[COURT OF CRIMINAL APPEAL]

1969 *Present:* **Weeramantry, J. (President), de Kretser, J., and Wijayatilake, J.**

G. H. WILSON SILVA and 3 others, Appellants, *and* THE QUEEN, Respondent

C. C. A. Nos. 29–32 OF 1969, WITH APPLICATIONS Nos. 38–41

S. C. 6/68—M. C. Trincomalee, 9475

Charge of murder on basis of unlawful assembly—Charge of murder on basis of common intention—Summing-up—Inadequate direction on the law relating to unlawful assemblies—" Common object ", " common intention ", " similar intention "—Penal Code, ss. 32, 138, 139, 146.

The four accused-appellants and another accused, who was the 5th accused at the trial, were indicted on three counts. The first count alleged that the accused were members of an unlawful assembly along with others unknown, the common object of which was to commit murder by causing the death of one L. S. The second count charged the accused with murder on the basis of unlawful assembly. The third count charged the accused with murder on the basis of common intention. The four accused-appellants were found guilty by the jury on all three counts. The fifth accused was acquitted.

The deceased had sustained a total of sixteen injuries, one only of which, a head injury alleged to have been inflicted by the 3rd accused, was necessarily fatal. The other fifteen injuries, all of which were on the hands and legs, were not necessarily fatal, even considered cumulatively.

The entire case for the prosecution rested upon the evidence of an alleged eye-witness, who stated that the attack on the deceased occurred through the deceased being trapped on the road between a lorry driven by the 5th accused and a tractor driven by the 2nd accused. To the tractor there was attached a trailer in which were the 1st, 3rd and 4th accused and three unknown men. The 3rd accused dismounted and struck the deceased on the head with a weapon like an iron rod. The 1st, 2nd and 4th accused, all of whom were said to have had similar weapons, then attacked the deceased, and the three unidentified persons also joined in the attack. The only specific injury alleged against an individual accused person was the injury inflicted on the head by the 3rd accused. Collective responsibility based on unlawful assembly or common intention was the only basis on which any of the other accused could be held guilty of the offence of murder.

Apart from some references to the wording of the counts in the indictment, the only direction given by the Judge on the law relating to unlawful assembly was that an unlawful assembly is an assembly of five or more persons the common object of which is to commit an offence.

Held, (i) that the dependence of the prosecution on the principle of unlawful assembly as one of the methods of bringing home guilt to the accused rendered it necessary to explain fully to the jury what such an assembly was, when it commenced and how inferences are drawn in regard to its common object. It was also necessary to explain the consequences of being a member of such assembly having regard to both limbs of section 146 of the Penal Code, for it was in terms of both limbs of that section that the indictment was framed. The attention of the jury should have been drawn to the contents of section 139 of the Penal Code which states the circumstances when a person becomes a member of an unlawful assembly.

(ii) that, consequent on the acquittal of the 5th accused, it became essential for the prosecution to prove that the unknown persons in the trailer also shared the common object of murdering the deceased.

(iii) that, even upon a total acceptance of the eye-witness's version, the question still arose whether there was certainty in regard to the common object of the assembly, having regard to the fact that all but the fatal injury were on the hands and legs, thereby rendering it at least doubtful whether the common object of the assailants was not to assault the deceased and maim him rather than to kill him. This factor would again raise the question whether every member of the attacking party shared a common murderous object or whether some at any rate had it in mind to inflict injuries far less serious in character.

This raised also the question of the possibility that the person who struck the fatal blow may have exceeded his mandate and caused more harm than was known to be likely to be caused in the prosecution of the common object.

(iv) that the Judge failed to marshal the evidence against each accused so as to assist the jury to consider each case individually.

(v) that adequate direction was not given to the jury on questions of "common object", "common intention" and "similar intention".

APPEALS against four convictions at a trial before the Supreme Court.

G. E. Chitty, Q.C., with *M. A. Mansoor* and *G. E. Chitty* (Jnr.) for the 1st accused-appellant.

E. R. S. R. Coomaraswamy, with *C. Chakradaran*, *T. Joganathan*, *Kosala Wijayatilake*, *M. S. Aziz*, *S. C. B. Walgampaya* and *P. H. Kurukulasuriya*, for the 2nd accused-appellant.

Colvin R. de Silva, with *E. R. S. R. Coomaraswamy*, *M. L. de Silva*, *Nihal Jayawickrama*, *Mrs. Manouri Muttetuwegama* and *I. S. de Silva*, for the 3rd accused-appellant.

Colvin R. de Silva, with *M. L. de Silva*, *Nihal Jayawickrama*, *Mrs. Manouri Muttetuwegama* and *I. S. de Silva*, for the 4th accused-appellant.

V. S. A. Pullenayegum, Senior Crown Counsel, for the Crown.

Cur. adv. vult.

September 6, 1969. WEERAMANTRY, J.—

The indictment in this case charges the four accused-appellants and another accused, who was the 5th accused at the trial, on three counts. The first count alleges that the accused were members of an unlawful assembly along with others unknown, the common object of which was to commit murder by causing the death of one Lanti Silva. The second count and third count charge the accused with murder, on the bases, respectively, of unlawful assembly and common intention.

After a trial lasting nine days these four accused-appellants were found guilty by a unanimous verdict of the jury on all three counts. In regard to the 5th accused, learned Crown Counsel intimated to the jury in the course of his address that he was not asking for a conviction, and this accused was accordingly acquitted.

It would appear that the deceased was done to death on a road which has been referred to in the proceedings as the bund road and that he had sustained a total of sixteen injuries. Of these, the first injury, a head injury with underlying fractures, was the only injury which was necessarily fatal. The deceased sustained fifteen other injuries comprising

fractures, incised wounds and several wounds of a trivial nature, all of which were on the hands and legs and, even considered cumulatively, were not necessarily fatal. Despite the gravity of the attack several of these injuries considered by themselves constituted no more than items of simple hurt.

The attack on the deceased, according to the evidence of the single eye witness Ehambaram, occurred through the deceased being trapped on the bund road between a lorry driven by the 5th accused and a tractor driven by the 2nd accused. To the tractor there was attached a trailer in which were the 1st, 3rd and 4th accused and three unknown men. The 3rd accused dismounted from the tractor saying " Today Lanti Silva has got caught and he should be assaulted till he is killed, " and struck the deceased on the head with a weapon like an iron rod. The 1st, 2nd and 4th accused all of whom are said to have had similar weapons then attacked the deceased, and the three unidentified persons also joined in the attack. When the deceased raised cries the 2nd accused raced the engine of the tractor presumably to drown these cries. Throughout the proceedings the 5th accused apparently remained seated in the driving seat of the lorry.

There was also evidence given by the mistress of the deceased to the effect that the previous day the 1st, 2nd and 3rd accused had uttered threats against the deceased, some of those threats being in the presence of the 4th accused. No motive was adduced for this offence but there was a somewhat vague suggestion that the deceased had shown displeasure at the elopement of the 2nd accused with the daughter of the deceased's mistress by her legal husband.

Although weapons like iron rods were referred to, no such weapons were produced. The prosecution did however produce two wooden clubs alleged to have been found about 200 yards from the spot, which, according to the medical evidence, were sufficient to cause the head injury and the other fractures.

It will be seen that the only specific injury alleged or proved against an individual accused person was the injury on the head by the 3rd accused. Collective responsibility based on unlawful assembly or common intention was the only basis on which any of the other accused could be held guilty of the offence of murder, or indeed of any offence graver than simple hurt.

The evidence of Ehambaram the sole eye witness was seriously challenged by the defence who submitted that Ehambaram did not see such an incident at all and indeed hinted that he might well have been the assailant or one of the assailants of the deceased. It was also established that Ehambaram had not told the police in a statement made on the 16th that he was a witness to the assault and had only made a belated statement on this question.

The learned trial judge has in this case addressed the jury at length on the facts and has very fairly referred to the infirmities in the evidence of Ehambaram resulting from his statement of the 16th, and the fact that the entire case rested upon the evidence of this one witness. He has made it abundantly clear that if they had doubts about the evidence of Ehambaram the entire case for the prosecution would fail and the accused would be entitled to an acquittal.

In regard however to certain questions of law that arise in this case, it appears to us that there is substance in the contention of the appellants that on some material matters there has been inadequate direction tantamount to a non-direction in view of the several legal concepts and principles which in the circumstances of this case a jury would be called upon to understand and apply.

The dependence of the prosecution in this case on the principle of unlawful assembly as one of the methods of bringing home guilt to the accused rendered it necessary to explain fully to the jury what such an assembly was, when it commenced and how inferences are drawn in regard to its common object. It was also necessary to explain the consequences of being a member of such an assembly having regard to both limbs of section 146, for it was in terms of both limbs of that section that the indictment was framed.

However the attention of the jury was at no stage drawn to the contents of section 139 which states how a person becomes a member of an unlawful assembly nor was their attention drawn to the requisite of intention therein contained. Their attention was also not drawn, beyond a reading of the relevant count in the indictment, to the fact that liability under section 146 arises in two ways, nor were they told what these ways were. This Court has pointed out, in *Andrayas v. The Queen*[1] that criminal liability for an offence committed by one member of an unlawful assembly attaches to another only when the existence of a certain element or elements other than mere membership has been established, such elements being specified in section 146. It was therefore necessary that the provisions contained in this section should have been explained to the jury. The jury were not instructed as to the meaning of the expression common object in relation to an unlawful assembly. They were not told when an offence is committed in prosecution of such a common object nor were they given any instruction as to the meaning of "offences such as members of the assembly knew to be likely to be committed in prosecution of that object"[2]. Indeed, apart from some references to the wording of the counts in the indictment, the only direction on the law relating to unlawful assembly was that an unlawful assembly is an assembly of five or more persons the common object of which is to commit an offence. With much respect, this would appear to be inadequate, particularly in the circumstances of this case, and we would draw attention in this regard to the fact that even if the jury had the benefit of a reading

[1] *(1964) 67 N. L. R. 425.* [2] *The King v. Sellathurai (1947) 48 N. L. R. at 574.*

of sections 139 and 146—a benefit which they did not have—still such a reading of sections would according to the decisions of this Court be inadequate to bring home to the lay mind a comprehension of these somewhat difficult legal concepts[1]. In the present case it would appear therefore that the jury did not have an adequate explanation of matters of law essential to their decision—a decision which may have made all the difference between murder and simple hurt in regard at any rate to all the accused but one.

Moreover, consequent on the acquittal of the 5th accused, and the reduction thereby of the number of accused persons to a figure below that required for the constitution of an unlawful assembly based on their participation alone, the questions involved in this case assumed some further complexity. It then became essential for the prosecution to prove that the unknown persons in the trailer also shared the common object of murdering the deceased. Failure to prove this matter according to the high standards the law has laid down for proof of sharing in a common object, would necessarily have resulted in an acquittal of all the accused on count one, and broken down the basis on which they were collectively charged on count two.

The Crown's statement regarding the 5th accused, at the concluding stages of the trial, had certain further consequences, on the question of common object. The jury could only be invited to acquit the 5th accused on the basis that the Crown was abandoning its position of a plan to trap the deceased between the lorry and the tractor, for if there had been such a plan he was, despite non-participation in the actual attack, just as guilty as the four others. Since the jury were not invited to approach the case on the basis of such a plan, they were in effect called upon to look upon the meeting of the vehicles and the deceased as fortuitous. In such an approach the most particular proof was called for of participation in a common murderous object by each individual occupant of the tractor and its accompanying trailer.

Furthermore, the offence in question was committed on the night after the Sinhalese New Year when according to the evidence a number of people in that area were travelling about in consequence of its being the night of a festive occasion. On such an occasion it is not unusual for people in a rural area such as this to seek a ride in a passing vehicle and the possibility had therefore to be eliminated that some of the passengers in the trailer may have been out on an innocent spree, when one or more occupants of the tractor and trailer seeing the deceased on that road quite by chance took advantage of this opportunity to attack him. This possibility merits serious consideration in view more particularly of the circumstance that the presence of the deceased on the bund road that night was itself apparently the result of a chance decision on the part of himself and Ehambaram to take that road at that particular hour. In this respect the facts of this case bear some resemblance to those

[1] *Andrayas v. The Queen (1964) 67 N. L. R. 425 ; Podisingho v. The King (1951) 53 N. L. R. at 60.*

in *The King v. de Silva*[1] where also a number of persons were charged with being members of an unlawful assembly the common object of which was to commit murder. In that case as here, the presence of the deceased at a particular spot was fortuitous and, as here, there was evidence only of specific injuries inflicted by one particular accused. The fact that there was no evidence to indicate that each alleged conspirator knew of the expected arrival of the deceased at the spot was an important factor which resulted in inclining the Court to the view that there was no evidence that death was caused in furtherance of a common object.

Another significant feature in this case was that Ehambaram, the only eye witness, was allowed to escape, although the attackers quite clearly saw him, and were there in sufficient numbers to deal with him as well. Had the attack been a pre-planned one, involving the active participation of all the passengers in the trailer, it merited consideration whether the attackers would have made a gift to the prosecution of Ehambaram who according to the evidence knew and was able to identify the accused persons.

In the circumstances of this case therefore it became specially necessary that the minds of the jury should have been particularly directed to the importance of giving the most careful consideration to the part played by the three unknown persons and that they should have realised that sharing of a common object could not be imputed to them unless the facts of the case made that an inescapable conclusion.

Arising from this it became necessary to draw attention to the fact that in regard to the three unknown persons, there was no evidence, as there was in regard to the four accused, of weapons in their hands, or of particular acts committed by them or of any threats uttered or adopted by them. No doubt the jury were entitled upon the evidence that they participated in the attack, to arrive at a finding that they shared a common object with the four accused-appellants, but their attention was not drawn to the matters just mentioned or to the fact that apart from Ehambaram's bare statement that they joined in the attack, there was no particularisation of the part played by them, as there was regarding the accused. Had the attention of the jury been drawn to these matters in the light of the legal requirement that sharing in a common object to murder the deceased must be brought home to these persons as a necessary inference from the facts, they may well have hesitated to act upon the mere general assertion that those three unknown persons joined in the attack and may well have taken the view that the alleged participation of these three was a mere flourish on the part of Ehambaram or the police to make up the requisite number.

Further, even upon a total acceptance of Ehambaram's version, the question still arose whether there was certainty in regard to the common object of the assembly, having regard to the fact that all but the fatal injury were on the hands and legs, thereby rendering it at

[1] *(1940) 41 N. L. R. 483 at 486.*

least doubtful whether the common object of the assailants was not to assault the deceased and maim him rather than to kill him. Indeed five of the injuries were apart from their triviality of a most curious kind being described by the doctor as punctures $\frac{1}{4}$ inch to $\frac{1}{2}$ inch in diameter and $\frac{1}{4}$ inch to $\frac{3}{4}$ inch in depth. This factor would again raise the question whether every member of the attacking party shared a common murderous object or whether some at any rate had it in mind to inflict injuries far less serious in character. This raised also the question of the possibility that the person who struck the fatal blow may, so to speak, have exceeded his mandate and caused more harm than was known to be likely to be caused in the prosecution of the common object.

On the question of common object the jury was given a general direction that having regard to the earlier threats, having regard to the nature of the assault and of the weapons that were used and having regard to the parts of the body on which the injuries were inflicted, the prosecution suggested that the jury would have no hesitation in coming to the conclusion that the persons who assaulted the deceased intended to cause his death or intended to cause injuries which were sufficient in the ordinary course of nature to cause death. In treating the items of evidence in this collective fashion there was a danger that the jurors would have lost sight of the important circumstances already referred to, which distinguished the evidence of participation by these unknown persons, when compared with the evidence against the four accused-appellants. Alternatively, the jury may well have been under the impression that the learned judge was here directing them in regard to the common object shared by the accused persons only, in which event they were left without directions in regard to the importance of assessing the object of the three persons unknown and with no guidance as to how this important question should be decided.

The direction to which I have referred followed immediately after the following paragraph :

> " You might think then there are only four persons but the prosecution alleges in that first count of the indictment that they were members of an unlawful assembly with others unknown. The evidence of Ehambaram is that there were three others in the tractor, and if there were three others, with these four accused in the tractor, there were seven persons, and if the common object of the unlawful assembly was to commit an offence, the requisite number is there—over five."

and was immediately succeeded by the following :—

> " If you are satisfied that *these accused people* who came out of the tractor came with that intention, then they would be guilty under count one of the offence of unlawful assembly with the common object of committing murder, and they would be guilty on the second count with committing murder in prosecution of the common object of the unlawful assembly which they knew to be likely to be committed in the prosecution of the common object. "

After a reading out of the wording of count two there then came the further direction :

> " If, gentlemen, you think that *they* did not have the murderous intention in this case—that is also a question of fact for you—then of course *they* are not guilty of murder on the second count but if you think *they* knew that death was likely to be committed in prosecution of the common object, then the offence on the second count would not be murder but culpable homicide not amounting to murder, or if you think that *they* did not even have that knowledge, then *they* are guilty of voluntarily causing grievous hurt on the second count because *they* had caused grievous hurt to the deceased. But having regard to the nature of the attack on the deceased, having regard to the threats that were uttered by some of these accused, having regard to the weapons that were used, the parts of the body that were affected, it is a matter for you to consider whether murder was committed, or culpable homicide not amounting to murder or grievous hurt."

These directions considered together may well have left the jury with an impression, which the learned judge by no means intended, that the presence of the three unknown persons was sufficient to make up, along with the four accused, the number requisite for an unlawful assembly, and that having thus disposed of the question of numbers, the learned judge was proceeding to examine the evidence against the accused persons of a sharing of a common object of murder. In the result the jurors may have been left with the impression that mere presence in the tractor along with the guilty participants would suffice to bring up the numbers to the figure requisite for unlawful assembly whereas there should on the other hand have been a clear indication that mere presence without more would not suffice in order to make them members of the unlawful assembly. Moreover the last direction would in our opinion suggest to the jury a collective approach to the assessment of evidence and in a case of this nature would tend to obscure the importance of a consideration of the evidence against individual accused, an examination of which was necessary in order to determine whether each accused shared the alleged common murderous object. Further, although there were different items of evidence indicating complicity against the several accused, such as threats uttered by some, the racing of the tractor engine by another presumably to drown the cries of the deceased, and so forth, there was no marshalling of the evidence against each accused so as to assist the jury to consider each case individually.

This brings me to another point urged on behalf of the appellants, namely, that there has been no direction to the jury as to the manner in which they should determine whether there has been an unlawful assembly. The questions whether a person is aware of facts which render an assembly unlawful, whether he intentionally joins such an assembly or continues in it, and whether the common object of the assembly is to commit an offence, are all matters which must be determined from a series of circumstances. The acts or omissions of each alleged

participant, the weapons used, the manner of their arrival at the scene, their prior utterances and so to speak every circumstance of significance in this regard would have to be evaluated. Such a task is only possible upon the basis of rules relating to the evaluation and assessment of circumstantial evidence. There has been no indication to the jurors at any point in the charge as to the manner in which circumstantial evidence is to be assessed and evaluated and there would therefore be a total failure on the part of the jurors to appreciate that they could arrive at these conclusions only if these items of circumstantial evidence pointed in their view irresistibly to the conclusion that the requisites of unlawful assembly were satisfied. If the jurors in their evaluation of the evidence relating to unlawful assembly guided themselves by any other tests, they would be proceeding upon a basis particularly unsatisfactory and dangerous in the context of attributing vicarious liability to one person for the acts of another. On the degree of proof required of the sharing of a common object, the governing principles are no different from those relating to the degree of proof of common intention, and the authorities hereinafter referred to, showing that such a conclusion must be an inescapable one, would be applicable.

It has been submitted for the appellants that common object as distinguished from common intention has not been explained to the jury who in the absence of any direction drawing their attention to this difference in phraseology between section 138 and section 32 would as laymen have been under the impression that the two expressions bore the same meaning. Charges lacking such directions have indeed been the subject of adverse comment by this Court[1] but in view of the other matters herein referred to, it is not necessary to make further reference to this principle.

Passing now to the question of common intention, there would appear, first and foremost to have been a failure to direct the jury that the inference of common intention should never be drawn unless it is a necessary inference deducible from the circumstances of the case. This was one of the matters stressed by Dias, J. in the Court of Criminal Appeal in *King v. Assappu*[2]. This principle has been laid down by the Privy Council in *Mahbub Shah's case*[3] and is also stressed by the commentators on the corresponding section of the Indian Code[4]. The same principle was stressed by L. M. D. de Silva, J. in *Fernando v. The King*[5] where that learned Judge explained that a necessary inference in this context meant an inference from which there is no escape.[6] This Court had occasion to repeat this principle in the case of *The Queen v. Vincent Fernando.*[7]

[1] *The Queen v. Ekmon (1962) 67 N.L.R. 49 at 62; The Queen v. N. K. A. Appuhamy (1960) 62 N.L.R. 484; The King v. Heen Baba, (1950) 51 N.L.R. 265.*

[2] *(1948) 50 N.L.R. 350.*

[3] *(1945) A.I.R.P.C. 118.*

[4] *Gour, Penal Law of India, 6th ed. vol. I p. 123.*

[5] *(1952) 54 N.L.R. 255.*

[6] *ibid, at p. 260.*

[7] *(1963) 65 N.L.R. 265.*

The necessity for such a direction becomes clear when one has regard to the fact that the basis for finding a common intention can only be a proper evaluation of all the circumstances of the case—an evaluation which cannot be made except upon the basis of the rules relating to the assessment of circumstantial evidence.

I have already referred, in dealing with questions of common object, to circumstances which may perhaps have rendered other constructions possible of the part played by the accused. Apart from the case of the 3rd accused, it might well have been possible for a submission to be made that the others had no common intention to commit murder but rather to commit some lesser offence, even upon the total acceptance of Ehambaram's evidence.

The finding therefore by the jury of murder based on common intention is not one which we can with conviction say had been arrived at upon a correct application of legal principles involved and it may well be that the jury in arriving at this conclusion were not conscious that it was their duty to exclude all reasonable possibilities and be satisfied that the evidence pointed in this direction alone.

Having regard to this matter it was also essential that they be advised that in the event of their being unable to say with the required degree of assurance that the accused shared a common intention, they must proceed to consider the particular injuries inflicted by each individual accused. The jurors, not having been directed on this aspect of their duties, stressed not only in *Assappu's case* but also in many other decisions of this Court, may well have been under the impression that if common intention failed, they must necessarily acquit all the accused, and such a view may well have operated to the detriment of the accused. Moreover, there is no direction at any point to the jurors that they should give their minds to the case of each accused separately in order to determine the question of his guilty participation. In *Regina v. Somapala*[1] this Court stressed that section 32 does not constructively impute to *one socius criminis* the guilty knowledge of another and that in order to decide whether an accused person to whom liability is imputed for another person's criminal acts, has committed an offence involving guilty knowledge, the test is whether such guilty knowledge has been established against him individually by the evidence. It would have helped the jury in the circumstances of this case had they been told, as suggested in *Assappu's case*, that in order to justify the inference that a particular prisoner was actuated by a common intention with the doer of the act, there must be evidence direct or circumstantial, either of pre-arrangement or a pre-arranged plan, or a declaration of common intention or some other significant fact at the time of the commission of the offence, to enable them to say that a co-accused had a common intention with the doer of the act.

[1] *(1956) 57 N. L. R. 350.*

Having regard to the direction already referred to, relating to the presence of the three unknown persons in the tractor, it became necessary also to direct the jury that the mere presence of a co-accused at the scene of crime does not *per se* prove his sharing a common intention to commit that crime. The directions by the learned judge suggestive of the presence of the three unknown persons in the tractor being sufficient to make up the number requisite for an unlawful assembly may well have left the jury without warning against the idea that mere presence sufficed in law to bring home guilty participation. In the absence of any special directions on the matter it would be reasonable to conclude that the jury in considering common intention considered it no differently from the common object involved in unlawful assembly, and on this latter point they had already had the direction referred to from the learned judge.

Finally, there was no adequate direction drawing the attention of the jury to the distinction between common intention and similar intention. The only reference to this matter is the following :—

> " You must be satisfied that all four accused who got down from that tractor had a common intention, not that each of them had a similar intention where each of them *separately* attacked and waylaid this man, but they all joined together in a common intention to cause the death of the deceased."

It was necessary to warn the jury that even if there was a simultaneous attack in pursuance of similar intentions this would not satisfy the test of common intention unless there was a sharing of the intention. The jury had however been placed on their guard not against such simultaneous and similar attacks but against separate attacks which they may no doubt have thought were attacks separate in point of time. Separate attacks would perhaps have been distinguished by them from an attack in pursuance of common intention even without this direction but the crucial distinction they should have had in mind was that even if this was a simultaneous attack (rather than a series of separate attacks) such attack should have been in consequence of a sharing of intentions rather than in consequence of similar intentions individually entertained by the assailants. The importance of this distinction being clearly brought home to the jury has, as is in the case of the other matters I have mentioned, been repeatedly stressed by this Court.

Several other questions of law were raised in the course of the argument but we do not think it necessary to deal with them in view of the conclusions at which we have arrived on the questions of unlawful assembly and common intention.

We may also observe that although so many questions arose for their consideration, the jury do not appear to have spent on their deliberations the time one would expect if they had carefully reviewed the facts against each accused in the light of the principles applicable. The time of fifteen minutes within which they returned their verdict in a case of this

length and complexity does little to support the view that they had a proper appreciation of the many matters to which the law required them to give their attention.

At the conclusion of the hearing we considered that the convictions in this case should not, for the reasons we have set forth, be permitted to stand, and the convictions were accordingly quashed. We have now set out our reasons for doing so. We also considered whether we should not proceed to convict the accused for their individual acts on the basis of Ehambaram's evidence. This may have meant, if we were so disposed to act, the entering of a verdict of murder or culpable homicide against the 3rd accused and no more than verdicts of simple hurt against all the others. However, having given our most anxious consideration to this matter we reached the conclusion that the interests of justice viewed from the angle of both prosecution and defence, would best be served if we left all these questions to the decision of a jury at a fresh trial. The defence would then have the benefit, in the event of the failure of the charges based on vicarious responsibility, of an evaluation by a jury whose minds were specifically directed to this question, of the evidence relating to specific acts by individual accused, while the Crown would not be deprived of the opportunity of presenting its case on the bases of unlawful assembly and common intention which form so important a feature of their case. If indeed a jury, giving their due attention to the legal principles applicable, should find as the prosecution alleges, that there was an unlawful assembly with a common murderous object, or that the accused shared a common murderous intention, it would be less than just to the prosecution that convictions for simple hurt should be entered against the majority of the participants. We therefore considered that the course most consonant with justice in this case was to order that the accused-appellants be tried afresh upon the same counts with such alterations as may be necessitated by the fact that the 5th accused is no longer on trial.

Before parting with this judgment it is our duty to observe, though with much regret, that we were greatly surprised at the petition of appeal filed in this case. We wish to place on record our disappointment at its tone and contents, for as I observed at the hearing, it is not the sort of petition this Court expects to receive. Wiser counsel would appear however to have prevailed with those responsible, and advisedly, at the commencement of the hearing, an amended petition of appeal was filed in greatly restrained terms. We decided accordingly to allow this matter to rest where it lay, and we express the hope that petitions such as this will not hereafter find their way into the records of this Court.

Case sent back for a fresh trial.