JAMAICA

IN THE COURT OF APPEAL

CRIMINAL APPEAL No. 79/69

BEFORE: The Hon. Mr. Justice Shelley, Presiding
The Hon. Mr. Justice Eccleston J.A
The Hon. Mr. Justice Smith J.A. (ag.)

R. v. EDDIE FRASER

Mr. M. Tenn for the Applicant

Mr. H. Edwards Q.C. for the Crown

February 16,17,18,19,20;
March 20, 1970

SHELLEY J.A.

On 24th August, 1968, Artel Brown, a coconut vendor died from shock resulting from haemorrhage from a bullet wound in his chest.

The applicant Eddie Fraser was charged with George Fraser for murdering Artel Brown. The applicant was convicted of murder and George Fraser was convicted of manslaughter in the Home Circuit Court on 30th May, 1969. This application of Eddie Fraser is for leave to appeal from his conviction.

The case for the Crown rested primarily upon two witnesses, Joslyn Coote and Julius Vassell, who allegedly saw the shooting. Coote's evidence was that he was at a dance at premises at King Street in Kingston on the night of 23rd August, 1968. Eddie Fraser and George Fraser were also there. Eddie Fraser had a gun in his hand whilst he was speaking to his girl friend at the dance. At about 11.35 p.m. Eddie Fraser, George Fraser, Coote and one Aston Young left the hall and walked together to Heywood Street. Eddie Fraser carried the gun stuck in his waist. In the area where Heywood Street meets West Street and Rose Lane there were two coconut vendors (Artel Brown and Julius Vassell) each with a handcart some distance apart. George Fraser said "I would drink a water coconut." He and Eddie Fraser went to Artel Brown's cart. Coote and Aston Young waited

at Rose Lane corner. George Fraser ordered and drank the coconut water. Artel Brown asked George Fraser for payment. George Fraser grabbed Artel Brown's apron with money from his cart and George Fraser and Eddie Fraser moved off. Artel Brown took his cutlass from his cart and moved towards them. Eddie Fraser then shot Artel Brown. Eddie Fraser and George Fraser ran up Rose Lane. Joslyn Coote and Aston Young walked up Rose Lane.

Julius Vassell testified that on the night of 23rd August 1968 Artel Brown and himself bought coconuts at Heywood Street. Artel Brown was packing his handcart whilst he, Julius Vassell, was stooping counting his coconuts. He heard someone say to Artel Brown "Give me what you have" and Artel Brown replied "Go away from me. I have nothing for you." He then looked up and saw Eddie Fraser standing close to Artel Brown pointing a gun at him threatening to "empty these five" on him. He heard another voice say "burn the man to ..." but did not see that speaker. Eddie Fraser then stepped up to the sidewalk, shot Artel Brown who fell to the ground. Eddie Fraser rifled Artel Brown's pocket, turned on Julius Vassell, held the gun on him, took £3 from his pocket, then ran with two others up Rose Lane. Julius Vassell did not hear or see anyone buy a coconut from Artel Brown.

In addition to those two witnesses, one Delores Thomas gave evidence that she was standing on the sidewalk at No. 19 Rose Lane, heard an explosion and saw three boys run up Rose Lane from Heywood Street one of whom she recognised to be George Fraser.

Expert evidence was adduced showing that a gun which the police got possession of was that from which the bullet which the pathologist removed from Artel Brown's body and which caused his death, was fired. George Fraser had that gun in his possession a week before the shooting according to witness Harold Williams. Carlton McBridge saw Eddie Fraser holding a gun in his hand in the presence of George Fraser at the dance hall at King Street on the night of 23rd August. Joslyn Coote said he too saw Eddie Fraser with a gun at the dance hall, that Eddie Fraser took that gun out on the street stuck in his waist when they went walking together to the place where Artel Brown was shot by Eddie Fraser. Julius Vassell said he saw Eddie Fraser shoot Artel Brown. Delores Thomas said

when she saw George Fraser running from that direction he had a gun in his left hand. Claudius Mossopp took the gun from which the expert said the fatal shot was fired, from George Fraser on 25th August, and handed it to Detective Charles Morrison.

Each defendant made an unsworn statement. The applicant, Eddie Fraser, admitted that he was at a dance at King Street on the night of 23rd August, 1968, with his girl friend, but denied any knowledge of the shooting. His defence was that he was framed by the witnesses because he belongs to a political party opposed to that of the witnesses.

George Fraser likewise denied any knowledge of the shooting.

Several grounds of appeal were argued in support of the application but it is only necessary to deal with 5 of them, the rest being without merit.

The first ground was that the learned trial judge erred in telling the jury that as far as the applicant was concerned he was either guilty of murder or not guilty, there being evidence on which a reasonable jury could return a verdict of manslaughter against him.

The second was that the trial judge erred in failing to direct the jury that they were entitled to consider the case against the applicant upon the footing that he was not acting in concert with his co-accused, George Fraser. Both these grounds were argued together. Learned counsel for the applicant submitted that, on the assumption that the jury accepted the evidence of Joslyn Coote, there was evidence on which they could have found a verdict of manslaughter against the applicant if his (the applicant's) case was considered on an independent footing. It was said that if the jury accepted the evidence of Coote only, all that George Fraser did was to purchase and drink a water coconut and then grab an apron from the handcart of the deceased. So, it was said, it was open to the jury to find as a fact that the applicant: (a) did not believe or had no reason for believing that the apron contained money, and (b) that he was not acting in concert with George Fraser to rob the deceased or, alternatively, had no reason to believe that at the time George Fraser was in fact robbing the deceased, and (c) that the use of the gun by the applicant was not an act in any way related to the action of George Fraser but was in response to the action of the deceased in moving towards George

Fraser with his cutlass. It was submitted that the jury ought, therefore, to have been directed that they were entitled to consider a verdict of manslaughter on the ground that the applicant was using more force than was necessary in defence of George Fraser against a serious or felonious attack by the deceased. Alternatively, that the jury were entitled to consider the individual guilt of the applicant as regards a verdict of manslaughter upon the footing that he was not acting in concert with George Fraser. In support of his arguments Counsel relied on King v. R. (1962) 2 W.L.R. 301.

Joslyn Coote's evidence was that George Fraser grabbed the deceased's apron with money from his cart. There was no evidence to contradict the statement that the apron contained money, nor was it challenged in any way. If, therefore, the jury accepted Coote's evidence, which is the basis of counsel's argument, there was no evidence on which they could find that the apron did not contain money. So the question whether or not the applicant believed or had any reason for believing that the apron contained money would not have arisen.

Whether it was open to the jury to find the facts stated at (b) and (c) above depends on whether on the evidence given by Coote those facts could reasonably be inferred, because there is no direct evidence to support them. The evidence, in detail, was that the applicant and George Fraser were together at the deceased's cart when George Fraser asked the deceased to sell him a water coconut; the deceased cut the coconut with a cutlass, which he had on his cart, and gave it to George Fraser who drank it; the deceased asked George Fraser for four pence in payment, the applicant then being "right at the cart." George Fraser did not pay but, instead, grabbed the deceased's apron from his cart and he and the applicant moved away; the deceased took up his cutlass and went after George Fraser and was shot by the applicant; George Fraser, with the deceased's apron, and the applicant then ran away together up Rose Lane, the applicant being about one yard behind George Fraser as they ran. Coote was asked to give the respective distances between the deceased and George Fraser and the deceased and the applicant at the time the deceased was shot. He was also asked how far the deceased went in pursuit of George Fraser. He pointed

out all these distances in Court. The distance pointed out between the applicant and the deceased when the latter was shot was estimated by the trial judge, according to the record, to be 20 yards and counsel for the applicant agreed with this estimate. Counsel told us, however, that there is an error in the record as the trial judge's estimate was 20 feet, not 20 yards. There is no estimate of the other distances pointed out, but there is no suggestion anywhere that the deceased was at any time within striking distance of George Fraser nor that he was otherwise in imminent or any danger from the deceased. The following questions and answers appear in the cross-examination of Coote at p.23 of the record:

" Q : How far did he (deceased) go after Danny (George Fraser)?

A : Like from where I am to the front bench there Ma'am.

Q : Did he catch Danny?

A : No Ma'am. "

On this evidence it is difficult to understand how it could be argued that it was open to the jury to find that the applicant had no reason to believe that "at the time George Fraser was in fact robbing the deceased." The evidence is that the applicant was not only present when George Fraser took the apron but moved away with him. While we agree that it can be said that the use of the gun by the applicant was in response to the action of the deceased in moving towards George Fraser with his cutlass, we do not agree that the act of the applicant was not in any way related to the action of George Fraser. There is, in our view, no evidence on which a reasonable jury could find that in shooting the deceased the applicant was acting bona fide in defence of George Fraser against a serious or felonious attack. George Fraser, clearly, stole the deceased's apron (whether there was money in it or not) and we agree with the submission made by learned counsel on behalf of the Crown that the deceased, therefore, had a right to arrest him as a felon and for this purpose to pursue him. We are of the view that the only reasonable inference to be drawn from the circumstances described by Coote is that the applicant shot the deceased so as to enable George Fraser to escape with the deceased's property. In our judgment, it was murder to kill the deceased in these circumstances and it does not matter whether in fact the applicant was assisting in the

commission of a felony or aiding a felon to escape.

It was further contended that manslaughter arose in relation to the direction given to the jury on the right of the deceased to retake possession of his property. The learned trial judge told the jury that if the evidence of Joslyn Coote as to the manner in which the deceased's apron with money was taken by George Fraser was accepted, the deceased had the right to get his property back from George Fraser and to use his cutlass to go after him to get it, the intention being, no doubt, to use reasonable force to get it back. Counsel submitted that it would not be using reasonable force to go at George Fraser with a cutlass and that the jury was here being told that it was reasonable to do so. It was submitted that the jury should have been told that they were entitled to consider a verdict of manslaughter in relation to the applicant if they found that the moving towards George Fraser with a cutlass involved unreasonable force. If the intention of the deceased in going after George Fraser was to retake his property, we cannot agree that taking his cutlass with him involved the use of unreasonable force. This incident occurred at around midnight in an area of Kingston which is notorious for the commission of violent crimes. It was simple prudence for the deceased to arm himself. As it turned out, the applicant, who was with George Fraser, was armed with a pistol. In any event assuming that moving towards George Fraser to retake his property in the way that he did involved unreasonable force by the deceased, we do not see how on the evidence a verdict of manslaughter could arise. It could only arise if the deceased was actually in the act of retaking his property by the use of unreasonable force and was shot in doing so. As has been pointed out, there is no evidence that this stage had been, or was likely to be, reached.

For the reasons stated above, we hold that the learned trial judge was justified in not leaving manslaughter to the jury insofar as the applicant was concerned.

The third ground of appeal was in relation to the direction to the jury on evidence capable of affording corroboration. The witness Joslyn Coote admitted that he was arrested by the police in connection with the killing of the deceased; he was kept in custody at the Denham

Town police station for some 5½ hours and was released after he had given a statement to the police. The trial judge left it to the jury to say whether or not Coote may have had some interest of his own to serve, "that is, trying to save himself in giving a statement to the police so that they could call him as a witness at the trial." The judge told the jury that if they formed the view that he had some interest to serve they should not only approach his evidence with caution but should look for some evidence to corroborate in a material particular what he said. The learned judge went on to point out bits of evidence which, if accepted, were capable of affording corroboration of Coote's evidence. At pp. 222 and 223 of the record he is reported as saying:

> "Before I give my final summation on the law, now let me remind you at this stage of the four bits of evidence, in sequence, in the case which if you accept them would tend to corroborate in a material particular the evidence of Joslyn Coote if Coote has some interest to serve. The evidence of Carlton McBridge that he saw Eddie Fraser with a gun at about 11 o'clock at the dance, supporting Joslyn Coote who was at the dance, that around the same time he saw Eddie Fraser with the gun. So McBridge supporting Coote on that point. The evidence of Julius Vassell, we are now on the scene at Heywood Street and Rose Lane, that it was Eddie Fraser who fired the shot, supporting Joslyn Coote that it was Eddie Fraser who fired the shot. The evidence of Delores Thomas that after he (sic) heard something like a fire cracker she saw three men running up along Rose Lane one being Danny Fraser, supporting the evidence of Joslyn Coote that Danny Fraser was with Eddie Fraser when the man was shot, on that point."

It was in relation to the direction that Julius Vassell's evidence was capable of corroborating Coote's evidence that Counsel for the applicant complained. He submitted that when one looks at the evidence of Vassell it is so different that his evidence cannot corroborate Coote. He contended that the jury had to believe either Coote or Vassell and that nothing in Vassell's evidence can be said to corroborate Coote. Counsel submitted that as one does not know which particular bits of evidence the jury accepted as corroboration, after a direction of what was capable of being corroboration, this was a fatal misdirection. He relied on R. v. Elva Sailsman (No. 2), 6 W.I.R. 46.

Counsel also referred to another section of the summing up as being relevant to this point. We do not however consider that section relevant for the reason that the learned judge was there comparing the evidence of the witnesses Vassell and Coote and was not dealing with the question of corroboration.

Counsel for the Crown submitted, first of all, that a jury was entitled to find that two men who saw the same incident would give different versions of the incidentals and that though there are disagreements they do not amount to much more than variations on the theme. He submitted, secondly, that Coote was not a person with an interest to serve; that a person with an interest to serve is one who has an interest in securing the conviction of the accused; that the important time to determine whether there is an interest to serve or not is the time of trial and not when the witness gave a statement; that all the evidence in the case amounts to is that Coote was once a suspect and has been cleared; that, therefore, at the trial Coote had no interest whatever to serve and no interest to serve in securing the conviction of the applicant, Eddie Fraser. Thirdly, it was submitted that if it is found that Coote may have been a witness with an interest to serve, the rule (as laid down in Prater's case (1960) 44 C.A.R. 83) is that it is desirable that a warning should be given but no more than that. So, it was argued, if a warning had not been given and if corroboration of a witness in that category is not available, it is not fatal as in the case of accomplices. Reference was made to R. v. Sam Chin, 3 W.I.R. 156 at 158 and R. v. Stannard (1964) 1 All E.R. 34 at 40 - 48 C.A.R. 81 at 91.

In dealing with this ground we first consider whether it is correct to say that Coote was a person with an interest to serve. Clearly on the evidence he was not an accomplice; there is no suggestion by the defence that he was; indeed the defence was in no position to suggest this since the defence amounted to this: I was not there, I know nothing about this shooting. The Crown's case was that the group of men happened upon the coconut vendor; George Fraser expressed the desire to have a coconut - something which happened on the spur of the moment. It was then that the applicant and George Fraser went to the coconut vendor and Coote and Young went to the far side of the corner to wait on them. Clearly there is

nothing in the evidence to suggest concert between Coote and the Frasers up to that stage nor indeed thereafter. But Coote is said to be a person with an interest to serve because he was arrested by the police "in connection with this case," taken to the Denham Town Police Station, was kept for 5½ hours, and was then released by the police. He was questioned during his detention and he gave a statement to the police. In short, he was no more than a suspect who was released by the police after interrogation. It was suggested to him, and he denied it, that he was giving evidence against Eddie Fraser "to save his own skin."

Can it be said that because the police suspected Coote of complicity, but never charged him, no doubt because their suspicions were cleared, he, at the trial, was a person with an interest to serve? We think not. His giving a statement to the police whilst detained seems to be a perfectly natural thing. Any innocent man having knowledge of a crime would speak up to secure his own freedom. This surely would not make him a person with an interest to serve at the trial. On the other hand, a person having guilty knowledge might seek to absolve himself or to involve others. There is nothing to indicate that in giving evidence he deviated from his statement to the police. Had he done this the question must have been raised. Upon that evidence no reasonable jury could find that Coote had a special interest in the outcome of the proceedings, and special reason for trying to shift blame from himself to Eddie Fraser. We think the learned trial judge went further in favour of the applicant than he need have done when he left to the jury the question of whether or not Coote was in the category of a witness with an interest to serve.

But if he were a witness with an interest to serve, what would be the position as regards corroboration of his evidence?

It is well settled that in a criminal trial where a person who was an accomplice gave evidence on behalf of the prosecution it was the duty of the judge to warn the jury that, although they might convict on his evidence it was dangerous to do so unless it was corroborated. In Davies v. D.P.P. (1954) 1 A.E.R. 507 the House of Lords considered (A) what is the scope and effect of the rule and (B) what is an accomplice. It was held that the rule, although a rule of practice, now has the force of a rule of law; that the rule applied only to witnesses for the prosecution.

It was also held that accomplices fell into three categories - persons particeps criminis in respect of the actual crime charged, and two others which we need not set out since it is quite properly not contended that Coote came within any of the three categories. But we do wish to point out that Lord Simonds, L.C., in his speech (in which all the other Lords, namely, Lord Porter, Lord Oaksey, Lord Tucker and Lord Asquith of Bishopstone concurred) said at p. 514A -

> "My Lords, these extensions of the term are imbedded in our case law and it would be inconvenient for any authority other than the legislature to disturb them. Neither of them affects this case ..... I can see no reason for any further extension of the term "accomplice." "

Now in R. v. Prater (1960) 1 AER 298, Prater and two other persons were charged before the Common Serjeant on an indictment containing several counts. One defendant named Welham gave evidence on his own behalf which implicated Prater. Prater gave no evidence. It was contended inter alia that although Welham was a co-accused and not a Crown witness his evidence required to be corroborated, that the learned Common Serjeant should have given a warning of the danger of acting on Welham's evidence. Edmund Davies, J., giving the judgment of the Court of Criminal Appeal said (p.299 I) -

> "For the purposes of this present appeal, this Court is content to accept that, whether the label to be attached to Welham in this case was strictly that of an accomplice or not, in practice it is desirable that a warning should be given that the witness, whether he comes from the dock, as in this case, or whether he be a Crown witness, may be a witness with some purpose of his own to serve ..... This Court, in the circumstances of the present appeal, is content to found itself on the view which it expresses that it is desirable that, in cases where a person may be regarded as having some purpose of his own to serve, the warning against uncorroborated evidence should be given."

However in R v. Stannard and others (1964) 1 AER 34, Winn,J. delivering the judgment of the Court of Criminal Appeal said at p. 39 H -

> "The appellant Stannard and the other two appellants, Cope and Brown, raise certain common grounds of appeal. One of them is that the learned judge failed to direct the jury that the evidence of a co-accused should not be accepted without the most careful consideration. It is put in

slightly different terms in the appellant Stannard's grounds of appeal, but it comes to the same effect. In the submissions which have been addressed to us on this matter, both by counsel for the appellants Cope and Brown and by counsel for the appellant Stannard, the court has been urged to say that it is, or should now be, a rule of law that a judge when summing-up a case, where there are two or more co-accused who have given evidence parts of which reflect on the cases of the other accused or co-accused, should warn the jury in similar terms to those which as a rule of law are proper to be employed when referring to the evidence of accomplices. That submission is sought to be supported by R. v. Prater."

At page 40E Winn, J. continues -

" The rule, if it be a rule, enunciated in R. v. Prater, is no more than a rule of practice. I say deliberately "if it be a rule" because, reading the passage of the judgment as I have just read it, it really seems to amount to no more than an expression of what is desirable and what, it is to be hoped, will more usually than not be adopted, at any rate where it seems to be appropriate to the learned judge. It certainly is not a rule of law, and this court does not think that it can be said here that there was any departure in this respect from proper procedure of trial; still less does it seem that any injustice can possibly have flowed from the undoubted fact that no such warning was given in the present trial."

In R. v. Allen and Evans (1964) 48 C.A.R. 314 the two accused were convicted of murder. There was dispute between them as to the respective part played by each, each attacking and blaming the other at the trial. Mrs. Allen, the wife of one defendant, gave evidence which was capable of corroborating her husband's evidence in certain respects which implicated Evans. The point was taken that Mrs. Allen's evidence could not in law be taken as corroborating her husband as she should herself be treated as one with her husband, and therefore an accomplice and herself needing to be corroborated. The Court of Criminal Appeal considered decided cases on the competency of a wife of an accomplice to corroborate his testimony and at p.321 Parker, L.C.J. said -

"In fact the learned judge in the present case did what those cases say should be done, namely, he referred to Mrs. Allen's evidence as capable of amounting to corroboration, but gave

> the jury a very serious warning that they ought to look at her evidence with the very greatest care. He said, which was the second warning given: "There is danger, is there not, in relying upon Mrs. Allen for the purpose of corroboration, not that she is tainted, but she is someone with an interest to serve" and he then goes on to consider what other matters there are capable of amounting to corroboration of her husband, the appellant Allen's evidence"

and then at p. 322 -

> "The court is quite satisfied that nothing more in the present case was called for than the very grave warnings which the learned judge gave in regard to Mrs. Allen's evidence."

This then was a case in which the evidence of a person with an interest to serve, namely, a wife of a co-accused, was held capable of affording corroboration of his evidence and, it follows, not of itself needing to be corroborated, but the judge was required to warn the jury carefully that they ought to look at the evidence with the greatest care.

We hold that in the circumstances of the instant case if even Coote were held to be a person having an interest of his own to serve his evidence if accepted could have been acted upon without corroboration provided, as was done, the jury had been sufficiently warned to approach his evidence with caution.

It appears from the fact that a verdict of guilty of manslaughter was returned against George Fraser, that the jury did act upon the evidence of Coote. It seems to us that the jury was entitled so to act whether or not they accepted Vassell's evidence as being capable of corroborating Coote.

In R. v. Linzee and O'Driscoll (1956) 40 C.A.R. 177, Goddard, L.C.J., with Hilbery J. and Omerod, J. in Court-Martial Appeal Court dealing with the question of corroboration, said at p.183 -

> "The Court-Martial had first to consider whether they could believe the evidence at all, because no kind of corroboration would turn a lie into truth, and in any court when corroboration is being considered the first thing to consider is whether the evidence given by the witness which requires to be corroborated is satisfactory. The question must be asked whether it is evidence which should not be acted upon unless corroborated."

Applying that reasoning to Coote's evidence, before the jury could act upon it, as it seems they did, the jury must have found it satisfactory

before going on to examine the evidence which was pointed out to them (superfluously, we think) as being capable of affording corroboration.

Was the judge wrong when he told the jury that Julius Vassell's evidence that it was Eddie Fraser who fired the shot if accepted would tend to corroborate Coote's evidence that it was Eddie Fraser who fired the shot?

We are asked to say that there was such difference between their respective evidence as made it incumbent on the learned trial judge to direct the jury that if they accepted one they were bound to reject the other. Coote undoubtedly gave an account of events leading up to the firing of the shot which appeared different from Vassell's. If Vassell saw anything at all his attention was first attracted by Fraser's demand of Brown "give me what you have." He did not see or hear anybody order a coconut from Brown, nor did he see the grabbing of the apron of which Coote spoke. Vassell explained that he was "kind of stooping down counting them (coconuts)" - "Just bending down looking about my business." The jury using their common sense may well have thought it unlikely that one coconut vendor looking about his business would be concerned about the commonplace event of a purchaser going to the cart of his fellow vendor, unless of course, something unusual happened. So Vassell may well have missed the first part of the drama through inattention but started to take notice when the unusual did happen. It is to be observed that Coote in cross examination by both defence counsel stated that another coconut vendor (i.e. other than Brown) was on Heywood Street. But whereas Coote puts him at a point "very far away" "About from where I am (in the witness box) to over the car park there (immediately across the lane)" Vassell said there was only the length of a court room bench (estimated by the Court at 14 feet) between them.

Now Coote said when George Fraser snatched the apron, he (George Fraser) and Eddie Fraser were moving away from the cart, Artel Brown took up his bill and moved towards them. Coote gave no details of how the actual shooting was done. He was asked: Ques.: "You saw what happened to the man?" Ans. "Yes sir they shot him." It was in cross examination that he said Eddie fired the shot. But from Vassell's evidence it was

reasonable to infer that there was a pause in the movement of the parties; that George Fraser may have moved further away than Eddie Fraser. Vassell heard a voice indicating another person was about although he did not see him. If in a matter of moments Vassell too was to become a victim the jury might well have asked themselves whether he was not in a better position to observe details than was the bystander, Coote, waiting at the corner for his companion. Now as to events following immediately after the shot was fired, the following passage in Coote's evidence under cross examination by Miss Thompson on behalf of George Fraser is significant.

> "Q. How long after this coconut vendor was shot that you moved from the corner of Rose Lane and Heywood Street?
>
> "A. As him get shot I move off.
>
> "Q. After the coconut vendor was shot Eddie and George ran past you?
>
> "A. No. "

He indicated that "no" meant that they passed on the other side of the street. He had said in examination in chief that he and Aston Young walked up Rose Lane while Eddie Fraser and George Fraser ran up Rose Lane. But one finds Vassell saying Eddie Fraser and two others ran up Rose Lane and Delores Thomas saying three boys ran up Rose Lane, one being George Fraser.

We are of the view that the apparent discrepancies between Coote and Vassell are not as real as they may seem at first and such as there are are explicable upon close reading of the evidence.

We hold that the learned trial judge was quite correct when he pointed out that Vassell's evidence that Eddie Fraser had fired the shot was capable of corroborating Coote's evidence to like effect. But as we have said:

> (a) we do not think Coote was a person with an interest to serve,
>
> (b) if he were, corroboration of his evidence would not have been necessary.

So the question of corroboration really did not arise.

This ground therefore fails.

The fourth ground of appeal was that the learned trial judge erred in failing to direct the jury that the identification of the applicant by the witness Julius Vassell was either improper or insufficient in law. Vassell said that he did not know the applicant before the night of the killing, that he did not attend an identification parade for the purpose of pointing out the applicant, and that the next time he saw him after the night of the killing was in Court at the preliminary examination. It was submitted that the trial judge should have told the jury how they should deal with this kind of identification; that at the lowest he ought to have warned them about this type of identification and at the highest he ought to have told them that it was worthless and they could place no reliance on it.

At pp. 221 and 222 of the record the learned trial judge is reported as saying:

> "Before I give you these further directions on the law let me refer to an observation which Mr. Tenn made before we took the adjournment, and that is as to the identity of the accused Eddie Fraser in relation to the evidence of Vassell, Julius Vassell. What Mr. Tenn told you was that he wanted me to stress for your consideration that Julius Vassell told you that he did not know Eddie Fraser before this night and that he Julius Vassell was not called on any identification parade with a view of picking out or identifying Eddie Fraser as the man who he calls the red man, the red one who fired the shot and killed the deceased Artel Brown.
>
> Now that is correct so far as Vassell is concerned. Vassell says he did not go on any identification parade, he was not called on any identification parade but he said that Eddie Fraser who he refers to as the red one, had the gun, fired it at Artel Brown and who robbed him of his money. The question is that as far as Vassell is concerned, can you rely on his evidence. He told you of the lights that were around; he told you of how near he was to the deceased and what Eddie Fraser said and what he did. Now in considering whether the identification of Eddie Fraser by Julius Vassell can be relied on, you will have to consider also the evidence of Coote who said that Fraser was the one who had the gun. So the identification of Eddie Fraser is not in isolation as far as Vassell is concerned. You have Coote's evidence too that Eddie Fraser had the gun and then you have the evidence of the witnesses from the dance hall McBridge along with Coote to say that they saw Eddie Fraser with

> a gun, and according to Coote that the same gun that he had with him walking along Heywood Street that he used to shoot Artel Brown the deceased, and according to the expert Exhibit 2 was the revolver or the gun which fired the bullet that was extracted from the body of the deceased; according to Harold Williams he was able to assist you that this gun was seen in the possession of George Fraser from around a week before.
>
> So then there we have Mr. Foreman and members of the jury, if you are satisfied that the gun was seen in the possession of the accused Eddie Fraser at the dance hall, that that was the said gun that was used to fire the shot, then it will only be a part of the identification of the man using it, because according to the witnesses it was Eddie Fraser who had it. It would be going to support the identification of Eddie Fraser by Julius Vassell and it would also go to support the eye-witness evidence of Joslyn Coote that he saw Eddie Fraser by the cart. Nevertheless you must remember the observation of Mr. Tenn on the point that Mr. Vassell was not called on any identification parade."

It was contended that in this passage the trial judge confuses the question of the identification of the applicant Eddie Fraser with the general question of the evidence of Julius Vassell as a whole. It is said that it was not sufficient for the trial judge to say: "The question is that as far as Vassell is concerned, can you rely on his evidence." The question, Counsel said, which ought to have been put is: "Can you rely on the identification?" It was argued that it was possible for the jury to have accepted other bits of Vassell's evidence though thinking he might have been mistaken that it was Eddie Fraser and that a specific direction was, therefore, required on the narrow issue of identification. Alternatively, it was submitted that the direction on the question of identification was inadequate or insufficient.

Counsel for the Crown submitted that Vassell's evidence was that he had a very clear view of the applicant. While admitting there should have been an identification parade, Counsel did not think a failure to hold it was vital. (He referred to Hunter (1969) Crim. L.R. 262)).

The learned trial judge having drawn Mr. Tenn's aubmissions to the attention of the jury and having himself put the question "can you rely on his (Vassell's) evidence" whilst dealing specifically with the question

of identification we take the view that this was sufficient to alert the jury on the importance of the question of identification by Vassell.

While identification of a prisoner for the first time in Court is generally not satisfactory the complaint loses force in this case as there is evidence that there were five persons in the dock at the preliminary enquiry when the witness identified the applicant.

This ground therefore fails.

The fifth ground was that the learned trial judge erred in overruling, without argument, a question put by counsel for the defence to the witness, Claudius Mossop, namely:

"Q: And you were convicted of this offence in relationship to your telling lies against a PNP man, weren't you?"

The witness had, prior to this question being asked, admitted that he had been convicted of the offence of perjury and had served a sentence for it. The learned judge ruled that what was allowed to be proved was a conviction for a felony or misdemeanour and that the details of the evidence which led to the conviction was irrelevant. Counsel submitted that in the light of the applicant's defence this was a proper question to ask. The defence, he said, was that the applicant, a PNP man was being framed by JLP men. During the trial it was suggested to all the material civilian witnesses that they were members, or sympathisers, of the JLP. Counsel for the Crown submitted that Mossop's evidence could not really have affected the minds of the jury if he had been allowed to answer and had answered the question, as Mossop's evidence affected the co-accused, George Fraser, and not the applicant.

We think that the question ought to have been allowed but its refusal could not have resulted in any injustice to the applicant because Mossop's evidence did not implicate the applicant.

This ground also fails.

The application is accordingly refused.