IN THE COURT OF APPEAL OF BELIZE A.D. 2024
CRIMINAL APPEAL NO. 7 OF 2021

BETWEEN:

KEYRON GIBSON

Appellant

and

THE KING

Respondent

Before:

Hon. Mme. Justice Sandra Minott-Phillips K.C.	Justice of Appeal
Hon. Mr. Justice Peter Foster K.C.	Justice of Appeal
Hon. Mme. Justice Michelle Arana	Justice of Appeal

Appearances:

Mr. Hubert Elrington SC and Mr. Norman C. Rodriguez for the Appellant
Cheryl-Lynn Vidal SC, the Director of Public Prosecutions for the Respondent

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2024: October 28
December 23

JUDGMENT

[1] **Minott-Phillips J.A.:** This appeal, filed in July 2021, was heard on 28 October 2024. It previously came before the court (differently constituted) on two occasions. The first was on 26 October 2023 when the court was informed of the Appellant's request for time to replace his legal-aid-assigned counsel with counsel he then expected to privately engage. His request for time to engage counsel of his choice was granted. The second occasion was when the appeal was listed for hearing on 19 June 2024. On that occasion the Appellant requested (and was granted) an adjournment as his new counsel was not ready to proceed.

[2] At the commencement of the hearing of the appeal on 28 October 2024, the Court drew the attention of the Appellant's counsel to the fact that the Notice of Appeal filed on 8 October 2021 stated that the grounds of appeal *"will be submitted at a later date"*, but the court had received no further document setting out the grounds of appeal. Counsel for the Appellant, having confirmed to us that no document setting out the grounds of appeal was filed, was invited to orally indicate to the court the proposed grounds of appeal, and did so. We wish to make it clear that an appellant is required to set out his/her grounds of appeal in writing and give timely notice of those grounds to the court and the Respondent. The invitation to the Appellant's counsel to indicate the proposed grounds orally at the hearing of this matter was extended by us as, in the particular circumstances of this case, we considered doing so would further the interest of justice because:

i) it would avoid a third adjournment of this matter;

ii) having rejected the legal aid counsel assigned to him, the Appellant would have been without counsel from the time his Notice of Appeal was filed up to when his current counsel was engaged; and

iii) the learned DPP was willing to proceed with oral notice of the proposed grounds of appeal.

This instance is not to be taken as an indication that the court, on some future occasion, will not insist upon written grounds of appeal and prior due notice of them being given to the court and the Respondent.

[3] A single ground was advanced orally to us, as follows:

> *"The learned judge below was wrong in finding that it was the Defendant [Appellant] who inflicted the wound from which the deceased died."*

The Appellant's contention was that, on that basis, his conviction should be set aside for being unsustainable having regard to the evidence. We pointed out to the Appellant's counsel that, as that proposed ground involves a question of fact alone or, taken at its highest, a question of mixed law and fact, a certificate of the trial judge or the leave of this court (issued pursuant to section 209 of the Senior Courts Act) was required to enable their client to proceed. We decided to treat the matter as an application to us for leave to appeal (to which the learned DPP expressed no objection) and proceeded to hear it in the interests of justice. We ultimately regarded the application for leave as the hearing of the appeal.

[4] For clarity, the following two contentions of the Appellant (raised in the written submissions filed on his behalf) were abandoned specifically and expressly by his counsel at the hearing before us. They were:

a) That the accused, Keyron Gibson, was not told before he was arraigned that he had the right to request that he be tried by a different tribunal of fact. He, therefore, was not given a legal option of requesting a change of the tribunal of fact.

b) That the judge's rejection of the Defence's alibi evidence was not based on legal principle or on evidence before the court but on speculation and cannot be upheld.

Having been abandoned, the Appellant's counsel made no submissions founded upon either of those contentions, and they formed no part of this appeal.

[5] The Appellant, Keyron Gibson, was indicted for the murder of Tulio Casares Jr., it being alleged that on 13 June 2014 in Belize City in the Belize District, in the Central District of the Supreme Court, he murdered Tulio Caceres contrary to section 117 [read along with 106(1)] of the Criminal Code. On 8 June 2021, he was arraigned and pleaded 'Not Guilty'. On 4 October 2021, the Hon. Mr. Justice Lord, sitting as a Judge alone, and having tried this matter, found Keyron Gibson guilty of the murder

of Tulio Caceres. On 21 December 2021, he sentenced him to life imprisonment with eligibility for parole after 25 years. Having been remanded for 6 years prior to that day, Lord, J. ordered that Keyron Gibson serve 19 years imprisonment with effect from 21 December 2021 before being eligible for parole.

[6] The facts are succinctly summarized by Lord, J. in his judgment on sentencing, and I repeat his words:

> *"On Friday, 13th June at about 10:28 a.m. the deceased Tulio Caceres was killed by means of gunshots mainly to the back of the body at the corner of Majestic Alley and North Front Street in Belize City.*
>
> *The evidence of the prosecution was that the defendant/convicted man was the person who was seen with the gun in his hands firing at persons gathered in the park and subsequently or immediately after the shooting the deceased Tulio Caceres was discovered dead at the same location corner Majestic Alley and North Front Street, Belize City.*
>
> *The deceased (Tulio Caceres) was later removed and taken to KHMH where he was pronounced dead on arrival. The post-mortem examination disclosed the cause of death was exsanguination due to internal and external bleeding due to multiple gunshot wounds."*

[7] Included in the evidence adduced by the prosecution at the trial was:

a) That of the forensic pathologist, Dr. Mario Estrada Bran that, on examining the body of the deceased, he found 17 orifices characteristic of wounds caused by a firearm.

b) That of Inspector Carmelito Cawich who testified that, on 13 June 2014 at 10:30 am, he went to the corner of Majestic Alley and North Front Street where he saw a body of a male person with apparent gunshot wounds. He observed several spent shells at the location and some that led to a park about 15-20 feet from where the body was.

c) That of Constable Shamir Mai who said that, on 13 June 2014 at 10:28 am, while standing on North Front Street, he heard a loud bang that sounded like a gunshot coming from the direction of Majestic Alley and North Front Street. He looked in that direction, heard loud bangs, and saw a brown skin male person, wearing a yellow tee-shirt and a grey cap, holding a black handgun in his right hand and firing shots inside the park in the direction of Majestic Alley and North Front Street. Constable Mai was about 100 feet away when he saw the male shooter who he recognized as Keyron Gibson. His evidence was that he knew Keyron Gibson for about 1½ years before that from when he was working mobile and foot patrol in the Majestic Alley area. He would conduct stop and searches on him and documented his particulars. He saw him about 2 to 3 times per week when doing patrol in the area. He (Keyron Gibson) would be 'hanging out' inside Majestic Alley Park. On cruise ship days, Keyron Gibson would be on Handyside Street by St Mary's Church and he (Constable Mai) would have then spoken with him being then at a distance of 3 feet from him. The last time Constable Mai saw him there before the shooting was at about 8:30 am on 9 June 2014 (when he saw him for about 30 minutes from about 100 feet away). On the day of the shooting (13 June 2014) Constable Mai went inside the Water Taxi Terminal and called 911. He was there for about 30 seconds before he went back outside. He heard about 10 shots being fired within 10-15 seconds while making the 911 call. He then ran to the corner of North Front Street in front of the San Pedro Water Taxi where he saw Keyron Gibson at North Front Street and Majestic Alley coming towards the direction of a Chinese Shop located on North Front Street and Handyside Street in the direction facing him. Constable Mai recognized Keyron Gibson who then took a bicycle and rode off in the direction of Handyside Street towards Queen Street. Constable

Mai was in front of the San Pedro Water Taxi (North Front Street and the street that leads off the Fisherman Cooperative). Constable Mai identified the accused in the dock (without objection from the Defence) as the person he knew to be Keyron Gibson and saw on 13 June 2014. After seeing Keyron Gibson ride off, Constable Mai ran to Majestic Alley and North Front Street where he saw a male person lying there motionless with apparent gunshot wounds. He recognized him as being Tulio Caceres who he came to know because he used to hang out in the same Majestic Alley Park, and who he had stopped and searched when he was on foot patrol in the area.

d) That of Inspector Sherlette O'Brien who testified that, in June 2014 she was a Corporal of Police stationed at North Front Street, Belize City. On 13 June 2014, at about 9:00 am, she left her workplace to run a quick errand and, on her way back, stopped at a Chinese shop situated at the corner of North Front Street and Handyside Street, where she purchased a phone card. While standing outside the shop she saw a brown skin male person who had on a grey tee-shirt and a ¾ pants. She exchanged words with him casually. He purchased water. She recognized him to be Keyron Gibson as he was making his way towards the Chinese shop. She knew him for about 2 years prior. She saw him over those 2 years every other day either at Majestic Alley, at Brown Sugar, or by the City Council building. She too (without objection from the Defence) pointed out the defendant/accused as the person she knew as Keyron Gibson. Prior to 13 June 2014, she had seen him about 2 to 3 days prior.

e) Forensic evidence that the 3 slugs retrieved from the body, as well as the 8 shell casings retrieved at the scene, were all fired from the same 9mm calibre Glock brand pistol.

[8] Keyron Gibson gave an unsworn statement from the dock stating:

> *"On 13th June 2014, I was in Lord's Bank Village from around 9:00am to 11:30 am. I was at my cousin's house Leon Gibson and also there was our friend Rodney Castillo. My cousin Leon Gibson was fixing my bike. On 13th June 2014, Ms Sherlette O'Brien did not see me at North Front Street and corner Handyside Street, and I did not spoke to her that morning. Shamir Mai did not see me at Majestic Alley, did not search me and I have never spoken to Shamir Mai. On 13 June 2014, I did not shoot or murder Tulio Caceres and my witness Leon Gibson will testify to the court that I was in Lord's Bank."*

[9] Lord, J was satisfied from the evidence before the court that:

a) There was only one firearm used in the shooting of the deceased; and

b) There was only one shooter involved in the incident on 13 June 2014.

[10] In speaking to the sole ground of appeal, counsel for the Appellant submitted that:

> *"the prosecution's evidence was wholly circumstantial and each of the elements of murder was established, not by direct evidence, but by circumstantial evidence".*

They maintained that the

> *"inferences drawn from the facts produced by the Prosecution were not sufficient to prove in each case that the Appellant was the person who had shot and killed the deceased, Tulio Caceres, and neither did it prove that he had the specific intention to kill the deceased."*

[11] Counsel for the Appellant submitted that the evidence given by Constable Mai that he saw the shooter wearing a yellow shirt, and the evidence given by Inspector Sherlette O'Brien that she saw and spoke with the Appellant a few minutes before the shooting occurred and that he was wearing a gray shirt, is irreconcilable and

cannot be used to prove that the shooter was the accused. Counsel for the Appellant contended, further, that this introduced mistaken identification into the Prosecution's case and there was no evidence to reconcile this discrepancy. This, they said, resulted in the learned trial judge being wrong in law when he concluded that the evidence showed that it was the Appellant who was the shooter.

[12] The learned DPP for the Crown countered, first with a reminder of the dicta from the Caribbean Court of Justice in the case of ***Gregory August and Alwyn Gabb v The Queen*** [2018] CCJ 7 (AJ) at paragraph [32], stating,

> *"It is well established that it is "no derogation" of evidence to say that it is circumstantial".*

[13] She then took the court through the circumstantial evidence before Lord, J., submitting that it was particularly strong. In her written and oral submissions, the DPP pointed out that the prosecution witness, Shamir Mai, saw the Appellant, a person well known to him, firing shots in the direction of the park. The body of the deceased was later found in that park with multiple gunshot wounds, some opined by the forensic examiner, Dr. Mario Estrada Bran, to have been at close range. The DPP submitted that Mai had 2 opportunities to see the shooter and the circumstances were ideal. This was a daylight shooting. Mai was at an acceptable distance. Additionally, the learned DPP pointed out that there was a visit to the *locus* in which the trial judge would have been able to appreciate the precise positions from which the shooter was viewed by Mai. There was no obstruction and neither view was a fleeting glance. Further, Mai's evidence was supported by the evidence of the witness Sherlette O'Brien who testified to having seen the Appellant in the vicinity shortly before the shooting. The DPP also directed our attention to the part of the reasons of Lord, J. showing that he gave himself the appropriate ***Turnbull***[1] warning, carefully examined the evidence before him, and then came to the

[1] ***R v Turnbull & others*** [1976] 3 All ER 549, [CA]

conclusion that he could safely rely on the evidence of identification led by the Crown.

[14] In giving his reasons for judgment, Lord, J. commenced by stating that his jurisdiction to try this case without a jury derived from section 65(a) of the Indictable Procedure Act. It states:

> *"65A.-(1) Notwithstanding anything contained in this Act, the Criminal Code, the Juries Act or any other law or rule of practice to the contrary, every person who is committed for trial or indicted, either alone or jointly with others, for any one or more of the offences set out in sub-section (2) shall be tried before a judge of the court sitting alone without a jury, including the preliminary issue (if raised) of fitness to plead or to stand trial for such offences.*
>
> *(2) The offences referred to in sub-section (1) are–*
>
> *(a) Murder,*
> *(b) Attempt to murder,*
> *(c) Abetment of Murder, and*
> *(d) Conspiracy to commit murder.*
>
> ———
>
> *65E.-(1) Except where the context otherwise requires, a reference in this Act or any other law to a jury, the verdict of a jury or the finding of a jury shall be read, in relation to a trial conducted without a jury, as a reference to the judge, the verdict of the judge or the finding of the judge.*
>
> *(2) Without prejudice to sub-section (1), where a trial is conducted without a jury under section 65A…, the provisions of this Act or any other law, insofar as they are predicated on a trial with a jury, shall not apply or shall be read and construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with a trial by a judge sitting alone without a jury."*

[15] Section 65 of the Indictable Procedure Act provides the jurisdictional basis for a judge, conducting a trial without a jury, to also perform the functions of fact-finding

and arriving at a verdict. In addition to determining the applicable law, the judge sitting alone also determines, from the evidence adduced at trial, the facts he accepts or rejects in making his findings of fact and arriving at a verdict.

[16] The dicta of the CCJ in ***August and Gabb v The Queen***[2] was made in the context of trials conducted by a judge and jury. That dicta is, however, in our view, equally applicable when the trial is conducted by a judge alone who is determining both the applicable law and the facts. It was the view of the CCJ in that case that to uphold August's appeal would amount to usurping the function of the jury as the sole finders of fact. In that case, the CCJ reminds us[3] that,

> *"The cases are legion that decry the usurpation of the jury's verdict by appellate courts".*

In delivering the judgment of himself, Anderson, JCCJ and Rajnauth-Lee JCCJ, Byron, PCCJ,[4] echoed the sentiments expressed by the House of Lords in ***R v Pendleton***[5] that an appellate court is:

> *"a court of review, not a court of trial. It may not usurp the role of the jury as the body charged by law to resolve issues of fact and determine guilt… Trial by jury does not mean trial by jury in the first instance and trial by judges of the Court of Appeal in the second… the Court of Appeal is not privy to the jury's deliberations and must not intrude into territory which properly belongs to the jury".*

[17] In this case, Lord, J. found the testimony of the Prosecution's witness *"especially on identification – was clearly compelling, coherent & cogent"*. By contrast, having looked at the credibility of the Defence, and carefully considered the evidence before the court, Lord, J. gave *"little to no weight"* to the unsworn statement of Keyron Gibson and his alibi witness, Leon Gibson. He expressly believed the testimony of the Prosecution's witnesses and expressly disbelieved that of the witnesses for the

[2] *Supra*.
[3] At numbered paragraph [39].
[4] At numbered paragraph [40]
[5] [2002] 1 WLR 72 at [12] and [17].

Defence. In discharging his function as the finder of facts, he was entitled to come to those conclusions based on the testimony he saw and heard.

[18] Our role is to consider whether the errors complained of by the Appellant are made out and, if so, their impact on the verdict. To quote from the judgment of Lord Widgery, CJ (reading the judgment of the court) in ***Turnbull***[6], editorialized with our words inserted in square brackets,

> *"[The law] does not authorize us to retry cases. It is for the jury [or judge functioning as jury] in each case to decide which witnesses should be believed. On matters of credibility this court will only interfere in three circumstances: first, if the jury [or judge functioning as jury] has been misdirected as to how to assess the evidence; secondly, if there has been no direction at all when there should have been one; and, thirdly, if on the whole of the evidence the jury [or judge functioning as jury] must have taken a perverse view of a witness, but this is rare."*

[19] In ***August and Gabb v The Queen*** [at para 32] our apex court quoted from authors Keane and McKeown, ***The Modern Law of Evidence*** (11th edn, Oxford 2016) 14, in describing the nature and value of circumstantial evidence in this way:

> *"Circumstantial evidence is particularly powerful when it proves a variety of different facts all of which point to the same conclusion… [it] 'works by cumulatively, in geometrical progression, eliminating other possibilities' and has been likened to a rope comprised of several cords:*
>
> > *'One strand of the cord might be insufficient to sustain the weight, but three stranded together may be quite of sufficient strength. Thus it may be in circumstantial evidence – there may be a combination of circumstances, no one of which would raise a reasonable conviction or more than a mere suspicion; but the three taken together may create a strong conclusion of guilt with as much certainty as human affairs can require or admit of.'"*

[6] [1976] 3 All ER 549 at 554, letter d.

[20] We agree with the submission of the learned DPP, Senior Counsel Vidal, that the circumstantial evidence in this case was particularly strong for reasons that included the following:

i) The Appellant was well known to prosecution witnesses Mai and O'Brien.

ii) Constable Mai saw him firing shots from a handgun on the day in question.

iii) The body of the deceased was then found in the vicinity with multiple gunshot wounds.

iv) It was a daylight incident and the conditions for visual identification were good.

v) The court visited the *locus*, which would have given the trial judge an appreciation of the positions from which Constable Mai viewed the shooter.

vi) Inspector O'Brien's evidence that she saw the Appellant in the vicinity shortly before the shooting buttresses Constable Mai's evidence.

[21] So far as the identification evidence is concerned, we agree with the submission of the learned DPP that the trial judge gave himself the appropriate ***Turnbull*** warning, carefully examined the evidence, and then came to the conclusion that he could safely rely on the evidence of identification led by the Crown. In the wake of the submission by the Appellant's trial counsel that *"this case depends wholly on the correctness of one identification of the accused which the Defence alleges to be mistaken"* and that the alleged recognition of his client did not meet the standard laid down in the ***Turnbull*** guidelines, we note the following words of Lord, J.:

> *"So I remind myself in accordance with the case of **R v Turnbull** [1977] QB 224 of the special need for caution before convicting the accused in reliance of the evidence of identification here made, therefore I must also consider that a witness who is convinced in his/her own mind may as a result, may be a convincing witness, but may nevertheless be mistaken. Therefore mistakes can also be made in recognition of someone known to a witness or even a close friend or relative and I note here that a number of such witnesses can all be mistaken too. Therefore, as the jury here in this case, I warn myself that I should therefore examine very carefully the circumstances in which the identification was made in this case now before the court of the accused (Keyron Gibson). Therefore I will bear in mind the following questions as I recall the testimony of Shamir Mai as to his identification of the accused on 13 June 2014:*
>
> 1. *How long did the witness Shamir Mai have the person he says was the accused under observation?*
> 2. *In what light did Shamir Mai see the accused?*
> 3. *At what distance?*
> 4. *Did anything interfere with the observation of the person?*
> 5. *Had the witness ever seen the person he knew before?*
> 6. *If so, how often?"*

Then, having recited the evidence adduced in relation to each of those 6 headings, Lord, J said:

> *"I therefore after a careful reading of the evidence and following the **Turnbull** guidelines… accept here that he (Shamir Mai) had sufficient opportunity to observe and register the features of the shooter, further I note that the witness also was able at the time, to note the colour of the clothing and the cap of the shooter as well as his height, built and sex, thus supporting his evidence that he indeed had a sufficient opportunity to observe the person he claimed to be the shooter (e.g. [sic.] Keyron Gibson)".*

[22] In considering the evidence of Inspector O'Brien who identified the Appellant as the person she saw in the vicinity just prior to the shooting, Lord, J. repeated the ***Turnbull*** warning he gave himself when considering the evidence of Shamir Mai

and again asked himself the 6 questions adverted to in that guidance in separately considering those factors in assessing her evidence.

[23] In wrapping up his analysis of the third element the prosecution was required to prove (namely, that it was (the accused) Keyron Gibson who caused the harm that resulted in the death of Tulio Caceres) Lord, J. said the following:

> *"…although there is no evidence of anyone seeing the actual shooting of the deceased Tulio Caceres, the circumstantial evidence does indeed point in one direction and one direction only (e.g.) [sic.] that the shooter of the 13th June, 2014 shooting during the first shooting heard that morning at 10:28am or thereabouts and the continued second subsequent shooting, that the only inference to be drawn is that the deceased (1) was one of the persons in the park that day. (2) that the deceased was killed during the shooting by the shooter seen shooting on 13th June 2014 at the back of the park, who then subsequently advanced to the front and through the gate of the park and to the corner of Majestic Alley and North Front Street where the body of Tulio Caceres was found. Therefore having reached this conclusion (and noting the forensic evidence in this case also reveals all the shell casings found at the scene and the slugs matched by the National Forensic Science Service Lab Technician were fired by only one gun.)*
>
> *Then the conclusion the court draws in the given circumstances is that there was only one (1) one shooter and not two shooters; and that there was also only (1) gun used in the shooting at the corner of Majestic Alley and North Front Street on the 13th June 2014.*
> *…*
>
> *The inference based on all the above therefore follows that the only shooter from the evidence before the court on 13th June 2014 at that time on the scene was therefore as identified to be the accused Keyron Gibson and is so accepted by the court in the circumstances noted above, following the consideration that during the officer's absence for approximately 30 seconds the shooting also continued, this suggests the shooter did not change, the inference being that the shooter remain the same shooter from start to finish on 13 June 2014.*
> *…*
>
> *The court also draw the inference that the presence of the expended shells in the park also confirms that the shooting*

commenced within the park and concluded near the body of the deceased where the rest of the expended shells were found.

And finally, the location of the expended shells on the scene is accepted as corroborating PC Mai's version of events on the 13th June, 2014 at the scene.

So having looked at the evidence I accept and I believe that Mai did have ample time to see and recognize the person whom he described as knowing for approximately 1½ years and who he saw 2-3 times per week during that period.

I am satisfied that in the present case the earlier knowledge by the eye witness of the accused was knowledge of a far greater degree than in other cases, I note the eye witness identification to the police of the accused by name was virtually immediate.

I also accept Shamir Mai as a credible witness in relation to the strength of the circumstantial evidence and the identification evidence now before the court.

Looking at the forensic evidence, I accept that the forensic evidence in this case does inform the court in its decision that there was only one (1) firearm and one shooter from the analysis and test performed at the National Forensic Science Service Lab by the Analyst (Mrs. Ebony Lyall-Nicholas) who gave testimony here in.

*I further also accept that the identification of the shooter did indeed meet the **Turnbull** case test and I am satisfied that the witness had again enough time both at the first and subsequent second sighting of the shooter, which was immediately after the second round of shooting that day 13th June 2014 at the said scene corner Majestic Alley and North Front Street to identify the shooter.*

Therefore, I draw the irresistible inference from the evidence of identification; forensic evidence; and circumstantial evidence place before this court that indeed the deceased (Tulio Caceres) was shot many times (e.g.) [sic.] during the first and second sequential shooting that day 13th June, 2014 at the corner North Front Street and Majestic Alley and that there was only one shooter and, one firearm used that day 13th June, 2014. (Ref. forensic evidence of the National Forensic Science Service).

Therefore, after consideration of all the evidence, I am led to accept and conclude that the shooter identified that day was Keyron Gibson the accused.

Therefore, I have considered again all the issues presented in this element of the charge of murder, I now accept that the Crown has proven this element beyond a reasonable doubt to me from all its evidence that it was the accused Keyron Gibson who caused the harm which resulted in the death of Tulio Caceres on 13th June, 2014 at the corner of North Front Street and Majestic Alley in Belize City."

[24] The description by Shamir Mai of the tee shirt worn by Keyron Gibson on that day at about 10:30 am as yellow, and as grey by Inspector O'Brien when she saw him an hour and a half earlier at approximately 9:00 am, was not a difference that necessarily undermined Lord J's acceptance of the identification evidence of Shamir Mai. Lord J. was still entitled to accept the identification evidence of Shamir Mai. His acceptance of that evidence cannot, on that basis, be considered perverse as it is within the remit of the fact-finder to decide which facts are accepted and which are not. In this case, there was ample evidence to support Lord J.'s conclusion that Keyron Gibson was the shooter, and his resulting guilty verdict.

[25] The correctness of Lord, J's acceptance of the identification of Keyron Gibson as the person who harmed Tulio Caceres resulting in his death is the sole ground of this appeal. we detect no error of law in it as he followed the ***Turnbull*** guidelines in giving himself the requisite warnings and by asking himself the relevant questions in his assessment of the identification evidence.

[26] Under section 216 of the Senior Courts Act, we are required to dismiss an appeal against conviction unless we think that;

a) the verdict of the judge or jury, as the case may be, should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence, or that

b) the judgment of the court below should be set aside on the ground of a wrong decision on any question of law, or that,

c) on any other ground, there was a miscarriage of justice.

For completeness, it is also the case that we may, notwithstanding that we are of the opinion that the point raised in the appeal might be decided in favour of the Appellant, dismiss the appeal if we consider that no substantial miscarriage of justice has actually occurred.

[27] So far as the issue of identification of the Appellant is concerned we are not of the view that:

a) He misdirected himself as to how to assess the evidence;

b) He failed to give himself a necessary direction; or

c) On the whole of the evidence, he took a perverse view of the identification witnesses.

[28] As we have not identified an error in the approach taken by Lord, J. in assessing the identification evidence the ground of appeal is not made out.

[29] The court reminds itself of the Appellant's abandonment before us of his challenge to the trial judge's rejection of the Defence's alibi evidence. This implies an acceptance now by the Appellant that Lord J made no error in rejecting that evidence. Consequently, no potential challenge of significance remains upon which the Appellant can ground his assertion that the decision of Lord, J. cannot be supported having regard to the evidence.

[30] Accordingly, the appeal is dismissed. No appeal against the sentence has been advanced before us, and the conviction and sentence are affirmed.

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Sandra Minott-Phillips K.C.
Justice of Appeal

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Peter Foster K.C.
Justice of Appeal

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Michelle Arana
Justice of Appeal