JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NOS. 17 & 18 of 1990

BEFORE: THE HON. MR. JUSTICE WRIGHT, J.A.
THE HON. MISS JUSTICE MORGAN, J.A.
THE HON. MR. JUSTICE GORDON, J.A. (Ag.)

REGINA
vs.
ALTIMOND CHAMBERS
KENNETH BELL

F. M. G. Phipps, Q.C. and Wentworth Charles for the appellants

Eriol Palmer and Patrick Cole for the Crown

February 11 and March 1, 1991

WRIGHT, J.A.:

The life of fifty-eight years old Basil Francis was summarily ended when at about 8:30 p.m. on January 19, 1989, a bullet from one of three guns being fired by three gunmen tore through his right lateral breast passed through the right lung through the right lobe of his liver and lodged in the tissues of the epigastrium. Massive haemorrhage resulted and with it death. The bullet recovered by Dr. Royston Clifford, forensic pathologist, was a large calibre copper-jacketed lead bullet. There were no gun-powder marks on the body which fact indicated that the weapon was more than twenty-four inches from the body at the time the bullet was discharged. The location was the intersection of Manchester Street and Manchester Lane, Spanish Town,

St. Catherine and although the evidence indicates that the intersection was busy with people the problem of finding witnesses, which has become very noticeable especially in crimes of violence, was such that the prosecution was forced to rely on the testimony of one eye-witness.

The hearing of the applications for leave to appeal against conviction and sentence of death imposed at the Home Circuit trial before Bingham, J. and a jury on February 1, 1990, was treated as the hearing of the appeals because questions of law were involved.

Significant areas for attention are the quality of the evidence, consisting as it does of the uncorroborated testimony of a single witness, the treatment by the learned trial judge of the case for the defence and the political aspect of the case. This latter fact assumes importance because, despite the fact the sole eye-witness and the appellants straddle the political divide, the prosecution did not present its case with that fact suggested as a possible motive. However, the defence, which did not disguise its condemnation of the witness as a liar because of his political allegiance, projected that fact as a basis for his fabricating a case against the appellants.

The General Elections of 1989 were but three weeks away and political activists were busy. The scene of the murder is claimed to be an area frequented mostly by adherents of one party (PNP). The lone eye-witness, Mr. Desmond Tahatdil, testified that the area was very crowded but the people appeared not to have been spread abroad but to have been in little groups. He was standing in the intersection between two of these little groups. The deceased, Basil Francis ("Corpie"), was seated on a culvert with his back towards the cemetery and his face towards the market

while the witness faced the cemetery with his back towards the market. Francis sat in conversation with Joshua Green and others. Approaching from the direction of the cemetery were three men whom the witness recognized from a distance of about one chain away to be the two appellants Altimond Chambers ("Milo"), Kenneth Bell ("Duck") and one "Tony Monk". They came towards the intersection running and then each man drew a gun from his waist and began firing indiscriminately at the persons gathered there. The deceased remained seated while all else including the witness sought safety. In all three persons were injured. It is not known whether Francis' failure to seek safety is due to his being shot early after the shooting began or whether he had been rendered incapable by his known alcoholic imbibitions. The witness took cover on the premises of Winston Jackson ("Q") across the road from where he watched the greater part of the proceedings. His view of the men, while he stood in the street, lasted a matter of a few seconds but he said he had known Chambers for seventeen to eighteen years and saw him quite frequently (Chambers agrees that they knew each other) and Bell he knew for about eight years and last saw him earlier during the said day. The street was lighted by a street light and the light from a hardware store. But as he looked at the men from Johnson's premises he was looking at their backs.

His evidence was challenged on two bases, viz:

1. He was not present and so had fabricated his evidence.

2. If he were present he could not possibly see what he said he saw from where he said he was.

He testified that he took cover behind a zinc sheet between Johnson's Bakery and an adjoining lumber yard and that he

viewed the incident through a hole about 1-inch across in the zinc sheet at which point he was four to five yards from where Francis sat on the culvert. Issue was joined as to whether any such point existed - the contention being that the lumber yard is fenced in with zinc sheet about eight feet in height and that there was no zinc fence across the front of Johnson's premises. However, he maintained that from that spot he saw Francis receive a shot in his back and then fall wriggling to the ground. After the people had fled into Manchester Lane the gunmen retraced their steps towards the cemetery. The witness then emerged from his hiding place where he had spent 2 - 2½ minutes viewing the events and, passing Francis on the ground, sought the company of the persons in the lane. He said he spent about one hour there with the people discussing the evening's horror during which time a police radio car came by and took the body of Francis away. On the question of identification of the three gunmen he said as they approached he saw them front-wise from head to foot and as regards obstruction to his view he said there was nothing to prevent him from seeing what was transpiring between the deceased and the three gunmen.

In cross-examination he said he knew Francis received more than one shot but he did not know how many. Further, he said he heard many shots fired but couldn't tell how many hit Francis. And he insisted Francis was shot in the back because he saw the men go up to him and shoot him in the back. Challenged on his depositions, he admitted testifying at the Preliminary Examination that he saw Francis receive two shots. He said he arrived at the Spanish Town Police Station to make his report about 7:30 p.m. but his deposition had "something to 9:00 p.m.". He said he was accompanied to the police station by persons who had

witnessed the incident. Questioned as to how he gained entrance to Johnson's premises, he said he entered where there was a dislodged zinc sheet adjoining the gate. He had previously said it was via the gate but he also agreed that that gate was kept chained. He denied the suggestion that he was at one Miss Nana's building along with one Karl Profile at the time of the shooting. He admitted that the appellant Chambers was a front-line supporter of the one party and that Vin Edwards was a candidate for the other in the up-coming General Elections but denied that he was accompanied to the police station by Vin Edwards.

Detective Corporal Maurice Shirley received a report of the incident about 8:40 p.m. and after attending at the Spanish Town Hospital where he saw the corpse of Basil Francis with a bullet wound to the right side, he visited the scene of the killing and observed blood by the culvert where Francis had sat. On February 5, 1989, he arrested the appellant Chambers on a warrant which he had obtained and after caution Chambers said:

> "Me go out and when me come back me see a crowd a people and them say some people get shot. Me never did even in a the area."

When Bell was arrested he said:

> "Nobody can say me shoot anybody. Me hear say them a call me name say me shoot man but me nuh shoot nobody."

Cross-examined, he said it was at about 9:00 p.m. he saw the witness Desmond Tahatdil at the police station at a time when several persons were there but he could not recall seeing Vin Edwards there. The cemetery, he said, is about four chains from the scene of the shooting. Of the several persons interviewed by him only two admitted to being eye-witnesses. That was the case for the prosecution.

The appellant Chambers gave sworn evidence. He was thirty-eight years of age and had known the deceased for fifteen years and had on occasions bought drinks at the wholesale where Francis worked. On January 19, 1989, he was not at the scene of the shooting and had nothing to do with the shooting of Basil Francis. He had been with a Mr. Brown at his office at Brunswick Avenue and from there he went to Mr. Warmington's bar at Tawes Pen at about 7:00 p.m. where he saw a crowd of party supporters including Basil Francis' son from whom he learnt of Francis' death. Cross-examined, he said that he and the appellant Bell were friends, he did see him the day of the incident but he had nothing to do with the killing.

The first of the five witnesses called in his defence was Deputy Superintendent Garnet Daley who testified that at about 8:00 p.m. the candidate Vin Edwards attended at his office and gave him certain information and as a result of which he sent for the witness, Desmond Tahatdil, and took a statement from him. What he could not recall was whether Edwards and Tahatdil were at the station together.

Next was Detective Inspector Kelso Small who said he had visited the scene along with Detective Corporal Shirley and had made a call for eye-witnesses to come forward. In response two persons came and he took them to the police station. He could not recall if one was Joshua Green but he was positive the other was not Desmond Tahatdil. Nor, contrary to what Tahatdil had testified, did he speak with the witness there. Tahatdil had said that he and Joshua Green and others had travelled to the station in a taxi-cab. Strange though it may seem, as the officer in charge of the C.I.B. Spanish Town, his inquiry was limited to the announcement at the scene and the conveying of the two

persons to the station. He did not recall taking any statements.

The significant features of the evidence of Winston Johnson ("Q"), on whose premises Desmond Tahatdil took cover, are that there was no hole in the lumber yard fence which would allow access to his premises; there was no zinc at the front of his premises; the gate to the front of his premises was about twelve yards in two sections; he was in the square leaning on his bicycle when he heard the shots and saw three men coming from the direction of the cemetery with guns, two came before him while the other was fifteen to twenty yards behind; he merely eased up off his cycle and turned around; he did not see either of the appellants there; the man nearest to him pointed his gun at him and he heard a click; the deceased was like a father to him but when he was asked if he did anything he said, "I don't business in a people business you know"; he saw the radio car come and take the deceased away; he did not give any statement to the police until some two weeks after the incident. In cross-examination, he said he had known the appellant Chambers for twelve years but that he had never during that period seen him come to the intersection; he was busy attending to his patty business; "I told you I put up my hand in the air, I don't business with people business, I am a business man" was his response to the question, "After the man pointed the gun at you and it went click, what was the next thing you did?". He did not see the witness Tahatdil there.

Joshua Green was talking to the deceased when the gunmen made their entry and there was no mistake about the role he played when he saw the two short strange gunmen. He ran away leaving his shoes. Later when Detective Inspector Kelso Small came he went and spoke with him and was conveyed

by the Inspector to the station. No, he did not go to the station in a taxi along with Tahatdil ("Moses"). Indeed, he did not see the witness there. Cross-examination elicited from him what Winston Johnson denied, namely, that there was a zinc fence to the front of Johnson's premises in addition to the iron gate.

Archibald Gordon operated a wholesale liquor business along Manchester Street. About mid-day he saw the appellant Chambers, who was in search of Heineken beer but he had none. He couldn't understand how his statement to the police has 4:30 p.m. He was not present at the time of the incident.

In an unsworn statement the appellant Bell said that he had a case at the Spanish Town Resident Magistrate's Court that day and when Court adjourned at 5:00 p.m. he went home, had his dinner and fell asleep. Later when he woke up his mother told him of the incident. It was then that he visited the scene of the incident.

The three Grounds of Appeal in respect of each appellant are similar and are as follows:

"1. The Verdict is unreasonable and cannot be supported having regard to the evidence.

PARTICULARS

The evidence of identification was unsupported by any other independent testimony. In the circumstance where this evidence was weak and unreliable, the case should have been withdrawn from the jury's consideration by the Learned Trial Judge.

2. MISDIRECTION

The Learned Trial Judge misdirected the jury by his failure to direct, that where politics could be a

" motive for lying, the evidence of the sole identification witness ought to be considered with great care and treated with caution. See Regina vs. Anthony Wilson, Supreme Court, Criminal Appeal No. 128 of 1989.

3. The Learned Trial Judge misdirected the jury by his failure to direct them adequately on the alibi which was raised by the Defence.

PARTICULARS

a) There was no direction given to the jury indicating that there was no onus on the defence to establish the alibi. The direction at Page 83 suggested that there was such an onus on the defence.

b) The Learned Trial Judge failed to direct the jury by reminding them that if the alibi was rejected, this by itself should not be used as support of the identification evidence. See --- R. v. Turnbull [1976] 3 All E.R. Page 549, and Reid, Dennis and Whylie v R (1989) 37 WIR, Page 347."

The burden of submissions on Ground 1 was that, in all the circumstances and in the light of the authorities, the evidence was weak and consequently the learned trial judge ought to have withdrawn the case from the jury. It is relevant to comment, though this is not determinative of the issue, that experienced counsel for the defence at the trial, who were in a position to get the feel of the case, never raised the question of no case to answer. Whether a case is weak or not is a question to be resolved on the evidence. The factors referred to are:

1. The lighting was inadequate to make recognition from one chain positive and reliable.

2. The further point of recognition through the fence was unreliable for it to be positive.

3. There was obstruction between the witness and the gunmen i.e. the crowd of individuals milling around when the men approached.

4. Tahatdil did not report to the police on the first available opportunity when the police came to the scene and had to be sent for.

On the question of the adequacy of the lighting to afford ample opportunity for recognition, it is important to note that no witness has contradicted Tahatdil's evidence as to the presence and the location of the two sources of light i.e. the street light at the intersection and the light from the hardware store about thirteen to fifteen yards from the intersection. There is no evidence of people milling around between the witness and the gunmen. The evidence is that the witness was by himself while on either side of him there were small groups but all these people fled into the lane when the gunmen arrived. Those are issues of fact for the determination of the jury. In the present Jamaican milieu it cannot be seriously contended that a witness must be discredited because he/she does not rush off post haste to disclose to the police such knowledge as he/she may possess. At any rate he gave his statement to the police on the same night of the incident. The substance of the grounds as filed is that the witness was unsupported by any other independent testimony. It has been observed for long that it has almost become the norm for willing prosecution witnesses to number no more than one. It may be seen as an indictment on the society for suffering crimes to go unpunished for lack of support of the police. It is quite a different thing to pillory a single witness, who sometimes comes forward at the risk of his life,

for performing his civic duty even if at times with some reservation. We agree with Mr. Palmer's suggestion that this case does not fall into the category to which Lord Widgery, C.J. adverted in **R. v. Turnbull** (1977) 1 Q.B. 224 and cited in Privy Council Appeals of **Junior Reid et al** (1989) 37 W.I.R. 346 at 354:

> "When, in the judgment of the trial judge, the quality of the identifying evidence is poor, as for example when it depends solely on a fleeting glance or on a longer observation made in difficult conditions, the judge should then withdraw the case from the jury and direct an acquittal, unless there is other evidence which goes to support the correctness of the identification."

This is certainly not a fleeting glance case nor one of observation made in difficult conditions. What is at issue here is the credit of the witness.

We certainly do not share Mr. Phipps' view that the evidence was such that it ought to have been withdrawn from the jury. What is of critical importance is how the evidence was left to the jury. As regards the lighting, they were told at page 194 of the record:

> "Now, on the basis of the prosecution's case, however, identification is the critical issue in the case, because on the evidence in the case it was night, night was coming down, not pitch dark, lights were on. There is no issue in the case as to the fact that there was a light at the street corner, at the intersection of Manchester Street and Manchester Lane, or that, for that matter, there was also a light coming from Mr. Barrett's hardware store which was just by the intersection. So, in so far as the state of the lighting as it existed at that intersection, or within the immediate vicinity of the intersection is concerned, there is no issue in the case as to that."

Then, on the question of there being only one witness, he continued:

> "Now, when one comes to deal with identification especially in relation to the identification of a single or sole eye witness, it is my duty to tell you this, Mr. Foreman and your members, that you must approach that question with extreme caution, utmost caution. A single or several witnesses can be mistaken, and a mistake is no less a mistake if it is made honestly. But what matters when you come to examine the identification evidence in each case, and in this case in particular, is the quality of the identification evidence. There are certain factors that you must take into consideration in determining that evidence as to the quality of the identification evidence."

The issue of obstruction was put this way at page 199:

> "There is no evidence of any barrier nor obstacle in the way, the path between the persons who were coming from the cemetery and the witness, to hinder the witness from seeing and making them out."

We are satisfied that that direction faithfully represents the evidence given and there was no basis for presenting it in any other way.

Not only were the jury directed on the particular aspects of the evidence cited but in more than one passage they were told of the importance of the credibility of the witness Tahatdil. At page 185 they were told:

> "So his testimony has been severely tested in this case and the question for you to determine before you even come to consider the defence in this case, bearing in mind what I told you about the burden of proof and the presumption of innocence, the question for you to determine is, having seen and heard Desmond Tahatdil, observing him, his demeanour, hearing him give

> "evidence, not only in chief, giving his account in chief, but seeing how he reacted under cross-examination, it is for you to determine how much reliance you can place on the testimony of that witness, because it is true to say that the prosecution's case stands or falls on his testimony. If you don't believe him or his evidence leaves you in a state of reasonable doubt, then you don't have to bother to look any further.
>
> Now, as I told you, I will have to go through his evidence very carefully because credibility, that is his ability to truthfully recollect and to relate the events of that evening, and most particularly the circumstances in which he sought to give his account as to the manner in which the shooting of Basil Francis took place, is a matter of the greatest importance."

And again at page 200:

> "But the matter doesn't end there, you know, because we now come to the question of credibility. Did the witness see these persons in the circumstances he has sought to relate to you, and it comes down to his credibility. Now, his credibility has been tested in a number of different ways. First, his testimony as to what - in what manner he was able to identify the two accused persons (Tony Monk is not before you) was challenged in relation to not only what he said before you in chief, that is under examination by Crown Counsel, but under cross-examination as to statements made by the witness, Tahatdil, on a previous occasion, which were put to him in order to destroy his credibility."

We are satisfied that Ground 1 is without merit.

The submissions on Ground 2 contemplate an addition to the list of cases in which a trial judge would be required to give a warning to the jury and the authority for such a proposition is said to be **R. v. Anthony Wilson** S.C.C.A. 128/89

delivered December 3, 1990 (unreported). We do not hesitate to say that **Anthony Wilson** (supra) decided no such thing. The distinction between the two cases is not far to seek.

That was a case tried by a judge alone and one in which the issue was whether the trial judge had taken into account the possible effect of malice born out of party politics on the credit of a witness whose evidence was crucial. There the Court said at page 6:

> "Malice born out of party politics is a notorious fact of which every ordinary citizen of Jamaica is aware. Judges, then, must view with caution evidence where political rivalry is a real live issue in a case, as it can be indicative of the mood and behaviour of the parties. It follows, therefore, that when such evidence appears, it must be considered with care and dealt with."

Of significance is the fact that that case was tried by a judge without a jury and it is in that regard that the quoted passage must be seen. The need for the judge, who sits alone, to disclose how he applied the law was clearly stated in **R. v. George Cameron** S.C.C.A. 77/88 dated November 30, 1989, where this Court said at pages 8 - 9:

> ".... where the judge sits alone he is required to deal with the case in the manner established for dealing with such a case though he is not fettered as to the manner in which he demonstrates his awareness of the requirement. What is impermissible is inscrutable silence. He must demonstrate in language that does not require to be construed that in coming to the conclusion adverse to the accused person he has acted with the requisite caution in mind. Such a practice is clearly in favour of consistency because the judge will then be less likely to lapse into the error of omission whether he sits with a jury or alone."

The extract from **Anthony Wilson** (supra) is consistent with this requirement because only then in such a case will it be manifest what principles have been applied. There is no need to extend this requirement to a trial with a jury because in such a case it can readily be ascertained what guidance was offered the jury. The contention accordingly fails.

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 as set out in Ground 3 of the Grounds of Appeal. That very question was dealt with by this Court in **R. v. Leroy Barrett** S.C.C.A. No. 45/89 dated July 16, 1989 (unreported) in which it was pointed out that there is no general rule of law to that effect. What was important was that the jury be plainly told that there was no burden on the accused person to prove anything and that the burden of proving guilt to the required standard rests entirely on the prosecution. We are of the opinion that the learned trial judge met that requirement. In dealing with the burden of proof he told the jury (at pages 180 - 181):

> "Now the effect of that plea of not guilty is that the burden of proving their guilt on this indictment, this charge that they are before you on, therefore, rests on the prosecution to bring evidence which when considered by you at the end of the case satisfies you so that you feel sure of their guilt, sure that is, beyond a reasonable doubt.
>
> Now that burden of proof which is on the Prosecution remains with the Prosecution throughout the case, throughout the case. Let me just stress that. It never shifts. There is a presumption of innocence which is raised up by the plea of not guilty and that presumption or what had been referred to as

> "this mantle, this cloak of innocence, each accused man is clothed with that cloak and the only way that the Prosecution can remove that cloak of innocence, that presumption of innocence is if at the end of the case when you come to examine the Prosecution's case you are satisfied so that you feel sure on the evidence that the Prosecution has brought and put before you, that Altimond Chambers is guilty as charged and that Kenneth Bell is guilty as charged."

And then, quite pointedly, he told them at page 182:

> "There is this burden on the prosecution I told you about, the burden of proof and the standard of proof. The accused men on the other hand are not obliged to prove their innocence. By the same token, there is no burden resting on them to prove that they are not guilty of this charge ...."

It is against that background that the direction on alibi ought to be regarded. At page 183 he told the jury:

> "Each of the accused persons has sought to establish his innocence in this case, putting forward what is known in law as an alibi or an alibi defence, and I will be reviewing the evidence, and I will come to deal with their evidence in greater detail later on in my summing-up. But just to summarise what Chambers is saying, Chambers is saying that at the time - and Bell, both of them, could deal with them together at this stage - both of them are saying that at the time of this incident, it was at or around 6.30 p.m. on this day in question, this evening in question, they were elsewhere, they were not at the intersection of Manchester Street and Manchester Lane, coming from the direction of any cemetery firing shots along with another person called Tony Monk, they were somewhere else.

> "Well, if you, when you come to consider the alibi which each of them has put forward, if you believe that alibi, or it leaves you in a state of reasonable doubt, then that is the end of the case so far as each of the accused men is concerned; you must find them not guilty, each of them. If you reject their alibi, then the matter does not end there, you now have to go back and look at the prosecution's case and it is true to say that the prosecution's case - let me tell you this from the outset - it rests entirely on the testimony of Desmond Tahatdil, otherwise called Moses. It is the testimony of Desmond Tahatdil that stands between each of these accused men being found guilty on this charge."

When the directions are seen as a whole it becomes abundantly clear that the jury could not be left in any doubt that the persons on trial had nothing to prove.

Having dealt with those specific complaints we feel obliged to attend to other questions thrown up during argument which, in our minds, raise the question as to whether the appellants had a fair trial. To begin with, the prosecution, despite the element of politics in the case, did not suggest that as a motive. Indeed, it was the defence which raised the issue of politics as the motive for the witness Tahatdil to lie. He was shown to be an activist and an organiser for the PNP while the appellants are active members of the JLP. When the question was raised counsel for the Crown expressed surprise stating that to his knowledge there had been a truce so he never considered politics as a possible motive. No evidence was led as to there having been a truce. Accordingly, it was submitted that it was wrong for the trial judge to, as it were, adopt it and include it in his summation. This is how the judge dealt with the matter at pages 196 - 197:

"I should also tell you that ... and here I will just pause and mention this, that during the course of the case the Defence brought out this question of politics. The motive that is being suggested and this Mr. Finson submits was done after a very careful consideration, was that this whole case is a trumped up charge - I am using my own words now - a trumped up charge which has as its genesis, its birth, politics and I suppose one might even add it was done to gain political mileage. These are my words, having regard to the political fever and the political atmosphere and the political climate that was prevailing in and around that area in St. Catherine at the time, this being three weeks before the general election (sic).

Now I will have to give you a direction in so far as that issue was brought out, because it's the witness Tahatdil who admitted that he was the supporter of one party and he had admitted that he knew that the two accused supported the opposing party, the rival party and today Mr. Chambers also gave evidence that he played a leading role in his community in relation to that party. So as Defence Counsel puts it, each of them was on Tahatdil's side and the two accused were on the other side of the political fence. Of course, you heard the submission made by Crown Counsel that there has been this truce that had been signed. So he thought that at the time of this incident...he was taken aback, Crown Counsel said, when this issue was raised, because at the time of this incident the truce or that olive branch, to use my words, had been waved and all was now peace and harmony. Well, you know this issue cuts both ways. Why I say that it cuts both ways, because it all comes back to the question of Tahatdil and what you make of the testimony of this witness; because if you believe Tahatdil, then his evidence would seek to provide a motive for what took

> "place that evening, you remember, because his evidence doesn't stand alone in this regard, because it is supported by the accused Chambers who gave evidence and when the accused man gives evidence it is evidence which you consider and act upon."

He then went on to remind them of Tahatdil's evidence that political rivals met at that intersection and that, having regard to the impending Elections, they could regard this political issue as a motive for the killing because of the resultant dislocations. It is observed that he rounded off the topic by labelling what he had to say as "just my comments". But a judge can only properly comment on evidence. Here that evidence was lacking.

It would also seem to us that, although the prosecution was content to present its case without a motive, the trial judge was at pains to fill the gap. We are aware that a trial judge is obliged to leave for the consideration of the jury all defences which properly arise on the evidence. We are yet to be persuaded that he had a corresponding duty to re-structure the prosecution case to give it added strength.

And yet this is not our greatest area of concern. That is reserved for the treatment of the defence which seems all the more ominous when the bolstering of the prosecution's case is considered. It will be borne in mind that the defence of each appellant is an alibi and three witnesses were called from the scene to testify. Their testimonies had two aspects - a negative and a positive. The negative aspect was that they did not see the witness Tahatdil there. Conceivably, he could have been there but because of his positioning relative to theirs they did not see him. The other, and, indeed, the aspect which mattered most to the

appellants, is that the witnesses said the appellants were not at the scene of the shooting. Johnson said he saw the gunmen and they were not the appellants. But the defence was not presented coherently. It is to be discovered in fragments throughout the prosecution's case at those points where the credit of Tahatdil was being presented for scrutiny. And this is in keeping with how the trial judge evaluated their evidence. Said he at page 202:

> "Now, witnesses were called by the defence in defence of the accused Chambers, and they were also called as their main purpose to seek to discredit Tahatdil."

He, accordingly, lost sight of the real reason for their being called i.e. to support the alibi with the result that this aspect was never left to the jury. In the circumstances, we conclude that there was a non-direction which amounted to a misdirection which deprived the appellants of a fair trial. We are accordingly obliged to quash the convictions and set aside the sentences. Having given careful thought to the evidence we are not persuaded that the interests of justice would be best served by ordering a re-trial. We, therefore, enter verdicts and judgments of acquittal.