-GNT.G.1

33, 1961

IN THE PRIVY COUNCIL No. 10 of 1961

ON APPEAL FROM
THE FEDERAL SUPREME COURT OF THE WEST INDIES

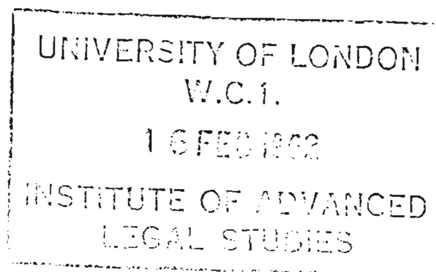
B E T W E E N :

JOHN DeFREITAS Appellant

- and -

THE QUEEN Respondent

RECORD OF PROCEEDINGS



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IN THE PRIVY COUNCIL No. 10 of 1961

ON APPEAL FROM
THE FEDERAL SUPREME COURT OF THE WEST INDIES

B E T W E E N :

JOHN DeFREITAS Appellant

- and -

THE QUEEN Respondent

RECORD OF PROCEEDINGS

In the Supreme Court

No. 1

Indictment.

21st August 1959.

No. 1

10 INDICTMENT

THE QUEEN

against

JOHN DeFREITAS

IN THE SUPREME COURT OF BRITISH GUIANA,
(Criminal Jurisdiction)

County of Demerara.

PRESENTMENT OF HER MAJESTY'S ATTORNEY-GENERAL FOR THE SAID COLONY.

John DeFreitas is charged with the following
20 offence:-

Statement of Offence

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

Particulars of Offence

John DeFreitas, on the twenty-first day of August in the year of Our Lord one thousand nine hundred and fifty-nine, in the county of Essequebo, murdered Flavio DaSilva.

A.M.I. Austin
30 Attorney General.

In the Supreme Court

No. 1

Indictment.

21st August 1959 - continued.

THE QUEEN

v.

JOHN DeFREITAS

MURDER — Monday 16th May, 1960.

Accused pleads Not Guilty.

Mr. F.R. Wills for the Crown.

Mr. P.N. Singh for the accused.

Mr. Singh applies for an adjournment.

x x x x x x x

Court states it proposes to go on with the trial. 10

Mr. Wills opens for the Crown and calls witnesses.

Prosecution Evidence

No. 2

Vera DaSilva.

Examination.

PROSECUTION EVIDENCE

No. 2

EVIDENCE OF VERA DaSILVA

VERA DaSILVA sworn states:

Farmer and live at Bellevue Pomeroon Essequibo. I am widow of Flavius DaSilva. I have six children by him. Two of those children are Gwendoline 14 years and Rudolph 13 years. My husband owned a property at Bellevue and a Coconut Estate at Cattle 10 Beach which is 50 miles North of mouth of Pomeroon River. There are two houses on Cattle Beach Estate. My brother-in-law Antonio DaSilva and his family in one house. The other house is used by my family whenever we go to Cattle Beach. My husband owned a launch "Sweet Sixteen". It had a sail and an engine. It had as an anchor an old cylinder block. This launch was used for transporting copra from Cattle Beach to Bellevue and transporting the family

In the Supreme Court

Prosecution Evidence

No. 2

Vera DaSilva.

Examination - continued.

between the two places.

My husband owned a 16 bore s.b. shot gun. Gun shown me not his gun.

My husband had a license for the gun. License shown me is the license tendered as Ex. B.

My husband used to buy brass shells and would make his own cartridges with pellets and powder. He kept his ammunition in a bag made out of baboon skin.

10 Have known accused for a long time ever since I was small. He was living with my sister Ernestine D'aguiar and they had four children. They lived together at Bellevue. They were not married. The families visited each other. My sister Ernestine died on 4th February, 1958.

After Ernestine died accused went to live at my brother-in-law, Antonio DaSilva at Bellevue. He too had two houses one at Bellevue and one at Cattle Beach. Accused moved from Antonio's and 20 came to live at our home in 1959. Accused was then working with my husband as a coconut picker and handyman.

On Thursday, 6th August 1959, my husband and the children Rudolph, Gwendoline, Ernine and Manoel and the accused left by "Sweet Sixteen" for Cattle Beach.

On 16th August 1959, my husband and accused came back to Bellevue from Cattle Beach.

When they came back in my presence at the 30 Bellevue house accused told my husband that he was in love with Gwendoline. My husband did not agree. I said the same as my husband to accused. My husband told accused that Gwendoline was too young. Accused said he still loved her. My husband also told him what if the girl did not love him. Accused said the girl said she loved him, but she was afraid of her father. This conversation went on the night they had come back from Cattle Beach from about 8 p.m. to 11 p.m.

40 No final decision was made in the matter. Don't know age of accused.

In the Supreme Court

Prosecution Evidence

No. 2

Vera DaSilva.

Examination - continued.

Next day 17th August 1959, accused and my husband left Bellevue at 10 a.m. for Cattle Beach.

Before they left accused asked my husband if he had decided in his mind as yet about giving him Gwendoline. My husband said no. They left for Cattle Beach and that was the last time I saw my husband alive.

On the night of 22nd August 1959, I was asleep at Bellevue, at 3.30 a.m. I was awakened by a knock on my door and opening I saw accused, my son Rudolph, and my brother Antonio D'Aguiar and Ignatius Watson. I asked accused what had happened. Accused said my husband fell overboard and drowned. I asked how it happened? Accused said my husband was sitting on the engine top on the covering of the engine cleaning his gun and a wave came and hit the boat bow and he fell overboard. I asked accused if he did not stop the engine and search for him. Accused said yes, that he saw him three times that he made to catch him but did not catch him. With exception of Rudolph they then left for Charity police station. Rudolph stayed with me.

On 23rd August 1959 at 8.30 a.m. I was at Charity police station and there I saw the dead body of my husband in a corial lying face downward. I saw two wounds behind his head and a piece of rope around his neck. Later in day I saw the body face up at the Charity Mortuary. My husband was a good swimmer.

Cross-Examination.

Cross-examined by Singh:

I am 31 years old. My husband was 40. He was born in 1919 - 1st April. Accused lived at home from January 1959 - not a full year. I however have known him more than 10 years. Accused myself and my husband got on well.

Conversation between my husband and accused took place in my presence on night of 16th August 1959. I can't really remember all that was said but more than I related was said. The conversation concerned accused wanting Gwendoline. I gave evidence at Magistrate's Court on 28th March 1959. At that time facts were fresher in my memory and I could not remember all the conversation then.

John DeFreitas was asking my husband for our daughter over and over. He said he was really in love with Gwendoline. My husband told him no. Accused persisted. At 11 p.m. my husband had arrived at a positive decision, although he told accused he had not decided in his mind yet.

On 17th August 1959 my husband left with accused from Grand Bellevue for Cattle Beach at about 10 a.m. I saw them off from the house.

10 On 22nd August 1959 at 3 a.m. when accused told me my husband got drowned I asked him if he had not stopped the engine and he said yes. Engine an inboard engine. I cannot operate engine. Have not been in a boat which had a break down. I was born on the river. Know the tides of the river. Tide is sometimes still. Accused said on that day the sea was very rough. The water is not rough in the river. The sea is more rough. If a boat is stopped in the sea and the anchor not
20 thrown out the boat will drift. Anchor used was a cylinder head as an anchor. I saw it but never examined it. Sometimes I got very close to it. Cylinder head was secured by a piece of rope attached to a hole in it. Cylinder had holes right through and rope tied to those holes. Constant moving about of the anchor could cause the rope to cut.

On 17th August 1959 when they left I kissed my husband goodbye and said goodbye to accused.
30 Know rope swells when soaked in water - it swells in diameter and shrinks in length.

<u>Not</u> Re-examined.

No questions of the Jury.

No. 3

EVIDENCE OF GWENDOLINE DaSILVA

GWENDOLINE DaSILVA sworn states:

I am 14 years old. I do not go to school. I live with my mother Vera DaSilva at Bellevue

In the Supreme Court

Prosecution Evidence

No. 3

Gwendoline DaSilva.

Examination - continued.

Pomeroon. Flavius DaSilva was my father. Know accused he is also called 'Sonny'. Accused used to work with my father as a coconut picker and to do other jobs. In 1959 he used to live at home. Around Easter 1959 accused told me he loved me and that he wanted to marry me. I told him I did not love him.

Several times after this accused told me he loved me. I never told him I loved him, or that I was afraid of my father. Don't know how old accused is. 10

On 6th August 1959, I left Bellevue with my father, two brothers and sister and accused in launch "Sweet Sixteen" for Cattle Beach. We arrived safely.

On 16th August 1959, accused and my father left Cattle Beach by the launch for Bellevue. Between 6th August 1959 and 16th August 1959 accused never approached me about his love for me.

On 17th August 1959 my father and accused returned to Cattle Beach. 20

On 20th August 1959 at 6 p.m. my father told accused that they would go and hunt at Iron point next morning. Iron Point 10 miles North West of Cattle Beach.

The same night I saw my father attending to the engine of the boat. The next day when I got up my father, the accused and the boat were not there. His gun and ammunition bag were not there.

Gun shown me - Ex. A is not my father's gun. My father had a gun similar to that one. 30

There was a rope attached to the cylinder block which my father used as an anchor.

I know the ropes of the boat I have handled them.

Rope shown me - Ex. C. used to be the anchor rope. That rope was taken off the anchor on the 17th August from the anchor and replaced it with a chain and a small piece of rope.

In the Supreme Court

Prosecution Evidence

No. 3

Gwendoline DaSilva.

Examination - continued.

I know the main sheet rope of the launch. Rope shown me Ex. D. is the main sheet rope of the launch.

On afternoon of the 20th August 1959 I saw the launch the anchor was attached by a chain with a piece of rope tied to it. The anchor and chain were intact.

On 21st August 1959 at 10 a.m. my brother Rudolph came to me and took me to my grandmother's house at Cattle Beach. Accused was present. Accused told me that my father fell over board and got drowned. He said he had the gun in his hand and the ammunition bag around his neck when he fell overboard. At 2 p.m. that day I went with accused, Rudolph, Ignatius Watson and Antonio D'Aguiar by corial to Iron Point. There I saw the launch "Sweet Sixteen" tied to a pole in the sea.

I know Fox Horse it is 10 miles from Iron Point. Cattle Beach, Iron Point, Bellevue, Fox Horse are all in the North West District of British Guiana.

Cross-Examination.

Cross-Examined:

The rope Ex. C resembles rope which was tied to the anchor of "Sweet Sixteen." Rope had no particular mark on it. The rope was new. Other than this I have no other means of identifying the rope. Ex. C is the rope which tied the anchor. Know it by travelling up and down in the boat.

Cylinder block was tied with Ex. C. On 16th August 1959 my father took off the rope and put on the chain with a piece of rope to the anchor. Anchor was secured by a chain from boat to which was attached a piece of rope which in turn was tied to the cylinder block.

On 21st August 1959 at 2 p.m. I went with accused, my brother, Watson and D'Aguiar to Iron Point where I saw "Sweet Sixteen" tied to pole. The rope attached to anchor and the anchor were missing. I went into the boat and I saw the anchor and rope were missing.

A piece of Ayra wood was stuck in mud and the boat was tied to that. The mast was missing.

In the Supreme Court

Prosecution Evidence

No. 3

Gwendoline DaSilva.

Cross-Examination - continued.

Ex. C. is rope to which anchor was previously attached. On 21st August 1959 the rope Ex. C was on the beach at Cattle Beach. My father had left it there on the 20th August 1959, when he changed the rope on anchor. I am positive about this.

On the 21st August 1959 when I got up the boat had left.

My father took off the rope from anchor on the morning of 20th August 1959 at about 8 a.m. I saw him take it off and it remained there till the police took it up. 10

I last saw my father alive on the afternoon of the 20th August 1959. I saw his dead body on the 22nd August 1959. Did not see when police took the rope Ex. C in their custody.

I gave evidence at preliminary enquiry on 28th March, 1960. During the investigation of this case I did say my father took off the rope from the cylinder head on the 17th August and put it in a logie. I now say it is not true that my father took off the rope on the 20th and left it on the beach. 20

Cross-examination not complete.

Jury warned.

Court rises 11.30 p.m.

Court resumes 1.08 p.m.

Jury checked - all present.

GWENDOLINE DaSILVA continuing her Cross-examination on oath:-

I don't know why I said so. Several times accused told me he loved me did not tell my parents I was afraid. I was afraid of my father. Have not always been afraid of my father. My father was strict.. He got angry quickly and when he got angry became very angry. When my father got angry he used to beat me. 30

Re-Examination.

Re-examined:

When my father got angry he used to be violent to the children. Never seen my father violent to anyone besides his children.

No questions of Jury. 40

No. 4

EVIDENCE OF WILLIAM SMARTT

In the Supreme Court

Prosecution Evidence

No. 4

William Smartt.

Examination.

WILLIAM SMARTT sworn states:

Detective Sergeant 4338 stationed Criminal Investigation Department, Headquarters, Eve Leary.

During August 1959 I investigated the present charge at Charity Police Station. At that station there is a Register of Firearms. Ex.B is a firearm's licence issued to the deceased Flavio DaSilva
10 and signed by Oswald Sampson the prescribed officer. I know his signature.

I supervised a search for the firearm referred to in the licence. It was not found.

I am familiar with firearms I have 20 years experience of them. I say all Stevens 16 bore S.B. shot guns are similar in weight and mechanism. Ex. A is one such gun, and similar to the one to which Ex. B refers.

On 25th August 1959 I was at Charity Station.
20 Accused was there as was Superintendent Sampson. Mr. Sampson told accused that he had reported to police that Flavio DaSilva died by drowning, and the post mortem examination performed on the body revealed that he died from gun shot wounds. Mr. Sampson cautioned accused and accused made a statement which Sampson took down in writing in my presence. He read it over to accused who agreed it was true and correct and he signed it. No promises or threats were held out or made to accused. His
30 statement was voluntary and I now tender statement. Statement read and put in evidence as Ex. N.

Superintendent Sampson is out of the colony.

Cross-examined by Mr. Singh:

Cross-Examination.

I have been stationed at Criminal Investigation Department, Headquarters, Eve Leary, for about eight years.

All Stevens 16 bore S.B. shot guns are similar in weight, mechanism and appearance. As far as my

In the Supreme Court

Prosecution Evidence

No. 4

William Smartt.

Cross-Examination - continued.

knowledge goes if you buy one now it will be similar. I am not aware that each Stevens 16 bore S.B. shot gun has its own peculiar internal marking. I would not be able to tell from which gun a shot was fired if there were two Stevens 16 S.B. guns. I am not a ballistics expert.

Shown two Parker pens witness says they are similar.

Mr. Sampson told accused that from the post mortem examination revealed that deceased died from gun shot wounds. Don't know where he got his information from. Don't know when he was transferred to Suddie. He was there sometime. Ex. B. is the original firearm licence. I got this Exhibit from the Charity Station. Don't know where the Corporal in charge got it. 10

I never saw gun in re the licence was issued. I have handled this type of gun on many occasions and I say they are all similar. I saw Sampson last, a few days before he left British Guiana. Prior to the investigations in this case I used to see Sampson every month when he came to town. I worked with him once for three months in 1940 at Wismar. He was then an Inspector and I was a Constable. 20

I know Sampson's signature I have seen him sign documents over and over and I say his signature is on Ex. B.

Re-Examination.

Re-Examined:

All 16 S.B. shot guns all break open like Ex. A. 30

No questions of Jury.

No. 5

Rudolph DaSilva.

Examination.

No. 5

EVIDENCE OF RUDOLPH DaSILVA

RUDOLPH DaSILVA sworn states:

13 years and I live with my mother Vera DaSilva at Bellevue in Pomeroon. Flavius DaSilva now dead is my father.

In the Supreme Court

Prosecution Evidence

No. 5

Rudolph DaSilva.

Examination - continued.

Know accused I call him Sonny. He used to work with my father as a coconut picker.

In August 1959 my father, the accused, my sisters Gwendoline and Ermina, my brother Emanuel and I were all at Cattle Beach. On the morning of the 21st August 1959 at 3 a.m. I saw my father and accused get up at Cattle Beach and go to the creek corner to my father's boat "Sweet Sixteen" my father had his cutlass and his shot gun his baboon
10 skin cartridge bag. Accused had a cutlass in his hand. When they got to the boat accused was trying to haul up the sail and in doing so the mast root out. My father said he would not worry to go any more. Accused said yes man we will go. Accused jumped overboard went ashore for a hammer and returned and nailed the mast after which they sailed off in "Sweet Sixteen."

My father was dressed in a black shirt and white short pants.

20 Shirt shown me is shirt my father was wearing. Ex. T.

Accused was in a khaki shirt and lohg blue trousers. Ex. U are the clothing accused was wearing.

The anchor of boat was a cylinder block. Can't remember how it was tied. At 11 a.m. the same morning I saw accused dressed in a khaki shirt and blue bathing pants. He came to my grandmother's house at Cattle Beach walking. Did not see boat.
30 I met accused at my grandmother's house. Accused said that my father fell overboard and got drowned. He then went to my father's house changed his clothes and slept. At about 1 p.m. Antonio D'Aguiar, my Aunt Josephine and Ignatius Watson came to Cattle Beach. Sonny went to them in their boat and told them my father got drowned.

I went with my sister, accused and Watson to Iron Point and there I saw "Sweet Sixteen." We brought the boat back to Cattle Beach. My Aunt
40 Josephine told accused to go to station and make a report. Accused said he would sleep and wait till next a.m. load the copra and make the report then. My Aunt told him he must go and make the report right away.

In the Supreme Court

Prosecution Evidence

No. 5

Rudolph DaSilva.

Examination - continued.

Later accused, Ignatius Tony D'Aguiar and Watson went to my mother's house and told he what happened. We woke up my mother. Accused told her that my father fell overboard and got drowned.

Cross-Examination.

Cross-examined:

After they nailed back the mast accused pulled up sail and they sailed away. My father pulled up the anchor. They used the engine and the sail my father started the engine accused was steering.

When the mast came out the mast and the sail fell overboard. It was a dark night, and not moon-light. I was there. 10

Before the mast became up-rooted accused had on khaki shirt and short blue swing pants. When he reached boat he took off the buckta and put on the long blue trousers.

My father pulled up the anchor.

I am sure I never told anyone that accused pulled up the anchor.

I was not asleep the morning they left. 20

Not re-examined.

No questions of Jury.

No. 6

EVIDENCE OF LEONARD DaSILVA

In the Supreme Court

Prosecution Evidence

No. 6

Leonard DaSilva

Examination.

LEONARD DaSILVA sworn states:

I am a Rural Constable and farmer of Beach Profit Pomeroon. I am brother of Flavius DaSilva now dead.

Know accused, John deFreitas. He is also called Sonny. I have know him 5-6 years.

During 1959 accused worked with my brother
10 Flavious DaSilva. At 3 a.m. on 22nd August 1959 I was at home when accused came and told me that my brother Flavius DaSilva was drowned I asked him how. He said that he and Flavio went to hunt Muscovy ducks at Iron Point. I asked him how Flavius managed to drown. Accused said the two of them left in the small boat that he was sitting over the engine when a wave hit bow of boat and he fell overboard. I asked him if he did not turn back. He said he turned back and the first time
20 he saw my brother swimming but as the boat had the engine and sail he passed him. He turned a second time and the said thing happened. On the third turn he did not see him at all. I then asked him about the gun and ammunition bag and he said they fell overboard. He then asked me if I would go with him to Charity Station to make a report. I said no that I would go in search of my brother. He said no sense in going that he fell far outside and the sling mud must be finished covering him up.
30 I told him I would go and bring him dead or alive. With that he left for Charity in "Sweet Sixteen". In going he said the anchor from the vessel also lost. My brother was a very good swimmer.

At 6.30 a.m. on 22nd August 1959 I left with a search party and went to Fox Horse - 10 miles North West of Iron Point. We split into two groups one in boat one group working ashore.

Among the shore groups was Maltis Duncan. I was in the search party in boat. After a turn
40 shore party signalled us and we went ashore. I discovered the body of Flavius DaSilva lying face downwards being washed ashore by the tide. I saw

In the Supreme Court

Prosecution Evidence

No. 6

Leonard DaSilva

Examination - continued.

two wounds at back of head and a piece of rope around his neck.

Rope shown me is rope I saw around my brother's neck Ex. E.

Body had on the black shirt and khaki shorts - Exs. T and U.

I took body back to Cattle Beach at 6.30 p.m. and there I met accused bathing. I went up to him with others I told him how? He said he was taking a bath as he was feeling tired. He went to dip some water from the drum. I then held him by his pants and he jumped as if to escape. I pulled him back and he asked me what the fuck was I doing. I told him he murdered the man and I was arresting him for murder. He bowed his head shaking it from left to right then asked me to let him go, he would not run. I told him I would let him go tomorrow morning when I reach Charity Police Station. I took him to Charity Police Station where I handed him to the Non-Commissioned Officer in charge. I also took the body and handed it over to Corporal Chalmers.

10

20

On 24th August 1959 I went with P.C. 6183 Da Costa with Flavius' body to the Georgetown mortuary.

On 25th August 1959 I identified body of my brother Flavius and witnessed a post mortem examination by Dr. Mootoo.

The same day I witnessed the burial of my brother's body.

Cross-Examination.

<u>Cross-examined:</u>

30

When I met accused bathing I said how? I did so,,so as not to arouse his suspicions. When he bent down to dip the water I held him firmly. He jumped and asked what the f. I was doing? He did bend his head and shake it. He never said he would go to station.

<u>No re-examination.</u>

<u>No questions of Jury.</u>

In the Supreme Court

Prosecution Evidence

No. 7

Maltis Duncan.

Examination.

No. 7

EVIDENCE OF MALTIS DUNCAN

Farmer of Florence Rose, Pomeroon know deceased Flavius DaSilva for 15 years. I worked with him.

On 22nd August 1959 I went with a number of persons to Iron Point beach to search for Flavius DaSilva. We went along coast in North West direction and at Fox Horse 10 miles away found the body of Flavius DaSilva. Body had a rope round neck
10 and two wounds behind head. Body was lying face downwards. The body was lifted and put in a boat face downwards. We took body to Cattle Beach where we saw accused when Leonard DaSilva arrested accused. We then left for Charity Station with accused and the body.

Accused and dead body were handed over to the Charity police.

Not re-examined.

No questions of Jury.

20

No. 8

Rudolph DaCosta

Examination.

No. 8

EVIDENCE OF RUDOLPH DaCOSTA

RUDOLPH DaCOSTA sworn states:

I am Police Constable 6183 stationed at Charity station.

At 4.15 a.m. on Saturday 22nd August 1959, the accused came to me and reported that he had come to report a drowning of one Flavius DaSilva. He said it took place on Friday 21st August 1959. I took a statement from him in writing. He was not cau-
30 tioned. I read statement over to him. He said it was true and correct and he signed his name in my presence and that of Police Constable La Rose.

I produce statement. Statement read in Court and put in as Ex. S.

In the Supreme Court

Prosecution Evidence

No. 8

Rudolph DaCosta

Examination - continued.

At 6.05 a.m. on Saturday 22nd August 1959 I went to the Charity Stelling where I was shown a boat by accused. I examined the boat. It had no anchor. I found no cartridge in it. The boat was fairly clean.

At 7.20 a.m. 23rd August 1959 the dead body of Flavius was brought to Charity Station by Leonard DaSilva. The body was in a corial lying face downwards. Body had two wounds at back of head and a rope tied around the neck. Body was removed to Charity Mortuary. Next day I took body to Georgetown along with Leonard DaSilva and delivered it to the Georgetown Mortuary. 10

At 8.45 a.m. on 25th August 1959 I witnessed a post mortem examination with dissection, on body of Flavius DaSilva by Dr. Mootoo. Leonard DaSilva identified the body to the Doctor.

After the post mortem body was delivered to Leonard DaSilva and that afternoon the body was buried at La Repentir Cementary. 20

After post mortem Dr. Mootoo gave me this piece of rope which I now tender - Ex. E. He gave me three pellets which I produce in evidence as Ex.J-1-6.

He gave me this clothing of deceased,

Shirt Ex. T.

Pair of shorts Ex. U;

and a bottle with wadding which I produce as Ex. V.

I kept all these exhibits in my custody at Charity Station and I now produce them in evidence.

Cross-Examination.

Cross-examined: 30

No one examined the boat before me to my knowledge. Had any one done so I would not have known unless accused told me. As far as I know I was the first police constable to examine the boat.

I was present at the post mortem. Dr. Mootoo got the pellets from the body. He also got the wadding from the body. I found no pellets in the boat. I did not search the boat. I looked at boat to see what it looked like.

In the Supreme Court

Prosecution Evidence

No. 8

Rudolph DaCosta

Cross-Examination - continued.

Not re-examined.

No questions of Jury.

Jury Warned.

Court rises 3.00 p.m.

Tuesday 17th May 1960.

Hearing resumed from 16/5/60.

Appearances as before.

Jury checked - all present.

No. 9

Dornford Wilson.

Examination.

No. 9

10 EVIDENCE OF DORNFORD WILSON

DORNFORD WILSON sworn states:

Police Constable 5695 stationed Sans Souci, Wakenaam. During August 1959 I was stationed at Anna Regina Essequibo.

On 23rd August 1959 on instructions I went to Charity Police Station.

On 26th August 1959 I went with Sergeant Renaldo and Corporal Chalmers to Belle Vue Pomeroon, the house of Flavius DaSilva. I arrived there at 20 10.30 a.m. there I saw a launch "Sweet Sixteen" moored in front of the deceased's home.

I measured the launch. Measurements were:-

Length	26 ft. 10 ins.
Width	5 ft. 4 ins.
Depth	2 ft. 9 ins.

From Engine encasement to stern 5 ft. 4 ins.

The boat appeared to be recently washed. I

In the Supreme Court

Prosecution Evidence

No. 9

Dornford Wilson.

Examination - continued.

found one whole shot gun pellet and one broken shot gun pellet.

I produce whole pellet - Ex. G.

I towed the launch to Charity to the foreshore of the station. Then it was photographed by P.C. Rollins.

On 3rd September 1959 Sergeant Renaldo in my presence wrapped one piece of rope 66 ft. long which he took from the boat - Ex. D. and he numbered it DCW 3. He took another piece of rope 36 ft. from the boat which he wrapped - Ex. C. and which he numbered DCW 2. 10

He wrapped another piece of rope Ex. E. which was found around the neck of deceased. This he numbered DCW 1.

He wrapped the whole pellet and the half pellet which I found - Ex. G. and marked DCW 10.

In my presence Corporal Chalmers found these 7 pellets at home of deceased which I now tender Exs. H 1-7. This package he marked Ex. DCW 8. 20

Corporal Chalmers in my presence found four loaded cartridges at deceased's house which I tender as Ex. K 1-4. These he wrapped and marked as DCW 9.

Corporal Chalmers wrapped the exhibits tendered by me along with other exhibits and sealed the package with police seal No. 6. They were locked in the Charity Station safe.

On 5th September 1959 I uplifted this package with seal No. 6 and handed them to Mr. Ramsammy Government Analyst at Georgetown. 30

On 30th September 1959 I received back this parcel from Mr. Ramsammy but this time it had the Government Analyst's seal.

I took exhibits back to Charity delivered them to Corporal Chalmers. These exhibits were all tendered in Court at a previous preliminary enquiry. I uplifted them from Registrar Supreme Court on 11th March 1960, took them to Criminal Investigation Department Headquarters Eve Leary where I wrapped 40

and sealed them with police seal 29.

I took these exhibits to Mr. Hoyen the Government Analyst on the 11th March 1960 and received them from him on 28th March 1960. They were produced in Court.

Cross-Examination.

Cross-examined by Mr. Singh:

Between engine encasement and stern of boat I saw no rope. All I found in boat were two pellets. After the boat was taken to police custody I was
10 first police officer to examine.

I saw body of deceased at the mortuary at Charity. From Charity the body was removed to Georgetown for the post mortem examination. I was not present at the post-mortem.

I only brought the exhibits to Analyst. Ex.E is similar to rope which was found around neck of deceased.

I searched boat and found a pellet and half pellet which was wrapped and marked DCW 10. I see
20 only one pellet in Ex. G. - DCW 10. Don't know what became of half pellet.

Looking at Ex. J 1-6 - DCW 11 they are pellets which were wrapped and marked as above and sealed by Sergeant Renaldo and given me.

I was present when Renaldo marked Ex. K 1-4 - DCW 9 - 4 loaded cartridges. Only the shells are now present in exhibit. I cannot account for the change. Other pellets came back from the Analyst. I assume the cartridge shells are from the cart-
30 ridges which I took.

Don't know where pellets in bottles marked DCW 9 A B & C came from.

In the Supreme Court

Prosecution Evidence

No. 9

Dornford Wilson.

Cross-Examination - continued.

Know nothing of the make up of cartridges.

The parcel was wrapped in my presence at Charity Station and sealed.

I was then stationed at Anna Regina. Don't know if this package was tampered with between time when I left them at Charity Station and the 5th September 1959 when I uplifted them.

When articles were returned to me by the Registrar they were open as they are now.

I knew what I had to uplift from the Registrar I had a list, and I checked the different items with my list. I uplifted DCW 10 from Registrar after having consulted my list which required that I uplift a package containing a whole pellet and a half pellet. 10

On 30th September 1959 I uplifted articles from Ramsammy and took them to Charity. DCW 10 then had the whole and the half pellet. When I uplifted DCW 10 from Registrar it had the whole and the half pellet. 20

On 28th March 1960 I uplifted exhibits from Ho-Yen. When I received it from Ho-Yen it did not have half pellet. Did not ask Ho-Yen about the half pellet or the condition of the four cartridges. When I handed the four cartridges to Ho-Yen they were spent.

Re-Examination.

Re-examined:

Did not see Ex. E taken from neck of deceased.

No questions of Jury.

To Court: 30

I did not see when Renaldo took the rope from the boat.

When I inspected boat I saw no rope in boat.

In the Supreme Court

Prosecution Evidence

No.10

Thomas Chalmers

Examination.

No. 10

EVIDENCE OF THOMAS CHALMERS

THOMAS CHALMERS sworn states:

Corporal of Police 4732 stationed Charity Police Station. I am in charge of station. During August 1959 Police Constable DaCosta was stationed there.

At 6 a.m. on 22nd August 1959 P.C. DaCosta told me in presence of accused, that accused reported 10 that at 3 a.m. 21st August 1959 accused and deceased Flavio DaSilva left Cattle Beach by a boat "Sweet Sixteen" to go six miles away to shoot wild ducks. The deceased Flavio DaSilva was sitting on a box which covered the engine cleaning his shot gun. The sea became rough and probably the deceased attempted to get up overbalanced and fell overboard. He swung the boat after seeing the deceased floating to rescue him but without success. He swung again for the second time but to no avail. He 20 anchored the boat sat on it for a while then went ashore on the beach. He travelled on the beach to Cattle Beach where he reported the matter to the mother-in-law of the deceased. He then proceeded to the Pomeroon river where he reported the matter to the deceased's wife Vera DaSilva and brothers of the deceased.

Accused said nothing.

P.C. DaCosta then handed me a statement which he said had been signed by accused.

30 On 23rd August 1959 I saw Leonard DaSilva at Charity in company of Malthis Duncan, Ephrain Bobb, George and Antonio DaSilva and accused.

In presence of accused Leonard DaSilva said he arrested accused for the murder of his brother Flavio DaSilva and that he had brought the dead body of Flavio DaSilva which was then lying in a corial at Charity foreshore accused said nothing. I went to the foreshore where I saw the body of Flavio lying face downwards in a corial. Body had 40 two wounds at back of head and a piece of rope tied around the neck.

In the Supreme Court

Prosecution Evidence

No.10

Thomas Chalmers.

Examination - continued.

Ex. E is the rope which was tied around the neck. The body was removed to Charity Mortuary where it was turned face upwards. I saw a wound on right side of forehead, an abrasion on right rib. Body clothed in blue shirt and khaki shorts, Exs. T and U.

In presence of accused Leonard said he found the body with face downwards at Fox Horse, and that the body was in same condition when I saw it, and that they had come down by boat Sweet Sixteen. 10

I examined boat and found:

2 cutlasses tendered as Exs. W 1-2.
1 iron called the tiller Ex. X.
An old felt
1 piece of rope 36 ft. long Ex. D.

I kept these articles at Charity Police station in police custody.

On 23rd August 1959 Police Constable 6183 DaCosta and Leonard DaSilva took body to Georgetown Mortuary. 20

On 23rd August 1959 Assistant Superintendent Sampson came to station and in my presence and in presence of Mr. Sampson, accused made an uncautioned statement. It was read over to accused who signed it after he agreed it was true and correct. Statement read in Court and put in evidence as Ex. Y.

Accused told me he was 36 years old.

On 23rd August 1959 I took boat "Sweet Sixteen" into custody and so kept it for over three weeks. During those three weeks I took it to Bellevue at least once. 30

During time the boat was in police custody no unauthorised persons were allowed to go on the boat.

On the 24th August I released accused because he had not yet been charged. On the 25th August 1959 I arrested accused on a charge of murder. A preliminary enquiry was held and he was committed for trial. An indictment was prepared but the indictment was quashed. I was informant then.

Accused was discharged on 17th February and re- 40

In the Supreme Court

Prosecution Evidence

No.10

Thomas Chalmers

Examination - continued.

arrested on that day and charged him with present charge. He was cautioned and said nothing.

On 26th August 1959 I went to Malgre Toute then to Bellevue with Police Constable Wilson, Inspector Bacchus and Sergeant Renaldo. I visited the house of deceased at Bellevue and there I collected a bottle with seven pellets in house of deceased - Ex. H 1-7, another seven pellets.

On the 30th August 1959 I collected a piece of
10 rope on the Cattle Beach which I tender as Ex. C.

Looking at Ex. E I recognise it as rope which was around neck of deceased.

Certain articles were collected and put into police custody. I was given a package by P.C. Wilson with Police Seal No. 6 which I put in safe at Charity Station. I had the key to safe and no one interfered with package when it was there.

On 5th September 1959 I gave this package to P.C. Wilson.

20 On 30th September 1959 I received package from P.C. Wilson and I kept the package in the safe. These exhibits were produced in evidence at preliminary enquiry. P.C. Wilson brought out these exhibits from Registrar Supreme Court on 21st March 1960. I received the gun ....Ex. A

the tiller ....Ex. X
three pieces rope ....Ex. D.C. & E.
two cutlasses ....W 1/2
7 pellets ....H 1/7
30 Shorts ....U
Shirt ....
Bottle with Wadding ....B
Skull ....F

On 26th August 1959 I was present when P.C. Rollins took pictures of the launch Sweet Sixteen.

Cross-Examination.

<u>Cross-examined by Mr. Singh:</u>

I was present when the body left Charity for Georgetown.

Ex. E resembles rope which was around neck of
40 accused. (sic)

In the Supreme Court

Prosecution Evidence

No.10

Thomas Chalmers.

Cross-Examination - continued.

When statement Y was taken I was present. When a statement is taken from a person with a view to charging him it is a requirement that it be taken in presence of a person other than person taking statement, but if a witness is available it is done, if no witness is available the practice may not be followed.

Looking at Ex. S. I say it was taken by P.C. Rudolph DaCosta and it is there recorded that he signed it in presence of P.C. La Rose. 10

Looking at Ex. N, I see that Inspector Sampson took statement in presence of Corporal Smartt.

Looking at Ex. Y, I see that no person other than Sampson signed statement. I was however present when statement was taken. On looking I see that the word 'Further' at beginning is in a different ink from the other part of the Statement. 'Further' is in writing of Mr. Sampson. "Commence" and "Terminated" are also in different ink from ink in body of statement. Writing not different. 20

Looking at Ex. N. at words "Commence and Terminate" are identical. I see Mr. Sampson took the statement.

'33 years' on Ex. Y is in writing of Mr.Sampson. I am acquainted with Mr. Sampson's writing. Did not see him actually write 33 years but I know his writing. It is in his writing.

I saw body lying in a corial at the foreshore of Charity Station. I looked at and touched body. I only examined the back. At the mortuary I examined the front part of body. At the mortuary body was still clothed. Shirt was opened up for about two buttons from neck. Shoulders and collar bones were covered by shirt. I lifted shirt to see wounds on chest. 30

In my presence Renaldo sealed the package with Seal 6 and gave it to P.C. Wilson. Did not see contents of parcel but according to procedure I assumed parcel contained the exhibits.

At preliminary enquiry I said I received the exhibits from Registrar. By that I meant I received them from P.C. Wilson. The exhibits were then 40

wrapped but not sealed. I opened parcel to check contents and to make sure the exhibits were present.

P.C. Wilson who received exhibits from Registrar.

I found - Ex. T. shirt
Ex. U shorts
Ex. A gun
Ex. X tiller
EX. W 1/2 two cutlasses
Ex. V Jar with wadding cartridges.
Ex. K 1-4 Cartridges.

10

I received all the exhibits in the case. I also received one and a half pellets. Between time I tendered exhibits and the time I received exhibits they were with the Registrar.

Cross-examination not complete.

Jury warned.

Court rises 11.30 a.m.

Court resumes 1.00 p.m.

20 Jury checked - all present.

THOMAS CHALMERS continuing his cross-examination on oath:

I was present when accused gave the statement Ex. Y. He stated his age then. Accused told Mr. Sampson his age was 33 years but accused told me he was 36 years old when I charged him, some time after. I recognise the '33 years' as being in handwriting of Sampson. Did not actually see Sampson write the words '33 years'.

30 I was present when the statement Ex. Y was made. I know that if I was not present when statement made it could not be admitted in evidence.

I agree that words "commence and terminate" in Ex. Y are in different ink from main statement. Not true that words were put in sometime after statement was taken. I saw Sampson take statement. Can't remember when he wrote "commence or terminate".

In the Supreme Court

Prosecution Evidence

No.10

Thomas Chalmers.

Cross-Examination - continued.

Did not see him write in the words. Don't know when the words were put in.

At a certain point Mr. Sampson's pen ran out of ink. I think it was towards the end of statement. I was present when the statement was taken.

I charged accused on 25th August 1959. Ex.Y is dated 23rd August 1959.

I gave evidence at Magistrate's Court. I was invited to correct mistakes. In Magistrate's Court although the 24th August 1959 appears in deposition I said 21st August 1959. 10

Re-Examination.

Re-examined by Wills:

I lifted Ex. T (shirt). I only saw abrasions on ribs and forehead. Did not examine shoulder. I was in charge of Charity Station and sent P.C. DaCosta to Town with the body. When DaCosta returned I received from him:

1 bottle with Pellets	Ex. J 1-6
1 bottle with wadding	Ex. V
1 piece of rope	Ex. E.

20

No questions of Jury.

No.11

Joseph Ephrain Ho-Yen.

Examination.

No. 11

EVIDENCE OF JOSEPH EPHRAIN HO-YEN

JOSEPH EPHRAIN HO-YEN sworn states:

Government Analyst for Colony of British Guiana. On 12th March 1960 I received certain articles from Police Constable 5696 Wilson, in one packet with police seal 29. In that packet were several smaller packages with seals intact and marked.

DCW 1, 2, 3, 8, 9, 10, 11. 30

DCW 1 contained a piece of rope Ex. E.

DCW 2 contained a piece of rope Ex. D.

DCW 3 contained a piece of rope Ex. C.

In the Supreme Court

Prosecution Evidence

No.11

Joseph Ephrain Ho-Yen.

Examination - continued.

DCW 8 contained a bottle with 7 pellets Ex.H 1-7 these pellets were found to be SSG mould shots. SSG refers to size of shot.

DCW 9 contained 4 brass cartridge shells loaded with gun powder and fitted with unfired priming caps and four bottles numbered A,B, C,D. Each containing a number of pellets. I tender these four bottles as Exs. M 1-4.

M 1 contained 58 shots ranging in size from BBBB drop shot to SSSSS G mould shots.

These letters refer to size of shot.

M 2 contained 61 shots ranging in size from No. 1 drop shot to SSSSS G mould shots.

M 3 contained 67 BB drop shots.

M 4 contained 22 SSG mould shots.

DCW 10 contained a bottle with one pellet and a tiny piece of metal. Ex. G. It is a BBBB drop shot. The tiny piece of metal I weighed and found it to be .06 of a gram I turned to look at it further it fell on floor and I could not find it. This tiny piece of metal was about $\frac{1}{8}$ weight of a single pellet.

DCW 11 contained a bottle with six pellets AAA drop shots - Ex. J 1-6. I sealed these exhibits in their original packages with Seal of Government Analyst. I kept them in my possession till 28th March 1960 when I delivered them to P.C. 5695 Wilson.

Know Mr. Ramsammy he was a Senior Assistant Government Analyst. He is not in the Colony. He is no longer with the Government of British Guiana.

Reference Exs. C, D, and E - Rope.

Ex. E is of same size and structure as rope DCW 2 - Ex. D.

By structure I refer to the number of fibres in each small strand the number of strands to make a bigger strand and finally the number of such

In the Supreme Court

Prosecution Evidence

No.11

Joseph Ephrain Ho-Yen.

Examination - continued.

bigger strands which made up the rope. Ex. E contained three of the bigger strands. Each of which consisted of three smaller strands and each smaller strand consisted of 145 smaller fibres.

DCW 2 - Ex. D had the same component parts as Ex. E.

DCW 3 - Ex. C contained three large strands each of which consisted of eight smaller strands each of which consisted of 145 fibres.

Cross-Examination.

Cross-examined by Mr. Singh: 10

Reference Ex. E, D, and C. I was able to recognise here by the tags.

Ex. E and Ex. D were identical in so far as the features I described. They had the same diameter .6 of inch. Ex. C had a diameter of .75 of inch. I took these measurements from smooth part of E. and I took measurements at various points along D and made a comparison.

My similarity is not based solely on diameter. Exs. E and D are identical in the structure and the diameter which I have described. 20

Not re-examined.

No questions of Jury.

No.12

Cyril Leslie Mootoo.

Examination.

No. 12

EVIDENCE OF CYRIL LESLIE MOOTOO

CYRIL LESLIE MOOTOO sworn states:

I am registered Medical Practitioner. Acting Government Bacteriologist and Pathologist. I was so acting on 25th August 1959. On that day I performed a post mortem examination on the body of a male person of Portuguese descent at Georgetown 30

In the Supreme Court

Prosecution Evidence

No.12

Cyril Leslie Mootoo.

Examination - continued.

mortuary. Body identified by Leonard DaSilva and Police Constable DaCosta of Charity Station as being the body of Flavius DaSilva.

The body was a male of Portuguese descent. It was sodden and in parts skin peeling off arms legs and abdomen. There was a rope tied very tightly around the neck. I removed the rope. Ex. E is the rope I removed from neck and handed to P.C. 6183 DaCosta. Ex. E now drier than when I first
10 saw it, and it is cut.

There were three lacerated wounds on head. (1) Lacerated wound 1" long on top of head over frontal bone and 3½" from bridge of nose. This gave a chipped fracture of the vault of the skull.

(2) Lacerated wound 1" long on right side of head 2½" from tip of right ear.

(3) A lacerated wound 2" long on the right side of head 2¾" from tip of right ear.

The Chest. There was a deep lacerated gun
20 shot wound circular in outline in front of chest over head of sternum and slightly to the right diameter of wound at skin 2" diameter in depth of wound 1". There was severe burning around the skin margin of the wound.

When the rope was cut from around neck the impressions of the rope marks were visible around the neck.

Internal Examination: The head and neck. Skull showed a chipped fracture. There was no ex-
30 tension of this fracture.

Brain. Liquifaction had started. There were no signs of haemorrhage present.

Neck had impressions of rope marks. The trachea showed congestion of the mucous membrane in the entire length, and also the branching of the right and left bronchii. In the oesophagus there was congestion of the mucous membrane there also.

Chest. Heart. Signs of putrefaction present. It weighed 10 ozs. Lungs - there was no air under
40 tension on opening the chest cavity.

In the Supreme Court

Prosecution Evidence

No.12

Cyril Leslie Mootoo.

Examination - continued.

The right lung had two perforations in the apical and middle lobes of the lung and two pellets were found in the right lung.

The left lung was congested. The chest wall had a fracture of the sternum, a fracture of 7th and 8th ribs on right side anteriorly. There was an irregular wound between the 7th and 8th ribs. Pellets were removed from site of the wound from without the chest cavity.

Abdomen - stomach was empty. Liver weighed 2 lbs. 3 ozs. was pale signs of putrefaction present. 10

Spleen weighed 5 ozs. there were signs of putrefaction.

Kidneys weighed 10 ozs. bowels were distended. Upper and lower limbs showed no fracture.

In my opinion death was due to:

Perforation of right lung from gunshot wounds and strangulation.

Body showed signs of having been immersed in the sea. 20

In my opinion the gunshot wounds were the first injury inflicted on deceased.

From my examination I am opinion the gun was discharged at close quarters. This wound could not have been self inflicted. In my opinion an assailant would have to be behind the victim pointing gun downwards over the shoulder.

There was a big wound on the right side of sternum and an exit wound which had not broken the skin but only the musculartture between 7th and 8th ribs this indicates that shot fired from above and downwards. 30

I found pellets under skin which I removed and gave to Inspector De Abreu who in my presence gave them to P.C. DaCosta.

In my opinion deceased would not have died immediately after gunshot wound. In absence of medical attention he would have died eventually.

In the Supreme Court

Prosecution Evidence

No.12

Cyril Leslie Mootoo.

Examination - continued.

In my opinion after gunshot wounds, wounds on head came next.

Wounds 2 and 3 could have been caused by a blow or a fall.

Would 1 could not have been caused by a fall it had to be a blow struck. There were special features about wound (1) with chipped fracture of skull. This was a blow with a metal instrument which rolled barrel of gun shown me could have
10 caused injury.

Witness demonstrates to jury with barrel and vault of skull how in his opinion injury could be caused. Gun barrel is part of Ex. A.

To inflict this head injury an assailant would have to stand in front of victim or a little to the right of him.

Having regard to gunshot wounds and from the head injury in my opinion victim would still have been alive.

20 The deceased was a very well built man, far better built than accused.

In my opinion the rope was placed around neck while there was still life in victim's body.

The combination of the rope the gunshot wounds and the head injury would in my opinion kill the victim.

This man was in my opinion dead before he was thrown overboard. His stomach was quite empty.

I removed cartridge wadding from top wound of
30 chest sealed it with Government Bacteriologist seal and gave it to P.C. 6183 DaCosta. I tender exhibit as Ex. V. The body was clothed. I delivered clothing on body to P.C. DaCosta.

There was no air under tension in the chest cavity. Lungs were not ballooned and stomach quite empty.

In my opinion after receiving the gunshot wound he would not have been able to fight with anyone he would have to lie quietly.

In the Supreme Court

Prosecution Evidence

No.12

Cyril Leslie Mootoo.

Examination - continued.

I removed the vault of the skull which I removed from deceased. I produce it as Ex. F.

Cross-Examination.

Cross-examined:

In my opinion death from gunshot wounds and strangulation. Without gunshot wound and strangulation injury to head would not have been fatal.

Without strangulation but with the other injuries I say he would have died eventually from the gunshot wounds. Head injury did not in any way cause death of deceased. 10

I agree that strangulation is an interference of air going to the lungs. Deceased was a strong man.

Dependent on the pressure strangulation exerted over the entire throat and evenly distributed with exceedingly great pressure would cause death within 2-3 seconds. Slight pressure on the throat would cause death after a struggle and providing there are other defects present.

The body was very sodden. I found no tardien spots on the face. Tardien spots not always present. From my examination I would say he passed through the normal stages of strangulation. This strangulation contributed to his death. 20

I agree there are three phases leading to fatal asphyxia.

Suboxia means insufficient oxygen far below amount required for breathing.

Sinosis means blueness. I agree first stage of fatal asphyxia, suboxia sends in accumulation of carbon dioxide. 30

In the Supreme Court

Prosecution Evidence

No.12

Cyril Leslie Mootoo.

Cross-Examination - continued.

Second stage - tardien spots are not essential they are present in most cases of asphyxia. Strangulation is only a form of asphyxia. I looked for tardien spots but did not find any.

In some cases terminal vomiting is the final stage.

Strangulation took place before death. Cannot say how long deceased took do die after strangulation. When rope was put around his neck there was
10 life in body.

Wound result of a shot fired at close quarters 6-9 ins. or nearer.

(Asked if injury could have occurred in a special position demonstrated. Doctor says no.

Doctor demonstrates his opinion as to how injury could have occurred.)

Have no experience of any person who having lost his temper becomes mad for two or three minutes. Have read of such cases. The case more for a
20 psychiatrist. There is no qualified psychiatrist in British Guiana.

Have read of cases where a person reaches the pitch of mental aberration but this opinion is for a psychiatrist. I am not a psychiatrist.

Not re-examined.

No questions of Jury.

Jury warned.

Court rises 3.25 p.m.

Wednesday, 18th May, 1960.

30 Resumed from 17th May.

Appearances as before.

Jury checked - all present.

In the Supreme Court

Prosecution Evidence

No.13

Kenneth Rollins.

Examination.

No. 13

EVIDENCE OF KENNETH ROLLINS

KENNETH ROLLINS sworn states:

Police Constable 5883 stationed at Criminal Investigation Department Headquarters, Eve Leary. I am attached to photographic branch as police photographer.

On 26th August 1959 was on duty at Charity Police Station. I took nine photos of launch Sweet Sixteen pointed out to me by Corporal Chalmers and Corporal John. I processed films myself and from negatives obtained I made photographic enlargements. I did not retouch or interfere with the negatives in any way. Those negatives and photographs were in my possession till the preliminary enquiry. 10

I tender negatives - Ex. O 1-9. I tender the photographs enlarged from Ex. O 1-9, Ex. P 1-9.

Looking at Ex. P 1 which is developed from O 1. It shows the view of the right side of boat 'Sweet Sixteen' with name written on boat. 20

Ex. P2 which is from O2 is a view of left of boat.

Ex. P3 developed from O3 is a view of bow of the said boat.

Ex. P4 developed from O4 and is a view of the stern of said boat.

Ex. P5 developed from O5 and is a view of a portion of interior of boat.

Ex. P6 developed from O6 is a view of a seat at stern of said boat. 30

Ex. P7 developed from O7 is a view of strands of rope under seat at stern of boat.

Ex. P8 from O8 is a view of inboard engine when covered over.

In the Supreme Court

Prosecution Evidence

No.13

Kenneth Rollins.

Examination - continued.

Ex. P9 from O9 is a view of the inboard motor uncovered.

All these exhibits are in same condition as when I made them.

Not Cross-examined by Mr. Singh.

No questions by Jury.

Case For The Crown.

No.14

Statement by Defendant from the Dock.

18th May 1960.

No. 14

STATEMENT BY DEFENDANT FROM THE DOCK

10 DEFENCE

JOHN DeFREITAS told of his rights elects to make a statement from dock.

JOHN DeFREITAS from dock states:-

I made a statement to the police already Ex.N. I have said everything that I have to say. I had no intention of doing anything. I am really sorry for what has happened. I have nothing more to say.

Mr. Singh states the Defence does not propose to call witnesses.

20 Case For The Defence

In the Supreme Court

No.15

Court Notes.

18th May 1960.

No. 15

COURT NOTES

9.37 a.m. Mr. Singh addresses the Jury.

10.15 a.m. Mr. Wills addresses the Jury.

11.02 a.m. Mr. Wills concludes his address.

Jury warned.

Court rises 11.05

Court resumes 1.15 p.m.

Jury checked - all present.

1.15 p.m. Court sums up. 10

3.10 p.m. Jury retire to consider their verdict.

5.20 p.m. Jury return a unanimous verdict of Guilty or Murder.

Accused says nothing.

Sentence of death passed on accused.

Court rises.

No.16

Summing Up.

18th May 1960.

No. 16

SUMMING UP

THE QUEEN

versus 20

JOHN DeFREITAS

Summing up of,
His Lordship (Honourable Justice Gordon):

Mr. Foreman, members of the jury - the accused stands indicated before you on a charge of murder, the particulars of which are that on the 21st day

In the Supreme Court

No. 16

Summing Up.

18th May 1960 - continued.

of August 1959 in the County of Essequibo, he murdered one Flavio DaSilva. You gentlemen, have listened to the evidence in this matter for the past three days and after I will have summed up to you, it will be your duty to consider the evidence as a whole and return a verdict one way or the other.

At the outset I must stress that it is your duty to arrive at your verdict on the evidence which has been led in this Court. You are to ex-
10 cise from your minds any preconceived notions or ideas which perchance you may have formed from any conversation overheard or gleaned from any press reports. You will therefore bear in mind that the evidence upon which you will have to arrive at your verdict is the evidence which you have heard in this Court.

You will further bear in mind that it is a cardinal principle of our legal jurisprudence that an accused person is always presumed to be innocent
20 until such time as he is proved guilty. The burden of proving the guilt of the accused is always on the prosecution and no burden is cast on the accused to establish his innocence. It is the duty of the prosecution to lead cogent evidence as will convince you and lead you to the certain conclusion that the crime was committed and committed by the accused. If the Crown has failed to do that it has not discharged its duty and in such a case you must acquit the accused.

30 If the accused leads evidence as he has done in this case, when such evidence is considered in conjunction with the evidence led by the prosecution, you find yourselves in reasonable doubt, provided such doubt is not fanciful or capricious it will be your duty to resolve that doubt in favour of the accused and acquit him. Even if you reject the evidence which has been led by the accused, you must nevertheless be satisfied that the Crown has proved its case beyond reasonable doubt before you
40 can return a verdict of guilty against the accused. You will apply this principle to any of the issues which may arise in the course of your deliberations on the evidence in this trial and in respect of which you will have to arrive at a conclusion.

There will be the issues of self-defence, of insanity, of provocation on which I will address you

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later and to which you will apply the principle regarding reasonable doubt.

Gentlemen, you will take your directions on the law from me. I must tell you that you are the sole judges of the facts; you are the persons who must decide which witness' evidence you will accept and which witness' evidence you will reject; what portions of a witness' evidence you will accept and what portions you will reject. As the sole judges of fact it is within your province to do so and in the final analysis you will relate your findings of fact to the law and having done so it will be your duty to arrive at a verdict one way or the other. 10

During the course of this summing up I may make comments and observations on the evidence but you need not necessarily follow or act on them; for you are the sole judges of the facts; the same holds good for the different comments and observations made by counsel for the defence and counsel for the prosecution in their respective addresses to you. 20 Such comments and observations as may be made by me or have been made by counsel, are made with a view to assisting but they need not necessarily be followed or accepted by you, for you are the sole judges of the facts. You are the persons with worldly knowledge, local knowledge of your people and the language they speak, knowledge of the terrain and local conditions. You will apply that knowledge to the circumstances of this tragic story and having done so, you will come to a conslusion on 30 the facts and finally arrive at a verdict.

During your deliberations you will undoubtedly have to draw inferences in order to arrive at certain conclusions. You will bear in mind that where from any set of facts two inferences may with equal reason be drawn, the one favourable and the other unfavourable to the accused, then you must draw the inference which is favourable to the accused. There is no magic in this. It does not mean that if in your view the only proper inference 40 that can be drawn from a set of circumstances is one unfavourable to the accused that you must not do so. In such a case it will be your duty to do so.

As you approach this case, you will apply your knowledge and experience of life to the surrounding circumstances of the case and you have seen and

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heard the witnesses who have given evidence. You know their conception of time and distance. You will no doubt make allowances for their limitations you will I am sure try to discover the truth of the story as a whole. It is in this spirit that you will approach the task ahead of you.

The accused, as I have told you, is indicted on a charge of murder. Murder is the unlawful and intentional killing of another person with malice - that is, with the intention to kill or to do grievous bodily harm, likely to cause death and from which death results. Grievous bodily harm does not necessarily mean permanent or dangerous injury. It is sufficient if it is such as seriously to interfere with the health and comfort of the victim. The law will imply malice from a deliberate and cruel act committed by any person against another where death occurs as the result of a voluntary act which was intentional and unprovoked. In this case, the prosecution must prove that the accused had the intention at the time that he struck the blow or blows, to do grievous bodily harm or to kill or cause the death of Flavio DaSilva.

The prosecution must prove to your entire satisfaction that the accused killed the deceased, that when he struck the blow or blows which caused death, he intended to inflict grievous bodily harm on the deceased or to kill him and that in doing so he was not provoked by the dead man.

In this case, the defence is contained in a statement from the dock which the accused made to the Police, and in his statement from the dock in this trial. In these statements you have intertwined four defences - the defence of insanity with which you can couple automatism, the defence of self-defence, the defence of accident and the defence of provocation. It will therefore, be your duty gentlemen, to apply your findings of fact to the law in respect of these differnet defences as you give consideration to them.

You will recall, members of the jury, that the accused made a statement. I will deal with that statement in greater detail when I deal with the defence. But there is an excerpt from that statement in which the accused said that they were wrestling for the gun.

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This is what he said in that statement:

"Whilst he was in the boat I was trying to
"take away the gun, an de gun go off. I even
"thought I did get shot but I didn't feel
"nothing. He still was holding the barrel
"but I succeed in getting de gun from his hand.
"Well, then ah get mad or something and ah
"remember hitting he with de gun in his head
"....."

I'll pause here a while. I will return later to certain incidents when I deal with the defence. In his statement, he said that he threw the gun overboard. He goes on to say: 10

"Ah sit down and when ah come to meself, ah go
"back an pull up the anchor and ah find the
"anchor gone ....."

In that part of the statement, the defence raises two suggestions - a suggestion of insanity and the suggestion that his mind went blank and he was then incapable of forming the intent which was a necessary constituent element of the offence with which he is charged. If you find an absence of intent, you will, of course, acquit. 20

You will have carefully to examine the events which must have occurred in that boat. You have no eye-witness as to what took place in that boat. There were two persons there; the one is dead and the other is the accused. The accused has given you his version which you will examine.

You have heard the case for the Crown and you will examine all the circumstances which have been put before you and it will be there for you to decide in your minds what did happen on that boat. Having done so you will relate it to the defence of insanity with which is linked the defence of automatism; that also is a form of mental ailment, a mental lapse such as occurs in a black-out or a trance. It is the law that every man is presumed to be sane and to possess a sufficient degree of reason to be responsible for his crime until the contrary is proved to your satisfaction. To establish the defence of insanity, it must be clearly proved that at the time when he committed the act, the accused was labouring under such a defect of 30 40

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reason or from disease of the mind as not to know the nature and quality of the act which he was doing; or if he did know it, that at the time of doing the act, he did not know he was doing what was wrong.

No one apart from the accused can tell you what happened in that boat. There is however evidence of certain circumstances before you by which you can check his story. He has told you his story;
10 it will be for you to examine it. It will be equally for you to say whether in the circumstances you as reasonable men are satisfied that he was suffering from a disease of the mind which rendered him incapable of knowing what he was doing at the time. Consider the body which was washed up with a rope around the neck. Automatism is a sort of black-out stage, where as the defence suggests, the mind is incapable of forming the intent which is necessary. Now, gentlemen, you cannot enter the
20 mind of a person in order to see what is operating there. You can only discover the machinations of the mind from the surrounding circumstances.

Here, it is suggested by the defence that what happened at that time can be gleaned from the words of the accused in his statement:

"Well, then ah get mad or something ... and ah
"den sit down and when ah come to meself...."

He is suggesting there that he was the victim of a black-out, a mental lapse such as you get in a
30 trance, a sort of vacuum in the mind.

In cases where the liability of the accused depends on full proof of mens rea - that is intent - it is not open to the accused to rely on such a defence of automatism unless there is some evidence of it. Here, there is only a suggestion. Do you believe it? Is there any proof of automatism by evidence before you from which you can conclude that his mind was a blank and that he did not know what he was doing? Examine the circumstances and ask
40 yourselves whether you are satisfied from his story and from the circumstances before you that his mind at that time was in fact a blank. If you find that there was a mental lapse which amounted to insanity, you will bear in mind and apply the law as to insanity of which I told you a while ago and remember

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that the burden of proof from the start to finish remains on the defence to satisfy you that the accused was incapable of discerning right from wrong with a view to negativing intent. Consider the blow on the head, the rope around the neck and the disposal of the body. If you find that the accused did these things and you are satisfied that when he did them he was suffering from some disease of the mind whereby he became unable to differentiate between right and wrong, the law would regard him as insane and in such case, your proper verdict would be guilty but insane. 10

I will now turn to the question of self-defence - and self-defence is a major concept of the defence. In his statement you will recall his saying that they were sailing in this boat going to hunt ducks and while sailing the deceased told him that when they got back home he was going to let him bag off the copra, carry it to Pomeroon, sell it, pay him off and then he could go where he liked. To this the accused replied that he had worked with the deceased so long and now this was what he was going to do with him and that the deceased might live to be sorry for it, for he (the accused) was going to make his daughter Gwendoline, follow him wherever he went. 20

The accused said that at that time the deceased was sitting on the engine covering and he was steering at the stern. The accused said in his statement: 30

> "After ah tell him so, he jump from the cover-
> "ing to do footboard and pick up de gun saying
> "'Ah gwine shoot you so and so' and he break
> "the gun and put in a load".

Gentlemen, here you have this limb of the defence: there they were in this boat and the accused told the deceased something which annoyed him (the deceased) to the extent that the deceased jumped up picked up his gun, loaded it and said that he was going to shoot the accused's so and so. 40

It was then that the accused said: "Oh me God Uncle Flavy, what you gwine do" left the stern and jumped on the deceased who had the gun and in wrestling with him for it, it went off and shot the deceased. Gentlemen, you have here, the defence

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of self-defence.

I must tell you that a person is entitled to defend himself against violence and he need not in every case wait until he is struck before using force in his defence. If he has good reason to apprehend danger to himself, he need not wait until he is struck; he is entitled to take such precautions as will protect himself from injury.

There are, however, three prerequisites necessary for such a defence. There is the duty on the part of the deceased to retreat if in the circumstances such a course is reasonable and can be pursued. Here, these parties were in a small boat, the dimensions of which were given by P.C. Wilson. You may well come to the conclusion in the circumstances here, that retreat would have been out of the question.

The second prerequisite is that the injury inflicted must not be excessive; that is to say, the force used must not be out of proportion to the attack or far greater than is necessary for the defence of the person's life and limb. Consideration must also be given to the nature of the weapon used.

In this case, in so far as the second prerequisite is concerned, you have this difference that they wrestled for the gun and that a shot went off while they wrestled. You will examine the other circumstances of the case in considering this second prerequisite which is that the injury must not be excessive. If you accept what the accused says that the shot went off when they were wrestling for the gun, you will go on to ask yourselves whether the blow in the head and the other things that happened, for example the strangulation, would or would not have constituted excessive force.

The third prerequisite is that the injury must not have been by way of revenge, that is after the danger from the assailant has passed. Here, you have the accused saying that the shot went off when they wrestled for the gun. You will recall the evidence of the doctor that in his opinion such a gunshot wound would have caused a man to lie down quietly. If you accept the medical evidence ask yourselves if after that shot went off

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hitting the deceased somewhere in the sternum as it did whether there was the necessity for the blow in the head and the rope around the neck which resulted in strangulation.

On examination of all the features of this case, you will ask yourselves whether in the given circumstances the prerequisites necessary for a defence of self-defence were present and whether this was a genuine case of self-defence. If upon a consideration of the evidence you are of 10 that opinion that the accused acted in self-defence or if after your deliberations you find yourselves in any reasonable doubt as to whether he so acted, then it will be your duty to acquit the accused. The decision will be yours for you to arrive at.

The defence of accident is also raised in the statement of the accused when he related how he left the stern and jumped to wrestle with the deceased for the loaded gun, and how in the course 20 of this struggle the gun went off. If you are satisfied that the shot went off in these circumstances, then there would not have been the intention on the part of the accused to kill, and your verdict should be not guilty. You must, however, be satisfied from all the circumstances that this shot went off in such a struggle and that death resulted from it.

You will examine the circumstances and ask yourselves whether you can say that you are so 30 satisfied. If you are in doubt on that point, remember that the doubt must be resolved in favour of the accused. Here, you have nobody but the accused to tell you what happened in that boat. There is, however, the dead body of the deceased which was washed up and on it were found not only a gunshot wound in the sternum but also a wound on the head which chipped the vault of the skull; and it had a rope tied around the neck. Further if you accept the evidence of Dr. Mootoo that the 40 shot was fired from behind and above the deceased ask yourselves if that is suggestive of a shot going off by accident in a struggle. It will be for you, gentlemen, to examine the circumstances, search your minds and ask yourselves whether in the given circumstances you are satisfied that this was an accident or not. As I have indicated, if you are in doubt, you will resolve that doubt in favour of the accused.

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I wish now to direct your attention to the defence of provocation which though not mentioned in either of the addresses of counsel, is of some importance in this case. It looms largely in the overall picture and it is my duty to direct you on that aspect of the case. However, before dealing with provocation I must tell you what is manslaughter for in cases of this kind provocation must be considered in relation to manslaughter.

10 Although the accused is indicted for murder, it is always open to a jury on a charge of murder to convict of the alternative offence of manslaughter. Manslaughter is the unlawful and felonious killing of another without malice expressed or implied.

Now, you will remember I told you that murder is the unlawful and intentional killing of another with malice. Manslaughter is the unlawful and felonious killing of another without malice
20 expressed or implied. You will have observed that in both the offences - murder and manslaughter - the killing must be unlawful. The difference between the two offences being that in the case of murder you must be satisfied from the surrounding circumstances that there was in the mind of the accused immediately before dealing the fatal blow or blows with intention to kill or to do grievous bodily harm. In the case of manslaughter that intention to kill or do grievous bodily harm is
30 not present.

In law all killing is unlawful unless it is justifiable or excusable. Justifiable homicide includes self-defence with which I dealt earlier.

Excusable homicide connotes a circumstance where a man in doing a lawful act by accident kills another, or where a man upon a sudden encounter kills another merely in defence of his life or person and not from any vindictive feeling.

Having told you what manslaughter is, I will
40 now address you on the defence of provocation and the law on the subject.

Provocation, gentlemen, is some act or series of acts done by the deceased to the accused person which would cause in any reasonable person and actually causes in the accused, a sudden temporary

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loss of self-control, rendering the accused so subject to passion as to make him not master of his mind. No provocation whatever can render homicide justifiable or even excusable but provocation may reduce the offence of murder to manslaughter. If a man kills another suddenly without any intent or without considerable provocation, malice may be implied and the homicide may amount to murder. If the provocation is great and is such as may greatly excite the accused, the killing then would be manslaughter. The test to be applied is whether the provocation was sufficient to deprive a reasonable man of his self-control, not whether it was sufficient to deprive the accused of his self-control.

In order to be satisfied on the issue of provocation, you must find that in the particular circumstances not only would an ordinary person have lost his self-control but that the accused as a fact did lose his self-control and that it was in consequence of that loss of self-control that he formed the intention to do the injury to the deceased from which death resulted.

In this case you have evidence that the deceased who was a better physical specimen than the accused and who was suggested got very angry when annoyed, had threatened to shoot the accused when he jumped to his defence, struggled for the gun and the shot went off. It was at this stage that he got mad or something. If you believe the accused you may well consider his frame of mind in relation to the concept of provocation.

In considering the question of provocation, you will have to discover too whether there was what in law is referred to as "cooling time", that is: was there a sufficient lapse of time between the time the shot went off and the blow on the head; and between the blow on the head and the placing of the rope around the neck, for the passion which the accused said he had got into to subside and for reason to regain dominion over his mind. You will bear in mind the size of the boat and what must have taken place in it, on that day out at sea.

If you find in the circumstances that there was sufficient time for the passion of the accused to subside, then an act, if any was done after his temper had subsided, would not have been done under

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the stress of provocation. If you find that the accused was acting under the stress of provocation when he dealt the fatal blow, then that would be sufficient to reduce the offence to one of manslaughter.

In considering the question of provocation you should also consider the weapon by which death was brought about. Then, assuming you accept that the gun went off by accident you will have to
10 pay regard to the rope around the neck which caused strangulation.

In considering the question of provocation, you must also bear in mind the weapon by which death was brought, for if it were effected with a deadly weapon, the provocation must be great indeed to reduce the offence to one of manslaughter; if the weapon is not likely or intended to produce death a lesser degree of provocation will be sufficient. In this case assuming you accept the
20 story of the accused that the gun went off by accident in a struggle you will have to give anxious thought to the rope around the neck which caused strangulation.

If after you will have weighed the evidence you are convinced beyond reasonable doubt that the accused was not acting under the stress of provocation when he dealt the fatal blow or blows then you will go on to consider the other aspects of the case.

30 If you are however satisfied beyond reasonable doubt that the accused unlawfully caused the death of the deceased but that at the time he dealt the blow or blows or tied the rope around the neck, he was smarting under the stress of provocation, it will be your duty to return a verdict of guilty of manslaughter.

Circumstantial evidence is evidence of surrounding circumstances which by undesigned coincidence is capable of proving a proposition.
40 While there is nothing wrong with your acting on the circumstantial evidence, it is my duty to warn you that before acting on it, it must be narrowly examined and scrutinised. If after having put it to the acid test of your scrutiny you are satisfied that the circumstances are such as to warrant your drawing inferences from them, then draw the inferences and act on them.

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In this case there are no eye-witnesses; the evidence is largely what is known as circumstantial evidence. Certain circumstances have been related to you and your attention has been drawn to certain features of those circumstances and you have been invited to draw certain inferences and conclusions from the circumstances.

Now, gentlemen, in this case, the Crown has called certain witnesses. These witnesses have told you of a set of events and circumstances prior to the sailing out of that boat from Cattle Beach on the 21st of August 1959. They have also told you of events afterwards. You will remember the story the accused told the family of the deceased before the body was discovere,d how the deceased accidentally fell overboard in a rough sea and got drowned. After the body was discovered with wounds and a rope around the neck, the accused gave another story. It will be for you to weight the circumstances.

It is not always possible to prove a crime by the positive evidence of eye-witnesses. Where such evidence is not available, you will infer from the facts proved other facts necessary to complete the elements which establish guilt or establish innocence and though presumptive evidence must of necessity be admitted, certainly it will be for you narrowly to examine it and act on it with the greatest caution.

It will be necessary for you before you draw inferences against the accused from the circumstantial evidence, to be sure that there are no corresponding circumstances which could weaken or destroy each of those inferences.

Now, let us turn to the evidence in the case. I will not keep you long on this aspect of the case as the evidence must be quite fresh in your mind. You have been listening to it. You have seen the demeanour of the witnesses. I propose touching only the salient points of the case.

The first witness was Vera DaSilva who is the widow of the deceased, Flavio DaSilva, and you will remember she told you that she lived with her husband Flavio DaSilva and six children at Belle Vue, Pomeroon River, Essequibo. Her husband owned Belle Vue as well as another plantation,

known as Cattle Beach which is situate about 50 miles from Belle Vue where he had a cultivation of coconuts. The accused worked with her husband as a coconut picker and a loader. The accused lived previously with her sister who had borne him four children and who died on the sixth of February 1958. The accused with his four children were living with herself and husband and their six children at their home at the material time. It is important to remember this as an important aspect of this case is the accused's avowal of love for their fourteen-year-old daughter, Gwendoline.

Vera DaSilva further told you that on the sixth of August last year, her husband and four of their children, along with the accused, went to Cattle Beach. Among these four children were Gwendoline and Rudolph. The accused went up there to work on the Cattle Beach Estate.

On the sixteenth of August the deceased and the accused returned from Cattle Beach to Belle Vue, Mrs. DaSilva told you. There was a discussion that night between her husband, the accused and herself. It lasted a considerable time and it was over the fact that the accused wanted her husband to agree to the accused's having Gwendoline, as his wife, as he was really in love with her.

Mrs. DaSilva told you that her husband was not at all in favour and that the accused was very persistent. When they were about to leave the next morning, the accused again asked her husband if he had not decided yet and her husband replied that he had nothing to say; he had not made up his mind. It will be for you as men of the world to decide in your minds what was the decision of the father. There was a girl of fourteen and this man, her uncle, trying to get permission from her parents to marry her or live with her, whichever it was - the defence told you that the matter was unresolved. It is a matter for you gentlemen, to apply your knowledge as men of the world, and to ask yourselves what the parents' reactions were. The fact, however, remains that there was this discussion that night and it took a long time - from eight until eleven o'clock. Only three persons were there - the deceased, his widow and the accused.

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On the seventeenth of August the accused and the deceased left on the return trip to Cattle Beach. The scene of the story now changes from Belle Vue to Cattle Beach which is about 50 miles from the south of the Pomeroon River. This is a vast country, gentlemen, and you can judge the distance from the time it took to travel from Cattle Beach to Belle Vue and from Cattle Beach to Iron Point.

Gwendoline, the fourteen-year-old daughter of the deceased told you that the accused told her several times that he wanted to marry her and that she had told him that she did not love him. 10

She told you that on the 20th, the deceased told the accused at Cattle Beach that they would be going out to shoot on the 21st. Both herself and her brother, Rudolph, told that on the 20th their father was busy with preparations to go duck shooting. Actually, the accused and the deceased left to go shooting on the 21st. The accused and the deceased were the only persons in that boat. 20

When Rudolph DaSilva got up that morning at about three o'clock, he told you, he saw his father and the accused going off in that boat and just before they went off there was an incident; when they pulled up the sail, the mast became uprooted from the boat. His father, ominously, you might say, said that he was not going any more whereupon the accused promptly jumped over the side and went ashore, got a hammer and hammered back the piece of wood into which the mast fitted. They then set sail. That was the last time anyone apart from the accused, saw the deceased alive. 30

As they sailed that morning for Iron Point something happened in that boat. What happened? The accused has given his version of it and certain evidence of different circumstances has been put before you by the defence so as to assist you in testing the story of the accused and in discerning what happened. 40

You will remember what the accused said in his statements before the body was discovered, to P.C. DaCosta, how he walked back to Cattle Beach and on arrival there how he broke the news to the deceased's mother-in-law and other members of the

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family, telling them that Flavio DaSilva had got drowned, after he overbalanced and fell overboard with the gun across his shoulder. You will remember too, how he said he tried unsuccessfully to rescue him.

Gwendoline and Rudolph who told you of how the accused came back walking to Cattle Beach and told them that their father had drowned. He explained to the family at Cattle Beach how a swell hit the boat and their father had fallen overboard and got drowned after he had tried without success to pick him up.

Rudolph told you that at about one o'clock that day Antonio DaSilva and Ignatius Watson went to Cattle Beach and the accused told them about the circumstances under which Flavio DaSilva was drowned somewhere off Iron Point and how they went to Iron Point with a view to bringing back the boat. On arrival there, he saw the boat tied to its mast which was stuck in the mud.

It is significant to note that the anchor was not there and there is evidence that the rope to which the anchor was attached was not there either.

Leonard DaSilva, a brother of the deceased and a rural constable, told you that about 3 a.m. on the 22nd the accused came to his house at Beach Profit and told him that his brother Flavio had got drowned and of the circumstances. Later the same morning he also told the widow of the deceased that her husband had got drowned. You will note that each member of the family when told about the drowning, asked for details. You may well conclude from that, that those persons familiar with the area and the habits of the sea would very promptly ask what steps were taken to save him. Their anxiety was only natural.

Continuing Leonard DaSilva told you that when the accused broke the news to him the accused asked him to go down to Charity with him to report the matter to the Police and he replied "No", he would go and look for his brother and the accused replied that there was no use in going as he had fallen over far out at sea and the sling mud must have covered him by then. Leonard DaSilva said he would go and bring him back dead or alive. The accused then left in a boat for Charity. On

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leaving, the accused told him that the anchor of the boat had also got lost.

He (DaSilva) organised a search party which left for Iron Point. At 6.30 that same morning the accused reported the death to the widow and later went on to the Police at Charity where he made a report. The Police took a statement from him about the circumstances and that statement was put in evidence by P.C. DaCosta.

DaCosta said that on the 22nd of August 1959, the accused arrived at the Charity Police Station and reported the drowning of Flavio DaSilva. He took a statement, Exhibit S, from him and he inspected the boat "Sweet Sixteen" which was at the Charity Stelling. 10

After reporting the matter to the Police, the accused returned to Grant Belle Vue. By this time the search party which had been looking for DaSilva's dead body returned from Iron Point.

Leonard SaSilva told you that the search party was divided into two groups, one on sea and the other on shore. He was in the boat with the sea party when the shore party signalled. He went in and there he saw washed up by the tide, the dead body of the deceased. 20

It must have been a gruesome spectacle. He saw wounds on the head, he said, and the neck was tied with a piece of rope. The body was taken to the Police Station.

On their way down to the Police Station with the body, he said, they stopped in at Cattle Beach where he met the accused bathing. He waited until he was about to dip some water from a container, then he finally held him and told him that he was arresting him for the murder of his brother. The accused was taken by surprise. The accused asked him to release him; he would not run or something to that effect. 30

The accused was taken to Charity Police Station where they arrived next morning. At this point the Police came into the picture and carried out investigations. You will remember that Leonard DaSilva also told you the deceased was a good swimmer and the widow confirmed the fact in her 40

evidence but in his statement to DaCosta, the accused said the deceased was not a good swimmer.

The Police in the course of their investigations searched the boat and were responsible for the body being brought to the Georgetown Mortuary where Dr. Mootoo performed the post mortem examination.

Dr. Mootoo told you that the body was that of a male of Portuguese descent. It was that of a
10 well-nourished person and was sodden, and in parts the skin was peeling off from the arms, legs and abdomen. There was a rope tied tightly around the neck. He removed the rope, parcelled it, sealed it - Exhibit B - and handed it to the Police.

He further said that there were three lacerated wounds on the head - (1) a lacerated wound one inch long on the top of the head, over the frontal bone and three and a half inches from the bridge of the nose. This wound gave a chipped fracture of the
20 vault of the skull. (2) a lacerated wound one inch long on the right side of the head, two and a quarter inches from the top of the right ear. (3) a lacerated wound two inches long on the right side of the head two and three quarters inches from the top of the right ear.

He gave it as his opinion that wounds numbers (2) and (3) could have been caused by a blow or fall but he was positive that wound number (1) could not have been caused by a fall; it had to be from a
30 blow struck with something which was a metal instrument. There were other special features about this wound which must have been caused, he said, by a metal instrument which rolled. He suggested that the barrel of a gun when taken away from the butt could have caused the injury and he was at pains to demonstrate to you his theory. It will be a matter for you whether or not you accept his theory. He did say, however, that to inflict the head injury, an assailant would have to stand
40 in front or a little to the right of the victim.

He further told you that when the rope was cut from the neck impressions of the rope on the neck were visible. The mucous membrane of the trachea was congested in its entire length and also the mucous membrane of the right and left bronchii. The oesophagus was congested. In effect he told

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you that the condition was symptomatic of strangulation and he told you that it was his opinion that the rope was placed around the neck while there was still life in the body.

He was cross-examined as to certain effects of strangulation and maintained that strangulation took place before death. The defence has asked you to reject the doctor's opinion as to strangulation. It will be a matter for you whether you accept the doctor's opinion or you reject it. 10

He told you that the right lung had two perforations in the apical and middle lobes and two pellets were found in the right lung. The left lung was congested. The chest wall showed a fracture of the sternum, a fracture of the seventh and eighth ribs on the right side anteriorly. There was an irregular wound between the 7th and the 8th ribs and pellets were removed from the site of this wound from without the chest cavity. The fact that the stomach was empty was his reason for 20 concluding that the man was dead before the body was thrown overboard.

He also said that there was a deep lacerated gun-shot wound circular in outline in front of the chest overhead of the sternum and slightly to the right. The diameter of the wound at the skin was two inches, diameter in depth of the wound was one inch. There was some burning around the margin and he gave it was his opinion that this was a gun-shot wound from a gun fired at close quarter. 30 He demonstrated to you, gentlemen, how the gun must have been held when fired - from the physical conditions he saw, for example the direction of the wound.

He gave it as his opinion that the assailant must have been above and behind and a little to the right, pointing the gun downwards over the shoulder of the victim, as he indicated, and having regard to the gunshot wound and the head injury, in his opinion, the gunshot wound was first 40 in point of time, next the head injuries and finally, the strangulation.

He told you the deceased was a very well built man and as far as stature went he was in better physical condition than the accused. He gave it as his opinion that the rope was placed around the

neck of the deceased while there was still life in his body.

Finally, he said:

"In my opinion death was caused by perforation of the right lung from gunshot wounds and strangulation ... "

That, gentlemen, is the medical evidence.

There was the evidence of the Government Analyst, Mr. Ho-Yen, who examined the exhibits which were taken to him. It was his opinion that the rope around the neck of the deceased was of the same size and structure as Exhibit D.

Exhibit D you will recall, was the main sheet rope of the vessel. He gave you his reasons for coming to that conclusion and he stuck to those reasons even though he agreed that when manilla is immersed in water it has a tendency to increase in circumference and reduce in length.

Mr. Ho-Yen also told you about the pellets. You will remember that certain pellets were taken from the dead body of the deceased by Dr. Mootoo and handed to the Police and they were in due course handed to the Analyst who gave you what their sizes were. The most important part of his evidence is what he told you about the structure of that rope which was around the neck and the fact that the rope was similar in structure to the main sheet rope. There is some evidence about four live cartridges and the exhibits put in were four "spent" cartridges. It is not clear, nor is it disclosed in the evidence how these "live" cartridges became "spent". You will therefore, ignore those exhibits as they are of no evidential value.

Sgt. Smartt of the Criminal Investigation Department said that he went up and collected the firearm licence - Exhibit B - from the widow of the deceased. He said it was signed by Inspector Sampson, an authorised Officer. It was put in evidence. It was a licence in respect of a 16 bore single barrel shot gun, of similar weight, shape, make and appearance as the one in evidence. He also told you that all such 16 bore single barrel shot guns are similar and though he does not regard himself as a ballistics expert, he has had

In the Supreme Court

No.16

Summing Up.

18th May 1960 - continued.

considerable - 20 years - experience with fire-arms.

P.C. Dornford Wilson told you that he went to Grant Belle Vue on 26th of August, saw the launch "Sweet Sixteen" and measured it. He gave you the dimensions of the boat. I'll refresh your memory on the measurements. It was 26 feet 10 inches in length, 5 feet 4 inches wide, 2 feet 9 inches in depth. From the rear end of the boat to the front end of the crankshaft of the engine was 5 feet 4 inches. 10

He searched that boat that morning and he found a whole shotgun pellet and a half of a shot-gun pellet. He produced the pellet Mr. Ho-Yen, the Government Analyst, did give details of this but they are not of great moment. He said there was one bottle with one pellet and a tiny piece of metal. Exhibit G was the whole pellet. It was a BBB drop shot. The little piece of metal unfortunately got lost. It weighed one-eighth of a whole pellet. Then you had the evidence of Corporal Chalmers. He told you that he saw P.C. DaCosta and the accused at Charity Police Station on August 22 and that DaCosta told him that the accused had made a report that Flavio DaSilva had fallen overboard from the launch "Sweet Sixteen" and drowned. 20

Corporal Chalmers said that he was present when the accused made a statement to Inspector Sampson. He saw and heard the statement. That statement, you will remember, was with respect to the so-called drowning accident and the details of it. 30

Chalmers also said that in the presence of the accused DaCosta told him what the accused had reported and the accused raised no objection to the report which DaCosta said he had made.

P.C. Kenneth Rollins, the photographer, told you of the photographs he took of the boat "Sweet Sixteen". 40

That is the case for the Crown, and the Crown invites you from this evidence to say that this man, the accused, had a passion for Gwendoline, age 14 years, that because of his passion and because her father was not in favour of it, he did

the deceased to death while they were at sea and with no one but himself to tell the tale.

The Crown invites you from the circumstances to say that when he fired that gun he did so with intent to kill or do grievous bodily harm and when he struck that blow on the head and tied the rope around the neck he did so with intent to kill or to do grievous bodily harm.

10 The Crown asks you to accept the evidence of the doctor about the position from which the shot was fired and further to consider the statements which were made by the accused. The Crown asks you to say that the earlier statement made by the accused was made with a view to satisfying the family of the deceased.

The Crown asks you to infer from the absence of the anchor and the statements of the accused that the accused tied the body to the anchor and sank it into the sea in the hope the sea would not 20 give up its dead. The Crown says that from these given circumstances that the accused wilfully and intentionally caused the death of the deceased. If you accept the Crown's case, and you can with satisfaction to yourselves draw the inferences which you are asked to draw and if after doing so you are satisfied beyond reasonable doubt that the accused is guilty, you will then have to consider the nature of the defence.

The defence has been told you by way of a 30 statement from the dock. I must tell you that under the law an accused is entitled to do so. He was told of his rights and he elected to make a statement from the dock. That statement you have to consider as his defence. You must give full and weighty consideration to it. The statement is to the following effect:

"I made a statement to the Police already - Exhibit N. I have said everything that I have to say. I had no intention of doing 40 anything. I am very sorry for what has happened. I have nothing more to say."

That, gentlemen, is the statement from the dock and his defence includes his statement Exhibit N. Exhibit N is of some length but I may as well read it to you. It is to this effect. You will

In the Supreme Court

No.16

Summing Up.

18th May 1960
- continued.

remember that this statement was made after the body was discovered and after the post mortem had been disclosed.

He was told that the port mortem report of Flavio DaSilva revealed that he had died of gun-shot wounds and after having been duly cautioned he stated - and this statement must be considered in conjunction with his statement from the dock. The statement is to the following effect:-

"Around 3 o'clock the morning me and Uncle Flavy lef Cattle Beach in the boat going to hunt duck. He carry he gun and shots. Before we leave the mass-step in the boat break; a nail come out from it. I went back to the house and bring a hammer and nails and Uncle Flavy nail the mass-step..." 10

In so far as this part of the statement is concerned you will remember the evidence of the young boy, Rudolph DaSilva about the disrepair of the mast of the boat that morning and of the 20 accused nailing it. This part of the statement confirms more or less what was said by the boy. You have also from the defence what the boy said. Continuing, the statement goes on:-

"We then loose off and while we going Uncle Flavy tell me when we got back home he gwine leh me bag off the copra, carry it to Pomeroon and sell it, pay me off, then I can go weh I like. I turn and seh 'Uncle Flavy I work with you so long and now to the long 30 run look wha you is doing to me'. Ah then tell Uncle Flavy you might regret; you gwine sorry. Uncle Flavy den ask me how ah mean and ah seh when ah go ah gwine mek you daughter Gwendoline, follow me. At that time he was sitting on the engine covering at the stern ..."

Gentlemen, you know the habits of the place, you know how these boats operate. In the state-ment he says he was sitting at the stern. You 40 will ask yourselves how were they sitting? You must ask yourselves whether they were facing each other or was each one looking in the direction the ship was sailing.

The statement continues:-

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Summing Up.

18th May 1960
- continued.

"After ah tell him so he jump from de covering to de footboard and pick up he gun saying 'Ah gwine shoot you so and so' and he break de gun and put in a load. I say 'Oh me God, Uncle Flavy wha you gwine do' and ah leave from the stern and jump to weh he had the gun. We both held the gun and we commence to wrestle for the gun. Whilst wrestling he fall down on the footboard but I didn't fall. Whilst he was in de boat I was over him trying to tek away the gun an de gun go off. I even thought ah did get shot but I aint feel nothing he still was holding de barrel but I succeed in getting de gun from his hand. Well, den ah get mad or something and ah remember hitting he with the gun in his head. After that ah throws de gun overboard ... "

Here you have his evidence, of the struggle for the gun, and the suggestion that he did not know what he was doing or why he put the rope around the neck. I have already referred to this aspect of the case when I dealt with the subject of insanity and automatism. You will consider the evidence as a whole and ask yourselves if you believe the accused was suffering from a disease of the mind at the time when he did what he said he did. The statement continues:-

"After ah throw de gun overboard ah remember he say twice 'Gwendoline my daughter, you is the cause of this'. He look to me dat he was dying and he say to me then 'Sonny, throw me overboard'. Ah remember that ah tie a piece or rope round he neck but ah can't remember why ah do it. But ah cut the rope from de main sheet rope. Ah den throw him overboard. Ah den throw de gun with de shots overboard. De bag mek out of baboon skin ... "

Here he tells you that he threw the deceased overboard at his request. Do you believe it, gentlemen, does his story ring true? The statement further continues:-

"Ah tek down de sails and stop de motor. After dat an den ah threw over de anchor wid de chain. Ah den sit down an when ah come to meself ah go back an pull up de

In the Supreme Court

No.16

Summing Up.

18th May 1960 - continued.

anchor an ah find dat de anchor gone. Well, ah hoist de sail an go down ahsore, and ah tek out de mast an plant it in de mud and ah spend about one hour an den ah try to wok de engine but ah didn't get it to wuk. Well, den ah decide to walk back to Cattle Beach because no tools was in de boat. All de tools did lef at Cattle Beach. Ah return to Cattle Beach an tell de children grandmother who is his father-in-law and mother-in-law what happen. But ah decide to tell dem ah lie..."

Here he explains the absence of the anchor, his return to Cattle Beach and his decision to tell the family a lie. The statement continues:-

"But ah decide to tell dem ah lie an tell dem Uncle Flavy drown, den ah send and call Uncle Flavy children and tell them de said thing dat their father drowned. Den me and de children went back to Uncle Flavy house. Ah spen a lil time deh, den myself, Gwendoline, Lionel, Antonio D'Aguiar and an Indian fellow name Ignatius, sent back foh de boat, an bring it to Cattle Beach, den Uncle Flavy father-in-law tell me dat ah must come to Charity and report right away. Meself Antonio D'Aguiar, Ignatius and Lionel, leave Cattle Beach around a quarter past four de next morning. Well, ah mek de report dat Uncle Flavy fell overboard and drowned, den ah leave an go back to Cattle Beach when Leonard da Silva come deh and seh he arrest me foh murder an he tek me back in the boat and bring me back to Charity."

Then there are a few questions in his replies to which he elucidated or clarified certain references in his statement. This in effect is his defence. It has been urged that you should accept the story of the accused, for he is the only person who is now in a position to say what happened in the boat, that his story as to the shooting is uncontradicted.

Examine that statement, consider it and satisfy yourselves as to whether you can accept it. If you accept it, you will relate the circumstances to the law as I have already indicated. You will bear in mind that the accused made another statement before the body of the deceased was discovered.

In the Supreme Court

No.16

Summing Up.

18th May 1960 - continued.

Before the dead body was discovered he reported to the Charity Police Station, according to the evidence of P.C. Da Costa, that the deceased was sitting on the covering of the engine of the boat cleaning his gun, that he had apparently overbalanced and fallen overboard. In his statement at that time, he said that Flavio after cleaning his gun got up from where he was sitting and probably overbalanced and in doing so fell over-
10 board with the gun still slung across his shoulder.

In his statement after the body was found, he said:-

"Whilst wrestling he fell down on the footboard but I didn't fall. Whilst he was in de boat I was over him trying to get away de gun an de gun go off. I even thought I get shot but I didn't feel nothing. He still was holding de barrel but I succeed in getting de gun from his hand ... After that I throw the
20 gun overboard. After ah throw de gun overboard I remember he say 'Gwendoline, my daughter, you is the cause of this'. He look to me dat he was dying and he say to me then 'Sonny, throw me overboard'. Ah remember dat ah tie a piece ah rope round he neck but ah can't remember why ah do it, but ah cut de rope from the main sheet rope. Ah den throw him overboard. Ah tek down de sail and stop de motor after dat and den throw over de
30 anchor ... "

It will be for you to examine these circumstances which he has related and ask yourselves whether you believe the accused or not. It is within your province to accept the explanation given or to reject it. You will remember the evidence of the doctor and if you accept his evidence you will have to ask yourselves: Did the incident occur the way the doctor suggested it did? or whether you will accept what the accused said
40 in his defence. You had it from Gwendoline that her father got angry when annoyed and you have it from the doctor that the deceased was the more physically fit of the two men.

The Crown suggests that the accused attacked the deceased from behind, shot him in the manner described by Dr. Mootoo and dealt him this blow with the intention of getting him out of the way so

In the Supreme Court

No.16

Summing Up.

18th May 1960 - continued.

that he could be able to have Gwendoline. That is what the Crown advances as a motive.

It will be for you to examine the statement of the accused and ask yourselves whether the suggestion of the Crown is one which you as reasonable men will accept. You will also have to ask yourselves why did the accused go out of his way to tell so many persons that the deceased had got drowned and to give details which he gave to the widow after she had asked him how her husband got drowned. You will remember that she said that when she asked him if he did not see her husband after he had fallen overboard, how he said that he saw him three times and tried to rescue him but he did not succeed.

You will have to ask yourselves, gentlemen, whether you accept the accused's story about the anchor or not, his story about the rope around the neck and try to satisfy yourselves whether the circumstances which he related are such as would lead you to the conclusion that his statement is a statement of truth or otherwise. That is a matter which is entirely for you - a matter which will fall completely within your province to decide. You will give full consideration to the evidence both for the Crown and for the defence. You will weigh the two stories and having done so, it will be for you to ask yourselves which story is consistent with truth. You will bear in mind what I have told you and you will try to discover from the evidence as a whole what in fact did happen on that day in that boat. You have been told of the dead body washed up from the sea having a gunshot wound in the chest, wounds on the head and a piece of rope around the neck. You have heard the medical evidence and the suggestions advanced by the defence on these matters. It will be a matter entirely for you to decide.

Now, gentlemen, after having weighed the evidence for the Crown and the evidence for the defence, if you are not satisfied that the Crown has established beyond reasonable doubt that the accused caused the death of Flavio da Silva, you will acquit the accused.

If it is your opinion that Flavio da Silva died by accident or if you are in reasonable doubt that his death was so caused, you must return a verdict of not guilty.

If you are of the opinion or you are in reasonable doubt that although the accused caused the death of the deceased but that in so doing he was acting in self-defence, you must acquit the accused.

If you find that the accused caused the death of the deceased when he was suffering from some disease of the mind the burden of proof of which is on the defence, your verdict should be one of guilty but insane.

If you are satisfied beyond reasonable doubt that the accused unlawfully caused the death of Flavio da Silva but that at the time of doing so he was under the stress of provocation, and that when doing the act and/or acts which caused the death that he did not intend to kill him or to cause grievous bodily harm, your verdict should be one of manslaughter.

If you are in doubt whether the act was done under such an impulse, you will resolve that doubt in favour of the accused as you will do if you are in any doubt with respect to any of the other propositions which I have put to you.

Finally, if you are satisfied beyond reasonable doubt that the death of the deceased was caused by the deliberate act or acts of the accused and that at the time of committing those acts or immediately before he intended to kill the deceased or to do him grievous bodily harm and that in doing so he was not acting in self-defence or under the impulse of provocation or suffering from some disease of the mind your verdict should be one of guilty of murder.

Gentlemen, you have been privileged to see the witnesses and to judge their demeanour. It will be for you to make up your minds whether their stories are true or not.

All of the exhibits which have been tendered in evidence are available to you and you may call for them when you retire for your deliberations.

Yours is a solemn duty and I invite you to carry out that duty in keeping with your oath. You must not allow any emotions of sentiment or sympathy to deflect you from doing your duty.

In the Supreme Court

No.16

Summing Up.

18th May 1960 - continued.

You will bear in mind what I have told you. You will consider all the circumstances before you and you must resolve in your minds the truth of that drama in the boat on that day.

I now invite you to consider your verdict.

Jury retire: 3.10 p.m.

Jury return: 5.17 p.m.

Verdict: Guilty of MURDER.

No.17

Minute of Sentence.

18th May 1960.

No.17

MINUTE OF SENTENCE

10

The jury by a unanimous verdict having found the accused JOHN DeFREITAS "Guilty" of Murder, contrary to section 100 of the Criminal Law (Offences) Ordinance, Chapter 10 THE SENTENCE OF THIS COURT IS THAT the said John DeFreitas be taken from this place to a lawful prison and thence to a place of execution and that he be there hanged by the neck until he be dead.

K. L. Gordon
Puisne Judge.

20

Dated this 18th day of May, 1960.

In the Federal Supreme Court

No.18

Notice and Grounds of Appeal.

25th May 1960

No.18

NOTICE AND GROUNDS OF APPEAL

IN THE FEDERAL SUPREME COURT
APPELLATE JURISDICTION

BRITISH GUIANA.

Criminal Appeal No.20 of 1960.

TO THE REGISTRAR OF THE FEDERAL SUPREME COURT.

Name of Appellant - John DeFreitas.

Convicted at the (1) County Sessions held at Georgetown, Demerara.

30

In the Federal Supreme Court

No.18

Notice and Grounds of Appeal.

25th May 1960 - continued.

Offence of which convicted (2) - Murder.

Sentence - Death.

Date when convicted (3) - 18th May, 1960.

Date when sentence passed (3) - 18th May, 1960.

Name of Prison (4) - Georgetown.

I the abovenamed appellant hereby give you notice that I desire to appeal to the Federal Supreme Court against my (5) - Conviction and Sentence. On the grounds hereinafter set forth
10 on Page 2 of this notice.

Dated this (7) 25th day of May A.D. 1960.

John DeFreitas
Appellant.

QUESTIONS	ANSWERS
1. Did the judge before whom you were tried grant you a certificate that it was a fit case for appeal?	No.
2. Do you desire the Federal Supreme Court to assign you legal aid? (20)	Yes.
(a) What was your occupation and what wages, salary or income were you receiving before your conviction?	Farmer. $21 per week.
(b) Have you any means to enable you to obtain legal aid for yourself?	No.
3. Is any solicitor now acting for you? If so, give his name and address. (30)	No.
4. Do you desire to be present when the Court considers your appeal? (9)	Yes.
5. Do you desire to apply for leave to call any witnesses on your appeal?	No.

In the Federal Supreme Court

No.18

Notice and Grounds of Appeal.

25th May 1960 - continued.

GROUNDS OF APPEAL OR APPLICATION (10)

1. That my Counsel did not have sufficient time within which to prepare my Defence.

2. That the learned trial Judge misdirected the jury as to the Law applicable to automatism.

3. That the learned trial Judge failed to put my Defence adequately to the jury.

4. That the conviction was wrong in Law.

5. That the verdict of the jury was unreasonable and cannot be supported having regard to the evidence. 10

No.19

Amended Grounds of Appeal.

5th September 1960.

No.19

AMENDED GROUNDS OF APPEAL

IN THE FEDERAL SUPREME COURT
APPELLATE JURISDICTION

Territory: BRITISH GUIANA
Criminal Appeal No. 20 of 1960.

REGINA

vs.

JOHN DE FREITAS

FURTHER AMENDMENTS OF GROUNDS OF APPEAL: 20

The Grounds of appeal herein are further amended as follows :-

1. By the addition of Ground 2 therein after the word "automatism" of the following words:

"and as to the law relating to the defences of self-defence, accident and provocation in relation to the facts of the case in that:-

(a) he failed to direct the jury fully or at all on the burden of proof in relation to 30

In the Federal Supreme Court

No.19

Amended Grounds of Appeal.

5th September 1960 - continued.

the defence of automatism and on the degree of proof required to establish the said defence;

(b) he failed to direct the jury that as regards the defence of self-defence if the jury believed that the accused started to struggle with and shot the deceased in self-defence but that on the whole more force than was reasonable and necessary was used thereby causing the death of the deceased a verdict of manslaughter may be found;

(c) he failed to direct the jury that if they were satisfied that the gunshot wound happened accidentally or were in reasonable doubt as to whether it so happened and that following upon such accident the accused caused injuries which only hastened the death of the deceased and/or did so to an infinitesimal extent only then they may acquit the accused or find him guilty of manslaughter only;

(d) he failed to direct the jury that if they found on the whole evidence that the accused caused the death of the deceased by an act or acts done with the intention to kill or to do grievous injury likely to kill but acted under the stress of provocation, then a verdict of manslaughter may be found;

(e) he failed to direct the jury that if on the whole of the evidence they find the gunshot wound was fired accidentally or in self-defence but that thereafter the accused wrongfully believing the deceased to be dead then tied to the neck a rope with an anchor attached for the purpose of disposing of a body believed to be dead thereby hastening the death of the deceased by strangulation a verdict of manslaughter may be found;

(f) he failed to direct the jury fully or at all on the various features of the evidence of Mootoo (Dr.) and their probative relationship to the aforesaid defences; and

(g) he failed to direct the jury specifically on the various facts of the evidence for the

In the Federal Supreme Court

No.19

Amended Grounds of Appeal.

5th September 1960 - continued.

prosecution and the defence supporting the case for the defence."

Richard A. Gunraj
Solicitor for APPELLANT.

Georgetown,
Demerara.

This 5th day of September, 1960.

No.20

Order of Dismissal,

12th September 1960.

No.20

ORDER OF DISMISSAL

IN THE FEDERAL SUPREME COURT 10

APPELLATE JURISDICTION

CRIMINAL

Territory: BRITISH GUIANA

ON APPEAL FROM THE SUPREME COURT OF BRITISH GUIANA

CRIMINAL APPEAL NO. 20 OF 1960

REGINA

v.

JOHN De FREITAS

BEFORE:

The Honourable The Chief Justice
" " Sir Alfred Rennie 20
" " Mr. Justice Marnan

Monday the 12th day of September, 1960.

Entered the 31st day of December, 1960.

UPON READING the Notice of Appeal filed herein on the 25th day of May, 1960 against the conviction and sentence of the appellant dated the 18th day of May, 1960, on Indictment at the April Session of the Supreme Criminal Court for the county of Demerara AND UPON HEARING Mr. J.O.F.

Haynes Q.C. of Counsel for the appellant and Mr. G.L.B. Persaud, Acting Solicitor General, of Counsel for the respondent IT IS ORDERED that this appeal be dismissed and that the conviction and sentence be affirmed.

BY THE COURT

Aditya T. Singh
Deputy Registrar.

No.21

10

JUDGMENT

IN THE FEDERAL SUPREME COURT
APPELLATE JURISDICTION
CRIMINAL

Territory: BRITISH GUIANA

ON APPEAL FROM THE SUPREME COURT OF BRITISH GUIANA
CRIMINAL APPEAL NO. 20 OF 1960

REGINA
v.
JOHN DeFREITAS

BEFORE:

20 The Honourable The Chief Justice
" " Sir Alfred Rennie
" " Mr. Justice Marnan

6th, 7th and 12th September, 1960

Mr. J.F. Haynes, Q.C., and Mr. P.N. Singh, for the appellant.
Mr. G.L.B. Persaud, Acting Solicitor General, for the Crown.

JUDGMENT OF THE COURT DELIVERED BY MR.JUSTICE MARNAN:

The appellant was convicted of the murder of
30 Flavio Da Silva and appealed to this Court on several

In the Federal Supreme Court

No.21

Judgment,

21st November 1960 - continued.

distinct grounds. His appeal was dismissed on the 12th September, 1960, after argument by counsel on both sides had been heard, and the Court then intimated that, having regard to those arguments and the authorities cited, reasons for the decision of the Court would be given at a later date.

The original notice of appeal was supplemented by two further sets of grounds, which were filed by leave of the Court on the 9th August and the 6th September, 1960, respectively. The first ground argued was that the learned trial judge was wrong in refusing an application for an adjournment of the trial made by counsel for the defence, Mr. P.N. Singh, before a jury was empannelled. Mr. J.F. Haynes, who appeared with Mr. Singh at the hearing of the appeal, conceded that he could find no case where a conviction had been quashed upon such a ground simpliciter. The question whether or not to grant an adjournment of a trial which has not begun is a matter entirely within the discretion of the trial judge, and the judge's refusal in that respect is not a ground of appeal, unless it can be contended that such refusal led to a miscarriage of justice. In R. v. Malvisti 2 Cr. App. R. 251, the appellant was arrested, committed for trial, and convicted on three successive days. His conviction was quashed after hearing the evidence of witnesses whom the appellant had been unable to call at his trial for lack of time to get in touch with them. It does not appear that the appellant was represented by counsel at trial or that any application for an adjournment was made, but had such an application been made and refused, the refusal would, in our view, have amounted to a miscarriage of justice in the circumstances of that case. In the present case, however, the appellant was charged with murder in August, 1959. He came up for trial in February, 1960, when the indictment was quashed on a technical ground. On that occasion, he was represented by Mr. Haynes. He was re-committed for trial in March, 1960, and the effective trial opened on the 16th May, immediately after Mr. Singh's application for an adjournment had been refused. Mr. Singh was assigned by the Court to defend the appellant on the 12th May, and had an opportunity of reading the depositions, but the appellant declined Mr. Singh's services, giving it as his reason that his relatives were arranging to

brief Mr. Haynes. On the morning of the 16th May, however, he told Mr. Singh that his father, which presumably meant the necessary funds, had not turned up, and that he would like Mr. Singh to defend him. Mr. Singh, having failed in his application for an adjournment conducted the defence with an ability which shows that he swiftly overtook the disadvantages under which he started in all respects except one, namely, that he had no opportunity to consult a doctor with a view to testing the effect of the medical evidence of the Crown. This Court granted an adjournment of the appeal on the 21st June, 1960, to enable the defence to seek a medical opinion on this aspect of the case, and to apply to call additional evidence if so advised. However, no such application was made on the hearing of the appeal, and having regard to the competent manner in which Mr. Singh conducted the appellant's case at trial, we are unable to take the view that the refusal of his application for an adjournment led to any miscarriage of justice. Moreover, while we sympathise with Mr. Singh personally with regard to his difficulties in undertaking the defence, and commend him for the manner in which he overcame them, there is here no question of the appellant himself having been pressed for time. Counsel had, in fact, appeared for him when he was first arraigned for trial in February, and if he was not in a financial position to instruct counsel of his own choosing in June, he was foolish to decline the assistance of counsel assigned to him by the Court. The only disturbing feature of the matter is that up to the morning of the trial the appellant appears to have been under the impression that Mr. Haynes was going to defend him. We have had no explanation as to why he did not do so, or alternatively, as to why the appellant was not disabused in good time of a false impression. In the absence of any such explanation we do not seek to censure anyone concerned, but we think it right to comment that it is most unusual and unsatisfactory that counsel, having undertaken the defence of a man charged with murder, and appeared for him at one stage, should not appear for him when he stands his trial, and nevertheless, subsequently appear on appeal to urge that the appellant only instructed other counsel on the morning of trial.

It is necessary to deal with two of the other grounds of appeal argued, but before doing so it

In the Federal Supreme Court

No.21

Judgment, 21st November 1960 - continued.

will be convenient to summarise the facts. The case for the Crown was that the appellant and the deceased went out together in a 27 foot boat on the Essequibo river to shoot ducks. The only weapon they took was a sixteen-bore single barrel shotgun belonging to the deceased. A few days previously, the appellant, who lived with, and worked for, the deceased, had disclosed to the deceased and his wife that he was in love with their daughter, Gwendoline, and wished to marry her. The appellant being over forty years of age, and Gwendoline only fourteen, the proposal led to a heated discussion, which was left unresolved. The seeds of a quarrel had thus been sown when the appellant and the deceased set out at three o'clock on the morning of the 21st August, 1959, alone in the small boat.

Later the same day the appellant returned on foot with a story to the effect that the deceased had fallen over-board and been drowned. He made a similar statement to the police. The boat was found moored in the river, but its anchor and a length of rope were missing. On the 22nd August, the body of the deceased was discovered, washed up on the river bank by the tide. There were wounds on the head, a gun-shot wound in the chest, and a piece of rope was tied tightly round the neck. The medical evidence was that death was due to the gun-shot wound and strangulation. In the doctor's opinion the gun-shot wound was the first injury inflicted, then the head wounds, which were consistent with blows from the gun barrel, and the deceased was still alive when the rope was tied round his neck, but dead before he was put into the water. The gun-shot wound would have eventually caused death if not attended to, but the head wounds alone would not have been fatal.

The appellant made further statements to the police on the 23rd and 25th August. In the former he repeated his story that the deceased had fallen overboard by accident. In the latter statement, which was made under caution, he told an entirely new story, upon which he relied at trial as constituting his defence. He did not give evidence or call witnesses, but made an unsworn statement from the dock, which was as follows:-

> "I made a statement to the police already, Exhibit N. I have said everything I have

to say. I had no intention of doing anything. I am really sorry for what has happened. I have nothing more to say."

In his summing-up, the trial judge told the jury:-

"In this case the defence is contained in a statement ... which the accused made to the police and in his statement from the dock at trial. In these statements you have inter-twined four defences - the defence of insanity, with which you can couple automatism, the defence of self-defence, the defence of accident, and the defence of provocation".

The effect of the appellant's statement, Exhibit N, was that while out in the boat the deceased told him, the appellant, that he was going to dismiss him and turn him out. The appellant replied that the deceased might regret that step because he would make Gwendoline follow him. The deceased then threatened to shoot the appellant, picked up his gun, and loaded it. The appellant, who had been sitting in the stern, steering, jumped up, caught hold of the gun in the deceased's hands, and began to wrestle for it. The deceased fell down, and the gun went off whilst the appellant was standing over him trying to take away the gun. The deceased was holding the barrel, but the appellant got the gun away from him. The appellant then "got mad or something" and remembered hitting the deceased on his head with the gun. The appellant then threw the gun overboard. The deceased said twice "Gwendoline my daughter, you is the cause of this". The deceased looked as if he were dying and said to the appellant "Sonny throw me overboard". The appellant then tied a piece of rope, which he cut from the main sheet, around the deceased's neck, but could not remember why he did so. He then threw the deceased and his baboon-skin cartridge bag into the river, took down the sail, stopped the engine and dropped the anchor. Later, when he came to himself, he found that the anchor, which had been attached to a chain, was gone. He hoisted the sail and went ahsore.

At the hearing of the appeal, Mr. Haynes critisised the judge's summing-up in two main

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respects. I shall deal first with the point relating to the defence of provocation.

At page 75 of the record the judge, in distinguishing between murder and manslaughter, told the jury that in the case of manslaughter an intention to kill or do grievous bodily harm is not present. But on page 76 he directed them as follows:-

"In order to be satisfied on the issue of provocation, you must find that in the particular circumstances not only would an ordinary person have lost his self-control, but that the accused as a fact did lose his self-control and that it was in consequence of that loss of self-control that he formed the intention to do the injury to the deceased from which death resulted". 10

Finally, at page 108 the judge said:-

"If you are satisfied beyond reasonable doubt that the accused unlawfully caused the death of Flavio Da Silva but that at the time of doing so he was under the stress of provocation, and that when doing the act and/or acts which caused the death that he did not intend to kill him or to cause grievous bodily harm, your verdict should be one of manslaughter. 20

If you are in doubt whether the act was done under such an impulse, you will resolve that doubt in favour of the accused as you will do if you are in any doubt with respect to any of the other propositions which I have put to you. 30

Finally, if you are satisfied beyond reasonable doubt that the death of the deceased was caused by the deliberate act or acts of the accused and that at the time of committing those acts or immediately before he intended to kill the deceased or to do him grievous bodily harm and that in doing so he was not acting in self-defence or under the impulse of provocation or suffering from some disease of the mind your verdict should be one of guilty of murder". 40

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It was argued for the appellant that those passages amounted to a misdirection in law to the effect that whatever the provocation, if the jury believed that the accused intended to kill the deceased, or do him grievous bodily harm, they could not return a verdict of manslaughter. Reliance was placed on Kwaku Mensah v. R. (1946) A.C. 83, and on Attorney General for Ceylon v. Perera (1953) A.C. 200, where Lord Goddard, dealing with this precise point, said at page 206:-

> "The defence of provocation may arise where a person does intend to kill or inflict grievous bodily harm but his intention to do so arises from sudden passion involving loss of self-control by reason of provocation".

We have considered those cases in relation to the well known passage in Lord Simon's speech in Holmes v. Director of Public Prosecutions (1946) A.C.588 at page 598, to the effect that where provocation inspires an actual intention to kill such as was admitted in that case or to inflict grievous bodily harm, the doctrine that provocation may reduce murder to manslaughter seldom applies.

The whole history of the so-calleddefence of provocation up to and including the apparent conflict of opinion above referred to, is admirably exposed in the 11th Edition of Russell on Crime at pages 575 to 585 inclusive, and we are in agreement with the view there expressed that Lord Simon's statement was not intended to contravene the principle that the defence of provocation is available to one who kills intentionally but in hot blood. Perhaps the explanation is to be found in the fact that in Holmes' case the provocation relied upon was a mere confession of adultery which was held not to be capable of amounting to provocation in law. Lord Simon's words "where the provocation inspires an actual intention to kill (such as Holmes admitted in this case)" may thus fairly be interpreted as meaning where the provocation inspires a deliberate, clear-headed and cold-blooded intention to kill as opposed to an intention formed through loss of self-control. This interpretation not only seems to be justified by the particular facts in Holmes' case, but also to be consistent with the law that a jury must

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consider whether the provocation alleged in fact caused the accused to lose his self-control. If it did not have that effect, it is of no avail that such provocation might so have affected other reasonable persons.

We therefore hold that if the effect of the summing-up in this case was to direct the jury that they could not find manslaughter if they believed that the killing was intentional, as opposed to accidental, there was a misdirection in law. But we do not think that, taken as a whole, that was the effect of what the judge said. If the jury might have been temporarily misled at page 74/5 they were put right by the passage at page 76. If the beginning of the passage at page 108 was possibly misleading, the passage, taken as a whole seems to us to make it clear that the jury should find manslaughter if they believed that the accused intended, under provocation, to do what he did, but had no calculated intention of killing. For the above reasons, this ground of appeal also fails.

The other main point argued for the appellant was that the jury should have been directed that if they found, or were left in doubt by the evidence, as to the defence of self-defence, in all respects except that they thought excessive force had been used, they should return a verdict of manslaughter. In support of that proposition, Mr. Haynes cited R. v. Howe (1958-9) Commonwealth L.R. 448, a case which is also reported in 32 Australian Law Journal Reports 212. I shall refer so far as necessary to the latter report. Howe's case was decided by five judges of the High Court of Australia on appeal by the Crown, from an order of the Supreme Court of South Australia directing a new trial. Howe had been convicted of murder before Ross, J. and a jury. All that need be said of the facts can be quoted from the judgment of Taylor, J. at 216:-

> "It is sufficient to say that there was some evidence of an attack upon the respondent and it may be possible to perceive some evidence that in shooting the deceased the respondent believed that his action was necessary for his own protection. At all events both the learned trial judge and the

Full Court considered the evidence flimsy in the extreme as it was sufficient to raise the issue of self defence ... "

It appears from the judgment of Menzies, J., that the trial judge directed the jury that they could find manslaughter instead of murder on the ground of provocation, but gave no other direction about manslaughter. On the issue of self-defence, apart altogether from provocation, he instructed the jury that if the force used was excessive, that is greater than was necessary for self-defence, then the evidence afforded no defence at all. Menzies, J. added:-

"It is this direction which gives rise to the question now before this Court because the Full Court decided that it was wrong".

Dixon, C.J. posed that question and gave the answer of the Full Court in the following passage at page 212:-

"The second and more important proposition related to the effect of an excessive use of violence on the part of a defendant who but for that would be able to make out a plea of self-defence as an answer to a charge of murder. If death ensues because he has resorted to an unnecessary measure of force in resisting an attack or threatened attack, a degree of force out of reasonable proportion to the danger, does that leave the defendant guilty of murder or is his crime manslaughter: The Supreme Court answered the question thus: 'We have come to the conclusion that it is the law that a person who is subjected to a violent and felonious attack and who, in endeavouring, by way of self-defence, to prevent the consummation of that attack by force, exercises more force than a reasonable man would consider necessary in the circumstances, but no more force than he honestly believes to be necessary in the circumstances, is guilty of manslaughter and not of murder'".

At page 214 Dixon, C.J. continued:-

"The assumption made for the purpose of this question is that a man actually defending

> himself from the real or apprehended violence of the deceased has used more force than is justified by the occasion and that death has ensued from the use of this excessive force. In all other respects, so it is assumed, the elements of a plea of self-defence existed .... Is the consequence of the failure of his plea of self-defence on that ground that he is guilty of murder or does it operate to reduce the homicide to manslaughter? There is no clear and definite judicial decisions providing an answer to this question but it seems reasonable in principle to regard such a homicide as reduced to manslaughter, and that view has the support of not a few judicial statements to be found in the reports."

Having referred to a number of cases, Dixon, C.J., came to the conclusion that the view of the Supreme Court was substantially correct.

We have given very careful consideration to this decision of the High Court of Australia, not only because of the respect in which we hold that Court and its distinguished Judges, but because the Judges in some Territories of the West Indies have, when directing juries on the issue of self-defence, used somewhat similar language to that which has now received the approval of the High Court of Australia.

In reaching their conclusions Dixon C.J., and Menzies, J. sought support from the English Authorities mainly on cases concerned with killings in the course of resisting wrongful arrest attempted under colour of lawful process. This category of killings is discussed in Russell (11th Edition) at page 504 et seq; that these cases are in a very special class of their own is explained in the following passage:-

> "An illustration of that development, however slow, which is constantly taking place in the common law and of the difficulties which this causes to those who have to expound the legal principles of their own time when they are in contrast with the older authorities, is to be found in Foster's comments on the case of <u>Tooley</u>

(1710) 2 Ld. Raym. 1296. The ancient strictness which maintained the policy of according the highest protection to officers of the law who were acting legally was to some extent applied in reverse, so that unless the officer endeavouring to effect the arrest was acting in all respects in a strictly legal manner the private citizen thus attacked was held to be justified if he used violent measures in resistance. When the resistance went to the length of killing the arrester, the courts were generally ready to treat the case as one of homicide committed under such provocation as would reduce the crime from murder to manslaughter, although it will be observed, in the older cases especially, that the facts were often not such as to satisfy all the usual requirements of the defence of provocation. In the passage of time some doubts came to be felt as to the necessity for the rigid severity of early law. And while Foster was firm in recognising the paramount importance of maintaining the inviolability of the agents of the law, he was inclined to take the newer view of mens rea when the responsibility of the private person was in question. This view could operate both ways. For a doctrine which requires that a man should not, through a rigid technicality of the law, suffer for a harm which he neither intended nor contemplated also requires that he should not escape through any such technicality when he has deliberately inflicted a harm".

The older writers, even as late as Foster (1689-1763), held that anyone who caused death in resisting an officer of justice committed murder, even if the killing was accidental (Russell 11th Edition 543). The law was equally rigid and technical in favour of the defendant if he killed while resisting wrongful arrest, as exemplified in the cases Ferrers (1634), Hugget (1666) and Tooley (1710). The law relating to such provocation as may reduce murder to manslaughter as we now know it only emerged in the nineteenth century. Referring to R. v. Hayward, Russell (p.580) states: "It thus appears that in 1833 the law as to provocation was comprehensible and settled".

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It is significant that in the case of Reg. v. Allen and others (1867) 17 L.T. (N.S.) 222 which concerned the killing of a constable, Blackburn, J. at page 225 said:-

> "But when the warrant under which the officer is acting is not sufficient to justify him in arresting or detaining the prisoner, or there is no warrant at all, ... the crime may be reduced to manslaughter when the offence is committed on the sudden, and is attended by circumstances affording reasonable provocation".

10

We have here travelled a long way from the rigid technicalities of Tooles's case (1710). There is no rigid ruling of manslaughter when a constable is killed while effecting an unlawful arrest. It is only manslaughter if the circumstances afforded reasonable provocation.

Menzies, J. at page 220 in Howe's case, having cited this passage from Blackburn's judgment in Allen, concluded thus:-

20

> "I consider that in law the only effect of a determination that the process was not lawful was to deprive the officer of his 'peculiar protection' and put him in the same position as any other person who makes a violent and unlawful attack on another. On this basis, the authorities which I have considered do support the view that it is manslaughter if an assailant is killed by the person attacked while resisting with excessive force an unlawful and serious attack".

30

It would appear from this passage as if Menzies, J. had drawn support for his conclusion from the older authorities before Allen, when the use of excessive force in resisting wrongful arrest was rigidly ruled as manslaughter: whereas it is clear from the observations of Blackburn, J. that it would only be manslaughter if the jury were satisfied that there was such provocation as reduced the crime to manslaughter. Menzies, J. cited Stephen's General View, 2nd Edition at page 117 to the effect that the intent to resist unlawful apprehension is treated as a state of mind constituting "that lighter degree of malice

40

which is necessary to the crime of manslaughter" rather than murder. But Russell (11th Edition), after reviewing the authorities, writes at page 511:-

> "It would seem then that the law has developed so that at the present day ... if the attack is not of so dangerous a kind as to justify an intentional killing by way of self-defence, the fact that the arrest was illegal will not of itself affect the question whether it amounted to such provocation as would reduce the killing of the arrester from murder to manslaughter".

It is clearly Russell's opinion that in this class of case when a plea of self-defence fails, then the prisoner must rely on the well established law relating to provocation if his offence is to be reduced to manslaughter; we consider this view to be correct.

In extending the old rulings regarding manslaughter where the killing was done in resisting unlawful apprehension to the wider sphere of cases where the killing was done while resisting an attack, the High Court of Australia were thus, in our opinion, extending a doctrine which is no longer the law of England. Moreover, the Supreme Court of South Australia made one proviso: that the person who used excessive force must have used no more force than he honestly believed to be necessary in the circumstances; and this was approved by the majority of the High Court of Australia. With respect, we think that were a trial judge to give a direction in this sense it would throw both the law and the jury into confusion. Menzies, J. at page 219, gives a concise and lucid account of the law relating to self-defence which might usefully serve as a direction to a jury in cases where that defence is raised. He said:-

> "A man who is attacked may use such force as on reasonable grounds he believes is necessary to prevent and resist attack, and if in using such force, he kills his assailant, he is not guilty of any crime even if the killing is intentional. In deciding in a particular case whether it was reasonably necessary to have used as much force as in

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fact was used; regard must be had to all the circumstances, including the possibility of retreating without danger or yielding anything that a man is entitled to protect."

This is a perfectly clear and, in our view, a correct direction. But, if Howe's case is to be followed, the judge must presumably go on to say that even if they consider that excessive force was used, they must, having viewed the question objectively, go on to consider subjectively the state of mind of the prisoner: although on reasonable grounds he could not have believed such force was necessary, nevertheless, did the prisoner in fact so believe. If so, the jury must find manslaughter. The judge would also have to go on to tell the jury that if they came to the conclusion that the prisoner himself did not honestly believe such force was necessary, they must then consider whether the provocation was such as to reduce the crime to manslaughter.

Any development of the law which would require the jury to go through this complicated and difficult process in reaching their verdict is most undesirable. The conduct of the prisoner in such cases should be judged according to the standard of a reasonable man. If he has done no more than was, in the opinion of the jury, reasonably necessary in self-defence he is entitled to be acquitted (R. v. Lobell (1957) 1 Q.B. 547). If he has gone further, his crime should only be reduced to manslaughter if, by reason of the provocation he received, he had lost his self-control.

Apart from such a development of the law being undesirable we do not, with respect, consider that it finds support in the modern law of England. On the contrary, an examination of the cases of Semini (1949) 1 K.B. 405 and Mancini (1942) A.C. 1, lends support to our view that the decision in Howe's case on this point is not the law of England or of British Guiana.

In Semini's case it appears that the effect of the trial judge's direction was that the jury could only return a verdict of manslaughter if they found provocation. It was contended for the appellant that the case was one of chance

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medley, that a finding of chance medley by itself justified a verdict of manslaughter, and that the doctrine of provocation had no application to chance medley. It was held that the expression "chance medley" has no place in the modern law of homicide, but when used was applied to cases of killing se defendendo or per infortunium, both being cases of excusable as opposed to justifiable homicide, where the prisoner escaped any corporal
10 punishment and was not convicted of manslaughter. The authorities relied upon for the appellant, where the verdicts were manslaughter, were all cases turning on provocation. The possibility of a verdict of manslaughter resulting from the failure of a plea of self-defence, without regard to provocation was thus implicity, if not expressly, excluded.

Mancini's case was considered by a Full Court of Criminal Appeal before it went to the House of
20 Lords. The main defence was self-defence and it is clear that excessive force was used. The fact that neither counsel, nor any of the judges concerned appear to have suggested that the jury might have been directed to return a verdict of manslaughter if they rejected self-defence only because of the excessive force used, is in itself an indication that this is not the law. The trial judge's direction on self-defence was simply that if they believed the appellant's account of how
30 he was attacked with a penknife they should acquit. Lord Simon's only criticism of this direction was that it was, if anything, too favourable to the appellant. In his own words:-

> "Macnaghton, J. did not write the jury to consider whether, even if it were true that the appellant was menaced with the penknife, that would justify the use of the appellant's terrible weapon <u>so as to constitute a case of necessary self-defence</u>".

40 Those words seem to us to lend strong support to our view that the nature and force of the counter-attack is properly to be regarded as an element, and a most important element, for the jury's consideration of the question whether what was done by the prisoner was reasonable self-defence. If the House had thought that a negative answer by the jury to the question Macnaghton, J. might have put would, without regard to the question

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of provocation, have founded a verdict of manslaughter, Lord Simon must surely have said so, having regard to the fact that the whole ground of the appeal was that the jury should have been differently directed as to their right to bring in such a verdict. On the contrary, he was content merely to comment that the appellant's counsel found no fault at all with that part of the summing-up which dealt with self-defence. Moreover, the judge had gone on to charge the jury that if they disbelieved Mancini's story and rejected self-defence, the circumstances might still justify them in returning a verdict of manslaughter. He did not use the word provocation, and Lord Simon thought that he was not referring to the defence of provocation, but to chance medley. The supposition then was that Mancini had used his dagger in counter-attack to an assault with fists. If the law were as it was held to be in Howe's case, surely there was the opportunity of explaining Mr. Justice Macnaghton's direction on manslaughter in that sense. In our opinion, Lord Simon did not do so because that is not the law, nor do we think, in the light of Semini's case, that that part of the summing-up, although favourable to the appellant, was correct, unless the judge was in fact referring to provocation.

We are also of opinion that there was no substance in the other points argued for the appellant in the present case, and therefore dismissed the appeal.

Dated the 21st day of November, 1960.

Eric Hallinan
Chief Justice.

A. B. Rennie
Federal Justice.

J. F. Marnan
Federal Justice.

In the Privy Council

No.22

Order granting Special Leave to Appeal.

24th March 1961.

No.22

ORDER GRANTING SPECIAL LEAVE TO APPEAL

AT THE COURT AT BUCKINGHAM PALACE

The 24th day of March, 1961

PRESENT

THE QUEEN'S MOST EXCELLENT MAJESTY

LORD PRESIDENT	LORD MILLS
EARL OF PERTH	CHANCELLOR OF THE DUCHY OF LANCASTER

10 WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 21st day of March 1961 in the words following viz.:-

"WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of John De Freitas in the matter of an Appeal from the Federal Supreme Court of the West 20 Indies between the Petitioner and Your Majesty Respondent setting forth: that the Petitioner was tried in the Supreme Court of British Guiana on a charge of having on the 21st August 1959 in the County of Essequebo murdered Flavio De Silva and on the 18th May 1960 he was convicted and sentenced to death: that the Petitioner appealed to the Federal Supreme Court of the West Indies which Court on the 12th September 1960 made an Order 30 dismissing the Appeal: And humbly praying Your Majesty in Council to grant the Petitioner special leave to Appeal in forma pauperis from the Order of the Federal Supreme Court of the West Indies dated the 12th September 1960 or for further or other relief:

"THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into con- 40 sideration and having heard Counsel in support thereof and in opposition thereto Their Lordships do this day agree humbly to report to Your Majesty as their opinion that

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No.22

Order granting Special Leave to Appeal.

24th March 1961 - continued.

leave ought to be granted to the Petitioner to enter and prosecute his Appeal in forma pauperis against the Order of the Federal Supreme Court of the West Indies dated the 12th day of September 1960:

"AND Their Lordships do further report to Your Majesty that the authenticated copy under seal of the Record produced upon the hearing of the Petition ought to be accepted (subject to any objection that may be taken thereto by the Respondent) as the Record proper to be laid before Your Majesty on the hearing of the Appeal."

10

HER MAJESTY having taken the said Report into consideration was pleased by and with the advice of Her Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

Whereof the Governor-General and Commander-in-Chief of the West Indies for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

20

W. G. AGNEW.

E X H I B I T S

Exhibits
"S"
Statement of Defendant.
22nd August 1959.

"S" - STATEMENT OF DEFENDANT

FORM No. A 81.

Charity Police Station,
Essequibo Coast,
22nd August, 1959.

BRITISH GUIANA POLICE FORCE

STATEMENT OF JOHN DE FREITAS

I am a farmer and I live at Grant Bell-View Lower Pomeroon River, presently I am working at
10 Cattle Beach in the North West District picking coconuts and making copra, there are other persons living on the said Cattle Beach but only one Flavier DaSilva also of Grant Bell-View is working with me.

On Friday 21st August 1959 at about 3.00 a.m. Flavier DaSilva and myself left our house at Cattle Beach to go and hunt wild ducks at a spot which is about five (5) or six (6) miles from Cattle Beach, before leaving Flavier told his children that he
20 was going to hunt, Flavier has four children who lives with him at Cattle Beach namely Gwendoline age about fourteen years, Lionel, thirteen years, Hermina, ten years and Emanuel whose age I cannot tell. As we left Cattle Beach the sea was very rough and the wind was blowing very strong, the boat was rolling much with the waves, Flavier was sitting on the engine room covering cleaning his gun with an oil cloth, I heard him saying to the gun "Patsy girl, I have to clean you because you
30 have to do some work this morning," and continued cleaning the gun, I didn't pay much attention to him because I was steering and had to watch the sea and where I was going. Flavier after finish cleaning the gun got up from where he was sitting and probably over balanced in so doing and fell overboard with the gun still across his shoulder, I turned back the boat to the spot where he fell and tried to go alongside him so that he could have held on but as I reached he made no attempt
40 to hold the boat, I passed on and turned back again but still he didn't catch the boat, as I made a third attempt to catch him he was no longer seen. I anchored the boat took down the sail and searched for him but did not find him, as far as I know

Exhibits	
"S" Statement of Defendant. 22nd August 1959 - continued.	Flavier is not a good swimmer, he is about forty-five years of age.

I later pulled up the anchor and headed for shore, when I reached shore I discovered that we had passed the place where we were going and was about two miles out from the nearest beach. On my return to Cattle Beach later the said day I told Flavier's mother-in-law Mrs. Marie Diguair that uncle Flavier fell over-board and was drowned and told her that I had searched for him for quite some time and didn't find him, I later sent and called Flavier's children and told them also what had happened to their father and in company with his daughter Gwendoline, Antonia Diguair, one Ignatius and myself we went back and searched for Flavier, the searched continued for over an hour but he was not seen, the party returned to their respective homes later. 10

At about 5.00 p.m. on 21st August 1959 I left Cattle Beach with Antonia Diguair, Ignatius and Lionel DaSilva on my way to Charity, I reached Charity about 4.45 a.m. on Saturday 22nd August 1959 and reported the matter at Charity Police Station and made this statement. 20

John DeFreitas
22.8.59

Taken by me at Charity Police Station at 5.15 a.m. I read it over to John DeFreitas who said that it was true and correct and in the presence of Const. 6412 La Rose and myself he signed his name. 30

Rudolph DaCosta Const. 6183
22.8.59.

Wit:- D. LaRose P.C. 6412.

"Y"

Statement of Defendant.

23rd August 1959.

"Y" - STATEMENT OF DEFENDANT

Commence 3.30 p.m. Charity Police Station
Terminated 4.45 p.m. 23. 8. 59.

JOHN De FREITAS FURTHER STATES: 33 years

I am a Farmer residing with the Da Silva's at Belview Pomeroon River. The Da Silva's family

Exhibits

"Y"

Statement of Defendant.

23rd August 1959 - continued.

comprised Flavio Da Silva, his wife (Veera) Da Silva, his eldest Daughter (Gwendolin) and five smaller children. I have been living with the Da Silvas for about 1½ years, and work with them most of the time. I sometimes do my own work.

I am in love with Flavio Da Silva's eldest Daughter (Gwendolin) and I think that she is also in love with me. Flavio Da Silva owns land in the Pomeroon River where he reside and do farming
10 i.e. Provisions, Oranges and Cocoanuts. He also has land at Cattle Beach which is his Coconut Estate. I accompany him there several times where we picked Cocoanuts and made Copra. During the early part of Aug. 1959 the day or date I do not remember I accompanied Flavio Da Silva to Cattle Beach. Gwendolin and three other children also accompanied the father. During the evening time one day while at Cattle Beach, the date I do not remember I told Flavio Da Silva that I am in
20 love with Gwendolin. He did not reply and I did not bring up the subject again for that night but retired to bed. Gwendolin was not present when I told her father that I was in love with her. Subsequently, I informed Gwendolin that I had informed her father that I was in love with her and she told me that I should wait until next year. I understood her to mean that I should not ask her parents for her to be my wife until next year (1960). I have never however had sexual
30 intercourse with Gwendolin.

On Monday 17th August, 1959 Flavio Da Silva and myself left for Cattle Beach by his Engine boat which has a sail and an inboard motor. I do not know the exact dimensions of the Boat but it is about 28 ft. in length and about 5 or 6 ft. wide.

We went there to pick cocoanuts, make copra, and to transport to Pomeroon from Cattle Beach the produce. No one accompanied us there as
40 Gwendoline and three other children total 4 were already there. Myself and Flavio Da Silva only, had returned to Pomeroon leaving the children at Cattle Beach.

We left Pomeroon about 9 a.m. and arrived at Cattle Beach about 4 p.m. the same day.

Exhibits
"Y"
Statement of Defendant.
23rd August 1959 - continued.

I was responsible for picking all the cocoanuts, Flavio Da Silva husk them and the children including Gwendolin shell or dig them out. Flavio Da Silva is the licence holder of a shot-gun which he always walked with.

On Wednesday 19th August about 7 p.m. Flavio Da Silva told me that he will like me to accompany him to shoot ducks the next day 20th Aug. 1959. He did not say what time he proposed leaving. All of the children was present when he told me so. 10

We retired to bed about 10 p.m. that evening, and about 3 a.m. next day Flavio Da Silva aroused me to prepare to leave, and I made ready and we left in the direction of Morowhama. The name of the Boat is "Sweet Sixteen". I was steering and Flavio Da Silva was driving the Engine. We did not take a lamp with us, and anticipated arriving at place of destination (name unknown) about 4 or 4.30 p.m. Flavio took his Gun with him which was into the boat. The sea was rough and now 20 and then water splashed into the boat wetting the Gun. About 4 a.m. while Flavio Da Silva was sitting on a shed over the Engine facing the port side cleaning his Gun I suddenly saw him fall forward overboard with the Gun. It appeared to me as though he was about to stand up on the shed where he was sitting when he fell overboard. I did not hear him shout or say anything, nor did I see him after he fell until I turned around and faced the direction I came from. I did not slow 30 down the Engine but turned around in the same speed. I then noticed Flavio Da Silva's head above the water on the right or starboard side of the boat and about 6 feet from the bow. The boat also had a sail which was up and the wind was very strong. When Flavio fell overboard I did not drop the sail nor did I do so when I was retracing my course in search of Flavio Da Silva. I did not hear Flavio Da Silva shout for my help when I saw his head above the water on the star- 40 board side of the boat.

I was still sitting at the stern of the boat steering, and before I got to the point where I had seen Flavio Da Silva, he was lost from view. I made about three more turns but did not see Flavio Da Silva again.

I then stopped the engine and pulled down the

sail of the boat, then threw over the anchor into the sea. The anchor referred to, is part of an Engine and the Chain is 45 feet in length. The anchor was previously secured to the chain by a piece of cord.

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"Y"
Statement of Defendant.
23rd August 1959 - continued.

After I threw the anchor I observed that the boat was drifting and on pulling up the chain found that the anchor was missing.

I then raised the sail and went ashore where
10 I lower the sail, removed the mast of the boat, and planted it in the mud. I then tied the boat to the mast, and remained there until around 9 a.m. on Thursday 20.8.59.

At 9 a.m. on 20.8.59, Water had gone and left the boat aground and therefore I walked on the Foreshore back to Cattle Beach.

Flavio Da Silva wife's mother and father resides at Cattle Beach and on my return there I told her that I believe he is drowned and explained
20 to her how he fell overboard.

I then sent for Gwendolin and other children and at their Grandparents home I told them of the occurrence. Gwendolin did not say anything, but Lionel (about 13 years old) began to cry. I then returned to the house where myself Flavio Da Silva and the children resides, and about 2 p.m. the same day I returned for the boat.

Antonio D'Guiar who is the uncle of Gwendoline and resides in the same house with Her Grandmother
30 and an Amerindian (male) named Ignatius who is employed by D'Guiar accompanied me in a corial back to the boat. We then drove back to Cattle Beach where we left the Corial, then proceeded by the same boat to Pomeroon River.

On arrival at Pomeroon River, I first stopped at Richardo Da Silva (brother of the Deceased) to whom I reported the occurrence. I then visited Leonard Da Silva (another brother) then Veera Da Silva (wife) and finally reported the occurrence
40 to Police Constable Da Costa at Charity Police Station. I arrived at Charity at about 4.45 a.m. 22.8.59. On 23.8.59 I saw the dead body of Flavio Da Silva with a piece of rope tied around his neck. I am not in a position to say who tied the piece of

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Statement of Defendant.
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rope around his neck. When he fell overboard no rope was around his neck and no marks of violence was on his body.

Prior to leaving for Cattle Beach on 17th Aug. 1959 with Flavio Da Silva, I asked him for his decision in respect of his daughter's (Gwendolin) hand in marriage. He told me in reply that he has not made up his mind in any direction. I was not annoyed because he said so.

John De Freitas
23.8.59.

10

Taken by me at Charity Police Station between 3.30 p.m. and 4.45 p.m. on Sunday 23.8.59 and read over to John De Freitas who said that it is true and correct and signed his name to it in my presence.

O.E. Sampson, A.S.P.
23.8.59.

JOHN De FREITAS further states:

20

I now remember and say that the day when Da Silva spoke to me to accompany him to shoot Ducks was on Thursday 20th Aug. 1959 and we left about 3 a.m. on Friday 21st Aug. 1959.

John De Freitas
23.8.59.

Taken by me at Charity Police Station between 4.45 p.m. and 4.48 p.m. 23.8.59 and read over to John De Freitas who said that it is true and correct and signed his name to it in my presence.

O.E. Sampson, A.S.P.
23.8.59.

30

"N" - STATEMENT OF DEFENDANT

Exhibits

"N"

Statement of Defendant.

25th August 1959.

Commenced 5.30 p.m.
Terminated 6.30 p.m.

Charity Police Station.
25.8.59.

Form No. A 81.

BRITISH GUIANA POLICE FORCE

STATEMENT OF JOHN DeFREITAS.

John DeFreitas having been told that the Postmortem report of Flavio DaSilva revealed that he died from Gun shot wounds and after having been duly cautioned
10 states:

Around 3 o'clock the morning me and Uncle Flavy left Cattle Beach in the boat going to hunt duck. He carry he gun and shots. Before we leave the Mass-Step in the boat break a nail come out from it. I went back in the house and bring a hammer and nails and Uncle Flavy nail the Mass-step. We then loose off and while we going Uncle Flavy tell me when we get back home he gwine leh me bag off the Copra, carry to Pomeroon, and sell it, pay me off,
20 then I can go weh I like. I turn and seh Uncle Flavy I work with you so long, and now to the long run look wah you is doing to me. Ah then tell he Uncle Flavy you might regret, you gwine sorry. Uncle Flavy den ask me how ah mean and ah seh wherever ah go ah gwine mek you daughter follow me. At that time he was sitting on the Engine covering and I was steering at the stern. After ah tell him so, he jump from the covering to de footboard and pick up de gun saying "Ah gwine shoot you so
30 and so" and he break de gun and put in a load. I say "Oh me Gad uncle Flavy, wha you gwine do" and ah leave from the stern and jump to weh he had de gun. We both hold de gun and we commence to wrestle foh de gun. Whilst wrestling he fell down on de footboard, but I din fall. Whilst he was in de boat I was over him trying to tek away de gun, an de gun go off. I even thought I did get shot, but I ain't feel nothing. He still was holding de barrel but I succeed in getting de gun
40 from his hand. Well then ah get mad or something and ah remember hitting he with de gun in his head. After that ah throw de gun overboard. After ah throw the Gun overboard ah remember he say twice, "Gwendoline my daughter, you is the cause of dis". He look to me den that he was dying, and he say to

Exhibits
"N"
Statement of Defendant.
25th August 1959 - continued.

me then, "Sonny, throw me overboard". Ah remember dat ah tie a piece ah rope round he neck but ah can't remember why ah do it, but ah cut de rope from de main-sheet rope an den throw him over-board. An then throw de bag wid de shots overboard. De bag mek out of Baboon Skin. Ah tek down de sail and stop de motor. After dat and den throw over de anchor wid de chain. Ah den sit down and when a come to meself, ah go back and pull up de anchor and ah find dat de anchor gone. Well ah hoist de sail up and go down ashore, and ah tek out de mass and plant it in de mud, and ah spend deh bout one hour and den ah try to wok de Engine but ah din get it to wok. Well then ah decide to walk back to Cattle-Beach because no tools was in de boat. All de tools did lef at Cattle-Beach. Ah return to Cattle-Beach and tell de children Grandmother who is his father-in-law and mother-in-law what happen, but ah decide to tell dem ah lie and tell dem Uncle Flavy drowned. Den ah send and call Uncle Flavy children and tell dem de said thing dat dey father drowned. Den me and de children went back to Uncle Flavy house. Ah spend ah lil time deh, den myself, Gwendolin, Lionel, Antonio D'Guiar, and ah Indian fellow name Ignatius went back foh de boat, and bring it to Cattle-Beach, den Uncle Flavy father-in-law tell me that ah must come to Charity and report right away. Myself, Antonio D'Guiar, Ignatius, and Lionell, leave Cattle-Beach around 5 o'clock to come to Charity and report and we reach Charity around quarter past four de next morning. Well ah mek de report that Uncle Flavy fall overboard and drowned, den ah leave and go down back to Cattle Beach and was at Cattle Beach when Leonard Da Silva come deh and seh he arrest me for Murder, and he tek me back in the boat and bring me hey to Charity.

QUESTION

You said about 3 o'clock the morning yourself and Uncle Flavy left Cattle Beach to hunt; Which morning do you refer to and who is Uncle Flavy.

Answer

Uncle Flavy is Flavius DaSilva and the morning is Friday 21st Aug. 1959.

Exhibits

"N"

Statement of Defendant.

25th August 1959 - continued.

Question:

When you told uncle Flavy that wherever you go, you were going to make his daughter follow you who of his daughters were you referring?

Answer:

I was referring to his daughter Gwendoline.

Question:

When you said, Uncle Flavy looked at you and said "Sonny throw me overboard," who is "Sonny" to whom
10 was he referring?

Answer:

Uncle Flavy sometimes call me Sonny and sometimes call me John, so he meant me.

Question:

You said Antonio D'Guiar, Ignatius, Lionel and yourself left Cattle Beach around 5 o'clock to report. To whom did you leave to report? And on which date this occurred?

Answer:

20 We leave to report to Charity Police Station the said Friday 21st Aug. 1959. De time was 5 in the afternoon.

John De Freitas
25.8.59.

Taken by me at Charity Police Station between 5.30 p.m. and 6.30 p.m. on 25.8.59 and read over to John De Freitas in the presence and hearing of 4338 Det. Cpl. Smartt.

John De Freitas said that it is true and correct
30 and signed his name to it and initialled the corrections in our presence.

O. Simpson, A.S.P.
25.8.59.

Witness:

1. W. Smartt, Det. Cpl. 4338.