JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NOS. 82, 85, 86/94

COR: **THE HON MR JUSTICE CAREY JA**
THE HON MR JUSTICE FORTE JA
THE HON MR JUSTICE GORDON JA

REGINA VS STEVE SHAW
PATRICK TAYLOR
DESMOND TAYLOR

Dennis Morrison QC for Shaw

Lord Gifford QC for Patrick and Desmond Taylor

Miss Paula Llewellyn, Deputy Director of Public Prosecutions for Crown

19th 20th June & 24th July 1995

CAREY JA

On the 27th March 1992, the decomposed bodies of Horrett Peddlar a shopkeeper aged about 54 years, his common-law wife Marcia Wright of about 39 years, their sons Matthew 12 or 13 years and Useph 5 or 6 years, who had been murdered were found in a remote district in the parish of St. James known as Guilsbro. They had been chopped in the back of the head or neck and in addition Horrett Peddlar's legs had been amputated. This gruesome find provided the particulars of the four counts of the indictment which charged capital murder in all the applicants who between 18th and 25th July 1994 were

tried in the St. James Circuit Court before Paul Harrison J and a jury. In the result, Steve Shaw and Desmond Taylor were convicted on all four counts as charged while Patrick Taylor was convicted of non-capital murder. Sentence of death was imposed on all the applicants.

By way of completion, it should be pointed out that the particulars of capital murder as averred in the indictment, were stated in the following form - count 1 which related to the murder of Horrett Peddlar - "...murdered Horrett Peddlar who was a witness in a pending criminal trial, also a party in a concluded civil case, and in furtherance of an act of terrorism". In count 2 which related to the murder of Marcia Wright, the particulars were - "in furtherance of an act of terrorism, she being a witness in a pending criminal trial." Counts 3 and 4, which concerned each child were content to state that those murders were committed "in furtherance of an act of terrorism." We will need to comment later in this judgment on the quality of the drafting displayed in the first two counts of the indictment.

We can now turn to the facts and circumstances on which these convictions were based. There was no eye-witness account of this altogether bloody end to the lives of an entire family. The Crown's case in general depended in respect of each applicant on statements allegedly made by each to the police or in their presence or to other persons who testified at the trial. The jury undoubtedly inferred from these statements the complicity of the applicants in the crime. The medical evidence put the approximate time of death at some

eight days prior to the discovery of the bodies of the victims and the post mortem examination held on 27th March 1992. The delay in the discovery of the crime can be attributed to the lonely location of the Peddlar house which was some 3/4 mile from the nearest house. The motive suggested for the killing of Horrett Peddlar was the animosity of the Taylors towards Peddlar. This stemmed from a civil action in the Resident Magistrate's Court for the parish of St. James at the instance of Peddlar against Desmond Taylor in which there remained an outstanding balance and also a criminal charge of wounding Peddlar against both Taylors.

We wish now to particularize the case against each applicant.

STEVE SHAW:

On the 17th April 1992 this applicant who is also known as "Curly" went to the shop of Marvin Campbell with what is described as a "three deck tape" desiring to pledge it against food stuff which he required, explaining that it was a birthday present he had received, and that he would redeem it by the end of the week. In the event, the applicant never kept his word, although he did return to attempt to credit more foodstuff. Eventually Campbell who had received some information, handed this piece of equipment to the police where it was subsequently identified by a son of the slain man as belonging to his father.

Another link in the chain of evidence was forged by Carla Sutherland a neighbour of the applicant, who having heard rumors in respect to the applicant, confronted him. She told him that she had heard that he had chopped up some

people. His response was to enquire who was her informant. She replied that no one in particular had given her the information but she wanted to hear if the story was true. When he answered in the affirmative, she wished to know his reason. He advised that "Boxer (Desmond Taylor) dem say dem going pay him fi do it." Thereafter he related what had occurred: (pp110-112) The extent of his participation was to eliminate one of the children.

On 28th April 1992, in an interview with the police, this applicant provided a statement under caution in the presence of a Justice of the Peace. In that statement he puts himself on the scene where he witnessed the killing of Marcia Wright, one of the sons and the pursuit of Horrett Peddlar to kill him. He admitted receiving clothes worn by the two killers for the purpose of getting rid of them and also a tape recorder as payment for that assistance.

Another piece of incriminating evidence came from a special constable (Gabbelin Wright) who testified that he overheard the applicant bragging that he had killed Peddlar. At the time, the applicant was in the holding area for prisoners in the Resident Magistrate's Court in Montego Bay. The officer made him aware of the fact that he had heard his statement.

Further evidence affecting Shaw is to be found in the course of an interrogation on 5th May 1992 by Detective Assistant Superintendent John Morris of another of the applicants, Desmond Taylor in the presence of Shaw. The officer asked Taylor if he knew Shaw but Taylor denied knowledge of him. Shaw then remonstrated with Taylor for saying that he did not know him. He

then went on to vouchsafe information as to what he had seen Desmond Taylor and another man do at Peddlar's premises.

On the 29th April 1992 the same police officer after Shaw had furnished the caution statement, went with Shaw to his house at Tucker in St. James where Shaw handed over some clothes which he said had been delivered to him by Desmond Taylor to be got rid of. Some of these were partially burnt.

Finally, there was a statement made by Desmond Taylor in the presence of Shaw, which the trial judge suggested to the jury could be used as evidence against Shaw. We will deal with this matter hereafter because it was made a ground of appeal. We omit details of that statement at this juncture because we do not share the view of the trial judge that the statement was indeed evidence against Shaw.

DESMOND TAYLOR:

This applicant was a judgment debtor in a suit in the Resident Magistrate's Court for St. James filed by Horrett Peddlar. The debt remained unsatisfied. He had also been arrested and charged with Patrick Taylor for wounding Peddlar. The matter had been before the court on a number of occasions but had not yet been resolved.

Some time in mid April 1991, a witness for the prosecution, Loxley Mitchell who washes cars for a living, testified that Desmond Taylor who, he referred to as "Boxer" told him that he wished to eliminate a man with whom he had a suit and owed money. This witness understood from this intelligence that

he was being invited to be the "hit man." He however declined, pointing out that his dirty work was washing cars. This conversation took place while Shaw was within earshot and had enquired what Taylor wanted. The witness' response was to suggest that Shaw speak directly to Taylor on the matter. Both men did have a conversation but he did not disclose what was said.

Other evidence linking this applicant came from Det. Asst. Supt. Morris while he was interrogating this applicant on 5th May 1992. He had asked the applicant if he knew "Curly" meaning Shaw and received a denial. Shaw was then brought in, and this applicant after being cautioned, was again asked if he knew Shaw. Whereupon this applicant again denied knowing Shaw who said (p 233)

> "Hey Boxer, no tell the officer say you no know me, man.
> Officer, him check me a Tucker and President and him go up a him country fi kill a man name Scaboo. Me and Mark go up a de road go watch and President and Boxer go over the yard. Me see when President run down the big son and Boxer chop up the woman."

The applicant reacted by grabbing the shirt of Shaw and remarking as follows:

> " Officer him tell you what me do, him nah tell you say a him chop up the little boy."
> [Emphasis supplied]

Shaw was removed from the room. The applicant enquired what would happen to Shaw. He was told charges would be laid against him. The applicant's retort was - "Good sir, him did think say a me alone ben go down in a it."

PATRICK TAYLOR:

The evidence connecting this applicant with the murders is derived from utterances of Steve Shaw adverse to the interest of this applicant. The jury were asked to infer from his conduct that he accepted those utterances as true. The matter came about in this way. During police interrogation of this applicant, he was asked if he knew Steve Shaw. When he demurred, Shaw was introduced to confront him. The question was then repeated with the same response. The officer then asked Shaw if the applicant was the person to whom he referred as "Mark." On obtaining an affirmative answer, the officer invited Shaw to repeat what he had earlier recounted regarding Mark. Shaw did as he was bid; he said:

> "... 'Me did down a Junie Lawn when me see Mark, Boxer and President come dey. Me and Mark go up a de man gate go watch and Boxer and President go over the yard and chop up the people dem." Mark Taylor began to cry and said, 'Curly, Boxer no tell you no fi say nothing. Alright, sir. Me go up dey but me never know say dem ben serious say dem a go kill de people dem.' "
> [Emphasis supplied]

At this stage, Shaw was withdrawn. When the applicant was arrested, he denied going up to the premises.

All the applicants made unsworn statements. Shaw made a blanket denial. He was not there: he never gave the police a statement and he was not at the murder scene. He admitted however that he signed a statement because he was tortured. He denied receiving stolen goods and he denied confessing

to Carla Sutherland. Desmond Taylor also denied participating in any crime as he had no reason for eliminating the Peddlar family. He denied the statements attributed to him by the police. An attorney was called, the effect of whose evidence was to confirm that there existed civil proceedings between Horrett Peddlar and the Taylors and that the judgment remained undischarged. Patrick Taylor for his part contented himself by denying that he acted as a look-out man. He was innocent of the charges.

Mr. Dennis Morrison QC argued some four grounds of appeal on behalf of Steve Shaw with his usual economy and lucidity. In ground 1, he complained that the trial judge erred in failing to give the jury full and adequate directions on the meaning of terrorism within the terms of section 2(1)(f) of the Offences against the Person (Amendment) Act. He readily conceded that he could not legitimately argue that the facts and circumstances of the murder if accepted by the jury did not amount to terrorism within the meaning of the Act. The thrust of his submission was that the learned trial judge did not fully assist the jury because he had contented himself by reading a part of section 2 (1)(f) of the Offences against the Person (Amendment) Act.

The learned trial judge (at pp. 304-305) directed the jury in the following terms:

> " Now, the law as it stands regards an act of terrorism as any act involving violence by the accused person, if you find it was the accused, which by reason of the nature and extent of the act, was calculated to create a state of fear in the public. The prosecution is saying to you in this particular case it is an act of terrorism. They are

> saying that there was in fact the situation where these persons went to the isolated home of Mr. Peddlar. You heard the nearest house was about six hundred yards away, or, in one case more than that. They are saying that all members of the family were killed. The prosecution is saying that in the case of Horrett Peddlar his limbs were severed. In the case of Marcia Wright, there was severe mutilation of her body, and in those circumstances they are asking you to say that because of the extent and nature of the acts committed against the entire family that day, that was intended to drive fear into the public in general, create a state of fear in the public, or a section of the public."

In our view, the trial judge cannot realistically be faulted. Having properly defined terrorism in the terms of the Act, he proceeded to relate or apply that definition to the facts in the case. He pointed to the number of men ("these persons') involved to the remoteness of the location (and thus the unlikelihood of assistance or interference or witnesses) the number of victims, (an entire family including children) and the nature and extent of the injuries. This court in **R v Wallace** (Unreported) SCCA 99/91 delivered 18th January 1993 said this at p. 8:

> " In determining whether the use of violence is calculated to create fear, all the circumstances must be considered. The timing of the abduction, the method of entry, the dress of the participants, their armoury of weapons, the robbery, the article stolen, viz. the wife's wedding ring, the abduction of the victim, the long march to the place of execution, the method of execution - the sheer brutality of it all, and the motive suggesting political overtures; all these factors, we think, would be calculated to create a state of fear in the public or a section of it."

See also the comments per Forte JA in **R v McKain** (unreported) SCCA 106/93 delivered 31st October 1994. The learned judge plainly, as he was required, brought all the circumstances of the case to the jury for their consideration.

We would also note that the fact of criminal and civil cases involving victim and some of the applicants, could be considered by the jury as ground for believing that the murders were intended as a warning to a section of the public. Learned counsel did not press this point and we need say no more about it.

The next ground of appeal stated as follows:

> "2. The learned trial judge erred in failing to give the jury any or any adequate directions on the effect of a finding, which was open to them on the evidence, that the Appellant, though in the vicinity of the place where the killings took place, was not an actual participant (see applicant's cautioned statement - pages 200-204)."

Mr. Morrison QC submitted that the prosecution evidence against the applicant Shaw pointed to two degrees of participation and the jury should have been alerted to the fact that if they preferred the statement contained in the cautioned statement as against other statements, a verdict of murder simpliciter i.e. non-capital would be available.

It is quite true that nowhere in his summation, did the learned trial judge direct the jury that as respects Steve Shaw, it was open to them to return a verdict of guilty of non-capital murder on the footing that they accepted that

although he was present aiding and abetting, he did not, in the words of section 2(2) of the Offences against the Person (Amendment) Act -

> "by his own act cause(d) the death of, or inflict(ed) or attempt(ed) to inflict grievous bodily harm on the person murdered or who himself use(d) violence on that person in the course or furtherance of an attack on that person..."

In order to leave that option open to them, the trial judge would have been obliged to direct them that they must then have rejected the other allegations which would make him guilty of capital murder. The cautioned statement, it must be remembered, did not stand alone: there was the evidence of Carla Sutherland of the applicant's confession to her and his disclosure overheard by the police while he was in custody. The Crown's case thus rested on the cumulative effect of these strands of evidence rather than on the evidence of the cautioned statement standing by itself. We are not altogether clear why a trial judge would choose to compartmentalize the different strands and invite the jury to consider each.

This argument, attractive as it might seem, cannot from any point of view, assist the applicant seeing that he would at all events, be guilty of committing four non-capital murders that is, multiple murders in respect of which sentences of death would nevertheless be imposed. The point can therefore only be regarded as wholly academic and in the context of the instant case, really pales into insignificance.

Ground 3 complained that:

> "3. The learned trial judge erred in law when he invited the jury to treat a statement allegedly made by Desmond Taylor in respect of the Applicant as evidence against the Applicant, (pages 330-332)."

In order to understand this ground, the area of the transcript as identified needs to be set out in extenso:

> "... Now, that is evidence, if you consider it, that this is a statement made by the accused person, Shaw, but he made it in the presence of Desmond Taylor. So you examine it and say what was Desmond Taylor's remark when Shaw made this statement. Because, where Shaw makes a statement in the circumstances of the caution statement that he made to the Police Officer before the Justice of the Peace, but he denied that he made it, that is not evidence against his co-accused, or against any person who he mentions, but where he makes a statement in the very presence of the person with whom he is charged, that is Desmond Taylor, then you look at what Desmond Taylor is alleged to have said, and seeing what is the reaction, how he reacts to it; did he accept it as true? Did he deny it? Because if he does not deny it, then you are free to say you accept the truth of it. If he denies it, or said anything in this respect, then you examine it and see whether when Shaw made the statement, Shaw is really speaking the truth.
>
> The evidence from Assistant Superintendent Morris, is that Taylor grabbed on to his shirt and said, 'Officer, him tell you what me do; him nah tell you say him chop up the little boy?'
>
> So here Taylor is saying, 'Him tell you what mi do.' That, if you accept it, you have to go back and look and see what did Shaw said Taylor did. Shaw said, 'Hey Boxer, no tell the officer say you

> no know me. Officer, him check me a Tucker. President and him go up a him country fil kill a man name Scaboo. Me and Mark ...' - this is not evidence against Mark - 'Me and Mark go watch President and Boxer over the yard. Me see President run down the big son and Boxer chop up the woman. Here is Shaw saying Boxer chop up the woman. Taylor says, 'Him tell you what me do, him nah tell you say a him chop up the little boy.' That is evidence, if you accept it, it is for you to say whether the accused man Taylor is accepting the statement of the accused man Shaw that he Taylor had chopped up the little boy, here where Taylor says that 'Him nah tell you say a him chop up the little boy.' "

No quarrel as we understood the submission, can be had thus far. Then the directions continue in this way:

> " You could use it also when you are considering the evidence against Steve Shaw, because the evidence from Carla Sutherland is that Shaw told her that the little boy spoke to him and he raised the machete and gave the youth one chop, and this is evidence that Carla Sutherland said Steve Shaw told her, and here you have Desmond Taylor saying, 'Him nah tell you say that him chop the little boy.' so you may use those bits of evidence and link them to say where you find the truth lies."

These directions, he argues, are wrong because after Taylor made his inimical observations, Shaw was removed and there would be no opportunity for reaction on the part of Shaw.

Miss Llewellyn did not attempt to defend the indefensible but contended that the misdirection occasioned no substantial miscarriage of justice and accordingly the proviso should be applied.

We agree entirely that Mr. Morrison QC's point is well founded. There was not a scintilla of evidence that Shaw had adopted or accepted the remarks of Desmond Taylor and therefore absent confirmation of Carla Sutherland's evidence respecting Shaw's disclosures to her. We agree also that this misdirection in the face of the other overwhelming evidence against the applicant, did not result in any miscarriage and we would accordingly apply the proviso.

The final ground related to a submission of no case in the presence of the jury, an exercise proscribed by the Privy Council in **Rupert Crossdale v R** delivered 6th April 1995. We, of course, accept the binding force of this judgment but it is not amiss to point out, lest it be entirely forgotten, that the Bar in this jurisdiction did not disagree with the practice as previously existed as they counted it as a first of two opportunities to address the jury. Be that as it may, learned counsel for this applicant conceded that there was really no prejudice occasioned to the applicant. See also **Nigel Neil v R** Privy Council Appeal No. 72/94 delivered 6th April 1995.

Learned counsel who appeared on behalf of the applicant Shaw (not present counsel) made a no case submission on count 2 only which involved a point of law whether the victim was a witness in a pending criminal trial. The result was an amendment to delete the statement "she being a witness in a criminal case." There was no objection by defence counsel. Plainly, no prejudice could be caused to the applicant. There is no merit in this ground.

The second part of this ground, framed thus:

> "ii) Further or alternatively the learned trial judge erred in failing to direct the jury that his ruling that there was a case to answer in respect of all the accused did not imply a view or suggestion on his part as to their guilt."

does not arise for consideration and can be dismissed.

Lord Gifford QC argued on behalf of the other two applicants. First, he adopted the arguments of Mr Morrison QC made in respect of grounds 1 and 4 of Steve Shaw's application.

We have dealt with ground 1 before, in this judgment and need not repeat what we said before. Secondly, with respect to ground 4, learned counsel although submitting that there was some rehearsal of fact before the jury, did not suggest in any shape or form that any prejudice could result from what has now been held to be an irregularity. We see no reason to depart from what we have already stated.

The next submission deployed by Lord Gifford QC, was put in this way: the essential evidence against both Taylors was their reactions to the words spoken when confrontations occurred at the police station in course of police interviews, and also admissions which each was alleged to have made. It was a bizarre feature of the case, that in neither case was a reference to the admission made in interviews with the respective applicant. In the case of Patrick Taylor, interrogation and confrontation with Shaw occurred on 4th May 1992 at 11:00 a.m. when he admitted his presence at the scene of the murder,

and further interrogation took place one and half hours later but no questions were put in relation to his earlier admission. With respect to Desmond Taylor also known as "Boxer" the confrontation with Shaw took place at 2:30 p.m. on 5th May 1992 when Desmond Taylor in response to Shaw's accusation, said - "Officer him tell you what me do, him nah tell you say him chop up the little boy." Then after Shaw was taken from the room, Taylor, in response to the police officer's comment that he intended to charge Shaw with murder, said - "Good sir him did think say a me alone ben go down in it." Further questions which were asked of Desmond Taylor were recorded. The session was adjourned to allow a lawyer to be present but no questions were put in respect to any admission made by the applicant. The trial judge should have told the jury that they were entitled to take into account the fact of failure to refer to the admissions in determining whether the admissions were in fact made.

The argument although it ends with a complaint about the judge's directions is in support of a ground that the verdicts were unreasonable or cannot be supported by the evidence. It was never argued that the issue of whether the admissions were or were not made, were never left to the jury because that issue was a live issue, there was lengthy cross examination to it and we have no doubt that counsel who appeared below, one of whom was Queen's counsel, addressed the jury on it. The learned judge addressed it at length (pp. 340-341) in his summing up. We do not accept it as axiomatic that a police officer must ask every possible question of a suspect, and that his

failure to ask, is to be considered so unreasonable that the inescapable inference is that his evidence of oral admissions is a fabrication. The officer's failure is as explicable on the basis of poor cross examination skills or uncharitably perhaps due to the limited intelligence of the interrogator or he did not think it necessary as it might well provoke a denial of the prior admission. Any one or other of these is as reasonable an hypothesis. The matter could easily have been settled by an enquiry of the officer for the reason of his failure. It seems to us just as bizarre, to borrow Lord Gifford's colourful descriptive word, not to have enquired. This ground, we are constrained, to observe, fails.

Lord Gifford QC then argued that there was no case for the applicant Patrick Taylor to answer. His submission went thus - the interpretation of the applicant's words was that he knew of the enterprise but had not taken it seriously. That showed he had no intention to kill anyone. On that paucity of evidence a jury could not find that the applicant was a party to murder.

This submission, it must be observed, focused attention solely on the applicant's words. But the common design and the applicant's participation therein, is to be inferred from all the circumstances. We refer to **Miller v R** [1981] 51 ALJR 23 at p. 26 where the Australian High Court said:

> " It requires no evidence of express agreement to establish the scope of a criminal common purpose. It may be deduced from all the proven circumstances."

From his statement he was well aware that the enterprise involved the use of violence against "the people dem." Further, the circumstances of the actual execution of the plan which he witnessed must have brought home to him that the plan was to be taken seriously. The trial judge, in deciding whether to allow the case to go to the jury, had to consider the matter from the view point of the applicant, that is subjectively. There was no evidence of the applicant disassociating himself from the butchering of the victims which he witnessed and which must have occupied some time. We think Queen counsel's argument before us no stronger than that made before the trial judge who we are satisfied, was right to overrule the submission of no case. We share his view that there was a case to answer.

From the extreme position of there being no case, learned counsel took the position that assuming this applicant was a party to murder, the common design could, on the evidence, only encompass the murder of Horrett Peddlar against whom the applicant and his brother held a grievance. That being so, he said, the applicant should only have been convicted of the non-capital murder of Peddlar with the consequences as to sentence. That argument boldly accepts that the conviction with respect to count 1 which left non-capital murder, can be supported.

With respect to the other counts, he argued that the trial judge did not leave for the jury's consideration the reasonable hypothesis that while the applicant may have been a party to the killing of Peddlar, the killing of the other

members of the family was outside the scope of any enterprise which the applicant was shown to have shared. It was a reasonable hypothesis based on the motive and that the further violence was action of the assailants which should not be laid at the door of the look out.

In our view, there was no issue before the jury of the assailants going beyond the scope of the plan. Patrick Taylor's contention was that mere presence was not enough. The argument of Mr. Hamilton QC who appeared at the trial was to that effect, thus conceding that the scope of the plan was to kill the "people dem". We do not doubt that where a defence fairly arises on the facts, a trial judge is obliged to leave that issue to the jury and he is not relieved of that duty because defence counsel whether for strategic reasons or otherwise chooses, omits or neglects to raise it. So the question posed is whether on the facts of the instant case, such an issue fairly arose? We have already recited the facts and circumstances on which common design arose. On any reasonable analysis of those facts, the judge was entitled to say that:

(i) the applicant knew that there was a plan to kill Peddlar and his family.

His statement spoke to the entire family not to any one member.

(ii) he was present at the killing field witnessing the events. The sequence in which killings took place was an important fact;

(iii) his presence was non accidental;

(iv) he expressed no dissent when he would be expected to unless he was a party to the killings;

(v) the entire family was eliminated.

It follows as night the day that there were no unusual consequences arising from the exercise of the joint enterprise, for the plan had been carried out.

So far as the applicant was concerned, he was in no doubt that the plan was to kill the entire family, his reservation was whether it would be put into effect. He must have been aware that they were serious from the moment they set out in circumstances which strongly suggested that the killers were armed with machetes. He was not just any disinterested bystander but a relative of one of the killers who had a grievance against Peddlar. Lord Parker CJ stated the law in these terms in **R v Anderson & Morris** [1966] 2 All ER 644:

> "... where two persons embark on a joint enterprise, each is liable for the acts done in pursuance of that joint enterprise and that includes liability for unusual consequences if they arise from the execution of the agreed joint enterprise."

We are not concerned on these facts with a primary criminal intention, or whether the killing of any member of the family was a remote possibility. The reality of the situation was whether the facts before the jury demonstrated presence without more.

We conclude therefore that on the facts before the court, the learned trial judge was entitled to leave the case to the jury in the manner he did viz:

> " So from that statement, the prosecution is asking you to say that when Patrick Taylor said, 'Mi go up deh but mi never know them serious say them a go kill the people them,' is that he went there, knowing that they were going there. The prosecution is asking you to draw the inference that he knew that they were going there armed on

> this occasion. The prosecution is asking you to say that he didn't just, as it were, buck upon the scene, he went there deliberately. He didn't go there by accident, he went there purposely, and in those circumstances, the prosecution is saying that he never expressed any dissent, that is, he never protest and say 'Don't kill them.' And if this is so, the prosecution is saying, they are asking you to draw the inference that in those circumstances, that he was in fact encouraging them wilfully by going there, knowing what was likely to happen. He did not dissent from it. The prosecution is saying, if he did not protest about it, then in those circumstances, it means that he would be part of that common design, albeit, he didn't strike a blow. And in those circumstances, he would not be guilty of capital murder, but he would be guilty of murder. Not capital murder."

An indulgent judge in an endeavour to bend over backwards to assist an accused person might very well have felt disposed to leave to the jury the consideration suggested by Lord Gifford QC. This Court is however concerned to see if the trial judge acted unfairly or misdirected himself in some way as to make the trial unfair so as to lead to a miscarriage of justice. For the reasons we have given, we are of opinion that the learned trial judge acted entirely correctly and fairly.

We have carefully considered the case against each of the applicants and it seems to us clear, that in the case of Shaw, the well-known Jamaican adage is particularly appropriate - "Cock mout' kill cock." All three persons were plainly endeavouring respectively to pass responsibility for the killings onto another of their number and minimising his role in this terrible crime.

Once the jury accepted the admissions or acceptance of statements as true, any verdict other than those returned, would have been perverse.

Counsel who appeared before us urged all that could fairly be said on behalf of their client and are to be complimented.

Before parting with these applications, we would like to call attention to the drafting of counts 1 and 2 of the indictment which we had earlier mentioned. The particulars of offence therein, lumped together different modes of committing capital murder. We do not think there can be any objection to that joinder seeing that these are alternative modes of committing the same offence, namely capital murder contrary to section 2(1) of the Offences against the Person (Amendment) Act. But where it is intended to do so, then they should be stated in the alternative. The statement of offence should also include the applicable provision of the Act.

In the result, the applications for leave to appeal are refused.

C.A. Criminal Law — Capital Murder — Terrorism — meaning — Evidence — No case — Common design — misdirection — Comment on Indictment — Terrorism — whether judge failed to give jury adequate direction on meaning of terrorism — Sec 2(1)(a) Offences Against the Person (Amendment) Act — whether Judge (Court) to give any or adequate direction of effect if they found that although in reality of place where killings took place was not an actual participant — whether misdirected jury by inviting them to treat statement by co-accused as evidence against applicant — whether proviso should be applied — submission of no case in prima facie case of jury — whether prejudiced — conviction on undue amount of the evidence — common design — whether any case for Prosecution to answer — whether if case to answer common design could only apply to one of accused? Indictment — Comment by Court re drafting of indictment where one of capital murder — statement of offence should also contain applicable provision of Act.

Application for leave to appeal refused

Case referred to — See back 1/2 11