JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO: 138/00

BEFORE: **THE HON. MR. JUSTICE FORTE, P.**
THE HON. MR. JUSTICE BINGHAM, J.A.
THE HON. MR. JUSTICE HARRISON, J.A.

R v. DEAN NELSON

Anthony Williams for the appellant

Gail Walters and Simone Wolfe for the Crown

3rd March & 3rd April 2003

FORTE, P.:

The appellant was convicted on the 18th July 2000 in the Saint Catherine Circuit Court for the capital murder of Tony Brown after a trial lasting eight days. As ordained by Statute, he was sentenced to death. On the 3rd of March 2003, having heard arguments on an application for leave to appeal, we granted leave to appeal, treated the hearing of the application as the hearing of the appeal, but nevertheless dismissed the appeal, and confirmed the conviction and sentence. We now fulfill our promise made at that time, to put our reasons in writing.

The appellant was jointly charged with Paul Barrett, but as the jury failed to come to an agreed decision in the case against Barrett, a new trial was ordered in respect of him.

The body of the deceased was found by Det. Sgt. Garrick on the 15th December 1998 in a section of land "which was bushy and unoccupied" in Avon Park in the parish of St. Catherine. The body was in a shallow grave with sticks and stones and other debris on top of it. On the following day the Det. Sgt. returned to the area with Pauline Vaughn Maylor, who identified the body as that of Dorrel Brown who was known as "Tony" or "Jah D" and who was her tenant.

Also at the scene on that day was Dr. Pawar who did the postmortem examination of the body of the deceased. On examination he found two "sharp force" injuries and one "blunt force" injury to the body. One of the former, was a seven centimeter size chop wound on the left occipital area. The Doctor pointed out that that injury was to the back of the head. The second wound was a ten (10) centimeter long wound on the right temporal region, vertically with the edges clean out. There was a fracture of the bone on the right side. There was a "blunt force" fracture with irregular margins on the left part of the skull involving the frontal temporal parietal part of the occipital bones. The size of the fracture was thirteen by eighteen centimeters and the brain substance was missing. There were several fractures coming out from that main fracture. The internal organs had all been decomposed. In his opinion death was caused by the "sharp and blunt" force injuries to the head. The sharp injuries were inflicted

by a sharp cutting weapon, the other injuries were inflicted by a blunt weapon, with irregular surfaces, such as a stone or a big stick. This third injury was caused by heavy force. Death had occurred more than forty-eight to seventy-two hours before his examination. Each injury, in his opinion was sufficient to cause death.

Before discovering the body, Det. Sgt. Garrick had already been talking to Miriam Walters and had taken a statement from her. He had known the deceased and knew that he was the owner of a Mark II motor car. In fact after the murder of the deceased, the police had been searching for that particular motor car, which was licenced 5469 BW which accords with the vehicle which the deceased's landlady Pauline Maylor had observed to be the deceased's car. At the time of trial the car had not been recovered.

Miriam Walters was the girlfriend of the deceased and together with Pauline Maylor contributed greatly to the proof of the case against the appellant, by the Crown.

On the 7th December 1998 the day of the murder, Mrs. Maylor was at home. The deceased, as we have already noted lived on the same premises as Mrs. Maylor. At about 6 to 7 o'clock in the evening, the deceased came home in the company of "two young men" whom she recognized as the appellant and Paul Barrett, who was subsequently charged with the appellant. The men had come to the premises on previous occasions, and in fact would sometimes come there two to four times per week. She knew their names, one was Paul and the

other Dean (the appellant). The men helped the deceased to put "things in his room" making three trips in the process. It was dark, but she was assisted in recognizing the men by a light "outside on the wall" on the side of the house. After they made the "last trip" to the room of the deceased, they stood near to the doorway for about three to five minutes and with the aid of the light from the deceased's doorway and her's she looked at their faces. In all, she testified she had them under observation during the time they were there making the "trips" which was a total of twenty-five minutes. Eventually, they left with the deceased in the car – the Mark II licenced No. 5469 BW. Significantly, she identified the appellant as going into the front passenger seat, while the other man went into the back of the car.

At about 7.00 p.m. on the same day, the deceased, as testified to by Ms. Miriam Walters, his girlfriend, arrived at her home driving the Toyota Mark II. In the car with him were two men. When she came out of her home to the deceased he was already standing outside of the car. The men were arguing. After the argument she went into the car. Before she did so, the appellant came out of the front passenger seat, walked around the car and went into the back. She then took his place in the passenger seat in the front. She went with them to Moore's River in Moore's District. The deceased parked the car, and she came out and walked towards the river. The men were then behind her. When she reached the river she heard something; "it sounded like wood chopping". Someone behind her held her with a machete at her neck. When she heard the

chopping she had heard the deceased say "Jah Paul and Jah Dean, why you doing this?" She could see that someone was on the ground and "the hand going up and down". After the person held her, another one came up and said "kill her". She begged for her life. She identified the appellant as the one who had said "kill her". After he said so, he left "from in front of her" picked up a stone and "dropped it on Dorrel's head". Dorrel was the deceased. The deceased was then lying face down. When the appellant dropped the stone she heard "like Dorrel head burst".

Both men apologized to her for having done that in her presence. They then put the body of the deceased in the trunk of the car, and drove away in the car leaving her.

As the Crown relied heavily on the evidence of this witness, who subsequently identified the appellant at an identification parade, the issue arose as to the accuracy of her identification. Of relevance therefore is her evidence as to the opportunity she had to see the assailant so as to be able to make a subsequent identification.

She had not known any of the men before that evening. What was the opportunity she had for seeing the appellant? She had observed him and seen his face when he came from the front of the car and went to the back. Again she saw his face in the car as they travelled to the river. In her opinion, he was handsome and consequently she paid him attention. She particularly admired his "canerow" hair style. She was able to see his face while in the car, with the

assistance of the streetlights which they passed from time to time. Every time they passed a light she looked at his face and this would be about 10 seconds each time.

Of relevance to the identification of the appellant also, was the fact that Mrs. Maylor had seen the appellant leave in the front seat of the car, which is supported by Ms. Walters' testimony that when he arrived at her home, he came out of the front seat and went into the back. It was also significant that the names that were called by the deceased during the attack on him coincided with the names of the appellant and the co-accused who is to be retried.

In addition, in a "questions and answers" session with Det. Sgt. Garrick the appellant admitted visiting the deceased "every week". He also admitted that he had visited him on the 7th December 1998 and had seen his landlady at that time. He had left the house that day in the Mark II, with the deceased and Paul. He was seated in the front of the car. They went to Birds Hill to "check him (the deceased's) girlfriend."

However, while admitting going to the girlfriend's home, he denied that the girlfriend came into the car. He said the deceased drove him to May Pen where he "dropped" him off.

In his defence the appellant denied knowing the co-accused Mr. Barrett. He denied that he killed the deceased and that he voluntarily signed the "questions and answers." In fact, he maintained that he gave no answers to any question. The policeman, he stated, told him that he must tell him that he

kill the man and he will let him get ten years and that he was punched in his belly and threatened to be shot if he didn't tell him. He felt scared. Three days later Det. Givans came, pulled out a firearm and said "is best to sign it". He signed because he was afraid and scared. He had only been asked two questions i.e. his name and his mother's name.

In his sworn evidence, he denied that he took a stone and dropped it on the head of the deceased and maintained that it was not true that he helped to chop up the deceased. He knew nothing about the murder. He never put the deceased in the trunk of the car, nor did he apologize to Ms. Walters for doing anything.

The appellant filed and argued seven grounds of appeal. Notably during the submissions Mr. Anthony Williams for the appellant conceded that each ground was not as meritorious as he had first considered it to be. Nevertheless, each ground will be treated with here.

The first and second grounds which were argued together read as follows:

> "1. That the learned trial judge erred in Law in failing to assist or direct the Jury adequately on the Burden of Proof and the Standard of Proof as it relates to the Defence of Alibi. This failure resulted in a substantial miscarriage of justice.
>
> 2. That the learned trial judge erred in Law in failing to direct the Jury adequately as it relates to the Burden of Proof generally."

Speaking firstly to the complaint which concerns the directions on the burden and standard of proof generally, it is difficult to grasp any merit therein,

given the many occasions on which the learned trial judge directed the jury on this subject. It may be good, to record some of these instances. Early in his summing-up the learned trial judge addressed the jury thus:

> " Now, the accused is presumed to be innocent until you by your finding find that they are guilty. The burden of proving the case against the accused is on the Prosecution throughout and never shifts. How does the Prosecution succeed in proving the defendants' guilt? The answer is simple, by making you sure of it. Nothing less than that will do. You must be sure of the guilt of the accused before you can pronounce the accused guilty."

Then throughout her summing-up the learned trial judge reminded the jury of the burden and standard of proof that the prosecution had to discharge before they could come to a conclusion of guilt. She directed the jury that the prosecution (1) had to prove each element of the offence (page 789); (2) its duty to prove common design (page 794) and (3) its duty in respect of the "questions and answers" (page 803).

Again in addressing the evidence of the defence she stated:

> "Now, neither accused man is obliged to say anything. Counsel in addressing you, have touched on this area, and I will tell you again because it is the Prosecution that must satisfy you so that you feel sure."

Then again (page 887) the learned trial judge returned to the subject matter when she told the jury:

> "... remember before you can say that a person is guilty, the Prosecution must make you feel sure."

While conceding that the general directions on the burden and standard of proof were given by the learned trial judge, Mr. Williams nevertheless complained about two specific passages. The first follows directly the passage on page 783 which has been quoted earlier in this judgment. It reads:

> "He is not required to prove his innocence but he might attempt to do so. If he attempts to prove his innocence and he succeeds, then you must find him not guilty. If he attempts to prove his innocence and he fails, you find that he is chatting nonsense or lying, then you must consider all the evidence, including what he has said and see whether or not you are satisfied so that you can feel sure that the Prosecution has proven its case. If after considering all the evidence you are sure that the defendant is guilty, then your verdict would reflect that. If you are not sure, then your verdict would be not guilty."

The other passage complained of appears at page 806 of the transcript. It reads:

> "Now Mr. Foreman and your members, the evidence given by each accused man can have one of three effects on you. It can convince you that he is innocent, in which case you acquit, say not guilty. It may leave you with a doubt, a reasonable doubt in your minds, in which case you say not guilty, but the effect of the accused man's evidence can also be to strengthen the case for the prosecution, because remember everything together, so bear that in mind, because it is up to you to say which of those effects the accused evidence has on you. If you are left in any doubt as to where the truth lies, the verdict has to be not guilty."

In respect to these paragraphs, counsel contended that the effect of the direction therein, would be to confuse the jury as to where exactly the burden of proof lies, as also to shift the burden of proof on the appellant. We find great

difficulty in accepting this proposition. On the contrary, we are of the view that the learned trial judge was very careful in informing the jury that although it may appear that the appellant was undertaking a burden of proving his case, there was no such burden on him, and in spite of his attempts, it did not relieve the prosecution of its burden of proving the case against him.

Mr. Williams maintained that in respect of the first paragraph, the learned trial judge should have told the jury that "if they so find that the appellant was chatting nonsense or lying then they cannot on that evidence alone convict him but should go back to the Crown's case and ask themselves whether or not they feel sure of the guilt of the accused before they can convict." In our view the words used by the learned trial judge did not vary in any material aspect from those advanced by counsel for the appellant.

The jury were correctly told that if they did not believe the appellant, then they must consider all the evidence, including that of the appellant, and see whether the prosecution had proven its case to the required standard. The use of the word must would surely have informed the jury that mere disbelieving the appellant, was not sufficient by itself, to ground a conviction.

In addition, the frequent reminders of the burden and standard of proof given by the learned trial judge throughout the summing-up, could leave no doubt in the minds of the jury as to who had that burden. We concluded therefore, that this ground was without merit.

The first ground of appeal concerned the direction as to the burden and standard of proof in respect to the defence of alibi. The impugned passage reads as follows:

> "Now each accused man has said to us that he doesn't know about the offence, so that means he was somewhere else, he wasn't at the scene of the crime when it was committed. Now it is for the prosecution to prove his guilt so that you are sure, so it means that if this man is saying he was not there, it is for the prosecution to satisfy you so that you are sure he was in fact there. Now his defence is called alibi, I was elsewhere. Now if you conclude that the alibi is false, it doesn't entitle you to convict the accused, it is the prosecution to satisfy you that each of these ~~men~~ was there. The prosecution must satisfy you that ~~each accused~~ man was there and was in fact committing the murder."

Mr. Williams citing the cases of ***R. v. Everald Elletson*** SCCA 151/90 delivered 18th May 1992 (unreported), ***R. v. Leroy Barrett*** SCCA 45/89 delivered 16th July, 1990; ***R. v. Ray Dixon*** SCCA 119/93 delivered 20th December 1994; ***R. v. Turnbull*** [1976] 3 All E.R. 5549 and ***Anthony Bernard v. The Queen*** [1994] 31 JLR 149, submitted that the following correct directions on alibi can be extracted therefrom:

> (a) "That the Defendant does not have to prove that he was elsewhere but on the contrary for the prosecution to disprove the alibi.
>
> (b) The Standard of Proof is beyond reasonable doubt and the prosecution must satisfy you that you feel sure of the guilt of the accused that he was there at the scene of the murder.
>
> (c) That if the alibi convinces them of his innocence then the accused must be acquitted.

(d) That if the alibi leaves them in doubt as to where he was at the material time of the crime when they look at the whole of the evidence then the accused must be acquitted.

(e) That if they feel sure that he was there then they would have rejected his alibi and cannot convict him unless they have rejected his alibi.

(f) That even if the alibi was rejected they cannot on that alone convict, they have to look back at the Crown's case and ask themselves whether they feel sure that the accused was present at the murder."

He contended that the direction by the learned trial judge having fallen short of the above was inadequate and denied the appellant of a fair trial, and consequently amounted to a miscarriage of justice.

In dealing with the defence of alibi, the trial judge has a duty to inform the jury that the burden of proving that the accused was present committing the crime rests on the prosecution, that the accused has no burden to prove that he was elsewhere, that the fact that they did not believe the alibi of the accused, was not by itself a sufficient basis for conviction, as in keeping with the burden of proof, they will have to examine the prosecution's case to determine whether it has proven that the accused was present committing the crime.

There is however, no rule that the learned judge is to recite in particular exact words the same directions each time a jury is addressed on the subject. In her written submissions Ms. Gail Walters for the Crown relied on the dicta of

Wright J.A. in the case of ***R. v. Chambers and Bell*** SCCA 17 and 18/90 delivered March 1, 1991 from which we find no reason to differ. He said:

> "It has become customary to give a specific direction on the burden of proof in relation to the defence of alibi so that its absence appears to give cause for complaint. ... That very question was dealt with by this Court in ***R. v. Leroy Barrett*** SCCA 45/89 in which it was pointed out that there is no general rule of law to that effect."

In our view, though not adhering to particular words commonly used in these directions on alibi, the learned trial judge nevertheless directed the jury accurately as to where the burden and standard of proof lie. The jury were told that disbelief of the appellant's alibi, did not entitle them to convict as the prosecution had the burden to prove that the appellant was there. No fault can be found with these directions and consequently we concluded that there is also no merit in this ground.

Ground 3 which sought to challenge the ruling of the learned trial judge on the "submission of no case" was abandoned:

Ground 4 reads as follows:

> "That the learned Trial Judge failed to assist or direct the Jury specifically or sufficiently in relation to the several inconsistencies and/or discrepancies and/or contradictions that arose on the prosecutions case. This failure deprived the Appellant of a fair trial."

This ground is without merit. The complaint has no real foundation as the learned trial judge's direction on this point spanned five pages of the transcript

(pages 783-787 inclusive) during which she dealt with the subject matter in detail.

Mr. Williams however complained that there were several discrepancies in the evidence of Ms. Walters eight of which he specified that the learned trial judge did not specifically remind the jury to consider. However, the learned trial judge's directions concerning the discrepancies in the evidence of Ms. Walters covers from pages 816-823 beginning with the following passage on page 816:

> "Now, Mr. Williams cross-examined on behalf of Mr. Nelson and in my view, the substance of the cross-examination was two fold, one, the length of time passing before a report was made, that is number one, and number two, the difference between statement made to the police and the evidence in court. I will deal with them one at a time, and I will deal with those two first of all."

The learned trial judge then dealt with the discrepancies, pointing them out to the jury. Some of the discrepancies dealt with by the learned trial judge, are in fact some of those complained of by the appellant. There is however, no burden on the judge to point out each and every discrepancy and inconsistency in the evidence. In the instant case the learned trial judge reminded the jury of what she obviously considered were the most material ones, and left them to deal with them on the basis of her earlier directions. In coming to her review of the evidence of Ms. Walters, and the discrepancies existing therein, the learned trial judge directed the jury thus:

> "Now Mr. Foreman and members of the jury, you might remember that Mr. Williams in cross-examination on behalf of Mr. Nelson did go in some

> detail with the words, the evidence which had been given at a previous court and compared it with the evidence which occurred here. Is it Mr. Foreman and members, that the witness has forgotten some of the details. Is it that she wishes not to address her mind to particular details because of the pain it causes? Is she making up the whole thing? These are matters that you have to determine. But bear in mind Mr. Foreman and members that the witness has been subjected to long cross-examination. Has she become tired? You saw her, she looked somewhat emotional. But then again, remember that the whole purpose of cross-examination is to expose inconsistencies and lies. So you look at her cross-examination, and you make a determination as to whether this witness is a witness on which you can rely. Mr. Williams I believe had as his point to show that the witness was changing parts of her story and that she was therefore unreliable. So you must determine whether you agree with that view or there is another reason."

The learned trial judge, in our view was thorough in her treatment of discrepancies, and no valid complaint can be made of her direction in this regard. This ground of appeal also failed.

The appellant per counsel next complained that the "verdict is unreasonable and cannot be supported having regard to the evidence." Mr. Williams was content however to have this ground considered with two other grounds – grounds six and seven which read as follows:

> "6. That the learned trial judge failed to adequately direct the jury to examine closely the circumstances in which the identification by each witness came to be made and in particular failed to point out the specific weaknesses which existed in the evidence of identification and furthermore failed to warn the jury of the inherent dangers associated in matters of this nature.

7. The learned trial judge misdirected the Jury:

   (a) that there was no complaint by the Appellant that the identification parade was unfair.
   (b) The learned trial judge failed to adequately direct the Jury on the legal principles governing the conduct of an identification parade this resulting in an unfair trial and a substantial miscarriage of Justice."

Dealing firstly with ground 6, it must be stated that this ground is misconceived as there are several passages in the learned trial judge's summing-up in which she properly and correctly directed the jury on the evidence of identification.

Firstly at page 799 the learned trial judge said:

> "Now, in this trial, the case against the defendants depended on the correctness of the identification and the defence alleges the identification is wrong. I have to warn you therefore, of the special need to exercise caution before convicting each defendant in reliance on the evidence of identification. And the reason I warn you is simple, it is possible for an honest witness to make a mistaken identification. It has been done in the past and no matter how convincing the witness might appear to be, such a witness nonetheless can make a mistake. So can a number of apparently convincing witnesses, they can make the same mistake, so you must Mr. Foreman and your members, carefully examine the circumstances in which the identification of each man was made.
> How long did the witness have the person she said was the accused, how long did the witness have each of these men under observation. How far away, what was the lighting like, good enough to see your face and retain. Was there anything obstructing, had the witness ever seen either of these men before, how often, was it a one shot or several times the witness has seen the accused. Was there any special reason

> for remembering the face of these accused men on occasions when they were seen before, if they were seen before. How long was it between when the accused was seen before and when the accused was identified to the police. When we deal with the evidence and the parade I will remind you of that, because it is very important.
> Mr. Foreman and your members, I am going to remind you that it is quite possible for you to make a mistake involving recognition. It happens perhaps on a daily basis, you make a mistake even when you recognize somebody you know well, you realize that you have called to the wrong person thinking it was 'A' when it wasn't really 'A'. That is reality, it happens to me all the time, I have a sister who is just like me, she warns me that I must behave myself at all times, so it is really a fact of life, this occurs with recognition."

Then again between pages 812-814, the learned trial judge examines with the jury, the evidence of identification by Ms. Walters, pointing out the circumstances and opportunity she had to identify the appellant as one of the assailants of the deceased. It may be useful to set out the words of the learned trial judge to demonstrate the thoroughness of her directions as well as the lack of merit of this ground of appeal. The learned trial judge directed as follows:

> "Now, Miss Walters told us that she did not know any of the men before but that that night, she observed them. She told us that she observed Nelson come out of the front of the car and go to the back seat. She said she saw his face when he did that. Mr. Foreman and members, consider how long that takes to come out and go back. Come out of the car and go to the back seat. She said she saw his face when they were on the way to the river, and that was the reason why she paid attention to him because she regarded him as being handsome and she liked the

canerow hairstyle that he had. She told us that in the car, why she looked at his face was because he was handsome. She was able to see because of the streetlights on the road. There was no light in the car. Mr. Foreman and your members, you consider if that lighting in your view is sufficient for her to see the face and maybe to recognize it. She said every time she passed the light, she would look around. The evidence is that she would look like ten seconds each time and that she did so more than once.

Now, she was invited to show us how quickly she looked, and you no doubt will recall Mr. Foreman and your members, that what she did was turn her head very quickly. Certainly less than seconds to indicate the length of time that she devoted to looking at the passenger in the back seat. So, we have to consider the lighting available, that is the lighting from the street lights, and also the length of time that she looked at the passenger. Remember I had told you that she told us that she noticed Nelson when he came out of the car and had gone in the back seat. She told us that in that process, the coming out of the front seat and going to the back, she had about a minute looking at him. She was at the door of the car she told us. She was close enough to have touched him if she wanted. So you can consider that. Close up, street lights, the car was parked under the street lights she told us, face to face. She says it is a minute. Do you believe that. So, with regard to Mr. Nelson, she would have you believe that there is an encounter when he moves from the front seat to the back seat and also in the body of the car. She says he was sitting on the right side and she was on the left. She doesn't know the distance but you know a motor car. How far is that, certainly within touching distance. She said that she doesn't like to remember the whole incident. She said there was nothing blocking his face. She said she was in a position where she didn't have to turn her entire neck around to see because she was on the left and he was on the right. So if you just put yourself in that direction, you would realize that if she just turns her head, she would be able to see him, if you accept her evidence,

> but you have to ask yourselves, the light and how much time.
> She told us that at the river, she saw his face. It was kind a dark but there was moonlight. She says it was bright enough. At the river, she also told us that she looked at him at the commencement – no longer than ten seconds. Now, that is concerning Mr. Nelson. Mr. Barrett did not seem to be getting so much of her attention because Barrett was in the car. Barrett was in the car when it arrived and remained there.
> Now, Mr. Foreman and members, remember the whole matter of identification. You have to be very careful. Did Miss Walters have the opportunity to properly note the face of the men? "

Thirdly, in respect of Ms. Pauline Maylor the learned trial judge (on page 827) reminded the jury of the caution with which to approach the evidence of identification as follows:

> "But I am going to remind you that even if you think a witness is an honest witness, such a witness can make a mistake, so remember even if you agree with my assessment of her, re-examine the evidence carefully because she can make a mistake, whether she thinks so or not."

I note here, however that the identification of the appellant by Ms. Maylor at the home of the deceased, was not really challenged by the appellant, as he admitted being there at the relevant time, as also to leaving in the car with the deceased. He also agreed with Ms. Maylor that he was seated in the front of the car at the time of departure.

In respect of ground 7(a) the passages impugned by Mr. Williams are set out in his written submissions as follows:

> "The impugned passage in the summing-up can be found at page 886-887 of the transcript to wit:

> 'Mr. Foreman and your members remember that there is no complaint about how that parade was conducted concerning Nelson, he told us that there was a J.P. on the parade and that he never heard them say anything. Where he was positioned he could have heard but he did not hear Ms. Pauline nor did he hear the J.P. complain about any irregularities'."

Further down in the passage the learned trial judge continued:

> "But in re-examination he told us no that he could only choose persons who were in the lock up. So in other words, his choice of persons placed on the parade was not limited but rather it is extremely limited because he only had access to the persons who were inside the lock up. So that you are left thinking well, this man did not really have a chance to have a fair I.D. parade because he only could choose from a certain pool of men but I must remind you Mr. Foreman and your members that Ms. Pauline was there looking out for him and the J.P. and there was no complaint concerning an unfair parade and if you believe the police officer that Mr. Nelson himself had been invited to say whether he was satisfied with how the parade was set up and he said yes."

Ironically the passages complained of by the appellant demonstrate a very detailed reminder to the jury of the contentions of the appellant in respect of the conduct of the identification parade. All his complaints e.g. the limited choice he had of selecting the men for the parade were left for the consideration of the jury. This also has to be considered against the background of the directions on Identification Parade which was given to the jury and which answers the complaint in Ground 7(b). The learned trial judge directed the jury thus:

> "Now an identification parade was held. The whole point behind the identification parade is to ensure that the suspect is given, is put in fair surroundings,

> by fair I mean he is given a proper chance, a good chance among persons who look like him or of the same standard in life, around the same colouring, height, age. The point behind it is to get persons who resemble the suspect so that the suspect is given a fair chance of not being identified, that is what it boils down to, because you put a number of men who look alike and the witness is brought in and invited to point out the person that he or she thinks is the perpetrator of the offence, so if you have a line of persons who all of them look alike, the chances are that the person when the witness does in fact identify the suspect, the witness would more likely be sure in that situation, than if just the suspect alone was put in front of her and say this is the man.
>
> Now, in this case we have identification parade being held and you will hear also that allowance is made for persons to come and observe the identification parade on behalf of the suspect to make sure that what occurs is correct, is fair. So that if the accused person wishes a J.P. or lawyer it is up to him. We will go back to that also.
>
> Now, in the identification parade, the hope, the objective is to ensure that the witness' ability to recognize the suspect has been fairly and adequately tested."

In conclusion, we wish to state that this was a summing-up which ought to be noted for its thoroughness and its detailed examination of the evidence and its accurate directions on the issues of law which were involved in the case. In the result we found no merit in any of the complaints advanced, and consequently dismissed the appeal.