LOLE VULACA, RUSIATE KOROVUSERE and PITA MATAI v STATE (CAV0005 of 2011)

SUPREME COURT — CRIMINAL JURISDICTION

HETTIGE, SUNDARAM, EKANAYAKE JJ

9, 21 August 2012

Criminal law — appeals — special leave to appeal against conviction — murder — accessory after the fact to murder — death in police custody — joint enterprise — inconsistent verdicts — independent assessment of evidence — summing up — Court of Appeal Act s 21 — Supreme Court Act s 7.

An alleged suspect of robbery was murdered while he was in police custody, and eight police officers were charged. The first and second petitioners were convicted of murder and the third petitioner was convicted of accessory after the fact to murder. The other accused were acquitted. The Court of Appeal dismissed the petitioners' appeal against conviction and the petitioners sought special leave to appeal to the Supreme Court. The grounds of appeal related to directions on joint enterprise, inconsistent verdicts, failure to make an independent assessment of the evidence, unbalanced summing up and a decision that could not be supported on the evidence.

Held –

(1) There is no primary offender in this case, like in the case of an offence of aiding and abetting. All of the accused are equally liable for the commission of murder of the deceased as they were charged for committing this offence in a joint enterprise. Hence, there cannot be any inconsistency in the verdict of the assessors in this case. This Court is not satisfied that only an unreasonable jury could have come to this conclusion or that it would be in any way unsafe to let the verdict stand.

(2) The appeal to the Court of Appeal in this case is under s 21(1)(a) of the Court of Appeal Act, that is, it is an appeal against conviction on grounds which involve a question of law alone. Therefore independent assessment of the evidence is not necessary.

Chamberlain v R (No 2) (Azaria Chamberlain Case and Dingo Case) (1984) 153 CLR 521, followed.

(3) The Court of Appeal in its majority judgement analysed the evidence and considered the direction of the judge on the evidence and the law. The analysis shows that the Court of Appeal was satisfied that the direction of the trial judge to the assessors on the evidence and the law does not contain any misdirection or non-direction. On these directions, the verdict cannot be interfered with. Further, the summing up was without error, and was fair and balanced.

Application for special leave to appeal dismissed.

Cases referred to

Reg v Stone, applied.

Whitehorn v R (1983) 152 CLR 657, cited.

Katonivualiku v State Criminal Appeal No CAV 0001.1999S (17 April 2003); *R v Hunt* [1968] 2 QB 433, cited.

Praveen Ram v Sate [2002] FJSC 12; CAV0001.2011 (9th May 2012), considered.

Appellants in Person.

Puamau S for Respondent.

[1] Hettige, Sundaram, Ekanayake JJ. The Petitioners seek special leave to appeal to this Court from a judgement of the Court of Appeal delivered on 29th August 2011. The Court of Appeal by a majority decision (Gounder JA and Temo

JA) dismissed the appeal preferred by the Petitioners, who had been convicted on 22nd April 2008 in the High Court after a trial before Shameem J and three assessors.

[2] The charge against the Petitioners arose out of events that took place on the 5th of June 2007 at Valelevu in the Southern Division. Where an alleged suspect of robbery was murdered while he was in Police custody. Eight Accused were charged all of them were Police officers. First and Second Petitioners who were the First and Fourth Accused in the High Court trial were jointly charged along with five others for murder. The Third Petitioner who was the Eighth Accused was singly charged for accessory after the fact to murder.

The Evidence

[3] On the 4th of June 2007 at 11.30 pm at Valelevu Police Station Sgt Pita Matai (8th Accused) briefed a team of Police officers to arrest Tevita Malasebe (deceased). This team comprised of 1st to the 7th accused. The team left in three vehicles to arrest the deceased. The 1st, 2nd and 3rd Accused entered the house and arrested the deceased. The deceased's mother knew the 1st Accused as a CID officer, and when she asked, why they were arresting his son no reply was given but said that he had to get back to the station to make sure the deceased was not assaulted.

[4] The deceased was taken to the Police Station. Constable Mosese Kalidole's evidence was that the 1st Accused came out of the vehicle with the deceased and went straight into the crime office with the deceased. The deceased was not taken to the charge room for the station orderly to enter his arrest in the station diary and to lock him up in the cell to await interview, a procedure followed by the police when arresting suspects.

[5] There is evidence to show that after midnight voices and the sound of crying saying 'Wailei' came from the crime office. The mother of the deceased said about 1am when she went towards the crime office, she saw the 4th Accused sitting outside the crime office and he chased her away from that part of the station. Subsequently she saw the 4th Accused coming out of the crime office and whispering to the officers at the charge room. Around 4.30 am according to the witnesses who testified at the trial said that they heard sounds of loud cry. The voice was saying on several occasions "Officer please have mercy on me "and "officer please let me live". The 5th Accused was staying just outside the Crime office without any response.

[6] At 6.45 am the deceased was seen lying on the floor. 2nd and 4th Accused sitting outside the crime office looked tired and worried. The 8th Accused came to the Police Station in the morning and had directed the deceased to be taken to the hospital and ordered to clean the crime office. The 4th Accused was seen cleaning the crime office of the faeces and urine on the floor, wearing hand gloves.

[7] The deceased was loaded into the back of a twin cab by the 2nd and 6th Accused, the 4th Accused was also there. The 1st Accused drove the vehicle the 2nd and 6th Accused were seated in the back. The deceased was taken into the hospital on a trolley, on examination the deceased was pronounced dead. The two men who brought the deceased were police officers who had told the hospital authorities that the deceased had been lying somewhere on the street. One of the police officers was identified as the 1st Accused and the other as the 4th Accused. According to the pathologist the deceased died of shock and internal haemorrhage, due to multiple bruises as a complication of multiple blunt impacts.

[8] After trial before Shameem J and three assessors, the assessors unanimously found the First and Second Petitioners guilty for the charge of murder and the Third Petitioner for the charge of accessory after the fact to murder. Shameem J concurred with the unanimous opinion of the assessors. The other Accused who were jointly charged in the High Court with the First and Second Petitioners were acquitted by the majority verdict of the assessors.

Court of Appeal

[9] The Court of Appeal in dealing with the grounds of appeal in its majority judgement (Goundar JA and Temo JA) held:

> a) We find no error in the direction of the learned trial judge on malice aforethought. Clearly, the direction is in accordance with the law on malice aforethought as defined by the Penal Code. On the direction on circumstantial evidence the assessors were clearly directed that they can only convict on circumstantial evidence if the only reasonable inference they can draw from the evidence was the guilt of the appellants and that there was no other explanation for the evidence that was consistent with the appellants' innocence.
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> b) When commenting on the dock identification of the 2nd Appellant the Court of Appeal observed; the decision to allow the dock identification was within the discretion of the trial judge. The circumstances under which the deceased's mother identified the second appellant were not fleeting. The witness had seen the second applicant on two occasions under good lighting conditions, first at the station and then at the hospital. We agree with the learned trial judge's conclusion that the inherent dangers of identifying one accused in the dock was diminished in the present case because there were eight men in the dock. No error has been shown in the learned trial judge's exercise of discretion to allow dock identification of the second appellant by the deceased's mother.
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> c) When analysing the direction of the trial judge on joint enterprise the Court of Appeal observed that the assessors were clearly directed that they had to be satisfied that the death of the deceased was a probable consequence of a planned assault on him in which the first and second appellants participated. In our judgement the direction on joint enterprise was adequate and was a correct statement of law.
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> d) On the issue of direction on accessory after the fact the Court of Appeal held: That the third appellant directed the removal of the deceased's body from the crime office because he knew the suspect had died at the hands of his junior police officers and the purpose of the removal of the body was to prevent detection of a crime. The third appellant accepted that he gave the direction to remove the suspect but he did not know that the suspect had died in the Crime Office. In these circumstances, no issue arose as to whether the third appellant was an innocent bystander at the crime scene requiring a direction to that effect.

[10] The Court of Appeal in its dissenting judgement (Inoke JA) held:

> a) I agree with the dismissal of appeal on all grounds except for the ground of inadequacy of the learned trial judge's direction on joint enterprise.
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> b) I think there has been a serious miscarriage of justice by the inconsistent verdicts that two co-defendants (the first and second appellants) were guilty of murder by joint enterprise whilst the other five co-defendants were not. The inconsistency showed that the assessors had misunderstood the learned trial judge's directions on the law.

Special Leave to appeal

[11] The Petitioners have raised the following grounds of Appeal in their Petition for Special Leave to appeal:

> a) That the majority decision of the Court of appeal failed to direct itself to the prejudice arising from the inconsistent verdict of the assessors which was accepted by the trial judge, which failure resulted in prejudice to the 1st and 2nd Petitioners; and

b) That the majority judgment erred in law when it failed to consider the inconsistent verdict of the assessors and how that inconsistency would relate to the count of accessory after the fact to murder against the third Petitioner; and

c) That the trial judge erred in law in failing to properly give the assessors a direction on the effect in law of joint enterprise in a criminal charge where complicity could only be drawn from circumstantial evidence in a multiple accused trial, which issue was not properly canvassed and or discussed by the majority judgment resulting in a serious prejudice to the petitioners; and

d) That the majority decision of the Court of Appeal erred in law in holding that the trial judge adequately directed on the issue of joint enterprise as a wrong test in law was applied and that the opinion of the assessors would clearly show that they did not appreciate the direction in law to be applied; and

e) That the majority judgment erred in law by failing to make an independent assessment of the evidence which it was required to do in dealing with the grounds of appeal advanced by your petitioners, established by authority including *Chamberlain v R (No 2)(Azaria Chamberlain Case and Dingo Case)* (1984) 153 CLR 521 and *Whitehorn v R* (1983) 152 CLR 657; and

f) That the majority judgment erred in law in holding that the trial judge's summing up was fair and balanced to both sides as the summing up was not balanced, not fair to the defence and sufficiently tailored to address all the facts to the advantage of your petitioners; and

g) That the majority judgement should be set aside as it is unsafe and unsatisfactory and cannot be supported having regard to the evidence at the trial in its entirety.

[12] The grounds (a) to (d) are in relation to the prejudice caused to the Petitioners by inadequate or misdirection on joint enterprise which has resulted in the inconsistent verdict of the assessors.

[13] At the trial eight accused were charged. The assessors unanimously found the First, Fourth and the Eighth Accused guilty to the charges framed against them. They had also by a majority decision found the other accused not guilty.

[14] The submission of the Petitioners is that when seven accused were charged for murder on the basis of join enterprise, convicting two of them for murder and acquitting the other co- accused amounts to inconsistency in the verdict which causes miscarriage of justice.

[15] The inconsistent verdict, the Petitioners' complain of is that when seven accused were charged for murder on the basis of joint enterprise, to convict two of them for murder and acquit the other co- accused, the evidence must be such that those two who were convicted would have committed all of the elements of the offence. That is to say that the prosecution proved beyond reasonable doubt that one or both of them would have inflicted the injuries to the deceased which caused the death of the deceased.

[16] This position cannot be sustained for the reason that in this case there is clear evidence that on the 4th of June 2007 at Valelevu Police Station at 11.30 pm, the 8th Accused briefed all the accused who were part of an investigation team to arrest the deceased. They proceeded to the deceased's house in three vehicles and arrested the deceased and brought the deceased to the Police station. There was evidence of eye witnesses to prove this fact. There was also the evidence of the mother of the deceased to the effect that the 1st Accused had told her that the others who were taking the deceased might assault him.

[17] The deceased who was arrested and taken to the Police Station was not taken to the Charge Room where the arrested suspects were normally brought for registration and to lock in the cell. But was taken to the crime office which was also situated in the same police station. There was direct evidence to establish

this fact. This act demonstrates that the accused who were in the said investigation team had acted with the common intention of committing an unlawful act and had brought the deceased to the crime office.

[18] When the deceased was taken to the crime office he was healthy and he was not having any medical condition. From midnight of the 4th of June to 6am on the 5th of June the deceased was in the crime room. There was direct evidence to establish these facts.

[19] During the period the deceased was in the crime room he was brutally assaulted and he died in the crime room. There were direct evidence from witnesses who heard the cry of the deceased and the pathologist's evidence. According to the pathologist who examined the deceased on the morning of 5th June the deceased died of shock and internal haemorrhage, due to multiple bruises as a complication of multiple blunt impacts. There were 38 external injuries of bruises, aberrations and hand cuff abrasions. There were two imprint abrasions on the back. He listed 16 internal injuries of extensive hematoma, fractured ribs (the 6th, 7th, 8th and 9th) and large areas of hematoma over the abdominal wall, and over the right and left feet.

[20] According to the pathologist most of the injuries were caused in the body of the deceased by the body striking a flat surface or irregular surface or an object, instrument or weapon striking the body. The fact that blows were struck while the deceased in the crime room was proved by direct evidence.

[21] The proof that was required was as to who struck these blows on the deceased. There is no direct evidence to prove this fact. The Prosecution relied on circumstantial evidence. It has to be borne in mind that there were direct evidence to prove that all accused including the 8th Accused were part of the investigation team that arrested the deceased and they were all present when the deceased was brought to the police station and taken to the crime room in violation of police procedure.

[22] There was evidence to show that out of the 1st to the 7th Accused several of them were physically present in and around the crime room that night. The 1st and the 4th Accused were police officers against whom there is direct evidence that they participated in the arrest and brought the deceased to the Police station, they were seen in the police station moving in and out of the crime room on that night. They were seen tired in the morning. Finally they took the deceased to the hospital and told the nurse on duty that they picked this person on the road and they were instructed to take him to the hospital.

[23] Would the above evidence be sufficient for a panel of reasonable assessors, properly directed to find the 1st and the 4th accused guilty for the murder of the deceased even if they were charged separately. The fact that the other accused were acquitted by the assessors only indicate that one or more of the ingredients of the charge framed against those accused was not proved beyond reasonable doubt.

[24] There is no primary offender in this case like in the case of an offence of aiding and abetting. All the accused are equally liable to the commission of murder of the deceased as they were charged for committing this offence in a joint enterprise. In these circumstances there cannot be any inconsistency in the verdict of the assessors in this case.

[25] To set aside a conviction, the Petitioners have to satisfy the court that the two verdicts i.e. the conviction of the 1st and 4th accused and the acquittal of the other accused who were charged for murder, cannot stand together, meaning

thereby, that no panel of reasonable assessors who had applied their mind properly to the facts in the case could have arrived at that conclusion.

[26] In *R v Hunt* [1968] 2 QB 433 at 438: the principle of inconsistency was discussed:

> *"The short facts were that late in the evening on a day in August last, a Mr and Mrs Harlow and a Mr Bourne were walking along the pavement and coming towards them were four young men, Farrell, Tull, Richards and the defendant, all walking abreast. According to Mr Harlow, he let go of his wife's arm and brushed against one of these men who came in between him and his wife. He could not identify the defendant as being that man but he said that that man immediately turned round, struck him with his knee in the groin and also a glancing blow in the face with his fist. He then went on to say that almost immediately one of the four men, and indeed the same man, he thought, as had struck him, turned and struck Mr Bourne. Mr Bourne was struck by a fist on the chin, knocked over and unfortunately hit his head on the pavement, fracturing his skull. As I have said, Mr Harlow was unable to identify the man who hit him and who hit Bourne. Mrs Harlow was again unable to identify the man although she said it was the same man in each case. But Farrell and Tull, two of the other men, gave evidence that it was this defendant who had hit both Mr Harlow and Mr Bourne. The defence was that in fact the man who had brushed against Harlow and who had hit Harlow and hit Bourne was none other than Tull himself.*
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> *Pausing there, there was undoubtedly ample evidence to support the verdict against this defendant in regard to an assault on Mr Harlow and nobody could complain of an impeccable summing up and direction on the law in this case. What is said nevertheless is that that verdict ought not to be allowed to stand because the jury in fact acquitted the defendant on two other counts in regard to the assault on Mr Bourne. He had been charged with causing grievous bodily harm with intent, and in the alternative, inflicting grievous bodily harm on Bourne. When the jury came to return their verdicts they did it in this form. Asked in regard to the first count, "Do you find the accused guilty or not guilty of causing grievous bodily harm with intent? The answer was "We find on the first count insufficient evidence so that the defendant is not guilty." Then the second count was put: "Do you find him guilty or not guilty of unlawfully inflicting grievous bodily harm? " The foreman answered, "On the second count exactly the same; not guilty.*
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> *It is in those circumstances that Mr Stockdale argues that the sole issue here was one of identity; that all the evidence was that it was the same man, whoever that man was; and that it follows that the jury, having rejected the evidence of Farrell and Tull in regard to the offences against Mr Bourne, should have rejected them in regard to the offences against Mr Harlow. In the course of his argument the court has been referred to a great number of cases dealing with apparently inconsistent verdicts, in some of which the verdict has been upheld and in others in which it has been quashed. They are, of course, by their very nature cases in which the two counts being compared and which are said to be inconsistent are closely linked either on the facts or by reason of motive or in regard to the nature of the defences, but the principle, as it seems to this court, in every case is whether the inconsistency is such that it would not be safe to allow the verdict, which prima facie is entirely a proper verdict, to stand.*

There is a useful passage in regard to the approach that the court should make which was given by Devlin J. in the unreported case of *Reg. v Stone,* Devlin J there said, at 3 of the transcript:

> ***"When an appellant seeks to persuade this court as his ground of appeal that the jury had returned a repugnant or inconsistent verdict, the burden in plainly upon him. He must satisfy the court that the two verdicts cannot stand together, meaning thereby that no reasonable jury who had applied their mind properly to the facts in the case could have arrived at the conclusion, and once one assumes that they ware an unreasonable jury, or they could not have reasonably come to the conclusion, then the conviction cannot stand. But the burden is upon the defense to establish that. "***

Applying that approach, this court is by no means satisfied that only an unreasonable jury could have come to this conclusion or that it would be in any way unsafe to let the verdict stand.

[27] The Petitioners have failed to establish that the verdict of the assessors was inconsistent and it is unsafe to allow the verdict, as such, the grounds (a) to (d) fail.

[28] The grounds (e) to (g) are that; the Court of Appeal had failed to make an independent assessment of the evidence, unbalanced summing up and the decision cannot be supported by evidence.

[29] The Petitioners relied on *Chamberlain v R (No 2)(Azaria Chamberlain Case and Dingo Case)* (1984) 153 CLR 521 and *Whitehorn v R* (1983) 152 CLR 657 to support their contention that it was the duty of the Court of Appeal to undertake an independent assessment of the evidence adduced in the trial Court.

[30] The above two cases relied on by the Petitioners are reflecting the Australian approach based on the Australian Law. *Whitehorn v The Queen* (supra) Dawson J observed:

"Section 353 of the Criminal Law Consolidation Act 1935-1975 (SA) is in the common Australian form, adopted from the English Criminal Appeal Act 1907. Under that section there are three grounds upon which an appeal against conviction may be allowed. First, it may be allowed if the verdict is unreasonable or cannot be supported having regard to the evidence; Secondly if there has been an error of law; and Thirdly, if on any ground there was a miscarriage of justice".

[31] *Chamberlain v The Queen* (supra) (Gibbs CJ, Mason j) observed:

"It is unnecessary to consider whether the jurisdiction exercised by Courts of Criminal Appeal in Australia is precisely the same as that exercised by the Court of Appeal in criminal cases in England under the amended statute. It seems to us that the proper test to be applied in Australia is,as Dawson J said, to ask whether the jury, acting reasonably, must have entertained a sufficient doubt to have entitled the accused to an acquittal, ie must have entertained a reasonable doubt as to the guilt of the accused. To say that the Court of Criminal Appeal thinks that it was unsafe or dangerous to convict, is another way of saying that the Court of Criminal Appeal thinks that a reasonable jury should have entertained such a doubt. **The function which the Court of Appeal performs in making an independent assessment of evidence is performed for the purpose of deciding that question.** The responsibility of deciding upon the verdict, whether of conviction or acquittal, lies with the jury and we can see no justification, in the absence of express statutory provisions leading to a different result, for an appellate tribunal to usurp the function of the jury and disturb a verdict of conviction simply because it disagrees with the jury's conclusion. We do agree that in many cases the distinction will be of no practical consequence; it will be merely a matter of words. That will not generally be the case where questions of credibility are decisive. However, whether it matters from a practical point of view or not in a particular case, it is not unimportant to observe the distinction- the trial is by jury, and (absent other sources of error) the jury's verdict should not be interfered with unless the Court of Criminal Appeal concludes that a reasonable jury ought to have had a reasonable doubt. (Emphasis supplied)"

[32] In Fiji Appeals in Criminal cases are provided under s 21 of the Court of Appeal Act. It provides;

21(1) A person convicted on a trial before the High Court may appeal under this part to the Court of Appeal-

(a) Against his conviction on any ground of appeal which involves a question of law alone.

(b) With the leave of Court of Appeal or upon the certificate of the judge who tried him that it is a fit case for appeal against his conviction on any ground of appeal which involves a question of fact alone or a question of mixed law and fact or any other ground which appears to the court to be a sufficient ground of appeal; and

(c) With the leave of the Court of Appeal against the sentence passed on his conviction unless the sentence is one fixed by law.

[33] The appeal to the Court of Appeal in this case is under s 21(1)(a) Court of Appeal Act i.e. Appeal against conviction on grounds of appeal which involves a question of law alone. Therefore independent assessment of evidence is not necessary as observed in *Chamberlain v The Queen* (supra), where the appeal was on the First Ground of Appeal of the Australian Act i.e. verdict is unreasonable or cannot be supported having regard to the evidence.

[34] In *Praveen Ram v Sate* [2002] FJSC 12;CAV0001.2011(9th May 2012) the Supreme Court of Fiji observed;

"Section 237 of the Criminal Procedure Decree of 2009,which repealed the above provision of the Code, follows the same principle and provides that the trial judge "shall not be bound to conform to the opinions of the assessors" and goes on to re-enact that the trial judge shall give his reasons for differing from the opinion of the assessors.

A trial judge's decision to differ from, or affirm, the opinion of the assessors necessarily involves an evaluation of the entirety of the evidence led at the trial including the agreed facts, and so does the decision of the Court of Appeal where the soundness of the trial judge's decision is challenged by way of appeal as in the instant case. In independently assessing the evidence in the case, it is necessary for a trial judge or appellate court to be satisfied that the ultimate verdict is supported by the evidence and is not perverse. The function of the Court of Appeal or even this Court in evaluating the evidence and making an independent assessment thereof, is essentially of a supervisory nature, and an appellate court will not set aside a verdict of a lower court unless the verdict is unsafe and dangerous having regard to the totality of evidence in the case".

[35] *Praveen Ram v Sate* (supra) distinguishes the duty of a trial judge and an appellate court. The trial judge having seen and heard the witnesses testifying in court like in the case of assessors could independently assess the evidence and decide whether he could confirm the opinion of the Assessors or differ from the opinion of the assessors. If the Judge differs he has to give his reasons.

[36] The Supreme courts observed in *Praveen Ram v Sate* (supra,) that the function of the Court of Appeal and this Court is of a supervisory nature. As the appellate courts have not seen and heard the witnesses it cannot independently assess and evaluate the evidence led at the trial to the extent of a trial court judge. But an analysis of evidence is necessary for two reasons one is to ascertain whether there is evidence to convict the accused. If there is no evidence it is a question of law, the Court of Appeal have to take into consideration in arriving at its finding. The other is to ascertain whether on the given facts if a properly directed panel of assessors would have come to the same decision. This is to ascertain whether the assessors were properly directed in the application of law on the given facts. However the Court of Appeal will not set aside a verdict of a High Court on a question of law (s.21(1)(a)) or fact (s.21(1)(b)) unless a substantial miscarriage of justice has in fact occurred (s.22(6)).

[37] In the present case the Court of Appeal in its majority judgement from paragraph [4] to paragraph [13] has analysed the evidence and thereafter considered the direction of the learned judge on the evidence and the law. The

analysis shows that the Court of Appeal by a majority decision was satisfied that the direction of the trial judge to the assessors on the evidence and the law does not contain any misdirection or non direction. On these directions the verdict arrived at by the assessors which was concurred by the learned Trial judges of the High Court cannot be interfered with.

[38] For the above reasons the grounds of appeal (e), (f) and (g) fail.

[39] When considering the totality of the evidence led against the accused and the summing up of the learned trial judge to the assessors it could be seen in relation to the 1st to the 7th Accused, the learned trial judge has analyzed the evidence available against each individual accused. She had directed the assessors to consider the evidence of each accused separately. She had explained the law relating to joint enterprise and its applicability in this case. She had also explained the elements of the offence of murder and cautioned the assessors that each of the elements have to be proved beyond reasonable doubt. That the evidence in relation to the charge of murder is circumstantial evidence. The law relating to circumstantial evidence and the precautions that have to be taken in convicting an accused on circumstantial evidence was also adequately explained by the learned trial judge. We could not see any error in the summing up and the summing up is fair and balanced.

[40] In relation to the 8th Accused there was evidence to show that he briefed the investigating team to arrest the deceased on the night of 4th June. He was in the police station when the deceased was arrested and brought. He was aware that the deceased was taken to the Crime Office by the investigating team bypassing the normal procedure of entering the arrest in the records maintained in the Police station and remanding him in the cell. On the next day morning he was informed of the condition of the deceased. The deceased was found unconscious inside the Crime Office There was faeces and urine on the floor. There were visible injuries on the body of the deceased. According to the pathologist the deceased would have died several hours before he was brought to the Hospital. The 8th Accused knowing the suspect was dead has directed the body to be removed to the hospital and to clean the Crime Office to destroy evidence of assault and to prevent detection of a crime. The learned trial judge in relation to this accused also had summed up the evidence in a fair manner explained the elements of the offence of accessory after the fact for which the 8th Accused was charged and directed the assessors to arrive at their own finding in relation to the guilt of the 8th Accused. We could not see any error in the summing up and it is fair and balanced.

[41] The jurisdiction of the Supreme Court with respect to special leave to appeal is provided under s 7 of the Supreme Court Act 1998.

> 7. (1) In exercising its jurisdiction under s 122 of the Constitution with respect to special leave to appeal in any civil or criminal matter, the Supreme Court may, having regard to the circumstances of the case-
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> (a) refuse to grant leave to appeal,
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> (b) grant special leave and dismiss the appeal or instead of dismissing the appeal make such orders as the circumstances of the case require; or
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> (c) grant special leave and allow the appeal and make such other orders as the circumstances of the case require.
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> (2) in relation to a criminal matter, the Supreme Court must not grant special leave to appeal unless-
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> (a) a question of general legal importance is involved;

(b) a substantial question of principle affecting the administration of criminal justice is involved; or

(c) substantial and grave injustice may otherwise occur

[42] The grounds raised in this application are based on the acceptance of the alleged inconsistent verdict of the assessors, inadequate direction on joint enterprise, the direction of the learned trial judge is not fair and the failure of the Court of Appeal to assess the evidence. These grounds were discussed above and found that they have no merits.

[43] The above grounds are not substantial questions of principle affecting the administration of criminal justice. In *Katonivualiku v State Criminal Appeal No: CAV 0001.1999S* (17 April 2003) the Supreme Court referring to s 7(2) of the Supreme Court Act 1998 observed:

> " It is plain from this provision that the Supreme Court is not a Court of Criminal appeal or general review nor is there an appeal to the Court as a matter of right and,whilst we accept that in an application for special leave some elaboration on the grounds of appeal may have to be entertained, the court is necessarily confined within the legal parameters set out above, to an appeal against the Court of Appeal...."

[43] As this application for special leave to appeal had not met the threshold requirement for the grant of Special leave to appeal, this court dismisses this application.

Application dismissed.