correct that I said in the Magistrate Court "I later saw Majeed at the kitchen shortly afterwards. It was before day clean that Majeed came to the kitchen and then leave and return later in the company of policemen".

BackJam side is south of my house.

Cross-examination by Lloyd Luckhoo:

I do not know if Haniff is going to return to Herstelling after this case. I have never asked him why he is staying so long. We do not discuss this case. I really can't say how long he used to stay before. I am not charging him rent or boarding. I had been taking greens to the bus for sometime now. I progressed alright.

30 I do not sleep so heavy. That morning I woke up 3 a.m. I heard the bus blow and it usually blow at 3 a.m. The bus woke me up. I can't say what time we left. We left shortly after we got up. Left in about 10 minutes. We did not stop on the way.

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Cross-
Examination by
E.V. Luckhoo -
continued.

Cross-
Examination by
Lloyd Luckhoo.

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The bus stop is about 100 rods from the house. As we got to the bus stop we unloaded the greens. Stayed no time there. The journey to and from the bus stop would take less than half an hour. We would have got back before 3.45 a.m.

Within a matter of five minutes after I discovered that Saffie was dead I left to inform my relatives. I ran, I shouted to Majeed. He was the first person. I next went to my brother Maude who lives nearby to Majeed. I got there in a minute or two. After that I returned to my house. About 10 minutes elapsed.

10

Cross-
Examination by
Lloyd Luckhoo.
continued.

Majeed came to the house about 5 minutes after my return. He saw the dead body and then he left for the police station. I do not know if he got a car. When he returned he came with the Police. There are many cars in Clonbrook. I do not know if he took a car. The nearest police station is Cove and John. I do not know what distance away. I have driven to Cove and John. "Dayclean" is around 6 a.m. Jury warned.

20

Adjourned - resumed:

MOHAMED NAZIR continues still on oath:

Before "day clean" I ran to Majeed. I can't say if it was about 15 minutes before "day clean" that I ran to Majeed. I do not know what time it was. I can't say what time I ran to Majeed. When Majeed came the body of deceased could have been seen without the aid of a light. The lamp was lit then. I did not discover the body 2 hours after my return from the bus stop. I never slept after my return from the bus stop. I am not telling a false tale.

30

My brother's daughter is married to Majeed. I do not know if Majeed has taken a lot of interest in this matter. I do not know if he searched for the gun.

There is a street to the west of my house with houses on both sides of that street. A person by the kitchen of Saffie can run away to the west and get to the street that is west of my house.

40

Only Haniff and I present when Saffie died. I made an alarm after that and people came. We started to holler and that caused people to come. I never hear gun shot in the country. I have never

heard a gunshot since that morning. I do not know my age.

People have rice fields in that area. Never seen pigeons there. No one shoots pigeons in that area.

10 Haniff used to go down in the mornings to help Saffie make tea. I do not know when Saffie makes tea. Sometimes I know when Haniff goes down to help Saffie. Haniff did not discover the dead body. Sometimes Haniff goes down before day clean to make tea. Haniff did not go down that morning to make tea.

BY THE FOREMAN: Do Haniff and yourself get along nicely:

ANSWER: Yes.

Question: How far the accused lived from you?

Answer: They live a good way from me.

Question: In what direction?

Answer: They live to the west of my house.

20 Question: Have you any knowledge that your brother Saffie and the accused have any previous quarrel?

Answer: Yes. Fiaz Baksh and my brother had a previous quarrel.

Question: Of your own knowledge have the accused any rice cultivation in that area?

Answer: Yes, Fiaz Baksh.

Question: Are there any other houses in the direction that the accused ran?

30 Answer: No other house. My house is the last.

Cross-examination by E.V. Luckhoo:

From where I live to where accused 1 Fiaz Baksh lives there are plenty houses. Fiaz Baksh does not live far from Nabi. They live in a north westerly direction from my house. I do not know if they live about one mile from me.

No cross-examination by Mr. Lloyd Luckhoo:-

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Evidence.

No. 5.

Mohamed Nazir
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Cross-
Examination by
Lloyd Luckhoo
continued.

By Jury

Cross-
Examination by
E.V. Luckhoo.

In the
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Prosecution
Evidence.

No. 5.
Mohamed Nazir
20th November,
1956.

Re-
Examination.

Re-examination:

I know that my brother had taken up with Miriam. He was married before that to Ofiran. Saffie and Ofiran left my house and went to live in the home of Fiaz Baksh. My brother Saffie and Fiaz Baksh had some story over Ofiran. I really can't tell what kind of story.

Saffie left Fiaz Baksh house and came to live with me at my house. Ofiran did not return with him. She went to live in another house. As far as I know Fiaz Baksh rent a house and put Ofiran to live in it. After that my brother Saffie and Fiaz Baksh begin "get story". They did not take the quarrel to court.

10

Question: Do you know of anything between Fiaz Baksh and Saffie after this story about Ofiran.

(Mr. E.V. Luckhoo objects to question. It is an attempt to get in hearsay evidence. Also objection on the ground of relevance. Has no particular bearing to the issues in this case and is prejudicial without probative value).

20

(Mr. Lloyd Luckhoo supports objection. Reply can never be received if hearsay).

(Court rules question permissible. Objection overruled).

Answer: There is now pending in Court a case between Fiaz Baksh and the deceased.

No. 6.

Submission by
Crown Counsel.
20th November,
1956.

No. 6.

SUBMISSION BY CROWN COUNSEL.

Crown Counsel applies that the deposition of witness be put in evidence as the defence has cross-examined upon it and proposes to show that there is conflict between the Deposition in the Magistrate's Court and the witnesses present evidence. If that be not admissible then so much of the Deposition be put in evidence as will explain the context.

30.

Mr. E.V. Luckhoo objects to application. Witness has admitted that he made the statements referred to. An admission of the deposition on

application of Prosecution is a cross-examination of the witness and that should not be allowed unless he obtains permission to treat the witness as hostile. No matter arises for the putting in of the deposition.

Mr. Lloyd Luckhoo: There is conflict between deposition and witness's evidence but witness had admitted what he said in the Magistrate Court and now it is only a matter of address.

10 What Crown Counsel wishes to have in evidence as explaining the true context is in truth new matter and has no bearing on that portion of the deposition put to the witness.

20 No cross-examination was directed to that portion of the Deposition which Crown Counsel would like to read to the witness. That portion of the Deposition was put to the witness and he admitted it so that there is an end to the matter and it is not necessary to put the whole of this Deposition in evidence.

 If witness denies the Deposition then Counsel for defence can elect whether to put the deposition in evidence or not. Counsel for the Crown would not have the right to put the deposition in evidence if the Defence did not put the Deposition in evidence.

30 Crown Counsel: The Court can put in the whole deposition or a certain portion. (Phipson Ev. 8th Edn. p. 474 and p. 409). (Sec. 80 Cap. 25 Laws of British Guiana). The Court can make such use of the Deposition as it thinks fit.

Ruling reserved.

No. 7.

EVIDENCE OF BASIL GILLETTE.

BASIL GILLETTE sworn:-

Registered Medical Practitioner. G.H.O. Mahaica, Demerara.

On 12/6/56 I performed a Post Mortem Examination on the body of the deceased Mohamed Saffie

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Evidence.

No. 6.

Submission by
Crown Counsel.

20th November,
1956 -
continued.

No. 7.

Basil Gillette.

20th November,
1956.

Examination.

In the
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Prosecution
Evidence.

No. 7.

Basil Gillette.
20th November,
1956.

Examination -
continued.

about 2 p.m. The body was identified by Bibi Miriam in the presence of Constable Liverpool. I found multiple punctured wounds on the front of the chest.

On dissection one shot was removed from behind the right breast over the fifth rib. This is the shot - Exhibit "A". Both pleural cavities were filled with blood.

These 8 shots were removed from the right pleural cavity - In Ev. Ex. "B". One shot was removed from the posterior chest wall opposite the fifth rib - In Ev. C. 10

One shot was found in the left pleural cavity of chest. In Ev. D.

One shot was found on left side of the vertebral column opposite the tenth rib. In Ev. E.

There were multiple punctured wounds on the surface of lower lobes. There were four punctured wounds on the right middle lobe and there were 6 punctured wounds on the right lower lobe. Six shots found in right lower lobe of lung. In Ev. F. 20

One shot found in left lower lobe of lung. In Ev. G. One shot in pericardial cavity. In Ev. H. One shot found in right diaphragm above liver. In Ev. J.

Many punctured wounds in the right middle lobe and the right lower lobe of the lung. There was blood in the pericardial sac. There were many punctured wounds of the heart muscle.

The cause of death was (1) gun shot wounds (2) Haemorrhage and shock. These shots in evidence could have caused death. I have no experience as to the use of guns but these shots could have been fired at a distance of over 5 or 6 feet from the deceased and not more than 12 or 15 feet. 30

The entrance wounds were in the front of the chest. There were no exit wounds at the back. I handed the exhibits to a constable.

Cross-
Examination by
E.V. Luckhoo.

Cross-examination by Mr. E.V. Luckhoo:-

The injuries were very severe. The heart was ruptured as a result of the gun shot wounds. Death was practically instantaneous. 40

(No cross-examination by Lloyd Luckhoo).
Adjourned to 22/11/56. Jury warned. Resumed.
Jury call over.

In the
Supreme Court
of British
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Prosecution
Evidence.

No. 7.

Basil Gillette.
20th November,
1956.

Cross-
Examination by
E.V. Luckhoo -
continued.

10

As regards Crown Counsel's application for ad-
mission of the Deposition of witness Mohamed Nazir
the application is rejected but Crown Counsel will
be allowed to examine the witness so as to reveal
the true context of the matter which brought about
his application for admission of the Deposition of
the witness.

No. 8.

EVIDENCE OF MOHAMED NAZIR (Recalled)

MOHAMED NAZIR Sworn; (Recalled)

Re-examination:

I remember telling the Magistrate how they ran.
I told him that when they finish cross the trench
they ran to the dam and to the east. I was under-
neath the house at that time. They came opposite
me continued running crossed the wire and ran to
backdam side.

20

No. 8.

Mohamed Nazir
(recalled)

Re-examination.

No. 9.

EVIDENCE OF DESMOND MONTAGUE EDGHILL (Recalled)
sworn (Continued)

I have made a new plan without the markings
that were objected to by the Defence. This plan
was prepared from my previous notes made at the
time of my inspection and survey. I now produce
the new original plan. Tendered in evidence and
admitted marked I.

No. 9.

Desmond
Montague
Edghill
(Recalled)

Re-examination.

30

I produce 5 copies duly certified by me, marked
I. I marked on the plan spots C, D, E, F, G, H,
I, J, P, Q, R, S, T, U, X, Y, Z.

The left portion of the plan represents a site

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Evidence.

No. 9.

Desmond
Montague
Edghill
(Recalled)

20th November,
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Re-examination
continued.

plan of a portion of Plantation Clonbrook bounded on west by Ann's Grove Village; east by Plantation Bee Hive. Point Z is bounded by 1000 feet north, on south by 300 feet of land south of Point Z. Point Z is a house also Point Y.

No part of the East Coast public road is shown on this plan. The East Coast public road would be at the north of the plan running east to west about $\frac{5}{4}$ mile from Point Z. The road shown at Ann's Grove Village leads to the public road and it should pass a point opposite to point Z. 10

The canal that runs north and south turns about 500 feet from in front of building Z; it turns in a westerly direction and continues to the village road. That section is about 1000 feet. There is a canal running east to west south of point Z. This canal runs into the north and south canal at a point 20 feet south of point Z and it begins at a point 15 feet east of point Z. The width of the north and south canal is 20 feet. The width of east to west canal south of building Z is about 15 feet and is about 450 feet long. There are two roads west of the house Z. One road is 110 feet west of the house Z; the other is 220 feet west of house Z. 20

Adjacent to this east to west canal there is a dam at the south side. A barbed wire fence is shown by the black broken line. This fence is about 3 feet from the edge of the trench or toe of the dam. That fence ran from the canal to the east of the house, to the canal that is to the west of the house. That fence is about 470 feet long. It ends at the canal to the west of the house. 30

There is a dam adjacent the canal on the east side of the house. It may be called the Bee Hive side line dam. There is a small dam on the west side of the canal going north and south of the Bee Hive Canal. That dam starts at a point south of Z and the eastern extremity of the barbed wire fence.

Point D is about 260 feet from Point Z as the crow flies. C is about 300 feet from Z. X is about 640 feet and F is about 960 feet from Z as the crow flies. E is about 1000 feet from Z as the crow flies. The details of building Z is represented on the eastern side of the plan. 40

Cross-examination by Mr. E.V. Luckhoo:

The village of Clonbrook is thickly populated. Wherever roads are indicated on the plan there are houses studded on both sides of the roadways. Z would be the last house in a southerly direction on the canal. From Z there are houses on the western side of the canal going north all the way up. The two roads immediately west of Z are studded with houses on both sides.

10 From a point south of Z after crossing the canal one comes to a portion of the dam 9 feet wide along which runs a wire fence from east to west separating the dam 1/3rd to the north and 2/3rds to the south approximately. A person could travel along the 3 feet strip in a westerly direction to the end of the dam and for a distance of 470 feet until it meets another dam running north and south. That other dam swings after 80 feet north into an easterly direction and then joins up with the second road 220 feet west of Z. It joins up at a point 250 feet north west of Z.

20 There is a gate in the barbed wire fence at the western end but it does not interfere with passage on the 3 foot strip of the dam. Point G was pointed out to me as the house of No. 1 accused, Fiaz Baksh. From G to Z along the shortest possible route by road and dam would be about 1900 feet.

30 There are several houses along that route. It is a built up area and there are houses all about. I was shown a divan in a living room of house Z which is marked U on the plan. I was told something about the divan by Mohamed Haniff which I noted. That was on 27/6/56.

Mr. E.V. Luckhoo asks witness what did Haniff tell you.

Crown Counsel objects to the question.

40 Mr. E.V. Luckhoo submits that the question is admissible and further witness made a note of what Haniff said and can produce the notes he made at the time.

Mr. Lloyd Luckhoo refers to Sec. 79 Chapter 25.

Question allowed.

Answer: Haniff said it was the bed on which he was sleeping when he was awakened by the sound of a gun.

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Cross-
Examination by
Lloyd Luckhoo.

Cross-examination by Mr. Lloyd Luckhoo:-

The entire plan is made to scale. On the site plan it is one inch to 100 feet. The inset plan is one inch to 60 feet. The plan of building is one inch to 10 feet. Point E represents the house of Nabi Baksh. The distance from E to Z by road and dam is 1350 feet.

C & D are houses of other Baksh. C is the house of Joe Baksh. D is the house of Rasul Baksh. X is a culvert on the left hand side of the plan. 10

By the canal parallel to the Mahaica Canal the distance by water to the bus stop is about 1500 ft. A person travelling on the 3 feet strip of dam south of Z and going west can turn south or north when the dam ends.

The little dam to the south of Z would take you away from the home of Baksh and into ricefields. There is a railway line at Clonbrook. That line runs east to west. That station would be at the edge of top of this plan. A person escaping from Z and goes south would be going away from the railway station. All dams and roads are marked in light brown whilst waterways are marked in light blue. 20

By Jury:

By Foreman: Is this the first time you have prepared a plan of this sort?

Answer: No.

Question: Is it customary to put in writing what is pointed to you?

Answer: Yes with regards to the plan but not any conversation. 30

Question: Is there any other jotting you made in connection with this plan?

Answer: No.

Adjourned - Resumed.

Cross-
Examination by
E.V. Luckhoo.

DESMOND MONTAGUE EDGHILL continues on oath:

Cross-examined by Mr. E.V. Luckhoo with regard to answers made to the Foreman of Jury.

I made jottings with reference to my plan. I produce the jottings. Tendered in evidence and admitted marked O. I have accounted for U on the plan as the divan on which Haniff was sleeping. 40

Re-examination:

Haniff now shown to me is the person with whom I had the conversation. There were several other persons present when I had the conversation with Haniff including policemen. One of the policemen was Cpl. Chee-a-Tow. I should think that he was near enough to hear the conversation.

10 The purpose of the jottings is to identify the points in connection with the plan, but not necessarily the full recording of a whole conversation. What I recorded as "V" was not exactly the full conversation with Haniff. He told me that that was the divan on which he was sleeping when he was awakened by the gun.

20 The conversation was also in connection with a window. He said that from the window he saw the accused person. That was recorded under a separate heading for the identification of P. which shows the position of the window. Z is the last house of that south west area covered by the plan.

I can't remember if there were houses south east of house Z. I am not quite sure if the Bee Hive Dam would cross the railway line. The Clonbrook railway station is direct north of Bee Hive Dam.

I am unable to say what is the shortest route from Z to the Railway station at Clonbrook.

No. 10.

EVIDENCE OF JOHN CHEE-A-TOW.

30 JOHN CHEE-A-TOW sworn:-

I am Detective Sergeant of Police stationed at Brickdam Georgetown. I was in June 1956, N.C.O., in charge of East Demerara Division.

On 12/6/56 a Tuesday morning I received a report at 6.30 a.m. One Abdul Majeed came to Cove and John Police Station and made a report. At 6.45 a.m. in company with Superintendent Fitt, Sub-Inspector Butts, Sgt. Marshall and P.C. Liverpool I

In the Supreme Court of British Guiana.

Prosecution Evidence.

No. 9.

Desmond Montague Edghill (recalled) 20th November, 1956.

Re-examination.

No. 10.

John Chee-A-Tow.

22nd November, 1956.

Examination.

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Evidence.

No.10.

John Chee-A-
Tow.

22nd November,
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Examination -
continued.

went to the home of Mohamed Saffie. Ex. Y11 repre-
sents the house to which I went.

I went to the kitchen on the western portion of
the said house. Ex. Y1 represents the kitchen.
There I saw the dead body of Mohamed Saffie lying on
the dirt floor of the kitchen, his feet facing south
and his head to the north. The body was on its
back. I saw several small holes on the chest of
the deceased they appeared to be gun shot wounds.
Blood was oozing from those holes. I also noticed
some blood on a step inside the kitchen and near to
where the body was lying.

10

On the southern side of the kitchen which was
made up of a portion of dry wild cane I noticed a
little opening and part of the wild cane was a
little damaged and there were holes in the wild cane
which appeared to be gun shots. Ex. Y7 shows those
holes in the wild cane. Ex. Y8 and Y9 show the
outside of the kitchen.

I looked for empty cartridge shell. I did not
find any. I then spoke to Mohamed Nazir and Mo-
hamed Haniff who were present. They told me some-
thing as a result of what they told me I looked on
a small trench which was on the southern side of
the kitchen and there I saw prints looking like
footprints on the southern edge of the said trench.
They were not old enough to be dug out for casting.
They appeared to be human footprints and looked
as if someone had scrambled up to get on the para-
pet. At the side of that parapet there is a barbed
wire fence running from East to West. I walked
along that parapet in an easterly direction about
 $1\frac{1}{2}$ rods and to the end of the barbed wire. I then
walked south on a dam east of the rice fields for
about 20 or 25 yards going south. As I got to
that distance I saw human footprints on the western
portion of the parapet running north to south. I
also saw human footprints on the other side.

20

30

I returned to the kitchen. I waited on the
photographer Eustace Williams. He came and took
photographs of the scene.

40

After the photographs were taken I collected
this lamp from the kitchen in which deceased was
lying. Lamp Ex. R. It was not alight when I
arrived. It was hanging on one of the rafters. I
did not notice any chimney to this lamp.

I cut off a portion of the damaged wild cane from the kitchen. I produce it. In evidence Q. Shown to jury.

I collected these two torch lights. Ex.L from Nazir and Ex. K from Haniff. I took those things to the Cove and John Police Station where I gave certain instructions.

10 At 1.55 p.m. the same day Dr. Gillette, G.M.O. at Cove and John performed a Post Mortem examination on the dead body of the deceased in the said yard. I was present when the doctor extracted 21 shots from the body of the deceased. He handed them over to P.C. Liverpool in my presence.

A search was made for a cartridge and a gun in the area south of where deceased died. I was present when this gun Ex. P was found on 22/6/56 in a trench north of where deceased died. About 180 yards from the home and in something looking like a sluice box.

20 It was found by Richard Carbon.

Fiaz Baksh lives about 75 or 80 yards away from where this gun was found and about the same distance or a little shorter from where Nabi Baksh lives. The gun was found at a point marked X on the plan.

Mud was in the barrel of the gun that was found. It appeared to have been greased and was recently used.

30 I examined it for the serial number and found none. Where I would expect to find the numbers appeared to be filed.

I broke open the gun but did not find any cartridge or shell. I sealed up gun and handed it to Dr. Ho-Yen on 23/6/56 and on 12/7/56 it was returned to me.

The gun has to be broken back before the cartridge is ejected.

40 On 12/6/56 I saw both accused at Cove and John Police Station between 10.30 and 11.30 a.m. I spoke to them on 13/6/56 when I read the charge to them. I cautioned both accused. Fiaz Baksh made

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Evidence.

No.10.

John Chee-A-
Tow.

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Examination -
continued.

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John Chee-A-
Tow.

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Examination -
continued.

a statement which I took down in writing and I read it over to him. He said it was true and correct and signed it. This is the statement. In evidence 'S'. Read to jury.

I also took a statement from accused Nabi Baksh after caution. I took it down in writing. I read it over to him. He said it was true and correct. He signed it. This is the statement. In evidence 'T'. Read to Jury.

On 27/6/56 I accompanied Desmond Edghill, Surveyor, to Clonbrook to the scene of the murder. 10

The Surveyor was shown certain spots by Mohamed Haniff, Mohamed Nazir and Bebe Marion and other persons.

The shortest possible route to Clonbrook railway station from the deceased house is by a back street running from north to south which would take you out to where the gun was found by a dam running east to west. There is a bridge nearby by which you can cross to dam running east to west then you turn a little east about 3 rods and cross another bridge running north to south, turn west and cross another bridge going east to west and then get on a dam east of where Nabi Baksh lives and then walk for about 100 yards which brings you to a cross dam running east to west, then walk west on that dam for about 25 or 30 yards which leads to another dam running north to south and that dam leads you to Clonbrook railway station. 20

I know the Beehive dam east of deceased house. There are no houses on that dam whatsoever. 30

If you walk on the Beehive dam in a northerly direction from opposite the deceased home for about 125 yards then you get to a bridge. That bridge takes you west to where the gun was found. There is another bridge which would take you to the railway station.

Clonbrook is roughly $18\frac{1}{2}$ miles by road from Georgetown. There is hire car service from Clonbrook to Georgetown. The latest train from Georgetown to Clonbrook is at 6.10 p.m. 40

It would take a car about 35 minutes to do the

journey from Georgetown to Clonbrook.

There is a bus service leaving Ann's Grove at about 4 a.m. to get to Stabroek Market about 5 or 5.15 p.m.

There is also early morning taxi service sometimes earlier than 4 a.m.

Jury warned.

Adjourned to 23/11/56.

Resume.

10 Jury call over.

Interpose Dr. J.E. Ho-Yen.

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Evidence.

No.10.

John Chee-A-
Tow.

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1956.

Examination -
continued.

No. 11.

EVIDENCE OF JOSEPH EPHRAIM HO-YEN.

JOSEPH EPHRAIM HO-YEN sworn:

I am Government Analyst living at 24 Fifth Avenue, Subryanville.

On 23/6/56 I received from Sgt. Chee-a-Tow this shot gun Ex. 'P'. It was sealed with police seal 38 and labelled J.C1.

20 I examined the gun for serial numbers. I found no filed out number on developing certain surfaces on the gun. I usually look for serial numbers on the stock of the gun near the breach of the gun.

There were some filings or filed areas at the spot where I would expect to find the numbers.

I returned the gun on 12.6.56 to Sgt. Chee-a-tow.

I have limited experience in ballistics.

30 It is not possible to tell from the size of the shots what bore gun fired the shots.

No.11.

Joseph
Ephraim Ho-Yen

23rd November,
1956.

Examination.

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Evidence.

No.11.

Joseph
Ephraim Ho-Yen.
23rd November,
1956.

Cross-
Examination by
E.V. Luckhoo.

Cross-examination by Mr. E.V. Luckhoo:

Except for the pitted surface where I treated the gun it is in the same condition as when I received it from Sgt. Chee-a-Tow.

I see no trace of mud on the outside of the gun.

When I received it from Sgt. Chee-a-Tow I saw no traces of mud on the gun.

If a gun were left in a trench for 10 days I would expect to find some trace of mud on it, when taken out. 10

Under normal circumstances, I would expect to find some rusting depending on the type of water.

If the gun were in the trench at the back of Clonbrook I would expect to find rust on the gun in waters of that type.

I found no rust on the gun.

My treatment of gun disclosed no letters or numbers below the filed areas. I am not in a position to say what was filed out nor am I in a position to say if anything was filed out. 20

No cross-examination by Mr. Lloyd Luckhoo

By Jury

By Foreman -

Do you know that every gun has a serial number?

Answer: When a gun is licensed with the police they stamp a number on it.

Question: If a gun is in sweet water and one in mixed water (salt) when taken out would the condition be the same?

Answer: Salt water would tend to have a greater corrosive action on metals than sweet water. 30

Re-
Examination.

Re-examination -

If a gun is greased that part with grease would not carry any rust.

I saw no rust on the breach of the gun.

By the Court -

Are all guns from a recognised factory stamped with a serial number?

Answer: I have not found serial numbers in every case on guns from factories.

Cross-
Examination by
E.V. Luckhoo
with leave.

Cross-examination by Mr. E.V. Luckhoo allowed -

I did not find any grease on the gun.

No. 12.

EVIDENCE OF JOHN CHEE A TOW (recalled) sworn:-

Cross-examination by Mr. E.V. Luckhoo:-

I took the gun to the analyst in the same condition in which it was found in the trench.

I found grease between the lock and barrel as shown in Court.

The spot where I found grease should be the lock.

10 There was mud on the outside of the gun. I did not clean the gun. Mud was about the front and along the barrel. One could not fail to see the mud. There was also some mud on the stock.

I received it back from Mr. Ho-Yen. It was wrapped up in paper and sealed. It was opened in Court and was then in the same condition as it is now.

20 I found mud in the muzzle of the gun. Mud is not now in the muzzle. It was soft mud that I saw in the muzzle when it was found. It was choking the inside of the barrel.

In my opinion the mud would get dry and subsequently drop out of the barrel. The mud was blocking the whole circumference of the muzzle.

It is difficult for me to say that the mud when dried would have to be prized out.

30 I broke back the gun when it was found, and I looked at the breach. There was not mud as far as the breach. I was not able to determine how far down the barrel I could see on account of the blockage at the muzzle.

I found grease on the inside of the lock and nowhere else. It is the usual practice to grease the gun after use when it is intended to put it up.

I never mentioned that grease was found anywhere else.

40 The grease would not have a fresh look if the gun had been stored for four or five months. It would have a fresh look up to a month of storage. It may well remain fresh after two months. It is of greater importance to grease the inside of the barrel after use.

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No.12.

John
Chee-a-Tow
(recalled)

23rd November,
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Cross-
Examination
by E.V.Luckhoo.

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1956.

Cross-
Examination
by E.V.Luckhoo
- continued.

I had early search made of the trenches in that area as I considered it of importance to find the gun. I began to search the trenches in that area on the day of 12/6/56. I began in the afternoon from about 5 p.m. I had about 6 or 7 men searching on that day. Nothing found on that day. That search was continued on 13/6/56 from after breakfast time and for several hours. Nothing found. About 8 men searched on that day. Water was on occasions up to the shoulders of the searchers. The depth of the water in the trench east of Saffie's house was about 5 ft. 6 ins. I think I completed the search of that trench on the 14th June, 1956. 10

"X" on plan represents where gun was found in the trench. That trench is east and west.

The canal immediately east of Z goes north for about 500 feet then it turns west at a point about 500 feet from where it turns west the gun was found.

A search was also made on 14/6/56 with about 8 men and nothing found. No other search was found between 14 and 22/6/56 by me. There is a possibility that other searches could have been made between 14 and 22/6/56. 20

I would have to make enquiries about that of other searches made during that period.

I would not be able to say if Majeed was at Cove & John Station on 21/6/56. I know he came to the station after the 14th June, 1956. He came once or twice. Abdul Majeed may have been at the station on 21/6/56. 30

There are hire cars going regularly on the East Coast both day and night. Those cars pick up passengers at various points along the East Coast. I think the police prosecute them for picking up passengers that way.

I do not know whether the hire cars operate according to any fixed schedule. You could get a taxi easier in the day than at night. I would say that the longest time during the day that you would have to wait for a hired car would be about 20 minutes between 6 a.m. and 7.30 p.m. or 8 p.m. 40

From Clonbrook to Georgetown the first Police Station would be Cove & John which is $1\frac{1}{2}$ miles from

Clonbrook. Next station is Vigilance about 5 miles from Cove and John.

The station at Vigilance faces the road. The policemen in the station can see people using the road.

After Vigilance there is Beterverwagting about 4 miles away. This station also faces the road and people could be seen using the road.

10 Next station is Sparendam nearly four miles away. That station is very close to and faces the road. Persons using the road could be identified by Policemen in the Station.

Majeed came to the station about 6.30 a.m. on 12/6/56 and made the report.

When he made the report I was anxious to know if anyone was seen who was responsible for the crime.

I did not hear Majeed call anyone's name that was responsible for the crime.

Cross-examination by Lloyd Luckhoo:

20 A station diary is kept at the Cove and John Police Station in which is accurately reported the time of various happenings. I do not need to refresh my memory. The diary would contain the time of Majeed's report.

Constable Cummings left that morning for Georgetown at about 6.35 a.m. He was detailed for duty in Georgetown.

From the railway station at Clonbrook to Cove and John Police Station is about $1\frac{1}{2}$ miles.

30 From the railway line going South along the public road over the Mahaica Canal then turning East and going along a road parallel to the Mahaica Canal until the end of the road at its eastern point by the dam between Bee Hive and Clonbrook is less than half of a mile. I stopped my car at that point on morning of 12/6/56 when I went to investigate. Then I walked along a North and South Dam for about 500 feet to the Deceased home.

40 From the Cove & John Station to where I got out of my car took me about 5 minutes to get there and

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Cross-
Examination
by E.V.Luckhoo
- continued.

Cross-
Examination by
Lloyd Luckhoo.

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I walked for about 5 minutes to get to the deceased home. I could not tell if Majeed came by car to the Station. I would not doubt that he came by car. There are plenty cars available.

Prosecution
Evidence.

The fact of the grease in lock of gun lead me to believe that the gun had been recently used.

No.12.

John
Chee-a-Tow
(recalled)

If one used a gun for a wrong purpose and wanted to abandon the gun I do not think he would have the time to grease it.

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The spot where the gun was found is in the heart of Clonbrook. 10

Cross-
Examination by
Lloyd Luckhoo
- continued.

My estimate of the distance from the house of deceased to where the gun was found is as the crow flies. I do not doubt that it is 200 yards and not 180 yards as I estimated.

I do not doubt that by road and dam the distance is 300 yards.

My estimate from C to X is as the crow flies. I do not doubt that it is 200 yards and not 75 feet, and by road is 1100 feet. 20

I know that both accused before they were charged had given lengthy statements.

By Jury

By Foreman: Do you know if any of the accused have been issued a license for a gun.

Answer: I do not know that they are licensed firearm holders. I have made enquiries and they are not licensed to keep firearms.

Re-
Examination.

Re-examination:

The gun was handed to me when it was found and I handled it. Sgt. Marshall also handled the gun. No other person handled the gun at the station. I wrapped up the gun in paper and sealed it with a seal and then I took it to the analyst. 30

I searched on 12, 13 and 14/6/56 then next searched on 22/6/56.

I searched on 22/6/56 on instructions of my senior officer.

Guns are greased to prevent corrosion.

The grease I found in lock of gun was in my opinion put there sometime before.

I feel that it was put there within the last two months before finding.

I searched about nearly a mile south of the house in the North and South trench.

Allowed:

10 On the Bee Hive dam going south at the place where I saw footprints there were other footprints on that dam as people readily traverse that dam.

Cross-examination by Mr. Lloyd Luckhoo allowed:

People in that area go to work in their rice-fields early in the morning.

Jury warned.

Adjourned.

Resume.

Jury call over.

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Guiana.

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No.12.

John
Chee-a-Tow
(recalled)
23rd November,
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Re-
Examination -
continued.

Cross-
Examination by
Lloyd Luckhoo
with Leave.

No. 13.

20 EVIDENCE OF HILTON CUMMINGS

HILTON CUMMINGS sworn:

Police Constable stationed at Cove & John.
During June 1956 I was stationed at Cove & John and staying at the Police Compound.

On 12/6/56 I left the station at 6.36 a.m.
Constable Moonosa would record the time I left. I left to attend Court at Georgetown. I arrived at the Victoria Law Courts at 8.45 a.m. having travelled by train from the Golden Grove Railway Station.

30 On my arrival I saw both accused walking East along Croal and East of High Street.

I contacted Sgt. Marshall at Cove & John by

No.13.

Hilton
Cummings.

Examination.

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No.13.

Hilton
Cummings.

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Examination -
continued.

telephone and told him something. I got instructions from him and as a result of those instructions I went to the office of Messrs. Luckhoo where I saw both accused seated on a bench. I told both accused that it was reported that they shot Mohamed Saffie and I would like them to accompany me to C.I.D. Brickdam.

Before that date I know both accused.

Fiaz Baksh said what murder me no know nothing man me sleep a town (meaning Georgetown) last night. 10

Nabi Baksh said "Oh me mamma. Ah you come hear distress and a we sleep a town last night, Fiaz?"

They later consented to go with me. I had gone downstairs to see if I could have got the assistance of another policeman and when I went up back I found both accused speaking to Mr.E.V.Luckhoo in Chambers.

I told Mr.E.V.Luckhoo about the report received at Cove & John Police Station, and I would like the two accused to accompany me immediately to the C.I.D. Brickdam. Mr. Luckhoo told them to go along with me. 20

I took the two accused to the C.I.D. and reported to Assistant Supt.Austin and Inspector Yaw.

I left and attended Court.

Cross-
Examination by
E.V. Luckhoo

Cross-examination by Mr. E.V. Luckhoo:

I did not arrest the two accused. I took them to C.I.D. Brickdam for enquiry. I reported to both Austin and Yaw. Sgt. Fraser was present.

From Brickdam both accused were taken to Brickdam for enquiry. 30

I went up with them.

I can't remember seeing Fiaz Baksh with Sgt. Fraser. Sgt. Fraser went up with us. I can't remember seeing Sergeant Fraser with Fiaz Baksh and Sergeant asking him questions and taking down the answers in writing.

Cross-
Examination by
Lloyd Luckhoo.

Cross-examination by Lloyd Luckhoo:

I was in a hurry to catch the train when Majeed came to the Station. I can't remember if Majeed arrived in a motor car.

The carriages in the train are open. The train caught would have just come from Clonbrook. I know Nabi Baksh. I do not know if he knows me well. I do not know that he boarded the same train I was on. I would not doubt it. There were about 7 third class carriages. Plenty of people would have seen him boarding the train.

10 I am quite certain that I did not see him on the train. I did not talk to him on the train. I can't remember who was sitting opposite to me on the train. He was not in the same carriage as myself. I saw plenty people. I spoke to persons in my carriage. I can't remember the person to whom I spoke. I rode my cycle from the railway station in Georgetown to the Law Courts.

I did not see Nabi Baksh come off the train at Georgetown. The early morning train arrives in Georgetown quite crowded.

20 If Nabi Baksh was on that train he would be seen by a number of people.

I never cautioned the two accused at any time whatsoever.

Fiaz Baksh first replied when I spoke to both of them.

I am quite certain that Nabi Baksh said that he slept in Georgetown.

I did not see Nabi Baksh in the train and did not speak to him.

30 I am not aware that Nabi Baksh gave a statement that same day at Cove and John saying that he travelled by the same train as myself. I did not search Nabi Baksh. I did not know that he had the return half of a ticket.

I saw Sgt. Fraser search Nabi Baksh at the station. I do not know that Sgt. Fraser took from Nabi Baksh the return half of a ticket. I do not know that the return ticket has been returned to him. I never saw the return ticket.

40 He was not searched in my presence. I was some distance off. No reason to keep away. I would have known if a ticket was found as the Sgt. would have spoken.

I know that Nabi Baksh made a statement at Cove & John Police Station.

I do not know what he said in the statement. Now is not the first time that I know of accused Nabi Baksh saying that he came on the train that morning.

In the
Supreme Court
of British
Guiana.

Prosecution
Evidence.

No.13.

Hilton
Cummings.

23rd November,
1956.

Cross-
Examination by
Lloyd Luckhoo
- continued.

No. 14.

In the
Supreme Court
of British
Guiana.

EVIDENCE OF HENRY FRASER

HENRY FRASER sworn:

Prosecution
Evidence.

Sgt. Police stationed at Suddie. In June, 1956 I was at C.I.D. Brickdam.

No.14.

Henry Fraser.
23rd November,
1956.

On 12/6/56 I was at C.I.D. Headquarters in the morning when Const. Cummings brought Fiaz Baksh and Nabi Baksh.

Examination.

I searched Fiaz Baksh and found \$141.84, two receipts, a ring with a key, a penknife, a pen in a plastic case. I searched Nabi Baksh and found \$18.09, a handkerchief, a small paper parcel and a railway ticket, 7890. I kept those things in my custody until about 10.30 a.m. when I lodged them at Cove & John Police Station.

10

I can get information from the property book what has happened to the articles.

I told both accused that they were brought in to the C.I.D. for enquiries in connection with the murder of Mohamed Saffie which occurred on the night of 11th June 1956 at Clonbrook. I took them to Cove & John Police Station.

20

I took a statement from Fiaz Baksh which he gave voluntarily. I did not caution him. I took it down in writing and read it over to him which he said was true and correct. He signed it. This is the statement.

Exhibit "v".

No objection from Mr. E.V. Luckhoo. Statement admitted in Evidence and marked "v".

Statement read to Jury.

30

I was present that afternoon when Lance Corporal Alexander took a statement from Nabi Baksh. He took it down in writing. It was read over to accused who refused to sign it.

Both accused were placed in custody.

Cross-
Examination
by E.V.Luckhoo

Cross-examination by E.V. Luckhoo:

Sub-Inspector Yaw told me about the matter but I was not present when P.C. Cummings brought both accused to the C.I.D.

I understood that both accused were at Brickdam for questioning in this murder case.

I never arrested them at any time. I never cautioned them at any time. I would have to be satisfied that they were implicated in the crime before I would caution them.

We arrived with them at Cove & John about 10.50 a.m.

10 The statement I took from Fiaz Baksh was completed at about 2.40 p.m. Started the statement at 11.30 a.m.

I had forty minutes available before taking that statement.

During that time I spoke to Sgt. Chee-a-Tow and other policemen.

I saw a few statements that were taken.

I spoke to Sgt. Chee-a-Tow and got from him what information he had on the matter. He had not much time to speak to me in detail.

20 At 11.30 I took a statement from Fiaz Baksh not under caution. In the course of taking that statement I asked him a number of questions so that I may be able to record his answers. He gave me those answers freely and voluntarily.

I wanted to trace his movements as closely as possible from the day before up to the time he was taken for enquiry and to get information to discover the author of the crime. He answered all the questions that I put to him.

30 As a result of those answers I made efforts to have statements taken immediately relating to his movements from persons mentioned in his statement but I did not get through with the statements in Georgetown until late.

The first statement in Georgetown was taken at about 7 p.m. and continued to about 9.30 p.m. Statements were taken from some of those mentioned in the Georgetown area.

40 Some were taken at La Penitence, one at Brickdam. During the time those statements were being

In the
Supreme Court
of British
Guiana.

Prosecution
Evidence.

No.14.

Henry Fraser.
23rd November,
1956.

Cross-
Examination
by E.V.Luckhoo
- continued.

In the
Supreme Court
of British
Guiana.

Prosecution
Evidence.

No.14.

Henry Fraser.
23rd November,
1956.

Cross-
Examination
by E.V.Luckhoo
- continued.

Cross-
Examination by
Lloyd Luckhoo.

Re-
Examination.

taken Fiaz Baksh was detained at Cove and John
Police Station. I took most of those statements.

All that I interviewed gave me statements. I
found this receipt on Fiaz Baksh when I searched
him on 12/6/56.

It is dated 11/6/56 and is from East Demorara
Judicial District. Receipt in Evidence 2.

Cross-examination by Lloyd Luckhoo:

Nabi Baksh did not say that the ticket 7890
was the return half of a ticket he had used that
morning.

10

That ticket bears date 12/6/56. The ticket
7890 was taken from Nabi Baksh by me. In Evidence 3.

The ticket is a third class and was issued at
Clonbrook. The accused Nabi Baksh said he had got
a telegram from Mr. Luckhoo on 9/6/56 asking him
to come to Georgetown and I could have verified if
that telegram was sent. The telegram said he was
to come on June 12th.

The copy telegram and envelope bear Official
Post Marks.

20

Marked for identity.

Fiaz Baksh gave a statement at Cove & John.

I understood that he had slept at his home on
night of 11/6/56, and that shortly after 6 a.m. he
had joined the train at Clonbrook. I do not know
if the Police checked on that with members of his
family.

Re-examination:

Nabi Baksh said he first heard of the murder
of Saffie at Mr. E.V. Luckhoo's office when the
Constable told him about it.

30

Jury warned.

Adjourned 26/11/56.

No. 15.

OBJECTION BY MR. E.V. LUCKHOO

In the
Supreme Court
of British
Guiana.

Bebe Mariam called.

Prosecution
Evidence.

No.15.

Objection by
E.V. Luckhoo.

Before witness is sworn Mr. E.V. Luckhoo objects to the evidence proposed to be lead as set out in Notice by prosecution, also objects to the evidence set out in the other statement served. Jury retires with 2 Bailiffs in charge.

26th November,
1956.

10 Mr. Edun informs Court that as regards further statement of Bebe Mariam he does not propose to lead evidence referring to that portion of the statement reading "He was also - to - charged in this matter".

20 Does not propose to lead any additional evidence relating to statement of Mohamed Mustapha. So far as the additional evidence of Mohamed Mursalin is concerned he will confine it to any fact in the additional evidence which will prove that both accused persons were in possession of firearms sometime before the incident in question. The witness will be examined only in relation to possession of a gun.

He will contend that the depositions of Mohamed Saffie is admissable.

Mr. E.V. Luckhoo submits:

It is not competent to lead any of the additional matter contained in the statement of Mariam served on 17/11/56.

30 That portion of the statement beginning on Friday 1st June, 1956 to the end does not constitute a threat made by the accused in the presence of the witness. It is a report of a threat by the deceased heard by the witness. It is not the trial of an accusation against the accused that he had threatened the deceased. If this were such a trial it might be conceded that the deceased was challenging the accused that he had made such a threat. It is sought to use this evidence as a statement of fact. The witness only heard her husband use the words not the accused using the word. What he
40 shouted out might never have happened.

In the
Supreme Court
of British
Guiana.

Prosecution
Evidence.

No.15.

Objection by
E.V. Luckhoo.

26th November,
1956 -
continued.

(b) The deposition of Mohamed Saffie at the Preliminary Investigation of a Charge against himself and another person for the offence of malicious wounding on 23/1/56, was not taken at the trial of Fiaz Baksh. It was at the stage of Preliminary Investigation where the matter was proceeding indictably and the magistrate could not adjudicate and was not called up to adjudicate and which has since been referred to the Supreme Court sitting in its criminal Jurisdiction for adjudication.

10

If this jury were to be permitted to hear this evidence it could only be presented to them with the object of asking them to say whether the accused Fiaz Baksh did on 27/1/56 at Clonbrook maliciously wounded Mohamed Saffie and thereafter the accused would be placed in the position of having to defend himself on that particular issue which would be tantamount to the accused defending himself on a charge not before the Court and which case is listed for trial at this Session with regard to the statement of Mohamed Mursalin.

20

This statement refers to the matter of the possession of a firearm on 2/12/55 which is the suspect of a charge. The two accused have been indicted on this charge and the case is for hearing at this Session. It would be asking the jury to decide another issue. The suspect another indictment and this indictment does not relate to Mohamed Saffie at all.

There is a contest as to possession of the gun and that is the suspect of a charge which is not yet disposed of.

30

The fact of possession of a gun is inextricably bound up with other matters that would be prejudicial to the accused.

Mr. Lloyd Luckhoo associates himself with the submissions of Mr. E.V. Luckhoo. The evidence to be led has no probative values in the issue involved in this trial. Even if there is slight probative value that value would be wholly outweighed by the greatly prejudicial effect of such evidence.

40

If that evidence admitted accused would have to defend himself in respect of: 1. Possession of a firearm for which he is indicted and not yet tried. 2. The matter of assault for which he is also indicted and not yet tried. 3. An alleged threat on

1/6/56 for which there is no charge.

No other counts allowed to be joined in an indictment for murder.

Noor Mohamed - British Guiana Law Reports.

Sureynaugh - British Guiana Law Reports 1952. p.25.

This case can be easily understood from the evidence in this case without calling evidence relating to other charges.

10 This evidence ought not to be led.

Mr. Edun. Crown Counsel submits that as regards the statement of Bebe Mariam the evidence is to prove motive, threats and enmity.

That portion of the statement beginning "On Friday, 1st June 1956" and ending "reported the matter" is evidence of threat. Proper foundation has to be laid that it was said in presence and hearing of the accused. It would show the relationship of enmity between deceased and accused.

20 The King against Ball 1911 A.C. 68.

As regards evidence of James Marshall introducing Deposition of Mohamed Saffie now deceased.

The Queen v. James Buckley 13 Cox 293.

The evidence will show motive the relationship existing between the parties.

The King & Palmer as reported in Phipman evidence 8th Edition p. 129.

Mr. E.V. Luckhoo replies:-

30 Defence does not challenge right of crown to prove motive. Must be proved by evidence, which is admissible. Court rules that evidence proposed to be given by Mohamed Mursalin should only relate to the fact that he saw Nabi Baksh with a gun and Fiaz Baksh with a gun.

Evidence of Marshall not admissible. The Deposition of Mohamed Saffie will not be admitted. The case not having been disposed of the matter is too contraversial and may be prejudicial to the accused.

40 As regards statement of Bebe Mariam only that portion of the statement relating to the pending case against Fiaz Baksh and the relationship between deceased and both accused should be led.

Jury return.

Jury call over.

In the
Supreme Court
of British
Guiana.

Prosecution
Evidence.

No.15.

Objection by
E.V. Luckhoo.

26th November,
1956 -
continued.

In the
Supreme Court
of British
Guiana.

No. 16.

EVIDENCE OF BEBE MARIAM

Prosecution
Evidence.

BEBE MARIAM sworn:-

I live at Clonbrook, Demerara.

No.16.
Bebé Mariam.
26th November,
1956.

Mohamed Saffie now deceased was living with me. We were not married. I do not remember when we started to live together. We lived at the house of Mohamed Nazir. We lived in a thatched house. I am a huckster selling greens and bananas. I used to get up early in the mornings and carry greens to the bus stop. 10

Examination.

Mohamed Saffie got on well with the neighbours. He had no story with anybody. I have known both accused for around 2 years. Fiaz Baksh and Nabi Baksh had story with Mohamed Saffie through Ofiran. I was not present when they first had story. Ofiran was Saffie's wife before he took up with me.

There is a case pending in the Supreme Court against Fiaz Baksh for breaking the foot of Mohamed Saffie.

In June 1956 I heard something about Saffie and when I went home I saw his dead body. The day before that was a Monday. On Monday night I went to bed around 9 p.m. Saffie was at home. I heard the dog barking about 9.30 p.m. I went outside and walked around but saw nothing. My husband was with me when I walked around. We went back in the house and went to bed. I got awake about 2.30 a.m. and heard the dogs barking again. We went outside and walked around. We went to the boat. Saw nothing. We went to the backyard. My husband Saffie had a torchlight. He turned it on. I saw Fiaz Baksh and Nabi Baksh on the rice bed near and facing my house. They were about 48 feet away. They were in the rice bed side. I had known them for about 2 years. I did not notice anything about them. I spoke to Saffie. We returned to the house around 3 o'clock in the morning. I heard the bus blow. My brother-in-law and others in the house got awake, we packed up our greens in the boat. Mohamed Nazir, my sister-in-law and myself went in the boat. We went to the bus stop. Mohamed Nazir discharged the load. We went on the bus and Mohamed left in the boat. My sister-in-law and I came to Bourda 30 40

Market. I heard something at Bourda Market in the morning. I left with my sister-in-law and returned to Clonbrook in a car. I went to the kitchen where I saw the dead body of my husband. Dr. Gillette came and performed a post-mortem on the body which I identified. The body was buried.

Jury warned.

Adjourned.

Resume.

10 Jury call over.

Bebe Mariam still on oath continues.

Cross-examination by Mr. E.V. Luckhoo:

20 Before I took up with Saffie I had a husband named Jamaladeen. We were legally married. We separated then Saffie take me. Jamaladeen is still alive. I was never living with Sampson an African. I do not know him. I did not give up with Sampson after he went to prison then take up with Saffie. I am now 24 years of age. I don't know anyone by the name of Sampson. I have never heard of any Sampson going to jail over coconuts. I was married to Saffie according to Moslem rites. Haniff is my brother. I was at Mahaica when I took up with Saffie. I was with my cousin Rose. I do not remember for how long I stayed with her.

I stopped living with Jamaladeen at Peters Hall. I took up with Saffie last year. I can't remember when I took up with Jamaladeen.

30 After I left Jamaladeen I went to live with my father at Herstelling, then I went to Mahaica. I can't really remember how long I spent with my father before I went to Mahaica. I went to Mahaica because I did not get along with my adopted mother.

I can't remember how long I was with my cousin Rose before Saffie took me.

I got married according to Moslem Rites to Saffie. Haniff did not come to the wedding. During last year Saffie and I went to live at Clonbrook.

40 When Saffie took me he was finished with Ofiran. He never tried to get her back.

In the
Supreme Court
of British
Guiana:

Prosecution
Evidence.

No.16.

Bebe Mariam.

26th November,
1956.

Examination.
- continued.

Cross-
Examination
by E.V.Luckhoo

In the
Supreme Court
of British
Guiana.

Prosecution
Evidence.

No.16.

Bebo Mariam.
26th November,
1956.

Cross-
Examination by
E.V. Luckhoo -
continued.

What I have told about Ofiran is what Saffie and other people tell me. I also have my own knowledge for Ofiran used to curse me. I am not a witness in the case against Fiaz Baksh for assaulting Saffie.

I have one dog of my own. Most of my neighbours have dogs.

I do not hear the dog bark at nights unless people come in the yard. I heard the dog bark that night. I do not know if the dog bark any other night at 9.30 p.m. I have heard the dog bark at other nights and when I come outside I find no one. 10

My husband took his torch with him that night. We went outside after the dog barked. We went to where the boat was and all around the house my husband used the torch.

Whether dogs bark or not I do always go round with the torch light. Even if the dog did not bark I would have come out with the torch light. 20

I did not see anything that the dogs were barking at that night.

I heard the same barking again at 2.30 a.m. In that same house were sleeping Mohamed Haniff and Nazir also my husband.

Neither my husband nor I woke up Nazir or Haniff.

We woke up when the bus blow. We never wake up earlier.

When my husband and I got up at 2.30 a.m. we went to the boat first. On the morning when I am going to sell greens the first place I go to is the boat to see if the boat is on land or in the water. 30

That morning I went to the boat at 2.30 after I heard the dogs barking to see if the boat was all-right.

I did not wake any of my neighbours when I heard the dogs barking at 2.30 a.m. At 2.30 a.m. my husband put on the torch where the boat was. After that we walked around the house with the torch shining and the dogs barking. 40

I walked from the boathouse to the southern side of the house.

I was asked in the Magistrate's Court the distance the rice bed was from the house and I showed it. I cannot remember if I was asked to show the distance from the house I saw the accused.

10 I say that the distance is from the witness box to the south western door of the Court room. I could see the accused rice bed in the day. At night the torch does not show so far. I can't point out how far the torch can shine.

I do not have any use to shine the torch at the back dam side.

I did not call out to Haniff or Nazir after I saw the accused that night.

I did not go into the house and tell them what I had seen.

20 I told Haniff and Nazir at 3 a.m. what I had seen at 2.30 a.m. that I had seen Fiaz Baksh and Nabi Baksh.

I can't remember the answers I made in the Magistrate's Court.

The Magistrate took down my evidence in writing then read it over to me and I signed it as correct.

30 I did say in the Magistrate's Court that I did not tell anyone that morning what my husband and I had seen when the dog barked but what I meant was that I did not tell anyone immediately, but before I left with the boat I told them. I know there is a police station at Cove & John. Another at Vigilance, and another at Beterverwagting. One at Sparendaan. We did not stop at any of those stations on the way down on the bus with the greens to make any report.

Cross-examination by Lloyd Luckhoo:

First barking of the dog was at 9.30 p.m. I did not tell the Magistrate "it was around midnight when I first heard the dog bark but I cannot be sure of the time".

40 I did not say anything about midnight.

I can sign my name.

I say the first bark was about 9.30 p.m. The

In the
Supreme Court
of British
Guiana.

Prosecution
Evidence.

No.16.

Bebe Mariam

26th November,
1956.

Cross-
Examination by
E.V. Luckhoo -
continued.

Cross-
Examination by
Lloyd Luckhoo.

In the
Supreme Court
of British
Guiana.

Prosecution
Evidence.

No.16.

Bebe Mariam.
26th November,
1956.

Cross-
Examination by
Lloyd Luckhoo
- continued.

next bark was about 2.30 a.m. Between 9.30 p.m.
and 2.30 a.m. I slept.

I can't remember if I said to the Magistrate
that "We did not sleep after we got up the first
time". The dog continued to bark "steady" from
midnight.

I do not know how long is a rod.

I showed the Magistrate the distance away from
my house that Fiaz Rice Bed was. I show a distance
equal to from the witness box to D'Aguiar.

10

I showed the Magistrate the distance away I saw
the accused. I showed a distance equal to from
the witness box to the South western door of Court
room. Shows about 13 yards. I know a neighbour
by the name of Lillyman. I do not know if Lilly-
man is on bad terms with any of my family. Haniff
used to work a farm. He used to come and go at
Clonbrook.

The deposition now shown to me was signed by
me. It bears my signature. Admitted and marked
5. Deposition read to Jury.

20

Cross-
Examination
by E.V.Luckhoo
with Leave.

Cross-examination by E.V. Luckhoo allowed:

Anyone else charged with Fiaz Baksh for assaul-
ting your husband?

Answer: Yes. Guillermo Rodrigues is charged with
Fiaz Baksh for assaulting Saffie which case has not
yet been heard.

No.17.

Mohamed Mustapha

26th November,
1956.

Examination.

No. 17.

EVIDENCE OF MOHAMED MUSTAPHA

MOHAMED MUSTAPHA sworn:

I live at Bee Hive and I am called Ghandi. I
know Mohamed Saffie. He was my uncle.

30

I know the two accused. Have known them about
6 or 7 years. On 11.6.56 I was at Bee Hive. I
went to work the ricefield at Dochfour. That night
I went to my ricefield at Dochfour. I walk on the
railway line from Bee Hive to my rice bed which was
about 200 rods away. I started to the rice bed

about 9.30 p.m. I was accompanied by Majeed and my brother Mursalin. The night was cloudy. We went to the ricefield then walked through Ann's Grove Village on the return journey. We walked through the backdam side and then in an easterly direction. I passed near to Fiaz Baksh house. I saw Fiaz Baksh and Yassin (brother of Nabi Baksh). They were standing at the side of the road about 6 or 7 rods from the house of Fiaz Baksh. I did not speak to them. That was about 11 p.m.

10

I went back home. Before that night I was not on speaking terms with Fiaz Baksh.

Cross-examination by Mr. E.V. Luckhoo:

The way to my rice field by the railway is far from Fiaz Baksh house, about 30 rods away.

My house is about 10 - 12 rods south of the railway line.

20

My house is about 150 rods North east of Fiaz Baksh house. Dochfour is further West of Ann's Grove.

The railway line runs East and West. My rice field is next to the railway line.

I walked the second course because after I traversed the ricefield and got to the end of the field it was easier to walk the way that took me past Fiaz Baksh house.

Lots of people living where Fiaz Baksh lives. Houses on both sides.

30

I looked at Fiaz Baksh but I do not know if he looked my way. I passed him sideways. I passed north of him.

I worked all day that Monday. I did feel weary but I had to go and look at my plants. That ricefield is my father's. I have three brothers. I worked that day at my father's ricefield. I ploughed. I worked the morning half day and then mind cow the other half day. One worker was with me.

I have heard people fire gun at nights to protect ricefield from ducks and pigs.

40

I did not see any other person on the return journey from the rice field but Fiaz Baksh and Yassin.

When going I only saw one person.

In the
Supreme Court
of British
Guiana.

Prosecution
Evidence.

No.17.

Mohamed
Mustapha.

26th November,
1956.

Examination -
continued.

Cross-
Examination
by E.V.Luckhoo.

In the
Supreme Court
of British
Guiana.

Cross-examination by Lloyd Luckhoo:

I know that Yassim lives at Cummings Lodge
about 10 miles away. Majeed was with me.

Prosecution
Evidence.

No.17.

Mohamed
Mustapha.

26th November,
1956.

Cross-
Examination by
Lloyd Luckhoo.

Re-examination:

My rice bed begins at the railway line and ex-
tends for about 50 rods away. I took the shortest
route for the return journey.

Jury warned.

Adjourned 27/11/56.

Mohamed Mustapha recalled at the request of Mr.E.V.
Luckhoo who is allowed to further cross-examine the
witness.

10

Cross-
Examination by
E.V. Luckhoo
with leave.
27th November,
1956.

MOHAMED MUSTAPHA sworn:

Cross-examination allowed by Mr. E.V. Luckhoo.

My rice plants were about 10 or 12 rods south
of the railway line.

No.18.

No. 18.

Ivan Gooding.

EVIDENCE OF IVAN GOODING

27th November,
1956.

IVAN GOODING sworn:

Examination.

I am a blacksmith living at Ann's Grove E.C.D.
I have been living there from 1915. I knew Mohamed
Saffie, now deceased, and had known him for a couple
of years.

20

I know the two accused. Have known them since
they were boys.

I remember the day that Mohamed Saffie was shot.
It was on 12/6/56 a Tuesday. On Monday night 11/6/56

I was seated on a koker - the wall of the koker at Clonbrook around 11 p.m. I was East of the Grove Public Road and south of the houses of both accused. I know the Mahaica Canal, it runs from East to West. The Bee Five dam runs north to south. I was seated West of Bee Five Dam.

I was on the northern dam of this Mahaica Canal.

10 Whilst I was seated on the wall of the koker I saw the accused Fiaz Baksh pass by. I was facing north. There were two houses near by and gas lamps were alight in those houses that were about 3 rods away. Fiaz Baksh came towards me and passed within 6 feet of me at the end of the dam on which he was travelling, and then he turned East of the said dam.

The accused was immediately opposite me when he turned East. I am sure it was Fiaz Baksh. I have no reason to swear falsely against him. We have never had anything against one another.

Cross-examination by Mr. E.V. Luckhoo:

20 I am 61 years of age. I wear glasses. I have been wearing them for about 11 years. Before that I used to see quite well without them. I started to wear them because my eyes began to give me trouble. As years went on my eyes began to get worse and worse.

I try to avoid places at night with high and low ground because I might trip up.

The surface of the dam with the koker is even. Has no unevenness of any kind. Not now used by cattle.

30 There is a timber across the dam. There are two pieces of timber across the dam which were there on 11/6/56, which I knew were there before 11/6/56.

40 I cannot remember whether the early part of June 1956 was rainy. It was an ordinary night and no moon was out. It was not a cloudy night. Around May and June it was rainy particularly the latter part of June, 1956. That koker dam was covered with bahama grass and there was no mud about. No slush is on that dam during the rainy period. If that dam were extremely rough I would not care to go there.

In the
Supreme Court
of British
Guiana.

Prosecution
Evidence.

No.18.

Ivan Gooding.
27th November,
1956.

Examination -
continued.

Cross-
Examination by
E.V. Luckhoo.

In the
Supreme Court
of British
Guiana.

Prosecution
Evidence.

No.18.

Ivan Gooding.

27th November,
1956.

Cross-
Examination by
E.V. Luckhoo -
continued.

If it were rough I would not have gone there.
If it were slushy I would not care to go there.

To get to my home I would have to travel west from point F on the plan until I get to the Ann's Grove north to South road then I travel south on that road for some distance then West into Ann's Grove, all I have to travel is 50 rods from my home to the koker.

There are several roads leading to my house. In my opinion from my house to the koker is about 50 rods by the way that I walk. 10

I never said in the Magistrate's Court that the distance from my house to the culvert is 300 - 400 rods. I call the culvert the koker.

I said that the deceased lives about 300 - 400 rods from where I live.

The longest way from my home to the koker can be about 100 rods.

I can't remember answering a question in the Magistrate's Court about the distance from my home to the culvert. I think I was asked the distance from the culvert to the home of the deceased and I think I said it was about $\frac{1}{2}$ mile. The Magistrate read out my deposition to me and told me if anything wrong I should correct him. 20

I did not correct him.

I live on the side of the middle walk street in Ann's Grove dividing Grove from Two Friends.

I say that Ann's Grove estate is about 25 rods wide. 30

On that night I did not travel East along middle walk Street.

I walked north along middle walk road running north and south and parallel to Ann's Grove Village Road. I walked 10 rods from home in a northerly direction and then I cut through the blocks by an alleyway. That alleyway is rough. I now say it is not rough but ordinary. The alleyway runs in a north Easterly direction. It is a little track not a public road. I walked about 15 rods North East, not 15, about 12 rods. After reaching Ann's Grove 40

road by the Mahaica Canal at the big bridge the roadways would be in better condition than the tracks.

I do not know the distance from my home to the Ann's Grove Road by the recognised roadway.

There is a koker north of where I live more to the North East and quite close to where I have my blacksmith workshop.

10 I know nothing about a plan. The koker near to my workshop is about three times the size of the koker on which I was seated. This large Ann's Grove koker is about 4 rods from my workshop in an Easterly direction. I can't help with the distance from my home to the Ann's Grove koker. It is much nearer to my home than the other koker.

20 It takes me about 3 or 4 minutes to get from my home to my workplace. From my home it took me about 7 minutes to get to the koker on which I was seated. By the long route it would take about 10 to 12 minutes.

I was at work on that Monday for part of the day. My wife and I had a "breeze" so I chose a quiet spot. I went there for quietude. We had the "breeze" just before I left home. I would not have gone there that night if my wife and I had not that "breeze".

In the Magistrate's Court I told you it was my private business and you objected.

30 The Magistrate said you might have gone there to think over life and I said "I think you are right, sir".

I did not care then to divulge about the breeze between my wife and myself.

40 I left home that night about 10.15. I have no particular time to go to between. It varies between 8 p.m. and 1 a.m. I do not change my clothes until I am ready to go to bed. I had not changed my clothes that evening. I had my supper at 7.30 p.m. I had the "breeze" immediately before I left home.

The worst type of boys would be at the Ann's Grove Koker. They are bad boys. They congregate at that koker and sometimes wander around Ann's Grove. I never like to encounter that crowd.

Saffie and myself were never friends. His brother "Maude" and I are friends.

In the
Supreme Court
of British
Guiana.

Prosecution
Evidence.

No.18.

Ivan Gooding.
27th November,
1956.

Cross-
Examination by
E.V. Luckhoo -
continued.

In the
Supreme Court
of British
Guiana.

Prosecution
Evidence.

No.18.

Ivan Gooding.
27th November,
1956.

Cross-
Examination by
E.V. Luckhoo -
continued.

I have known Maude for a number of years.

I have known Abdul Majeed since the Magistrate's Court. I have only been to Court once before.

I drink and I go to the rum shops in the district. I go to Gunlow and sometimes to the shop of Geo. Da Silva. I had never seen Maude in the rum shops before this case but since then I have seen him in Da Silva's shop. I have never seen Majeed in any of the shops. I do not remember seeing Saffie in any of the rum shops. He might have been there. 10

After I gave evidence at the Preliminary Investigation Maude came at my house and called me. We went out to the shop and I offered him a drink. We spent about 10 or 12 minutes. That was the only time I had a drink with Maude. I know the faces of Maude's children. Maude gives me work to repair his plough. His boys have never been to my shop as far as I can remember. 20

I think Saffie was buried on 12/6/56. I did not go to the funeral.

Since giving evidence in the Magistrate's Court I have checked up on my calendar. I knew it was the second Monday in June.

I can't remember what I told the Magistrate as to the date of burial.

I went to Maude's home to give him my sympathy.

I think I gave my statement to the police on Friday 12/6/56. 30

The dam of the koker on which I was seated is about one rod wide.

The canal north of the koker is about 3 rods wide.

That canal is 3 times wider than the koker. There is a trench to the north of the koker.

I recognised the accused Fiaz Baksh when he was about 6 feet away from me.

The trench north of the koker dam is about 16 feet wide. 40

I was on the extreme South of that koker dam.

Accused was walking about the centre of the dam as he passed me. He was actually passing me when I recognised him.

I did not speak to him. He did not speak to me.

Jury warned.

Adjourned.

Resume.

10 Jury call over.

Ivan Gooding continues on oath.

Cross-examined by Mr. Lloyd Luckhoo:

I never go to bed early. I have no particular time to go to bed.

When people go to bed at nights they turn off their gas lamps.

My home is not 300 - 400 rods from the koker on which I was seated.

20 I do not know the dam between Clonbrook and Bee hive.

I do not know that Clonbrook is 100 rods wide.

From the koker to the junction of Clonbrook and Ann's Grove is about 6 rods.

It is possible to walk by road from the koker to my home. From koker by road to the dam is 6 rods. From the dam going South I would walk for 20 rods then turn East and walk to my home. I would have to walk the whole facade of Ann's Grove. I do not know whether Ann's Grove is 50 rods wide.

30 I left the koker to go home about half an hour after I saw accused Fiaz Baksh. At the koker there is a road going to the north. One accused lives to the East of that road and the other to the west. Neither live on that road.

In the
Supreme Court
of British
Guiana.

Prosecution
Evidence.

No.18.

Ivan Gooding.

27th November,
1956.

Cross-
Examination by
E.V. Luckhoo -
continued.

Cross-
Examination by
Lloyd Luckhoo.

In the
Supreme Court
of British
Guiana.

Prosecution
Evidence.

No.18.
Ivan Gooding.
27th November,
1956.

Cross-
Examination by
Lloyd Luckhoo
- continued.

Nabi Baksh lives to the East of that road and
Fiaz to the West.

I know the Beo Hive kokor and the Bee Hive
dam.

I do not know the width of Clonbrook.

Ann's Grove and Two Friends are together smaller than Clonbrook.

No.19.

Ivan Kalloo.

Examination.

No. 19.

EVIDENCE OF IVAN KALLOO

IVAN KALLOO sworn:

10

I am booking clerk of T.H.D. at Clonbrook. In June I was clerk at Clonbrook Railway Station.

On 12/6/56 I was at work at Clonbrook Railway Station from 4.30 a.m. I was selling tickets. The early trains are 5.12 a.m. from Mahaica to Georgetown arriving Clonbrook 5.27 a.m. There is a second train from Mahaicony at 5.32 a.m. arriving Clonbrook at 6.28 a.m. I sold tickets to passengers on the second train. While selling tickets I saw Jackoo also called Nabi Baksh. He bought a return ticket Clonbrook to Georgetown which I sold him. He was alone.

20

One Jerrick was at the railway station. Before Nabi Baksh bought the ticket I heard Jerrick say something whilst Nabi Baksh was a couple of feet away and Nabi Baksh could have heard what he said. I heard Jerrick say that Saffie got shot in his kitchen. He was speaking to the station master. Nabi Baksh said nothing.

Nabi Baksh boarded the train when it came. On the day before that is Monday 11/6/56. I saw Fiaz Baksh at the station with Guelermo Rodrigues. It was 6.28 a.m. I saw them. Both of them bought a return ticket to Georgetown. I saw them board the train. I have known both accused for a couple of years.

30

Cross-examination by Mr. E.V. Luckhoo:

The first train gets to Clonbrook at 5.27 a.m. and leaves for Georgetown 5.28 a.m. The second arrives at 6.28 a.m. and leaves at 6.30 a.m.

I know P.C. Cummings. The return tickets are good for seven days.

10 Nabi Baksh was aside when the station master and Jerrick were talking. He was not in the conversation. J. Jerrick is the person. I do not know if he is Josiah.

The station master telephoned immediately after Jerrick said that Saffie got shot in his kitchen.

I gave evidence in the Magistrate's Court.

I can't remember hearing Jerrick say that he went to the place where Saffie got shot.

The station master asked Jerrick who had shot Saffie.

I can't remember that Jerrick said that he had just come from the place where Saffie had been shot.

20 Jerrick said he did not know who had shot Saffie.

My evidence was read over to me in the Magistrate's Court, and I was satisfied that it was true and correct and signed it.

I can't remember telling the Magistrate that Jerrick said that he had just come from the place where Saffie had been shot but if it is so recorded by the Magistrate then it is correct and I must have said so.

30 I signed the deposition now shown to me. It bears my signature.

That portion of cross-examination read to witness. He agrees that he told the Magistrate what was now read to him.

Deposition of witness put in evidence and marked C.

In the
Supreme Court
of British
Guiana.

Prosecution
Evidence.

No.19.

Ivan Kalloo.
27th November,
1956.

Cross-
Examination by
E.V. Luckhoo.

In the
Supreme Court
of British
Guiana.

Prosecution
Evidence.

No.19.

Ivan Kalloo.
27th November,
1956.

Cross-
Examination by
Lloyd Luckhoo.

Cross-examination by Lloyd Luckhoo:

There were about 25 passengers who boarded the train with Nabi Baksh. They could be seen quite openly.

Our clocks have to be accurate so we check them.

The train left at 6.28 a.m.

Nabi Baksh was the first person to buy a ticket. I saw him about 5.58 a.m. He bought his ticket and remained at the station until the train left.

10

The ticket now shown to me is the return half of a ticket sold at Clonbrook on 12/6/56.

Re-examination:-

Re-examination.

The train arriving at 5.27 a.m. would leave at 5.28 a.m.

No.20.

No. 20.

Richard
Carbon.

EVIDENCE OF RICHARD CARBON

RICHARD CARBON sworn:

Examination.

I am a coconut oil manufacturer living at Bee Hive.

20

On 22/6/56 I went to search for a gun which I had already searched for on 12th June, 1956 and for four days thereafter. On 22/6/56 whilst searching in the trench at Clonbrook running East to West I found this gun. In Evidence "P", there were about 9 of us and we had searched about 150 rods.

Whilst searching my foot touched on a box - a sluice box and in that box I found the gun, about 10.30 a.m. to 11 a.m.

30

I began to search about 8 to 8.30 a.m. There were about 4 or 5 policemen and I gave the gun to one of them. Sgt. Chee-a-Tow now in Court is the policeman to whom I handed the gun.

Cross-
Examination
by E.V.Luckhoo.

Cross-examination by Mr. E.V. Luckhoo:

My wife has a kitchen garden where vegetables are planted in Bee Hive.

Sometimes pigs disturb the cultivation. I never shoot those pigs.

The Friday after Saffie got shot I did not use a gun with a wire strap like Ex. P. to shoot a pig.

The wire strap on the exhibit was on it when I found it. I do not use a gun. I have never used a gun. I now say that I have used a gun. I do not reckon that I am a good shot. I know that people shoot pigs that trespass on their farms.

10 On Friday 15/6/56 I did not shoot Joseph Jerrick's pig about 9 a.m.

I know Joseph Jerrick. I do not know that he has pigs. Jerrick did not meet me with a gun on Friday 15/6/56 and he did not ask me what I shot at and I never said I shot nothing. I never saw him with a dead pig that morning. He did not ask me why I told him a lie when I said I did not shoot anything. I work as a canecutter. I did not work during the month of June 1956.

20 Sometimes in June 1956 I did give assistance in my wife's garden. I do not know one Ramnarain at Bee Hive. I have to come from East to West when returning from my wife's garden.

I was at home on Friday 15/6/56. I never went to my wife's garden that day but I can't say what day I went. I went to the garden about the second week in June, 1956.

30 I know Abdul Majeed. Have known him for about a year or so. Searching for a gun in a trench is a hard job. I have been paid by the Government. I can't say for how many days. There was no day I worked that I was not paid. I never said in the cross-examination before the Magistrate that I was not paid for assisting in the search. I live about 200 rods away from where the gun was found.

I never said in the Magistrate's Court that my house is 20 rods from the place where gun was found.

No one suggested that I should search that trench. We had searched other trenches.

40 I never said in the Magistrate's Court that it was the brother of the deceased who suggested that we should search the trench in which the gun was

In the
Supreme Court
of British
Guiana.

Prosecution
Evidence.

No.20.

Richard Carbon.

27th November,
1956.

Cross-
Examination by
E.V. Luckhoo -
continued.

In the
Supreme Court
of British
Guiana.

Prosecution
Evidence.

No.20.

Richard
Carbon.
27th November,
1956.

Cross-
Examination by
E.V. Luckhoo -
continued.

found. His name is Mohamed Nazir. He mentioned this around 8 a.m. The gun was found around 11 a.m.

Abdul Majeed was about 4 to 5 rods away from me when the gun was found. I knew before that day that there was a sluice box at that spot.

The gun was on its apron when I found it. The stock was nearer to me.

I had to push my hand about 18 inches into the sluice box before the gun was found. I did not know it was a gun until I brought it up. 10

When I touched it it felt like a gun. The sluice box had a little mud in it. I now say, I cannot say if the sluice box had any mud.

When I took the gun from the sluice box I did not take any keen observation of it. I had not been acquainted with that gun.

We searched about 4 days from 12/6/56 and then on 22/6/56.

I was asked by Nazir to search on 22/6/56. He called me and said we are going to search again. 20

I do not know anyone in the district with a gun. I have never used a gun for a good time. I can't say whose gun I borrowed as I have never borrowed one. I had a license long years ago and had a gun. It was a double barrelled 12 bore gun. That was in 1920 something. I paid \$40 for it second-hand.

In my absence my wife gave up the gun and it was sold at the compound. I used to shoot deer and game. I have no knowledge of this Ex. P the gun. I never had it in my possession. 30

Cross-
Examination by
Lloyd Luckhoo.

Cross-examination by Lloyd Luckhoo:

I never heard about "bush gun". I have heard of people having guns without a license. I had a gun for about 10 years.

I do not know if there are many sluice boxes at Clonorook. There are not many trenchos and

canals at Clonbrook. I did not expect to find a gun. I did not know of any gun being planted.

The sluice box does not show as the water was deep.

The sluice box was about 1½ feet under water.

Re-examination:

I was paid for the search after I gave evidence in the Magistrate's Court.

10 The policemen were present when Magistrate asked me to search on 22/6/56. There were about 3 or 4 policemen. The car could not come to my home so I went out to them and I was told that they were going to search. I joined 9 others in the search. We finished one trench that ran from East to West.

Jury warned.

Adjourned to 23/11/56.

Resume.

Jury call over.

20

No. 21.

EVIDENCE OF MOHAMED MURSALIN

MOHAMED MURSALIN sworn:-

30 I am a farmer and I live at Bee Hive East Coast Demerara. I knew Mohamed Saffie now deceased. Knew him for a long time. He was my uncle. I know the two accused. Have known them for long years in the village. I remember Friday 2/12/55. On that day I went a back of Clonbrook with other persons. During that day about 7 p.m. I saw both accused on Clonbrook side line dam about 100 rods from deceased house on the back dam side. I saw Nabi Baksh with a gun in one hand and Fiaz Baksh had a gun in one hand. Each gun was like the gun now in Court.

In the Supreme Court of British Guiana.

Prosecution Evidence.

No.20.

Richard Carbon.
27th November, 1956.

Cross-Examination by Lloyd Luckhoo - continued.

Re-Examination.

No.21.

Mohamed Mursalin.

28th November, 1956.

Examination.

In the
Supreme Court
of British
Guiana.

Prosecution
Evidence.

No.21.

Mohamed
Mursalin.

28th November,
1956.

Cross-
Examination by
E.V. Luckhoo.

Cross-examination by E.V. Luckhoo:

Mohamed Saffie was not with me. Myself, Mustapha, my brother Amin, my father and my brother Insham and Abdool Majeed.

It was night time when I saw both accused between 7 - 8 p.m. It was a dark night. I saw them on the Clonbrook dam and no houses were about there. That dam runs north to south. There is small little bush in the middle of the dam. There is a track on the western side of the bush. The width of the dam is about 2 rods. 10

The width of the bush is about 8 feet. The track is about 3 feet wide. People can walk on the Eastern side of dam which may be called a pathway and it is about 3 feet wide.

We were on the western side of the dam and the both accused were in the middle of the dam and about 12 feet to the East of us. We were in the middle of the track on the western side.

The photograph now shown to me appears to be a photograph of the dam on which we were. This photograph was produced in the Magistrate's Court. Tendered in Evidence and marked 7. 20

Re-examination

Re-examination.

I saw both accused in the middle of the dam where the bush is small.

I was able to see both accused that night because my brother Mustapha "torch-a-light" and I saw them.

No.22.

No. 22.

30

Isaac
Alexander.

EVIDENCE OF ISAAC ALEXANDER

ISAAC ALEXANDER sworn:

Examination.

Cpl. Police stationed at C.I.D. Brickdam on 12/6/56 I went to Cove & John Police Station where I took a statement from Nabi Baksh. He gave this statement free and voluntary. I wrote down what he said and read it over to him. He said it was true and correct but refused to sign it. This is the statement. Sgt. Fraser signed as a witness to the reading over. 40

Marked "V" for identity.

No cross-examination by Mr. E.V. Luckhoo.

Cross-examination by Mr. Lloyd Luckhoo:

I did not caution Nabi Baksh because I had not decided to charge him.

I asked him in detail his movement at the relevant times. He gave me the details in his answers relating to time place and person.

Getting those details could enable us to check on the particulars. In the normal course I would expect enquiries to be made in the relevant particulars.

10

Statement tendored and admitted in Evidence and marked "V".

Statement read to the Jury.

In the
Supreme Court
of British
Guiana.

Prosecution
Evidence.

No.22.

Isaac
Alexander.

28th November,
1956.

Cross-
Examination by
Lloyd Luckhoo.

No. 23.

EVIDENCE OF EUSTACE LIVERPOOL

EUSTACE LIVERPOOL sworn:

Police Constable stationed at Cove and John, Demerara, B.G.

20

On 12/6/56 I went to Clonbrook where I saw Dr. Gillette perform a post-mortem on the body of Mohamed Saffie, which was identified by Bebe Mariam. The doctor extracted 21 bullets from the body which he handed to me and I produced them at the Magistrate's Court. I now produce them marked "A" to "J".

I later witnessed the burial of the body at Two Friends Demerara. The body was found in the County of Demerara.

30

The foreman of the Jury states that the Jury would like to visit the locus.

The Court grants the request of the Foreman.

No.23.

Eustace
Liverpool.

Examination.

In the
Supreme Court
of British
Guiana.

REQUEST BY E.V. LUCKHOO FOR VIEW.

Prosecution
Evidence.

No.24.

Request by
E.V.Luckhoo
for view.

28th November,
1956.

Mr. E.V. Luckhoo submits that witness be taken to point out the necessary places.

Mr. Lloyd Luckhoo supports the submission of Mr.E.V. Luckhoo.

Foreman of Jury states that the Jury would like to see the following places marked on the plan in Evidence namely Points 2, C, D, X, F, G & E, also the home of witness Ivan Gooding.

10

Mr. Lloyd Luckhoo asks that Jury be shown Clonbrook Railway Station.

Application granted.

Mr. E.V. Luckhoo asks that Jury be shown Ann's Grove koker, and Gooding's Blacksmith's shop.

Application granted.

Crown Counsel suggests that route be from Public Road to Grove Public road then to Gooding's house viewing the Bus Stop on the way then to Koker Dam and on to Bee Hive then South to point Z.

20

Sgt. Chee-a-Tow to point out all places to other witness to be in attendance.

A constable to be in charge of each car with Jurors.

A marshall and Five Constables to be sworn to keep the Jury.

Jury to be warned not to communicate with anyone.

Police report that it is not possible to arrange for the visit this afternoon.

30

Mr. Lloyd Luckhoo requests that Nabi Baksh does not attend as his Counsel will be in attendance.

Mr. E.V. Luckhoo makes similar requests with regard to Fiaz Baksh. Both applications granted.



EVIDENCE OF HENRY FRASER (recalled)

HENRY FRASER (recalled) at request of Mr. E.V. Luckhoo, sworn:

Cross-examination allowed:

10 This morning at the request of Mr. Lloyd Luckhoo with approval of Crown Counsel I made enquiries at the Central Telegraph Office, Georgetown that I found that on 9/6/56 a telegram was handed at Georgetown at 9.30 a.m. addressed to Nabi Baksh called Jacob of Clonbrook, E.C.D. sent by Edward Luckhoo. I got that information from the original which I inspected and I have seen this copy, which corresponds with the original.

I tender the copy telegram in Evidence 4.

Envelope 4 A.

According to the records in the office the telegram was duly sent and delivered.

Cross-examination by Mr. E.V. Luckhoo:

20 I searched accused Fiaz Baksh on 12/6/56. I found two receipts on the accused. This receipt for \$50.

In Evidence 8 and another receipt which has already been put in evidence.

Jury warned.

Adjourned to 29/11/56.

VIEW BY JUDGE AND JURY

Resume.

30 Jury call over arrangements for Jury to visit Locust.

Constables Cecil Benn, Frederick Grainger,

In the
Supreme Court
of British
Guiana.

Prosecution
Evidence.

No.25.

Henry Fraser
(recalled)
28th November,
1956.
Cross-
Examination by
E.V. Luckhoo
with Leave.

View by Judge
and Jury.

29th November,
1956.

In the
Supreme Court
of British
Guiana.

Prosecution
Evidence.

No.26.

View by Judge
and Jury.

29th November,
1956 -
continued.

Robert Bourne and Marshall Arthur Eustace Hercules sworn to keep the jury and to suffer no one to speak to them. Constables and Marshall warned to observe the oath. Foreman and members of the Jury told that they will be taken to the Locus in quo in motor cars and further informed that they are not to communicate with anyone but the Judge. A sworn constable to each car.

Judge and Jury leave in Motor cars for Clonbrook.

Judge and Jury return from Clonbrook.

10

Jury call over.

Jury warned.

Adjourned to 30.11.56.

Resume

Jury call over.

No.27.

John Chee-a-Tow
(recalled)

30th November,
1956.

Examination.

No. 27.

EVIDENCE OF JOHN CHEE-A-TOW sworn: (recalled)

I was present yesterday when the Jury visited the Locus in quo. The trial Judge, Jury, both Counsels for the accused, Crown Counsel and Registrar were present.

20

In their presence and hearing I pointed out the -

1. Ann's Grove Public Road.
2. Clonbrook Railway Station and Railway Line.
3. Home of Fiaz Baksh.
4. Home of Nabi Baksh.
5. Koker on which Gooding is alleged to have sat.
6. Bus stop and Mahaica canal.
7. Ann's Grove Koker.
8. Gooding's Blacksmith's shop.

30

- 9. Home of Ivan Gooding.
- 10. Sluice-box in canal where it is alleged the shot-gun was found.
- 11. Home of deceased.
- 12. Wire-fence dam.
- 13. North and South trench.
- 14. Dam at the western-end of the rice field.

In the
Supreme Court
of British
Guiana.

Prosecution
Evidence.

No.27.

John Chee-a-Tow
(recalled)

30th November,
1956.

Examination -
continued.

No cross-examination

Case for Prosecution.

- 10 Each accused informed on the right of Election.

Defence Evidence.

No. 28.

STATEMENT BY MOHAMED FIAZ BAKSH FROM THE DOCK.

The statement which I have given Sgt. Fraser is true. He was questioning me for about over 3 hours. I gave him an answer for all the questions he asked me. He then told me that he would check at once from all the persons whose names I called to justify if my statement was true. I then told him that I was not at Clonbrook the Monday night in question, but I was at La Penitence. I then told him that I never held a gun and I have never used a gun in my whole life. I then told him that no gun or ammunition has ever been found at any time in my possession or in my house.

Defence
Evidence.

No.28.

Statement by
Mohamed
Fiaz Baksh
from the Dock.

I told him that I do not know Mohamed Haniff and I have never spoken to him for my whole life. He has never spoken to me. The first time I have ever seen him was at the small Court at Cove & John. Mohamed Haniff, Mohamed Nazir, Bebe Mariam, Ivan Gooding, Mohamed Mustapha and also Mohamed Mursalin have spoken falsely against me. I believe they have done so out of spite and ill-will as I was on bad terms with Mohamed Saffie and his family. I never shot Mohamed Saffie and I do not know who shot him. I am innocent of this charge. If anyone say that they have seen me with a gun in my whole life, they have spoken falsely against me. That is all.

In the
Supreme Court
of British
Guiana.

No. 29.

EVIDENCE OF LOUIS VIERA

LOUIS VIERA sworn:-

Defence
Evidence.

Examined by Mr. Lloyd Luckhoo for Mr. E.V. Luckhoo.

No.29.

Louis Viera.

30th November,
1956.

Examination.

I live at Clonbrook, Demerara. I know Mohamed Nazir also called Ali. I have known him from his boyhood days. On 12.6.56 I was living at Clonbrook. I left home that morning at about 5.45. I was going to my ricefield. I had to take the East side line dam between Clonbrook and Bee Hive. I met one Lochan. I spoke to him. We continued to walk towards the back. When we walked for about 10-15 rods, I heard a mournful cry from Mohamed Nazir's yard. I was then about 10 or 15 rods from Ali's yard. Ali and his brother Saffie lived in that yard. I knew Saffie. Lochan and I went into the yard. I saw Ali, Haniff and Saffie's mother. I found Saffie dead. I saw all of them crying. I asked Ali what was wrong. He said they shoot his brother.

10

20

I went to where the body was. I saw the mother near to the dead body of Saffie. She was crying. I watched the dead body and then came out to Ali. I asked Ali who shoot him. Ali said he did not know. This morning he went to the bus and carry greens. On returning when he was at truck line he heard a gun fire and he went home, tied his boat, went in and sleep and in the morning he woke up Haniff and sent him down to see if Saffie finish cooking and he found him dead and started to cry.

30

We were there a minute or two more and Lochan and I went to the back. No other persons were on the scene at that time. It took me about 8 or 10 minutes to get to the yard of Saffie.

I know truck line is between the bus stop and the koker.

I know Gooding. He drinks. I do not drink alcohol.

Cross-
Examination.

Cross-examination:

It is true that I have lived all my life at Clonbrook. I come to Georgetown very often to buy

40

goods for Seymour. I buy the goods monthly. Sometimes I come to town on my own personal business. I travel by car sometimes. Some days cars can be had every ten minutes. On Saturdays cars can be had faster than on other days.

A car takes about an hour to Georgetown from the bus stop at Clonbrook. 18 miles by railway and 20 miles by road.

10 I live about 120 rods from Saffie's home and near to the bus stop. Clonbrook East side line dam is by deceased house.

I did not hear any gun sound any time that morning.

I have heard on various occasions the sound of a gun. I can recognise the sound of a gun.

20 I knew Saffie from his boyhood days. I know him to have been living good in Clonbrook. I had no row with him. I was shocked to know that Saffie was shot. I saw the shot holes. The body was lying flat on its back. I do not know who put it there.

I attended to my rice field that morning. My rice field is about 60 rods south of Saffie's house.

I stayed at Saffie's house that morning about 4 to 5 minutes.

30 I have known Saffie's mother from when I was a boy. She is an old woman. I do not know if she is deaf. I have spoken to her on occasions. I saw no other relatives or strangers on the spot. I believe Lochan and I were the first on the scene.

I did not see Abdul Majeed. I did not see Lillman there. Lillman's house is one lot from Saffie's house. Bilgit is a neighbour and his house is about 8 rods away from Saffie's.

I have used a single-barrelled shot gun on several occasions.

The cartridges bought from the store can be heard between 10 - 15 - 20 rods. I go to my rice field daily.

40 There are houses to the West of Saffie's house.

I offered no help to the relatives of the deceased. I was in a hurry to get to my rice field.

In the
Supreme Court
of British
Guiana.

Defence
Evidence.

No.29.

Louis Viera.
30th November,
1956.

Cross-
Examination -
continued.

In the
Supreme Court
of British
Guiana.

Defence
Evidence.

No.29.

Louis Viera.

30th November,
1956.

Cross-
Examination -
continued.

I was not present when the police arrived.

I did not suggest to any to make a report to the Police.

I never considered that I should have gone to the Police.

I have known Fiaz Baksh from he was a boy. I do not know if he drinks. He has been living in the district from he was a boy.

I did not hear the next day that Fiaz Baksh was charged on that day for murder. I heard about 6 or 7 days after. I had not left the district. My work takes me out early and I do not return until late. I do ploughing and am tired in the evenings. 10

When I heard that Fiaz Baksh was charged I remembered the conversation. It did not occur to me to make a report to the Police. After I heard that Fiaz Baksh was charged I told the wife of accused about the conversation.

I was in Court at the Preliminary Examination. I heard some of the evidence of Haniff. I heard him say that he saw Fiaz Baksh running away with the gun and that is why I spoke to Fiaz Baksh's wife. I told it to several persons. After that day I spoke to the lawyer. It was about 3 weeks after. I wrote a statement and sent it to the lawyer and after that I came to see him at Georgetown. 20

I do not know if Lochan gave a statement. I do not know if Lochan was in Court when Haniff was giving evidence.

By Jury.

By Foreman:-

30

Question: How far do you live from Fiaz Baksh's home?

Answer: I live about 70 - 80 rods away.

Question: Before the Preliminary Examination did you mention the conversation to anyone?

Answer: I spoke it to friends in the ricefield.

Question: Did you make any enquiries in the evening?

Answer: I made no more enquiries as I had to hustle to work at Doch four after opening water in my ricefield.

In the Supreme Court of British Guiana.

Defence Evidence.

Re-examination by Mr. E.V. Luckhoo:

I call Saffie's mother Yellowtail wife as her husband used to be called Yellowtail.

No.29.
Louis Viera.
30th November, 1956.

At night the sound of a gun carries further.

A louder report is made if you load your own cartridge with plenty powder.

Re-examination by Mr. E.V. Luckhoo.

10

No. 30.

No.30.

EVIDENCE OF LINDON BURNHAM

Lindon Burnham.

LINDON BURNHAM sworn:

Examination.

Barrister-at-Law practising in B.G.

I know the accused Fiaz Baksh. I was retained by him and Guillermo Rodrigues to appear in a certain matter. This is a receipt issued from my office on 7.6.56. I requested Fiaz Baksh on the day the receipt was written to obtain certain records from the Magistrate's Court at Vigilance.

20

He brought that document to me on 11.6.56 at my chambers in Georgetown. I now produce the document.

Receipt in Evidence 9. Document in Evidence 10. The document bears the date 11.6.56.

I actually saw Fiaz Baksh at my chambers about 3.30 p.m. to 4 p.m. on 11.6.56. My interview was incomplete. He came with Rodrigues who said he wanted to get back into the country that evening. I gave instructions for them to return next day. I seem to remember that Rodrigues said he wanted to return by train.

30

Cross-examination by Crown Counsel:

Cross-Examination.

I saw Fiaz Baksh and Rodrigues on 7.6.56. Other than the receipt I made no record.

In the
Supreme Court
of British
Guiana.

Defence
Evidence.

No.30.

Lindon Burnham.

30th November,
1956.

Cross-
Examination -
continued.

They consulted me about a trial to take place in the Supreme Court relating to a charge of wounding Mohamed Saffie.

I did not appear at the Preliminary Examination. The deposition states that one Rai appeared at the Preliminary Examination. I made an appointment with Fiaz Baksh and Rodrigues on 7.6.56 to see me again when they had obtained the case jacket. I told them to return the next week with the case Jacket the next week. I did not name 11.6.56 but I told them the sooner the better. 10

When they left my chambers on 11.6.56 it was about 4 p.m. I did not see them again that day.

I saw Rodrigues a few days after. I do not remember the date. I did not see Fiaz Baksh after that.

I read in the newspaper subsequent to the 11.6.56 of the arrest of Fiaz Baksh.

No.31.

Lochan.

Examination.

No. 31.

EVIDENCE OF LOCHAN

LOCHAN sworn:

I live at Ann's Grove, Demerara. I am a shop-keeper. I knew Mohamed Saffie and where he lived. I pass the dam East of Saffie's house when I go to my ricefield aback.

I went to my ricefield on 12.6.56 Tuesday morning. I left my house about 5.30 a.m. I got to Saffie's house about 5.45 a.m. As I was about to pass Saffie's house I saw Viera. I then heard some crying. Viera and I went into Saffie's yard. There I saw Ali and another chap (Haniff). Viera asked Ali what happen. Ali said his brother is dead. We went into the house and saw the brother lying down and the mother crying. I saw the body on the ground in the kitchen. We stayed a while and came out. 30

Viera asked Ali if they don't know who kill ho.

Ali said he was carrying out load to the bus and when he was coming back he heard a gun. He said when he went home he tied the boat and went up and sleep. He said in the morning he woke up the brother-in-law to see if Saffie finish making tea. He said his brother-in-law shout at him and say Saffie is dead. We stayed a little while and left.

In the
Supreme Court
of British
Guiana.

Defence
Evidence.

No.51.

Lochan.

30th November,
1956.

Examination -
continued.

Cross-examination:

10 I had known Saffie for a long time. I was sorry and shocked when I saw his dead body. I live about 200 rods away from Saffie's house. There is a side line dam West of Saffie's house and about 50 rods away. It is easier for me to walk on the dam East of Saffie's house to get in to my ricefield. I take that route every time I go to my ricefield. This is a long route but the shorter route by the west dam is more difficult as I have to cross two trenches whereas I have only one trench to cross on the longer route.

20 Viera was just coming out his yard when I met him. This was the first morning we met and walked together. I did not hear the firing of a gun that morning. I saw gun shot wounds on Saffie's chest. Viera and I were the only strangers in the yard at that time. The body was on its back. We stayed there about 4 to 5 minutes.

I did not advise them to go to the Police and I did not think of going to the Police.

30 I can't say if Saffie lived good with the people. I do not know if he had quarrel with anyone. I do not drink. I had to run off water from the ricefield. Spent an hour there then came home and went to town.

I heard in the afternoon that the body was buried.

40 I heard about a week or two after in my shop that Fiaz Baksh and Nabi Baksh were charged with the murder of Saffie. I remembered the conversation and spoke about it in the shop but did not go to the police. The police did not take statement from me.

In the
Supreme Court
of British
Guiana.

Defence
Evidence.

No.31.

Lochan.

30th November,
1956.

Cross-
Examination -
continued.

I was not at the Preliminary Enquiry into this case. Fiaz Baksh wife asked me to give evidence before the Preliminary Enquiry.

I did not go to the Small Court. I gave statement to the lawyer about 2 months now. Every Tuesday I come to Georgetown. I have given evidence in Court once before and that was for Nabi Baksh. This is the second time I am giving evidence on his behalf. I have known him from he was a boy. I live about 80 rods from Fiaz Baksh.

10

I have walked on the Eastern dam with the koker.

People can sit down on the koker.

Re-Examination:

Re-Examination.

The long route to my ricefield takes about 10 minutes more than the shorter route. The journey is about 20 minutes. The distance is 20 rods longer than the shorter route.

The two trenches on the Western side - one is middle walk and the other is side line middle walk has 4 feet of water and the side line trench has water up to my neck on occasions.

20

The one trench on the Eastern dam is a side line trench with 3 or 4 feet of water.

Jury warned.

Adjourned.

Resume.

Jury call over.

No.32.

No. 32.

Alfred Allen.

EVIDENCE OF ALFRED ALLEN

30

Examination.

ALFRED ALLEN sworn:

I live at Bee Hive, E.C.D. I know where Saffie used to live, it is 35 rods from my home.

On 12.6.56 I was at home and left home at about

5.30 a.m. to 6 a.m. I went to go and bathe in the company's trench.

I heard something and went to Saffie's yard where I saw Ali (M. Nasir). He was at the entrance to bridge and in the yard.

I got to the yard about 6 a.m. I heard people speak to him. He said his brother got killed and he does not know is who. There were about 10 or 12 persons in the yard at that time. He said he went to post load at the bus and when he was by the trench Jam he heard a loud fire and he came along with the boat and moored the boat and went upstairs where he lie down until in the morning. In the morning he sent his brother-in-law to see if Saffie done cook and when the fellow went down he call out and say look Saffie lay down on the step like he dead. Ho came down and saw that Saffie was dead. They took him off the step. I did not hear him say anything more. He talk hard and said he was going to tell his brothers.

Cross-examination by Mr. Lloyd Luckhoo:

He called the brothers name and said it was Maudo that he was going to tell.

Cross-examination by Crown Counsel:

I bathe in the Company's trench every morning. Everybody in Bee Hive bathe there.

I was not going to work. I work at my farm on Monday and Wednesday but not on Tuesday.

I was to go to my farm on Tuesday but after the death I decided not to go to my farm that day.

I saw Ali and Saffie's mother. She was crying beside the body. I have known Saffie's mother from I was a small boy. About 10 or 12 persons were in the yard.

After I came from the yard I had a bath. I spent about 15 minutes in the yard and when I left no policeman had arrived. I bathed about 10 rods from the house. I was alone. On my return journey I did not pass by Saffie's home. I went straight home. When the police came about 7 a.m. to 8 a.m. I returned and was at the dam. I think Sgt. Chee-a-Tow was there. I did not speak to any policeman.

In the
Supreme Court
of British
Guiana.

Defence
Evidence.

No.32.

Alfred Allen.

Examination -
continued.

Cross-
Examination by
Lloyd Luckhoo.

Cross-
Examination.

In the
Supreme Court
of British
Guiana.

Defence
Evidence.

No.32.

Alfred Allen.
30th November,
1956.

Cross-
Examination -
continued.

I did not count the policemen. I think there were about 5 policemen. I never spoke to them.

I can't remember seeing any policeman cross that trench and go on the wire fence dam.

I did not see any policeman cross the trench and walk on the wire fence dam.

I did not see any policeman walking on the rice-field dam. I saw the policemen in the yard. I can't say if they went anywhere.

I did not tell any policeman about the conversation that people had with Ali. 10

On the next day I knew that Fiaz Baksh and Nabi Baksh were charged with the murder of Saffie.

Nazir and I never had a conversation.

After I heard of the arrest I remembered the conversation of Ali but I did not tell anyone till 6 weeks after. I have been in hospital since August 1956.

I told Fiaz Baksh sister of the conversation. I was not in Court at that Preliminary Enquiry. 20

I gave a statement to the lawyer.

I do not know when the Preliminary Enquiry was held.

Both accused and I went to school together. I am not a carpenter. I do not know if Louis Viera is a carpenter. Lochan is a shopkeeper. I can't remember if I saw Viera and Lochan at Saffie's house.

I come to Georgetown once every 2 or 3 weeks.

The last train passes Clonbrook about 8 p.m. I have travelled by that train. I do not know what time it leaves Georgetown. 30

I have travelled in a car from Georgetown to Clonbrook. Plenty cars travel from Georgetown to Clonbrook and Clonbrook to Georgetown.

Re-examination. Re-examination:

I heard it said that Ali and Haniff said it is Fiaz and Jackoo murder their brother. So I told the sister of Fiaz about 6 weeks after what I heard.

No. 33.

EVIDENCE OF JOSHUA JERRICK.JOSHUA JERRICK sworn:

I live at Bee Hive, Demerara, about 35 rods from Saffie's home.

At present I am working at Port Mourant.

10 On 12.6.56 I went to Saffie's yard some minutes past six in the morning. I went there as a result of what I heard and when I got there I saw about 10 or 12 persons. I know Saffie's brother Ali. I did not see him when I got to the yard. I know Saffie had a brother-in-law staying there at the time and he was there.

20 I asked the crowd if they know is who shoot and they say No. The brother-in-law is now in Court. Witness points out Mohamed Haniff. He could have heard what was said and he said nothing. I went to Clonbrook Station where I saw the station master and Kalloo the assistant. I had a conversation with the station master Kowlessar in the presence and hearing of Kalloo. I went to the Corentyne in the month of July, 1956.

On the morning of 12.6.56 I did hear the report of a gun about 3 to 3.30 a.m.

Cross-examination by Crown Counsel:

I got awake after I heard the report of the gun. I was awake before I heard the report of the gun. The report came from the direction of Saffie's house.

30 The bus blows at about 3 a.m. I heard the bus blow that morning and the report of the gun was about half an hour later. The report was loud.

I always wake up at that hour. I do not go to work early. I did not get up I only wake up.

I discourse that morning about life with my wife. I did not discuss with my wife the sound I heard. I always hear gun fire. I did not get up to see what it was at all about.

I can see people walking along the Bee Hive

In the
Supreme Court
of British
Guiana.

Defence
Evidence.

No.33.

Joshua Jerrick.

30th November,
1956.

Examination.

Cross-
Examination.

In the
Supreme Court
of British
Guiana.

Defence
Evidence.

No.33.

Joshua Jerrick.

30th November,
1956.

Cross-
Examination -
continued.

dam from my house. I saw people walking on that dam that morning when I open my door but I cannot tell the time.

I can't tell the hour I went on that dam in the morning. I did not batho in the company's trench that morning.

I did not see Lochan or Viora that morning.

I saw women running to the scene. I saw plenty people running. I saw about 10 - 12 persons at the yard. I got there about 12 minutes past six. I did not notice if anyone was standing on the dam. Saffie's mother was crying. I saw Saffie's body on the ground. I do not know how it got there. I did not hear anyone mention about step. There was no confusion I only saw people crying. The railway station is the only place with a telephone. I got to the railway station about 6.30 a.m. The second train had not yet arrived. I was coming to town by that train, when I had gone to the deceased house I was fully dressed and ready to take the train. Nabi Baksh came and saw me at the station. We took the train together. I did not see a policeman come aboard at the next station.

10

20

Kalloo could have heard what I said to the station master and Nabi Baksh could have heard.

I heard the station master telephoning the police. I came back from Georgetown by the last train.

Both accused and myself grow up in one village.

I heard on the 13th June 1956 that they were charged with the murder of Saffie. I did not tell any policeman what I had heard.

30

I did not instruct the station master to get in touch with the police.

I was surprised to hear that they were charged with the murder of Saffie. I did not speak to any policeman about what I heard.

I got a telegram yesterday to come to court today.

I think the lawyers knew about me by the evidence of Kalloo.

40

The station master did not ask me if I knew who shot Saffie. I did not reply to the station master I do not know.

The train had not come in when I was speaking to the station master. I got to the station some minutes after six.

Saffie's house is about 100 rods from the station. It took me about 10 minutes to get to the station.

10 I got to Saffie's home some minutes after 6 a.m. Remained there about 2 minutes.

I had time enough to go and look on the body.

I have given evidence before in Court on my own behalf. Did so twice. I have never appeared in the Georgetown Court before Magistrate R.S. Persaud in 1947. I have a nephew also named Joshua Jerrick.

I am 48 years of age, never lived at Ann's Grove.

20 Albertha Jerrick was my first wife. Augustus is my brother.

I have appeared in Cove and John Court before Mr. Mongal Singh for wounding. I think it was in 1954 and I was convicted. Never appeared before Magistrate Mr. Brown.

Re-examination:

I was fined for wounding.

The station master asked me if they know who shot Saffie and I replied No.

In the
Supreme Court
of British
Guiana.

Defence
Evidence.

No.33.

Joshua Jerrick.

30th November,
1956.

Cross-
Examination -
continued.

Re-Examination.

30

No. 34.

No.34.

EVIDENCE OF SHIRA ALI

Shira Ali.

SHIRA ALI sworn:

30th November,
1956.

I am the wife of Hiat Ali. I have 8 children. I live with my husband at Field 11 Bed 1 La Penitence. I know the accused Fiaz Baksh.

Examination.

I saw him at my home on 11.6.56 at 5 to 5.30 p.m.

In the
Supreme Court
of British
Guiana.

Defence
Evidence.

No.34.

Shira Ali.

30th November,
1956.

Examination -
continued.

About 6 p.m. he had dinner. I went to bed about 9 p.m. that night. Up to the time that I went to bed I left Fiaz Baksh speaking to my husband in the gallery.

I got up next morning at about 5.30 a.m. to 5.45 a.m. to make tea.

I woke up my husband and my son Ariff who had to go to work at Hack's Cycle Store. He leaves about 7 a.m. He got up and opened the bedroom door. I saw Fiaz Baksh came out of that same room a few seconds after and sat on a bench in the kitchen. That was about 6 a.m. or a few minutes after six. 10

Fiaz Baksh went to the latrine. After that I gave him water to wash his face in the kitchen. After that he went on the back stop platform and wiped his face. He came in and I gave him tea about 6.30 a.m. or 6.45 a.m.

We spoke and he left the home after 7 a.m.

On 11.6.56 I understood that he intended to spend the night at my home. 20

Cross-
Examination.

Cross-examination by Crown Counsel:-

My son sleeps in his own room. Ariff was sleeping at 9 a.m. when I went to bed. I do not know what time Ariff went to his room. He can go to his room without my knowing. He is about 18 or 19 years of age. I did not know when he went to his room to sleep. He can get out of the house by way of the kitchen. If I am in the kitchen I will know when he comes in or goes out. Ariff went in the room before Fiaz Baksh. Fiaz Baksh locked the room door. 30

Fiaz Baksh was in the gallery when I went in the room and my husband was with him.

I heard the "dead news" coming over the radio when I went to bed that would be about 9 p.m.

About 10 or 15 minutes after my husband joined me in bed.

After my husband came in the room I got up and went into the kitchen to see if everything was alright. 40

There is a front door to the house. I do not

know if my son could have gone out by the front door.

Fiaz Baksh is my brother-in-law. He married my husband's sister.

I have a small son 6 years old.

There is a single bed in my sons room. My son Ariff and my small son sleep on that bed. Three or four persons can sleep on that one bed. Fiaz Baksh must have slept on that bed with them.

10 On Monday afternoon at 4.30 p.m. when Ariff came from work he told me that his stomach was hurting him. He went out. I do not know that he went to the Cinema and came out at 7.15 p.m.

I have been to Clonbrook by car. I take the car at Stabrook Market. I do not know anyone named "Badd". I do not know that Fiaz Baksh has a nephew named Badd who has a "hire-car" in Georgetown.

I do not know if my husband had to get up in the night to open the door for Fiaz Baksh.

20 I have never travelled from Clonbrook in the morning by Car at about 4.30 a.m. I saw Fiaz Baksh before 6 a.m. at about 5.45 a.m. on 12.6.56.

When I finished making my husband tea I rapped at my son's door to wake him up. He opened the door and came out. I had a talk with Fiaz. He told me in the afternoon and also in the morning that he had to see his lawyer in Georgetown.

30 At about 5.30 p.m. On Monday he told me that he was staying. He did not bring any parcel with him as if with night clothes. My husband did not provide him with any clothes to sleep. When Fiaz came out of the room in the morning I saw him with armless singlet shirt and short pants. Later he had on shirt with long pants.

I know Fiaz's house in Clonbrook. I do not know Saffie's house.

I do not know Nabi Baksh house.

Re-examination:

40 When I saw Fiaz in the morning it appeared that he had on his underpants.

The stove is opposite the bedroom door of my room and about 10 feet away. Whilst I was making

In the
Supreme Court
of British
Guiana.

Defence
Evidence.

No.34.

Shira Ali.

30th November,
1956.

Cross-
Examination -
continued.

Re-examination.

In the
Supreme Court
of British
Guiana.

Defence
Evidence.

No.34.

Shira Ali.
30th November,
1956.

Re-examination
- continued.

tea if anyone had gone into the bedroom I would have seen.

From the time I got up no one came in or went out of the room. I rapped at the door of the room and my son came out.

I think Fiaz was wearing a plaid shirt and a darkish colour pants that morning and it was the very clothes he wore the evening before.

I had a baby about 1 year old in my room.

I had allowed Fiaz to sleep in my son's room. 10

Before I went to bed that night I checked my doors to see that they are locked. It is my usual duty. I was satisfied that everything was alright. I keep the front key in my bedroom. The back door is left with the key in it. I opened the back door at 6.30 that morning. The front door was not open yet.

I gave a statement to the Police that Tuesday night. My husband and Ariff gave statements to the Police. 20

I live beyond La Penitence market about 100 rods away and then 15 minutes walk inside.

Jury warned.

Adjourned 3/12/56.

Resume 3/12/56.

Jury call over.

No.35.

No. 35.

Shira Khan.

EVIDENCE OF SHIRA KHAN

3rd December,
1956.

SHIRA KHAN sworn:

Examination.

I am a neighbour to Shira Ali and living at Middle Road, La Penitence, Field 9, Bed 10. About 200 rods south of La Penitence market then turn East for about 800 rods. Ruimveldt Police Station is nearby. I know Fiaz Baksh. I saw him at a wedding on 20.5.56 at Shira Ali's home. I saw him again on the evening of 11th June, 1956 going into the yard of Shira Ali. It was after 5 p.m. I next saw him the following Tuesday morning that is 12.6.56. I saw him at about 6 to 6.30 a.m. at the back steps of Shira Ali's home. 30

Cross-examination by Crown Counsel:

Shira Ali is no relative of mine. She has been my neighbour since 15.1.56. I had known her for about 2 to 3 years. When I saw Fiaz Baksh he was going into Shira Ali's house. I know one Mohamed Ali who lives further West and he is family to Shira Ali.

I did not see Fiaz Baksh go to Mohamed Ali's house or come from there after 5 p.m.

10 I was seated on my step when I saw Fiaz Baksh going into Shira Ali's house.

I went to bed after 9 p.m. I have not got a radio. My neighbour has a radio.

On 12.6.56 I saw Fiaz Baksh at the back step with a towel in his hand. My husband leaves home at 6.30 a.m. I do not remember if my husband had left for work. I do not think so.

After I read it in the papers on Wednesday I remembered that I had seen Fiaz Baksh.

20 My husband works at Sprostons. He rides a bicycle. Sprostons is not more than a mile from my home.

Re-examination:

I live in a cottage divided in two. My neighbour with the radio lives in the other section of the cottage.

No. 36.

EVIDENCE OF JOSEPH JERRICK.JOSEPH JERRICK sworn:

30 I am 19 years of age. Live at Bee Hive. I know where Mohamed Saffie used to live. My father is Augustus Jerrick. On a Tuesday I heard that something had happened to Mohamed Saffie. I know Richard Carbon. He has a kitchen garden about 25 rods from where I live. About 3 days after I heard the report about Mohamed Saffie I went to Richard Carbon's kitchen garden and I saw Richard Carbon there. He had a gun in his hand. That was about

In the
Supreme Court
of British
Guiana.

Defence
Evidence.

No.35.

Shira Khan.
3rd December,
1956.

Cross-
Examination.

Re-examination.

No.36.

Joseph Jerrick.

Examination.

In the
Supreme Court
of British
Guiana.

Defence
Evidence.

No.36.

Joseph Jerrick
3rd December,
1956.

Examination -
continued.

9 a.m. I spoke to him. I asked him if he shot any pig. I asked him because I heard a gun fire and I went around to the garden. I am minding pigs and I know Carbon always shoot pigs. Carbon replied that he did not shoot anything in the garden. I started to search near the garden and I found a dead pig. It was shot. I took it away and cleaned it. I ate it.

I said to Carbon how you told me you shot no pig and I find my pig shot dead. He did not reply.

10

I noticed that the gun Carbon had in his hand had a piece of wire band by the trigger. I never saw Carbon again after that day.

The next week a saw the Police with a gun with a piece of wire which they were taking to the Police Station.

No Cross-examination by Lloyd Luckhoo.

Cross-
Examination.

Cross-examination by Crown Counsel:

Joshua Jerrick is my uncle. I live far away from him. I did see him on Friday in the Court gallery. I have been attending Court in this matter for about two weeks. I have known Carbon since I was a small boy. I live about 100 rods from him and to the East. I have to cross a trench before I get to his place. His garden is about 50 rods from his house and a back dam side.

20

I mind my pigs at my house. No other persons with kitchen garden. It is about 50 rods from my house to Carbon's garden.

There are many gardens near to Carbon's house.

My uncle has a garden and there are about 4 other gardens.

30

My pigs never damage anybody garden. My pigs always go straight down the dam and to Carbon's garden. I called Carbon's attention to the fact that the pig was outside his garden. I called Carbon to look at the pig. He saw it. I saw damage done inside the garden. I did not take a constable to view the damage. Carbon has never before this day shoot a pig of mine. I did not see him before with a gun and I do not know if he had a license to keep a gun. No rural constable near to me. I know there is a rural constable in Ann's Grove. The

40

nearest Police Station is Cove and John. I did not make any report to anyone about Carbon having a gun and shooting my pig. I have been to Cove and John Court and been convicted there twice.

I was not vexed when Carbon shot my pig. I saw the people search in the trench. I saw the Police with a gun with a piece of wire.

About 10 a.m. I saw people in the canal searching for a gun. I do not know Policeman Sancho.

10 I saw Policemen with the search party. I do not remember seeing Sgt. Chee-a-Tow. I saw a Policeman holding the gun that was found. I did not see where the gun was found. I noticed the wire around the trigger at that time. I then remembered that I had seen Carbon with a gun like that. I did not speak to any Policeman about it and I made no report at the station about it.

20 I never told the accused about it. I told my father who is Augustus Jerrick. I did not tell my uncle. I told my father the same day I went home. I do not know if he did anything about it. My mother is dead. I do not know if my father spoke to any rural constable.

I knew Fiaz Baksh before the shooting of Saffie. I do not know that he is a carpenter. I am not a carpenter boy. I am a labourer.

30 I knew he was charged with the shooting of Saffie. I can't remember when I heard. I heard in the afternoon of the Tuesday that Fiaz Baksh was charged with the murder of Saffie. The whole district knew and I heard from the people in the district. I told no one about the gun.

The family of Fiaz Baksh came to me about it. I do not know how long ago they came. I can't remember.

Re-examination:

My house to Carbon's garden is about 50 rods.

Carbon's house is about 100 rods from my house.

40 There are about 5 gardens in Carbon's house area. Those gardens are about 75 to 100 rods from my house.

Carbon's garden is the nearest to my house. I know that the law allows people to shoot pigs found trespassing in the garden.

I do not know the exact place where the pig was shot.

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Defence
Evidence.

No.36.

Joseph Jerrick.

3rd December,
1956.

Cross-
Examination -
continued.

Re-examination.

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No. 37.

STATEMENT BY NABI BAKSH FROM THE DOCK.

Defence
Evidence.

NABI BAKSH unsworn states:

No.37.

Statement by
Nabi Baksh
from the Dock.

3rd December,
1956.

I am not related to Fiaz Baksh. I do not know who shot Mohamed Saffie. On Saturday 9.6.56 I received a telegram which was produced in Court from Mr. E.V. Luckhoo instructing me to come to Georgetown on the following Tuesday 12.6.56 also Fiaz Baksh.

10

The said day I received the telegram I arranged with Fiaz Baksh to come to Georgetown the following Tuesday. I did not see him anywhere from then - the Sunday night or the Monday.

I remained in Clonbrook where I live with my relatives on Saturday, Sunday and Monday. On Monday evening 11th June, 1956 I went home about 6 - 7 p.m. I did not leave home for nowhere from then. Where I live I usually sleep with my family. I slept the whole night in the said house with brother mother and sister. I awoke the Tuesday morning to catch the second train. I walked openly. I caught the train where various villagers joined the said train. I travelled openly. Even one Constable Cummings met me in the train and sat just nearby. We spoke to each other. From the station I went to Mr.E.V. Luckhoo's office where I met Fiaz Baksh. P.C.Cummings came and asked us to go with him to C.I.D. Brickdam for enquiry. I did not tell him that I ever slept in town nor did I sleep in town. Fiaz Baksh told him that he slept in town. When we got to Brickdam we met Sgt. Fraser who asked me in the presence of Constable Cummings if I had any money and anything else. I delivered my money, train ticket, parcel and handkerchief to Sgt. Fraser in the presence of Constable Cummings. Then he asked us to go to Cove and John for enquiry.

20

30

At Cove and John Corporal Alexander took a detailed statement of all my movements. I readily gave it to him as I had nothing to hide. The statement I gave to the police of all my movement is true. In fact I am absolutely innocent of the murder of Mohamed Saffie and I do not know who shot him. I never use a gun in my whole life. Neither

40

10 I never own a gun. I have never found myself in possession of a firearm or anywhere about even at my house. If anyone says so it is false. I did not know Mohamed Haniff. I never spoke to him in my whole life, neither he never spoke to me. The first time in my life I saw him and I heard his name was at the Magistrate's Court at Cove and John when he gave evidence in this case. The evidence by Mohamed Haniff, Mohamed Nasir and Bebe Mariam also Mohamed Mustapha is entirely false; in fact I am absolutely innocent for the murder of Mohamed Saffie.

In the
Supreme Court
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Guiana.

Defence
Evidence.

No.37.

Statement by
Nabi Baksh
from the Dock.

3rd December,
1956 -
continued.

No. 38.

EVIDENCE OF RASULAN

RASULAN sworn:

20 Female East Indian. Nabi Baksh is my son. I was at home on Monday night before Saffie's death. I live at Clonbrook. Accused Nabi Baksh slept inside my house that Monday night. I got up about 3 a.m. Tuesday morning as I had to go to market to sell fruits and greens. I came to Georgetown by the first train. I have not got a clock. First train leaves about 5 a.m. I made two trips to the station carrying bananas. I saw that Nabi Baksh was sleeping in the hall. I came to Kitty market. I got back to Clonbrook in the afternoon and before dusk. I heard at the Kitty Market that Nabi Baksh was arrested.

No Cross-examination by E.V. Luckhoo.

30 Cross-examination by Crown Counsel:

I have Azizan a daughter. She came to my house that Monday night and stayed there.

I have two houses in my yard, one new, the other old. No one lives in the new house. All of us live in the old house. There is the room, a hall and a gallery. Azizan slept in a hammock in

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Rasulan.

Examination.

Cross-
examination.

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Defence
Evidence.

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Cross-
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continued.

the hall with a sick child. Azizan and I did not sleep in one bedroom. When I got up at 3 a.m. I saw Azizan awake in the hammock with the sick child. I do not know what time Azizan got up. I left at 5 a.m. I do not know if Nabi Baksh was dressed when Azizan got up. Azizan stayed until the baby felt better. I do not know if police came to my house. I did not go to the Police Station.

I did know that my son was going to town He told me so. He told me that he had got a telegram. 10

I went twice to the station with my load. A little girl named Jameda helped me carry the things. Nabi Baksh did not help. Nabi Baksh told me he was going to lawyer but he did not tell me what train he was going to catch.

I had my tea before I left for Kitty. I have another son named George. Nabi Baksh and George were asleep when I left. I did not hear the bus blow. I did not see my son Nabi Baksh get up that night. 20

The door is bolted not locked with a key. There is one hammock in the hall. My bedroom door is open all night. It has not got a lock.

Re-examination. Re-examination:

My daughter lives at Ogle Front. She came because the child was sick with 2 abscesses. Child about one year old. Azizan came in my bedroom but did not sleep in there that night.

By Jury

By Foreman: Do you know Fiaz Baksh?

Answer: Yes. 30

Question: Did you know Mohamed Saffie.

Answer: I knew Mohamed Saffie.

Case for Nabi Baksh

No. 38A

Notes of
Proceedings,
3rd-5th
December, 1956.

No. 38A

Notes of Proceedings

Jury warned.

Adjourned

Resume.

Jury call over.

Mr. E.V.Luckhoo counsel for M.Fiaz Baksh addresses. 40

Jury warned.

Adjourned to 4/12/56.

4/12/56.

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Resume.

Jury call over.

Mr. E.V. Luckhoo continues his address to the Jury.

Mr. Lloyd Luckhoo Counsel for Nabi Baksh addresses.

No.38A.

Jury warned.

Adjourned.

Notes of
Proceedings,
3rd-5th
December, 1956
- continued.

Resume.

Jury call over.

Mr. Lloyd Luckhoo continues his address.

10 Mr. Edun Crown Counsel addresses.

Jury warned.

Adjourned to 5/12/56.

5/12/56.

Resume.

Jury call over.

Mr. Edun continues his address.

Judges summing-up.

Jury retire. Two Sworn Marshalls in attendance.

Jury return.

Jury call over.

20 Verdict:- M.F. Baksh - Guilty of Murder.
N. Baksh - Guilty of Murder.

Verdict

M.F. Baksh - I am innocent.

N. Baksh - I am absolutely innocent sir.

This is the first time in Jury have ever found
a man absolutely innocent Guilty.

Sentence: M.F. Baksh - Death.
N. Baksh - Death.

Sentence

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No. 39.

SUMMING UP OF MR. JUSTICE CLARE

No.39.
Summing-up of
Mr. Justice
Clare.
5th December,
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Mr. Foremen and Members of the Jury, we have been seated here for the past twelve days or so listening to a very important case. Possibly you have found your seats not so very comfortable and the only thing I can say in that regard is that a great man, Abraham Lincoln, I think it was, said "If your seat is too hard stand up". Unfortunately, you are so placed that you have to sit there and listen and, if I may say so, you have done that exceedingly well. I trust that my summing up - at least I shall endeavour to make it so - will be not as burdensome as it might be seeing that we have had at least eleven days of taking of evidence. 10

The indictment on which both accused are being tried is as follows :-

The Statement of Offence being murder and the Particulars of Offence are that Mohamed Fiaz Baksh and Nabi Baksh, on the twelfth day of June, in the year of Our Lord One thousand nine hundred and fifty-six, in the County of Demerara, murdered Mohamed Saffie. 20

On the case presented to you, as Crown Counsel has said, there are only two possible verdicts open to you: either guilty of murder or not guilty. There is no room for a verdict of manslaughter in this particular case. There is no question of provocation and it is inconceivable that it could be said that the act of shooting at a person at close range is such as was not likely to cause death. So I do not propose to direct you on any question of manslaughter. It must be either murder or not guilty of any offence. 30

Members of the Jury, it is your duty to consider the evidence and decide on the guilt or innocence of each prisoner. There are two persons being tried and the case is being taken jointly against them, but you are to deal with the evidence in relation to each accused separately. You are not to lump them as one. You are to examine the evidence and make up your minds in regard to each accused for the reason that you will be called upon to give a verdict regarding each. 40

You are to consider only the sworn evidence that you have heard in this Court and not anything that any of you might have heard outside the Court. You are to put all those things from your minds as also the question of sympathy. You have no sympathy whatsoever to bestow either upon the relatives of the deceased or sympathy for the accused because they are so charged on this indictment.

10 You are to put away all prejudices that you might have against the accused possibly because they are charged for this type of crime. They have each elected to give a statement from the dock and as you have heard it is well within their province so to do. In fact, I informed them of their privileges and I told them that they may give evidence or make a statement from the dock, or indeed be silent.

20 Of ancient times the prosecution had to prove their case without having a word from the accused. The prosecution have brought them here and they are to prove the case. It is not the accused person that has to prove his innocence - or their innocence in this case.

30 The accused persons have brought witnesses and it is your duty to weigh the evidence of their witnesses and the statements of the accused themselves in the same scale, or give it the same treatment, as you do the evidence of the prosecution. Indeed you are seeking after the truth and so you must investigate and sift everything that is placed before you.

40 A plan has been shown to you which you have and you must use. That has been prepared by the surveyor. There are the photographs that have been prepared by the Police Department to which you also have access, and you were allowed to visit the locus. Indeed, as far as those things are concerned you are fully equipped. You have all the material which you may use to investigate and sift this evidence so as to arrive at the truth.

I mentioned to you that the accused persons have in their wisdom elected to make a statement from the dock and they are entitled so to do. However, you are also entitled to draw inferences that may be unfavourable to the prisoners where they are not called to establish an innocent

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explanation of facts that you might find proved by the prosecution and which, without such explanation, tell of their guilt.

You are the sole judges of fact in this case and you are to make up your minds and determine the issues of fact. That includes not only facts as such but the deductions which you are able to make from the facts that you find proved in this case. You are entitled to draw reasonable conclusions from the facts that you find proved to your satisfaction, but you must always give the benefit of the doubt - of any reasonable doubt - to the prisoners. 10

It is for you to say what evidence you believe and what you disbelieve and all questions of fact are for you to decide.

In considering the evidence it is necessary, it is wise, that you should note the demeanour of witnesses, the manner of giving their evidence and the way a witness answers questions by Counsel: and when I say that it is not confined to the defence Counsel nor to Counsel for the Crown. 20

What I mean is that you observe them - the manner in which they answer all questions that are put to them, whether by the Foreman, or by any of the Counsels, or by myself.

It is well within my province to express an opinion on the facts but you are to remember that you are by no means bound by my expression of opinion or bound to follow it. You are at liberty to discard it and substitute your own. In fact, if you do not agree with it you should do so. 30

Those remarks are equally applicable to any submissions that Counsel for the prosecution or for the defence might have put to you. They have submitted certain views to you and I might submit my own. Well, if you agree with them you accept them as your own. If you do not agree with them then you forget them and discard them and form your own views. You are the sole judges of fact in this case and as far as the facts are concerned you are supreme. But where the law is concerned you are to accept the law as I direct you. 40

In this particular case there are two persons

that are being tried together. They have each made several statements to the police and each made a statement from the dock. You are to understand that a man's statement is only evidence against himself and not against his co-prisoner. If a statement implicates a co-prisoner it is not evidence against that co-prisoner.

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10 Nothing said by one accused, or by any person, either in the absence or in the presence of the other accused is evidence against that other accused, unless you find that there is something which goes to show that the other accused accepts what has been said in relation to him - accepts it either in whole or in part. If he does not accept it at all you cannot allow it to operate in relation to one accused anything said by the other accused either in his presence or absence unless he accepts it in whole or in part.

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20 In this case, as in all criminal cases, the burden of proof is on the prosecution and proof is the establishment of a fact to your satisfaction beyond reasonable doubt. It is the law that every accused person is presumed to be innocent until he is proved to be guilty and the burden of proving him guilty rests upon the prosecution all the way during the whole of the case; and while the prosecution must prove the guilt of the prisoner there is no such corresponding burden laid on the prisoner to prove his innocence - or the prisoners: when I use
30 the singular as far as this case is concerned it refers to both of them. It is sufficient for him to raise a doubt as to his or their guilt. He is not bound to satisfy you of his innocence.

40 You must on all occasions give the prisoners the benefit of any reasonable doubt that exists in your minds and when you are satisfied of a fact beyond doubt you will act on it though it may be unfavourable to the prisoners; but if you are in any state of reasonable doubt it is your duty to give the prisoners the benefit of that doubt.

If at the end of the case and after considering all the evidence for the prosecution and the defence you are left in a state of doubt as to whether one or other or both accused are guilty of this offence you must acquit, because the prosecution has failed to satisfy the onus of proof which lies upon

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them and the accused are entitled to the benefit of that doubt and should be acquitted. Equally, if you are satisfied that the prosecution has proved the case beyond a reasonable doubt it is your duty to convict, and if there is a reasonable doubt as to the guilt of the accused then they must be acquitted.

Reasonable doubt means moral certainty and you, gentlemen, should be fully satisfied of the prisoners' guilt before you convict them. 10

You may well ask 'What is proof beyond reasonable doubt?' Well, proof beyond reasonable doubt does not mean proof beyond a shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which may be dismissed with a sentence, "Of course, it is possible but not in the least probable", then the case is proved beyond reasonable doubt and nothing short of that will suffice. 20

I have already told you that the burden which lies upon the prosecution is to establish the existence of facts beyond reasonable doubt and that means, that the evidence should be such as to lead you, members of the jury, to such certainty as you would act upon in matters of great consequence in your own private affairs; matters that possibly would affect your own life.

Such doubts must not be just fanciful or flimsy doubts. Then and only then can it be said that the prosecution has proved the case to your satisfaction and beyond reasonable doubt. You may convict on the strength of the Crown's case but not on the weakness of the Defence. 30

The Crown does not have to prove motive but if motive can be proved it will help you, gentlemen of the jury, to understand the case. As regards motive there is no obligation whatsoever upon the Crown to prove motive. They are not obliged to do so but if there is a motive then they may call evidence for the reason that if there is a strong motive for an act it strengthens the prosecution's case. 40

I read out the indictment to you which charges both accused for murder and murder is the unprovoked

killing of a human being without lawful excuse, with the intention of killing or causing grievous bodily harm from which death is likely to result and does result.

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You must be satisfied that the killing was not the result of an accident. No one can be held criminally responsible for the death of a person as the result of an accident.

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10 You must be satisfied that there is no question of self-defence. No such defence has been put forward in this case. If it were the case that the deceased was fighting with some one and that other person was in mortal danger at the hands of the deceased and in order to save his own life that other person had to kill the deceased, then no crime would have been committed because the law says that a man is entitled to take the life of another in protecting his own life in certain circumstances. If those circumstances do not exist then the killing is unlawful. Well, as regards this case I have
20 already said that there was no such suggestion of self-defence.

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If there are circumstances indicating provocation the killing nevertheless is unlawful and provocation can only reduce a murder charge to one of manslaughter. It is entirely unnecessary for me to give any directions as to provocation as it has not been raised by the defence and there is no evidence on which it may be said that the person or
30 persons who killed the deceased was provoked to such an extent by the deceased that he (or they) lost power of their self-control and so killed the deceased. Yet, those circumstances, I said, will only reduce the charge to one of manslaughter.

Provocation will arise if the conduct of the deceased to the prisoners was such as would cause a reasonable person, and actually caused the prisoners, to lose his self-control and to drive him into such a passion and lack of self-control that he
40 might use violence of the degree and nature which the prisoners used. The provocation must be such as would reasonably justify the violence that was used.

In order to establish the charge of murder against the accused the Crown must satisfy you beyond reasonable doubt of four things :-

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- (1) that one or both the accused shot the deceased;
- (2) that the deceased died as a result of the wounds;
- (3) that the prisoners' intention was to kill or to cause grievous bodily harm; and
- (4) that the use of the gun was unprovoked.

Well, as far as the evidence goes there is evidence that the deceased died as a result of the wounds. The doctor described the injuries to you and he has certified the cause of death, so that there is one thing that has been proved and it is for you to say if it is to your satisfaction. When we are going through the evidence I shall relate to you what the doctor says as to the cause of death. 10

There is no evidence whatsoever, as I said before, of provocation so we leave that alone. You must, however, be satisfied that the prisoners took the life of the deceased and that they did it by means of an intentional act that was likely to cause death. 20

Having read the indictment out to you and you observe that there are two prisoners being tried on that indictment I come to that section of my advice to you which we would term - at least I am informing you of what we call in law - a common design.

Now, gentlemen, if you are satisfied, and you so find, that the death of the deceased was caused by one or other of the accused persons it is for you to determine whether there existed a common design - that is to say, a pre-concerted plan, an agreement or a confederacy or a community of purpose. All those legal terms just come to mean an agreement between them. 30

You have to ask yourselves whether this was some joint affair - a common design between them - some joint act between Fiaz Baksh and Nabi Baksh.

If you cannot find that there was a common design - some joint purpose - then you will have to ask yourselves which of the two accused, if you are so satisfied that it was done by one of them - and that is for you to determine. 40

If you are satisfied it was one of them but the two of them were not acting together, then you will have to ask yourselves which of the two it was.

10 If you are satisfied that there was no common design but you are satisfied that it was done by one of the accused acting independently of the other, but you are unable to say which one it was, then obviously your verdict will be not guilty. That is where you find there is no common design, no common purpose, no joint act between them.

If you find that there is no common design and you can on the evidence say with certainty, beyond reasonable doubt, which one it was, then you will return a verdict of guilty on that one. It is a matter of fact for you but you must be able to say, if it is one only, which one it was. That is where you find that there is no common design.

20 If you find that there was a common design the position is entirely different because you have not got to be satisfied as to which of the two did the shooting resulting in death. If you find that these two men were acting together the act of one is deemed to be the act of both. That is the law. If you say both were acting together it is not necessary to determine which of the two actually caused the death.

30 Gentlemen, there are two categories of persons who are deemed to be equally responsible for a crime committed by some one else where they do not take an active part in actually inflicting an injury or in actual physical perpetration of that crime. The first category of the offender is called what is known as an accessory before the fact and if you find that either of these prisoners falls within the category he is equally responsible with the principal felon - that is, the person who actually commits the killing. The second category is a person who is known as a principal in the second degree and I shall endeavour to explain the difference between an accessory before the fact and a
40 principal in the second degree.

If you find that one of the accused either counselled, procured or commanded the other accused to commit this offence but at the time that the murder was actually committed that accused was so

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far away that the person committing the offence would not be encouraged by the hope of any immediate help or assistance from that accused then you may convict.

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In other words, if you find that one of the accused committed the offence, that the other accused had either commanded, procured or counselled him to commit, but he was too far away to give any immediate help to the one who actually did it, he is nevertheless equally responsible for what that other person has done even though he is too far away to give any immediate help. 10

But you must be satisfied that there was some degree of direct incitement by the accessory that directed the person who actually committed the offence - an incitement to commit the offence which is actually charged: that is in this case the offence of murder. There must be some active proceeding on his part - that is the accessory, the person who is too far away to give immediate help. 20

You will want to know what in law would constitute incitement by any accessory to the person actually committing the offence.

Incitement may take the form either of expressing a liking, some approbation or assent or agreement, to the felonious design of the person who actually commits the offence. If he expresses a liking or approbation or assent to that felonious design it is sufficient; but mere concealment of what the person intends to do is not sufficient. If you find that one intended to go and shoot another person and the other one knew about it but did not say anything and concealed it, that is not sufficient. 30

You must be satisfied that there was some incitement proceeding from the accessory to the one who actually commits the offence. But as I have said already, a mere concealment, if he knows what the other accused is going to do and merely conceals it and says nothing, is not sufficient to make him an accessory. 40

Nor will some tacit acquiescence, that is, offering of no opposition to what is planned, be sufficient; or words which you consider might even amount to a mere permission where he says "all right

go ahead". If you find that is the position well, that in itself would not be sufficient.

You must be satisfied that there was some active proceeding or some direct incitement on the part of the absent accused - that is to say, what we are discussing: the accessory, the one who was too far away to render immediate assistance to the person who actually commits or perpetrates the offence.

10 If you find that one accused either commanded or counselled or procured another to commit an offence, if you find that there was some direct incitement on the part of one and that at the time the offence was committed that one was too far away from the other to render him any immediate assistance, then he is nevertheless equally guilty with him, if you find that there was direct incitement as I have already explained to you.

20 So then, if there was some direct incitement on the part of, shall we say "A", and that at the time the offence was committed "A" was too far away from "B" to render him any immediate assistance, "A" is nevertheless equally guilty with "B" if you find that there was direct incitement which I have already explained to you.

30 Now, the next position is this: suppose you find that one accused, though not actually physically joining with the other in the commission of that offence, is nevertheless near enough to give assistance should the occasion arise you must know what the law is in relation to that person who would be known as a principal in the second degree; - that is one who is near enough to give assistance should the occasion demand it; the other fellow is too far away - the one that I have previously spoken of: he could not give immediate assistance; he is an accessory; but if he has given direct incitement he is equally responsible and must be treated the same as the principal felon - that is, the doer of the act.

30 Now we come to the principal in the second degree who is near enough to give assistance if required. He is not, shall we say, an active participant, but he is near enough to give assistance should the occasion arise. In such a case the questions which you must ask yourselves, gentlemen,

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are three:

First, was the accused whom you are considering near enough to give assistance if required;

Secondly, was there at the time of the commission of the offence a common purpose; a knowledge on the part of the principal in the second degree of what the other accused proposed to do and an intention on his part - that is the one who is slightly removed from the scene - to aid or encourage the person actually committing the offence; and

Thirdly, was there an actual aiding or encouraging or a readiness to aid or encourage if the circumstances demanded it?

If the answer to those three questions is in the affirmative - that is where you say 'yes' - then that person, though not actively taking part in the commission of the offence, is as guilty as the person who actually discharged the shot.

If you are satisfied that there was a community of purpose and there was either an incitement on the part of one where the person is too far away to give assistance; or if you find that a person was near enough, that there was community of purpose and he was ready and willing to help should the occasion arise and that he knew what was planned, then he is equally responsible.

If you find that they were together side by side, the other one right opposite him, well then, you would not have to disturb your minds with the principles which apply to an accessory before the fact - that is a person who is too far removed - or the principles of the principal in the second degree - that is, within distance to give assistance if necessary.

I think I should tell you this, gentlemen, that if you find that at some stage there did exist a common design but that before the commission of the crime, if you find it was in fact committed, that the willingness to join in it was countermanded - that is, withdrawn - before the commission of the crime, well, that does not show the existence of a common design because if the person originally agrees to join with another one and before it is carried

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into effect he withdraws and says "I did say I was coming but I am no longer coming along with you" well, then, you cannot say that a common design existed. You must find that a common design was carried into effect up to the time of the commission of the offence.

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10 As regards this case there is no direct or positive testimony of an eye-witness - a witness who actually saw the gun discharged and Saffie fall and then die. You have before you what is called circumstantial evidence and, therefore, you are permitted to infer from the facts proved other facts necessary to complete the elements of guilt or establish innocence.

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20 It has been said that circumstantial evidence is often the best evidence but nevertheless, you should approach it with caution. It is evidence that lends itself to fabrication - evidence that can be made up, - but it has been said that it is often the best evidence. You, members of the jury, must approach this circumstantial evidence with caution and you are to realise that circumstantial evidence is evidence of the surrounding circumstances which by undesigned coincidence - undesigned coincidence - is capable of proving a proposition with the accuracy of mathematics.

30 I shall read to you some extracts and here it says that the jury may convict purely on circumstantial evidence but they should be satisfied - and this is where it starts - "not only that those circumstances were consistent with his having committed the act, but they must also be satisfied that the facts were such as to be inconsistent with any other relational conclusion than that the prisoner was the guilty person". That is an extract from an ancient case called the Hodge's case. Those were the directions of the Judge at the time.

40 Or, as it was put by Lord Hewart in Rex versus Podmore - and this case is cited in Wills on Circumstantial Evidence, seventh edition, at page 43 - It says "Circumstantial evidence consists of this: that when you look at all the surrounding circumstances you find such a series of undesigned unexpected coincidences that as a reasonable person you find your judgment is compelled to one conclusion".

There is also this statement by Lord Chief Baron

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Macdonald and it is enunciated in the case of Rex versus Patch. (It is also cited in Wills on Circumstantial evidence at Page 323). "The nature of circumstantial evidence is that the jury must be satisfied that there is no rational mode of accounting for the circumstances other than the conclusion that the prisoner is guilty".

Well, members of the jury, that is how you are to apply the evidence that you have heard in this case. If there is evidence before you on a murder charge and it is proved to your satisfaction that "D" was murdered in a house and "X", the prisoner, was seen running from the house with a bloody sword in his hand, these facts would raise a violent presumption that "X" who was running away with the bloody sword was the murderer.

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Now, members of the jury, intention is not capable of positive proof. It is a deduction which you make from the facts you find proved. If a man takes up a loaded gun and shoots at and kills another, what other intention could he have but to kill or to do grievous bodily harm?

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The defence in this case is that the prisoners were elsewhere when the crime was committed. They are saying that they are not the persons, and could never be the persons, who were seen as they were so far removed from the kitchen or the house. It is my duty to tell you that if you consider that the alibi has failed you must now turn to the facts of the case and consider them on their own merits.

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In law when a person submits that type of defence - that he was elsewhere when the crime was committed - we term it as an alibi:- hence the use of the term.

If in your opinion the defence of an alibi has failed the prosecution does not necessarily succeed. You still have to consider the facts of the case and see if the prosecution has proved the case beyond reasonable doubt. The onus of proving an alibi is on the accused but the onus on the prosecution of proving the identity of the person or persons that did the act still remains. It does not prevent you, gentlemen, from finding that notwithstanding that the alibi is not proved the explanation given by the accused persons throws so

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much doubt on the evidence of the prosecution as to lead you to say "we have a doubt about the guilt of the prisoners" and you will therefore acquit them.

10 When an accused person is required to prove a fact he is not required to prove it beyond reasonable doubt as in the prosecution's case. He is only required to prove that on a balance of probabilities and if on such balance of probabilities you come to the view that they are not the persons who discharged the shots that killed the deceased then they are not guilty.

I think I should further inform you that as regards circumstantial evidence the circumstances may point to one conclusion but if one circumstance is not consistent with guilt it breaks the whole thing down. It may be described as a chain of circumstances and you might have heard, and possibly from experience can appreciate, that if one link in a chain is weak then the whole chain is bad.

20 So it is with circumstantial evidence. If one circumstance is not consistent with guilt it breaks the whole thing down; but if you find that each link, as far as this evidence is concerned, is in perfect condition and that you are compelled to the one conclusion that the accused are the guilty persons it must so reflect in your verdict.

30 You may have all the circumstances consistent with guilt but consistent with something else. In that case it does not prove the matter. What you want is an array of circumstances which point only to one conclusion and to all reasonable minds - and that is why you are here: you are persons with reasonable minds - and to all reasonable minds point to one conclusion only and to that conclusion only. You must be satisfied not only that those circumstances were consistent with the accused having committed the act but you must also be satisfied that the facts are such as to be inconsistent with any other rational conclusion than that the prisoners are guilty.

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So far as the question of determining who caused the death of Saffie is concerned the Crown must satisfy you on that issue that the prisoners were the persons who caused the death and the Crown must satisfy you on that beyond reasonable doubt.

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If you entertain a reasonable doubt as to who killed Mohamed Saffie then you are to say that the prisoners are not guilty: but if you are satisfied beyond reasonable doubt that the accused are the persons responsible for the killing, and that they killed him, then your verdict will be one of guilty of murder.

In the particular circumstances of this case we must therefore consider the facts as disclosed by the evidence. As I have already informed you the Crown's case is that of circumstantial evidence and that of the accused is an alibi - that they were elsewhere when this offence was actually committed; but you, gentlemen, full well know and appreciate this fact, that when a killing is committed it is usually done in secret, away from the eyes of witnesses, and it is now your duty to piece the evidence together that you have heard in this court and to decide upon the guilt or innocence of these prisoners.

I shall now attempt to give you a precis of the evidence that you have heard during the last eleven days, this being our twelfth day, I think.

You will remember that the first witness that was called was Desmond Edghill, the land surveyor, and he prepared that excellent plan which I have no doubt you will take with you into your room when you are having your deliberations because it has now been accepted in evidence. Further, you have visited the locus so that you can fully understand the plan.

You will remember that this witness, during cross-examination I think it was, told you of the notes that he made and as regards a bed in the house where this incident took place, and he told you that Haniff said it was the bed on which he was sleeping when he was awakened by the sound of the gun.

His notes have been put in evidence and you have access to them and I would advise you to take them along with other exhibits with you when you are considering the evidence. Those jottings were made by him at the time as he explained to you that he did not record the full conversation.

So then, in sifting the evidence you will know

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how to treat it and how to deal with it. If you find from that evidence that the witness, Haniff, is such a hopeless liar that you cannot accept any portion of his evidence then you will discard it; but you are entitled, members of the jury, to say, if you so find, that you will accept a portion of his evidence - not necessarily the whole of it - you may accept a portion of his evidence or the whole of it, or you may discard the whole of it.

10 If in your wisdom you find that he is not a witness of truth and you cannot believe anything that he said you will discard his evidence. But are you going to discard his evidence merely on the evidence of this surveyor, Desmond Edghill, or are you going to take the whole circumstances of the case and the evidence of all the witnesses and so weigh and sift it as to find out whether this witness is telling the truth in a certain aspect and not telling the whole truth in another aspect of the case so that you will only accept a portion of his evidence? But that is your province; you are to decide upon the facts.

The next witness is Eustace Williams. He was the sergeant photographer and he produced various photographs that were taken by him of the scene. I need hardly again refer to your visit to the locus so that you will better appreciate the photographs now that you have visited the locus.

30 After that we have the witness Mohamed Haniff and I have no doubt that you will come to the conclusion, as much as the defence and the prosecution have come to that conclusion, that Mohamed Haniff is an important witness. But that is for you. He is the brother-in-law of Saffie, Saffie having married Bebe Mariam, his sister. This witness comes from Herstelling and he went there to stay with them at Clonbrook. He described the whole surroundings, but again I remind you of your visit to the locus.

40 He was at the house on the night of the 11th June and this is his evidence. I am not stating it as a fact; I am just giving to you a precis of the evidence.

He says that he slept in the board house of Mohamed Nazir and the deceased Saffie in the bush house attached to a bush kitchen, and on the morning

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of the 12th June he got awake at 3 o'clock. That seems, as far as the evidence here is concerned, to be the usual hours for people to arise in that area.

He says Nazir, his wife, and Saffie and his wife also got up and he assisted them in loading baskets of fruit and greens, I suppose, into the boat that they were going off to the market to sell, and that Nazir left in the boat with his wife and Bebe Mariam for the bus stop where the boat would be unloaded; that he (Mohamed Haniff) returned to the house and Saffie was in front and Saffie went into the trash house whilst he (the witness) went upstairs in the board house; that he sat on his bed smoking a cigarette and waiting on Nazir's return and, to use his own expression, he said he heard a load fire from a gun, only one load, and it sounded as if it was from the kitchen and he said he heard a voice like Saffie's.

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He said -

"I went to the window with a flashlight in my hand. I went to the northern window". (Witness faces east and points to the south as the window through which he looked).

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Of course, members of the jury, you have noted his demeanour there in the witness box and from the way in which he gave his evidence you must have observed his intelligence. However, that is a matter for you to weigh.

He said -

"I turned on the light and fixed it on the east to west trench".

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You will remember that that light was taken away from him by Sergeant Chee-a-Tow. Need you ask the reason why; but the sergeant must have had some information. But that is for your consideration. He said he put it on the east to west trench "as I heard a noise in the water".

"I saw two men crossing over the trench at the back of the house in the southerly direction. The back of the men was facing me so I did not recognise them. They ran to the rice field dam and then came opposite the window. I was then able to make them out. I shouted. I made them out to be Mohamed Fiaz

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Baksh and Jacob - that is, Nabi Baksh - the two accused. They were then about three rods from me. I shouted alright Fiaz and Jacob, no use run any more I see you already. I saw a gun in Fiaz Baksh's right hand. Jacob had nothing. Both men turned and looked at me. They then jumped over the fence and ran away to the backdam side. I watched them. I then stand up for a while and heard a voice.

10 I ran downstairs and went to Mohamed Saffie kitchen where I saw Nazir. I also saw Mohamed Saffie lying with his face on his hands and he was on the step leading into the kitchen".

Well, that explains the blood on the step as shown on one of the photographs exhibited.

20 "His head was on the house flooring and his feet in the kitchen. He was over the step. Nazir spoke to me. I saw Saffie bleeding from wounds to his chest. I ran outside and shouted.

Nazir and I lifted Saffie from the step and placed him on his back in the kitchen.

The police also handled the body" (that is after they arrived).

"I saw Saffie's stomach had plenty of shot holes and he was bleeding from them.

When we put him down he was groaning but he soon finished groaning.

30 The police came later that morning. Saffie's mother came".

And then he showed you - he picked out - his torchlight and he said it was working at the time; it had three batteries and a bulb and the police took it from him.

40 Undoubtedly, gentlemen, you have knowledge of torchlights and those with that large glass in front would throw an excellent beam. As you might have heard in Shakespeare "How far that little candle throws its beam so shines a good deed in a naughty world". Well, in this case the torchlight was of assistance - that is what the witness says - and by that beam of light he was able to identify both accused.

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He went on further in cross-examination which I shall read to you, or I think it might have been in re-examination - a type of re-examination that I allowed - to say that there was also another torch-light; he observed another light other than his own playing on both accused and by that means he was able to identify them.

Members of the jury, identification is very important as regards this case. It depends to a great extent upon the identification and so, naturally, you will go carefully into this case and arrive at your conclusions in the manner that you have been persuaded by the evidence.

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In the cross-examination - you will remember he was cross-examined by both counsels - he told you that he is not working any longer at Herstelling but he is now living in the Clonbrook area although he has not brought up his family and that on that night he was not sleeping when the shooting took place, and further, that he did not tell the surveyor that he was asleep.

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He says -

"I sleep on a cot. I know Mr. Edghill, the land surveyor.

I did not tell Mr. Edghill, the land surveyor, that I was sleeping until I was awakened by the sound of a gun.

I never spoke to him at all. I had no conversation with him at any time. The policeman spoke to me and I replied to him.

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I do not know one Alfred Allen".

You remember he was brought into court and the witness said -

"I have never seen that man before".

Well, Alfred Allen is one of the witnesses for the defence.

As regards the cross-examination he was further asked about the blowing of the horn of the bus and he told you that the bus arrives at 3 a.m. and they take about fifteen minutes loading the boat the preliminaries and that Saffie makes tea usually between 5 and 5.30 a.m.

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Well, members of the jury, in that part of the country they are not possibly disturbed by the idiosyncrasies of a town clock or a village clock but they only trust to things like the blowing of the 'bus and you know what omnibuses are: they arrive at all hours. But you use your own intelligence and knowledge when you are dealing with matters of the kind. It is accepted, apparently by the villagers that the 'bus blows at 3 a.m. but are you going to use it as a stop watch in a race and say that it was definitely at 3 o'clock in the morning? And what all the witnesses have said as regards time you will use your own intelligence in weighing those things.

No one there would be able to speak with the accuracy of a chronometer, nor did any one have a stop watch to find out how long it would take to go down this trench in a boat and return. But you have visited the locus and naturally, you will get together and arrive at a fair estimate of how long that will be and consider the evidence accordingly. It is important, this matter of time, and so you will give it the utmost attention.

Then he went on to tell you that all the time, after they had done their work of loading the boat, Saffie and himself were discussing things (or having a chat) one downstairs and the other upstairs and then he heard the shot go off ... It was during cross-examination that he said those things ... and after the shot fired he heard Allie's voice.

He was also cross-examined as to the use of the torchlight, but isn't it a perfectly natural action that if you hear an explosion down below the house or in the area in which you are, whether sitting on the bed or sleeping, that it would cause you to investigate? I don't know, gentlemen, but the report from a gun, I think, would awake one no matter how deep a sleeper that person is and possibly cause that person to investigate; and if, as he says, this light shone on the persons after having heard this noise, and his light shone on a person with a gun and another person accompanying him, gentlemen of the jury, would you as wise and intelligent persons, unarmed, chase a person with a gun? That, of course, is for you to consider.

Nevertheless, he goes on to say that he did say in the Magistrate's Court -

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"I did not speak to Allie before he ran off to call the relatives of the deceased nor did he speak to me".

And then he goes on in cross-examination to say -

"I never said that I was asleep and never heard any gun.

I never said that Allie had sent me down to see if Saffie had got on with the cooking.

It was not that way that I discovered Saffie.

I never called out to the deceased after I heard his voice.

I never heard Allie say that when he was coming back he heard a gun but did not know what it was so he went upstairs to lie down and after that he sent me downstairs".

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Then further in cross-examination you will remember that there was some type of conflict in his evidence where he said -

"I did not say at the Magistrate's Court that my first visit to Clonbrook was on the occasion of the marriage of my sister, Bibi Miriam, to the deceased five or six years ago and then three or four times after".

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And you will remember that he was asked by the Foreman if he was acquainted with both accused and he said "I am acquainted with both accused". Asked for how long, he said, "From three to four weeks before this incident".

He had also said in his cross-examination that he had smoked about half the cigarette when he heard the shot. He also told you that Saffie's mother is deaf.

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Then in re-examination that was allowed he told you of the light from downstairs that also shone on both accused.

You will also remember that this torchlight that he spoke of was taken away from him by the Police. Possibly, that might help you in considering the matter of the reports to various persons and at the same time assist you in arriving at the truth.

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Then our next witness is Mohamed Nazir, also called Allie, who lives with his wife in the board house whilst Saffie lives in the bush house. You saw the place so I need not go any further into that.

He told you that he went to bed on the Monday night (11th June) and got awake at 3 a.m. and he assisted others in putting provision that was for sale into this boat and he took the boat with the two females down to the 'bus stop, unloaded it and then left. He says as he got to the mooring he heard a gun shot - that is on his return - and he came out of the boat and ran underneath the house. Now, is that a natural manoeuvre?

10 He said -

"I came out the boat and ran underneath my house. I heard a scrambling in the water in the small trench at the side of my house.

I stood up underneath the house and saw Fiaz Baksh and Nabi Baksh crossing the little trench. They then started to run east.

I heard Mohamed Haniff shout to them. They could have heard what Haniff said.

20 Haniff said 'All right Fiaz and Jacob don't run a see you'.

When he shouted they made a swing to turn back.

They jumped over the wire and ran away.

When they came in front of me I turned my torchlight on them whilst they were on the small dam and opposite to me.

I saw Fiaz Baksh with a gun. I observed the gun when he was climbing from the small trench to the dam.

30 I saw a torchlight shining from a window upstairs.

The men swung to the house side and jumped over the wire. They got on a small dam and went backdam side.

I went to Mohamed Saffie's kitchen. I saw Mohamed Saffie on the kitchen step lying face downwards. He was on top of the step with his head resting on the floor of the house. His feet were hanging down over the step.

40 I shouted and Haniff came. I was the first person to get to the kitchen and Haniff was the second.

I tried to lift Mohamed Saffie and Haniff helped me. We lifted him and put him on the floor of the kitchen on his back".

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Then he goes on to say that he groaned and died.

"I left the place and started to run and holler", he said.

"I ran to my brother, Amin. I made a report to him.

I came back to my home and saw people gathering up".

Well, you visited that area and you saw this wire fence dam and the other dam and you must have observed that there was no other house in that area and that was the area in which they ran. 10

A lot has been said about the manoeuvre of this boat and the time that it took to load the boat, to take the boat to the 'bus stop and back. You are people of experience and you will consider the evidence and come to your own conclusion using your own intelligence. As to his action after he said he heard this gun shot do you consider it as a normal and natural reaction in the circumstances?

Well, his demeanour - and demeanour of all witnesses is important - was attacked by the defence and in his cross-examination he was asked if he knows Louis Vieira and Lochan, but he said that he does not know when they came into the yard but he saw plenty people; that the people were anxious to know what happened and he told them "Saffie get shot" and they wanted to know how he got shot. He said he never told Vieira and Lochan anything. 20

He said -

"The people were anxious to know what happen that cause the crying. I told them that Saffie get shot They wanted to know how he got shot. 30

I never told Lochan and Vieira anything. I never talked to any direct person. I only said Fiaz Baksh and Nabi Baksh shot Saffie. I told the people that I saw Fiaz and Jacob running away after the gun fire.

I never told Louis Vieira and Lochan that I did not know who shot Saffie. 40

I did not tell Louis Vieira and Lochan that when I was coming back in the boat I heard a gun fire by the truck line dam.

I did not continue to tell them that I did not pay any attention to that but went up-stairs to my room.

I did not tell them that I woke up Haniff to see if Saffie finish making tea.

I did not tell them that when Haniff went to the kitchen he made the alarm that Saffie was shot dead".

10 However, the defence gave that in evidence as a conversation between those witnesses and Nazir. So, gentlemen, you will have to consider it and you will decide whether it was a remarkable conversation and that they came just at the psychological time and got all the evidence that was necessary for the defence and kept it all to themselves, except at a time when they found that it was most opportune to discharge it upon the accused and his relatives. But that is for you to consider: that this most
20 helpful evidence was just got from witnesses who were so callous at the time in such a grievous matter, that they arrived there and got this evidence in a couple minutes and quickly disappeared to their mire - water and rice. That is all they went there to do - to relieve their plantations of the water- but that they took no other interest in this early morning occurrence.

There is some conflict with Haniff's evidence. This witness (Nazir) said -

30 "I can't say if he came to spend a little holiday and he was not working up that side when he came. Until now he is not working. He is still there in the house".

He will remember that Haniff said he is now working or that he was then working up at Clonbrook, but this witness says that that is not correct.

There is also further conflict in his evidence where he said -

40 "I gave evidence in the Magistrate's Court. It was read over to me and I said it was true and correct and signed it.

I did say in the Magistrate's Court that 'when I first saw the accused they had already crossed the trench and they then ran backdam side'.

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I did say in the Magistrate's Court 'the two men began to run and I heard Haniff shout alright a you no run, me see ah you'.

I did say I shouted 'Oh God me brother get shoot'."

Well, it is for you to compare this evidence and to say whether these conflicts cause you to feel that you should discard all his evidence or accept a portion or the whole of it; whether from these conflicts you will decide whether he is a witness of truth or not, so that you can accept the whole of his evidence or you will discard the whole of it or that you will only accept a portion. You are to come to your findings of fact.

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He goes on further to say -

"I was asked in the Magistrate's Court what I told Majeed when I went to his house. The answer was 'I told Majeed that Saffie had been shot and I returned'.

It is correct that I said in the Magistrate's Court 'I later saw Majeed at the kitchen shortly afterwards. It was before day clean that Majeed came to the kitchen and then leave and return later in the company of policemen'."

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He was asked a number of questions by the Foreman and in reply he said that Haniff and himself got along nicely and that the accused lived a good way from him and that they lived to the west of his house.

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Then he was asked again by the Foreman: "Have you any knowledge that your brother Saffie and the accused have any previous quarrel? and he said: "Yes, Fiaz Baksh and my brother had a previous quarrel". Asked if the accused, Fiaz Baksh, has any rice field in that area he said "yes".

Well, as I have already said to you the witnesses Haniff and Nazir are important witnesses and upon them you will decide as to the identity of the prisoners, if the proof is sufficient or not; and that proof as to identity is essential. The accused say that they were not in that area at the time and these are the two witnesses that say "we actually saw them on the dam". So then, gentlemen, you will

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pay special attention to the evidence and decide whether you will accept that evidence or not. As I say, identity is most important.

Then Dr. Gillette gave evidence and he told you of the numerous injuries caused by the gun-shot wounds; that he took out twenty-one gun shots from the body of the deceased and that he handed them to the police, and he said that the cause of death was gunshot wounds, haemorrhage and shock.

10 When he was cross-examined he said that the injuries were very severe, that the heart was ruptured as a result of gunshot wounds and that death was practically instantaneous. So that is evidence as regards the cause of death and the death of this deceased.

20 He told you that in his opinion the shot was discharged not more than fifteen feet away from the body. So that gives you an idea as to the distance that the person who discharged the shot might have been.

Now, your next witness is Sergeant John Chee-a-Tow who told you that he received a report at 6.30 in the morning of the 12th June at Cove and John from Abdool Majeed. You will remember the time as given by the witnesses when they say that this act was committed and now you have the time that Majeed has made the report - that is at 6.30 a.m.

30 Then the Sergeant says that he left at 6.45 with others and arrived at the deceased's home where he saw the dead body and saw the damage to the wild cane (wattle) which is in evidence. So that from that evidence you would come to the conclusion I should say, or you would observe, that the gun must have been opposite there outside the kitchen because you will observe that the wild cane with the holes, outside were clean holes whereas inside, where the shots came out, some parts of it were torn; then it would have to be put at an angle so that some of the shots got into this cane whereas a goodly portion of
40 the shots sprayed the body of the deceased.

This sergeant also told you that he inspected the area and that he looked on a small trench which was on the southern side of the kitchen and there he saw prints looking like footprints on the southern edge of the said trench.

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"They were not old enough to be dug out for casting", he said.

"They appeared to be human footprints and looked as if someone had scrambled up to get on the parapet.

At the side of that parapet there is a barbed wire fence running from east to west.

I walked along that parapet in an easterly direction about one and a half rods and to the end of the barbed wire. I then walked south on a dam east of the rice field for about twenty or twenty-five yards going south. As I got to that distance I saw human footprints on the western portion of the parapet running north to south. I also saw human footprints on the other side".

10

Well, you will remember the evidence of the two witnesses who said that that was the direction in which the two accused ran.

The sergeant goes on to tell you that he came back to the house and remained there whilst the photographer took his pictures that he cut out the portion of the kitchen which was brought here and produced in evidence; and further, that he collected the torchlights from Nazir and Haniff.

20

Now, you would ask yourselves what was the reason for his collecting those torchlights, but you will find, or at least you will search the evidence to find that answer as to the reason for his collecting them. Possibly you will come to the conclusion that it was on account of the report that those witnesses made to him; but then, that is for you to come to your finding and in the circumstances, does that action throw any light upon the movements of both Haniff and Nazir and does it show to you that they are truthful witnesses or not? But as I say those are important things for you to consider upon the whole of the evidence.

30

Then this witness goes on to say that he was present when Dr. Gillette performed the post mortem and found the shots and he was also present when the gun was found on the 22nd June by Richard Carbon and on that gun he did not find any serial number but that he sent it on to Mr. Ho-Yen for examination.

40

He told you that on that same day (12th June, 1956) that he saw both accused at the Cove and John Station and that on the 13th June he read the charge to them and cautioned both; that Fiaz Baksh said "I am innocent" and Nabi Baksh said "I am innocent of the charge against me".

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10 He further told you that he accompanied the surveyor to the scene and there the surveyor made his notes - that was on the 27th June. He informed you of the 'bus and car service in that area.

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In cross-examination he told you of the many searches that he made for the gun: on the first four days and then again on the 22nd June; that he did not hear Najeed call anyone's name as responsible for the crime.

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You will remember that he accompanied us to the visit of the locus and that he was recalled here and gave in evidence all that was done at the locus.

20 Then Mr. Ho-Yen was the next witness who came and told you that he found no serial number on the gun after careful examination.

30 Then your next witness was Constable Cummings who told you that he travelled by train on 12th June to Georgetown and on arrival at Georgetown he saw both accused, - I am not going through the whole of the evidence: I am just giving you a very short summary -; and that he saw both accused on Croal Street. Then he rang up Sergeant Marshall - contacted him by telephone at Cove and John - and he got instructions from him and he went to the office of Messrs. Luckhoo where both accused were seen. He told them both that it was reported that they shot Mohamed Saffie and he would like them to accompany him to Brickdam.

40 So then you would see what action was taken that early morning - that was somewhere about 8.45. So in considering the evidence as to reports you will naturally take into consideration this action by Constable Cummings; what was it that prompted him upon seeing those accused persons at Croal Street to telephone right away. You will make your deductions from the evidence. Upon the facts that you find proved you will make your inferences.

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He told you that before that date he knew both accused and that he told them that it was reported -

"That they shot Mohamed Saffie and I would like them to accompany me to C.I.D. Brickdam. Fiaz Baksh said 'what murder; me no know nothing man. Me sleep a town (that means Georgetown) last night.

Nabi Baksh said 'Oh me mamma; ah you come hear distress and a we sleep a town last night Fiaz'."

10

Now, Nabi Baksh's statement here and at all times and that of his mother were that he slept at home. So that is a matter for you as regards this conflict. You will decide for yourselves and it will reflect in the manner in which you will weigh the evidence.

The witness says they later consented to go with him.

"I had gone downstairs", he said "to see if I could have got the assistance of another policeman and when I went up back I found both accused speaking to Mr. E.V. Luckhoo,"

20

and they consented to go with him to Brickdam.

He, too, was cross-examined. He says that he could not remember seeing Fiaz Baksh with Sergeant Fraser.

"Sergeant Fraser went up with us", he said. "I can't remember seeing Sergeant Fraser with Fiaz Baksh and the Sergeant asking him questions and taking down the answers in writing".

30

He further says -

"I do not know that Nabi Baksh boarded the same train I was on. I would not doubt it. There were about seven third class carriages. Plenty of people would have seen him boarding the train".

When cross-examined as to that part of Nabi Baksh's saying that he slept in town, he said -

"I am quite certain that Nabi Baksh said that he slept in Georgetown".

40

Anyway, you have the evidence of the assistant

station agent as to the movements of Nabi Baksh that morning and the finding on him of the return ticket.

Next we have Sergeant Fraser who was at Brickdam when Constable Cummings brought in both accused and he searched them and found the railway return ticket on Nabi Baksh - that is the Clonbrook return ticket; the portion, of course, that you have seen is from Georgetown to Clonbrook.

10 He took them to Cove and John Police Station and took a statement from Fiaz Baksh who gave it voluntarily. That statement you will remember was admitted in evidence. He said he was also present when a statement was taken from Nabi Baksh.

He took them to Cove and John Police Station and took a statement from Fiaz Baksh who gave it voluntarily. That statement you will remember was admitted in evidence. He said he was also present when a statement was taken from Nabi Baksh.

20 In his cross-examination he says that he took a statement from Fiaz Baksh as he wanted to trace his movements and check on his answers by taking statements from the persons mentioned by him.

He said he found a receipt on Fiaz Baksh from the East Demerara Judicial District Office and that Nabi Baksh told him that he got a telegram calling him to Georgetown. Well, you will remember that there is no conflict in that, but that telegram was sent and received.

30 Gentlemen, another receipt that was found on him reads as follows :-

"Received from Hamid Fiaz Baksh the sum of fifty dollars on a/c of \$300:- fee for Supreme Court trial in re the Queen v. Himself and Nabbi Baksh (possession of firearm).

Mr. E.V. Luckhoo
per D.N. Sharma".

40 I shall read to you the statement that the accused Fiaz Baksh gave. I am sorry that I have to detain you for that length of time in reading this but nevertheless it has to be done.

"Mohamed Fiaz Baksh states :-

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I am a carpenter and live at Clonbrook, East Coast, Demerara with my wife Jumrattan and ten children: they are Mohamed Zakara Baksh, 17 years, Affrare Baksh, 16 years, Nadira, about 13 years, Safaura, Eco, Sheila, Faizul, Afzul, Faziah, Shafeek.

I knew Mohamed Saffie, he was my cousin, but I do not know how we are related. He was living at Clonbrook Section "A" with his wife, I do not know her name. His brother Mohamed Nazir called Ali, and his wife live in the same yard with Saffie. 10

In 1954 Saffie left his wife Ogiran who was living with him at the same house where he lived on to his death. In February 1955 I became friendly with Ogiran who was then living alone in Clonbrook and from then we became good friends. I sleep with her on some nights and I assisted her in maintaining herself.

I do not know why Ogiran and Saffie were separated. I never asked her about it. Saffie knew that I was friendly with Ogiran. He never told me that he was annoyed with me because I was friendly with Ogiran. 20

Corporal Chee-a-Tow told me on the 28th January, 1956 that a report was made against me that I had assaulted Saffie, and Rodrigues and me did it. I denied, because it was not true.

I never had any quarrel or fight with Saffie. I never threaten him at any time. Saffie never threaten me. No one ever told me that Saffie threatened to do me any harm. 30

I saw Saffie about two weeks ago at Clonbrook Public Road at the bus park. I did not speak to him. Before myself and Ogiran were friends myself and Saffie used to speak to each other, but after we stop speaking to each other. I did not want any worries so I stop talking to him. 40

On Sunday 11th June, 1956 I left home about 6.10 a.m. to join the 6.30 a.m. train to travel to Georgetown but on my way I came off at Buxton Railway Station because I had been to Georgetown on Thursday 7th June, 1956 to Mr. L.F.S. Burnham and he had asked me to get a case jacket at the Magistrate's Office at Vigilance. I stopped at Buxton and I went to

Vigilance to get the jacket. I spoke to Mr. Bovil, the Magistrate's Clerk, and told him what I wanted. He found the case jacket I wanted and he made an extract and I paid him forty-eight cents: it is a case of the Police vs. Mohamed Fiaz Baksh.

10 I joined a motor car about 9 a.m. from Friendship and I travelled to Georgetown. The driver of the car was an East Indian. I do not know him; I do not know his name.

20 When I joined the car I was alone. When I got to Buxton a black woman stopped the car and came in; I do not know the woman. At Betterverwagting when we arrived at the gasolene station belonging to a Mohamedan named something like Bacchus, the first gasolene station you meet on the way to Georgetown, a negro woman joined the car but she came off at Plaisance. Then two women came in at Plaisance by the Police Station; one of them was a Portuguese and the other East Indian. All of us travelled to Georgetown.

30 I came out at Croal Street by the bar at High Street. The time was a few minutes to 10 a.m. I went to Mr. Burnham's office in company with Guilemo Rodrigues. I met Rodrigues by the tree at the corner of Croal and High Streets. I had arranged to meet Rodrigues there. I had travelled in the train from Clonbrook to Buxton with Rodrigues and when we parted I arranged to meet him there.

We did not find Mr. Burnham in his office. I spoke to Mr. Moore the clerk and he told us to wait. We waited until 11 a.m., Mr. Burnham came and I gave him the case jacket. Mr. Burnham asked myself and Rodrigues to return to his office after Court at 4 p.m. and he would discuss our business.

40 Myself and Rodrigues went away and parted by High and Croal Streets. He said he wanted to see one Nascimento. I went to the Stabroek and I bought some drinks, then I went to my sister Ajiman in a cross street near to De Freitas saw mill in Water Street and I took my meals. She was present, also her husband Habib Rohoman.

I remained at my sister until about 12.45 p.m. when I went to Croal and High Streets

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where I met Rodrigues. Rodrigues told me that he did not have any food and he suggested that we go to the Stabroek Market to get some. We went to the market and Rodrigues bought two lemonade and one cake and he parted the lemonade.

Rodrigues and I went walking in Water Street and we met one Sydney known by the name Mohamed Moor Bacchus of East Bank Demerara and we spoke for some time.

About 2.30 p.m. I went back to Mr. Burnham's office but he was out. Rodrigues was with me; Sydney also was with us. I left Rodrigues at Mr. Burnham's office and went to Mr. E. V. Luckhoo's office. A few minutes later Sydney and Rodrigues joined me there. I had gone to see Mr. E.V. Luckhoo about a matter. I spoke to Mr. E.V. Luckhoo and enquired from him whether it was true that he wanted to see myself and Nabbi Baksh on Tuesday 12th June 1956. Mr. E.V. Luckhoo said yes and I told him that as I was already in Georgetown I would stay.

Myself and Rodrigues went back to Mr. Burnham's office around 3.30 p.m. and I saw Mr. Burnham. Mr. Burnham told us that it was already late for us to catch the train so we must return to see him on Thursday 14th June, 1956 and myself and Rodrigues left. I told Rodrigues he better catch the 4.30 p.m. train because I was staying in town. Rodrigues left me and went on his way.

I went towards the Stabroek west in Croal Street. When I got to the Demerara Ice House I met one Badah - I do not know where he lives - he owns a cream car, I do not know the make. A Fellow was washing the car and Badah was sitting on a cart nearby. Badah is my father brother son. Badah has a hire car and he runs it in Georgetown. I spent about fifteen minutes with Badah then I went south along Lombard Street.

I met a fellow called Razack of the East Bank of Demerara. His sister Kairool lives at Clonbrook near Mr. Sars. I spent about ten minutes talking to him then I left for La Penitence.

I stopped at Budhea's house in La Penitence Middle Street, which is near a telephone

box in the street running south to Yarrow Dam. I met his wife Hasra and his sister daughter, and his wife brother Paulo. I spent half an hour there then I went to Hiatali known as Baban who lives at La Penitence Middle Street, Field 11, Bed 1. I took dinner there and remained for the night until today 12.6.56 at 7.30 a.m. Baban was at home when I got there around 6 p.m.

10

I slept in a room with his son Atiff who shared the same bed with me.

I never returned to Clonbrook since I left on Monday 11th June, 1956 at 6.30 a.m. If anyone said they saw me at Clonbrook or anywhere else that I did not mention in my statement it would be a lie.

20

About 7.30 a.m. on the 12th June, 1956 I left home at Baban and went to the corner of High and Croal Streets to wait for Nabbi Baksh. Not very long after I saw him coming west towards me from the Victoria Law Courts. I went to him and both of us went to the office of Mr. E.V. Luckhoo where the policeman found us.

On Saturday 9th June, 1956 Nabbi had told me about receiving a telegram from Mr. E. V. Luckhoo and it was on the same day I told him that I would be in Georgetown on Monday 11th June, 1956 and I would remain in Georgetown to meet him.

30

I never used a shot gun. I never owned one. I have no friend that own a shot gun. I know that Rodrigues owns a shot gun. I never went out hunting with him.

I heard about the death of Saffie when the policeman told me about it for the first time. I do not know anything about the death of Saffie.

40

I usually wear a barred shirt and black striped pants to work a back. When I left home for Georgetown on Monday 11th June, 1956 I left them home in my house.

(Signed) Mohamed Faiz Baksh.

Taken by me at Cove and John Police Station at 2.40 p.m. on the 12.6.56 and read over to Mohamed Faiz Baksh who said it was true and correct and signed his name to it in the presence

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of Detective Constable 4770 Alexander.
(Signed) H. Fraser, Detective.

Lance Corporal 4669
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I. Alexander,
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That is the statement that was given to the
Sergeant and, members of the jury, that statement
of the accused is now part of the prosecution's case
and you will remember that, as the Sergeant said,
he took that statement which was given voluntarily
so that he might check upon the movements of this
accused and there is evidence to show that it was
indeed checked upon.

10

I think that at this stage we will adjourn un-
til 1 o'clock. During that time, members of the
jury, I do not think it will be likely that you
will be allowed to discuss the matter with any one
but I take the precaution of advising you and warn-
ing you that you should not discuss this case with
any one during this adjournment. Unfortunately, as
I had to start my summing up, you will not be al-
lowed to have your lunch elsewhere, but I express
the hope that you will be satisfied with what will
be provided and frugal though it might be, that you
will be able to enjoy it.

20

AT ADJOURNMENT.

RESUMPTION:

Gentlemen, I left off with the evidence of
Sergeant Fraser and I had just read the statement
of the accused Fiaz Baksh to you. The next witness
that we will deal with is Bebe Mariam, the widow of
Saffie, the deceased.

30

She said in her evidence that she knew of a
feud or a little quarrel that was existing between
Fiaz Baksh and Saffie over Ogiran who was at one
time the wife of Saffie; and further, that there is
a case now pending in the Supreme Court for break-
ing Saffie's foot.

40

She told you of having gone to market that day
and returning and she got the news; she saw the dead
body of Saffie and she identified it as such and was

present at the post mortem.

10 She said that on the night before - the night of the 11th June - she retired to bed at 9 o'clock or thereabouts and then at 9.30 she heard her dog barking that the husband and herself looked out and she saw nothing, but again at about 2.30 - that was on the morning of the 12th - they heard the dog barking and Saffie and herself went out with a torchlight and whilst inspecting the premises they observed Fiaz Baksh and Nabi Baksh on the rice bed near to the house; that they were about forty-eight feet away from the house.

She said they returned to their room and heard the 'bus blow at somewhere about 3 a.m. and they packed their provisions in the boat with the assistance of others and went to the 'bus stop and journeyed on to the Bourda Market.

20 Later, she got a report and returned home and there she saw the dead body of Saffie and a post mortem was performed.

Then she was cross-examined as to her many affairs with men and also as to the dog that she had on the premises and what happens when the dog barks and such the like and she said that it was customary for them to inspect whenever the dog did bark; that she told no one about what they saw at 2.30 but that somewhere about 3 a.m. she told Haniff and Nazir; and further, that the dog kept up a steady barking from midnight until 2.30.

30 You will remember that her deposition was put in evidence and from that you will be able to find out the differences between her evidence now and her evidence before the Magistrate.

She said in cross-examination -

"The Magistrate took down my evidence in writing then read it over to me and I signed it as correct.

40 I did say in the Magistrate's Court that I did not tell anyone that morning what my husband and I had seen when the dog barked, but what I meant was that I did not tell anyone immediately but before I left with the boat I told them.

I know there is a police station at Cove and John and another at Vigilance ..." and so on.

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Then there was a further conflict in her evidence which you have to compare with the depositions where she said:-

"Haniff used to work a farm. He used to come and go at Clonbrook.

The deposition now shown to me was signed by me. It bears my signature". (Admitted and marked 5.) and the deposition was read to the jury.

Well, members of the jury, you will have access to that deposition. You will compare it with the evidence that you have heard in Court here and that will assist you in deciding whether this witness is a witness of truth or not and at least, that obviously will help you in your deliberations. 10

Then there is the evidence of Mohamed Mustapha who said that about 11 o'clock on the night of 11th June he saw the accused Fiaz Baksh and Yassin, the brother of Nabi Baksh, standing about six to seven rods from Fiaz Baksh's house. Mustapha and themselves were not on speaking terms so he did not speak to them. 20

In cross-examination he explained the reason for taking that route past Nabi Baksh's house as it was the end of the rice field; that after he had walked from the rice field he would end up in that direction so it was easier for him to take that route.

That is for your consideration. This is a witness that is put forward by the prosecution as informing us that Fiaz Baksh was in the area that night and not as he says that he was down at La Penitence. So that also is for your consideration. 30

Then next you have the evidence of Ivan Gooding. You will remember, members of the jury, that you visited the locus and also paid a visit to the area in which Ivan Gooding lives and where he has his blacksmith shop.

He told you that on Monday night, 11th June, he was on a koker at Clonbrook about 11 p.m. and that he saw Fiaz Baksh pass by. 40

He was cross-examined as to his sight and the route that he took to the koker and you will remember that there was somewhat of a conflict in his

evidence now comparing it with the evidence that he gave at the preliminary examination.

He said that he left home on account of words with his wife - as he expressed it he had a "breeze" with his wife - and so he went to the wide open spaces to commune, as one counsel put it, with nature.

As far as the conflict in this witness' testimony is concerned you will remember that he said -

10 "I said that the deceased lives about 300 to 400 yards from where I live.

The longest way from my home to the koker can be about 100 rods.

I never said in the Magistrate's Court that the distance from my house to the culvert is 300 to 400 yards".

MR. C.L. LUCKHOO (Correcting): I think it is rods, not yards, My Lord.

20 HIS LORDSHIP: I am very sorry. I am grateful to Mr. Luckhoo for that correction. It should be "rods" and not "yards".

The witness said:-

"I never said in the Magistrate's Court that the distance from my house to the culvert is 300 to 400 rods. I call the culvert the koker".

And then further on there is some other conflict where he says -

30 "I was at work on that Monday for part of the day.

My wife and I had a 'breeze' so I chose a quiet spot. I went there for quietude. We had the 'breeze' just before I left home. I would not have gone there that night if my wife and I had not that 'breeze'.

In the Magistrate's Court I told you it was my private business and you objected.

40 The Magistrate said you might have gone there to think over life and I said 'I think you are right Sir'.

I did not care then to divulge about the 'breeze' between my wife and myself".

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Well, you are men of the world and you will understand, but as far as these conflicts are concerned it is for you to weigh the evidence now and compare it with the evidence as given before the Magistrate and decide for yourselves whether you can say that this witness is a witness of truth and that you will accept his evidence; or on the other hand, that you will not accept his evidence, you find him to be such a hopeless liar, a person that has not told the truth; or indeed you may decide to accept a portion of his evidence, if not the whole. That is entirely within your province.

10

We have next the witness Ivan Kalloo who is a clerk at the Clonbrook Railway Station. He told you that at 4.30 a.m. on the 12th June he was at the station and he told you of the movements of the train: the first train at 5.27 a.m. and the second train at 6.28 a.m. - that is the arrival at the station or maybe the departure - and that the accused Nabi Baksh bought a return ticket. Well, that we may say is in a measure corroborated - but that is for you to find - because a ticket was found on him with the date and showing that it is the return ticket from Clonbrook to Georgetown; in other words, it is the Section for Georgetown to Clonbrook.

20

He told you of a report that Jerrick made to the station master that Saffie got shot and that Nabi Baksh was near enough to have heard what was said and that he said nothing.

Well, Nabi Baksh might be the type of person that does not like to interfere with things that he might overhear. There are some persons that eavesdrop very well and a good listener goes away with knowledge. He need not necessarily have anything to say because it is not always that silence means a sign of guilt or a sign of innocence. It is a matter for you to weigh.

30

He did tell you that he saw Nabi Baksh board the train that morning: the 6.28 train.

Then he went on to say in cross-examination that the station master, after he got the report from Jerrick, telephoned - I think it would be the police station - and he went on further to say that Jerrick said that he did not know who shot Saffie.

40

You will remember that his deposition, too, was

put in evidence so that you might compare it with the present evidence that he has given and decide what to do with his evidence. There was a portion of his cross-examination that was read to him and he agreed that he told the Magistrate what was now read to him and that portion of the deposition was put in evidence. Before that, he has told you -

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10 "I can't remember telling the Magistrate that Jerrick said that he had just come from the place where Saffie had been shot, but if it is so recorded by the Magistrate then it is correct and I must have said so".

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20 Then there is this witness, Richard Carbon, who was next called. He was the person that successfully effected a search. He told you that he had searched days before but on the 22nd June he was called to make a search and that he found the gun now produced - on the 22nd June - in a sluice in this trench and that he gave the gun to Sergeant Chee-a-Tow.

During cross-examination you will remember that he said he had never used a gun before, or that he had never used a gun with wire strap or straps like the gun exhibited. He was also asked as to having used a gun and after some time he admitted that he had been the owner and user of a gun some years ago but that he had lost it in that it was sold by the authorities I suppose.

30 Then he was asked if Joseph Jerrick did see him with a gun and he said no and that he shot no pig the property of Joseph Jerrick.

There, too, was somewhat a conflict in his evidence with what he said at the Magistrate's Court and he said here -

"I never said in the Magistrate's Court that my house is 20 rods from the place where the gun was found.

No one suggested that I should search that trench. We had searched other trenches"

.....

40 and that Majeed did not suggest to him where to search.

Well, that is his evidence and it is for you to put it in the scale with all the evidence of the

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other witnesses and decide for yourselves whether he is a witness of truth or not.

Before I pass on to the other witness I must inform you that he said that it was Mohamed Nazir that asked him to search on the 22nd June and that they were a big search party: nine others searched. I reminded you that he said he had owned a gun seven years before. Of course, he denied having the gun that is now exhibited. He said that he never had this gun in his possession before; it was only that he found it on that particular day, the 22nd June. 10

Then your next witness was Mohamed Mursalin, the nephew of the deceased, Saffie. He said that on the 2nd December, 1955 he saw both accused and that each had a gun on the Clonbrook sideline dam. That was about 7 p.m. and he saw them by means of a torch.

In cross-examination it was disclosed that only relatives were with him at the time that he made this observation - that he saw those two accused each with a gun. Possibly that relates to some other case, I do not know, but that is the evidence that is put forward by the prosecution. 20

Then next you have Corporal Isaac Alexander who took a statement from Nabi Baksh on the 12th June and that was put in evidence by the defence. When I say by the defence it was in the prosecution's case but in their cross-examination it was admitted. 30

You will remember that the statement was unsigned and in cross-examination the witness told you that the statement sets out in detail the movements of Nabi Baksh; that questions were asked by him and the answers were given by the accused. It was done with the intention, of course, of tracing every movement of this accused person, Nabi Baksh, and witnesses have told you that they checked up on the answers that he gave.

This is the statement - 40

"Nabi Baksh states :-

I am living at Clonbrook Village, East Coast, Demerara and I does work as a carpenter and does do farming and rice planting. I know Fiaz Baksh. We are no

family and he lives at Clonbrook too, about seventy rods away from me. Fiaz Baksh and me are not friends but we does talk and so.

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10 I know Saffie (Mohamed Saffie). He live at Clonbrook. He and me are just partial friends. We does meet and talk, telling how-a-day and thing. The last time me see Saffie was this same crop about two weeks ago. Me see he at Clonbrook Middle walk bailing his behia plants. Me tell he how-a-day. He asked me to lend him me bucket. Me lend him me bucket and he bailed his rice plants. Since then me can't remember if me see he again up to this day.

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Me get a case now where me and Fiaz Baksh charged for some threatening with fire-arm and the case is at the Supreme Court in Georgetown. Mr. E.V. Luckhoo is defending me and Fiaz.

20 On Saturday, the 9th June, 1956 I received a telegram from Mr. E.V. Luckhoo saying that I must go down today (Tuesday, 12th June, 1956) to Georgetown because the case would start. Me receive the telegram at about 11 in the morning and at about 3 o'clock the same Saturday afternoon I see Fiaz coming from the backdam. He was walking alone on the dam near to Clonbrook driving road and I told him that I get a telegram from Mr.E.V. Luckhoo to go down on Tuesday (12th June, 30 1956) to Georgetown for the case. After that me go out on Clonbrook Public Road and go home back.

40 On Sunday the 10th June, 1956 me alone went to me rice field at Clonbrook backdam. Me go around at the rice field around half-past seven to 8 o'clock in the morning and come home about 11 o'clock the same morning. Me alone go to the rice field, me alone work and me alone come back home. I remained at home for the rest of the day and slept the whole Sunday night at home.

Around 6 o'clock Monday morning (11th June, 1956) I get up from bed and about 8 o'clock me left home and went to me rice

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field. Me alone go to the rice field and about 12 o'clock (midday) me alone come back home. I did not see Fiaz Baksh from since I tell him about the telegram up to the mid-day on Monday, 11th June, 1956.

From the time I reached home about mid-day, Monday 11th June, 1956 I remained in the house until about 4 o'clock in the afternoon when me come out of the house and went to Clonbrook road alone. When me been at the road me see 10
Guyan a boy from Clonbrook, then one Rasool of Clonbrook. Me and Guyan even talk. We sit down by Clonbrook bridge by the public road. Me can't remember what me and Guyan talked about.

After me and Guyan done talk me go across to Sullay store in Clonbrook and I buy this pair of yachting boots from Sullay wife. She tell me that the yachting boots is for \$2.48. Me hadn't money on me then so me 20
begged she for credit me the yachting boots. She credit me the boots. Me nah know what is Sullay wife name. After me buy the yachting boots me go home at me house. That was about 7 o'clock.

From the time me go home, me sleep. Me and me brother sleep in one bed. Me brother name George. Me mother sleep in another bed. Me sister Azzizan from Plaisance come to me mother yesterday afternoon to spend 30
some time and she sleep with me mother.

About 6 o'clock this morning Tuesday, 12th June, 1956 me wake up. Me mother had gone already to Clonbrook train station to carry greens, bananas and things to sell at Georgetown. Everybody in the house been wake when me wake.

After me wake me get ready to go to Georgetown. Me sister Azzizan made tea. Me wash me foot, hand and face and put on me 40
clothes and go to Clonbrook station to catch the second Bermuda Train to come to Georgetown.

Me alone go to the train station - Clonbrook. While waiting for the train me see

one Seetal of Clonbrook. Then me buy me ticket. The boy who sell me the ticket know me too, but I cannot remember his name. He is an East Indian. The train came around 7 o'clock. I went in. In the train I saw Jagar of Two Friends daughter-in-law. I do not know her name. We travelled in the same carriage and I think she came out at Beter-verwagting. I go on to Georgetown Railway Station.

10

From Georgetown railway station I went straight to Mr. Luckhoo office. On the road in front of Mr. Luckhoo office, whilst me been a go in, I see Fiaz Baksh. That is the first time me see him since 3 o'clock on Saturday the 9th June, 1956, when me tell he about the telegram. Me and he talk and he tell that he been yesterday (Monday 11th June, 1956) to Mr. E.V. Luckhoo office, but Mr. Luckhoo was busy and couldn't talk to him.

20

The two of us go in Mr. Luckhoo Office and we talk to Mr. E.V. Luckhoo about the case we got and then the policeman (Constable 6019 Cummings) came and tell us that he arrest the two of us in connection of murder. He did not say foo who murder. He then bring we straight to Brickdam. I remember the policeman say that it was for Saffie murder. That is the first time me hear that Saffie get murdered.

30

If anyone say that they see me and Fiaz anywhere and at any time today (Tuesday 12th June, 1956) before I see Fiaz Baksh by Mr. Luckhoo office that person is telling a false story against me. From the time when me go home after me buy the yachting boots on Monday, 11th June, 1956 I haven't left my home until this morning Tuesday 12th June, 1956 when I left to catch the train. Taken by me at 4.20 p.m. on the 12.6.56 at Cove and John Police Station, East Coast Demerara. Same was read over to Nabi Baksh who said it was true and correct and said he would not sign same as it was not necessary".

40

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You will remember that he did not sign it but

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anyway, it has been put in evidence and it is now part of the case.

Your next witness is Constable Eustace Liverpool and he told you that on the 12th June he saw Dr. Gillette perform a post mortem on the body of Saffie and extracted those twenty-one pellets which have been tendered in evidence.

That, members of the jury, is the case for the prosecution. That is the evidence that has been tendered. We will now go on to the defence and you will remember that the first-named accused, Mohamed Fiaz Baksh, elected to make a statement from the dock as he is entitled to do, and I recommend that you give the statement of his the same consideration that you would give the evidence of the witnesses for the prosecution.

10

This is his statement:-

"My Lord, the statement which I have given Sergeant Fraser is true. He was questioning me for about over three hours. I gave him an answer for all the questions he asked me. He then told me that he would check at once from all the persons whose names I called to justify if my statement was true.

20

I then told him that I was not at Clonbrook the Monday night in question but I was at La Penitence.

I then told him that I never owned a gun and I have never used a gun in my whole life.

I then told him that no gun or ammunition has ever been found at any time in my possession or in my house.

30

I told him that I do not know Mohamed Haniff and I have never spoken to him for my whole life. He has never spoken to me. The first time I have ever seen him was at the small court at Cove and John.

Mohamed Haniff, Mohamed Nazir, Bebe Maram, Ivan Gooding, Mohamed Mustapha and also Mohamed Mursalin have spoken falsely against me. I believe they have done so out of spite

40

and ill will as I was on bad terms with Mohamed Saffie and his family.

I never shot Mohamed Saffie. I do not know who shot him.

I am innocent of this charge. If anyone say that they have seen me with a gun in my whole life they have spoken falsely against me.

That's all".

10 Well, members of the jury, you have his state-
ment that was given to the police and this is his
statement here from the dock. As regards the state-
ment that he gave to the police relating to his
movements you will remember particularly that he
said that he slept at this home in La Penitence;
but members of the jury, was he not a free person
at that time, and do you consider that he was such
a free person that night and could have left Shira
Ali's home and go to Clonbrook by car, do what he
20 wanted there and return by that car or some other
car? As regards identity, proof of identity is
important and that is for your consideration, not
mine.

The next witness called was Louis Vieira. He
said that on the 12th June, 1956 on the way to his
rice field at about 5.45 a.m. he met Lochan and
they walked together for about ten or fifteen rods;
then he heard a mournful cry from Mohamed Nazir's
yard. He went inside, saw Nazir, Haniff, Saffie's
30 mother and he found Saffie dead. He saw all the
relatives crying. Then he asked Nazir what was
wrong.

Here you have a very important conversation.

"I asked Ali what was wrong. He said
they shoot his brother".

They shoot his brother. Possibly it might be the usual
colloquial expression, but at the same time it might
have some significance. I do not know; it is for
you. You are well accustomed to the language of
this country.

40 "I went to where the body was", he says.
"I saw the mother near to the dead body of
Saffie. She was crying.

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I watched the dead body and then came out to Ali. I asked Ali who shoot him.

Ali said he did not know; this morning he went to the 'bus and carry greens. On returning when he was at truck line he heard a gun fire and he went home, tied his boat, went in and sleep and in the morning he woke up Haniff and sent him down to see if Saffie finish cooking and he found him dead and started to cry".

He goes on further and says -

10

"We were there a minute or two more and Lochan and I went to the back. No other persons were on the scene at that time.

It took me about eight or ten minutes to get to the yard of Saffie".

Well, that is his evidence. I do not know if you will consider him a sympathetic type of villager or a callous type. Here it is, this sudden firing, a death and so on and in a few minutes he came in, got important information and then left. But those matters are for your consideration.

20

He said in his cross-examination that he heard no gun shot and he was shocked to know Saffie was shot dead but he offered no help. Of course, he was very preoccupied, as it were, with the condition of his rice field and he made no suggestion whatsoever to report the matter to the police. He, too, made no report to the police about the conversation but some time after he wrote a statement and sent it to the lawyer which was about three weeks after.

30

Then the next witness was Linden Burnham, a practising barrister, who came and gave evidence on behalf of the defence. He told you that he was retained by Fiaz Baksh and Rodrigues to defend them in a matter. You will have access to the receipt which has been admitted in evidence and you will note what the receipt says:

"Received from Mr. Mohamed Fiaz Baksh on a/c fee of \$250.00 re R. v. himself and Guilhermo Rodrigues fifty dollars".

40

He told you that on the 7th June he requested Fiaz Baksh to get a copy jacket of the case and that

he brought it to him on the 11th June. So that portion of it is corroborated by this witness; and that he saw him at about 4 p.m. with Rodrigues and he told him to return on the 12th June. So that is as the accused has stated.

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10 The next witness is Lochan who says that on the 12th June at about 5.45 a.m. as he was about to pass Saffie's home he met Vieira and he heard crying; he went into the yard, saw Saffie dead and the relatives crying.

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In comparing the evidence of Vieira and Lochan you will observe that Vieira said that they had walked for some distance before they got into the yard, whereas Lochan says that they met at the entrance to the yard; as he was about to pass Saffie's house they met. And then now comes this conversation as given by Vieira in evidence.

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Lochan told you - I will try to give you his exact words -

20 "I left my house at about 5.30 a.m. I got to Saffie's house about 5.45 a.m. As I was about to pass Saffie's house I saw Vieira".

You remember I told you that Vieira said -

"I had to take the east sideline dam between Clonbrook and Beehive. I met one Lochan. I spoke to him. We continued to walk towards the back. When we walked for about 10 to 15 rods I heard a mournful cry".

This witness, Lochan, goes on to say -

30 "As I was about to pass Saffie's house I saw Vieira. I then heard some crying. Vieira and I went into Saffie's yard. There I saw Ali and another chap (Haniff).

Vieira asked Ali what happen. Ali said his brother is dead. We went in the house and saw the brother lying down and the mother crying. I saw the body on the ground in the kitchen. We stayed a while and came out.

40 Vieira asked Ali if they don't know who kill he.

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Ali said he was carrying out load to the bus and when he was coming back he heard a gun.

He said when he went home he tied the boat and went up and sleep.

He said in the morning he woke up the brother-in-law to see if Saffie finish making tea.

He said his brother-in-law shout at him and say Saffie is dead. 10

We stayed a little while and left".

Two minds with but a single thought (Lochan and Vieira) - ricefields; but on the way they stopped at this house where there was a death, got the important information and went on to their ricefield.

That is the evidence for you to consider and to decide whether they are witnesses of truth or not. You weigh that evidence and decide for yourselves; was it a remarkable conversation or was it not? That is a matter for you to weigh. 20

In his cross-examination you will remember that he told you that he took the long route to his rice field, which would pass Saffie's house, on account of having to cross two trenches - because in the short route he would have to cross two trenches and one of those trenches would put him in water up to his neck ... (excellent expression). But you will remember that Vieira said he was just coming out of his yard when he met the witness (Lochan).

They went on further to say that they were the only strangers in the yard - and that is, after a death of the kind, only these two persons came there at that time. There was nobody else in that yard. 30

He went on further to tell you that after that incident he did have some conversation in his shop - that is, he spoke about what he had heard in his shop - but he never told the police and then Fiaz Baksh's wife asked him to give evidence. It was also brought out in cross-examination that he had given evidence before in another matter for Fiaz Baksh. 40

The next witness for the defence was Alfred Allen. He told you that it is usual for him to bathe in the mornings and that he went on this morning of the 12th June at about 5.30 to 6.0 o'clock to bathe; that he heard something and he went to the house of Saffie at about 6 a.m. and he heard people speaking to Nazir. And this is another occasion on which further evidence was got.

He said -

10

"I got to the yard about 6 a.m. I heard people speak to him" (that is Nazir or Ali).

"He said his brother got killed and he does not know is who. There were about ten or twelve persons in the yard at that time.

20

He said he went to post load at the bus and when he was by the truck dam he heard a load fire and he came along with the boat and moored the boat and went upstairs where he lie down until in the morning. In the morning he sent his brother-in-law to see if Saffie done cook and when the fellow went down he call out and say look Saffie lay down on the step like he dead.

He came down and saw that Saffie was dead. They took him off the step.

I did not hear him say anything more. He talk hard and said he was going to tell his brothers".

30

That is the evidence of this witness, Alfred Allen. He told you that he left the yard and went and had his bath and then he returned when the police came but he made no report to the police of this conversation, but some time after he told Fiaz Baksh's sister of the conversation.

40

The next witness for the defence was Joshua Jerrick who said that on the 12th June he got information and went to Saffie's yard. He saw ten or twelve persons there. He asked the crowd if they know is who shoot and they said no. Haniff was present and said nothing.

"I asked the crowd", he says, "if they know is who shoot and they say no. Haniff was present and said nothing".

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Well, that is the evidence of the witness. He told you that he went to Clonbrook Railway Station and made a report to the station master and he went on further to say that he had heard the report of a gun some time that morning about 3 to 3.30 o'clock.

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In cross-examination he said that the report of the gun was about half an hour after the 'bus blow.

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The next witness that was called was Shira Ali who told you that she lives at La Penitence and saw Fiaz Baksh at her home on the 11th June between 5 and 5.30 in the evening. He had dinner there at 6 p.m. slept there that night and the witness got up between 5.30 and 5.45 a.m. on the 12th to make tea; she woke up her husband and her son, Atiff, who goes to work at Hack's store in Georgetown; that her son opened the bedroom door and she (Shira Ali) saw Fiaz Baksh come out of the room.

10

In cross-examination you will remember her demeanour and the manner in which she gave evidence. Much has been said about the demeanour and the manner in which witnesses give evidence. It is important that the jury should be observant and should note the demeanour and manner in which witnesses give evidence. Some do show some nervous tendencies, others swallow as if to keep back the saliva and others show long silence before giving the answers.

20

All those things will weigh with a jury and you will remember the appearance of Shira Ali - I need not remind you. In her evidence and in her cross-examination she told you the time she went to bed and the time that Fiza Baksh went to bed and that when she woke up the next morning she saw him there.

30

Well, as I have said before Fiaz Baksh appeared to have been a free agent. He was not imprisoned or detained by anyone and you will come to your own conclusions after you have properly sifted and weighed the evidence - what the evidence tells you and the inferences that you can draw.

40

The next witness that was called was Shira Khan, the neighbour of Shira Ali. She says that on the 11th June she saw Fiaz Baksh at the home of Shira Ali after 5 p.m. and next saw him the next

morning, the 12th June, at about 6 to 6.30. So she saw him the evening and she saw him the morning of the next day.

She told you in cross-examination that she is no relative of Fiaz Baksh.

10 Joseph Jerrick was the next witness called. He told you that on the 12th June he heard of Saffie's death. He told you that he knows Richard Carbon who keeps a kitchen garden which is about twenty-five rods from where he lives; that he went to Richard Carbon's kitchen garden on the morning of the 12th June and saw him there with a gun in his hand. That was about 9 o'clock in the morning. He asked him (Carbon) about the shooting of a pig and he told him that he did not shoot any pig but upon a search he found the dead pig outside the garden. Fortunately, he was able to clean it and make a feast - he ate it, - this witness. He did not say who joined in the feast but he just said that he ate the pig.

20

He said the gun that he saw Carbon with was a gun similar to the one now in court; it had the same wire marks on it or the wiring was the same - the same wire band on it.

30 In cross-examination you will remember that he told you that he keeps pigs and that the pigs always take the "high road" to Carbon's garden and that they never disturb the other people because from his place to Carbon's garden is on the dam; so that the pigs just go right down to the garden there and trespass; that he was present and saw the police with the gun the morning that it was found and the gun appeared to be similar to the one that he saw Carbon with on the morning of the 12th June - the same fateful morning.

MR. LLOYD LUCKHOO (correcting): My Lord, I think he is supposed to have seen Carbon on the 15th June. Saffie died on the 12th June and he saw Carbon on Friday, 15th.

40 HIS LORDSHIP: Yes, I am grateful to you.

Gentlemen, I am grateful to counsel for the defence for pointing out what I should consider a very serious error on my part and I will readily try to correct it. Please erase it from your minds. The evidence as it is here says :-

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"I know Richard Carbon. He has a kitchen garden about 25 rods from where I live. About three days after I heard the report about Mohamed Saffie I went to Richard Carbon's kitchen garden and I saw Richard Carbon there".

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So that it did not occur on the same morning, as Mr, Lloyd Luckhoo has pointed out, but it was on the 15th. I am most grateful to him. So it was on the 15th that this gun was seen in the hand of this witness, Richard Carbon.

10

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Then on the 22nd or whatever day it was found this witness (Jerrick) says that he saw in the hands of the police a gun similar to the one he had seen in the hand of Richard Carbon. I say similar because it has the same marks but possibly it might be the same gun as far as this is concerned.

Well, you will remember, though possibly it might have been his nerves - he is only a lad of 19 years old - that he was not very distinct in his speech and so possibly the nervousness must have been due to his youthfulness; but that is for your consideration.

20

That is the case for Fiaz Baksh.

Then Nabi Baksh elected to make a statement as he is entitled to do, members of the jury, and this is his statement:-

"I am not related to Fiaz Baksh.

I do not know who shot Mohamed Saffie.

On Saturday, 9th June, I had received a telegram - the said telegram present in court - from this Counsel, Mr. E.V. Luckhoo, instructing me to come down to Georgetown the following Tuesday, the 12th; also Fiaz Baksh.

30

The said day I received the telegram I arranged with Fiaz Baksh to come down to Georgetown the said following Tuesday.

I did not see him anywhere from then - the Sunday neither the Monday.

I remain in Clonbrook where I live with my relatives on Saturday, Sunday and Monday.

40

On Monday evening the 11th I went home about 6 to 7 o'clock. I did not leave home nowhere from then where I lives and usually sleep with my family. I slept whole night in the said house with my brother, mother and sister.

I awoke the Tuesday morning to catch the second train. I walked openly. I caught the train where various villagers join the said train. I travelled openly. Even one Constable Cummings met me in the train and sat just near by. We spoke to each other

Well, you will remember that Constable Cummings denied that. Of course, those are differences for you to sift.

10 The statement continues -

"From the station I went to Mr. E.V. Luckhoo's office where I met Fiaz Baksh.

P.C. Cummings came and asked us to go with him to the C.I.D. Brickdam for inquiries.

I did not told him that I ever been sleep in town or I slept in town. Fiaz Baksh told him he slept in town

20 You will remember in the Constable's evidence what he said that this accused said he had slept in town and that Fiaz Baksh said he had slept in town. There is nothing in writing that has been produced where this constable had set down these words and possibly he might genuinely be mistaken as to what these accused persons said. But that is entirely for you. I am not telling you that it is so. I am just saying that there is that possibility.

Well, he goes on in his statement to say -

30 "When we go to Brickdam C.I.D. I met Sergeant Fraser who asked me in the presence of Constable Cummings if I have money or anything let me give it.

I delivered money, the said train ticket, parcel and kerchief in the presence of Constable Cummings.

Then he asked us to go with him for inquiries.

At Cove and John Corporal Alexander took a detailed statement of all my movements. I willingly gave him as I had nothing to hide.

40 The statement that I gave to the police of all my movements is true. In fact I am absolutely innocent of the murder of Mohamed Safie; neither I do not know who shot him.

I never used a gun in my whole life neither I never own a gun.

I never even found myself in possession of a gun or anywhere about even to my house where we live. Anyone says so is false.

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I did not know Mohamed Haniff. I never spoke to him in my whole life, neither he never spoke to me.

The first time in my life I saw him and heard his name is at the Magistrate's Court at Cove and John when he gave evidence in this case.

The evidence of Mohamed Haniff, Mohamed Nazir and Bebe Mariani, also Mohamed Mursalin, is entirely false they spoke about me. 10

In fact I am absolutely innocent for the murder of Mohamed Saffie".

Well, members of the jury, he told you that he slept at his home, but he was free to do whatsoever he wanted and he might have slept the whole night as well as he might have done otherwise.

That is the statement of the accused, Nabi Baksh. He called a witness, Rasulan, who is his mother and lives at Clonbrook. She told you that he slept in the house on the night of the 11th June and that she awoke at 3 a.m. - that is the working person's waking hour apparently - and came on to Kitty to sell greens; she made two trips to the train station to take out her greens and she saw that Nabi Baksh was asleep when she left. She heard of his arrest later that day when she went home. 20

In cross-examination she said she did not see her son go out that night. Well, of course she was asleep, her bedroom door, she says, was open all night. Well, having it open possibly any movement might awake her. All these things are for your consideration. 30

That members of the jury is the case for the defence. As I have told you before the defence is that both accused were elsewhere when this shooting took place and could not have shot Mohamed Saffie; that Fiaz Baksh was away in La Penitence and Nabi Baksh was sleeping at his mother's home.

If you accept their statement and the evidence of their witnesses then they are not guilty. If it leaves you in any doubt, then they must be acquitted. 40

If you do not accept it, before you can convict the accused you still have to consider the evidence and the case of the prosecution. So that, before you convict, you have to consider the evidence of the prosecution to see that the identity of the persons has been established - that it has

been proved - and all other ingredients of which you have been informed by me.

You, gentlemen, are the judges of fact and you decide what evidence you believe and what you disbelieve. From the evidence you accept you must draw reasonable inferences and you are not to indulge in any speculation.

10 My function is to direct you on the law, as I have done, and to recall for your benefit the salient features in this case, and to comment on the evidence which has been led; but if in the course of my comments you conclude that I have expressed an opinion on the facts you must understand that you are entitled to disregard anything that I tell you on the facts. However, if you agree with what I say you accept them and then you can use them as your own.

20 So then, nothing that I have said to you on the facts you are to accept as any gospel. You are there as the supreme judges of fact. You come to your own conclusions and find as a fact such and such a thing as from the evidence, and if necessary, you make whatsoever inferences you think reasonable, reasonable inferences without speculation.

30 Please remember that it is not necessary for the prosecution to establish motive as part of the evidence to convict a prisoner, but in this case there is such evidence before you and it is for you to consider it together with all the other evidence and to come to a decision.

If you are in doubt as to whether you should convict at all your duty would be to acquit. If you accept the account of each of the accused you must acquit. Short of accepting that explanation if it left you in any doubt you must acquit.

On consideration of the whole of the evidence you must be satisfied of the guilt of one or other, or both accused, before you can convict one or other, or both.

Gentlemen, you are here to assist in the administration of justice and do not fail in so doing.

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DISCUSSION ON CONCLUSION OF SUMMING UP

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REMARKS TO COUNSEL

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Gentlemen, is there anything else that you would like me to put to the jury?

MR. E.V. LUCKHOO:-

My Lord, may I with great respect say that if Your Lordship thinks it necessary you may put this to them: Your Lordship mentioned that the two torchlights were handed to Sergeant Chee-a-Tow sometime on the 12th. I believe in addition to that, and subject to Your Lordship's view on the matter, there was also a lamp from the house.

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MR. LLOYD LUCKHOO: That is so, My Lord.

CROWN COUNSEL: I think I did hear, in cross-examination of the witness Lochan, Your Lordship by mistake say that he had given evidence for Fiaz Baksh. It is really for Nabi Baksh.

HIS LORDSHIP: Members of the jury, I am most grateful for this help given by the defence and also Crown Counsel, and that is, that I omitted to inform you of the lamp that was also taken by Sergeant Chee-a-Tow, which lamp is in evidence. It is so, that on the morning of the 12th June he collected the torchlights as well as the oil lamp that is now in court as an exhibit. I am most grateful to Mr. E.V. Luckhoo for pointing this out.

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Further, I want you to erase from your minds what I think I said that this witness, Lochan, gave evidence before on behalf of Fiaz Baksh. It was Nabi Baksh. I have down the note here -

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"I have given evidence in court once before and that was for Nabi Baksh. This is the second time I am giving evidence on his behalf."

I am most grateful to the gentlemen.

Please consider your verdict. All the exhibits are at your disposal and may accompany you in your room where you are to have your deliberations.

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No. 41.

VERDICT AND SENTENCE

In the
Supreme Court
of British
Guiana.

VERDICT: No. 1 accused, Mohamed Fiaz Baksh,
found guilty of murder.

No. 2 accused, Nabi Baksh, found
guilty of murder.

No. 41.

Verdict and
Sentence,
5th December
1956.

SENTENCE: Sentence of death passed on the
prisoners.

No. 42.

NOTICE OF APPEAL OF MOHAMED FIAZ BAKSH

In the Supreme
Court of British
Guiana, Court of
Criminal Appeal.

CRIMINAL APPEAL ORDINANCE, 1950.

NOTICE OF APPEAL

QUESTION OF LAW ONLY.

No. 42.

Notice of Appeal
of Mohamed Fiaz
Baksh,
14th December
1956.

To: The Registrar of the Court of Criminal Appeal

I, Mohamed Fiaz Baksh, having been convicted
of the offence of murder, contrary to section 100
of the Criminal Law (Offences) Ordinance, Chapter
10, and being now a prisoner under sentence of
death in the Georgetown Prison, do hereby give you
notice of appeal against my conviction (particulars
of which hereafter appear) to the Court of Criminal
Appeal on questions of law, that is to say:

1. The learned trial Judge erred in allowing
the following evidence to be led which was inad-
missible or which even if admissible had little pro-
bative value in relation to the offence charged but
was highly prejudicial:

that is to say the evidence of Mohamed
Mursalin concerning an incident of 2nd December,

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In the Supreme
Court of British
Guiana, Court of
Criminal Appeal.

No. 42.

Notice of Appeal
of Mohamed Fiaz
Baksh,
14th December
1956 -
continued.

1955, entirely unconnected with the charge, on which occasion the witness claims to have seen the two accused with guns in their hands.

2. The learned trial Judge misdirected the jury in his summing up in relation to the evidence referred to in ground (1) above.

3. The learned trial Judge misdirected the jury concerning the statements of the accused from the dock, to the effect that they were entitled to draw inferences which could tell of their guilt and which might be unfavourable to the accused if the accused did not give a reasonable explanation for facts which were proved.

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4. The learned trial Judge misdirected the jury on "the burden of proof" and "reasonable doubt".

5. The learned trial Judge misdirected the jury as to their consideration of statements made by the accused before they were charged as well as from the dock.

6. The learned trial Judge misdirected the Jury as to the manner in which the establishment of motive by the Crown would strengthen the case for the prosecution.

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7. The learned trial Judge misdirected the jury as to the law relating to "common design" and its application to the instant case.

8. The learned trial Judge misdirected the jury as to the law relating to "an accessory before the fact."

9. The learned trial Judge misdirected the jury as to the law relating to "a principal in the second degree."

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10. The learned trial Judge erred in leaving to the Jury for their consideration that if either accused fell within the category of "an accessory before the fact" then either or both would be responsible in law, because there was no evidence from which such a conclusion could properly be drawn.

11. The learned trial Judge misdirected the jury as to the law relating to "circumstantial evidence."

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12. The learned trial Judge misdirected the jury

as to the law relating to "the defence of an alibi."

13. The learned trial Judge misdirected the jury to the effect that the onus of proving an alibi is on the accused.

10 14. The learned trial Judge misdirected the jury to the effect that when an accused person is required to prove a matter, it need not be proved "beyond reasonable doubt", but only to the "extent of probability."

15. The learned trial Judge misdirected the jury in dealing with the effect of the depositions which were tendered in evidence in relation to the testimony of the witnesses whose depositions were put in.

16. The learned trial Judge misdirected the jury as to inferences unfavourable to the accused which they could draw from the evidence of witnesses for the prosecution.

20 17. The learned trial Judge misdirected the jury as to inferences unfavourable to the accused which they could draw from the evidence of witnesses for the defence.

18. The learned trial Judge did not adequately put the case for the defence to the jury, and did not invite them to consider from all the evidence in the case certain material and favourable inferences which they could draw if they accepted certain portions of the evidence.

30 The learned trial Judge did not fully and clearly put to the jury the defence of the accused and its relation to the facts of the case.

40 19. The learned trial Judge in summing up on the evidence of Mohamed Nazir erred in not pointing out that the witness negatived previous answers by subsequently admitting that when persons came on to the scene he did not answer any question as to the circumstances under which the deceased met his death because the persons who came up did not ask any questions.

20. The learned trial Judge misdirected the jury and invited them to draw inferences which would naturally be unfavourable and would be unjustified as to the reason why Sergeant Chee-a-Tow collected

In the Supreme Court of British Guiana, Court of Criminal Appeal.

—————
No. 42.

Notice of Appeal of Mohamed Fiaz Baksh,
14th December 1956 -
continued.

In the Supreme
Court of British
Guiana, Court of
Criminal Appeal.

No. 42.

Notice of Appeal
of Mohamed Fiaz
Baksh,
14th December
1956 -
continued.

the torchlights and examined footprints, and whether it was not possibly on account of the report of the witnesses made to him, and whether such action did not throw light on the evidence of Mohamed Haniff and Mohamed Nazir and did not show that they were truthful witnesses.

21. The learned trial Judge misdirected the jury and invited them to draw inferences which would naturally be unfavourable and would be unjustified as to the reason which prompted P.C. 6019 Cummings to telephone to the Cove and John Police Station when he saw the accused in Croal Street, Georgetown, on the 12th June, 1956. 10

22. The learned trial Judge erred in misdirecting the jury as to the evidence relating to the finding of a gun, which was not proved to be in any way connected with the case, and in not directing the jury as to the unfavourable inferences to the prosecution which they might draw if they found that the gun had "been deliberately planted" by persons connected with the prosecution. 20

23. The learned trial Judge erred in unduly criticising the witnesses for the defence on matters which did not warrant criticism.

24. The learned trial Judge erred in misdirecting the jury or in not adequately directing them as to the importance of the time element in the case and as to inferences favourable to the accused which they could draw if they were satisfied as to the establishment of certain incidents at particular times. 30

25. The learned trial Judge erred in misdirecting the jury that although the accused had set alibis yet they were free agents to do what they wanted, because if the accused could establish that they were elsewhere at points of time so close to the point of time at which the jury might find that the deceased was killed in order to render it impossible for the accused to have shot and killed the deceased, then the question of freedom of movement did not arise. 40

26. The learned trial Judge misdirected the jury as to the evidence of the witnesses Shira Ali and Shira Khan, because if their testimony were accepted then it would have been impossible for the appellant to have committed the offence.

27. The learned trial Judge erred in not directing the jury that it was important to determine the precise time at which the deceased was shot and that they would have to consider whether based on that finding it was possible for the Appellant to commit the offence and be at La Penitence, East Bank, Demerara at the time as deposed by the witnesses.

10 28. The learned trial Judge erred in not directing the jury that even if one or more of the accused had been seen in the vicinity during the night of 11th June, 1956, they would still have to consider the testimony of Mohamed Haniff and Mohamed Nazir independently in order to determine whether they were satisfied as to the truth of the testimony of these witnesses and as to their ability to identify the persons whom they claimed to have seen.

Mohamed Fiaz Baksh

20 Appellant.

Witnesses:-

1. C.A.E. Jordan.
2. D.N. Sharma.

Dated this 14th day of December, 1956.

Particulars of trial and conviction

- 30
1. Date of trial: 19th, 20th, 21st, 22nd, 23rd, 26th, 27th, 28th, 29th and 30th November, 1956, 3rd, 4th and 5th days of December, 1956.
 2. In what Court tried: Before the Honourable Mr. Justice Clare, Demerara Assizes.
 3. Sentence: Death.
 4. Whether above questions of law were raised at the trial: Some were raised.
-

In the Supreme Court of British Guiana, Court of Criminal Appeal.

No. 42.

Notice of Appeal of Mohamed Fiaz Baksh,
14th December 1956 -
continued.

In the Supreme Court of British Guiana, Court of Criminal Appeal.

No. 42.

Notice of Appeal of Mohamed Fiaz Baksh, 14th December 1956 - continued.

- 1. I do not desire to apply to the Court of Criminal Appeal for legal aid.
- 2. I desire to be present on the hearing of my appeal in order to give my Counsel any information which may be necessary.
- 3. I do not wish my argument presented in writing.

Mohamed Fiaz Baksh
Appellant.

Witnesses:-

- 1. C.A.E. Jordan.
- 2. D.N. Sharma.

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Demerara. Dated this 14th day of December, 1956.

No. 43.

Notice of Appeal of Nabi Baksh, 14th December 1956.

No. 43.

NOTICE OF APPEAL OF NABI BAKSH.

CRIMINAL APPEAL ORDINANCE, 1950.
NOTICE OF APPEAL.
QUESTION OF LAW ONLY.

To: The Registrar of the Court of Criminal Appeal

I, Nabi Baksh, having been convicted of the offence of murder, contrary to section 100 of the Criminal Law (Offences) Ordinance, Chapter 10, and being now a prisoner under sentence of death in the Georgetown Prison, do hereby give you notice of appeal against my conviction (particulars of which hereafter appear) to the Court of Criminal Appeal on questions of law, that is to say:

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- 1. The learned trial Judge erred in allowing the following evidence to be led which was inadmissible or which even if admissible had little

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probative value in relation to the offence charged but was highly prejudicial:

that is to say the evidence of Mohamed Mursalin concerning an incident of 2nd December, 1955, entirely unconnected with the charge, on which occasion the witness claims to have seen the two accused with guns in their hands.

10 2. The learned trial Judge misdirected the jury in his summing up in relation to the evidence referred to in ground (1) above.

3. The learned trial Judge misdirected the jury concerning the statements of the accused from the dock, to the effect that they were entitled to draw inferences which could tell of their guilt and which might be unfavourable to the accused if the accused did not give a reasonable explanation for facts which were proved.

4. The learned trial Judge misdirected the jury on "the burden of proof" and "reasonable doubt".

20 5. The learned trial Judge misdirected the jury as to their consideration of statements made by the accused before they were charged as well as from the dock.

6. The learned trial Judge misdirected the jury as to the manner in which the establishment of motive by the Crown would strengthen the case for the prosecution.

30 7. The learned trial Judge misdirected the jury as to the law relating to "common design" and its application to the instant case.

8. The learned trial Judge misdirected the jury as to the law relating to "an accessory before the fact."

9. The learned trial Judge erred in leaving to the law relating to "a principal in the second degree."

40 10. The learned trial Judge erred in leaving to the jury for their consideration that if either accused fell within the category of "an accessory before the fact" then either or both would be responsible in law, because there was no evidence from which such a conclusion could properly be drawn.

In the Supreme Court of British Guiana, Court of Criminal Appeal.

No. 43.

Notice of Appeal of Nabi Baksh, 14th December 1956 - continued.

In the Supreme Court of British Guiana, Court of Criminal Appeal.

No. 43.

Notice of Appeal of Nabi Baksh, 14th December 1956 - continued.

11. The learned trial Judge misdirected the jury as to the law relating to "circumstantial evidence."

12. The learned trial Judge misdirected the jury as to the law relating to "the defence of an alibi."

13. The learned trial Judge misdirected the jury to the effect that the onus of proving an alibi is on the accused.

14. The learned trial Judge misdirected the jury to the effect that when an accused person is required to prove a matter, it need not be proved "beyond reasonable doubt," but only to the "extent of probability." 10

15. The learned trial Judge misdirected the jury in dealing with the effect of the depositions which were tendered in evidence in relation to the testimony of the witnesses whose depositions were put in.

16. The learned trial Judge misdirected the jury as to inferences unfavourable to the accused which they could draw from the evidence of witnesses for the prosecution. 20

17. The learned trial Judge misdirected the jury as to inferences unfavourable to the accused which they could draw from the evidence of witnesses for the defence.

18. The learned trial Judge did not adequately put the case for the defence to the jury, and did not invite them to consider from all the evidence in the case certain material and favourable inferences which they could draw if they accepted certain portions of the evidence. 30

The learned trial Judge did not fully and clearly put to the jury the defence of the accused and its relation to the facts of the case.

19. The learned trial Judge in summing up on the evidence of Mohamed Nazir erred in not pointing out that the witness negatived previous answers by subsequently admitting that when persons came on to the scene he did not answer any questions as to the circumstances under which the deceased met his death because the persons who came up did not ask any questions. 40

20. The learned trial Judge misdirected the jury and invited them to draw inferences which would naturally be unfavourable and would be unjustified as to the reason why Sergeant Chee-a-Tow collected the torchlights and examined footprints, and whether it was not possibly on account of the report of the witnesses made to him, and whether such action did not throw light on the evidence of Mohamed Haniff and Mohamed Nazir and did not show that they were truthful witnesses.

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21. The learned trial Judge misdirected the jury and invited them to draw inferences which would naturally be unfavourable and would be unjustified as to the reason which prompted P.C.6019 Cummings to telephone to the Cove and John Police Station when he saw the accused in Croal Street, Georgetown, on the 12th June, 1956.

22. The learned trial Judge erred in misdirecting the jury as to the evidence relating to the finding of a gun, which was not proved to be in any way connected with the case, and in not directing the jury as to the unfavourable inferences to the prosecution which they might draw if they found that the gun had "been deliberately planted" by persons connected with the prosecution.

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23. The learned trial Judge erred in unduly criticising the witnesses for the defence on matters which did not warrant criticism.

24. The learned trial Judge erred in misdirecting the jury or in not adequately directing them as to the importance of the time element in the case and as to inferences favourable to the accused which they could draw if they were satisfied as to the establishment of certain incidents at particular times.

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25. The learned trial Judge erred in misdirecting the jury that although the accused had set alibis yet they were free agents to do what they wanted, because if the accused could establish that they were elsewhere at points of time so close to the point of time at which the jury might find that the deceased was killed in order to render it impossible for the accused to have shot and killed the deceased, then the question of freedom of movement did not arise.

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26. The learned trial Judge misdirected the jury as to the evidence of the witness Rasulan, because if her testimony were accepted then it would

In the Supreme Court of British Guiana, Court of Criminal Appeal.

No. 43.

Notice of Appeal
of Nabi Baksh,
14th December
1956 -
continued.

In the Supreme
Court of British
Guiana, Court of
Criminal Appeal.

No. 43.

Notice of Appeal
of Nabi Baksh,
14th December
1956 -
continued.

have been impossible for the appellant to have committed the offence.

27. The learned trial Judge erred in not directing the jury that it was important to determine the precise time at which the deceased was shot and that they would have to consider whether based on that finding it was possible for the Appellant to escape, to change his clothes, and clean his body, and reach the railway station at Clonbrook at 5.58 a.m. as testified to by the Crown witness, Kalloo. 10

28. The learned trial Judge erred in not directing the jury that even if one or more of the accused had been seen in the vicinity during the night of 11th June, 1956, they would still have to consider the testimony of Mohamed Haniff and Mohamed Nazir independently in order to determine whether they were satisfied as to the truth of the testimony of these witnesses and as to their ability to identify the persons whom they claimed to have seen. 20

Nabi Baksh
Appellant.

Witnesses:-

1. C.A.E. Jordan.
2. D.N. Sharma.

Dated this 14th day of December, 1956.

Particulars of trial and conviction

- | | | |
|---|--|----|
| 1. Date of trial: | 19th, 20th, 21st, 22nd,
23rd, 26th, 27th, 28th,
29th and 30th November,
1956, 3rd, 4th and 5th
days of December, 1956. | 30 |
| 2. In what Court tried: | Before the Honourable
Mr. Justice Clare,
Demerara Assizes. | |
| 3. Sentence: | Death. | |
| 4. Whether above ques-
tions of law were
raised at the trial: | Some were raised. | 40 |

1. I do not desire to apply to the Court of Criminal Appeal for legal aid.
2. I desire to be present on the hearing of my appeal in order to give my Counsel any information which may be necessary.
3. I do not wish my argument presented in writing.

In the Supreme Court of British Guiana, Court of Criminal Appeal.

No. 43.

Notice of Appeal of Nabi Baksh, 14th December 1956 - continued.

Nabi Baksh
Appellant.

Witnesses:-

- 10
1. C.A.E. Jordan.
 2. D.N. Sharma.

Demerara. Dated this
14th day of December, 1956.

No. 44.

AFFIDAVIT OF CLAUDE LLOYD LUCKHOO

C.C.A. Nos.35 and 36 of 1956

IN THE SUPREME COURT OF BRITISH GUIANA
COURT OF CRIMINAL APPEAL

B E T W E E N :-

MOHAMED FIAZ BAKSH, and
NABI BAKSH Appellants

-- and --

THE QUEEN Respondent

AFFIDAVIT filed by leave of the Court this 13th day of May, 1957.

I, Claude Lloyd Luckhoo, Barrister-at-Law, of 2 Croal Street, Georgetown, British Guiana, being duly sworn, make oath and say as follows:-

No. 44.

Affidavit of Claude Lloyd Luckhoo, 13th May 1957.

In the Supreme
Court of British
Guiana, Court of
Criminal Appeal.

No. 44.

Affidavit of
Claude Lloyd
Luckhoo,
13th May 1957
- continued.

1. I am a Barrister-at-law and have been in practice in the Colony of British Guiana for the past seventeen years.

2. I appeared as Counsel for the Appellant, Nabi Baksh, at his trial and was present throughout the entire hearing.

3. There were three witness called by the Crown whose evidence, if accepted, sought to inculpate the Appellant as being concerned in the murder of Mohamed Saffie. These witnesses were Bebe Mariam, Mohamed Haniff and Mohamed Nazir. Bebe Mariam is the widow of the deceased, Mohamed Haniff the brother-in-law of the deceased, and Mohamed Nazir the brother of the deceased; and are all therefore closely related.

1C

4. Subsequent to the trial and conviction of the Appellant, at my request and following my enquiry the Solicitor General has permitted me to inspect the original statements given to the Police of the Crown witnesses Bebe Mariam, Mohamed Haniff and Mohamed Nazir. At my request the Solicitor General has also recently supplied me with copies of the statements of the said witnesses.

2C

5. There are material discrepancies, contradictions and variations between the original statements and the evidence on oath of the said witnesses the most important of which are set out below.

6. The witness Bebe Mariam in her statement to the Police on the day of the murder, 12th June, 1956, said that at about 2.30 a.m. on 12th June, 1956, she awoke and heard dogs barking, and by the light of her husband's flashlight she saw Fyuse Baksh running away in the ricefield South of her home.

3C

No mention was made by her of having seen the Appellant although in another part of the statement reference is made to Nabby Baksh which shows he is a person known to her.

This subsequent evidence relates to a period of time close to the time of the murder of Mohamed Saffie and was very damaging evidence against the Appellant.

4C

On the other hand in her evidence at the preliminary enquiry on 25th July, 1956, (tendered at

the trial) this witness testified that she saw Mohamed Fiaz Baksh and Nabi Baksh at 2.30 a.m. two or three feet apart in a ricefield, by the light of a torch, and they walked away. Also at the trial (page 70 lines 3 - 8) she repeated that she saw Fiaz Baksh and Nabi Baksh on the rice bed 48 feet away from her house. She added (page 73 lines 5 - 6) that she told Haniff and Nazir at 3.00 a.m. what she had seen at 2.30 that she had seen Fiaz Baksh and Nabbi Baksh.

In the Supreme Court of British Guiana, Court of Criminal Appeal.

No. 44.

Affidavit of
Claude Lloyd
Luckhoo,
13th May 1957
- continued.

7. The witness Mohamed Haniff firstly in his statement to the Police on the 12th June, 1956, said that after he heard the explosion of a gun, he looked out of the window, shone his torchlight and saw Mohamed Fiuze Baksh and another man whom he did not know by name on the parapet of the trench which divides the yard and the ricefield. He later added that he would be able to identify the other man whom he knew by face but not by name; whereas on the other hand he gave evidence at the trial to the effect that he identified both men by appearance as well as by name (page 19 lines 11-26); and (page 23 line 14 to page 24 line 1); and (page 28 lines 13 - 17); secondly in his said statement he said that he went out on the platform and then ran on the bridge and was all the time shouting "All right Fiuze, all you run, me see all you two" (which was consistent with knowing the name of one person only) whereas in his evidence (Page 19 lines 11-26 and page 23 line 14 to page 24 line 1); and (page 28 lines 13 - 17) - he said that he shouted "Alright Fiaz and Jacoob no use run any more I see you already" (page 19 lines 21 - 22) or "Alright Fiaz and Jacoob you need not run I see you all" (page 24 line 1) and that he was acquainted with both men for three to four weeks before this incident (page 28 lines 13 - 17); and in addition he gave no evidence as to having gone unto the platform or run on to the bridge: thirdly, in his statement he said the men were on the rice field side parapet, 8 feet from the yard, in line with the kitchen, and running away south in the ricefield and suddenly turned running east whereas in his evidence (references as above) he said that the men changed their course after crossing the trench and walked (on the dam) in an easterly direction, and Mohamed Fiaz Baksh turned his face and he recognised him (page 23 line 28 - end of page) - an entirely different version of the route taken and of his ability to identify: fourthly, in his statement he said he went to

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In the Supreme
Court of British
Guiana, Court of
Criminal Appeal.

No. 44.

Affidavit of
Claude Lloyd
Luckhoo,
13th May 1957
- continued.

Clonbrook from 3rd June, 1956 and Mohamed Fiuise Baksh was pointed out to him on 4th June, and no mention was made of Nabi Baksh, whereas in his evidence he said he had been in Clonbrook for three weeks (page 20 line 4 from end) and was acquainted with both accused for three to four weeks (page 28 lines 13 - 17) - presumably from the beginning of his stay:

fifthly, in his statement he said that before the discharge of a gun Mohamed Saffie went down with a lighted wall lamp into the kitchen to cook whereas in his evidence he denied this fact (page 22 lines 24 - 26):

sixthly, in his statement he said that after the firing of the gun he went into the kitchen and found Mohamed Saffie bracing by the steps whereas in his evidence he said he found Mohamed Saffie lying on the step of the kitchen (page 19 - 5 lines from end).

8. The witness Mohamed Nazir firstly in his statement which he gave to the Police on the 12th June, 1956, said that neither he nor Mohamed Haniff shouted at the men who were escaping after the gun had been fired because they were afraid of being shot whereas in his evidence at page 30 line 26 he said that Haniff said: "Alright Fiaz and Jacob, don't run a see you"; and he admitted having said in the Magistrate's Court that Haniff shouted: "Alright alyou no run, me see ah you" (page 35 - 2 lines from end);

secondly, in his statement he said that after the discharge of the gun the men scrambled up on a parapet South of the house, and ran South along a ricefield, and crossed over a trench on the eastern side of the ricefield, whereas in his evidence (page 30 lines 22 - 30) he described the men as crossing the trench and running East (which would be along the dam) and in addition introduced the shout of Haniff (not referred to in his statement) and added when Haniff shouted they made a swing to turn back:

thirdly, in his statement he said that after the discharge of a gun he found Mohamed Saffie standing and swaying, and he caught him when he was about to fall, and he eased him on to the floor of the kitchen, whereas in his evidence he said he found Mohamed Saffie on the kitchen step lying face downwards (page 31 lines 2 - 3):

fourthly, in his statement he said he awoke at 4 a.m. when the 'bus blew its horn' whereas in his evidence he said that he awoke at 3 a.m. and the

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bus usually blew at 3 a.m. (page 36 - 5 lines from end).

And further I say not.

C. Lloyd Luckhoo.

Sworn to at Georgetown, Demerara,
this 13th day of May, 1957,

before me,

F.I. Dias.

36 cents
cancelled
F.I.D.
13/5/57.

10 A Commissioner of Oaths to
Affidavits.

In the Supreme
Court of British
Guiana, Court of
Criminal Appeal.

No. 44.

Affidavit of
Claude Lloyd
Luckhoo,
13th May 1957
- continued.

No. 45.

AMENDMENTS TO NOTICES OF APPEAL

CRIMINAL APPEAL ORDINANCE 1950.

NABI BAKSH

v.

THE QUEEN

- and -

MOHAMED FIAZ BAKSH

v.

THE QUEEN.

No. 45.

Amendments to
Notices of
Appeal,
13th May 1957

AMENDMENTS SOUGHT TO NOTICE OF APPEAL

To amend ground 1 of the Grounds of Appeal by the insertion of ("a") after the words "that is to say"; and to add after the words "with guns in their hands" the following:

- (b) the evidence of Mohamed Nazir at page 40 of the record as follows: "There is now pending in Court a case between Fiaz Baksh and the deceased";

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In the Supreme Court of British Guiana, Court of Criminal Appeal.

No. 45.

Amendments to Notices of Appeal,
13th May 1957
- continued.

- (c) the evidence of Bebe Mariam at page 70 of the record as follows: "There is a case pending in the Supreme Court against Fiaz Baksh for breaking the foot of Mohamed Saffie."
- (d) The evidence of Lyndon Burnham at page 100 of the record as follows: "They consulted me about a trial to take place in the Supreme Court relating to a charge of wounding Mohamed Saffie."

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C. Lloyd Luckhoo
Counsel for Nabi Baksh.

Edward V. Luckhoo
Counsel for Fiaz Baksh.

Dated this 13th day of May, 1957.

No. 46.

Particulars of Grounds of Appeal,
14th May 1957.

No. 46.

PARTICULARS OF GROUNDS OF APPEAL

CRIMINAL APPEAL ORDINANCE 1950

C.C.A. Nos. 35 and 36 of 1956.

IN THE SUPREME COURT OF BRITISH GUIANA

COURT OF CRIMINAL APPEAL.

20

BETWEEN:- NABI BAKSH Appellant
- and -
THE QUEEN Respondent
and MOHAMED FIAZ BAKSH Appellant
- and -
THE QUEEN Respondent

PARTICULARS OF GROUNDS OF APPEAL

2. A. The learned trial Judge did not direct the Jury adequately on the evidence of Mohamed Mursalin in that

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10 (a) The Jury were not told that they would have to be satisfied that the accused were properly identified in view of the fact that it was about 7 - 8 p.m. on a dark night and the persons alleged to be the accused were walking in the middle of the dam in bush 8 feet wide as shown in a photograph (marked 7). The Jury were not asked to say whether, even if a torch were used, there could be proper identification from the western pathway where the witness was walking through bush as shown in the said photograph tendered;

(b) The Jury were not directed as to the significance if any of this evidence, how they were to regard it, and apply it to the facts of the present case;

20 (c) The Jury were not directed that even if the evidence related to another case it should not prejudice their minds in relation to the issues in the present case, except that if the evidence was believed it only proved that the accused persons were once seen carrying guns six months before the offence in question.

30 B. There was non direction amounting to misdirection in respect of the additional grounds 1, (b), (c) and (d) (if granted) in that the Jury were not given any guidance as to how the said evidence should be treated, especially as the said evidence was of a highly prejudicial nature if not considered in the right way.

4. (a) Because of what is mentioned in ground 3 of the Notice of Appeal, and

40 (b) When the Jury were directed as at page 139 that "If the evidence is so strong against a man as to leave only a remote possibility in his favour which may be dismissed with a sentence, 'of course, it is possible but not in the least probable', then the case is proved beyond reasonable doubt and nothing short of that will suffice."

5. (a) The learned trial Judge failed to direct the Jury and/or direct them adequately

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No. 46.

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14th May 1957
- continued.

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Grounds of
Appeal,
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on the several inferences favourable to the accused which could be drawn from the statements made before they were charged.

(b) Because of what is stated in ground 3 of the Notice of Appeal.

6. In that the learned trial Judge merely told the Jury that "If there is a strong motive for an act it strengthens the Prosecution case", without further going into the question as to what evidence of motive there was and how it affected the case for the Prosecution. 10
8. In that the learned trial Judge told the Jury:
- (a) At page 143: "If you find that either of these prisoners falls within the category (In referring to an accessory before the fact) he is equally responsible with the principal felon - that is the person who actually commits the killing." when there was no evidence upon which either of the prisoners could fall within that category. 20
- (b) At Page 143: "If you find that one of the accused either counselled, procured or commanded the other accused to commit this offence but at the time that the murder was actually committed that accused was so far away that the person committing the offence could not be encouraged by the hope of any immediate help or assistance from that accused then you may convict" when there was no evidence upon which such a direction could be given. 30
- (c) At page 144: "If you find that one of the accused committed the offence, that the other accused had either commanded, procured or counselled him to commit, but he was too far away to give any immediate help to the one who actually did it, he is nevertheless equally responsible for what that other person has done even though he is too far away to give any immediate help" when there was no evidence upon which such a direction could be given. 40
- (d) At page 145: "If you find that one accused either commanded or counselled or procured another to commit an offence, if you

find there was some direct incitement on the part of one and that at the time the offence was committed that one was too far away from the other to render him any immediate assistance, then he is nevertheless equally guilty with him, if you find that there was direct incitement as I have already explained to you" when there was no evidence upon which such a direction could be given.

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- continued.

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(e) At page 147: "If you are satisfied that there was a community of purpose and there was either an incitement on the part of one where the person is too far away to give assistance ... then he is equally responsible" when there was no evidence upon which such a direction could be given.

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12. In that the learned trial Judge told the Jury at page 150:

"The onus of proving an alibi is on the accused; but the onus on the prosecution of proving the identity of the person or persons that did the act still remains."

C. Lloyd Luckhoo

Counsel for Appellant, Nabi Baksh.

Edward V. Luckhoo

Counsel for Appellant, Mohamed Fiaz Baksh.

30 Dated this 14th May, 1957.



In the Supreme
Court of British
Guiana, Court of
Criminal Appeal.

ADDITIONAL STATEMENTS USED IN COURT OF
CRIMINAL APPEAL

No. 47.

No. 47.

STATEMENT OF MARIAM

Statement of
Mariam,
25th July 1956

T.A.M. ex "C.C.A.1"
in re Baksh v. The
Queen 21/5/57

Taken 25/7/56

Mariam called Baby states:-

I am a huckster. I live at Clonbrook, E.C.D. 10
Mohamed Saffie deceased, was my husband. We were
living together in the same home at Clonbrook up to
the time of his death. His mother Somaria and
brother Mohamed Nasir live in another house that
adjoins my home. At about 9 p.m. on Monday 11th
June 1956 Mohamed Saffie, decd. and I were in our
home lying in bed not sleeping. I heard our dog
barking in our yard continuously as if it was bark-
ing at some one. I went at the door and shone a
flashlight about the yard but saw no one. This 20
door is on the northern side of our home. I went
back to bed and shortly after, the dogs started to
bark again. I fell asleep leaving the dogs bark-
ing. About 2.30 a.m. I woke up and heard the dogs
still barking and my husband and I went out in our
yard with a flashlight, quietly. My husband focus-
ed the light south of our home as the dogs were
looking in that direction and I saw Fyzuse Baksh
running away in the rice field next (south) of our
home. He had something in his hand but I do not 30
know what it was. We were afraid and we went back
in our home. I then started to prepare to go to
town to sell because the bus leaves Anns Grove at
about 4 a.m. daily. I always go to town on Tues-
days to sell and my husband always go with me to
the bus. After seeing Fyzuse Baksh in the rice
field, I told my husband that he must not accompany
me to the bus and that he must send his brother
Mohamed Nasir with me because his wife Shida was
going to town also by the same bus to sell. About 40
3.30 a.m. Mohamed Nasir, his wife Shida and I left
home to join the bus at Anns Grove. The dogs were
still barking but not as before. We arrived at the
bus stand about 3.40 a.m. and Shida and I joined

the bus. Mohamed Nasir left saying that he is going back home. About 4.30 a.m. the bus left for Georgetown and we arrived there around 6 a.m. About 7 a.m. whilst at Bourda Market, I heard that my husband got shot and died. A black woman named Alice told me. I returned home about 9 a.m. and saw my husband lying dead in our kitchen with wounds and blood on his chest. I went in the kitchen and saw an opening made at the southern side. That opening was not there at the time I closed up the kitchen on the evening of the 11th June 1956. Near to the opening I also saw some small holes on the whild canes that were used to make the walls of the kitchen on the southern side. These holes were not there on the evening of Monday 11th June 1956. My husband lived well with everybody in the neighbourhood. He is not on speaking terms with Fyzuse Baksh and Nabby Baksh. Fyzuse Baksh was charged with assaulting my husband during January 1956 and the case is still pending in the Supreme Court. He was also charged with discharging a firearm at my husband's brother Mohamed Morsalene. That case is also pending. Nabby Baksh is also charged in this matter. On Friday 1st June, 1956, at about 7 a.m. I was in our yard. I saw Fyzuse Baksh in a coconut walk about 20 rods south of our home and my husband coming from the direction of the said coconut walk shouting saying all right Fyzuse you threaten me, you run me wid the cutlass but ah wont tell you anything but ah goh report the matter to the Police. Shortly after I went at Cove & John Police Station with my husband where he reported the matter.

Mariam.

Taken by me at Clonbrook at 10.45 a.m. on 12.6.56 and read over to Mariam who said it is true and correct and signed it.

Liverpool P.C. 5015.

In the Supreme Court of British Guiana, Court of Criminal Appeal.

No. 47.

Statement of
 Mariam,
 25th July 1956
 - continued.

In the Supreme
Court of British
Guiana, Court of
Criminal Appeal.

No. 48.

STATEMENT OF MOHAMED NASIR.

No. 48.

Statement of
Mohamed Nasir
18th July 1956.

Taken
18/7/56

T.A.M. Ex. C.C.A.2
in re Fiaz Baksh &
Mohamed Baksh v.
The Queen
21/5/57
K.B.

Clonbrook East Coast Demerara

Tuesday 12th June 1956.

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MOHAMED NASIR states:

I live at the above address and I am the brother of Mohamed Saffie called Sophie. I am twenty six years old but I cannot read nor write. I am a Farmer. The land which my house is built on is my property, and has a trash-house adjoining to it. My brother Mohamed Saffie lives in my house with his wife Baby. I am married under the Muslim rites and live with my wife Shaida and two children in the said house.

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The trash-house which is situated west of the cottage I live in, is used as a Kitchen. Haniff who is the brother-in-law of Mohamed Saffie is stopping at my house for the past three weeks now. At present there are eight of us living at my place. Myself, my wife, my mother Somaria, my two children about 4 and 5 year respectively and Haniff sleeps in the cottage that I live in, while Mohamed Saffie and his wife live in the trash house.

Between 7 and 8 p.m. on Monday 11th June, 1956 we all retired to bed, and at about 4 a.m. on Tuesday 12th June, 1956, when I heard the Anns Grove Bus blew his horn, I got up from bed and my wife, Mohamed Saffie and his wife also got up from their bed, and myself and my brother Mohamed Saffie were assisting our wives to get ready to catch the said Bus for them to go to Georgetown to sell greens. As soon as my wife and Mohamed Saffie's wife was ready, I went with them with their load to catch the Anns Grove Bus. When we arrived where the bus was parked at Ann's Grove Public Road, I put in the load in the said bus and my wife and Mohamed Saffie wife boarded the said bus. I then left and was

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In the Supreme
Court of British
Guiana, Court of
Criminal Appeal.

—
No. 48.

Statement of
Mohamed Nasir,
18th July 1956
- continued.

returning home in my bateau and as soon as I was
about to tie the bateau to the usual place where I
always tie it near my house I heard a load fired
from a gun near to the kitchen where my brother
Mohamed Saffie lives and I immediately jumped out
of my bateau and I heard like feet running, and a
splash in a trench south of my house and as I heard
the noise I shone a torchlight which I had in my
hands after walking under my house and I saw
10 Mohamed Fiaz Baksh with a shot gun in his hands
and Nabi Baksh called Jacko behind him and they
both scrambled up on the parapet south of my house,
and ran south along a rice field, and crossed over
a trench on the eastern side of the rice field and
they both ran south along Clonbrook side line dam.
I did not shout out at them because I was afraid
that I would have been shot by Mohamed Fiaz Baksh.
I then ran into the kitchen and I saw my brother
Mohamed Saffie standing and swaying on his feet as
20 if he was about to fall. I then said "Saphie wha
happen". Then my brother Saphie said "Oh God Fiaz
Baksh shoot me and Jacko been wid he." I then
catch my brother Saphie who was about to fall and
eased him down on the floor of the kitchen. and I
saw my brother Saphie bleeding all over his chest
from gun shot wounds. The same time, Mohamed Haniff
came into the said kitchen and he said that after
he heard the gun load go off he got up from where
he was lying down in my house and saw the said two
30 men Mohamed Fiaz Baksh and Nabi Baksh called Jacko
running away alongside the rice field south of my
house and that he saw Mohamed Fiaz Baksh with a
shot-gun in his hands and that he also was afraid
to shout out, because he was afraid that Mohamed
Fiaz Baksh would shoot him. After not hearing my
brother saying anything more I left home and ran
to Abjool Majeed house at Bee Hive and I met him
at home and I told him what happen and he came
with me and saw my brother lying down in the
40 kitchen bleeding on his chest and Majeed left to
go and report the matter to Cove and John Police
Station while I remain with my brother who appear-
ed as if he was dead. Plenty people came to my
house and afterwards the Police came, and took over
and I told the Police all that I know and what I
saw. I cannot remember what clothes Mohamed Fiaz
Baksh and Nabi Baksh had on as I was confused and
was afraid and I did not take a chance to go be-
hind them. I know that my brother and Mohamed
50 Fiaz Baksh and Nabi Baksh are not on terms. I
know also that Mohamed Fiaz Baksh and Guilherme
beat up my brother some time early this year and
broke his foot and the case is now in Supreme Court

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Statement of Mohamed Nasir, 18th July 1956 - continued.

and Mohamed Fiaz Baksh threatened my brother several times to shoot him as the last time he threatened my brother to shoot him was some day in last week in the Coconut Walk at Clonbrook backdam. When I left home at 4.20 a.m. on 12.6.56 Saphie was alive.

his
Mohamed Nasir X 12.6.56
mark

Witness to Mark

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- 1. A. Thomas Det. Cons. 4409
- 2. G. St. John P.C. 5217

Taken by me at Clonbrook E.C. Dem at 10 a.m. on 12.6.56 in the presence of Det. Const. 4409 Thomas and 5217 St. John read over to Mohamed Nasir who said it is true and correct and affixed his mark in our presence.

John Chee-a-Tow Det. Cpl.
No. 4194

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No. 49.

No. 49.

Statement of Mohamed Haniff, 18th July 1956.

STATEMENT OF MOHAMED HANIFF

Clonbrook East Coast Demerara.

Taken 18/7/56

12th June, 1956.

T.A.m. Ex. C.C.A.3
in re Baksh v. The Queen
21/5/1957
K.B.

Mohamed Haniff states,

I am a messenger employed at Pln. Providence estate East Bank Demerara. I live at Herstelling Housing Scheme with my father and mother. My father

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is Alladin and my mother Sakina. I am 30 years of age but not married. I have no children. Bibi Miriam called Baby is my sister. She is married to Mohamed Saffie. Bibi Miriam and her husband Mohamed Saffie live together at Clonbrook East Coast, Demerara. They have no children. About four months ago whilst I was at my home at Herstelling E.B.D. my brother-in-law Mohamed Saffie came home to me and spent a week. He was then suffering with a fractured leg which I was told had been caused when a man named Mohamed Fiuse Baksh had beaten him with a stick at Anns Grove E.C.D. Up to that time I did not know Mohamed Fiuse Baksh. In month of May 1956 I applied and was granted three weeks leave from my job by the estate and on Sunday 3rd June, 1956, I went to my sister Bibi Miriam to spend time. At my sister's home I met her husband Mohamed Saffie her husband's brother Mohamed Nasir called Alli and his wife Shaidah also Mohamed Saffie's mother Somaria. We all live together in the house. About 7.00 a.m. on Monday 4th June, 1956, I was at this home when Mohamed Saffie called me to the front step of the house and showed me the man Mohamed Fiuse Baksh who at the time was in a boat in the trench which was in front the steps of the house and just about four feet from the steps. I looked at Mohamed Fiuse Baksh well, and realized that he is a person whom I had previously seen some place but it was only then that I knew he is Mohamed Fiuse Baksh. Mohamed Fiuse Baksh went away towards the back dam side. About 4.00 p.m. on Tuesday 5th June, 1956 myself and Mohamed Saffie my brother-in-law went to the backdam at Clonbrook to the coconut walk to pick up coconuts. We met Mohamed Fiuse Baksh at the said coconut walk and just as Mohamed Saffie went from the boat on to the coconut bed, Mohamed Fiuse Baksh began saying a loud and mockingly voice "Dem seh dem gat case against me, but before the case foh try, my gwine done away wid dem, because me goh see dat dem can't live foh goh to the Court and the case can't try." He did not call any one name but he was nearby and both myself and Mohamed Saffie heard what he said. No other person was present or at least I did not see any other person there. Mohamed Saffie did not answer or say anything to Mohamed Fiuse Baksh. We picked up our coconuts and left for home leaving Mohamed Fiuse Baksh at the coconut walk. I did not see Mohamed Fiuse Baksh again until today Tuesday 12th June, 1956. It is customary that my sister Bibi Miriam carries greens to Georgetown twice a

In the Supreme Court of British Guiana, Court of Criminal Appeal.

No. 49.

Statement of Mohamed Haniff, 18th July 1956 - continued.

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Statement of
Mohamed Haniff,
18th July 1956
- continued.

week to sell. She goes on Tuesdays and Saturdays and with the early bus which leaves at 4.30 a.m. About 3.00 a.m. on Tuesday 12th June, 1956, I was awakened by movements in the house. I then saw that my sister Bibi Miriam, my brother-in-law Mohamed Saffie and Mohamed Nasir called Alli and his wife Shaidah were packing and preparing greens to be taken to the bus for Georgetown. About 3.45 a.m. said day Mohamed Nasir called Alli Shaidah and Bibi Miriam left home with the load of greens to the bus. I, Mohamed Saffie and the old lady Somaria were left at home. A little after they left with the load Mohamed Saffie went down in the kitchen to cook and he had with him a lighted wall lamp with no shade. The kitchen is at the western side of the house. It adjoins the house but it is built flat on the ground the floor being the naked earth and the walls being of wild cane trash, roof and top are also of trash wild cane. The house is on 8 feet blocks. The platform of the house is on the Eastern side of the house and over looks the trenches (two) and dams which run North to South. There is a window on the Southern side of the house which over looks a rice field. This rice field is divided from the yard by a trench which runs East to West. There is no other house on the southern side of the house. Any one standing at this southern window can have a full and clear view of a long distance as no bush and trees are on the rice field. Any one standing on the platform of the house can have a full and clear view of a long distance as there is no bush or so is on the dams or trenches. I was on a cot in the living room of the house whilst Mohamed Saffie was in the kitchen. At the time the southern window of the house was open. I remember well that I heard the sound of the bus horn and shortly after that, I heard the explosion of a gun which sounded by the kitchen of the house. I at once looked out the southern window, and at the said time shone my three cells torchlight and I saw Mohamed Fiuse Baksh and another man whom I do not know by name on the parapet of the trench which divides the yard and the rice field. They were on the rice field side parapet which is about 8 feet from the yard and about 10 feet from where I was. They were in line with the kitchen and running away south in the rice field. Mohamed Fiuse had a gun in his right hand and was in front the other man who had nothing. Suddenly they turned running east and I went out on the platform and kept the light on them. They crossed the two trenches which run North to South in front of the house and they went

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10 on the far dam and again ran South. I then ran on
the bridge and was all the time shouting "all right
Fiuse, all you run, me see all you two". I did
not run further behind them as I was afraid. When
I ran out on the bridge I saw Mohamed Nasir called
Alli in the yard, running towards the kitchen. I
afterwards went into the kitchen I saw Mohamed
Saffie bracing by the steps in the kitchen and
Mohamed Nasir called Alli bracing him. This steps
runs from the house inside to the kitchen. I saw
20 that he was bleeding from his chest but he was not
then speaking. I told Mohamed Nasir I saw who
shot Saffie and he said he saw them too. I would
be able to identify the other man who was with
Fiuse Baksh. They had on dark clothes which I can-
not more describe. I now say that I know the other
man who ran with Fiuse Baksh by face but not his
name. I see the trash in the kitchen open up at a
part, this was not like how it is now when I saw
it about 7.00 p.m. on Monday 11 June 1956 as it
was intact and in order.

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Statement of
Mohamed Haniff,
18th July 1956
- continued.

Mohamed Haniff.

Taken by me at Clonbrok on 12.6.56 about
10.00 a.m. read over to Mohamed Haniff he
said it is correct and signed his name to
it.

G. St. John P.C.

12/6/56.

No. 50.

No. 50.

J U D G M E N T

Judgment,
7th June 1957.

Before HOLDER, C.J., STOBY and DATE, JJ.

1957: May 13, 14, 15, 16, 17, 20 & 21.
June 7;

E.V. Luckhoo for appellant, Mohamed Faiz Baksh.
C. Lloyd Luckhoo for appellant, Nabi Baksh.
G.M. Farnum, Solicitor General for respondent.

JUDGMENT

The appellants were charged with the murder of

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one Mohamed Saffie on the 12th June, 1956.

After a trial before a jury at the Sessions in the Supreme Court, Georgetown, they were convicted and sentenced to death

Their appeals against conviction contained twenty-eight (28) grounds and at the hearing leave was granted to implement the first ground and the appellants were required to furnish particulars of certain grounds which direction was complied with.

Before the argument commenced Counsel for the appellant Nabi Baksh applied under section 12 of the Criminal Appeal Ordinance, Chapter 8, for leave to call fresh evidence. As we were unable to decide in the absence of any indication as to the nature of the fresh evidence and the reason why it was not adduced at the trial, whether leave should be granted or refused, we gave leave to Counsel to file an affidavit containing the relevant information. 10

In accordance with our direction the affidavit was filed and after argument we decided to hear the submissions with respect to the grounds of appeal. 20

On the 20th May we gave leave to admit the fresh evidence and this was accordingly done on the 21st May.

We now give our reasons for admitting the fresh evidence and our decision resulting from its admission.

Section 12 (b) of the Criminal Appeal Ordinance Chapter 8 states that the Court of Criminal Appeal may 30

"if they think fit order any witnesses who would have been compellable witnesses at the trial to attend and be examined before the Court, whether they were or were not called at the trial, or order the examination of any such witnesses to be conducted in manner provided by rules of Court before any judge of the Court or before any officer of the Court, or before any magistrate or other person appointed by the Court for the purpose, and allow the admission of any depositions so taken as evidence before the Court;" 40

This provision, which is the equivalent of section 9 of the Criminal Appeal Act, 1907, has in a series of cases been interpreted to mean that the Court will only hear additional evidence if it was not available at the trial.

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10 Where, however, there has been a reference to the Court by the Home Secretary, different considerations apply and the Court may hear additional evidence even though it were available. R. v. McGarth (1949) 2 All E.R. 498.

In R. v. Sparkes 40 Cr. App. R. 83, it was pointed out that no general rule was to be deduced from the previous cases and that the Court would not treat itself as bound by the rule of practice regarding the admission of fresh evidence if to do so might lead to injustice or the appearance of injustice.

20 It is not unlikely that the reason for the distinction in England is that there is no power in the Court of Criminal Appeal to order a new trial and as a consequence the reception of fresh evidence may necessitate the quashing of a conviction although after hearing such evidence, a jury might have convicted.

30 In this Colony the power to order a new trial exists and consequently in a suitable case it may be necessary to decide whether there should be any different approach to the reception of fresh evidence when the application is made on appeal or where made on a reference by the Governor.

It is unnecessary to decide this point now as in this case the fresh evidence was not made available to the defence at the trial and in accordance with R. v. Wattam (1952) 36 Cr. App. R. 72, we decided to hear the evidence as the affidavit filed by our directions disclosed prima facie that justice might be stultified if we did not hear it.

40 We think it imperative to observe, however, that applications of this nature will always be carefully scrutinised as we recognise the obvious danger in a Court of Criminal Appeal listening to witnesses whom the jury have not heard.

A summary of the evidence admitted shows the following discrepancies:

Bebe Mariam, in a statement to the police, said:
that at about 2.30 a.m. on 12th June, 1956, she

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Judgment,
7th June 1957
- continued.

awoke and heard dogs barking and by the light of her husband's flashlight she saw Mohamed Faiz Baksh running away in the rice-field south of her home;

At the trial she said:

That she saw Nabi Baksh on the rice bed 48 feet away from her house; that she told Haniff and Nazir at 3.00 a.m. what she had seen at 2.30 a.m. - that she had seen Mohamed Faiz Baksh and Nabi Baksh;

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Mohamed Haniff, in a statement to the police, said:

that on the 12th June, 1956, after he heard the explosion of a gun, he looked out of the window, shone his torchlight and saw Mohamed Faiz Baksh and another man whom he did not know by name on the parapet of the trench which divides the yard and the rice-field; that he went out on the platform and then ran on the bridge and was all the time shouting "all right Faiz, all you run, me see all you two."

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At the trial he said:

that he identified both men by appearance as well as by name; that he shouted "alright Faiz and Jacob you need not run I see you all."

Mohamed Nazir, in a statement to the police, said:

that on the 12th June, 1956, neither he nor Mohamed Haniff shouted at the men who were escaping after the gun had been fired because they were afraid of being shot;

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At the trial he said:

that Haniff said "alright Faiz and Jacob don't run a see you"; that he admitted having said in the Magistrate's Court that Haniff shouted: "alright alyou no run, me see ah you";

The appellant Nabi Baksh is also called Jacob. It is regrettable that the police officer who

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prosecuted in the Magistrate's Court did not disclose to the defence the material variations which had taken place.

We recognise that variations must occur between a witness' statement to the police and his evidence.

10 Changes in time, date, place and description do not necessarily mean that a witness is not speaking the truth and once there is no substantial or vital discrepancy there is no obligation for a prosecutor to disclose it to the defence. Where, however, the discrepancy is so startling that it strikes at the very root of the prosecution's case, justice demands that a disclosure should be made and a prosecutor who fails to do so is acting contrary to an established and salutary practice in the administration of justice.

20 We make no observations about the non-disclosure of the evidence in the Supreme Court as we are aware that Crown Counsel examines the witnesses from the depositions and may not have seen the original statements.

30 From an examination of the additional evidence, it will be seen that Bebe Mariam made no mention of seeing Nabi Baksh on the morning of the 12th June shortly before the shooting; Mohamed Haniff did not know the name of the man he saw with Faiz Baksh and therefore could not have called it out. Had the jury known these facts, we are unable to say that inevitably they would have arrived at the same conclusion. They may have done so because they may have accepted Mohamed Nazir's evidence that he saw the two appellants, or the two witnesses already mentioned may have been able to explain or amplify their original statements. In Lochan v. The Queen, (1957) Feb. 26, we referred to the case of Attorney General v. Kelly (1937) 1 R. 315, where the possible courses open to a court after listening to the testimony of witnesses was discussed.

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In our view in respect of the appellant Nabi Baksh in the interests of justice, the value and weight of the evidence should be determined by a jury and not by this Court.

Entirely different considerations apply with regard to the appellant Mohamed Faiz Baksh. Counsel

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for him has contended that if the witnesses were untruthful in their evidence concerning Nabi Baksh, then undoubtedly the jury might have taken the view that they were untruthful regarding Mohamed Faiz Baksh.

In Kelly's case supra, it was said -

"In another case, the evidence may be such that, in the opinion of the court, it should not influence any reasonable jury in arriving at their verdict, and in that case the court would refuse to reverse the conviction." 10

We do not wish to embark on a detailed examination of the evidence of the three material witnesses having regard to our decision with respect to Nabi Baksh but a brief reference seems inevitable.

According to the statements admitted Ex.C.C.A. 1, 2 and 3 each witness positively identified Mohamed Faiz Baksh and each one said so in his or her statement to the police. Had they been cross-examined on their original statements, damaging evidence against Mohamed Faiz Baksh could and certainly would have been elicited; for example, Bebe Mariam never gave the reason which prevented the deceased accompanying her to the bus. In her statement the evidence would seem to be hearsay but there was nothing to prevent her saying that after seeing Mohamed Faiz Baksh she spoke to her husband and as a result he did not leave the house with her. Naturally, we are conscious that the contents of the statements cannot be treated as evidence and we do not overlook the fact that in order to decide whether the jury's verdict would have been the same had they heard the additional evidence, we must not consider evidence which was not given; but we are entitled to consider, having seen the statements, whether anything favourable to this appellant could have been obtained which was not obtained at the trial. There is a great deal that is unfavourable which we will not take into account but we can find nothing favourable. At the time when the statements were made to the police, one of the witnesses had identified both of the appellants; the three witnesses lived in the same house and two of them had some hours together before making their statements and yet their statements did not correspond in certain aspects. This would necessarily have a profound effect on the jury when 30 40

assessing the value of the evidence even if the jury knew the facts as we now know them.

We are of opinion that the jury's verdict with respect to Mohamed Faiz Baksh ought not to be disturbed on this ground.

It now becomes necessary to consider the substantive grounds of appeal; it is not proposed to set out all of them in detail as many were abandoned, some are without merit, and some can be summarised. We shall first consider Ground 3 which is:-

The learned trial Judge misdirected the jury concerning the statements of the accused from the dock, to the effect that they were entitled to draw inferences which could tell of their guilt and which might be unfavourable to the accused if the accused did not give a reasonable explanation for facts which were proved.

The directions at page 135 which is impugned is as follows:-

"I mentioned to you that the accused persons have in their wisdom elected to make a statement from the dock and they are entitled so to do. However, you are also entitled to draw inferences that may be unfavourable to the prisoners where they are not called to establish an innocent explanation of facts that you might find proved by the prosecution and which, without such explanation, tell of their guilt."

It is said by Counsel that the judge's direction is a correct statement of the law but was unwarranted having regard to the fact that the prisoners had given evidence from the dock and had answered the prima facie case of the prosecution.

The passage referred to in the summing-up appears in Archbold's 33rd edition page 488. The authority cited in support of it is R. v. Corrie (1904) 68 J.P. 294; R. v. Bernard 1 Cr. App.R. 218.

In both of the abovementioned cases the trial Judge had commented on the absence of the accused from the witness box and told the jury to draw their own conclusions from the absence of an explanation. Since the two accused both gave unsworn evidence about their movements at the material

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No. 50.

Judgment,
7th June 1957
- continued.

(Rec.p.p.97-98)

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Criminal Appeal.

No. 50.

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7th June 1957
- continued.

time, it would not be correct to say that there was no explanation. A judge is entitled, however, to comment on the absence of an accused person from the witness box. When the sentence preceding the one which is criticised is borne in mind, no reasonable jury could have thought anything else than that the judge was commenting on the absence of the accused from the witness box. The words "when they are not called" mean when they are not called as witnesses.

10

Ground 4 is as follows:-

The learned trial Judge misdirected the jury on "the burden of proof" and "reasonable doubt".

The objection to the manner in which the Judge dealt with the burden of proof can be dismissed in a few words. In explaining the meaning of proof beyond reasonable doubt, the Judge took a passage from Denning L.J.'s judgment in Miller v. Minister of Pensions (1948) L.T.R. 117 at p. 203. Nor did he confine himself to the language of Denning L.J.; he elaborated and gave his own explanations in a concise and thorough manner.

20

Ground 6 is as follows:-

The learned trial Judge misdirected the jury as to the manner in which the establishment of motive by the Crown would strengthen the case for the prosecution.

(Rec. p.100)

Counsel submitted that the trial Judge's direction at page 139 "If there is strong motive for an act it strengthens the prosecution's case" was a misdirection in that the jury might have thought that if they were doubtful about the identity but certain of motive, their doubts could be resolved having regard to motive. The argument was also put thus: If there was strong motive, the witnesses by faulty reasoning, might consider that the only person who could have shot Saffie was someone who had a grudge against him and therefore it must have been Mohamed Faiz Baksh who shot him. This aspect, Counsel said, was not adequately dealt with in the summing-up.

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40

We do not understand the submission to be that evidence of motive is not admissible.

Previous enmity, motive, preparation, have

long been accepted as admissible as relevant factors in deciding whether an act was done by an accused person or not. None can deny that motive strengthens a case just as absence of motive weakens a case. Whether a witness persuades himself that he has seen someone he has not seen simply because he is convinced that no one but a known enemy could have desired the death of the person concerned, is a possibility which is present in every case where identity is in issue and previous enmity exists. Trial by jury would be impossible and a summing-up an intolerable burden if a Judge were required to remind the jury of all the weaknesses of human nature. A reasonable jury must be credited with some knowledge of the way people behave and it must not be assumed that when they considered the evidence they were unmindful of the possibilities Counsel stressed.

10

Ground 8 is as follows:-

20

The learned trial Judge misdirected the jury as to the law relating to "an accessory before the fact."

Counsel contended that the direction regarding an accessory before the fact was a misdirection for the reason that while he stated the law correctly he left it open to the jury to find that one or other of the accused was an accessory before the fact and could be convicted as such when there was no evidence to warrant any such finding.

30

The first point to be noticed is that no complaint is made regarding the direction in law. We entirely agree that the legal direction was impeccable. That being so, the short answer to the submission is that it cannot be assumed that the jury acted contrary to the direction. They were told that in order to convict of being an accessory before the fact, there must be evidence of aiding, abetting, etc. If there was no such evidence, it would be wrong for us to assume that the jury discovered evidence which did not exist.

40

Another answer suggests itself. Neither Mohamed Haniff nor Mohamed Nazir saw who fired the shot which killed Saffie. Since Bebe Mariam had seen the appellant Mohamed Faiz Baksh near the house two or more hours before the shooting and if the evidence was to be believed that he was seen leaving the vicinity from which the shot had come,

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there was some evidence on which the jury could find that if he did not fire the shot he was either a principal in the second degree or was an accessory before the fact. The Judge is entitled to put any theory to the jury once the facts justify it. Ramlochan v. The Queen (1956) A.C. 475. The main issue in this case was identity and unless the jury had accepted the evidence of the witnesses as to identity, they could not on the summing-up have found the appellants guilty.

10

Grounds 12 and 13, which were argued together, are as follows:-

12. The learned trial Judge misdirected the jury as to the law relating to the defence of an alibi.
13. The learned trial Judge misdirected the jury to the effect that the onus of proving an alibi is on the accused.

Under these heads the appellants complained of two portions of the summing-up appearing respectively at page 150 and page 151 of the record:

20

(Rec. p.p.108-
109)

- (1) "The onus of proving an alibi is on the accused but the onus on the prosecution of proving the identity of the person or persons that did the act still remains."
- (2) "When an accused person is required to prove a fact he is not required to prove it beyond reasonable doubt as in the prosecution's case. He is only required to prove that on a balance of probabilities and if on such balance of probabilities you come to the view that they are not the persons who discharged the shots that killed the deceased then they are not guilty."

30

Counsel for the appellants submitted, in our view not unreasonably, that the jury must have understood the second passage as being referable to the first, that is to say, as a further direction with regard to the onus of proving an alibi. He laid special emphasis on the use of the word "required", and contended that the combined effect of the two statements might well have been to mislead or confuse the jury.

40

It is very important that a jury should be

directed properly with regard to the onus of proof but in our view there is no misdirection in the passages complained of although they are not happily worded.

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10 It is the fact that if an accused person states a fact completely inconsistent with the prosecution's case, that fact can only be accepted by the jury if on the balance of probabilities the jury believe it to be proved. Proof of it results in an acquittal; failure to prove it does not result in a conviction. In attempting to prove some fact, the prosecution's case may be so shaken that the burden of proof has not been discharged.

20 Once the jury understand the position, the form of direction is immaterial and we have no doubt in this case that the correct method of approach was understood. In considering whether the jury have been properly directed with regard to the onus of proof, it is necessary in each case to look at the whole of the summing-up and not just at one or two passages which, standing by themselves, may be regarded as infelicitous or open to even stronger criticism. It is the effect of the summing-up as a whole that matters.

Learned Counsel for the respondent has directed attention to these other passages in the summing-up:-

(a) Pages 134 and 135 of the record:- (Rec. p.97)

30 "The prosecution have brought them (the accused) here and they are to prove the case. It is not the accused person that has to prove his innocence - or their innocence in this case."

(b) Page 136 of the record:- (Rec. p.98)

40 "You are entitled to draw reasonable conclusions from the facts that you find proved to your satisfaction, but you must always give the benefit of the doubt - of any reasonable doubt - to the prisoners."

(c) Pages 137 and 138 of the record:- (Rec. p.99)

"In this case, as in all criminal cases, the burden of proof is on the prosecution and proof is the establishment of a fact to your satisfaction beyond reasonable doubt. It is the law that every

In the Supreme Court of British Guiana, Court of Criminal Appeal.

No. 50.

Judgment,
7th June 1957
- continued.

accused person is presumed to be innocent until he is proved to be guilty and the burden of proving him guilty rests upon the prosecution all the way during the whole of the case; and while the prosecution must prove the guilt of the prisoner there is no such corresponding burden laid on the prisoner to prove his innocence - or the prisoners: when I use the singular as far as this case is concerned it refers to both of them. It is sufficient for him to raise a doubt as to his or their guilt. He is not bound to satisfy you of his innocence."

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(Rec. p.100)

(d) Page 139 of the record:

"You may convict on the strength of the Crown's case but not on the weakness of the defence."

(Rec. p.108)

(e) Pages 150 and 151 of the record:

"It is my duty to tell you that if you consider that the alibi has failed you must now turn to the facts of the case and consider them on their own merits....

20

"If in your opinion the defence of an alibi has failed the prosecution does not necessarily succeed. You still have to consider the facts of the case and see if the prosecution has proved the case beyond reasonable doubtIt does not prevent you, gentlemen, from finding that notwithstanding that the alibi is not proved the explanation given by the accused persons throws so much doubt on the evidence of the prosecution as to lead you to say 'we have a doubt about the guilt of the prisoners' and you will therefore acquit them."

30

(Rec. p. 150-151)

(f) Pages 217 and 218 of the record:

"If you accept their statement and the evidence of their witnesses then they are not guilty. If it leaves you in any doubt, then they must be acquitted. If you do not accept it, before you can convict the accused you still have to consider the evidence and the case of the prosecution. So that, before you convict, you have to consider the evidence of the prosecution

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to see that the identity of the persons has been established - that it has been proved and all other ingredients of which you have been informed by me."

In the Supreme Court of British Guiana, Court of Criminal Appeal.

(g) Page 219 of the record (Rec. p.151):

No. 50.

"If you are in doubt as to whether you should convict at all, your duty would be to acquit. If you accept the account of each of the accused you must acquit. Short of accepting that explanation if it left you in any doubt you must acquit."

Judgment,
7th June 1957
- continued.

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The very clear and unimpeachable directions at (f) and (g) came almost at the end of the learned Judge's charge to the jury, and it is inconceivable that they were overlooked; they must, we think, have removed from the minds of the jury any misunderstanding or confusion that could have been caused by the earlier statements complained of.

20

We are satisfied that the effect of the summing-up, taken as a whole, was to convey to the jury what was their duty, namely, that they must acquit if they believed the alibi or if they were left in doubt about it, and that, even if they disbelieved it, they would still have to consider the case for the prosecution and could not convict unless they were satisfied that the prosecution had proved its case beyond reasonable doubt.

30

Grounds 18 to 28 may be summarised under the main head that the learned trial Judge did not adequately put the case for the defence to the jury. Ground 1 (a), (b), (c) and (d) can also be included under this head.

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We indicated at the hearing that we were not impressed with any of the arguments addressed to us under these grounds. Counsel gave us the benefit of a very reasoned and detailed examination of the evidence and dealt at length on certain features which he thought should have been put to the jury. The following are some of the omissions about which complaint is made:-

- (a) As the defence was that after Saffie was shot the witnesses did not notice it abroad that they had seen the assailants, as would be expected if they did so, this fact should have been mentioned to the jury;

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7th June 1957
- continued.

(b) Saffie must have been shot at about 5.30 a.m. which would make it virtually impossible for one of the appellants to join the train at 6 a.m.;

(c) the appellants' movements were disclosed at a very early time. The information they gave must have been checked and found correct and sufficient prominence was not made of this fact;

The record shows that Counsel for both appellants were Counsel in the Court below. We observe, too, that their addresses to the jury lasted nearly two days. Although there were only fourteen witnesses called by the Crown the trial lasted 13 days. 10

In this Colony there is no obligation for the Official Shorthand Writer to record any part of Counsel's speeches so we have not had before us any note of what they said. We are certain that Counsel, with their wide experience, did not overlook any of the matters which have been drawn to our attention. The Judge in putting the defence to the jury, read their evidence and commented on certain aspects of the defence. There were other comments. We are satisfied that the defence was adequately put and the jury were not unaware of the salient features of the case. 20

Grounds 5, 7, 9, 11, 15, 16, 17 and 22 were abandoned. Accordingly, the appeal of the appellant Mohamed Faiz Baksh is dismissed and the conviction and sentence affirmed. 30

For the reasons hereinbefore stated, the conviction of Nabi Baksh is reversed and we direct a new trial in accordance with the provisions of section 6 (2) of the Criminal Appeal Ordinance, Chapter 8.

Dated this 7th day of
June, 1957.

F.W. Holder
Chief Justice. 40

Kenneth S. Stoby
Puisne Judge.

W.A. Date
Puisne Judge.

No. 51.

ORDER IN COUNCIL GRANTING
SPECIAL LEAVE TO APPEAL

In the
Privy Council.

No. 51.

AT THE COURT AT BUCKINGHAM PALACE

The 31st day of October, 1957.

Order in Council
granting special
leave to appeal.
31st October,
1957.

PRESENT

THE QUEEN'S MOST EXCELLENT MAJESTY

10 WHEREAS there was this day read at the Board
a Report from the Judicial Committee of the Privy
Council dated the 17th day of October 1957 in the
words following, viz :-

20 "WHEREAS by virtue of His late Majesty
King Edward the Seventh's Order in Council of
the 18th day of October 1909 there was re-
ferred unto this Committee a humble Petition
of Mohamed Fiaz Baksh in the matter of an Ap-
peal from the Court of Criminal Appeal in the
Supreme Court of British Guiana between the
Petitioner and Your Majesty Respondent setting
forth: that the Petitioner was jointly in-
dicted and jointly tried in the Supreme Court
of British Guiana with one Nabi Baksh (also
called Jacko and Jacoob) for the murder of
Saffie Mohamed on the 12th June 1956 and they
were both convicted and sentenced to death:
that the Petitioner and Nabi Baksh appealed
to the Court of Criminal Appeal which on the
7th day of June 1957 dismissed the Petition-
er's Appeal and quashed the conviction of Nabi
30 Baksh and directed a new trial: that on the
22nd June 1957 the Crown entered a nolle
prosequi on the charge of murder against the
said Nabi Baksh: And humbly praying your
Majesty in Council to grant the Petitioner
special leave to appeal against the Judgment
of the Court of Criminal Appeal in the Supreme
Court of British Guiana dated 7th day of June
1957 and for such further and other Order as
may seem fit:

40 "THE LORDS OF THE COMMITTEE in obedience

In the
Privy Council.

No. 51.

Order in Council
granting special
leave to appeal,
31st October,
1957 - continued.

to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and in opposition thereto Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioner to enter and prosecute his Appeal against the Judgment of the Court of Criminal Appeal in the Supreme Court of British Guiana dated the 7th day of June 1957: 10

"AND THEIR LORDSHIPS do further report to Your Majesty that the authenticated copy under seal of the Record produced upon the hearing of the Petition ought to be accepted (subject to any objection that may be taken thereto by the Respondent) as the Record proper to be laid before Your Majesty on the hearing of the Appeal."

HER MAJESTY having taken the said Report into consideration was pleased by and with the advice of Her Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution. 20

Whereof the Governor or Officer administering the Government of the Colony of British Guiana for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly. 30

W.G. AGNEW

E X H I B I T S

Exhibits

"S" - STATEMENT OF MOHAMED FIAZ BAKSH

"S"

Statement of
Mohamed Fiaz
Baksh,
13th June 1956.

Regina versus Mohamed Fiaz Baksh et al.

Exhibit "S"
P.M.B.
M.
11. 8. 56

Cove and John Police Station, E.C.D.

Wednesday 13th June, 1956.

10 MOHAMED FIAZ BAKSH duly charged and cautioned further states:-

I am innocent.

Mohamed Faiz Baksh
13.6.56

Witness to S/S.

1. G. St. John P.C. 5217

2. D. Moonasar, P.C. 6119.

20 Taken by me at the above Station at 10.50 a.m. on 13.6.56 in the presence of Consts. 5217 St. John and 6119 Moonasar read over to Mohamed Faiz Baksh who said it is true and correct and signed it in our presence.

John Chee-a-Tow, Det. Cpl; No.4194

Exhibits

"T" - STATEMENT OF NABI BAKSH

"T"

Statement of
Nabi Baksh,
13th June 1956.

Regina versus Mohamed Fiaz Baksh et al.

Exhibit "T"
P.M.B.
M.
11.8.56

Cove and John Police Station, E.C.D.

Wednesday 13th June, 1956.

NABI BAKSH duly charged and cautioned further states :-

10

I am innocent of the charge against me.

Nabi Baksh, 13/6/56.

Witness to S/S.

1. G. St. John, P.C. 5217.
2. D. Moonasar, P.C. 6119.

Taken by me at the above Station at 10.45 a.m. on 13/6/56 in the presence of Consts. 5217 St. John and 6119 Moonasar, read over to Nabi Baksh who said it is true and correct and signed it in our presence.

20

John Chee-a-Tow, Det. Cpl. No. 4194.

"U" - STATEMENT OF MOHAMED FIAZ BAKSH.

Exhibits

"U"

Regina versus Mohamed Fiaz Baksh et al.

Exhibit "U"
P.M.B.
M.
25.8.56

Statement of
Mohamed Fiaz
Baksh,
12th June 1956.

Cove & John Police Station,
East Coast Demerara,
12th June, 1956.

10 MOHAMED FAIZ BAKSH states :-

I am a carpenter and live at Clonbrook, East Coast Demerara, with my wife Jumrattan, and ten children, they are Mohamed Zakara Baksh, 17 years; Affrare Baksh, 16 years; Nadira about 13 years, Safaura, Eco, Sheila, Faizul, Afzul, Faziah, Shafeek.

20 I knew Mohamed Safie, he was my cousin, but I do not know how we are related. He was living at Clonbrook Section "A" with his wife, I do not know her name. His brother Mohamed Nazir called Ali, and his wife live in the same yard with Safie. In 1954, Safie left his wife Ogiran who was living with him at the same house where lived on to his death. In February, 1955, I became friendly with Ogiran who was then living alone in Clonbrook, and from then we became good friends I sleep with her on some nights, and I assisted her in maintaining herself. I do not know why Ogiran and Safie were separated, I never asked her about it. Safie knew that I was friendly with Ogiran. He never
30 told me that he was annoyed with me, because I was friendly with Ogiran. Corporal Chee-a-Tow told me on the 28th January, 1956, that a report was made against me, that I had assaulted Safie, and Rodrigues and me did it. I denied, because it was not true. I never had any quarrel or fight with Safie, I never threaten him at anytime. Safie never threaten me. No one ever told me that Safie threatened to do me any harm. I saw Safie about
40 two weeks ago at Clonbrook Public Road, at the bus park. I did not speak to him. Before myself and Ogiran were friends, myself and Safie used to speak to each other, but after we stop speaking to each

Exhibits

"U"

Statement of
Mohamed Fiaz
Baksh,
12th June 1956
- continued.

other. I did not want any worries so I stop talking to him. On Monday 11th June, 1956, I left home about 6.10 a.m. to join the 6.30 a.m. train to travel to Georgetown, but on my way I came off at Buxton Railway Station, because I had been to Georgetown on Thursday 7th June, 1956, to Mr. L.F.S. Burnham and he had asked me to get a case jacket at the Magistrate's Office at Vigilance. I stopped at Buxton, and I went to Vigilance to get the jacket. I spoke to Mr. Bovil, the Magistrate's clerk, and told him what I wanted. He found the case jacket I wanted, and he made an extract, and I paid him forty eight cents, it is a case of the Police vs. Mohamed Faiz Baksh. I joined a motor car about 9 a.m. from Friendship and I travelled to Georgetown. The driver of the car was an East Indian, I do not know him, I do not know his name. When I joined the car I was alone. When I got to Buxton a black woman stopped the car, and came in, I do not know the woman. At Beterverwagting when we arrived at the gasolene station belonging to a mohamedan named something like Bacchus, the first gasolene station you meet on the way to Georgetown, a negro woman joined the car, but she came off at Plaisance. Then two women came in at Plaisance by the Police Station, one of them was a Portuguese and the other East Indian, all of us travelled to Georgetown. I came out at Croal Street by the bar at High Street. The time was a few minutes to 10 a.m. I went to Burnham's office in company with Guilemo Rodrigues. I met Rodrigues by the tree at the corner of Croal and High Streets. I had arranged to meet Rodrigues there. I had travelled in the train from Clonbrook to Buxton with Rodrigues and when we parted I arranged to meet him there. We did not find Mr. Burnham in his office. I spoke to Mr. Moore his clerk, and he told us to wait. We waited until 11 a.m., Mr. Burnham came, and I gave him the case jacket. Mr. Burnham asked myself and Rodrigues to return to his office after court at 4 p.m., and he would discuss our business. Myself and Rodrigues went away and parted by High and Croal Streets, he said he wanted to see one Nascementho. I went to the Stabroek, and I bought some drinks, then I went to my sister Ajiman in a cross street, near to De Freitas saw mill in Water Street, and I took my meals. She was present, also her husband Habib Rohoman. I remained at my sister until about 12.45 p.m. then I went to Croal and High Streets where I met Rodrigues. Rodrigues told me that he did not have any food, and he suggested that we go to the Stabroek Market to get some. We went to the

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Exhibits

"U"

Statement of
 Mohamed Fiaz
 Baksh,
 12th June 1956
 - continued.

market, and Rodrigues bought two lemonade, and one
 cake, and he parted the lemonade. Rodrigues and I
 went walking in Water Street, and we met one Sydney
 known by the name Mohamed Noor Bacchus of East Bank
 Demerara, and we spoke for sometime. About 2.30
 p.m. I went back to Mr. Burnham's office, but he
 was out, Rodrigues was with me, Sydney also was
 with us. I left Rodrigues at Mr. Burnham's office,
 and went to Mr. E.V. Luckhoo's office. A few min-
 10 utes later Sydney and Rodrigues joined me there. I
 had gone to see Mr. E.V. Luckhoo about a matter. I
 spoke to Mr. E.V. Luckhoo, and enquired from him
 whether it was true that he wanted to see myself
 and Nabbi Baksh, on Tuesday 12th June, 1956, Mr.
 E.V. Luckhoo said yes, and I told him that as I
 was already in Georgetown I would stay. Myself and
 Rodrigues went back to Mr. Burnham's Office around
 3.30 p.m. and I saw Mr. Burnham. Mr. Burnham told
 20 us that it was already late for us to catch the
 train, so we must return to see him on Thursday
 14th June, 1956, and myself and Rodrigues left. I
 told Rodrigues he better catch the 4.30 p.m. train
 because I was staying in Town. Rodrigues left me
 and went on his way. I went towards the Stabroek
 west in Croal Street, when I got to the Demerara
 Ice House I met one Badah I do not know where he
 lives - he owns a cream car, I do not know the make.
 A fellow was washing the car, and Badah was sitting
 on a cart nearby; Badah is my father brother son.
 30 Badah has a hire car, and he runs it in Georgetown.
 I spent about fifteen minutes with Badah, then I
 went south along Lombard Street. I met a fellow
 called Razack of the East Bank of Demerara; his
 sister Kairool lives at Clonbrook near Mr. Sars. I
 spent about ten minutes talking to him then I left
 for La Penitence. I stopped at Budhea's house in
 La Penitence Middle Street, which is near a tele-
 phone box in the street running south to Yarrow
 Dam. I met his wife Hasra, and his sister daughter,
 40 and his wife brother Paulo. I spent half an hour
 there, then I went to Hiatali known as Baban who
 lives at La Penitence Middle Street field 11 bed 1.
 I took dinner there, and remained for the night
 until today 12.6.56 at 7.30 a.m. Baban was at
 home when I got there around 6 p.m. I slept in a
 room with his son Atiff who shared the same bed
 with me. I never returned to Clonbrook since I
 left on Monday 11th June, 1956, at 6.30 a.m. If
 50 anyone said that they saw me at Clonbrook or any-
 where else that I did not mention in my statement
 it would be a lie. About 7.30 a.m. on the 12th
 June, 1956, I left home at Baban, and went to

Exhibits

"U"

Statement of
Mohamed Fiaz
Baksh,
12th June 1956
- continued.

the corner of High and Croal Streets to wait for Nabbi Baksh, not very long after I saw him coming west towards me from the Victoria Law Courts, I went to him, and both of us went to the office of Mr. E.V. Luckhoo, where the policeman found us. On Saturday, 9th June, 1956, Nabbi had told me about receiving a telegram from Mr. B.V. Luckhoo, and it was on the same day I told him that I would be in Georgetown on Monday 11th June, 1956, and I would remain in Georgetown to meet him. I never used a shot gun. I never owned one. I have no friend that own a shot gun. I know that Rodrigues owns a shot gun. I never went out hunting with him. I heard about the death of Safie when the policeman told me about it for the first time. I do not know anything about the death of Safie. I usually wear a barred shirt, and black striped pants to work aback. When I left home for Georgetown on Monday 11th June, 1956, I left them home in my house.

10

Mohamed Faiz Baksh.

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Taken by me at Cove & John Police Station at 2.40 p.m. on the 12.6.56, and read over to Mohamed Faiz Baksh who said it was true and correct and signed his name to it in the presence of Det. Const. 4770 Alexander.

H. Fraser, Det. L/Cpl. 4669.

Witness to statement

1. I. Alexander, Cons. 4770

12.6.56

"V" - STATEMENT OF NABI BAKSHExhibits"v"

Regina versus Mohamed Fiaz Baksh et al

Statement of
Nabi Baksh,
12th June 1956Exhibit "V"
P.M.B.
M.
28.8.56.Cove and John Police Station,
East Coast Demerara

Tuesday 12th June, 1956.

10 NABI BAKSH states :-

I am living at Clonbrook Village, East Coast, Demerara and I does work as a carpenter and does do farming and rice planting. I know Fiaz Baksh. We are no family and he lives at Clonbrook too, about 70 rods away from me. Fiaz Baksh and me are not friends, But we does talk and so. I know Sofie (Mohamed Saffie). He live at Clonbrook. He and me are just partial friends. We does meet and talk, telling how-a-day and thing. The last time me see

20 Safie was this same crop about two weeks ago. Me see he at Clonbrook Middle walk, bailing his behia plants. Me tell he how-a-day. He asked me to lend him me bucket. Me lend him me bucket and he bailed his rice plants. Since then me can't remember if me see he again up to this day.

Me get a case now where me and Fiaz Baksh charged for some threatening with firearm and the case is at the Supreme Court in Georgetown. Mr. E.V. Luckhoo is defending me and Fiaz. On Saturday

30 the 9th June, 1956, I received a telegram from Mr. E.V. Luckhoo saying that I must go down today (Tuesday 12th June, 1956) to Georgetown because the case would start. Me receive the telegram at about eleven o'clock in the morning and at about 3.00 o'clock the same Saturday afternoon I see Fiaz coming from the backdam. He was walking alone on the dam near to Clonbrook driving road and I told him that I get a telegram from Mr. E.V. Luckhoo to go down on Tuesday (12th June, 1956) to Georgetown

40 for the case. After that me go out on Clonbrook Public Road and go home back.

On Sunday the 10th June, 1956, me alone went

Exhibits

"v"

Statement of
Nabi Baksh,
12th June 1956
- continued.

to me ricefield at Clonbrook backdam. Me go around at the ricefield around half past seven to eight o'clock in the morning and come home about 11 o'clock the same morning. Me alone go to the ricefield, me alone work and me alone come back home. I remained at home for the rest of the day and slept the whole Sunday night at home.

Around 6 o'clock Monday morning (11th June, 1956) I get up from bed and about 8.00 o'clock me left home and went to me ricefield. Me alone go to the ricefield and about 12 o'clock (midday) me alone come back home. I did not see Fiaz Baksh from since I tell him about the telegram up to the midday on Monday 11th June, 1956. From the time I reached home about midday, Monday 11th June, 1956 I remained in the house until about 4.00 o'clock in the afternoon when me come out of the house and went to Clonbrook road alone. When me been at the road me see Guyan a boy from Clonbrook then one Rasool of Clonbrook. Me and Guyan even talk. We sit down by Clonbrook bridge by the public road. We can't remember what me and Guyan talked about.

After me and Guyan done talk me go across to Sullay Store in Clonbrook and I buy this pair of yachting boots from Sullay wife. She tell me that the yachting boots is for \$2.48. Me hadn't money on me then so me begged she for credit me the yachting boots. She credit me the boots. Me nah know what is Sullay wife name. After me buy the yachting boots me go home at me house. That was about seven o'clock.

From the time me go home, me sleep. Me and me brother sleep in one bed. Me brother name George. Me mother sleep in another bed. Me sister Azzizan from Plaisance come to me mother yesterday afternoon to spend some time, and she sleep with me mother. About six o'clock this morning Tuesday 12th June, 1956 me wake up. Me mother had gone already to Clonbrook Train Station to carry greens, bananas and things to sell at Georgetown. Everybody in the house been wake when me wake.

After me wake me get ready to go to Georgetown. Me sister Azzizan make tea. Me wash me foot, hand and face and put on me clothes and go to Clonbrook Station to catch the second Bermuda train to come to Georgetown. Me alone go to the train station Clonbrook. While waiting for the train me see one Seetal of Clonbrook. Then me buy me

ticket. The boy who sell me the ticket know me too, but I cannot remember his name. He is an East Indian. The train came around 7 o'clock. I went in. In the train I saw Jagar of Two Friends daughter-in-law. I do not know her name. We travelled in the same carriage and I think she came out at Beterverwagting. I go on to Georgetown Railway Station.

Exhibits

"v"

Statement of
Nabi Baksh,
12th June 1956
- continued.

10 From Georgetown Railway Station I went straight to Mr. Luckhoo office. On the road in front of Mr. Luckhoo office, whilst me been ah go in, I see Fiaz Baksh. That is the first time me see him since three o'clock on Saturday the 9th June, 1956, when me tell he about the telegram. Me and he talk and he tell me that he been yesterday (Monday 11th June, 1956) to Mr. E.V. Luckhoo office, but Mr. Luckhoo was busy and couldn't talk to him. The two of us go in Mr. Luckhoo office and we talk to Mr. E.V. Luckhoo about the case we got and then the
20 policeman (Cons. 6019 Cummings) came and tell us that he arrest the two of us in connection of murder. He did not say foo who murder. He then bring we straight to Brickdam. I remember the policeman say that it was for Sofie murder. That is the first time me hear that Sofie get murdered.

30 If anyone say that they see me and Fiaz anywhere and at anytime today (Tuesday 12th June, 1956) before I see Fiaz Baksh by Mr. Luckhoo office, that person is telling a false story against me. From the time when me go home after me buy the yachting boots on Monday 11th June, 1956 I haven't left my home until this morning Tuesday 12th June, 1956 when I left to catch the train.

X

Taken by me at 4.20 p.m. on the 12.6.56 at Cove & John Police Station, E.C.D. Same was read over to Nabi Baksh who said it was true and correct and said he would not sign same as it is not necessary.

40 I. Alexander, Cons. 4770.
12.6.56.

Wit: to S/S

I.H. Fraser, Lcpl. 4669.
12.6.56.

Exhibits

"W" - FURTHER STATEMENT OF MOHAMED FIAZ BAKSH

"W"

Further statement
of Mohamed Fiaz
Baksh,
12th June 1956.

Regina

-vs-

Mohamed Fiaz Baksh et al

Exhibit "W"

P.M.B.

M.

29.8.56

12' June, 1956.

I. innocent.

10

of the Elogaction

A the Police toldame.

Nabi Baksh.

No. 26 of 1957

IN THE PRIVY COUNCIL

ON APPEAL FROM THE SUPREME COURT

OF BRITISH GUIANA

COURT OF CRIMINAL APPEAL

MOHAMED FIAZ BAKSH Appellant

- and -

THE QUEEN ... Respondent

RECORD OF PROCEEDINGS

Hy. S.L. POLAK & CO.,
20/21 Tooks Court,
Cursitor Street, E.C.4.
Solicitors for Appellant.

CHARLES RUSSELL & CO.,
37 Norfolk Street,
W.C.2.
Solicitors for the Respondent.