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LEGAL STUDIES  
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IN THE PRIVY COUNCIL

No. 49 of 1972

ON APPEAL  
FROM THE COURT OF APPEAL OF THE BAHAMA ISLANDS

B E T W E E N

PHILIP FARQUHARSON

Appellant

-- and --

THE QUEEN

Respondent

CASE FOR THE RESPONDENT

Record

- 10 1. This is an appeal from a decision of the Court of Appeal of the Bahama Islands (Bourke, P., Archer and Hogan JJ.A.) delivered on the 23rd March, 1972, dismissing the Appellant's appeal against a conviction, and his application for leave to appeal against sentence imposed by the Supreme Court of the Bahama Islands (Smith, J. sitting with a jury) on the 8th December, 1971. p.220-235
- 20 2. The Appellant was charged with Alexander Pinder and Bernard Darling on four counts viz. that being concerned together they murdered Anthony Alexiou contrary to Section 337 of the Penal Code; being concerned together they attempted to murder Ypapanti Alexiou, contrary to Section 338; being concerned together they committed armed robbery, contrary to Section 383 (2); and burglary, contrary to Section 406. The jury was unanimous in convicting all the accused on each count. Each accused was sentenced to death on the convictions on the first count, to twelve years imprisonment on the second count, to ten years imprisonment on the third count, and, to seven years imprisonment on the fourth count. The sentences of imprisonment were to run concurrently, but consecutively to any sentences then being served by the accused. This appeal is against the convictions upon counts one, two and three. p.218
- 30 3. The relevant provisions of the Penal Code and The Criminal Procedure Code are set out as an Appendix to this Case. pp.1 and 2
- 4. Evidence, insofar as it related to the Appellant, was led by the Crown as follows: p.217

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- pp.8-10 (a) Detective Corporal Lindbergh Walkine said he photographed and labelled a finger impression on a northern bathroom window at the house of Mr.Alexiou.He was a finger-print officer.
- p.8 1.14  
p.10 1.8
- pp.10-13 (b) Dr.Andrew George Esfakis said that early on the morning of the 21st April,1971, he saw the dead body of Anthony Alexiou and examined Mrs.Alexiou. Later that day he examined Kathryn Klonaris.Mrs. Alexiou had a bruise or bruises on her left arm, and a bullet wound in the right breast. X-rays showed the presence of a small calibre bullet in the chest wall. Kathryn Klonaris had a superficial skin wound about three inches long on the left upper arm, a bruise on the right shin and another on the left thigh. 10
- p.11 1.5
- p.11 1.9
- p.11 1.27
- p.15-16 (c) Dr.Joan Margaret Read, a pathologist said she examined a body, identified to her by Amanuel Alexiou as being that of his father Anthony Alexiou, at 11.15 a.m. on the 21st April. She estimated that death had occurred four to eight hours earlier. There was a bullet entry wound over the lower end of the breast-bone. The bullet was lodged on the left side of the spine, inside the chest. The bullet which had caused the death had passed through the heart, the oesophagus, the aorta and the edge of the left lung. There was no significant natural disease present and there was no other mark on the body. 20
- p.15 1.21
- p.15 1.22 30
- p.15 1.20
- pp. 16-24 (d) Mrs.Ypapanti Alexiou, the widow of the deceased said she was at home with her husband on the evening of the 20th April, 1971. She went to bed at 11.00 p.m. She was wakened by her husband jumping out of bed. He opened the bedroom door and she heard him say: 'What are you doing here?'. She saw Darling with a cutlass and asked him the same question. He replied: 'Give me your money'. Darling tried to hit her husband on the head. She, her husband, and her daughter Kathryn, who had come out of her bedroom, were able to hold Darling's hand. The witness saw 40
- p.17 1.3
- p.17 1.8
- p.17 1.12
- p.17 1.28

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Darling hit Kathryn on the arm and drew blood. She was also cut by the cutlass, on the left arm. She turned and saw two men standing at her son's bedroom door. One, whom she identified as Pinder, had a gun. The other, whom she identified as the Appellant, held her straw basket. Her husband and daughter were still struggling with Darling. She heard a gun fired and felt a burning in the right breast. She fell. The Appellant ran out and the man with the gun went to the porch door, which he held open. Darling threw her husband and daughter down and ran out of the door. As soon as Darling had gone the man with the gun fired again, hitting her husband. Cross-examined by Darling, the witness said she was sure it was the Appellant she had seen with her basket. None of the men was disguised. When she saw Pinder and the Appellant they were three to four feet away from her. Cross-examined by the Appellant she said the lights were on and she repeated that it was the Appellant who held the basket

(e) Sandra Gale Alexiou said she went to bed just before 3 a.m. on the morning of the 21st April 1971 and was there until 4.20 a.m. She had locked the bedroom door on the inside. She was not sure what woke her. A man was standing at the bedroom door, which was open. The lights in the corridor and bathroom were on. She said, 'Who is there?' and the man ducked behind the door and started to crawl into the bedroom. She turned to waken her husband, Emanuel Alexiou, and when she turned again a man was standing beside the bed holding a gun pointed at her head. Someone said: 'Put your head under the covers and do not move or I will shoot'. She did so. She looked out and saw another man. Someone said: 'Where is the money?' She answered that it was in the drawer beside the bed and she heard the drawer opened and things being moved. She heard further noises and tried to restrain her husband from getting out of bed. She saw a man with a cutlass struggling in the doorway, although she could not see with whom he was struggling. The man with the cutlass was Darling. She was still holding her husband when she heard first one shot and then another. She heard a car drive away. She went to the bathroom

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- p.27 1.24 window (the bathroom connected with the bedroom). Although there were screws in the window to prevent it being opened wide, it was wide open. In the morning she found that a bag containing money and a blue pill box had gone from the drawer by the bed. So also had a straw bag containing an album, some beads and a bottle of Bacardi. She identified the album, the beads, the pill box and the straw basket in Court. Cross-examined by Darling, the witness reiterated that he was the man with the cut-llass and added that, of the two men she saw in her bathroom, Darling was standing behind the man with the gun. 10
- pp.34-40 (f) Emanuel Alexiou gave an account of events substantially similar to that given by his wife. Of the two men he had seen in his bedroom he identified Darling as the man standing at the foot of the bed. At this moment the other man was at the head of the bed. 20
- p.36 1.17
- pp.40-44 (g) Charles Satchwell, Paul Lightbourne and Bruce Raine each said his car had been taken without his knowledge or consent on the night of the 20th/21st April 1971. Satchwell had an Austin, Lightbourne a red Triumph, and Raine an American Rambler (his parents' car). Various items were in Satchwell's car when he recovered it, which did not belong to him. So also with Lightbourne's car, in which was the album and the beads claimed by Sandra Gale Alexiou. 30
- pp.46-55 (h) Assistant Commissioner John Thomas Crawley said he went to the Alexiou house at 5.20 a.m. on the 21st April and he described the outside of the house. He noticed finger-prints on the lower sash of the bathroom window and called finger print experts. He arranged three identification parades and was present when each accused was paraded. The parades were at the hospital. The Appellant was very co-operative and was on the third parade. The parades were inspected by Mrs.Ypapanti Alexiou. She did not identify the Appellant. He put in two letters (C.K.1.,pp 240/241) which he said he had received from the prison superintendent. 40
- p.46 1.29
- p.49 1.6 50

- (i) P.C.Allen Evans said he took the finger prints of the Appellant, who signed the finger print form. pp.55-57 p.55 1-11
- (j) Detective Chief Inspector McDonald Chase said he was a finger print expert. He identified the Appellant's finger prints with finger prints taken from the bathroom window sash the cars of Satchwell and Raine and the number plates of Lightbourne's car. pp.59-66
- 10 (k) Superintendent Anthony McDonald Fields said he also had arranged three identification parades at the C.I.D.and was present when each accused was paraded. Each parade was inspected, in turn, by Emanuel Alexiou, Mrs. Sandra Alexiou and Mrs.Katherine Klonaris. The Appellant was on the third parade. He had no objection to taking part. He had not been picked out by any of the three witnesses. pp.67-79 p.69 1.4
- 20 (l) Detective Sergeant Alfred Moss said that at 12.40 p.m. on the 21st April he went to Third Terrace West, this being in an area where the Appellant lived, and found Lightbourne's red Triumph car. In the car were bits of stocking and a photograph album. He searched the nearby area, and, in the bushes about 75 feet from the car, he found a straw basket containing a small photograph album, some beads and other items. At 11.15 a.m. on the 22nd April he made a further search in the same area and found a cutlass, a torn leather wallet and two car licence plates (being the plates of Lightbourne's car). He was present when Detective Inspector Hercules recorded a voluntary statement made by the Appellant, At 3 p.m. on the 23rd April he and two other officers went out with the Appellant in a car, following a route for which the Appellant gave directions. The party went first to Park Manor (the home of Satchwell) and the Appellant then said that it was from there that 'they' had taken a small white car. The party was then directed to Lightbourne's home where the Appellant pointed to a yard and said that was where 'they' had changed the white car for a red one. The party was next directed to the Alexiou house and, on arriving there, the Appellant had said that this was the house into which 'they' had broken. At 3.40 p.m. on the same day the pp.79-86 p.86 1.37 p.79 1.31 p.80 1.1. p.80 1.7 p.80 1.19 p.80 1.43 p.81 1.2 p.81 1.8
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- p.81 1.17 witness went out again, this time with the Appellant. They went to an old building at Fort Fincastle where, according to the witness, the Appellant and Pinder said they had buried a gun. A search was made but the gun was not found.
- p.89-107 (m) Detective Inspector Lincoln Oswald Hercules said that he saw the Appellant at the C.I.D. at 10.50 p.m. on the 22nd April, cautioned him, and asked his whereabouts on the night of the 20th. The Appellant said he had been to the cinema and thereafter at home with a girl called Butt. The Appellant then asked to speak privately to the witness, and was cautioned again. In an adjacent office the Appellant said that he and the other two accused had gone to the house and that Pinder had shot the man. The Appellant had then gone on to speak of stealing two cars in succession, breaking into the house, Pinder shooting the man, and then all three running out, driving the car to where the Triumph was found, and going home. The witness said he then asked the Appellant if he wished to make a statement in writing. The Appellant agreed to do so, whereupon the witness called Sergeant Moss and two other officers into the room, cautioned the Appellant again and recorded his statement. At the request of the witness, the Appellant himself wrote the last paragraph. The Appellant signed the statement which was given completely voluntarily (pp.237-238). The witness said he was present when the search was made for the gun, and said that the party, which included Pinder then went on to Lightbourne's house where both accused pointed out the place from which the car had been taken.
- p.92 1.29 10
- p.93 1.1. 20
- p.93 1.19 30
- p.93 1.38
- p.96 1.3 40
- p.108 (n) Corporal Charles King, of H.M.Prison, said he was present at the prison on the 20th May, 1971, when Officer Jonathan King searched the Appellant. He saw King find two letters in the Appellant's waistband and he identified the two and put them in.
- pp.112-120 (o) Kathryn Klonaris said she was asleep in her bedroom at her father's house on the 50

10 night of the 20th/21st April. She was awakened in the early morning by her father's voice, emerged from her room, and saw her father and mother struggling with a man holding a cutlass. She ran to help, was pushed to the floor, bruised and cut on the left arm. She saw another person in the doorway of her brother's room and then heard two shots. The man with the cutlass, the man at her brother's door, and a third man then ran out.

20 5.(a) The Appellant gave evidence. He said that on pp.120-128 the night of the 20th April he went to the cinema with his girl friend and thereafter went to his mother's house where he remained for the rest of the night. In cross-examination he said he never went to any place to search for a gun. He had no talk with Inspector Hercules and was asked no questions by the latter. He had never told the police anything about Darling or Pinder. The first time he had seen his alleged statement was in Court. He had not signed it. He gave the police no finger prints. The letters alleged to have been found in his waistband were not found there; They were in the cell, to which he had just been moved.

30 (b) Christine Monique Rolle said she went to pp.158-161 the cinema with the Appellant on the evening of the 20th April and afterwards went with him to his mother's home, where she stayed all night. The Appellant did not leave the house that night.

40 6. Evidence implicating Pinder was contained in a confession made by him, but not in the presence of the Appellant. It stated that, at the outset of the venture, the gun was in the possession of the Appellant. It then stated that the Appellant fired the gun over the heads of the people in the bedroom after which he handed it to Pinder. When 'people came running' Pinder returned the gun to the Appellant and jumped through the bathroom window. The Appellant then handed back the gun and followed Pinder through the window. Pinder then saw 'the people' had Darling inside whereupon he pushed the door open and fired three times at the people. pp.239-240

7. Smith, J., after defining the offences charged pp.180-217 directed the jury on joint responsibility. As regards murder, after pointing out that only one person fired the shot that killed Anthony Alexiou, he said the jury must first consider whether one

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p.182 1. or another of the accused fired the fatal shot. If they decided that one of the three fired the fatal shot in circumstances amounting to murder, then they might convict that person accordingly. As regards the remaining two, the jury should acquit unless satisfied beyond reasonable doubt that each was present that night, all were acting with a common purpose (in this case the breaking and entering of the Alexiou household); the furtherance of the common purpose involved the use of force, extreme force, if necessary, to effect it, and the firing of the shot (the force in this case) was an act in pursuance or furtherance of the common purpose. He then added: 'In other words that there was in their minds at the time an intention to use whatever force, however extreme, to secure their object or their safety!' If so satisfied, the jury could convict. Smith J., gave similar directions in respect of the other offences charged, and emphasised that of absolute necessity the jury must consider separately the case against each accused. 10

p.185 1.18 8. Smith, J., then went through the evidence adduced by the prosecution and ended this part of his summing up by summarising, in turn, the case against each accused. As regards the Appellant, the prosecution's case rested on: (a) the identification of the Appellant's finger-prints with prints found on the bathroom window and on each of the three cars, one of which contained the album Mrs. Sandra Alexiou had said was stolen from her; (b) the statements said to have been made by the Appellant to Inspector Hercules; and (c) his remarks and acts when going around with the police. The two letters found on the Appellant were in no way any evidence of guilt, but they indicated that the Appellant thought himself to be in serious trouble and wanted his sister to account for his movements on the nights of the 20th and 21st April. The Appellant had been a member of an identification parade, but had not been picked out by any witness. As regards the Appellant's defence, this was a denial of any participation. He denied that he had gone anywhere with the police; that he had given the police his finger-prints; that he had made any statement 20

p.205 1.40 30

p.209 1.1 40

p.206 1.37 50

p. 208 1.32



to the police; that he had either written or signed the written statement; that he had written the letters found in his waist-band or that they had been found in his waist-band. He said he had spent the evening and night of the 20th/21st April with his girl-friend, first at the cinema and thereafter at his mother's house. His girl-friend, Miss Christine Rolle, had given evidence in support of this story. Concluding, the learned Judge said to the jury:  
10 'The facts are for you and if there is any reasonable doubt in your minds, give the benefit of it to the Appellant.

p.208 1.21

p.209 1.7

p.209 1.27

9. On concluding his summing up the learned Judge was asked by counsel for the prosecution to refer the jury to the Penal Code, Section 12 (3). He did so. The jury then retired but returned to ask if all the accused could be found guilty of murder if two had gone out of the room, the remaining one being the person who fired the shot. The direction given was that if the shot was fired to facilitate escape or prevent pursuit, then this would be in furtherance of the common purpose, assuming that a common purpose to rob with whatever force was necessary be found; but if the firer shot in panic or for some reason unconnected with the common purpose, then the firer alone would be responsible for the consequences of the shot.  
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p.216 1.2

p.216 1.37

p.217 1.4

10. Six grounds of appeal were argued on behalf of the Appellant before the Court of Appeal. They were:  
30 (i) that the evidence and proceedings ought to have been recorded mechanically; (ii) and (iii) that, as the Penal Code, Section 86, had, in effect, abrogated the distinction between principals in the first and second degree and accessories before the fact, and had created a separate offence of aiding and abetting, the Appellant, who had not fired the fatal shot, could not be charged and convicted jointly with Darling and Pinder, either for murder or for the other offences;  
40 (iv) that the trial judge did not specifically direct the jury that the weight which they should attach to the Appellant's alleged confession depended on all the circumstances in which it was taken; (v) that the Appellant was wrongly denied the opportunity of refuting the allegation that he was identified by fingerprints; and (vi) that the conviction was not supported by the evidence, in that the participation alleged against the Appellant, who was unarmed, did not involve him in the killing, which, from the prosecution evidence, was ascribable to Pinder.

11. The judgment of the Court of Appeal (Bourke, p.220-235  
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p.226 1.15	P., Archer and Hogan, JJ,A.) was delivered by Hogan, J.A., He first summarised the evidence and then dealt with the first of the Appellant's grounds of appeal. The Appellant relied upon the Supreme Court Ordinance, Section 57, but this Section merely said that 'whenever possible' adequate equipment for recording the evidence mechanically should be provided. Smith, J., had endorsed upon the record that tape recording these proceedings was not practicable, and this, in the Courts view, was sufficient to satisfy Section 57. The first ground of appeal failed. As to the fifth ground, the Appellant sought to derive from the Bahamas Constitution, Section 6, the right to be provided, at public expense, with the services of a finger-print expert. The Court could not so interpret Section 6. This ground also failed. The fourth ground also failed. The decision in <u>Chan Wai Keung v. The Queen</u> (1967), 2 A.C.160 indicated that where the issue of voluntariness of a confession had been specifically raised, it was not essential for the judge specifically to direct the jury that they must be satisfied beyond reasonable doubt that a confession was voluntary. In the present case the specific direction given to the jury to decide whether or no the police officer who took the confession was telling the truth sufficed. The matter of the weight attributable to the confession, if the jury regarded it as voluntarily made, was sufficiently covered by the general directions given on the subject of burden of proof. Hogan, J.A.added that, in any event, the issue of voluntariness had not been specifically raised.	10
p.229 1.24		
p.229 1.1.		20
p.229 1.12		30
p.229 1.9		
p.226 1.47	12. As to the second and third grounds, which had been argued together, the view of the Court was that the Penal Code, Section 86 (2), read with the Criminal Procedure Code, Section 73, justified the course adopted by the prosecution in joining more than one accused in one charge. Section 86 (1) listed a large number of activities as falling within the expression 'abatement' and Section 86 (2) provided that whoever abetted an offence should, if the offence be committed in pursuance of or during the abatement, 'be deemed guilty' of that offence. These grounds failed. The sixth ground also failed. The facts alleged by the prosecution, if believed, were sufficient to show a common	40
p.227 1.25		
p.231 1.6		50

design and a fatal act of violence in pursuit of that design, As to weight, the failure of the witnesses to identify the Appellant deserved most careful consideration, but the learned Judge put this aspect meticulously to the jury and, this aside, there was clearly sufficient evidence, if believed, to justify the jury in finding the Appellant guilty of participation in all the offences with which he was charged. The appeal against conviction was dismissed and the Court saw no reason to grant the application for leave to appeal against sentence.

p,235 1.16

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13. The Respondent respectfully submits that the Appellant was rightly and lawfully charged and convicted jointly with his two co-accused with the murder of Alexiou. Upon the evidence it was open to the jury to find, as they did, that the Appellant's conduct fell within s.86 (1) of the Penal Code and so constituted abetment of the murder of Alexiou. It therefore followed, by virtue of s.86 (2), that he was 'deemed guilty' of that murder. Consequently he was rightly convicted upon the count charging him with that murder.

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14. Alternatively, in the Respondent's respectful submission, it was open to the jury upon the evidence to find that the murder was committed in pursuance of a purpose common to the Appellant and his two co-accused. The matter of common purpose was correctly put to the jury by Smith, J., and it is clear that the jury were satisfied that the common purpose existed and the murder was committed in the course of its execution. The Appellant, therefore, by virtue of s.11 (7) of the Penal Code, was rightly charged with murder and convicted under the common law, irrespectively of the provisions of s.86.

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15. In relation to the other matters argued on behalf of the Appellant in the Court of Appeal, the Respondent respectfully relies upon the judgment of that Court.

16. The Respondent respectfully submits that the judgment of the Court of Appeal of the Bahama Islands was right and ought to be affirmed, and this appeal ought to be dismissed, for the following (among other)

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R E A S O N S

1. BECAUSE the Appellant was guilty of murder by virtue of s.86 of the Penal Code:
2. BECAUSE the Appellant was guilty of murder under the common law:
3. BECAUSE of the other reasons set out in the Judgment of the Court of Appeal.

J.G.LeQUESNE.

GERALD DAVIES.

A P P E N D I X

The Penal Code, Ch.69 of the Statute Law of the  
Bahama Islands 1957 Edition

Book I - General Provisions

Section 3. The following general rules shall be observed in the construction of this Code, namely:-

- (1) all the provisions of Book I. shall be applied to and be deemed to form part of every provision of Books II. and III., in so far as they are applicable to the matter of that provision, and are not expressly or by necessary implication excluded, limited or modified with respect to that matter; 10

.....

Section 11. Nothing in this Code shall affect:-

.....

- (7) the liability of a person under the Common law. 20
- Provided that if a person does an act which is punishable under this Code, and is also punishable under another law of any of the kinds mentioned in this section, he shall not be punished for that act both under that law and also under this Code.

Section 86.

- (1) Whoever directly or indirectly, instigates, commands, counsels, procures, solicits or in any manner purposely aids, facilitates, encourages or promotes, whether by his act or presence or otherwise, and every person who does any act for the purpose of aiding, facilitating, encouraging or promoting the commission of an offence by any other person, whether known or unknown, certain or uncertain is guilty of abetting that offence, and of abetting the other person in respect of that offence. 30
- (2) Whoever abets a crime or offence shall, if the same is actually committed in pursuance or during the continuance of the abetment, be deemed guilty of that crime or offence. 40
- (3) Whoever abets a crime shall, if the crime is

not actually committed, be punishable as follows, that is to say:-

10 (a) if the commission of the crime is prevented by reason only of accident, or of circumstances or events independent of the will of the abettor, the abettor shall, where the crime abetted was murder, be liable to imprisonment for life, or shall where the crime abetted was any crime other than murder, be punishable in the same manner as if the crime had been actually committed in pursuance of the abetment;

(b) in any other case the abettor shall, if the crime which he abetted was a felony, be deemed guilty of felony, or shall, if such a crime was a misdemeanour, be deemed guilty of a misdemeanour.

20 (4) Whoever abets a crime or an offence, shall be punishable on indictment or on summary conviction, according as he would be punishable for committing that crime or offence.

(5) An abettor may be tried before, with, or after a person abetted, and although the person abetted is dead or is otherwise not amenable to justice; and any number of abettors at different times to an offence may likewise be tried together.

30 (6) An abettor may be tried, before, with, or after any other abettor, whether he and such other abettor abetted each other in respect of the offence or not, and whether they abetted the same or different parts of the offence.

(7) .....

(8) .....

Section 87.

40 (1) Where a person abets a particular offence, or abets an offence against or in respect of a particular person or thing, and the person abetted actually commits a different offence, or commits the offence against or in respect of a different person or thing, or in a manner different from that which was intended by the abettor, the following provisions shall have effect, that is to say:-

(a) if it appears that the offence actually committed was not a probable consequence

of the endeavour to commit, nor was substantially the same as the offence which the abettor intended to abet, nor was within the scope of the abetment, the abettor shall be punishable for his abetment of the offence which he intended to abet in the manner provided by this Title with respect to the abetment of offences which are not actually committed;

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(b) in any other case, the abettor shall be deemed to have abetted the offence which was actually committed, and shall be liable to punishment accordingly.

(2).....

Section 88.

Whoever, knowing that a person decides to commit or is committing a felony, fails to use all reasonable means to prevent the commission or completion thereof is guilty of a misdemeanour.

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Section 89.

(1) If two or more persons agree to act together with a common purpose in committing or abetting an offence whether with or without any previous concert or deliberation, each of them is guilty of conspiracy to commit or abet that offence as the case may be.

(2) .....

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Section 90.

(1) If two or more persons are guilty of conspiracy for the commission or abetment of any offence, each of them shall, in case the offence is committed, be punished as for that offence according to the provisions of this Code, or shall, in case the offence is not committed, be punished as if he had abetted that offence.

(2) .....

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Book III - Indictable Offences

Section 336. Whoever intentionally causes the

death of another person by any unlawful harm is guilty of murder, unless his crime is reduced to manslaughter by reason of such extreme provocation, or other matter of partial excuse as in this Title hereafter mentioned.

10 Section 337. Whoever commits murder shall be liable to suffer death: Provided that sentence of death shall not be pronounced on or recorded against a person who, in the opinion of the Court, was at the time when the murder was committed under eighteen years of age; but, in lieu of such punishment, the Court shall sentence such person to be detained during Her Majesty's pleasure, and, if so sentenced, he shall, notwithstanding anything in the other provisions of this Code or the provisions of any other Act, be liable to be detained in such place and under such conditions as the Governor may direct, and whilst so detained shall be deemed to be in legal custody.

20 Section 338. Whoever attempts to commit murder shall be liable to imprisonment for life.

Section 383.

- (1) Whoever commits robbery shall be liable to imprisonment for fourteen years.
- (2) Whoever commits robbery, being armed with any offensive instrument, or having made any preparation for using force or causing harm, shall be liable to imprisonment for twenty years and, if a male, to undergo corporal punishment.

The Criminal Procedure Code Act. No. 38 of 1968

30 Section 3. Subject to the express provisions of any other law for the time being in force, all offences under any law shall be inquired into, tried and otherwise dealt with according to the provisions hereafter in this Code contained.

40 Section 71. Every charge or information shall contain, and shall be sufficient if it contains, a statement of the specific offence or offences with which the accused is charged, together with such particulars as may be necessary for giving reasonable information as to the nature of the offence alleged

Section 72.

- (1) Any offences, whether felonies or misdemeanours, may be charged together in the same charge of information if the offences charged are founded

on the same facts or form or are part of a series of offences of the same or a similar character.

- (2) Where more than one offence is alleged in a charge or information, a description of each offence so charged shall be set out in a separate paragraph of the charge or information called a count. 10
- (3) Where, before trial or at any stage of a trial, the court is of opinion that a person accused may be embarrassed in his defence by reason of being charged with more than one offence in the same charge or information or that for any other reason it is desirable to direct that the accused person be tried separately for any one or more offences alleged in a charge or information, the court may order a separate trial of any count or counts of such charge or information. 20

### Section 73.

The following persons may be joined in one charge or information and may be tried together:-

- (a) persons accused of the same offence committed in the course of the same transaction;
- (b) persons accused of an offence and persons accused of abetment or of an attempt to commit such offence; 30
- (c) persons accused of different offences committed in the course of the same transaction;
- (d) persons accused of different offences all of which are founded on the same facts or form, or are part of, a series of offences of the same or a similar character;

Provided that where before trial, or at any stage of a trial, the court is of opinion that a person accused may be embarrassed in his defence by reason of his being tried together with another person or other persons or that for any other reason it is desirable to direct that the accused person be tried separately, the court may order a separate trial of such accused person. 40



Section 142. Subject to the provisions of this Code and to any other law for the time being in force in the Colony, the practice of the Supreme Court in the exercise of its criminal jurisdiction and the mode of conducting and procedure at the trial of any person upon information shall be assimilated so far as circumstances admit to the practice of the High Court of Justice, in the exercise of its criminal jurisdiction, and of courts of oyer and terminer and general gaol delivery in England.

10 Section 167.

(1) When the evidence of the witnesses for the prosecution has been concluded, and the statement or evidence (if any) of the accused person before the committing court has been given in evidence, the court, if it considers that there is no evidence that the accused or any one of several accused committed the offence, shall, after hearing any arguments which the counsel for the prosecution or the defence may desire to submit, record a finding of not guilty.

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(2) .....

No.19 of 1972

IN THE PRIVY COUNCIL

O N A P P E A L

FROM THE COURT OF APPEAL OF THE  
BAHAMA ISLANDS

B E T W E E N:

PHILLIP FARQUHARSON Appellant

- and -

THE QUEEN Respondent

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CASE FOR THE RESPONDENT

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CHARLES RUSSELL & CO.,  
Hale Court,  
21, Old Buildings,  
Lincoln's Inn,  
London, W.C.2.

Solicitors for the Respondent.