JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO: 41/97

BEFORE: THE HON. MR. JUSTICE HARRISON, P.
THE HON. MR. JUSTICE COOKE, J.A.
THE HON. MR. JUSTICE DUKHARAN, J.A. (AG.)

R v DALTON REYNOLDS

Earl DeLisser & Robert Fletcher for appellant

Kent Pantry, Q.C., Director of Public Prosecutions
and Miss Lisa Palmer, Snr. Deputy Director of Public Prosecutions
for Crown

15th, 16th,19th & 25th January 2007

HARRISON, P.

This is an appeal from a conviction of the appellant on 20th March 1997 at the Home Circuit Court, Kingston before Clarke, J (now deceased) and a jury, of the offence of murder of Carl Simpson committed on 14th February 1992 in the parish of St. Andrew.

The chronology of the events affecting this appeal is of relevance.

An application for leave to appeal from the conviction of 20th March 1997, Criminal Form B1, was filed by the appellant in the Court of Appeal Registry on 8th April 1997. The Registrar, by notice dated 22nd April 1997 to the Registrar of

the Supreme Court, advised the latter of the application and requested copies of the proceedings and the summing-up of the learned trial judge. This request was not complied with. In the interim, the appellant contacted the Independent Jamaican Council for Human Rights, which by letter dated 25th November 1998, advised the Registrar of the Court of Appeal that the appellant was not represented by counsel, contrary to what he had indicated on his application filed on 8th April 1994, and requested information as to the status of any appeal existing. The Registrar then noted that the transcript was "awaited."

In 1999, consequent on the urgings of the appellant, the office of the Public Defender, an agency of the State, contacted the Registrar of the Court of Appeal on several occasions and was informed that "the documents were not yet obtained."

In January 2001, the Public Defender sent to the appellant a copy of a portion of the summing-up of Clarke, J. The appellant in his affidavit dated 8th December 2006, stated that the said copy summing-up "has been lost in the prison."

Up to 2001 the Registrar of the Court of Appeal had not received the notes of evidence nor the summing-up of the learned trial judge from the Supreme Court.

Ongoing enquiries were made in 2004 to the Registrar of the Court of Appeal by the Public Defender who was advised that "more documents were

required and ... had not been located." The appellant was so advised by the Public Defender.

In January 2005, counsel in this appeal, Mr. Robert Fletcher, then representing the appellant, on further enquiries, was told by the Registrar of the Court of Appeal that "the court file could not be located." In February 2005 the court file in the Court of Appeal was found, but the full transcript requested had not yet been received from the Supreme Court. However, later in 2005, a copy of the incomplete summing-up of the learned trial judge was received in the Registry of the Court of Appeal.

On 28th June 2006 not having received the full transcript of the summing-up, the portion received was submitted to the single Judge of Appeal, by the Registrar of the Court of Appeal. Leave to appeal was granted.

By memorandum dated 19th September 2006 to the Chief Court Reporter in the Supreme Court, from the Registry of the Court of Appeal, a full transcript of the trial proceedings was requested. By letter dated 28th September 2006, the Chief Court Reporter in the Supreme Court replied, in these terms:

> "***Re: SCCA No. 41/97 Regina vs Dalton Reynolds***
>
> Pursuant to our several telephone conversation, Charlton/Myrie, and Crosse/Myrie, regarding the Notes of Evidence in the captioned matter, I must inform you that a comprehensive search was made for correspondence relating to a request by your office, prior to your correspondence, dated 19th September, 2006, and I am unable to locate such a correspondence.

> During the period (1997), due to staff shortage, there was a policy whereby court reporters were only required to produce summation in non-capital murder cases and a full transcript in capital murder. The Court Reporting Department was not fully computerized, and so there are no diskettes which would have stored the information recorded in court.
>
> It is to be noted that two of the four officers involved in recording the evidence are no longer in the Service.
>
> A thorough search was made for the shorthand notes of the four court reporters who were involved in recording the evidence in the matter but the effort proved futile.
>
> I, sincerely, hope that the summation which was submitted some time ago will be of assistance and that an amicable solution will be arrived at.
>
> Sincerely yours,"

The hearing of this appeal was fixed for 18th December 2006, when, on the application of counsel for the appellant it was taken out of the list. The appeal is now before us.

The facts in support of the conviction of the appellant were as hereunder.

On 14th February 1993 in the night, the prosecution witnesses Owen Richards and Derrol Dacres and three other men were standing in front of Dacres' gate on Blackwood Terrace off Red Hills Road, St. Andrew. The appellant and four other men came out of a top gate to the said premises. The appellant had a gun in his right hand and a machete in his left. The appellant said "No one move." He said to deceased "You bwoy, you nuh hear when me say you fe leave yah." Appellant chased deceased, who ran. The appellant

chopped at the deceased then the appellant and the other men chopped the deceased several times. Both witnesses ran. The appellant came to within 1 ½ yards from the witnesses. Both witnesses Richards and Dacres knew the appellant for 20 years and 4 years, respectively, and saw his face for about 50 seconds. There was an electric light in the lane 20 steps away from the witness Dacres' yard and another light on the shop in front of the lane by means of a 100 watt bulb that the witness Richards had put in the day before.

On 21st February 1993 Det. Cpl. Lenworth Mellis arrested the appellant on a warrant for the offence of murder, when cautioned, he said:

"Officer, a no me do the chopping, sah."

The deceased sustained 20 wounds. They were to his right skull, expelling the brain tissue, the bridge of his nose, his right shoulder, his chest, left knee and his leg which together caused his death. The wounds were consistent with infliction by a machete.

The appellant gave sworn evidence that he was of good character. He knew both prosecution witnesses for years. On that night he was not there in the lane with a group of men. He did not chop the deceased. He was at his sister's house in Duhaney Park with his girlfriend, from 13th February 1993 until 17th February 1993. His sister gave evidence in support of his defence of alibi.

The following four supplemental grounds of appeal were filed by counsel for the appellant:

> "1. The applicant's right under section 20(1) of the Jamaica Constitution to a fair hearing within a

reasonable time has been infringed in that he has waited over nine years for his appeal to be heard.

2. The applicant's right under section 20(6)(b) of the Constitution to have adequate facilities to prepare his defence has been infringed in that the absence of the notes of evidence and a portion of the summation severely limits his ability to prepare and present his appeal.

3. The learned trial judge's directions on visual identification were inadequate in at least one critical respect in that he failed to warn the jury that the care they were to exercise in assessing evidence of visual identification applied equally to recognition cases.

4. The learned trial judge failed to sufficiently isolate the question of mere presence of the accused and its significance in law."

Ground 1

Mr. Fletcher for the appellant argued that the length of the delay being nine (9) years, during which the appellant waited for his appeal to be heard, was presumptively prejudicial and the State not having to date provided the appellant with a transcript of the proceedings at trial nor a copy of the full summing-up infringed his rights under section 20(1). The State was responsible for the said delay and not the appellant, who through his efforts and that of his attorney and other agencies sought to assert his rights. The appellant suffered from the uncertainty and anxiety of not knowing when his case on appeal would be heard and was thereby prejudiced. He relied on ***R v Bell***, SCCA 16/98 dated 29th September 2003, ***Alfred Flowers v R*** [2000] 1 WLR 2396, ***Bell v DPP*** [1985]

AC 937 and ***Darmalingum vs The State*** [2000] 1 WLR 2303. The appellant he argued, was entitled to an acquittal.

In this Court's view the factors to be considered when a complaint is made that an appellant's right as stated in section 20(1) of the Constitution have been infringed, are those stated in ***R v Bell*** , (supra) following ***Barker v Wingo*** [1972] 407 US 514. They are (1) the length of the delay (2) the reason for the delay (3) the defendant's assertion of his right and (4) the prejudice to the defendant.

The right to "a fair trial within a reasonable time..." applies equally to the appellate process. The breach of that right which is re-inforced by the fact that the appellant should not be prejudiced by lengthy delays, was not absolute, but must be balanced against the public interest that those who are guilty should be punished. Any lengthy and inordinate delay suffered by the appellant does not automatically attract a quashing of his conviction, but may be taken into account, in considering any alteration of the sentence imposed. The Court should also consider the strength of the case in proof of the conviction (See ***Flowers v R,*** supra). In the latter case the Board followed the principles stated in ***Barker v Wingo*** (supra) which were relied on in ***Bell v DPP***, (supra). About six years delay occurred from the time the appellant ***Flowers*** was charged to the date of his conviction of capital murder on a retrial. Recognizing that the right given to an appellant by section 20 of the Constitution of Jamaica, must be balanced against the public interest in seeing that all persons found guilty of

serious crimes in Jamaica ought to be punished, their Lordships observed that the said right:

> "... is not a separate guarantee but, rather, that the three elements of section 20(1) form part of one embracing form of protection afforded to the individual."

Their Lordships thereby declined to follow ***Darmalingum vs The State*** (supra), an appeal to the Judicial Committee from Mauritius decided earlier, in which the appellant was arrested in 1985 for forgery. He was not charged until 1992. He was tried and convicted in 1993. He appealed, but his appeal was not decided until 1998. He complained of a breach of his constitutional right guaranteed by section 10(1) of the Constitution of Mauritius which section is similar to section 20(1) of the Constitution of Jamaica. It was held that the delay of thirteen years was a breach of section 10(1) and the only remedy for such a flagrant breach of his constitutional rights was a quashing of the conviction. The appeal was allowed and the conviction quashed. Lord Steyn, delivering the judgment of the Board, said of section 10(1) at page 2307:

> "... if a defendant is convicted after a fair hearing by a proper court, this is no answer to a complaint that there was a breach of the guarantee of a disposal within a reasonable time. And, even if his guilt is manifest, this factor cannot justify or excuse a breach of the guarantee of a disposal within a reasonable time. Moreover, the independence of the 'reasonable time' guarantee is relevant to its reach. It may, of course, be applicable where by reason of inordinate delay a defendant is prejudiced in the deployment of his defence. But its reach is wider. It may be

> applicable in any case where the delay has been inordinate and oppressive." (Emphasis added)

Whereas, the cases of ***Bell v DPP,*** (supra) and ***Flowers v R,*** (supra) viewed the constitutional guarantee of section 20(1) as "...one embracing form of protection," the Board in ***Darmalingum vs The State*** (supra), interpreted a similar provision as three separate guarantees, but that of delay being of paramount importance and emphasis.

These differing views were resolved in the case of ***Attorney General's Reference*** (No. 2 of 2001) [2003] UKHL 68, [2004] 2 AC 72. The House of Lords sitting in an Appellate Committee of nine judges considered a reference from the Attorney General on the question of whether a trial court could stay an indictment on the ground that there had been a violation of the right of the defendant to a trial within a reasonable time pursuant to Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, in circumstances where the defendant could not demonstrate any prejudice arising from the delay. The case concerned prison riots in 1998, and the indictments came on for trial in 2001, when the judge stayed the indictment. The majority view was that although lapse of time creating a delay was a breach of one's rights to a fair trial within a reasonable time, the appropriate remedy was not a stay. It would depend on all the circumstances of each case. Lord Bingham, for the majority, at paragraph 24, said:

> "24. If, through the action or inaction of a public authority, a criminal charge is not determined at a hearing within a reasonable time, there is necessarily a breach of the defendant's Convention right under article 6(1). For such breach there must be afforded such remedy as may (section 8(1)) be just and appropriate or (in Convention terms) effective, just and proportionate. The appropriate remedy will depend on the nature of the breach and all the circumstances, including particularly the stage of the proceedings at which the breach is established. If the breach is established before the hearing, the appropriate remedy may be a public acknowledgement of the breach, action to expedite the hearing to the greatest extent practicable and perhaps, if the defendant is in custody, his release on bail. It will not be appropriate to stay or dismiss the proceedings unless (a) there can no longer be a fair hearing or (b) it would otherwise be unfair to try the defendant. The public interest in the final determination of criminal charges requires that such a charge should not be stayed or dismissed if any lesser remedy will be just and proportionate in all the circumstances."

The latter decision, being of persuasive authority, is most helpful in the issue before us. The Judicial Committee of the Privy Council addressed the issue and resolved the conflict by its decision in the case of ***Prakash Boolell v The State,*** Privy Council appeal No. 39 of 2005 dated 16th October 2006, an appeal from the Intermediate Court of Mauritius, and which was brought to our attention by learned Snr. Dep. Director of Public Prosecutions, Miss Palmer. Their Lordships considered the issue of the breach of section 10(1) of the Constitution of Mauritius, which guaranteed the familiar "... fair hearing within a reasonable time by an independent and impartial court established by law." The

Board acknowledged the differing views in the cases of ***Bell*** (supra) ***and Flowers*** (supra) on the one hand and ***Darmalingum*** on the other and agreed with the decision in ***Attorney General's Reference*** (No. 2 of 2001).

The appellant Boolell, a Mauritius barrister, was charged in 1992 with swindling in respect of a dishonoured cheque knowingly tendered by him in 1990 and embezzlement on a related matter. Cautioned statements had been taken from him by the police in 1991. Preliminary hearings commenced and the trial was fixed in 1993. After several adjournments the trial commenced in 1996. By means of various manoeuvres by the appellant, namely, change of counsel, filing of motions, applications for adjournments, the trial continued until 1998. The prosecution entered a nolle prosequi in respect of the count which charged swindling and the trial recommenced on 5th May 1999. This trial was also drawn out. There were numerous adjournments and applications. It was listed before the court on 90 occasions. The appellant was convicted on 24th March 2003. His appeal to the Supreme Court was rejected and he appealed to the Judicial Committee of the Privy Council on the matter of delay, which infringed his rights under section 10(1) of the Construction of Mauritius which guaranteed him "... a fair hearing within a reasonable time by an independent and impartial court established by law."

Their Lordships examined the cases of ***Bell v DPP*** (supra), and ***Flowers v R***, (supra), both of which relied on the factors identified in ***Barker v Wingo,*** (supra) by the US Supreme Court, and all of which emphasized the issue of

prejudice to the accused. Their Lordships recognized that the Board in the ***Flowers*** case, expressly declined to follow the case of ***Darmalingum vs The State***, (supra) which had categorized section 10(1) as three separate and distinct guarantees.

Their Lordships in ***Boolell*** accepted the reasoning and decision of the House of Lords in ***Attorney General's Reference*** (No. 2 of 2001), supra, and quoted Lord Bingham's conclusions, inter alia, at paragraph 24, namely:

> "If the breach of the reasonable time requirement is established retrospectively, after there has been a hearing, the appropriate remedy may be a public acknowledgement of the breach, a reduction in the penalty imposed on a convicted defendant or the payment of compensation to an acquitted defendant. Unless (a) the hearing was unfair or (b) it was unfair to try the defendant at all, it will not be appropriate to quash any conviction. Again, in any case where neither of conditions (a) or (b) applies, the prosecutor and the court do not act incompatibly with the defendant's Convention right in prosecuting or entertaining the proceedings but only in failing to procure a hearing within a reasonable time." (Emphasis added)

and found that the correct law of Mauritius in respect of section 10 was:

> "(i) If a criminal case is not heard and completed within a reasonable time, that will of itself constitute a breach of section 10(1) of the Constitution, whether or not the defendant has been prejudiced by the delay.
>
> (ii) An appropriate remedy should be afforded for such breach, but the hearing should not be stayed or a conviction quashed on account of delay alone, unless (a) the hearing was unfair or (b) it was unfair to try the defendant at all."

Their Lordships concluded that although the appellant's conduct contributed to the delay, the trial was not conducted within a reasonable time and therefore there was a breach of section 10(1) of the Constitution. His trial was not unfair and therefore "... the Board does not consider that the conviction should be set aside..."

In respect of the remedy due to the appellant their Lordships said that they –

> "... would not regard it as acceptable that the prison sentence imposed by the Intermediate Court should be put into operation some 15 years after the commission of the offence unless the public interest affirmatively required a custodial sentence, even at this stage."

Boolell's sentence of imprisonment was set aside and a fine substituted.

In the instant case, the appellant was convicted on 17th March 1997 of murder and filed his application for leave to appeal on 8th April 1997 in the Court of Appeal, which requested the notes of his trial and summing-up of the learned trial judge on 22nd April 1997. It was not until January 2001, a period of almost four (4) years that the appellant received from the Public Defender a portion of the learned trial judge's summing-up. A further period of four (4) years passed when in 2005, the Court of Appeal received a copy of "a portion of the summing up." Only then could the Court proceed to process the application for leave to appeal. This delay by the State was undoubtedly an extraordinary one, which was an infringement of the appellant's rights under section 20(1) of the Constitution. The appellant did seek to assert his rights, as he is required to do,

by his letters to the Court of Appeal, the Human Rights Council and the Office of the Public Defender, in addition to employing the assistance of his relatives and his attorney-at-law.

We take note of the fact that the offence committed by the appellant was a particularly grave one, in that, the appellant and four others chopped the deceased to death by the infliction of some twenty chops. This undeniably is the type and nature of action that it is in the public interest to discourage. The prevalence of the crime of murder and its toll on the lives of Jamaicans is unprecedented and well documented. The nature of the visual identification was good. The witnesses and the appellant were all known to each other. It is not without significance that the appellant had been convicted previously on 25th August 1995 of the said murder. A retrial was subsequently ordered. Twice therefore, did a jury in Jamaica pronounce its satisfaction with the appellant's guilt. This Court cannot ignore that fact.

Taking all the factors into consideration, namely, the delay of nine (9) years, the fact that the appeal file could not be found, the learned trial judge having died in the interim, two of the Court reporters including one Mrs. Smith, having left the service, the attempts by the appellant and his agents to obtain a hearing and his obvious anxiety resulting, there was inordinate delay and therefore the appellant's constitutional right under section 20(1) was infringed. However, in agreement with Miss Palmer for the Crown, the case against him is strong. In our overall view, in all the circumstances, although there was an infringement of the

appellant's constitutional right under section 20(1) this is not a case in which any basis exists to quash the conviction. The fundamental safeguard contained in and guaranteed by section 20(1) of the Constitution is fairness of the trial or the appellate proceedings, even after delay, however inordinate. The consequential remedy depends on the circumstances of each case. The trial was fair and no prejudice was suffered by the appellant. The public interest demands that the conviction be upheld, but that the Court should consider, in all the circumstances, what remedy is available in the appellant's favour. Ground 1 therefore fails.

Ground 2

Counsel for the appellant argued that because of the absence of the notes of evidence, a complete summing-up and notes of the learned trial judge or of counsel or other documents, and bearing in mind that the appellant is not responsible for their absence, the appellant is thereby deprived of facilities to prepare his defence. That amounts to a breach of his rights under section 20(6)(b) of the Constitution, which should be construed liberally. Consequently, his conviction should be quashed, his sentence set aside and a verdict of acquittal entered.

He submitted that if there was available the complete notes of the learned trial judge or of counsel at the trial or such affidavits that could give a complete picture of the proceedings, the absence of the original record would not provide a ground under the said section 20(6)(b). However, if there are no notes of

evidence and neither the judge's summation nor counsel's notes are complete, the appellant's counsel is impaired in representing his client. That is because an assessment of what issues arise and of the whole picture is not possible. It amounts to a breach and the appellant is entitled to a remedy.

In our view the absence of the notes of evidence, a complete summation and the learned trial judge's or counsel's notes do not, without more, entitle an appellant to have his conviction set aside.

Rule 3.7(2) of the Court of Appeal Rules, 2002 (the Rules") requires that the Registrar of the Court of Appeal, on receipt of the notice of appeal (or application for leave to appeal) "require the registrar of the court below" to provide:

> "(a) four copies of the record ..."

and other original documents.

The "record" is defined in rule 3.7(1), inter alia, as:

> "(a) the indictment or acquisition ...
>
> (c) notes of <u>any particular part of evidence relied on as a ground of appeal;</u>
>
> (d) any further notes of evidence which the registrar may direct to be included; ..." (Emphasis added)

However, in "any capital case copies of <u>all of the notes of evidence</u> must be included in the record" – rule 3.7(3) (Emphasis added).

Rule 3.9 of the Rules, in addition, empowers the Court of Appeal to require a trial judge to supply:

"3.9 (a) a written report giving his opinion upon the case either generally or upon any point arising in the appeal;..."

In ***R v Samuel Thompson*** [1967] 10 JLR 275, following the case of ***R v Parker*** [1966] 9 JLR 498, it was held that an appellant was entitled to have his appeal against conviction on the count for unlawful wounding heard on the basis of the learned trial judge's entire summing up. Because that aspect concerning unlawful wounding was absent, his conviction for unlawful wounding was quashed. However, the part of the summing-up which was available (a portion of the summing-up was missing because the court reporter who transcribed it had disappeared) contained the directions of the learned trial judge on the law and his summation of the facts in respect of the count for wounding with intent "... particularly as it affected the defence raised." This was sufficient for the court to consider the count for wounding with intent. The appeal from the latter count was dismissed.

In ***R v Norris Small*** SCCA 166/68 dated 6th November 1969, the shorthand writer who took the notes of the trial was no longer in the service. The Court ordered that the transcript of the notes of evidence be supplied, because the grounds of appeal filed revealed that counsel was relying on it, and ordered also that the learned trial judge provide his report and notes. The Court heard and determined the appeal based on the said report and notes of the learned trial judge. The application for leave to appeal was refused. (See Rule

49 Court of Appeal Rules 1962 and section 16 of the Appellate (Jurisdiction) Law 15/62.)

In ***R v Anthony Isaacs & Michael Miles*** SCCA 283/77 dated 16th March 1979 a fire in the Supreme Court destroyed the notes of evidence and transcript of the summing up. The Court of Appeal ordered that the learned trial judge's notes of the proceedings be supplied. It was argued that the Court of Appeal had no power to request the notes, and in the absence of the transcript of the evidence it was impossible to deal with the application and the Court of Appeal would be at a disadvantage in several areas. The application for leave should therefore be allowed.

The applicants had been convicted of murder, Isaacs sentenced to death and Miles detained during Her Majesty's pleasure.

It was held that:

> (1) There was no complaint in respect of the summing-up in the grounds, if there had been, the court would obtain the recollection of the crown counsel and the learned trial judge.
>
> (2) Where there is a complaint of omission or deficiency in the summing up, the burden was on the appellant to show the existence or the possibility of error, omission and deficiency in the summing-up.

The applications for leave to appeal were refused.

The Court of Appeal stated that there was a duty on counsel for the accused in criminal cases, if errors, omission or deficiencies occur in a summing-up to bring it to the attention of the learned trial judge or the appellate court.

In the instant case a substantial portion of the summing up of the learned trial judge is available to this Court. The omissions occur where the recording of one of the shorthand writers, who is no longer in the service, should have been. The defence was one of alibi and the absence of the complete summing-up, in no way placed the appellant at a disadvantage. There is no complaint in any of the grounds of the nature of the summing-up. The portion available to this Court is sufficiently detailed and relevant that the Court can deal with the grounds argued. The learned trial judge in the said portion available dealt adequately with the material issues, namely, the functions of the judge and jury, the relevant law, the principles of common design, discrepancies, credibility and identification and warned the jury of its dangers and the reasons therefor. He dealt with the case of the appellant and in particular his defence of alibi and good character. It was comprehensive and fair. The absence of the complete summing-up did not prejudice the appellant in any way.

Neither counsel who appeared at the trial and who were invited by counsel for the appellant to provide notes of the trial, made any complaint or reference to any inadequacies in the summing-up.

This ground also fails.

Ground 3

The complaint was that the learned trial judge's direction on visual identification was inadequate. The instant case required the integration into the ***Turnbull*** directions elements which took into account the fact that it is a

recognition case. The jury should have been told that mistakes in recognition of friends and relatives are sometimes made.

This Court is of the view that no such further direction was required. The learned trial judge has a duty to warn the jury of the dangers that can arise in recognition cases and to give the ***Turnbull*** warning even in recognition cases.

In the instant case the learned trial judge did so.

There is no merit in this ground.

Ground 4

No arguments were advanced by counsel for the appellant.

Counsel for the appellant applied and was granted leave to argue a further ground as ground 5 – that the directions on alibi were deficient.

This Court referred counsel to directions on alibi, in the summing-up. The learned trial judge said on page 2 of the record:

> "This accused man is presumed to be innocent and that presumption of innocence remains throughout this trial unless and until you by your verdict say that he is guilty. He is not required to prove anything at all in this case. The burden of proof is upon the prosecution. It is for the prosecution to prove the guilt of this accused man. Before you can convict him, the prosecution must satisfy you to the point where you feel sure about his guilt. This is the same thing as being satisfied beyond all reasonable doubt of his guilt."

and on page 13:

> "The accused man, if you are to believe the evidence of Detective Corporal Lenworth Mellis, was accosted, arrested and charged on a warrant on the 21st of February, that is to say, a few days later, arrested

> and charged on a warrant for murder; that the accused man was cautioned and upon being cautioned he said, 'Officer, a nuh mi do the chopping, sah.' You must say what you make of this, if you accept this evidence. Is he there denying, denying that he did any chopping? He is saying, 'I did not do any chopping', so he is denying that. Is he also there saying, and this is entirely a matter for you, that I wasn't there, I didn't do any chopping, I don't know anything about this? He is charged for murder and the substance of it, you may think, of the allegations, is that men chopped up Jonathon, and he told the officer, 'Officer, I didn't do the chopping.' So, isn't he there not only denying that he did the chopping, but also that he knows nothing about this, he wasn't present on the occasion that brought about this end."

and on page 14:

> "The accused man, Dalton Reynolds, came and told you, members of the jury, he gave sworn evidence. He was not obliged to say anything at all, he was entitled to sit back to see if the prosecution could have proved their case against him, but he has given sworn evidence and that evidence is to be tested in the same way as the evidence for the witnesses for the prosecution.
>
> You must not disbelieve the accused man merely because he is the accused person at trial. He told you that he was not on Blackwood Terrace that night. He was not in the area that night, he says. He said, he was living at 8 Donmair Close off Red Hills Road, some eights minutes walk from there, the foot of Donmair Close, to Black Ants Lane. That night, all through that night, from the evening, in fact, from before the 13th, he says, of February he was at the home of his sister, Yudith (sic) Richards, at 14B Shakespear Avenue, Duhaney Park, Kingston."

and on page 17:

> "So according to her, her brother was at her home throughout the evening and night and you may think

> throughout the entire 14th of February 1993, and you will remember they both went into detail about the number of persons who were there; the sister's children and another sister's children and at one stage the husband of the sister Judith Richards. So, they were all there together as one big family and he didn't leave those premises at all, from the 13th of February until the 17th of February, 1993, and in addition to that, as I told you, he has no burden to discharge, but he called other witnesses."

These directions were adequate and clearly helpful to the jury in explaining the defence of alibi and that the burden remained on the prosecution throughout.

There is no merit in this ground.

In view of the fact that this Court has found that there was an infringement of the appellant's right guaranteed by section 20, due to delay, the appellant is entitled to some remedy. This was a strong case. The conviction cannot be assailed. No question of his acquittal arises, as counsel suggests. The authorities must bear the blame for the delay and need to avoid any such aberration on its appellate procedural machinery in future. Supplementary systems of recording and storing records of trials are still required and ought to be implemented in order to avoid such delays.

In all the circumstances, because of the nature of the offence, the sentence of life imprisonment and the order that the appellant should serve eighteen (18) years before he became eligible for parole is not manifestly excessive and will not be disturbed.

The remedy lies in recognizing that the appellant has been in custody since his arrest and awaiting the determination of his appeal since his notice was received in the Court of Appeal on 8th April 1997.

He was convicted on 17th March 1997.

In the circumstances, this Court will grant his remedy due to the delay, resulting in a breach of his rights under section 20 of the Constitution by ordering that his sentence shall commence to run as from 17th March 1997, the date of his conviction.

The appeal is accordingly dismissed and his conviction and sentences are affirmed.