

IN THE PRIVY COUNCIL

No.29 of 1975

O N A P P E A LFROM THE COURT OF APPEAL OF TRINIDAD AND
TOBAGOB E T W E E N :

STANLEY ABBOTT

Appellant

- AND -

THE QUEEN

RespondentCASE FOR THE APPELLANT

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1. This is an appeal by Special Leave in forma pauperis of Her Majesty in Council dated the 12th June 1975, from the Judgement and Orders of the Court of Appeal of Trinidad and Tobago (Sir Isaac Hyatali C.J., Phillips J.A. and Corbin J.A.) dated the 9th July 1974, which dismissed the Appellant's appeal from his conviction for murder at the Port of Spain Assizes, Trinidad at his trial before Garvin Scott J. and a Jury between the 5th and 16th July, 1973, when he was sentenced to death by hanging.

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pp.149-153

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2. The Appellant was charged that he on the 2nd day of January, 1972, with one Edward Chadee, at Arima in the County of St. George, murdered Gale Anne Benson (hereinafter referred to as the "deceased")

p.1

3. Evidence was given for the Crown as follows:-

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ALFRED HENRY, grave-digger, said that on the 24th February 1972, at Christina Gardens, Arima, Trinidad he discovered the buried body of a white woman

p.15

ROLAND KNIGHT, dentist said that on the 3rd March 1972, he had identified the body as

pp.11-12

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that of a former patient of his, Gale Ann Benson

pp.8-11

KEITH SIMPSON, Professor of Forensic Medicine said that on the 27th February, 1972, he conducted a post-mortem examination on the body of the deceased, which was in a condition consistent with having died about two months previously.

He found

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- (a) ten slashes, cuts in the skin
- (b) a cut entering and passing through the left arm
- (c) a single 1" stab wound in the back, quite superficial
- (d) "a very deep stab wound at root of neck 3" long, vertical slit on skin. I found this wound had penetrated 6½" down into left chest - a little to left and a little backwards - penetrating lung and causing the escape of both blood and air into the chest I found a single nail lying in the back of the throat behind the tongue. It did not come from the hands of the dead woman. I also found on back of throat and breathe into windpipe and air passage some dirt, brown or earth dirt similar to that I had seen at the pit of the scene. I found more of this dirt - in small quantity swallowed and lying in the stomach. I formed the view that death was a consequence, first of stab wound passing into the chest; secondly that death had been accelerated or precipitated by the face being covered as if in burial whilst life was still present".

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and under cross-examination, "Last wound 6½" deep stab wound caused her to collapse and start dying and from which she would certainly have died. Death might have been accelerated by inhalation of dirt. One to two breaths would have accounted for small

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amount of dirt I found and these would have been her last breaths in any event".

10 MELBA LYNCH said that she was employed for the first three weeks of August, 1971, by Abdul Malik at 26 Christina Gardens, Arima. Malik his wife, his children and Steve Yeates were there. Thereafter she was a regular visitor and saw the man Hakim Jamal and Halle, as the deceased was also known. pp.25-26

LUCY LETTS said that Hakim Jamal and the deceased lived at 43 Christina Gardens, (infact also belonging to Abdul Malik) around Christmas 1971. p.16

20 ADOLPHUS PARMASSAR said that on Saturday, 1st January, 1972 at 9.00 p.m. (although the transcript shows 9.00 a.m. it is clear from other evidence and that of other witnesses that 9,00 p.m. is correct) he was at 26-28 Christina Gardens at the premises of Malik. Malik spoke to him and Abbott, Chadee, Steve Yeates and Marvin Dean, also called Kidogo, were present. Malik proposed getting rid of Halle (the deceased) because of mental strain she was causing to Hakim Jamal. Malik proposed that Steve Yeates should bring the deceased to the northern side of Malik's premises the following day where he, Parmassar, Dean, Abbott and Chadee were instructed to dig a hole. Malik was to take Hakim Jamal away in his car the next morning and he instructed Chadee and Parmassar to sleep on the premises. pp.26-32

30 On the morning of the 2nd January, 1972, Malik pointed out the spot for digging about 100 yards from No. 26-28 and called Abbott to his car where they spoke for a while. Parmassar Abbott, Chadee and Kidogo dug the hole. Steve Yeates and the deceased arrived. She came across and stood over the hole. 40

"Accused Abbott held her around the neck and jumped with her in the hole saying "It is for you". When Abbott jumped in the hole with her Kidogo jumped in the hole with a cutlass trying to stab her in the chest. She was struggling and she got a large wound on inner left elbow. It bled profusely. Halle was struggling and accused Abbott had one hand around her neck and the other over her mouth

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After Kidogo made several attempts to stab her without success, accused Abbott called to one of us to come in the hole and assist Kidogo. Abbott did not specify which one of us. Steve Yeates jumped in the hole and took the cutlass from Kidogo. Holding it in his left hand he placed it against her throat and with his right hand forced the cutlass into her throat. Yeates struck handle of cutlass with his right hand. I had seen the cutlass before. It is the cutlass called "gilpin" but that bent tip was filed off to form a point and on wooden handle the letter K was inscribed.

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After the cutlass was forced on her throat Abbott, Kidogo and Yeates came out of the hole. Halle was still struggling. She was lying in the hole. An order was given to start covering the hole.

I cannot recall who gave this order, I, Abbott, Chadee, Yeates and Kidogo started covering the hole. At that time the woman in the hole was still moving. Other persons covering the hole could have seen this".

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and under cross-examination, that Abbott worked at Malik's premises but he did not think Abbott was paid; that he himself lived at Malik's for some time. At times they had to ask for food. "Malik's house was like a prison camp. At one time I was in deadly fear for my safety. On the 1st January, 1972 at 9.00 p.m. there was an order by Malik that something be done. Abbott was the only one who said anything. Abbott said the best way to get rid of the woman was to give her a plane ticket and send her back where she came from. We were all present. No one supported it. From comments Malik made if his orders were not carried out it meant death. Abbott was trying to persuade Malik not to kill the woman but nobody supported it. I became involved because I thought I would be killed" ... (The next morning after the murder), ... "I did see guns around Christina Gardens. Malik was in the habit of discharging shots".

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"In December 1971, Abbott asked to visit his mother and Malik turned down the request ... I did go with Abbott to the Court House (it is respectfully submitted that what here is

meant is the "Penthouse"). Malik did not like that and told him he would take care of him personally. I understand it to mean he would kill him".

10 On the 15th or 16th February, 1972, Abbott had told Chadee and Parmassar to leave after Malik had given orders to liquidate the Mootoo family. That before then he, Parmassar, had been compelled to stay there.

20 "Malik had dogs on the premises, a large doberman and two mongrels. There were spotlights around these premises. Premises were enclosed - all around (of the conversation of 9.00 p.m. on the 1st January, 1972) Malik did say one of the brothers having a mental strain and Halle must be got rid of. Abbott did say the best way to get rid of Halle was to give her a plane ticket and send her back where she came from. Malik said he wanted something definite - he wanted blood. Yeates also said he wanted something definite".

"From that day Chadee and I slept, ate and worked on the premises until the 16th February 1972, when we left Malik's place was like a prison. Order after order was being given

30 Steve Yeates met his death while attempting to save one of Malik's daughters and another girl Hasrajh from drowning".

40 IGNATIUS McPHILLIP Superintendent of Police said "On the 25th February, 1972, at 12.30 p.m. I saw Inspector Kew. He came with Abbott to my office at C.I.D., Port of Spain. Inspector Kew told me in the presence of Abbott that 11.45 p.m. on the 24th February, 1972, Abbott walked into C.I.D. Port of Spain and spoke to him, Inspector Kew, telling him that he (Abbott) had seen in the papers where a dead body was found in Michael X's yard in Christina Gardens and he had come to talk to the police constable who was handling the matter".

pp.33-37

He took a statement under caution from Abbott which, in respect of his first meetings with Abdul Malik and his visits to England, in summary coincided with his evidence in chief; then in respect of the conversation on the evening of the 1st January, 1972 stated

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"Michael called a meeting - all of us except Hakim Jamal were present. Michael said he wanted blood and said Halle had to go. He told us to go to sleep early and you will get up before the sun. You will dig the hole in the back by the manure. He said he will take out Hakim and Steve will take Halle over to the farm for the milk and keep her there looking at the cows until it is time. He Steve will drive up to the manure with Halle. Michael gave a deadline of three quarters of an hour to dig the hole".

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"We were like Zombies. We were under the very strong influence of Michael Both of them (Yeates and the deceased) got off the jeep and walked to the hole. Halle asked what we were digging the hole for and I told her it was to throw stuff in. Kidogo had his own cutlass. He tried to kill her by stabbing her. He caught her arms a couple times and I saw blood coming from them. Steve took the cutlass from Kidogo and killed her by stabbing her to the front of the throat : when he was in the hole. I was right there may be I pushed her and she fell in the hole, then Kidogo jumped into the hole after her followed by Steve. I held her mouth because she was shouting. All of us covered the hole and left for Michael's home".

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Under cross-examination

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"Abbott came to the police by his own volition ... when I first saw him he was actually shaking. I formed the impression he was nervous He did not cry. He appeared to be suffering from fear or fright ... He did not tell me he was afraid for his life during the taking of the statement. He did say so weeks after. He did say he did not want to be placed in the same cell as Malik. He never said Malik threatened his mother. He did say he was afraid for his mother who lived along at Montrose. To my knowledge his mother lived alone while he was in England When Abbott came to my Office on the 25th February, 1972, I observed the nails on Abbott's hands were intact".

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"I did know that Hakim Jamal lived at 43 Christina Gardens before December, 1971, and that

Halle lived there with him and that Stanley Abbott lived there from the 11th December, 1971, and that he arrived there on Malik's instructions".

When recalled under cross-examination

"Adolphus Parmassar was taken into custody on the 22nd February, 1972. He was charged for the murder of Gail Ann Benson. Subsequently he was no longer charged".

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Under re-examination

"Proceedings against Parmassar were discontinued by Attorney General in pursuance of his powers under Sec.62 of the Constitution.

Original information contained in addition to the two accused Marvin Deane also called Kidogo and also Adolphus Parmassar. A warrant of arrest was sworn for the arrest of Marvin Deane which is still unexecuted. Michael Abdul Malik also called Michael de Freitas was on original information as well. Michael de Freitas has been convicted of a capital offence."

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CALVIN TROTMAN Inspector of Police, said that on the 24th February, 1972, at C.I.D. Headquarters, Port of Spain, he saw Chadee who told him of the events of the evening of the 1st January, 1972 and of the next morning. [This accords with Chadee's own evidence at the trial] On the 25th February, 1972, he took a statement under caution from Chadee which was also in summary form, in accordance with Chadee's own evidence at the trial.

pp.16-21

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4. The Appellant gave sworn testimony that he left Trinidad for the United Kingdom in 1956, and that he first met Michael Abdul Malik in England in 1956 and next in 1963. In February, 1971, Malik invited him to leave for Trinidad "I said I did not want to come on any political scene - meaning Black Power. He reminded me he had already told the world he was finished with Black Power Organizations and that he was coming home to do farming. I longed for home. I had been away for 15 years". In May, 1971, the Appellant became dissatisfied with Malik's plans but he persuaded him to stay. Later" he (Malik) said I would go to England and do what

pp.38-50

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he wants me to do and I would come when he calls me. I resented being told to come and go and argued with him. That was when he first threatened my mother's life - May 1971. He knew my mother. I had taken him there. She is a sweet person. I sensed Michael was a dangerous person, reckless and ruthless at that point in his bid to hold me I would have done nothing to ignite Michael - he was an explosive, I thought. I received a letter in December, 1971, from Michael and the letter had one word "Come". That word "come" represented life and death to me. I arrived in Trinidad two days later Michael took me to No. 43 Christina Gardens, opposite his home. He showed me a room and said this is my new home. I begged to go home to my mother - to release me as I had done all he had asked in the U.K. He bluntly refused

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Michael worked me unmercifully around his home

I was mortally afraid of Michael for my life and that of my mother. On the day before Xmas Eve, 1971, he came to my room at 7 a.m. and woke me up. When I opened the door I saw blood on his mouth and beard. He said they had killed a calf on Laurencol's farm and he was drinking blood. I felt scared and sick." Kidogo arrived from the United States of America.

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I again beseeched Michael to let me go home as he had someone to help him. He said Kidogo was a hired killer and not there for manual work".

"When we returned that evening (1st January 1972) Michael called us and started talking about getting rid of Halle. He spoke about liquidation I felt mortally afraid". Malik, Yeates, Kidogo, Chadee, Parmassar and the Appellant were present".

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"I was afraid of Kidogo ... at that meeting I pleaded for her life. Michael too denied my plea. Yeates jumped to his feet. He said he wanted something definite. Michael pulled his beard and said he wanted blood. Kidogo just looked at me. I could see murder in their eyes".

10 "That night when I walked across to 43
Christina Gardens after having pleaded for Halle's
life and seeing the looks of Michael, Yeates and
Kidogo I wanted to speak to Jamal but I was
mortally afraid because they said they were
doing it for him. The threats already made by
Malik in respect of my mother's life and knowing
I was discontented with him, I know when I left
there death was my companion. To have gone to
the police that night and spoken what Michael
had plotted behind the backs of Junior, Sonny and
myself, I felt I would not have been believed.
Michael always boasted of the cloak of
respectability around him, John Lennon and Yoko
also stayed at Christina Gardens with Michael.
World famous comedian Dick Gregory visited
Christina Gardens as well as several well-known
20 people. With his wife, children and luxurious
house I did not think the police would believe
me. They could not give me the protection or my
mother aged 72 at Chaguanas. Her life is in
mortal danger more so after today.

30 These are the reasons why I did not go to
the police ... I did not take my clothes off
that night. I laid therethinking "The next
morning "Malik reversed the car to the spot
where he said he wanted the hole dug. He called
me to the car. I said "Oh Lord Michael you
don't have to do that, spare the woman." I begged
him. He said he did not want any of the old talk
from last night. He said Yeates would drive
up in the car with Halle, he would hand her over
to me. I should tell her when she saw the hole
if she got suspicious that it was for stuff to
be decomposed or words to that effect. That i
was to grab the woman and take her into the
hole. Then I was to tell her that the hole was
40 for Jamal. He told me that Kidogo had his
orders. He said if I did anything to endanger
safety for the men around the hole, his family
or himself, by not obeying, I would die that
morning with the knowledge that my mother would
be dead as that was where he was heading with
Jamal. As I walked off he said to remind
Kidogo the heart is on the left side. He wants
the heart. I did as Michael instructed. I
said in my statement I was moving like a zombie
- a mindless, mechanical creature".

50 "I am not saying Sonny is a liar but I

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believe he is confused about events at the hole.. If I had held her as Parmassar said with three people in the hole - four feet square - four feet deep - I had no cuts on my hands. It would not be possible for me to have held her neck while she was fatally stabbed. I remember resting my hands on her lips, she was shouting

I knew my mother would leave with Malik if she was told I was ill. I knew Malik was capable of murder".

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"After the incident at the hole we all went back to Malik's premises, 26-28 Christina Gardens He (Kidogo) was a mad man. I felt mortally afraid for my own safety ... Telephone near the kitchen rang - Junior answered the telephone call. On his return to the kitchen Yeates asked Junior who rang. Junior said Michael asked if everything was alright and he answered yes. Yeates then left. The following day I telephoned my mother from Mrs. Letts. My mother told me on the 2nd January, 1972, Michael and Jamal had come there and she invited them in and gave them coffee. Shortly after Michael asked to telephone his home. Michael made a short telephone call and they left. My mother is an old woman of 72 years and lives in mortal fear for her life".

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"I made a request to see the C.I.D. Head. I saw the Deputy of the C.I.D. I told him I was in mortal fear for my mother's life. I asked for protection for her... My mother said the request was granted as she told me she was under police protection".

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"In 16 months in prison I am more free there than the two months at Christina Gardens. My mind is now free".

Under Cross-examination

"I remember Chadee's statement that she was fighting up with them but at that time I was not a part of them. I never restrained the woman, not to my recollection. I heard in Chadee's statement that Chadee said Stanley called for help. I did call out for somebody to do something. I remember that clearly, as I thought Kidogo was going to kill me at any minute too. My statement "1 McP.2" is true.

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I did rest my hands on her lips as she was shouting It was Steve Yeate's finger nail that was found in the womans throat."

10 "I assisted in covering the woman when she was in the hole. I did not start that while the woman was beating up in the hole. This is not quite correct. I have no reason to doubt that this woman was still alive when I and others covered up. I did all I could for her. I just had to cover the hole. I did all I could in the circumstances."

20 5. The Appellant's co-accused Edward Chadee gave sworn testimony that he was a car salesman who first met Malik in June or July, 1971 and the Appellant in the second week of December. On the evening of the 1st January, 1972, he, Chadee, Malik, Yeates, Kidogo, the Appellant and Parmassar were present when Malik "said he wanted her to be got rid of and Abbott told him, "Give her a plane ticket and let her go back where she came from", Yeates immediately said he wanted something definite and Malik said he wanted blood and blood is the only thing to keep us together".

pp.51-71

30 The next morning "Malik reversed his car down the street. He called Abbott to the car and spoke to him". The Appellant then passed on Malik's orders, and took part in digging the hole. When Yeates and the deceased had arrived and approached the hole "Abbott then held her mouth with his right hand and held her left hand behind her back with his left hand saying "It is for you", and jumped into the hole with her. Kidogo followed immediately with the cutlass. I heard Abbott saying, "somebody help, somebody do something". Yeates then took the cutlass from Kidogo and resting it against the deceased struck the handle.

40 In Malik's premises, "I heard the telephone ring I answered. I said 'Hello'. The person asked who was speaking. I recognised Malik's voice. He asked if everything was alright. I said Yes".

"Later that night (the 2nd January, 1972) on the porch with Malik and Parmassar. Malik told us that we have now become one of them.

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We were members for life and cannot resign".

Under cross-examination

"Abbott was dis-associating himself with the killing of the woman"

"Abbott of persons there appeared the most charitable".

"On the 2nd January, 1972, Malik would have had sufficient time in 45 minutes to leave Abbott's mother's home and arrive at Christina Gardens".

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Abbott assisted him and Parmassar to leave later.

"When covering the hole was started her feet were still beating. She was still alive".

pp.86-26

6. The learned trial judge in his summin-up directed the jury as to the onus and burden of proof, their function in the trial, separate consideration of the cases against each Defendant and the constituent parts of the offence of murder. He directed them as to the participation which is necessary for corroboration of the evidence of an accomplice. He summed up the evidence for the Crow and for each accused at length. He then directed the jury, "Even if you believe that he was in fear of his life, in fear of Malik, in fear that his mother would be killed, and in those circumstances acted on orders of Malik, acted under duress, in those circumstances, putting his case at the highest, even if you believe it, duress is no defence to the crime of murder; no defence whatever".

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7. The jury returned verdicts of guilty of murder and the Appellant and his co-defendant were sentenced to death by hanging.

pp.147-149

8. The Appellant sought to appeal to the Court of Appeal of Trinidad and Tobago on the ground of the misdirection as to the law of duress and also the withdrawing from the jury of a possible verdict of manslaughter. Counsel for the Appellant did not pursue the appeal on either ground and in agreeing with the course taken by counsel the Court relied upon a previous decision of that same Court in holding that duress was no

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defence to murder. In the course of so ruling, Sir Isaac Hyatali C.J., giving the judgement of the Court, commented, "This he (Abbott) did to save himself or his mother, or both of them from being killed by Malik".

9. The Appellant respectfully submits that the substantial questions which arise for determination of this Appeal are:-

10 (A) Whether on a charge of murder the defence of duress is open to a person accused as principal in the first degree.

20 It will be contended that the Learned Trial Judge's direction to the jury on the availability of the defence of duress to the Appellant was wrong in law. The Appellant will rely upon the case of D.P.P. V LYNCH ... which held that on a charge of murder the defence of duress is open to a person accused as principal in the second degree. The question here raised was expressly left open. It will respectfully be submitted that there is no distinction between principal in the second degree and principal in the first degree which can justify the availability of the defence to the former but not to the latter.

30 It will respectfully be submitted that the Appellant was by reason of the Learned Trial Judge's withdrawal of the issue from the jury deprived of his defence and the verdict of the jury upon it. A substantial miscarriage of justice was thereby occasioned and the verdict of the jury, so misdirected, cannot be allowed to stand.

(B) Whether there was evidence of duress which was fit for the consideration of the jury on which therefore to require rebuttal beyond sufficient reasonable doubt by the Crown

40 The Appellant respectfully submits that it was open to a properly directed jury to acquit on the evidence of duress before them. It is submitted that it cannot here be suggested that a properly directed jury must inevitably have convicted on the evidence.

(C) Whether, if the defence of duress is confined to one accused of murder as principal in the second degree, a jury so directed, would

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inevitably have found the Appellant to be a principal in the first degree.

The Appellant respectfully submits that even if his submission on (A) above is rejected, the Learned Trial Judge by his direction on the law wrongly withdrew from the Jury the issue as to whether he was a principal in the first or the second degree. The Learned Trial Judge failed to direct the jury as to the law in this respect. It is submitted that there was evidence upon which a jury could have found the Appellant to be a principal in the second degree. It is submitted that a principal in the first degree is the perpetrator of the "actus reus"; in the case of murder, the killer 10

10. The Appellant himself submits that this Appel should be allowed and that his conviction and the sentence passed upon him be quashed alternatively a new Trial be ordered under the provisions of ordinance Chapter 3 No. 2 of the Laws of Tinidad and Tobago, Section 6 (2) for the following among other 20

REASONS

1. BECAUSE the Learned Trial Judge misdirected the jury on the law relating to the defence of duress and thereby withdrew the issue of duress from the jury.
2. BECAUSE the Appellant by reason of the said misdirection was deprived of the consideration of his defence by the jury. 30
3. BECAUSE the Court of Appeal wrongly upheld the direction of the Learned Trial Judge.
4. BECAUSE the evidence at the Appellant's trial raised the issue of duress and it was open to a properly directed jury to acquit.
5. BECAUSE as a consequence of his said misdirection the Learned Trial Judge failed to direct the jury as to the law on principals in the first and second degrees, thus depriving the Appellant of the jury's consideration of his true role 40
6. BECAUSE in the premises a substantial miscarriage of justice has been occasioned

and the verdict of the jury cannot be allowed
to stand

BRIAN CAPSTICK

PATRICK O'CONNOR

IN THE PRIVY COUNCIL No.29 of 1975

ON APPEAL

FROM THE COURT OF APPEAL OF TRINIDAD
AND TOBAGO

B E T W E E N:

STANLEY ABBOTT Appellant

- AND -

THE QUEEN Respondent

CASE FOR THE APPELLANT

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