GUNASIRI AND OTHERS (APPELLANTS) AND ALBARA DURA ANANDA (PETITIONER) V. THE STATE

COURT OF APPEAL,
A DE Z. GUNAWARDANA, J., AND AMEER ISMAIL, J
C A No 67 – 70/88 – REV. APPLN 384/90 – M C GALLE 1015
NOVEMBER 12, 13, 14, 15, 16, 19, 20, 1990

Criminal Procedure Code – Section 216, – Verdict of the Jury confusing, incoherent and inconsistent with the law – Power of Court to discharge the Jury – Whether plea of autrefois acquit or convict can be raised – Defence of alibi – Dock statement – Required direction – Accused absconding – Trial in absentia – Whether second inquiry before trial necessary.

The five accused-appellants were indicted before the High Court on three charges viz (1) of being members of an unlawful assembly, (2) for committing murder of one person, whilst being members of the said unlawful assembly, and (3) for committing the murder of the said person, on the basis of common intention. At the first trial, Foreman of the Jury, at first informed the Court that all accused-appellants were guilty of all the charges, on a divided verdict of 5 to 2 However, before the said verdict was signed, the Foreman informed the Court, that he had made a mistake and that the verdict of the Jury is unanimous According to that verdict 1st accused-appellant was guilty of counts (1) and (2) and not guilty on count (3), but guilty of attempted murder , the 2nd accused-appellant was guilty of count (1) and (2) not guilty of count (3), but guilty of causing grievous injuries with the intention of committing attempted murder At this stage questioning of the Foreman was abandoned, in view of the change in the division and because the verdict was inconsitent with the law The Jury was discharged and a second trial was held, at which all the accused-appellants were convicted of all the said charges.

Held :

(1) that where the verdict of the Jury is confusing, incoherent and inconsistent with the law, " the interests of justice " as contemplated under Section 216 of the Code of Criminal Procedure would require that the Jury should be discharged In such a situation, a plea of *autrefois acquit or convict* can not be taken, as there is no verdict in the eye of the law

(2) that where an accuesd has taken up a plea of alibi in his dock statement, it is sufficient to direct the Jury that benefit of any reasonable doubt arising from such dock statement, be given to the accused

(3) that when an accused keeps away from Court deliberately, without attending the trial, it is not necessary to hold a second inquiry before the trial commences, where the Court has already satisfied itself after inquiry, that the accused is absconding.

Cases referred to :

1 *The Queen v. Handy (1959)* 61 NLR 265
2. *The Queen V Arnolis Appuhamy* 70 NLR 256
3 *Rajepakse and others V. The State* 77 NLR 12
4. *Yahonis Singho v. The Queen (1966)* 67 NLR 8
5. *Damayanu v. The Queen (1969)* 73 NLR 61

APPEAL from, and Application in Revision of judgment of the High Court

Ranjith Abeysuriya, P. C. with Lasantha Wickrematunga, Miss Gayomie de Silva and Achala Wangappuli for 1, 3, 4 and 5 accused-appellants.

Aloy Ratnayake with *Janaka de Silva* for 2nd accused-petitioner.

C. R. de Silva, S S.C. for the State.

Cur. adv. vult.

December 12, 1990.

A. DE Z. GUNAWARDANA, J.

The five accused in this case were indicted in the High Court of Galle on the following charges : –

1. That on 17th November, 1982 at Ratgama, they were members of an unlawful assembly the common object of which was to cause the death of T. Marthelis de Silva an offence punishable under Section 140 of the Penal Code.

2. That at the time and place aforesaid and in the course of the same transaction one or more members of the said unlawful assembly caused the death of the said T. Marthelis de Silva, and thereby committed murder, which offence was committed in the prosecution of the said common object and the said accused-appellant being members of the said unlawful assembly at the time the said offence was committed, are thereby guilty of an offence punishable under Section 296 read with Section 146 of the Penal Code.

3. That at the time and place aforesaid, and in the course of the same transaction, the said accused-appellants caused the death of the said T. Marthelis de Silva and thereby committed murder an offence punishable under section 296 read with Section 32 of the Penal Code.

After trial, the jury by their unanimous verdict, on 11 7.1988, found all the accused guilty, of all the charges aforesaid. At the trial only the 1st, 3rd, 4th and 5th accused were present. Therefore they only have appealed against their convictions and sentences. The 2nd accused who was tried in absentia, has later moved in Revision in C.A. application No. 384/90 and this Court had issued notice on the Respondent, the Hon. Attorney-General. The Counsel for the 2nd accused-petitioner urged that the said Revision application be also taken up together with the said Appeals of the other accused-appellants. Accordingly both the said Revision Application and the said Appeals were taken up for argument together, before us.

The case for the prosecution was that on 17th November, 1982, the deceased Marthelis had gone to Galle in his car and was returning home at about 1.30 p.m., driving his Morris Minor car, with the witness Pathmasiri in the front seat and his two sons, witness Saman Kantha and Susil Kantha in the rear seat. On the by-road leading to their house at Rathgama, near the Agricultural Centre, the 1st and 5th accused-appellants have suddenly jumped on to the road, from the land on which the Bank is situated. Both were armed with guns. The 1st accused-appellant had aimed and fired at the car, but that shot had not struck anybody. Then the deceased had got down from the car and had started walking towards the rear of the car. At that time the 2nd accused-appellant who was with the 3rd accused-appellant, both of whom were armed with guns, in the land where the Bank was situated, had aimed and fired at the deceased. That shot had struck the deceased. Then the deceased had come back and sat in the driving seat. Thereafter the 1st, 2nd, 3rd and 5th accused-appellants have come near the car. The 4th accused-appeallant who was armed with a short barrel gun had advanced towards the deceased from rear of the car. The 1st accused-appellant had then pulled out the deceased from the car and shot him at close range. When that happened, the witnesses have run away from the scene.

This case was taken up for hearing for the first time in the High Court, on 22nd June, 1987. On the second day of the said hearing it had been

brought to the notice of the Court, by the State Counsel, that one of the Juror's is residing near the place of the incident. Therefore on 23.6.1987, the jury was discharged and a fresh trial was ordered.

Thereafter on 13.6.1988 the case was taken up for trial for the second time. At the said hearing the 2nd accused-petitioner was absent and was therefore tried in absentia. At the conclusion of the said trial on 17.6.1988, the Foreman of the Jury was asked what the verdict of the Jury was, in respect of each of the accused for the respective counts they were charged with. Then the Foreman of the Jury replied to questions by officiating Registrar of the High Court and gave the verdict of the Jury in respect of each of the accused and in respect of each of the counts. According to the said answers it appears that the Jury had found all the accused guilty of all the counts they were charged with, on a divided verdict of 5 to 2. However soon afterwards, before the verdict was signed, the Foreman of the Jury has informed the learned Judge that the Foreman had made a mistake and that he would like the officiating Registrar to question him again. Upon the three counts against the 1st accused-appellant being read, separately to the Foreman, he had indicated that the verdict of the Jury is unanimous and that by a unanimous verdict the Jury found 1st accused-appellant guilty of count 1 and 2 and not guilty of count 3 as indicted, but guilty of the lesser offence of attempted murder. On being questioned regarding the counts against the 2nd accused-petitioner, the Foreman has informed the Court that by an unanimous verdict they found the 2nd accused-petitioner guilty of count 1 and 2, and not guilty of count 3 as indicted, but guilty of the lesser offence of causing grievous injuries with the intention of committing attempted murder. At this stage the questioning of the Foreman had been abandoned. The trial Judge had discharged the Jury as the Jury has earlier brought in a divided verdict of 5 to 2 and has later changed the verdict to be unanimous, in respect of the three counts on which the verdict against 1st accused-appellant and 2nd accused-petitioner were recorded. It is also to be noted that in his Order dated 28.6.1988, where the learned trial Judge allowed an application of the State Counsel for a special Jury, it is stated that two jurors who were seated in the back row had tried to attract the attention of the Foreman when he was delivering the first verdict, but the Foreman had disregarded them and carried on. It is further stated there that the offence the Jury found 2nd accused-appellant guilty is not one found in the law books.

In view of these circumstances, the learned Counsel for Accused-Appellants took up a plea of autrefois convict, and argued that the second trial at which the said accused have been convicted and from which this appeal is preferred, was illegal. He cited the case of *Handy*[1]. The appellant in that case was tried on two charges viz. the murder of one person and the attempted murder of another. The Jury brought in a verdict of not guilty in respect of both the said charges. The trial Judge then immediately stated : "Don't record this verdict. I refuse to accept this verdict". The Judge thereafter made an Order wherein he stated that in his view the defence was palpably false and that the Jury had not understood his directions on the law and on the evidence. Therefore he discharged the Jury and ordered a fresh trial at which the appellant in that case was convicted on both the former charges. In an appeal to the Supreme Court against the said conviction, the appellant was acquitted, and it was held, that the Order discharging the Jury was unjustified and the Court stated as follows :–

> " In the instant case the Jury having, as they are empowered by the Code to do (S 245 (*a*)), decided which view of the facts is true and returned a verdict which under that view ought according to the directions of the Judge to be returned, it cannot be said that the interests of justice require that they should be discharged without their verdict being recorded as provided in Section 249..... "

The learned Counsel for the accused-appellants also cited the case of *The Queen v. Arnolis Appuhamy*[2]. The appellant in this case was indicted on two counts, with the murder of one Muthu Banda and with the attempted murder of one Nanhamy. At the first trial the Jury brought in an unanimous verdict of not guilty on the murder charge but found the accused guilty of the lesser offence of culpable homicide. On the second count the accused was acquitted. When asked to explain the basis of their verdict by the trial Judge, the Forman stated that they found the accused guilty of culpable homicide on the basis of exceeding the right of private defence. Then the learned trial Judge pointed out that he had not directed the Jury on the law regarding private defence, and that they should have followed the law as he gave it to them. He expressed the view that the Jury has come to a conclusion on a matter they were not addressed on and on which there was no evidence led. Therefore he discharged the Jury and ordered a re-trial. However H. N. G. Fernando, C.J. having considered the facts and circumstances of the case, stated.

" It is perfectly clear that the learned Commissioner disagreed with the unanimous verdict at the earlier trial because in his opinion the evidence did not justify the findings of the Jury that the accused had fired his gun in self-defence-the learned Commissioner had himself not directed the Jury on the matter of self-defence. But with respect, it seems to us that the defence could properly arise..... Had the learned Commissioner appreciated this aspect of the matter and acted according to law, the interests of justice would have been served far better than they are in the ultimate result. "

Fernando, C.J., further pointed out that Section 230 of the Criminal Procedure Code does not entitle the presiding Judge to discharge the Jury in a case in which he disagrees with the view of the facts taken by the Jury.

It is important to note here that in both the above cases the juries have been discharged as the learned trial Judges have disagreed with the verdicts. However, in the instant case the position is different, as the Jury in this case has been discharged as they appear to have been confused and because they have brought in a verdict not tenable in law.

The learned Senior State Counsel cited to us the case of *Rajapakse and others v. The State*[3]. which is more in accord with the facts of the instant case, and which has considered the above stated two cases and other relevant authorities. In this case five persons were tried upon an indictment charging them on seven counts. The Jury convicted all five accused on the first count of unlawful assembly, on the 2nd count of mischief committed by one or more members of the unlawful assembly, and on 3rd count of the murder of one Muthuwa committed by one or more members of that unlawful assembly. The 4th count was also a charge of murder of one Elli by one or more members of the same unlawful assembly, but on this count the Jury returned a verdict of culpable homicide only against the 4th and 5th accused. Upon the verdicts being returned the State Counsel informed Court that the findings of the Jury on count 4 and certain other counts indicated some confusion in the minds of the Jury and suggested that they be asked to reconsider their verdict. The counsel for the defence did not approve of the suggestion of the State Counsel and moved for a discharge of the Jury and for an order of retrial. The learned Commissioner refused the defence application and re-directed the Jury. However after few minutes of the Jury retiring after the fresh directions, the learned

Commissioner not being satisfied with the course of action he had taken, recalled the jury and discharged them. At the second trial a plea of *autrefois acquit* was taken, but was rejected. At the conclusion of the second trial the Jury brought in a verdict of guilt against all the accused in respect of count 1 to 4.

On a consideration of the verdict at the first trial it is clear that the Jury had not understood the difficult topic of vicarious criminal liability. They having found all accused guilty of the murder of Muthuwa on the unlawful assembly count, found only the 4th and 5th accused guilty of the murder of Elli on count 4, which was also on the basis of the same unlawful assembly. On the finding made by the jury on count 4, it was incumbent on them to have held that the other accused were also liable for causing the death of Elli. However their failure to do so indicated that they had not understood the law. This misunderstanding could well have extended to count 3. Hence, H.N G. Fernando, C.J. stated :-

> "We ourselves think that when there is established such confusion in the minds of the Jury as was obviously present in this case, it is quite unsafe to accept from that Jury a verdict involving the imposition of sentences of death on five persons. In such a situation it is eminently in the interests of the prisoners against whom so grave a verdict has been returned that they be permitted the advantage, which their Counsel sought, of a fresh trial by a different Jury."

Having stated so, Fernando, C. J. went on to hold that the Jury was properly discharged in that case in the exercise of the powers conferred by Section 230 of the Code. It was further held :

> "That being so, there was in law no verdict upon which a plea of *autrefois convict* could be based; and it is nearly absurd to think that a plea of *autrefois acquit* could be maintained considering that the Jury returned a verdict of murder against all five prisoners on one of the counts."

In the instant case too the verdict brought after the first trial indicated that the Jury were confused. At first the Foreman of the Jury informed Court that they were divided 5 to 2. However, after the verdict was recorded in full, as pointed out earlier, Foreman stated to Court that he had made a mistake and that the verdict indicated for the second time in respect of count 3 on the basis of common intention against 1st

accused-appellant was one of attempted murder of the deceased Marthelis. This finding is in conflict with their verdict on count 2 against the 1st accused-appellant where they found him guilty of the murder of the deceased Marthelis, on the basis of unlawful assembly. In addition, the finding of the Jury, in respect of count 3 against the 2nd accused-petitioner, that he was guilty of committing grievous hurt with the intention of causing attempted murder, is a verdict untenable in law. Thus we see that the said verdict of the Jury is confusing, incoherent and inconsistent with the law.

In such a situation, we are of the view that, "the interests of justice" as contemplated under Section 216 of the Code of Criminal Procedure would require that Jury should be discharged.

It has also to be noted here that in such circumstances, as was pointed out in *Rajapakse's* case, "There was in law no verdict upon which a plea of *autrefois convict* could be based". Hence, the contention of the learned Counsel for the accused-appellants, that such a plea was available in this case would fail.

The learned Counsel for the accused-appellant submitted that the learned trial Judge has failed to give adequate directions to the Jury on common murderous intention, and that as a result the Jury may have thought that a mere agreement to commit a criminal act would have been sufficient to find the accused guilty. However, he conceded that the trial Judge has in numerous instances referred to common intention, and has given several illustrations to explain to the Jury what common intention means. The learned Counsel for the accused-appellant submitted further that even if full credence is given to the two eye witnesses, they have testified to only seeing the 1st accused-appellant and 2nd accused-petitioner firing their guns. Furthermore he pointed out that, although all five accused were armed, the Doctor was categorical in his evidence that only four shots have struck the deceased, one on the head, two on the mouth and one on the left leg. In addition, the Doctor has testified to the presence of five stab injuries, which according to him could have been caused by the same weapon. The learned Counsel submitted that, in the light of those facts it is difficult to assume that all the accused entertained a common murderous intention. Therefore it was necessary for the trial Judge to have directed the Jury on the requirement to prove common murderous intention.

The learned Senior State Counsel submitted that the learned trial Judge had explained in detail what common intention means and has given several illustrations to the Jury. He has in explaining what murder is, has stressed the need to prove murderous intention as an essential ingredient of the offence. The trial Judge in that context has elaborated on the difference between similar intention and common intention, with examples. He has dealt with common object with reference to illustrations, and distinguished the difference between common intention and common object. He has highlighted the fact that in the case of common object intention need not be shared whilst in the case of common intention it is otherwise. We note that at page 920 the learned trial Judge has stressed that it is necessary to prove in the case of common intention, that there was mental sharing of the intention. He has directed the Jury at page 931 that if they find that there was no common intention, then the accused will be guilty only for their individual acts. Having said so, he has directed the Jury to ascertain whether the accused have acted with a common murderous intention and stated as follows :–

"තමුත්තාත්සේලාට පළමුවෙන්ම චේතනාව යොයා බලන ආකාරය මම කියා සිටියා. මරණය සිදුකිරීමේ පොදු චේතනාවක් ඇතිව ක්‍රියා කළාද කියල තමුත්තාත්සේලා යොයා බැලිය යුතුයි"

The learned Senior State Counsel submitted that the evidence in this case showed that accused-appellants have acted on a concerted plan, and that in the circumstances the only inference that can be drawn is that all the accused-appellants entertained a common murderous intention. He adverted to the fact that all five accused were armed with guns and to the manner in which the deceased was attacked. The fact that all five accused converged upon the deceased's car as soon as it was stopped and thereafter continued the attack, he submitted, clearly showed that the accused were acting in concert, according to a pre-conceived plan, to cause the death of the deceased. He also pointed out that the veracity and credibility of the two eye witnesses have been clearly established as they have withstood the cross-examination well and no material contradictions or ommissions were marked in their evidence. He submitted that, therefore there was clear and cogent evidence of common murderous intention, on the facts proved in the case.

Having considered the above stated matters carefully, we are of the view, that the directions given by the trial, in regard to common murderous intention, are adequate in the circumstance of this case and no material prejudice has been caused to the accused-appellants

The 4th accused-appellant has made a dock statement in this case. In that statement he had denied any knowledge of this incident and has stated that he was at Naula, in Matale District, at his wife's house at the time the incident is alleged to have taken place. When he was there his brother had come and asked him to hide because the police would assault him, as he had been implicated in the murder of the deceased Marthelis. The learned Counsel for the accused-appellant submitted the learned trial Judge has failed to give adequate directions to the Jury, regarding the said statement, in that he failed to refer to the intermediate position, where they neither believed nor disbelived the 4th accused-appellant's statement. The learned Senior State Counsel submitted that, the general directions in regard to the burden of proof, the directions given to Jury to give the benefit of any reasonable doubt to the accused-appellant and in particular the specific direction given to the Jury to give the benefit of any reasonable doubt arising from the said dock statement, would in the circumstances of this case, suffice.

We may also point out that in *Yahonis' case*[4] on which the learned Counsel for accused-appellant placed reliance, the alibi was supported by an independent witness who gave evidence on oath and was subject to cross-examination. In the instant case the only evidence of the alibi came from the unsworn dock statement of the 4th accused-appellant. Although the 4th accused-appellant could not be subject to cross-examination when he made the dock statement, the learned State Counsel who conducted the trial had sought to mark a contradictory statement made by him to the police in regard to his whereabouts on the day of the incident. However this application was rightly refused by the learned trial Judge. Nevertheless, all these go to show the inferior quality of the evidence upon which the 4th accused-appeallant sought to establish that he was elsewhere, at the time the offence was committed.

In *Damayanu's case*[5], which considered *Yahonis' case,* H. N. G. Ferando C.J. has observed :

> " It will be seen that the mis-direction or non-direction in that case (Yohanis' case my interpolation) consisted in the ommission of the trial Judge to direct the Jury to consider whether the defence evidence may create a reasonable doubt as to the guilt of an accused person or as to the truth of the prosecution case, even if the Jury were unable to accept the defence evidence as being

probably true. In the instant case, however, the Jury were told quite clearly that they must acquit the first three of the accused if the evidence of the 2nd accused's wife raised a reasonable doubt as to the participation of those accused in the assault. That being so, there was not here the same ommission as in the case of *Yahonis Singho."*

In the instant case too the position appears to be similar were the learned trial Judge has given a specific direction to the Jury to give the benefit to the 4th accused-appellant, of any reasonable doubt arising from the said dock statement. Therefore we are of the view that directions given to the Jury in this regard, are adequate, in the circumstances of this case.

The learned Counsel for the 2nd accused-petitioner, pointed out that although the Order to proceed in absentia against the 2nd accused-appellant was made on 19.1.1988, the trial, to which this appeal relates, had in fact commenced on 4.7.1988. Therefore, he submitted, the learned trial Judge should have held a fresh inquiry before the present trial commenced to ascertain whether the 2nd accused-appellant is still absconding. At the outset itself it must be pointed out that the learned Counsel failed to draw our attention to any provision of law which necessitated such a requirement.

In this context it would be appropriate to look at the circumstances under which the learned trial Judge came to make the said Order. It is evident from the record that on the 8.9.1987, which was a date fixed for trial, the 2nd accused-petitioner was absent for the first time. When his two sureties were questioned by Court they could not give a satisfactory explanation as to the whereabouts of the 2nd accused-petitioner However a medical certificate was produced. On 22.9.1987 when the case was called, the 2nd accused-petitioner was absent. The police have reported that he was not at home and have recorded a statement from his wife. They have told the wife to inform the 2nd accused-petitioner to appear in Court. The sureties who were present have asked for time to produce the 2nd accused-petitioner When the case was called on 29.9.1987 the sureties have informed Court that they met the accused and the accused told them that he cannot come before the trial date. Thereafter, a warrant was issued to the Kotahena Police to arrest and produce the 2nd accused-petitioner as he was said to be at Kotahena. On 7.10.1987 it was reported to Court by the surety that he went with the officers of the Kotahena Police

but could not find the 2nd accused-petitioner. When the case was called on 9.11.1987 2nd accused-petitioner was absent and inquiry into confiscation of the security furnished by the sureties was fixed for 18.11.1987. After several postponements the said inquiry was held on 14.12.1987 and the security was confiscated. On 4.1.1988 the case was called but on that date too the 2nd accused-petitioner was absent. The inquiry into the absconding of the 2nd accused-petitioner was taken up on 19.1.1988. The evidence of two police officers regarding their efforts to apprehend the 2nd accused-petitioner, was recorded. Thereafter the learned trial Judge, satisfied himself that the 2nd accused-petitioner was absconding, and made Order, to proceed to trial in the absence of the 2nd accused-petitioner.

The steps taken before the Order to proceed against the 2nd accused-petitioner *in absentia* was made, was recounted at length to show that the absence of the 2nd accused-petitioner was not a mere accident but was a deliberate act on the part of the 2nd accused-petitioner. Furthermore the said journal entries show the efforts made by Court to secure the presence of the 2nd accused-petitioner and ultimately even the security was confiscated. In the light of these circumstances it would have been futile for the Court to hold another inquiry just before the trial was taken up on 4.7.1988, as suggested by learned Counsel for the 2nd accused-petitioner.

The learned Counsel for the 2nd accused-petitioner also contended that the said accused was denied the substance of a fair trial. He pointed out that Counsel had been assigned for all the accused on 8.7.1986, the day the indictment was served. It must be noted here that all the accused have asked for assigned Counsel, and they have consented to the nomination of Mr. Vidanepathirana, as assigned Counsel. Thereafter on 23.6.87 Mr. K. D. P. Gunaratne had been nominated as assigned Counsel for all the accused. According to the Journal Entry on 4.1.88 the said Mr. Gunaratne had handed back the papers to the Registrar. The Journal Entry of 21.3.88 indicate that Miss Indrani Jayaweera had appeared as assigned Counsel. It is seen from the Journal Entries that, from that day up to the conclusion of the trial she had appeared as assigned Counsel. However, the learned Counsel for the 2nd accused-petitioner submitted that not a single question had been asked from any witness on behalf of the 2nd accused-petitioner. There was also no address to the Jury on his behalf.

It may be said that the accused-petitioner was responsible in no small measure for bringing upon himself this situation, by absenting himself, deliberately. It is appropriate to note here, that in para. 7 of his petition to this Court he has stated that he, "will not be able to establish his *"bona fides"* before the High Court of Galle, as regards his absence". This may indicate that he had no valid reason to absent himself from the trial. He also had the right and the opportunity to have himself represented by a lawyer at the trial, if he was not satisfied with the assigned Counsel and even if he did not want to come to Court. This too he has not done

In this context it must be pointed out that it is not clear from the brief as to whether the Counsel assigned concurred with the defence and the addresses made by the Counsel who appeared for the other accused, as was done by the Counsel for the 2nd accused-petitioner, who in addition to his submissions, concurred with the submissions made by the Counsel for the other accused-appellants, in this Court.

Upon a careful consideration of the evidence in this case, it appears to us that the evidence available against the 2nd accused-petitioner is much the same as against all the other accused. It is the same two eye witnesses who have testified against all. All the accused have been known to the witnesses. The opportunity and the distance at which they observed the criminal acts of the accused were the same, as both witnesses were together when they saw the incident. In addition there was no distinction in the weapons that each accused possessed, because according to the witnesses, they all had guns. Furthermore the prosecution relied on vicarious liability to bring home the guilt to the accused.

On a consideration of the totality of the evidence in this case it seems to us that the case against all the appellants is a formidable one, as it is based on clear and cogent evidence. The evidence of the eye witnesses have been corroborated by the medical evidence that firing had been from a very close range. No material contradictions were marked in their evidence. The witnesses have identified the accused with certainty because they were known to them and they were close to the place of the incident, which took place in broad day light. Thus there was ample opportunity for the two eye witnesses to accurately and properly identify the accused. Therefore we are of the view that the verdict of the Jury is reasonable and well founded on the evidence.

We see no reason to interfere with the verdict and sentences in this case. The appeals of the 1st, 3rd, 4th and 5th accused-appellant's are dismissed. The application in Revision of the 2nd accused-petitioner is also dismissed.

AMEER ISMAIL, J.– I agree.

Application dismissed