

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL**

SAINT VINCENT AND THE GRENADINES

SVGHCRAP2019/0011

BETWEEN:

ANDY QUASHIE

Appellant

and

THE KING

Respondent

Before:

The Hon. Mde. Margaret Price-Findlay
The Hon. Mr. Trevor Ward
The Hon. Mr. Gerard St. C. Farara

Justice of Appeal
Justice of Appeal
Justice of Appeal [Ag.]

Appearances:

Mr. Jomo S. Thomas for the Appellant
Ms. Rose-Ann Richardson for the Respondent

2023: July 25;
November 23.

Criminal appeal – Appeal against conviction – Evidence – Hearsay – Whether the judge allowed prejudicial hearsay evidence making the trial manifestly unfair to the appellant – Summing-up – Turnbull Direction – Whether the judge erred in law by initially refusing and then failing to give an adequate Turnbull Direction – Corroboration warning – Whether the judge erred in law by failing to give an accomplice direction

Andy Quashie (“the appellant”) was convicted of the murder of Joseph Lynch (“the deceased”) and possession of a firearm with intent to aid in the commission of an offence. At trial, prosecution witness, Adolphus Foye (“Foye”) testified that he, Billy Adams (“Adams”) and the appellant were all together when the deceased passed and hurled insulting words at the group. Adams urged the appellant to retaliate and then the appellant and Adams ran to their homes and armed themselves with guns. All three men then walked to Texier Road from where the deceased was observed in a yard speaking with his girlfriend. After a while he left and started walking in the direction of the trio. At that point the appellant ran through

a shortcut. Foye testified that sometime after he heard a loud noise coming from the direction of the burial site. He made his way to that area, where he saw the deceased crawling on the ground. Foye then took possession of Adams's gun and proceeded to his home with it. The prosecution's main witness, Mayon Spring ("Spring"), was the only witness who testified that he saw the appellant shoot the deceased. The appellant's case on the other hand, was a full denial of involvement in the shooting, and therefore a case of mistaken identity.

The appellant's appeal to this Court is against his conviction and he has advanced four grounds of appeal from which the following issues emerge: (i) whether the judge allowed prejudicial hearsay evidence making the trial manifestly unfair to the appellant; (ii) whether the judge erred in law by initially refusing and then failing to give an adequate Turnbull direction; (iii) whether the judge erred in law by failing to give an accomplice direction; and (iv) whether, taken together, the trial was manifestly unfair and unsatisfactory.

In relation to the first ground, the appellant challenges four bits of evidence: Foye's statement that an absent witness knew the appellant and urged him to avoid conflict ("Foye's statement"); Angela Quashie's statement that the deceased complained that he could not have peace whenever he encountered the appellant and Adams ("Quashie's statement"); Inspector Trevor Bailey's statement that Adams said to him that the appellant committed the shooting ("Bailey's statement"); and the appellant's own evidence in court where he described his actions, namely, disposing of marijuana which he had at his home after being informed by his mother that the police was looking for him ("the appellant's statement"). In relation to the second ground, the appellant contended that the judge posed and answered questions, which the **Turnbull** guidelines require him to direct the jury to consider, and, further, that the judge also made reference to multiple identifications but failed to take the jury through that evidence. In relation to the third ground, the appellant's position was that Foye was an accomplice with an interest in giving evidence for the respondent, and despite this, the judge failed to warn the jury on accepting his evidence.

Held: dismissing the appeal and upholding the appellant's conviction, that:

1. Evidence is hearsay if it is a statement made by a person at a time other than when giving evidence in the subject court proceedings, and the object of the evidence is to establish the truth of what is asserted. Foye's statement, Quashie's statement and Bailey's statement amounted to inadmissible hearsay evidence because they were all statements made out of court and were intended to be acted on as true. Foye's statement carried a prejudicial connotation that the appellant was a person engaged in a certain lifestyle which the absent witness was exhorting him to be done with. Quashie's statement painted the appellant in the light of a habitual tormentor of the deceased. Bailey's statement was asserted to prove that the appellant was the person who shot and killed the deceased. The appellant's statement, however, is not hearsay as it was given during his examination in chief where he described his own actions when he learnt that the police was looking for him.

Subramaniam v Public Prosecutor [1956] 1 WLR 965 followed; **DPP v Christie** [1914] AC 545 considered.

2. The evidence which the Court has found to be inadmissible hearsay evidence by itself, is not sufficient to render the conviction unsafe, and this is a point which the appellant's counsel conceded.
3. In directing the jury on the issue of identification, the judge's directions must comply with the sense and spirit of the guidance in **R v Turnbull**, without necessarily reciting the guidelines in that case as a mantra. The judge in the present case would have initially asked counsel whether an identification direction was needed, and upon hearing counsel's response, promptly launched into the directions. He first warned the jury of the need for special care in reliance on the identification evidence. He then directed the jury on the following circumstances: the length of time the appellant was under observation; the distance at which the observation was made; the lighting conditions; whether the observation was impeded; and whether the witness knew the appellant. Thereafter the judge cross-referenced the appellant's confirmatory evidence of this issue. As economical as the directions appeared, they complied with the **Turnbull** guidelines.

R v Turnbull [1976] 3 All ER 549 followed; **Mills et al v R** [1995] 1 WLR 511 followed.

4. The part of the summation which refers to "one or four or more identifications" is most likely an error in transcription. Firstly, the phrase makes little sense linguistically. Secondly, nowhere in the judge's rehearsal of the evidence in his summation did he refer to other witnesses who claimed to have seen the appellant shoot the deceased. Lastly, the judge's directions on identification, were confined to Spring's evidence.
5. Historically, where an accomplice was called as a prosecution witness, the judge was required to give a corroboration warning, failing which, the conviction must be quashed. In England, this requirement was abolished with the passage of the **Criminal Justice and Public Order Act 1994** ("the **1994 Act**") which made the corroboration warning a matter of the judge's discretion. The manner in which a judge should exercise that discretion was set out in **R v Makanjuola**; **R v Easton**. Even though Saint Vincent and the Grenadines does not have a statutory counterpart to the **1994 Act**, the Privy Council has held that since the requirement to give a corroboration warning was merely a rule of practice relating to the way the judge should direct the jury, the principles enunciated in **Makanjuola** should be followed.
R v Makanjuola; **R v Easton** [1995] 1 WLR 1348 followed; **R v Gilbert** [2002] 2 AC 531 followed.
6. The relevant questions to be answered are firstly, whether Foye was an accomplice and, secondly, if so, whether the judge wrongly exercised his discretion to not give a corroboration warning. The evidence shows that Foye attended the scene after hearing gunshots and saw the appellant and Adams both armed while the deceased dragged himself along the ground. With that knowledge, he took possession of

Adams' gun and proceeded to his home with it. This could arguably be interpreted as an attempt to dispose of, or at least conceal, a weapon that may have been of evidential relevance in the investigation of the murder. This could be interpreted as an act of intentional assistance on his part, and, at the very least, Foye was an accomplice after the fact. In answering the second question, it must first be noted that the Court does not lightly interfere with the trial judge's exercise of discretion. Considering that the respondent's case did not solely depend on Foye's evidence; that there was strong identification evidence from Spring, and there was no suggestion that Foye was unreliable, deceitful or that he held a grudge against the appellant, there is no justification for saying that the judge wrongly exercised his discretion in not giving a corroboration warning.

Dufour and others v Helenair Corporation Limited and others (1996) 52 WIR 188 followed; **Davies v Director of Public Prosecutions** [1954] 1 All ER 507 followed; **R v Makanjuola**; **R v Easton** [1995] 1 WLR 1348 followed.

JUDGMENT

- [1] **WARD JA:** On 12th February 2019, Andy Quashie ("the appellant") was convicted after trial for the murder of Joseph Lynch ("the deceased" or sometimes, "Evans" or "Tuffie") contrary to section 159(1) of the Criminal Code,¹ and one count of possession of a firearm with intent to aid in the commission of an offence contrary to section 19(1)(a) of the Firearms Act.² On 29th March 2019, he was sentenced to a term of 28 years and 6 months imprisonment on the count of murder, and to a term of 7 and a half years on the possession of a firearm count. He was credited for the period of 6 and a half years spent on remand.

Outline of the prosecution's case

- [2] The narrative of the events immediately leading up to the murder of the deceased was provided by the witness Adolphus Foye ("Foye"). He testified that on 1st September 2012, he was in company with the appellant and one Billy Adams ("Adams") in the Cash Ville area when the deceased passed by and hurled insulting words at the group saying "aryuh pussy hole." Adams asked the appellant whether he was taking that and urged the appellant, "boy ley we go for the thing ah them".

¹ Cap. 171 of the Revised Laws of Saint Vincent and the Grenadines, 2009.

² Cap. 386 of the Revised Laws of Saint Vincent and the Grenadines, 2009.

With that, the appellant and Adams ran towards their home and asked Foye to accompany them. When he was halfway to their home, he saw the appellant and Adams heading back towards him. Each was armed with a gun. All three then walked to Texier Road. From where they were, the deceased was observed in a yard speaking with his girlfriend. After a while he left and started walking in the direction of the trio. At that point the appellant ran through a shortcut. Foye said he then lost sight of the deceased and the appellant but then heard “the thing them burst off down there by the burial ground side... bow, bow, bow.” On hearing this he ran down to the burial ground side. There he saw the deceased crawling on the ground. Adams then handed Foye a firearm, which he described as a mini-tech. Adams handed him the gun and he wondered what to do with it. He decided to take it home and left with it. Foye and the appellant walked through a short cut then went their separate ways.

- [3] The main witness for the Crown was Mayon Spring (“Spring”), who was the only person to have witnessed the shooting. He testified that he had known the appellant quite well for a period of about three years. He said that at about 12:50 p.m. on 1st September 2012 he was at a friend’s house with his two-year-old son just along the main highway of the Layou Public Road. He was inside the house when he heard two gunshots. He stepped outside and looked down the road and observed someone lying face down in the centre of the road. The person was trying to move to the right side of the road. He then saw the appellant emerge from the Cap Ville gap with a shotgun in his right hand. He walked towards the person lying on the ground, raised the shotgun, pointed it at the person and fired a shot. The appellant then turned and walked towards the village. Spring stated that he then proceeded down to where the person was lying. When he got there, he saw that a crowd was gathered, and when he went through the crowd and noticed that “the person on the ground was Evans Tuffie Lynch” and his girlfriend, was holding him in her arms. Spring testified that he had made these observations from a distance which it seems was agreed to be about 100 feet, based on the reference points he had given. He said he was able to see the appellant’s whole body and that nothing obstructed his

view, and the appellant wore nothing on his face. He said he was able to observe the appellant for about a minute or so. The post-mortem examination report listed the cause of death as multiple gunshot injuries.

The appellant's case

- [4] The appellant opted to give evidence. He testified that on, 1st September 2012 he was at home. After taking a shower, he proceeded to the Cash Ville block where he met a lot of people. He sat there smoking and listening to music. He testified that he met Adams on the block when he arrived. After about half an hour the deceased, whom he referred to as "Tuffie" passed by and threw a word, "pussy", at Adams. The appellant further testified that sometime afterwards, he heard a loud noise but was not sure where it came from. He then heard another loud sound and people started running all over the place. He too started running to see what was happening, so he followed the people towards the main road. When he got to the main road, he saw someone lying on the ground. He was eventually able to peep through the crowd and he recognised the person lying on the ground to be Tuffie. Like everyone else, he stood there asking what was really going on since he didn't know what had happened. He eventually left the main road and returned to the gap where he spoke with some men before going home.

- [5] The appellant's case was therefore a full denial of involvement in the shooting and therefore a case of mistaken identity.

Grounds of appeal

- [6] On 26th April 2019, the appellant filed a notice of appeal against both conviction and sentence containing four grounds. At the hearing of the appeal, the appellant sought and obtained leave to abandon those grounds and to rely instead on the following four grounds against conviction only:
- (1) The learned trial judge allowed prejudicial hearsay evidence thus making the trial manifestly unfair to the defendant.

(2) The learned trial judge erred in law by initially refusing and then failing to give an adequate **Turnbull**³ direction.

(3) The learned trial judge erred in law by failing to give an accomplice direction.

(4) Taken together, the trial was manifestly unfair and unsatisfactory.

[7] I propose to take each ground in turn, first setting out the respective submissions of the appellant and the respondent before proceeding to provide my analysis and conclusion on the merits of each ground.

Ground 1 - The learned trial judge allowed prejudicial hearsay evidence thus making the trial manifestly unfair to the defendant

[8] The appellant's complaint under this ground is directed towards four bits of evidence that were given during the trial, which it is said, were highly prejudicial to the appellant, and in respect of which the judge failed to caution the jury. The first bit of evidence objected to was one made by Foye ("Foye's evidence"), who related what a woman is alleged to have said to the appellant in his (Foye's) presence. Foye testified as follows:

"Well a man -- well well Doyner a woman name Doyner say Oh God Andy Quasie (sic) me know you, yo overs, e ah tell um nuh must done wid them thing dey.... but she dun die to nuh....before arwe reach pon the same area up dey nuh before the thing happen that ah way the people them ah talk before the action happen me ah talk bout like nuh."⁴

[9] For the appellant, Mr. Jomo S. Thomas submitted that this evidence was elicited on the prodding of the judge. To place this evidence in context, it is necessary to examine the Record of Appeal at pages 33 to 35. Immediately prior to this evidence being elicited, Foye was relaying certain things being said by a woman to the appellant as the appellant, Adams and Foye were "walking going up". His evidence

³ [1976] 3 All ER 549.

⁴ See p. 35, lines 6-11 of the Record of Appeal.

was interrupted a few times as it is evident from the Record that the judge was struggling to keep up with him. At pages 34 – 35 of the Record, the following exchange is recorded between the judge and Foye:

“THE COURT: I can’t write as fast as you can talk so please help me out, go a little slower for me. Alright, you walking down, you saw a woman, the woman said to you - -

THE WITNESS: Right by Mavis right dey – by Mavis gap right dey so.

THE COURT: Yes a woman spoke to you by Mavis Gap and what did the woman tell you?

THE WITNESS: Not me enuh, come like me bin dey to but me ah just listen. Andy Quashie them was talking to nuh.

THE COURT: Ok Andy was there?

THE WITNESS: Yeah three ah we.

THE COURT: Ok.

THE WITNESS: So then the man now - - when arwe ah go up now in the same gap ah go up in the street now –

THE COURT: Hold on but you didn’t tell me what the woman said when Andy was there.”

[10] It was in answer to that question that Foye gave the impugned evidence. The overall context as gleaned from the record, and roughly translated, is that the witness had been allowed to give evidence that a woman had said to the appellant that somebody (in context, presumably the deceased) had said that they had some gunshot to give the appellant which the witness interpreted as a threat. It was in this context that Doyner is alleged to have said, “Oh God Andy Quasie (sic) me know yuh... must done wid dem thing dey.” Roughly translated, it seems that Doyner was trying to placate the appellant or at least urge him to avoid conflict or violence in circumstances where threats were being made towards him.

[11] The second bit of evidence to which objection is taken on grounds of prejudicial hearsay is the evidence of Angela Quashie (“Quashie’s evidence”), the girlfriend of

the deceased and great aunt of the appellant. She gave evidence of a conversation she had with the deceased at their home shortly before the shooting. She testified:

“He start ...complaining talking to me...he said he can’t have peace with my nephew (the appellant) and Billy anytime he pass in the street they always - -”⁵

[12] At that point, the prosecutor intervened to stop the witness from giving any further details.

[13] The third bit of evidence said to be prejudicial hearsay is recorded at page 131 of the Record, from lines 8 to 17 (“the appellant’s evidence”). Here, the appellant testified that he was at home when his mother informed him that the police were looking for him in connection with the murder. He was asked by his counsel whether he did anything when he was so informed by his mother. The appellant replied:

“Well I had some marijuana home at the time, you understand, so I get me place clean up because after me mommy give me that message I must look for police, I must look for police you understand....Well I had a bucket ah marijuana inside the house at the moment so after me mother give me the message that police want me my name calling in thing police want me I got to clean me place before police get to me place, you understand, cause if them come dey they go come find the marijuana.”

[14] The last bit of evidence to which objection is taken on grounds of prejudicial hearsay is that given by Inspector Trevor Bailey (“Bailey’s evidence”). After Adams had been arrested for the murder, he was subsequently interviewed under caution by Inspector Bailey. During the course of cross-examining Inspector Bailey, the following exchange occurred between him and defence counsel:

“Q:...Umm so you cautioned him?

A: I did please My Lord.

Q: (Inaudible) and he done told you certain things; he just said something one up one time he tell you something?

A: He said “Andy Quashie shoot the man”.⁶

⁵ See pp. 106-107, lines 22-25 of the Record of Appeal.

⁶ See pp.159-160 of the Record of Appeal.

- [15] Mr. Thomas submitted that this was highly prejudicial hearsay evidence and was compounded by the fact that the judge never warned the jury that this was a self-serving statement from someone who had been arrested and charged with the murder.
- [16] In written submissions, Mr. Thomas submitted that the cumulative effect of the four pieces of prejudicial hearsay evidence was to doom the appellant's chances for a fair trial and that they had the effect of rendering the appellant's conviction unsafe and unsatisfactory. However, during the course of the hearing Mr. Thomas conceded that by itself the hearsay evidence was not sufficient to vitiate the conviction, although I understood him to be arguing that when taken together with the other grounds of appeal, the cumulative effect of all of the matters of complaint was to render the conviction unsafe.

The respondent's submissions on ground 1

- [17] In relation to the complaint about Foye's evidence, Ms. L.T. Rose-Ann Richardson for the respondent in written submissions, "agreed that there were minor breaches of the application of the hearsay rule". While agreeing that the evidence should not have been admitted, Ms. Richardson contended that the evidence of the conversation adduced by Foye was not more prejudicial than probative and was not detrimental to the overall fairness of the trial.
- [18] As it relates to Quashie's evidence, Ms. Richardson admitted that that evidence should not have been heard by the jury. Nonetheless, she invited the Court to consider that the prosecution did not rely on that bit of evidence as part of its case and that when the prosecutor realised where the witness was going, the witness was stopped immediately.
- [19] In so far as Bailey's evidence is concerned, Ms. Richardson conceded that that evidence offended the hearsay rule given that the maker of the statement, Adams, was not available for cross-examination (having died before trial).

[20] The respondent did not address the complaint in relation to the appellant's evidence.

[21] The respondent's overall submission was that "although there were minor breaches of the application of the hearsay rule, these breaches of the hearsay rule do not automatically deem the trial unfair and the conviction unsafe." This is so, submitted Ms. Richardson, because the evidence was so overwhelming against the appellant, "that a jury, having not heard the hearsay evidence and properly directed could have returned guilty verdicts." There was ample independent evidence which pointed to the culpability of the appellant. Having regard to all of the evidence, a conviction was inevitable.

Discussion

[22] Evidence is hearsay if it is a statement (oral or written) made by a person at a time or on an occasion other than when giving evidence in the subject court proceedings, and the object of the evidence is to establish the truth of what is asserted in the statement. A succinct summary of the hearsay rule was provided by the Privy Council in the well-known case of **Subramaniam v Public Prosecutor**:⁷

"Evidence of a statement made to a witness by a person who is not himself called as a witness may or may not be hearsay. It is hearsay and inadmissible when the object of the evidence is to establish the truth of what is contained in the statement. It is not hearsay and is admissible when it is proposed to establish by the evidence, not the truth of the statement, but the fact that it was made. The fact that the statement was made, quite apart from its truth, is frequently relevant in considering the mental state and conduct thereafter of the witness or of some other person in whose presence the statement was made."

[23] A good example of when a statement may not be hearsay because it is not proposed to establish the truth of its contents is provided in **Subramaniam** itself. In that case, in support of a defence of duress, the defendant sought to give evidence of threats made to him by terrorists who were not called to give evidence. The evidence of the threats made to him was admissible because the purpose of proving that he had been subjected to threats was not to establish that the threats were true but was

⁷ [1956] 1 WLR 965 at 970.

relevant to show the effect that they produced on the state of mind of the defendant, namely, that the threats induced in him a fear of instant death if he failed to comply with the terrorists demands.

- [24] The rule against hearsay seeks to guard against the risks that the witness might be lying or mistaken about what the absent witness said; or, although giving a truthful and accurate account of what the absent witness said, the absent witness themselves was not being truthful or was mistaken in what they had said.
- [25] While there are well recognised common law and statutory⁸ exceptions to the rule against hearsay, it is not suggested that any exception applies in this case, thus, for present purposes, it is unnecessary to say anything further on this topic.
- [26] In assessing whether evidence offends the hearsay rule, it is necessary to identify what relevant fact the statement contains and is intended to prove; and having done so to ask whether the purpose of the maker of the statement was that the fact asserted be received or acted upon as true. If the object of the evidence is to establish the truth of the contents of the statement of the absent witness, then it is hearsay.
- [27] Applying this approach, Foye's evidence is evidence of a statement made to him or in his presence by a person who was not called as a witness at the appellant's trial. It seems to me that two matters are asserted. First, that the absent witness knew the appellant. Secondly, that she advised him to "done wid them things dey," which in context seems to be a reference to involvement in conflict or violence. These statements were intended to be acted on as true. The evidence was therefore hearsay. When viewed in the context of the other hearsay evidence which preceded it, this statement carries the prejudicial connotation that the appellant was a person

⁸ In Saint Vincent and the Grenadines, hearsay evidence is only admissible in civil proceedings by virtue of the provisions of the Evidence Act Cap 220.

engaged in a certain lifestyle which the absent witness was exhorting him to be done with.

- [28] I should add that the fact that it was said in the presence of the appellant is of no moment here. It is not always the case that once a statement is made in the presence of an accused person it is immune from challenge on grounds of hearsay. The correct legal principle governing statements made in the presence of an accused person is as articulated in **DPP v Christie**.⁹

“The rule of law undoubtedly is that a statement made in the presence of an accused person, even upon an occasion which should be expected reasonably to call for some explanation or denial from him, is not evidence against him of the facts stated save so far as he accepts the statement, so as to make it, in effect, his own.”

- [29] The statement only becomes admissible where the accused, by word or conduct, acknowledges it as true. Therefore, in the absence of evidence that the appellant accepted the truth of what was asserted in the statements, they are inadmissible as evidence against him.

- [30] Accordingly, I would hold that the impugned part of Foye’s evidence was inadmissible hearsay.

- [31] Quashie’s evidence similarly runs afoul of the rule against hearsay as it is evidence of a statement made to her by a person, the deceased, who self-evidently could not be called as a witness at the appellant’s trial. The fact asserted and intended to be proved by the evidence was that the deceased could not have peace whenever he encountered the appellant and Adams on the street, the clear implication being that they always harassed him. The only purpose intended by the maker of this statement is that it be regarded as true. This evidence was clearly prejudicial to the appellant as it painted him in the light of a habitual tormentor of the deceased. The prejudice is heightened, and the statement given greater force, when it is considered that this complaint is allegedly made to the witness shortly before the deceased is murdered.

⁹ [1914] AC 545, at 544.

- [32] This was inadmissible hearsay evidence and ought not to have passed without at least some direction to the jury to completely disregard it. While evidence that an accused bore the deceased some enmity is admissible to prove motive,¹⁰ that evidence must be derived from an admissible source, such as a witness who had personally perceived the accused engaging in acts of hostility towards the deceased. This was not the case here.
- [33] In relation to Bailey's evidence, it is afflicted by the same vice; it is evidence of a self-serving statement made to him by a deceased co-accused who could not be called as a witness at the appellant's trial. The fact asserted by the statement is that the appellant was the person who shot and killed the deceased; and it is asserted to prove that very fact as the truth. That evidence was classic hearsay and was indeed prejudicial to the appellant. At the least, it warranted a strong direction from the judge to the jury that it should be disregarded entirely.
- [34] In relation to the appellant's evidence, it is manifestly and self-evidently not hearsay. This is evidence given by the appellant in court during his examination in chief describing his own acts upon learning that the police were looking for him. There is no merit to this complaint.
- [35] Having determined that these three pieces of inadmissible hearsay evidence were allowed to besmirch the trial record, the appellant partly succeeds on ground one. However, Mr. Thomas has conceded that even cumulatively, the admission of this evidence would not by itself be sufficient to vitiate the conviction; much depends on what is made of the other grounds of appeal, to which I now turn.

¹⁰ See *R v Ball* [1911] 2 AC 47.

Ground 2 - The learned trial judge erred in law by initially refusing and then failing to give an adequate Turnbull direction.

The appellant's submissions on identification

- [36] Mr. Thomas asserted that although identification was a live issue in the case, the judge completed his summation without directing the jury that this was so. It was only after consulting with counsel for the respondent and the defence that the judge directed the jury on the issue of identification. Even so, submitted Mr. Thomas, the judge gave a grudging **Turnbull** direction that was grossly inadequate. Mr. Thomas submitted that rather than directing the jury on the identification evidence, the judge posed and answered some of the questions which **Turnbull** requires the judge to direct the jury to consider. In this regard, the specific direction complained of is reflected in the following passage of the summation:

“So Mayon Spring, how long did he have the person who he says was the defendant under observation. He told you the length of the time. At what distance. Mr. Spring indicated to you about 100 feet. In what light; he said broad daylight. **Did anything interfere with his observation; nope.** (emphasis added) He said that nothing was blocking him. Had he ever seen that person before; he said yes I knew the man, I knew him quite well.”¹¹

- [37] Mr. Thomas takes issue with the underlined directions, which he submitted shows that the judge impermissibly asked and answered his own questions.
- [38] While Mr. Thomas had contended in his written submissions that it was disputed that this case could properly be characterised as a recognition case, he resiled from this position at the hearing of the appeal and accepted that the appellant and the identifying witness, Spring, were known to each other previously. Nonetheless, Mr. Thomas submitted that the judge did not warn the jury in sufficiently clear terms of the dangers associated with this kind of evidence.
- [39] Further, Mr. Thomas complained that during his summation the judge spoke of, “one or four or more identification” but dwelled only on the evidence of Spring. The jury

¹¹ See p. 234 of the Record of Appeal.

was not taken through the evidence of these “multiple identifications” of which they were told and were thus not “properly and adequately appraised of the law.”

- [40] Mr. Thomas submitted that the failure of the judge to raise the issue of identification and the problems related to it, as well as his lacklustre directions rendered his directions on identification inadequate.

The respondent’s submissions on identification

- [41] Ms. Richardson accepted that identification was in issue in this case. However, she drew attention to the judge’s directions on identification and submitted that they were in accordance with the guidance contained in **Turnbull**. While the judge did not use the exact words suggested in **Turnbull**, and was not required to, he nonetheless canvassed the points which the jury were required to consider. Furthermore, submitted Ms. Richardson, the judge did not supply his own answers to the questions posed per **Turnbull**; he was merely reiterating the actual evidence given by the witness.
- [42] In relation to the reference to “one or four or more identification”, Ms. Richardson submitted that this was most likely an error in transcription as the judge was well aware that there was only one witness who claimed to have seen the appellant shoot the deceased while the other witness spoke of the actions of the appellant before and after the shooting.

Discussion on identification

- [43] Whenever the case for the prosecution depends on the correctness of one or more disputed identifications of the accused, an important duty devolves upon the trial judge to direct the jury most carefully on the issue of identification. This is so whether the witness and the accused were complete strangers or in a recognition case where the witness claims to have known the accused previously. The template for such directions has become the speech of Lord Widgery CJ in **R v Turnbull**:¹²

¹² Supra n.3 at 550-552.

“First, whenever the case against an accused depends wholly or substantially on the correctness of one or more identifications of the accused which the defence alleges to be mistaken, the judge should warn the jury of the special need for caution before convicting the accused in reliance on the correctness of the identification or identifications. In addition he should instruct them as to the reason for the need for such a warning and should make some reference to the possibility that a mistaken witness can be a convincing one and that a number of such witnesses can all be mistaken. Provided this is done in clear terms the judge need not use any particular form of words.

“Secondly, the judge should direct the jury to examine closely the circumstances in which the identification by each witness came to be made. How long did the witness have the accused under observation? At what distance? In what light? Was the observation impeded in any way, as for example by passing traffic or a press of people? Had the witness ever seen the accused before? How often? If only occasionally, had he any special reason for remembering the accused? How long elapsed between the original observation and the subsequent identification to the police? Was there any material discrepancy between the description of the accused given to the police by the witness when first seen by them and his actual appearance? ... Finally, he [the judge] should remind the jury of any specific weaknesses which had appeared in the identification evidence....

Recognition may be more reliable than identification of a stranger; but, even when the witness is purporting to recognise someone whom he knows, the jury should be reminded that mistakes in recognition of close relatives and friends are sometimes made.

All these matters go to the quality of the identification evidence. If the quality is good and remains good at the close of the accused's case, the danger of a mistaken identification is lessened; but the poorer the quality, the greater the danger.”

[44] It has been recognised by this Court¹³ and others that it is not expected, nor is it required that the trial judge must recite this formula as a mantra. The Privy Council made this point sharply in **Mills et al v R**¹⁴ in the following terms:

“Their Lordships emphatically reject this mechanical approach to the judge's task of summing up. *Reg. v. Turnbull* is not a statute. It does not require an incantation of a formula. The judge need not cast his directions on identification in a set form of words. On the contrary, a judge must be

¹³ See *Nardis Maynard v The Queen* Criminal Appeal No. 12 of 2004 (delivered 22nd May 2006, unreported); *Yourrick Furlonge v The Queen* ANUCRAP 2009/0006 (delivered 27th February 2014, unreported).

¹⁴ [1995] 1 WLR 511 at 518.

accorded a broad discretion to express himself in his own way when he directs a jury on identification. All that is required of him is that he should comply with the sense and spirit of the guidance in *Reg. v. Turnbull* as restated by the Privy Council in *Reid (Junior) v. The Queen* [1990] 1 A.C. 363.”

[45] A direction on identification evidence will therefore avoid censure where the judge, in whatever words used, communicates clearly to the jury the need for special caution in approaching evidence of identification, and explains to them the reasons for this. The judge must make clear that mistakes in identification can equally be made by a witness purporting to recognise someone whom he knows, including relatives. The judge must direct the jury to examine carefully the circumstances under which the identification was made, and should identify those circumstances which require consideration to be matters such as the length of time the witness had the accused under observation; the distance at which the observation was made; the lighting conditions at time of observation; whether the observation was impeded in any way; whether the witness had ever seen the accused before, and if so, how often and in what circumstances. Importantly, the judge must ensure that at the time of identifying each such circumstance, the judge relates the evidence bearing on that factor then and there, so that the jury has the benefit of comprehending and relating the directions to the actual evidence in the case. The judge must also point out any specific weaknesses in the identification evidence

[46] Against the foregoing principles, I will examine the directions given by the judge, beginning with his discussion with counsel regarding whether there was need for directions on identification. After the judge had summed up the evidence given by the appellant, he told the jury, “So that was the evidence in this matter; my short trip through the evidence with you. Remember Mr. Foreman, ladies and gentlemen of the jury that you have to consider all of the evidence.”¹⁵

[47] The judge then turned to counsel and asked:

¹⁵ See p. 233 of the Record of Appeal.

"Now Mr. Connell and Mr. Nelson do you think that a identification - - a direction on identification is apt for this matter?

MR. KARIM NELSON: My Lord, the defence is actually challenging the identification so yes please."¹⁶

[48] Pausing here, it is to be noted in fairness to the judge that it is the judge himself who raised the question of the need for a direction on identification; not that he had to be prompted to give it as suggested in the appellant's written submissions. Having heard Mr. Nelson's response, the judge promptly launched into the directions without demur. It is plainly erroneous to suggest, as the appellant does, that the judge initially refused to give a **Turnbull** direction.

[49] The judge directed the jury on identification as follows:

"Alright ok. Mr. Foreman, ladies and gentlemen of the jury in this trial the case against the defendant depends to a large extent on the correctness of one or four or more identifications of him. The accused man says they are mistaken. I will therefore warn you that there is a special need for care before you convict a defendant in reliance on the evidence of identification and that is because it is possible for an honest witness to make a mistake in identification and an apparently convincing witness can be mistaken so to can a number of apparently convincing witnesses. I should also tell you that mistakes in recognition are sometimes made even in the case of close friends or relatives; so in this case you have to therefore examine carefully the circumstances in which the identification by the witness was made.

So Mayon Spring, how long did he have the person who he says was the defendant under observation. He told you the length of time. At what distance. Mr. Spring indicated to you about 100 feet. In what light; he said broad daylight. Did anything interfere with his observation; nope. He said that nothing was blocking him. Had he ever seen that person before; he said yes I knew the man, I knew him quite well. The accused man also gave evidence that they had conducted business together and he agrees that Mayon Spring knows him. So that consider then all those circumstances and see whether or not you think you are able to rely on the evidence of Mayon Spring and the correctness of the identification of the accused."¹⁷

¹⁶ Ibid.

¹⁷ See p. 234 of the Record of Appeal.

[50] In my view, as economical as these directions may appear, they were not lacklustre but were in fact compliant with the **Turnbull** guidelines. The judge warned the jury of the need for special care before convicting the appellant in reliance on the identification evidence. He explained that the reasons for this was the possibility of mistake by an identifying witness and even by a number of witnesses, and that the possibility of mistake was present even in recognition cases, and although the witnesses appeared convincing. The judge then directed the jury to examine carefully the circumstances under which the identification was made and took them through the relevant circumstances which were: the length of time the witness had the appellant under observation; the distance at which the observation was made; lighting conditions at the time of observation; whether the observation was impeded in any way; and whether the witness knew the appellant before and in what circumstances. The judge even cross-referenced the appellant's confirmatory evidence on this issue. Importantly, at the time of posing each question in relation to the circumstances of the identification, the judge related the evidence bearing on that factor immediately. This approach has been wrongly criticised by the appellant and characterised as the judge asking and answering his own questions. The judge was merely doing what the authorities enjoin him to do; relating each consideration or question to the evidence in the case.

[51] It might be said, however, that the judge should have actually reminded the jury of the evidence relating to the length of time the witness claimed to have had the appellant under observation rather than merely raising the question and saying, "he told you". However, in my view, this omission did not render the directions as a whole inadequate.

[52] In so far as it is said that the judge erroneously told the jury that there was, "one or four or more identifications" of the appellant, I am inclined to agree with Crown Counsel that this is most likely an error in transcription. I say this for several reasons. First, the phrase makes little sense linguistically. Secondly, the structure of the judge's summation was one where he recounted the evidence of each witness in

sequence. Nowhere in that rehearsal of the evidence of the witnesses is there any suggestion that any witness other than Spring claimed to have seen the appellant shoot the deceased. Additionally, when the judge gave directions on the identification evidence, his directions were confined to the evidence given by Spring.

[53] All of these circumstances leave me confident that even if the judge's words are accurately transcribed, the jury could not have been in any doubt that the case against the appellant turned on the correctness of the identification evidence of one witness only, and that witness was Spring.

[54] For all of these reasons I would dismiss ground 2.

Ground 3: The learned trial judge erred in law and misdirected himself when he failed to give an accomplice direction

The appellant's submissions

[55] Mr. Thomas submitted that based on the evidence, Foye was an accomplice who had an interest to serve in giving evidence for the respondent. He submitted that Foye and Adams were implicated in the shooting that led to the death of the deceased and reminded that both had been charged with his murder but the police later dropped the charges. Despite this, the judge did not alert the jury to the dangers of accepting the evidence of Foye without more.

The respondent's submissions

[56] The respondent's position was that Foye was not an accomplice since there was no evidence either on the respondent's case or the appellant's case that Foye committed the act of murder, or aided or abetted the act of murder. The respondent submitted that even on the principle of joint enterprise, there was no basis for charging Foye with murder. Accordingly, no corroboration warning was needed.

[57] In the alternative, Ms. Richardson submitted that if the Court finds that Foye was an accomplice, it could not be said that his evidence was uncorroborated. His evidence was merely circumstantial but there was the evidence of Spring who testified that

he had seen the appellant shoot the deceased. This was therefore independent evidence on the respondent's case implicating the appellant.

- [58] Furthermore, submitted Ms. Richardson, there was no absolute requirement that a corroboration warning should be given in relation to accomplice evidence.

Discussion on accomplice directions

- [59] In its primary and natural sense, an accomplice is a person who is a participant in the actual crime charged whether as principal or an accessory before or after the fact. Beyond this class of persons, two other classes have been recognised as accomplices: (1) a receiver of stolen goods on the trial of the thief from whom they received them; and (2) parties to crimes, identical in type to the offence charged, evidence of which has been admitted as proving system and intent and negating accident.

- [60] In **Davies v Director of Public Prosecutions**¹⁸ the House of Lords posited the following definition of an accomplice:

"There is in the authorities no formal definition of the term "accomplice": and your Lordships are forced to deduce a meaning for the word from the cases in which X, Y and Z have been held to be, or held liable to be treated as, accomplices. On the cases it would appear that the following persons, if called as witnesses for the prosecution, have been treated as falling within the category : -(i) On any view, persons who are participes criminis in respect of the actual crime charged, whether as principals or accessories before or after the fact (in felonies) or persons committing, procuring or aiding and abetting (in the case of misdemeanours). This is surely the natural and primary meaning of the term "accomplice". But in two cases, persons falling strictly outside the ambit of this category have, in particular decisions, been held to be accomplices for the purpose of the rule: viz, (ii) receivers have been held to be accomplices of the thieves from whom they receive goods on a trial of the latter for larceny (*R v Jennings* ; *R v Dixon*), and (iii) when X has been charged with a specific offence on a particular occasion, and evidence is admissible, and has been admitted of his having committed crimes of this identical type on other occasions, as proving system and intent and negating accident: in such cases the court has held that, in relation to such other similar offences, if evidence of them were given by parties to them, the evidence of such other parties should not be left to the jury without a warning that it is dangerous to accept it without corroboration: *R v Mohamed*

¹⁸ [1954] 1 All ER 507 at 513.

[61] In this case, ground 3 is predicated on the argument that Foye was an accomplice to the crime of murder as an accessory after the fact.

[62] Historically, where an accomplice was called as a witness for the prosecution, it was obligatory for the judge to warn the jury about convicting the accused on the uncorroborated evidence of an accomplice. He was required to direct them that although they may convict on the evidence of an accomplice, it is dangerous to do so unless the accomplice's evidence was corroborated. This rule was of ancient vintage and also applied to other categories of witnesses, such as victims of sexual offences. The courts had consistently held that in the absence of such a warning the conviction must be quashed. In England, this requirement was abolished with the passage of the **Criminal Justice and Public Order Act 1994 Act** ("the **1994 Act**"). Section 32 of the **1994 Act** provided so far as relevant:

"(1) Any requirement whereby at a trial on indictment it is obligatory for the court to give the jury a warning about convicting the accused on the uncorroborated evidence of a person namely because that person is -
(a) an alleged accomplice of the accused, or
(b) where the offence charged is a sexual offence, the person in respect of whom it is alleged to have been committed,
Is hereby abrogated..."

[63] With the abrogation of the requirement to give a corroboration warning, whether to give a warning in any given situation was left within the discretion of the trial judge. Comprehensive guidance on the interpretation of the **1994 Act** and the manner in which a judge should exercise their discretion was helpfully furnished by the Court of Appeal in **R v Makanjuola; R v Easton**¹⁹. In giving the judgment of the court, Lord Taylor of Gosforth CJ stated:

"The circumstances and evidence in criminal cases are infinitely variable and it is impossible to categorise how a judge should deal with them. But it is clear that to carry on giving "discretionary" warnings generally and in the same terms as were previously obligatory would be contrary to the policy and purpose of the Act. Whether, as a matter of discretion, a judge should

¹⁹ [1995] 1 WLR 1348 at 1351 to 1352.

give any warning and if so its strength and terms must depend upon the content and manner of the witness's evidence, the circumstances of the case and the issues raised. The judge will often consider that no special warning is required at all. Where, however the witness has been shown to be unreliable, he or she may consider it necessary to urge caution. In a more extreme case, if the witness is shown to have lied, to have made previous false complaints, or to bear the defendant some grudge, a stronger warning may be thought appropriate and the judge may suggest it would be wise to look for some supporting material before acting on the impugned witness's evidence. We stress that these observations are merely illustrative of some, not all, of the factors which judges may take into account in measuring where a witness stands in the scale of reliability and what response they should make at that level in their directions to the jury. We also stress that judges are not required to conform to any formula and this court would be slow to interfere with the exercise of discretion by a trial judge who has the advantage of assessing the manner of a witness's evidence as well as its content.

To summarise. . . (2) It is a matter for the judge's discretion what, if any warning, he considers appropriate in respect of such a witness as indeed in respect of any other witness in whatever type of case. Whether he chooses to give a warning and in what terms will depend on the circumstances of the case, the issues raised and the content and quality of the witness's evidence. (3) In some cases, it may be appropriate for the judge to warn the jury to exercise caution before acting upon the unsupported evidence of a witness. This will not be so simply because the witness is a complainant of a sexual offence nor will it necessarily be so because a witness is alleged to be an accomplice. There will need to be an evidential basis for suggesting that the evidence of the witness may be unreliable. An evidential basis does not include mere suggestion by cross-examining counsel. (4) If any question arises as to whether the judge should give a special warning in respect of a witness, it is desirable that the question be resolved by discussion with counsel in the absence of the jury before final speeches. (5) Where the judge does decide to give some warning in respect of a witness, it will be appropriate to do so as part of the judge's review of the evidence and his comments as to how the jury should evaluate it rather than as a set-piece legal direction. (6) Where some warning is required, it will be for the judge to decide the strength and terms of the warning. It does not have to be invested with the whole florid regime of the old corroboration rules."

- [64] This passage makes it very clear that with the enactment of section 32(1) of the **1994 Act**, judges undoubtedly have a discretion whether to give a corroboration warning, and guidance is furnished, in the form of a non-exhaustive list of factors relevant to the exercise of that discretion.

- [65] Clearly, in jurisdictions that have enacted provisions similar to section 32(1), **Makanjuola** will have considerable persuasive force. But what of jurisdictions like Saint Vincent and the Grenadines which have no such provision in its **Evidence Act** or otherwise? Does it follow that the common law position continues to apply, so that the judge is obliged to give the corroboration warning in the case of an accomplice?
- [66] The Privy Council's decision in the case of **R v Gilbert**²⁰ out of Grenada is of assistance on this point. While that case concerned the evidence of the victim of a sexual offence, the issue raised was the same. The judge had failed to warn the jury about convicting on the uncorroborated evidence of the complainant, who was the sole identifying witness. The defendant was convicted of attempted rape. The Court of Appeal allowed his appeal and quashed his conviction, holding that the law of Grenada required a corroboration direction and warning to be given in all sexual offence cases and that, since the nature of the evidence left a lurking doubt as to the safety of the conviction, it would not be appropriate to consider the application of the proviso.
- [67] The Crown appealed to the Privy Council in order to challenge the contention that the common law corroboration rule was still to be regarded as part of the law of Grenada, arguing that the English law abrogating the common law rule requiring a corroboration warning was applicable in Grenada by virtue of section 167 of Grenada's **Evidence Act**.²¹
- [68] Although rejecting this latter argument, the Privy Council nonetheless allowed the Crown's appeal. The Board held that the requirement in a sexual offence case, to warn the jury of the danger of convicting on the uncorroborated evidence of the complainant as to whether the offence had been committed and also whether the person charged had committed it, was merely a rule of practice relating to the way

²⁰ [2002] 2 AC 531.

²¹ Cap. 92 of the Revised Laws of Grenada.

the judge should direct the jury; that, as a rule of practice, it was always liable to be reassessed in the light of further experience or research and reformulated in order to better perform its function; that, although the purpose for which the rule existed was to give juries the appropriate directions to assist them to arrive at a safe verdict as part of a fair trial, since the mandatory requirement that such a warning be given in all cases had not been conducive to achieving that result but rather had led to inappropriate and indiscriminate directions being given which confused juries, created unfairness as between the prosecution and the defence and undermined the safety of the juries' verdicts, it should no longer apply in Grenada; that in sexual offence cases the judge would have a discretion whether to give any corroboration warning with regard to the complainant's evidence and, if so, in what terms, depending on the circumstances of the case, the issues raised and the content and quality of that evidence; that, although only in clear and exceptional cases would an appellate court be justified in interfering with such exercise of discretion by the judge.

- [69] This judgment is significant for two reasons. First, it explored the history of the corroboration rule and the conflicting cases, one line of which described the rule as a rule of practice while the other line regarded it as having the force of a rule of law. At paragraph 20 of the judgment, the Privy Council concluded firmly that it was a rule of practice only. Secondly, and more importantly, the Privy Council held that even without a statutory counterpart to the **1994 Act**, the approach and principles enunciated in **Makanjuola** applied in Grenada. In so holding, the Board overruled a previous decision of the Eastern Caribbean Court of Appeal in **Pivotte v The Queen**²² which had held that, in Grenada, the corroboration rule could be abrogated only by statute. The Board held that the common law corroboration rule should no longer be followed when they stated:

“In their Lordships’ opinion the rule of practice which now will best fulfil the needs of fairness and safety is that set out in the passage they have quoted from the judgment of Lord Taylor of Gosforth CJ in *R v Makanjuola* [1995]

²² Crim App No. 11 of 1995 (delivered 20th March 1995, unreported).

1 WLR 1348, 1351-1352. The guidance given by Lord Taylor of Gosforth CJ should now be followed.”²³

- [70] It is pellucid from the foregoing, that although Saint Vincent and the Grenadines has not statutorily abrogated the requirement to give the corroboration warning, and in the absence of any statutory requirement in Saint Vincent and Grenadines that imposes an obligation on the judge to give a corroboration direction in the case of accomplice evidence, the principles and guidance enunciated in **Makanjuola** now apply with full force, and the old common law rules no longer apply.
- [71] It follows therefore that the appellant’s submission that the mere failure by the judge to give a corroboration warning simply because Foye was an accomplice must fail as a legal proposition. What has to be examined is: (i) whether Foye was in law an accomplice; and (ii), if yes, whether the judge erred in exercising his discretion not to give a corroboration warning.
- [72] In order to determine the first issue, it is necessary to examine the evidence in relation to Foye’s role, if any, in the commission of the offence. The material part of Foye’s testimony is that on the day in question he was in company with the appellant and Adams in the Cash Ville area when the deceased passed by and hurled insulting words at the group saying “aryuh pussy hole”. Adams asked the appellant whether he was taking that and urged the appellant “boy ley we go for the thing ah them”. With that, the appellant and Adams ran towards their home and asked Foye to accompany them. When he was halfway to their home, he saw the appellant and Adams heading back towards him. Each was armed with a gun. All three then walked to Texier Road. From where they were, the deceased was observed in a yard speaking with his girlfriend. After a while he left and started walking in the direction of the trio. At that point the appellant ran through a shortcut. Foye said he then lost sight of the deceased and the appellant but then heard, “the thing them burst off down there by the burial ground side... bow, bow, bow.” On hearing this he ran down to the burial ground side. There he saw the deceased crawling on the

²³ Supra n.22 at 543.

ground. Billy then handed Foye a firearm, which he described as a mini-tech. Billy handed him the gun and he wondered what to do with it. He decided to take it home and left with it. Foye and the appellant walked through a short cut then went their separate ways.

[73] There was undisputed evidence that Foye had also previously been charged, along with the appellant and Billy, with the murder of the deceased.

[74] As stated previously, Mr. Thomas submitted that based on this evidence, Foye was an accomplice who had an interest to serve in giving evidence for the respondent. He submitted that Foye and Adams were implicated in the shooting that led to the death of the deceased and reminded that both had been charged with his murder but the police later dropped the charges. Despite this, the judge did not alert the jury to the dangers of accepting the evidence of Foye without more.

[75] The respondent's position is that Foye was not an accomplice since there was no evidence either on the respondent's case or the appellant's case that Foye committed the act of murder, or aided or abetted the act of murder. The respondent submitted that even on the principle of joint enterprise, there was no basis for charging Foye with murder. Accordingly, no corroboration warning was needed.

[76] In the alternative, Ms. Richardson submitted that if the Court finds that Foye was an accomplice, it could not be said that his evidence was uncorroborated. His evidence was merely circumstantial but there was the evidence of Spring who testified that he had actually seen the appellant shoot the deceased. This was therefore independent evidence on the respondent's case implicating the appellant.

[77] In my view, Foye's evidence shows that he had full knowledge that a murder had occurred. According to him, he attended the scene after hearing gunshots and saw the appellant and Adams both armed while the deceased dragged himself along the ground. With that knowledge, he took possession of Adams' gun and proceeded to

his home with it. This could arguably be interpreted as an attempt to dispose of, or at least conceal, a weapon that may have been of evidential relevance in the investigation of the murder. That was an act of intentional assistance on his part. On any view, Foye was at least an accomplice after the fact. **Davies** recognises such a person as falling within the normal and primary definition of an accomplice. I would hold that he was.

[78] This brings me to the second issue: whether it was a wrongful exercise of discretion for the judge not to have given the jury a corroboration warning in relation to Foye. The starting point is to remind oneself that generally a Court of Appeal does not lightly interfere with the judge's exercise of discretion merely because it might have exercised the discretion differently. It may only do so if it can be shown that the judge has exceeded the generous ambit within which reasonable disagreement is possible or where it is shown that his decision is plainly wrong.²⁴

[79] More specifically, in the context of the exercise of discretion in relation to a corroboration warning, I remind myself of the admonition sounded in **Makanjuola** that the appeal court would be slow to interfere with the exercise of discretion by a trial judge who has the advantage of assessing the manner of a witness's evidence as well as its content.

[80] In assessing the circumstances of the present case, I consider it relevant that there has been no suggestion that this witness was shown to have been unreliable or demonstrated to have lied or to bear the appellant some grudge. Indeed, the only basis on which it is urged that a warning should have been given was that Foye was an accomplice. As the contemporary learning makes plain, this factor alone no longer suffices as a trigger for the corroboration warning. Moreover, this was not a case where the prosecution's case depended solely on the evidence of Foye, who never claimed to see which of the appellant or Adams shot the deceased. That

²⁴ See *Dufour and others v Helenair Corporation Limited and others* (1996) 52 WIR 188.

evidence was supplied by Spring, whose evidence was powerful independent and direct evidence that the appellant had shot the deceased.

- [81] For these reasons, I see no justification for saying that the judge committed any error of law in failing to give a corroboration warning and would dismiss ground 3.

Ground 4: The trial was manifestly unfair and unsatisfactory

- [82] In view of the conclusions to which I have arrived on grounds 1-3, and Mr. Thomas' proper concession that the inadmissible hearsay evidence by itself does not render the trial unsafe so as to vitiate the conviction, it follows that this ground fails. I would accordingly dismiss the appeal.

I concur.
Margaret Price-Findlay
Justice of Appeal

I concur.
Gerard St. C. Farara
Justice of Appeal [Ag.]

By the Court

Chief Registrar